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**INDEPENDENT YET ACCOUNTABLE?**  
THE JUDICIAL CONDUCT COMMISSIONER AND JUDICIAL  
CONDUCT PANEL ACT 2004

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## *ABSTRACT*

This paper examines the Judicial Conduct Commissioner and Conduct Panel Act 2004 (the "Act"), which implements a formal procedure to receive complaints about judicial conduct. It analyses the Act from the perspective of the balance it achieves between the two fundamental principles, and frequently opposed principles, of judicial independence and accountability. The Act sets up distinct procedures for minor complaints, and complaints of sufficient gravity to warrant consideration of removal. These procedures are analysed separately.

For the treatment of minor complaints, the Act preserves the existing situation where the Head of the Bench considers complaints informally and in private. The major initiative in the Act is in the creation of a mandatory investigation procedure that must precede the removal of a judge.

This paper concludes that the Act strikes an appropriate balance between independence and accountability. While the Act does not implement a wholly transparent complaints procedure, particularly in relation to minor complaints, it provides for an independent judiciary.

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## I INTRODUCTION

All the hallmarks of the judiciary flow from its central role of adjudication. Judges must be impartial so they can fairly decide between conflicting positions. Judges must be independent so that they will be able to act impartially and be seen to act impartially.<sup>1</sup>

Accountability of the judiciary cannot now be seen in isolation. It must be viewed in the context of a general trend to render governors answerable to the people in ways that are transparent, accessible and effective.<sup>2</sup>

Judges are influential members of society. They have the authority to resolve disputes, grant rights, and impose obligations.<sup>3</sup> The public therefore wants judges, as with all public office holders, to account to society for the way they carry out the judicial function. It is uncontroversial that judges should, and do, account for the decisions they make. In addition, the public calls for judges to account for their conduct.

This desire to hold judges accountable for their conduct must be placed in context. It is a long-established principle that a pre-requisite for an impartial justice system, is an independent judiciary. Judicial independence requires that judges are free to make their decisions based purely on the law and their conscience; without fear or favour.<sup>4</sup> The risk is that the more judges are held to account, the greater the likelihood that improper pressure is placed on them.<sup>5</sup>

The paradox is that public confidence in justice relies on both judicial independence and accountability. If judges are not independent, and do not deliver impartial decisions, public confidence suffers. To restore confidence,

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<sup>1</sup> Rt Hon Beverley McLachlin "The Supreme Court and the Public Interest" (2001) 64 Sask L Rev 309, 311

<sup>2</sup> Hon Michael Kirby "Judicial Accountability in Australia" (Commonwealth Legal Education Association, Brisbane, 6 October 2001), 6.

<sup>3</sup> McLachlin, above n 1, 311.

<sup>4</sup> Canadian Judicial Council "Ethical Principles for Judges" (1998) 8 ["Ethical Principles for Judges"].

<sup>5</sup> Vince Morabito "The *Judicial Officers Act* 1986 (NSW): A Dangerous Precedent of a Model to be Followed?" (1993) 16(2) U NSWLR 481, 490.



accountability for conduct may be necessary. In holding judges accountable however, this could threaten their independence.

Are judicial accountability and independence absolutes opposed, or is it possible they can be complementary? The recent enactment of the Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004 (the "Act"),<sup>6</sup> goes to the heart of this issue. The Act implements a general statutory complaints system to receive all complaints made about judicial misconduct. It also lays down a mandatory procedure for the removal of all judges. The dual purpose of the Act is to "enhance public confidence" in the judicial system through implementing a strong complaints system, and to "protect the impartiality and integrity of the judicial system".<sup>7</sup>

This paper analyses the Act from the perspective of the balance it achieves between judicial independence and accountability. In doing so, reference is made to the New South Wales and Canadian formal complaints procedures that provided the explicit models for the New Zealand Act. This paper makes a division in analysis between complaints that do not raise consideration of removal (referred to as "minor" complaints), and those that do.

The first section sets out the principles of judicial independence and accountability. The second outlines the situation relating to judicial misconduct before the Act. It sets out the informal complaints system designed to receive minor complaints, and the statutory provisions providing for the removal of judges in exceptional cases of misconduct. The third section looks at why the New Zealand Government decided to formalise the complaints procedures. The fourth sets out the New Zealand Act, and the New South Wales and Canadian equivalents. The fifth analyses the minor complaints procedure under the Act. The final section looks at the removal procedures.

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<sup>6</sup> The Act developed out of the Judicial Matters Bill. It will come into force on a date appointed by the Governor-General through an Order in Council.

<sup>7</sup> Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004, s 4.



This paper concludes that Act reaches an appropriate balance between independence and accountability. While it does not substantively increase accountability for minor complaints, this is the right choice. Removing the ability of the judiciary to self-regulate would have implications for judicial independence. It also concludes that the process that must precede the removal of a judge is sound. It is an open investigation procedure that is harmonious with judicial independence. The only reservation with the Act is the power it gives to the Attorney-General in the investigation process.

## **II PRINCIPLES IN TENSION**

The two fundamental principles that underlie the Act are judicial independence and accountability. The purpose of the Act is to “enhance public confidence in, and to protect the impartiality and integrity of the judicial system”, through the new complaints procedure.<sup>8</sup> This is an ambitious dual purpose, and it is important to understand what judicial independence and accountability mean, when they are complementary, when they are antagonistic.

### **A Judicial Independence**

Judges serve the public.<sup>9</sup> The primary role of a judge is to resolve disputes arising on the application of the law, whether between citizens or between a citizen and the state. They uphold the rule of law in society, and act as a shield against unwarranted incursions on the freedoms of individuals by the state.<sup>10</sup> Judges are immensely important to the litigants that appear before them because they can grant the individual rights, or conversely, impose obligations.<sup>11</sup> The individual litigant, and citizens generally, want to be assured that any given judge will dispense the law impartially. Society wants the judge to apply the law free from bias; actual or perceived.<sup>12</sup>

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<sup>8</sup> Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004, s 4.

<sup>9</sup> McLachlin, above n 1, 310.

<sup>10</sup> *Ell v Alberta* [2003] SCC 35 para 22 Major J.

<sup>11</sup> *Therrien c Quebec* [2001] SCC 35 para 108 Gonthier J.

<sup>12</sup> *Lippe c Charest* 39 QAC 241 para 61 Lamer J.



Ensuring that judges are independent is the most effective way to secure impartial decision-making. The perception of judicial independence is also central to the public's confidence in the administration of justice. Independence and impartiality, while interrelated, are distinct concepts. Judicial independence is valued insofar as it is the means to the greater end of impartial decision-making.

At the heart of judicial independence is the idea that judges must be able to freely make their decisions based on the law without fear or favour.<sup>13</sup> The principle of judicial independence, which began with this very simple proposition, has expanded and strengthened over the years. There is a now commonly accepted "two-pronged" articulation of judicial independence where individual independence and institutional independence are seen as separate, yet complementary.<sup>14</sup>

### *1 Individual Independence*

Individual independence, the historical core of judicial independence, requires that judges are able to discharge the judicial functions without outside interference,<sup>15</sup> and without regard to self-interest. Individual independence is concerned purely with the adjudicative function and the dispensing of justice in every case.<sup>16</sup> An issue for individual independence is whether the presence of a formal complaints system will in any way impinge on the freedom of judges in the adjudicative role.

To be independent, and to be seen to be independent, a judge must have financial security and security of tenure.<sup>17</sup> Security of tenure requires that the government should not dismiss a judge when he or she makes an unpopular decision. The Supreme Court of Canada, taking this concept further, stated that a judge could only be removed from office for serious and very specific reasons

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<sup>13</sup> "Ethical Principles for Judges", above n 4, 8.

<sup>14</sup> *Moreau-Berube c Nouveau-Brunswick* [2002] SCC 11 para 56 Arbour J.

<sup>15</sup> *Application under s 83.28 of the Criminal Code, Re* [2004] SCC 42 para 172 Le Bel J.

<sup>16</sup> *Mackin v New Brunswick (Minister of Justice)* [2002] SCC 13 para 39 Gonthier J.

<sup>17</sup> *Application under s 83.28 of the Criminal Code*, above n 15, para 171.



following an independent review where the judge is able to speak and defend him or herself.<sup>18</sup>

In New Zealand, security of tenure is enshrined in section 23 of the Constitution Act 1986. A Judge of the High Court (including the Court of Appeal) cannot not be removed except by the Governor-General acting on an address from the House of Representatives. An address may only be moved on the grounds of misbehaviour or incapacity to discharge the functions of judicial office.<sup>19</sup> There is an equivalent provision in the District Courts Act 1947 where the Governor-General, on the advice of the Minister of Justice, can remove a District Court Judge on the grounds of misbehaviour or inability.<sup>20</sup>

Security of tenure is relevant to an analysis of the new judicial complaints system because the Act sets up a procedure that could lead to the dismissal of a judge. Two particularly important questions in this context are whether the tenure of judges is strengthened by the new investigation process, and whether greater power over the tenure of judges has been placed in the hands of the executive at the expense of parliament.

## 2 *Institutional Independence*

Institutional Independence attaches to the judiciary as an institution, and requires that the judiciary is separate, in fact and appearance, from both parliament and the executive. Institutional independence ties closely into the theory of separation of powers in that it demands there is independence between the judiciary and the two other branches.<sup>21</sup>

If the courts are going to fulfil their role as protector of individual rights and liberties, they must necessarily be independent from the branches that might seek to diminish those rights and liberties.<sup>22</sup> The appearance of separation is

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<sup>18</sup> *Application under s 83.28 of the Criminal Code, Re*, above n 15, para 171.

<sup>19</sup> Constitution Act 1986, s 23.

<sup>20</sup> District Courts Act 1947, s 7.

<sup>21</sup> *Application under s 83.28 of the Criminal Code*, above n 15, para 179.

<sup>22</sup> *Ell v Alberta*, above n 10, para 22.



central to public confidence in the administration of justice. For if the public does not believe that the judiciary is acting independently, and protecting their rights against governmental excesses, there will be a loss of faith in the justice system as a whole. When such a loss of faith occurs, the judiciary cannot claim legitimacy or command the respect and acceptance essential to the judicial function.<sup>23</sup>

The impact that the Act may have on institutional independence is more subtle than any possible impact it may have on individual independence. The Act may set up an independent process to investigate complaints about judicial misconduct, but it also gives greater control to the Executive, through the Attorney-General, over judicial tenure. The new system therefore creates the possibility of a relationship of influence flowing from the Executive to the Judiciary.

### **B        *Judicial Accountability***

This is an age where there is an increasing call for the accountability of all those who "wield public power".<sup>24</sup> Members of government have the power to make decisions that impact on society as a whole through the positions that they hold. Society authorises members of government to exercise power on the condition that they account for their actions.<sup>25</sup> Members of Parliament are held accountable through regular public elections. The public service is increasingly accountable for its decisions through the development of judicial review and the creation of the Ombudsman. The judiciary, being the third branch of government, does not escape the call for greater accountability.

Judges, who hold a unique position in society, unquestionably need to account to society. While judges do not have the explicit role of making the law, they strongly influence the development of it. In deciphering the law, and

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<sup>23</sup> *Mackin v New Brunswick (Minister of Justice)*, above n 16, para 38.

<sup>24</sup> Kirby, above n 2, 3.

<sup>25</sup> Kirby, above n 2, 6.



deciding between competing interpretations,<sup>26</sup> judges are making very significant decisions. They are particularly important in the development of the common law where judges develop rights and impose obligations, without the direction of parliament.

Judicial accountability is necessary not only for the reason that judges are powerful, but also because public confidence in the judiciary relies on a judiciary that is held accountable. The integrity of the judiciary diminishes if the public perceives that its behaviour is unchecked.

