



# Habeas Corpus Act 2001

Public Act 2001 No 31  
Date of assent 25 May 2001  
Commencement see section 2

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## The Parliament of New Zealand enacts as follows:

### 1 Title

This Act is the Habeas Corpus Act 2001.

### 2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

### 3 Interpretation

In this Act, unless the context otherwise requires,—

**applicant** means the plaintiff in an application

**application** means an application to the High Court for a writ of habeas corpus

**detention** includes every form of restraint of liberty of the person

**habeas corpus** means habeas corpus *ad subjiciendum*

**High Court Rules** has the same meaning as in the Judicature Act 1908

**Judge** means a Judge of the High Court

**Registrar** includes a Deputy Registrar

**working day** has the same meaning as in the High Court Rules.

### 4 Application of Act to the Crown and Parliament

- (1) This Act binds the Crown.
- (2) Nothing in this Act limits or affects the power or authority of the House of Representatives to punish for contempt.

### 5 Purposes

The purposes of this Act are—

- (a) to reaffirm the historic and constitutional purpose of the writ of habeas corpus as a vital means of safeguarding individual liberty;
- (b) to make better provision for restoring the liberty of persons unlawfully detained by establishing an effective procedure for applications to the High Court for the issue of a writ of habeas corpus, and the expeditious determination of those applications;
- (c) to provide certain unsuccessful parties in habeas corpus proceedings with a right of appeal to the Court of Appeal;
- (d) to abolish writs of habeas corpus other than the writ of habeas corpus *ad subjiciendum*.

*Application for writ of habeas corpus*

**6 Application for writ of habeas corpus to challenge legality of detention**

An application to challenge the legality of a person's detention may be made by an application for a writ of habeas corpus.

**7 Manner of application for writ**

- (1) An application for a writ of habeas corpus must be made to the High Court by originating application in the manner provided by the High Court Rules.
- (2) Despite subsection (1), nothing in that subsection excludes the inherent jurisdiction of the High Court to hear and to make an order on an oral application at any time in circumstances of unusual urgency.
- (3) Despite subsection (1), the provisions of any High Court Rule providing for directions by the Court before the hearing, or affecting the hearing, of an originating application or empowering the Court to convene a conference of the parties to an originating application do not apply to an application.
- (4) No applicant may be disqualified for lack of capacity or standing.
- (5) In a proceeding for a writ of habeas corpus—
  - (a) no party to the proceeding is entitled to general or special discovery of the documents of any other party to the proceeding or to an order for security for costs; and
  - (b) the High Court Rules concerning discovery and inspection of documents and security for costs do not apply.
- (6) No fee is payable to the High Court for filing any document in respect of an application.
- (7) Section 51E of the Judicature Act 1908 does not apply in respect of the form and manner of any application made under this Act.

**8 Description of defendant by reference only to office**

A defendant may be described in an application by reference only to the defendant's office if the defendant is—

- (a) the Superintendent of a penal institution in which the detained person is alleged to be illegally detained; or

- (b) the Commissioner of Police, if the detained person is alleged to be illegally detained in police custody except following the exercise of powers under the Immigration Act 1987; or
- (c) the chief executive of the Department of Labour, if the detained person is alleged to be illegally detained in police custody following the exercise of powers under the Immigration Act 1987; or
- (d) the Comptroller of Customs, if the detained person is alleged to be illegally detained in the custody of the New Zealand Customs Service; or
- (e) any other office holder prescribed by rules made in accordance with section 20, and in the circumstances prescribed in those rules.

## **9 Urgency**

- (1) An application for a writ of habeas corpus must be given precedence over all other matters before the High Court.
- (2) Judges and employees of the Department for Courts must ensure that every application, including any interlocutory application, is disposed of as a matter of priority and urgency.
- (3) The Registrar must allocate a date for the *inter partes* hearing of an application that is no later than 3 working days after the date on which the application is filed.

## **10 Urgency where no resident Judge available**

- (1) If an application is filed at a Registry of the High Court in a place where no Judge is at that time available, the Registrar must ensure that the application is dealt with in some other place within the time limit referred to in section 9(3); and any other Registrar or employee of the Department for Courts whose assistance is sought by the Registrar in whose Registry the application is filed has a corresponding obligation.
- (2) If subsection (1) applies, the Registrar must—
  - (a) make such urgent enquiries as are necessary to determine where and by whom the application can most conveniently and expeditiously be dealt with; and
  - (b) forward the application and any other relevant documents without delay to the Registrar at the place where the application is to be dealt with; and

- (c) without delay, inform every party to the proceeding of the action taken under this section.
- (3) This section applies in substitution for any provision of the High Court Rules relating to the transfer of notices of application filed at a time when a Judge is not present.

