

APPEALS FROM ADMINISTRATIVE TRIBUNALS

SECOND REPORT OF THE PUBLIC AND ADMINISTRATIVE  
LAW REFORM COMMITTEE

Presented to the Minister of Justice in January 1969

SECOND REPORT OF THE PUBLIC AND  
ADMINISTRATIVE LAW REFORM COMMITTEE

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## INTRODUCTION AND GENERAL

### Membership

1. In July 1966 the Minister of Justice set up the Public and Administrative Law Reform Committee under the chairmanship of Dr J.L. Robson C.B.E., the Secretary for Justice. The other members of the committee are Mr A.C. Brassington, a barrister and solicitor of Christchurch; Mr R.B. Cooke, one of Her Majesty's Counsel; Mr E.L. Greensmith C.M.G., a former Secretary to the Treasury; Dr R.G. McElroy, a barrister and solicitor of Auckland; Professor J.F. Northey, Dean of the Faculty of Law at the University of Auckland; Mr G.S. Orr, Senior Crown Counsel; and Mr D.A.S. Ward C.M.G., Counsel to the Law Drafting Office. Professor C.C. Aikman, formerly a member, withdrew from the committee after his appointment as Vice Chancellor of the University of the South Pacific in Fiji.

### Programme

2. As we mentioned in our first report the matters referred for our investigation under the programme approved by the Law Revision Commission included appeals from administrative tribunals, the constitution and procedure of such tribunals, and the judicial control of administrative acts. At the outset we decided that the last of these matters was less urgently in need of review than the others and accordingly we have continued to concentrate on appeals and procedures of administrative tribunals.

### Contents of first report

3. Our first report was presented to the Minister of Justice in January of last year (1968). The principal recommendation in that report was for the setting up of an Administrative Division of the Supreme Court to hear appeals from specified administrative tribunals and to exercise the existing jurisdiction of the Court in the field of administrative law. The arguments for the creation of the Division are traversed at length in that report and need not be repeated here. Although we have recommended the creation of an Administrative Division we have not assumed

that it should be the appellate body for all tribunals. We have studied the functions, powers and procedures of each tribunal separately and have made such recommendations as to appeal and procedure as are appropriate to the particular circumstances of that tribunal: no attempt has been made to confine tribunals within any theoretical strait-jacket.

4. In our first report we also recommended that the jurisdiction of the Land Valuation Court, the Transport Licensing Appeal Authority and the Trade Practices Appeal Authority should be absorbed by the Administrative Division. We further recommended that there be an appeal, with leave, to the Division from decisions of the Town and Country Planning Appeal Boards. Our study of the Transport Charges Appeal Authority and of the Price Tribunal led us to the conclusion that it was not appropriate for either of these jurisdictions to be absorbed by the Administrative Division, or that there ought to be a right of appeal to the Division from their decisions.

#### Adoption of proposals

5. The Government adopted the Committee's proposals for the creation of the Administrative Division and we are of course pleased that the first step towards implementing our recommendation has been taken so speedily. A Judicature Amendment Bill, establishing the Division, was introduced into Parliament in August of last year and has now been enacted. We reproduce the Act as Appendix I to this report.

6. The Judicature Amendment Act differs in two main respects from the committee's recommendations. First, the Act gives to the Chief Justice and not to the Governor-General as we recommended, the power to assign judges to the Division. Both the Governor-General (acting on the advice of the Government) and the Chief Justice are in a good position to assess the qualifications of judges and to make a proper choice. It has been suggested that giving the power of assignment to the Chief Justice rather than to the Governor-General is of constitutional significance since it would avoid any possibility of "political" assignments. In our view this suggestion has little substance; there is no more reason to suppose that the Governor-General, acting

on the advice of his Ministers, would take political considerations into account than he would do in making appointments to the Supreme Court. We have no quarrel with the change unless it jeopardises the object that the work of the Administrative Division should, throughout New Zealand, be performed by judges specialising and regularly engaged in that work (among their other judicial functions); or unless in some other way its practical operation conflicts with the spirit of our first report.

7. The other main respect in which the Act differs from our recommendation is that it gives power to the Chief Justice in certain circumstances to direct that an appeal which would otherwise lie to the Division should be heard by a judge who is not a member of the Division. The section states that the Chief Justice must have regard to the "special nature of the subject matter of the appeal or proceeding and the circumstances of the case". Our recommendation did not envisage this possibility. It is plain that the purpose of the provision is to enable a case to be heard in special circumstances by a judge possessing special qualifications to hear the particular type of administrative appeal but who is not a member of the Division. It may for example be appropriate for such a judge to hear tax appeals, as the field of tax law is one with which most judges and barristers are professionally concerned from time to time and judges particularly versed in this work will not necessarily be members of the Administrative Division. The majority of us think the provision has merit since it provides sufficient flexibility to ensure that an appeal is heard by a judge well fitted to do so. It is most important however that the power be not used so freely as in effect to undermine the concept of an Administrative Division. Here again much will turn on the practical operation of the Act, which we will naturally watch with close interest.

8. The Judicature Amendment Act also gives the Division jurisdiction to hear such applications for the prerogative writs as are referred to it by the Chief Justice. Our recommendation was that the Division should 'in general' hear the prerogative writ applications. Clearly there are some such applications which do not require a hearing before a judge of the Division, for example, an application for an order restraining a Magistrate in an adoption application;

and to give a general discretion to the Chief Justice has the merit of enabling a choice to be made. A better solution in our view would have been to provide that all prerogative writ applications involving tribunals other than the Magistrate's Court should be heard by the Division. The Legislature has preferred greater flexibility. Our comments at the end of paragraphs 6 and 7 apply here also.

9. The Act does not of itself give the Administrative Division any appellate jurisdiction. Such jurisdiction in any particular field is to be given by amendment to the statutes dealing with the existing appellate authorities whose jurisdiction is to be absorbed by the Division. During the Parliamentary session just concluded, amendments have been made to the relevant statutes transferring to the Division appellate jurisdiction in the land valuation and sale of liquor fields. We describe the changes in the following paragraphs.

#### Land Valuation Proceedings Amendment Act 1968

10. This enactment implemented the recommendations contained in paragraph 45 of the committee's first report by abolishing the Land Valuation Court and transferring its jurisdiction to the Administrative Division. Previously two lay persons sat as members of the Land Valuation Court and the amendment maintains this arrangement by providing for two lay members to sit as members of the Administrative Division in land valuation proceedings. The present lay members continue in office. The Act also provides for an appeal, with the leave either of the Administrative Division or the Court of Appeal, to the Court of Appeal from decisions of the Administrative Division. Such a further appeal was also recommended in paragraph 45 of our first report. Under the previous law decisions of the Land Valuation Court were final although there was power for the Judge of the Court to state a case on a point of law for the opinion of the Court of Appeal. The Legislature has adopted without change the criteria which we suggested should guide the courts in deciding whether to grant leave to appeal. The Legislature also adopted our recommendation that the parties should be able to require the proceedings to be heard initially in the Division, and not by a committee, except that the Act provides for the leave of the Administrative Division to be

obtained for this course. We are bound to say that there are objections to requiring the leave of the Division: applications for leave will entail additional expense and delay since in the event the Division may after much argument refuse leave and require the matter to be dealt with by a committee. If both parties are in agreement that the case should be heard by the Division in the first instance, we should have thought it to be in the public interest to give effect to their wishes.

#### Sale of Liquor Amendment Act 1968

11. Our recommendations regarding the Licensing Control Commission and Licensing Committees are contained in paragraphs 51 - 59 of this report. Some points regarding liquor licensing appeals were the subject of an informal report by the committee to the Minister of Justice earlier this year and the substance of our recommendations is repeated in this report. The committee recommended that appeals against those decisions of the Licensing Control Commission and Licensing Committees which under the existing law lay to the Supreme Court should be heard by the Administrative Division. This recommendation was accepted.

12. Under s.229 and s.318 of the Sale of Liquor Act there is a right of appeal against an order of the Commission requiring the alteration, repair, or rebuilding of licensed premises which involve an expenditure of \$10,000 or more. The committee recommended that the minimum value in respect of these appeals should be reduced to \$2,000. We regarded the figure of \$10,000 as unduly high and well above the amount which would give a right of appeal in other areas of the law. This recommendation was also accepted and the Act now gives a right of appeal in respect of orders involving expenditure of \$2,000 or more.

#### New Tribunal : Broadcasting Authority

13. During the session just concluded the Broadcasting Authority Act was enacted. Power to grant applications for warrants to operate television or radio stations is given to a newly-created Broadcasting Authority consisting of three members, the chairman being required to be a barrister or solicitor of not less than seven years practice. The criteria to which the Authority must have regard in



granting or refusing a permit are set out in s.21 of the Act. The criteria are extremely wide, covering not only economic but also social factors. A right of appeal to the Administrative Division is given to those immediately affected by the Authority's decision. It is interesting to observe that the Broadcasting Authority Bill as introduced into Parliament contained no provision for an appeal at all. The Statutes Revision Committee of the House, to whom the bill was referred for consideration, recommended that an appeal should lie to at least three judges of the Supreme Court. Although that Committee knew of our recommendation for the creation of an Administrative Division, the Government had not decided at that time to introduce the necessary legislation. The Statutes Revision Committee's recommendation was thus an anticipatory one. The Minister of Broadcasting subsequently introduced an amendment to the bill substituting the Administrative Division for the requirement that three judges hear the appeal and it was enacted in this form.

