ADMINISTRATIVE TRIBUNALS

CONSTITUTION, PROCEDURE AND APPEALS

fourth report of
the Public and
Administrative Law
Reform Committee

PRESENTED TO THE MINISTER OF JUSTICE
IN JANUARY 1971

FOURTH REPORT OF THE PUBLIC AND ADMINISTRATIVE LAW REFORM COMMITTEE

ANALYSIS

FOURTH REPORT OF THE PUBLIC AND ADMINISTRATIVE LAW REFORM COMMITTEE

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., then Secretary for Justice. Dr Robson has continued as chairman since his retirement from the Department of Justice in March 1970 and his appointment as Visiting Fellow and Director of Studies in Criminology at the Victoria University of Wellington. The other members of the Committee are Mr A.C. Brassington, barrister and solicitor of Christchurch; Mr R.B. Cooke, one of Her Majesty's Counsel; Mr E.L. Greensmith, C.M.G., former Secretary to the Treasury; Dr R.G. McElroy, barrister and solicitor and former Mayor of Auckland; Professor J.F. Northey, Dean of the Faculty of Law at the University of Auckland; Mr G.S. Orr, formerly a Crown Counsel and now a State Services Commissioner; and Mr D.A.S. Ward, C.M.G., Counsel to the Law Drafting Office. Mr R.S. Clark of the Law Faculty, Victoria University of Wellington, became secretary of the Committee this year. Mr R.G. Montagu was appointed recently as the Justice Department's liaison officer with the Committee.

References to the Committee

2. The matters which were referred to us 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. As noted in our First Report, we considered the last of these matters to be less urgently in need of review than the others. Accordingly, our first three

reports were concerned primarily with individual administrative tribunals and rights of appeal from them. In this report, after setting out (in paragraphs 3 to 8) a resumé of our first three reports, we deal mainly with judicial review of administrative action.

Contents of First Report

3. Our First Report was presented to the Minister of Justice in January 1968. The principal recommendation in this (Mr Orr dissenting) was for the creation 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. Although we recommended the creation of an Administrative Division, we did not propose that it be the appellate body for all tribunals. We have studied (and are studying) the functions, powers and procedures of each tribunal separately and have made such recommendations as to appeals and procedure as are appropriate to the particular circumstances of that tribunal.

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 be vested in the Administrative Division. We further recommended that an appeal to the Division should lie, with leave, 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 nor that there ought to be a right of appeal to the Division.

Contents of Second Report

5. Our Second Report was presented to the Minister of Justice in January 1969. In that report we continued our study of selected individual tribunals and in particular the question of appeals from them. In each case, we gave first an outline of the present constitution, procedure and appeal provisions of the tribunals studied, and then stated our recommendations in respect of them. The tribunals examined in our Second Report were the Motor Spirits Licensing Authority and the Motor Spirits Licensing Appeal Authority; the Air Services Licensing Authority and the Air Services Licensing Appeal Authority; the Licensing Control Commission and the Licensing Committees; the Taxation Board of Review; the special tribunals set up to hear appeals against income-tax assessment of co-operative dairy companies, milk marketing companies and pig marketing companies; the Cinematograph Films Licensing Authority, the Cinematograph Films Licensing and Registration Appeal Authority and 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; the Shops and Offices Exemption Tribunal; and the Pharmacy Authority.

6. We recommended that appeals from the Motor Spirits Licensing Authority, the Air Services Licensing Authority, the Licensing Control Commission, the Taxation Board of Review, the Cinematograph Films Licensing Authority and the Pharmacy Authority should lie to the Administrative Division. In the case of each of these tribunals we recommended that there should be an opportunity for appeal from the Administrative Division to the Court of Appeal on questions of law. As far as applications direct to the Supreme Court under s.32 of the Land and Income Tax Act 1954 were concerned, we considered that there should continue to be an appeal to the Court of Appeal on fact

or discretion also. In addition, we recommended that the power of appellate bodies be widened to enable them to refer back for reconsideration part or the whole of a decision appealed against and to appoint counsel to assist the tribunal if it appeared that otherwise only one side of the case would be argued or that the public interest would be involved.

7. We recommended no change in appeal procedure from the Cinematograph Films Censorship Board except on questions of law, in respect of which we recommended that appeals lie to the Administrative Division. We also recommended no change in appeal procedure in respect of 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. With one small exception, in the case of the Military Service Postponement Committees, we also recommended no change in other aspects of these tribunals.

