

- **CRIMINAL CASES REVIEW COMMISSION BILL**

First Reading

Hon ANDREW LITTLE (Minister of Justice): I move, *That the Criminal Cases Review Commission Bill be now read a first time.* I nominate the Justice Committee to consider this bill.

Miscarriages of justice unjustly deprive individuals of their freedom and undermine public confidence in the justice system. It's therefore vital that we have robust mechanisms to identify and remedy miscarriages of justice where they occur. This bill advances those objectives by establishing a criminal cases review commission.

Currently, a person who believes they've suffered a miscarriage of justice may apply to the Governor-General for the exercise of the royal prerogative of mercy. By convention, the Governor-General acts on the formal advice of the Minister of Justice. Work on the prerogative of mercy applications is undertaken by lawyers in the Ministry of Justice's office of legal counsel, and assistance is sought, where required, from an independent adviser, such as Queen's Counsel or a retired judge.

This process has, in many ways, served us well. However, for some time, experts and members of the wider public have had concerns about our systems for identifying and remedying miscarriages of justice. The concerns expressed are principally related to the independence, timeliness, quality, and fairness of investigations into miscarriages of justice under the status quo. Further, as Sir Thomas Thorp highlighted more than a decade ago, our current system does not adequately encourage applications from Māori or Pacific people. As we know, Māori and Pacific peoples are imprisoned disproportionately, making up some 60 percent of our current prison population, yet the rates of applications for the royal prerogative of mercy from these populations is estimated at somewhere between 11 and 16 percent.

Other jurisdictions have grappled with similar concerns and have, in response, established criminal cases review commissions. The experience of these overseas bodies, while not without difficulty, suggest that establishing a criminal cases review commission may

significantly enhance the process of identifying possible miscarriages of justice.

The Criminal Cases Review Commission will be a new, independent Crown entity with between three and seven commissioners, including a chief and a deputy chief commissioner. The independent Crown entity model will enable the Criminal cases review commission to operate within a coherent, well-established framework that is sufficiently independent of Ministers, the courts, and relevant State sector organisations. At least one-third of the commissioners will be legally qualified, and at least two-thirds will have a background in the criminal justice system. Appointments of commissioners will also take into consideration the desirability of diversity and that understanding of Te Ao Māori in particular. This membership composition will enable the commission to have the necessary mix of skills and experience for its decision making and governance while avoiding the risk of ongoing expansion of membership beyond what may be necessary.

The primary function of the commission will be to review convictions and sentences and decide whether to refer them to the appeal court, or the Court of Appeal. The courts remain the body that determine a person's guilt or innocence, and the way this operates is the judiciary decides guilt and sentences accordingly; it must be the judiciary that, ultimately, undoes the decision if it is found to be erroneous.

The commission will be able to receive applications from any living convicted person or their representatives. The commission is also able, where it is in the public interest, to make initial inquiries on its own initiative, though it must seek the consent of the individual concerned to proceed to a full investigation.

Investigations will be thorough and involve, for example, examining large quantities of relevant files, interviewing applicants or witnesses, and, very commonly, forensic testing or instruction of experts. This role will help to remove some of the burden that currently rests on applicants. If, in investigating a case, the commission finds evidence of a matter that may be causing or contributing to miscarriages of justice, it will be able to launch a thematic inquiry into these issues. One issue commonly raised currently is the use of jailhouse witnesses in relation to purported

confession evidence and that may be something is the subject of a thematic inquiry at some point in the future.

The result of the commission's work will be a report to the Minister of Justice, who will be required to present that report to Parliament as soon as practicable after receiving it. The intent of this power is to add a quasi-preventive function to the commission's work. The commission also has a duty to promote public awareness of its functions. I see this as an important element in signalling to the commission the need to engage with potential applicants especially Māori and Pacific peoples, in order to encourage meritorious applications.

Arguably the most important and complex aspect of the design of the commission is the test for referring a case back to the courts for a fresh appeal. Clause 17 of the bill provides that the commission can refer a conviction or a sentence to the Court of Appeal if it considers referral is in the interests of justice. In deciding whether to refer, the commission must have regard to a number of points: firstly, whether the convicted person has already exercised their rights to appeal against conviction or sentence; secondly, the extent to which the application relates to argument, evidence, information, or a question of law previously raised or dealt with in the proceedings relating to the conviction or sentence; thirdly, the prospects of the court allowing the appeal; and, finally, any other matter that the commission might consider relevant.