#### Appeal from War Pensions Board

14. Section 4 of the War Pensions Amendment Act 1968 widens the class of persons to whom the War Pensions Board may order the payment of any pension or allowance unpaid at the date of death of the recipient. If the amount claimed is £2,000 or less an appeal is given to a Magistrate's Court against the decision. If the amount is more than £2,000 an appeal is given to the Administrative Division of the Supreme Court.

#### Programme

15. We continued our programme of studying selected administrative tribunals and our proposals about them form the main part of this second report. The tribunals studied since the first report are -

- (1) The Motor Spirits Licensing Authority                    )  
The Motor Spirits Licensing Appeal Authority            )
- (2) The Air Services Licensing Authority                    )  
The Air Services Licensing Appeal Authority            )
- (3) The Licensing Control Commission                        )  
The Licensing Committees                                    )

- (4) The Taxation Board of Review
- (5) The special tribunals set up to hear appeals against income tax assessment of co-operative dairy companies, milk marketing companies and pig marketing companies.
- (6) The Cinematograph Films Licensing Authority )  
The Cinematograph Films Licensing and Registration )  
Appeal Authority )
- (7) The Cinematograph Films Censorship Board of Appeal
- (8) The Indecent Publications Tribunal
- (9) The Earthquake and War Damage Commission
- (10) The Copyright Tribunal
- (11) The Military Service Postponement Committees
- (12) The Conscientious Objection Committee
- (13) The Shops and Offices Exemptions Tribunal
- (14) The Pharmacy Authority

16. In accordance with the pattern established in our first report we give first an outline of the present constitution, procedure, and appeal provisions of the tribunals studied and then state our recommendations in respect of them. It should be mentioned that we also considered some of the principal industrial tribunals of New Zealand, namely the Court of Arbitration, the Waterfront Industry Tribunal and the Apprenticeship Committees. It seemed obvious that at this stage of New Zealand's industrial progress and labour relationships it would be inappropriate for any of them to be absorbed by the Administrative Division and since we had no evidence before us suggesting that the procedures of these tribunals were unsatisfactory we make no recommendations about them. They deserve further study than we have so far given and we contemplate returning to them at some later date.

#### Policy and Scope

17. We emphasise that because this committee has reviewed a tribunal and has made recommendations for improvements in procedure and in appellate structure, it does not necessarily accept that there should be regulation or control of the fields of activity. Such broader questions of policy lie outside the committee's order of reference. Questions of policy of this kind enter into

the committee's deliberations only in the subordinate sense that they may assist in determining whether the constitution, procedure and appeal structure of a tribunal do in fact conduce to just decisions. The merits or otherwise of the policy issues served by the tribunals established by Parliament fall outside our purview.

#### Privy Council

18. We have not yet considered whether in cases where we have recommended an appeal to the Administrative Division and thence to the Court of Appeal there should be a further opportunity of appeal to the Privy Council. The general pattern of our recommendations is for a right of appeal on law only to the Court of Appeal. Our recommendation for appeals in land valuation proceedings is an exception to this pattern for we recommended an appeal, with leave, on fact or discretion as well as on law to the Court of Appeal. We did not discuss whether a further appeal should lie to the Privy Council and our first report is silent on that question.

19. The general position as to appeals to the Privy Council is explained by Mr Justice Adams in Woolworths, Ltd v. Wynne [1952] N.Z.L.R. 496 at 512.

Her Majesty the Queen, in virtue of her prerogative, has authority to review the decisions of all Colonial Courts, whether the proceedings be of a civil or of a criminal character except insofar as Her Majesty has parted with such authority... But appeals to the Privy Council are always by leave, such leave being either leave granted by the local Court in exercise of a delegated power to grant it, or special leave granted by the Sovereign in Council... The Court from which the appeal arises has no power to grant leave "unless first authorised by some enactment, such as an Order in Council." ... Where no appeal lies by right of grant, or where the Colonial Court has no power to grant leave, or has refused to grant leave, an appeal can proceed only on special leave granted by the Privy Council.

Although New Zealand courts are no longer "colonial courts" the principles stated do govern appeals from our courts.

20. Appeals to the Privy Council from New Zealand Courts are governed by an Order in Council of 1910 and an Order in Council of 1957, both of which are English enactments. There is no doubt that since the adoption by the New Zealand

Parliament of the Statute of Westminster in 1947 the New Zealand Parliament can, by apt words, abolish or restrict appeals to the Privy Council from decisions of New Zealand Courts, irrespective of whether an appeal would otherwise lie by leave granted by a New Zealand court, or by special leave granted by the Privy Council.

21. Section 18A (4) of the Land Valuation Proceedings Act 1948 (as inserted by section 8 of the Land Valuation Proceedings Amendment Act 1968) provides that "the decision of the Court of Appeal on any such appeal shall be final". It might be thought that these words prohibit any further appeal to the Privy Council, but it is extremely doubtful whether they in fact do so. In In re the Will of Wi Matua [1908] A.C. 448 the Privy Council held that the provision in s.93 of the Native Land Court Act 1894 (N.Z.) that the decision of the Native Appellate Court was "final and conclusive," did not exclude the granting of a petition to His Majesty for special leave to appeal. The Privy Council stated that the prerogative of the Crown cannot be taken away except by express words. Thus there is a strong argument for saying that although s.18A (4) of the Land Valuation Proceedings Act 1948 takes away the power of the Court of Appeal to grant leave to appeal to the Privy Council, it leaves untouched the power of the Privy Council itself to grant special leave to appeal.

22. Leaving aside the question of an appeal to the Privy Council in other areas we consider that at least so long as appeals may be taken to the Privy Council there is much to be said for giving an opportunity of appeal to the Privy Council in land valuation proceedings. Considerable sums could be at issue, the Privy Council has had experience in appeals in land valuation from other jurisdictions (in fact some of the leading cases are Privy Council decisions, including a case on appeal from New Zealand, In re Whareroa 2E Block [1959] N.Z.L.R. 7) and no social policy is involved which might otherwise make it desirable for the New Zealand courts to have the last word. We should have preferred the restriction in s.18A (4) of the Act to be dropped and so to enable the Court of Appeal to grant leave. As it is we think that the Privy Council may be most reluctant to grant leave.

23. Whatever may be decided on the question of appeals to the Privy Council in any area, care must be taken to ensure that anomalies do not arise. If, for example, it is simply provided that no appeal shall lie to the Privy Council in cases allotted to the Administrative Division in a particular field this would leave the general law to operate in regard to decisions made by the Supreme Court in its ordinary jurisdiction. In the result the right of appeal on a question of law might well stop at the Court of Appeal if the case had been heard by the Administrative Division, whereas if the same question had arisen in prerogative writ proceedings which were not referred to the Division by the Chief Justice, there would be an opportunity of appeal to the Privy Council. It would be indefensible for an appeal to the Privy Council to depend merely on whether or not the case was heard by the Division. For this reason, and indeed for reasons of general principle, the whole subject of Privy Council appeals necessarily concerns the Public and Administrative Law Reform Committee, and, should any legislative change in this connection be under consideration at any time, the Committee would hope to have an opportunity of expressing its views.

#### Acknowledgements

24. Among those consulted in relation to the tribunals studied since our first report were: Mr S.T. Barnett, chairman of the Licensing Control Commission; Mr W.H. Carson S.M., chairman of the Taxation Board of Review; Mr R.V. Johnson, Deputy Secretary of Defence (Army); Mr L.M. Greig, barrister and solicitor; Mr B.C. Hickey; Dr D.P. Kennedy, Director-General of Health; Mr I.L. McKay, barrister and solicitor; Mr M.J. Moriarty, Secretary of Industries and Commerce; Mr P.J. O'Dea, Secretary for Internal Affairs; Mr N.P. Ross; Mr T.J. Sanger; Mr L.G.H. Sinclair, a former Stipendiary Magistrate; Mr D.A. Stevens, Commissioner of Inland Revenue; Judge Thomson, Judge of the Court of Arbitration and the Motor Spirits Licensing Appeal Authority; Mr J.O. Upton, barrister and solicitor; and Mr N.S. Woods, Secretary of Labour.

We acknowledge our indebtedness to all those who readily gave us the benefit of their experience in each particular field.

MOTOR SPIRITS LICENSINGMotor Spirits Licensing Authority

25. This tribunal is constituted by the Motor Spirits Distribution Act 1953 and consists of a chairman and not more than two other members (at present two). All are appointed by the Governor-General on the recommendation of the Minister of Industries and Commerce and hold office during pleasure. The principal function of the Licensing Authority is to consider and to determine applications for the granting, transfer, amendment, suspension or revocation of wholesale and retail motor spirits distribution licences. The Licensing Authority is, within the scope of its jurisdiction, deemed to be a commission of inquiry under the Commissions of Inquiry Act 1908 and thus may state a case for the opinion of the Supreme Court on any question of law.