While it is obvious that accountability is necessary, the more difficult question is deciding on the form and extent to which it should take. Enhancing judicial accountability is a delicate exercise because it is absolutely necessary to ensure that any "changes do not place the critically important constitutional value of judicial independence at risk".<sup>27</sup> The New Zealand Law Society is wary about increasing accountability.<sup>28</sup>

Judges it is said, are public servants who must, like all other public servants, be "accountable for their actions". "Accountability", and other buzz words like "transparency" and "robust process", are tossed about as if their frequency of use makes them inevitably applicable to every situation, even if their meaning often remains obscure.

The first step is to decide what accountability should mean in the judicial context, and the next is to look at how accountability should be increased.

### *1 Accountability for the judicial function*

The most important function of a judge is to adjudicate disputes, and it is beyond doubt that the judiciary should be, and has for a long time been, accountable to the public for the way that it discharges this function.<sup>29</sup> Judges

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<sup>26</sup> Peter Hogg *Constitutional Law of Canada* (3ed, Carswell, Toronto, 1992) 121.

<sup>27</sup> Antonio Lamer "The Rule of Law and Judicial Independence: Protecting Core Values in Times of Change" (1996) U NB L J 3, 12.

<sup>28</sup> New Zealand Law Society "Submissions on the Judicial Matters Bill" para 16.

<sup>29</sup> Lamer, above n 27, 13.



are required to hold their hearings in public, and they are required to issue a judgment setting out the reasons for the decision. The public judgments are also rigorously scrutinised by the media. These requirements mean that the public gain insight into why the judge reached the particular decision and this makes it easier for an individual to challenge it.

The appeal and review processes are the most direct way that judges are held to account. If a judge makes an error of law, or holds biases for or against those who appear in court, a higher court will correct these mistakes. The appeal process therefore addresses the greatest concern for members of the public, and that is that justice was not delivered.

## 2 *Accountability for judicial conduct*

While it is uncontroversial that judges must be held accountable in their official capacity, the extent to which judges should be accountable for their conduct is more contentious. Before assessing the need for accountability, it is firstly necessary to understand the importance of judicial conduct to the public's confidence in the administration of justice.

Judges hold a unique position in society and that is why judges are expected to be beyond the judgment of others; they are in a "place apart" in our society.<sup>30</sup> The public asks not only that judges serve the ideals of truth and justice but that they also embody them.<sup>31</sup> This demands a high standard of conduct for it asks that judges are an example of impartiality, independence and integrity, and this is much more than is expected from any other member of society.<sup>32</sup>

The public loses confidence in the justice system when a judge is insulting, racist, sexist, intemperate to those who appear before them, or makes

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<sup>30</sup> *Therrien c Quebec (Minister of Justice)*, above n 11, paras 111-112.

<sup>31</sup> *Therrien c Quebec (Minister of Justice)*, above n 11, para 109.

<sup>32</sup> *Therrien c Quebec (Minister of Justice)*, above n 11, para 111.



statements that suggest that he or she has prejudged a particular issue.<sup>33</sup> Comments and behaviour, both in and outside the courtroom, can lead to the impression that the particular judge is not impartial. To restore public confidence in the judiciary when there have been instances of misconduct, it is necessary that the public can see that behaviour of judges does not go unchecked. Judges are already accountable for their conduct in a number of ways.

When misconduct occurs in the discharge of judicial duties, and is alleged to have impacted on the decision in a case, the appeal and review procedures are designed to respond to this. The New Zealand Law Society argues that where a review or appeal succeeds on the grounds of judicial misconduct, this amounts to a "substantial public rebuke".<sup>34</sup>

Judicial conduct is routinely scrutinised by the media and cases of judicial misconduct, such as the allegations of false accommodation and travel expense claims made against Judges Beattie and Hesketh,<sup>35</sup> do make the headlines. Is media scrutiny of judicial misconduct in New Zealand diluted however, by the offence of contempt of court, and scandalising the judiciary in particular?

Scandalising the judiciary arises when there is interference with the administration of justice, and a publication calculated to lower the authority of the judge and the court, may be in contempt of court.<sup>36</sup> Members of the media could be guilty of scandalising the court if they attribute improper motives to a judge.<sup>37</sup> As the High Court noted in the recent case of *Solicitor-General v Nicholas Rex Smith*, scandalising does not exist to "protect the ego or feelings

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<sup>33</sup> "Ethical Principles for Judges", above n 4, 32.

<sup>34</sup> New Zealand Law Society, above n 28, para 24.

<sup>35</sup> Rob Drent "Beattie: A Question of Integrity" (3 August 1997) *Sunday Star Times* Auckland 5.

<sup>36</sup> *Solicitor-General v Radio Avon* [1978] 1 NZLR 225, 231 Richmond P.

<sup>37</sup> *Solicitor-General v Radio Avon*, above n 36, 230.



of individual Judges. It is to prevent the undermining of public confidence in the competence and integrity” of judges “and thus the authority of the courts.”<sup>38</sup>

It is rare in New Zealand for anyone to be found guilty of scandalising the court, yet *Solicitor-General v Radio Avon* and *Solicitor-General v Nicholas Rex Smith* both show that the offence exists and is used. The mere existence of scandalising might discourage media scrutiny of judicial propriety. It is therefore particularly important in New Zealand that other mechanisms exist to hold judges to account.

In 1999, the Government created an informal complaints system to receive all complaints about judicial misconduct that cannot be dealt with through the appeal and review processes. Under this system, the Head of the Bench receives all of the complaints and has the ability to look into them and discuss the complaint with the judge concerned. This process takes place behind closed doors. The question is whether there was a need for further accountability in the form of a statutory complaints process?

### ***C Balance Between Judicial Independence and Accountability***

If the judicial system is to have legitimacy, the judiciary must command the respect and support of the public. Public confidence depends both on an independent judiciary delivering impartial decisions, and an accountable judiciary. A problem in New Zealand is that although the public is clear that accountability is necessary, it poorly understands the significance of judicial independence.<sup>39</sup> It is true that greater accountability strengthens the justice system because it ensures that judges do not go unchecked. Yet it is equally true, that if further accountability erodes judicial independence, this will severely weaken the judicial system.

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<sup>38</sup> *Solicitor-General for New Zealand v Nicholas Rex Smith* (24 March 2004) HC WN CIV 2003 485 1811, 29 Judgment of the Court.

<sup>39</sup> Hon Sian Elias “‘The Next Revisit’: Judicial Independence 7 Years On” (Neil Williamson Memorial Lecture, Christchurch, 30 July 2004) 2.



The difficulty with securing both independence and accountability lies in the fact that there does come a point when the two principles are antagonistic. The more that society scrutinises the behaviour of judges and holds them to account, “the greater the likelihood that attempts will be made to exert improper pressure on them”.<sup>40</sup> Tied closely to this is that the more judges are scrutinised, the more restriction they may feel.

Public confidence cannot be an absolute touchstone when considering an appropriate complaints system for several reasons. Firstly, what does public confidence actually mean? It is a diffuse concept. Secondly, the public is often completely uninformed; public confidence feeds off the media who do not always provide a balanced perspective. While it is important to secure public confidence, it is more important to secure an independent judiciary that delivers justice.

### *III ACCOUNTABILITY BEFORE THE ACT*

Before the Act, there were already mechanisms in place to respond to complaints of judicial misconduct. The primary procedure, which largely remains in force under the Act, is an informal complaints procedure. This procedure is designed to deal with the raft of minor complaints made about judicial misconduct. In addition to this, there were also statutory provisions providing for the removal of a judge. These provisions responded to complaints alleging very serious misconduct. They too remain in force under the Act.

#### *A Informal Complaints Procedure*

In 1999, the Chief Justice Sir Thomas Eichelbaum, and the Minister of Justice Hon Doug Graham, introduced a complaints procedure that involved the Head of the Bench and a Judicial Complaints Lay Observer (the “JCLO”).<sup>41</sup> The procedure got under way in 2001 when Hon Margaret Wilson made the first

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<sup>40</sup> Morabito, above n 5, 490.

<sup>41</sup> Rt Hon Geoffrey Palmer “Judicial Administration Issues” (1 November 2002) 27.



appointment of the JCLO.<sup>42</sup> The Ministry of Justice issued a booklet, on behalf of the Chief Justice and the Attorney-General, titled "The Judicial Complaints Process", detailing the complaints procedure.

Members of the public are only to use the complaints procedure where the complaint relates to judicial conduct. Where the complaint concerns the outcome of a case, the complainant is instructed to use the review and appeal processes. The distinction between judicial conduct and the outcome of a case is not entirely straightforward. Where judicial misconduct occurs in court, it can lead a litigant to the impression that the judge did not make an impartial decision in a particular case. Therefore, a complainant could be concerned both with the conduct of a judge and the outcome of a case. The intention is that where misconduct is perceived to have affected the result of a case, this can, and should, be remedied through the appeal and review processes. Where on the other hand, misconduct is not alleged to have impacted on a case, but is nonetheless inappropriate, the complaints procedure is designed to respond to this.

All complaints made about the conduct of a judge are to be made to the Head of the Bench, and the booklet "broadly" summarises the procedure that takes place from that point on.<sup>43</sup> It is important to note that the steps set out are not compulsory and the complainant does not have a right to enforce them. Rather, they are guidelines for the procedure that should take place on receipt of a complaint.

When the Head of the Bench receives a complaint, he or she will first establish that the complaint concerns judicial conduct.<sup>44</sup> Where the complaint does not relate to judicial conduct, the Head of the Bench advises the complainant of this and informs them about any other avenues, such as appeal, that they could pursue. Provided that the complaint concerns judicial conduct,

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<sup>42</sup> "Judicial Complaints Lay Observer Appointed" (7 March 2001) <<http://www.scoop.co.nz/mason/stories/PA0103/S00090.htm>> (last accessed 29 September 2004).

<sup>43</sup> Ministry of Justice "The Judicial Complaints Process" (2001) 2 ["The Judicial Complaints Process"].

<sup>44</sup> "The Judicial Complaints Process", above n 43, 2.



the Head of the Bench makes a preliminary decision about whether there is any substance to the complaint. If it appears that the complaint does have substance, the Head of the Bench refers the complaint to the judge in question, considers any response, and makes any further inquiries that he or she believes appropriate.<sup>45</sup> Where the Head of the Bench proceeds with these inquiries, the complainant is notified of this.

When the Head of the Bench decides that a complaint has substance in fact, the booklet sets the general parameters for what the Head of the Bench might do. The Head of the Bench decides on the appropriate action, and he or she can consider options such as asking the judge to convey an apology to the complainant, or offering the judge appropriate assistance to avoid such conduct in the future.<sup>46</sup> While appropriate action is not limited to the above two options, there is no further indication about what the Head of the Bench might do. It is quite possible that the Head of the Bench will not take any action.

The complaints procedure also includes a review by a non-statutory appointment, the Judicial Complaints Lay Observer ("JCLO"). When the Head of the Bench makes the preliminary finding that the complaint is without substance, the complainant is advised both of this finding and of the right to refer the complaint to the JCLO.<sup>47</sup>

The JCLO has the power to review the complaint, the way it was processed, any response from the judge, and any other relevant matters.<sup>48</sup> The review and any inquiries are conducted in confidence. If the JCLO feels the decision not to pursue the complaint should be reconsidered, he or she can ask the Head of Bench to do so.<sup>49</sup> The JCLO informs the complainant about whether reconsideration of the complaint is recommended to the Head of the Bench.

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<sup>45</sup> "The Judicial Complaints Process", above n 43, 2.

<sup>46</sup> "The Judicial Complaints Process", above n 43, 2.

<sup>47</sup> "The Judicial Complaints Process", above n 43, 2.

<sup>48</sup> "The Judicial Complaints Process", above n 43, 3.

<sup>49</sup> "The Judicial Complaints Process", above n 43, 3.



The JCLO is an integral part of the complaint process through providing an independent check on the consideration of complaints. The usefulness of the role is however limited. The JCLO is confined to recommending that the judge reconsider whether there is substance to the complaint, and the power is merely that, recommendatory. Moreover, the JCLO plays no part where a complainant believes the Head of the Bench did not take appropriate action once a finding of substance has been made.

