Section 6 NZBORA – In the Eye of the Beholder?
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On 7 March 2016, the Human Rights Review Tribunal (HRRT) delivered its decision in *Adoption Action Inc v Attorney-General* [2016] NZHRRT 9. Here, the HRRT issued six declarations of inconsistency between the Human Rights Act 1993 and the Adoption Act 1955 (it also issued a declaration of inconsistency between the Human Rights Act and s 4(1) of the Adult Adoption Information Act 1985).

One of the inconsistencies found relates to s 3(2) of the Adoption Act, which provides: "an adoption order may be made on the application of 2 spouses jointly in respect of a child." To which, the HRRT held in *Adoption Action Inc* at [158], the term "spouses" could not be interpreted to include civil union partners or same-sex de facto couples.

The decision sits at odds with that of the Family Court in *Re Pierney* [2016] NZFLR 53, which held precisely the opposite in respect of same-sex de facto couples (the case did not consider civil union couples). *Adoption Action Inc* was heard in November 2013 and January 2014, with the decision issued on 7 March 2016. In the intervening period between the hearing and final decision, an application to adopt was filed in *Re Pierney*. Final orders were granted on 30 October 2015. It is unclear from the decision whether the HRRT had the benefit of the decision in *Re Pierney* before making its decision.

It is argued that in making that judgment, the Family Court was correct to find it was reasonably possible under s 6 of the New Zealand Bill of Rights Act 1990 (NZBORA) to interpret the term "spouses" in the Adoption Act to include same-sex de facto couples. Accordingly, it is suggested the HRRT erred in its analysis of s 6 NZBORA, and was, therefore, incorrect to issue a declaration of inconsistency between the Human Rights Act and s 3(2) of the Adoption Act, in respect of same-sex de facto couples. Rather, it could, and should, have held that its interpretative powers – which are in fact duties – allowed it to avoid a conclusion that breached rights.

Overview
The HRRT in *Adoption Action Inc* at [158] and [168] took the view that the decision of the High Court full bench in *Re Application by AMM and KJO to adopt* [2010] NZFLR 629, to include heterosexual de facto couples in the term "spouses" in s 3(2) of the Adoption Act, was interpretively controversial and aggressive. Nonetheless, the HRRT conceded at [139] that it was an important decision in aiding "the determination of either the ordinary meaning of spouses or in determining whether under s 6 of the Bill of Rights the term spouse "can" be given a meaning which would allow the presently excluded categories of relationships [same-sex de facto couples and civil union partners] to be now included."

Ultimately, the HRRT at [158] determined it would be legislating not interpreting were it to include civil union couples and same-sex de facto couples in the term "spouse". The primary reason for this was because the HRRT saw parliament's intention as clearly against such an approach; therein, s 4 NZBORA mandated the intended meaning should prevail, despite the rights inconsistency. Four examples were cited in this regard, at [156]: (i) Parliament revised laws relating to guardianship but not adoption when enacting the Care of Children Act 2004; (ii) Parliament made consequential amendments to the Adoption Act at the time of enacting the Civil Union Act 2004 but did not make changes to include civil union partners; (iii) Parliament neutralised the relationship status in over 100 pieces of legislation with the Relationships (Statutory Reference) Act 2005 but omitted the Adoption Act from that exercise; and (iv) Parliament amended the Adoption Act after *Re AMM* to allow for

same-sex married couples to jointly adopt, following the passage of the Marriage (Definition of Marriage) Amendment Act 2013 (MDMA Act).

The HRRT's decision in respect of same-sex de facto couples at least, is problematic in two regards: (1) the impact of *Re AMM* and (2), the nature of the amendments to the Adoption Act caused by the MDMA Act. Broadly speaking, this criticism mirrors the argument put to the HRRT by the Crown at [155]. Notably, that was an almost complete reversal of the Crown's position in *Re AMM*.

