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| **ISSUES OF THE CONSTITUTION**  **The Underlying Principle of Democracy**  The New Zealand constitution operates within the context of New Zealand's status as a Parliamentary democracy under a constitutional monarchy.  The formal disposition of power rests with the Sovereign and the Sovereign's representative in the appointment of Ministers, judges and certain other statutory office holders. They may summon and dissolve Parliament, and assent (or not) to Bills passed by the House and submitted to them as recommendations by the Executive Council and Ministers[10](http://www.ssc.govt.nz/display/document.asp?docid=4277&pageno=3" \l "P93_11579).  The democratic character of the constitution is in turn reflected in the conventions which circumscribe the discretion of the Sovereign and Governor-General. That is, that they will act only on the advice given by the Prime Minister or Ministers having the support of Parliament, and thus of the electorate at large.  Political parties or offices such as that of the Prime Minister are not formally established in statutes. They are nevertheless vital in the organisation of how power is achieved and exercised in Parliament. Constitutional conventions, in many cases, act to provide the legal forms of governance with functional reality.  **Decision Making Power**  The legitimacy of the decision making power exercised by the Executive is derived by the Government having the confidence of the electorate, as reflected in the disposition of seats in the House of Representatives and the continuing support of the majority of its members.  United Kingdom statutes and common law establish the supremacy of Parliament in the making or unmaking of legislation[11](http://www.ssc.govt.nz/display/document.asp?docid=4277&pageno=3" \l "P103_12666), the gathering of revenue and the disposition of public money[12](http://www.ssc.govt.nz/display/document.asp?docid=4277&pageno=3" \l "P104_12766), and determining the viability of a ministry. Through its Parliamentary majority, a government has considerable powers to legislate to achieve its objectives with few checks and balances (other than the constraints imposed by the electoral cycle and the dominant constitutional conventions) on the exercise of this power.  Governments need to retain the confidence, not just of a majority of the House of Representatives, but of the public as well. This will mean ensuring that in the exercise of majority power sufficient regard for minority right, and the protection of social and constitutional values, is observed. It will also mean using power responsibily in ways that do not infringe common perceptions of social justice and fairness, or New Zealand's international obligations.  Accordingly, there is a commensurate responsibility on a government not to abuse its role as law maker, lest the legitimacy of the system of government itself is called into question. For it is in the best interests of those holding decision making power, and those who are party to decisions, to observe the conventions. It follows that public servants and politicians alike need to understand about constitutional conventions, their meaning and their purpose.  With the recent changes to the electoral process, bringing an increased likelihood of minority or coalition governments, the scrutinising and control function of Parliament may be heightened. That is, in a relative sense, the government of the day through its Responsible Ministers may be more answerable to, or under closer examination from, the House of Representatives acting on behalf of the electorate.  **Consultation and Participation**  The legitimacy of the decision making process and its outcomes depends ultimately on the extent to which it is based on the informed consent or at least consultation with those immediately affected by the decisions. In a democracy legitimacy refers mainly to the respect or proper regard that might attach to the process or the outcomes.  The Official Information Act 1982 expresses the principle of:  ". . . increas[ing] progressively the availability of official information to the people of New Zealand in order -  (i) to enable their more effective participation in the making and administration of laws and policies; and  (ii) to promote the accountability of Ministers of the Crown and officials.[13](http://www.ssc.govt.nz/display/document.asp?docid=4277&pageno=3" \l "P123_15188)"  Consultation requires decision makers to ascertain the concerns of interested parties, and consider and weigh up those concerns before making a final decision. The Court of Appeal commented on the meaning of the term consultation (CA 23 and 73 1992):  "If the party having the power to make a decision after consultation holds meetings with the parties that it is required to consult, provides those parties with relevant information and with such further information as they request, enters the meeting with an open mind, takes due notice of what is said, and waits until they have had their say before making a decision, then the position is properly described as having been made after consultation. It is immaterial that those parties may have other concerns which for their own reasons they chose not to put forward."  For a minority or coalition government, consultation processes are particularly relevant to achieving a high degree of consensus in the exercise of these powers.  **Judicial Review**  Every decision affecting others made by a statutory officer, or a chief executive of a Public Service department may be subject to review and judgment by the courts.  Judicial review is the review by a judge of the High Court, or the Employment Court, of administrative decisions. The Judicature Amendment Act 1972 [Part I] forming part of the Judicature Act 1908 is about the procedure for getting review and the available remedies. The Act is an important instrument by which the constitutional principles of procedural fairness and justice may be upheld and tested.  Any person or entity affected by a decision may seek a judicial review. The possible grounds used by an affected party for seeking a judicial review include illegality, unreasonableness, unfairness, and the application or otherwise of the laws of natural justice.  The purpose of judicial review is to define principles of administration and to safeguard individual interests from unreasonable, illegal, or administrative actions taken without following proper procedures[14](http://www.ssc.govt.nz/display/document.asp?docid=4277&pageno=3" \l "P139_17265).  Executive power may be tempered by the likelihood of electoral sanction and the constraints of constitutional convention. However, judicial review ensures that decision makers are acting within the scope of the powers or discretion conferred on them[15](http://www.ssc.govt.nz/display/document.asp?docid=4277&pageno=3" \l "P142_17602).  [10](http://www.ssc.govt.nz/display/document.asp?docid=4277&pageno=3" \l "P93_11580) *The Cabinet Office Manual* Ch. ½.  [11](http://www.ssc.govt.nz/display/document.asp?docid=4277&pageno=3" \l "P103_12667) *Constitution Act 1986* Part III s15.  [12](http://www.ssc.govt.nz/display/document.asp?docid=4277&pageno=3" \l "P104_12767) *Constitution Act 1986* Part III s22.  [13](http://www.ssc.govt.nz/display/document.asp?docid=4277&pageno=3" \l "P123_15189) *Official Information Act 1982* s4(a)  [14](http://www.ssc.govt.nz/display/document.asp?docid=4277&pageno=3" \l "P139_17266) *The Judge Over Your Shoulder: Judicial Review of Administrative Decisions* (1989) p2.  [15](http://www.ssc.govt.nz/display/document.asp?docid=4277&pageno=3" \l "P142_17603) Fitzgerald vs Muldoon 1976 [NZLR 616-617] - changes to the law can only be made by the authority of Parliament, i.e. public servants cannot anticipate chnages in law. |
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