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Public Confidence and Judicial Function - the New Zealand Experience

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Introduction

The keynote address from the Chief Justice has tackled some of the challenges for judges in Australia in holding the confidence of the public. I have been asked to address you on "the New Zealand experience". It has to be said that there have been better times to share that particular perspective. Indeed, I am reminded of the British cabinet minister lost on the moors who asked a local for directions to London. "If I was going there", the local said, "I wouldn't start from here".

The New Zealand judiciary today faces a number of challenges. Its standing has been unsettled by two or three years of restructuring and reassessment. The pace of change does not show signs of slowing and the further changes still to be implemented or which are foreshadowed, will keep the judiciary and its performance in the public eye. It does not help then that we have a climate of some suspicion about the role of the judiciary. Some of that has come about because of on-going tensions about law and order. In addition, questions about the legitimacy and scope of the judicial function, long raised by business groups and some academics in relation to the claimed "activism" of the New Zealand Court of Appeal, have spread more widely. They have been fuelled in part by political controversy over the creation of the Supreme Court and in part by political fall-out from recent court decisions.

Since the establishment of the Supreme Court has offended most of the opposition political parties and the controversial court decisions have offended almost everybody, the judiciary is feeling a political chill. The convention, now expressed in the Cabinet Manual, that Ministers:

> should not express any views that are likely to be publicised where they could be regarded as reflecting adversely on the impartiality, personal views or ability of any judge

is not consistently adhered to. Talk back hosts and newspaper columnists have long felt no such inhibitions. The Deputy Prime Minister on the occasion of the

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[1] The Rt. Hon. Dame Sian Elias, Chief Justice of New Zealand

150th anniversary sitting of Parliament described a risk to Parliamentary sovereignty through judicial activism, citing a paper I was incautious enough to give two years ago when I thought the topic was of academic curiosity only. The Prime Minister has said in interviews that the Chief Justice cannot comment publicly on matters touching on court resources, because such comment infringes the basic principle that judges must be seen to be above politics.

At the same time, the Law Commission has reported that its investigations disclose widespread dissatisfaction with the court system. It remarks on a "message of alienation and discomfort" which is felt by big business as well as by "ordinary New Zealanders".

In the last year, the government has sought to reassess the process by which complaints against judges are made. In the end, it has not favoured the establishment of a Judicial Commission and has left lesser complaints to be dealt with by an informal voluntary process administered by the head of bench.[2] But now by legislation all such complaints will be vetted for seriousness by a Judicial Conduct Commissioner. If he or she considers the complaint, if substantiated, would not justify removal from office, the complaint will be sent to the head of bench. If it is considered the complaint, if substantiated, could justify removal, the Judicial Conduct Commissioner investigates the matter and if proceedings to initiate removal by Parliamentary address are approved by the Attorney-General, a Judicial Conduct Panel is convened to determine the facts upon which Parliament will be asked to act.

The Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004 sets up procedures which ensure fairness in the investigation and which preserve removal from office as the only sanction against judges. That leaves the constitutional position of the higher judiciary established by the Act of Settlement of 1701 intact. Whether it will satisfy those who would like to see lesser complaints handled by a Commission with the power to discipline judges, remains to be seen.

Also this year, amendments to the Judicature Act and District Court Act have introduced a mechanism for enabling judges who wish to do so to work part-

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[2] For the past five years we have been operating a voluntary process for dealing with complaints about judges which would not warrant removal from office. The procedure has been established by a protocol entered into between the former Chief Justice and the heads of the other benches and the then Attorney-General. Each head of bench deals with complaints against judges in his or her court. As none purports to exercise any disciplinary responsibilities, the mechanism essential is one by which a judge can be assisted to make an appropriate response where a complaint is justified. If a judge failed to offer an appropriate response, it would be open to the head of bench to do so. Where the head of bench declines to accept a complaint, the matter can be referred by the complainant to a Lay Assessor who can ask the head of bench to reconsider the response. After a flurry of complaints initially, matters have now settled down.