The experts we've consulted in developing the test have, unsurprisingly, had a variety of views on this construction. Many believe the test strikes the right balance providing the necessary flexibility while clearly signalling the relevant considerations involved in making a referral. However, others were concerned that the test is overly prescriptive and that the use of factors as listed may be interpreted in a manner that has a chilling effect on referrals. In my view, the test strikes an appropriate balance. It has been specifically designed for the New Zealand context. In the interests of justice, it provides a broad discretion to refer while the factors that the commission must have regard to acknowledge important constitutional principles. The existence or non-existence of one factor is not in itself a determinative of the application. I anticipate and I welcome comment on this aspect of the bill and I will gladly consider any improvements that can be made so that the commission may effectively carry out its core function.

Similarly, I expect the commission's information-gathering powers will be of particular interest to submitters and to the committee in its deliberations. The bill makes it clear that consent and cooperation should always be the preferred means of seeking information but allows the commission to compel information from public entities and private individuals where necessary. Where a person has failed to provide information, the bill includes a civil enforcement process in the District Court. The drafting of the information-gathering powers attempts to strike a careful balance between the need for the commission to access all relevant information and to safeguard the rights and freedoms of individuals and relevant protections for privilege and confidentiality.

I note in particular that the bill expressly provides that the commission cannot access information that is protected by existing privileges or confidentiality. This is an important difference from commissions overseas which are able to access information even if it is privileged. The scope of the information-gathering powers, including whether or not to allow the commission to access privileged information, will be important for the committee to consider and I look forward to their conclusions in this respect.

Another important aspect of the bill is how it interacts with the royal prerogative of mercy. The effect of the bill is that the Governor-General will no longer play a role in referring cases back to the courts. However, as the royal prerogative of mercy remains in force, the bill recognises that the Governor-General will continue to have the power to, for example, grant a free pardon. The bill provides that where the exercise of the royal prerogative of mercy is being considered the Minister of Justice, as the Governor-General's adviser, may request the commission's opinion on any matter relevant to the case.

This bill meets an important Government commitment, responds to long-held concerns from a variety of New Zealanders and will dramatically improve our system for responding to miscarriages of justice. It will create an important safety valve presently missing from our system. In closing, I note the finding of the United Kingdom House of Commons Justice Committee in assessing the work of the Criminal Cases Review Commission there that, "If a bolder approach leads to five more failed appeals but one additional miscarriage being corrected, then that is of clear benefit." I agree

with that sentiment and I believe that this bill will enable us to achieve such a benefit. I commend this bill to the House.

- **CHRIS PENK (National—Helensville):** Thank you, Madam Assistant Speaker, for the opportunity to lead the contribution to the debate on this side of the House. I acknowledge, first, the laudable intention of the Government and the Minister who's just given an introduction to the intent of the bill and indeed some of its operation. Minimising miscarriages of justice—it almost goes without saying—is indeed a laudable intention. I use the word "minimising" in deliberately broad terms because a couple of options are presented to us as policy makers—one being to prevent as many as possible from occurring in the first instance, and then, second, how to deal with the prospect that there might have been miscarriages of justice that have taken place. Of course it goes without saying, again, that both of those aims should be taken into account by policy makers, but I would like to place on record that we believe that it may be fruitful, if reform is required in this space regarding the possibility of miscarriages of justice, to do everything that is possible to reduce the possibility that they take place in the first instance.
-

That acknowledged, I'd like to go on to structure some remarks around a couple of different themes—one being matters of constitution and the other matters of construction. On this side of the House we have some concerns with the relationship of the respective branches of Government—executive, legislature and judiciary, although not particularly the legislature in this part—and the way that those interact and how those would be affected by the operation of this bill if it is passed into law. As for matters of construction there'll be some particular matters that we'd like to highlight and hope that these will be taken on board by the Government through the legislative process, assuming that it does pass the reading and beyond.

