

# **Supreme Court Bill**

Government Bill

As reported from the committee of the whole House

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## Key to symbols used in reprinted bill

### As reported from a select committee

#### Struck out (majority)

Subject to this Act,

Text struck out by a majority

#### New (majority)

Subject to this Act,

Text inserted by a majority

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*Hon Margaret Wilson*  
**Supreme Court Bill**

Government Bill

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Supreme Court Act **2002**.

**Part 1**  
**Supreme Court of New Zealand**

*Preliminary matters*

**2 Commencement**

This Act comes into force on ~~((the 28th day after the date on which it receives the Royal assent))~~ 1 January 2004.

**Struck out (majority)**

**3 Purpose**

The purpose of this Act is to—

- (a) establish the Supreme Court of New Zealand as the court of final appeal for New Zealand, and provide for its jurisdiction and related matters; and
- (b) end appeals to the Judicial Committee of the Privy Council from decisions of New Zealand courts; and

**Struck out (majority)**

- (c) make related amendments to certain enactments relating to courts or judicial proceedings.

**New (majority)****3 Purpose**

- (1) The purpose of this Act is—
- (a) to establish within New Zealand a new court of final appeal comprising New Zealand judges—
    - (i) to recognise that New Zealand is an independent nation with its own history and traditions; and
    - (ii) to enable important legal matters, including legal matters relating to the Treaty of Waitangi, to be resolved with an understanding of New Zealand conditions, history, and traditions; and
    - (iii) to improve access to justice; and
  - (b) to provide for the court's jurisdiction and related matters; and
  - (c) to end appeals to the Judicial Committee of the Privy Council from decisions of New Zealand courts; and
  - (d) to make related amendments to certain enactments relating to courts or judicial proceedings.
- (2) Nothing in this Act affects New Zealand's continuing commitment to the rule of law and the sovereignty of ~~(parliament))~~ Parliament.

**4 Interpretation**

In this Act, unless the context otherwise requires,—

**acting Judge** means an acting Judge of the Supreme Court appointed under ~~section <32(1)>~~ <22A(1)>

**Chief Justice** means the Chief Justice of New Zealand appointed under section 4(1) of the Judicature Act 1908

**civil proceeding**—

- (a) means any proceeding that is not a criminal proceeding; and
- (b) includes a proceeding under the Bail Act 2000

**decision** means a judgment, decree, order, direction, or determination

**District Court** includes—

- (a) a Family Court and a Youth Court; and
- (b) a District Court sitting in its admiralty jurisdiction

**High Court** includes the High Court sitting in its admiralty jurisdiction, or sitting as a permanent Prize Court under the jurisdiction conferred by section 8 of <the> Admiralty Act 1973

**interlocutory application**—

- (a) means an application in a proceeding or intended proceeding for—
  - (i) an order or a direction relating to a matter of procedure; or
  - (ii) in the case of a civil proceeding, for some relief ancillary to the relief claimed in the pleading; and
- (b) includes an application for a new trial; and
- (c) includes an application to review a decision made on an interlocutory application

**New Zealand court** means—

- (a) the Supreme Court, the Court of Appeal, the High Court, or a District Court; or
- (b) any of the following specialist courts: a court-martial constituted under Part 6 of the Armed Forces Discipline Act 1971, the Courts Martial Appeal Court constituted by the Courts Martial Appeals Act 1953, the Employment Court, the Environment Court, the Maori Appellate Court, and the Maori Land Court

**New (majority)**

**permanent Judge** means a Judge of the Supreme Court who is not an acting Judge

**Privy Council** means the Judicial Committee of the Privy Council

**Registrar** means the Registrar of the Supreme Court appointed under **section 36(1)**

**Supreme Court** and the **Court** mean the Supreme Court of New Zealand established by **section 6**

**working day** means a day that is not—

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign's birthday, or Waitangi Day; or
- (b) the day observed as anniversary day in Wellington; or
- (c) a day in the period commencing on 25 December in one year and ending with 15 January in the next year.

## **5 Act binds the Crown**

This Act binds the Crown.

### *Establishment and jurisdiction of Supreme Court*

## **6 Supreme Court established**

This section establishes as the court of final appeal for New Zealand a court of record called the Supreme Court of New Zealand.

Compare: 1908 No 89 s 57(1)

## **7 Appeals against decisions of Court of Appeal in civil proceedings**

The Supreme Court can hear and determine an appeal by a party to a civil proceeding in the Court of Appeal against any decision made in the ~~((*proceeding*))~~ proceeding, unless—

### **Struck out (majority)**

- (a) an enactment other than this Act makes provision to the effect that the decision is final or binding; or

### **New (majority)**

- (a) an enactment other than this Act makes provision to the effect that there is no right of appeal against the decision; or
- (b) the decision is a refusal to give leave or special leave to appeal to the Court of Appeal.

## 8 Appeals against decisions of High Court in civil proceedings

The Supreme Court can hear and determine an appeal by a party to a civil proceeding in the High Court against any decision made in the proceeding, unless—

### Struck out (majority)

- (a) an enactment other than this Act makes provision to the effect that the decision is final or binding; or

### New (majority)

- (a) an enactment other than this Act makes provision to the effect that there is no right of appeal against the decision; or
- (b) the decision is a refusal to give leave or special leave to appeal to the High Court or the Court of Appeal; or
- (c) the decision was made on an interlocutory application.

## 9 Appeals against decisions of other courts in civil proceedings

The Supreme Court can hear and determine an appeal against a decision made in a civil proceeding in a New Zealand court other than the Court of Appeal or the High Court to the extent only that an enactment other than this Act provides for the bringing of an appeal to the Supreme Court against the decision.

## 10 Appeals against decisions in criminal proceedings

The Supreme Court can hear and determine appeals authorised by—

- (a) Part XIII or **section 406A** of the Crimes Act 1961; or
- (b) ~~((section 144 <or>)) <section 144A>~~ of the Summary Proceedings Act 1957; or
- (c) ~~<section 10 or section 10A>~~ <section 10AA or section 10A(1)> of the Courts Martial Appeals Act 1953.



## 11 Procedural requirements

**Sections 7 to 10** are subject to—

- (a) the provisions of this Act; and
- (b) all applicable rules, orders, and directions for regulating the terms and conditions on which appeals may be ~~allowed~~ allowed, made or given under this Act or the Judicature Act 1908.

Compare: 1908 No 89 s 66

### *Leave to appeal to Court*

## 12 Appeals to be by leave

- (1) Appeals to the Supreme Court can be heard only with the Court's leave.
- (2) References in enactments other than this Act to the leave of the Supreme Court must be read subject to **sections 13 and 14**.

## 13 Criteria for leave to appeal

### **Struck out (majority)**

- (1) The Supreme Court must not give leave to appeal to it unless it is satisfied that—
  - (a) the proposed appeal involves a significant issue relating to the Treaty of Waitangi or tikanga Māori; or
  - (b) the proposed appeal involves some other matter of general or public importance; or
  - (c) a substantial miscarriage of justice may have occurred, or may occur unless leave is given; or
  - (d) the proposed appeal involves a matter of general commercial significance; or
  - (e) it is necessary in the interests of justice for the Court to hear and determine the proposed appeal.
- (2) The Supreme Court must not give leave to appeal to it against an order made by the Court of Appeal on an interlocutory application unless (in addition to being satisfied of one or more of the matters stated in **subsection (1)**) it is satisfied that it is necessary in the interests of justice for the Supreme Court to hear and determine the proposed appeal before the proceeding concerned is concluded.

**New (majority)**

- (1) The Supreme Court must not give leave to appeal to it unless it is satisfied that it is necessary in the interests of justice for the Court to hear and determine the proposed appeal.
- (2) It is necessary in the interests of justice for the Supreme Court to hear and determine a proposed appeal if—
  - (a) the appeal involves a matter of general or public importance; or
  - (b) a substantial miscarriage of justice may have occurred, or may occur unless the appeal is heard; or
  - (c) the appeal involves a matter of general commercial significance.
- (3) For the purposes of **subsection (2)**, a significant issue relating to the Treaty of Waitangi is a matter of general or public importance.
- (4) The Supreme Court must not give leave to appeal to it against an order made by the Court of Appeal on an interlocutory application unless satisfied that it is necessary in the interests of justice for the Supreme Court to hear and determine the proposed appeal before the proceeding concerned is concluded.
- (5) **Subsection (2)** does not limit the generality of **subsection (1)**; and **subsection (3)** does not limit the generality of **subsection (2)(a)**.

**14 No direct appeal from court other than Court of Appeal unless exceptional circumstances established**

The Supreme Court must not give leave to appeal directly to it against a decision made, a conviction entered, or a sentence imposed, in a proceeding in a New Zealand court other than the Court of Appeal unless (in addition to being satisfied *<of one or more of the matters stated in **section 13(1)**>* *<that it is necessary in the interests of justice for the Court to hear and determine the proposed appeal>*) it is satisfied that there are exceptional circumstances that justify taking the proposed appeal directly to the Supreme Court.

**15 Applications for leave**

- (1) The parties to an application for leave to appeal to the Supreme Court may make written submissions to the Court, and may include in the submissions—
  - (a) additional relevant written material; and
  - (b) responses to submissions made by any other party.
- (2) Neither the parties nor their representatives have a right to appear before the Court on the application; but the Court may if it thinks fit—
  - (a) authorise the parties, their representatives, or both to appear;
  - (b) exclude from any authority to appear a party who is an appellant in custody.
- (3) In determining the application, the Court must consider—
  - (a) the written submissions before it; and
  - (b) if an oral hearing was held, the matters raised at the hearing.
- (4) The Court may consider the written submissions in any manner it thinks fit.

Compare: 1961 No 43 s 392B

**Struck out (majority)****16 Court not required to give reasons for refusal to give leave**

The Supreme Court may give reasons for refusing to give leave to appeal to it, but does not have to do so.

**New (majority)****16 Court to state reasons for refusal to give leave**

- (1) The Supreme Court must state its reasons for refusing to give leave to appeal to it.
- (2) The reasons may be stated briefly, and may be stated in general terms only.

*Constitution of Court***17 Constitution of Court**

- (1) The Supreme Court comprises—

- (a) the Chief Justice; and
  - (b) <4> <not fewer than 4 nor more than 5> other Judges, appointed by the Governor-General as Judges of the Supreme Court.
- (2) The Supreme Court's jurisdiction is not affected by a vacancy in the number of its Judges.

Compare: 1908 No 89 s 4

### **18 Chief Justice, and seniority of Judges**

- (1) The Chief Justice is the head of the New Zealand judiciary, and has seniority over the other Judges of the Supreme Court.
- (2) Other Judges of the Supreme Court appointed on different dates have seniority among themselves according to those dates.
- (3) Other Judges of the Supreme Court appointed on the same date have seniority among themselves as follows:
- (a) Judges who have been Judges of the Court of Appeal are senior to Judges who have not been Judges of the Court of Appeal:
  - (b) Judges who have been Judges of the Court of Appeal have among themselves the seniority they would have if still Judges of the Court of Appeal:
  - (c) Judges who have not been Judges of the Court of Appeal but have previously been Judges of the High Court have seniority among themselves according to their seniority as Judges of the High Court:
  - (d) Judges who have not previously been Judges of the High Court but have previously held other judicial office in New Zealand are senior to Judges who have not previously held judicial office in New Zealand.
- (4) Judges of the Supreme Court are senior to the Judges of the Court of Appeal, and to the Judges of the High Court who are not Judges of the Supreme Court.
- (5) This section <does not apply to acting> <applies only to permanent> Judges.

Compare: 1908 No 89 s 57(6)

**19 Acting Chief Justice**

- (1) While the office of Chief Justice is vacant, or the Chief Justice is outside New Zealand, the senior Judge of the Supreme Court is authorised to act as Chief Justice.
- (2) If because of illness or a reason other than absence from New Zealand the Chief Justice is unable to perform the duties of that office, the Governor-General may authorise the senior Judge of the Supreme Court to act as Chief Justice until the Chief Justice resumes those duties.
- (3) While authorised to act as Chief Justice, the senior Judge of the Supreme Court can perform the duties of the Chief Justice, and exercise any power of the Chief Justice.
- (4) The fact that the senior Judge of the Supreme Court performs a duty of the Chief Justice or exercises a power of the Chief Justice is conclusive proof of his or her authority to do so. No action of the Judge, and no decision of the Court, may be questioned on the ground that the occasion for the Judge to perform the duty or exercise the power had not arisen or had ceased.
- (5) This section does not affect clause XII of the Letters Patent constituting the Office of Governor-General of New Zealand 1983 (SR 1983/225).

