JUSTICE 1 COMMITTEE

Wednesday 11 January 2006

Session 2

£5.00

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by Astron.

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JUSTICE 1 COMMITTEE
1st Meeting 2006, Session 2

CONVENER

*Pauline McNeill (Glasgow Kelvin) (Lab)

DEPUTY CONVENER

*Stewart Stevenson (Banff and Buchan) (SNP)

COMMITTEE MEMBERS

*Marlyn Glen (North East Scotland) (Lab)
Mr Bruce McFee (West of Scotland) (SNP)
*Margaret Mitchell (Central Scotland) (Con)
*Mrs Mary Mulligan (Linlithgow) (Lab)
*Mike Pringle (Edinburgh South) (LD)

COMMITTEE SUBSTITUTES

Brian Adam (Aberdeen North) (SNP)
Karen Gillon (Clydesdale) (Lab)
Miss Annabel Goldie (West of Scotland) (Con)
Mr Jim Wallace (Orkney) (LD)

*attended

THE FOLLOWING ALSO ATTENDED:

Professor Jim Murdoch (Adviser)

THE FOLLOWING GAVE EVIDENCE:

◊Rosslyn Noonan (New Zealand Chief Human Rights Commissioner)

◊by video link

CLERK TO THE COMMITTEE

Callum Thomson

SENIOR ASSISTANT CLERK

Douglas Wands

ASSISTANT CLERK

Lewis McNaughton

LOCATION

Videoconference Room T3.29

Scottish Parliament

Justice 1 Committee

Wednesday 11 January 2006

[THE CONVENER *opened the meeting at 08:02*]

Scottish Commissioner for Human Rights Bill: Stage 1

The Convener (Pauline McNeill): I am Pauline McNeill and I am the convener of the Justice 1 Committee of the Scottish Parliament. I thank Rosslyn Noonan for giving us her time. We are in the middle of stage 1 consideration of a bill that would create a Scottish human rights commissioner. Although the remit of the commissioner would not be as broad as that of the New Zealand Human Rights Commission, we think that we have something to learn from New Zealand.

I will start by asking you about the remit of the New Zealand Human Rights Commission. I know that it was established in 1978 and has recently had its remit broadened. It would be helpful if you could give us a resumé of the remit of the commission as it currently operates.

Rosslyn Noonan (New Zealand Chief Human Rights Commissioner): I would be happy to do that. As you point out, the commission started off in 1978. It was primarily an anti-discrimination body that had a specific focus on sex discrimination. The Office of the Race Relations Conciliator had already been established to deal with race discrimination complaints. Between 1978 and 2001, there was a considerable extension of the commission's anti-discrimination mandate. Under the Human Rights Act 1993, the remit of the commission was extended to cover matters such as disability, age and sexual orientation. I think that the act covered 13 types of discrimination.

More significantly, in 2001, the Government decided to merge the old Human Rights Commission and the race relations office and to broaden the new single body's remit to include the human rights framework as a whole. That was a substantial change. Although the complaints process is still heavily focused on anti-discrimination complaints, the commission's other work now takes full account of what I call the human rights framework—in other words, the rights that are reflected in the Universal Declaration of Human Rights, in the subsequent United Nations convenants and conventions and in the eight International Labour Organisation human rights labour standards.

Our present remit, which is set out in the Human Rights Act 1993 as amended by the Human Rights Amendment Act 2001, provides for four major statutory functions. The first is

"to advocate and promote respect for, and an understanding and appreciation of, human rights in New Zealand society".

The second is

"to encourage the maintenance and development of harmonious relations between individuals and among the diverse groups in New Zealand society".

The third is

"to provide information to members of the public who have questions about discrimination and to facilitate resolution of disputes"

about discrimination

"in the most efficient, informal and cost-effective manner possible".

The fourth is

"to lead, evaluate, monitor and advise on equal employment opportunities".

The 2001 act amendments added some specific new responsibilities, such as that to develop a New Zealand action plan for human rights and that to encourage understanding of the human rights dimensions of the Treaty of Waitangi. As the committee may be aware, that is New Zealand's founding document, about the place of which in New Zealand society there is still considerable debate.

The Convener: What types of human rights issues has the commission taken up since its remit was broadened? What kinds of issues have arisen?

Rosslyn Noonan: I will identify three issues.

First, a role that the commission would probably not have been able to play under its old mandate is the one that it has played in intervening in the first case of a review of a security risk certificate, which had been issued against Ahmed Zaoui, an Algerian refugee in New Zealand. The commission intervened in that case right through to the Supreme Court of New Zealand to ensure that the processes that the inspector-general of intelligence and security used took account of human rights and natural justice considerations.