Contents of Third Report

8. Our Third Report was presented to the Minister of Justice in January 1970. We continued our analysis of selected tribunals with particular reference to the question of rights of appeal. We recommended that appeals from the Animal Remedies Board lie to the Administrative Division of the Supreme Court and noted that this recommendation had been adopted. We reaffirmed the recommendation in our Second Report that appeals from the Pharmacy Authority should go to the Administrative Division. We made no recommendations at that time with regard to the Co-operative Dairy Companies Tribunal, the Timber Preservation Authority and the War Pensions Board. We recommended that appeals from the Land Settlement Board lie to the Administrative Division but made no other recommendations in respect of the Land

Settlement Board and the Land Settlement Committees. However we expressed a wish to be consulted when the Land Act is next revised. We also expressed our concern that no steps had been taken to implement our recommendation that appeals from the Town and Country Planning Appeal Boards should lie, with leave, to the Administrative Division. Closely connected with the town and country planning legislation is the 1969 legislation dealing with urban renewal. Although we did not criticise the new legislation for having provided for appeals only to the Town and Country Planning Appeal Board we accepted this as a temporary measure. We regarded an appeal to the Administrative Division as desirable and recommended that provision be made for this at an early date.

Adoption of Committee's Proposals

9. As we noted in our Third Report, most of our proposals have been adopted. Section 40 of the Pharmacy Act 1970 gave effect to our recommendation that there should be a right of appeal from the Pharmacy Authority to the Administrative Division of the Supreme Court. The proposed abolition of the Trade Practices Appeal Authority which we refer to in paragraphs 29-32 of this Report will be another step in fulfilment of our recommendations. The Town and Country Planning Amendment Bill introduced but not passed during the last session of Parliament went part of the way to meet our recommendations. We refer to the whole matter of town and country planning appeals in paragraphs 34-38. As far as we are aware, however, no legislation is pending to put into effect the recommendations of the Committee in respect of the following:

Air Services Licensing Appeal Authority
Motor Spirits Licensing Appeal Authority
Taxation Board of Review
Transport Licensing Appeal Authority.

We have asked to be consulted when the Land Act is next revised.

1970 Programme

10. A substantial portion of our programme this year has been concerned with the question of judicial review of administrative action. As we mention later in this Report, we are currently engaged in formulating proposals to establish a new procedure for judicial review. We have also discussed further the need for legislation to implement our earlier proposals on town and country planning and urban renewal appeals and have examined draft legislation on trade practices and mining in so far as they involved matters within the scope of our terms of reference.

AN ADDITIONAL REMEDY IN ADMINISTRATIVE LAW

11. Much of the Committee's time this year has been devoted to the question of what can be done to improve judicial procedures for preventing what Lord Denning in a Hamlyn Lecture(1) called "the abuse of power". We have been helped in our efforts by the extremely useful discussion of this topic in Volume I of the Report of the Ontario Royal Commission into Civil Rights, commonly known as the McRuer Report, and by an Ontario Judicial Review Procedure Bill drafted on the basis of that report. One of our members(2) has recently summarised the grounds upon which the Courts will review administrative action:

(1) Denning, Freedom Under the Law, (1949) 126.

(2) Northey "An Additional Remedy in Administrative Law" [1970] N.Z.L.J. 202. Much of what follows is based on Professor Northey's article which is continued in [1970] N.Z.L.J. 228 and on Orr, Administrative Justice in New Zealand (1964) ch.15.

First, that the action or decision is ultra vires.

Second, that an error of law has been disclosed on the face of the record of the tribunal making the determination.

Third, that there has been a breach of the principles of natural justice. Because this ground has a more limited application and because there remains some doubt as to whether a breach of natural justice results in a void decision (which it would, if it were treated as an example of ultra vires), this ground is treated as separate and distinct from the first, although it is believed to be an application of the ultra vires doctrine. (3)

12. Although some of our members favour extension of these grounds (in particular that there should be a review on the ground of lack of substantial evidence)(4) we have decided at this stage to concentrate upon improvement of the procedure to obtain review, leaving the substantive law untouched. In the remarks that follow we discuss the present means by which review is obtained and indicate the general lines of approach which we are taking towards the introduction of a new remedy.