Compare: 1908 No 89 s 5

**20 Judges to be Judges of High Court**

- (1) No person can be appointed as a Judge of the Supreme Court under **section 17(1)(b)** unless he or she—
  - (a) was a Judge of the High Court (whether sitting in the High Court or the Court of Appeal) immediately before being appointed as a Judge of the Supreme Court; or
  - (b) is appointed as a Judge of the High Court when appointed as a Judge of the Supreme Court.
- (2) Every permanent Judge of the Supreme Court—
  - (a) continues to be a Judge of the High Court; and
  - (b) may as a Judge of the Supreme Court exercise any of the powers of a Judge of the High Court.

Compare: 1908 No 89 s 57(4)

**21 Judges of other courts vacate office on appointment**

- (1) A Judge of a New Zealand court other than the High Court vacates office as a Judge of that court when appointed as a Judge of the Supreme Court.

**Struck out (majority)**

- (2) A Judge of the Supreme Court who has vacated office as a Judge of a New Zealand court under **subsection (1)** may attend the sittings of that court to give judgment in, or otherwise complete a matter in relation to, a proceeding heard by that Judge when he or she sat in that court.

**New (majority)**

- (2) A Judge of the Supreme Court who has vacated office as a Judge of a New Zealand court under **subsection (1)** may nevertheless continue in office to determine, give judgment in, or otherwise complete, a proceeding heard by the Judge (either alone or with others) when he or she sat in that court.

Compare: 1908 No 89 s 88A

**22 Term of office of Judges**

A Judge of the Supreme Court holds office until he or she ceases to hold office as a permanent Judge of the High Court.

**New (majority)****22A Acting Judges**

- (1) The Governor-General may appoint as acting Judges of the Supreme Court retired Judges of the Supreme Court or the Court of Appeal who have not reached the age of 75 years.
- (2) Each acting Judge must be appointed for a stated term that—
- (a) is not more than the time until the Judge will reach the age of 75 years;
  - (b) in any case, is not more than 24 months.
- (3) During the term of his or her appointment, an acting Judge may act as a Judge of the Supreme Court to the extent only that the Chief Justice authorises under **subsection (4)**.

**New (majority)**

- (4) The Chief Justice may authorise an acting Judge to act as a member of the Supreme Court—
- (a) to hear and determine any proceedings within a stated period; or
  - (b) to hear and determine stated proceedings.
- (5) The Chief Justice may authorise an acting Judge to act as a member of the Supreme Court only if satisfied that—
- (a) there is a vacancy in the Supreme Court; or
  - (b) a Judge of the Supreme Court is for any reason unavailable to hear proceedings or particular proceedings.
- (6) An acting Judge is authorised when the Chief Justice gives the Attorney-General a certificate, signed by the Chief Justice and at least 2 other permanent Judges of the Supreme Court, to the effect that in their opinion it is necessary for the proper conduct of the Court's business for the acting Judge to be authorised to act as a member of the Supreme Court—
- (a) to hear and determine proceedings within the period concerned; or
  - (b) to hear and determine the proceedings concerned.
- (7) An acting Judge has the jurisdiction, powers, protections, privileges, and immunities of a Judge of the Supreme Court and the High Court, but only in relation to acting as a member of the Supreme Court, under the authority of **subsection (4)**, in the hearing and determination of a proceeding.
- (8) While acting as a member of the Supreme Court, under the authority of **subsection (4)**, in the hearing and determination of a proceeding, but not otherwise, an acting Judge must be paid—
- (a) a salary at the rate for the time being payable to a Judge of the Supreme Court other than the Chief Justice; and
  - (b) any applicable allowances, being travelling allowances or other incidental or minor allowances, determined by the Governor-General for acting Judges.
- (9) The fact that an acting Judge acts as a member of the Supreme Court is conclusive proof of the Judge's authority to do so. No action of the Judge, and no decision of the Court, may be questioned on the ground that the occasion for the Judge to act as a member of the Court had not arisen or had ceased.

**New (majority)**

- (10) An acting Judge may resign office by written notice to the Attorney-General.

Compare: 1908 No 89 ss 11A, 11B

*Powers and judgment of Court***23 Appeals to proceed by rehearing**

Appeals to the Supreme Court proceed by way of rehearing.

**24 General powers**

- (1) On an appeal in a proceeding that has been heard in a New Zealand court, the Supreme Court—

- (a) can make any order, or grant any relief, that could have been made or granted by that court; and
- (b) even if the proceeding has not been heard in the Court of Appeal, has all the powers the Court of Appeal would have if hearing the appeal.

- (2) In any proceeding, the Supreme Court can make any ancillary or interlocutory orders (including any orders as to costs) it thinks fit.

**25 Power to remit proceedings**

The Supreme Court can also remit a proceeding that began in a New Zealand court to any New Zealand court that has jurisdiction to deal with it.

Compare: 1908 No 89 s 62

**26 Exercise of powers of Court**

- (1) For the purposes of the hearing and determination of a proceeding, the Supreme Court comprises 5 Judges of the Court.

- (2) Any 2 or more <permanent> Judges of the Supreme Court can act as the Court—

- (a) to decide whether an oral hearing of an application for leave to appeal to the Court should be held, or the application should be determined just on the basis of written submissions;
- (b) to determine an application for leave to appeal to the Court.



- (3) The ~~<delivery of the>~~ judgment of the Supreme Court may be ~~<delivered>~~ ~~<effected>~~ in any manner, and by any number of Judges, provided by rules made under section 51C of the Judicature Act 1908.
- (4) **Subsection (1)** is subject to **sections 27(1) and <29(3)> <29(1)>**.  
Compare: 1908 No 89 s 58(2)

## 27 Interlocutory orders and directions may be made and given by one Judge

- (1) In a proceeding before the Supreme Court, any ~~<permanent>~~ Judge of the Court may make any interlocutory orders and give any interlocutory directions the Judge thinks fit (other than an order or direction that determines the proceeding or disposes of a question or issue that is before the Court in the proceeding).

### Struck out (majority)

- (2) The Judges of the Supreme Court who together have jurisdiction to hear and determine a proceeding may discharge or vary an order or direction made or given under **subsection (1)**.
- (3) Any ~~<permanent>~~ Judge of the Supreme Court may review a decision of the Registrar made within the civil jurisdiction of the Court under a power conferred on the Registrar by a rule of Court, and may confirm, modify, or revoke that decision as the Judge thinks fit.

### New (majority)

- (4) The Judges of the Supreme Court who together have jurisdiction to hear and determine a proceeding may—
- (a) discharge or vary an order or direction made or given under **subsection (1)**; or
  - (b) confirm, modify, or revoke a decision confirmed or modified under **subsection (3)**.

## 28 Presiding Judge

- (1) The Chief Justice presides over the Supreme Court.

- (2) If the Chief Justice is absent, or the office of Chief Justice is vacant, the most senior available Judge of the Supreme Court presides over the Court.
- (3) The fact that a Judge of the Supreme Court other than the Chief Justice presides over the Court is conclusive proof of the Judge's authority to do so. No action of the Judge, and no judgment or decision of the Court, may be questioned on the ground that the occasion for the Judge to preside over the Court had not arisen or had ceased.

## 29 Procedure if Judges absent

### Struck out (majority)

- (1) This subsection applies to a proceeding that the Supreme Court is about to begin hearing, or has begun hearing and has not determined, if—
  - (a) a Judge of the Court dies or becomes unavailable; and
  - (b) at least 3 Judges of the Court are still available to determine it.
- (2) The remaining Judges must decide whether a proceeding to which **subsection (1)** applies must be adjourned or reheard, or may continue.
- (3) If the remaining Judges decide that a proceeding to which **subsection (1)** applies may continue, they—
  - (a) may act as the Supreme Court in relation to the proceeding; and
  - (b) can determine the proceeding and any interlocutory matters (including the question of costs).

### New (majority)

- (1) Where, because of the death or unavailability of one or 2 of the Judges of the Supreme Court who are about to begin or have begun hearing a proceeding, only 3 or 4 of those Judges remain available to determine it,—
  - (a) the remaining Judges must decide whether the proceeding must be adjourned or reheard, or may continue; and
  - (b) if the remaining Judges decide that the proceeding may continue,—

**New (majority)**

- (i) they may act as the Supreme Court in relation to the proceeding, and can determine it and any interlocutory matters (including the question of costs); and
- (ii) the reference in **section 30(1)** to a majority of the Judges hearing the proceeding must be read as a reference to a majority of those remaining Judges.

- (4) If at the time appointed for a sitting of the Supreme Court one or more Judges are absent, the Judge or Judges present may adjourn or further adjourn the sitting to some other time.
- (5) If at the time appointed for a sitting of the Supreme Court all the Judges are absent, the Registrar must adjourn or further adjourn the sitting to some other time.

Compare: 1908 No 89 ss 58D(3), 61

**30 Judgment of Court**

- (1) The judgment of the Supreme Court must be in accordance with the opinion <of a majority> of the Judges hearing the proceeding concerned.
- (2) If the Judges <present> are equally divided in opinion, the decision appealed from or under review is taken to be affirmed.

Compare: 1908 No 89 s 59

**31 Decisions of Court may be enforced by High Court**

A judgment, decree, or order of the Supreme Court may be enforced by the High Court as if it had been given or made by <that court> <the High Court>.

Compare: 1908 No 89 s 63

**Struck out (majority)****32 Acting Judges**

- (1) The Governor-General may appoint as acting Judges of the Supreme Court retired Judges of the Supreme Court or the Court of Appeal who have not reached the age of 75 years.

**Struck out (majority)**

- (2) Each acting Judge must be appointed for a stated term that—
  - (a) is not more than the time until the Judge will reach the age of 75 years;
  - (b) in any case, is not more than 24 months.
- (3) During the term of his or her appointment, an acting Judge may act as a Judge of the Supreme Court to the extent only that the Chief Justice authorises under **subsection (4)**.
- (4) The Chief Justice may authorise an acting Judge to act as a member of the Supreme Court—
  - (a) to hear and determine any proceedings within a stated period; or
  - (b) to hear and determine stated proceedings.
- (5) The Chief Justice may authorise an acting Judge to act as a member of the Supreme Court only if satisfied that—
  - (a) there is a vacancy in the Supreme Court; or
  - (b) a Judge of the Supreme Court is for any reason unavailable to hear proceedings or particular proceedings.
- (6) An acting Judge is authorised when the Chief Justice gives the Attorney-General a certificate, signed by the Chief Justice and at least 2 other Judges of the Supreme Court who are not acting Judges, to the effect that in their opinion it is necessary for the proper conduct of the Court's business for the acting Judge to be authorised to act as a member of the Supreme Court—
  - (a) to hear and determine proceedings within the period concerned; or
  - (b) to hear and determine the proceedings concerned.
- (7) An acting Judge has the jurisdiction, powers, protections, privileges, and immunities of a Judge of the Supreme Court and the High Court in relation only to acting as a member of the Supreme Court, under the authority of **subsection (4)**, in the hearing and determination of a proceeding.
- (8) While acting as a member of the Supreme Court, under the authority of **subsection (4)**, in the hearing and determination of a proceeding, but not otherwise, an acting Judge must be paid—
  - (a) a salary at the rate for the time being payable to a Judge of the Supreme Court other than the Chief Justice; and

**Struck out (majority)**

- (b) any applicable allowances fixed by the Governor-General for acting Judges.
- (9) The fact that an acting Judge acts as a member of the Supreme Court is conclusive proof of the Judge's authority to do so. No action of the Judge, and no decision of the Court, may be questioned on the ground that the occasion for the Judge to act as a member of the Court had not arisen or had ceased.
- Compare: 1908 No 89 ss 11A, 11B

*Administrative provisions***33 Salaries and allowances of Judges**

- (1) There must be paid out of public money to the Judges of the Supreme Court other than the Chief Justice, without further appropriation than this section,—
- (a) salaries at a rate determined by the *Higher Salaries Commission* *Remuneration Authority*; and
- (b) any applicable allowances determined by the *Higher Salaries Commission* *Remuneration Authority*; and
- (c) any applicable additional allowances, being travelling allowances or other incidental or minor allowances, determined from time to time by the Governor-General.
- (2) A determination under **subsection (1)**, or a provision of a determination under **subsection (1)**, may be stated to come into force on—
- (a) the date on which the determination is made; or
- (b) any other date, whether before or after the date on which the determination is made.
- (3) If no date is stated for a determination or a provision of a determination, it comes into force on the date on which the determination is made.
- (4) **Subsection (2)** is subject to the *Higher Salaries Commission* *Remuneration Authority* Act 1977.
- (5) This section does not apply to acting Judges.

