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RESEARCH PAPER FOR ADMINISTRATIVE AND CONSTITUTIONAL LAW
LL.M. (LAWS 501)

LAW FACULTY
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> "The fundamental, and legal basis of rent control is to prevent the speculative, unwarranted and abnormal increases in rents that would result from the unnatural competition of too many tenants bidding for too few apartments and the economic and social hardships this would cause....." [1]

But how may this be achieved? This paper briefly traces the development of rent legislation in New Zealand and studies the Rent Appeal Boards after the passage of the Rent Appeal Amendment Act 1977. It reviews their procedure and discusses options for the future.

1. BACKGROUND

The legal control of rent is a peculiarly twentieth century phenomenon. The first measures appeared in the United Kingdom during the First World War when the Increase of Rent and Mortgage Interest (War Restrictions) Act 1915 (U.K.) rendered any rent in excess of the "standard" rent for the premises irrecoverable. The standard rent was that payable on 3 August 1914 or if not let on that date, the last rent at which it was let before 3 August or, if only let after that date, then the first rent at which it was so let. This was the simplest form of rent freeze. It is clear from the second reading debate that the Bill was viewed essentially as a temporary measure, prompted specifically by the agitation of munitions workers who were angry at suggestions that their rents may be raised. [2] In New Zealand the first rent legislation was Part 1 of the War Legislation Amendment Act 1916 which adopted the British Act with some modification of detail although its aim was to prevent exploitation of accommodation shortages during the war, especially in Wellington. [3] The wartime genesis of this type of legislation is further illustrated in the case of Canada where an Order of

1. Ontario Law Reform Commission, Interim Report on Landlord and Tenant Law Applicable to Residential Tenancies. (Department of the Attorney-General, Ontario, 1968) 65.

2. M. Partington, Landlord and Tenant (Weidenfield & Nicholson, London, 1975) 43.

3. A. Frame, P. Harris, "Formal Rules and Informal Practices: A Study of the New Zealand Rent Appeal Boards" (1977) 7 NZULA 213, 217.

in Council in 1941 [4] pegged maximum rents to those obtaining at a specified date. It seems clear that rent control began as a curtailment of the landlord's rights as part of a larger package of economy control measures designed "to" arrest inflation and bolster the economy in time of national emergency. The popular conception of rent control as principally an instrument of social justice can therefore only stem from its continuation in times of peace.

The 1916 Act did not apply to furnished accommodation, nor accommodation let with substantial board and attendance. [5] The War Legislation Act 1917 [6] brought furnished accommodation within the scheme and since that time the New Zealand legislation has not differentiated between furnished and unfurnished accommodation except to allow an amount in the rent to cover the cost of providing furniture.

The New Zealand provisions were intended to expire six months after the end of World War One [7] but were continued in various forms until the passage of the Fair Rents Act 1936, although decontrol measures during the 1920's had meant few tenancies were subject to rent restriction. The Fair Rents Act 1936, product of the freshly elected Labour Government, was described as [8] "an Act to make temporary provision for the restriction of increases in the rent of certain classes of dwelling houses..." and required annual reenactment. [9] It establishes not only a "basic rent" similar to the previous standard rent but provided also for the fixing of a "fair rent", in the determination of which the Magistrate was to have regard to the relevant circumstances of the landlord and tenant and "other relevant matters",

4. Order in Council 9029, approved 21 November 1941 under provisions of the War Measures Act, R.S.C. 1927, c. 206.

5. War Legislation Amendment Act 1916, s.8 (1)

6. Section 21 (1)

7. War Legislation Amendment Act 1915, s. 10 (1). Similarly Increase of Rent and Mortgage Interest (War Restrictions) Act 1915 (U.K.), s. 5 (2)

8. Title, Fair Rents Act 1936. Emphasis Added.

9. Section 25 (1).

eventually fixing a rent that "in his opinion it would be fair and equitable for the tenant to pay".[11] When war came a second time it was provided that the Act should terminate on the expiration of one year from the end of the war "but before the war's legal termination as between New Zealand and Germany on 9 July 1951 the consolidating Tenancy Act 1948 was passed.[12] Wartime had seen contemporaneous control under Part III of the Economic Stablization Emergency Regulations 1942,[13] promulgated for the purpose of "promoting the economic stability of New Zealand".[14] These regulations laid down a comprehensive plan which included stabilizing as far as possible prices (of a selective list of goods), remuneration and transport rates as well as the linking of wages and salaries to a Wartime Price Index which had to move a fixed percentage before the Court of Arbitration could make any general wage order.[15] Rents for all tenancies other than those already covered by the Fair Rents Act 1936 and its amendments were fixed at those payable on 1 September 1942. While the Magistrate determining a fair rent under the Fair Rents Act was required to have regard to the "circumstances", the Economic Stabilization Emergency Regulations forbade such consideration.[16] The dichotomy was ended by the enactment of Section 21(1) of the Tenancy Act 1948 since which time taking into account the individual circumstances of either the tenant or the landlord in assessing a fair rent has disappeared. The legislation was amended and consolidated in the Tenancy Act 1955 but this was soon subject to curtailment with tenancies entered into after 18 November 1961 being excluded from its jurisdiction with the except-

10 Fair Rents Act 1936, s.7(1). The fair rent was not to exceed the basic rent unless the Magistrate was satisfied by evidence from the landlord that there were special circumstances.

11 Fair Rents Amendment Act 1942, s.2(1).

12 E.J. Haughey, "The Law of Property" (ed. J.L. Robson) New Zealand: The Development of its Laws and Constitution (2ed; Stevens and Sons, London 1967) 403.

13 Under the Emergency Regulations Act 1939.

14 Reg.2.

15 J.V.T. Baker, The New Zealand People at War: War Economy (Department of Internal Affairs, Wellington, 1965) 287.

16 Fair Rents Act 1936, s.7(1), Economic Stabilization Emergency Regulations 1942, R.16.

ion of new agreements by pre-existing tenants.[17] The Act still applies today but only to a small number of tenancies.[18] The rental market was therefore practically a free market in the early 1970s and the actions of "rack renters" or unscrupulous, speculative landlordspreying on tenants in a very tight rental climate became a substantial political issue during the 1972 General Election campaign. As a means of drawing publicity, Mr Ron Bailey introduced a private member's bill into Parliament in late August 1972 which would have respectively frozen rents and permitted increases only after a successful appeal to a Rent Appeal Board. The Rent Appeal Board's Bill in fact permitted any party to a tenancy agreement to ask that the board amend any clause of a residential tenancy agreement. Although the Bill was required to be taken over by the Government[19] which indicated it would not do so, the Rent Appeal Boards Bill was read a first time and referred to the Labour Committee for consideration where it lapsed upon the dissolution of Parliament.

After the 1972 elections the victorious second Labour Government promulgated the Rent Review Regulations 1972 [20] to fulfill its election promise that there would be "rent appeal boards" established before Christmas.[21] These regulations operated an appeal system from a general rent freeze as had been envisaged in Mr Bailey's Bill and were an interim measure designed to give the government time to consider the passage of a permanent Act early in the following year. That Act, the Rent Appeal Act 1973, was purportedly amended by the Economic Stablization (Rent) Regulations

17 Tenancy Act 1955, s.6A as inserted by Tenancy Amendment Act 1961, s.2.

18 Estimated at 8,800. Department of Statistics, New Zealand Official Year Book 1975 (Wellington, 1975) 526. In 1975 only 213 applications were recieved to have rents fixed under the Act: Whiteley, Private Rented Housing in New Zealand (National Housing Commission, Wellington,1979)22.

19 It involved an appropriation by Parliament.

20 S.R. 1972/226 1972/227

21 Hon. Norman Kirk, Press Statements by Ministers of the Crown: 24/72, 370

1976 [22] and indirectly affected by the Rent Freeze Regulations[23] 1976 which temporarily froze rentals during the last third of that year. The Rent Freeze Regulations were promulgated under the Economic Stablization Act 1948 on the same day as the Price Freeze Regulations 1976 [24] to form, once again, part of an overall stabilization plan. Miscellaneous changes to the Rent Appeal Act were made in an amending Act of 1977 which transferred the administration of the Act from the Labour Department to the Housing Corporation.

There are several threads running through the history of rent control in New Zealand that form a useful backdrop against which to view the establishment of the rent appeals boards. The tension between the use of restrictions as an implement of economic policy or one of social justice is interesting although the two are so closely related that it would be unreasonable to assert either as the sole basis of control. The Fair Rents Act 1936 was described from the bench as an Act[25] "to protect poor tenants of small houses from the exercise of their rights as property owners by their landlords," and one National Member of Parliament went so far as to see Mr Bailey's Bill as[26] "nothing more or less than a calculation to excite class hatred". Indeed tenancy legislation could be viewed as more than an attempt at

22 S.R. 1976/122; Taylor v Auckland City Corporation (1977)2 N.Z.L.R. 413, 418.

23 S.R. 1976/232

24 S.R. 1976/231. 17 August 1976.

25 Stable Securities v Cooper (1941) N.Z.L.R. 879, 886 per Ostler J.

26 New Zealand Parliamentary debates Vol. 380, 1972: 2142.

social justice, being the implementation of a right existing at international law:[27]

> Adequate shelter and services are a basic human right which places an obligation on goverment to ensure their attainment by all people, beginning with direct assistance to the least advantaged through guided programmes of self-help and community action.

As we have seen, the economic interest at stake was initially that of the state as a whole. The Tenancy Act 1948 provided that[28] "the Court shall have regard to the general purpose of the Economic Stablization Act 1948". The regulations mentioned above and especially the Economic Stablization (Rent) Regulations 1976 [29] which purported to require a rent appeal board to have regard not only to the matters set out in the Act but, as an overriding and predominant consideration, to the economic stability of New Zealand bespeak rent control as economic policy.
In the fairly large renting group [30] the factor with the strongest relationship to tenure is the age of the tenant. There is generally a flow from renting to mortgage holding and finally to outright ownership. A study has shown that apart from the effect of these factors on the life-cycle of the family, socio-economic class, occupation, income and education had only modest relationships with tenure.[31] There does not seem to be any underprivileged renting class in New Zealand. The disadvantaged here are the economically weak, albeit often temporarily. Laidlaw, in his 1975 study of the rent appeal boards [32] commented that the Act

27 HABITAT: United Nations Conference on Human Settlements, Declaration of Principles III (Vancouver, 1976)5.

28 Section 9(1). That purpose is the promotion of the economic stability of New Zealand: Economic stabilization Act 1948, s.3.

29 S.R. 1976/122, Reg.3. Under the Economic Stabilization Act 1948.

30 Twenty seven percent of all dwellings specified in the 1976 Census were rented: N.Z. Official Yearbook 1979 (Wellington, 1979) 473. This represents 248, 356 dwellings. Cf. 25.9%, 1971; 24.9% 1966. These figures are not subject to very useful interpretation because the Census does not distinguish between state and housing tenants and municipal dwelling or private tenants.

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31 C. Crothers "Determinants of House Tenure", Department of Socialogy and Social Work, V.U.W. May 1977. Cited in Whiteley, op.cit, n.18, 15. There were however three times as many wage or salary earners compared to employers in rented accommodation.

32 (1975) 3 Otago L.R. 323, 326.

did not seek to promote general economic stability. Having regard to the circumstances of the Act's conception when the political pressure was based on stories of unscrupulous landlords exploiting their tenants and not any argument regarding the economy, which was then in excellent shape, this would appear to be an accurate assessment.

The temporariness of control is a feature of most of the legislation in this area. The early British and New Zealand World War One and yet the New Zealand Act continued in operation until the Fair Rent Act 1936 was passed.[33] The "temporary" 1936 Act was to expire a year later but was continued by regular reenactment until repealed in 1948. The Rent Appeal Act itself was introduced into Parliament on an apologetic note when, during the first reading debate, the then Prime Minister, Norman Kirk, said that he would prefer not to have the controls and that the Act would not be kept in force a day longer than was necessary.[34] While the emphasis on temporariness would be seen as simply owing to a political desire to please tenant voters and placate landlords at the same time the history of periods of control followed by decontrol show that the incursion on a landlord's right to receive the market rental is only condoned when there is a critical shortage of accommodation. Nonetheless the rent control measures are difficult to dispose of entirely.

The method of restricting rent increases had undergone changes as the various laws were passed. The "rent freeze" method that had been used originally pegged the maximum rent to that payable on a certain date. This had the disadvantage of effectively rewarding landlords charging exhorbitant rentals and punishing reasonable landlords leasing at low rates by perpetuating and legimating the status quo. Against this there was the advantage that the base rent was often very easily determined. This gave way to the "fair rent" so that while all rents remained frozen, individual rents could be assessed on the merits of each tenancy and the Court

33 Though subject to restrictions on operation.

34 Fair Rents Act 1936, s.7(1); Tenancy Act 1955, s.21(1).

arrived at a figure which [35] it would be fair and equitable for a tenant to pay for the premises. While the basis of assessment was couched in fairly vague terms the Fair Rents Act made provision for regulations providing that the annual amount of the fair rents to be determined should be such proportion as prescribed (between four and six percent) of the capital value of the dwelling house, together with the average annual outgoings of the landlord in respect of rates, insurances and repairs, the annual amount, if any, to be allowed in respect of depreciation of the dwelling house, and the annual amount to be allowed as the rent of the furniture, if any.[36] These regulations were never promulgated but the Act was nonetheless administered by many Magistrates very much on a formula basis and many of the decisions were quite predictable. This situation was normalised by the Tenancy Act 1955 under which the Tenancy Regulations 1956[37] were made. Despite a similarly wide basis for determining the fair rent in that Act [38] the regulations restricted the fair rent to less than five percent of the capital value on which the fair rent was based, together with an allowance for outgoings and an allowance for any chattels included in the tenancy as well as the amount of interest in excess of five percent payable under a mortgage of the premises on principal not exceeding the value of the premises. The assessment of fair rents was largely a mathematical exercise, based on the capital value of the premises.