At each level, the courts' decisions have reflected and taken up perspectives that the commission has presented in its role as an intervener. We are satisfied that although the process that has now gone back to the inspector-general is not totally what we would want—that is difficult to achieve with issues of national security—it is a lot better than it was.

Secondly, we have undertaken a major inquiry into the accessibility of public transport. I mention it because, under the previous remit, we received complaints of discrimination in private sector transport provision, but it was only in 2001, with the Human Rights Amendment Act, that the Crown and Government legislation, policy and practice were fully covered. Therefore, the transport inquiry was able to examine central Government legislation, policy, funding and practice; regional local government roles; and the roles and responsibilities of private sector operators.

The inquiry reflected probably better than anything else the value of what we call a human rights approach. The approach was not to identify guilty parties against whom we might subsequently proceed, but rather to lay out all the issues and human rights responsibilities of the parties and to identify how they could best meet their responsibilities.

Thirdly, I will mention a major piece of work with which we have been involved, of which the committee may be aware. I mentioned the New Zealand action plan for human rights, to which I will come later but, as a base for that, we undertook the first ever comprehensive review of the status of human rights in New Zealand. The full document, which is entitled "Human Rights in New Zealand Today", is a fairly weighty tome of some 400 pages, but it is accessible nonetheless.

The work involved engagement with people from throughout the New Zealand community—more than 5,000 individuals and many organisations contributed. We worked with Government agencies, and a Government liaison committee and national advisory council were established to provide advice and access to information for us throughout the process. The document provides a basis from which human rights legislation in New Zealand can move from being in essence simply documents that New Zealand has signed up to and then largely put on the shelf to being documents that have a real place—that are, in fact, the starting point—in the development of legislation, policy and practice. We have some way to go before that is achieved, but people can now see the value and practicality of achieving it.

"Human Rights in New Zealand Today" identified issues on which we do well and meet international human rights standards and issues on which we fall short. However, more important, it showed people how human rights are reflected in a complex, developed and multiracial society; it showed that human rights are not just a box to be ticked, but something that must be actively applied and worked through. I believe that that work is one of the most valuable contributions that the commission has made to date, because it is something on which people can draw, whoever they are, without further reference back to us. I know from the feedback that we receive that that already happens.

The Convener: That is helpful. I have one supplementary question. You talked about an inquiry into the accessibility of public transport provided by the private sector. Does that mean that you have a remit to inquire into private sector operations?

08:15

Rosslyn Noonan: Yes. We can inquire into any area in which there is a perceived or possible violation of human rights, so the private sector is included. The legislation specifies the issues into which we may inquire, such as access to goods and services or education, and gives some exceptions.

Of course, public transport is such a complex matter that plays such a significant role in the economy that if you are going to make a substantial difference you cannot consider it only from the point of view of Government responsibilities. Our broad remit enables us to look comprehensively at human rights issues.

It is interesting that one of the conclusions that we came to was that, in a New Zealand context, although the responsibility to ensure that human rights are respected falls largely on the state, it does not fall only on the state. Consider the position of children. We identified children and young people, along with disabled people, as the groups who are most at risk of human rights abuses and violations in New Zealand today. The protection of their human rights is largely down to family members, friends and professional people who come into contact with them. The state will never be able to guarantee their human rights, so we have emphasised that every New Zealander has a responsibility to ensure that the rights of those around them are respected and that it is not just a matter for the state. In the long term that is essential if human rights are going to be a day-to-day reality for every person.

Professor Jim Murdoch (Adviser): I have one supplementary question about the disputes resolution function. You said that it is strongly focused on discrimination. Are there any instances of human rights—in particular civil and political human rights—mediation coming your way?

Rosslyn Noonan: There is an issue about how we use language. It was when I was in Scotland at the conference that launched the proposal for a Scottish human rights commission that I discovered that in the United Kingdom you regard discrimination and equality as something separate from human rights. That is a puzzle to me; it has taken me a little while to get my head around it.

We regard the right to be free from discrimination as a fundamental civil and political right.

With respect to other civil and political rights, the formal disputes resolution process is not available to individual complainants, but the Human Rights Commission can take up any case and can take whatever action it sees fit on any matter when it thinks that there is a violation of human rights. The formal complaints process is currently restricted to discrimination complaints, but in our context that is interpreted broadly.