Issue 1: the impact of *Re AMM*

The HRRT at 32] and [156.4] were of the view that in enacting the MDMA Act, parliament did so in "the full knowledge" of what was said in *Re AMM* at [39], such that there were "formidable barriers" to including same-sex de facto couples in the meaning of the term "spouses" in s 3(2) of the Adoption Act. A reading of the three parliamentary debates would, however, seem to indicate the opposite, as many MPs made factually inaccurate statements about the effects the MDMA Act would have on adoptions. See for example, statement of Dr Paul Hutchison (29 August 2012) 683 NZPD 4923, who claimed the amendments would mean that single men would no longer need to show exceptional circumstances to adopt a girl. Clearly, such a statement was and is incorrect. Indeed, the HRRT issued a declaration of inconsistency on this very point at [277.3]. Hansard also confirms neither *Re AMM* nor its impacts were mentioned during the parliamentary debates. Therefore, it cannot be "presumed", as the HRRT has it, that parliament made the resultant amendments to the Adoption Act based on an express understanding of *Re AMM*.

Even if it is assumed that parliament was awake to the intricacies of a judgment of the High Court, such awareness is not fatal to the case for a more rights-consistent reading to be given to the term "spouses". Accordingly, it could be argued that in awareness of *Re AMM*, parliament knew the consequential amendments it was making to the Adoption Act (in allowing same-sex married couples to jointly adopt) would provide recourse to the Courts to find a more rights-consistent interpretation to the term "spouses" so as to also include same-sex de facto couples. This can be "presumed" on the basis that at [38] – [39] the High Court in *Re AMM* was limited in its ability to interpret the term "spouses" to only include opposite-sex de facto couples because the term at the time was synonymous with husband and wife. Seemingly then, parliament were aware that in enacting the MDMA Act the term "spouses" would no longer be so confined. Thus, it can be reasonably inferred that parliament were aware its liberation of the meaning of "spouses" to include same-sex couples, would provide the Courts with the interpretative tools they felt lacking in *Re AMM* to now include same-sex de facto couples in that meaning.

Viewed this way, it then becomes reasonably possible to interpret the term "spouses" to include same-sex de facto couples, without the Courts or the HRRT believing they have strayed into legislative territory. This analysis is given further weight by the next error identified in the HRRT's assessment under s 6 NZBORA: its appraisal of parliament's intention.

Issue 2: impact of MDMA Act

The HRRT's decision to issue a declaration of inconsistency between the Human Rights Act and the Adoption Act partially derives from its view at [156.4] that it would be overly aggressive to interpret the term "spouses" to include same-sex de facto couples because of the amendments parliament made to the Adoption Act through the MDMA Act.

While it is correct to assert that the Adoption Act was amended following the passage of the MDMA Act, it is incorrect to conclude that this somehow meant parliament was seised of the matter and intentionally chose to restrict the meaning of the term "spouses" to married persons. This is because the changes made to the Adoption Act that followed the MDMA Act were *consequential*, not substantive. As discussed above, parliament, in fact, never turned its mind to the expansive interpretation of the term "spouses" as applied by *Re AMM*. The additional reasoning put forward by the HRRT at [156.4] that the same amendments to the Property (Relationships) Act 1976 prevented it from interpreting the term "spouses" more rights consistently was also incorrect; the amendments merely underscored the intended meaning was discriminatory, and therefore, most relevant to steps 1 and 2 of the test proposed by Tipping J in *R v Hansen* [2007] 3 NZLR 1 at [92], not step 5 as the HRRT had it.

There is a clear distinction between substantive and consequential amendments. Ironically, the example used by Ross Carter *Burrows and Carter Statute Law in New Zealand* (5th ed, LexisNexis NZ Ltd, Wellington, 2015) at 675 to highlight the difference is the *substantive* amendment in the Human Rights Amendment Act 2011, which brought about the change in name of the Complaints Review Tribunal to the Human Rights Review Tribunal, and the *consequential* amendments made to other legislation in recognition of the new name.

Indeed, Standing Orders of the House of Representatives 2014, SO 260 (which mirrors the text of Standing Orders of the House of Representatives 2011, SO 257, as operational at the time of the enactment of the Marriage (Definition of Marriage) Amendment Act 2013) provides that when a new Bill is being introduced only consequential amendments can be made to other Acts:

> **260 Bills to relate to one subject area**
>
> (1) Except as otherwise permitted by the Standing Orders, a bill must relate to one subject area only.
>
> (2) A bill may make consequential amendments to a number of Acts affected by its provisions

Standing Orders thus recognises a distinction between consequential and substantive amendments. It restricts multi-subject or omnibus Bills. Here, the inclusion of consequential amendments at schedule 2 of the MDMA Bill 2012 (39-2) were within Standing Orders as they were amendments to update and replace legislation where "spouses" had to be "husbands and wives". Therefore, the amendments brought about to the Adoption Act by the MDMA Act did not expressly deal with whether "spouses", in line with *Re AMM,* covers opposite or same-sex de facto couples.