35 Fair Rents Act 1936, s.7(1); Tenancy Act 1955, s.21(1).

36 Fair Rents Act 1936, s.24(2).

37 S.R. 1956/187, Reg.2

38 Section 21(1): "after taking into consideration all relevant matters, (the Court) shall, subject to the provisions of any regulations made under this Act, fix as the fair rent such rent as in its opinion it would be fair and equitable for a tenant to pay for the premises".

The Rent Review Regulations 1972 introduced a novel scheme in that all rents were frozen at a certain date and tenants could apply to one of the Review Authorities for a determination as to whether any increase in rent since that date could be "justified" in terms of not exceeding the extent by which (a) the landlord's outgoings in respect of the premises had increased for reasonable cause; or (b) the premises or any furniture or chattels provided by the landlord had been improved by him.[39] Thus no fair rents were assessed but exceptions to the basic rent were justified in whole or in part, or rejected as totally unjustified.

Not only did the type of control vary over the years but the body determining the rents also altered. Under the War Legislation Amendment Act 1916 where the only issue was a factual one of determining the standard rent and recourse was to a Magistrate if it was contended there had been an increase in rent by virtue of the transference to the tenant of some burden previously borne by the landlord or where the parties could not agree on the capital value of the dwelling house.[40] Similarly a fair rent under the Fair Rents Act was to be fixed by a Magistrate.[41] Under the Economic Stablization Emergency Regulations 1942 the Magistrate's Court retained jurisdiction of tenancies worth less than 525 l. per annum and unless the parties agreed otherwise, more valuable fair rents were determinable in the Supreme Court.[42] There was provision in the Fair Rents Act for an Inspector of Factories to act on behalf of the tenant both in and out of court[43] and in the Tenancy Act 1948, every Inspector of Factories was ex-officio appointed to be a Rent Officer who, with other appointed Rent Officers was to not only appear for tenants but could also approve a fair rent agreed to between the parties which would then

39 S.R. 1972/277, Reg.5

40 Sections 2(2), 7(1) respectively

41 Fair Rents Act 1936, s.6(1)

42 H.J. Wiley, Tenancy Legislation (5 ed, 1967)

43 Fair Rent Act 1936, s.17

apply as if it were the fair rent fixed by the Court.[45] This was a sensible time and money saving adaptation that was taken further in the Tenancy Act 1955 so that the Rent Officer could approve an agreement [46] or else fix the fair rent himself which would then take effect unless the parties appealed to the Magistrate's Court.[47] If a fair rent was fixed in the Magistrate's Court there was a further appeal to the Supreme Court if the fair rent exceeded 525l. per annum.[48] There was still a right to apply to the Magistrate's Court for a determination but it seems fair to say that the pattern emerging is that of a movement away from the cost and formality of the courts and towards the more informal decision of an officer of the Department of Labour, subject to appeal. This movement was continued in the Rent Review Regulations 1972 which created Rent Review Authorities which give the impression of being independent tribunals but were in fact officers in the various Department of Labour district offices. While the movement away from the courts was advantageous from a cost and efficiency standpoint, the departmental control of rent in fulfilment of an election pledge is in complete contrast to the tenet that a tribunal affecting the rights of citizens must not only be unbiased but must be seen to be so.

New Zealand has never attempted two other forms of rent control. The first involves alteration of the parties' common law relationship by conferring upon existing courts the power to assist tenants threatened with an "unreasonable demand for rental". [49] The second would render any demand for an exhorbitant rent ("rent usury") a criminal offence as it is in the Federal Republic of Germany.[50]

45 Ibid, s.16(1).

46 Tenancy Act 1955, s.25

47 Ibid, s.24

48 Ibid, s.27

49 Noted in Ontario Law Reform Commission Report, n.1, 68.

50 L.N. Brown "Comparative Rent Control" (1970) 19 I.& C.L.Q. 205, 211.

II. THE ACT

The Rent Appeal Act 1973

At the end of 1972 tenancy legislation was becoming a political issue and the National Party government maintained the attitude that the only way to alleviate the pressure of escalating rentals was to stimulate investment to encourage the construction of new rental accommodation. It had given serious consideration to the possibility of some form of surveillance over rents but thought rent control would require the reestablishment of a fair rents administration and the appointment of large numbers of inspectors as well as setting back the building of houses or flats for rent and retarding the renovation and improvement of existing accommodation. It therefore did not propose to take action "because controls would be both impracticable and self-defeating."[51] This attitude was maintained by the National Party throughout the ensuring debates on Mr Bailey's private members Bill[52] and the Rent Appeal Bill which later became the 1973 Act.[53] The Rent Review Regulations had been roundly critized in the light of the low number of applications for review [54] but the Third Labour Government pressed on in its establishment of permanent legislation on the basis that the regulations had at least slowed down the rent increases and a "permanent" Act would be even more effective.[55]

51 New Zealand Parliamentary debates Vol. 379, 1972: 1425. Hon D. Thomson.

52 New Zealand Parliamentary debates Vol. 380, 1972: 2138. Hon. D. Thomson. Mr Bailey claimed to recognise that the only really effective leveller of rents is an adequate supply of houses for all who need a home but until that desirable state had been reached he considered there was a need for some way of arriving at a fair rent for residential properties: Ibid. 2136.

53 The Hon. D. Thomson said the Bill was misnamed. He suggested it be called the "Rental Accommodation Shortage Creating Bill" with a long title, "An Act to create shortages by deterring investment in rental accommodation through regimentation and control". New Zealand Parliamentary debates Vol. 386, 1973: 3757.

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54 In the first two months of operation to 22 February 1973 there had been only 251 applications nationwide, 32 of which were outside the jurisdiction of the review authority: New Zealand Parliamentary debates Vol. 381, 1973:913. The Hon. N.E. Kirk admitted he had expected there would have been more applications and suggested as one reason why there were not the fact that the regulations, made under the Economic Stabilisation Act 1948, could not operate retrospectively on rent increases before 21 December even if they occurred after the stipulated date of 1 April 1972. Ibid, 912.

55 New Zealand Parliamentary Debates Vol.381, 1973: 690. The Hon. H. Watt.

The Rent Appeal Bill was introduced on 16 March 1973 with the Labour Government avowing it would prefer not to have the controls but they were temporarily necessary[56] and the National opposition emphasising it opposed the Bill because of the deterrent to investment occassioned by unclear controls.[57]

The Bill was read and referred to the Labour Committee largely as it later appeared as the Rent Appeal Act 1973. It provided a system whereby there would remain a freedom to contract a residential tenancy at any rent subject to an appeal for an equitable rent to be set by one of the rent appeal boards which were to be established by the Minister as the thought necessary. This took the control of rent out of the hands of government employee and put it into those of an independent tribunal which was a constitutionally desirable step in the movement away from the court structure. The Labour Committee recommended miscellaneous adjustments to the Bill, the most important of which were the inclusion of the duty to give reasons for every assessment which must be in writing[58] and an entitlement in the landlord to apply for an assessment, even when the flat was not let.[59] The committee also created a right of recovery of rent paid in excess of the equitable rent,[60] as well as offences in the later part of the Act for stipulating for or accepting key money[61] not issuing receipts for rent paid[62] and refusing to let a dwelling house to an applicant with children.[63] The select committee

56 Ibid, 912. The Hon. N.E. Kirk

57 Ibid, 911. The Hon. D. Thomson.

58 Rent Appeal Act 1973, Clause 8, Second Schedule.

59 Ibid, ss6 (1), 6(6).

60 Section 11.

61 Section 22.

62 Section 23

63 Section 24. It also added a commencement date clause (s1(2)), made provision for subtenancies (s.6(2)), excluded motels and travellers' accommodation (s.6(7)), provided that the assessments be open to public inspection (s.7), limited calculation of a proper return to the landlord to the value of the premises as a dwelling house (s.8(4)), added a ground for rehearing (s.9(1)(b)), clarified the definition of dwellinghouse (s9(2)), provided that an appeal to the Supreme Court does not act as a stay of proceedings (s.13(2)) and increased protection against eviction to cover an action under s.11 (s.20(1)) and for protection

(63 continued)
to last the whole time an assessment is in force. It also required the conditions on which a bond was held to be written (s.21(b)(ii) and (iii)), created an offence of failing to answer a question put by the board (s.26(g)) and adjusted the requirement to notify the other party which had previously required service on the landlord (cl.3, Second Schedule).

was clearly a very useful stage in the bill's development. After consideration by the Committee of the Whole House, provision was made for continuing actions under the Rent Review Regulations[64] and the onus on the landlord to prove in a criminal action that he did not evict the tenant because of his application to the Board was extended to civil actions for possession or ejectment.[65] Parties to any hearing of the rent appeal board or subsequent appeal to the Supreme Court were made eligible to receive legal aid.[66]

The Act was passed on 28 September 1973 and came into force on 1 February 1974.[67] The Minister of Labour in whose department the Act was to be administered gazetted the establishment of four rent appeal boards.[68] Instead of a rent appeal board in every Labour Department district office as had been envisaged in the private Bill[69] the boards were to exercise a broad territorial jurisdiction covering the following Labour Department districts:

Auckland:	Whangarei, Auckland, Hamilton, Tauranga and Rotorua.
Wellington:	Gisborne, Napier, Hastings, New Plymouth, Wanganui, Palmerston North, Masterton, Lower Hutt and Wellington.
Christchurch:	Nelson, Blenheim, Greymouth, Christchurch and Timaru.
Dunedin:	Dunedin and Invercargill.

64 Section 20.

65 Section 20(4)

66 Section 33

67 S.R. 1974/14

68 New Zealand Gazette, Vol. 11, 1974 226 (7 February).

69 Rent Appeal Boards Bill 1972, cl.4(1).

Three members were appointed to each Board by the Minister of Labour[70] and it is worth noting that whereas the Rent Appeal Boards Bill 1972 had required the appointment of a barrister and solicitor of the Supreme Court as chairman with two "other persons" as members,[71] the 1973 Act merely provided that every board consist of three persons, one of whom shall be appointed chairman.[72] On introducing the Rent Appeal Bill 1973 into the House, the Minister of Labour (Mr Watt) said the necessary qualities for appointment were qualifications in law, valuation and social work.[73] In its Report of the Committee on Administrative Tribunals and Enquiries,[74] the Franks Committee recommended that the chairmen of British Rent Tribunals should, without exception, possess legal qualifications. However this was made against a general background of criticism of the British tribunals for their insufficiently high quality of membership; insufficiently judicial methods and their rare production of reasoned decisions.[75] The more general finding with respect to chairmen was that;[76]

70 Rent Appeal Act 1973, s.4(4)

71 Rent Appeal Boards Bill 1972, cl 4(2).

72 Rent Appeal Act, 1973, s.4(3).

73 New Zealand Parliamentary debates Vol. 381, 1973: 910.

74 Cmnd. 218 (1957), para 163.

75 Ibid, para 160.

76 Ibid, para 55.

> Objectivity in the treatment of cases and the proper sifting of facts are most often best secured by having a legally qualified chairman, although we recognize that suitable chairmen can be drawn from feilds other than the law. We therefore recommend that chairmen of tribunals should ordinarily have legal qualifications but that the appointment of persons without legal qualifications should not be ruled out when they are particularly suitable.

This was also the opinion of New Zealand's Public and Administrative Law Reform Committee[77] and although several chairmen of boards have been lawyers, many have not.[78] It is submitted that the expressed desirability of legal expertise in one member of a board exercising a very important statutory jurisdiction as far as the two parties are concerned, is well founded and that notwithstanding executive appreciation of the benefits of a legal training, it would be more desirable if the section under which a chairman was appointed had been framed in the terms of the later Small Claims Tribunal Act 1976 regarding the appointment of Small Claims Tribunal Referees:[79]

> A person is qualified to be so appointed if -
>
> (a) He is a barrister or solicitor of the (High) Court of not less than 3 years practice; or
>
> (b) He is otherwise capable by reason of his special knowledge or experience of performing the function.

77 First Report, 1968, para 42(ii). Despite nomenclative a Rent Appeal Board plainly cannot be considered an appelate tribunal which the committee recommended should always be legally qualified.

78 Only on board currently has a lawyer as Chairman. See Appendix A.

79 Section 7(2)

The Wellington Rent Appeal Board is a useful illustration of the unreasonableness of requiring legal qualification as a compulsory attribute in all chairmen. The first chairman was Mr W.A. Fox who had been Minister of Labour in the Second Labour Government and responsible for the operation of the Tenancy Act 1955. He was succeeded by Mr A.N. V. Dobbs, a former Director-General of Education and earlier an Assistant Commissioner of Police, now a member of the War Pensions Board. It would be unrealistic to pass up the services of such capable and administratively experienced men solely on the basis that they were not legally qualified.

