Habeas Corpus Bill

Member's Bill

As reported from the Law and Order Committee

Commentary

Recommendation

The Law and Order Committee has examined the Habeas Corpus Bill and recommends that it be passed with the amendments shown.

Background to the bill

The writ of habeas corpus is a means of protecting a person's right to liberty and right to freedom from arbitrary arrest. These rights are guaranteed by section 22 of the New Zealand Bill of Rights Act 1990.

In 1984, the High Court Rules (rules relating to practice and procedure in New Zealand civil proceedings) were enacted as part of the Judicature Amendment Act 1984 (the Amendment Act). Habeas corpus procedures were not included in the new rules because there were concerns that their inclusion may limit the writ. As a temporary solution, section 54C of the Amendment Act prescribed that applications for the writ of habeas corpus must be dealt with according to English practice, pleading, and procedure.

The English law that provides for habeas corpus procedure is based on three statutes; namely the Habeas Corpus Acts of 1640, 1679 and 1816. A 1997 Law Commission report, *Habeas Corpus Procedure*, questioned why New Zealand courts were still subject to archaic English law and proposed that the law be modernised to reflect New Zealand practices.

The bill

The Habeas Corpus Bill (the bill) is based on a draft Act proposed in the 1997 Law Commission report. The bill aims to modernise provisions relating to the exercise of the writ of habeas corpus and to make the procedures for the writ clear and simple. It does this by repealing the three 17th and 19th century English writs of habeas corpus currently prescribing habeas corpus procedures in New Zealand, and providing for a sole writ of habeas corpus *ad subjiciendum* [1]. A writ must be granted, requiring the detained person to be released immediately, where a court determines there is no lawful justification for detaining that person.

The bill proposes specific procedures for interim orders, rights of appeal, applications that involve minors, and for applications to be dealt with under urgency. It also provides for the making of supplementary rules that are consistent with the bill.

Support for procedures to reflect New Zealand practices

All submissions favour replacing the English statutes with modern habeas corpus procedures reflecting New Zealand practices. We agree with submitters that it is incongruous that 17th and 19th century English statutes govern the administration of such an important constitutional right. We consider that New Zealand laws should reflect New Zealand practices.

Two issues of principle with the bill

Submissions raise two issues of principle with the bill. The main issue is whether habeas corpus procedures should be contained in regulations, through the High Court Rules, or in a separate statute. The second issue relates to whether section 6 of the Habeas Corpus Act 1640 should be retained, despite the repeal of the three English statutes.

[1] Habeas corpus *ad subjiciendum* means, "in order to have the lawfulness of a person's detention subjected to the examination of the court".

Procedures contained in the High Court Rules or statute

The Rules Committee, [2] the New Zealand Law Society, and the Chief Justice, are of the view that separate legislation is unnecessary and that any changes should be made by amending the Judicature Act 1908 and the High Court Rules.

To show how this might be done, the Rules Committee provided us with an alternative Habeas Corpus Bill. In their bill, the procedural provisions relating to the writ of habeas corpus are removed and placed within the High Court Rules. The reason for doing this is to prevent the sort of problems that the Rules Committee believes are created when procedure is placed in statute. In their experience, inconsistencies can develop between procedures in statute and those in the High Court Rules, as the former may remain unchanged, irrespective of any changes to the latter. They submit that changes to habeas corpus procedures could then be achieved by an amendment to the Judicature Act 1908 and the insertion of a new part into the High Court Rules. They state this would allow them to regulate the practice and procedure for habeas corpus in the same way they regulate the practice and procedure for other civil proceedings.

In addition, some submitters have concerns about clause 17 of the bill. Clause 17 empowers the Rules Committee to regulate habeas corpus practices and procedures in a manner consistent with the bill. They consider that clause 17 may create practical difficulties as procedures will be mixed in statute and the High Court Rules. This is seen as problematic for the same reasons as mentioned above.

Alternatively, the Law Commission asserts that habeas corpus procedures should be in statute, not the High Court Rules. Their view is that, because the writ of habeas corpus is a means of protecting fundamental and important constitutional rights, it should be an exception to the general rule that matters of procedure are provided for in regulations rather than in statute. They consider that clause 17 allows sufficient flexibility for habeas corpus procedures to be administered and developed within the overall court framework.