We will be speaking—I hope and expect—on a number of a different aspects of the bill. I'll just summarise those briefly before going into a bit more detail on a couple in particular. We'll be talking about the features of the commission, as advertised in the bill itself, and some pros and cons of those as we see them, also the question of discretion, the membership of the commission, the possibility of introducing delays into our justice system—I note that it seems to be a matter that is generally accepted as true that there are already unacceptable delays in our court system and in our justice system

more generally—expense, the possibility of floodgates opening, the prospect of duplication, the establishment of another Government agency, which is not a step that should be taken lightly. Others are consideration of the standard required for referral, and I do acknowledge that the Minister has already made some comments on that and those are duly noted and understood, there is possibility that a lack of accountability will arise from this mechanism. Again this is perhaps in comparison particularly with the current arrangements whereby the Minister himself or herself has something of a role. There is the place of victims too, and their voice within this process as having been established, is something we're also keen to discuss along with the particular investigative powers and the ways that the bill would operate in practice through the commission itself of course.

So without going into those in more detail in the hope and expectation that others on this side of the House and perhaps others too on the other side of the House will comment on those, I'd like to turn more particularly to examining the features of the commission as set out by the bill itself in the explanatory note. First, it is to receive applications from eligible person or their authorised representatives. "Eligible persons" are defined again I acknowledge the Minister has made this point as living persons who have been convicted, they feel, unjustly or indeed their representatives but not on the other hand by those who feel as though a miscarriage of justice may have taken place—the other way round so to speak, so that if a miscarriage of justice has occurred such that a person has not been convicted in circumstances that they would have. So I just note for the record something of a lack of balance in that regard.

Second, the element of promotion of its own activities in relation to the functions of the commission: that will be something that the commission is mandated to do. Appropriate, of course, that its functions be known, so that those who might be able to take advantage of it have the opportunity and the ability to do so—an aspect of the access to justice element of our rule of law. But I wonder if more thought could be given to improving the ability for the members of public, in particular those to whom it might apply, to actually know what the current arrangements are. So if phrases such as the "Royal prerogative of mercy" are somewhat inaccessible to those who might be in a situation of having suffered a miscarriage of justice, then perhaps some thought should be given to that in relation in particular to particular ethnic groups that the Minister has

mentioned, who are not availing themselves of that opportunity as it currently already exists.

The undertaking of thematic inquiries in relation to miscarriages of justice in general: again, laudable in intent but I wonder if that's not already a function of other parts of the executive, and indeed the legislature. There is nothing to stop this House, or indeed, including via select committees and so forth, and the Minister of Justice and the Law Commission and various other bodies—Government and non-government agencies and entities alike—making such inquiries, so I wonder what the relationship of the commission will be in relation to those.

The powers to obtain information are quite intriguing. I do fear that not enough thought has been given to how these will play out. The Minister has mentioned the question of privilege; he's not mentioned however, and I hope I'm not incorrect in saying—actually, I hope I am incorrect in saying that the question of contempt of court is not raised in the bill. I don't know if standard judicial functions will apply to this body, which is judicial in nature—at least to some extent. It does have the ability to review and it does have the ability to refer, albeit not ultimately to decide. So that's something that I would encourage the Minister to consider as at least a matter to clarify one way or the other in terms of whether such standard aspects of criminal procedure will apply to the operation of the commission.

I'd like to move now in my remaining time to a couple of other points. One is, perhaps, a matter of drafting more so than policy intent, but none the less extremely important. At clause 17(1) of the bill we hear that, "The Commission may refer a conviction or sentence to the appeal court if the Commission, after reviewing the conviction or sentence, considers that it is in the interests of justice to do so." I understand I think the intention, which is to establish, effectively, a set of criteria such that referrals will be made, but the word "may" after the word "commission", saying that the commission merely may refer a conviction or sentence in those circumstances seems to me the wrong word. Surely if the commission, having reviewed the conviction or sentence, does consider that it is in the interests of justice to do so, then it shall or must refer such a conviction or sentence to the appeal court. Such is my view, and on this side of the House, and, again, I would encourage and request that the Minister and his team take a close look at that aspect. No doubt there will be other opportunities to thrash out particular details of the

bill, but that's one that did strike me as rather significant at this early stage.