Turning to the manner in which members are appointed to the Boards, there arise some constitutional questions as to the independence of each Board. The Minister chooses and appoints members on his own which puts him in a powerful position when members come up for reappointment. The Public and Administrative Law Reform Committee recommended in their first report[80] that appointments to administrative tribunals be made by the Govnernor-General acting on the advice of the Minister concerned who should be required to consult with the Minister of Justice before the advice is tendered. This was regarded as being "particularly important" by the Committee in that it would not only ensure the stability of the applicant but also "should dispel any illusion that the department of state administering the tribunal may be exercising undue control over its personnel." As it is the Minister chooses members from a standing file to which nominations have from time to time been added by fellow members of Parliament and figures in the community.[81] That the Board members are reappointed solely at the pleasure of one man is emphasised by a comment of the then Minister of Housing, the Hon. Eric Holland when he explained, "I do not propose to change any of the board members because I am satisfied with the way they are operating." [82]

80 First Report, 1968, para 42(v)

81 The selection of members appears totally dependent on the nominations on file: M. Thompson, Aide to the Minister of Housing. This is common practice for the filling of statutory boards.

82 New Zealand Parliamentary debates Vol.415, 1977: 4357.

The members are appointed for a minimum three year term which accords with the recommendations of the Public and Administrative Law Reform Commission.[83] They may be removed from office at any time by the Minister for "disability, bankruptcy, neglect of duty, or misconduct proved to the satisfaction of the Minister".[84] Parallel provisions maybe noted in other comparatively recent legislation.[85] The subjective nature of the power may remove much of the protection afforded by the express listing of grounds for removal and it is uncertain whether a court would be prepared to quash the decision of a Minister made on these terms. However, in an appropriate case a judge may be able to rule that the Minister was mistaken as to whether the facts proved, to whatever degree, represented one of the grounds for dismissal in which case the Minister was mistaken on a point of law (his powers under the statute) and his decision may be annulled.[86] One factor that might be taken into account in quashing such a decision is the distinction in the Act between the tenure of a member and that of a deputy to a member who holds office only "during the pleasure of the Minister".[87] The enactment of more restrictive provisions regarding the dismissal of a member may well imply that the courts are entitled to take an active stand here. In any case, the most likely sanction in such a case involving Ministerial interference with an independent board would be political rather than legal.[88]

83 First Report, 1968, para 42,(vi)

84 Rent Appeal Act 1973, s.4 (7); c.l.2(1), First Schedule.

85 E.G. Transport Act 1962, s.99(2); Treaty of Waitangi Act 1975, cl.2, First Schedule; and the Commerce Act 1975, s.4 (exercisable by the Governor-General in the latter two cases).

86 E.G. Reade v Smith (1959) N.Z.L.R. 996, 1000; Labour Department v Meritt & Beazley Homes (1976) 1 N.Z.L.R. 505, 508.

87 Rent Appeal Act 1973, cl.4 (1) First Schedule.

88 Witness the Marginal Loans Board Inquiry: New Zealand Gazette 1980, No. 100, 2521 (28 August 1980)

The Act binds the Crown but the largest section of Crown owned dwelling houses is excluded from its operation because State housing is specifically left outside the Boards' jurisdiction.[89]

The board is required to assess an equitable rent for the premises and the Act is inovative in the large scope it gives to the subjective impressions and ideas of the board members in arriving at a determination. The rent is no longer computed as a function of the capital value after premises plus other expenses and allowances, but the board is required to determine the rent under section 8(1):[90]

> For the purposes of this Act, the equitable rent of a dwelling house shall be that rent which (without regard being had to the personal circumstances of either party) a reasonable landlord might expect to recieve and a reasonable tenant might expect to pay for that dwelling-house having regard to -
>
> (a) The locality in which the dwelling-house is situated:
>
> (b) The standard of accommodation which the dwelling house provides:
>
> (c) Its state of repair:
>
> (d) The prevailing level of rents in the locality:
>
> (e) The provision of a proper return to the landlord:
>
> (f) The landlord's outgoings in respect of the dwelling house:
>
> (g) The furniture and chattels (if any) provided by the landlord.

89 Section 29 Nevertheless the Act may be invoked to gain an equitable assessment of other Crown owned dwelling houses. E.g. Applications by Messrs Sutcliffe, Wakefield and Neil (Defence Department houses at Waiouru) withdrawn after hearing.

90 By subsections 2,3 and 4 of section 8 the amount allowed under s.8(1)(g) shall not exceed 15 percent per annum on the value of the furniture and chattels, an assessment may include a reasonable allowance for management and collection of rent, and the determination of a proper return to the landlord under s.8(1)(e) shall be based on the value of the premises as a dwelling-house, and not their value for industrial, commercial or other purposes.

As mentioned above,[91] the disregard for personal circumstances is not new and is preferable to avoid equitable rents over the same property which would vary from tenant to new tenant and landlord to new landlord in an unpredictable manner. While a tenant is not entitled to a lower than normal equitable rent because his landlord is a city corporation, not liable to tax, which has built the accommodation with a low interest central government loan,[92] yet nor does he have to pay a greater than normal rent because the landlord has heavily mortgaged the property.

Although the words "having regard to" appear weaker than "and shall have regard to", it is agreed that Laidlaw is correct in arguing that nevertheless the consideration of all factors is mandatory.[93] Laidlaw argues convincingly that the list is not exhaustive and although his use of Section 5(j) of the Acts Interpretation Act 1924, to resolve the problem is dubious,[94] it is submitted that the better view is, as he finds, that the legislature intended the Board to take into account all relevant matters excluding personal circumstances, irrespective of whether they are specified in section 8(1). Such matters may included the level of rent paid by the tenant up until the timeof application to the board[95] or the security of tenure enjoyed by the tenant.

91 Ante p.

92 Taylor v Auckland City Corporation (1977) 2 N.Z.L.R. 413 416.

93 Op.cit.,n.32,330, especially in the light of Clark v Wellington Rent Appeal Board (1975) 2 N.Z.L.R. 24,31 where O'Regan J. implies that had the record disclosed that the board had not taken into account one of the listed factors, that would comprise an error of law.

94 Op.cit., n.32,332. Section 5(j) requires that all statutes receive such a fair large and liberal interpretation as will best ensure the attainment of the object of the legislation. The crux of the argument lies in what can be said to be the object of the legislation and while Laidlaw offers "to provide for the assessment by the Board of a rent which is equitable for the particular dwellinghouse "it would not be incorrect to insert after the word "assessment", "according to prescribed criteria." The object of the Act cannot be used to justify one interpretation or the other without begging the question at issue.

95 This information is required on the application form.

The assessment of equitable rent continues inforce for twelve months[96] from the date on which it takes effect. A perusal of the assessments of the Wellington Rent Appeal Board discloses that the power to nominate a day on which the assessment takes effect is sometimes exercised in a discretionary fashion. Although it is normally the case that a preliminary assessment that has the consent of the parties and approval of the board will run from the date of application, while an equitable rent fixed by hearing will run from the date of the hearing, there are appropriate cases where the equitable rent fixed at a hearing is backdated to the date of application to allow the tenants to recover their money paid in excess.

No rent in excess of the fixed equitable rent is recoverable or lawfully payable for any period during which the assessment is in force [97] and any such amount that has been paid may, within twelve months, be recovered as a debt due to the person by whom it was paid, and maybe deducted by the tenant from any rent payable within that twelve month period.[98]

The board may state a case for the opinion of the High Court[99] or the parties to the assessment may appeal to that court on a point of law only as the determination of the board is final and conclusive as to any question of fact.[100]

96 Unless the rent appeal board decide on a lesser period for "special reasons"; Rent Appeal Act 1973, s.9.

97 Section 10.

98 Section 11. The inelegant wording that reads "a sum that by virtue of this Act is irrecoverable----may-----be recovered" comes from the Fair Rents Act 1936, ss.9 and 10 on which ss.10 and 11 of the Rent Appeal Act are based.

99 Section 12.

100 Section 13(1).

Section 20(1) of the Rent Appeal Act creates the offence of giving notice to or evicting a tenant, or commencing proceedings to eject him or gain recovery of possession of the dwellinghouse because the tenant has made an application for an assessment under the Act or attempted to recover money paid in excess of the equitable rent. Where the landlord does this within six months of an application to the board or while the rent is fixed by assessment, then the onus is on the landlord to prove that he has not acted contrary to section 20(1).[101] The penalty for an offence against the Act is $500 for an individual and $1000 for a company or other corporation[102] and thus the reversed onus may seem harsh in light of the normal onus on the prosecution to prove guilt beyond reasonable doubt. However protection of the tenant must be effective in operation if the Act is to be used with confidence.

The Act also limits the amount a landlord may stipulate for or demand as rent in advance and bond, the total of which may not exceed one month's rent.[103] It creates an offence where bond is paid or asked for unless the bond may be applied by or on behalf of the landlord only if the landlord suffers loss or damage through the tenants' failure to perform any of his obligations as tenant. The landlord must make it known to the tenant in writing that, except to the extent that the landlord suffers loss or damage, the tenant will be entitled to have the bond refunded in full when he vacates the premises.[104]

101 Section 20(2)

102 Section 27. In the case of a continuing offence the liability on summary conviction is a further fine of ten and forty dollars per day respectively.

103 Section 21(a)

104 Section 21(b)

Key money, that is money paid in consideration of the grant, renewal, termination or continuance of a tenancy is abolished[105] as the simplest way to circumvent the limit on the return to the landlord an equitable rent imposes would be to demand the payment of such a fee. Although the trinity of rent control, security of tenure and the prohibition of premiums appears to be unquestionably necessary if tenancy legislation is the work, some European countries purport to have managed to free rents while preserving security of tenure and equally, control rents without interference with the contractual termination of tenancies.[106]

The Act requires written receipts to be given by or on behalf of the landlord to the tenant for payments of rent or any other payment under the tenancy and specifies the information to be on the receipt.[107] It also prohibits a refusal to let a dwelling-house to any person on the grounds that it is intended that a child will live there.[108] This section also appeared almost word for word as section 9 of the Fair Rents Amendment Act 1942.

Seven offences are listed in section 26 of the Act from intimidating a tenant so as to avoid proceedings under the Act to resisting, obstructing or deceiving any board or person attempting to exercise their powers or functions under the Act. Failure to comply with any requirement to answer any question regarding the letting of the premises or to produce any rent book, receipt or other document for the purpose of ascertaining the rent paid may also be an offence under the section subject to a defence that in so doing, a person would incriminate himself or his spouse or

105 Section 22

106 Brown, N.50, 209. Unfortunately a comparative study is outside the scope of this paper.

107 Section 23. That is (a) the date of payment, (b) the amount of the payment, (c) the nature of the payment and (d) in the case of rent, the date to which the rent is paid.

108 Section 24.

would be disclosing evidence he could not be compelled to disclose in any proceedings within the meaning of the Evidence Act 1908.

The Rent Appeal Act was administered by the Department of Labour until the Rent Appeal Amendment Act 1977 transferred its administration to the Housing Corporation.

The Rent Appeal Amendment Act 1977

The transfer of the Act from the Labour Department to the Housing Corporation was the principal function of the 1977 Act which also made a few minor administrative changes that were found desirable in light of the board's experience since their establishment. The transfer at first excited fears in the Labour Party Opposition that the government was transferring responsibility for the Act without "rhyme nor reason" and the plain inference was that there might be some unwholesome motive behind the change.[109] A Labour Party attempt to get the Bill referred to the Statutes Revision Committee failed[110] and yet the Bill was unopposed during its second reading after the opposition had studied it.[111] The change had actually been foreshadowed in the National Party's 1975 General Election Policy [112] and the Minister

109 It was a "gift from the National Party to the landlords of New Zealand". New Zealand Parliamentary debates Vol. 413, 1977: 3063. Mr Isbey.

110 Ibid. 3066

111 Ibid 4357. Hon. W.A. Fraser

112 "While the present extreme shortage of rental accommodation continues, National will retain the system of rent appeal boards. Their work will be reviewed with particular regard for the need to achieve uniformity of approach and responsibility for the boards will be removed from the Labour Department to the Housing Corporation." Chap.11, p.13.

of Housing, the Hon. Eric Holland explained it on the basis that the Department of Labour had no officers skilled in valuation while the boards were becoming increasingly keen on obtaining a valuer's report on as many premises as possible. He queried who, apart from an officer of the Valuation Department, is in a better position to make a valuation than an officer of the Housing Corporation, one of the principal functions of which was to administer rentals.[113] The argument is slightly misleading in that the valuers are tendering expert evidence before the board and are not assisting in the administration of the Act in general. However the Minister's point may be justified from the point of view that it may have been considered desirable that the request for a valuer's time came from within the same department to avoid interdepartmental rivalry and problems of communication. In a similar vein, the Labour Department which administers many Acts and statutory boards may have felt its time was being used unnecessarily on the rent appeal boards. If the boards were busy in 1976[114] then so was the Labour Deparment which had to administer 754 applications[115] of which 309 or forty percent, lapsed or were withdrawn prior to a hearing. This was largely the result of the extremely active Tenants Protection Associations in the major cities whose policy it was on receipt of any type of tenancy complaint or inquiry by a tenant to apply to the board for an equitable assessment.[116] Whether this was done to reassure the anxious tenant or to take advantage of the security of tenure provided for six months after application[117] is not

113 New Zealand Parliamentary debates Vol. 413, 1977; 3062

114 In Wellington the Board was sitting on two days a week for some periods: Interview, A.N.V. Dobbs, Chairman Wellington Rent Appeal Board.