time, with their salaries being paid on a pro rata basis. The purpose of the legislation is to encourage diversity in judicial appointments by allowing judges to match their family and work commitments. The system is administered by the head of the particular bench who is directed to take into account the needs of the bench in acceding to any request to work part-time. In practice, I think that the ability of the head of bench to decline such a request may be quite limited. Whether this provision will make judicial careers more attractive to those with child care responsibilities – its apparent principal aim – remains to be seen. It may appeal especially to those who do not need full-time income and who would like to have more leisure. It may add to the complexities of judicial administration and impact adversely upon collegiality. I hope that does not prove to be the case. In addition, the legislation continues a growing tendency to provide in legislation for matters of judicial administration by the head of bench or Chief Justice. We need to be cautious about conferring statutory powers in judicial administration upon Chief Justices and Chief Judges. They are departures from the tradition that such officers have no authority over others other than those consented to by the judges.

Apart from legislative reform, the judiciary has been faced with a restructuring of government responsibilities. The former Department for Courts, established in 1995 in part because of concern about aspects of judicial independence, has been re-absorbed into the Ministry of Justice. The judiciary was not consulted and there was no apparent acknowledgement that issues for judicial independence might arise. We have not been reassured by the continuing failure of the government departments responsible for judicial support to address long-standing concerns about security and confidentiality, including in relation to our immediate support staff and electronic communications. Despite the matter having been raised, no system has been adopted by the Ministry for dealing with requests under the Official Information Act for information acquired by it in the course of providing judicial support. Such information, recently released, was predictably misused without subsequent correction by the Ministry (which was in possession of the facts).

While the present conditions of change may be unusual, the more commonplace cares remain. Recruitment and retention of judges at High Court level is of concern. Perceptions of lagging levels of remuneration are compounded by the replacement of pensions by a scheme of defined superannuation contributions and by the low retirement age of 68. Although the restructuring of the Department has led to some real improvements in management, with corresponding lift in registry performance, proper resources for courts remain out of reach, although a "baseline review" of the funding for courts is now being undertaken in acknowledgement of the problem. The problem is particularly acute in the District Courts, the volume courts of our system. Modern evidence recording, video conferencing and registry staff resources are accepted to be inadequate. We try to encourage the Ministry to

look to comparable jurisdictions, including yours, to prove the worth of proposals and to avoid the delays in homegrown pilots and the development of "business cases," but with little success to date. (I am coming to the view that process is the deadliest form of denial). Security arrangements in most courts in New Zealand are wholly inadequate. The range of weapons extracted in those few courts with scanning equipment and security officers has not led to the provision of resources to make the protection comprehensive. We lack any forward building plan for courts. The Ministry has been aware of the need to develop one for some time. I have been stressing its urgency for the last 5 years. When I checked the present position the day before leaving to come here I was told the Ministry is "working towards developing such a plan". In areas of high population (north of Taupo) courtroom space and judges chambers now impose real constraints.

So we face a number of challenges. We are not helped by the fact that the role of the judiciary in our constitution is not well-understood. Nor is the judiciary well placed to explain its role more widely. In confronting what strategies can be put in place to meet the challenges, this gap in public understanding needs to be addressed.

The New Zealand judiciary

In my remarks I have in mind principally the four courts of general jurisdiction in New Zealand: the District Courts; the High Court; the Court of Appeal; and the Supreme Court. The numbers in each court are restricted by statute although the statutory cap is about to be significantly increased. At present, the District Courts can comprise 122 judges (the number is about to be lifted to 140), but the actual strength of the Court is extended by the systematic and regular appointment of retired judges as Acting Judges. The High Court at present comprises 42 Judges and the Chief Justice and 5 Associate Judges (the office formerly known as Master of the High Court). Acting Judges can be used to cover shortfalls in judicial strength, but such Judges are appointed on the recommendation of the Chief Justice to meet actual need and their use is not as extensive as in the District Court. In the High Court the numbers are about to be increased to a maximum of 55, although there is no suggestion we will need to appoint as many for some time.

In the District Courts, the reforms have removed the statutory cap and replaced it with a mechanism for extension of the number of authorised appointments by Order in Council. The same mechanism had been proposed for the High Court, but was abandoned in the legislative process apparently in recognition of the constitutional significance of the High Court.

