



28 February 2011

Hon Christopher Finlayson
Attorney-General
Private Bag 18888
Parliament Buildings
Wellington 6160

Dear Mr Attorney

Taxation (Tax Administration and Remedial Matters) Bill

This letter is to bring to your attention clause 70 of the Taxation (Tax Administration and Remedial Matters) Bill (Bill), which had its first reading on 7 December 2010.

The Ministry of Justice advised your office on 12 November 2010 that the Bill appeared to be consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990. However, the New Zealand Law Society believes that on an initial review of the many proposals in this Bill by officials, one aspect may have been overlooked.

Clause 70 proposes to amend section 138B(3) of the Tax Administration Act 1994 by requiring taxpayers to obtain the Commissioner's consent, in the form of a "challenge notice", before commencing proceedings against the Commissioner. As you may be aware, provisions of this sort have been struck down in other jurisdictions as unconstitutional (see for example *Macaulay v Minister for Posts and Telegraphs* [1966] IR 345).

In the New Zealand context, section 27(3) of the New Zealand Bill of Rights Act 1990 affirms that every person the right to bring proceedings against the Crown, according to law, in the same way as civil proceedings between individuals. That right should not be fettered. Working in conjunction with the New Zealand Institute of Chartered Accountants, the Society has made a submission to the Finance and Expenditure Select Committee on the Bill and this point has been raised. The Society believes that clause 70 is contrary to section 27(3) of the New Zealand Bill of Rights Act 1990 and considers this a very serious issue.

The Society brings this issue to your attention. It is aware that, on its face, section 7 of the New Zealand Bill of Rights Act 1990 operates only at the time a Bill is introduced into the House. However, consistently with the purpose underlying section 7, it is hoped that you can bring the inconsistency between this provision and the New Zealand Bill of Rights Act 1990 to the attention of the House of Representatives at subsequent readings of the Bill.

Brendan Brown and Dr Andrew Butler, respectively of the Society's Taxation Committee and Human Rights Committee, would be pleased to meet with you to discuss the matter in more detail if that would be of assistance. A meeting can be arranged by contacting the secretary of the Committees, Julie Smith, at julie.smith@lawsociety.org.nz or ph 04 463 2967.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jonathan Temm', written in a cursive style.

Jonathan Temm
President