#### *1 Problems statutory incorporation might introduce*

The informal complaints system has been running since 2001, and the question is whether formalising this process, as the Government has now done, could cause further problems. The New Zealand Law Society, in its submission on the Judicial Matters Bill, stated that formalising the complaints process could do more damage because of the impact it will have on judicial independence. There are several factors that can be advanced in support of this contention.

Firstly, a concern the New Zealand Law Society raised, and a concern Judith Collins MP stressed during debate in the House,<sup>50</sup> is that the mere existence of the statutory procedure will encourage people to make complaints.<sup>51</sup> The figures relating to complaints made under the informal complaints system show that most of the complaints are disguised forms of appeals.<sup>52</sup> The New Zealand Law Society feels that a feature of the judicial system, and one that tends to be overlooked when considering complaints of judicial misconduct, is that there will always be litigants who are not satisfied with the result of a case. These litigants will use any available process to vent their frustration with the result of the case.<sup>53</sup>

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<sup>50</sup> (4 September 2003) 611 NZPD 8404.

<sup>51</sup> New Zealand Law Society, above n 28, para 35.

<sup>52</sup> In 2001, a total of 70 complaints were made against the benches combined. Of those, 33 were disguised forms of appeal.

<sup>53</sup> New Zealand Law Society, above n 28, para 36.



While judges do have to bear the burden of this behaviour, the New Zealand Law Society argues that judges are entitled to have a system that adequately protects them against these complaints. The statutory system, which may encourage more complaints, can only add to the pressures that judges already face.<sup>54</sup> The concern is that judges will feel further restriction when they are making decisions in court.

In addition, the New Zealand Law Society argues that it is not appropriate to have a person with formal power scrutinising the behaviour of judges.<sup>55</sup> If someone has the power to make an adverse finding about the conduct of a judge, they are in a position of superiority to the judge.

While the New Zealand Law Society does raise valid concerns, the concerns do not inevitably lead to the conclusion that formalising the complaints system is not desirable. It is correct that a statutory system could lead to an increase in complaints, yet in itself this is not a negative consequence. In fact, if the increase is due to the fact that people with genuine complaints now have an obvious forum to take them, this is to be encouraged. Admittedly, there is likely to be an equivalent increase in complaints that are not genuine. It will therefore fall on the particular system to weed those complaints out at the earliest point.

Providing a person with authority to look at the conduct of a judge is not a decisive criticism either. In any formal complaints procedure, someone is going to have the power to scrutinise the conduct of judges. The more important question is how closely the power is circumscribed to prevent manipulation of that power.

## ***B Removal of Judges from Office***

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<sup>54</sup> New Zealand Law Society, above n 28, para 36.

<sup>55</sup> The New Zealand Law Society submission was in response to the Judicial Matters Bill, and so their complaint about a statutory officer is specific to the Judicial Conduct Commissioner that is set up under the Act.



In the event of very serious judicial misbehaviour, there has always been statutory power to remove a judge from office. Section 23 of the Constitution Act 1986 empowers Parliament to make a motion to remove a High Court Judge, or an Employment Court Judge, on the grounds of misconduct or incapacity. The District Court Act 1947, governing the removal of a District Court Judge, permits the Governor-General to remove a District Court Judge on the grounds of inability or misbehaviour.<sup>56</sup> The Minister of Justice is to advise the Governor-General when to make this decision.<sup>57</sup> The issue is that these provisions represent the outcome, which is the removal of a judge, and do not set out the procedure that would identify serious misbehaviour or incapacity. As a judge has never been removed in New Zealand, there is no certainty regarding the procedure.

A number of suggestions have been made about what could take place before Parliament made a motion for removal. The Ministry of Justice noted that Parliament would be free to establish a Select Committee Inquiry to investigate allegations of misconduct.<sup>58</sup> The concern with that is it would be unseemly for a judge to appear before a committee of Parliamentarians and justify his or her behaviour. Another option would be for Parliament to debate about the misbehaviour of a judge. It is equally possible that Parliament could make a motion for dismissal without carrying out any inquiry. The Constitution Act 1986 does not actually require that removal be on the grounds of "proven" misbehaviour.

#### *IV GOVERNMENT RESPONSE*

The creation of the Act is indicative of the fact that the Government perceived problems both with the informal complaints procedure dealing with minor complaints, and the provisions governing the exceptional case of

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<sup>56</sup> District Courts Act 1947, s 7.

<sup>57</sup> John McGrath "Judge M J Beattie: Section 7 District Courts Act 1947" (prepared for the Minister of Justice, 1 September 1997) 2.

<sup>58</sup> Ministry of Justice "Response to the Justice and Electoral Committee: Initial Information Request" (5 February 2004) 17 ["Initial Information Request"].



misconduct where a judge should be removed. This section analyses the shortcomings with these procedures.

#### A *Problems with the Informal Procedure*

It is difficult to pinpoint the problems with the informal system because little discussion was devoted to the procedure for minor complaints as the Judicial Matters Bill passed through the House. In fact several groups, particularly the New Zealand Law Society, argue that there were no such problems. The Law Society points to the fact that the Government did not have any empirical evidence to suggest that there was current dissatisfaction with the informal procedure,<sup>59</sup> or that the number of complaints justified a change.<sup>60</sup> As the procedure only began in 2001, there has been little time to gather any information. Sir Geoffrey Palmer, who undertook the initial review that sparked the later legislative progress, felt there was no suggestion the informal process was “fundamentally flawed”.<sup>61</sup> The Government made changes however, and it is important to understand why.

The purpose of the Act is to “enhance public confidence in, and to protect the impartiality and integrity of the judicial system”. The Hon Margaret Wilson explicitly states that the “transparent” and “accessible” system will achieve the stated goals.<sup>62</sup> The problems were therefore that the informal complaint system was not accessible enough and that it lacked transparency.

The informal complaints system was not an obvious mechanism, creating problems for accessibility. There is support for the fact that it was not obvious. Even though the established procedure was to make complaints to the Head of the Bench, complaints were made to both the Crown Law Office and the Ministry of Justice.<sup>63</sup> A complaints system is not an effective mechanism if those who will use the system are unaware that it exists and how to use it.

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<sup>59</sup> New Zealand Law Society, above n 28, para 28.

<sup>60</sup> New Zealand Law Society, above n 28, para 32.

<sup>61</sup> Palmer, above n 41, 27.

<sup>62</sup> (11 May 2004) 617 NZPD 12794.

<sup>63</sup> Ministry of Justice “Response the Justice and Electoral Committee: Second Information Request” (20 February 2004) 8 [“Second Information Request”].



The fact that the complaints system was not obvious has a further implication. As complaints were made to several bodies and there was not a uniform system for receiving them, it meant that it was difficult to collect data about the number of complaints and the grounds on which they were made. Neither the Ministry of Justice and the Crown Law Office kept a formal record of complaints.<sup>64</sup> There was not a co-ordinated approach to complaints either, because the Ministry of Justice comments that it is not clear how many of the same complaints were also made to the Head of the Bench.<sup>65</sup>

The lack of a formal record containing all complaints means that an effective response to judicial misbehaviour is less likely. Only when you can gather information about how and why judges are misbehaving can you target judicial education programmes in the necessary area.

A further concern with the informal complaints system was the lack of transparency attaching to the complaints process. While the complainant was aware broadly aware of the procedure for dealing with a complaint through the outline provided in "The Judicial Complaints Process", the complainant could not see how the Head of the Bench considered and responded to the complaint. Although the Head of the Bench could notify the complainant about the progress of the complaint, the process was not sufficiently transparent.

The inclusion of the JCLO in the process alleviated, to some extent, the lack of transparency surrounding the role of the Head of the Bench. Through the power that the JCLO had to look at how the Head of the Bench considered the complaint, and recommend to the Head of the Bench to reconsider, an independent mechanism was available to an unhappy complainant. As the JCLO considered the complaint in confidence however, there is still a problem with transparency.<sup>66</sup> Where a system is not transparent, the public cannot have absolute confidence in it.

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<sup>64</sup> Second Information Request, above n 63, 8.

<sup>65</sup> Second Information Request, above n 63, 8.

<sup>66</sup> "The Judicial Complaints Process", above n 43, 3.



During debate in the House, Richard Worth MP commented that a problem with the adequacy of the informal complaints system was the response to judges who misbehaved.<sup>67</sup> The Head of the Bench did not have any formal powers over other judges, and in fact played more of a counselling role towards the judge than a disciplinary role.<sup>68</sup> The perception is that minor misconduct was not dealt with meaningfully.

### **B Inadequacy of the Removal Provisions**

What mostly concerned the Government, and provided the impetus for the Judicial Matters Bill, was the lack of an established procedure to investigate the conduct of a judge preceding removal. The Government argued this lack of certainty could have strong consequences if it was not rectified before the question of removing a judge arose in New Zealand. The Government pointed to the implications such lack of certainty had in both Australia and Canada when allegations of serious misconduct were made against judges. Australia and Canada both set up ad hoc commissions to respond to allegations of serious misbehaviour, and in both countries there were negative repercussions.

Canada had to respond to the question of removing a judge when serious allegations were made about the conduct of Justice Landreville. In 1964, the Attorney-General for Ontario laid charges against Justice Landreville.<sup>69</sup> The accusation was that while Landreville was the Mayor of Sudbury, he had agreed to accept stock in a company called NONG, in return for using his influence to see NONG obtain a franchise agreement in Sudbury.<sup>70</sup> After hearing the case, the Magistrate discharged it.<sup>71</sup>

Following this, the Law Society of Upper Canada formed a special committee to look into the conduct of Justice Landreville.

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<sup>67</sup> (11 May 2004) 617 NZPD 12796.

<sup>68</sup> Ministry of Justice "Response to the Justice and Electoral Committee: Third Information Request" (15 March 2004) 10 ["Third Information Request"].

<sup>69</sup> *Landreville v R (No.2)* [1977] 2 FCR 726 para 25.

<sup>70</sup> *Landreville v R (No.2)*, above n 69, para 25.

<sup>71</sup> *Landreville v R (No.2)*, above n 69, para 25.



first became aware of the inquiry when he was provided with a report recommending that the Law Society should not support him continuing to sit as a judge. Once this report entered the public arena, the Minister of Justice decided that in the interests of Justice Landreville, and the administration of justice, a formal inquiry was desirable.<sup>72</sup>

In 1966, the Governor in Council appointed the Honourable Ivan Rand, a retired Judge of the Supreme Court, as a Commissioner of a Royal Commission of Inquiry.<sup>73</sup> The Minister of Justice felt an Inquiry was more appropriate than introducing a motion directly in Parliament for several reasons.<sup>74</sup> Firstly, there were factual disputes that needed to be determined.<sup>75</sup> Secondly, the decision to remove a judge from office was essentially judicial in nature, and it was felt that Parliament was an "unwieldy institution" for exercising such a function.<sup>76</sup>

The inquiry was riddled with problems. While Justice Rand had been given clear terms of reference, he did not remain within them.<sup>77</sup> No restrictions were placed on his right to compel witnesses, and similarly no restrictions were placed on procedure. The Rand Commission and its Report have been described as a "travesty of justice".<sup>78</sup> Concern was also expressed over the fact that Government had the power to select a Royal Commission and "empower it to scrutinize the conduct of a superior court judge".<sup>79</sup>

Commissioner Rand issued his report in August of 1966 and several weeks later it was tabled in the House of Commons.<sup>80</sup> A special Joint Committee of the Senate and the House of Commons was then appointed to look into whether an address should be made to the Governor-General for

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<sup>72</sup> *Landreville v R (No.2)*, above n 69, para 39.

<sup>73</sup> *Landreville v R (No.2)*, above n 69, para 5.

<sup>74</sup> Ed Ratushny "Speaking As Judges: How Far Can They Go?" (1999-2000) *National Journal of Constitutional Law* 293, 305.

<sup>75</sup> Ratushny, above n 74, 305.

<sup>76</sup> Ratushny, above n 74, 305.

<sup>77</sup> Ratushny, above n 74, 305.

