



ANALYSIS

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1957, No. 9

An Act to amend the Judicature Act 1908

[26 September 1957]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title, etc.—(1) This Act may be cited as the Judicature Amendment Act 1957, and shall be read together with and deemed part of the Judicature Act 1908 (hereinafter referred to as the principal Act).

(2) Except as provided in subsection two of section two and subsection three of section four of this Act, this Act shall come into force on the first day of January, nineteen hundred and fifty-eight.

The Court of Appeal

2. Constitution of the Court of Appeal—(1) Section fifty-seven of the principal Act, as amended by subsection four of section seven of the Judicature Amendment Act 1913, is hereby further amended by repealing subsection two, and substituting the following subsections:

“(2) Subject to the provisions of this Part of this Act, the Court of Appeal shall consist of—

“(a) The Chief Justice of New Zealand, who shall be a member of the Court by virtue of his office as the head of the Judiciary:

“(b) A Judge of the Supreme Court, to be appointed by the Governor-General as a Judge of the Court of Appeal and as President of that Court:

“(c) Two other Judges of the Supreme Court, to be appointed by the Governor-General as Judges of the Court of Appeal.

“(3) Any Judge may be appointed to be a Judge of the Court of Appeal either at the time of his appointment as a Judge of the Supreme Court or at any time thereafter.

“(4) Every Judge of the Court of Appeal shall continue to be a Judge of the Supreme Court, and may from time to time sit as or exercise any of the powers of a Judge of the Supreme Court.

“(5) Every Judge of the Court of Appeal shall hold office as a Judge of that Court so long as he holds office as a Judge of the Supreme Court:

“Provided that, with the prior approval of the Governor-General, any Judge of the Court of Appeal may resign his office as a Judge of that Court without resigning his office as a Judge of the Supreme Court.

“(6) The Judges of the Court of Appeal shall have seniority over all the Judges of the Supreme Court (including any Judge who is for the time being an additional Judge of the Court of Appeal), except the Chief Justice or the acting Chief Justice. The President of the Court of Appeal shall have seniority over the two Judges of that Court referred to in paragraph (c) of subsection two of this section; and those two Judges shall have seniority between themselves according to their seniority as Judges of the Supreme Court. If any Judge of the Court of Appeal resigns his office as a Judge of that Court without resigning his office as a Judge of the Supreme Court, he shall then have, as a Judge of the Supreme Court, the seniority that he would have had if he had not been appointed as a Judge of the Court of Appeal.

“(7) While any vacancy exists in the office of President of the Court of Appeal, or during any absence from New Zealand of the President, or while by reason of illness or any other cause he is prevented from exercising the duties of his office, the senior Judge of the Court of Appeal, not being the

Chief Justice, shall have authority to act as President of the Court of Appeal and to execute the duties of that office and to exercise all powers that may be lawfully exercised by the President.

“(8) The jurisdiction of the Court of Appeal shall not be affected by any vacancy in the number of the Judges of that Court.”

(2) Any appointment of a Judge of the Court of Appeal may be made under section fifty-seven of the principal Act, as amended by subsection one of this section, at any time after the date of the passing of this Act as if this section had come into force on that date. Any person so appointed shall come into office as a Judge of the Court of Appeal on the commencement of this Act.

3. New sections substituted—The principal Act, as amended by subsection five of section eight of the *Judicature Amendment Act 1913*, is hereby further amended by repealing sections fifty-eight and sixty, and substituting the following sections:

“**58. Additional Judges of Court of Appeal in certain circumstances**—(1) At any time during the illness or absence of any Judge of the Court of Appeal the Governor-General may appoint some other Judge of the Supreme Court to hold office as an additional Judge of the Court of Appeal during the pleasure of the Governor-General.