The HRRT was, therefore, incorrect to assert it was parliament's intention that the consequential amendments to the Adoption Act caused by the passage of the MDMA Act should prevent a wider interpretation of the term "spouses" in the Adoption Act, so as to exclude same-sex de facto couples being given the eligibility status to jointly apply to adopt a child. Certainly, such was the parliamentary process involved here, it cannot be sensibly maintained that parliament made an intentional statement that the term "spouses" in the Adoption Act should be confined to married couples (regardless of sexuality), such that a more rights-consistent interpretation could not have been made under s 6 NZBORA, because those amendments were merely consequential not substantive.

It follows the HRRT was also incorrect in its conclusion at [158] and [277.1] that s 4 NZBORA mandated parliament's intended meaning prevail, and thus incorrect to issue a declaration of inconsistency between s 3(2) of the Adoption Act and s 21(1) (b) of the Human Rights Act (unlawful discrimination on the grounds of marital status) in respect of same-sex de facto couples.

Reasonable Interpretation

If the HRRT had not reached such an early conclusion on parliament's intention and the impact of *Re AMM*, it, like the Family Court before, could have found it was reasonably possible to find a more rights-consistent meaning to the term "spouses" so as to include same-sex de facto couples.

Section 6 NZBORA provides:

> **Interpretation consistent with Bill of Rights to be preferred**
>
> Wherever an enactment can be given a meaning that is consistent with the rights and freedoms contained in this Bill of Rights, that meaning shall be preferred to any other meaning.

The Supreme Court considered the application of s 6 NZBORA in *R v Hansen* [2007] 3 NZLR 1 at [57] – [59], where Blanchard J was of the view that the exercise under s 6 NZBORA requires the Courts to consider whether a provision is "reasonably capable of bearing another meaning", when it has already been found that the limit placed on the affected right is unjustifiable pursuant to s 5 NZBORA. Space prohibits a full discussion on the correctness of the majority of the Supreme Court to import the word "reasonably" into s 6 in *Hansen*. Suffice to say, without that word the HRRT may not have felt so confined in its interpretative task.

Section 6 NZBORA is of course tempered to some degree by the Interpretation Act 1999. To which it is fairly well-settled that the shared interpretive task of s 6 NZBORA and s 5(1) Interpretation Act is to ascertain a meaning of a particular legislative term from the text and in light of purpose. The task here is to consider the composite intention of successive parliaments, whereby the original intended meaning is now shaped by the later intent not to discriminate or breach international treaty obligations.

Whilst, as enacted, the Adoption Act allowed for joint adoptions by husbands and wives only, it also provided for adoptions by single persons both male and female of a certain age. Section 11(a) provides further emphasis to the purpose of the Act, in providing that before granting an adoption order the Court must be satisfied that "every person who is applying for the order is a fit and proper person to have the role of providing day-to-day care for the child and of sufficient ability to bring up, maintain, and educate the child."

It, thus, becomes clear that parliament's intention at the time of enacting (and subsequently) the Adoption Act, was to ensure children to be adopted were emotionally and financially cared for. The relationship status of the applicant (or applicants) was, and remains, essentially immaterial. The fact that "spouses" was used for joint adoptions purposes, and did not include de facto relationships (especially same-sex ones) or civil unions, was indicative of society at the time of enactment, when de facto relationships were a rarity, civil unions did not exist, and homosexuality illegal.

Indeed, it is arguable that the driving purpose behind all of New Zealand's adoption legislation has been to ensure both the emotional and financial needs of adoptive children, and to provide certainty to potential adoptive parents. To which, New Zealand's inaugural adoption specific legislation, the

Adoption of Children Act 1881, was in the terms of its proposer, the Hon George Waterhouse (4 August 1881) 39 NZPD 281, created so that "the benevolent might find wider scope for generous action; and that the results of their generosity might obtain some security by law."

