

APPEALS ON QUESTIONS OF LAW FROM  
ADMINISTRATIVE TRIBUNALS

PRESENTED TO THE MINISTER OF JUSTICE  
MARCH 1982

SIXTEENTH REPORT OF THE  
PUBLIC AND ADMINISTRATIVE  
LAW REFORM COMMITTEE

WELLINGTON  
NEW ZEALAND

## APPEALS ON QUESTIONS OF LAW FROM ADMINISTRATIVE TRIBUNALS

1. This report recommends that the practice of conferring on those aggrieved by the decision of an administrative tribunal a right of appeal to the High Court on a question of law should be extended. The principle that questions of law should be capable of being taken to the High Court for final determination (and not be so determined by a tribunal) is one of the basic assumptions of our legal system. We propose that those aggrieved by a decision of an administrative tribunal on a question of law should have ready access to the High Court. Some departments which we consulted, charged with the administration of statutes creating administrative tribunals, for example the Ministry of Transport, while accepting that principle, resisted its extension to tribunals such as those responsible for transport or air services licensing. We have found ourselves unable to agree that exceptions should be made to the basic principle adumbrated in this paragraph.

2. Many statutes creating administrative tribunals provide for appeals to the High Court against decisions of those tribunals. These provisions take one of these forms:

- (1) there may be an appeal on a question of law by way of a case stated by the tribunal;
- (2) there may be an appeal "as if from the exercise of a discretion";
- (3) There may be a general appeal which is usually said to be by way of "rehearing";
- (4) There may be an appeal on a question of law only, sometimes limited by the need to obtain the leave of either the tribunal or the High Court.

There are also three other ways, apart from an appeal to the High Court, in which the decisions of an administrative tribunal may be questioned. First, the tribunal may itself state a case on a question of law for the High Court. Secondly, the court has the power at common law (and now under the Judicature Amendment Act 1972, s.4) to review the decision and proceedings of the tribunal. Thirdly, there may be an appeal from the decision of a tribunal or administrative body to an appellate tribunal or to the District Court.

3. The issue raised in this report is different from those covered by our earlier reports. Many of them were concerned with a general right of appeal on the law, the facts and the merits. In a number of instances the appeal can be taken to the Administrative Division of the High Court. Other reports, for example those leading to the enactment of the Judicature Amendment Act 1972, were concerned with improvements in the arrangements for review. We are aware, as the schedules to this report indicate, of the value of the power many tribunals have to state a case on a question of law for the opinion of the High Court. That power, it will be noted, is a power vested in the tribunal and not in the parties; it must be exercised prior to the tribunal completing its hearing and reaching a decision. In both these respects, it differs from a right of appeal of the kind we are proposing.

4. In this report we are concerned with two aspects of the right of appeal on questions of law:

- (1) when should it be available; and
- (2) what should be the process for settling the questions of law to be decided ?

Our short answer to the first question is that there should be a right of appeal to the High Court on questions of law from the decisions of the tribunals that are listed in the first schedule to this report. Our short answer to the second question is that the procedure for putting the questions before the Court should be simplified in the various ways indicated in this report. The procedural proposals relate to both the proposed and existing rights of appeal. The second schedule lists those tribunals in respect of which there is now a right of appeal on a point of law and in respect of which we propose that the new procedure should apply.

5. Before proceeding to discuss those questions, it is useful to identify the characteristics of a right of appeal on a question of law:

- (a) it is conferred by statute and is to be contrasted with the power of judicial review;
- (b) it is exercisable at the instance of the parties and is distinguishable from powers of the tribunal to state a case; that power is exercisable at the discretion of the tribunal in the course of the hearing;
- (c) it is limited to questions of law thereby differing from a general right of appeal to the High Court, another court or appellate tribunal, or an appeal "as if from the exercise of a discretion".

6. It is also useful to identify four characteristics of the type of appeal to the High Court mentioned in paragraph 5(c) - the appeal "as if from the exercise of a discretion". The first and second characteristics correspond to (a) and (b) in that paragraph. The third is that such an appeal appears to have been restricted to three areas -

- . censorship; Indecent Publications Act 1963, s.19(2), cf. Cinematograph Films Act 1976, s.93(1);
- . broadcasting; Broadcasting Authority Act 1968, s.23(3), Broadcasting Act 1973, s.85(5) and Broadcasting Act 1976, s.84(5); and
- . immigration; Immigration Act 1964, s.22G(3) as enacted in 1978.

The fourth characteristic is that the courts treat the right of appeal in censorship and broadcasting areas as similar to, but somewhat wider than, a right of appeal on questions of law.

When should a right of appeal on a question of law be available?

7. Parliament has established administrative tribunals because of the advantages they possess. Those advantages may be seen to fall into two principal categories:

4.

- (a) they relate to the issues to be resolved by the tribunal and include the expertise and experience of its members in dealing with those issues, the ability of the tribunal to develop and adopt a consistent policy, and a greater responsiveness to changing circumstances. The first instance tribunal which sees and hears the witnesses has an additional advantage over an appellate body in relation to findings of fact. The appellate body is inhibited in making judgment on credibility;
- (b) they relate to the procedure adopted, for example accessibility, information, speed and cheapness. The creation of a right of appeal might be seen as nullifying some or all of these advantages.

An appeal right will certainly delay the final disposition of the issues and involve the parties in more expense. This is so of any system of appeals but nonetheless Parliament confers a right of appeal in respect of most court and tribunal decisions. It is recognised that the appellate body also has some advantages over the inferior tribunal. At the appellate hearing there will have been some refinement of the issues and the elimination of some as a result of the first instance hearing; there will also have been clarification of the facts, thereby giving the parties a better opportunity to present their arguments on the points remaining in issue. Moreover, the appellate body can be expected to be more skilled and experienced in relation to questions of law than the inferior tribunal.

8. How do these general considerations affect our recommendation that the High Court be empowered to decide issues of law on appeal. We emphasise that decisions which fall within the tribunal's special competence, because of the qualifications and experience of its members or of its procedures (that is the decisions on matters of fact, policy and discretion), will be left intact. By contrast, the High Court is the constitutional agency with the relevant experience and skills to determine disputed questions of law. Our general recommendation accordingly recognises the respective contributions which the tribunal, on the one hand, and the High Court, on the other, make to administrative adjudication.