Two welcome legislative reforms in the last year have seen tenure obtained by the Associate Judges, as well as a change in their name - and immunities in

judicial work being extended to District Court Judges. Masters were formerly appointed for 5 years terms, an anomaly which we have been keen to see changed since the office was created in 1986, although extensions of the terms at the option of the Master were never in fact a problem.

The Court of Appeal remains a Court of seven judges. It is becoming clear that either the workload of the Court will have to be restructured or the numbers of judges will have to be increased. At present appeals from District Court jury trials are heard by the Court of Appeal, not the High Court. There are proposals to remove such appeals into an appellate division of the High Court, which would provide relief to the Court of Appeal. At present the Court of Appeal is able to sit in divisions which can co-opt two judges of the High Court to sit with one permanent member of the Court of Appeal. In practice, the bulk of the criminal appeals are heard in such divisions. The work has increased substantially in the last year, in part in response to the Privy Council criticism of the former practice of hearing a large proportion of criminal appeals on the papers and in spite of legislative reforms authorising that practice. We had hoped that the Law Commission proposals for the structure of the Courts would have accomplished appellate restructuring. It is clear that there remains much more work to be done. At least the matter is now under active review by the government which appreciates the need to alleviate the pressure on the Court of Appeal. One issue that will need to be addressed is whether the Court of Appeal, now an intermediate appeal court in all matters, will continue to be located in Wellington only.

The Supreme Court is a new, stand-alone Court comprising at present five judges, but with a statutory cap of six. An option could have turned the Court of Appeal into the Supreme Court and provided an intermediate appellate tier as a division of the High Court initially. That could have allowed more flexibility in the judicial resource allocation at intermediate appeal level and resolved some of the problems about location and buildings we still face, but it did not find favour, including with most of the judges. One of the reasons which seems to have influenced the Working Party set up to consider options for replacement of the Privy Council was the view held by some influential lawyers and business groups that fresh faces were required. Another matter that seems to have carried weight was the assumption that the derelict historic building that formerly housed the High Court would make a suitable home for the Supreme Court.

In fact, it became obvious in the rather acrimonious public debate that ensued after the Working Party had come up with its recommendations, that the appointment of judges except on the basis of seniority, would destabilise our institutions and fan fears of political appointments. That was the course eventually followed; the judges appointed to the Supreme Court were the four most senior judges of the Court of Appeal. We continue to live with the consequences of the initial assumption, untested by proper assessment of

functionality, as to whether the old High Court building would properly accommodate the new Court. In the meantime, we are operating out of temporary premises which are perfectly adequate, except for library facilities.

The Court can sit only as a bench of five to hear substantive appeals. Appeals are by leave only. We have the ability to appoint retired Judges of the Court of Appeal who have not reached the age of 75. There are not many judges eligible and conflicts are bound to arise. My expectation is that a sixth appointment will have to be made before too long, if only in anticipation of the retirement of Sir Kenneth Keith in November 2005.

The Judges of the Supreme Court continue to be judges of the High Court, which maintains the formal integration of the higher courts judicature. The Chief Justice is no longer a member of the Court of Appeal, even for formal purposes. The Chief Justice continues however to be "head of the judicature in New Zealand". The legislation setting up the Supreme Court provides for a Chief High Court Judge who is "responsible to the Chief Justice for ensuring the orderly and prompt conduct of the High Court's business".

Perhaps because of the political controversy surrounding the establishment of the Supreme Court, there was no judicial input sought into the assumptions upon which the budget for the Court was set (including its library budget) and the suitability of the premises identified for its permanent housing before decisions were taken. So there was no budget for support of the Chief Judge of the High Court; an assumption that the library required by the Supreme Court would be identical to that provided for the Court of Appeal but scaled down by two judges; no appreciation that the staff of the Chief Justice would have to be housed in the Supreme Court; no apparent understanding that clerks and immediate support staff should be located in close proximity to the judges with whom they work; little appreciation of the desirability of promoting collegiality by the layout and facilities provided to the judges; no adequate assessment of the space required for a working library for the Court; and no insight that an historic jury courtroom might not be the best courtroom to replace the hearing room of the Privy Council.