(3) This is the opinion of at least two members of the House of Lords, Lord Reid and Lord Pearce, in what is undoubtedly the most significant decision in administrative law for many years: Anisminic Ltd. v. Foreign Compensation Commission [1969] 2 A.C. 147; [1969] 1 All E.R. 208.

(4) Cf. R. v. Nat Bell Liquors Ltd. [1922] 2 A.C. 128 and the McRuer Report Volume I at 261-263 and 310-311.

The means by which review is presently obtained

13. A decision which is invalidated or affected by one of the three grounds stated above may be attacked directly or collaterally. The issue of invalidity may also be raised in ordinary proceedings[5] brought either by or against the person adversely affected; if his plea is upheld he will succeed. For instance, if workmen have moved on to the plaintiff's land on the authority of a compulsory acquisition order which he claims is invalid, he may successfully sue for trespass or defend an action arising from his resistance to the entry of the workmen on the basis that there is no authority for their entry. Because there are certain obvious risks in adopting this course of action, it is more usual to challenge the order or decision immediately by an application for one of the five remedies about to be mentioned. Each of these remedies will be discussed in sufficient detail for the scope of the remedy and its limitations to be appreciated. Because they have proved to be a major obstacle to litigants, comment will also be made about the procedural rules governing the remedies.

14. Declaration - Declaration is available in terms of the Declaratory Judgments Act 1908, ss. 2 and 3, which differ slightly from the approximately equivalent English rules. Though it is stated to be discretionary,[6] over the past forty years that discretion has been exercised liberally.[7] In England Lord Denning has made some of his characteristically bold statements concerning the breadth of the remedy.[8] Few of his

(5) The issue could also be raised as a defence in criminal proceedings.

(6) s.10

(7) e.g. Simpson v. Attorney-General [1955] N.Z.L.R. 271.

(8) e.g. Pyx Granite Co. v. Ministry of Housing and Local Government [1958] 1 Q.B. 554, 571; [1958] 1 All E.R. 625, 632.

remarks received endorsement by higher authority, but, on the other hand, they have not been dissented from. It was therefore somewhat surprising to find Diplock L.J. proceeding against the flow of authority when he introduced a note of warning in his judgment in the Court of Appeal in the Anisminic case. His remarks may have been obiter, but they were carefully considered. The effect of his observations is to introduce an unexpected restriction on the availability of declaration. Diplock L.J. suggested that, before a declaration would be granted, it must be established that the defendant has the power of enforcement of the decision or order and that an action in tort for interference with the plaintiff's rights would lie against the defendant. If the power of enforcement lies in another body or if no action in tort would lie, declaration will not be granted. A somewhat similar decision was given by the Australian High Court in Toowoomba Foundry Pty. Ltd. v. Commonwealth (9) where a declaration was refused because the wrong defendant was named.

15. Though the limitation introduced by Diplock L.J. may seem to be not unreasonable, in that a plaintiff should be expected to take care in naming the other party to his proceedings it would be found, by an application of the tests suggested by Diplock L.J., that in some cases a declaration cannot be sought at all because there is no defendant who can be named. This would have been the case in Anisminic itself because no order in favour of the plaintiff had been made by the Commission. Even if it had been made, payment could not have been enforced either against the Commission or the Crown. It is doubtful if any other remedy could have been secured; certiorari, as will be seen, is hedged about with even more stringent requirements. While the statement of Diplock L.J. may not be accepted by New Zealand judges as part of our law, his dictum has introduced a new note of uncertainty into this branch of the

(9) (1945) 71 C.L.R. 545; [1945] A.L.R. 282.

law. The decision of the House of Lords, which restored the judgment of Brown J. in Anisminic thereby granting a declaration to the plaintiff, may be treated as a rejection of the opinion of Diplock L.J.

16. Certiorari - Certiorari is also a discretionary remedy which may be granted to quash a determination(10) made by a body with legal(11) authority to affect rights(12) and having a duty to act judicially. Though there may be doubts whether it is necessary in the United Kingdom to prove that the tribunal has the power to affect rights,(13) the New Zealand authorities are quite clear on this point.(14) In any event the other conditions must be satisfied before the plaintiff can argue that the discretion should be exercised in his favour. The need to prove a legislative intention that the tribunal was expected to act judicially is a rock on which a number of litigants have foundered.