9. This constitutional division of function is widely and increasingly recognised. The list of tribunals in the second schedule to this report is an indication of Parliament's recognition of it. The common law of review also strongly reflects it. The grounds for review are now largely concerned with questions of law; many turn on the interpretation of the empowering legislation. The grounds do not in general involve policy, discretion or disputed facts. The present law has been reinforced by legislation, especially that contained in the Judicature Amendment Acts of 1972 and 1977 directed to simplify the procedure for review by the High Court. While these developments of the law of judicial review have been occurring, the United Kingdom enlarged the rights of appeal from tribunals on questions of law. The Tribunals and Inquiries Act 1958 now consolidated and amended by the Tribunals and Inquiries Act 1971, created a right of appeal in points of law from nine specified tribunals, some with very extensive jurisdiction. There was some concern then expressed, first, that this change involved inappropriate judicial interference with administrative and policy matters and, second, that the courts would have difficulty in determining the scope of the "question of law" (as opposed to fact, or policy, or discretion).

The Law Reports in the United Kingdom and New Zealand (several New Zealand statutes also provide for appeals on points of law) suggest that the courts have had only limited difficulty with the second matter. The weight to be attached to the first concern is more difficult to estimate, but we have observed that the original schedule of tribunals in the United Kingdom Act has been lengthened (from 9 to 17) and now includes appeals concerning disputes about rent assessment, value added tax, and industrial matters.

10. We propose that a right of appeal on points of law from the decisions of the tribunals set out in the first schedule to this report be established. In preparing that list we have had regard to the following considerations:

- (a) Are the decisions of the first instance tribunal already subject to appeal? If so, we do not propose a right of appeal direct to the High Court from that tribunal. But the decisions of the appellate body could be made subject to appeal on a question of law;

- (b) Does the body have a power of decision or does it merely report or recommend. If the latter, we do not, in general, propose a right of appeal;
- (c) Is the function to be seen as largely a policy and executive one? Or is it to be seen as a more specific adjudicative one? This involves these considerations -
  - (i) how is the body composed (the Minister, departmental representatives, interest groups, independent representatives, lawyers)?;
  - (ii) how broadly are the powers and purposes stated?;
  - (iii) does the tribunal have responsibility for allocating resources or regulating an industry or trade; or does it determine particular claims or rights of obligations?;
- (d) What procedure does the body follow? Is an application required? Is there provision for parties, for objection, for the use of the powers conferred by the Commissions of Inquiry Act? In short, is there a hearing?

11. Before settling the list included in the schedule we considered and excluded a large number of administrative bodies. A few examples of those excluded illustrates the application of the considerations mentioned in paragraph 10. Those considerations led us to exclude producer boards because of their broad policy functions, the National Roads Board for that reason and because of its allocative role, and the Board of Health because its principal functions are advisory. Others were excluded because an appeal or other remedy was provided for, e.g. the Committee of Private Broadcasters and the Water Resources Council.

Departmental views invited

12. We informed government departments about our tentative thoughts in a Working Paper completed in March 1979. We invited them to comment. Many chose to take advantage of this opportunity.

The Ministry of Energy and the Departments of Health, Internal Affairs, Lands and Survey, Police, and Trade and Industry made no adverse comments on our proposed new appeal rights.

The Departments of Education, Labour, and Railways considered that the provision of an additional right of appeal would result in unjustifiable delays in the settlement of claims. Related to this concern was the objection, raised by the Department of Labour, that the availability of an appeal would lead to many appeals being lodged with little likelihood of success. This is an aspect of the well known floodgates approach we examined in our report on Standing in Administrative Law (1978).

While we recognise that both these are very real problems, we do not accept that such fears should be allowed to distort the basic principle of the availability of an appeal to the High Court on a question of law. In practice, we anticipate that only a very few aggrieved persons will take advantage of the new appeal rights. We note that the High Court has power to award costs against a person bringing an unmeritorious appeal or lodging an appeal apparently as a delaying tactic and then abandoning it shortly before the hearing date.

The problem of delays should be tackled at the source, not by restricting appeal rights. Attention should be given to expediting the pace of hearings in the High Court so that delay ceases to be a critical factor. It may well be that delays will decrease significantly now that areas of the High Court jurisdiction have been transferred to the District Court, e.g. dissolution of marriages and some jury trials.

13. Several Departments had more specific comments to make. The Railways Department opposed the creation of a right of appeal on a question of law from decisions of the Railways Appeal Board. It took the position that the procedure of the Board balances administrative efficiency and staff relations. A further appeal, the Department considered, would upset that balance. We are aware of the practical difficulties but reject the conclusion that such problems should be allowed to exclude the general principle we have advanced.



The Department of Health objected to the suggestion of an appeal on a question of law from decisions of the Hospitals Review Committee because of the Committee's advisory role. Our response is that the Committee should make a final decision, rather than submit a recommendation to the Minister; if this is done, the appeal procedure we propose would be even more appropriate.

The Department of Inland Revenue suggested that the time period for lodging an appeal should be extended from one month to two. As a general proposition we could not support the proposal; it would increase delays and uncertainty. We note that the existing provisions, ss 31(2) and 33(2)(a) of the Income Tax Act 1976 allow a period of two months within which to refer an objection to the Taxation Review Authority or to require the Commissioner of Inland Revenue to state a case for the opinion of the High Court. We see uniformity as an advantage.

14. The Ministry of Transport was opposed to the additional right of appeal to the High Court in respect of decisions made in relation to air services licensing, transport licensing and the exclusion of seamen from the maritime industry. The principal arguments advanced were those already discussed, the need to retain speed and efficiency, the delays such an appeal would cause, the use or abuse of the appeal right to enable a transport operator to continue his present business, and the satisfaction which the industry has shown with the present arrangements.

But bearing in mind that an application for review can be made in respect of the decisions of these tribunals, we were not convinced that the appeal right would significantly reduce the efficiency of the present tribunals. We see no reason for exempting these tribunals from the scrutiny of the High Court on questions of law. Rather we see positive advantages in extending the proposed appeal right to those aggrieved by the decisions of the tribunals, provided a satisfactory formula can be agreed upon in relation to the status of the decision from which the appeal is taken. We believe that the decision appealed from should remain in force unless either the High Court or the tribunal from which the appeal is taken decides otherwise. This should prevent or reduce the possibility of an abuse of the appeal right.

