



AUCKLAND DISTRICT LAW SOCIETY

PUBLIC ISSUES COMMITTEE

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JUDGES IN THE POLITICAL ARENA

The Public Issues Committee of the Auckland District Law Society has considered the recent NZPA report (Herald 13/6/01) that three Court of Appeal Judges met privately with a Member of Parliament in relation to the Crimes (Criminal Appeal) Amendment Bill.

On the assumption that the report was correct, the Committee wishes to express its concern that, while there may be occasions where it is appropriate for the judiciary to communicate with the government about proposed legislation, this particular meeting does not appear to fall within that category. In particular, the meeting concerned legislation which is intended to remedy possible defects in the Court of Appeal's judgments in a particular group of cases which are presently the subject of an appeal to the Privy Council.

The Public Issues Committee is concerned about the following four matters:

1. That the meeting took place at all.
2. That the meeting took place in private.
3. The Judges had a potential interest in the legislation being discussed.
4. The issue being discussed was a subject of appeals before the Privy Council.

Unfortunately, there appears to be little information available publicly as to the circumstances which led to the meeting taking place, or what transpired at the meeting.

However, it is known that the Bill which has been introduced into Parliament by the government is intended to validate certain past practices and decisions of the Court of Appeal when sitting in its criminal appeal jurisdiction. Aspects of the legality and validity of those practices and decisions is being challenged on appeal in the Privy Council. It is understood that the main issue involves the way in which certain appeals were disposed of by the Court of Appeal, namely appeals involving persons who had applied for legal aid for representation to have their appeals heard, but were denied legal aid.

It is an important cornerstone of our legal system that a litigant is free to lodge and prosecute an appeal. Where there are appeals, the usual convention is that Judges remain aloof, and do not comment on matters relating to appeals from their own decisions. Certainly they should not be meeting with government or any Member of Parliament over an issue such as the Bill in question.

The Public Issues Committee accepts that the Court of Appeal Judges might well have intended to remain aloof, and that the discussion might have concerned issues which were merely of a technical nature, perhaps involving an explanation of the procedures which were adopted by the Court of Appeal. It appears also that the request for the meeting came from the Minister of Justice, Mr Phil Goff. But if the discussion was of that nature, the Committee would question why the information could not have been supplied by someone other than the Judges, e.g. Court officials or the Crown Law Office.

In any event, the Public Issues Committee would question whether it is appropriate for the Court of Appeal Judges to meet in private with an MP who is considering legislation, when that legislation is intended to correct possible mistakes by the Court itself and which is the subject of appeals. The concern is, that even if the discussion was of an entirely neutral nature, the principle that the judiciary must be seen to remain aloof from any political or social debate, and from commenting on their own decisions, is undermined. The importance of this principle is not to be underestimated. It is essential to continued public confidence in the independence and impartiality of our judiciary, and is part of the fundamental constitutional principle of the separation of powers between the judiciary, the legislature and the executive.

The Public Issues Committee is concerned that the meeting may well have eroded the public's perception of the judiciary's independence, and questions whether the meeting was appropriate. It may be that there are circumstances which justify the meeting having taken place. But if that is the case, it is submitted that the confidence that the public are entitled to have in the impartiality and independence of the judiciary, requires a public explanation for the reasons for the meeting and the contents of the discussions which ensued. Otherwise, the public may well be left with the impression that the Judges actively lobbied to have the Bill passed, so as to vindicate their own past actions, and to effectively prevent the appeals from their decisions having any practical effect.

The Committee's concern is that the public maintain its confidence in the integrity of New Zealand's constitutional base and the important principles of New Zealand's constitution, and submits that such confidence can only be maintained where those principles are strictly observed at all times, particularly by those who have the privilege of heading the judiciary.

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