As s 5(1) of the Interpretation Act and s 6 NZBORA remind us, the role of the courts in interpreting legislation today is to ensure a rights-consistent meaning as derived from the text and purpose of the legislation in question. Given that purpose was evidently to ensure children were properly cared for, it can, therefore, hardly be considered "aggressive" interpretation to the point of legislating to include same-sex de facto couples (or civil union partners) in the meaning of "spouses". Unless, of course, one fundamentally believes such couples cannot provide the necessary level of care, even where the required social work report (pursuant to s 10 of the Adoption Act) says otherwise. While not an argument put forward by or at the HRRT, it would be a flawed argument given research shows children develop just as well in families with same-sex parents as in families with opposite-sex parents (regardless of relationship status), and, indeed, better in some key areas such as family cohesion and general health. See, Simon R Crouch "Parent-reported measures of child health and wellbeing in same-sex parent families: a crosssectional survey" (2014) 14 BMC Public Health 635.

Societal Change

The HRRT's view of the ambulatory approach to interpretation was outlined in its analytical framework to all matters under consideration at [76] – [80]. Here, the HRRT at [77.1.1] – [77.1.2] stressed that an ambulatory approach under s 6 of the Interpretation Act is dependent not only on purpose, but on the terms concerned being able to bear the meaning attributed to them. Equally important to the HRRT at [77.3] was the consideration of whether "any expansion in the scope of the legislation is more appropriately left to parliamentary amendment [than] judicial interpretation."

Notably, the HRRT at [77.3] cites the discussion in *Burrows and Carter Statute Law in New Zealand* regarding parliamentary inaction and *Re AMM*, where it was noted at 419 that the High Court's approach can be viewed in two ways: a sensible updating in line with purpose, or legislative rather than interpretative. From its judgment at [158] and [168] the HRRT appears to subscribe to the latter view that the High Court's approach was legislative. That said, such was the HRRT's methodology to the issue of whether the term "spouses" could be reasonably interpreted to include same-sex de facto couples or civil union partners (as discussed above), it largely forfeited the opportunity to consider the ambulatory (or updating reading) approach to interpretation as mandated by s 6 of the Interpretation Act.

It is argued that the decision of *Re AMM* is neither legislative nor controversial. Rather, it is quite conservative in being broadly consistent with prior decisions of the Courts in relation to the interpretation of the term "spouses" in the Adoption Act; albeit, they were not specifically mentioned in the Court's judgment in *Re AMM*.

To that end, the High Court in *Application for adoption by RRM and RBM* [1994] NZFLR 231 at [234] observed that the current views of society should be reflected when interpreting the Adoption Act.

Such judicial reasoning was later developed by the Family Court in *In the Matter of J (adoption)* [1998] NZFLR 961, where it was proffered that the Courts are entitled to look at the actual relationship in question to determine whether it is enduring and stable, rather than to be fixated on whether the applicants are married or not.

While not specifically related to the interpretation of "spouses", the High Court in *Re SJD (adoption application)* [2000] NZFLR 193 at [9] also observed that there has been a substantial move in community attitudes towards adoption since 1955, and, as such, comments made in parliament at the time of the Adoption Act's enactment were of no particular value. Furthermore, the High Court at [10] agreed with the view that societal changes had to be taken into account when interpreting legislation.

Despite this shift in opinion, *In the matter of R (adoption)* [1999] NZFLR 145 the Family Court held that the term "spouses" in the Adoption Act means a husband and wife who are married. The High Court in *Re AMM* specifically dismissed this view at [31] – [32] when determining the Interpretation Act, NZBORA and Human Rights Act required them to consider societal attitudinal changes since the enactment of the Adoption Act, and, as such, held at [66] that an unmarried man and a woman in a stable relationship were eligible to jointly apply to adopt.

In the Matter of C (Adoption) [2008] NZFLR 141 at [40] the Family Court asserted that on the basis of NZBORA, the Human Rights Act, the International Covenant on Civil and Political Rights, and the United Nations Convention on the Rights of the Child, the term "spouses" in the Adoption Act: "does not have to be limited to those that are married, but can include a relationship between two persons who live together in a relationship in the nature of marriage or a civil union (from the definition of 'de facto relationship' in s 29 of the Interpretation Act 1999)." Notably, this decision makes no distinction between same-sex and opposite-sex couples.

Returning to *Re AMM*, as the HRRT were acutely aware, the High Court did not actually determine whether or not same-sex de facto couples had the right to jointly apply to adopt; the case stated referred to whether the Act could be interpreted to include unmarried men and women who were in a committed relationship. Nonetheless, the High Court at [48] took the opportunity to offer comment on same-sex de facto couples and proffered that at some point in the future the term "spouses" may be interpreted to include same-sex de facto couples, but it was unlikely at that point in time because it may "represent a departure from the traditional family unit concept."