We believe that the appeal on a question of law, subject to the safeguard just mentioned, will have these advantages:

- (a) Scrutiny by the High Court of the legal issues will bring to those issues a point of view from a body not involved in the transport industry:
- (b) The persons aggrieved will be more aware of existence of the appeal right than the right to review which is available under the common law or a different status:
- (c) Authoritative interpretation by the High Court of the legislation in the transport field (which is frequently amended).

15. The right of appeal is not seen as diminishing the common law review powers of the High Court. A distinction is of course drawn in practice between those cases where the appeal right exists and those where it does not. In principle the court's review powers remain unaffected by an appeal right, but in exercising their discretion to grant review the judges do have regard to alternative remedies; see for example Wislang v. Medical Practitioners Disciplinary Committee [1974] 1 NZLR 29, 43-45, per Speight J. and the remarks by Cooke J. in Reid v. Rowley [1977] 2 NZLR 472, 481-484.

How should the questions of law be settled?

16. The second schedule sets out a list of tribunals in respect of which there exists a right of appeal on questions of law. We recommend that the new procedure outlined in this report be made available either by an amendment to each statute or by a general statute.

It is a matter of urgency that the new procedure should extend to appeals on questions of law from the Planning Tribunal, the Licensing Control Commission and Licensing Committees. We have therefore included draft amendments to the relevant statutes in the third schedule. These can be modified for inclusion in a general statute applicable to all tribunals from whose decision an appeal on a question of law should lie. This approach was discussed by us when we were considering the procedures of administrative tribunals. We contemplate the enactment of an Administrative Tribunals (Appeals) Act which would prescribe the procedure recommended in this report and extend it to those tribunals where an appeal on a question of law was seen to be appropriate.

17. The existing procedure governing appeals on a question of law is based on s.107 of the Summary Proceedings Act 1957, under which a District Court Judge may state a case on a question of law for the High Court. Two examples of this procedure are s.162 of the Town and Country Planning Act 1977 and s.226 of the Sale of Liquor Act 1962 providing for appeals on questions of law from decisions of the Planning Tribunal and the Licensing Control Commission or a Licensing Committee, respectively.

18. We became aware of criticism of the existing case stated procedure and completed a working paper on the subject in March 1979. It was circulated to members of the judiciary, District Law Societies, administrative tribunals and others interested in the relationship between the High Court and administrative tribunals. Many valuable replies were received.

19. There is widespread support for our suggestion that the existing procedure should be reformed. In particular, a number of District Law Societies strongly endorsed the proposal to change the law. The principal criticisms levelled against the existing case stated procedure are summarised below:

- (1) The procedure is unduly cumbersome and time wasting. Delays are commonly encountered in settling the statement of the case.
- (2) More often than not the relevant facts and the grounds of the tribunal's determination are included in its decision and should not have to be restated.
- (3) The appellant does not have final responsibility for settling the questions of law included in the appeal. Tribunals have sought to influence and, on occasions, have overruled the appellant's counsel in respect of the wording of the question of law which is to be submitted to the High Court.
- (4) The proceedings are in reality an appeal initiated by the appellant against the tribunal's findings. Yet the case stated procedure perpetuates the fiction that the tribunal concerned is seeking the guidance of the High Court on a question of law.

20. We are satisfied that these criticisms are justified. The case stated procedure needs to be replaced with a simple formula providing a right of appeal to the High Court on questions of law. The initiative should rest with the appellant. Consequently, we recommend the adoption of the new procedure described in paragraph 31.

21. In one helpful comment we were reminded that, from the point of view of the High Court, the existing procedure has the merit of ensuring that the Judge is presented with a clearly defined issue. The facts are identified and do not have to be extracted from the reasons for the judgment. Moreover, the question of law is generally formulated with reasonable precision. We agree that this advantage is significant but consider that much the same result can be achieved under the new procedure which we recommend. We suggest that the notice of appeal be required to set out both the specific errors of law alleged and the questions of law to be determined by the Court as a result of such errors. If part only of the decision is relevant that part of the decision should also be identified in the notice of appeal.

22. We recognised at the outset that difficulties could arise at times if all the facts which were relevant to the question of law in issue were not included in the tribunal's decision. From our knowledge of the operation of tribunals we do not consider that these occasions will be frequent. Nevertheless, we wish to guard against the rare situation in which the appellant or one of the parties require further facts to be stated in order to argue the question of law under appeal properly.

23. Our comments in the working paper referring to the settling of "supplementary facts" were the subject of much comment and this has assisted us to clarify our thinking on this point. We did not intend that supplementary facts would involve the introduction of further evidence. We do not consider that the stated facts should ever be permitted to go beyond the evidence adduced at the hearing and cannot see that there are any circumstances in which the hearing should, in effect be re-opened. We agree that no tribunal should ever be given jurisdiction to settle disputed questions of fact which have not been proven at a properly constituted hearing.

24. As we see it, the need may occasionally arise for a tribunal to set out in a supplementary statement those facts which were expressly or by necessary implication found by the tribunal but not recorded in its decision. What is really envisaged is the stating of facts already effectively determined for the purpose of the tribunal's finding but not actually recorded by it. We incorporate a provision to enable these facts to be determined but do not consider that it will require to be invoked other than in exceptional cases. Any misuse of the provision can be penalised by an appropriate award of costs in the High Court.

25. We have also provided for a method by which documents other than the decision can be brought before the court in appropriate cases. In our working paper we suggested that the decision appealed from as well as documents forming part of the record should be filed in the High Court. On reflection we consider this unnecessary. In the great majority of cases only the decision will be pertinent and it would be inappropriate to burden the court with pleadings, such as copies of the original application and the objections. Moreover, while the phrase "documents forming part of the record" has been the subject of recent judicial decisions, it will always be open to argument that a given document is or is not part of the record. We believe it would be preferable to avoid that argument and the delay associated with it. We therefore provide that any party may apply to the court for an order that further documents or other written material be submitted to it.