My final comments relate to the membership of the commission. I'll just note reasonably briefly that the qualifications of the commission perhaps are intended to strike a balance between those who are legally qualified, as that term is defined, and those who are not, but I will be making some suggestions—perhaps not in my remaining minute, but perhaps through other means—by way of suggestion about how that could be tightened up a lot more to ensure that actually we have robust processes that reflect the very real needs of those who are engaged in the criminal justice system. Not only those who believe that they have suffered a miscarriage of justice in the sense of being criminals but also those who are affected directly in terms of victims and, of course, the State and the people of New Zealand as a whole.

Criminal law, by definition, involves us all—at least at a theoretical level, and less involved than those who are, sadly, in the thick of it—but with these comments I'll bring to close my contribution. But, as I say, I hope that the contribution on this side of the House along the lines of constitutional matters and also matters of construction of the bill will give pause to thought to the Minister and the other side of the House in proposing a bill that we see as somewhat flawed in terms of the way it interacts with the current system and as to specifics as well.

-
- **Hon AUPITO WILLIAM SIO (Associate Minister of Justice):**
Madam Assistant Speaker, Teina Pora is a case that many of us in South Auckland are familiar with. Here, a young man who was charged with rape and murder spent 20 years in jail, and then finally that conviction was quashed after a couple of people spent the entirety of their career finding out the truth, getting the information out, until it was finally recognised that a miscarriage of justice had been carried out.
-

That is only one example of why an independent criminal cases review commission is required. Too often, I hear from others who say that access to justice is about sending criminals to prison. The reality is, access to justice is about doing the right thing: making sure that the people that we are charging with offences or criminal behaviour do get charged. We spend an awfully significant amount of money making sure that offenders are convicted, but we don't

spend equally enough energy and resources making sure that justice has been done.

I want to point out to this House why I am supporting this particular bill and supporting what the Minister of Justice is doing, because there are a number of people who have been identified, particularly people who do not have the means to be able to embark on a particular appeal where they feel that the wrong thing has been done. So I'm supportive of this.

I note that the association of the legal fraternity also welcome this—that there are many in the legal fraternity who have been advocating for such a commission. It needs to be independent. I note also the recommendation of having three to seven members sitting on this review commission. I also acknowledge that there is a line of thought that there should be more than three, and a tendency to look towards having a membership of seven. I'm keen to understand better from the general public and those who are in the legal fraternity to know what the arguments are for that.

I'm of the view, also, that if we are concerned about Māori and Pasifika, people who are categorised as those who do not have the economic means to embark on a particular appeal where they believe injustice has been committed, then those people who may not necessarily have a legal background but those who are our peers in society should also be part of this commission. But I would be keen to hear what the public have to say about the make-up of that particular commission.

So, when we talk about access to justice, it also means about making sure that the timeliness, the quality, fairness, and independence of our current system is upheld. Therefore, I believe, setting up this Criminal Cases Review Commission Bill not only achieves what this particular Government is prioritising but I think it will achieve what many in society generally want to see, and that is, when we send somebody to jail we all need to be confident that justice has been done.

I want to conclude by making reference again to Teina Pora. The artists and musicians of South Auckland developed a video that was played and circulated and promoted because—and it revealed also just the appalling view that's held by many people who don't have the means to hire a judge for themselves—a lawyer, sorry; a lawyer for themselves—ha! Ha!

SPEAKER: I think that's a—I note the correction!

Hon AUPITO WILLIAM SIO: Yes. But we're appalled that it took 20 years for full and complete information to be made available, and once that full and complete body of evidence was made available, they were able to quash the convictions of this young person. The fear amongst the low-income—the fear amongst these artists in South Auckland was if they could do it to one of ours, they could do it to the rest of us, which meant that there's a perception out there that if you don't have money, you're not going to get justice. Therefore, I think this Criminal Cases Review Commission goes towards eliminating that fear and reaffirming that justice is for all, including people in this House. Thank you.

