



Supreme Court of New Zealand

Te Kōti Mana Nui

Practice in Relation to Acting Judges

The permanent judges of the Supreme Court agreed on 6 March 2017 to adopt the following practice in relation to acting Judges.

Background

- A Section 66(2) of the Senior Courts Act 2016 (the Act) provides that Supreme Court consists of the Chief Justice and no fewer than four nor more than five other judges.
- B Section 81(1) of the Act requires that Supreme Court comprise five judges for the purpose of hearing and determining appeals.
- C It is recognised that there will be times when the Court will not have five permanent judges available. For example, there may be times where a permanent judge who has retired or died has not been replaced or where a permanent judge is unavailable to sit because of illness, absence on leave or otherwise. There may also be cases on which a permanent judge is unable to sit because of a conflict of interest or otherwise. It is possible more than one permanent judge may be unavailable at a particular time or for a specified proceeding for any of the above reasons.
- D The Act makes provision for these situations as follows:
 - (i) Section 111 provides for the appointment by the Governor-General of retired judges of the Supreme Court who are under the age of 75 years as acting judges of the Supreme Court (a judge appointed under s 111 is referred to below as an “acting SC judge”) and for an acting SC judge to be authorised by the Chief Justice to act as a member of the Supreme Court to hear and determine any proceedings within a specified period or to hear and determine one or more specified proceedings; and
 - (ii) Section 110 provides for the appointment by the Chief Justice, in consultation with the President of the Court of Appeal, of a Court of

Appeal judge as an acting judge of the Supreme Court to hear and determine one or more specified proceedings (a judge appointed under s 110 is referred to below as a “s 110 judge”).

- E To avoid any suggestion of selection of a judge for a particular case, the Court intends to apply the following policies and practices.

Selection of acting SC judges for appointment

- 1 The practice in relation to s 23 of the Supreme Court Act 2003 has been that all retired judges of the Supreme Court who are eligible (not having reached the age of 75 years) and able and willing to accept appointment have been appointed as acting judges. The Supreme Court’s policy is to seek the continuation of this practice in relation to retired judges.

Authorisation of acting SC judges to act for specified periods

- 2 The practice of the Supreme Court in relation to the authorisation of acting SC judges to hear and determine proceedings within a specified period under s 111(4)(a) of the Act is that the most recently retired acting SC judge who is available to sit during that period will be authorised.

Use of non-permanent judges for specified proceedings

- 3 The practice of the Supreme Court in relation to the use of non-permanent judges to hear and determine specified proceedings is as follows:
- (a) If any acting SC judge is available for a specified proceeding or proceedings, the Chief Justice will authorise an acting SC judge to hear and determine the proceeding or proceedings under s 111(4)(b) of the Act. Such authorisations will be made in strict rotation, subject only to availability (in which case the next available acting SC judge in the rotation will be authorised).
 - (b) If no acting SC judge is available for a specified proceeding or proceedings or, where more than one non-permanent judge is required, insufficient acting SC judges are available, the Chief Justice will, in consultation with the President of the Court of Appeal, appoint a s 110 judge to hear and determine the proceeding or proceedings under s 110(1) of the Act. The Supreme Court’s policy in relation to the appointment of s 110 judges is that the s 110 judge appointed to hear and determine a specified proceeding or proceedings will be the most senior judge of the Court of Appeal who is available to sit and who is not conflicted, whether by reason of participation in the decision under appeal or otherwise.