We note that the English statutes that prescribe the law of habeas corpus are concerned specifically with procedure. This reflects the fact that although the law recognised the right to freedom from arbitrary detention, an effective mechanism to enforce the right did

[2] The Rules Committee is the body appointed under section 51C of the Judicature Act 1908 to make rules of practice and procedure for New Zealand courts.

not exist. Because of the importance of the right, the English Parliament decided that it should control the means of protecting the right through the writ of habeas corpus. For the same reason, we consider that any modernised procedures should be in statute. Otherwise, habeas corpus procedures may be subject to the risk of being restricted without any involvement by Parliament. We recommend no change to the bill in this regard.

Repeal of section 6 of the 1640 Act

Section 6 of the Habeas Corpus Act 1640 prescribes a penalty for judges whose decisions do not reflect the law of habeas corpus as set down in the statute. The New Zealand Council for Civil Liberties is of the view that section 6 should remain part of the new laws governing habeas corpus procedures. Our view is that such penalties are not appropriate in contemporary New Zealand, as this type of penalty is not provided for in any other legislation. We recommend no change to the bill.

Technical amendments recommended

The large bulk of submissions are concerned about the way the bill is drafted. Submitters suggest 37 technical amendments be made to the bill. We considered these suggestions and agree that 20 amendments suggested by submitters should be made. In addition to some drafting changes, we have also made a number of additional amendments. These are set out below.

Clarification and consistency of terms or phrases

We consider that some of the terms or phrases used in the bill need to be amended to ensure that the bill is consistent and to clarify the meaning of some clauses.

The bill uses the term "applicant" when referring to a detained person. We consider this creates confusion, as an applicant for a writ of habeas corpus may not necessarily be the person detained. An applicant may be anyone, including the detained person's lawyer or family member. We recommend amendments to a number of clauses to clarify when the clause refers to the person detained, and when it refers to persons who may apply for the writ of habeas corpus [3]. We also recommend:

[3] Clauses 5, 8, 9, 10, 11, 12, 13.

- amending clause 9(1)(a) by inserting the words "or the person's original detention" to clarify that the power of arrest extends to persons absconding to evade a court appearance in connection with the original detention
- amending clause 11(1) by deleting the words "and justice" to ensure there is no ambiguity that the remedy of habeas corpus is one of right and is not discretionary
- amending clause 12(2) to clarify that the constraint on the re-arrest of successful habeas corpus applicants (where that arrest is on substantially the same grounds as the original detention) applies to any re-arrest, not only when another application for habeas corpus is filed
- amending clause 16(1)(b) by substituting the words "made to" for "filed in". This is to minimise the possibility that habeas corpus applications might be unnecessarily restricted by standard court procedures.

Other amendments are recommended to ensure the bill is consistent with the terminology used in other court documents (clause 2), accurately reflects current circumstances (clause 5B), and is internally consistent (clauses 2, 12 and 15).

Use of High Court Rules numbering

Clause 5 of the bill refers to Rules 255, 458I, 458J and 458K of the High Court Rules. Clause 6 refers to Rule 458G of the High Court Rules. We are concerned that this may create confusion in the event that the numbering system within the High Court Rules is changed. We recommend that the numbers should be replaced by the descriptions of the rules themselves so that, regardless of whether the numbering changes, the meaning of the clause will be retained.

Adding to the list of defendants described by reference to their office

Clause 5(6) currently provides a list of office holders that can be used to describe a potential defendant. At present the list is: (a) the Superintendent of the penal institution in which the detained person is alleged to be detained, (b) the Commissioner of Police, (c) the Secretary of Labour, and (d) the Comptroller of Customs. We recommend the insertion of clause 5B(e) to allow the Rules Committee to add to the list of office holders should this ever be required.

Interim orders

We note the submission from the Ministry of Justice which states that complications might arise from applications being made by inmates challenging interim recall orders and sentence calculations, where an interim order for release is granted but a final order is declined. To remedy this, we recommend the insertion of a new clause 8(4), modelled on section 70(3) of the Bail Act 2000. This would mean that the period between being released and the time at which a final determination is declined does not count as part of any term of detention under such a person's sentence. We also recommend that clause 8(3) be amended to provide an express power to revoke an interim order.