- **Hon Dr NICK SMITH (National—Nelson):** One of the most important areas of legislation for Parliament is in the area of criminal justice and ensuring that we meet the objective of where people cause harm and commit criminal offences, they are held responsible, serve appropriate penalties for those, but equally that our society respects innocence and respects those long-established principles of law in ensuring people get a fair trial. So it is timely with this bill that Parliament debates these core issues about how we improve and eliminate imperfections in our criminal justice system.
-

Now, where I would differ a little in emphasis from the previous speaker and Government Minister, the Hon Aupito William Sio, is that as important as it is that we ensure that no innocent person is locked up, equally important for members on this side of the House is that our communities are safe and that where people commit crimes, they're held accountable and that the community is kept safe from them. So as we debate this bill, let us be open and transparent about that real balance that we have to strike in terms of our criminal justice system.

I would also want Parliament to be realistic about that old saying "Bad examples make for bad law." If I reflect, for instance, on one of the very good justice Ministers, and an interesting Prime Minister, David Lange: in his valedictory speech, he said that he had so often seen Parliament chasing after bad examples and passing bad law as a consequence of those. While you can quote examples—of course there will be—where our criminal justice system failed, I'd urge the Government and Parliament, as it considers this bill, not to fall into that trap of bad examples making for bad law.

Now, the previous speaker also quoted the example of Teina Pora and the injustice that he suffered and the process that has been followed through the exercise of the Governor-General's prerogative of mercy to resolve that issue. We on this side of the House need to be satisfied that this new Criminal Cases Review Commission is actually going to be able to more effectively deal with that sort of case of injustice than the process that exists under our current law. Let's firstly focus on ensuring that before we create a fourth tier of judicial process for dealing with difficult cases, we make the first three tiers work—that is, where there is a case of murder or significant criminal offending, we provide for a High Court trial, we provide for a Court of Appeal, and we provide for the Supreme Court.

So before we simply jump to the easy conclusion of adding a fourth process through the Criminal Cases Review Commission, Parliament should be focused on making sure that those first three steps are as robust, as fair, in delivering justice as possible. So, for instance, if there are issues with our legal aid system, if there are issues around our evidence law, if there are issues to try and get as many cases right as early as possible, this is, firstly, where National would wish to go.

Some of the concerns that National has in respect of this bill is, firstly, the very low threshold for taking a case to the Criminal Cases Review Commission. While any judicial system will be imperfect and will not get every case right, the truth is that our justice system deals with tens of thousands of cases every single year, and if we're going to open up with a very low threshold and an additional area of appeal under this bill, in my view there needs to be a high-level threshold for cases being able to get to that point that exists currently under our Crimes Act under the exercise of the royal prerogative of mercy. This is a far wider gate, and is, effectively, adding a fourth level of appeal for criminal cases in New Zealand.

I further want to raise concerns about the make-up of the commission. It is National's view that if you are to add this extra tier, we need to be absolutely sure that there is a high level of legal expertise going into any fourth-level appeal. What is provided here in this bill is that two-thirds of the members of the commission can have no legal training at all. If we really are intent on improving the quality of the judicial system and the decisions that come out of our courts, we would want to be sure that there is the highest level of

judicial expertise, of legal skills, going in to ensure that those decisions are indeed correct.

We also would note that this bill is going to provide for a cost of about two and a half million dollars to establish the commission, and an extra cost of \$4 million per year. Now, we are, on this side of the House, keen to know, actually, is that a better response? The simplistic response of "Oh, we're prepared to pay anything to ensure our justice system"—actually, we need to spend the money where we're going to get the very best of improvements, and we have a question mark about that, and particularly in respect of the low threshold for cases being able to be taken to the Criminal Cases Review Commission.

The last point I would want to make is that in these really difficult cases, and we can all think of the Arthur Allan Thomases or the David Bains or the Scott Watsons or the Mark Lundys, or the Ewen Macdonalds, and we can think of all those examples, when there is an injustice, is the more flexible mechanism—and there have been a number of commissions of inquiry that Cabinet and the Government can initiate, where there's very specific terms of reference that is able to focus in on the particular aspects. Here's the truth: if, having gone through the High Court, the Court of Appeal, and the Supreme Court, and the judicial system has still not got it right, then that actually asks questions about the effectiveness of those three steps in the justice system.