For example, there has been a complaint by a particularly militant protest group or pressure group that campaigns on water privatisation issues. It has complained that Auckland City Council has denied its members speaking rights at recent meetings, that the council has sought to eject them from meetings and that the council had them arrested and so on.

Members of the group have come to us and said that they think that the behaviour of the council amounts to political discrimination. Their complaint will be considered in the context of our legislation, but if it is not covered under part 3 of the Human Rights Act 1993, we could still take it up—not through the formal mediation process but through a different route.

If the Human Rights Commission felt that there was not political discrimination but that the council was acting in a way that restricted freedom of speech, political participation, or whatever, we could take the matter up with the council and work things through with it. Our capacity to act is pretty broad. At the moment, we are quite cautious in how we proceed, but we have been able to resolve through other means a number of individual complaints that have, strictly speaking, fallen outside the anti-discrimination provisions.

We are often a place of last resort for citizens; we are the only place where they are listened to seriously. In some instances, there is nothing that we can do—or nothing that it would be appropriate for us to do. Nevertheless, the presence of somewhere where people are treated with respect and know they will be heard, even if their particular issue cannot be pursued, has a very positive effect on social cohesion and society as a whole. The role that we play in the process—taking time to explain to people why something has happened, or opening the door back to the agency or organisation against whom they have a grievance and persuading it to take them seriously—makes an important contribution to a society in which people are treated with dignity.

Stewart Stevenson (Banff and Buchan) (SNP): I want to probe the legal basis on which you operate. You referred to the 13 headings that you work on, which include disability and age. You also referred to international rights such as the Universal Declaration of Human Rights. Is what you do founded on legislation; does it draw directly on what international declarations, such as that on human rights, say; or do you have the option of basically doing what you like within the human rights agenda?

How, exactly, does the legislation presently constrain you? What are you not able to do that, as a human rights advocate, you think you ought to be able to do?

Rosslyn Noonan: The first of our primary functions is to advocate and promote respect for and an understanding of human rights in New Zealand society—a function that is similar to the one in the bill. We take that as a very broad mandate, which is what the New Zealand Parliament intended it to be. However, the long title of the New Zealand Human Rights Act 1993 states that it is an act

"to provide better protection of human rights in New Zealand in general accordance with United Nations Covenants or Conventions on Human Rights".

Similarly, the long title of the New Zealand Bill of Rights Act 1990, which we also have regard to, states that it is an act to

"affirm, protect, and promote human rights and fundamental freedoms in New Zealand; and … To affirm New Zealand's commitment to the International Covenant on Civil and Political Rights."

We firmly base everything we do on those two acts, which are based on international human rights covenants and conventions. They are what we relate everything back to. We do not do anything that, in its broadest sense, would fall outside the rights and freedoms in the two primary documents—the covenants on civil and political rights and on economic, social and cultural rights. We check carefully that what we do relates back to them.

The constraints in the 1993 act mean that the one area in which we cannot pursue individual cases is immigration complaints. We are able to inquire into or comment on immigration policy in practice, but we are specifically excluded from taking up any individual immigration case.

Interestingly enough, we argued in the Ahmed Zaoui case that it was fundamentally a human rights case rather than an immigration case and the Crown did not challenge our request for intervener status. Although the Crown was not happy about our intervening in the case, it did not seek to use any legal technicalities to prevent us from being involved.

As regards accessing documents and evidence, if we require the provision of documents that are not willingly offered to us, we have to seek approval from a district court judge—the lowest

level of the court system. It is not the end of the world, but it is an unnecessary impediment and I have never received a satisfactory explanation of why that provision was made.

Under the system that we work to, the commission runs the disputes resolution service. Under my oversight is a separate office of human rights proceedings that can provide legal representation to complainants who do not get a satisfactory settlement through the disputes resolution process. The human rights review tribunal is the first level of entry into the court system and hears human rights, privacy, health and disability cases. Although I am responsible for the efficient and effective administration of that office, the director is required independently to apply the criteria in the act and decide which cases to take up. Currently, there are two cases of significance for the Government.

One case is from the Child Poverty Action Group, which claims that discriminatory payments are made to families dependent on benefit income as opposed to employment, so that is about child tax credit issues. The other case relates to the state's refusal to enable family members to contract to care for other family members who need full-time care. As those cases work their way through the system, they will create significant jurisprudence in New Zealand. There is very little human rights jurisprudence because ours is not a litigious society. For the most part we work things out between ourselves, so there is a gap in our jurisprudence.