Motor Spirits Licensing Appeal Authority

26. This consists of a barrister or solicitor of not less than seven years' standing who is appointed by the Governor-General during pleasure. The Appeal Authority's function is to sit as a judicial authority for the determination of appeals from decisions of the Licensing Authority. Within the scope of its jurisdiction, the Appeal Authority is deemed to be a commission of inquiry and thus may state a case for the opinion of the Supreme Court on a point of law. As we pointed out in our first report, this is no substitute for an appeal.

27. There is a right of appeal to the Appeal Authority from the whole or any part of a decision of the Licensing Authority. After hearing the appeal, the Appeal Authority may confirm, modify or reverse the decision of the Licensing Authority, or refer the matter back to the Licensing Authority for reconsideration. In the event of a reference back, the Licensing Authority must consider the matter afresh, as if no decision had previously been made.

28. Where the effect of any decision of the Appeal Authority is to revoke or suspend any licence the holder of the licence may appeal to the Supreme Court. On hearing the appeal, the Supreme Court may order the Appeal Authority to reverse, modify or confirm its decision. There

is, however, no power to refer the case back to the Appeal Authority so that it may reconsider the matter.

#### Recommendations

29. The jurisdiction of the Motor Spirits Licensing Appeal Authority should be absorbed by the Administrative Division of the Supreme Court and exercised by that Division. The issues that fall to be determined in this area are of the same broad type as those relating to transport and air services licensing and concern both the public interest and the welfare of the industry at the wholesale and retail level. Licences are not granted on grounds of the applicant's suitability alone; the effect on other licence holders and the public interest must be considered. The Administrative Division would thus be a suitable body to balance properly any conflicting claims and considerations.

#### Further Appeal

30. The Committee considers that there should not be a right of appeal on fact or discretion to the Court of Appeal, and that the right should be restricted to a point of law only. The field is a specialised one and the parties are afforded two full opportunities to have their case heard. It should be emphasised that the Administrative Division may sit as a full court in cases of special importance or difficulty; the need for an appeal on law should thereby be reduced.

#### Scope of appeal from Licensing Authority

31. The Committee discussed the scope of the appeal. It had been suggested that the Appeal Authority was restricted in its powers to a consideration merely of errors of law or of jurisdictional defects. Our view is that the scope of the Authority's powers is much wider and it may substitute its own decision for that of the tribunal below, provided it is satisfied that the decision below is wrong. The statutory powers of the Appeal

Authority appear not to give grounds for suggesting any such limitation. Section 36 provides -

- (1) At the hearing of the appeal the Appeal Authority shall hear all the evidence tendered and all representations made by or on behalf of the appellant and other persons which he deems relevant to the subject-matter of the appeal:

Provided that at any time during the hearing he may decide not to receive further evidence or representations.

- (2) In his determination of any appeal the Appeal Authority may confirm, modify or reverse the decision appealed against.

32. It is true that in general anyone who appeals against a decision to a higher court or tribunal must show that the decision appealed from is wrong, but this is unexceptionable and is simply a particular instance of the general rule that the onus lies on the person who objects to a decision to prove that it is in some way at fault. If this can be done the way is open for the Appeal Authority to substitute its own decision for that of the body below. However if we are incorrect about the extent of the Appeal Authority's powers we strongly urge that the law be amended to give the appellate body such powers as it needs to make the right of appeal a full one.

#### Procedure

33. One of our members pointed out that there is no express power given to the Appeal Authority to appoint counsel to assist it, where it appeared that only one side of the issue would be put before it. This situation could arise in particular under section 23 which empowers the Licensing Authority to hold a public inquiry as to whether or not any business carried on under the licence is being conducted in conformity with its terms, and to revoke the licence if the Authority is satisfied that the terms are being broken. There is a right of appeal to the Appeal Authority against the decision of the Licensing Authority but there may be no person interested in appearing at the



hearing of the appeal to put the case for the revocation of the licence. Under current practice the Appeal Authority obtains the services of Crown counsel to assist it but on one occasion the appellant has questioned the right of the Crown counsel to appear. In our view it is most desirable for an appellate body to have the assistance of counsel if it appears that only one side of the case would be presented. Judge Thomson, the present Appeal Authority, agrees. We have referred particularly to section 23, but the power of appointing counsel should not be confined to cases under that section. If our recommendation that the Appeal Authority be absorbed by the Administrative Division is adopted, the power to appoint counsel could be provided for in the procedural rules of the Division. (See section 26B of the Judicature Act 1908 as inserted by section 2 of the Judicature Amendment Act 1968; Appendix I.) Indeed the power to appoint counsel to assist or to act as amicus curiae in such cases should be given generally and not be confined to motor spirits licensing.

34. It was also suggested to us that the Appeal Authority should be expressly empowered to direct reconsideration by the Authority of any particular part of the Authority's decision. Judge Thomson views the power to refer back for reconsideration in whole or in part as being most important to all appellate administrative jurisdictions. In his capacity as Motor Spirits Licensing Appeal Authority, he has recently ruled that the power to refer back part of the decision is implied in section 37 of the Motor Spirits Distribution Act, even though not expressly given. We are of the view that the legislation should provide expressly for that power in order to remove any doubt. If our general recommendation is accepted, the appellate jurisdiction would be exercised by the Administrative Division, and the Division should have express power to refer back the whole or part of the decision for reconsideration. This should have general application to all appeals before it.

Other matters

35. There is a further point of importance. Section 35 of the Motor Spirits Distribution Act is unsatisfactory. It states that where an appeal has been filed the licensee may carry on the business in the manner in which and to the extent to which he was lawfully carrying it on at the time when the original decision of the Authority was given. This may be the very question which is raised in the appeal and is therefore impossible to answer until the appeal has been disposed of. We consider the best solution is to provide for the decision appealed against to be suspended until the time for appeal has expired or until any appeal that has been filed is determined. The alternative of providing that the decision is to take effect pending the determination of the appeal has the obvious difficulty that a person in acting on the decision of the Authority might so alter his position as to be caused serious embarrassment if the appeal were upheld.

36. As we pointed out in our first report (paragraph 42) we think it wrong that the members of an administrative tribunal hold office during pleasure. Members of the Licensing Authority should be appointed for a minimum term of, say, three years.

37. Our attention was drawn to difficulties of lesser importance in the legislation but they do not justify comment here. We have conveyed their substance to the Department of Industries and Commerce for consideration when the Act is under review.

AIR SERVICES LICENSINGAir Services Licensing Authority

38. This Authority is constituted by the Air Services Licensing Act 1951. It consists of a chairman and three other members appointed by the Governor-General on the recommendation of the Minister of Transport. No special qualification for membership is stipulated by statute. Members are appointed for a term of not more than three years and may be reappointed or removed from office by the

Governor-General for cause shown.

39. The principal function of the Licensing Authority is to hear and determine applications for the granting, renewal or transfer of air service licences. For these purposes it may hold such inquiries and investigations as it thinks necessary. It is deemed to be a commission of inquiry for the purpose of any hearing, inquiry or investigation it carries out. There is a general right of appeal from its decisions to the Air Services Licensing Appeal Authority.

Air Services Licensing Appeal Authority

40. The holder of this office must be a barrister or solicitor of not less than seven years' standing. He is appointed by the Governor-General during pleasure. The Appeal Authority's function is to sit as a judicial authority to determine appeals from decisions of the Air Services Licensing Authority. In its determination of any appeal, the Appeal Authority may confirm, modify, reverse or refer back the decision appealed against. Decisions of the Appeal Authority may not be appealed against and there is the usual privative clause restricting the intervention of the Supreme Court to questions of jurisdiction. Since it is deemed to be a commission of inquiry the Appeal Authority may state a case for the opinion of the Supreme Court on any question of law. As pointed out, this is an inadequate substitute for an appeal.

Recommendations

41. Air services licensing is analogous to road transport licensing and the criteria to which the Authority must have regard in granting or refusing a licence are broadly similar. In our view it follows from this that the jurisdiction of the Air Services Licensing Appeal Authority should be absorbed by the Administrative Division and be exercised by it.

42. There is one aspect of the Authority's jurisdiction, namely, rates fixing, which gave us concern. In our first report we recommended that the Transport Charges Appeal Authority remain in

its present form and should not be absorbed by the Administrative Division. Our reason was that the fixing of road transport charges was more akin to the fixing of prices by the Price Tribunal which we also recommended should not be absorbed by the Division. We were informed that the Authority's power to fix rates for the various types of air services is seldom invoked and when it is the decision rarely proves controversial. In fact only regular air services rates are fixed by the Authority. Air taxi service rates are regulated only to the extent that the standard terms and conditions promulgated by the Authority in 1959 provide for such operations to charge proportionately higher than a scheduled service over the same route. We were told that there appears to be dissatisfaction at the charges of certain aerial top dressing firms and a price ring is alleged. We are not in a position to assess the truth of this allegation. It would appear a matter for the Trade Practices and Prices Commission rather than for the Air Services Licensing Authority. We conclude therefore that there is not sufficient reason for removing rates fixing from the Authority's jurisdiction and treating it separately.