### *Determination of applications*

#### **11 Interim orders for release from detention**

- (1) The High Court may make an interim order for the release from detention of the detained person pending final determination of the application, and may attach any conditions to the order that the Court thinks appropriate to the circumstances.
- (2) In the case of a detained person who is charged with an offence to which the Bail Act 2000 applies, the Court must not make an order under this section if the Court is of the opinion that bail would not be granted to that person under that Act.
- (3) If a person has been released from detention under an interim order, the Court may, on the application of the person released or any party to the proceeding or on the Court's own initiative, make an order—
  - (a) revoking the interim order; or
  - (b) varying or revoking any condition of the interim order or substituting or imposing any other condition.
- (4) If a detained person who is in custody under a conviction is released under an interim order, the time during which the person is released does not count as part of any term of detention under the person's sentence if on a final determination of the application the writ of habeas corpus is refused.

#### **12 Power of arrest of absconder etc**

- (1) A member of the police may arrest without warrant a person who has been released from detention under an interim order made under section 11 if the member of the police believes on reasonable grounds that—
  - (a) the person released has absconded, or is about to abscond, for the purpose of evading any appearance or further appearance in Court in connection with the application or the person's original detention; or
  - (b) the person has failed to comply with any condition attached to the interim order.

- (2) A person who is arrested under this section must be brought before the High Court as soon as possible.
- (3) The Court may revoke the interim order if it is satisfied that the person had absconded or was about to abscond or had failed to comply with a condition attached to the interim order or an undertaking to the Court in reliance on which the interim order was made.
- (4) A member of the police may, for the purposes of this section, enter at any time onto any premises, by force if necessary, if the member of the police has reasonable cause to believe that the person released from detention is on those premises.
- (5) If the member of the police is not in uniform and a person in actual occupation of the premises requires the member of the police to produce evidence of his or her authority, the member of the police must, before entering on the premises, produce his or her badge or other evidence of membership of the police.

### **13 Powers if person detained is young person**

- (1) In dealing with an application in relation to a detained person who is under the age of 20 years, the High Court may exercise the powers that are conferred on a Family Court by the Guardianship Act 1968.
- (2) If the substantive issue in an application is the welfare of a person under the age of 16 years, the High Court may, on its own initiative or at the request of a party to the proceeding, transfer the application to a Family Court.
- (3) An application referred under subsection (2) must be dealt with by the Family Court in all respects as if it were an application to that Court under the Guardianship Act 1968.

### **14 Determination of applications**

- (1) If the defendant fails to establish that the detention of the detained person is lawful, the High Court must grant as a matter of right a writ of habeas corpus ordering the release of the detained person from detention.
- (2) A Judge dealing with an application must enquire into the matters of fact and law claimed to justify the detention and is not confined in that enquiry to the correction of jurisdictional

errors; but this subsection does not entitle a Judge to call into question—

- (a) a conviction of an offence by a court of competent jurisdiction, a duly constituted court-martial, or an officer exercising summary powers under Part V of the Armed Forces Discipline Act 1971; or
  - (b) a ruling as to bail by a court of competent jurisdiction.
- (3) A Judge must determine an application by—
- (a) refusing the application for the issue of the writ; or
  - (b) issuing the writ ordering the release from detention of the detained person.
- (4) All matters relating to the costs of and incidental to an application are in the discretion of the Court and the Court may refuse costs to a successful party or order a successful party to pay costs to an unsuccessful party.
- (5) A writ of habeas corpus may be in the form set out in the Schedule.

## **15 Finality of determinations**

- (1) Subject to the right of appeal conferred by section 16, the determination of an application is final and no further application can be made by any person either to the same or to a different Judge on grounds requiring a re-examination by the Court of substantially the same questions as those considered by the Court when the earlier application was refused.
- (2) A person who has been released from detention in accordance with a writ of habeas corpus must not be re-arrested or detained again on substantially the same grounds as those considered by the Court when the earlier release was ordered.
- (3) Subsection (2) has no application if the ground on which the earlier release was ordered was a jurisdictional or procedural defect that has since been corrected or no longer applies.