The important point is that, initially, the Crown challenged the standing of the Child Poverty Action Group, but the tribunal has since made the strong decision that every New Zealander has an interest in having a discrimination-free society and that the Human Rights Act 1993 does not specify who is allowed to bring a case. The Crown is currently appealing the decision to the High Court, which I believe will uphold the tribunal's decision. That will put down a strong marker for the future.

08:30

Marlyn Glen (North East Scotland) (Lab): Scotland has a number of commissioners and ombudsmen, such as the commissioner for children and young people and the Scottish public services ombudsman, whose remits are likely to overlap with that of the proposed Scottish human rights commissioner. Has the New Zealand Human Rights Commission experienced difficulty in finding its own space among other commissions and ombudsmen? How have any overlaps been handled?

Rosslyn Noonan: That is a good question. A tradition of distant but effective co-operation was developed over the years, which meant that when the commission dealt only with discrimination complaints there was a reasonably good working relationship among the different agencies. For example, if the Office of the Ombudsmen received a complaint that came within the commission's area of responsibility it would forward it to us, and vice versa. After all, given the maturity and calibre of the people who are appointed to such positions, one would expect them to be able to arrange an efficient and effective working relationship.

That said, there was a frisson of territoriality or what might be called patch protection—I do not know whether you use that phrase in Scotland—when the Human Rights Commission and the Office of the Race Relations Conciliator were merged and the commission's mandate was broadened. Frankly, in order to get over that situation and to avoid unnecessary duplication—which we had to do—we and the other agencies were required to work together maturely. We had to take the initiative.

Our approach has received a good response. For example, after signing a formal memorandum of understanding with her predecessor, we now have a particularly close relationship with the children's commissioner, who has worked in full partnership with us on the review entitled "Human Rights in New Zealand Today" and the action plan. Moreover, in two of our offices we share the premises, library and reception with the health and disability commissioner, and we work together on many issues that come our way. Although the health and disability commissioner focuses more on consumer rights, he also deals with certain important human rights elements, which we strongly support.

We also work with the Office of the Ombudsmen on issues related to prisons. I should point out that New Zealand has signed the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which provides a national mechanism in that respect. Of course, a society such as ours has a number of national mechanisms to oversee places of detention. Proposed legislation before the Parliament seeks to recognise the responsibilities of the Office of the Ombudsmen, the children's commissioner and the Police Complaints Authority, and to provide for the New Zealand Human Rights Commission as the national co-ordinating mechanism. We will not take over anybody's responsibilities, but we will be responsible for liaising with the relevant international body and for taking up systemic issues.

We have an inter-commission liaison group—not an elegant title—that works effectively and

includes four commissions with human rights elements. Increasingly, we are finding ways to co-operate and to share training opportunities and staff development. I hope that by the end of the year we will have agreed a nationwide citizens phone number that any person in New Zealand who has an issue can call to be put through to the relevant agency. That will increase accessibility.

The law needs to be clear about responsibilities, but ultimately it is for the people who are appointed to jobs to work out the relationships. Those people—including existing appointees—should be given the clear message that Parliament wants and expects co-operation. The Scottish bill requires the human rights commissioner to co-operate with other agencies; other legislation could be amended to place an equal responsibility on those other agencies.

Margaret Mitchell (Central Scotland) (Con): Under the bill, a main function of the commissioner will be to promote and raise awareness of human rights. How has New Zealand done that? How effective has it been at changing New Zealand society? For example, you said that New Zealand society is not particularly litigious. Is that a reflection of your promotion of human rights?

Rosslyn Noonan: New Zealand provides an interesting study in human rights, given our short history. We can start in 1840 with the Treaty of Waitangi, which was a remarkable document for its time. Its third article provided to Maori all the rights and freedoms of British subjects at the time, which was an extraordinary guarantee. In the same year, a carpenter from Britain—an early migrant settler—organised, campaigned for and won the first eight-hour working day anywhere in the world. The committee will know about workers' rights and women's rights in New Zealand.

We have a history of placing a strong emphasis on rights, although it has been uneven—many rights for Maori in the Treaty of Waitangi, including their right to their property, were of course dishonoured. However, New Zealand had an early old-age pension and the great depression led to free education and a free health service—couched in terms of the rights to education and health. Along with others, New Zealand played a role in ensuring that the Universal Declaration of Human Rights contained economic, social and cultural rights.

We have quite a strong commitment to rights that has built up from the place and from the people who came here. Britain colonised New Zealand at a time of considerable human rights focus in Britain—the anti-slavery movement and so on were happening.