<sup>78</sup> Ratushny, above n 74, 305.

<sup>79</sup> Ratushny, above n 74, 305.

<sup>80</sup> *Landreville v R (No.2)*, above n 69, para 6.



removal.<sup>81</sup> The Committee, after 19 meetings where they heard from Justice Landreville and read the report by Commissioner Rand, concluded that Justice Landreville had proven himself unfit for office. It recommended that an address for removal be made to the Governor-General.<sup>82</sup> Justice Landreville resigned shortly after the Committee reached its conclusion.<sup>83</sup>

The members of the Committee were not immune from criticism either. They were not seen to take their task seriously and their low attendance rate was indicative of this.<sup>84</sup> A further problem was that there "was something unseemly about the fate of a judge being thrust into political hands".<sup>85</sup>

Concerns also surrounded an ad hoc investigation in Australia into the behaviour of Justice Murphy, a member of the High Court. The allegations led to a joint Federal New South Wales police task force inquiry, the establishment of two Senate Committees, a Commonwealth Parliamentary Commission of Inquiry, a Royal Commission of Inquiry and several appeals before the New South Wales Court of Appeal and the High Court.<sup>86</sup> In New South Wales, the adverse publicity created by the allegations caused a loss of confidence in the judiciary.<sup>87</sup>

New South Wales and Canada responded to the failures of these ad hoc commissions by implementing formal complaints systems. The Landreville incident has been described as "a watershed in the historical development of an adequate institutional response to allegations of misconduct by superior court judges".<sup>88</sup>

Australia and Canada both illustrate the fact that if there is not an established procedure, the investigation process can spiral out of control into a

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<sup>81</sup> *Landreville v R (No.2)*, above n 69, para 8.

<sup>82</sup> *Landreville v R (No.2)*, above n 69, para 9.

<sup>83</sup> *Landreville v R (No.2)*, above n 69, para 10.

<sup>84</sup> Ratushny, above n 74, 305.

<sup>85</sup> Ratushny, above n 74, 305.

<sup>86</sup> Morabito, above n 5, 482.

<sup>87</sup> Morabito, above n 5, 484.

<sup>88</sup> Ratushny, above n 5, 305.



number of separate inquiries. This is certainly not desirable from the perspective of the judge, or from the perspective of the public. Where the public is exposed to several inquiries dealing with the same allegation of misconduct, the adverse publicity can cause a loss of public confidence in the integrity of the judiciary. Margaret Wilson stated in the first reading in the House that a process should be set out in advance in New Zealand because a "hastily devised process may damage public confidence and impose risks to judicial independence."<sup>89</sup>

## V FORMAL COMPLAINTS PROCEDURES

The New Zealand Government responded to the problems with informal complaints system for minor complaints, and the inadequacy of the removal provisions, by modelling a formal complaints system on the overseas precedents of New South Wales and Canada. This section describes both the New South Wales and Canadian systems, and then the New Zealand Act in greater detail.

### A *New South Wales*

The Judicial Officers Act 1986 (NSW) established a standing body called the Judicial Commission of New South Wales (the "Judicial Commission"). The most important of its three functions, for the purposes of this paper, is to deal with complaints made against judicial officers. The other two complementary functions are to provide judicial education and training, and to assist the courts in achieving consistency in the sentences they impose.

The Judicial Commission receives all complaints that concern the ability or behaviour of a judicial officer.<sup>90</sup> The Commission is not to deal with a complaint however, where it does not raise the question of removal or it has not affected the performance of judicial duties.<sup>91</sup> Where the Commission decides to deal with the complaint, it conducts a preliminary examination, and either

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<sup>89</sup> (2 September 2003) 611 NZPD 8300.

<sup>90</sup> Judicial Officers Act 1986 (NSW), s 15(1).

<sup>91</sup> Judicial Officers Act 1986 (NSW), s 15(2).



dismisses the complaint, classifies the complaint as minor, or as serious.<sup>92</sup> Where the Commission classifies the complaint as minor or serious, the complaint is referred to the Conduct Division. The Commission does have the discretion however, to refer a minor complaint to the head of jurisdiction where the Commission does not think the complaint warrants the attention of the Conduct Division.<sup>93</sup>

The Conduct Division comprises of three people who must all be either current or retired judicial officers. The Conduct Division examines a complaint and may hold a hearing in relation to it.<sup>94</sup> The default positions are that a hearing into a serious complaint takes place in public, and a hearing into a minor complaint takes place in private.<sup>95</sup>

In relation to a serious complaint, the Conduct Division reports to the Governor its findings of fact, and its opinion as to whether the matter could justify parliamentary consideration of the removal of the judicial officer.<sup>96</sup> The Minister of Justice then lays the report before both Houses of Parliament,<sup>97</sup> and Parliament is able to initiate removal. The Houses of Parliament are unable to act without a report from the Conduct Division recommending removal.

## **B**      *Canada*

The Judges Act 1971, which applies to federally appointed judges, established a standing body called the Canadian Judicial Council (the "Council"). The Council, as with the New South Wales Judicial Commission, has several purposes, including the ability to investigate complaints made about the conduct of judges. The Council appoints a Judicial Conduct Committee to receive and deal with the complaints that are made, and designates a Chair of the Committee.

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<sup>92</sup> Judicial Officers Act 1986 (NSW), s 19.

<sup>93</sup> Judicial Officers Act 1986 (NSW), s 21(2).

<sup>94</sup> Judicial Officers Act 1986 (NSW), s 24(2).

<sup>95</sup> Judicial Officers Act 1986 (NSW), s 24(2).

<sup>96</sup> Judicial Officers Act 1986 (NSW), s 29(2).

<sup>97</sup> Judicial Officers Act 1986 (NSW), s 29(3).



The Chair of the Committee initially reviews the complaint and may dismiss the complaint either because it is trivial, vexatious, or without substance, or because the conduct of the judge is not so inappropriate that it warrants consideration of removal.<sup>98</sup> Where the judge recognises that the conduct is inappropriate or improper, the Council may express disapproval of the judge.<sup>99</sup> For any complaint not dismissed, the Chair must refer it to a designated panel of the Judicial Conduct Committee.<sup>100</sup>

The Chair of the Judicial Conduct Committee designates a panel of up to five to assess whether the complaint should be dismissed, or recommend further investigation.<sup>101</sup> Where the panel recommends further inquiries, the Council may decide to follow this recommendation,<sup>102</sup> and where it does so, appoints an Inquiry Committee.<sup>103</sup>

There is also a fast-track procedure to the Inquiry Committee stage. Where the Minister of Justice or a provincial Attorney-General requests an inquiry into the conduct of a judge, the formal inquiry process takes place immediately without prior consideration of the Chair or the panel.<sup>104</sup>

The Inquiry Committee conducts a hearing into the complaint in public, except in exceptional circumstances.<sup>105</sup> After the hearing, the Inquiry Committee reports to the Council and states whether a recommendation for removal should be made.<sup>106</sup> The Council then considers the recommendation, reports to the Minister of Justice, and also submits the record of inquiry.<sup>107</sup>

The Canadian removal procedure differs markedly from the New South Wales procedure in that the inquiry procedure laid out in the Judges Act 1972

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<sup>98</sup> Canadian Judicial Council By-Laws, 50(1).

<sup>99</sup> Canadian Judicial Council By-Laws, 50(2).

<sup>100</sup> Canadian Judicial Council By-Laws, 53.

<sup>101</sup> Canadian Judicial Council By-Laws, 55.

<sup>102</sup> Canadian Judicial Council By-Laws, 57(1).

<sup>103</sup> Canadian Judicial Council By-Laws, 57(2).

<sup>104</sup> Judges Act 1971 (C), s 63(1).

<sup>105</sup> Canadian Judicial Council By-Laws, 63.

<sup>106</sup> Canadian Judicial Council By-Laws, 65.

<sup>107</sup> "Initial Information Request", above n 58, 7.



does not affect the powers of the House of Commons or the Senate. Parliament retains the ability to dismiss a judge from office irrespective of the finding of the Council.

*C        The Judicial Conduct Commissioner and Judicial Conduct Panel Act  
             2004*

The New Zealand Act is modelled very closely on the New South Wales and Canadian procedures, and the differences are more detail than substance. The Act implements a formal procedure to receive all complaints, irrespective of gravity. It is important to note however, that it maintains distinct systems for the treatment of minor complaints, and the treatment of complaints that might warrant consideration of removal.

*1        The Judicial Conduct Commissioner*

The Act establishes an office of the Judicial Conduct Commissioner (the "Commissioner"). The Governor-General appoints the Commissioner on the recommendation of the House of Representatives.<sup>108</sup> Before the recommendation is made, the Attorney-General must consult the Chief Justice about the proposed appointment.<sup>109</sup> The inclusion of Parliament and the Chief Justice in this process is important because the Commissioner must have the support of both Parliament and the Judiciary if he or she is going to successfully fulfil the role of investigating alleged misconduct of judges. The Act does not specify any criteria for appointment, and there is no requirement for the Commissioner to have legal qualifications.

All members of the public are entitled to make a complaint, the Attorney-General may refer a matter concerning the conduct of a judge, and the Commissioner may on his or her own initiative look into the conduct of the judge.<sup>110</sup> The Commissioner is to receive all of the complaints that are made

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<sup>108</sup> Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004, s 7(2).

<sup>109</sup> Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004, s 7(3).

<sup>110</sup> Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004, s 12.



about the conduct of a judge irrespective of whether the complaint arises in the exercise of the judge's judicial duties.<sup>111</sup>

When the Commissioner receives a complaint he or she must acknowledge the complaint in writing, and notify the judge concerned that the complaint has been made.<sup>112</sup> The Commissioner must examine the complaint, and in doing this, is able to seek a response from the Judge concerned, make any necessary inquiries, obtain any court documents, and consult the Head of the Bench.<sup>113</sup> These preliminary inquiries are carried out in private. When the Commissioner has completed the preliminary examination, the Commissioner can take three possible courses of action.<sup>114</sup> The decision of the Commissioner, as to which course of action he or she takes, is subject to judicial review.<sup>115</sup> These options available to the Commissioner, set up the distinct procedures for the treatment of minor and serious complaints.

Where the complaint fails to meet the threshold set out in section 16 of the Act, the Commissioner must dismiss the complaint. Grounds for dismissal include that the complaint has no bearing on judicial functions or duties, that the complaint is frivolous or vexatious or not in good faith, that the subject matter of the complaint is trivial, or that it relates to a judicial decision and should therefore be dealt with through the appeal or review process.<sup>116</sup>

Where the Commissioner believes that an inquiry into the complaint is justified, and that if substantiated could warrant consideration of removal, the Commissioner may recommend that the Attorney-General appoint a Judicial Conduct Panel to inquire into the alleged conduct.<sup>117</sup> As the Act does not specify when an inquiry is "justified", and the decision to recommend the formation of Conduct Panel is discretionary, the Commissioner has a lot of control over the types of complaints that may proceed to an investigation.

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<sup>111</sup> Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004, s 11.

<sup>112</sup> Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004, s 14.

<sup>113</sup> Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004, s 15.

<sup>114</sup> Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004, s 15.

<sup>115</sup> "Third Information Request", above n 68, 7.

<sup>116</sup> Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004, s 16.

<sup>117</sup> Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004, s 18.



Where the Commissioner does not dismiss the complaint, and does not recommend the formation of a Conduct Panel, he or she must refer the complaint to the relevant Head of the Bench.<sup>118</sup> This is the minor complaints procedure. While the Act does not set out the procedure from that point, the Government intends that Heads of the Bench will consider the complaints in the way that they always have; informally and behind closed doors.<sup>119</sup>

## 2 *The Judicial Conduct Panel*

When the Commissioner recommends the formation of a Conduct Panel, the Attorney-General may at any time appoint a panel.<sup>120</sup> The decision of the Attorney-General is discretionary. This means that even where the Commissioner decides that further investigation is warranted, the Attorney-General may not accept this conclusion. The Attorney-General does not have unfettered discretion however, as the ability to form a Conduct Panel is contingent on a positive recommendation by the Commissioner.<sup>121</sup>

When appointing a Conduct Panel the Attorney-General must consult with the Chief Justice on the proposed membership.<sup>122</sup> A Conduct Panel is to comprise of three members and although the exact composition may vary, the Act specifies that there must be two members with legal qualifications and one lay member. While the two legally qualified members may either be current judges, retired judges, barristers or solicitors, it is compulsory that either a judge or a retired judge sits on the panel.<sup>123</sup>

Once a Conduct Panel is formed, its role is to inquire into, and report on, the matters that have been referred to it by the Attorney-General. In inquiring

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<sup>118</sup> Minor complaints are negatively defined in that they are not dismissed, and not serious enough to warrant removal, they are minor complaints.