115 Year ending 31 March 1977: Appendix to the Journals of the House of Representatives, 1977, I52.

116 Interview A.N.V. Dobbs.

117 Rent Appeal Act 1973, s.20

clear but it is not difficult to imagine the effect so much administrative work for so few results would have on the opinion of the Labour Department personnel.

If the Act were to go anywhere then the Housing Corporation would be as good a place as any with state housing specifically excluded from the operation of the Act. The administrative aid to the board involves corresponding and dealing with tenants, valuers and landlords and although the Labour Department may have more experience at managing arbitral proceedings, the Housing Corporation would appear well suited to its task. The Public and Administrative Law Reform Committee recommend that a tribunal not be staffed (in the sense of administratively served) by officers of departments which customarily appear before it[118] but it cannot accurately be said that the Housing Corporation appears before the board since the valuer merely supplies information requested[119] and is in no way a party to the proceedings.

Until the 1977 Act came into force on 1 February 1978, the Labour Department had policed the Rent Appeal Act "quite vigorously" and in Wellington at least would occasionally check to see if a landlord had increased the rent notwithstanding an assessment in force.[120] If it appeared to a Labour Departments' district office that a complaint was justified, a recommendation for prosecution was sent to the Department's Head Office where it was referred to the legal division. Allan[121] considers that the cautious approach of the district offices and the administrative delays often meant

118 First Report, para 66; Seventh Report, para 100.

119 Rent Appeal Act cl.9, First Schedule

120 Interview, Mr A.N.V. Dobbs.

121 "Perspectives on the Operation of the Rent Appeal Act 1973" (1977)8 V.U.W.L.R. 421, 428.

the tenant lost the momentum required to pursue the matter but nonetheless the Department had laid prosecutions and on at least two occasions caused fines of $300 to be charged.[122] The Housing Corporation on the other hand never intended to police the various offences in the Act[123] and although the Corporation prints a form headed "Rent Appeal Act 1973: Alleged Breach"[124] little is done to help aggrieved tenants. They are requested to obtain independent legal advice and, if they have a case, to institute a prosecution themselves. The rationalization offered for this is that it is next to impossible to obtain a conviction,[125] which is surprising in light of the reversed onus of proof.

The 1977 Act provided that the Director-General of the Housing Corporation be the secretary of every board with a power to delegate his functions and powers as secretary.[126] The stated reason for this was to ensure a uniformity and consistency of operation as to method, decision making and presentation.[127] Uniformity and consistency maybe desirable features in four boards applying one statute across New Zealand but whether it is desirable that the head of a government department should exercise a power of regulation is not so clear.

The Housing Corporation is required to act in accordance with any written directive of the Minister of Housing[128] and although so far no such directive has been received respecting the rent appeal boards[129] the Minister and the Director-General of a department dealing with such an emotive and sensitive subject as housing would be expected to be on fairly close working terms,[130] Housing

122 Interview: Mr A.N.V. Dobbs. The Department of Labour produced an excellent yearly table of complaints submitted to it under the Act: Appendix to the Journals of the House of Representatives, 1974-1978, G.1. The practice has not been continued by the Housing Corporation.

123 Interview: Housing Corporation employee.

124 Form R.A.5.

125 Interview: Mrs L. Ross, Secretary Christchurch Rent Appeal Board; Solicitor, Wellington Regional Office, Housing Corporation.

126 Rent Appeal Amendment Act 1977, s.3(2).

127 New Zealand Parliamentary debates Vol. 413, 1977: 3063. The Hon. E.S.F. Holland.

128 Housing Corporation Act 1974, s.20.

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129 There were none in the years 1978-1980: Appendix to the Journals of the House of Representatives, 1978-1980, B.13,5.

130 "(M)embers of the Corporation are kept fully informed of the Governments' housing policies by the Director-General who is chairman of the Corporation". Annual Report of the Housing Corporation of New Zealand: Appendix to the Journals of the House of Representatives, 1978, B.13.

is a pollitically senstive area and as rent is the single most important feature of a flat the most tenants[131] then it is not unpardonable to suggest that politically rather than administratively imspired guidelines could be issued to boards under the present regime.[132] Calls for the repeal of the 1973 Act on the grounds that it is obsolete and now only serves to discourage investment[133] could well be satisfied without publicity by the boards' consistently fixing high rents and thus discouraging applications. However this political influence has not been brought to bear on the boards, as far as can be discovered. The last meeting of the Minister with the chairmen of the boards was in 1978 and the Director-General does not appear to have laid down any guidelines for the regulation of the boards.[134] The Housing Corporation's clerical employees to whom the job of secretary has been delegated regard themselves as responsible only to their respective boards (except that in the general context they are responsible to their administrative supervisors)[135] and

131 D.C. Thorns Rental Housing: Choices and Constraints (National Housing Commission, Wellington, 1980) 28.

132 A far more trifling reason for the possible exertion of influence on the boards may lie in the fact that total dwelling rentals hold a 4.02% weighting in the Consumers Prices Index. (0.91% of this is for municipal dwelling rentals (covered) and state housing (not covered by the Act): Supplement to the April 1978 Monthly Abstract of Statistics (Department of Statistics, Wellington, 1979) 3 C.f. a 25% weight for rents in the Wartime Price Index, Baker, op.cit., n.15, 311.

133 E.G. Olly Newland "An Aucklander's View" (1979) Property (No.175), 25.

134 Interview: A.N.V. Dobbs, Chairman Wellington Rent Appeal Board.

135 Interview: Mrs M.J. Miller, Secretary Wellington Appeal Board.

it is clear that the Director-General's role as secretary has not brought uniformity to the operations of the boards.[136]

Each board having its own secretary would seem to be a beneficial change and the administrative assistance the boards receive is improved, now that there is one designated person who is as much a part of the board's operation as the members.[137]

It is certainly true that the Housing Corporation and the Rent Appeal Boards are very closely linked together and that the independence of the boards is in no way seen to exist (although their actual independence is not questioned in this paper). The application form filled in by a tenant twice mentions the Housing Corporation to which it is addressed and never the rent appeal board concerned.[138] Although the 1977 Act requires the application to be filled at the nearest office of the Housing Corporation[139] the form provided unnecessarily submerges the rent appeal boards in the Housing Corporation and gives a "government controlled" feeling to the procedure that could easily have been avoided if the form had been addressed to "The Secretary, Rent Appeal Board, Housing Corporation of New Zealand". Further correspondence is headed "Rent Appeal Board, C/- Housing Corporation of New Zealand".

136 Post p.

137 The Wellington Rent Appeal Board's service has improved. Determinations are now drafted by the secretary which the Labour Department refused to do. Interview: A.N.V. Dobbs.

138 This may be owing to the fact that the forms are therefore good all over New Zealand and it avoids the short runs necessary if a separate form were printed with each boards name on it.

139 Rent Appeal Act 1973, cl.1, Second Schedule as amended by the Rent Appeal Amendment Act 1977, s.2(4)(c)

The situation in unsatisfactory in that the Act creates a suspicion of possible interference by imparting into the process a person very concerned with the availability of housing, and thus the level of rents throughout New Zealand, while at the same time the reality of the matter is that the consistency envisaged by the Act does not exist.

In contrast one could observe that the Small Claims Tribunals do not make any attempt at uniformity [140] and the only factor that might induce consistency is that new referees spend several days observing cases in Christchurch before they take up their appointments. However a large feature of the Small Claims Tribunal is its emphasis on the parties personally[141] and the moral as well as legal basis of the case.[142] While the Rent Appeal Act is specifically designed to allow the board members' subjective appreciation of the various factors in section 8 determine the equitable rent, the assessment is objective in that it is based on specific criteria with a right of appeal on a point of law.[143] The Rent Appeal Act requires like cases to be treated alike and so uniformity of method, decision making and presentation is more desirable than in Small Claims Tribunals where the Act's object is not to resolve the claim (if assess the equitable rent) so much as to do so in a particular informal way that puts justice

140 The Christchurch Referee does not even communicate with his associate, Mrs Taylor, on tribunal matters. Interview: Mr Tinker, Referee, Christchurch Small Claims Tribunal.

141 They may not be represented by a lawyer and the proceedings are held in private: Small Claims Tribunal Act 1976, ss.24 (5),25.

142 "The Tribunal shall determine the dispute according to the substantial merits and justice of the case: Small Claims Tribunal Act 1976, s.15(4).

143 There is no right of appeal from the decision of a referee except on the grounds that the proceedings were conducted or an inquiry was carried out in a manner that was unfair to the appellant and prejudicially affected the result of the proceedings: Ibid, s.34(1).

within the reach of more citizens. The experimental nature of Small Claims Tribunals may also be a reason why they have been left to develop as they see fit.

While uniformity of method and presentation is desirable, uniformity of decision making cannot be taken too far as the problems associated with a tight rental market are almost invariably localised rather than general. During the debate on the Rent Appeal Boards Bill 1972 it was emphasised that the boards were "proposed" as being locally based and not centrally controlled agents so as to allow different areas to establish different needs and different requirements.[144] The locality of the premises plays a not inconsiderable part in the assessment[145] and knowledge of the district is one factor fairly heavily weighted in considering a candidate for appointment to a board.[146] However while local decision making may vary according to perceived local tastes or requirements, nonetheless it is submitted that the procedural rules of the board should be uniform.

As well as the transfer and uniformity, the 1977 Act deals with a preliminary assessment to be issued by the Housing Corporation,[147] a fee,[148] specified factors to be included in the written assessment[149] and administrative details allowing the boards to order a respondent to reimburse to the applicant his fee,[150] to dismiss an application "not proceeded with expeditiously"[151] and allowing the applicant to withdraw his application.[152]

144 New Zealand Parliamentary debates Vol. 380, 1972: 2134. Mr Hunt.

145 Rent Appeal Act 1973, ss 8(1)(a), 8(1)(d).

146 Interview- Mr Thompson, Aide to Minister of Housing.

147 Rent Appeal Amendment Act 1977, s.4. Post p.

148 Ibid s5(1), post p.

149 Ibid s5(2), post p.

150 Ibid s5(3), post p.

151 Ibid s5(4), post p.

152 Ibid s5(5), post p.

III THE RENT APPEAL BOARDS

Throughout this section of the paper principal emphasis has been placed upon the operation of the Wellington Rent Appeal Board although examples of the procedure of other boards have been included where appropriate.

An application is filed with the office of the Housing Corporation nearest to the premises concerned which refers it to a rent appeal board.[153] The application forms are available only from the Housing Corporation, unlike the forms issued previously for the same purpose by the Department of Labour which were obtainable, in Auckland for instance, from Post Offices, citizens advice bureaux and offices of the Department of Maori and Island Affairs as well.[154] With the application a fee of ten dollars is payable for which provision had been made in the Rent Appeal Amendment Act 1977.[155]

The application is acknowledged and the applicant is asked to contact the Housing Corporation to arrange a mutually acceptable time for a valuer to call.[156] The respondent, who is normally the landlord, is informed of the application and a copy is enclosed. He is invited to make written submissions for the board's consideration within a period not less than fourteen days[157] although the information specifically requested varies from board to board. The Wellington Board asks for

1. The date the property was purchased and purchase price.
2. Outgoings on the property: rates, insurances and maintenances.
3. Cost and value of any chattels.

While the Christchurch Board requests these[158] as well as

(a) Cost and details for additions or improvements

153 Rent Appeal Act 1973, cl. 1,2, Second Schedule. The application is deemed to have been made when filed with the Corporation.

154 A. Frame and P. Harris, "Formal Rules and Informal Practices: A study of the New Zealand Rent Appeal Boards (1977) 7 N.Z.U.L.R. 213, 226.

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155 Section 5(1) Set at $10 by S.R. 1978/126

156 Much of the following information has been taken from Standard letters used by the board.

157 Rent Appeal Act 1973, cl.3, Second Schedule

158 It specifies that insurance on the building is to be for indemnity cover only and does not ask for the cost of chattels.

(b) Is a commission payable on collection of rent, if so, amount percent.

(c) Amount (the landlord) considers the current market value of the property.

The Wellington Board also takes the opportunity to draw the landlord's attention to Section 20 of the Rent Appeal Act which makes it an offence to determine the tenancy or evict the tenant because of an application under the Act.

A Housing Corporation valuer is then asked by the board to inspect and prepare a report on the subject property.[159] This is a comparatively recent development for under the Labour Department's administration, valuer's reports, from the Valuation Department, were infrequently obtained. This had consequences not only for the standard of the decision of the board but meant that the hearing could not as easily be confined to relevant points as it can now, where the parties to a large degree argue to the valuer's report and raise supplementary points which the board can immediately pronounce relevant or irrelevant as the case may be. Inspection by the valuer is nearly always in the presence of the tenant for the practical reason that the valuer has arranged a suitable time to gain entry to the premises. The landlord is not normally present at these inspections which raises a question of a breach of the rules of natural justice regarding ex parte communications to the valuer. Under the procedure adopted by the Wellington Board natural justice is observed since the report in full is sent to both parties before the hearing. They therefore have time to reflect on any points that the valuer puts to the Board, whether those statements are derived from an ex parte communication or otherwise. If natural justice may be regarded as "fair play in action"[160] and "fairness" merely another aspect of the same concept[161] then it is appropriate to note that

159 Rent Appeal Act 1973, cl.13, First Schedule. Valuation Department valuers may rarely be used if Housing Corporation valuers are unavailable.