26. The same argument cannot be made out for requiring the tribunal to record for the court further reasons or considerations which it took into account in arriving at its determination, because they should already be set out in the decision. This is ordinarily the case. Instances may occasionally arise in which the court would be assisted by having a further statement from the tribunal indicating the basis of its determination. This was recognised by Cooke J in Hotel Association of New Zealand and Another v. Crowley and Another [1976] 1 NZLR 110, at pages 111-112, where he discussed the Supreme Court (Administrative Division) Rules 1969 in relation to the lodging of a supplementary report by the tribunal. The procedure we suggest will enable such a report to be made available in appropriate cases.

27. The recent decision of Somers J in Meadow Mushrooms Ltd v. Papanua County Council (Christchurch, December 1980) reinforces the need for our suggested reform. These questions were included in the case stated by the Planning Tribunal:

"(f) Was there any or any sufficient evidence to justify the finding on page 14 of the Tribunal's decision: 'We have concluded that there is a likelihood of increased noise levels from the Appellant's operations if the extensions are allowed'?

Note: This question has been included at the request of counsel for the appellant against the submissions of counsel for the other parties. The Chairman is in doubt as to whether or not it is a question of law, but it is stated in order that the parties might argue that matter before the Court.

"(g) Was there any or any sufficient evidence justifying the finding of the Tribunal on page 15 of the decision: 'We are not prepared to draw the conclusion that there will be no increase in this problem so far as the "residents are concerned" '?

Note: This question has been included at the request of counsel for the appellant against the submissions of counsel for the other parties. The Chairman is in doubt as to whether or not it is a question of law, but it is stated in order that the parties might argue that matter before the Court."

Somers J concluded that the question whether or not there is evidence to support a finding is a question of law and the tribunal is obliged to include in the case stated the evidence to support its conclusions. The Planning Tribunal was required by Somers J to state the evidence upon which the conclusions referred to in paragraph (f) and (g) above were founded.

28. The procedure for appealing points of law which we recommend should prove much less cumbersome and time-consuming than the existing case stated procedure. Time limits, subject only to enlargement on application to the Court, will ensure that the hearing of an appeal is not delayed any longer than necessary. Moreover, in order to assist the party adversely affected by the inevitable delay involved in an appeal, we have provided that any party may take the necessary steps to obtain a date for the hearing of the appeal in terms of our draft clause 226G of the Sale of Liquor Act 1962 and clause 162H of the Town and Country Planning Act 1977 (included in the third schedule). The Registrar is then required to arrange a date for the hearing as early as possible.

We anticipate that the Court will meet inappropriate applications or avoidable delays by suitable awards of costs.

29. In some cases, a successful party before a tribunal may also wish to raise and argue a point of law on the hearing of an appeal. This could occur, for example, in a case where one or more of that party's legal contentions had been rejected while yet another argument had been accepted thus enabling him to succeed. The successful argument would, of course, be the subject of the appellant's notice of appeal but the other party could then wish to argue and establish the validity of the points on which he had failed before the tribunal. We suggest a provision in the procedure we recommend which will enable this to be done.

30. The conventional provision relating to cross appeals does not require a notice of cross appeal to be filed but requires a respondent who intends to contend that the decision of the court below should be varied to give notice of his intention to any parties who may be affected by that contention. If the respondent has omitted to give such notice within a reasonable time before the hearing, the court may, at its discretion, treat the omission as a ground for an adjournment or for a special order as to costs. (See section 74 of the District Courts Act 1947 and Rule 33 of the Court of Appeal Rules 1955.)

Such a procedure is not necessarily appropriate in the context of an appeal against the determination of an administrative tribunal where delay in arriving at a final decision can be both inconvenient and costly. To avoid or minimise that possibility we recommend a provision which enables any other question of law which a party may wish to argue on the appeal to be incorporated in the same proceedings and subjects that party to the same time constraints as those placed on the appellant.

Summary of new procedure

31. The procedure we recommend is summarised below:

- (1) An appeal would be commenced by the appellant filing in the High Court within one month (two months in relation to tax, see paragraph 13) of the date of the determination appealed from a notice of appeal restricted to questions of law. The appellant would be required to serve a copy of the notice on every other party to the proceedings as well as the secretary, registrar or other similar officer of the tribunal.
- (2) The notice of appeal would be required to specify -
  - (i) whether the whole or part only of the determination is appealed from and, if part only, to specify that part;
  - (ii) the errors of law alleged by the appellant together with a clear statement of the questions of law to be resolved; and
  - (iii) the grounds of the appeal specified with such reasonable particularity as to give adequate advice both to the court and the other parties of the issues involved.
- (3) As soon as the secretary, registrar or other similar officer of the tribunal has received a copy of the notice of appeal he would be required to send a copy of the whole of the determination appealed from to the High Court.
- (4) Any party desiring to appear and be heard at the hearing of the appeal would be required, within 10 days after the receipt of the notice of appeal, to give notice of that intention.



- (5) Any party would have the right to apply to the court within one month of the date of filing the notice of appeal in the case of the appellant or within one month of the date of service of the notice in the case of any other party for any of the following orders -
- (a) An order directing the tribunal to lodge with the High Court any document or other written material or exhibit in the possession or custody of the tribunal;
  - (b) An order directing the tribunal to lodge with the High Court a report recording, in respect of any matter or issue which the court may specify, any of the findings of fact which are not set out in its determination;
  - (c) An order directing the tribunal to lodge with the High Court a report setting out, in respect of any matter or issue which the Court may specify, any reasons or the considerations to which it had regard which are not set out in its determination.

Before making an order the Court would require to be satisfied that such an order was necessary to allow proper determination of the point of law in issue.


- (6) Any party other than the appellant who wishes to contend at the hearing of the appeal that the determination appealed from is erroneous on a point of law not included in the notice of appeal would be required to file a notice to that effect within one month after the date of service on him of the notice of appeal. The provisions relating to the notice of appeal would, with the necessary modifications, apply to such a notice.
- (7) When the appellant or any other party has notified the Registrar of the High Court in Wellington that the appeal is ready for hearing the Registrar would be required to arrange a date for the hearing of the appeal as early as possible.