#### Further Appeal

43. It is also our view that, in accordance with our general approach in relation to tribunals dealing with a specialised subject matter, the decision of the Administrative Division should be final in matters of fact or discretion and that there should be a further right of appeal on law only to the Court of Appeal.

44. We note that the power of the Appeal Authority to refer appeals back to the Licensing Authority for reconsideration is in the same terms as the provision we have criticized in relation to the Motor Spirits Licensing Appeal Authority. (See paragraph 34). Our remarks in that paragraph apply also to the similar provision in the Air Services Licensing Act.

LIQUOR LICENSING

Licensing Control Commission

45. This tribunal which is now established under the Sale of Liquor Act 1962 was first set up in 1948. It consists of either three or four members (at present three) appointed by the Governor-General for a term of five years on the recommendation of the Minister of Justice. One member is appointed chairman. No special qualifications for membership are required by statute.

46. The functions of the Commission are, broadly, to exercise general supervisory control over the licensing and management of the liquor trade in New Zealand. In particular the functions are -

- (a) to authorise the issue of the more important licences such as hotel premises licences, tavern premises licences, restaurant licences and wholesale licences; and also now wine resellers' licences. As regards hotel and tavern premises licences and restaurant licences, the Commission not only authorises the issue of a new licence but determines to whom it will be granted.
- (b) to determine the fair price payable for new licences and on removal of licences;
- (c) to prescribe standards of accommodation and facilities on licensed premises and to conduct inquiries into requirements;
- (d) to grant and renew club charters;
- (e) to hear appeals from Licensing Committees;
- (f) to control the Licensing Fund;
- (g) to conduct inquiries at the request of the Minister of Justice.

As indicated below there is a right of appeal to the Supreme Court from certain decisions of the Commission. Its decisions are also reviewable to the usual extent by the Court by way of the prerogative writs.

Licensing Committees

47. The Sale of Liquor Act provides for the division of

New Zealand into a maximum of 24 licensing districts. (At present there are 22). For each district there is a licensing committee consisting of a magistrate, appointed by the Governor-General on the recommendation of the Minister of Justice, and four other persons, elected every three years after the local authority elections by local authorities within the district. Any member of a licensing committee may be removed by the Governor-General for neglect of duty or misconduct. Licensing committees have a considerably narrower jurisdiction than the Licensing Control Commission, their principal function being to grant, renew and approve the transfer of various types of liquor licences and matters incidental thereto. Some of the more important functions are -

- (a) To grant hotelkeepers', tavernkeepers' and tourist house keepers' licences;
- (b) to consider applications for wholesale and wine resellers' licences authorised by the Commission and to grant these licences;
- (c) to grant ship, works canteen and booth licences;
- (d) to grant, renew and transfer winemakers' licences (exercisable by the chairman only);
- (e) to approve a variation of the usual hours for the sale of liquor by hotels and taverns;
- (f) to renew all renewable licences (i.e. except premises licences and booth licences);
- (g) to transfer restaurant, wholesale, wine resellers' and works canteen licences from one person to another;
- (h) to grant managers' certificates (exercisable by the chairman only);
- (i) to review accommodation facilities and services provided by holders of premises licences, (concurrent with Commission);
- (j) to suspend a premises licence for non-compliance with health or fire requirements;
- (k) To cancel or suspend managers' certificates and licences other than premises licences;

- (l) to grant permits for the sale of liquor by auction;
- (m) to consent to alterations of licensed premises.

We set out the functions in some detail because it is arguable that some of these tasks could be better performed by the Licensing Control Commission.

48. We gave considerable thought to the constitution and jurisdiction of licensing committees and the Department of Justice prepared a paper for us on the historical background. The unusual feature about the constitution of licensing committees is that they have representatives of local authorities as members. Licensing regulation during the past hundred years has contained a measure of local control through bodies which since 1881 have had a majority of members directly or indirectly elected by the people. We considered whether licensing committees should be abolished altogether. This in fact had been the view of the Select Committee on Licensing in 1960 (1960 A.J. - I.17). That committee recommended that the functions, powers and duties of licensing committees should be passed over to the Licensing Control Commission, with the qualification that certain matters of administration be entrusted to magistrates. This approach was the one favoured by many of the magistrates who had served as chairmen of licensing committees. The Bill introduced in 1961 provided for the abolition of licensing committees but this approach was strongly opposed by the industry. The New Zealand Alliance were also not in favour. The opposing view prevailed and the Bill was extensively altered to retain licensing committees and to provide a new method of selecting their members by appointment by local authorities.

#### Appeals

49. Any party to proceedings before a committee or the Commission may appeal to the Supreme Court on a point of law by way of case stated. The Commission and the committees also have power to state a case on a point of law for the opinion of the Supreme Court.

50. In certain cases there is a right of appeal from a licensing committee to the Licensing Control Commission and in other cases there is a right of direct appeal from a

licensing committee to the Supreme Court. There is also a right of appeal in certain cases from the Commission to the Supreme Court. On hearing an appeal, whether from a committee or from the Commission, the Supreme Court may modify, confirm or reverse the decision appealed against. Apart from one very minor exception, the Court has no power to refer the matter back, either to the Commission or to a committee. When hearing a case on appeal, the Licensing Control Commission has the same powers as the Supreme Court, and may also refer the matter back to the Licensing committee for further consideration.

51. The appeal provisions are intricate and the relationship of the various bodies to one another is complex. We have set out in diagrammatic form the appeal provisions in Appendix II of this report. The diagram might be regarded as illustrating the length to which the Legislature has gone to provide judicial safeguards to control the power of an administrative tribunal while at the same time leaving it with sufficient discretion to implement the basic policy of the legislation. On the other hand it may also be taken as illustrating illogical compromises and "horse trading".

#### Recommendations

52. Last year we recommended to the Minister of Justice that the appellate jurisdiction in liquor licensing which was exercised by the Supreme Court should be exercised by the Administrative Division of that Court. This should ensure consistency of decisions and the hearing of appeals by specially qualified judges. This recommendation was adopted by the Government. The Sale of Liquor Amendment Act 1968 substitutes the Administrative Division for the Supreme Court in its ordinary jurisdiction as the appellate body.

53. We also recommended that the minimum value in respect of which an appeal lay against a decision of the Commission ordering the rebuilding or repair of licensed premises should be reduced from £10,000 to £2,000. Whatever was the original justification for the high figure, it is clear that it should be reduced to provide an adequate appeal against an order to expend what could be to a hotel owner a



considerable sum of money. This recommendation was also accepted and the Sale of Liquor Amendment Act 1968 has made the appropriate change.

Further possible recommendations as to Commission

54. We think there are other respects in which we may desire to recommend amendments or extensions of the present appeal rights. For instance, there is a curiously restricted right of appeal at present against an authorisation by the Commission of a new tavern premises licence : s.229 (6). It may be that this class of appeal should not be so severely limited. Again, there is at present no appeal at all against the fixation of a "fair price" by the Commission. Yet in other fields - for example, estate duties - valuing a licence falls within the province of the Supreme Court. It may be that there should be a right of appeal to the Administrative Division here. These are questions which we propose to consider and report upon in due course.

Licensing Committees

55. We cannot say that the present method of selecting membership is ideal for a body which should be judicial in character. On the other hand we recognise that liquor licensing is a highly contentious subject and that there are complex political and social factors involved. We consider that committees do perform a service which could not adequately be performed by a central body.

56. While we make no recommendations as to the abolition or reconstitution of committees we do make certain recommendations as to their position vis-a-vis the Commission. At present wholesalers' licences and wine resellers' licences are granted by licensing committees with a right of appeal to the Commission. Because we recognised that a choice between competing applicants is different from and perhaps a more 'judicial' function than deciding whether a new licence should be authorised, we think that the

committees should retain the jurisdiction to grant these licences; but we consider that the right of appeal should be direct from committees to the Administrative Division. We do not regard the Commission as the most appropriate appellate body since difficult questions of mixed law and fact can arise which are best decided by a judge.

57. We propose this year to consider whether appeals from licensing committees other than those dealt with in paragraph 56 should likewise go to the Commission.

58. It is undesirable that there be overlapping jurisdiction as to enforcement of standards; it is preferable that committees should cease to have jurisdiction in this field, and that the field be left to the Commission which is in a position to apply consistent standards throughout the whole country. Now that the Commission has finished its review of hotels it would have, it seems, more time to enforce standards.