(10) As distinct from a recommendation; R. v. St Lawrence's Hospital Visitors, ex parte Pritchard [1953] 1 W.L.R. 1158; [1953] 2 All E.R. 766.

(11) Including authority given by prerogative, but not as the result of agreement; R. v. Criminal Injuries Compensation Board, ex parte Lain [1967] 2 Q.B. 864; [1967] 2 All E.R. 770.

(12) The New Zealand Courts have given an extended meaning to this word.

(13) See the Lain case, supra.

(14) e.g. New Zealand Licensed Victuallers Association v. Price Tribunal [1957] N.Z.L.R. 167.

17. Prohibition - The rules governing this remedy are the same as those already stated for certiorari, with this difference: certiorari lies to quash a determination taken without jurisdiction while prohibition lies to restrain a threatened excess of jurisdiction.(15)

18. Injunction - Injunction serves essentially the same purpose as prohibition, but it is not subject to the limitation that a duty to act judicially must be established.

19. The judgment of the Privy Council in Durayappah v. Fernando(16) where the appellant mayor was denied relief because the proceedings should have been brought by or on behalf of the Jaffna Municipal Council, imposes on a plaintiff seeking any of the remedies of declaration, injunction or certiorari (and presumably prohibition) a severe locus standi requirement.

20. Mandamus - Mandamus lies to compel the performance of a public, that is a statutory or comparable, duty owed to the plaintiff. It will compel the tribunal to exercise its jurisdiction, but it will not direct the tribunal to act in a particular way or to exercise a discretion in favour of the plaintiff. It is available irrespective of the function being exercised by the tribunal.

21. Procedure - The source of authority to make a declaratory judgment or declaratory order is the Declaratory Judgments Act 1908, ss. 2 and 3. While s.3 provides for application to be made by originating summons, s.2 speaks of "action or proceeding" thereby recognising that it may be commenced by any of the four methods by which civil proceedings may originate. Sections 4 and 5,

(15) "Jurisdiction" remains somewhat obscure, despite the opinions expressed in the Anisminic case.

(16) [1967] 2 A.C. 337; [1967] 2 All E.R. 152.

as to the effect of a declaration and service, are confined to applications made in terms of s.3. This limitation is unfortunate because the combined effect of ss. 4 and 5 is to reduce the number of cases where, on the ground that the wrong defendant had been named, the proceedings could fail.

22. The extraordinary remedies are governed by Rules 461-475A of the Code of Civil Procedure, but the Courts have often observed that the application and construction of those rules present difficulties. It is certainly true that many practitioners are less confident when they are obliged to turn to this part of the Code. Some of the problems will be mentioned.

(a) The writ of mandamus which may be available under Rule 461 is equivalent to the prerogative writ for which application must be made by motion. It cannot be obtained under Rule 473 as an alternative claim in an ordinary action, where the writ is the equivalent of statutory mandamus. The difference between the writs and the procedure to be followed was discussed in Armstrong v. Wairarapa South County[17] and Yewen v. Terrill,[18] but in Kaikoura County v. Boyd[19] a motion made under Rule 461 was treated in the circumstances of that case as having been commenced by writ under Rule 473.

(b) If any relief other than an injunction and costs is sought, a writ of summons must be issued in terms of Rule 473. Rule 466, under which the filing of a statement of claim without a writ of summons commences proceedings under Rules 461-465, may not be used in such a case; Yewen v. Terrill, supra.

(17) (1897) 16 N.Z.L.R. 144.
(18) [1950] G.L.R. 517.
(19) [1949] N.Z.L.R. 233, 262.

(c) No provision is made in Rule 469 as to the time within which a statement of defence must be filed.

(d) A declaration cannot be sought under Rule 466; Armstrong v. Kane.(20)

(e) The power which the Court has under Rule 467 to make an order in terms of the prayer of the statement of claim or such other order as the Court may consider the applicant entitled to is restricted to proceedings commenced by statement of claim according to the decisions cited in subparagraphs (b) and (d) above.

(f) The power under Rule 467 to make such order as the Court considers the applicant entitled to does not include a declaration (see (d) supra). Quaere could damages be awarded except as an alternative to an injunction under Rule 462? A narrow interpretation is to be inferred from the wording of Rule 466B which also excludes the statutory mandamus available under Rule 473.

