

House of Representatives
Supplementary Order Paper

Tuesday, 9 February 2010

Judicial Matters Bill

Proposed amendments

Hon Christopher Finlayson, in Committee, to move the following amendments:

Clause 10(1)

To omit this subclause (lines 17 to 21 on page 6) and substitute the following subclause:

- (1) Section 15(1) is amended by repealing paragraphs (a) and (b) and substituting the following paragraphs:
 - “(a) there are any grounds for exercising his or her power under **section 15A** to take no further action in respect of the complaint; or
 - “(b) there are any grounds for dismissing the complaint under section 16; or
 - “(c) the subject matter of the complaint, if substantiated, could warrant referral of the complaint to the Head of Bench under section 17; or
 - “(d) the subject matter of the complaint, if substantiated, could warrant consideration of the removal of the Judge from office by way of a recommendation under section 18.”

Clause 11: new section 15A(2)(c)

To omit this paragraph (lines 14 to 19 on page 7) and substitute the following paragraph:

- “(c) that the complaint is one in respect of which the Commissioner, having started the preliminary examination required by section 15, concludes that there is no reasonable prospect of there being available to him or her information that would enable him or her to form an

opinion on the matters specified in **section 15(1)(b), (c), and (d)**.”

Clause 12

To insert the following subclause as *subclause (1)* (before line 36 on page 7):

- (1) Section 16(1) is amended by repealing paragraph (i) and substituting the following paragraph:
- “(i) he or she has considered or previously considered the subject matter of the complaint, and that subject matter could not, if substantiated, warrant either referral to the Head of Bench under section 17 or consideration of the removal of the Judge from office by way of a recommendation under section 18.”

Clause 12A

To omit this clause (lines 6 to 11 on page 8) and substitute the following clause:

12A Commissioner’s power to refer complaints to Head of Bench

Section 17(1) is amended by repealing paragraphs (a) and (b) and substituting the following paragraphs:

- “(a) exercises his or her power under **section 15A** to take no further action in respect of the complaint; or
- “(b) dismisses the complaint under section 16; or
- “(c) recommends under section 18 that a Judicial Conduct Panel be appointed.”

New Part 1A

To insert the following Part after *Part 1* (after line 5 on page 9):

Part 1A
Amendment to District Courts Act 1947

Principal Act amended

15A Principal Act amended

This **Part** amends the District Courts Act 1947.

District Court Judges

15B Appointment and qualifications

Section 5(2) is amended by omitting “140” and substituting “156”.

Heading to Part 2

To omit “**Amendment**” (line 7 on page 9) and substitute “**Amendments**”.

New heading and clauses 16A and 16B

To insert the following heading and clauses after *clause 16* (after line 10 on page 9):

*Higher duties allowance for High Court Judges
serving on Court of Appeal*

16A Salaries and allowances of Judges

- (1) Section 9A(1) is amended by inserting the following paragraph after paragraph (b):

“(ba) a higher duties allowance payable and calculated in accordance with **subsection (1A)**; and

- (2) Section 9A is amended by inserting the following subsection after subsection (1):

“(1A) The higher duties allowance under **subsection (1)(ba)** is—

“(a) payable only to a Judge who—

“(i) is or was not a Judge of the Court of Appeal holding office under section 57(2) (in this subsection called a **permanent Judge**); but

“(ii) is or was under sections 58A to 58C or section 58F serving as a member of a criminal or civil division, or as a member of the Full Court, of the Court of Appeal; and

“(b) payable only in respect of periods of the Judge’s service as a member of the division or Full Court; and”

“(c) calculated at a rate expressed per day of service as a member of the division or Full Court in accordance with the following formula:

$$(a - b) \times c/d$$

where—

a is the applicable yearly rate of salary determined by the Remuneration Authority to be payable to a permanent Judge

b is the applicable yearly rate of salary determined by the Remuneration Authority to be payable to a Judge who is not a permanent Judge

c is 0.0383561 (the standard payroll factor, which represents the proportion of an annual salary that is paid per fortnight)

d is 10 (the number of working days per fortnight).

- (3) Section 9A(5) is consequentially amended by omitting “the payment of salary and allowances on a pro-rata basis under subsection (4) is not” and substituting “neither the cessation of the payment of a higher duties allowance payable and calculated under **subsections (1)(ba) and (1A)**, nor the payment

of salary and allowances on a pro-rata basis under subsection (4), is”.

- (4) Section 11A(3) is consequentially amended by omitting “shall also be paid” and substituting “must also be paid the higher duties allowance payable and calculated under **section 9A(1)(ba) and (1A)** and”.

16B Allowances paid previously

- (1) This section applies to higher duties allowances paid out of public money before the commencement of this section to Judges who, for the periods in respect of which the allowances were paid,—
- (a) were not Judges of the Court of Appeal holding office under section 57(2) of the Judicature Act 1908; but
- (b) were under sections 58A to 58C or section 58F of that Act serving as a member of a criminal or civil division, or as a member of the Full Court, of the Court of Appeal.
- (2) Those allowances must be taken to be, and to always have been, as authorised and valid as allowances calculated, appropriated, and paid in accordance with sections 9A, 11, and 11A of the Judicature Act 1908 (as those sections are amended by **section 16A** of this Act).

New heading and clause 18

To insert the following heading and clause after *clause 17* (after line 14 on page 9):

Court of Appeal Judges

18 Constitution of Court of Appeal

Section 57(2)(b) is amended by omitting “8” and substituting “9”.

Explanatory note

This Supplementary Order Paper sets out amendments to the Judicial Matters Bill. The amendments—

- clarify the actions the Judicial Conduct Commissioner may take on a complaint about the conduct of a Judge. *See* the amendments to *clauses 10(1), 11, 12, and 12A*, which amend section 15(1), *new section 15A(2)(c)*, and sections 16(1) and 17(1) of the Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004;
- increase from 140 to 156 the maximum number of District Court Judges. *See new Part 1A* amending the District Courts Act 1947 section 5(2);
- clearly authorise higher duties allowances paid to High Court Judges serving on the Court of Appeal so that, in the language of MacKenzie J

in *Wikio v Attorney-General* (2008) 8 HRNZ 544 (HC) at paragraphs [128]–[135], they “rest on a more secure constitutional foundation”. See new clauses 16A and 16B amending sections 9A and 11A of the Judicature Act 1908, and authorising allowances paid previously:

- increase from 9 to 10 (including the President) the maximum number of permanent Judges of the Court of Appeal that may be appointed. See new clause 18 amending the Judicature Act 1908 section 57(2)(b) (which specifies the minimum and maximum numbers of permanent Judges (other than the President) of the Court of Appeal).
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