The HRRT viewed such statements as damning for the case to interpret the term "spouses" to include same-sex de facto couples. In granting joint adoption orders to a same-sex de facto couple in *Re Pierney,* the Family Court appears to disagree.

There is of course nothing new about the courts using s 6 NZBORA to revisit meanings of pre-NZBORA (pre-1990) Acts. See for example, *Newspaper Publishers Association of New Zealand (Inc) v Family Court* [1999] 2 NZLR 344 (HC) (Guardianship Act 1968, s 23) and *Police v Beggs* [1999] 3 NZLR 615 (HC) (Trespass Act 1980). Even so, it is true, as the HRRT identify at [77.4], it is relatively unclear when an historic approach over an ambulatory one will be taken by the courts. It appears from the HRRT's reasoning that in this instance it preferred to take the more historic view to interpretation.

Were the HRRT to have preferred the ambulatory approach, there are at least five instances that indicate a societal shift has since occurred, by which the HRRT could have interpreted the term "spouses" in the Adoption Act to include same-sex de facto couples. Namely: (1) the decriminalisation of homosexuality and introduction of anti-discrimination legislation in NZBORA and the Human Rights Act; (2) the enactment of the MDMA Act after *Re AMM*, and with it the clear statutory indication that the welfare and best interests of the child are not thwarted by having same-sex parents; (3) the Government and Administration Committee Report on Marriage (Definition of Marriage)

Amendment Bill noted it was absurd that a single same-sex attracted or transgendered person could apply to adopt a child but a same-sex couple could not apply jointly; (4) Ministerial authorisation was recently given to the Advisory Committee on Assisted Reproductive Technology to amend its Guidelines on Surrogacy Involving Assisted Reproductive Procedures to empower the Ethics Committee on Assisted Reproductive Technology to determine whether or not to give a same-sex male couple approval to use fertility services for the purposes of conceiving a baby that would then need to be adopted by them; and (5) Parliament amended the Status of Children Act 1969 to allow a female same-sex couple, regardless of marital status, to be able to jointly register the birth of a child born via assisted reproductive technology, and for the female partner of the birth mother to be considered the birth parent of the child born through such technology.

Limited Impact

The HRRT also failed to consider the limited impact its interpretation of "spouses" would actually have, when determining the reasonableness of said interpretation. The High Court in *Re AMM* at [42] took the view that there would be limited impact brought about by interpreting the term "spouses" to include opposite-sex de facto couples precisely because of the extensive legislative work that had gone before it. Markedly, the same legislative history the HRRT believed at [155] – [156] prevented it from giving "spouses" a more rights-consistent interpretation.

The limited impact was also felt to occur by the High Court in *Re AMM* at [42] and [50] because it was a discrete area of law with relatively small numbers of adoptions taking place each year.

It can be added that to include same-sex de facto couples (and those couples in civil unions) in the term "spouses" would have similar limited effect because the law already provides avenues for many female same-sex couples (irrespective of relationship status) to cement their parental status to children born to them via assisted reproductive technology, without the need for adoption orders, as such persons can both be named on the birth certificate, pursuant to s 13(b) of the Status of Children Act 1969. Additionally, adoption orders are already able to be made in favour of suitable married couples (regardless of sexuality or gender identity) and opposite-sex de facto couples, as well as single people (and to same-sex de facto couples in accordance with *Re Pierney*).

Cumulatively, it is clear that interpreting the term "spouses" to include same-sex de facto couples would have limited effect and would, therefore, not be an overly aggressive interpretative exercise. As such, it is indicative that it *was* reasonably possible for the HRRT to find a more rights-consistent meaning of "spouses" so as to include same-sex de facto couples.

Clarity not Confusion

The HRRT's approach also meant it did not consider that the term "spouses" in the Adoption Act can reasonably be extended to include same-sex de facto couples without straining the meaning of the term. It also failed to consider what the High Court in Re AMM at [50] considered to be a relevant consideration – whether the proposed interpretation would render the remainder of the Act unworkable.