59. At present the grant of restaurant licences rests with the Commission, but their renewal and transfer is for committees. This may tend to lower standards; it has been suggested to us that committees do not always exercise the same care on the renewal or transfer as the Commission does on the original grant. There appear to be alternative ways of meeting this problem. One is to ensure that an inspector of licensed premises furnish an annual report in respect of a renewal application or an application for a transfer. The other is to give the renewal and transfer as well as the grant of such licences to the Commission. Matters affecting restaurant licences are so closely related to standards that we regard the distinction between authorisation and grant, mentioned in paragraph 57 above, as of no real moment in this particular case.

TAXATION BOARD OF REVIEW

60. Under the Inland Revenue Department Amendment Act 1960, there is provision for one or more Boards of Review to be established. Only one board has been established. The Board comprises a chairman, who must be a barrister or solicitor of not less than seven years' practice and who is in fact a stipendiary magistrate, and two other persons. Members may be employees of the Crown and are appointed by the Governor-General for such term, not exceeding seven years, as he thinks fit. The function of the Board is to sit as a judicial authority for the hearing and determining of objections to assessments of tax or duty, and to certain discretionary decisions of the Commissioner of Inland Revenue. The Board is deemed to be a commission of inquiry; its hearings are in private and it may receive such evidence as it thinks fit. The Board may, on the application of either the objector or the Commissioner of Inland Revenue, or of its own motion, state a case to the Supreme Court on any question of law. The Board's decisions are reviewable to the usual limited extent by the Supreme Court by way of the prerogative writs. The decision of the Board on any objection is subject to appeal to the Supreme Court on a question of law, but is final and conclusive as to any question of fact or discretion. There is also a right of appeal to the Court of Appeal against any decision of the Supreme Court on any case stated to it by the Board or decided by it on appeal.

Recommendations

61. A minority of the committee considers that the jurisdiction now vested in the Board should be returned to the Magistrates' Courts, where it had been before 1960. The majority disagreed, considering that the Board has a wider jurisdiction than Magistrates then had, particularly in relation to discretionary decisions of the Commissioner, and it was desirable that these cases should be heard by one body. The alternative that the Board's jurisdiction be absorbed by the Administrative Division was consid-

ered but deemed impracticable; many cases are of comparatively minor importance and others concern relatively small amounts and do not necessarily involve questions of principle though they may take up considerable time in hearing.

62. The majority therefore favour the retention of the Board. The recommendations in paragraph 42 of our first report as to the qualifications for membership apply.

### Appeals

63. At present there is a right of appeal on a point of law only to the Supreme Court and the question is whether there should also be a right of appeal on fact or discretion. In principle there should be a full right of appeal. In terms of section 32 of the Land and Income Tax Act 1954 a taxpayer may have his objection to assessment heard by the Supreme Court in the first instance. Where the objection relates to a question of law only, the objector has a right to apply to the Supreme Court. Where the objection relates to a question of fact (whether or not it also relates to a question of law) the objector and the Commissioner may agree to the objection being heard by the Supreme Court or, failing agreement, the Supreme Court may give leave. The Commissioner of Inland Revenue informed us that it has been the policy of his Department for a number of years to agree to the case going direct to the Supreme Court, if an objector so requests. Thus, in fact, the objector is thereby given an opportunity of putting his case before the Supreme Court. It might be argued therefore that there is no need to amend the Act in this respect.

64. But on balance we think that the principle of a statutory right of appeal to the Supreme Court on fact or discretion as well as on law should be maintained, as we have recommended for other tribunals. Whether this will encourage litigants to treat the proceedings before the Board as a trial run, experience

alone will show: cost will tend to discourage this. To avoid appeals where relatively small amounts are involved, we consider that a right of appeal on fact or discretion should be given to either party but only where the amount of tax in dispute is at least \$500. (The sum was \$400 between 1916 and 1960, when a right of appeal to the Supreme Court existed from decisions of Magistrates' Courts). The recommendation of such a right of appeal is made as a matter of principle and carries no implication that the decisions of the Board are particularly susceptible to error. If the right were seldom used, or if few appeals were successful, confidence in the Board's decisions would even be increased by the existence of the right.

65. The committee considered whether appeals should lie to the Administrative Division or to the Supreme Court in its ordinary jurisdiction. If the Administrative Division is chosen as the appropriate appellate body in respect of appeals from the Board of Review then it should also be the body to which an objector can apply direct under section 32 of the Land and Income Tax Act. Tax appeals do not involve the same sort of questions relating to economic or social policy as may be involved in appeals from some other administrative tribunals. Nevertheless they involve relations between citizen and State and we consider that on balance the Administrative Division is the appropriate appeal authority. We draw attention to section 26 (3) of the Judicature Act 1908, as inserted by section 2 of the Judicature Amendment Act 1968 (see Appendix I) which will permit a tax appeal to be referred to a judge not a member of the Division should it be appropriate to do so, and we refer also to what we have said in paragraph 7.

#### Further appeal

66. At present where an appeal on a point of law against a decision of the Board is heard by the Supreme Court a further appeal lies to the Court of Appeal. This should remain but we do not think

that a further appeal on fact or discretion should also lie to the Court of Appeal: the objector will have had two opportunities of establishing the facts of his case.

67. As mentioned, an objector may go direct to the Supreme Court under section 32 of the Land and Income Tax Act. The question arises whether, if this course is followed, there should be a right of appeal on fact as well as on law to the Court of Appeal. This is the present position and we do not recommend change. A right of appeal is salutary and this applies as much to the Supreme Court as to administrative tribunals.

#### Allied tribunals

68. Sections 146, 146A and 146B of the Land and Income Tax Act 1954 provide for the establishment of ad hoc tribunals to hear appeals against the tax assessment of cooperative dairy companies, cooperative milk marketing companies and cooperative pig marketing companies. The members of the tribunals are the Secretary to the Treasury, an Agriculture Department official and one other person.

69. In our view these tribunals appear unnecessary, in that their function could be undertaken by the Taxation Board of Review. We do not say that the absorption by the Board would have much practical effect. Indeed we were informed that only one reference has been made to these tribunals within the last 12 years. We make the recommendation on the ground that tribunals should not be multiplied beyond necessity.

CINEMATOGRAPH FILMSCinematograph Films Licensing Authority

70. The tribunal, consisting of three members, is established by the Cinematograph Films Act 1961. The chairman, who must be an officer of the Department of Internal Affairs, is appointed by the Governor-General on the recommendation of the Minister of Internal Affairs and holds office during pleasure. The other members who are appointed by the Governor-General on the recommendation of the Minister for a term of three years must have special knowledge of the film industry. One must be a person who has no financial interest in the exhibition or renting of cinematograph films. The Authority is deemed to be a commission under the Commissions of Inquiry Act 1903 and is required to sit in private. The function of the Authority is to regulate the granting, amendment and renewal of exhibitors' and renters' licences and exhibitors' permits, and to revoke, suspend or cancel such licences or permits. It also establishes standards for cinema theatres.

71. There is a general right of appeal to the Cinematograph Films Licensing and Registration Appeal Authority. The decisions of the Authority are reviewable to the usual extent by the Supreme Court by means of the prerogative writs.

Cinematograph Films Licensing and  
Registration Appeal Authority

72. The Appeal Authority who must be a barrister or solicitor of not less than seven years' practice, is appointed by the Governor-General for a term of four years. The function of the Appeal Authority is to sit as a judicial authority for the determination of appeals from -

- (a) the Licensing Authority;
- (b) the Registrar in respect of the registration of any film;
- (c) the Cinematograph Film Projectionists Licensing Board.

The supervisory power of the Supreme Court is excluded except for lack of jurisdiction.

In determining any appeal, the Authority may confirm, modify or reverse the decision appealed against and may also direct the Licensing Authority to reconsider the matter. In making such a direction, the Appeal Authority must advise the Licensing Authority of its reasons. Appeals to the Appeal Authority are heard in public unless in the Authority's opinion the interests of the parties require the sitting to be in private.

#### Recommendations

73. The Secretary for Internal Affairs informed us that a complete review of the Cinematograph Films Act is under way and consequently we considered it unnecessary to discuss details of these tribunals. As long as licensing of cinemas remains appeals should lie to the Administrative Division and the jurisdiction of the Cinematograph Films Licensing and Registration Appeal Authority should be absorbed by the Administrative Division and be exercised by that Division. We were told that the present Appeal Authority wishes to retire in April of this year. The Secretary considers it may be appropriate to amend the legislation this year to transfer the appellate jurisdiction to the Division.

74. The present jurisdiction of the Appeal Authority includes also appeals from the Film Projectionists Licensing Board and from the Registrar of Films (who is not to be confused with the Films Censor). The Secretary for Internal Affairs has indicated that the licensing of projectionists may be abolished, but if it remains any appeal should lie to the Administrative Division as should appeals from the Registrar of Films. The Secretary for Internal Affairs agrees.