Now, the game we've got at the moment of the more flexible approach of the Government being able to have a commission of inquiry, that's occurred in a number of those controversial cases, is that you're actually not able to just resolve the issue of the injustice that may have occurred for the individual, but actually to scrutinise the systematic error that's occurred within the justice system and provide a mechanism by which that can be improved. I'll make a bet for this Parliament: even if we proceed with the establishment of the Criminal Cases Review Commission, there will still be examples in our justice system where there are failures and there will be commissions of inquiry and the exercise of the prerogative of mercy being exercised. So my challenge for the Government as this bill progresses before the House is that National wants to be satisfied that we are first making sure that the first three steps of our justice system are working properly, and our principal focus should be on ensuring that those issues are resolved. Secondly, if we are going to

spend many more millions of dollars in creating a permanent, effective fourth level of appeal for these criminal cases, we need to be satisfied that we are improving the quality of justice, and we are going to take some convincing, particularly with the low thresholds, particularly with the lack of legal skills on this new commission, that we indeed are going to improve the quality and the effectiveness of New Zealand's important justice system.

SPEAKER: Before I call Darroch Ball, I've had quite a few complaints about visual pollution in the House from all sides, with the named boxes. The rules are very clear and that is members who are in the Chamber are allowed one—thank you, Mr Ngaro; can you take one of yours down? Thank you.

- **DARROCH BALL (NZ First):** Thank you, Mr Speaker. It's a pleasure to rise on behalf of New Zealand First to speak on the Criminal Cases Review Commission Bill and in obvious support of it. It's part of the commitment of the coalition agreement of this highly successful coalition Government. I would just like to make a few quick points that I'd like to highlight, but before I do I'd just like to thank the Minister for bringing the bill to the House. In his speech he outlined in quite a lot of good detail how the commission would work, why it would work, the progress of the bill going forward, and the entity itself.
-

New Zealand First has actually campaigned on the need for this entity for quite a number of years—at least for the last two elections that I've been involved in—but I think it's quite important to note that this isn't actually a reinvention of the wheel that we are trying to achieve here. This sort of independent entity is established in several jurisdictions around the world, including the United Kingdom, Scotland, and Norway, and they provide some very good examples for us about the strength and the need in the basis for an independent sort of commission that we are wanting to achieve here in New Zealand through this legislation.

The main reasoning behind why we are pushing for this commission, I think, is quite obvious. We've heard from both sides of the House already about the number of cases, and quite high-profile cases, in recent years of miscarriages of justice. I think the point is that often those who are convicted feel that there are quite severe miscarriages of justice, and, unfortunately, it is just a reality that they do occur. What we need to do is try to minimise those and have, I

think, most importantly, those people who are convicted not having to have ad hoc associations of their supporters trying to raise funds to try and correct something that is wrong in the justice system, and instead have a process that doesn't rely on just on how much fuss they can make about it and how much money they can raise. This is one way of doing that and we can learn from overseas jurisdictions, as I have noted previously, where it works.

It's important to note and for people to understand that the primary stakeholders within this jurisdiction were consulted with. There are a number of them, but they range from the convicted individuals themselves, the Governor-General, Police, academics, lawyers, and the public. The justice officials undertook targeted consultation with the investigative bodies, being the Independent Police Conduct Authority, the Office of the Privacy Commissioner, and Inspector-General of Intelligence and Security, and all of their comments were positive and in support of the establishment of this independent commission.

New Zealand First is obviously pleased that this bill is going through the House as part of the coalition agreement. We fully support it, and I commend this bill to the House.

- **Hon MARK MITCHELL (National—Rodney):** I'm very happy to stand and take a call on the Criminal Cases Review Commission Bill. I just want to address very quickly the last comment that the last speaker, Darroch Ball, made around the consultation that was done. It has actually been very broad. I think that, in principle, all of those groups would actually agree that if we could see a mechanism put in place that is likely to prevent or stop miscarriages of justice inside our justice system, we'd all agree that that would be a good thing to do. The only concern I have is that the one group that's missing—and it seems to be a trend that is developing in the debates we have in this House around our criminal justice system—is victims and how this process is going to fit alongside them. What sort of voice are they going to have?
-

One of the big concerns that I have with the legislation is around the application of the Official Information Act (OIA) 1982 and the fact that the commission is going to be exempt from anyone being able to make an OIA application to actually get visibility on the communication that is happening between the commission and anyone that they're engaging with. I think that that is a poor step in

the wrong direction in terms of at least having some transparency around how the commission is working and what they're doing. I think the reason why this is so important is because if you look at the proposed make-up of the commission, you are going to have commissioners sitting on there—and, of course, they can range anywhere from three through to seven. If, for example, we did take the scenario where there are three commissioners appointed, and one or two of those had no legal background, then you've now got a commission with extraordinarily wide-ranging powers that are not subject to the OIA and they're going to be making decisions on cases inside our criminal justice system.