(g) The wording of Rule 473: "Any party to an action commenced in the ordinary way may, in addition to any other relief, claim the issue of a writ of mandamus or a writ of injunction; and where such claim is made, the party making such claim may ... move for an order for such writ as he has claimed, and the like proceedings may be had upon such motion as upon any motion under Rule 467 ..." is obscure. Does it mean that any of the forms of relief named in Rules 466 and 466A, as well as such order as the Court considers the applicant entitled to, are available or is this merely a procedural concession? Certainly, the prerogative writ of mandamus cannot be granted; (Armstrong v. Wairarapa South County (supra)) and it would seem that a declaration cannot be issued.

(20) [1964] N.Z.L.R. 369.

23. Quite apart from these procedural problems, it is as well to recall that both prohibition and certiorari call for an examination and definition of "jurisdictional errors" where there is a privative clause, and there is much confusion, despite the clarification to be gained from the Anisminic decision, as to the meaning of jurisdiction.

24. Much of the uncertainty which surrounds proceedings for one of the prerogative writs may be avoided by use of the declaration. But proceedings under the Declaratory Judgments Act 1908 are not without their own uncertainties and there is authority for the proposition that a declaration will not be granted in respect of a decision as to entitlement to monetary benefits if what is alleged is a non-jurisdictional error of law.(21)

25. It will be apparent from the foregoing discussion that litigants face a number of difficulties especially in the area of procedure. There are, of course, wide differences in the conditions and restrictions which govern the various remedies. In some circumstances the litigant has difficulty in determining which remedy he should seek and his difficulty is no less when it is realised that the law on some of the relevant issues is far from being settled. In our view a citizen is entitled to a system that is less complex and less uncertain - it is wrong that so much can depend upon the particular remedy sought by a litigant. We consider that the ascendancy exerted by procedure today can readily be corrected by a simple addition to the law.

(21) Punton v. Ministry of Pensions and National Insurance (No. 2) [1964] 1 W.L.R. 226; [1964] 1 All E.R. 448.

An additional remedy

26. We therefore propose the introduction of an additional remedy which would be available to achieve all that might now be done by the existing remedies. It would stand alongside and not supersede the existing remedies although we envisage that the existing remedies would in time simply cease to be used. The advantages of such a step are these:

(a) The distinction between jurisdictional and other errors of law would cease to be important, particularly if privative clauses were simultaneously abolished or controlled. Once it is conceded, as the creation of the Administrative Division implies, that the inferior tribunal does not have a monopoly of expert knowledge based on experience, there is little justification for the retention of privative clauses or for their enactment. Where a department claims that there is a need for such a provision, it should be expected to produce convincing evidence for it.

(b) Much of the significance attaching to the function being exercised would disappear. Of course, if the applicant complained that the determination was invalid because there had been a breach of the principles of natural justice, it would remain necessary for the plaintiff to establish that those principles were intended to be observed by the inferior tribunal.

(c) The procedural difficulties which have been outlined would no longer be a barrier to a meritorious claim.

(d) If the Court were empowered to make such order as it thought appropriate, a plaintiff would not fail, as he might at present, on the ground that he had sought the wrong remedy.

27. What we propose therefore is that there should be provision for an application by motion to be styled an

"application for judicial review". On such an application, the Court may, notwithstanding any right of appeal, grant any relief to which the applicant would be entitled in any proceeding for mandamus, certiorari, prohibition, declaration, injunction or any combination of them.

28. In two respects we propose an addition to the powers which the Courts have at present in respect of such applications. At present the decision of a Court quashing a decision of a tribunal renders the tribunal's proceedings a nullity and may make it necessary for the whole matter to be reconsidered de novo. There are occasions where this involves a quite unjustifiable amount of time and effort. We propose therefore that, where appropriate, the Court should have power to refer a matter back to a tribunal for further consideration and decision.

The second innovation is the conferment of a power enabling the Court to make an order validating a decision affected by a defect in form or technical irregularity from such date and on such terms as the Court considers appropriate. This would resolve some of the difficulties introduced by the void/voidable controversy.

TRADE PRACTICES BILL

29. In our First Report (para. 77) we recommended that the Trade Practices Appeal Authority should be absorbed into the Administrative Division of the Supreme Court. We also recommended (para. 78) that in view of the high discretionary content in the trade practices area any further right of appeal should be on a point of law only.