When we put the rights that were so eloquently stated in the Universal Declaration of Human Rights into practice after the second world war, it was almost as if we lost sight of the value of an explicit acknowledgement of the human rights framework. Like Britain, we do not have a written constitution, but we have a number of constitutional documents, although even the Bill of Rights Act 1990 is not entrenched legislation. When we reviewed the status of human rights in New Zealand we found that people had a gut sense of what human rights were, but they had little formal understanding of them. Our review showed that we in New Zealand seem to have lost our understanding of what the right to free education actually means. We found that students were being charged for courses and were not permitted to do them if they could not pay the fees.

In the short time in which the commissioners have operated under the new mandate, our experience has led us to believe that we have a long way to go in developing an understanding of human rights in the wider community, although we have identified some clear areas to target. One of our most successful human rights campaigns concerned people who experience mental ill health. It was successful because it was comprehensive and involved television, radio and community activities and programmes. It was run by the New Zealand Ministry of Health, although the Human Rights Commission was involved in elements of it and supported it. The annual budget for the campaign was half of the commission's total budget.

Our contribution has to be targeted. For example, we are working in isolated rural areas with very poor communities on programmes that are producing interesting results. Significantly, a number of marae on the east coast asked the commission to work with them to develop human rights-based marae. That is taking the idea of human rights into the heart of Maori culture and practice. If you were here, you would understand the significance of that, as there is legitimate concern among the Maori about mainstream society imposing its standards on them.

One of our priorities at the moment is the public sector, with which we are doing a great deal of work. Most public servants, including senior public servants, had no idea that the international human rights standards that New Zealand ratified had a bearing on their day-to-day work or that they needed to know about them and apply them. The commission cannot just tell them that they have to get on with it; the commission has to work with the public sector to show it the value and significance of human rights standards and how to apply them. We have a programme with the police to get them to integrate human rights standards into their mainstream training—not just their pre-service training, but their training for promotion. The programme aims to encourage the police to bring

an awareness of human rights standards into their day-to-day work.

08:45

We are evaluating all our programmes over time to see what effect, if any, they have. According to the public opinion surveying that we have done over the past three years, around 80 per cent of New Zealanders regard having an organisation that exists to promote and protect human rights as either important or very important. That is an incredibly high return in terms of national opinion polling.

We have a long way to go. We are hampered by a lack of adequate resources. For example, we have twice asked the Government for money to run major multimedia campaigns, but it has declined. However, we have done a couple of smaller multimedia campaigns with some outside sponsors, such as media organisations that have donated time and expertise.

You have to be in for the long haul. Obviously, we have a way to go. We have some good examples that are having an impact, but I would not say that we have the answer.

Margaret Mitchell: Thank you, that was comprehensive and helpful.

Marlyn Glen: You talked about the New Zealand action plan that was published earlier this year. Does the plan represent the work programme for your commission for the next five years? How do you review and update the programme? Your remit is wide and you are making choices all the time.

Rosslyn Noonan: As a result of the action plan, we have just completely reviewed our strategic plan for the next five years, introduced new priorities and identified the specific actions that are within our remit either to lead on or to undertake with others. We await the Government's response to the action plan; our Parliament placed on us a statutory responsibility to develop it. The Government needs to pick up on the elements of the plan that are relevant to it as a Government and to endorse them as part of the Government action plan for human rights.

The committee will be aware that we had an election late last year and that the Government was not formed until November. Initially, the Government was supposed to respond to the action plan in November, but that has been deferred until March because the Government had to go straight into the budget cycle. For us, a key issue is going to be how the Government responds to the areas of the action plan on which it needs to pick up.

Local government and regional government have been extremely responsive and we are working with them on relevant issues.

The action plan has been important for non-governmental organisations, community groups and so on because it has allowed them to see what a systematic approach to human rights could mean in their areas of interest and how the human rights standards can assist them to advocate and develop the areas that are priorities for them. The action plan is an incredibly useful and educative tool as well as being an advocacy document. It is not a blueprint.

Marlyn Glen: Will the action plan work on a five-year cycle? Will you then go back to the beginning?

Rosslyn Noonan: Yes—we have committed a future commission to reviewing the plan. We have a regular programme of reporting on developments with respect to the action plan, but we have a five-year cycle for the full review.

Mike Pringle (Edinburgh South) (LD): Good morning. Your inquiry function is broader than what is proposed for our commissioner for human rights. How many inquiries do you conduct annually and how long do they take? I presume that some inquiries will be shorter and others will be longer. What staff resources are involved?