<sup>119</sup> Office of the Associate Minister of Justice "Enhancing Public Confidence in the Judiciary" (23 January 2003) 3.

<sup>120</sup> Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004, s 21(1).

<sup>121</sup> Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004, s 21(1).

<sup>122</sup> Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004, s 21(2).

<sup>123</sup> Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004, s 22.



into the referred matters, the Conduct Panel must hold a hearing,<sup>124</sup> where the judge concerned is entitled to appear and speak.<sup>125</sup>

The Conduct Panel must hold hearings in public unless it decides to hold a hearing in private. The Panel can hold the hearing in private where it feels it is proper to do so having regard to the interest of any person and the public interest.<sup>126</sup> The Conduct Panel also has the discretion to decide whether any restrictions should be placed on the publication of any report, any account of any part of the proceedings, and any document produced at the hearing. The Conduct Panel can also prohibit the publication of the judge's name or the details of any person.<sup>127</sup>

The decision of the Conduct Panel to hold a hearing, or any part thereof, in private or to restrict the publication of any information, is not final. The Act provides that any person may appeal to the Court of Appeal concerning any decision that the Conduct Panel makes in regard to the hearing and the publication of material.<sup>128</sup> This ability to appeal cuts both ways in that a person may appeal when the Conduct Panel decides not to exercise the choice to hold a hearing in private or to restrict publication.

After the hearing, the Conduct Panel reports to the Attorney-General its findings of fact, its opinion as to whether consideration of removal is justified, and the reasons for the conclusion.<sup>129</sup> Where the Panel finds that consideration of removal is justified, the Attorney-General has "absolute discretion" as to whether to take steps to initiate the removal of that judge from office.<sup>130</sup> The Attorney-General cannot take steps to initiate removal of a judge however, in the absence of a report by the Conduct Panel recommending that consideration

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<sup>124</sup> Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004, s 24(2).

<sup>125</sup> Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004, s 27(1).

<sup>126</sup> Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004, s 29.

<sup>127</sup> Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004, s 30.

<sup>128</sup> Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004, s 31.

<sup>129</sup> Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004, s 32.

<sup>130</sup> Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004, s 31(1).



of removal is warranted.<sup>131</sup> This is an important restriction on the role that the Attorney-General can play.

Where the Attorney-General does take steps to remove a judge, the Act sets out the process for this.<sup>132</sup> In the case of High Court, Court of Appeal, Supreme Court and Employment Court Judges, a motion must be made in Parliament to the Governor-General to remove a Judge. The Government intends that all a motion by Parliament requires is a majority vote.<sup>133</sup> In the case of Associate Judges and other judges, the Attorney-General advises the Governor-General to dismiss a judge. New Zealand has not followed Canada where the ability of Parliament to remove a judge, without a recommendation by the Council, is preserved.

## VI ANALYSIS OF THE MINOR COMPLAINTS PROCEDURE

This section analyses the complaints that fall in the middle of the hierarchy created under the Act. They are the minor complaints that are channelled to the Head of the Bench. It asks whether the new procedure addresses the perceived problems with the informal process, or whether the change is superficial and greater changes should have been made.

In essence, the Act retains the status quo in relation to the processing of minor complaints. The two modifications are that the Commissioner makes the first decision about all complaints of judicial misconduct, and that the power of the Head of the Bench to deal with complaints now has a statutory basis.

### A *Strengths of the Procedure*

Through the office of the Commissioner, the complaints procedure should now be a more obvious mechanism to the public. While incorporation into statute does not automatically mean that the public will have a greater

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<sup>131</sup> Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004, s 31(2).

<sup>132</sup> Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004, schedule 1.

<sup>133</sup> Office of the Associate Minister of Justice, above n 119, 3.



awareness of the system, the existence of a dedicated office for the receipt and processing of complaints should generate greater publicity of the system. If the complaints system is more obvious to the public, this thereby ensures that it is more accessible. Accessibility is immensely important if there is to be meaningful accountability.

At the point the Commissioner considers the complaint, much greater transparency surrounds the treatment of complaints. Not only does the Commissioner have a statutory obligation to consider complaints, the statute sets out both the steps that the Commissioner can take in the investigation and the three options of decision that are open to the Commissioner.<sup>134</sup>

It is very important that the statute sets out the grounds for dismissal because dissatisfaction with the informal complaints procedure must have been high when the Head of the Bench dismissed complaints and the complainant did not understand why. Where a complaint fails to meet the required threshold for consideration under section 16,<sup>135</sup> the Commissioner must notify the complainant that the complaint has been dismissed, and the grounds on which that decision was made.<sup>136</sup> Admittedly, the complainants will not have complete understanding of the decision because they will not have access to the information that the Commissioner based the decision on. Nevertheless, the process is more inclusive.

While the public is concerned that judges are held accountable, it has an even greater concern that steps are taken to minimise future misconduct. A problem raised above was that the system for collecting data has not been reliable. This was partly because complaints were made to several bodies, but mostly because the explicit task of gathering reliable data was not assigned to a particular person.

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<sup>134</sup> Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004, s 15.

<sup>135</sup> Grounds for dismissal include that the complaint is not within the Commissioner's jurisdiction; that it has no bearing on judicial functions and judicial duties; that it is frivolous, vexatious or not in good faith; that the subject matter of the complaint is trivial; that the complaint concerns a judicial decision or function, that is or was subject to a right of appeal or review.

<sup>136</sup> Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004, s 16(2).



The Act takes the first step towards improvement in this area, because part of the role of the Commissioner is to present an annual report to the Attorney-General who can then choose to table it in Parliament.<sup>137</sup> Amongst other things, the report must contain the number and types of complaints received during the year, and the outcomes of those complaints.<sup>138</sup> The information gathered about the types of complaints that are made at the lower end of the scale thereby allows targeted judicial education.

### ***B Should the Act Have Gone Further?***

Reference to the passage of minor complaints in the Act stops at the point that complaints are forwarded to the Head of the Bench, and the silence about the process thereafter is very interesting. Several questions arise from this, and they are these; why does the reference stop at this point, and does this mean that the Act fails to address the most potent concerns identified with the informal complaints system?

#### *1 Failure to specify the procedure*

Members of Parliament rigorously questioned whether the Act could have achieved more, and argued that it does not make a significant change in the response to minor complaints.<sup>139</sup> For the Act does not set out a mandatory procedure for the Head of the Bench, and nor does it provide the Head of the Bench with powers of discipline.

The greatest concern raised about the informal complaints system was the lack of transparency surrounding the process. As the Act does not set down a procedure for the Head of the Bench to follow, the opportunity to bring greater transparency to the process is lost. The position remains that the Head of the Bench is not obliged to follow a procedure when considering a complaint, that

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<sup>137</sup> Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004, schedule 2, 9(2).

<sup>138</sup> Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004, schedule 2, 10(1).

<sup>139</sup> (11 May 2004) 617 NZPD 12796.



the consideration of the complaint is behind closed doors, and that the complainant is therefore effectively excluded from the process.

Why does the Act go so far as to incorporate the informal complaints system in statute, and then fall short of giving clarity to the process from that point on? The answer to this is not straightforward, and little can be gained from debate in the House. A Departmental Report provided by the Ministry of Justice to the Justice and Electoral Committee does however, provide some insight on this point. The Ministry of Justice stated that in order to protect judicial independence, the handling of less serious complaints should be left in the hands of the judiciary, and the Head of the Bench should not be provided with a statutory power of decision. It is necessary to unpack this statement further.

Regulation of judicial misconduct has always been within the province of the judiciary, except where the misconduct is of a nature that warrants removal. In that situation, Parliament reserved itself the power under the Constitution Act 1986 to make a motion for removal. In all other instances of misconduct the judiciary, and in particular the Head of the Bench, can exercise discretion in dealing with a complaint. If the legislature were to step in and set down how the Head of the Bench were to proceed with a complaint, this would mean that the legislature is encroaching on the traditional province of the judiciary.

Stipulating how the judiciary must manage instances of judicial misconduct could also breach individual independence. Judicial independence means that a judge in their adjudicative function must only be subject to his or her conscience and the law.<sup>140</sup> Judges must not be subject to irrelevant pressures, including pressures from the Head of the Bench.<sup>141</sup> The Head of the

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<sup>140</sup> *Alberta (Provincial Court Judge) v Alberta (Provincial Court Chief Judge)* [1999] ABQB 309, para 130.

<sup>141</sup> *Alberta (Provincial Court Judge) v Alberta (Provincial Court Chief Judge)*, above n 140, para 152.



Bench is broadly characterised as first among equals,<sup>142</sup> and does have some responsibility for the judges on the same bench. If formal powers of decision-making are given to the Head of the Bench in respect of judicial conduct however, this moves from the conception of first among equals and creates a hierarchy where the Head of the Bench is placed in a position of superiority.

Moreover, providing the Head of the Bench with formal decision-making powers might open the judiciary up to undue pressure from outside. Where the powers of the Head of the Bench are clearly set out, the public has a greater ability to question the decision that the Head of the Bench reached and criticise it.

The role of the Head of the Bench looking into complaints informally, and playing a counselling role, is much more in line both with the conception of first among equals and judicial independence. In this role, the Head of the Bench has the ability to look into a complaint, and the ability to provide assistance. Yet they cannot force any behaviour on the part of the judge concerned.

The Ministry of Justice felt that a further reason for not setting out a defined procedure in the Act was that doing so could expose the Head of the Bench to the possibility of judicial review. Judicial review is not desirable in light of the fact that the Head of the Bench considers complaints of minor misconduct where the misconduct does not impact on the result of a case. A judicial review proceeding could cause collateral damage through the publicity that it creates. The risk of adverse publicity is not justified when complaints are at the lower end of the scale.

The Ministry of Justice felt that judicial review would be a distinct possibility if the Act had set out an express obligation on the Head of the Bench

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<sup>142</sup> *Alberta (Provincial Court Judge) v Alberta (Provincial Court Chief Judge)*, above n 140, para 90.



to make a decision, or to take action on the complaint.<sup>143</sup> If Head of the Bench had the power not only to make a decision, but the ability to also act on that decision, this could be a statutory power of decision. Under section 4 of the Judicature Amendment Act 1972, the courts have the ability to review the exercise of statutory powers of decision.<sup>144</sup>

The only reference to the Head of the Bench put in the Act was therefore in the form of a statutory link, and the Ministry of Justice believes the likelihood of judicial review is minimal. It argues that as the Head of the Bench does not have any express power of decision, there should be no right of judicial review. This conclusion is not beyond doubt however, and it is necessary to work through whether there could be review.

Does the Act confer an implicit statutory power of decision? The Act contemplates that the Commissioner can pass complaints on to the Head of the Bench, and this includes the Head of the Bench within the statutory complaints process. The important issue is what power the Head of the Bench has in this process, and whether the Head of the Bench in fact has the power to make a “decision” as required by the Judicature Amendment Act 1972.

As the Commissioner can pass on a complaint to the Head of the Bench, there is, at the least, an implicit duty on the Head of the Bench to consider the complaint. That alone, is not a power of decision. Where the Head of the Bench looks into a complaint, and reaches the conclusion that there has been misconduct, this is closer to a power of decision. The Courts require more however than the mere power to decide, they require an exercise of power that has a final determinative effect.<sup>145</sup> The Court of Appeal held in *Daemar v Gilliland* that where the decision does not finally determine the rights and obligations of a person, it is not reviewable. The Head of the Bench has no formal power over the judge concerned and therefore any decision about misconduct does not have a final determinative effect.