Compare: 1908 No 89 s 9A

**34 Fees to be paid into Crown Bank Account**

All fees received under this Act must be paid into the Crown Bank Account.

Compare: 1908 No 89 s 53

**35 Contempt of Court**

- (1) A person commits an offence who—
  - (a) assaults, threatens, intimidates, or wilfully insults a Judge of the Supreme Court, the Registrar of the Court, a Deputy Registrar or officer of the Court, or a witness, during his or her sitting or attendance in Court, or in going to or returning from the Court; or
  - (b) wilfully interrupts or obstructs the proceedings of the Supreme Court, or misbehaves in the Court; or
  - (c) wilfully and without lawful excuse disobeys an order or direction of the Supreme Court in the course of the hearing of a proceeding.
- (2) A member of the police or officer of the Supreme Court, with or without the assistance of any other person, may, by order of a Judge of the Court, take into custody and detain until the rising of the Court a person who commits an offence against **subsection (1)**.
- (3) The Supreme Court may sentence a person who commits an offence against **subsection (1)** to imprisonment for a period not exceeding 5 days, or to pay a fine not exceeding \$5,000, or both, for every offence.
- (4) The Supreme Court has the same power and authority as the High Court to punish any person for contempt of Court in any case to which **subsection (1)** does not apply.
- (5) Nothing in **subsections (1) to (3)** limits or affects the power and authority referred to in **subsection (4)**.

Compare: 1908 No 89 s 56C

**36 Appointment of officers**

- (1) A Registrar of the Supreme Court must be appointed under the State Sector Act 1988.
- (2) There may also be appointed under that Act Deputy Registrars of the Supreme Court, and any other officers required for the conduct of the Court's business.

Compare: 1908 No 89 ss 27, 72

**37 Powers and duties of officers**

The Registrar, Deputy Registrars, and other officers of the Supreme Court have the powers and duties prescribed by rules made under section 51C of the Judicature Act 1908.

Compare: 1908 No 89 ss 28, 73

**38 Seal**

- (1) The Supreme Court has a seal for sealing writs and other instruments or documents issued by the Registrar that must be sealed.
- (2) The Registrar has custody of the seal.

Compare: 1908 No 89 s 50

**39 Regulations**

- (1) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:
  - (a) prescribing the matters for which fees are payable under this Act:
  - (b) prescribing scales of fees for the purposes of this Act and for the purposes of proceedings before the Supreme Court:
  - (c) prescribing the fees, travelling allowances, and expenses payable to interpreters and to people giving evidence in proceedings before the Supreme Court:
  - (d) in order to promote access to justice, empowering the Registrar or a Deputy Registrar of the Supreme Court to waive, reduce, or postpone the payment of a fee required in connection with a proceeding or intended proceeding, or to refund, in whole or in part, such a fee that has already been paid, if satisfied on the basis of criteria prescribed under **paragraph (e)** that—
    - (i) the person otherwise responsible for payment of the fee is unable to pay or absorb the fee in whole or in part; or
    - (ii) unless one or more of those powers are exercised in respect of a proceeding that concerns a matter of genuine public interest, the proceeding is unlikely to be commenced or continued:
  - (e) prescribing, for the purposes of the exercise of a power under **paragraph (d)**, the criteria—
    - (i) for assessing a person's ability to pay a fee; and

- (ii) for identifying proceedings that concern matters of genuine public interest:
  - (f) empowering the Registrar or a Deputy Registrar of the Supreme Court to postpone the payment of a fee pending the determination of—
    - (i) an application for the exercise of a power specified in **paragraph (d)**; or
    - (ii) an application for review under **section 40**:
  - (g) providing for the postponement under the regulations of the payment of a fee, including (without limitation) providing—
    - (i) for the recovery of the fee after the expiry of the period of postponement; and
    - (ii) for restrictions to apply (after the expiry of the period of postponement and for so long as the fee remains unpaid) on the steps that may be taken in the proceeding in respect of which the fee is payable:
  - (h) providing for the manner in which an application for the exercise of a power specified in **paragraph (d)** or **paragraph (f)** is to be made, including (without limitation) requiring the application to be in a form approved for the purpose by the chief executive of the Department for Courts.
- (2) No fee is payable for an application for the exercise of a power specified in **paragraph (d)** or **paragraph (f)** of **subsection (1)**.

Compare: 1908 No 89 s 100A

#### **40 Reviews of decisions of Registrars about fees**

- (1) A person aggrieved by a decision of the Registrar or a Deputy Registrar under regulations under **section 39(1)(d)** may apply to a Judge of the Supreme Court for a review of the decision.
- (2) An application must be made within—
  - (a) 20 working days after the date on which the applicant is notified of the decision; or
  - (b) any further time the Judge allows on application made for that purpose before or after the expiration of that period.
- (3) The application may be made informally.
- (4) The review—
  - (a) must be conducted by rehearing:



- (b) may be dealt with on the papers, unless the Judge decides otherwise.
- (5) The Judge may confirm, modify, or reverse the decision.
- (6) No fee is payable for an application under this section.

Compare: 1908 No 89 s 100B

#### **41 Technical advisers**

Sections 99B to 99D of the Judicature Act 1908 (which relate to the appointment of technical advisers to give advice in appeals in *<civil>* proceedings involving questions arising from expert evidence) apply to the Supreme Court and proceedings in the Supreme Court as if references in those sections to the Court of Appeal were references to the Supreme Court.

#### *Ending of appeals to Her Majesty in Council*

#### **42 Ending of appeals to Her Majesty in Council**

- (1) No appeal to Her Majesty in Council lies or may be brought from or in respect of any civil or criminal decision of a New Zealand court made after *(the commencement of this Act)* 31 December 2003—
- (a) whether by leave or special leave of any court or of Her Majesty in Council, or otherwise; and
- (b) whether by virtue of any Act of Parliament of the United Kingdom or of New Zealand, or the Royal prerogative, or otherwise.
- (2) **Subsection (1)** is subject to **section 48**.

### **Part 2 Amendments, repeals, transitional provisions, and savings**

*Substantive <amendment> <amendments> to Judicature  
Act 1908*

#### **New**

- 42A New sections 4A and 4B of Judicature Act 1908 inserted**  
The Judicature Act 1908 is amended by inserting, after section 4, the following sections:

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**New**

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**“4A Chief High Court Judge**

- “(1) The Governor-General must by warrant appoint a Judge of the High Court who is not a Judge of the Supreme Court or the Court of Appeal to be the Chief High Court Judge.
- “(2) The Chief High Court Judge holds that office until the earliest of the following:
- “(a) ceasing to hold office as a Judge of the High Court;
  - “(b) being appointed a Judge of the Supreme Court or the Court of Appeal;
  - “(c) resigning the office of Chief High Court Judge without resigning office as a Judge of the High Court.
- “(3) The Chief High Court Judge cannot resign the office of Chief High Court Judge without resigning office as a Judge of the High Court, except with the prior approval of the Governor-General.
- “(4) The Judge of the High Court who is next senior after the Chief High Court Judge may act in place of the Chief High Court Judge if,—
- “(a) because of illness or absence from New Zealand, or for any other reason, the Chief High Court Judge is unable to exercise the duties of that office; or
  - “(b) the office of Chief High Court Judge is vacant.
- “(5) While acting in place of the Chief High Court Judge, the next senior Judge—
- “(a) may perform the functions and duties of the Chief High Court Judge; and
  - “(b) may for that purpose exercise all the powers of the Chief High Court Judge.
- “(6) The fact that the next senior Judge exercises any of the powers of the Chief High Court Judge is conclusive proof of his or her authority to do so.

**“4B Functions of Chief High Court Judge**

The Chief High Court Judge is responsible to the Chief Justice for ensuring the orderly and prompt conduct of the High Court’s business.”

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**43 Constitution of the Court**

Section 57 of the Judicature Act 1908 is amended by repealing subsection (2), and substituting the following subsection:

- “(2) Subject to this Part, the Court of Appeal comprises—
- “(a) a Judge of the High Court appointed by the Governor-General as a Judge of the Court of Appeal and as President of that Court;
- “(b) not fewer than 5 nor more than 6 other Judges of the High Court appointed by the Governor-General as Judges of the Court of Appeal.”

**New (majority)****43A Technical advisers**

- (1) Section 99B(1) of the Judicature Act 1908 is amended by omitting the word “civil”.
- (2) Section 99B(4) of the Judicature Act 1908 is consequentially repealed.

*Substantive amendment to Te Ture Whenua Maori Act 1993***44 New sections 58A and 58B inserted**

Te Ture Whenua Maori Act 1993 is amended by inserting, after section 58, the following sections:

**“58A Further appeal to Court of Appeal from Maori Appellate Court**

- “(1) A party to an appeal under section 58 may appeal to the Court of Appeal against all or part of the determination of the Maori Appellate Court on the appeal.
- “(2) On an appeal under **subsection (1)**, the Court of Appeal may make any order or determination it thinks fit.

**“58B Direct appeal to Supreme Court from Maori Appellate Court in exceptional circumstances**

- “(1) A party to an appeal under section 58 may, with the leave of the Supreme Court, appeal to the Supreme Court against all or part of the determination of the Maori Appellate Court on the appeal.
- “(2) On an appeal under **subsection (1)**, the Supreme Court may make any order or determination it thinks fit.

- “(3) This section is subject to **section 14 of the Supreme Court Act 2002** (which provides that the Supreme Court must not give leave to appeal directly to it against a decision made in a court other than the Court of Appeal unless it is satisfied that there are exceptional circumstances that justify taking the proposed appeal directly to the Supreme Court).”

*Other substantive amendments*

**45 Other substantive amendments**

The enactments specified in **Part 1 of Schedule 1** are amended in the manner indicated in that schedule.

*Consequential amendments and repeals*

**46 Consequential amendments and repeals**

- (1) The enactments specified in **Part 2 of Schedule 1** or **Part 1 of Schedule 3** are amended in the manner indicated in that schedule.
- (2) The enactments specified in **Schedule 2** are repealed.
- (3) The enactments specified in **Part 2 of Schedule 3** are amended by omitting the word “Supreme” wherever it occurs, and substituting in each case the word “High”.
- (4) Regulations 2 and 3 of the Law Practitioners (Victoria Reciprocity) Order 1937 (SR 1937/242) are amended by omitting the word “Supreme” wherever it occurs without being immediately followed by the words “Court of Victoria”, and substituting in each case the word “High”.
- (5) This section has effect as if, *(immediately before the commencement of this Act)* at the close of 31 December 2003, section 12 of the Judicature Amendment Act 1979 had ceased to apply to *(the Oamaru Gasworks Act 1875)*, the Statutes Amendment Act 1947, the Law Practitioners (Victoria Reciprocity) Order 1937, and the enactments specified in **Schedule 3**.

**47 Imperial enactments ceasing to have effect in New Zealand**

On *(the commencement of this Act)* 1 January 2004, the following Imperial enactments cease to have effect as part of the law of New Zealand:

- (a) the Imperial enactments listed in **Part 1 of Schedule 4**:

- (b) the Imperial subordinate legislation listed in **Part 2 of Schedule 4**.

*Transitional and savings*

**Struck out**

**48 Certain appeals may still be determined by Privy Council**

**Struck out (majority)**

- (1) The following proceedings may be heard and determined, or continue to be heard and determined, by the Privy Council:
- (a) an appeal to the Privy Council made before the commencement of this Act:
  - (b) an appeal to the Privy Council arising out of a successful application to a New Zealand court for leave to appeal to the Privy Council made before the commencement of this Act:
  - (c) an appeal to the Privy Council arising out of a successful application to the Privy Council for special leave to appeal to it made before the commencement of this Act:
  - (d) an appeal to the Privy Council arising out of a successful application to the Privy Council for special leave to appeal to it made at any time in respect of a matter in respect of which a New Zealand court has, on an application for leave to appeal to the Privy Council made before the commencement of this Act, refused leave to appeal to the Privy Council.