Amendment to clause 17

As previously noted, clause 17 empowers the Rules Committee to regulate habeas corpus practices and procedures in a manner consistent with the Judicature Act 1908. To be consistent with our view that habeas corpus procedure should remain within Parliament's control, we recommend new clause 5A(7) be inserted so that the powers provided to the Rules Committee under section 51E of the Judicature Act 1908 do not apply under the bill. [4]

Amendment to Legal Services Act 1991

Clause 19(3) was drafted to ensure that legal aid applications are dealt with urgently under section 25 of the Legal Services Act 1991 by classifying habeas corpus applications as civil not criminal proceedings. We consider that the clause is no longer appropriate as the Legal Services Act 1991 has been replaced by the Legal Services Act 2000 which removes the relevant procedural distinction between civil and criminal applications. We recommend this clause be deleted from the bill.

[4] Section 51E, in accordance with section 51C of the Judicature Act, provides the Rules Committee with the power to prescribe procedure on applications to High Court or Court of Appeal.

Appendix

Committee process

The Habeas Corpus Bill was referred to the committee on 22 March 2000. The closing date for submissions was 19 May 2000. We received ten submissions from interested groups and individuals. We heard four submissions. Hearing evidence took 1 hour and 32 minutes and consideration took 1 hour and 55 minutes.

We received advice from the Law Commission.

Committee membership

Janet Mackey (Chairperson)

Taito Philip Field

Hon Parekura Horomia

Ron Mark

Brian Neeson

Jill Pettis

Hon Ken Shirley

Hon Clem Simich

Hon Judith Tizard

Richard Worth

Judy Keall replaced Hon Parekura Horomia as a temporary replacement member. Richard Worth replaced Simon Power, and Hon Tony Ryall replaced Tony Steel, as permanent members of the committee on 13 February 2001. Hon Clem Simich replaced Hon Tony Ryall as a permanent member of the committee on 20 February 2001.

Committee staff

Tracey Rayner

Michael Wilkinson

Key to symbols used in reprinted bill

As reported from the Law and Order Committee

Struck out (unanimous) Subject to this Act,	Text struck out unanimously
New (unanimous) Subject to this Act,	Text inserted unanimously
(*Subject to this Act,*)	Words struck out unanimously
Subject to this Act,	Words inserted unanimously

Simon Power

Habeas Corpus Bill

Member's Bill

Contents

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Habeas Corpus Act **1999**.

New (unanimous)

1A Commencement

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

2 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

Struck out (unanimous)

Rules Committee means the Rules Committee established by section 51B of the Judicature Act 1908

working day means any day other than—

(a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign's Birthday, and Waitangi Day; and

(b) a day in the period beginning on 20 December in any year and ending on 20 January in the following year.

New (unanimous)

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

3 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.

4 Purposes

The purposes of (*the*) 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:

Struck out (unanimous)

(b) to establish an effective procedure for applications to the High Court for the issue of a writ of habeas corpus and the expeditious determination of habeas corpus applications and matters arising from such applications:

New (unanimous)

(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

Struck out (unanimous)

5 Manner of application for writ

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

(2) An application for a writ of habeas corpus is to be made to the High Court by an originating application in the manner provided by Part IVA of the High Court Rules, but this subsection does not exclude the High Court's inherent power to make an order on an oral application in circumstances of unusual urgency.

(3) Notwithstanding **subsection (2)**, rules 255, 458I, 458J, and 458K of the High Court Rules do not apply to an application, and no applicant may be disqualified for lack of capacity or standing.

Struck out (unanimous)

(4) A party to a proceeding for a writ of habeas corpus is not 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 the High Court Rules concerning discovery and inspection of documents and security for costs do not apply.

(5) No fee is payable to the High Court or the Court of Appeal for filing any document in respect of an application or an appeal against the refusal of an application.

(6) An application may describe a defendant by reference only to his or her office as—

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

(b) the Commissioner of Police, if the applicant is alleged to be illegally detained in police custody except following the exercise of powers under the Immigration Act 1987; or

(c) the Secretary of Labour, if the applicant 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 applicant is alleged to be illegally detained in the custody of the New Zealand Customs Service.

6 Urgency

(1) An application for a writ of habeas corpus is to be given precedence over all other matters before the High Court and Judges and employees of the Department for Courts are to ensure that every such application, including any interlocutory application, is disposed of as a matter of priority and urgency.

(2) The Registrar must allocate a date for the inter partes hearing of an application that is no later than 3 working days after the application is filed, and the allocated date must be shown on the notice of application in accordance with rule 458G of the High Court Rules.

(3) Notwithstanding **subsection (2)**, an application may be made to a Judge at any time on any day, whether a working day or not.

New (unanimous)

5 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.

5A 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.

5B 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—

New (unanimous)

(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 17**, and in the circumstances prescribed in those rules.

6 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.