By the time the views of the judges were sought, Cabinet had already approved a plan for the permanent building which preserved the heritage aspects of the old High Court building at some substantial cost, leaving little flexibility for reconsideration to take account of function. Since consultation with the Judges began, we have tried to work within the constraints. In the latest design we have seen, our clerks will be located at some distance from the judges chambers, the limitations of the courtroom dimensions remain (although it is hoped the bench will be modified and the jury seats removed), our common room will be an internal space lit by a lightwell (all that remains of an initial suggestion by the architect of a small internal garden), and the limitations on the library space would mean that we will need to have access to a research

library off-site. Our rooms meet but do not exceed High Court design guidelines (which are perfectly adequate).

On receiving the modified plan, the government sent the Department off to mediation with the Historic Places Trust, which supported the original design. The result has been further public controversy, with the judges being portrayed in the news media as greedy philistines who want to destroy a heritage building: "Wallies of the week" as we were described in one newspaper.

Well, some of that goes with the territory. I think in New Zealand it is time to take stock and consider where all this is going. In his speeches at the time of the centenary of the High Court of Australia, Chief Justice Gleeson expressed the belief that, despite the controversy that flares up periodically about decisions of the High Court, the public is committed to the Court and believes that, at the end of the day, the Court holds the scales of justice evenly. I am not sure that similar commitment to an independent judiciary can be taken for granted in New Zealand.

Independence

Arguably, by its separate identification of the three elements of government, the New Zealand Constitution Act provides explicit recognition of a constitutional separation of powers in government between the legislative, executive and judicial branches. Our legal system is built upon the independence of the judiciary from the other sources of state power. Such independence ensures that, as Aharon Barak put it recently, "in judging, the Judge is subject to nothing other than the law."[3]

Explaining why judicial independence matters and when it may be at risk is a judicial responsibility even - or perhaps especially – when it is the subject of current debate. Some stoicism is necessary. This is a subject upon which there may be little public sympathy. Judicial protests easily receive the Mandy Rice-Davies response: "Well, they would say that, wouldn't they." Moreover, in countries like ours, judicial independence is unlikely to fall to direct attack. That is why repeating "judicial independence", as though it is some sort of charm against an evil empire, does not strike any immediate chord and is profoundly irritating, but gradual erosion is dangerous for all that, particularly in a country like New Zealand where our constitutional arrangements are so opaque.

When I became Chief Justice, Sir Geoffrey Palmer, who has done more than anyone I can think of in New Zealand to raise public consciousness of the role of the courts in the constitution, urged me to speak about the role of the

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[3] "A Judge on Judging: The Role of a Supreme Court in a Democracy", the foreword to the 2001 Supreme Court year, (2002) Vol.116 Harvard Law Review 16.

judiciary on every possible occasion, because of his concern about the level of understanding about civics in our community. That is what I have tried to do in the last five years in a great number of papers and talks delivered from Winton to Warkworth, to farmers, and justices of the peace, Rotarians, lawyers, and all-comers. Usually the topic is thought to be rather dull. Indeed, that is one of the reasons for a Chief Justice to talk about it – it is safer than talking about legal problems that may arise for determination in Court. But I am not sure that such random attempts achieve much at all. Something more systematic is required.

I have wondered whether an improvement in public interest and understanding may be a consequence of the establishment of the Supreme Court. Our present system has been bewilderingly obscure. It has been instructive to watch the celebration last year of the centenary of the High Court of Australia. The Court is a visible symbol of the place of impartial administration of justice in the Australian constitution. The High Court is visible and accessible, as our final court has never been. In Winton and Warkworth, until the present debate about replacing the Supreme Court got underway, I found that most people were unable to name our final court. They were incredulous to be told that it was located in London and consisted of Lords of Appeal in Ordinary with the occasional retired Lord Justice of Appeal and the odd stray judge from New Zealand or, potentially, the Caribbean.