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<sup>143</sup> Ministry of Justice “Departmental Report on Part One of the Judicial Matters Bill” (17 March 2004) 21 [“Departmental Report on Part One of the Judicial Matters Bill”].

<sup>144</sup> Judicature Amendment Act 1972, s 4.

<sup>145</sup> *Daemar v Gilliland* [1979] 2 NZLR 7, 15 McMullin J.



(a) Comparative analysis

Canada and New South Wales have different procedures for minor complaints, both from the New Zealand system of referring complaints to the Head of the Bench, and from each other. The New Zealand procedure falls in the middle of the spectrum, with the Canadian system focussing less on minor complaints, and New South Wales providing for more extensive consideration.

When a complaint is made in Canada, the designated Chair of the Judicial Conduct Committee conducts the preliminary investigation of the complaint.<sup>146</sup> After the review, the Chair may dismiss the complaint either because it is trivial, vexatious or without substance, or because the conduct of the judge is not inappropriate enough to warrant consideration of removal.<sup>147</sup>

The fact that the Chair can dismiss those complaints where there has been inappropriate or improper conduct creates an important distinction with the New Zealand Act. On the one hand, the complaint is substantiated and is therefore warranted, and on the other, the complaint is dismissed. This mixed message could leave the complainant feeling that the complaint has not been addressed. While our procedure involving the Head of the Bench may not necessarily provide greater consideration of the complaint, where the complaint is substantiated, the complainant is notified of this. Even though the Head of the Bench may not take any action, the mere fact that a complaint is upheld could positively influence the public perception of the complaints procedure.

The New South Wales process provides an interesting contrast. When a complaint is made to the Commission, the Commission must carry out a preliminary examination of it, and classifies the complaint as minor or serious where the complaint is not dismissed.<sup>148</sup> All complaints classified as minor or

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<sup>146</sup> Canadian Judicial Council By-laws, 47.

<sup>147</sup> Canadian Judicial Council By-laws, 50.

<sup>148</sup> Judicial Officers Act 1986 (NSW), s 19.



serious are then referred to the Conduct Division.<sup>149</sup> The Commission can choose however, to refer a minor complaint to the relevant head of jurisdiction where they believe that the complaint does not warrant consideration by the Conduct Division.<sup>150</sup> When this happens, the legislation does not set out the process from that point on.

When a minor complaint is referred to the Conduct Division, the Conduct Division conducts an examination of the complaint in private, as far as that is practicable.<sup>151</sup> Where the Conduct Division decides that a hearing is necessary, the hearing is heard in private.<sup>152</sup>

The Judicial Officers Act 1986 (NSW) strikes a different balance to our Act through the provision that minor complaints can be referred to the Conduct Division. As the Conduct Division, a panel of three judicial officers, can investigate minor complaints, the Act provides for more comprehensive consideration of minor complaints. Moreover, a panel has the appearance of being a more neutral mechanism for examining complaints than the Head of the Bench in the New Zealand process. Even though an investigation, and any subsequent hearing, is carried out in private, the simple fact that a panel considers the complaint should enhance public confidence in the process.

The key question is whether the New South Wales process strikes a more appropriate balance than the New Zealand Act? On the one hand, the New South Wales process is likely to attract greater public confidence in the investigation of complaints, yet on the other, it is also more likely to have implications for judicial independence. The more that the behaviour of a judge is scrutinised through a formal process, the greater the likelihood that judges will not feel they have complete freedom in carrying out judicial duties.

Where the misconduct is not of a nature to warrant consideration of removal, it is not worth risking any loss to judicial independence. As the New

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<sup>149</sup> Judicial Officers Act 1986 (NSW), s 21.

<sup>150</sup> Judicial Officers Act 1986 (NSW), s 21.

<sup>151</sup> Judicial Officers Act 1986 (NSW), s 23.

<sup>152</sup> Judicial Officers Act 1986 (NSW), s 24(3).



Zealand Law Society comments, if there is a loss in accountability through an informal complaints system, the public must accept that as a possible disadvantage off-set by the greater benefit of an independent judiciary.<sup>153</sup>

## 2 *Formal powers of discipline*

Members of Parliament criticised the Judicial Matters Bill on the grounds that it failed to give the Head of the Bench any formal disciplinary powers. Richard Worth MP argued that things “could have been done- censure, public apology, required counselling, but this Government did not have the appetite to take that step”.<sup>154</sup> The argument that the Head of the Bench should be provided with disciplinary powers is a contentious one.

Recently, the New Zealand Chief Justice Hon Sian Elias commented that “the Act of Settlement removal for cause by Parliament remains the only formal sanction that can be imposed consistently with” judicial independence.<sup>155</sup> The High Court and Court of Appeal Judges, in their submission, argued strongly against any formal sanctions.<sup>156</sup> The concern with formal powers is that they can infringe the individual independence of judges, and adversely affect public confidence in the administration of justice.

Where the Head of the Bench is given formal powers over a judge, this clearly places the Head of the Bench in a position of authority. The Head of the Bench can decide whether to discipline a judge and in theory, could use this power of decision to influence another judge’s behaviour. Where the power of discipline is in fact exercised, this could also have implications for individual independence. For a judge who is formally disciplined, and must carry on with his or her adjudicative functions, may feel hesitant from that point on.

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<sup>153</sup> New Zealand Law Society, above n 28, para 18.

<sup>154</sup> (11 May 2004) 617 NZPD 12796.

<sup>155</sup> Elias, above n 39, 9.

<sup>156</sup> Judges of the High Court and Court of Appeal “Submission of the Judges of the High Court and Court of Appeal on the Judicial Matters Bill” 10.



Formal sanctions could negatively impact on public confidence in the judiciary. Where a judge is formally sanctioned, through a required public apology or a reprimand, this will affect public confidence in the ability of the judge. As noted in the Canadian context, a "reprimanded judge is a weakened judge: such judge will find it difficult to perform judicial duties and will be faced with a loss of confidence on the part of the public and litigants".<sup>157</sup> Where public confidence in a judge has been lost, this has wider implications for public confidence in the judiciary.

(a) Comparative analysis

The role that the Head of Bench plays, without formal powers of discipline, mirrors the role of the head of jurisdiction in New South Wales. Under the Judicial Officers Act 1986 (NSW) the Head of the Bench has a role in considering complaints, and does not have any formal power to respond where the complaint is substantiated.

The Canadian legislation is not directly on point given that minor complaints are dismissed from the system. The Canadian legislation is nevertheless worth comparing because of the provision that, at several points through the process, the Canadian Judicial Council can express disapproval of a judge's conduct.<sup>158</sup> Disapproval can even be expressed where the conduct is inappropriate and is dismissed from further consideration. In itself, a public expression of disapproval is a strong measure, and will have an impact on the judge concerned. The fact that that it is the Council expressing disapproval is important because the Council is further removed from the judge concerned than a Head of Bench would be.

The Government deliberately chose not to incorporate sanctions in the New Zealand legislation, and this was undoubtedly the correct choice. The role that the Head of the Bench plays currently, which is close to a counselling role,

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<sup>157</sup> Leo Barry "Judicial Free Speech and Judicial Discipline: A Trial Judge's Perspective on Judicial Independence" (1996) U NB LJ 79, 84.

<sup>158</sup> See Canadian Judicial By-Laws.



can achieve a desirable result. Where appropriate, the Head of the Bench will encourage the Judge to make an apology to the complainant. More importantly, the Head of the Bench can organise education for the judge to minimise the chance that the misbehaviour is repeated. The focus, in these cases of minor misconduct, should be on giving appropriate help to the judge rather than publicly on diminishing them.

### *C Conclusion on the Minor Complaints Procedure*

There is little doubt that the legislation attempts to walk a fine line in relation to minor complaints. It seeks to increase accountability and transparency, and to protect judicial independence. The Act will not satisfy members of the public who demand undiluted accountability. Accountability and transparency are increased only insofar as the Commissioner deals with the complaints at the initial stage. The Act does little to address the concerns members of the public have with the closed door approach of the Head of the Bench.

The Act takes the correct approach. Where judicial misconduct is at the lower end of the spectrum, and has not impacted on the result of a case, a formal procedure is unnecessary and could even be harmful. Yes judges should be held to account. The public has to accept however, that judges are human and will make mistakes. They should not be put through a hearing every time that they have misbehaved, and indeed every time it is alleged that they have misbehaved. A formal process should only be engaged where the misconduct is serious enough that it could lead to dismissal. If a formal process is engaged for minor complaints, this places the fundamental principle of judicial independence at risk.

## *VII COMPLAINTS THAT COULD JUSTIFY DISMISSAL*

The driving motivation behind the Act was to establish a procedure that must precede removal of a judge. This section analyses the removal procedures and assesses how, and whether, the Act balances independence and



accountability. While significant protections for the judge are built into the complaints process, and there is public accountability, the identified concern is the transferral of power from parliament to the executive over the tenure of a judge.

#### A *Protection for the Judge and Judicial Independence*

One of the most serious concerns with the ad hoc commissions set up in Australia and Canada was the lack of protection provided for the judge at the centre of the inquiry. It is absolutely necessary that protection for the judge is built into the complaints system because a judge, just like every other citizen, has the right to expect a fair trial. Protection for the individual judge will go some way to ensuring that the system cannot be used to erode judicial independence.

One of the stated purposes of the Act is to provide a fair process that recognises and protects the requirements of natural justice.<sup>159</sup> The Act does impose obligations on the Commissioner and the Panel to act independently and in accordance with natural justice.<sup>160</sup> Obligations alone are not sufficient protection, and this is recognised through the substantive protections that are built into the Act.

The Act ensures that the judge is put in a position to defend any allegation. As soon as a complaint is made to the Commissioner, and before any preliminary investigation is undertaken, the Commissioner will send written notification to the judge.<sup>161</sup> While sending a copy of the complaint to the judge is not automatic, the judge is entitled to request this.<sup>162</sup> The only instance where the judge is not be immediately notified of the complaint is when the Commissioner, after consultation with the Head of the Bench, is satisfied that taking that step may prejudice court proceedings.<sup>163</sup> In most circumstances

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<sup>159</sup> Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004, s 4.

<sup>160</sup> Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004, s 9.

<sup>161</sup> Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004, s 14(1)

<sup>162</sup> Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004, s 14(3).

<sup>163</sup> Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004, s 14(6).



then, the judge has adequate warning of the complaint and can prepare a response to the allegation if indeed it does proceed to the investigation stage.

A judge is entitled to appear and speak at the hearing, and is also entitled to representation.<sup>164</sup> The option of representation is strengthened by the fact that the office of the Commissioner will meet the judge's "reasonable costs" of representation.<sup>165</sup> This provision is very interesting because it is unlike most cases where the parties meet the legal costs themselves, and may only receive payment for costs if they win the case. It is appropriate however, because it recognises that a hearing can place a large burden on the judge. A hearing moreover that will not arise as an incident of most jobs; it arises due to the particular nature of judicial office. A judge should not therefore have to bear the cost of representation, particularly where the Commission does not recommend removal.

There is no equivalent provision for payment in either the Judicial Officers Act 1986 (NSW) or the Judges Act 1971. The New South Wales Commission specifically commented on this omission and recommended that judicial officers in New South Wales be provided with financial assistance because of the possibility that some judges might resign rather than bear the cost of a hearing.<sup>166</sup>

In addition to the availability of representation for the Judge, the Attorney-General must appoint a person to act as special council in an inquiry.<sup>167</sup> There is an equivalent provision in Canada for the Chair to appoint an independent counsel when the Inquiry Committee holds a hearing.<sup>168</sup> The special counsel under the New Zealand Act is required to present the allegations, and may make submissions on any questions of procedure and applicable law.<sup>169</sup> The Act stipulates that the special counsel must perform his

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<sup>164</sup> Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004, s 27(1).