**New (majority)**

- (1) The Privy Council may hear and determine, or continue to hear and determine, an appeal arising out of—
- (a) a successful application to a New Zealand court (whether made before or after the commencement of this Act) for leave to appeal to the Privy Council against—

**Struck out****New (majority)**

- (i) a decision of a New Zealand court made before that commencement; or
- (ii) a decision of the Court of Appeal made after that commencement in a proceeding whose hearing was completed before that commencement; or
- (b) a successful application to the Privy Council (whether made before or after the commencement of this Act) for special leave to appeal to it against—
  - (i) a decision of a New Zealand court made before that commencement; or
  - (ii) a decision of the Court of Appeal made after that commencement in a proceeding whose hearing was completed before that commencement.

**New****48 Privy Council may still determine appeals in certain existing proceedings**

- (1) The Privy Council may hear and determine, or continue to hear and determine,—
  - (a) an appeal against a final judgment of the Court of Appeal made before 1 January 2004, or made after 31 December 2003 in a proceeding whose hearing was completed before 1 January 2004, where—
    - (i) the matter in dispute on the appeal amounts to or is of the value of \$5,000 or upwards; or
    - (ii) the appeal involves, directly or indirectly, some claim or question to or respecting property or some civil right amounting to or of the value of \$5,000 or upwards; or
  - (b) an appeal arising out of a successful application to a New Zealand court (whether made before, on, or after 1 January 2004) for leave to appeal to the Privy Council against a decision of the Court of Appeal—

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**New**

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- (i) made before 1 January 2004; or
  - (ii) made after 31 December 2003 in a proceeding whose hearing was completed before 1 January 2004; or
  - (c) an appeal arising out of a successful application to the Privy Council (whether made before, on, or after 1 January 2004) for special leave to appeal to it against a decision of the Court of Appeal—
    - (i) made before 1 January 2004; or
    - (ii) made after 31 December 2003 in a proceeding whose hearing was completed before 1 January 2004.
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- (2) **Subsection (1)** does not apply to an appeal if—
  - (a) the Privy Council has not begun hearing the appeal; and
  - (b) all parties agree in writing that an application should be made to the Supreme Court for leave to appeal to the Supreme Court against the decision concerned.

**Struck out**

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**49 Limitations on right to appeal to Court**

- (1) There is no right to appeal to the Supreme Court against a judgment, decree, order, conviction, or sentence—
    - (a) if the Privy Council has declined to give special leave to appeal against it; or
    - (b) if the Privy Council has already heard or begun hearing an appeal against it; or
    - (c) if—
      - (i) **section 48<(1)>** enables an appeal against it to be heard and determined, or to continue to be heard and determined, by the Privy Council; and
      - (ii) all parties have not agreed in writing that an application should be made to the Supreme Court for leave to appeal to the Supreme Court against it.
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**New**

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**49 Limitation on right to appeal to Supreme Court in certain existing proceedings**

- (1A) This subsection applies to a decision if—
- (a) it was made by any New Zealand court before 1 January 2004; or
  - (b) it was made by the Court of Appeal after 31 December 2003 in a proceeding whose hearing was completed before 1 January 2004.
- (1) There is no right to appeal to the Supreme Court against a decision to which **subsection (1A)** applies if—
- (a) the Privy Council has already heard or begun hearing an appeal against it; or
  - (b) a New Zealand court has declined to give leave to appeal to the Privy Council against it and the Privy Council has not later given special leave to appeal against it; or
  - (c) the Privy Council has declined to give special leave to appeal against it; or
  - (d) all the parties to the proceeding in which it was made have not agreed in writing that an application should be made to the Supreme Court for leave to appeal to the Supreme Court against it.

- (2) **Subsection (1)** overrides **sections 7 to 10**.

**50 Transitional effect of sections 42 and 47**

- (1) The following applications must be determined as if **sections 42 and 47** had not been enacted:

**Struck out (majority)**

- (a) all applications for leave to appeal to the Privy Council made to a New Zealand court before the commencement of this Act;
- (b) all applications for special leave to appeal to the Privy Council made to the Privy Council after the refusal of a New Zealand court before the commencement of this Act to grant leave to appeal to the Privy Council:



**Struck out (majority)**

- (c) all applications for special leave to appeal to the Privy Council made to the Privy Council before the commencement of this Act.

**Struck out****New (majority)**

- (a) all applications to a New Zealand court (whether made before or after the commencement of this Act) for leave to appeal to the Privy Council against—
- (i) a decision of a New Zealand court made before that commencement; or
  - (ii) a decision of the Court of Appeal delivered after that commencement in a proceeding whose hearing was completed before that commencement:
- (b) all applications to the Privy Council (whether made before or after the commencement of this Act) for special leave to appeal to it against—
- (i) a decision of a New Zealand court made before that commencement; or
  - (ii) a decision of the Court of Appeal delivered after that commencement in a proceeding whose hearing was completed before that commencement.

**New**

- (a) all applications to a New Zealand court (whether made before, on, or after 1 January 2004) for leave to appeal to the Privy Council against—
- (i) a decision of a New Zealand court made before 1 January 2004; or
  - (ii) a decision of the Court of Appeal delivered after 31 December 2003 in a proceeding whose hearing was completed before 1 January 2004:

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**New**

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- (b) all applications to the Privy Council (whether made before, on, or after 1 January 2004) for special leave to appeal to it against—
- (i) a decision of a New Zealand court made before 1 January 2004; or
  - (ii) a decision of the Court of Appeal delivered after 31 December 2003 in a proceeding whose hearing was completed before 1 January 2004.
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- (2) All appeals brought with leave given on an application to which **subsection (1)** applies must be heard and determined as if **sections 42 and 47** had not been enacted.
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**New**

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- (2) All appeals that, by virtue of **section 48(1)**, the Privy Council may hear and determine, or continue to hear and determine, must be heard and determined as if—
- (a) **sections 42 and 47** had not been enacted; and
  - (b) the reference in section 112(1) of the Credit Contracts and Consumer Finance Act 2003 to the Supreme Court included a reference to the Privy Council.
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**51 Transitional arrangements for leave applications**

- (1) In **subsection (2)**, **leave application** means an application to the Supreme Court for leave to appeal to the Supreme Court.
- (2) Until the commencement of the first rules made (*after the commencement of this Act*) under section 51C of the Judicature Act 1908 (or under that section and section 409 of the Crimes Act 1961) containing provisions regulating the making of leave applications,—
- (a) the rules for the time being in force under that section (or those sections), with all necessary modifications, apply to leave applications as if they were applications

- for leave to appeal to the Court of Appeal against a decision of the High Court; but
- (b) the Chief Justice may issue practice directions—
    - (i) modifying the application of those rules to leave applications; or
    - (ii) providing for any matter (relating to leave applications) that those rules do not provide for.
  - (3) Until the appointment of the first Registrar of the Supreme Court, the Registrar and every Deputy Registrar or officer of the Court of Appeal is also the Registrar or a Deputy Registrar or officer of the Supreme Court.
  - (4) Until the establishment of the first Supreme Court Registry, the Court of Appeal Registry is also the Supreme Court Registry.

**52** ***(Rights to appeal against decisions made before commencement of Act)*** **No new rights of appeal against decisions made before 1 January 2004**

**Struck out**

- (1) This subsection applies to a decision made in a proceeding if—
  - (a) the decision was made before the commencement of this Act; and
  - (b) there was an ability—
    - (i) to appeal to the Privy Council against the decision; or
    - (ii) to apply to a New Zealand court or the Privy Council for leave or special leave to appeal to the Privy Council against the decision; and
  - (c) no party to the proceeding had, before the ability to do so had been ended by **section 42**,—
    - (i) appealed to the Privy Council against the decision; or
    - (ii) applied to a New Zealand court or the Privy Council for leave or special leave to appeal to the Privy Council against the decision.
- (2) The Supreme Court can hear and determine an appeal against a decision to which **subsection (1)** applies to the same extent it

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**Struck out**

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could if the decision were made after the commencement of this Act; but the time within which an application for leave to appeal to the Supreme Court must be made, or any other action must or may be taken, must be determined by reference to the date on which the decision was actually made.

- (3) **Subsection (2)** overrides **subsection (4)**.
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- (4) A person does not have a right to appeal to a particular New Zealand court ~~((on any grounds against a decision made before the commencement of this Act))~~ or the Privy Council on any grounds against a decision made before 1 January 2004 unless, when the decision was made, the person had the right to appeal against the decision to that court on those grounds.

- (5) **Subsection (4)** does not limit or affect the right of any person to appeal to a New Zealand court on any grounds against a decision made—

- (a) on or after ~~((the commencement of this Act))~~ 1 January 2004; but
- (b) on appeal against a decision—
- (i) made before ~~((that commencement))~~ 1 January 2004; or
- (ii) made at any time on appeal against a decision made before ~~((that commencement))~~ 1 January 2004.

**New**

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**53 Hearings not to begin before 1 July 2004**

- (1) The Supreme Court cannot begin hearing appeals until after 30 June 2004.
- (2) Before 1 July 2004, the Supreme Court can take any steps preliminary to hearing appeals, including considering and determining applications for leave to appeal to it, and interlocutory matters.
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## Schedule 1 Amendments

ss 45, 46(1)

### Part 1 Substantive amendments

#### **Child Support Act 1991** (1991 No 142)

Insert in section 97, before the words “Court of Appeal”, the words “Supreme Court, the”.

Omit from section 120(3) the words “on a question of law” and substitute the words “against the decision”.

#### **Struck out (majority)**

Omit from section 120(4) the words “on a question of law arising in an appeal under that subsection”.

#### **New (majority)**

Repeal section 120(4) and substitute:

“(4) With the leave of the Court of Appeal, a party to an appeal under subsection (1) or subsection (3) may appeal to the Court of Appeal against all or part of any determination of the High Court made in the appeal.”

Repeal subsections (6) and (7) of section 120.

#### **Children, Young Persons, and Their Families Act 1989**

(1989 No 24)

Repeal section 347 and substitute:

#### “347 **Appeal to Court of Appeal**

“(1) A party to an appeal under section 341 may, with the leave of the Court of Appeal, appeal to the Court of Appeal against all or part of any *order* determination of the High Court made in the appeal.

“(2) On the appeal, the Court of Appeal has the same power to adjudicate the High Court had.”

#### **Courts Martial Appeals Act 1953** (1953 No 100)

Repeal section 10 and substitute:

**Courts Martial Appeals Act 1953** (1953 No 100)—continued**“10 Appeals to Court of Appeal**

“(1) The appellant in an appeal <to the Courts Martial Appeal Court> under this Act or the Chief of Defence Force may, within 14 days after the decision of the Courts Martial Appeal Court was given, apply to the Attorney-General for a certificate that—

- “(a) the decision involves a point of law of exceptional public importance; and
- “(b) it is desirable in the public interest that a further appeal should be brought.

**New (majority)**

“(1A) The Courts Martial Appeal Court may extend the period within which an application for a certificate under **subsection (1)** must be made, whether that period has expired or not.

“(2) If<, and only if,> given a certificate under **subsection (1)**, the appellant in an appeal <to the Courts Martial Appeal Court> under this Act or the Chief of Defence Force may appeal to the Court of Appeal against the decision of the Courts Martial Appeal Court.

**Struck out (majority)**

“(3) The Courts Martial Appeal Court may extend the period within which an application for a certificate under **subsection (1)** must be made, whether that period has expired or not.

“(4) In an appeal to the Court of Appeal,—

- “(a) the Court of Appeal has the same powers as the Courts Martial Appeal Court; and
- “(b) the provisions of this Act, as far as they are applicable and with any necessary modifications, apply to the appeal as they apply for the purposes of an appeal to the Courts Martial Appeal Court.

**Courts Martial Appeals Act 1953 (1953 No 100)—continued**  
**New (majority)**

**“10AA Appeals to Supreme Court from Court of Appeal**

With the leave of the Supreme Court, the appellant in an appeal to the Court of Appeal under **section 10(2)** or the Chief of Defence Force may appeal to the Supreme Court against the decision of the Court of Appeal in the appeal.

**“10A Direct appeals to Supreme Court in exceptional circumstances**

**Struck out (majority)**

“(1) The appellant in an appeal under this Act or the Chief of Defence Force may, with the leave of the Supreme Court appeal to the Supreme Court against the decision of the Courts Martial Appeal Court.

