

SMALL CLAIMS TRIBUNALS BILL

EXPLANATORY NOTE

THIS Bill constitutes and establishes small claims tribunals throughout New Zealand.

Clause 1 relates to the Short Title and commencement.

Clause 2 relates to definitions. These include:

- “claimant” as a person who is a consumer, but not a corporation;
- “referee” as a new term for the presiding official of the tribunal;
- “small claim” as outstanding debts or services rendered to the amount of \$500.

Clause 3 establishes the tribunal and requires a barrister and solicitor of 7 years' standing to be a referee.

Clauses 4–9 outline the conditions of the office of referee. These include:
A 3-year term with provision for reappointment;
the usual resignation and removal procedures for tribunals;
the taking of an oath before exercising jurisdiction;
remuneration and expenses;
protection from personal liability.

Clause 10: The referee constituting a small claims tribunal must:
first attempt a settlement;
secondly, if this is not possible, make an order in respect of the dispute; and
thirdly, inform the Minister of matters significant to consumer trader relationships.

Clause 11 gives discretion to the tribunal concerning sittings. It is foreseen that regulations will provide for evening sittings.

Clause 12 establishes a single control registry in Wellington for all tribunal records.

Clause 13 defines what is a “record” of the tribunal. This includes the claim, its classification by the tribunal and the tribunal's order. It does *not* include the personal notes of the referee. This record is open free of charge to the parties to a proceeding, members of the Consumer Council and members of higher judicial bodies if it is required in proceedings.

Clause 14 provides for places of practice for the tribunals. It is foreseen that Regulations will stipulate these as informal localities such as town halls.

Clause 15 provides for staff.

Clauses 16 and 17 relate to the tribunal's jurisdiction. This is over small claims only. No other judicial body can have simultaneous jurisdiction on the same subject matter.

Clases 18 and 19 refer to the finality of the tribunal's decision except where the referee states a case on a question of law to the Supreme Court. There is no appeal on the facts or merits of the case.

Clause 20 immunises the tribunal from judicial supervision except where the tribunal acts beyond its jurisdiction.

Clause 21 permits the tribunal to make orders for payment of money, specific performance or dismissal where a settlement is reached by the parties.

Clause 22 prohibits the enforcement of any order of over \$500, except for \$500.

Clause 23 provides that orders for payment of money may be made to take effect immediately or when there has been a default in payment. It may be in default of the respondents appearing. Procedure for collection by the Magistrates' Court is provided.

Clause 24 provides for renewal of procedures when an order is not complied with.

Clause 25 outlines how a consumer initiates a claim by filing a form in the office of a Magistrates' Court. Assistance must be given by justice personnel where required.

Clause 26 provides for the registrar either of the Court or the Registry of small claims to give notice of the claim to all parties, the time and place of its hearings.

Clause 27 allows other parties to be joined if they can show they have a sufficient interest.

Clause 28 provides for withdrawal of a claim.

Clause 29 insists on continuity of the tribunal in the person of one and the same referee.

Clause 30 provides for amendment of a claim by the tribunal or claimant during proceedings.

Clause 31 provides for adjournments.

Clause 32 concerns representation at the tribunal. The parties can plead their own cases. Agents are permitted for body corporates, out of necessity, where specialised knowledge is needed, and where the parties agree. This applies to barristers and solicitors. Agents can not accept or ask for fees.

Clause 33 permits evidence to be written or oral, and to be taken in private. It further allows informal interviewing and inspection of documents, articles and places.

Clause 34 provides for hearings and orders to be made in the absence of one party, but the absent party can request a rehearing if he justifies his absence.

Clause 35 disallows costs.

Clause 36 makes the procedure of a tribunal its own responsibility but subject to regulation.

Clause 37 prohibits contracting out of the provisions of this Act.

Clause 38 relates to the mode of giving notice.

Clause 39 requires publication as specified by the Minister of the names of the claimant and respondent, the nature of the dispute and the tribunal's order.

Clause 40 protects staff, the claimant and witnesses from personal liability.

Clause 41 lists offences against the tribunal and makes them punishable by a \$500 fine or 6 months imprisonment.

Clause 42 provides for regulations.