<sup>165</sup> Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004, s 27(2).

<sup>166</sup> Morabito, above n 5, 494.

<sup>167</sup> Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004, s 28(1).

<sup>168</sup> Canadian Judicial Council Bylaws 61.

<sup>169</sup> Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004, s 28(2).



or her duties impartially and act in accordance with the public interest.<sup>170</sup> The special counsel should assure that a balanced approach to the misconduct is taken at the hearing.

The inclusion of the special council does give the hearing the appearance of an adversarial process. Most other aspects of the procedure indicate however, that this is not an adversarial process where the complainant is pitted against the judge. In fact the Act does not specifically provide that the complainant is even included in the hearing, although this possibility is left open.<sup>171</sup> The process is instead focussed on assessing whether the judge is fit to continue in office.

In Canada, the Supreme Court commented on the purpose of the Canadian Judicial Council while considering a judicial review application. The Court firmly concluded that the purpose of a hearing is to find out whether misbehaviour is serious enough to warrant removal,<sup>172</sup> it is not designed to enforce the rights of complainants, or to provide them with redress.<sup>173</sup> The New Zealand Act is designed along very similar lines and so the focus must be very similar.

The Act has wide confidentiality provisions, and also allows the Conduct Panel to restrict the information it believes should not enter the public arena.<sup>174</sup> The reason confidentiality provisions are important is that when the Conduct Panel does not recommend the removal of the judge, that judge will have to return to judicial duties. If the allegations become public, the credibility of the judge may remain tarnished even where the Commission has found that the complaint is not substantiated. Confidentiality, up until the point of a public hearing is desirable because it may allow a judge to return to duties with public confidence in their ability intact.

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<sup>170</sup> Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004, s 28(3).

<sup>171</sup> Under section 28(4), with the consent of the Panel, any other person may appear at the hearing and may be represented by counsel.

<sup>172</sup> *Taylor v Canada (Attorney-General)* [2003] CarswellNat 2874, para 76 Evan J.

<sup>173</sup> *Taylor v Canada (Attorney-General)*, above n 172, para 82.

<sup>174</sup> Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004, s 30(1).



The Commissioner has a duty to keep confidential all matters that “come to their knowledge in the performance of” his or her functions.<sup>175</sup> Confidentiality therefore attaches to the complaint as soon as the Commissioner receives it. The Chief Executive of the New South Wales Commission supported confidentiality obligations at this stage, noting the risk of harm to the judiciary if information was released at the beginning.<sup>176</sup> The Conduct Panel also has powers to restrict the publication of the report, any account of the proceedings, any documents produced at the hearing, and the name or affairs of any person.<sup>177</sup> Where a person breaches a restriction order, he or she is liable to a fine.<sup>178</sup>

The New Zealand Act has more extensive confidentiality provisions than the New South Wales system. There is criticism in New South Wales over the fact that their confidentiality provisions do not kick in as soon as a complaint is made to the Commission. That is the period when there is most likely to be publicity.<sup>179</sup>

The weakness with the confidentiality provisions both in the New Zealand Act, and in New South Wales, is that they are unlikely to be adequate protection in the face of a determined complainant. Canada illustrates the fact that the person with the greatest incentive to publicise the complaint, is the complainant. In Canada, “militant members of interest groups regularly scrutinize the comments of judges” for insensitive and “politically incorrect” statements.<sup>180</sup> It is in their interests to publicise the allegations, and the publicity is likely to be one sided. Publicity surrounding such complaints can therefore cause a lot of damage to the reputation of the judge.

The reality is that a complaints system cannot wholly restrict publicity about allegations of misconduct. In fact, there are several reasons why a complaints procedure should not even attempt to do so. Firstly, to impose an

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<sup>175</sup> Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004, s 19(1)(a).

<sup>176</sup> “Departmental Report on Part One of the Judicial Matters Bill”, above n 143, 7.

<sup>177</sup> Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004, s 30.

<sup>178</sup> Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004, s 30(6).

<sup>179</sup> Morabito, above n 5, 498.

<sup>180</sup> Barry, above n 157, 87.



obligation of confidentiality on the complainant restricts freedom of expression. Secondly, wholesale confidentiality provisions run counter to the aims of the Act which are to implement an open and transparent complaints procedure.

A further protection in the Act is the multi-layered procedure that has to be followed before a Parliament can make a motion for dismissal. Before Parliament even has the ability to make a motion, the complaint must pass through the Commissioner who must recommend the formation of a Conduct Panel, the Attorney-General who must agree to form the Conduct Panel, the Conduct Panel who must recommend that consideration of dismissal is warranted, and finally the Attorney-General again who must agree to present the Report to Parliament. This multi-layered approach, which is similar in form to the New South Wales and Canadian procedures, ensures that judges cannot be removed simply because they are out of favour with one person or group. A number of people, holding varying positions, must agree to the dismissal of a judge.

#### **B Public Confidence in Judicial Accountability**

In providing protection for the judge, will this have the unintended consequence of lessening public confidence in the process? The Act does address this possibility by specifically directing several provisions towards increasing public confidence.

Our court system is premised on the basis that for the public to have confidence in the courts, justice must be delivered openly. Therefore, for the public to have confidence in the complaints system, it must be able to see the workings of the Conduct Panel. That is why the hearings of the Conduct Panel must be carried out in public, except where the Panel believes it is more appropriate to hold a hearing in private.<sup>181</sup> In deciding to hold a hearing in

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<sup>181</sup> Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004, s 29(2).



private, the Panel must consider the interest of any person, including the privacy of the complainant, and the public interest.<sup>182</sup>

The decision to hold a part, or the whole, of a hearing in private should be sparingly used, because a hearing into the misconduct of a judge is certainly in the legitimate public interest. Holding a hearing in private would raise the curiosity of the public, and cast doubts over the handling of the complaint by the Panel.

The inclusion of the lay member on the Conduct Panel should attract public confidence in the process. It is interesting that New Zealand chose to depart from both New South Wales and Canada in specifying that there must be one lay member. All members of a Conduct Division in New South Wales are judicial officers, and all members of any Inquiry Committee in Canada are judges.

Canadian commentators have discussed the relative merits of a lay member. Professor Friedland, who has written extensively on the Canadian complaints system, believes that lay members should be added to the mix in Canada.<sup>183</sup> An argument for lay inclusion is that it enhances the public perception that a hearing into judicial misconduct is more impartial; that it is not a case of judges merely policing themselves.

Lay inclusion has however, been questioned. Chief Justice Lamer in particular, believes that lay inclusion is little more than "window-dressing",<sup>184</sup> and that it will not affect the public perception in the rightness or wrongness of the decision. While that may be true on a case-by-case basis, a lay member should create a more general impression that the system is neutral. In itself, this is important.

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<sup>182</sup> Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004, s 29(2).

<sup>183</sup> Lamer, above n 27, 15.

<sup>184</sup> Lamer, above n 27, 16.



An important question in regards to the lay member is whether this will affect the quality of the panel. Judges should expect that a hearing into misconduct is conducted by those most qualified for the task. Those sitting on a panel are required to grapple with the constitutional principles of judicial independence, accountability, and public confidence in the administration of justice.<sup>185</sup> A lay member, who has no expertise in the area, may struggle with this.<sup>186</sup> A better solution in New Zealand may have been to leave the possibility of a lay member open, but not to provide that the presence of a lay member is mandatory.

Until the Act is used, it is not clear whether the measures of public hearings and the inclusion of the lay member will be sufficient to attract public confidence in the complaints procedure. How the Commissioner and the Attorney-General fulfil their roles is likely to have the strongest influence on public confidence. The Commissioner has power over which complaints will proceed to an investigation stage. If the Commissioner is reluctant to pass complaints through the investigation process, the public will not feel that the Act is serving its purpose. Similarly where the Attorney-General exercises the discretion not to initiate steps of removal when the Conduct Panel makes a positive recommendation, this would legitimately cause a loss of public confidence.

### *C Constitutional Implications*

“The Judicial Matters Bill bears upon the balances struck by the New Zealand constitution and the functions of the judiciary in a society based upon law”.<sup>187</sup> How the Act alters the balance between the three branches of Government is a key issue. The central questions are whether the addition of the complaints system transfers power from Parliament to the Executive, and whether this is appropriate.

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<sup>185</sup> Moreau-Berube, above n 14, para 45.

<sup>186</sup> It will be particularly hard for a lay member because the Conduct Panel is not a standing Panel, it will be formed in an ad hoc manner. Therefore the lay member will not gain experience.

<sup>187</sup> Judges of the High Court and Court of Appeal, above n 156, 1.



Before the new complaints system, Parliament had the right to make a motion to remove a judge from office on the grounds of misbehaviour or incapacity. While the Act preserves the motion for removal, the notable difference is that Parliament has lost the right to initiate this motion. In the absence of a report by the Panel, and the agreement of the Attorney-General to initiate removal procedures, Parliament is powerless to act.<sup>188</sup>

With District Court Judges, Parliament is not involved in the removal process. As was the case before the Act, the Governor-General removes a District Court Judge on the recommendation of the Attorney-General. The Government had intended to unify the removal procedures, so that all judges could only be removed after a motion by Parliament.<sup>189</sup> It is not clear why this did not happen.

While Parliament has never actually exercised its right to remove a judge in New Zealand, it clearly feels that the ability to do so is constitutionally important.<sup>190</sup> Judges derive their authority and legitimacy from the support of the people. Therefore Parliament, the people's representative, is the appropriate body to initiate removal. It should remove a judge when it deems that the misconduct of a judge means that the judge has lost the support of the people.

Members of Parliament argue that the Government, through the new complaints system, now has the ability to stop Parliament exercising its constitutional right. It is necessary to analyse how much control Parliament had over the dismissal of a judge, and how much of that ability it has lost.

Did the Government already control the removal of judges through the majority it has traditionally commanded over Parliament? It is likely it did when Parliament comprised only of two parties. Admittedly, this control has weakened with the advent of MMP. It is now not always the case that the

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<sup>188</sup> Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004, s 33(2).

<sup>189</sup> Cabinet Business Committee "Enhancing Public Confidence in the Judiciary" (24 January 2003) 3.

<sup>190</sup> (11 May 2004) 617 NZPD 12803.



Government has a majority in Parliament, and when it does, this is usually in coalition. Had Parliament exercised its right under MMP, its decision might have allowed more cross-party involvement. Therefore Parliament, rather than the Government, would hold the power to initiate and decide on removal.

While Parliament loses the right to initiate the removal of a judge, it does not lose the right to discuss the conduct of a judge. Parliament, as the sovereign body, will always have the right to discuss questions of public importance. How rigorous should the discussion be? By convention, Members of Parliament exercise restraint in discussing a case that is going through the courts so that they do not usurp the judicial function.<sup>191</sup> While the Conduct Panel is not exercising the traditional judicial function, Parliament would nevertheless have to be careful. In discussing an allegation of misconduct, Parliament must not be seen to prejudice the independence of the judicial complaints process.

Parliament is also not losing ability to conduct investigations into the conduct of a judge. Hon Margaret Wilson MP stated, before the passing of the Act, that Parliament could carry out any further investigations it thought necessary.<sup>192</sup> It is anticipated however, that a report by the Conduct Panel will provide Parliament with all the information necessary to make a decision.

Importantly, in the case of High Court Judges and Employment Court Judges, Parliament remains the ultimate arbiter under the Act. If there is a recommendation for removal by the Panel, and the Attorney-General does not veto placing the report before Parliament, Parliament has absolute freedom as to whether it will accept the recommendation. If Parliament was not to accept the recommendation, the public reaction would be interesting. An Australian commentator has suggested that the public would see Parliament's decision as solely motivated by political factors rather than the merits of the case.<sup>193</sup>

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<sup>191</sup> Philip Joseph *Constitutional and Administrative Law in New Zealand* (2ed, Brookers, Wellington, 2001) 293.

<sup>192</sup> Office of the Associate Minister of Justice, above n 119, 4.

<sup>193</sup> Morabito, above n 5, 503.