160 Ridge v Baldwin (1963) I Q.B. 530, 578 per Harman L.J. "A much quoted phrase" according to de Smith, Judicial Review of Administrative Action (3ed, Stevens and Sons Ltd, London, 1973) 135n.

161 McInnes v Onslow-Fane(1978) 1 W.L.R. 1520; Smithy's Industries Ltd v Attorney General (1980) N.Z. Recent Law 34.

> Fairness, however does not require a plurality of hearings or representations and counter representations. If there were too much elaboration of procedural safeguards, nothing could be done simply and quickly and cheaply. Administrative or executive efficiency and economy should not be too readily sacrificed.

For any application received, the Director-General of the Housing Corporation is entitled, with the consent of the applicant, to issue a preliminary assessment of an equitable rent.[163] That assessment is then disclosed to the parties and, if if they signify their consent in writing within fourteen days, is referred to the board for ratification which renders the preliminary assessment the determination of the board for the purposes of the Act.[164] Because the parties are informed of the figure assessed without recourse to the valuer's report it may be argued that a new complexion is thrown on any representations made to the valuer by the tenant, since the basis of the assessed figure is not disclosed. However, having regard to the landlord's right to continue to a hearing if the preliminary assessment is unsatisfactory, it is submitted that the current practice does not infringe any duty to act fairly. I quote Lord Wilberforce,[165] "The system, intended to be fair, might be or might be made to appear fairer still, but the roughness injustice does not, in my view, reach the point where the courts ought to intervene".

Although the preliminary assessment is technically in the power of the Housing Corporation to issue where the applicant consents infact the boards are the ones that set the procedures. They have taken divergent views on the application of the preliminary assessment and while Auckland and Dunedin always issue preliminary assessments as a first meaure (presumably the applicants always consent), Wellington issues them for approximately half the applications proceeded with [166] and Christchurch nearly always

163 Rent Appeal Act 1973, s.6A as inserted by Rent Appeal Amendment Act 1977, s.4.

164 Section 6A(5). The board need not make an assessment equal to the preliminary assessment but may still conduct a full hearing if it so desires.

165 Wiseman v Borneman (1971) A.C. 297, 320.

166 Appendix C

proceeds directly to a hearing.[167] Wellington's reasons for not issuing an assessment included:

1. It was obvious that the parties would not agree.
2. The hearing of other cases was already being arranged in the locality, involving Board travel. Time and perhaps travel was saved in proceeding straight to the hearing.
3. The Board required further information which would be best obtained at a hearing.[168]

The Christchurch Board has a preliminary assessment made only when the subject dwellinghouse is remote and the Board has no other reason to travel to the area.

Despite the differing use made of the preliminary assessment there is a uniformity in the small number of cases it resolves each year. In 1979 it resolved seven cases from thirty seven preliminary assessments made in Auckland, five from fifteen in Wellington and two from eleven in Dunedin.[169] The measure may have been enacted to[170] "speed up the work of the boards and do away with much of the ... formality," but it seems likely that in the majority of cases it has simply increased the length of time between application and final assessment. This is understandable as, having paid the ten dollar fee required on application, the disappointed tenant sees nothing to loose in going on to a hearing which costs him no extra and as far as the disappointed landlord is concerned the full hearing also costs nothing for a chance to overturn an unacceptable restriction on his income. A discretionary use of the preliminary assessment as practised by the Wellington Board is to be preferred since it minimises time and money wasted and it is submitted that used in this way, even if it only disposes of a small number of cases, the procedure has value in avoiding the cost and effort of a full hearing.

167 Interview: Mrs L. Ross, Acting Secretary Christchurch Rent Appeal Board.

168 Wellington Rent Appeal Board letter to other boards.

169 Appendix C.

170 New Zealand Parliamentary debates Vol. 413, 1977: 4356. The Hon. E.S.F. Holland (Minister of Housing).

If no preliminary assessment is issued or one of the parties does not agree to the preliminary assessment issued, then the case goes on to a hearing. Once again practice differs among the boards on this procedure. The Wellington Board's chairman, Mr A.N.V. Dobbs was Director-General of Education from 1971 to 1977 which meant that he was involved with the administrative law case of Furnell v Whangarei High Schools' Board [171] and read Crown Law office opinionson the subject of natural justice. Once appointedto theWellington Rent Appeal Board he sought and received Crown Law office advice on the operation of the Rent Appeal Act, especially with regard to the rules of natural justice, but although the Wellington Board's procedure is therefore excellent, the Labour Department took the opportunity to file the advice rather than distribute it to the other three boards.[172]

The Wellington Board, like the British Rent Assessment Committees in ordinary cases[173] invariably inspects the premises to be assessed,[174] normally on the morning before the hearing. This does present problems regarding ex parte communications by the tenant in the absence of the landlord [175] and there is no means by which the landlord can find out what particular features of the dwelling are impressed on the minds of board members which an explanation may change or alter if only he knew it was required. Clearly an inspection must be allowed to proceed with- or the landlord being present or landlord could defeat the process by not appearing. Nonetheless it would be unfair not to give the landlord the opportunity to observe the inspection and so in Clarke v Wellington Rent Appeal Board [176] O'Regan J. held

171 (1973) A.C. 660

172 Interview: Mr A.N.V. Dobbs

173 Noted with approval by the Francis Committee, Report of the Committee on the Rent Acts, Cmnd. 4609, 1971, 46.

174 The boards have power of entry under Rent Appeal Act 1973, cl.15, First Schedule.

175 Wellington assessments reveal that for every inspection made where the landlord and tenant are present there is one where only the tenant is present and none where only the landlord is present.

176 (1975) 2 N.Z.L.R. 24, 29.

> such an examination and the impression of this or that factor which it leaves with the individual members cannot but affect their judgements on the matters they are to determine. I think that prudence ordains that both parties or their representative should be given the opportunity to be present at such a view.

The boards therefore give fair notice to the parties and invite them or their representative to be present at an appointed time. Laidlaw argues that a party should be taken to have waived its right to disclosure of ex parte communications by remaining absent during the inspection only if the communications referred to matters which the absent party should reasonably have anticipated would arise out of and relate to the inspection.[177] But an inspection is not compelled by the Rent Appeal Act and in fact the Wellington Board is the only one to inspect every dwelling while Dunedin "seldom" inspects [178] and Christchurch and Auckland never.[179] Where the boards have been given a power to fix rent according to criteria such as the dwelling's "state of repair" and "standard of accommodation"[180] in a subjective manner then the Wellington procedure would once again appear the most desirable as the board would be under no illusion as to the condition of the premises and would be better equipped to question parties during the hearing and weigh the different arguments.

For the hearing, the Wellington Board recommends that the parties prepare their case in writing and supply the secretary with four copies before the hearing commences. This is a sensible requirement which should, as the Board's letter to the parties point out, help the parties' cases while at the same time assisting the Board. That letter also indicates that the matter may be heard and determined in the party's absence, should he fail to appear [181] although the Christchurch board's notice of hearing does not. The Christchurch letter informs the party that he may make written submissions if he can not attend at the time fixed and points out that he may be represented by a solicitor or other person if so desired. The Wellington letter does not mention representation and neither mention entitlement to legal aid.[182]

177 Op.cit., n.32, 342 and generally 340 - 343.

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178 Letter: Secretary Dunedin Rent Appeal Board.

179 Interview: Mrs L. Robb, Acting Secretary Christchurch Rent Appeal Board; Telephone conversation: Miss Howe, Secretary Auckland Rent Appeal Board.

180 Rent Appeal Act 1973, s.8(1)(b),(c).

181 As recommended by the Public and Administrative Law Reform Committee, Sixth Report, 1973, para 24.

182 Rent Appeal Act 1973, s.33

Pre-hearing disclosure of the valuer's report is another variable in the board's procedure. The Wellington Board takes the view that it should not consider any information that the parties have not had an opportunity to challenge[183] and in Wellington and Auckland the valuer's report so posted to the parties before the hearing. In Dunedin the report is given to the Board, which uses its discretion whether to give it to the parties[184] and in Christchurch the summary of the report is read out to the parties at the hearing although in both cases copies of the report are given if requested by virtue of clause 14 of the First Schedule of the Rent Appeal Act: "The tenant and the landlord shall be entitled to inspect any valuation or report obtained by the board....."

Natural justice requires[185] that where a commission or tribunal acts on a report that puts information before the board and interprets the factual matters researched[186] then the parties to the case must be given[187] "a fair opportunity of commenting on it and of contradicting it." Disclosure in the form of reading a survey of the report to the parties may satisfy the requirement of the rule but it places great reliance on the ability of the board to pinpoint areas of possible error and where the board has not inspected the property, the ability must be greatly diminished. At one observed hearing by the Wellington Board it was revealed that the valuer had not noticed a garage on the property (as there was only one driveway shared by the two neighbours) but it is doubtful whether this would have come out

183 Interview: A.N.V. Dobbs

184 Letter: Secretary, Dunedin Rent Appeal Board.

185 It is assumed that the principles of natural justice apply where a board with a statutory right to intervene on the tenants' application may deny a landlord money he is otherwise lawfully entitled to: Durayappah v Fernando (1967) 2 A.C. 337, 349

186 Cf. a report that merely seeks to verify or discredit evidence that is already before the tribunal: South Otago Hospital Board v Nurses and Midwives Board (1972) N.Z.L.R. 828. The Valuer's report will often comment on how easily the property would sell and of course offers a suggested equitable rent.

187 T.A. Miller Ltd v Minister of Housing (1968) 1 W.L.R. 992 per Lord Denning M.R; also Denton v Auckland City (1969) N.Z.L.R. 256; Board of Education v Rice (1911) A.C. 179, 182, per Lord Loreburn L.C.; R.V. Deputy Industrial Inquiries Commissioner, Exparte Moore (1965) I O. B. 456, 476.

had the parties not received copies of the valuer's report and the board not inspected the premises itself. Where there is no inspection by the board then the valuer's report might be expected to carry considerable weight in the minds of the members and in such a case there is dicta to the effect that the report should be circulated and not merely read out.[188]

While the Wellington Board's practice is excellent, the effect of clause 14 may be regarded as either relaxing the normally operative rules of natural justice so that the only requirement of disclosure is one following a request by the parties or as a measure inserted ex caueta to provide express minimum standards without derogating from the normal principles of natural justice. It is submitted that the former view is the better one[189] having regard to the decision in Furnell v Whangarei High School Board.[190] The existence of clause 14 is therefore unsatisfactory in that it unnecessarily lowers a party's chance of challenging information on which the rent will largely be based. Although technical in nature, the report should not be withheld on the basis that certain parties may not understand it as there will certainly be no disadvantage in their receiving it and any use to which it is put by the parties is subject to the experienced opinion of the board during the hearing.

The hearing is informal and held in public,[191] usually at the nearest Housing Corporation office. As already noted, a board may regulate its procedure as it thinks fit[192] and therefore there will be different practices in each board. Comment on procedure during the hearing is here largely restricted to that observed during three cases heard by the Wellington Board but some general observations may be made.

188 Denton v Auckland City, supra, 267; Lamond v Barnett (1964) N.Z.L.R. 195, 203; New Zealand Dairy Board v Okitu Cooperative Dairy Co Ltd (1953) N.Z.L.R. 366, 374, 380, Cited in Laidlaw, n.32, 339.

189 This news is supported by Laidlaw, n.32, 340, and G.A. Crowhen, "Rent Appeal Boards in New Zealand: An Examination of their Constitutional Procedure", Unpublished seminar paper, V.U.W., 8.

190 (1973) A.C. 660, 679. Admittedly this concerned far more detailed regulations but the majority's approach based on the view that it is not the courts' function

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to redraft a procedural code where the legislature had addressed itself to the very question at issue is apposite here. Brettingham-Moore v Municipality of St Leonards (1969) 121 C.L.R. 509, 524 quoted.

191 Rent Appeal Act 1973, cl.6(1) Second Schedule. The Board may prohibit the publication of any report or description of the proceedings but may not prohibit publication of the names and descriptions of the parties to the application, particulars of the dwelling house affected, the amount of the equitable rent or the amount of the existing rent. Clause 6(2), Second Schedule.

192 Ibid, cl.11, First Schedule.

A board has the power to require either the landlord or the tenant to supply "such information as it may reasonably require regarding the dwelling house and the application" within fourteen days[193] as well as powers to require them or their respective agents to answer any question relating to the letting or sub-letting of the dwelling house[194] or produce any rent book, receipt, or other document in their possession or power for the purpose of ascertaining the rent paid.[195]

The boards are deemed to be commissions of inquiry under the Commissions of Inquiry Act 1908, provided they are acting within the scope of their jurisdiction, and subject to the provisions of the Rent Appeal Act 1973, all the provisions of the 1908 Act apply except for sections 11 and 12 which relate to the awarding and enforcement of an order for costs.[196] This is extremely common practice[197] and it is equally common, as is the case here that the tribunal concerned makes little use of the provisions of the Act but looks rather to powers contained in the principal Act which often expand on those in the 1908 legislation.[198] The chief provisions on the Commissions of Inquiry Act for the rent appeal boards are those which protect a member acting bona fide from suit for anything he may report or say in the course of the inquiry[199] and which give the board the powers of a District Court in the exercise of its civil jurisdiction in respect ofciting parties, summoning witnesses, administering oaths, hearing

193 Ibid, cl.4, Second Schedule

194 Ibid, cl. 15(b) First Schedule

195 Ibid, cl. 15(c) First Schedule

196 Ibid, cl. 8, First Schedule. Exclusion of these sections is common e.g. Inland Revenue Department Act 1974, s.33, New Zealand Ports Authority Act 1968, s.8. Public and Administrative Law Reform Committee, Thirteenth Report, 1980, para 75.

