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1977, No. 32

An Act to amend the Judicature Act 1908

[*7 October 1977*

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—This Act may be cited as the Judicature Amendment Act 1977, and shall be read together with and deemed part of the Judicature Act 1908 (hereinafter referred to as the principal Act).

2. Number of Judges of Supreme Court increased—(1) Section 4 of the principal Act (as inserted by section 4 (1) of the Judicature Amendment Act 1957 and amended by section 2 (1) of the Judicature Amendment Act 1976) is hereby further amended by omitting from subsection (1) the expression "21", and substituting the expression "22".

(2) Section 2 of the Judicature Amendment Act 1976 is hereby consequentially repealed.

3. Service of process on Sundays—(1) Section 54 (1) of the principal Act is hereby amended by omitting the word "No", and substituting the words "Subject to any rule of Court, no".

(2) The said section 54 (1) (as amended by section 5 of the Judicature Amendment Act 1974) is hereby further amended by omitting from the proviso the words ", or when sitting as a Prize Court".

(3) Section 54 (2) of the principal Act is hereby repealed.

4. Order of subpoena—(1) Section 56A of the principal Act (as inserted by section 2 of the Judicature Amendment Act 1960 and amended by section 7 of the Decimal Currency Act 1964) is hereby amended by omitting from subsection (2) the expression "$100", and substituting the expression "$500".

(2) The said section 56A (as amended by section 10 of the Judicature Amendment Act 1961) is hereby further amended by omitting from subsection (3) the words "writ of subpoena", and substituting the words "order of subpoena".

(3) Section 56BB of the principal Act (as inserted by section 11 of the Judicature Amendment Act 1961) is hereby amended by omitting the words "writ of subpoena", and substituting the words "order of subpoena".

(4) Every reference to a writ of subpoena in any other Act or in any regulation, rule, bylaw, order, or other enactment, or in any deed, instrument, notice, or other document whatsoever shall hereafter be read as a reference to an order of subpoena.

(5) This section shall come into force on a date to be fixed by the Governor-General by Order in Council.

5. Number of Judges of Court of Appeal increased—(1) Section 57 of the principal Act (as amended by section 2 (1) of the Judicature Amendment Act 1957) is hereby further amended by omitting from paragraph (c) of subsection (2) the expression "Two", and substituting the expression "Three".

(2) The said section 57 (as so amended) is hereby amended by omitting from subsection (6) the expression "two Judges" in both places where it occurs, and substituting in each case the expression "3 Judges".

6. Additional Judges of Court of Appeal in certain circumstances—Section 58 of the principal Act (as substituted by section 3 of the Judicature Amendment Act 1957) is hereby amended by inserting, after subsection (1B) (as inserted by section 6 (1) of the Judicature Amendment Act 1974), the following subsections:

"(1C) Whenever the Chief Justice and the President of the Court of Appeal certify that it is necessary for the due conduct of the business of the Court of Appeal that the Court shall be enabled to sit in divisions in accordance with section 60A of this Act, and that, for that reason, it is expedient that any Judge or Judges of the Supreme Court who is or are or has or have been 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 for such period, not exceeding 3 months, as may be specified in the certificate, the Judge or Judges so nominated may act as a Judge or Judges of the Court of Appeal during the period so specified.

"(1D) Subsection (1C) of this section and this subsection shall cease to have effect on the expiry of the period of 2 years commencing with the date of the commencement of section 6 of the Judicature Amendment Act 1977."

7. Court of Appeal may sit in divisions—The principal Act is hereby amended by inserting, after section 60 (as substituted by section 3 of the Judicature Amendment Act 1957), the following section:

"60A. (1) The Court of Appeal may from time to time, as the President directs, sit in divisions, and all the powers of the Court may be exercised by any such division.

"(2) Each Division shall consist of such Judges of the Court (of whom at least 1 shall be a member of the Court pursuant to section 57 (2) of this Act) as are for the time being assigned to that Division by the President.

"(3) A Division of the Court may exercise any powers of the Court notwithstanding that another Division of the Court is exercising any powers of the Court at the same time.

"(4) The provisions of this section shall be read subject to the provisions of section 59 (1) of this Act."