### *Appeals by certain unsuccessful parties*

## **16 Certain unsuccessful parties may appeal**

- (1) The provisions of the Judicature Act 1908 relating to appeals to the Court of Appeal against decisions of the High Court in civil cases—
  - (a) apply with respect to a determination refusing an application for the issue of a writ of habeas corpus; but

- (b) do not apply to a final determination that orders the release from detention of a detained person unless the substantive issue is the welfare of a person under the age of 16 years.
- (2) The Court cannot order that security for costs be given by the appellant in an appeal against the refusal of an application where the respondent in the appeal is the Crown or a public officer or other person purporting to act on behalf of the Crown.
- (3) No fee is payable to the Court of Appeal for filing any document in respect of an appeal against the refusal of an application.

### **17 Urgency in hearing appeals**

- (1) An appeal under this Act must be given precedence over all other matters before the Court of Appeal.
- (2) Judges of the Court of Appeal and employees of the Department for Courts must use their best endeavours to ensure that every appeal under this Act is disposed of as a matter of priority and urgency.

### *Miscellaneous provisions*

### **18 Abolition of certain writs**

It is declared for the avoidance of doubt that all writs of habeas corpus other than the writ of habeas corpus *ad subjiciendum* are abolished.

### **19 Contempt of court**

- (1) A person commits a contempt of court who—
  - (a) wilfully hinders the prompt disposal of an application; or
  - (b) being aware that an application has been made to the High Court seeking the release from detention of a person, removes or attempts to remove that person from the jurisdiction of the Court; or
  - (c) having been released under an interim order made under section 11, fails to comply with a condition attached to the order; or
  - (d) wilfully fails to comply with a writ of habeas corpus ordering the release from detention of a person.

- (2) This section does not limit or affect any power or authority of the High Court or the Court of Appeal to punish any person for contempt of court in any case to which this section does not apply.

## **20 Rules**

- (1) Rules not inconsistent with this Act may be made under section 51C of the Judicature Act 1908 regulating the practice and procedure of the High Court and the Court of Appeal in relation to applications under this Act.
- (2) Without limiting subsection (1), rules may be made under section 51C of the Judicature Act 1908 that amend the form in the Schedule or revoke the form and substitute a new one.

## **21 Supplementary procedure**

If a matter arises in relation to an application for which this Act does not provide, the High Court must dispose of it as nearly as is practicable in a manner consistent with this Act, and to the extent that they are not inconsistent with this Act, in accordance with the High Court Rules.

## **22 Repeals and amendments**

- (1) Section 54C of the Judicature Act 1908 is repealed.
- (2) The First Schedule of the Imperial Laws Application Act 1988 is amended by repealing so much of it as relates to enactments relating to Habeas Corpus and accordingly,—
- (a) (1640) 16 Cha 1, c. 10—The Habeas Corpus Act 1640, section 6; and
  - (b) (1679) 31 Cha 2, c. 2—The Habeas Corpus Act 1679, sections 1 to 11; and
  - (c) (1816) 56 Geo 3, c. 100—The Habeas Corpus Act 1816—
- cease to have effect as part of the laws of New Zealand.
- (3) Sections 17 to 19, and 21 of the Interpretation Act 1999 apply to the enactments referred to in subsection (2) as if those enactments were Acts of the Parliament of New Zealand.
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s 14(5)

## Schedule Writ of habeas corpus

(Intitulement)

Elizabeth the Second, by the Grace of God Queen of New Zealand and Her Other Realms and Territories, Head of the Commonwealth, Defender of the Faith:

To: [*Name, place of residence, and occupation of the defendant, or other person in whose custody the detained person is alleged to be detained*]

**We command you** immediately to discharge and release from custody and detention [*Full name*] (who may be called by another name).

Witness the Chief Justice of Our High Court of New Zealand this  
..... day of ..... 20.....

By Order of Court

(Deputy) Registrar

### Warning:

Take notice that if you wilfully fail to comply with this writ of habeas corpus the High Court will be moved as soon as counsel can be heard for an order committing you to prison for your contempt.

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### Legislative history

1 July 1999	Introduction (Bill 308–1)
22 March 2000	First reading and referral to Law and Order Committee
26 March 2001	Reported from Law and Order Committee (Bill 308–2)
2 May 2001	Second reading
16 May 2001	Committee of the whole House, third reading
25 May 2001	Royal assent

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This Act is administered in the Ministry of Justice.

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