197 The Public and Administrative Law Reform Committee note that at least 94 bodies are so empowered. Thirteenth Report, 1980, para 35.

198 Ibid, para 35.

199 The Commissions of Inquiry Act 1908, s.3. The members are expressly not liable for any act done or omitted to be done by the board or any member thereof in good faith in pursuance or intended pursuance of the powers and authorities of the board by virtue of the Rent Appeal Act 1973, cl.10, First Schedule.

evidence and conducting and maintaining order at the inquiry.[200] Witnesses giving evidence and counsel appearing before the board enjoy the same privileges and immunities as witnesses and counsel in courts of law and an amending bill before Parliament at the time of writing extends this qualified privilege to an "Agent or other person" as well.[201] In the ordinary procedure of the rent appeal boards, however, the provisions of the Commissions of Inquiry Act 1908 have little place.

The Wellington Rent Appeal Board's hearings begin, as they did under the former chairman, Mr W.A. Fox,[202] with the chairman clearly outlining the procedure to be followed. That procedure has changed somewhat owing to the emphasis on the valuer's report which was often not compiled for a dwelling house before the Act was transferred to the Housing Corporation. The Chairman holds up the report and ensures both parties have a copy before them. He then leads the parties through the report, page by page, asking whether there is any comment they may care to make. The valuer who compiled the report attends the hearing[203] and may answer questions, especially from the board, as to the basis for figures or statements in the report. The attendance of the valuer is highly desirable and any information that is not included in the report[204] may be supplied to the Board with the full knowledge of the parties. In comparison the Auckland and Dunedin Boards only sometimes have a valuer present[205] and while the Christchurch Board does not normally sit with a valuer in attendance it may speak to him after the hearing to clarify

200 Commissions of Inquiry Act 1908, s.4. The Commissions of Inquiry Amendment Bill 1980 currently before Parliament removes the words from "summoning witnesses" to "hearing evidence" from this section: clause 2.

201 Commissions of Inquiry Amendment Bill 1980, cl.6.

202 Frame and Harris, n.154, 229

203 If this is not possible the valuer briefs another Housing Corporation valuer who attends in his place.

204 For example, the date of the Government Valuation, replacement cost of the building.

205 Letter, Secretary - Dunedin Rent Appeal Board; Telephone conversation: Miss Howe, Secretary Auckland Rent Appeal Board.

information without the parties' attendance.[206] Where a hearing is provided by the legislation it is submitted that unless the clarification involves a simple verification of matters raised at the hearing[207] such subsequent consultations are in breach of the board's duty to act judicially[208] and that this procedure deserves correction.

Once the valuer's report has been dealt with the applicant-tenant presents his written submission by pointing out salient features after the board and the landlord have had a few minutes to read it. Where there is no written submission, of course the applicant makes his various points and in either case the Board asks the landlord if he has any comment to make or indicates that he may like to enlighten the board on a particular point during his submissions. The respondent landlord then presents his case and is subjected to questioning by the tenant and the board. The board adopts an inquisitional or investigatary attitude during the hearing although the parties are free to ask questions of each other and talk to each other directly rather than through the chair. After the final questions have been put the board reserves its decision and informs the parties by post of its determination.

By making the maximum use of the report and written submissions the board can to a large extent keep the parties' arguments focussed on the specific criteria listed in section 8(1) of the Rent Appeal Act.[209] Frame and Harris's assertion that the boards were filling a decision making vacuum under the cover of their role in determining rents and were being used as an act of general protest against the landlord can therefore no longer be called accurate because by far the majority of cases are now straight forward rent disputes.[210] Admittedly the chief reason

206 Interview: Mrs L. Ross, Acting Secretary Christchurch Rent Appeal Board.

207 South Otago Hospital Board v Nurses and Midwives Board (1972) N.Z.L.R. 828.

208 The Board's duty to act judicially arises from the conclusiveness of its decisions, it procedure and trappings and the manner in which something extremely close to a lis inter partes is resolved by reference to statutory criteria: see generally S.A. de Smith, Judicial Review of Administrative Action (3ed, Stevens and Sons, London, 1973) 68-75.

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209 A form with Section 8(1) printed on it is given to the parties at Christchurch as well as Wellington.

210 Op.cit.,n154, 231. Interview: Mr A.N.V. Dobbs. Although other collateral issues will no doubt surface at the hearings. In the cases observed the respondent landlord was the Ministry of Defence and the opportunity was taken by an employee of the Ministry to propose yearly increases in the future rather than the current five yearly hikes. The hearing was useful in bringing the parties together to discuss tenancy matters not directly related to the Rent Appeal Act although there was nothing by way of a cathartic battle between the parties as described by Frame and Harris.

for the numbers of applications based primarily on grounds other than rent was probably the extreme activism of the Tenants' Protection Associations over this period which led to many applications being filed without any sort of basis in rent appeal at all.[211] The solely rent based cases which are now argued on criteria affecting the assessment of an equitable rent are therefore more likely to be attributable to the imposition of a fee on application and a decline in Tenants' Union work thanks to the format of the hearing, but nevertheless the emphasis on documents appears to have provided a good balance between informality and the formality required to accomplish the task reasonably efficiently.

In analysing the rent appeal boards it is helpful to bear in mind the distinctive advantages such bodies have over ordinary courts of law and assess how far the boards can be said to have suceeded in these categories. The Franks Committee[212] agreed that these were cheapness, accessibility, freedom from technicality, expedition and expert knowledge of their particular subject.

Cheapness:

This may be taken to refer both to the expense in running the tribunal and the expense to the parties to the decision, the latter having obvious consequences regarding accessibility in realistic terms.

Although the calculation of the cost of each determination is very unscientific and fraught with considerable margins of error it provides an approximate cost which is of value when attempting to assess the overall worth of the rent appeal boards. The expenditure for the year ending 31 March 1980 has been calculated

211 Interview: Mr A.N.V. Dobbs, Chairman Wellington Rent Appeal Board.

213 Report of the Committee on Administrative Tribunals and Enquiries, Cmnd 218, 1957, para 67.

as follows:

(1) The time of four secretaries:[213]

Auckland	c. 12½	hours a week
Wellington	c. 23½	hours a week
Christchurch	c. 1¼	hours a week
Dunedin	c. 4	hours a week
	c. 41¼	hours a week

At current average rates[214] this equals c. $211 per week
or $11,007 per year.

(2) The time of valuers:

In Wellington the time take is c. 2¼ days or 18 3/4 hours per case[215] where the valuer attends the hearing as well. A more realistic national figure would be, say, 16 hours.

At current average rates[216] this equals c.$120 per case Multiplied by the number of applications less those not requiring a valuer's report[217] equals c. $12,240 per year.

(3) The fees, allowances and expenses of the board:[218]

$9,000

The appropriate figure arrived at is something in the order of $32,247 spent to arrive at 75 determinations for the year ending 31 March 1980[219] or $430 per determination.

213 This includes dealing with general Rent Appeal Act inquiries. Source: communications with the secretaries themselves.

214 The job is graded for an 007-102 clerk for which the mean wage step has been used.

215 Interview: Mr P. Butler, Senior Registered Valuer, Housing Corporation, Wellington.

216 The Approximate mean of valuer's salaries on the 161 scale has been used although occasionally higher paid senior registered valuers do compile reports for the boards.

217 Appendix C. Plus 25 Christchurch cases. Interviews: Mrs L. Ross. 102 in all Figures are therefore slightly out of time but still represents a year's work.

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Applications to the board was originally free but in 1978 a fee of ten dollars was prescribed by regulation under the Rent Appeal Amendment Act 1977.[220] When the Act was introduced into the House the Minister of Housing, the Hon. Eric Holland made the surprising claim that the fee:[221]

> Maybe refunded in part or in full if so ordered by the board, and I would expect this to be the case except where applications had been judged by the board to be frivolous or vexations, or of a similar nature.

And on the second reading[222]

> It will not be prohibitive. Indeed the Bill provides that the Board can refund the fee, and I guess that would happen in many cases.

What is suprising is that the Bill did not confer such a power on the board but provided that it may[223] "in any case order the respondent to reimburse to the applicant the whole or any part of the application fee". The effect of the Bill is therefore markedly different from the Minister's interpretation and the innovation approaches a power to make an order regarding costs, rather than a discretion to refund the fee. In practice this provision has not been used in Wellington and nor has the power to order costs[224] "on the grounds that it is desirable for special reasons to make such an order". The Minister's unfounded assertions have received some administrative life as the Housing Corporation is prepared to refund the fee where there is a genuine case for it in Auckland[225] and where, as in Wellington, a withdrawal occurs before a valuation report has been compiled.

For most applicants, however, the ten dollars is paid irrevocably. Its imposition in 1978 is in strange contrast to the four dollar fee prescribed for a claim before Small Claims Tribunal and the abolition in 1975 of the two dollar fee for lodging a complaint

220 Rent Appeal Amendment Act 1977, s.5(1); S.R. 1978/126, R.2

221 New Zealand Parliamentary debates Vol. 413, 1977: 3063

222 Ibid 4357.

223 Rent Appeal Amendment Act 1977, s.5(2)

224 Rent Appeal Act 1973, cl.9 Second Schedule. Interview Mr A.N.V. Dobbs.

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225 For example where the tenant applies and the house is sold immediately. Telephone conversation: Mr B.L. Byrnes, Chairman Auckland Rent Appeal Board.

with the Ombudsman. While the first contrast may be explained on the basis that the valuer's report incurs considerable expense not normally incurred before a Small Claims' Tribunal[226] the second is more difficult to resolve. For the years ending 31 March 1975, 1976 and 1977 the percentage of cases that lapsed or were withdrawn ran at sixty-four percent, forty-three percent, and forty-one percent respectively which would have wasted a huge amount of time and money in processing. Although this is most likely the major reason for the fee there is also the fact the boards at the time were becoming increasingly keen on requiring valuations to be made on the properties and is not unreasonable to suppose that the government which had been faced with the situation of one department (valuation) donating the services of its officers free to another department (Labour) for considerable amounts of time, formulated a scheme by which the same department responsible to the Act spent the money on the valuations and received a subsidiary from the applicant to ease the new burden. It is submitted that the principal explanation for the fee is nonetheless to cut down on the high number of applications filed without regard to merit by Tenants' Protection Associations as a stop gap measure.

Of the four rent appeal boards chairmen, two are of the opinion that the fee is not high enough[227] while the other two belive it is more than a token and should be reduced.

At any rate ten dollars is normally the only fee a tenant will incur pursuing an application for an equitable rent. Tenants are very rarely represented but some landlords do brief solicitors and valuers to act for them which may involve considerable expense. They do not stand to recoup this by way of costs as they might in court but the choice to retain such people is theirs and that does not deny the conclusion that the cost to the majority of parties is clearly less than in an action before a court.

226 Although the tribunal sometimes exercises its power to appoint an investigation to asses the value of work done among other things. Small Claims Tribunal Act 1976,s.27.

227 One said it should be increased while the other said it should be increased or dropped altogether.

Accessibility:

Although both tenant and landlord are entitled to apply for an assessment of equitable rent, the nature of the appeal suggests that the tenant will be the applicant since the landlord will charge what he considers reasonable, subject to an appeal to the rent appeal board by the tenant. It is typical of all the boards that in Wellington only one landlord applied for an assessment in 1979.[228] The high numbers of landlord's applicants in the first year of the Act's operation[229] may be explained with reference to the Rent Review Regulations 1972 under which it was for the landlord to apply in order to justify increases in rents. It is likely that most of these early applications were under a mistaken view of the board's jurisdiction which has since been rectified.

Therefore the issue is accessibility to the tribunal on the part of the tenant and the chief difficulty faced by tenants in regard is ignorance of the rent appeal boards and how to invoke their aid. In a pilot survey undertaken in 1976 it was found that sixty out of seventy-eight people questioned knew rent appeal boards existed but only nineteen of that seventy-eight claimed any idea of how to apply to them.[230] The "legal literacy" of tenants is crucial to the effectiveness of the regime[231] and the greatest way to lessen the ignorance of potential applicants can only be through publicity initiated by the boards themselves. Under the Rent Review Regulations 1972, leaflets advertising the available recourse to Rent Review Authorities were displayed in Post Offices, the Labour Department considered were situated in areas of high rents.[232] As noted before, the Labour Department made application forms available from Post Offices, citizens advice

228 That was a secondary school Board of Governors which sought an assessment without any intention of charging the equitable rent. Letter: Wellington Rent Appeal Board.

229 Nearly 20 percent of all applications were from landlords. Laidlaw, Op. cit., n.32, 347.

230 G. Allan "Perspectives on the Operation of the Rent Appeal Act 1973" (1977) 8 V.U.W.L.R. 421, 424.

231 "Depending on applications by tenants for enforcement has been one of the main causes of the failure of rent regulation legislation, both in Victoria and in South Australia." Report of the Community Committee on Tenancy Law Reform, Reforming Victoria's Tenancy Laws (1978) 28.