8. Incidental orders and directions may be made and given by one Judge—The principal Act is hereby amended by inserting, after section 61, the following section:

"61A. (1) In any civil appeal or in any civil cause or matter pending before the Court of Appeal, any Judge of that Court, sitting in Chambers, may make such incidental orders and give such incidental directions as he thinks fit, not being an order or a direction that determines the appeal or disposes of any question or issue that is before the Court in such appeal, cause, or matter.

"(2) Every order or direction made or given by a Judge of the Court of Appeal under subsection (1) of this section may be discharged or varied by any Judges of that Court who together have jurisdiction, in accordance with section 59 of this Act, to hear and determine the proceeding.

"(3) Any Judge of the Court of Appeal may review a decision of the Registrar made within the civil jurisdiction of the Court under a power conferred on the Registrar by any rule of Court, and may confirm, modify, or revoke that decision as he thinks fit.

"(4) The provisions of this section shall apply notwithstanding anything in section 59 of this Act.

"(5) This section shall have effect from a date to be appointed by the Governor-General by Order in Council."

9. Juries of 4 abolished—(1) The principal Act is hereby amended by inserting, after section 19, the following sections:

"19A. **Certain actions may be tried by jury**—(1) This section applies to actions in which the only relief claimed is payment of a debt or pecuniary damages or the recovery of chattels.

"(2) If the debt or damages or the value of the chattels claimed in any action to which this section applies exceeds $1,000, either party may have the action tried before a Judge and a jury on giving notice to the Court and to the other party, within the time and in the manner prescribed by the rules of the Supreme Court, that he requires the action to be tried before a jury.

"(3) Nothwithstanding anything in subsection (2) of this section, in any case where, after notice has been given

pursuant to that subsection but before the trial has commenced, the debt or damages or the value of the chattels claimed is reduced to $1,000 or less, the action shall be tried before a Judge without a jury.

"(4) If, in any action to which this section applies, the defendant sets up a counterclaim, then, unless pursuant to this section the action and the counterclaim are both to be tried before a Judge without a jury, the following provisions shall apply:

"(a) On the application of either party made with the consent in writing of the other party, both the action and counterclaim shall be tried before a Judge without a jury, or before a Judge with a jury, whichever is specified in the application:

"(b) If no such application is made, the action and the counterclaim shall, subject to any direction of the Court or a Judge under section 19B of this Act, be tried in accordance with the foregoing provisions of this section:

"Provided that if the Court or a Judge orders that the action and the counterclaim be tried together, they shall be tried before a Judge with a jury.

"(5) Notwithstanding anything to the contrary in the foregoing provisions of this section, in any case where notice is given as aforesaid requiring any action to be tried before a jury, if it appears to a Judge before the trial—

"(a) That the trial of the action or any issue therein will involve mainly the consideration of difficult questions of law; or

"(b) That the trial of the action or any issue therein will require any prolonged examination of documents or accounts, or any investigation in which difficult questions in relation to scientific, technical, business, or professional matters are likely to arise, being an examination or investigation which cannot conveniently be made with a jury,—

the Judge may, on the application of either party, order that the action or issue be tried before a Judge without a jury.

"(6) Nothing in this section shall apply in respect of any action to be heard by the Court in its admiralty jurisdiction.

"19B. **All other actions to be tried before Judge alone, unless Court otherwise orders**—(1) Except as provided in section 19A of this Act, every action shall be tried before a Judge alone.

"(2) Notwithstanding subsection (1) of this section, if it appears to the Court at the trial, or to a Judge before the trial, that the action or any issue therein can be tried more conveniently before a Judge with a jury the Court or Judge may order that the action or issue be so tried."

(2) The Juries Act 1908 is hereby amended by repealing section 62, and substituting the following section:

"62. **Common juries in civil cases**—Where a civil action in the Supreme Court is to be tried by a common jury the jury shall consist of 12 persons whose names shall be taken from the common jury book of the district in which the trial is to take place."

(3) The Juries Act 1908 is hereby consequentially amended—

(a) By omitting from section 64 (as amended by section 6 (1) of the Juries Amendment Act 1963) the words "if the jury is of twelve, and not less than twelve persons if the jury is of four":

(b) By repealing section 83:

(c) By omitting from section 159 (1) (as amended by section 2 (1) of the Juries Amendment Act 1959) the words "Different sums may be so prescribed according to whether the trial or assessment is by a jury of twelve or by a jury of four.".