Mr Downie

SMALL CLAIMS TRIBUNALS

ANALYSIS

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A BILL INTITULED

An Act to make provision for the constitution and establishment of small claims tribunals, to confer jurisdiction thereon with respect to the determination of small claims, and for purposes connected therewith

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

1. Short Title and commencement—(1) This Act may be cited as the Small Claims Tribunals Act 1975. 10

(2) This Act shall come into force on a date to be appointed by the Governor-General by Order in Council.

2. Interpretation—(1) In this Act, unless the context otherwise requires,—

“Claimant” means a consumer who has duly referred a small claim to a Small Claims Tribunal. 15

“Consumer” means a person, not being a corporation, who buys or hires goods otherwise than for re-sale or letting on hire or than in the course of or for the purposes of a trade or business carried on by him, or than as a member of a business partnership, or for whom services are supplied for fee or reward otherwise than in the course of or for the purposes of a trade or business carried on by him, or than as a member of a business partnership: 20 25

“Contract” includes all agreements, whether written or oral:

“Minister” means the Minister of Justice:

“Referee” means a person appointed under this Act to be a referee of Small Claims Tribunals: 30

“Registrar” means the registrar of the Registry of Small Claims Tribunals or the Magistrates Court and includes any person for the time being acting in his stead:

“Registry” means the Registry of Small Claims Tribunals established and maintained in Wellington under this Act: 35

“Respondent” means a trader against whom is made a small claim that is duly referred to a Small Claims Tribunal:

“Small claim” means—

(a) A claim for payment in an amount not exceeding \$500; or

5 (b) A claim for performance of work of a value not exceeding \$500—

that in either case arises out of a contract for the supply of goods or the provision of services being a claim that has arisen not more than two years previously between persons who, in relation to those goods or services, are a consumer on the one hand and a trader on the other:

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“Small Claims Tribunal” means a tribunal constituted under this Act for taking a proceeding in relation to a small claim:

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“Trader” means a person who in the field of trade or commerce carries on a business of supplying goods or providing services or who regularly holds himself out as ready to supply goods or to provide services of a similar nature:

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“Tribunal” means a Small Claims Tribunal duly constituted to take a proceeding in relation to a small claim.

(2) The provisions of this Act apply to small claims arising out of contracts made after the commencement of this Act.

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PART I

THE SMALL CLAIMS TRIBUNALS

3. Establishment of Small Claims Tribunals—(1) For the purposes of this Act there shall be established one or more small claims tribunals.

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(2) If more than one, any Small Claims Tribunal may be given such distinctive designation as the Governor-General determines, and any such designation may from time to time be changed by the Governor-General.

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(3) Every Small Claims Tribunal shall consist of one referee being a barrister or solicitor of the Supreme Court of not less than 7 years' practice.

(4) Every Small Claims Tribunal shall be appointed by the Governor-General on the recommendation of the Minister.

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(5) No referee shall be deemed to be employed in the service of Her Majesty for the purpose of the State Services Act 1962, or the Superannuation Act 1956 by reason only of his being an Authority.

4. Term of office of a Small Claims Tribunal—(1) Except as otherwise provided in this Act, every referee shall hold office for a term of 3 years provided that any referee may from time to time be re-appointed.

(2) Notwithstanding anything in subsection (1) of this section, any referee, unless he sooner vacates office under section 5 of this Act, shall continue in office until his successor comes into office notwithstanding that the term for which he was appointed may have expired. 5

5. Resignation and removal from office—(1) Any referee may resign his office at any time by written notice given to the Minister. 10

(2) Any referee may at any time be suspended or removed from office by the Governor-General for engaging in any occupation for reward outside the duties of his office, or for disability, bankruptcy, neglect of duty or misconduct proved to the satisfaction of the Governor-General: 15

Provided that, where the terms of appointment of any referee permit him to engage in any occupation for reward outside the duties of his office, he shall not be liable to be suspended or removed from office under this subsection by reason of his so engaging in any occupation for reward so permitted. 20

(3) If any referee dies or resigns his office or is removed from office as aforesaid, the vacancy shall, as soon as practicable, be filled by the appointment of another referee and, if the term of the vacating referee has not expired at the time of the appointment, the referee appointed to fill the vacancy shall hold office by virtue of that appointment for the residue of the terms of the vacating referee. 25 30

6. Oath to be taken by a referee—Before entering upon the exercise of the duties of his office, every referee shall take and subscribe an oath before a Judge of the Supreme Court that he will faithfully and impartially perform the duties of his office. 35

7. Remuneration and travelling expenses—There shall be paid out of money appropriated by Parliament for the purpose to any referee remuneration by way of fees, salary, or allowances and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of the Act shall apply accordingly as if that referee were a statutory board within the meaning of that Act. 40

8. Small Claims Tribunal not personally liable—No referee shall be personally liable for any act done or omitted to be done by him in good faith in pursuance or intended pursuance of his powers and authorities as a Small Claims Tribunal.

