Mr Simon Parsons
Department for Constitutional Affairs
Legal and Judicial Services Group
5th floor, 30 Millbank
London SW1P 4XB

3 November, 2003

Dear Mr Parsons,

Re: A Supreme Court for the United Kingdom

The Northern Ireland Human Rights Commission wishes to submit the following response to the consultation paper on a Supreme Court issued by your Department in July 2003. For ease of reference we have at the appropriate point included in brackets the relevant question numbers listed in the consultation document.

The Human Rights Commission is a statutory body whose members are appointed by the Secretary of State for Northern Ireland. By section 68(3) of the Northern Ireland Act 1998 the Secretary of State "shall as far as practicable secure that the Commissioners, as a group, are representative of the community in Northern Ireland". At present there are nine Commissioners. Our function, generally speaking, is to promote and protect the human rights of everyone in Northern Ireland.

The Commission is very much in favour of the creation of a Supreme Court for the United Kingdom. In particular we agree that it is imperative to cut the link between any branch of the judiciary and the legislature. Maintaining the Appellate Committee of the House of Lords is therefore not an option. We think, indeed, that the bar on sitting and voting in the House of Lords should be extended to *all* holders of judicial office (**question 8**).

We agree that it would be sensible to transfer to the new Supreme Court the jurisdiction of the Judicial Committee of the Privy Council in devolution cases (**question 1**). Once the "normal" final court of appeal for UK legal matters has no longer a link with the legislature there can be no justification for having the devolution cases dealt with by any other court.

In the absence of more information about the workloads of existing Law Lords, it is difficult for us to say whether the number of full-time members of the Supreme Court should remain at 12 (**question 2**). What is clear is that quite a number of months usually

go by between the hearing of a case in the Court of Appeal and its hearing in the House of Lords, with a further period of weeks, if not months, elapsing before judgment is issued by the Lords. If these delays could be reduced by the appointment of a small number of additional judges, then they should be.

In addition, the Court should have access to a panel of additional *ad hoc* members. These should be called upon in much the same way as additional judges are called upon at the moment in the Privy Council (**question 3**). We have no objection to retired judges over the age of 75 sitting in any case, and indeed the EU Framework Employment Directive 2000/78 (which has to be in force in the UK from December 2006 at the latest) will probably make compulsory retirement ages illegal, but we think it would be reasonable to require such judges to undergo a test for mental alertness once they have reached that age. A further option would be to permit judges who have already served a set number of years in the Court of Appeal (say, five years) to be appointed to sit as additional *ad hoc* judges in the Supreme Court. To suggest, as the consultation paper does in paragraph 32, that the eligible additional judges should be those who have held high judicial office and are members of the Privy Council would perhaps create too big a pool, since all 45 or so judges in the UK courts of appeal would then be eligible, but perhaps the pool needs to be large if it consists mostly of people who otherwise have demanding calls upon their time.

Subject to the point made above in connection with the EU Framework Employment Directive, we currently favour a retirement age of 70 for all senior judges (High Court and above) (**question 17**). Retired members of the Supreme Court under the age of 75 should also be eligible to sit (**question 18**).

We do not think that retired members of the Supreme Court should automatically be appointed to the House of Lords (**question 7**): we are in favour of a House of Lords appointed through an open appointments system, with some peers being elected; we do not think anyone should be a member *ex officio* (**question 9**).

Whatever the composition of the Court, we feel strongly that it should continue to be regulated by statute (**question 4**). There should be a Deputy President (**question 5**) and the Court should continue to sit in panels, normally of five members (**question 19**).

The Human Rights Commission believes that *all* appointments to the Supreme Court should nominally be made by the head of state on the advice of a Judicial Appointments Commission (**questions 6, 10 and 11**), which should put forward one name only for each vacancy. We are not in favour of appointments, even nominal appointments, being made by the Prime Minister, a member of the government. We would be content with such an Appointments Commission being convened from the existing Appointments Commissions in the three jurisdictions, once they have all been created (**question 12**), but we would want to be satisfied that there was sufficient input by lay persons into the deliberations of these Commissions.

The process for identifying candidates for the new Court should certainly include open applications (**question 13**). We do think the qualifications for appointment should be

changed so as to allow a wider pool of people to apply (**question 14**). We do not think that candidates need to have had hands-on experience of judicial work, especially as judicial work in the House of Lords, being much less concerned with procedure, is qualitatively different from judicial work in the High Court and in lower courts. The main function of the Supreme Court will be to consider and decide new points of difficulty in the law. What is required for that is a good intellect, a sound awareness of how to handle existing legal texts (a qualification as a practising lawyer is *not* necessary) and high-quality writing skills. We would point to the experience of the Constitutional Court of South Africa in this regard: it has benefited enormously from the contribution of justices who had no previous hands-on experience of judicial work.

The guidelines applying to the selection of members of the new Court should be set out in legislation (**question 15**).

We believe that the legislation in question should specify that at least one member of the Supreme Court should have a demonstrable knowledge of the law of Northern Ireland and two of Scottish law (**question 16**). This does not necessarily mean that the people appointed have to have previously served as judges in those jurisdictions.

The Court should decide for itself which cases it wishes to hear. There should no longer be an appeal as of right if leave is given by a lower court because a supreme court will be more likely to operate efficiently it if is in control of its own workload, in terms both of the type of case and the quantity of cases it hears. (**Questions 20 and 21**).

As regards a name for the Court, we prefer "The Supreme Court of the United Kingdom" (**question 22**). Legislation should be enacted to amend the name of the present "Supreme Court of Judicature" to something like the "Courts of Justice".

Members of the new Court should be called "Justices of the Supreme Court", with members of the Court of Appeal being renamed "Justices of Appeal" (**question 23**).

Yours sincerely,

Brice Dickson
Chief Commissioner