(4) Section 6 of the Juries Amendment Act 1951 is hereby consequentially amended—

(a) By omitting from subsection (1) the words "seventy-five, seventy-six, and eighty-three", and substituting the expression "75 and 76":

(b) By omitting from paragraph (a) of that subsection the words "in the case of a special jury of twelve, and not less than thirty-two in the case of a special jury of four":

(c) By omitting from paragraph (b) of that subsection the words "in the case of a special jury of twelve, and to eight in the case of a special jury of four":

(d) By omitting from subsection (4) the words "seventy-three to eighty-three", and substituting the expression "73 to 82".

(5) The Juries Amendment Act 1963 is hereby consequentially amended by repealing so much of the Schedule as relates to section 62 of the Juries Act 1908.

(6) The following enactments are hereby consequentially repealed:

(a) The Judicature Amendment Act (No. 2) 1955:

(b) Section 4 of the Judicature Amendment Act 1960:

(c) Section 8 of the Judicature Amendment Act 1961:

(d) Section 3 of the Judicature Amendment Act (No. 2) 1973:

(e) Section 3 of the Judicature Amendment Act 1974.

Amendments of Judicature Amendment Act 1972

10. Interpretation—(1) Section 3 of the Judicature Amendment Act 1972 is hereby amended by inserting in the definition of the term "statutory power", after the words "by or under any Act", the words "or by or under the constitution or other instrument of incorporation, rules, or bylaws of any body corporate".

(2) The said section 3 is hereby further amended by adding to paragraph (d) of the definition of the term "statutory power" the word "or", and by adding to the definition the following paragraph:

"(e) To make any investigation or inquiry into the rights, powers, privileges, immunities, duties, or liabilities of any person:".

(3) The said section 3 is hereby further amended by omitting from the definition of the term "statutory power of decision" the words "to make a decision deciding or prescribing", and substituting the words ", or by or under the constitution or other instrument of incorporation, rules, or bylaws of any body corporate, to make a decision deciding or prescribing or affecting".

11. Application for review—(1) Section 4 of the Judicature Amendment Act 1972 is hereby amended by inserting, after subsection (2), the following subsection:

"(2A) Notwithstanding any rule of law to the contrary, it shall not be a bar to the grant of relief in proceedings for a writ or an order of or in the nature of certiorari or prohibition, or to the grant of relief on an application for review, that the person who has exercised, or is proposing to exercise, a statutory power was not under a duty to act

judicially; but this subsection shall not be construed to enlarge or modify the grounds on which the Court may treat an applicant as being entitled to an order of or in the nature of certiorari or prohibition under the foregoing provisions of this section."

(2) The said section 4 is hereby further amended by omitting from subsection (5) the word "may", and substituting the words "if it is satisfied that the applicant is entitled to relief under subsection (1) of this section, may, in addition to or instead of granting any other relief under the foregoing provisions of this section,".

(3) The said section 4 is hereby further amended by inserting, after subsection (5), the following subsections:

"(5A) If the Court gives a direction under subsection (5) of this section it may make any order that it could make by way of interim order under section 8 of this Act, and that section shall apply accordingly, so far as it is applicable and with all necessary modifications.

"(5B) Where any matter is referred back to any person under subsection (5) of this section, that person shall have jurisdiction to reconsider and determine the matter in accordance with the Court's direction notwithstanding anything in any other enactment.

"(5C) Where any matter is referred back to any person under subsection (5) of this section, the act or omission that is to be reconsidered shall, subject to any interim order made by the Court under subsection (5A) of this section, continue to have effect according to its tenor unless and until it is revoked or amended by that person."

12. Interim orders—The Judicature Amendment Act 1972 is hereby amended by repealing section 8, and substituting the following section:

"8. (1) Subject to subsection (2) of this section, at any time before the final determination of an application for review, and on the application of any party, the Court may, if in its opinion it is necessary to do so for the purpose of preserving the position of the applicant, make an interim order for all or any of the following purposes:

"(a) Prohibiting any respondent to the application for review from taking any further action that is or would be consequential on the exercise of the statutory power:

"(b) Prohibiting or staying any proceedings, civil or criminal, in connection with any matter to which the application for review relates:

"(c) Declaring any licence that has been revoked or suspended in the exercise of the statutory power, or that will expire by effluxion of time before the final determination of the application for review, to continue and, where necessary, to be deemed to have continued in force.