232 However the regulations were concerned with rent increases, not the level of rents per se. Frame and Harris, op.cit., n.154, 220.

bureaux and the Department of Maori and Island Affairs[233] while the Housing Corporation has withdrawn all manifestations of the Act into Housing Corporation buildings where there can be found the application form and a 1978 pamphlet titled "Rent Appeal Act 1973". This informative publication shows how to apply for an assessment of equitable rent but its limited distribution to Housing Corporation offices means that it will have little effect in enlightening the public unless they are already in the knowledge that they must apply to the Housing Corporation. Whereas bodies protecting the citizen such as the Ombudsman and the Human Rights Commission may speak out on issues and thereby publicize their existence in the process of resolving cases[234] the subject matter under consideration by the rent appeal boards precludes extensive news coverage.

The publicity must therefore come from the actions of other bodies of the Housing Corporation itself. Privately published booklets incorporating advice on rent appeal applications are available[235] and the Justice Department's leaflet explaining the operation of the Property Law Amendment Act 1975 also has a note on assessing a "fair" rent.[236] While this does not provide outstanding publicity it goes some way towards creating a general awareness of the rent appeal boards. A tenant with no idea what to do may well go to one of many citizens' advice bureaux which are responsible for referring many cases to the boards.[237] Procedure among the bureaux differs from attempting to write to the landlord on the tenant's behalf or if not realistic, referring to a solicitor[238] to referring the tenant

233 Ibid 226.

234 See the Human Rights Commission's stand when a South African student was denied speaking rights in New Zealand for instance. (1979) N.Z. L.H. 365, 368.

235 Tenants and the Law (New Zealand Universities Students' Association); Getting Started (National Bank of New Zealand Ltd).

236 Landlords and Tenants, Legislation Series No. 4.

237 Letter: Secretary Dunedin Rent Appeal Board; Interview: Mrs L. Ross, Acting Secretary Christchurch Rent Appeal Board; Telephone conversation: Miss Howe, Secretary Auckland Rent Appeal Board.

238 For example, Porirua Citizens' Advice Bureau. However because of the large state housing population this bureau has little to do with rent appeal work.

directly to the bureau's duty solicitor attending on a specific night[239] or to referring him direct to the local Tenants' Union[240] but it is expected that at some stage the tenant will be lead to the Housing Corporation's door.

If a tenant had only vague knowledge of the rent appeal process he may look to the telephone book for further direction. In spite of a ministerial answer in Parliament in 1978 stating that[241] "steps are being taken to improve publicity, and opportunity will be taken to include the telephone numbers of rent appeal boards' secretaries when telephone directories are being reprinted", a further question a year later revealed that the Wellington and Dunedin Boards were only then seeing to the matter[242] and at present only the 1980 Christchurch Directory includes such a listing.[243]

Publicity for the boards is therefore capable of considerable acceleration but it is only justified if it would markedly increase the numbers of applicants with genuine cases. The Francis Committee suggested six reasons for a low level of applications by tenants and they are:[244]

(i) Ignorance. This may be reduced by adequate publicity. The Committee suggested "sub-offices" in problem areas.

(ii) Fear of the landlord. This was not a real problem outside areas of acqute housing stress.

(iii) A sense of moral obligation to stand by one's agreement. The Committee received evidence to the effect that many tenants would consider it dishonourable to go back on their word, even when the rent was unreasonably high. A "very real concern" was voiced by the Hon. Eric Holland during the passage of the Rent Appeal Act 1973 over the steady and regular erosion of the sanctity of one's word under a Labour Government[245]

239 For example, Wainuiomata Citizens' Advice Bureau.

240 For example, Newtown Citizens' Advice Bureau.

241 New Zealand Parliamentary debates Vol. 420, 1978: 3023. The Hon. E.S.F. Holland.

242 New Zealand Parliamentary debates Vol. 425, 1979: 2732. The Hon. D.F. Quigley.

243 Under "Rent Appeal Board". In other centres the "Housing Corporation" listing does not even include

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"Rent Appeal Board" as a subheading.

244 Report of the Committee on the Rent Acts, Cmnd. 4609, 1971, 14-16.

245 New Zealand Parliamentary debates Vol. 386, 1973: 3763 "where there is an existing rent under a lease, that is the "fair rent" unless matters which are relevant can be established that are so strong as to justify the breaking and varying of the contract to which the parties have bound themselves: Sievewright v Wellington Girls' College and Girls' High School Governors (1944) N.Z.L.R. 523; also R. v Paddington & St Marylebone Rent Tribunal: Exp. Bell London and Provincial Properties Ltd (1949) 1 K.B. 666, 681.

(iv) Fear that the tribunal will increase the rent.

(v) An overriding concern for the tenant to have repairs carried out by the landlord. This was felt to have a large part in many decisions not to apply for a rent assessment.

(vi) Satisfaction with the existing rent. The Committee believed that most landlords charged reasonable rents and tenants in general acknowledged this fact.

To these may be added the payment of the fee on application. This was attacked by the Labour Party as effectively restricting access in some cases[246] and it is submitted that this claim may not be exaggerated in a small number of cases where a poor tenant is beset by severe financial troubles culminating in a rent increase by the landlord. The dramatic drop in the numbers of those applying after the imposition of the fee to below the number of determinations in previous years means this argument cannot be lightly discarded.

In summary, there are many factors which may affect access to a rent appeal board, not all of which are within the control of the boards. There are twenty seven Housing Corporation offices in New Zealand so access by a tenant who is informed of the procedure is not physically difficult and the boards will travel to sit in a town where the premises are situated. The major contribution that could be made to improve accessibility is the distribution of pamphlets and application forms, already published by the Housing Corporation, to Post Offices and community groups so they may advertise the procedure without the necessity of the tenant first being informed that an application need be made to the Housing Corporation.

Freedom from Technicality:

> In the hands of skilled lawyers, formal trial procedure is no doubt a splendid instrument. But as a means of getting at the truth where one or both of the parties is unrepresented, a more inefficient system is difficult to imagine.[247]

246 New Zealand Parliamentary debates Vol. 413, 1977: 3064. The Hon. Mr Lange.

247 The Consumer Council, Justice Out of Reach: A case for Small Claims Courts (H.M.S.O., London, 1970)22

Freedom from technicality of procedure allows parties to represent themselves in the majority of cases with a subsequent saving of expense at the cost of efficiency. There are also certain dangers attendant in informality which must be convassed.

As noted earlier, the procedure of the board generally is, subject to the Rent Appeal Act and regulations made there under, as the board thinks fit, although this will not obviate a duty to act in accordance with the principles of natural justice.

How far efficiency may be sacrificed for informality is a question of judgement for each board chairman and it is submitted that the Wellington Board has achieved a reasonable balance in this respect. The hearings are clearly structured and the board members may well tell a party that he has made a good point and ask the other party to incorporate some sort of expected answer in his reply, rather than let the proceedings go into a question and answer session.[248]

The chairman of the Wellington Board, Mr A.N.V. Dobbs, is of the opinion that legal representation is clearly desirable before the board, as having a well though out case presented clearly is of great benefit in assessing a truly equitable rent. This is an understandable position when the reality of the situation is that some cases before the board are presented by people who cannot construct arguments any more advanced than, "I think the rent is too high".[249] It may have been with such cases in mind that the Committee of the Whole House added section 33 to the 1973 Act, entitling parties to legal aid before the board and the High Court on Appeal. The Francis Committee[250] recommended that legal aid not be offered to parties in Britain because:

1. It would involve delay.
2. It would militate strongly against the informality of the proceedings. Direct communication between the parties and rent assessment committee members is a good thing which makes the hearing more

248 Observed during the hearing of Messrs Sutcliffe, Wakefield and Neil at Waiouru, 26 August 1980.

249 Interview: Mr A.N.V. Dobbs

250 Note 244, 52-53

interesting for both, helps to put the unrepresented at ease and enables him to tell his own story in his own way, within limits.

3. There is little scope for advocacy in such proceedings. The committee is entitled to use its own knowledge and is not limited to material presented to it as "evidence". Questions of law seldom arise, and, when they do, it is always open to a party to take a point of law to court, where legal aid is available.

4. In complicated cases where a large landlord, e.g. the National Coal Board is involved, the landlord will undoubtedly be represented but the tenants could all chip in for a solicitor or counsel at small cost to the individual tenant.

5. The inarticulate and uneducated tenant certainly needs assistance but it is considered he needs not professional representation but a friend, acquainted with the facts and able to communicate.

Some of these arguments rest on dubious ground,[251] and in practice the New Zealand experience has shown that very few parties use the legal aid available to them for rent appeal board purposes.[252] It has had virtually no effect on the boards' operation.

As to legal representation generally, the Public and Administrative Law Reform Committee is of the opinion that parties should normally be entitled to representation by counsel or agent.[253]

251 For example, no 2: A board is unlikely to find ~~rage~~ vague and nebulous argument "interesting" when trying to grapple with the task in hand. Nonetheless this ground may be justified on the basis that the informality means there is less expense because lawyers will not normally be required to be briefed. No.3: the presentation of a case directly aimed at the relevant statutory criteria is a skill of advocacy that would help the proceedings. No.5: This assumes that such a friend exists and is willing to act.

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252 Laidlaw notes 4 cases of legal aid being granted in the Act's first year of operation, n.32, 347. It is believed that there has been no legal aid granted to rent appeal parties within the last financial year. Telephone conversation, Legal Aid Officer, Justice Department. The Legal Aid Board's annual report does not specify any rent appeal cases. Appendix to the Journals of the House of Representatives, 1980, E.7.

253 Sixth Report, 1973m para 41.

Nonetheless the Small Claims Tribunal Act 1976 expressly excludes any person from appearing as a representative before the Tribunal who is enrolled as a barrister or solicitor or who, in the opinion of the Tribunal is, or has been regularly engaged in advocacy work before other tribunals.[254] The jurisdiction of the Tribunal extends to claims based on contract no greater than $500 and aims to remove the thing that prevents even the most fearless potential litigant from litigating, expense. By removing the action into a special division of the District Court which sits in private with normally no one present but one referee and the two parties.[255] Parliament has removed the principal expense of litigation being the fees payable to solicitors.

Despite the inclusion of eligibility for legal aid in the Rent Appeal Act 1973 it is clear that representation by solicitors before the boards is rare[256] and therefore the boards have been able to retain their informality and in so doing avoid the spiralling need for most parties to be represented. For this reason a ban similar to that imposed on lawyers before small claims tribunals would no be of substantial benefit.

A danger that increases as the proceedings became more informal is the chance of an erroneous decision. The only safeguard against this, given that informality is desirable, is a right of appeal based on a point of law and an appeal must be based on the record of the proceedings.[257] The duty to give reasons[258] is thus a technicality of great importance in the system of rent appeal boards.

254 Small Claims Tribunals Act 1976, s.24(5)

255 Ibid. s.25(1)

256 About 6½ percent of cases before the Wellington Board involve a legally represented party: Wellington Rent Appeal Board determinations.

257 Although the courts are increasingly prepared to attack decisions where no reasons are given: Pa v Minister of Agriculture, Fisheries and Food (1968) A.C. 997; Rowling v Takaro Properties Ltd (1975) 2 N.Z.L.R. 62.

258 Rent Appeal Act 1973, cl.8, Second Schedule.

Although the Franks Committee singled out rent tribunals as being in an area where it is only possible to give a brief statement of reasons, for example, that having heard the arguments and inspected the premises the tribunal considers that the rent should be X,[259] the courts have taken a more exacting view. In Clark v Wellington Rent Appeal Board,[260] O'Regan J. was called to examine a determination which recited that the board, after "full consideration of all relevant factors in accordance with the Act" had fixed the rent at a certain sum. Then it continued, "In reaching this decision the board took into consideration in particular:

(a) The locality in which the dwelling house is situated;
(b) The standard of accommodation which the dwelling house provides;
(c) Its state of repair"

These are word for word the criteria in section 8(1)(a) to (c) of the Rent Appeal Act 1973 which the board is required to have regard to and the issue was whether a recording in writing ipsissi-ma verba the words of the statutes fulfilled the duty to give reasons. O'Regan J. held that it did not and adopted the line taken in two English cases[261] to rule that the reasons must not only be intelligible but must deal with the substantial points at issue.

The case does not bring any real clarity to the board's duty to give reasons however. As recognised by Lord Parker L.J.,[262] "What reasons are sufficient in any particular case must, of course, depend on the facts of the case". While reasons can be distinguished from matters that have or have not been taken into account[263] it is equally true that an insufficiently detailed statement of the particular facts on which a decision was based may be held to be in breach of a duty to give reasons because the person against whom the decision was made was left with the real

259 Note 212, para 98.

260 (1975) 2 N.Z.L.R. 24

261 Re Poyser and Mills' Arbitration (1964) 2 Q.B. 467; Mountainview Court Properties Ltd. v Devlin (1970) 21 P&C R.689

262 Mountainview Court Properties Ltd v Devlin, supra, 692.

263 Givaudan & Co Ltd v Minister of Housing and Local Government (1967) 1 W.L.R. 250, 258, "real and substantial doubt as to the reasons for his decision and as to the matters which he did and did not take into account..."

grievance that he was not told why the decision had been made.[264] The question of which level of decision making the reason relate to, the matters that were considered or the interpretation of those matters, is a question to be answered with regard to the facts of each case. In many rent appeal cases a listing of the factors taken into account may be all the case allows of while in others it may be the judgement of the board in emphasising unduly a certain feature of the dwelling that the parties must be informed of. O'Regan J. in Clark does not give any idea as to what would fulfill a duty to give reasons but it is submitted that his argument is not so much directed to the recording of the three statutory criteria as "reasons" so much as the board's silence over the feature of the house which were taken into consideration. As far as the decision in Clark can be interpreted, the Wellington Board would seem to be discharging its duty to give reasons adequately by reciting much of the information in the valuer's report and any matters brought up at the hearing and then concluding, "The Board, after visiting the premises and after full consideration of the factors listed as (a) to (g) inclusive in section 8(1) of the Act, has made the following decision ...." where appropriate the boards will expressly state that the assessment "includes a reasonable allowance in respect of the chattels provided by the landlord" or similar but by and large the "reasons" are not so much an insight into the minds of the deciders as a resume of the facts on which the decision was based.