“(2) In an appeal to the Supreme Court,—

“(a) the Supreme Court has the same powers as the Courts Martial Appeal Court; and

“(b) the provisions of this Act, as far as they are applicable and with any necessary modifications, apply to the appeal as they apply for the purposes of an appeal to the Courts Martial Appeal Court.

**New (majority)**

“(1) With the leave of the Supreme Court, the appellant in an appeal to the Courts Martial Appeal Court under this Act or the Chief of Defence Force may appeal to the Supreme Court against the decision of the Courts Martial Appeal Court.

“(3) *⟨This section⟩* *⟨Subsection (1)⟩* is subject to **section 14 of the Supreme Court Act 2002** (which provides that the Supreme Court must not give leave to appeal directly to it against a decision made in a court other than the Court of Appeal unless it is satisfied that there are exceptional circumstances that justify taking the proposed appeal directly to the Supreme Court).

**Courts Martial Appeals Act 1953** (1953 No 100)—continued  
**New (majority)**

**“10B Powers and procedure of Court of Appeal and Supreme Court**

In an appeal to the Court of Appeal or the Supreme Court under **section 10(2) or section 10AA or section 10A(1)**—

- “(a) the court appealed to has the same powers as the Courts Martial Appeal Court; and
- “(b) this Act, as far as it is applicable and with any necessary modifications, applies to the appeal as it applies to an appeal to the Courts Martial Appeal Court.”

**Crimes Act 1961** (1961 No 43)

Insert, after section 406:

**“406A Appeals against decisions made on references**

**Struck out (majority)**

- “(1) A party to proceedings in which the High Court heard and determined a question referred to it under section 406(a) may, with the leave of the court concerned, appeal to the Court of Appeal or the Supreme Court against the High Court’s determination of the question.
- “(2) A party to proceedings in which the Court of Appeal heard and determined a question referred to it under section 380 or section 406(a) may, with the leave of the Supreme Court, appeal to the Supreme Court against the Court of Appeal’s opinion on or determination of the question.
- “(3) A party to an appeal to the Court of Appeal under **subsection (1)** may, with the leave of the Supreme Court, appeal to the Supreme Court against the Court of Appeal’s determination of the appeal.

**New (majority)**

- “(1) With the leave of the court appealed to, a party to proceedings in which the High Court heard and determined a question referred to it under section 406(a) may appeal to the Court of



**Crimes Act 1961** (1961 No 43)—continued**New (majority)**

Appeal or the Supreme Court against the High Court's determination of the question.

- “(2) With the leave of the Supreme Court, a party to proceedings in which the Court of Appeal heard and determined a question referred to it under section 380 or section 406(a) may appeal to the Supreme Court against the Court of Appeal's opinion on or determination of the question.
- “(3) With the leave of the Supreme Court, a party to an appeal to the Court of Appeal under **subsection (1)** may appeal to the Supreme Court against the Court of Appeal's determination of the appeal.
- “(4) **Subsection (1)** is subject to **section 14** of the Supreme Court Act 2003 (which provides that the Supreme Court must not give leave to appeal directly to it against a decision made in a court other than the Court of Appeal unless it is satisfied that there are exceptional circumstances that justify taking the proposed appeal directly to the Supreme Court).”

**Family Proceedings Act 1980** (1980 No 94)

Omit from section 174(5) the words “on a question of law arising in an appeal under that subsection” and substitute the words “in the appeal”.

Repeal subsections (7) and (8) of section 174.

**New (majority)**

Repeal section 175(6).

**Guardianship Act 1968** (1968 No 63)

Repeal subsections (1)(b)(i) and (3) of section 31B.

**Harassment Act 1997** (1997 No 92)

Omit from section 36(1) the words “on a question of law <arising>”.

Repeal section 36(3).

Omit from section 42(2)(g) the words “or the Court of Appeal” and substitute the words “the Court of Appeal, or the Supreme Court”.

**Human Rights Act 1993** (1993 No 82)

Repeal section 123(2) and substitute:

- “(2) A party to a proceeding under section 92B or section 92E may appeal to the High Court against all or any part of a decision of the Tribunal—
- “(a) dismissing the proceeding; or
  - “(b) granting one or more of the remedies described in section 92I; or
  - “(c) granting the remedy described in section 92J; or
  - “(d) refusing to grant the remedy described in section 92J; or
  - “(e) constituting a final determination of the Tribunal in the proceeding.

“(2A) For the purposes of **subsection (2)(d)**, the Tribunal does not in a proceeding refuse to grant the remedy described in section 92J unless—

- “(a) a party to the proceeding expressly applies to the Tribunal for the remedy in relation to a particular enactment; and
- “(b) the Tribunal does not grant the remedy in relation to that enactment.”

Repeal section 124(5) and substitute:

- “(5) The same judgment must be entered in the High Court, and the same execution and other consequences and proceedings must follow on it, as if the decision of the Court of Appeal on an appeal under this section had been given in the High Court.”

**Summary Proceedings Act 1957** (1957 No 87)**Struck out (majority)**

Repeal section 144 and substitute:

**“144 Appeal to Court of Appeal or Supreme Court**

- “(1) Either party may, with the leave required by this section, appeal to the Court of Appeal or the Supreme Court against—
- “(a) a determination of the High Court on a case stated for its opinion under section 107; or
  - “(b) a determination of the High Court (other than a determination made on an interlocutory application (within the meaning of the Supreme Court Act **2002**)) made in a general appeal.

**Summary Proceedings Act 1957 (1957 No 87)—continued****Struck out (majority)**

- “(2) Either party may, with the leave required by this section, appeal to the Supreme Court against a decision of the Court of Appeal on an appeal under **subsection (1)**.
- “(3) An appeal to the Court of Appeal cannot be brought without—
- “(a) the leave of the High Court; or
  - “(b) the special leave of the Court of Appeal, given after the High Court has refused leave.
- “(4) An appeal to the Supreme Court cannot be brought without the leave of the Supreme Court.
- “(5) A party wishing to appeal to the Court of Appeal under this section against a determination must, within 21 days after the determination, or any further time the High Court allows, give notice of application for leave to appeal in the manner directed by the rules of the High Court.
- “(6) Within 21 days after the refusal of the High Court to give leave, or any further time the Court of Appeal allows, the applicant may apply to the Court of Appeal, in the manner directed by the rules of that court, for special leave to appeal to that court.
- “(7) The High Court must not grant leave, and the Court of Appeal must not grant special leave, unless satisfied, as the case may be, that—
- “(a) a question of law involved in the proposed appeal is one that, because of its general or public importance or for any other reason, should be decided by the Court of Appeal; or
  - “(b) there would arise in the proposed appeal a question of fact so important that it should be considered or reconsidered by the Court of Appeal.
- “(8) On an appeal under this section,—
- “(a) the Court of Appeal or Supreme Court has the same power to adjudicate on the proceeding that the High Court had; and
  - “(b) the same judgment must be entered in the High Court, and the same execution and other consequences and

**Summary Proceedings Act 1957 (1957 No 87)—continued****Struck out (majority)**

proceedings follow, as if the decision of the Court of Appeal or Supreme Court had been given in the High Court.”

**New (majority)**

Repeal subsections (4) to (6) of section 144.

Insert, after section 144:

**“144A Appeal to Supreme Court**

“(1) With the leave of the Supreme Court, either party may appeal to the Supreme Court against—

“(a) a determination of the High Court on a case stated for its opinion under section 107; or

“(b) a determination of the High Court (other than a determination made on an interlocutory application (within the meaning of the Supreme Court Act 2003)) made in a general appeal; or

“(c) a decision of the Court of Appeal on an appeal under section 144(1).

“(2) **Subsection (1)** is subject to **section 14 of the Supreme Court Act 2003** (which provides that the Supreme Court must not give leave to appeal directly to it against a decision made in a court other than the Court of Appeal unless it is satisfied that there are exceptional circumstances that justify taking the proposed appeal directly to the Supreme Court).

**“144B Powers of Court of Appeal and Supreme Court on appeal**

On an appeal under section 144 or **section 144A**, to the Court of Appeal or the Supreme Court—

“(a) the court appealed to has the same power to adjudicate on the proceeding that the High Court had; and

“(b) the same judgment must be entered in the High Court, and the same execution and other consequences and proceedings follow, as if the decision of the court appealed to had been given in the High Court.”

**New (majority)**

Part 2  
Consequential amendments

**Animal Products Act 1999** (1999 No 93)

Repeal section 154(3).

Repeal section 155 and substitute:

“155 **Appeals to Court of Appeal or Supreme Court**

**Struck out (majority)**

“(1) A party to an appeal under section 154 may, with the leave of the court concerned, appeal to the Court of Appeal or the Supreme Court against any determination of the High Court in the appeal.

**New (majority)**

“(1) With the leave of the court appealed to, a party to an appeal under section 154 may appeal to the Court of Appeal or the Supreme Court against any determination of the High Court in the appeal.

“(2) On an appeal under this section, the Court of Appeal or the Supreme Court has the same power to adjudicate on the proceedings as the High Court had.

**New (majority)**

“(3) **Subsection (1)** is subject to **section 14** of the Supreme Court Act 2003 (which provides that the Supreme Court must not give leave to appeal directly to it against a decision made in a court other than the Court of Appeal unless it is satisfied that there are exceptional circumstances that justify taking the proposed appeal directly to the Supreme Court).”

**Bail Act 2000** (2000 No 38)

Insert in section 58(1), before the words “the Court of Appeal”, the words “the Supreme Court or”.

Insert in section 67, after subsection (3):

**Bail Act 2000** (2000 No 38)—continued

“(3A) No decision of a High Court Judge appealed against under section 66 is suspended merely because the defendant has applied for or been given leave to appeal to the Supreme Court against a decision of the Court of Appeal on the appeal under section 66.”

Insert, after section 69:

“69A **Execution of decision of Supreme Court on appeal relating to bail**

- “(1) If, on an appeal to the Supreme Court against a decision of the Court of Appeal on an appeal under section 66 against a refusal to grant bail to a defendant, the Supreme Court determines that bail should be granted, the Supreme Court must order that the defendant be released on bail, subject to any conditions the Supreme Court thinks fit.
- “(2) If, on an appeal to the Supreme Court against a decision of the Court of Appeal on an appeal under section 66 in respect of any condition of bail, the Supreme Court cancels or amends a condition of bail or substitutes or imposes any other condition, the Registrar of the Court whose decision was appealed against must send written notice to the defendant and to every surety (if any) requiring them to attend at a specified time and place for the execution of a fresh bail bond containing the conditions (if any) required to give effect to the Supreme Court’s decision.
- “(3) If, in any case to which **subsection (2)** applies, the defendant fails without reasonable excuse to attend at the time and place required, or fails to enter into a fresh bail bond, the Registrar must refer the matter to a High Court Judge who may issue a warrant for the arrest of the defendant.
- “(4) If, on an appeal to the Supreme Court against a decision of the Court of Appeal on an appeal under section 66 against a refusal to grant bail to a defendant, the Supreme Court determines that bail not be granted or, as the case may be, not be continued, a warrant for the detention in custody of the defendant must be issued out of the Supreme Court and signed by a Judge of the Court.
- “(5) The person who executes the warrant under **subsection (4)** must ensure that a copy of the notice of the result of the appeal is

**Bail Act 2000** (2000 No 38)—continued

given to the defendant when the warrant is executed or as soon as practicable after the warrant is executed.

“(6) A defendant to whom **subsection (4)** applies who is not in custody may be arrested without warrant by any member of the police or any officer of a penal institution.”

Insert in section 70(1), after the words “the Court of Appeal”, the words “or the Supreme Court”.

Insert in section 70(2), after the words “~~(the)~~ The Court of Appeal”, the words “or the Supreme Court (as the case may be)”.

Repeal section 71 and substitute:

**“71 Reserved question of law**

If under section 380(5) of the Crimes Act 1961 the High Court has decided to respite the execution of the sentence or postpone the sentence of a person <who has been convicted in the High Court>, the Court may in its discretion either—

“(a) commit the person to prison; or

“(b) grant the person bail on any terms, and subject to any conditions, the Court thinks fit.”

Insert in section 72(1), after the words “the Court of Appeal”, the words “or the Supreme Court”.

Insert in section 72(3), after the words “the Court of Appeal”, the words “or the Supreme Court”.

**New (majority)****Commerce Act 1986** (1986 No 5)

Omit from section 77(13) the words “shall be final, and shall take effect and be entered” and substitute the words “~~(take)~~ takes effect, and must be entered,”.

Repeal section 97(4).