Rosslyn Noonan: We have carried out only a limited number of inquiries to date, although we are in the process of putting in place provisions to enable us to carry out inquiries more frequently.

Our major inquiry into transport took two years. We had timetabled about 18 months for it, but the inquiry took longer because the process meant that we went back to the key players several times. Interestingly, that inquiry has resulted in changes, even though the Government has not yet adopted the report, which was completed only in October. Local government and private operators have already acted on some of the report's recommendations because, although they started out being quite hostile, the process took them along with us.

Our inquiries into other issues could be characterised better as research. For example, we are carrying out an inquiry along with the Mental Health Commission into the use of seclusion in psychiatric treatment, but that inquiry is a much lower-key affair with no public hearings. For that inquiry, we have issued written consultation papers on which we have invited feedback.

The provisions in the Scottish Commissioner for Human Rights Bill about the conduct of inquiries are exactly what we did for our big transport inquiry. We first published draft terms of reference, which proposed our methods and included the

provisions in our act that we would work under. For example, our working under the provision that enables us subsequently to take people to court was ruled out from the beginning. However, it would have been highly inappropriate to go through the same process for our current inquiry into seclusion. A human rights commissioner needs to have inquiry powers and to be given broad principles under which those powers should be used, but the commissioner needs also to be allowed to adapt the principles to particular circumstances so that inquiries can be shaped most appropriately to the subject matter and the people involved. There should not be an overly prescriptive approach.

At the moment, we are scoping a number of possible inquiries. We will examine various elements of prisons and imprisonment, including imprisonment rates. We will also examine issues that affect transgender and transsexual people, who are particularly marginalised and experience serious difficulties in our health services. We might also carry out an inquiry along with the children's commissioner into children's rights with respect to immigration decisions that affect their parents.

Over the next three years, we will conduct one significant inquiry a year and probably one smaller inquiry. We have largely used internal staff for our inquiries because our resources are limited, but we have sometimes contracted out specific pieces of research. For example, we might contract academics to do literature surveys and analysis—PricewaterhouseCoopers has done some economic analysis for us. We are really only limited by our resources.

Mike Pringle: That is interesting. You talk about budgets and limited resources. What is your annual budget? Bizarrely, we have decided what our commissioner's annual budget will be before we have even passed the bill. You talked about not getting money from the Government and about contracting out, but I presume that somebody has to pay for that. Who pays?

The other slightly controversial thing in my view—and perhaps in the views of others—is that we have already decided what our commissioner's annual salary will be, which is equivalent to about 200,000 New Zealand dollars. Is that an adequate salary?

Rosslyn Noonan: Our budget from the Government is 7.5 million New Zealand dollars a year. We negotiate annually with the Government; although it makes a three-year commitment to a baseline budget amount, in each annual budget round we bid for additional funds. In terms of the independence of the institution, funding is one area in which the Government is able to exercise some control; for example, we put in a wonderful bid for human rights public campaigns, which the Government would not fund and we were unable to reorganise our funding so that we would have had enough to carry out those campaigns effectively. The commission achieves a lot with the money that it receives, but we need about 10 million New Zealand dollars a year to be able to do our job comfortably and effectively. In my view we are underfunded.

In New Zealand, the commissioner's salary is set by the Remuneration Authority, which also sets the salaries of chief executives, members of Parliament and judges. That is an independent process. My salary is just over 200,000 New Zealand dollars; we are required to report my salary annually, so that is public information. It is not negotiated with the Remuneration Authority. By New Zealand standards, it is a very reasonable salary.

Mike Pringle: You have the right to investigate individuals and individuals' human rights, which our commissioner will not be able to do. Should the Scottish commissioner be able to carry out such investigations?

09:00

Rosslyn Noonan: A commissioner should certainly be able to receive complaints from individuals and, if necessary, to take them up. It is difficult to understand why you would not give a commissioner that power. When appointments are made, you should trust people to make decisions on priorities, and on which complaints can be taken up and which cannot. I have not read anything to convince me that such a restriction is appropriate.

The Paris principles provide that national human rights institutions are able to receive complaints or representations from any person, and to deal with those complaints if it is deemed appropriate to do so. My commission has a broad mandate and people come to us with a whole load of stuff, but that does not mean that we take everything up—we do not take up matters that fall into other jurisdictions.

Mike Pringle: Thank you. That is very useful.