These are important points. These are points that I want to raise. I would invite the Opposition members to take a call on this and, if I'm wrong, point out to me where I'm going wrong and give us some confidence that we're not going to create a situation whereby you've got a commission with extraordinary powers that is making decisions on our judicial system with people that necessarily don't have a legal background or the proper training or background to be able to do that. At the same time, the people of New Zealand are not going to be able to get visibility on what's happening because the commission is exempt from the OIA. I think these are important questions that need to be answered. The fact of the matter is—and I'll come back again to the comments that were made by the New Zealand First member who spoke before I did—that if you're going to set up a commission like this and they're going to investigate possible miscarriages of justice, which is very important, you can almost guarantee that behind every crime there are victims and there are stakeholders and people that have an interest in it, and they should be entitled to have a clear understanding of what is happening and what is going on inside of that review.

The other thing that I am very worried about—and the Hon Dr Nick Smith raised it—is the thresholds involved. In my view, this commission, if it's established, is going to be swamped very, very quickly with a lot of applications from a lot of people that have been convicted of something and feel aggrieved and feel like there's been a miscarriage of justice. So I'd like someone to take a call on this and explain to this House how that process is going to work before we have a commission that is going to cost \$2.3 million annually to run and is going to be so bogged down with their own workload that what's going to happen is it's going to slow down justice for everyone. It's going to create blockages in the system, because part

of it isn't going to be able to actually process and deal with cases that are brought to it to be reviewed.

So I think that this is actually a really important, critical, part of the bill—explain to us what the criteria are going to be. Is it going to be people that have faced minor charges under the Summary Offences Act? Is it going to be only for people that have been charged with serious offences with prison terms of two years or more under the Crimes Act? This is going to be critically important to how this commission is going to function. So these, really, are the two main issues that I wanted to raise in the House today.

I would ask the next Government member that takes a call on this bill to just talk us through and take us through the issues that I've highlighted so that we could at least have some comfort and start working through this bill to see whether or not we land in a place where we think that, number one, it's actually going to add something, and it's going to bring some added benefit to our criminal justice system and how we deal with miscarriages of justice. Although we've got one of the best criminal justice systems in the world—without a doubt—it is not perfect. Anything to do with human beings will never be perfect. There are going to be mistakes made, without a doubt. But, please, someone take a call and address the issues that I've raised and show us clearly, demonstrate clearly, how the Criminal Cases Review Commission Bill is actually going to make our criminal justice better, safer, and isn't actually going to clog it up and isn't actually going to create a body that, number one, has not got the expertise in it to be able to start making these decisions and, number two, why there's not going to be transparency around it—why they're not going to be subject to the Official Information Act? Thank you very much, Mr Speaker.

- **GOLRIZ GHARAMAN (Green):** Thank you, Mr Speaker. It's exciting for me to rise to speak in support of the creation of the Criminal Cases Review Commission today. I advocated for this as part of my role on the executive of the Criminal Bar Association of New Zealand for some years, as we watched the fairness of our justice system decline under the types of cuts they were implemented by the previous Government. I think most people in New Zealand would be shocked to find that there is actually a Court of Appeal judgment that rules our legal aid system unlawful for the damage that it was doing to access to justice in New Zealand, and

that was under the National Party Minister the Hon Judith Collins. I was part of that case it was heartbreaking to watch a fair and free—

Hon Dr Nick Smith: What are you implying?

GOLRIZ GHAHRAMAN: —criminal justice system—what am I implying?

Hon Dr Nick Smith: Yeah.

GOLRIZ GHAHRAMAN: The Court of Appeal ruled the legal aid cuts unlawful; that it is hard to find fairness in a system where access to justice is only available for the rich. I'm not implying that; I'm saying it outright. The Court of Appeal found it, and the judgment stands. The judgment stands. So we're trying to fix that. We're trying to make justice available.