The 1977 Amendment Act required the boards' assessments to include:[265]

(a) the value of the premises as a dwelling house;
(b) the existing rent (if any);
(c) the amount assessed by the Board as a proper return to the landlord.

The Wellington Chairman expressed the opinion that the proper return to the landlord could not be calculated as a percentage of

264 Re Poyser and Mills Arbitration (1964) 2Q.B. 467, 477

265 Rent Appeal Amendment Act 1977, s.5(2).

the value of the premises[266] and "proper returns" varying from eleven to four percent would confirm this. It is worth noting that in every Wellington assessment seen bar one, the rent assessed provided more than what the board considered a proper return to the landlord, sometimes considerably more.[267]

In summary, the Wellington Rent Appeal Board at least has been able to balance the economic desirability of informality with the practical necessity for some formality although it is submitted that more frequent legal representation, seen as desirable by the board, would be to the detriment of this balance. The duty to give reasons is being coped with as well as possible although its judicial definition does not give the boards any clear guidelines on what is required.

Expediency

This is an asset to any tenant facing a rent increase and wanting to either resolve the rent in his current flat or seek alternative accommodation. In Wellington, obtaining an assessment can take from 3 to 7 weeks. This compares well with the four to six weeks required to prosecute a claim before a Small Claims Tribunal.

The 1973 Act provided that an application could be dismissed by the board if it were "frivilous or vexatious".[268] This power was rarely used but in 1977 the amending Act added as a grounds if dismissed that "the application has not been proceeded with expeditiously."[269]

266 Cf. Laidlaw's conjecture that a 9½ percent return was used as a yardstick, possibly based on average first mortgage returns in the district at the time. N.32, 328.

267 From assessments filed at the Housing Corporation's Wellington Regional Office. In one case the tenant was to pay $2376 p.a. above the proper return.

268 Rent of Appeal Act, cl.10, Second Schedule.

269 Rent Appeal Amendment Act 1977, s.5(4)

This is frequently used by the boards to dismiss applications where letters to the applicant are returned or requests to arrange a mutually acceptable time for inspection go unanswered.

One fetter on expediency is the right of a disgruntled party to appeal.[270] This is independent of the right of the board to state a case for the opinion of the High Court[271] but involves the appellant filing a notice of appeal with the board written thirty days after the determination appealed form, specifying the registry of the High Court in which he intends to file the case on appeal and including security for the costs of the appeal to the satisfaction of the board. The board then states and signs a case and delivers it to the appellant who within fourteen days must transmit it to the Registrar of the High Court in the registry specified. As with many other tribunals, the boards' determination may be appealed from on a question of law but is final and conclusive as to any question of fact.[272] To date there have been no reported appeals decided in the High Court [273] which is unfortunate for the rent appeal boards in the long view as the court, exercising its appellate jurisdiction, would almost certainly endeavour to guide the boards' procedure and thus bring some uniformity to their operation.

Expert Knowledge of the particular subject

The desirability of having legally qualified chairmen has already been canvassed in this paper.[274] At present only one chairman is legally qualified and it is not clear whether this is the result of extremely few nominees for appointment being lawyers or indicates a more general policy of appointment that does not discriminate between lawyers and others. In fact, knowledge of the district is one of the major factors taken into account in appointing all members, irrespective of their occupation.[275]

270 Rent Appeal Act 1973, ss. 13-19

271 Ibid s.12

272 Ibid s.13

273 Clark v Wellington Rent Appeal Board (1975) s N.Z.L.R. 24 is the exception although the two cases there comprised applications for review under the Judicative Amendment Act 1972. Taylor v Auckland City Corporation (1977) 2 N.Z.L.R. 413 was by way of a case slated by the Auckland Rent Appeal Board.

274 Ante

275 Interview: Aide to the Minister of Housing, M. Thompson.

While it is no longer true that every board includes a valuer[276] three of them do. The criticism that lawyers and valuers have in the course of their professional practices habitually acted for property owners but seldom, if ever for tenants in low income groups and that their professional experience has inevitably predisposed them to adopt a sympathetic attitude towards landlords[277] is not convincing and especially not in the New Zealand Context where the valuers appointed are often retired Housing Corporation valuers and the tenant landlord relationship is not imbued with the same class conotations that may be found in England for example.

The expertise of the members is one of the tools the boards employ to arrive at a determination but the members sit primarily as individuals with different views, rather than experts in separate fields. There is no conflict between the lay and valuation elements in the board but all members contribute equally as experienced individuals.[278] Although the circumstances in which the tribunal must disclose that it is acting upon its own experience and not adduced material have not been precisely determined, Laidlaw concludes that[279]

> (1) the board must disclose when it is acting on information acquired from relatively specific sources to supplement or as a substitute for evidence, but not when it relies upon an accumulated background of general knowledge or expertise.
>
> (2) Undisclosed general knowledge may be used as a basis for deciding between two conflicting views but not far rejecting uncontradicted evidence.

276 Auckland does not. Appendix A. Cf. Frame and Harris, n.154, 232.

277 Noted by the Francis Committee, Report of the Committee on the Rent Acts (1971; Cmnd. 4609) 91.

278 Ibid. 91-92

279 Note 32, 343-345. Based on J.A. Smillie "The Problem of 'Official Notice': Reliance by Administrative Tribunals on the Personal Knowledge of their Members" (1975) Pub. Law 64.

IV CONCLUSION

Housing performs four quite different functions in New Zealand:[280]

(1) It is a consumer good on which the average household spends a considerable portion of its income.

(2) It is an investment good both for the entrepreneur and for the owner-occupier.

(3) It is an economic sector in which the level of activity has a major impact on employment, transport and manufacturing as well as a wide range of service industries.

(4) It is a social good, the supply of which is an important element in the overall quality of life for most people and for which the community as a whole takes some responsibilty through government action.

Housing is a political issue and rent control is the same, whether as a tool of economic control or social justice. However the scheme by which the political design is imposed on the community raises issues of constitutional and administrative law.

The control of rent has been taken from the court structure and delivered to a three man tribunal. This has posed problems with procedure and has led to the situation where the boards appear to be almost a division of the Housing Corporation and yet in fact receive no regulating influence from that body. It is desirable that uniformity of procedure be present to some degree and to this end it is submitted that one of the Rent Appeal Board chairman should be appointed to supervise co-ordination of the boards and create a flow of information that will result in the boards' being more aware of their legal obligations. The Housing Corporation should take more care to ensure that the independence of the board is apparent to the parties and the scheme by which the Director-General is appointed secretary with

280 National Housing Commission, Housing New Zealand (5 yearly report, March 1978) 11.

with a power to delegate should be ended in favour of simply appointing a local Housing Corporation officer as secretary to each board.

In calling for the abolition of the rent appeal boards it has been said:[281]

> This relic from the Labour Government which has done so much to remove rental accommodation from the property market should be disbanded immediately. Any disputes that tenants may have can be handled quite comfortably by solicitors or, hopefully one day, by a small claims court.

Ignoring the political sentiments expressed, the idea that small claims tribunals be used in tenancy matters could be extended to question whether a transfer of the rent appeal boards' functions to the small claims tribunals would not improve many of the defects of the present system. The tribunals have already considerable experience in dealing with landlord and tenant disputes[282] and their heavy emphasis on informality and cheapness could be seen as the logical extension of the movement of rent control away from the courts. The procedure is reasonably similar in that for example the tribunal will call on an investigator to report on the value of work partially completed and the parties will then be able to challenge the report.[283]

Nevertheless it is submitted that the tribunal would not be a more satisfactory body than the rent appeal boards for several reasons. The boards set great stock by the value of having three members from whom a more representational view of what "a reasonable landlord might expect to receive and a reasonable tenant might expect to pay" which is very much open to personal interpretation.[284] Where there is no appeal from a decision on substantive points of law as well as fact, then the opinion of one man may not be adequate to ensure the fairness of what is essentially an impressionistic decision. There are also problems of jurisdiction for the tribunal is limited to claims for $500. While an assessment lowering the rent five dollars a week may be

281 Olly Newland "An Aucklander's View", (1979) 175 Property.

282 The Register of the Christchurch Small Claims Tribunal shows just under one eight of all cases were between landlord and tenant.

283 Small Claims Tribunal Act 1976. However the parties do not get a copy of the report which is read to them.

284 Interview: Mr A.N.V. Dobbs.

within the tribunal's jurisdiction there came problems when dealing with large blocks of flats where a similar increase might cost a thousand dollars. Parties before the boards are not finding they generally need to be represented and so it would seem the particular needs catered for by the Small Claims Tribunals Act are not those that pose the problems in the case of the rent appeal boards.

The decision whether to retain rent control in New Zealand must be a political one and with forecasts that rental housing, both private and public, could prove to be an area of pressure over the next two to three years[285] it is likely that the questions posed by rent legislation will continue for some time.

285 Annual Report of the National Housing Commission, Appendix to the Journals of the House of Representatives, 1980, G.30,4.

APPENDIX A: MEMBERSHIP OF THE BOARDS[1]

Auckland Board

Chairman: Mr B.L. Byrnes, retired city manager, accountant, currently a member of the Planning Tribunal.

Members: Mr I. Mathison, retired administrator for St John's Ambulance, social organization worker.

Mrs J. Poulton, housewife.

Wellington Board

Chairman: Mr A.N.V. Dobbs, career civil servant, ex-Director - General of Education, Assistant Commissioner of Police, member of A Board, currently a member of the War Pensions Board.

Members: Mr P.C. Neilson, retired Housing Corporation valuer.

Mr E.H. Nepia[2] retired school teacher, now on the staff of Massey University.

Christchurch Board

Chairman: Mr E.C. Robinson, former banker.

Members: Mr A. Gray, former building superviser for the Housing Corporation, registered valuer.

Mr A.E. Carson,[3] retired Deputy Manager of the Christchurch Branch, Housing Corporation.

Dunedin Board

Chairman: Mr J.M. Conradson, practising solicitor.

Members: Mr R.A. Sutherland, valuer with the Public Trust.

Mrs H.J. Plunkett, Hospital Board member, active in Girl Guides Association.

1. Information obtained from the four chairmen.
2. Mr Nepia's deputy is Mr I.C. Bowden, retired chartered accountant.
3. Mr Carson's deputy is Mrs M. Murray, housewife, Waimairi City Councillor.

APPENDIX B: CASES BEFORE RENT APPEAL BOARDS[1]

Period	Applications	Determinations	Lapsed or Withdrawn	Outside
1.2.74-31.3.74	156	24	17	1
Y/E 31.3.75	1001	519	641	182 [2]
Y/E 31.3.76	939	462	403	26 [2]
Y/E 31.3.77	754	409	309	17
31.3.77-31.1.78	383	272	178	11
1.2.78-31.3.78	42	4	10	-
	425	276	188	11
				Dismissed
Y/E 1.3.79	152	98	52	-
Y/E 31.3.80	234	75	40	17

1. Appendix to the Journals of the House of Representatives, 1974-1978, G.1. Ibid, 1978-1980, B.13

2. Includes one dismissal.

APPENDIX C: TREATMENT OF CASES BY BOARDS IN 1979 [1]

A: NUMBER OF CASES HANDLED	AUCKLAND	WELLINGTON	DUNEDIN
1. Cases on hand 1.1.79	5	3	7
2. Filed during year	65	71	31
TOTAL	70	74	38
3. On hand 31.12.79	12	13	21
4. Disposed of during year	58	61	17

B: DETAILS OF DISPOSAL			
1. Withdrawn before P.A. or hearing	13	26	6
2. Withdrawn after P.A.	6	1	4
3. Dismissed without PA or hearing	8	6	-
4. Dismissed after PA	7	1	-
5. Disposed of by consent assessment	7	5	2
6. Disposed of by hearing	15	20	5
7. Withdrawn at hearing	2	2	-
TOTAL	58	61	17

C: PRELIMINARY ASSESSMENTS			
1. P.A's leading to consent assessment	7	5	2
2. P.A's not accepted by one or both parties and put down for hearing.	15	8	5
3. Withdrawn after hearing	6	1	4
4. Dismissed after P.A.	9	1	-
TOTAL	37	15	11

D: ANALYSIS OF DETERMINATIONS

	BY CONSENT		BY HEARING		TOTAL	
	AUCK.	WGTN	AUCK	WGTN	AUCK	WGTN
1. Rent confirmed	3	2	2	3	5	5
2. Existing or proposed rent reduced.	2	2	10	17	12	19
3. Rent raised	1	1	4	-	5	1
	6	5	16	20	22	25

1. These figures for 1 January 1979 - 31 December 1979 were distributed among the boards on the initiative of the Wellington Rent Appeal Board. The Christchurch Board did not reply.