

land on which Rich Hill Thoroughbreds Ltd carries on business. The second is as a client of that company in the breeding and selling of horses.

- 5 Part of the land on which the activities of Rich Hill Thoroughbreds Ltd are carried out is jointly owned by Mr Galbraith, Mr John Thompson and Mr Colin Thompson and his wife Irene.¹ Another part of the land is owned by Rich Hill Ltd, a company of which Mr Galbraith and I are the directors and shareholders.² The balance of the land is at present jointly owned by Mr Colin Thompson and his wife, Rich Hill Ltd and Rich Hill Thoroughbreds Ltd.³ That land is presently in the course of subdivision. Following subdivision, the land which adjoins the land owned by Rich Hill Ltd⁴ will be amalgamated with that land. The remainder of the land will be transferred into the names of Mr Colin Thompson and his wife and Rich Hill Thoroughbreds Ltd.
- 6 All payments for the agistment, breeding and selling of horses at Rich Hill Stud are made by the owners of those horses to Rich Hill Thoroughbreds Ltd. That company then pays to Rich Hill Ltd part of the agistment charges for those horses which are being agisted on land owned by Rich Hill Ltd (in the nature of rental for the use of the land). Accordingly, I have no direct involvement in the breeding or selling of horses by Rich Hill Thoroughbreds Ltd; my interest is a passive and indirect involvement in the agistment of horses on the land owned by Rich Hill Ltd, which I jointly own with Mr Galbraith.
- 7 I am involved in the breeding, selling and racing of horses as a member of three partnerships comprising Dame Sian Elias, Mr H A Fletcher, Mr Galbraith and me. Each of these partnerships owns a broodmare and

¹ Exhibit S to Mr Radford's third affidavit.

² Exhibit R to Mr Radford's third affidavit.

³ Exhibit T to Mr Radford's third affidavit.

⁴ As shown in Exhibit U to Mr Radford's third affidavit.

breeds from that mare. Some of these horses are agisted at Rich Hill Stud. The partnerships pay Rich Hill Thoroughbreds Ltd the agistment charges for those horses. If a horse is on the land owned by Rich Hill Ltd, part of the agistment charge for that horse is then paid to that company. Mr Galbraith and I also breed one or two horses a year through Rich Hill Ltd. If these horses are at Rich Hill Stud, the usual agistment charges are paid to Rich Hill Thoroughbreds Ltd and, if the horses are on the Rich Hill Ltd land, part of the payment goes back to that company.

- 8 During my many years of practice as a barrister prior to my being appointed a Judge of the Court of Appeal in December 2006, it was apparent to me that in this country a personal friendship between a Judge and counsel appearing before that Judge was not seen as creating a conflict of interest for the Judge. Nor was a business relationship between Judge and counsel, unless there was some connection between that business and the subject matter of the litigation.
- 9 Accordingly, when I was appointed a Judge, I believed that an appearance by Mr Galbraith in front of me would not result in a conflict of interest for me unless any part of the business of Rich Hill Stud or one of the breeding partnerships would or might be affected by the litigation. I had held the same view when Mr Galbraith and I appeared as counsel for opposing parties, as occurred on numerous occasions, or when one of us appeared as counsel before the other as arbitrator, which occurred less frequently.
- 10 No part of Rich Hill Stud was in any way affected by the litigation between the Saxmere Company Ltd, the Wool Board Disestablishment Company Ltd and others. Nor were the breeding partnerships. Accordingly, I did not see any conflict in my sitting on the appeal when Mr Galbraith was appearing as counsel. I thought however that Mr Radford of Saxmere might have a concern about my association with Mr Galbraith.
- 11 Because I considered that there was no conflict, I thought that it would not be appropriate to make any formal disclosure. In my view, Judges should not sit in proceedings where the law regards them as having a conflict of interest but

it is also important that Judges do not avoid sitting, or be excluded from doing so, because of an alleged conflict which in reality does not exist. The difficulty with making formal disclosure of matters which do not constitute a conflict is that, having made the disclosure, it is in practice very difficult for the Judge to sit if any party objects to his or her doing so.

- 12 Balancing these considerations, I thought that the best approach was for me informally to advise Mr Cooke QC, senior counsel for Saxmere, of my involvement with Mr Galbraith. I therefore telephoned Mr Cooke and told him, in relation to the *Saxmere* appeal, that I wanted him to know that Mr Galbraith and I were close personal friends and that we shared in the ownership of a horse stud. I thought that the reference to ownership of a horse stud was sufficiently broad to encompass both the ownership of land on which the agistment and breeding of horses occurred and my personal involvement in the breeding, selling and racing of horses. My recollection is that Mr Cooke replied that he did not see a problem, but that (quite appropriately) he would have to take instructions and, if there were an objection, he would raise the issue through the Registry of the Court of Appeal. I heard nothing more from Mr Cooke (again, quite appropriately) but recall being advised by the Registrar prior to the hearing that counsel had confirmed that there was no difficulty with my sitting on the appeal.
- 13 I have no recollection of a discussion in terms of the second to last and third to last sentences of paragraph [9] of Mr Cooke's affidavit. I am in no doubt however that I did advise Mr Cooke that Mr Galbraith and I shared in the ownership of a horse stud and that he would therefore have understood that our association was a business one, going beyond the shared ownership of racehorses. I am similarly in no doubt that I would not have suggested to Mr Cooke that he advise his instructing solicitor or his client that the position was other than as advised by me to Mr Cooke.
- 14 It appears to be common ground that I advised Mr Cooke, and that through his instructing solicitor Ms Grey he advised Mr Radford, that Mr Galbraith and I

shared a friendship and racehorse interests.⁵ What is in issue is whether, in Mr Radford's words, I conveyed that we were "sharing a hobby"⁶ or whether I told Mr Cooke that we shared business interests.