"(2) Where the Crown is the respondent (or one of the respondents) to the application for review the Court shall not have power to make any order against the Crown under paragraph (a) or paragraph (b) of this section; but, instead, in any such case the Court may, by interim order,—

"(a) Declare that the Crown ought not to take any further action that is or would be consequential on the exercise of the statutory power:

"(b) Declare that the Crown ought not to institute or continue with any proceedings, civil or criminal, in connection with any matter to which the application for review relates.

"(3) Any order under subsection (1) or subsection (2) of this section may be made subject to such terms and conditions as the Court thinks fit, and may be expressed to continue in force until the application for review is finally determined or until such other date, or the happening of such other event, as the Court may specify."

13. Procedure—(1) The Judicature Amendment Act 1972 is hereby further amended by repealing section 9, and substituting the following section:

"9. (1) An application for review shall be made by motion accompanied by a statement of claim.

"(2) The statement of claim shall—

"(a) State the facts on which the applicant bases his claim to relief:

"(b) State the grounds on which the applicant seeks relief:

"(c) State the relief sought.

"(3) It shall not be necessary for the statement of claim to specify the proceedings referred to in section 4 (1) of this Act in which the claim would have been made before the commencement of this Part of this Act.

"(4) The person whose act or omission is the subject-matter of the application for review, and, subject to any direction

given by a Judge under section 10 of this Act, every party to the proceedings (if any) in which any decision to which the application relates was made, shall be cited as a respondent.

"(5) For the purposes of subsection (4) of this section, where the act or omission is that of any 2 or more persons acting together under a collective title, they shall be cited by their collective title.

"(6) Subject to any direction given by a Judge under section 10 of this Act, every respondent to the application for review shall file a statement of his defence to the statement of claim.

"(7) Subject to this Part of this Act, the procedure in respect of any application for review shall be in accordance with rules of Court."

(2) The said Act is hereby further amended—

(a) By omitting from section 4 (1) the words "by motion":

(b) By repealing section 12.

14. Powers of Judge to call conference and give directions—The Judicature Amendment Act 1972 is hereby further amended by repealing section 10, and substituting the following section:

"10. (1) For the purpose of ensuring that any application or intended applicaton for review may be determined in a convenient and expeditious manner, and that all matters in dispute may be effectively and completely determined, a Judge may at any time, either on the application of any party or intended party or without any such application, and on such terms as he thinks fit, direct the holding of a conference of parties or intended parties or their counsel presided over by a Judge.

"(2) At any such conference the Judge presiding may—

"(a) Settle the issues to be determined:

"(b) Direct what persons shall be cited, or need not be cited, as respondents to the application for review, or direct that the name of any party be added or struck out:

"(c) Direct what parties shall be served:

"(d) Direct by whom and within what time any statement of defence shall be filed:

"(e) Require any party to make admissions in respect of questions of fact; and, if that party refuses to make an admission in respect of any such question, that

party shall be liable to bear the costs of proving that question, unless the Judge by whom the application for review is finally determined is satisfied that the party's refusal was reasonable in all the circumstances, and accordingly orders otherwise in respect of those costs:

"(f) Fix a time by which any affidavits or other documents shall be filed:

"(g) Fix a time and place for the hearing of the application for review:

"(h) Require further or better particulars of any facts, or of the grounds for relief, or of the relief sought, or of the grounds of defence, or of any other circumstances connected with the application for review:

"(i) Require any party to make discovery of documents, or permit any party to administer interrogatories:

"(j) In the case of an application for review of a decision made in the exercise of a statutory power of decision, determine whether the whole or any part of the record of the proceedings in which the decision was made should be filed in Court, and give such directions as he thinks fit as to its filing:

"(k) Exercise any powers of direction or appointment vested in the Court or a Judge by the rules of Court in respect of originating applications:

"(l) Give such consequential directions as may be necessary.

"(3) Notwithstanding any of the foregoing provisions of this section, a Judge may, at any time before the hearing of an application for review has been commenced, exercise any of the powers specified in subsection (2) of this section without holding a conference under subsection (1) of this section."

15. Meaning of "convicted on indictment" in Crimes Act amended—(1) Section 3 (c) of the Crimes Act 1961 is hereby amended by inserting, after the words "or section", the words "153A or section".

(2) This section shall be deemed to have come into force on the 1st day of May 1977 (being the date of the commencement of section 153A of the Summary Proceedings Act 1957).

This Act is administered in the Department of Justice.