#### Further appeal

75. An appeal on law only should lie to the Court of Appeal.



Qualifications of members

76. Section 4 of the Cinematograph Films Act 1961 provides that the chairman of the Licensing Authority must be an officer of the Department of Internal Affairs. We believe that the appointment of a departmental officer as a member of a judicial tribunal is undesirable. A main reason for the creation of such a tribunal is to ensure that decisions are made without government interference. We do not say that the departmental officer will in fact be subject to ministerial or departmental pressure, but it should be made plain that the possibility cannot arise and this can be achieved only by making the membership completely independent. The Secretary for Internal Affairs informed us that the present provision was made at the request of the film industry and is largely for historical reasons. The Secretary favours an amendment to the legislation to provide that the chairman should be an independent person with legal qualifications in line with the recommendations in our first report relating to the qualifications for membership of tribunals (see paragraph 42). We agree with the Secretary's views and agree that the other members should be independent persons not necessarily with legal qualifications. Needless to say, we also recommend that the chairman should be appointed for a minimum term and not merely hold office during pleasure.

Cinematograph Films Censorship Board of Appeal

77. The Cinematograph Films Act 1961 also establishes a censor of cinematograph films. Appeals against the whole or any part of any decision of the censor may be taken to the Cinematograph Films Censorship Board of Appeal. The Board consists of three persons appointed by the Minister of Internal Affairs for a term of not more than three years. No special qualifications for membership are required by statute. One member is appointed by the Minister as chairman. The board has wide powers to uphold, reverse or vary a decision of the censor but it cannot vary the decision in any respect not the subject of the appeal. Appeals may

also be referred back to the censor for reconsideration.

78. The decision of the Board is final. There is no power to state a case on a point of law for the opinion of the Supreme Court, and the Court's supervisory power is confined to questions of lack of jurisdiction.

#### Recommendations

79. Tribunals dealing with censorship stand in a category separate from other tribunals. Because artistic and moral standards tend to change the composition of these tribunals should be comprised of persons able to make a balanced decision in the light of those changes. They are in effect representatives of the community and may be expected to apply current standards. It is inappropriate that there should be a right of appeal on the merits from such a body. Decisions in this field are necessarily subjective. Thus to give a full right of appeal would merely provide for the substitution of one subjective view for another. The Secretary for Internal Affairs agrees that there should be no further right of appeal on the merits from this Board. We have received no suggestion to the contrary. Because decisions must be final we consider that the chairman should have legal qualifications to ensure the observance of proper procedures and compliance with the rules of natural justice. Such a chairman should also be able to balance and reconcile the possibly divergent views of other members. The practice is to appoint as chairman a person with legal qualifications and the Secretary for Internal Affairs has informed us that when the legislation is reviewed he will recommend that this become a statutory requirement.

80. Our recommendation is that there should be no right of appeal from decisions of the Films Censorship Board of Appeal except on questions of law. These appeals should be to the Administrative Division.

INDECENT PUBLICATIONS TRIBUNAL

81. This tribunal is constituted by the Indecent Publications Act 1963. It consists of a chairman who must be a barrister or solicitor of not less than seven years' practice, together with four other members of whom at least two must have special qualifications in the field of literature or education. Members are appointed for a period of five years by the Governor-General on the recommendation of the Minister of Justice.

82. The Tribunal's function is to classify as indecent or not indecent, or as indecent in certain specified circumstances, books and sound recordings submitted to it. In making this classification, the Act lays down criteria to which the Tribunal must have regard. Hearings before the Tribunal and proceedings on appeal from the Tribunal are open to the public, except where the interests of public morality require a private hearing. The decisions of the Tribunal are reviewable to the usual extent by the Supreme Court by way of the prerogative writs. The Tribunal is deemed to be a commission of inquiry under the Commissions of Inquiry Act 1908, and thus may state a case for the opinion of the Supreme Court on a point of law.

83. Books and sound recordings which have been classified by the Tribunal or by the Court on appeal from the Tribunal may be re-submitted after three years, so that the decision may be reconsidered and altered or confirmed.

84. Any party to any proceedings before the Tribunal may appeal to the Supreme Court against the Tribunal's decision. Appeals must be heard by at least three Judges of the Supreme Court. The decision of the Supreme Court on any such appeal is final and conclusive.

Recommendation

85. What we have said about appeals in relation to the Films Censorship Board of Appeal applies with equal force here. The existing right of appeal to the Supreme Court is limited, section 19 (2) of the Indecent Publications Act providing that "the Supreme Court shall hear and determine the appeal as if the decision of the Tribunal had been made in the exercise

of a discretion". Thus the Court cannot conduct the appeal as if it were a hearing de novo. While some of us doubt whether an appeal except on law is justified in this area for the reasons advanced in relation to film censorship, we are not disposed to recommend that an existing right be taken away. Therefore we recommend no change.

#### EARTHQUAKE AND WAR DAMAGE COMMISSION

86. This Commission is constituted under the Earthquake and War Damage Act 1944. It consists of the Minister of Finance, who is the chairman, the Secretary to the Treasury, the State Insurance General Manager and four other members appointed by the Governor-General and holding office during pleasure. No special qualifications are required by statute for the four appointed members of the Commission.

87. Before 1967 the Commission had the power to determine whether damage qualified as disaster damage or extraordinary disaster damage or was landslip damage - matters decisive as to whether any claim lay against the Fund. The Commission's decision in this respect was final. In 1967 an amending regulation took away this power with the result that all questions arising between the Commission and the claimant may now be referred to arbitration under the provision of clause 19 of the conditions of insurance set out in the regulations. The Commission is thus an administrative rather than a judicial body.

#### Recommendation

88. This amendment was clearly desirable since the Commission controlled the insurance Fund and was, in a sense, a judge in its own cause. In the insurance field the method of settling disputes by arbitration has the advantage that a person can be appointed as arbitrator who is specially qualified in relation to the particular case in dispute. We have no evidence that the Commission's membership or procedure is unsatisfactory and we recommend no change.

COPYRIGHT TRIBUNAL

89. This tribunal is set up by the Copyright Act 1962 and its function is to determine disputes in relation to the performing rights in copyright material. The Tribunal consist of three members appointed by the Governor-General in Council for a term of five years. The chairman must be a barrister or solicitor of not less than seven years practice. There is no appeal from the decision of the Tribunal. The Tribunal may however state a case for the opinion of the Court of Appeal on a point of law. There is the common privative clause restricting the intervention of the Supreme Court to questions of jurisdiction.

Recommendation

90. Although members of the Tribunal have been appointed it has not yet had occasion to hold a hearing. Experience of its actual working is required before any proper assessment can be made and in this circumstance we do not recommend any change in the procedure or appeal rights.

MILITARY SERVICEMilitary Service Postponement Committees

91. Under the National Military Service Act 1961, there may be appointed such number of military service postponement committees as the Minister of Labour thinks fit. Each committee consists of three persons appointed by the Minister who hold office during pleasure. One member is appointed by the Minister as chairman. No special qualification for membership is required by statute. The function of the committees is to consider applications for postponement of liability for military service. Decisions of committees are final and conclusive. Each committee is, within the scope of its jurisdiction, deemed to be a commission of inquiry and thus may state a case for the opinion of the Court on a point of law. The decisions of the committees are subject to the Court's supervisory jurisdiction.

Recommendations

92. We have no evidence that the committees in the exercise of their statutory function are working unsatisfactorily and we have no recommendation to make in that respect except that, on principle, a minimum term of office for members should be prescribed.

93. However, we had our attention drawn to another part of their function. There is no statutory procedure by which a serviceman or his employer can apply to the committee for exemption from part-time military service, in particular from attendance at an annual camp. Since there may be cases where the obligation to attend a camp involves hardship either for the serviceman or his employer a procedure has been worked out by the Army and the Labour Department by which the serviceman can apply for exemption to his Commanding Officer, who refers it in certain cases to the local postponement committee. Usually the application is dealt with initially by the regular force adjutant on the Commanding Officer's behalf. It is a standing Army Instruction that in cases of doubt or where the application is based on employment or hardship grounds it is to be referred to the appropriate postponement committee for a recommendation, provided that it is made at least 14 days before service. Normally the recommendation of the postponement committee is accepted and cannot be rejected without reference to Army Headquarters.

94. We are particularly concerned to ensure that a serviceman's application is not declined by a junior officer and we suggested to the Army that the decision be made personally by an officer holding at least the rank of Lieutenant-Colonel. The Deputy Secretary of Defence informed us that geographical considerations make this impracticable but that the Army would issue an instruction that the decision must be made personally by the soldier's immediate commanding officer (not below the rank of Major). The Army would also ensure that the serviceman was told that he may have the application dealt with by a postponement committee if made more than 14 days before commencement of the service.

This appears a satisfactory solution and in view

of the assurance we have received we need not now make any further recommendations.

#### Conscientious Objection Committee

95. This Committee is constituted under the National Military Service Act 1961 and consists of a chairman and two other members appointed by the Minister of Labour to hold office during pleasure. No special qualification is required by statute. The function of the Committee is to consider and determine applications by persons subject to registration for military service who claim that they conscientiously object to serving with the armed forces. Where a person is registered as a conscientious objector, the Committee has power to order financial adjustments so that an objector is not better off financially than if he was serving in the Army.