“(2) Whenever the Chief Justice and the President of the Court of Appeal certify that in any appeal or proceeding before that Court it is expedient that any Judge or Judges of the Supreme Court nominated by the Chief Justice should act as an additional Judge or, as the case may be, as additional Judges of the Court of Appeal, the Judge or Judges so nominated may act as a Judge or Judges of the Court of Appeal for the purposes of that appeal or proceeding.

“(3) Every additional Judge acting pursuant to this section shall be deemed while so acting to be a Judge of the Court of Appeal.

“(4) The fact that any Judge acts as an additional Judge of the Court of Appeal shall be sufficient evidence of his authority to do so; and no judgment or determination given or made by that Court while he so acts shall be questioned on the ground that the occasion for his so acting had not arisen or had ceased to exist.

“(5) Every Judge who pursuant to this section has acted as an additional Judge of the Court of Appeal may attend the

sittings of that Court for the purpose of giving judgment or passing sentence in or otherwise completing any proceedings in relation to any case that has been heard by that Court while he so acted, notwithstanding that he is no longer an additional Judge of that Court.

“59. Judgment of Court of Appeal—(1) Any three or more Judges of the Court of Appeal may exercise all the powers of the Court:

“Provided that any two Judges of the Court shall have power to act as the Court of Appeal for the purpose of delivering any judgment of the Court or of hearing any application for leave to appeal to the Privy Council.

“(2) The judgment of the Court shall be in accordance with the opinion of the majority of the Judges present.

“(3) If the Judges present are equally divided in opinion, the judgment, decree, or order appealed from or under review shall be deemed to be affirmed.

“60. Sittings of Court of Appeal—(1) The Court of Appeal may from time to time appoint ordinary or special sittings of the Court, and may from time to time make rules, not inconsistent with the rules of practice and procedure of the Court of Appeal for the time being in force under this Act or with the laws of New Zealand, in respect of the places and times for holding sittings of the Court, the order of disposing of business, and any other necessary matters.

“(2) At every sitting of the Court at which the President of the Court of Appeal is present he shall preside unless the Chief Justice is also present, in which case the Chief Justice shall preside.

“(3) In the absence of the Chief Justice and of the President from any sitting of the Court the senior Judge of the Court of Appeal present shall preside.

“(4) The Court shall have power from time to time to adjourn any sitting till such time and to such place as it thinks fit.”

The Supreme Court

4. The Judges of the Supreme Court—(1) The principal Act, as amended by subsection six of section two of the Judicature Amendment Act 1913, is hereby further amended by inserting, after section three, the following section:

“4. (1) Subject to the provisions of this Act, the Supreme Court shall consist of one Judge, who shall be called the Chief Justice of New Zealand, and thirteen other Judges:

“Provided that an additional Judge or additional Judges may be appointed whenever the Governor-General deems it necessary by reason of the absence or anticipated absence of any of the Judges on leave preliminary to retirement; and every such appointment shall be a permanent appointment from the time when it is made, and shall fill the vacancy next occurring in the office of Judge, not being a vacancy filled by an earlier appointment under this proviso.

“(2) The Judges of the Supreme Court shall be appointed by the Governor-General in the name and on behalf of Her Majesty.

“(3) Subject to the provisions of this Act, the Judges of the Supreme Court other than the Chief Justice shall have seniority among themselves according to the dates of their appointments as Judges of the Supreme Court. If two or more of them are so appointed on the same day, they shall have seniority according to the precedence assigned to them by the Governor-General on their appointment as such Judges or, failing any such assignment, according to the order in which they take the Judicial Oath:

“Provided that every permanent Judge shall have seniority over every temporary Judge.

“(4) The jurisdiction of the Supreme Court shall not be affected by any vacancy in the number of the Judges of that Court.”

(2) The following enactments are hereby repealed, namely:

(a) Section two of the Judicature Amendment Act 1913:

(b) Section two of the Judicature Amendment Act 1953:

(c) Section two of the Judicature Amendment Act 1956.

(3) This section shall come into force on the passing of this Act.