Amendments to the Sale of Liquor and Town and Country Planning Acts

32. We set out in the third schedule draft provisions for inclusion in the Sale of Liquor Act 1962 and the Town and Country Planning Act 1977. Because of the number of appeals taken under those Acts, urgency attaches to their amendment. The remaining statutes set out in the first and second schedules could be amended by the Administrative Tribunals (Appeals) Act incorporating the new procedure and declaring that it will be available in respect of the tribunals included in the schedule to that Act. Reference should be made to paragraph 16 of this report.

33. As already stated, we circulated to those Government Departments which are responsible for the administration of legislation establishing administrative tribunals a summary of our working paper and the clauses for inclusion in the Sale of Liquor Act 1962. In their replies, some of them emphasised that the members of tribunals were selected for their knowledge and experience in the field being regulated and that many decisions turned on questions of fact rather than law. Such observations were not relevant to our proposal which is intended to improve the means of having questions of law determined by the High Court. It is no answer to our proposal that the statutory tribunal is made up of experts or that decisions turn on questions of fact. The contribution by the expert will be subject to appeal only if it involves a question of law, which the High Court will be better qualified to determine.

For the Committee



Chairman

**Members of the Committee**

Mr W. Iles  
Professor K.J. Keith  
Mr G. Laking  
Dr D.L. Mathieson  
Mr E.A. Missen, O.B.E.  
Professor J.F. Northey  
Mr J.B. Robertson  
Judge D.F.G. Sheppard,  
Mr E.W. Thomas Q.C.  
Mrs C. Cosgriff, Secretary

March 1982

FIRST SCHEDULE

TRIBUNALS IN RESPECT OF WHICH A RIGHT OF APPEAL  
ON A POINT OF LAW SHOULD BE ESTABLISHED

TRIBUNAL	ENACTMENT	SECTION OR REGULATION UNDER WHICH POWER EXERCISED FROM WHICH APPEAL SHOULD LIE
<u>Agriculture and Fisheries</u>		
District Court acting as appeal tribunal from decisions of Pest Destruction Board <sup>1</sup>	Agricultural Pests Destruction Act 1967	Section 41
Dairy Factory Managers Registration Board of Appeal	Dairy Industry Act 1952	Section 33(5)
Fertilisers Appeal Authority	Fertilisers Act 1960	Section 10
New Zealand Kiwifruit Authority <sup>2</sup>	Kiwifruit Marketing Licensing Regulations 1977 S.R. 1977/281	Regulation 23
Milk Appeal Authority	Milk Act 1967	Section 57F
National Hydatids Council <sup>3</sup> Board of Appeal <sup>4</sup>	Hydatids Act 1968 Hydatids Act 1968	Section 31 Section 26

New Zealand Citrus Marketing Authority <sup>5</sup>	Citrus Marketing Authority Regulations 1966 S.R. 1966/64	Regulation 25
Noxious Plants Appeal Arbitrator	Noxious Plants Act 1978	Section 52
Veterinary Surgeons Board of Appeal <sup>6</sup>	Veterinary Surgeons Act 1956	Section 15
Wool Industry Appeal Authority	Wool Industry 1977	Section 27

#### Education

Education Boards Employment Appeal Board	Education Boards Employment Regulations 1958 (S.R. 1958/106)	Regulation 12
Primary Teachers Appointment Appeal Board	Education Act 1964	Section 145A
Teachers Assessment and Classification Appeal Board	Education (Assessment, Classification and Appointment) Regulations 1976 (S.R. 1976/287)	Regulation 86
Teachers Court of Appeal	Education Act 1964	Section 175
Tertiary Assistance Grants Appeal Authority	Education Act 1964	Section 193AA

#### Energy

Coal Mines Council <sup>7</sup>	Coal Mines Act 1979	Section 246
Electric Linemen Board of Appeal	Electric Linemen Act 1959	Section 21

Health

Hospitals Review Committee <sup>8</sup>	Hospitals Act 1957	Sections 51C, 51D, 51E
Occupational Therapy Board of Appeal	Occupational Therapy Act 1949	Section 26
Pharmacy Board of Appeal	Pharmacy Act 1970	Section 57
Physiotherapy Board of Appeal	Physiotherapy Act 1949	Section 25
Various Registration Boards - Appeal Tribunals	Medical and Dental Auxilliaries Act 1966	Section 35

Inland Revenue

Co-operative Dairy Companies Appeal Authority	Co-operative Dairy Companies Income Tax Regulations 1955 (S.R. 1955/55)	Regulation 9
Co-operative Milk Marketing Companies Income Tax Appeal Authority	Co-operative Milk Marketing Companies Income Tax Regulations 1960 (S.R. 1960/1)	Regulation 9
Co-operative Pig Marketing Companies Income Tax Appeal Authority	Co-operative Pig Marketing Companies Income Tax Regulations 1964 (S.R. 1964/37)	Regulation 9
Overtime and Shift Work Recognition Authority <sup>9</sup>	Income Tax Act 1976	Section 46

Internal Affairs

Fire Service Appeal Board                      Fire Service Act 1975                      Section 82

Justice

Copyright Tribunal<sup>10</sup>                      Copyright Act 1962                      Section 43

District Court acting as appeal  
tribunal from decisions of  
Motor Vehicle Disputes Tribunal                      Motor Vehicle Dealers Act 1975                      Section 133

Labour

Board of Appeal                      Construction Regulations 1961  
(S.R. 1961/5)                      Regulation 15

Shop Trading Hours Commission                      Shop Trading Hours Act 1977                      Section 20

Lands and Survey

Land Settlement Board<sup>11</sup>                      Land Act 1948                      Section 67

District Court acting as appeal  
tribunal from decisions of  
Rural Fire Mediator                      Forest and Rural Fires Act 1977                      Section 65

Police

Medical Appeal Board<sup>12</sup>                      Police Act 1958                      Section 28

Police Appeal Board                      Police Act 1958                      Section 48

Police Staff Tribunal<sup>13</sup>                      Police Act 1958                      Section 67

Post Office

Post Office Appeal Board                      Post Office Act 1959                      Section 197

Railways

Government Railways  
Appeal Board                      New Zealand Railways  
Corporation Act 1981                      Sections 99, 99

Social Welfare

Handicapped Child's Appeal  
Board<sup>14</sup>                      Social Security Act 1964                      Section 39F

Invalids' Benefit Appeal  
Board<sup>15</sup>                      Social Security Act 1964                      Section 45