96. The decisions of the Objection Committee are final and may not be challenged except on the ground of lack of jurisdiction. The Committee may state a case for the opinion of the Supreme Court on a point of law.

#### Recommendation

97. We have not had our attention drawn to any criticism of this committee or of its procedure. The only recommendation we make is that the members should not hold office during pleasure, but should be appointed for a fixed term.

#### SHOPS AND OFFICES EXEMPTIONS TRIBUNAL

98. This tribunal is established under the Shops and Offices Amendment Act 1959. It consists of one person appointed by the Governor-General on the recommendation of the Minister of Labour. The person appointed must be qualified to be appointed as a stipendiary magistrate, or must have held office as a stipendiary magistrate. The Tribunal's function is to hear and determine applications for total or partial exemptions from the provisions of the Shops and Offices Act 1955 as to the closing of premises. In hearing applications, the Tribunal has the powers of a magistrate, sitting in a Magistrate's Court.

99. There is no appeal from the Tribunal's decision. The Tribunal does, however, have power to revoke or vary any previous order made by it. The decisions of the Tribunal are reviewable to the usual limited extent by the Supreme Court by means of the prerogative writs.

#### Recommendation

100. We had no evidence before us suggesting that the Tribunal was functioning other than satisfactorily. The Secretary of Labour, whom we consulted, did not consider there was need for a right of appeal either to the Administrative Division or other appellate body. With this we agree and we recommend no change.

#### PHARMACY AUTHORITY

101. Under the Pharmacy Amendment Act 1954, the Minister of Health may from time to time appoint a suitable person to be the Pharmacy Authority, for the purposes of that Act. The person appointed must be a barrister or solicitor of not less than seven years' practice.

102. The function of the Authority is to consider applications for its consent to the establishment of a pharmacy business by a company, or an unqualified person or to the multiple ownership of pharmacies. The Authority may state a case for the opinion of the Supreme Court on a point of law. The Court's supervisory power is excluded except in respect of lack of jurisdiction, but there is a general right of appeal to the Supreme Court from decisions of the Authority.

#### Recommendations

103. All those consulted on this tribunal agree that appeals from its decisions should lie to the Administrative Division of the Supreme Court and not to the Supreme Court in its ordinary jurisdiction and we so recommend. The field is similar to transport licensing and there would clearly be advantage in appeals being heard by a body with the qualifications of the Administrative Division. The Director-General of Health agrees. He expects to promote a consolidation of the legislation this year and the necessary change could be made then.



Further Appeal

104. At present there is a right of appeal on fact or discretion as well as on law to the Court of Appeal and thence to the Privy Council. There is something to be said in favour of limiting the appeal to questions of law, for much the same reasons as prompted us to recommend that decisions of the Administrative Division should be final on fact or discretion in the transport licensing and allied fields. The Director-General of Health does not disagree with this approach. However, we are reluctant to limit to questions of law only the right of appeal beyond the Administrative Division because to do so would take away a right which already exists. Nor have we received any suggestion that it has been abused or has worked unsatisfactorily. Therefore we recommend no change although we are bound to say that if the question had arisen de novo we might not have recommended an appeal on fact or discretion from the administrative Division.

105. For the same reason we might not have recommended a further appeal on fact or discretion to the Privy Council, but again we are reluctant to recommend that an existing right be taken away.

Procedure

106. We have no complaint about the procedure of the Pharmacy Authority and those consulted state that in practice the procedure is quite satisfactory. In common with most other tribunals the Authority admits written evidence of witnesses in lieu of examination-in-chief. This procedure is useful since there is usually no question of the credibility of witnesses, and the presentation of evidence in written form saves time and enables a clearer presentation.

SUMMARY

107.

(1) In this our second report we first discuss briefly the implementation of the principal recommendation in our first report, which was for the creation of an Administrative Division

of the Supreme Court to hear appeals from certain administrative tribunals. (Paragraphs 5 - 9).

(2) We then draw attention to the Land Valuation Proceedings Amendment Act, the Sale of Liquor Amendment Act, the Broadcasting Authority Act and the War Pensions Amendment Act, passed last year and all providing for appeals to the Administrative Division. (Paragraphs 10 - 14). We indicate our programme since the first report and discuss briefly appeals to the Privy Council and our attitude to questions of policy (Paragraphs 17 - 23).

(3) Since our first report we have continued our study of selected tribunals and our recommendations in respect of them make up the main part of this report. In the case of each tribunal discussed we first set out the present constitution, functions and appeal provisions and we then make recommendations for any improvement.

(4) We recommend that appeals from the following tribunals should lie to the Administrative Division:

- The Motor Spirits Licensing Authority  
(Paragraph 29)
- The Air Services Licensing Authority  
(Paragraph 41)
- The Licensing Control Commission  
(Paragraph 52)
- The Taxation Board of Review  
(Paragraph 65)
- The Cinematograph Films Licensing Authority  
(Paragraph 73)
- The Pharmacy Authority (Paragraph 103).

These recommendations will involve the abolition of the Motor Spirits Licensing Appeal Authority, the Air Services Licensing Appeal Authority and the Cinematograph Films Licensing and Registration Appeal Authority. Our recommendation concerning appeals from the Licensing Control Commission (and in certain cases appeals from Licensing Committees), the Pharmacy Authority and the Taxation Board of Review involve the transfer of appellate jurisdiction in these fields from the Supreme Court in its ordinary jurisdiction. We recommend that the appeal from the Taxation Board of Review be widened to include fact and discretion as well as law.

(5) Our recommendations regarding appeals from the Licensing Control Commission and Licensing Committees were contained in an informal report to the Minister of Justice last year. This report also recommended that the minimum

value in respect to which an appeal should lie from an order requiring the rebuilding or repair of licensed premises should be reduced from £10,000 to £2,000. These recommendations were accepted and the legislation has now been passed.

(6) In accordance with our general approach we consider there should be an opportunity of appeal from the Administrative Division on questions of law to the Court of Appeal in relation to the abovenamed tribunals. Where an objector applies direct to the Supreme Court under section 32 of the Land and Income Tax Act 1954 there should continue to be an appeal also on fact and discretion to the Court of Appeal (Paragraph 67).

(7) We also make recommendations for the widening of the power of appellate bodies. We recommend that an appellate body should have power to refer back for reconsideration part or whole of the decision appealed against (Paragraph 34). Although the matter was studied in relation to appeals from the Motor Spirits Licensing Authority the recommendation has general application. We further recommend that an appellate body should have express power to appoint counsel to assist it if it appears that otherwise only one side of the case would be argued before it (Paragraph 33). The Administrative Division should have these powers in relation to all administrative appeals.

(8) We draw attention to possible areas in respect to which appeal rights from decisions of the Licensing Control Commission should be broadened (Paragraph 54) and to certain cases where we consider appeals from licensing committees should go direct to the Administrative Division instead of to the Commission (Paragraph 56). We also recommend that the enforcement of standards should be given solely to the Commission (Paragraph 58). We suggest alternative ways of dealing with applications for renewal and transfer of restaurant licences (Paragraph 59).

(9) In the taxation field we recommend that the jurisdiction of three ad hoc tribunals dealing with income tax appeals by cooperative dairy companies, milk marketing companies and pig marketing companies should be absorbed by the Taxation Board of Review (Paragraph 69).

(10) We also studied the Cinematograph Films Censorship Board of Appeal, the Indecent Publications Tribunal, the Earthquake and War Damage Commission, the Copyright Tribunal, the Military Service Postponement Committees, the Conscientious Objection Committee, and the Shops and Offices Exemptions Tribunal. We

make no recommendation for change in the appeal provisions relating to those bodies, and indeed in no other respect, except that we make a relatively minor suggestion about the extra statutory function of the Military Service Postponement Committees and a recommendation that the term of office of members of these committees and of the Conscientious Objection Committee should be fixed. This latter recommendation also applies to the Motor Spirits Licensing Authority (Paragraph 36).

108.

FUTURE PROGRAMME

We intend to continue our study of administrative tribunals and their procedures. Hitherto we have concentrated more on the composition and jurisdiction of tribunals and on the appeal rights than on procedure before the tribunals. But we regard the question of procedure as of real importance, and in view of the progress we have made on the other matters we expect to be able to devote much more attention to it in the future.

Upon completion of this task we shall turn our attention to the question of the judicial control of administrative acts, a topic included in the programme approved by the Law Revision Commission. This will include a study of the adequacy of the prerogative writ procedures by which the Supreme Court exercises supervisory jurisdiction over administrative acts (including decisions of administrative tribunals).

(Signed) J.L. Robson  
 A.C. Brassington  
 R.B. Cooke  
 E.L. Greensmith  
 R.G. McElroy  
 J.F. Northey  
 G.S. Orr  
 D.A.S. Ward

APPENDIX I

JUDICATURE AMENDMENT ACT 1968

An Act to amend the Judicature Act 1908

31 October 1968

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

1. Short Title - This Act may be cited as the Judicature Amendment Act 1968, and shall be read together with and deemed part of the Judicature Act 1908 (hereinafter referred to as the principal Act).