5. Senior Judge to act as Chief Justice in certain circumstances—The principal Act is hereby further amended by repealing section five, and substituting the following section:

“5. (1) While any vacancy exists in the office of Chief Justice, or during any absence from New Zealand of the Chief Justice, the senior Judge in New Zealand, not being a Judge of the Court of Appeal, shall be deemed to be the principal judicial officer of New Zealand, and shall have authority to act as Chief Justice and to execute the duties of that office and to exercise all powers that may be lawfully exercised by the Chief Justice.

“(2) Whenever by reason of illness or any cause other than absence from New Zealand the Chief Justice is prevented from exercising the duties of his office, the Governor-General may authorise the senior Judge in New Zealand, not being a Judge of the Court of Appeal, to act as Chief Justice until the Chief Justice resumes his duties, and during that period to execute the duties of that office and to exercise all powers that may be lawfully exercised by the Chief Justice.

“(3) The authority conferred on the acting Chief Justice by or by virtue of this section shall not include power to preside as Chief Justice at any sitting of the Court of Appeal.”

6. Judges to be barristers or solicitors of seven years' practice—Section six of the principal Act is hereby amended by omitting the word “standing”, in both places where it occurs, and substituting in each case the word “practice”.

Miscellaneous Provisions

7. Salaries of Judges—There shall be paid to the Judges of the Court of Appeal and to the Judges of the Supreme Court out of the Consolidated Fund, without further appropriation than this Act, salaries at the following rates:

- (a) To the Chief Justice of New Zealand, at the rate of three thousand seven hundred and fifty pounds a year:
- (b) To the President of the Court of Appeal, at the rate of three thousand five hundred pounds a year:
- (c) To each of the other Judges of the Court of Appeal or of the Supreme Court, at the rate of three thousand two hundred and fifty pounds a year.

8. Sittings of Supreme Court—Section fifty-two of the principal Act is hereby amended by omitting from the first proviso the words “shall be subject to the approval of the Governor-General in Council, and”.

9. Constitution of Rules Committee—Section two of the Judicature Amendment Act 1930 is hereby amended by adding to paragraph (a) of subsection one the words “of whom at least one shall be a Judge of the Court of Appeal”.

10. Repeals and savings—(1) The enactments specified in the Schedule to this Act are hereby repealed.

(2) Where at the commencement of this Act any appeal or other matter has already been heard or partly heard before the Court of Appeal, that appeal or other matter may be

continued and completed before the Court of Appeal as constituted before the commencement of this Act, and the judgment or decision of that Court may be given thereon, as if this Act had not been passed.

(3) Except in any case to which subsection two of this section applies, all appeals and proceedings brought in the Court of Appeal before the date of the commencement of this Act and pending or in progress at that date may be continued and completed before the Court of Appeal constituted under the principal Act as amended by this Act.

(4) Without limiting the provisions of the Acts Interpretation Act 1924, but subject to the foregoing provisions of this section, it is hereby declared that the repeal of any provision by this Act shall not affect any appointment or document made or deemed to have been made or any thing whatsoever done under the provision so repealed or any corresponding former provision, and every such appointment or document or thing, so far as it is subsisting or in force at the time of the repeal and could have been made or done under this Act, shall continue and have effect as if it had been made or done under the corresponding provision of this Act, and as if that provision had been in force when the document was made or the thing was done.

SCHEDULE

Section 10

ENACTMENTS REPEALED

- 1913, No. 41—The Judicature Amendment Act 1913. (1931 Reprint, Vol. II, p. 92.)
1923, No. 36—The Judicature Amendment Act 1923: Section 3. (1931 Reprint, Vol. II, p. 96.)
1933, No. 3—The Judicature Amendment Act 1933.
1953, No. 45—The Judicature Amendment Act 1953.
1954, No. 1—The Judicature Amendment Act 1954.
1956, No. 80—The Judicature Amendment Act 1956.
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