Why does public understanding of the role of the courts matter? An aspect of the rule of law is accessibility to courts which are independent and impartial. Courts are vulnerable, particularly when obliged to enter into areas of controversy. They cannot avoid such controversies when they are brought for decision in properly constituted litigation. As our recent experience in New Zealand illustrates, they cannot always avoid controversy when significant restructuring of our institutions is current or when government policies impinge on access to the courts or affect their administration.

Further misconception appears in a recent discussion paper on judicial appointments published by the Ministry of Justice which describes judges as "ultimately accountable to Parliament."[4] The paper, after referring to the present system of appointment of judges on the recommendation of the Attorney-General, continues:

> This process has recognised the importance of minimising political interference in the decision-making, while at the same time recognising that ultimately, the judges are responsible to Parliament. Judges themselves are not above the law. They are ultimately accountable to Parliament, which is the highest law making authority under our constitution. The fact that there is so little criticism of the competency

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[4] *Appointing Judges: A Judicial Appointments Commission for New Zealand?* (Ministry of Justice, Wellington, April 2004), 6.

> and integrity of our judiciary is a testament in part at least to the process of appointment.[5]

If that is a reference to the power of removal by the Governor-General on the address of Parliament, it might have said so. Instead, the reference to accountability to Parliament seems gratuitous in context. It reads like a general assertion of Parliamentary authority over judges.

It is even more perplexing in a New Zealand context for it to be suggested that the judges have pretensions of supremacy over the legislature. The work of New Zealand judges has I think been characterised by scrupulousness in attention to statutes and a consciousness of the limits to judicial legitimacy, particularly where legislative facts are required. In New Zealand we have not had experience of the sort of hostility to statutes demonstrated by the English Judges referred to by Lord Devlin who obstructed reforms because of personal hostility to the aims of the legislature:

> They looked for the philosophy behind the Act and what they found was a Victorian Bill of Rights, favouring (subject to the observance of the accepted standards of morality) the liberty of the individual, the freedom of contract, and the sacredness of property, and which was highly suspicious of taxation. If the Act interfered with these notions, the judges tended either to assume that it could not mean what it said to minimise the interference by giving the intrusive words the narrowest possible construction, even to the point of pedantry.[6]

That has not been the New Zealand way. I think we have had a less suspicious, more appreciative, understanding of the role of both legislature and executive in securing good government. It is therefore surprising that so much recent – and vociferous - criticism of the New Zealand judiciary is based upon democratic objections to its function. Such suspicions emerged during the passage of the Supreme Court Act and had an impact on the ultimate form of the legislation setting up the Court.

Constitutional stirrings

The Supreme Court Act 2003 has the declared purpose "to establish within New Zealand a new court of final appeal comprising New Zealand judges." That overall purpose is said in the enactment to be:

1. to recognise that New Zealand is an independent nation with its own history and traditions; and

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5 Ibid.

6 Patrick Arthur Devlin, The Judge (Oxford University Press, 1979) at 15.

2. to enable important legal matters, including legal matters relating to the Treaty of Waitangi, to be resolved with an understanding of New Zealand conditions, history, and traditions; and
3. to improve access to justice.[7]

With those consciously nationalistic objects, the Act ended appeals to the Judicial Committee of the Privy Council from decisions of New Zealand courts. It is clear that the Act is not intended to result in any shift in the constitutional balances between the courts and the legislature. The purpose provision goes on to provide

> Nothing in this Act affects New Zealand's continuing commitment to the rule of law and the sovereignty of Parliament.

This last provision, invoking the duality described by Dicey in his *Introduction to the Law of the Constitution*, is a departure from our traditional reticence to spell out the features of our unwritten constitution. By contrast, the New Zealand Constitution Act 1986 rather flatly makes provision for the legislative, executive and judicial functions without attempting any description of their relationship or scope. It provides simply that the New Zealand Parliament continues to have "full powers to make law for New Zealand."

It is possible that in the use of these terms we are in New Zealand seeing the beginning of an attempt to address and capture in writing some of the fundamental elements of our constitution. That it should be done in the context of setting up a national replacement for the Privy Council suggests however some constitutional stirrings upon which there may be little national consensus.