5 **9. Employee of Crown appointed as a Small Claims Tribunal**—If any employee of the Crown is appointed as a referee, his service as a referee shall, for the purpose of determining his existing and accruing rights under the State
10 Services Act 1962, or, as the case may require, the Government Railways Act 1949 or the Post Office Act 1959, or under the Superannuation Act 1956, be deemed to be Government service in New Zealand.

FUNCTIONS AND POWERS OF SMALL CLAIMS TRIBUNALS

15 **10. Functions of Small Claims Tribunals**—(1) The primary function of a referee constituting a Small Claims Tribunal shall be to attempt to bring the parties to a dispute that involves a small claim to a settlement acceptable to all the parties.

20 (2) Should it appear to the referee to be impossible in a particular case to attain to a settlement acceptable to all parties to a dispute the function of a referee constituting a Small Claims Tribunal shall be to make an order with respect to the issue in dispute or, where he thinks the case requires it, an order dismissing the claim.

25 (3) It is a function of a referee to report to the Minister—

(a) Upon all matters arising out of references to Small Claims Tribunals that are significant to the relationship of consumer and trader; and

30 (b) Upon all matters relevant to the administration of this Act or to the practices and procedures of Small Claims Tribunals that in the referee's opinion should be brought to the notice of the Minister.

STAFF, REGISTRIES, AND SITTINGS

35 **11. Sittings of a Small Claims Tribunal**—Sittings of a Small Claims Tribunal shall be held at such times and places as the Small Claims Tribunal from time to time appoints.

12. Registry—There shall be established and maintained a Registry of Small Claims Tribunals wherein shall be kept all records of Small Claims Tribunals.

13. Records—(1) Notes made by the referee in any case shall not form part of the record of the reference to the tribunal.

(2) The record of a Small Claims Tribunal shall consist of:

(a) The claim referred to it, as completed by the claimant; 5

(b) The notation of the nature of the issue in dispute as determined and recorded by the tribunal during the hearing of the claim; and

(c) The order made by the tribunal.

(3) The record of a Small Claims Tribunal kept in the Registry shall be open for inspection free of charge by— 10

(a) The parties to the proceeding to which the record relates;

(b) The members of the Consumer Council; and shall be available for production before a court or judge 15 for the purposes of any proceeding before the court or judge.

14. Seat—Every Small Claims Tribunal shall have a seat which shall be judicially noticed in all local authorities.

15. Officers at a Small Claims Tribunal—(1) There shall from time to time be appointed under the State Services Act 20 1962 such Registrars, Deputy Registrars, Clerks and other officers of a Small Claims Tribunal as may be required, and one person may be appointed Registrar or Deputy Registrar or Clerk or Officer of two or more Small Claims Tribunals.

(2) The office of Registrar or Deputy Registrar or any 25 other office may be held either separately or in conjunction with any other office in the Public Service.

JURISDICTION

16. Extent of Jurisdiction—Subject to this Act a Small Claims Tribunal has jurisdiction with respect to any claim 30 referred to it that is a small claim.

17. Exclusion of other Jurisdictions—(1) Where a claim, being a small claim, is duly referred to a Small Claims Tribunal the issue in dispute in that claim (whether as shown 35 in the initial claim or as emerging in the course of the hearing of the claim by the tribunal) shall not be justiciable at any time by a court or by a tribunal of any other kind except:

(a) Where the proceeding before that court or tribunal of any other kind was commenced before the claim 40 was duly referred to a Small Claims Tribunal; or

(b) Where the claim before a Small Claims Tribunal has been withdrawn.