Parliament has already amended the Adoption Act so that same-sex married couples can both be named as parents on an adopted child's birth certificate, despite the biological impossibilities. Parliament has also allowed for this in respect of the amendments to the Status of Children Act for children born through assisted reproductive technology to female same-sex couples. Indeed, all

adoptions, whether to same or opposite sex couples (married or otherwise) create a legal fiction, in retrospectively amending children's birth certificates.

New Zealand's adoption laws already lack coherence, when it is lawful for same-sex attracted single people and same-sex married couples to adopt jointly, but for the HRRT to assert that same-sex de facto couples cannot. A similar observation was made in respect of Austria's laws by the European Court in *X v Austria* (19010/07) Grand Chamber, ECHR 19 February 2013 at [144].

Therefore, it would have been clear to the HRRT, if it turned its mind to it that extending the term "spouses" in the Adoption Act to include same-sex de facto couples (or civil union partners) would cause no added confusion or amount to a furthering of the already established legal fiction created by any adoption. Similarly, it would not have added strain to the meaning the courts have already given to "spouses" in the Adoption Act nor would it cause the rest of the Act to be unworkable.

Consistency

In addition to the above, the High Court in *Re AMM* at [49] (concurring with Richardson P, Gault and Keith JJ in *R v Poumako* [2000] 2 NZLR 695 (CA) at [37]) provided that it is valid, under s 6 NZBORA, to prefer a meaning that is not in every respect, but is more than the enactment's ordinary meaning, "consistent with this Bill of Rights."

Therefore, it was open to the HRRT to find that interpreting the term "spouses" in the Adoption Act to include same-sex de facto couples (or civil union partners) for joint application purposes would be consistent with the right not to be discriminated on the grounds of marital status. It would also be open to the HRRT to find that it would be consistent with the right not to be discriminated against on the grounds of sexual orientation, which could occur given that the High Court in *Re AMM* previously interpreted the term "spouses" to include opposite-sex de facto couples.

Conclusion

The HRRT's decision puts into perspective the real difficulties surrounding the exercise of attempting to determine the intention of Parliament. Much ink has been spilt in the discussion over the correctness of the judiciary attempting to divine parliament's intention when there are no clear words to aid the process. Suffice to say it is a perilous journey. That said, had the HRRT not cut short its s 6 NZBORA enquires in *Adoption Action Inc v Attorney-General* it could have come to the same conclusion as that reached by the Family Court in *Re Pierney,* and found that it was reasonably possible to find a more rights consistent meaning of "spouses" so as to include same-sex de facto couples (and civil union partners) for joint adoption purposes.

The preferred approach from here would be for *Re Pierney* and the reasoning of the High Court in *Re AMM* to be applied. There is, however, now a risk that the next same-sex de facto couple to jointly apply to adopt will not be granted such orders on the basis of the HRRT decision. This article sets out why in principle the High Court's lead in *Re AMM* should still apply.

In enacting the NZBORA, parliament, through section 6, tasked the courts with interpreting legislation in a rights-consistent manner. Section 6 NZBORA provides that wherever an enactment "can" be given a given a right-consistent meaning that meaning should be preferred. However, the conservative approach to s 6 indicated by the majority of the Supreme Court in *Hansen*, and as followed by the HRRT, to dilute "can" to "reasonably possible" means that people who have their rights infringed due to legislative words may not receive the necessary support from the courts or the HRRT.

Instead, they will be required to undertake a costly judicial exercise, where there is no guarantee that the courts will proactively interpret legislation in a rights-consistent manner. Where s 4 is then applied, the courts may or may not issue a declaration of inconsistency, which the government is free to determine what level of action (if any) to take, beyond advising parliament of the declaration. The preferable option would be for the courts (and the HRRT) to take a more assertive approach to their interpretative task under s 6. Otherwise, the full realisation of our fundamental rights will largely depend on political expedience. The very point which s 6 sought to overcome.

Post-publishing note: In August 2016 the government tabled its response to the decision of the HRRT in *Adoption Action Inc v Attorney-General*. In essence, the government advised parliament that it would not be revising the Adoption Act 1955 despite the six clearly identified breaches of New Zealander's fundamental human rights. It is the writer's view that this only goes to underscore the article's conclusion that the courts and the specialist Tribunal need to take a more proactive approach to securing people's rights. Otherwise, we risk those rights going unfulfilled where it does not meet the current legislative prerogative of the government of the day.