It is not self-evident that these difficult constitutional matters were engaged in a reform designed to replace the Privy Council with a local final court. That they surfaced as an important issue in the debate indicates a general suspicion of the role of the courts and an uneasiness and uncertainty about the outlines of our constitution which I think need to be addressed. At root, these are questions about legitimacy and the nature of law. They suggest that we cannot assume shared understandings and values in the constitution and about the nature of law. They also suggest an uneasiness about the role of the judiciary and the future directions it may take. This is a much more doubtful start than the contemporary reference in 1903 to the High Court of Australia as the "keystone" in the arch of the constitution.

Since the government has made statements about undertaking constitutional reform, we may need to get our thinking in order shortly. In the meantime, questions of institutional independence of the judiciary are pressing.

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[7] Section 3, Supreme Court Act 2003.

Institutional independence of the judiciary

The New Zealand Constitution Act 1986 makes separate provision for the legislative, executive and judicial branches of government. Although our legal system requires the independence of the judiciary from other sources of State power, in reality, that independence is fragile. Judges have security of tenure and salary but are dependent upon the Ministry for administrative support.

International statements of basic principles for judicial independence adopted both by the United Nations General Assembly and by the Commonwealth recognise that judicial independence has an institutional dimension. The Supreme Court of Canada has held that administrative independence in the organisation of judicial work and the support necessary to achieve it are aspects of judicial independence.[8] Chief Justice Barak of Israel has expressed the view that it is inconsistent with judicial independence for the administration of the judiciary to be through a department of government.[9] In the United States and Canada as well in your jurisdictions, considerable operational autonomy is given to judges.

In the United Kingdom all Law Lords, in response to the government's consultation paper proposing the setting up of the Supreme Court in the United Kingdom, were in agreement that a new Supreme Court "should enjoy corporate independence."[10] The submission makes it clear that the court:

> ……must have its own budget, settled in a manner which protects the court from political pressure. It must have its own Registrar, answerable to the court, its own staff and its own IT facilities. The independence of the Judges requires not only that they be free of extraneous pressure but also that the court be institutionally free of administrative pressure. In Australia, a one-line budget is agreed annually between the High Court's Chief Executive Officer and the Attorney-General and a similar arrangement would be appropriate here.

It is arguable that in New Zealand we are now getting out of step with countries with which we identify closely. Since 1995 we have attempted a middle way, with the courts administered by a separate Department for Courts. In matters of direct judicial support (including support for organisation of judicial work) we have operated in a loose partnership with the Department. In 1997 Sir

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8 *Re Remuneration of Judges of the Provincial Court of Prince Edward Island* [1997] 3 SCR 3, para 118.

9 Supra, n.3 at 54.

10 The Law Lords' response to the Consultation paper on *Constitutional Reform in the UK* (CP.11/03, July 2003), at 2, para 4.

Thomas Eichelbaum pointed out the dangers for judicial independence in our arrangements.[11] He expressed the view that this half-way house would prove to be an intermediate step to judicial control of the administration of the courts.

I have been more reluctant about judicial control of the administration of the courts as a whole. I see the provision of courts as a substantial undertaking of executive government, but I have come to the view that our immediate judicial support does need to be under judicial control because it is inextricably bound up with judicial independence. It is not appropriate for our staff and systems to be part of the Executive.

The problem of principle has been exacerbated in recent times by three circumstances. First, the resumption of responsibility for courts and judicial support by the Ministry of Justice, a large policy department with an interest in matters litigated in the courts. Secondly, by Employment Court indication that the "Crown Prerogative employee" status which we had thought was enjoyed by our staff – making them responsible to the Judges – was not effective to prevent them being employees of the Ministry. Finally, by our dependence in internal communication and judgment writing on technology which is part of the Ministry system and in which our security needs have not been adequately addressed. There is no incentive on the Executive to address concerns like these.