**Courts Security Act 1999** (1999 No 115)

Insert in the definition in section 2 of **Judge**, after paragraph (a):

“(aa) any other Judge of the Supreme Court:”.

Insert in section 3(5), before paragraph (a):

“(aa) the Supreme Court:”.

## New

**Credit Contracts and Consumer Finance Act 2003**

(2003 No 52)

Omit from section 112(1) the words “Judicial Committee of the Privy Council” and substitute the words “Supreme Court”.

**Crimes Act 1961** (1961 No 43)

Insert in section 2(1), after the definition of **Superintendent**:

“**Supreme Court** means the Supreme Court of New Zealand established by **section 6** of the **Supreme Court Act 2002**”.

Add to section 19DA:

“~~(6)~~~~(7)~~ If, on appeal from the Court of Appeal, the Supreme Court quashes the sentence of community work, it must, at the same time, direct that the case be remitted to the High Court to be dealt with under section 19D.”

Omit from section 379A(1) the words “Court of Appeal, may appeal to that Court” and substitute the words “court *concerned* appealed to, may appeal to the Court of Appeal or the Supreme Court”.

Omit from section 379A(2) the words “Court of Appeal, may appeal to that Court” and substitute the words “court *concerned* appealed to, may appeal to the Court of Appeal or the Supreme Court”.

Repeal section 379A(3) and substitute:

“(3) On an appeal under this section the Court of Appeal or Supreme Court may confirm or vary the decision of the Court or Judge (as the case may be), or set the decision aside and make any other order (being an order that could have been made in the first place) that the Court of Appeal or Supreme Court thinks appropriate.”

Insert in section 379A(5), after the word “appeal”, the words “to the Court of Appeal”.

Add to section 379CA(1) the words “or, with the leave of the Supreme Court, to the Supreme Court”.

Insert in section 379CA(2), after the words “the Court of Appeal”, the words “or (*the*) The Supreme Court”.

Insert in section 379CA(4), after the word “appeal”, the words “to it”.

Repeal section 380(5) and substitute:



**Crimes Act 1961** (1961 No 43)—continued

- “(5) If the result of the trial is conviction, the Court may in its discretion respite the execution of the sentence or postpone sentence until the question reserved has been decided by the Court of Appeal, and one of the following has happened:
- “(a) no application for leave to appeal to the Supreme Court against the Court of Appeal’s decision has been made within the time required:
- “(b) the Supreme Court has refused leave to appeal against the Court of Appeal’s decision:
- “(c) the Supreme Court has given leave to appeal against the Court of Appeal’s decision, but—
- “(i) no appeal has been brought within the time required; or
- “(ii) an appeal has been brought but abandoned:
- “(d) the Supreme Court has decided an appeal against the Court of Appeal’s decision.”

Insert in section 381, after subsection (3):

- “(3A) The decision of the Court of Appeal to refuse to grant leave is final.”

Insert in section 383(1), after the words “the Court of Appeal”, the words “or, with the leave of the Supreme Court, to the Supreme Court”.

Omit from section 383(2) the words “Court of Appeal, may appeal to the Court of Appeal” and substitute the words “court *concerned* appealed to”, may appeal to the Court of Appeal or the Supreme Court”.

Omit from section 383(3) the words “Court of Appeal” and substitute the words “court concerned”.

*Insert, after section 383* Repeal section 384 and substitute:

- “383A *Right of appeal* Appeal **against decision of Court of Appeal on appeal against conviction or sentence**
- “(1) With the leave of the Supreme Court, a convicted person may appeal to the Supreme Court against a decision of the Court of Appeal on appeal under section 383.
- “(2) With the leave of the Supreme Court, the Solicitor-General may appeal to the Supreme Court against a decision of the Court of Appeal on appeal under section 383(2).
- “(3) If an appeal under **subsection (1) or subsection (2)** against a sentence of detention is not heard before the date on which the convicted person has completed serving the sentence, on that

**Crimes Act 1961** (1961 No 43)—continued

date the appeal lapses, and must be treated as having been dismissed by the Supreme Court for non-prosecution.

- “(4) For the purposes of **subsection (2)**, **sentence** includes any method of disposing of a case following conviction.

**384 Right of appeal against sentence or conviction for contempt of Court**

- “(1) This subsection applies to a person—

“(a) found guilty in the High Court of a criminal contempt of that court or any other court committed in the face of that court or the other court; or

“(b) found guilty in a District Court of a criminal contempt of that court committed in the face of that court during a proceeding on indictment.

- “(2) A person to whom **subsection (1)** applies may appeal to the Court of Appeal or, with the leave of the Supreme Court, to the Supreme Court against any sentence imposed (other than an order of the High Court or a Judge of the High Court, or a District Court or a District Court Judge, > that he or she be detained in custody until the rising of the Court) as if he or she had been convicted on indictment.

- “(3) This subsection applies to a person found guilty in the High Court of a criminal contempt (other than a contempt committed in the face of the court) of that Court or any other Court.

- “(4) A person to whom **subsection (3)** applies may appeal to the Court of Appeal or, with the leave of the Supreme Court, to the Supreme Court against the finding, or any sentence imposed (other than an order of the High Court or a Judge of the High Court that he or she be detained in custody until the rising of the Court); and this Part applies as if the finding that he or she is guilty of a criminal contempt of court were a conviction.

- “(5) With the leave of the Supreme Court, a person convicted of contempt of Court may appeal to the Supreme Court against a decision of the Court of Appeal on appeal under this section.

**Crimes Act 1961** (1961 No 43)—continued**New (majority)**

“(6) This section is subject to **section 14 of the Supreme Court Act 2003** (which provides that the Supreme Court must not give leave to appeal directly to it against a decision made in a court other than the Court of Appeal unless it is satisfied that there are exceptional circumstances that justify taking the proposed appeal directly to the Supreme Court).”

Insert in section 385, before subsection (1):

“(1AA) This subsection applies to—

“(a) an appeal to the Supreme Court or the Court of Appeal against conviction:

“(b) an appeal to the Supreme Court against a decision of the Court of Appeal on appeal under section 383 against conviction.”

Omit from section 385(1) the words “against conviction the Court of Appeal shall” and substitute the words “to which **subsection (1AA)** applies, the Court of Appeal or the Supreme Court must”.

Insert in the proviso to section 385(1), after the words “Court of Appeal”, the words “or the Supreme Court”.

Omit from section 385(2) the words “shall, if it allows an appeal against conviction” and substitute the words “or the Supreme Court must, if it allows an appeal to which **subsection (1AA)** applies”.

Insert in section 385, after subsection (2):

“(2A) This subsection applies to—

“(a) an appeal to the Supreme Court or the Court of Appeal against sentence:

“(b) an appeal to the Supreme Court against a decision of the Court of Appeal on appeal under section 383 against sentence.”

Omit from section 385(3) the words “against sentence the Court of Appeal” and substitute the words “to which **subsection (2A)** applies, the Court of Appeal or the Supreme Court”.

Omit from the heading to section 386 the words “**Court of Appeal**” and substitute the words “**appellate courts**”.

Insert in section 386(1), after the words “Court of Appeal”, the words “or the Supreme Court”.

Insert in section 386(2), after the words “Court of Appeal”, the words “or the Supreme Court”.

**Crimes Act 1961** (1961 No 43)—continued

Insert in section 386(3), after the words “Court of Appeal” in both places where they occur, the words “or the Supreme Court”.

Insert in section 386(4), after the words “Court of Appeal” where they first occur, the words “or the Supreme Court”.

Insert in section 386(4), after the words “Court of Appeal” where they secondly occur, the words “or the Supreme Court (as the case requires)”.

Omit from the heading to section 389 the words “**Court of Appeal**” and substitute the words “**appellate courts**”.

Insert in section 389, after the words “Court of Appeal” in each place where they occur, the words “or the Supreme Court”.

Insert in section 392(1), after the words “Court of Appeal”, the words “or the Registrar of the Supreme Court”.

**Struck out**

Insert in section 392A(1), after the words “application for leave to appeal”, the words “(other than an application for leave to appeal to the Supreme Court)”.

**New (majority)**

Add to section 392A:

“(7) This section does not apply to an application to the Supreme Court for leave to appeal to it.”

Repeal section 393 and substitute:

**“393 Certain powers exercisable by one Judge**

“(1) A Judge of the Court of Appeal may exercise, in the same manner as it may be exercised by that court and subject to the same provisions, the power of that court to give leave to appeal against conviction or sentence.

“(2) A Judge of the Supreme Court or, as the case may be, of the Court of Appeal may exercise, in the same manner as it may be exercised by that court and subject to the same provisions, any power of that court to—

“(a) extend the time within which notice of appeal or of an application for leave to appeal may be given; or

**Crimes Act 1961** (1961 No 43)—continued

- “(b) allow the appellant to be present at any proceedings in cases where he or she is not entitled to be present without leave; or
  - “(c) issue a warrant for the detention of the accused pending a new trial; or
  - “(d) grant bail to an appellant.
- “(3) If on an application by an appellant a Judge refuses to exercise a power referred to in **subsection (1) or subsection (2)** in favour of the appellant, the appellant may have the application determined by the court concerned.”

Omit from the heading to section 394 the words “**Court of Appeal**” and substitute the words “**appellate courts**”.

Insert in section 394(1), after the words “Court of Appeal” in both places where they occur, the words “or the Supreme Court”.

Insert in section 394(2), after the words “Court of Appeal”, the words “or the Supreme Court”.

**Struck out (majority)**

Insert in section 395(1), after the words “leave to appeal”, the words “to the Court of Appeal”.

Insert in section 395(1A), after the words “Court of Appeal”, the words “or, as the case requires, the Supreme Court”.

Insert in section 395(2), after the words “Court of Appeal”, the words “or the Supreme Court”.

**New (majority)**

Add to section 395:

- “(3) **Subsections (1) to (2)** do not apply to—
- “(a) an appeal to the Supreme Court; or
  - “(b) an application for leave to appeal to the Supreme Court.”

Insert in section 399(4), after the words “Court of Appeal”, the words “or the Supreme Court”.

Insert in section 399(4H), after the words “Court of Appeal”, the words “or the Supreme Court”.

Insert in section 399(5), after the words “Court of Appeal”, the words “or the Supreme Court”.

**Crimes Act 1961** (1961 No 43)—continued

Repeal section 409(1) and substitute:

“(1) There may be made under the Judicature Act 1908 rules of Court regulating the practice and procedure in proceedings under this Act in the Supreme Court, the Court of Appeal, the High Court, and District Courts, or any of them.”

**Crown Proceedings Act 1950** (1950 No 54)

Omit from the definition of **Court** in section 2(1) the words “Judicial Committee of the Privy Council” and substitute the words “Supreme Court”.

**Declaratory Judgments Act 1908** (1908 No 220)

Omit from section 12 the words “Privy Council” and substitute the words “Supreme Court”.

**New (majority)****District Courts Amendment Act 2002** (2002 No 63)

Omit from the item in the Schedule relating to the Protection of Personal and Property Rights Act 1988 proposed new section 83A.

**Domestic Violence Act 1995** (1995 No 86)

Omit from section 126(2)(i) the words “or the Court of Appeal” and substitute the words “the Court of Appeal, or the Supreme Court”.

**New (majority)****Electronic Transactions Act 2002** (2002 No 35)

Insert in Part 4 of the Schedule, before item (1):

“(1A) the Supreme Court:”.

**Electoral Act 1993** (1993 No 87)

Insert in section 8(1)(d)(i) after the words “Court of Appeal” the words “or of the Supreme Court”.

**Employment Relations Act 2000** (2000 No 24)

Omit from the heading to section 214 the words “**to Court of Appeal**”.

Repeal section 214(1) and substitute:

**Employment Relations Act 2000** (2000 No 24)—continued

“(1) A party to a proceeding under this Act who is dissatisfied with a decision of the Court (other than a decision on the construction of an individual employment agreement or a collective employment agreement) as being wrong in law may, with the leave of the Court of Appeal, appeal to the Court of Appeal against the decision; and section 66 of the Judicature Act 1908 applies to any such appeal.”

Repeal section 214(7).

Insert after section 214:

**“214A Appeals to Supreme Court on question of law in exceptional circumstances**

“(1) A party to a proceeding under this Act who is dissatisfied with a decision of the Court (other than a decision on the construction of an individual employment agreement or a collective employment agreement) as being wrong in law may, with the leave of the Supreme Court, appeal to the Supreme Court against the decision.