Miners' Benefit Appeal  
Board<sup>16</sup>                      Social Security Act 1964                      Section 51

State Services Commission

Public Service Appeal Board                      State Services Act 1962                      Section 64

Public Service Special Appeal  
Board                      State Services Act 1962                      Section 64

Trade and Industry

Motor Spirits Licensing Appeal  
Authority<sup>17</sup>                      Motor Spirits Distribution Act 1953                      Section 36



Transport

Air Services Licensing Appeal Authority	Air Services Licensing Act 1951	Section 43
Maritime Appeal Authority	Shipping and Seamen Act 1952	Section 15G
Transport Charges Appeal Authority	Transport Act 1962	Section 172
Transport Licensing Appeal Authority	Transport Act 1962	Section 172

Valuation

Board of Appeal	Valuers Act 1948	Section 34
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Works and Development

Board of Appeal	Clerks of Works Act 1944	Section 41
Board of Appeal	Engineers Registration Act 1924	Section 12
Engineering Associates Appeal Authority	Engineering Associates Act 1961	Section 25
Soil Conservation and Rivers Control Council <sup>18</sup>	Soil Conservation and Rivers Control Act 1941	Section 33A

#### NOTES

1. The District Court has jurisdiction to hear appeals from rating decisions of the Boards.
2. The New Zealand Kiwifruit Authority has jurisdiction to grant, refuse or revoke a Kiwifruit Exporter's Licence. The only existing right of appeal is from the revocation of a licence (Reg.25) or a refusal to renew a licence. That appeal lies to an Arbitrator who is to be a barrister and solicitor and whose decision is final. The position of this appeal right would need to be considered.
3. The bulk of the powers of the National Hydatids Council are administrative and non-adjudicative. The exceptions concern the appeal powers exercised under section 31 and powers conferred by section 25. Section 30(1)(c) and (d) confers certain powers on Hydatids Control Officers to impose requirements with respect to treatments etc. There is a right of appeal to the Council under section 31 from any such requirement on the grounds that the requirement is unreasonable. The Council holds a hearing and there is a right to call evidence and to be represented. A right of appeal on a point of law would appear appropriate. The powers under section 25 are dealt with in Note 4.
4. This Tribunal comprising a district court judge and two assessors hears appeals from the Council's approval of, or refusal of approval of, prevention and eradication plans of Hydatids Control Authorities. The Council's powers of approval are found in section 25 while the appeal jurisdiction is contained in section 26. The appeal is a general appeal. A right of appeal on a point of law would be appropriate.
5. The Authority may in its "absolute discretion" issue licences to carry on the business of processing, grading, packing and storing of lemons and/or oranges and distribution of the same. There is at present no right of appeal.

6. The Board of Appeal deals with appeals from decisions of the Veterinary Surgeons Board in which registration has been refused. There is an existing right of general appeal to the High Court from an order made by the Veterinary Surgeons Board in the exercise of disciplinary powers. This general right of appeal should be preserved.
7. The Council deals with industrial disputes. Nevertheless a right of appeal from the decision of the Council, which holds a hearing with the parties entitled to representation, would appear appropriate on a point of law.
8. The Hospitals' Review Committee considers complaints from dismissal of staff of hospital boards and appeals from such staff against non-appointment to vacancies or transfers. The appeal is made to the Minister who refers appeals to the Committee for hearing and complaints for inquiry. The Committee is required to follow the rules of natural justice. The Committee at the conclusion of the hearing submits a report to the Minister with reasons and recommendation(s) (if any). The Minister considers the report and makes a decision which is binding. As the Review Committee does not itself take the decision but merely acts in an advisory capacity a right of appeal from the exercise of these limited powers would be inappropriate. The legislation should be amended to allow the committee itself to take the decision. A right of appeal from the committee on a point of law would then be appropriate.
9. The hearing before the Authority is not open to the public to protect the confidentiality of tax payers' affairs. A similar provision would be needed with regard to a High Court hearing on appeal. The Authority is not required to hold a hearing and may deal with the appeal merely on the papers.
10. The Tribunal may state a case for the opinion of the Court of Appeal. There is at present no right of appeal open to the parties. It may be more appropriate for any case stated by the Tribunal to be to the High Court for its opinion.
11. There is an existing right of appeal to the High Court from any decision of the Board except where by any provision of the Act the decision of the Board is final or where the Board has made a determination of an administrative nature. It would seem necessary to examine the provisions making the decision of the Board final to establish whether their retention is justified. The appeal is by way of case stated, or if a case cannot be agreed upon, the court may hear evidence. This provision could be replaced by the proposed new appeal provision.

12. The Board comprises three medical practitioners who are required to conduct a full enquiry. No other procedural provisions are specified.
13. This Tribunal deals with industrial matters, viz. awards. It enjoys powers under the Commissions of Inquiry Act 1908, is deemed to be a statutory board and holds a hearing at which public servants may appear as advocates. It would appear appropriate that there should be a right of appeal from such a tribunal on a point of law.
14. The powers given to this Board might be more appropriately dealt with by the Social Security Appeal Authority. This might be a more rational approach although the existence of the separate appeal board might be justified on the basis that it comprises two medical practitioners (with a lawyer as chairman) and thus provides a degree of expertise necessary to the matters under review.
15. The observations in 14 above are of equal application except that this Board is made up of three medical practitioners. No procedural provisions at all are specified in this case unlike the Handicapped Child's Appeal Board where the statute seems to envisage a hearing.
16. see 15.
17. There is at present a right of appeal to the High Court by way of case stated against a decision of the Appeal Authority which has the effect of cancelling or completely suspending an existing licence. The right of appeal should be extended to allow an appeal on a point of law from all decisions of the Appeal Authority.
18. All of the powers of the Council are administrative and non-adjudicative with the exception of those under s.33A. Under that section the Council, or a tribunal appointed by the Council for the purpose, hears and determines disputes referred to the Council under the provisions of the Act.