30. Both of these recommendations are proposed to be put into effect by the Trade Practices Amendment Bill now before Parliament. The Bill provides that appeals to the Court of Appeal may be made only if the Administrative

Division grants leave to appeal or, if that Division refuses leave, the Court of Appeal grants leave. Where leave to appeal is granted the decision of the Administrative Division will nonetheless have effect pending the determination of the appeal unless the Court granting leave otherwise directs.

31. We made a further recommendation in our First Report (para. 79) that the Examiner of Trade Practices should have a right of appeal against a refusal by the Trade Practices Commission to make an order for which the Examiner has applied. We saw no reason why the Examiner should not have the same rights as the industry concerned. Partial effect is given to our recommendation by the Bill. The Examiner is given a right of appeal on a question of law only from any decision of the Commission -

(a) under s.18A of the principal Act -
    (i) approving a collective pricing agreement; or
    (ii) refusing an application by the Examiner to revoke any such approval; or
    (iii) altering any condition subject to which any such approval was granted or imposing new or additional conditions; or
    (iv) refusing an application by the Examiner to alter any such condition or to impose new or additional conditions;
(b) under s.19 of the principal Act, or refusing to make such an order.

32. The Committee is encouraged by the likelihood that its recommendations in this area will receive substantial implementation.

MINING BILL

33. The Committee was given the opportunity to express its views on the Mining Bill which was being considered by the Labour and Mining Committee of the House during 1970. The Bill was introduced in 1969 and referred to the Select Committee which was given power to study it

during the recess. The Secretary for Justice asked us to comment on those parts of it which raised issues coming within the Committee's terms of reference. Our suggestions on a number of sections were transmitted to the Labour and Mining Committee through the Secretary for Justice. We were pleased to note that most of our suggestions were adopted. In particular the new Bill confers a number of rights of appeal to the Administrative Division of the Supreme Court. We were also anxious to see that any reports made under the various procedures in the Bill were freely available to all parties and satisfactory provisions were included in this respect. We understand that the Bill, as amended, will be re-introduced this year.

TOWN & COUNTRY PLANNING APPEALS

34. In its First Report (paras. 59-68) the Committee in recommending the establishment of the Administrative Division of the Supreme Court envisaged the town planning field as one of the first in which the Division would be given jurisdiction. In our Third Report last year we referred (in paras. 11 and 53-56) to the urgent need for implementation of our previous recommendation.

35. Since our last Report the work of the Appeal Boards has continued unabated. On all hands it is agreed that from time to time these Boards are called upon to make decisions of far reaching effect socially, or in which large sums of money are at stake - sums far greater than are involved in Magistrate's Court litigation. The Committee mentioned the likelihood in para. 55(a) of its Third Report that with three Appeal Boards are inevitable tendency for differences of opinion and approach was not likely to diminish. Unfortunately that prediction is now in the process of being confirmed. For example, we have

been reliably informed that practitioners who have been concerned with appeals arising from one City District Scheme consider that the outcome of an appeal may turn upon which of the three Boards happens to hear it.

36. At least where principles of law or town and country planning are involved, there appears to be a wide measure of agreement that appeals to the Administrative Division should be possible. The question of a review of planning procedures at a lower level is more controversial. In any event the Committee would be strongly opposed to any suggestion that reform at the appellate level should be further delayed pending such a review at a lower level. It is the Committee's view that provision for ultimate appeals to the Administrative Division will always be essential.

37. The Committee has noted the expedition with which the Administrative Division has dealt with appeals in the fields in which it already has been given jurisdiction. There can be no doubt that Judges of the Division are fully alive to the importance of this quality. Delays are not occurring in the hearing of appeals to the Division. On the other hand, some delays do occur in the disposal of the applications for writs of certiorari or mandamus to which parties seeking to challenge Appeal Board decisions are now forced. To some extent this is the unavoidable result of the complexity of the present law and procedure surrounding the prerogative writs. Straightforward appeal procedure would be obviously preferable.

38. The Town and Country Planning Amendment Bill introduced but not proceeded with during the 1970 session of Parliament went some of the way to meet our recommendations in this area. But it did not go the whole way. It proposed to give a right of appeal to the Administrative Division only on a question of law. The Committee

would like it made clear that a question of law includes a question of natural justice in its technical legal sense. It also favours an appeal where a substantial question of town planning principle is involved.