“(2) In its determination of the appeal, the Supreme Court may confirm, modify, or reverse the decision appealed against or any part of that decision.

“(3) Neither an application for leave to appeal nor an appeal operates as a stay of proceedings on the decision to which the application or the appeal relates unless the Court or the Supreme Court so orders.

“(4) This section is subject to **section 14 of the Supreme Court Act 2002** (which provides that the Supreme Court must not give leave to appeal directly to it against a decision made in a court other than the Court of Appeal unless it is satisfied that there are exceptional circumstances that justify taking the proposed appeal directly to the Supreme Court).”

**Evidence Act 1908** (1908 No 56)

Insert in the definition of **Court** in section 2, before the words “the Court of Appeal”, the words “the Supreme Court,”

**Habeas Corpus Act 2001** (2001 No 31)

Omit from section 15(1) the words “right of appeal conferred by section 16” and substitute the words “rights of appeal conferred by section 16 of this Act and <to> **sections 7 to 10 of the Supreme Court Act 2002**”.

Insert in section 16, after subsection (1):

**Habeas Corpus Act 2001** (2001 No 31)—continued

“(1A) With the leave of the Supreme Court, a party to the proceeding in which the determination was made may appeal to the Supreme Court—

- “(a) against a determination refusing an application for the issue of a writ of habeas corpus:
- “(b) if the substantive issue is the welfare of a person under the age of 16 years, against a final determination that orders the release from detention of a detained person.”

Insert in section 16(3), after the words “Court of Appeal”, the words “or the Supreme Court”.

Repeal section 17(2) and substitute:

“(1A) The following must be given precedence over all other matters before the Supreme Court:

- “(a) an application for leave to appeal against a decision of the Court of Appeal on an appeal under this Act:
- “(b) an application for leave to appeal under **paragraph (a) or paragraph (b) of section 16(1A)**:
- “(c) an appeal against a decision of the Court of Appeal on an appeal under this Act:
- “(d) an appeal under **paragraph (a) or paragraph (b) of section 16(1A)**.

“(2) Judges of the Court of Appeal or the Supreme Court, and employees of the (~~Department for Courts~~) Ministry of Justice, must use their best endeavours to ensure that every appeal under this Act or **paragraph (a) or paragraph (b) of section 16(1A)** is disposed of as a matter of priority and urgency.”

Insert in section 19(2), after the words “Court of Appeal”, the words “or the Supreme Court”.

Insert in section 20(1), after the words “Court of Appeal”, the words “and the Supreme Court”.

**Struck out (majority)**

**Higher Salaries Commission Act 1977** (1977 No 110)

Omit from section 12B(1)(a) the words “the President of the Court of Appeal, the” and substitute the words “the other Judges of the Supreme Court, the President of the Court of Appeal, the other”.



## New (majority)

**Human Rights Act 1993** (1993 No 82)

Repeal section 90(3) and substitute:

“(3) In this section and sections 92 and 92C, **related proceedings**, in relation to proceedings before the Tribunal, means proceedings of any of the following descriptions:

“(a) an appeal to the High Court against a decision of the Tribunal:

“(b) proceedings in the High Court arising out of—

“(i) the statement of a case under section 122; or

“(ii) the removal of proceedings or a matter at issue in them under section 122A:

“(c) an appeal to the Court of Appeal against a decision of the High Court made in proceedings described in **paragraph (a) or paragraph (b)**:

“(d) an appeal to the Supreme Court against—

“(i) a decision of the High Court made in proceedings described in **paragraph (a) or paragraph (b)**; or

“(ii) a decision of the Court of Appeal made in proceedings described in **paragraph (c)**.”

Add to section 92G(1)(b):

“(iv) the Supreme Court.”

Add to section 92H(1)(b):

“(iv) the Supreme Court.”

**Imperial Laws Application Act 1988** (1988 No 112)

Add to the item in the First Schedule relating to the Naval Prize Act 1864 “: the Title, Preamble, sections 1 to 3, 10 to 12, and 14 to 56.”

Omit from the First Schedule the references to enactments relating to the Judicial Committee of the Privy Council, and the heading “**Enactments Relating to the Judicial Committee of the Privy Council**” before them.

Omit from the Second Schedule the references to orders in council relating to the Judicial Committee of the Privy Council, and the heading “**Orders in Council Relating to the Judicial Committee of the Privy Council**” before them.

Omit from the Second Schedule the reference to the Prize Court Rules 1939 and the heading “**Order in Council Relating to Prize**” before it.

**Judicature Act 1908** (1908 No 89)**New**

Insert in section 2, before the definition of **civil proceedings**:

“**Chief High Court Judge**—

“(a) means the person holding that office under **section 4A**; and

“(b) includes a Judge of the High Court acting in place of the Chief High Court Judge under **section 4A(5)**”

Add to section 2:

“**Supreme Court** means the Supreme Court of New Zealand established by **section 6** of the **Supreme Court Act 2002**.”

Omit from section 4(1) the number “37” and substitute the number “42”.

**New**

Repeal section 4(3) and substitute:

“(3) As between the Judges of the High Court who are not Judges of the Supreme Court or Court of Appeal,—

“(a) the Chief High Court Judge has seniority over the other Judges:

“(b) the other Judges have seniority among themselves according to the dates of their appointments as Judges of the High Court:

“(c) 2 or more of the other Judges appointed as Judges of the High Court on the same date,—

“(i) have seniority according to the precedence assigned to them by the Governor-General on appointment; or

“(ii) if no precedence is assigned to them, according to the order in which they take the Judicial Oath.

“(3A) Permanent Judges have seniority over temporary Judges.

“(3B) **Subsection (3A)** overrides **subsection (3)**.”

Omit from section 9A(1) the words “the President of the Court of Appeal, to the” and substitute the words “the other Judges of the Supreme Court, to the President of the Court of Appeal, to the other”.

**Judicature Act 1908** (1908 No 89)—continued**New**

Omit from section 11(3) the words “or the President of the Court of Appeal or a Judge of the Court of Appeal” and substitute the words “the other Judges of the Supreme Court, the President of the Court of Appeal, the other Judges of the Court of Appeal, or the Chief High Court Judge”.

Omit from section 11A(2) the word “Justice”, and substitute the words “High Court Judge”.

Repeal section 11B and substitute:

“**11B Certificate by Chief Justice and Chief High Court Judge**

No appointment may be made under section 11 or section 11A except on a certificate signed by the Chief Justice and the Chief High Court Judge to the effect that, in their opinion, it is necessary for the due conduct of the Court’s business that one or more temporary Judges, or (as the case may require) for one or more acting Judges, to be appointed.”

Repeal subsections (1) and (2) of section 24C and substitute:

“(1) A commercial list established under section 24A is supervised by a Judge nominated from time to time by the Chief Justice after consulting the Chief High Court Judge.

“(1A) The Chief High Court Judge can be nominated under **subsection (1)**.

“(2) After consulting the Chief High Court Judge, the Chief Justice may nominate one or more Judges to help the Judge nominated under **subsection (1)** and to supervise the list when that Judge is absent from duty.”

Repeal section 26D(2) and substitute:

“(2) Whether a Master acts on a full-time basis or a part-time basis must be determined by the Chief Justice, after consulting the Chief High Court Judge.”

Add to section 26H:

“(7) The Chief Justice must not sign the certificate without first consulting the Chief High Court Judge.”

Insert in section 51B(1), after paragraph (a):

“(ab) the Chief High Court Judge:”.

Omit from section 51C(1) the words “(including the practice and procedure on appeals from any court or person to the Court of

**Judicature Act 1908** (1908 No 89)—continued

Appeal or the High Court)” and substitute the words “and of the Supreme Court (including the practice and procedure on appeals from any court or person to the Supreme Court, the Court of Appeal, or the High Court)”.

Omit from section 51C(2)(f) the words “High Court or the Court of Appeal” and substitute the words “High Court, the Court of Appeal, or the Supreme Court”.

Omit from heading to section 51E the words “**or Court of Appeal**” and substitute the words “**, Court of Appeal, or Supreme Court**”. Insert in section 51E(1), after the words “Court of Appeal”, the words “or to the Supreme Court”.

Insert in section 51F(1), after the words “Deputy Registrars”, the words “(whether of the High Court, the Court of Appeal, or the Supreme Court)”.

Repeal section 57(6) and substitute:

“(6) The Judges of the Court of Appeal have seniority over all the Judges of the High Court (including any additional Judge of the Court of Appeal) except the Chief Justice and the other Judges of the Supreme Court.

“(6A) The President of the Court of Appeal has seniority over the other Judges of the Court of Appeal.

“(6B) Other Judges of the Court of Appeal appointed on different dates have seniority among themselves according to those dates.

“(6C) Other Judges of the Court of Appeal appointed on the same date have seniority among themselves according to their seniority as Judges of the High Court.

“(6D) A Judge of the Court of Appeal who resigns office as a Judge of that Court without resigning office as a Judge of the High Court then has, as a Judge of the High Court, the seniority that he or she would have had if he or she had not been appointed as a Judge of the Court of Appeal.”

Omit from section 57(7) the words “, not being the Chief Justice,”.

**New**

Insert in section 58A(2), after the words “President of the Court of Appeal”, the words “and the Chief High Court Judge”.
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**Judicature Act 1908** (1908 No 89)—continued**New**

Insert in section 58B(2), after the words “President of the Court of Appeal”, the words “and the Chief High Court Judge”.

Add to section 58C(3) the words “and the Chief High Court Judge”.

Omit from section 58D(1) the words “or 7”.

**New (majority)**

Repeal section 59(1) and substitute:

“(1) The judgment of the Court must be in accordance with the opinion of a majority of the Judges hearing the proceeding concerned.”

Repeal subsections (2) and (3) of section 60 and substitute:

“(2) If present at a sitting of the Court of Appeal, the President presides.

“(3) If the President of the Court of Appeal is absent from a sitting of the Court, the senior Judge of the Court present presides.”

Omit from section 87(1) the words “or the Court of Appeal” and substitute the words “, the Court of Appeal, or the Supreme Court”.

Omit from section 87(2) the words “or the Court of Appeal” and substitute the words “, the Court of Appeal, or the Supreme Court”.

Insert in section 99B(1), after the words “Court of Appeal”, the words “or the Supreme Court”.

**Legal Services Act 2000** (2000 No 42)

Omit from section 6(a) the words “or the Court of Appeal” and substitute the words “the Court of Appeal, or the Supreme Court”.

Omit from section 7(1)(b) the words “or the Court of Appeal” and substitute the words “, the Court of Appeal, or the Supreme Court”.

**Legal Services Act 2000** (2000 No 42)—continued**Struck out****New (majority)**

Insert in section 60, after the words “Court of Appeal”, the words “or the Supreme Court”.

Add to the heading to section 60 the words “**or Supreme Court**”.

Section 144 of the Summary Proceedings Act 1957 (which provides for appeals to the Court of Appeal) applies to determinations of the High Court on an appeal under section 59 as if that determination were a determination under section 107 of the Summary Proceedings Act 1957.

**New**

Repeal section 60 and substitute:

“60 **Appeals to Court of Appeal and Supreme Court**

**Sections 144 to 144B** of the Summary Proceedings Act 1957 (which provide for appeals to the Court of Appeal and Supreme Court) apply to determinations of the High Court on an appeal under section 59 of this Act as if they were determinations under section 107 of that Act.”

**Maori Language Act 1987** (1987 No 176)

Insert in the First Schedule, before the item “The Court of Appeal”, the item “The Supreme Court”.

**Struck out (majority)****Oamaru Gasworks Act 1875** (1875 No 30)

Omit from section 35 the word “Supreme” and substitute the word “High”.

**Oaths and Declarations Act 1957** (1957 No 88)

Insert in section ~~(9)~~ 9(1) after paragraph (c):

**Oaths and Declarations Act 1957** (1957 No 88)—continued

“(ca) the Registrar or a Deputy Registrar of the Supreme Court; or”.

**New (majority)****Privacy Act 1993** (1993 No 28)

Repeal section 86(1) and substitute:

“(1) Whether or not the Director of Human Rights Proceedings is or was a party to the proceedings before the Human Rights Review Tribunal, the Director may appear and be heard, in person or by counsel,—

“(a) in any proceedings under this Part before the Human Rights Review Tribunal; and

“(b) in relation to any proceedings that are or have been before the Human Rights Review Tribunal under this Part, in any proceedings in a District Court, the High Court, the Court of Appeal, or the Supreme Court.”