Part of the right to justice is the right to fair process. Part of that right—most people know the right to defence counsel, the right to fair and transparent proceedings, and the right to impartiality. But another aspect of that right is the right to appeal—appeal against unfair convictions and sentences. Part of the legal aid cuts that made our system of justice unfair was that the cost of an appeal was cut. I think it's down to about \$1,700.

Now, to bring an appeal you have to have counsel that's at least as senior as the trial counsel. That lawyer has to go through the transcripts of the trial, through the evidence that was disclosed before trial, look at possible new evidence—and Teina Pora's case has been raised; that was complex new evidence—look at the possibility of new witnesses, and see if any unfairness occurred either as the result of the conduct of the sitting judge or the previous trial counsel. That's a huge job and we've seen people languishing in prison because they don't have access to that right. It's not been facilitated properly. It's not been funded properly, and they are the victims, actually. So when you think about "Are we thinking about the victims?", unfairly tried, wrongfully convicted accused persons are the victim, and we owe it to them to rectify that.

Now, this commission will sit not as a decision maker—this was one of the questions raised by the previous speaker, the Hon Mark Mitchell. This isn't a body that's going to be making decisions on our criminal justice system; this is a body that will filter these cases and see if there is cause to have the case raised before our appeal

courts. The appeal courts will still remain the judges and the decision makers on appeal cases, but this is a way that experts can actually have a look at the case and can make decisions about whether it is likely that a miscarriage of justice occurred. We haven't had that, so people do languish in prison, waiting for a lawyer, waiting to find someone that's willing to do it on the measly pay that the legal aid system now allows for appeals. It treats it like it's a bit of admin on the side, and that's just not true.

We need experts to assess whether or not a miscarriage of justice has occurred, whether it's likely, and to refer them up to the court. It will actually filter out cases also that shouldn't be before the court. So sometimes we do have abuses of that process with overly litigious convicted persons, and we get them constantly before the court, and this will filter that out, as well. So it will make our criminal justice system much more efficient, much more accessible, much more fair and expert, which is why this is a good day. We're starting to go down the road that other like-minded nations have gone down, whether that's England or Scandinavian countries, who do actually prioritise fairness and who do recognise that unfairness sometimes does occur for lack of resources and that that is not OK. So I commend this bill to the House, Mr Speaker, and it is a proud day for our system of justice. Thank you.

- **KANWALJIT SINGH BAKSHI (National):** Thank you, Mr Speaker, for the opportunity to participate in the first reading of this bill. I stand in opposition to this bill. There are a few points which I would like to touch upon. If we go through some of the notes which I have been provided, one group which has been left out is the group of victims. It is very important. We need to understand that they also have got the right, as it has been rightly pointed out by the Hon Nick Smith and Mark Mitchell, that this group should have been consulted when this policy was being formed. The consultation, which has been mentioned, has been taken with the convicted individuals, which is important; we understand that everyone has got rights. They should get the real justice. The Attorney-General was consulted for this. Māori and Pacific people were consulted. No doubt we need to consult with the people who are most affected. Civil society was consulted. Lawyers and members of the judiciary were consulted. But victims were left out—that is my point; that we should have this consultation done before this policy or the bill was formulated.

The second thing which I would like to touch upon is that the composition of the commissioners. I see that this commission is going to play a very important role. I can see the chair of the Justice Committee sitting over here. He himself is got a legal background; that's why he is the chair of the Justice Committee, and during the select committee process I would like to bring to his attention that the composition of the commissioners without legal background will be a challenge. We want to have a system if it is being formulated, it should be formulated in a manner where everyone has got a justice to it. If the commissioners don't have a judicial background at all background or a law background, then it will be a challenge for them to deal with some of the complex cases which have been mentioned in the Minister of Justice's speech, and other members of the Government. But I want to make sure that the composition of the commission is equally important, whereas it is important to get the victims into this role.

This commission has been formulated in the UK, Ireland, and other European countries from where the idea is been taken. I think that makes a real challenge for us. We should have learnt some of the things which those commissions—

SPEAKER: This debate is interrupted and set down for resumption next sitting day. The House stands adjourned until 2 p.m. today.

Debate interrupted.

The House adjourned at 1 p.m.