7 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 6(*(2)*) (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.

New (unanimous)

(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

Struck out (unanimous)

8 Interim orders for release from detention

(1) The High Court may make an interim order for the release from detention of an applicant for a writ of habeas corpus pending final determination of the application and may attach such conditions to the order as the Court thinks appropriate to the circumstances.

(2) In the case of an applicant who is charged with an offence, 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 the Crimes Act 1961 or under sections 45A to 50A of the Summary Proceedings Act 1957.

(3) If a person has been released from detention under an interim order, the Court may, on the application of any party to the proceeding or on the Court's own initiative, make an order varying or revoking any condition of the interim order or substituting or imposing any other condition.

New (unanimous)

8 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, 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 the Bail Act 2000.

(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.

9 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 8** if the member of the police believes on reasonable grounds that—

(a) the person (*so*) 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.

Struck out (unanimous)

(2) Every person who is arrested under this section must be brought before the High Court as soon as possible and, if the

Struck out (unanimous)

Court 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, the Court may revoke the interim order.

(3) 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 applicant is on those premises; but if that 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.

New (unanimous)

(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.

Struck out (unanimous)

10 Powers as to young applicants

(1) In dealing with the application of a person who is under the age of 20, the High Court has and 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, the High Court may, of its own initiative or at the request of a party to the proceeding, transfer the application to a Family Court, and in such an event the application is to be dealt with by the Family Court in all respects as if it were an application to that Court under the Guardianship Act 1968.

New (unanimous)

10 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.

11 Determination of applications

Struck out (unanimous)

(1) The High Court is to grant a writ of habeas corpus ordering the release of the applicant from detention as a matter of right and justice where the defendant fails to establish that the detention of the applicant is lawful.

New (unanimous)

(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 (*is to*) 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 or a duly constituted court-martial; or

(b) a ruling as to bail by a court of competent jurisdiction or a duly constituted court-martial.

(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 (*applicant*) detained person.

(4) All matters relating to the costs of and incidental to an application are (*to be*) 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**.

12 Finality of determinations

(1) Subject to the right of appeal conferred by **section 13**, the determination of an application is final and no further application can be made by (*the applicant*) 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 (*declined*) 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 (*grounds requiring a re-examination by the Court of*) substantially the same grounds as those considered by the Court when the earlier release was ordered.

Appeals by certain unsuccessful parties

13 Certain unsuccessful parties may appeal

Struck out (unanimous)

(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 apply with respect to a determination refusing an application for the issue of a writ of habeas corpus, but do not apply to a final determination that orders the release from detention of an applicant unless the substantive issue is the welfare of a person under the age of 16.

New (unanimous)

(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.

New (unanimous)

(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.

Struck out (unanimous)

14 Urgency of hearing appeals

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

Miscellaneous

15 Abolition of certain writs

It is declared for the avoidance of doubt that the writs of habeas corpus ad testificandum, habeas corpus ad respondendum, habeas corpus ad deliberandum, and habeas corpus recipias are abolished.

New (unanimous)

14 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

15 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.

16 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 (*filed in*) 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 8**, 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.

Struck out (unanimous)

17 Power to make rules

(1) The Rules Committee may, for the purpose of facilitating the expeditious, inexpensive, and just disposal of applications under this Act, make rules not inconsistent with this Act regulating the practice and procedure of the High Court in relation to such applications and the practice and procedure of the Court of Appeal in relation to appeals from refusals of such applications.

(2) The Rules Committee may make rules amending the form in the **Schedule**.

(3) Section 51A of the Judicature Act 1908 is to apply to rules made under this section in the same way as it applies to the High Court Rules.

New (unanimous)

17 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.

18 Supplementary procedure

If a matter arises in relation to an application for which this Act does not provide, the High Court (*is to*) 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.

19 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.

Struck out (unanimous)

(3) Section 19(1) of the Legal Services Act 1991 is amended by inserting, after paragraph (c), the following paragraph:

"(ca) proceedings in the High Court or the Court of Appeal relating to an application for a writ of habeas corpus:".

(4) Section 51E of the Judicature Act 1908 does not apply in respect of the form and manner of any application made under this Act to the High Court or a Judge thereof or to the Court of Appeal.

New (unanimous)

(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.

s 11(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* (*plaintiff*) *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 ..... (*19 [or 20]*) 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.

Legislative history

1 July 1999	Introduction (Bill 308–1)
22 March 2000	First reading and referral to Law and Order Committee

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