The greatest concern with the diminished role of Parliament is that the Government now has increased influence over the tenure of judges. The problem is not that the Act provides the Government with an increased ability to dismiss a judge. In fact, the statutory complaints system has lessened the possibility of arbitrary dismissal of a judge. The problem is rather that the Government, through the Attorney-General, now has the ability to stop the dismissal of a judge that it wants to keep in office.

The Act is designed in such a way that the Attorney-General is able to stop the process at several points. Firstly, when the Commissioner recommends that a Panel should be formed, the Attorney-General has the choice as to whether to act on the recommendation.<sup>194</sup> Secondly, when a Panel recommends consideration of removal, the Act provides that the "Attorney-General must determine, at his or her *absolute discretion*, whether to take steps to initiate" the removal of the Judge.<sup>195</sup>

It is possible to characterise the role of the Attorney-General both positively and negatively. Arguably, the involvement of the Attorney-General adds further protection for the Judge against an arbitrary dismissal, because the Attorney-General is an additional person that must agree to the course of action before the judge is dismissed. The Attorney-General is seen as the appropriate person to do this because of the traditional role that the Attorney-General plays as the protector of the judiciary. Taking the alternative view, the involvement of the Attorney-General is negative because it allows the Government to influence how a complaint will proceed. If, for any reason, the Government wants to keep a judge in office, it has the ability to do so.

During debate in the House, Steven Franks MP certainly took the latter view. He claimed, in strong terms, that the Act snookers "the possibility of Parliament taking this out of the hands of an Attorney-General who is colluding

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<sup>194</sup> Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004, s 20.

<sup>195</sup> Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004, s 33.



with the judiciary".<sup>196</sup> He is therefore arguing that the Act allows the Attorney-General to influence the judiciary.

It is interesting that the power we give to the Attorney-General is not modelled on an equivalent provision in New South Wales. Where the Conduct Division in New South Wales finds that consideration of removal is justified, the reports are automatically laid before Parliament.<sup>197</sup> There is clearly no ability for a member of the Executive in Canada to play this role either because the right of Parliament to remove a judge is preserved

The Act should not have provided the Attorney-General with such a pivotal role under the complaints system. An aim of the complaints system is to set down a neutral and independent method of investigating judicial conduct, and the significant inclusion of the Attorney-General in the process is inconsistent with this. The "absolute discretion" that the Attorney-General has after the Conduct Panel has recommended that consideration of removal is justified, is particularly surprising. If the independent panel is intended to play a central role in the decision to remove a judge, a report recommending consideration of removal should always be placed before Parliament. While this does take away the protection of a further layer of agreement, this is necessary for the independence of the decision-making process.

#### *D Success of the Removal Procedure*

As far as possible, the Act has built in protection for any judge that goes through the complaints process. A conscious effort has been made to place judges in an effective position to defend themselves against an allegation of misconduct. Such protection is a strong step towards securing individual independence of the judiciary. Protection for the judge is carefully balanced against the need for the public to feel that there is effective accountability. The established procedure, the open nature of the hearing, and the inclusion of the lay member will all go towards securing public confidence in the process.

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<sup>196</sup> (2 September 2003) 611 NZPD 8313.

<sup>197</sup> Judicial Officers Act 1986 (NSW) s 29(3).



The removal of the right of Parliament to make a motion for removal is not cause for concern. In setting up a statutory removal procedure, it is necessary to take this right away from Parliament. For if Parliament retained the ability to initiate removal, it could side step the complaints procedure entirely. A difficulty with the Act does lie however, in the role that the Attorney-General has been given. While it is quite possible that an Attorney-General will not abuse the role provided under the Act and exert influence over the judiciary, the ability to do so should not be provided.

### *VIII CONCLUSION*

The Government has attempted a formidable task with the Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004. It seeks to harmonise two principles frequently in tension; judicial accountability and independence. The result is a delicate balance.

The Act makes little change to the procedure for minor complaints. It incorporates the informal complaints procedure where the Head of the Bench considers the complaint informally and confidentially. The failure to formalise this system will not attract support from members of the public who call for undiluted accountability. Public confidence should not however be determinative of the success of the procedure. Accountability is not an absolute, it must always be viewed in the wider context of an independent judiciary. The procedure for minor complaints is positive not because of the changes it makes, which are few, but for the balance it preserves. It allows an independent judiciary while at the same time providing an informal check on behaviour.

The major initiative in the Act is the independent investigation process that must precede removal of a judge. The investigation procedure combines protection for the judge with a transparent and comprehensive hearing. Any power to look into the conduct of a judge is carefully dispersed between the Commissioner, the Conduct Panel, and the Attorney-General. The only



problem with the power given under the Act is the ability for the Attorney-General to thwart the investigation process.

The real success of the Act cannot be measured until it is put into practise. Provisions in an Act cannot guarantee that judges will be independent yet accountable. For when power is given to scrutinise the conduct of judges, it can always be manipulated. As far as possible however, the powers in the Act are carefully circumscribed.



## **IX BIBLIOGRAPHY**

### **A Cases**

*Alberta (Provincial Court Judge) v Alberta (Provincial Court Chief Judge)* [1999] ABQB 309, para 130.

*Application under s 83.28 of the Criminal Code, Re* [2004] SCC 42 para 172.

*Daemar v Gilliland* [1979] 2 NZLR 7, 15 McMullin J.

*Ell v Alberta* [2003] SCC 35 para 22.

*Landreville v R (No.2)* [1977] 2 FCR 726 para 25.

*Lippe c Charest* 39 QAC 241 para 61.

*Mackin v New Brunswick (Minister of Justice)* [2002] SCC 13 para 39.

*Moreau-Berube c Nouveau-Brunswick* [2002] SCC 11 para 56.

*Solicitor-General v Radio Avon* [1978] 1 NZLR 225, 231 Richmond P.

*Solicitor-General for New Zealand v Nicholas Rex Smith* (24 March 2004) HC WN CIV 2003 485 1811, 29 Judgment of the Court.

*Taylor v Canada (Attorney-General)* [2003] CarswellNat 2874, para 76.

*Therrien c Quebec* [2001] SCC 35 para 108.

### **B Legislation**

Canadian Judicial Council By-Laws

Constitution Act 1986.

District Courts Act 1947.

Judges Act 1971 (C).

Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004

Judicial Officers Act 1986 (NSW).

Judicial Matters Bill 2003, no 71-1.

Judicial Matters Bill 2004, 71-2(Select Committee Report).



**C**      *Parliamentary Materials*

(2 September 2003) 611 NZPD 8299.

(11 May 2004) 617 NZPD 12794.

Judges of the High Court and Court of Appeal "Submission of the Judges of the High Court and Court of Appeal on the Judicial Matters Bill" 10.

New Zealand Law Society "Submissions on the Judicial Matters Bill" para 16.

**D**      *Government Publications*

Attorney-General "Judicial Matters Bill: Consistency with the New Zealand Bill of Rights Act" (24 July 2003).

McGrath John "Judge M J Beattie: Section 7 District Courts Act 1947" (prepared for the Minister of Justice, 1 September 1997).

Ministry of Justice "Departmental Report on Part One of the Judicial Matters Bill" (17 March 2004).

Ministry of Justice "Response to the Justice and Electoral Committee: Initial Information Request" (5 February 2004).

Ministry of Justice "Response the Justice and Electoral Committee: Second Information Request" (20 February 2004).

Ministry of Justice "Response to the Justice and Electoral Committee: Third Information Request" (15 March 2004).

Ministry of Justice "The Judicial Complaints Process" (2001).

Office of the Associate Minister of Justice "Enhancing Public Confidence in the Judiciary" (23 January 2003).

Palmer, Rt Hon Geoffrey "Judicial Administration Issues" (1 November 2002).

**E**      *Speeches*

Elias, Hon Sian " 'The Next Revisit': Judicial Independence 7 Years On" (Neil Williamson Memorial Lecture, Christchurch, 30 July 2004).

Ernest Schmatt "The Role and Functions of the Judicial Commission of New South Wales" (Judicial Conduct and Ethics Committee Conference, Dublin, 6 May 2000).



Hamilton, Hon Jon "Judicial Independence and Impartiality: Old Principles, New Developments" (South Pacific Judicial Conference, Apia, 28 June 1999).

Kirby, Hon Michael "Judicial Accountability in Australia" (Commonwealth Legal Education Association, Brisbane, 6 October 2001).

Lloyd, Hon John "Judicial Accountability" (The Judicial Conference of Australia, Queensland, 7 November 1998).

Richard, John "Maintaining a Strong Judiciary: The View from Canada" (5<sup>th</sup> Worldwide Common Law Judiciary Conference, Sydney).

#### *F Press Releases*

New Zealand Government "Judicial Matters Bill Passes into Law" (14 May 2004) Press Release.

New Zealand National Party "A Government Gaffe" (3 May 2004) Press Release.

#### *G Texts*

Hogg, Peter *Constitutional Law of Canada* (3ed, Carswell, Toronto, 1992) 121.

Joseph, Philip *Constitutional and Administrative Law in New Zealand* (2ed, Brookers, Wellington, 2001) 293.

#### *H Journals*

McLachlin, Rt Hon Beverley "The Supreme Court and the Public Interest" (2001) 64 Sask L Rev 309.

Morabito, Vince "The *Judicial Officers Act* 1986 (NSW): A Dangerous Precedent of a Model to be Followed?" (1993) 16(2) U NSWLR 481.

Lamer, Antonio "The Rule of Law and Judicial Independence: Protecting Core Values in Times of Change" (1996) U NB L J 3.

Ratushny, Ed "Speaking As Judges: How Far Can They Go?" (1999-2000) National Journal of Constitutional Law 293.

Barry, Leo "Judicial Free Speech and Judicial Discipline: A Trial Judge's Perspective on Judicial Independence" (1996) U NB L J 79.

Scott, Richard "Accountability and Independence" (1996) U NB LJ 27.



Gall, Gerard "Ethical Principles for Judges" (1999) *National Journal of Constitutional Law* 261.

Shetreet, Simon "The Limits of Judicial Accountability: A Hard Look at the Judicial Officers Act 1986" (1987) 10 *U NSWLR* 4.

Bindman, Stephen "Judicial Independence and Accountability" (1996) *U NB LJ* 59.

Sopinka, John "Must a Judge be a Monk—Revisited" (1996) *U NB LJ* 167.

Ewing, K D "A Theory of Democratic Adjudication: Towards a Representative, Accountable and Independent Judiciary" (2000) 38 *Alberta L Rev* 708.

### *I Newspaper Articles*

Donoghue Tim "Judge-sacking law 'unconstitutional'" (19 May 2004) *The Independent* Auckland 4.

Drent Rob "Beattie: A Question of Integrity" (3 August 1997) *Sunday Star Times* Auckland 5.

### *J Canadian Judicial Council Material*

Canadian Judicial Council "2002/2003 Annual Report".

Canadian Judicial Council "Ethical Principles for Judges" (1998) 8 ["Ethical Principles for Judges"].

Canadian Judicial Council "Report of the Bienvenue Inquiry" <<http://www.cjc-ccm.gc.ca/english/inquiries>> (last accessed 25 August 2004).

Canadian Judicial Council "Report of the Canadian Judicial Council concerning Mr Justice Jean-Guy Boilard" <<http://www.cjc-ccm.gc.ca/english/inquiries>> (last accessed 25 August 2004).

Thomas, Jeannie, Executive Director of the Canadian Judicial Council "File Involving Mr Justice MacPherson of the Court of Appeal for Ontario" (25 October 2002, Letter).

### *K Australian Material*

Judicial Commission of New South Wales "Annual Report 2001-2002".

### *L Electronic Materials*

"Judicial Complaints Lay Observer Appointed" (7 March 2001) <<http://www.scoop.co.nz/mason/stories/PA0103/S00090.htm>> (last accessed 29 September 2004).



The International Commission of Jurists "Attacks on Justice 1995"  
<<http://www.law.murdoch.edu.au/icjwa/cijlaust.htm>> (last accessed 6 May  
2004).



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