Mrs Mary Mulligan (Linlithgow) (Lab): Good morning. I would like to ask you about accountability. The Scottish commissioner for human rights will be funded by, and held accountable to, the Scottish Parliament; I understand that the New Zealand commission is funded by your Government. What is the relationship between your commission, Government and Parliament?

Rosslyn Noonan: The arrangements in the bill are preferable to the New Zealand arrangements in that respect. Ideally, a national human rights institution should be accountable and answerable to its Parliament.

In New Zealand, the commission is required to be independent. Commissioners are appointed by the governor-general on the recommendation of the Minister of Justice. We receive warrants from the governor-general so that we cannot be dismissed other than for criminal behaviour or bankruptcy, for example. Once commissioners are appointed, their position is highly protected for the duration of the warrant.

Other than in exceptional circumstances that must be tabled in Parliament, ministers may not direct us or interfere in what we do. We have a memorandum of understanding with the Minister of Justice, which sets out in some detail that the minister will not interfere with our strategic priorities. We are funded through vote justice—the justice budget. That is the administrative line through which our money comes. However, once we have the money, what we do with it is our business.

Obviously, if the Government votes us money to do one thing, we cannot then spend it on something else—we must do what we put the bid in for. However, once the money is part of our baseline, it is ours to allocate.

We have to report annually to Parliament, and we report quarterly to the Minister of Justice to highlight our key activities, primarily for reasons of financial accountability. The Justice and Electoral Select Committee of the New Zealand Parliament has a specific mandate for human rights and it examines our annual report as a matter of course. It comments on the report and give its views on how we could do better. The examination can be quite rigorous.

We also had a number of exchanges with the Justice and Electoral Select Committee in the development of "Human Rights in New Zealand Today" and the action plan. That committee then sought a formal meeting with us about the results of "Human Rights in New Zealand Today". I would describe our contact with it on our work as regular but not close.

We also have considerable involvement with other parliamentary select committees. In some instances, committees ask us to advise them from a human rights perspective on issues that are before them. We are also free to make submissions to parliamentary committees on any bill, inquiry or report that they are involved in, and it is up to us whether we do that. However, if a select committee asks us, we always respond regardless of whether we have capacity or whether the matter is a priority at the time, because we regard the Parliament to be an essential element in a robust human rights environment.

Mrs Mulligan: I am interested in how you were appointed, which you said was done through a recommendation. Is that appointment for a fixed term?

Rosslyn Noonan: Yes, it is for five years. The appointment process is that the Minister of Justice sets up, or requests that the secretary of justice sets up, an independent panel and calls for nominations or applications for the position of commissioner. The independent panel has always included at least one civil society representative as well as a senior public servant or an academic—that is the kind of mix. That panel then makes recommendations to the minister, who is free to accept or reject them, but all that information is available to the public under the Official Information Act 1982. In the period that I have been in the job, the minister has followed the recommendations of the independent panel.

Mrs Mulligan: I hope that my next question is not unfair: how do members of the Parliament view the Human Rights Commission?

Rosslyn Noonan: There are mixed views about the commission. However, when we presented our report, "Human Rights in New Zealand Today", and the last time that the House of Representatives examined our annual report, one of our greatest challengers said somewhat reluctantly, "Well, I have to say, you've been very productive", which I took as an underhand compliment.

I should have said that another element of the convention about the appointment of the chief human rights commissioner is that the Government of the day consults the Opposition about who they propose to appoint. At the time of my appointment, relations between the Minister of Justice and the Opposition spokesperson on justice were particularly fraught and the consultation was at best a gesture. Initially, I felt somewhat disadvantaged by being caught up in a political shouting match that I had not caused, but of which I was the focus. That took some time to overcome.

That is why the appointments processes are important. You have a good starting base, because the Scottish Parliament will make the appointments. If the Justice 1 Committee is to be responsible for driving that process, you will need to think about exactly how you will go about it and what, if anything, can be done to prevent it becoming a source of debate and argument over legitimate party political differences, although it is not possible to get away from that completely. However, all that I have ever asked is that we be judged on the quality of our work—I am happy to accept criticism if it has been poor—and the quality of that work has begun to win people over.

We have actively sought to work with all the political parties. We are not a Government department and do not have to go through the minister; therefore, when we produce a major report, it goes to the leaders of the other political parties at the same time as it goes to the minister. We offer to brief them all and, increasingly, they are asking to be briefed. That is something that the institution and commissioners have to do, but parliamentarians, too, need to think about their role. It is perfectly legitimate to have any number of arguments about how human rights are best protected but, ideally, the genuine consensus should be that they are a critical part of a fair and decent society—something to which everyone is committed, regardless of their political perspective.

