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Dean, Matthew

From: Parsons, Simon
Sent: 22 October 2003 15:35
To: Dean, Matthew
Subject: FW: Supreme Court

Consultation response to acknowledge and log please.

-----Original Message-----

From: Harris Michael [REDACTED]
Sent: 22 October 2003 15:27
To: 'Simon Parsons'
Subject: Supreme Court response

Please see attached <<Supreme Court.doc>>

His Honour Judge Michael Harris
President, Appeals Service

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Response to consultation paper on the Supreme Court

Before turning to the specific questions, I would propose that a further alternative should be considered. Instead of replacing the Judicial Committee of the House of Lords with a Supreme Court, the Judicial Committee should be abolished. The Court of Appeal would become the Supreme Court. This is not a new idea. The Victorians put this arrangement into statute towards the end of the 19th Century but it was not implemented. Our system already has at least one level of appeal (and in some instances, many more) and a further level is simply unnecessary. There is no Human Rights' imperative to have this added right of appeal. It adds to the costs of litigation and adds to the delay. The new Supreme Court would in effect replace the Court of Appeal. The head of the court should have the power to convene a larger bench of judges, of, say, 5 members, to sit on those types of cases which currently go through to the Judicial Committee. It would also be appropriate to convene this larger bench in order to resolve conflicting Supreme Court decisions (there is a model for this in the jurisdiction of Social Security Commissioners where the Chief Commissioner has statutory power to convene a tribunal of commissioners to resolve difficult (and contentious) questions of law).

Q1 Devolution cases could go before this enlarged bench. The membership of the Supreme Court might include members of the appellate courts in the devolved jurisdictions, who can be called upon to sit in these cases.

Q2 The existing members of the Court of Appeal and of the Judicial Committee would become judges of the Supreme Court. That would add 12 members to the present strength. However, I would confidently predict that the elimination of the further appeal right would significantly reduce the total volume of work and that some of those additional members would not need to be replaced on retirement.

Q3/4 It is not easy to see why there should be any statutory limit on the number of judges which should be appointed to any particular level or jurisdiction. The appointments should be based on operational need.

Q5 Nearly always sensible to have a deputy!

Q6 All judicial appointments should be by the same process – namely through the appointments' commission. The more senior the judge the more important it is that there should be no Ministerial involvement in the process – not the other way round as suggested.

Q7-9 The House of Lords is a political body. A retired law lord should have no greater right to sit there than any other member of the public – there should be no presumption of a peerage. And senior judicial officers should not sit and vote in the House of Lords.

Q10-12 See answer to Q6. The appointments' commission should make the appointments. There is no reason why the Queen should be involved at all.

Q13-16 As indicated above the appointment process for senior judges should be exactly the same as for rest of the judiciary. It should be by open competition and the posts filled largely by promotion but sometimes directly from the professions or academia.

Q17/18 The retirement age should be 70 with a view over time to reducing it to 65. Unless there are powerful operational reasons no judge should be authorised to sit beyond the retirement age. It is important that the posts should be filled by younger candidates.

Q19/20/21 These do not apply in my model.

Q22/23 It should be called the Supreme Court and the judges called Mr x or Mrs y, Judge of the Supreme Court.

HH Judge Michael Harris
The Appeals Service
22.10.03