(2) For the purposes of this Act a small claim shall be taken to have been duly referred to a Small Claims Tribunal 5 when subsection (1) of section 25 of this Act has been complied with.

18. Proceedings of Tribunal final—A settlement or an order made by a Small Claims Tribunal shall be final and binding on all parties to the proceeding in which the settle- 10 ment or order is made, and no appeal shall lie in respect thereof.

19. Tribunal may state case for opinion of the Supreme Court—(1) Any Tribunal may state a case for the opinion of the Supreme Court, to be heard and determined by the 15 Administrative Division of the Supreme Court, on any question of law arising in any proceedings before it.

(2) The provisions of section 78 of the Summary Proceed- 20 ings Act 1957, so far as they are applicable and with the necessary modifications, shall apply to any cases stated under this section as if the reference in subsection (3) of the said section 78 to either party were a reference to any party to the proceedings before the Tribunal.

20. Immunity from Judicial Supervision—No writ of certiorari, prohibition, or other prerogative writ shall issue, 25 and no declaratory judgment shall be given, in respect of a proceeding taken or to be taken by or before a Small Claims Tribunal or in respect of any order made therein unless the court before which such writ or judgment is sought is satisfied that the tribunal had or has no jurisdiction conferred by this 30 Act to take proceedings or that there has occurred therein a denial of natural justice to any party to the proceeding.

21. Orders of the Tribunal—(1) Where a settlement is made by a claimant and a respondent in respect of a claim referred to a Small Claims Tribunal, the tribunal shall, on 35 the request of the claimant, make an order that gives effect to the terms of the settlement.

(2) Subject to sections 21 and 22 of this Act a Small Claims Tribunal is empowered to make:

(a) An order that requires a party to the proceeding before 40 it (other than the claimant) to pay money, to a person specified in the order;

- (b) An order that requires a party to the proceeding before it (other than the claimant) to perform work to rectify a defect in goods or services to which the claim in the proceeding relates; or
- (c) An order that dismisses the claim to which the proceeding relates— 5
and no other order.

(3) An order made by a Small Claims Tribunal may direct that what is required to be done by an order shall be done within a time limited in the order. 10

22. Restricted effect of Tribunal's orders—An order made by a Small Claims Tribunal that requires the payment of money in an amount exceeding \$500 or that requires the performance of work of a value exceeding \$500 shall be of no effect to the extent that it exceeds \$500 but shall be taken in by a valid and effective order in the amount or to the value of \$500. 15

23. Orders to pay money—(1) An order made by a Small Claims Tribunal that requires the payment of money may be made to take effect immediately or upon default made in complying with some other order made by the tribunal. 20

(2) The registrar shall cause a copy of an order that requires the payment of money to be given or sent to the person against whom the order is made as soon as is practicable after its making if that person is not present or represented at its making. 25

(3) The person to whom payment is to be made under an order that requires the payment of money may enforce the order by filing, free of charge, in the office of the clerk of the Magistrates' Court for the place wherein the person required by the order to make payment resides or has a place of business or wherein the person to whom payment is to be made resides— 30

(a) A copy of the order certified by the registrar of the Registry of Small Claims Tribunals to be a true copy; and 35

(b) His affidavit as the person to whom payment is to be made under the order as to the amount not paid under the order and, where the order is to take effect upon any default as to the making of that default— 40

whereupon the order shall be deemed to be an order duly made by a Magistrates' Court requiring the payment of money and may be enforced according.

(4) An order may be filed once only under subsection (3).

- 5 **24. Renewal of proceedings when order not complied**
with—Upon making an order a Small Claims Tribunal may
adjourn the proceeding to a fixed date or without fixing a
date and in either case may give leave to the person in whose
favour the order operates to renew the reference of the claim
10 in the proceeding if the order is not complied with.

CLAIMS

- 15 **25. Initiating proceedings**—(1) A consumer who wishes to refer his claim, being a small claim, to a Small Claims Tribunal shall complete the prescribed form and file the form after payment of the prescribed fee in the office of any Magistrates' Court.

(2) It is the duty of the registrar and of every clerk of a Magistrates' Court to give his assistance to a claimant who seeks it in completing the prescribed claim form.

- 20 (3) A clerk of a Magistrates' Court in whose office a completed claim form is filed with the prescribed fee shall, as soon as is practicable, send the form or, if so permitted by the regulations, a copy of the form to the registrar by prepaid certified mail.