SECOND SCHEDULE

TRIBUNALS IN RESPECT OF WHICH THE NEW PROCEDURE FOR APPEAL  
ON A POINT OF LAW SHOULD BE SUBSTITUTED

Agriculture and Fisheries

Plant Varieties Appeal Authority <sup>1</sup>	Plant Varieties Act 1973	Section 26
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Internal Affairs

Films Censorship Board of Review <sup>2</sup>	Cinematograph Films Act 1976	Section 84
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Local Government Commissions <sup>4</sup>	Local Government Act 1974	Section 37A
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Justice

Co-operative Dairy Companies Tribunal <sup>4</sup>	Co-operative Dairy Companies Act 1949	Section 19
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Deportation Review Tribunal <sup>5</sup>	Immigration Act 1964	Section 22F
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Legal Aid Appeal Authority <sup>6</sup>	Legal Aid Act 1969	Section 7
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Licensing Control Commission) <sup>7</sup> Licensing Committee )	Sale of Liquor Act 1962	Section 226
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Social Welfare

Social Security Appeal  
Authority<sup>8</sup>

Social Security Act 1964

Section 120

Trade and Industry

Tobacco Quota Appeals  
Tribunal<sup>9</sup>

Tobacco Growing Industry Act 1974

Section 38

Works and Development

Planning Tribunal

Town and Country Planning Act 1977

Section 162

#### NOTES

1. To replace present case stated procedure under section 30.
2. To replace present case stated procedure under section 93.
3. To replace present case stated procedure under section 37A.
4. To replace present case stated procedure under section 19.
5. To replace present case stated procedure under section 22F.
6. To replace present case stated procedure under section 7.
7. To replace present case stated procedure under section 226.  
(This does not offend the principle stated in paragraph 10(a)).
8. To replace present case stated procedure under section 120.
9. To replace present case stated procedure under section 38.
10. To replace present case stated procedure under section 162.

#### Further Note:

The Land Settlement Board and Motor Spirits Licensing Appeal Authority are listed in the First Schedule. From each of these tribunals there is an existing, but limited, right of appeal to the High Court on a point of law by way of case stated. Both tribunals are listed in the First Schedule, however, as it is considered that the right of appeal should be widened.

THIRD SCHEDULE

DRAFT PROVISION FOR AN APPEAL ON A QUESTION OF LAW UNDER THE  
SALE OF LIQUOR ACT 1962

[This provision is in substitution for the existing section 226]

226. Appeal against decision of Commission or Licensing Committee on a question of law - (1) Where any party to any proceedings before the Commission or any Licensing Committee under this Act is dissatisfied with any determination of the Commission or Licensing Committee in the proceedings as being erroneous in point of law, he may appeal to the High Court on that question of law.

(2) The provisions of subsection (1) of this section, so far as they relate to proceedings before the Commission, shall extend and apply to any proceedings before the Commission by way of appeal against the decision of a Licensing Committee.

(3) Subject to sections 226A to 226G of this Act, every appeal under this section shall be dealt with in accordance with the rules of court.

226A. Notice of appeal - (1) Every appeal under section 226 of this Act shall be instituted by the appellant lodging a notice of appeal within 1 month after the date of the determination with:

- (a) The Registrar of the High Court in Wellington; and
- (b) The Secretary of the Commission or the Clerk of the Licensing Committee.

(2) Either before or immediately after the lodging of the notice of appeal, the appellant shall serve a copy of the notice of appeal, either personally or by post, on every other party to the proceedings before the Commission or Licensing Committee.

(3) Service under subsection (2) of this section, if by post, shall be by registered letter and shall be deemed in the absence of proof to the contrary for the purposes of this section to be effected at the time when the letter would be delivered in the ordinary course of post.



(4) Every notice of appeal shall specify:

- (a) The determination or the part of the determination appealed from; and
- (b) The error of law alleged by the appellant; and
- (c) The question of law to be resolved; and
- (d) The grounds of the appeal, which grounds shall be specified with such reasonable particularity as to give full advice to both the Court and the other parties of the issues involved.

(5) The Secretary of the Commission or the Clerk of the Licensing Committee shall, as soon as is practicable after receiving a copy of the notice of appeal, send a copy of the whole of the determination appealed from to the Registrar of the High Court in Wellington.

226B. Right to appear and be heard on appeals - (1) Any party to the proceedings before the Commission or the Licensing Committee who wishes to appear and be heard on the hearing of the appeal shall, within 10 days after the date of the service on him of a copy of the notice of appeal, lodge with the Registrar of the High Court in Wellington a notice of that party's intention to appear and be heard.

(2) Any party who gives a notice of intention to appear and be heard and the appellant shall be parties to the appeal and shall be entitled -

- (a) To be served with every document thereafter filed or lodged with the Registrar relating to the appeal; and
- (b) To receive a notice of the date set down for the hearing of the appeal.

226C. Orders relating to determination of appeals - (1) Subject to subsections (2) and (3) of this section, the High Court may, of its own motion or on the application of any party to the appeal, make all or any of the following orders -

- (a) An order directing the Commission or Licensing Committee to lodge with the Registrar of the High Court in Wellington any document or other written material or any exhibit in the possession or custody of the Commission or Licensing Committee:
  - (b) An order directing the Commission or Licensing Committee to lodge with the Registrar a report recording, in respect of any matter or issue which the Court may specify, any of the findings of fact of the Commission or Licensing Committee which are not set out or fully set out in its determination:
  - (c) An order directing the Commission or Licensing Committee to lodge with the Registrar a report setting out, in respect of any matter or issue which the Court may specify, any reasons or considerations of the Commission or the Licensing Committee to which the Commission or the Licensing Committee had regard but which are not set out in its determination.
- (2) An application under subsection (1) of this section shall -
- (a) In the case of the appellant, be made within 1 month of the date of the lodging of the notice of appeal; or
  - (b) In the case of any other party to the appeal, within 1 month after the date of the service on him of a copy of the notice of appeal.
- (3) The High Court may make an order under subsection (1) of this section only if it is satisfied that a proper determination of the point of law in issue so requires; and the order may be made subject to such conditions as the High Court thinks fit.

226D Dismissal of appeal - The High Court may dismiss any appeal under section 226 of this Act -

- (a) If the appellant does not appear at the time appointed for the hearing of the appeal; or
- (b) If the appellant does not prosecute his appeal with all due diligence and any party applies to the Court for the dismissal of the appeal.