2. New heading and sections inserted in principal Act - The principal Act is hereby amended by repealing sections 25 and 26, and substituting the following heading and sections:

"ADMINISTRATIVE DIVISION OF THE COURT

"25. Administrative Division of the Supreme Court -

(1) There shall be in the Supreme Court an Administrative Division.

"(2) The Division shall consist of not more than four Judges of the Supreme Court, being Judges assigned to the Division from time to time by the Chief Justice.

"(3) Nothing in this section shall prevent any Judge of the Administrative Division from exercising any of the powers of a Judge of the Supreme Court, whether or not in his capacity as a Judge of the Division.

"26. Jurisdiction of Administrative Division - (1) Notwithstanding anything in section 19 of this Act, the Administrative Division shall hear and determine -

"(a) Such appeals as are, under or by virtue of any enactment for the time being in force, to be heard and determined by the Division:

(b) Such proceedings, other than appeals, as are, under

or by virtue of any enactment for the time being in force, to be heard and determined by the Division:

"(c) Such applications or classes of applications to the Supreme Court for writs of certiorari, prohibition, or mandamus, and such applications or classes of applications to the Court for declaratory judgments or orders or injunctions, as may from time to time be referred to the Division by the Chief Justice.

"(2) Any one or more of the Judges of the Division may exercise all the powers of the Division, except such powers as may by any enactment be required to be exercised by any specified number of Judges of the Division.

"(3) Notwithstanding anything in paragraphs (a) and (b) of subsection (1) of this section, the Chief Justice may in his discretion direct that any particular appeal or proceeding, not being one that is required by any enactment to be heard by a specified number of Judges of the Division, be heard and determined by a Judge who is not a member of the Administrative Division if in the Chief Justice's opinion, having regard to the special nature of the subject-matter of the appeal or proceeding and the circumstances of the case, it is one that would more appropriately be dealt with by that Judge.

"(4) Except as otherwise expressly provided in any enactment, nothing in sections 64 to 66 of this Act shall apply in respect of any proceedings required by paragraphs (a) and (b) of subsection (1) of this section to be heard by the Administrative Division, whether or not they are heard by the Division.

"26A. Lay members or assessors in certain cases - Sections 25 and 26 of this Act shall be read subject to the provisions of any enactment that provides for the appointment of persons other than Judges to sit as members of or assessors with the Administrative Division in respect of any specified proceedings or class of proceedings.

"26B. Rules relating to Administrative Division - (1) Rules may from time to time be made, in the manner prescribed by this Act, -

"(a) Regulating the practice and procedure of the Administrative Division:

(b) Prescribing the form and manner in which appeals, applications, and other proceedings shall be made.

to or brought before the Division:

(c) Fixing scales of costs in respect of matters within the jurisdiction of the Division.

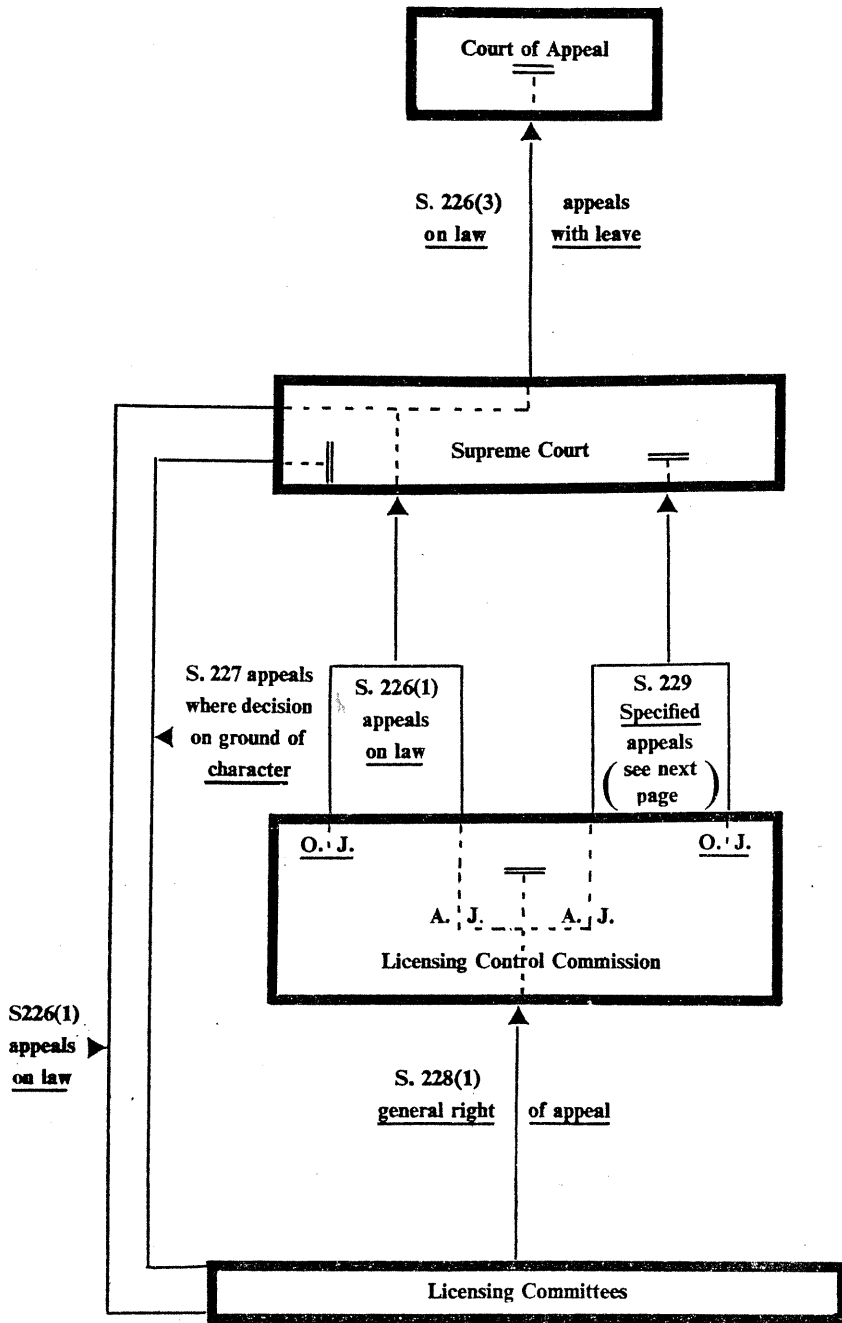
(2) Any such rules may modify the provisions of any enactment relating to any matters to which subsection (1) of this section applies; and so far as any such enactment is inconsistent with or repugnant to the Rules it shall be read subject to the rules."

Appendix II

O. J. = Original Jurisdiction

A. J. = Appellate Jurisdiction

### Appeals Under Sale of Liquor Act 1962





SECTION 229 - SPECIFIED APPEALS

[Note: All references are to sections of the  
Sale of Liquor Act 1962]

A. Appeals arising out of ORIGINAL jurisdiction  
of Commission

Section 229 -

- ss (1) (a) Against an order, before granting a hotel-to-tavern or tavern-to-hotel conversion under s.101, for improvements costing \$2,000 or more; (or which would cause the total of similar expenditure during the last three years to amount to \$2,000 or more).
- ss (1) (b) Against an improvement order, on review of an existing premises licence under s.210, if costs involved are \$2,000 or more; or against refusal to extend time limit for completion of such order.
- ss (2) (a) Against cancellation or suspension of premises licence for failure to comply with improvement order under s.210.
- ss (3) (a) Against cancellation or non-authorisation of a premises licence because of failure to reveal true owner of premises, as required by s.88.
- ss (3) (b) Against refusal to extend time fixed under s.94 for completion of requirements preceding granting of new premises licence, or against revocation of notification of such grant for failure to complete requirements in time.
- ss (4) (a) Against refusal to direct, under s.83 (2), that a trust poll be taken.
- ss (4) (b) Against refusal to grant a special hotel premises licence in place of hotel premises licence under s.96.
- ss (4) (c) Against refusal to grant a hotel-to-tavern or tavern-to-hotel conversion under s.101.
- ss (5) Against the grant under s.91 of a premises licence to another person, the appeal being available to any unsuccessful applicant.

- ss (6)           Against the grant of a tavern premises licence, the appeal being available to holder of a hotel premises licence who opposed the grant under s.75(2).
- ss (7)           Against revocation or suspension of a club charter under s.172.

B. Appeals arising out of APPELLATE jurisdiction of Commission

- ss (1) (c)       Against confirmation or modification by Commission of a Committee order under s.211 relating to the improvement of facilities costing £2,000 more (or £2,000 or more over previous three years).
- ss (2) (b)       Against confirmation or modification by Commission of cancellation or suspension by a Committee of a premises licence for failure to make improvements ordered under s.211.
- ss (2) (c)       Against cancellation or suspension by Commission of a licence, other than a premises licence, following an appeal against a refusal by a Committee to cancel the licence on a ground listed in s.213 relating to character or conduct.