- 25 **26. Notice of claim and proceedings**—The registrar—

- (a) Shall cause notice of the claim and its particulars to be given, as soon as is practicable, to the respondent and to every person who appears from the claim form to have a sufficient interest in a resolution of
30 the dispute to which the claim relates; and
(b) Shall arrange a time and place of the initial proceeding of a Small Claims Tribunal in relation to the claim having regard therein to the convenience of the claimant, and shall cause notice of that time and
35 place to be given to the claimant and to the respondent and to every other person to whom notice of the claim is given.

27. Parties to the proceedings—Every person to whom notice is given under section 25 of this Act shall be taken to be a party to the proceedings that relates to the claim of which notice is so given, and every person who satisfies a Small Claims Tribunal that he has a sufficient interest in a resolution of the dispute to which the claim in question relates shall be entitled to be joined as a party to the proceeding and shall be joined as a party thereto. 5

28. Withdrawal of claim—A claimant may withdraw at any time a claim referred by him to a Small Claims Tribunal, whether before or after the tribunal has entered upon a hearing of the claim. 10

HEARINGS

29. Continuity of tribunal—(1) A tribunal shall, at all times throughout the course of a proceeding, be constituted by the same referee. 15

(2) If in any case the course of a proceeding is interrupted before a settlement or order is made therein by the death, incapacity, or removal of the referee who constitutes the tribunal and the claimant desires to proceed with his claim the proceedings in relation to the claim shall be recommenced before a tribunal constituted by another referee. 20

30. Amendment to claim—A tribunal may, at any stage of a proceeding, make such amendment to the claim to which the proceeding relates as it thinks fit, either at the request of the claimant or of its own motion with the approval of the claimant. 25

31. Adjournment of proceeding—(1) A tribunal may from time to time adjourn a proceeding to such times and places and for such purposes as it considers necessary. 30

(2) The registrar shall cause to be given to any party to a proceeding that is adjourned who is not present or represented at the time when the proceeding is adjourned a notice of the time and place to which the proceeding is adjourned.

32. Representation of parties—(1) Each party to a proceeding before a tribunal shall plead his own case. 35

(2) A party to a proceeding before a tribunal shall not be entitled to be represented by an agent unless it appears to the tribunal that the party is a body corporate or that an agent should be permitted to that party as a matter of necessity
5 and the tribunal so approves.

(3) In no case shall the tribunal approve of the appearance in a proceeding of an agent who is practising as a barrister or solicitor or as a barrister and solicitor or as an advocate for fee or reward unless—

10 (a) All parties to the proceedings agree; and
(b) The tribunal is satisfied that the parties, other than the party who applies for approval of an agent, or any of them shall not be thereby unfairly disadvantaged.

15 (4) Where it appears to a tribunal that it should allow an agent to present to it the case of any party to a proceeding—

(a) The tribunal shall, where a particular agent is proposed for its approval, satisfy itself that the proposed agent has sufficient personal knowledge of the issue in dispute and is vested with sufficient
20 authority to bind the party; and

(b) It may subject its approval to such conditions as to the type of agent it considers reasonable to ensure that any other party to the proceeding is not thereby
25 unfairly disadvantaged and, in such case, the entitlement of an agent to present that case shall be subject to compliance with those conditions.

(c) No agent representing any party to a proceeding shall be entitled to claim any fee, award or allowance
30 from that party.

(5) Contravention of any provision of this section shall not invalidate the taking of the proceeding in which the contravention occurs or of any order made therein.

33. Evidence—(1) Every proceeding before a tribunal shall
35 be taken in private.

(2) Evidence material to a proceeding before a tribunal—

(a) May be given orally or in writing; and

40 (b) Shall be given upon affirmation or declaration instead of an oath where the same is permitted by law, the referee being hereby empowered to administer an oath or, as the case may be, to take and receive an affirmation or declaration for the purpose.

(3) Every referee shall be able to informally and separately interview either of the parties to the proceedings or any witness thereto.