The Convener: I want to ask about your relationship with the New Zealand courts. In our bill, there are limited powers to intervene in the Scottish courts. What powers does the New Zealand Human Rights Commission have in its relationship with the courts?

Rosslyn Noonan: As will be the case for the Scottish commission, we are excluded from making any comment on matters that are before the courts or doing anything about judgments of the courts. We do not take up complaints against decisions of the courts or the behaviour of judges, and so on. We receive such complaints, but we do not act on them. We have the power to pursue a case ourselves if we choose to do that; however, we have not yet chosen to do that. The Child Poverty Action Group at one point came to the commission to ask that we pursue a case on its behalf, but we decided that that was not the most appropriate thing for us to do. We can apply to intervene, and I think that that will increasingly be our most common involvement with the courts. Also, the courts can ask us to act as amicus curiae. In a couple of instances, at tribunal level, a tribunal has sought our views on a specific situation and has used them in its considerations. We were not party to those cases, but the tribunals asked us how we viewed certain situations.

At the regional level, we work with the Asia Pacific Forum of National Human Rights Institutions, which has an advisory council of jurists—the Asia Pacific region does not have the equivalent of the European Court of Human Rights. One of our appeal court judges, Justice Susan Glazebrook, is the New Zealand member of the advisory council of jurists. Every year, the national human rights institutions in the region refer specific questions to the advisory panel of jurists, which then sits on those questions and reports on them. The panel's reports are disseminated back through the countries.

I am fairly comfortable with our relationship with the courts and the restrictions that prevent our doing anything about specific cases. However, interestingly, we have had a case that we originally felt that we could not take up, which related to the treatment of a disabled person in a court. Subsequently, the court itself determined that he had been inappropriately treated and that we could have treated that as a discrimination issue. Again, there is a fine line between the judicial function and the practices and approaches around the courts.

09:15

The Convener: Does that mean that, for any issue that the commission would regard as a breach of human rights, you could begin court proceedings to challenge the state or an institution? Is the power as broad as that?

Rosslyn Noonan: It is fairly broad. There are specific links to matters that might come under the legislation's antidiscrimination provisions. We have not really tested the power yet to see just how far it would go. To what extent it would be limited would probably depend on the extent to which the Crown or a respondent chose to challenge our standing.

The Convener: I can see that.

Rosslyn Noonan: We would not consider court proceedings for just anything. An issue would have to be clearly linked to a human rights standard and there would have to a clear basis for proceeding.

The Convener: You would want to ensure that a particular issue involved a breach of human rights.

Rosslyn Noonan: Absolutely.

The Convener: You would also have to weigh up your chances of winning. Initiating court proceedings for a breach of human rights risks losing the court decision, whereas you might succeed with a human rights issue by not going to court. If you use your powers to go to court on a breach of human rights and the court decides against you, you have lost that issue.

Rosslyn Noonan: Absolutely. However, our approach would be that court action would be the very last step. In our context, I cannot imagine court action ever being the first option; it would be very much the last resort.

Interestingly, on the role of the director of human rights proceedings to accept cases and provide legal representation for them, one of the criteria from the Human Rights Act 1993 that must be taken into account is the chance of success. One would always weigh up what the chances of success were. However, we have debated a

couple of situations in which getting the jurisprudence would be helpful whether or not we were successful because a court decision could clarify the law and make it clear whether we needed to advocate for a law change.

Generally, I agree with you. We would never take an issue to court unless there was a very high chance of success. However, there might well be cases in which, even if we were not successful, it would be important to clarify the law and, if necessary, to work subsequently for a change of law.

The Convener: That was extremely helpful. That is the end of our questions, Rosslyn. You have been very frank and insightful and I thank you for that. You have given us an awful lot to consider. We will be going into a committee meeting in about half an hour's time to question more witnesses to see what they think about the creation of a human rights commission for Scotland. Thank you for working so hard with the Scottish Parliament and for answering our questions today.

Rosslyn Noonan: I wish you all the very best. I believe that human rights commissions are worth while. They are not a panacea, but they are an important component of a society such as yours and ours, for ordinary people of the society. Human rights commissions have a real contribution to make to building fair and just societies in which everybody, from children up, can not only feel confident of their rights but know their responsibilities. Good luck with your work. I will follow it with interest. I hope one day to be there to drink a toast to the establishment of the commission.

The Convener: Thank you.

Meeting closed at 09:20.

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