DRAFT LEGISLATION

39. As has already been mentioned the Mining Bill was referred to our Committee and we were also given the opportunity to consider the Trade Practices Amendment Bill. These were significant developments in the use of the Committee. The Committee is concerned, of course, with appeals from administrative tribunals, the constitution and procedure of such tribunals and the judicial control of administrative acts. These questions are important because they bear upon the freedom of the citizen. It is to the advantage of all concerned that the Committee should have an early opportunity to consider any bill which raises questions of this kind.

40. There is variety in the background and experience of members of the Committee. There is also a broad understanding of the aims and aspirations of the Administration. The Committee, however, is not likely to be unduly influenced by the natural enthusiasm of departments for their own measures and can be expected to take a wider view of what is for the best.

FUTURE PROGRAMME

41. Our immediate task is to complete our specific proposals for a new administrative law remedy. When that is completed we shall turn our attention to consideration of a Statutory Code of Procedure for Administrative Tribunals. Our tentative thinking on that subject appears in paras. 63-70 of our Third Report. A somewhat different point of view has been expressed recently by Dr J.A. Farmer in his article published in the October

1970 issue of the New Zealand Universities Law Review entitled "A Model Code of Procedure for Administrative Tribunals - An Illusory Concept". We recognise the need for a comprehensive examination of the whole subject.

42. Among the other matters with which we propose to concern ourselves are:

(a) Review of regulation-making powers and procedures of the Executive.

(b) Review of bylaw-making powers and procedures of local bodies and the present powers of the Court to review them.

In addition there are a number of specific administrative tribunals which we have not yet examined as closely as we did those discussed in our first three Reports and we expect to consider them in due course.

43. In 1959, Cabinet authorised the Department of Justice to undertake a detailed survey of all administrative tribunals functioning within New Zealand.(22) Accordingly a survey was undertaken by the department and when the results had been examined it became plain that there would be an advantage in publishing a report based upon these results. Eventually, in 1965, the department published a small booklet entitled The Citizen and Power. Our deliberations have been materially assisted by this publication and we have also had access to the data upon which it was based.

SUMMARY

44. (1) In this our Fourth Report, we first briefly recapitulate the recommendations made in our first three Reports (paras. 2-8) and refer to those proposals of the Committee which have been adopted and those which are still awaiting action (para. 9). We then indicate our programme for the past year (para. 10).

(22) See Annual Report of the Department of Justice for the year ended 31 March 1959, A.J.H.R., H.20 at 45-46.

(2) Our major recommendation this year is for the introduction of an additional remedy in administrative law. We believe that the citizen seeking redress faces a number of unnecessary procedural hurdles in his quest for justice and that some of these will be removed by a new remedy which we propose (paras. 11-28).

(3) In our First Report we recommended that the Trade Practices Appeal Authority should be absorbed into the Administrative Division of the Supreme Court. A Bill to that effect was before the House last session and we had the opportunity to comment on it (paras. 29-32).

(4) The Committee also had the opportunity to comment on those parts of the Mining Bill before the House last session that raised issues coming within our terms of reference. A number of our recommendations were reflected in the revised Bill. The Bill lapsed but we understand that it will be reintroduced next session (para. 33).

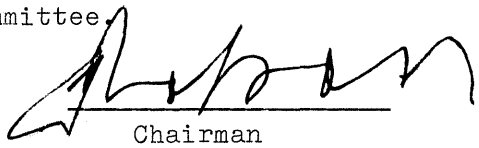
(5) We have referred in our earlier Reports to the need to provide for appeals from Town and Country Planning Appeal Boards to the Administrative Division of the Supreme Court. A bill introduced but not proceeded with last session went part of the way to meet our recommendations (paras. 34-38). We hope that the opportunity which now exists to improve the Bill will be taken.

(6) During the year the Committee examined and commented on two sets of draft legislation, the Town and Country Planning Amendment Bill and the Mining Bill. We see an advantage in referring to the Committee at the bill stage matters coming within the scope of our interests (paras. 39-40).

(7) Finally we indicate our future programme. The major task for next year after the completion of our detailed proposals for a new remedy in administrative law

is to consider the question of a statutory code of procedure for administrative tribunals.

For the Committee,



Chairman

Dated at Wellington 18th January 1971.

A. R. SHEARER, GOVERNMENT PRINTER, WELLINGTON, NEW ZEALAND—1971