**Property (Relationships) Act 1976** (1976 No 166)

Omit from section ~~(2G)~~ 2G(2) the words “under section 39, the High Court or the Court of Appeal or the Privy Council” and substitute the words “the High Court, Court of Appeal, or Supreme Court”.

Omit from the heading to section 39B the words “**and to Privy Council**”.

Repeal section 39B(2).

Omit from section 73(3)(c) the words “Privy Council” and substitute the words “Supreme Court”.

**New (majority)****Protection of Personal and Property Rights Act 1988**

(1988 No 4)

Repeal sections 83A and 84 and substitute:

**“83A Procedure on appeal to High Court**

The High Court Rules and sections 75 to 78 of the District Courts Act 1947, with all necessary modifications, apply to an appeal under section 83.

**New (majority)****Protection of Personal and Property Rights Act 1988**

(1988 No 4)—continued

**“84 Further appeal to Court of Appeal**

A party to an appeal under section 83 may, with the leave of the Court of Appeal, appeal to the Court of Appeal against any determination of the High Court in the appeal.”

Repeal section 85(3).

**Remuneration Authority Act 1977 (1977 No 110)****Struck out**

Omit from section 12B(1)(a) the words “the President of the Court of Appeal, the” and substitute the words “the other Judges of the Supreme Court, the President of the Court of Appeal, the other”.

**New**

Repeal section 12B(1)(a), and substitute:

“(a) the Chief Justice, the other Judges of the Supreme Court, the President of the Court of Appeal, the other Judges of the Court of Appeal, the Chief High Court Judge, and the other Judges of the High Court; and.

**Resource Management Act 1991 (1991 No 69)**

Repeal section 299 and substitute:

**“299 Appeal to High Court on question of law**

“(1) A party to a proceeding before the Environment Court under this Act or any other enactment may appeal on a point of law to the High Court against any decision, report, or recommendation of the Environment Court made in the proceeding.

“(2) The appeal must be made in accordance with the High Court Rules, except to any extent that those rules are inconsistent with sections 300 to 307.”

**Sentencing Act 2002 (2002 No 9)**

Insert in section 72(1)(a), before subparagraph (i):



**Sentencing Act 2002** (2002 No 9)—continued

“(ia) by the Supreme Court on appeal against a sentence imposed by the High Court, or imposed by the Court of Appeal on appeal from the High Court; or”.

Insert in section 72(1)(b), before subparagraph (i):

“(ia) by the Supreme Court on appeal against a sentence imposed by a District Court presided over by a trial Judge, or imposed by the Court of Appeal on appeal from a District Court presided over by a trial Judge; or”.

Insert in section 91, after subsection (8):

“(8A) If the sentence is imposed by the Supreme Court, any Judge of that court may sign the warrant.”

Insert in section 143(3)(a) before subparagraph (i):

“(ia) by the Supreme Court on appeal against a sentence imposed by the High Court, or imposed by the Court of Appeal on appeal from the High Court; or”.

Insert in section 143(3)(b), before subparagraph (i):

“(ia) by the Supreme Court on appeal against a sentence imposed by a District Court presided over by a trial Judge, or imposed by the Court of Appeal on appeal from a District Court presided over by a trial Judge; or”.

**Statutes Amendment Act 1947** (1947 No 60)

Omit from section 44 the word “Supreme” in *(both places)* each place where it occurs and substitute in each case the word “High”.

**New****Terrorism Suppression Act 2002** (2002 No 34)

Add to section 58:

“(3) For the avoidance of doubt, an appeal under subsection (1) is a civil proceeding for the purposes of the Supreme Court Act 2003.”

s 46&lt;(3)&gt;&lt;(2)&gt;

## Schedule 2

### Consequential repeals

**Admiralty Act 1973** (1973 No 119)  
Section 13(3).

**Animal Welfare Act 1999** (1999 No 142)  
Sections 153(3) and 154(3).

**Children, Young Persons, and Their Families Act 1989**  
(1989 No 24)  
Section 348(3).

#### Struck out (majority)

**Commerce Act 1986** (1986 No 5)  
Section 97(4).

**Dairy Industry Restructuring Act 2001** (2001 No 51)  
Section 132(5).

#### Struck out (majority)

**Family Proceedings Act 1980** (1980 No 94)  
Section 175(6).

**Family Protection Act 1955** (1955 No 88)  
Section 15(4).

**Harassment Act 1997** (1997 No 92)  
Section 34(4).

**Judicature Act 1908** (1908 No 89)  
Sections 5 and 58(2)(b).

**Judicature Amendment Act 1957** (1957 No 9)  
Section 5.

#### New

**Judicature Amendment Act 1985** (1985 No 136)  
Section 3.

**Law Reform (Testamentary Promises) Act 1949** (1949 No 33)  
Section 5A(4).

**Telecommunications Act 2001** (2001 No 103)  
Section 60(5).

**Te Ture Whenua Maori Act 1993** (1993 No 4)  
〈*Repeal section*〉 〈Section〉 72(4).

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s 46&lt;(4)&gt;&lt;(3)&gt;

**Schedule 3**  
**Provisions containing references to**  
**former Supreme Court**

**New (majority)**

Part 1

Acts

**Auckland Baptist Tabernacle Act 1948** (1948 No 4) (P)

Omit the word “Supreme” from rule 7 of the Second Part of the First Schedule, and from rules 15, 16, 17(d), 18, 20, 21, 23, 24, 25(1) (in both places where it occurs), 25(2), and 25(5), the heading to rule 25, and the proviso to rule 27, of Section II of the Third Schedule and substitute in each case the word “High”.

**Church of Jesus Christ of Latter-Day Saints Trust Board Empowering Act 1957** (1957 No 1) (P)

Omit from sections 7(k) and 8 (wherever it occurs) the word “Supreme” and substitute in each case the word “High”.

**John Duncan McGruer Estate Act 1945** (1945 No 4) (P)

Omit the word “Supreme” from the Preamble (in each place where it occurs), the heading to section 3, and sections 3(1), 3(2), 3(3), 3(4), and 3(5) (in both places where it occurs) and substitute in each case the word “High”.

**R. O. Bradley Estate Act 1972** (1972 No 3) (P)

Omit from the third proviso to section 18(2) the word “Supreme” and substitute the word “High”.

**Wanganui Orphanage Trust Extension Act 1960** (1960 No 1) (P)

Omit from the preamble the word “Supreme” where it thirdly occurs and substitute the word “High”.

Omit from section 3(c) the word “Supreme” and substitute the word “High”.

**New (majority)****Wellington Waterworks Act 1871** (1871 No 3) (P)

Omit from sections 40, 58, and 63, the word “Supreme” and substitute in each case the word “High”.

Part 2  
Subordinate legislation

**Adoption Regulations 1959** (SR 1959/109)

Regulation 13(2).

**Animal Remedies Regulations 1980** (SR 1980/145)

Regulation 37.

**Courts-Martial Appeal Rules 1954** (SR 1954/215)

Regulations 9(a), 9(b), and 22(a).

**Gaming and Lotteries (Licensed Promoters) Regulations 1978**  
(SR 1978/144)

Forms 2 and 3 in the First Schedule, Third Schedule.

**Incorporated Societies Regulations 1979** (SR 1979/93)

Second Schedule.

**Joint Family Homes Regulations 1965** (SR 1965/65)

Regulations 18(d) and 20.

**Licensed Interpreters Regulations 1958** (SR 1958/22)

Second Schedule.

**Patents Regulations 1954** (SR 1954/211)

Regulation 154(1)(e).

**Periodic Detention Order 1966** (SR 1966/182)

Regulation 2(a)(i).

**Periodic Detention Order 1967** (SR 1967/31)

Regulations 2(a), 3, and 4.

**Periodic Detention Order 1968** (SR 1968/112)

Regulations 2(a), 3, 6(a), and 7.

**Periodic Detention Order 1971** (SR 1971/253)

Regulations 2(1)(a)(i) and 2(2).

**Periodic Detention Order 1972** (SR 1972/41)

Regulations 2(1)(a) and 2(2).

**Periodic Detention Order (No 2) 1972** (SR 1972/89)  
Regulations 2(1)(a)(i) and 2(2)(a).

**Periodic Detention Order (No 3) 1972** (SR 1972/99)  
Regulations 2(1)(a)(i) and 2(2)(a).

**Periodic Detention Order (No 4) 1972** (SR 1972/144)  
Regulations 2(1)(a)(i) and 2(2)(a).

**Periodic Detention Order 1973** (SR 1973/60)  
Regulations 2(1)(a)(i) and 2(2)(a).

**Periodic Detention Order (No 3) 1973** (SR 1973/190)  
Regulations 2(1)(a)(i) and 2(2)(a).

**Periodic Detention Order (No 4) 1973** (SR 1973/204)  
Regulations 2(1)(a)(i) and 2(2)(a).

**Periodic Detention Order (No 2) 1974** (SR 1974/66)  
Regulations 2(1)(a)(i) and 2(2)(a).

**Periodic Detention Order (No 4) 1974** (SR 1974/239)  
Regulations 2(1)(a)(i) and 2(2)(a).

**Real Estate Agents Regulations 1977** (SR 1977/((???)248)  
Form 2 in the First Schedule.

**Trust Estates Audit Regulations 1958** (SR 1958/71)  
Regulation 2(d).

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s 47(1)

**Schedule 4**  
**Imperial legislation ceasing to have effect as part of**  
**law of New Zealand**

Part 1  
Imperial Acts

**Appellate Jurisdiction Act 1876** (39 and 40 Vict., No c. 59)

The final paragraph of section 6.

**Appellate Jurisdiction Act 1887** (50 and 51 Vict., No c. 70)

Sections 3 and 5.

**Appellate Jurisdiction Act 1908** (8 Edw. 7, No c. 51)

Sections 1, 3(1), 4, 5, and 7.

**Court of Chancery Act 1851** (14 and 15 Vict., No c. 83)

Section 16 (as amended by section 1 of the Statute Law Revision Act 1875 (38 and 39 Vict., c. 66)).

**Judicial Committee Act 1833** (3 and 4 Will. 4, No c. 41)

Section 1 (as amended by section 1 of the Statute Law Revision Act 1874 (37 and 38 Vict., c. 35) and section 1 of the Statute Law Revision (No 2) Act 1888 (51 and 52 Vict., c. 57)), section 3, section 5 (as amended by section 16 of the Court of Chancery Act 1851 (14 and 15 Vict., c. 83)), sections 6 to 9, 11 to 13, 15 to 21, 23, and 24, and section 28 (as amended by section 6 of the Judicial Committee Act 1843 (6 and 7 Vict., c. 38)).

**Judicial Committee Act 1844** (7 and 8 Vict., No c. 69)

Sections 1 and 8.

**Judicial Committee Act 1881** (44 and 45 Vict., No c. 3)

**Judicial Committee Act 1915** (5 and 6 Geo. 5, No c. 92)

**Judicial Committee Amendment Act 1895** (58 and 59 Vict., No c. 44) as amended by section 3 of the Appellate Jurisdiction Act 1913 (3 and 4 Geo. 5, c. 21) and section 13 of the Administration of Justice Act 1928 (U.K.)

**Naval Prize Act 1864** (27 and 28 Vict. No c. 25)

Sections 4 to 6, 9, and 13.

**Privy Council Registrar Act 1853** (16 and 17 Vict., No c. 85)

## Part 2

## Imperial subordinate legislation

1909 No 1228—Order in Council making continuing Order directing that all Appeals to His Majesty in Council shall be referred to the Judicial Committee (SR & O. and S.I. Rev. 1948, Vol XI, p 205).

1910 No 70 (L.3)—The New Zealand (Appeals to the Privy Council) Order 1910 (SR & O. and S.I. Rev. 1948, Vol XI, p 409; SR 1973/181).

1972 No 1994—The New Zealand (Appeals to the Privy Council) (Amendment) Order 1972 (S.I. 1972/1994; SR 1973/181).

1982 No 1676—The Judicial Committee (General Appellate Jurisdiction) Rules Order 1982 (S.I. 1982/1676).

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**Legislative history**

9 December 2002	Introduction (Bill 16–1)
17 December 2002	First reading and referral to Justice and Electoral Committee
16 September 2003	Reported from Justice and Electoral Committee (Bill 16–2)
7 October 2003	Second reading
8, 9 October 2003	Committee of the whole House (Bill 16–3)

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