226E Appeal in respect of additional points of law - Where any party to an appeal under section 226 of this Act other than the appellant wishes to contend at the hearing of the appeal that the determination appealed from is erroneous on a point of law other than those set out in the notice of appeal he shall, within 1 month after the date of the service on him of a copy of the notice of appeal, lodge a notice to that effect with the Registrar of the High Court in Wellington. The provisions of sections 226 and 226A(2) to (4), 226C, 226D, 226F and 226G of this Act shall apply, with such modifications as may be necessary, to any notice lodged under this section as if it were a notice of appeal.

226F Extension of time - The High Court or a Judge thereof may, in its or his discretion, on the application of the appellant, or intending appellant, or any other party, extend any time prescribed or allowed under any of the provisions of sections 226A to 226E of this Act for the lodging of any notice, application, or other document.

226G Date of hearing - When any party to the appeal notifies the Registrar of the High Court in Wellington -

(a) That the notice of appeal has been served on all parties to the proceedings; and

(b) Either -

(i) That no application has been lodged under section 226C of this Act and that no order has been made under that section; or

(ii) That any application lodged under section 226C of this Act has been heard and that any order under that section has been complied with,-

the appeal shall be, in all respects, ready for hearing and the Registrar shall arrange a date for the hearing as soon as is practicable.

DRAFT PROVISION FOR AN APPEAL ON A QUESTION OF LAW UNDER THE TOWN AND COUNTY PLANNING ACT 1977

[This provision is in substitution for the continuing section 162 and 162A]

162. Appeal on a question of law - (1) Where any party to any proceedings before the Tribunal is dissatisfied with any determination of the Tribunal or of the Chairman sitting alone in accordance with section 135 of this Act as being erroneous in point of law, he may appeal to the High Court on that question of law.

(2) Subject to sections 162A to 162G of this Act, every appeal under this section shall be dealt with in accordance with the rules of court.

162A Notice of appeal - (1) Every appeal under section 162 of this Act shall be instituted by the appellant lodging a notice of appeal within 1 month after the date of the determination with:

- (a) The Registrar of the High Court in Wellington; and
- (b) The Registrar of the Tribunal

(2) Either before or immediately after the lodging of the notice of appeal, the appellant shall serve a copy of the notice of appeal, either personally or by post, on every other party to the proceedings before the Tribunal.

(3) Every notice of appeal shall specify -

- (a) The determination or the part of the determination appealed from; and
- (b) The error of law alleged by the appellant; and
- (c) The question of law to be resolved and
- (d) The grounds of the appeal, which grounds shall be specified with such reasonable particularity as to give full advice to both the Court and the other parties of the issues involved.

(4) The Registrar of the Tribunal shall, as soon as is practicable after receiving a copy of the notice of appeal, send a copy of the whole of the determination appealed from to the Registrar of the High Court in Wellington.

162B. Right to appear and be heard on appeals - (1) Any party to the proceedings before the Tribunal who wishes to appear and be heard on the hearing of the appeal shall, within 10 days after the date of the service on him of a copy of the notice of that party's intention to appear and be heard.

(2) Any party who gives a notice of intention to appear and be heard and the appellant shall be parties to the appeal and shall be entitled -

- (a) To be served with every document which is thereafter filed or lodged with the Registrar of the High Court in Wellington and which relates to the appeal; and

- (b) To receive a notice of the date set down for the hearing of the appeal.

162D. Orders relating to determination of appeals - (1) Subject to subsection (2) and (3) of this section, the High Court may, of its own motion or on the application of any party to the appeal, make all or any of the following orders-

- (a) An order directing the Tribunal to lodge with the Registrar of the High Court in Wellington any document or other written material or any exhibit in the possession or custody of the Tribunal;
- (b) An order directing the Tribunal to lodge with the Registrar a report recording, in respect of any matter or issue which the Court may specify, any of the findings of fact of the Tribunal which are not set out or fully set out in its determination;
- (c) An order directing the Tribunal to lodge with the Registrar a report setting out, in respect of any matter or issue which the Court may specify, any reasons of consideration of the Tribunal to which the Tribunal had regard but which are not set out in its determination.

99(2) An application under subsection(1) of this section shall be made -

- (a) In the case of the appellant, within 1 month of the date of the lodging of the notice of appeal; or
- (b) In the case of any other party to the appeal, within 1 month after the date of the service on him of a copy of the notice of appeal.

(3) The High Court may make an order under subsection (1) of this section only if it is satisfied that a proper determination of the point of law in issue so requires; and the order may be made to such conditions as the High Court thinks fit.

162D. Dismissal of appeal - The High Court may dismiss any appeal under section 162 of this Act -

- (a) If the appellant does not appear at the time appointed for the hearing of the appeal; or
- (b) If the appellant does not prosecute his appeal with all due diligence and any party applies to the Court for the dismissal of the appeal.

162E. Appeal in respect of additional point of law - Where any party to an appeal under section 162 of this Act, other than the appellant, wishes to contend at the hearing of the appeal that the determination appealed from is erroneous on a point of law other than those set out in the notice of appeal he shall, within 1 month after the date of the service on him of a copy of the notice of appeal, lodge a notice to that effect with the Registrar of the

High Court in Wellington. The provisions of sections 162 and 162A(2) and (3), 162C, 162D, 162F and 162G of this Act shall apply, with such modifications as may be necessary, to any notice lodged under this section as if it were a notice of appeal.

162G. Extension of time - The High Court or a Judge thereof may, in its or his discretion, on the application of the appellant, or intending appellant, or any other party, extend any time prescribed or allowed under any of the provisions of section 162A to 162E of this Act for the lodging of any notice, application, or other document.

162G. Date of hearing - When any party to the appeal notifies the Registrar of the High Court in Wellington -

- (a) That the notice of appeal has been served on all parties to the proceedings; and
- (b) Either -
  - (i) That no application has been lodged under section 162C of this Act and that no order has been made under that section; or
  - (ii) That any application lodged under section 162C of this Act has been heard and that any order under that section has been complied with, -

the appeal shall be, in all respects, ready for hearing and the Registrar shall arrange a date for the hearing as soon as is practicable.

162H. The provisions of section 144 of the Summary Proceedings Act 1957 shall apply in respect of any determination of the High Court under section 162 of this Act as if the determination were made under section 107 of the Summary Proceedings Act 1957.