Communication with the public

Sir Thomas Eichelbaum before I became Chief Justice expressed dismay about public understanding of legal issues. He suggested that in New Zealand there was "a paucity of intelligent written analysis of legal topics in terms understandable to a broader audience" such as was available in newspapers in Australia. You may have different views about the record of your own press, but to us as outsiders the picture is not uniformly poor. Serious commentary about legal decisions is to be found. Sir Thomas said:

> "Here it is more likely that any instant reactions critical of a decision or outcome will be published and will become the definitive judgment on the issue."[12]

I do not think there is any reason to believe that rather gloomy verdict should be altered. It became clear that in order to achieve balance it was the judges themselves who would need to take steps to present their point of view. Initiatives taken to provide better information to the public at that time included the provision of an annual report which was hoped to provide an opportunity

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11 The Rt. Hon. Sir Thomas Eichelbaum, "The Inaugural Neil Williamson Memorial Lecture: J*udicial Independence Revisited* [1997] Canterbury Law Review 421.

12 Ibid at 426.

for Heads of Court to speak out on controversial matters. A judicial communications advisor was appointed to act as a channel for information between the media and the judiciary. Courts were opened to television, an attempt to make them more accessible to the public in a way in which we still are ahead of your jurisdictions.

Views today are mixed on the success of the strategy. Some believe that the advent of television and radio broadcasting of court hearings has accentuated the negative – the sad and violent lives of some in our community – fuelling outrage, without assisting in public understanding of the work of the courts. What perhaps the greater accessibility of the electronic media has done, is emphasise that the Courts are the courts of our communities. That is a good thing. Justice should not be seen to be remote and the preserve of lawyers and Judges alone.

Despite the efforts made by Sir Thomas, I do not think the strategies then and subsequently put in place to provide better public information, have been successful. It is not easy to identify what strategies might work better.

We have tried, for example, in the Court of Appeal and High Court, to make judgments more accessible by providing tables of contents and in cases where there is likely to be substantial public interest, by providing summaries of the decisions. We had hoped that, even if the public as a whole would still find reasons for judgment indigestible, the press would be assisted in its task of reporting them. We have posted sentencing decisions and decisions thought to be of public interest on the Ministry of Justice website so that those interested can have access to them immediately the decisions are available. No doubt these initiatives have assisted to some extent, but there is a limit to what can be done if the media and those who comment on decisions do not play their part - and judgments are after all never going to be material many people read for recreation.

We do not fare better in communicating views and information about judicial function and its place in the legal system. The judicial communications advisor responds to media inquiries, which is a great help to us, but does not have the means to pursue a more ambitious strategy of public information, although we are currently reviewing what can be done there. The annual report was expensive to produce. It was difficult to co-ordinate all the different Benches to achieve timely publication. In its hard copy format it was not effective as a means of communicating the views of the Heads of the different jurisdictions on matters of controversy, as Sir Thomas had hoped. The statistical information about work-flows in the courts were published in any event in the Department's annual report.

We decided that we should replace the judicial annual report with a judicial website on which we could place annual reviews as well as the work-flow

information, which could be kept up to date rather than being an end-of-year snapshot. In addition to the material published in the annual report, we thought that the judicial website could be the site for publication of decisions of public interest and the papers produced for public speaking engagements by the Judges. These papers are often significant contributions to legal issues and deserve a wider audience than those who are present to hear them, or the subscribers to the law reviews in which some of the more substantial papers are published. In the past, many of these speeches were published in *the New Zealand Law Journal* as a record. That is no longer the case.

There has been agreement by the Ministry that a judicial website should be established for some years. To date, other priorities in government have delayed the project. Lacking a budget of our own, we have not been able to achieve what seems a modest and sensible strategy to make the work of the courts more accessible and comprehensible.

We need to do very much better. The Working with the Media handbook published by the Judicial Conference of Australia will be extremely helpful to us.

Contact with the jurisdictions in Australia

In the last few years the New Zealand judiciary has been more in the public eye than at any time within my memory. The experience has not been entirely comfortable. There are clear risks for the legal system if we cannot rise to the challenges and hold the confidence of the public for the work we do. At such times, our isolation is itself a challenge. That is why the work of the Judicial Council of Australia is important to us as an example and a reminder of what is at stake at times when we might be tempted to wobble. A few years ago when the Council stood up to defend Michael Kirby, one of our judges sent round an e-mail to say "Three Cheers for the JCA". Three Cheers indeed - and three cheers, too, for Simon Sheller for the great service he has performed in keeping us all up to the mark.

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