(4) Every referee may informally inspect the documents, articles, places or any other matters the subject of the proceedings. 5

34. Where one party not represented—(1) Subject to the provisions of this section, where the case of any party to a proceeding before a tribunal is not presented to the tribunal the issue in dispute in the proceeding shall be resolved by the tribunal on such evidence as is otherwise adduced before it and an order made by the tribunal therein shall be lawful and as effectual as if the party whose case was not presented had been fully heard. 10

(2) Where an issue in dispute has been resolved in the absence of any party to the proceeding a tribunal on application made to the registrar within seven days after the party received notice of the resolution, may, if it appears to it that there was sufficient reason for the party's absence, order that the claim be re-heard. 15 20

(3) Upon an order being made for re-hearing—

(a) The registrar shall notify all parties to the proceeding that related to the claim of the making of the order and, where practicable, of the time and place appointed for the re-hearing; and 25

(b) The order of the tribunal made upon the first hearing shall thereupon cease to have effect unless it is restored pursuant to the provisions of subsection (4) of this section.

(4) If the party on whose application a re-hearing is ordered does not appear at the time and place appointed for the re-hearing or upon any adjournment of the proceeding therein the tribunal, if it thinks fit and without re-hearing or further re-hearing the claim may direct that the order made upon the first hearing of the claim be restored, and that order shall be thereby restored to full force and effect and shall be deemed to have been of effect at all times since the time of its making. 30 35

35. Costs—Costs shall not be allowed to or against any party to a proceeding before a tribunal. 40

PART II

MISCELLANEOUS

5 36. **Control of procedures**—Subject to this Act and the regulations every Small Claims Tribunal shall have control of its own procedures and in the exercise thereof shall have regard to natural justice.

10 37. **Contracting out prohibited**—The provisions of this Act shall have effect notwithstanding any stipulation whatsoever to the contrary and no contract or agreement made or entered into before or after the commencement of this Act shall operate to annul or vary or exclude any of the provisions of this Act.

15 38. **Modes of giving notice**—Where by this Act the registrar is required to cause any notice or copy or order to be given to any person the notice may be sent by mail and shall be deemed to be sufficient service.

20 39. **Publication of particulars of reference**—(1) The registrar shall cause to be published in such manner as the Minister nominates from time to time the particulars specified in subsection (2) of this section with respect to every reference to a Small Claims Tribunal.

(2) The particulars to be published pursuant to the provisions of subsection (1) of this section are—

- 25 (a) The name of the claimant;
(b) The name of the respondent;
(c) The nature of the issue in dispute;
(d) The order made by the tribunal.

30 40. **Protection from liability**—No action shall lie against the Registrar, any claimant or any other person on account of any proceeding taken, any publication made, or anything done under the authority of this Act or taken, made or done *bona fide* purportedly under the authority of this Act, or on account of any omission made *bona fide* in the administration of this Act.

35 41. **Offences**—(1) Any person who—
(a) Wilfully insults a referee during his sitting as a Small Claims Tribunal or while he is on his way to or from such a sitting or any person, during his attendance at a Small Claims Tribunal or while
40 he is on his way to or from such attendance; or

- (b) Wilfully misbehaves in a Small Claims Tribunal; or
- (c) Wilfully, and without lawful excuse, interrupts the proceedings of a Small Claims Tribunal; or
- (d) Unlawfully assaults or wilfully obstructs a person in attendance at a Small Claims Tribunal; or 5
- (e) Without lawful excuse, disobeys a lawful direction of a Small Claims Tribunal given to him during the sitting of the tribunal—

may, by oral order of the tribunal, be excluded from the tribunal and, whether he is so excluded or not, shall be guilty of an offence against this Act and shall be liable to a maximum fine of \$500 or imprisonment for six months. 10

(2) Proceedings for an offence under subsection (1) of this section may be brought only by the tribunal concerned and may be withdrawn by it upon its receiving an apology for such contempt. 15

42. Regulations—The Governor-General in Council may make regulations for or with respect to—

- (a) Forms to be used for the purposes of this Act and the purposes for which they shall be used; 20
- (b) Fees to be paid under this Act;
- (c) The practice and procedure of Small Claims Tribunals and the enforcement of the orders thereof;
- (d) The practice and procedure of the Registry and the powers, functions, and duties of the registrar and other persons employed therein; and 25
- (e) All matters authorised or required or permitted by this Act to be prescribed or which are necessary to be prescribed for carrying the objects of this Act into effect. 30