- 15 There are several reasons for my belief that I advised Mr Cooke that Mr Galbraith and I shared in the ownership of a business, in the form of a horse stud. First, that is my clear recollection. Secondly, my purpose in calling Mr Cooke was to advise him of my friendship with Mr Galbraith and my involvement with him in business; I would not have misrepresented the nature of that involvement. I have never regarded my interest in Rich Hill Stud as a "hobby". I do not describe it in that way. Thirdly, in an email to Mr Cooke on 4 February this year⁷ Ms Grey referred in the first paragraph to my having advised Mr Cooke prior to the hearing that Mr Galbraith and I "had business interests together". Fourthly, in his letter on behalf of Mr Radford to the Judicial Conduct Commissioner complaining about my conduct, Professor Webb noted that there had prior to the hearing been "some mention of the existence of a common shareholding."⁸
- 16 I note that Mr Cooke, in his letter to Ms Grey dated 15 February this year (but apparently written on 15 July⁹), states in paragraph [4] that he was not aware of the extent of my bloodstock interests with Mr Galbraith "i.e. I did not know of Rich Hill Ltd or of Rich Hill Stud."¹⁰ It is quite correct to say that I did not mention to Mr Cooke the words "Rich Hill". The name of the Stud seemed to me to be irrelevant. Had I been asked, I would readily have given the name. More generally, I thought that if Mr Cooke or Mr Radford wanted more detail about the interests I shared with Mr Galbraith they would have asked.
- 17 In an email which she copied on 18 August this year to the Prime Minister, the Attorney-General and others, Ms Grey alleged that, in the response to the

⁵ See paragraphs 4 and 47 of Mr Radford's third affidavit.

⁶ See paragraph 5 of Mr Radford's third affidavit.

⁷ Exhibit D2 to Mr Radford's second affidavit and Exhibit B to the affidavit of Mr Cooke.

⁸ Exhibit C to Mr Radford's first affidavit.

⁹ See paragraph 19 of the affidavit of Mr Cooke.

¹⁰ Exhibit D to the affidavit of Mr Cooke and Exhibit D5 to Mr Radford's second affidavit.

Commissioner, "Justice Wilson confirmed his conflict".¹¹ Ms Grey repeated this allegation two days later in an email, again copied to the Prime Minister, the Attorney-General and others, in which she asserted that I had signed a letter "confirming [my] conflict".¹² I did no such thing. I did confirm in my response to the Commissioner that, prior to the hearing, I had ensured that Mr Cooke was aware that Mr Galbraith and I shared in the ownership of a horse stud.¹³ I had done so not because I thought that that created a conflict (I did not), but because I thought that Mr Radford might be concerned about the association. In Mr Cooke's words, I was "only raising the matter ... to ensure that there was no perception of unfairness."¹⁴

18 At paragraphs [16] and [20] of his second affidavit, Mr Radford refers to a discussion he had with Mr Gerard Fahey. Because I was surprised at some of the comments attributed to Mr Fahey, I arranged for Mr Radford's account of the discussion to be referred to Mr Fahey. I understand that Mr Fahey disagreed with Mr Radford's account in a number of respects, that he contacted Mr Radford and that they reached agreement as to what had been discussed between them. I assume that the solicitor for the appellants will be advising the Court of the discussions which Mr Radford and Mr Fahey agree they had.

19 I do not know why Mr Radford referred to certain discussions with Mr Keith Sutton.¹⁵ Mr Sutton and his wife are personal friends of my wife and me. I did not however have any knowledge of those discussions with Mr Radford until I read the affidavits for the first time, in the week commencing 24 November.

20 In his undated letter of complaint to the Commissioner,¹⁶ Professor Webb alleged on behalf of Mr Radford in the penultimate paragraph that it appeared

¹¹ Exhibit ZE to Mr Radford's first affidavit.

¹² Exhibit ZI to Mr Radford's first affidavit and Exhibit ZH to his second affidavit.

¹³ Exhibit K to Mr Radford's first affidavit and Exhibit ZI to his second affidavit and Exhibit F to the affidavit of Mr Cooke.

¹⁴ Paragraph 4 of his letter dated 5 February 2008 to Ms Grey – Exhibit C to Mr Cooke's affidavit.

¹⁵ At paragraphs 25 – 33 of his second affidavit.

¹⁶ Exhibit C to Mr Radford's first affidavit and Exhibit G to his second affidavit.

that Mr Galbraith had been instructed as counsel after it was known that I was to be a member of the Court. I regarded this when I read it, and I continue to regard it, as an allegation of actual bias, because there would have been no reason to involve Mr Galbraith at that time unless I could be expected to favour his client. Mr Radford repeated the allegation in the second paragraph of his letter to the Prime Minister dated 4 June this year.¹⁷

- 21 In a letter to the Commissioner on 11 July,¹⁸ Mr Galbraith explained that he was first instructed in March 2006, well before I was appointed a Judge. On 14 August, Mr Radford received a copy of Mr Galbraith's letter from the Commissioner.¹⁹ Mr Radford nevertheless made public, on 8 September, the allegation that Mr Galbraith was retained after the composition of the Court was known.²⁰
- 22 Mr Radford has referred²¹ to the judgment of the Court of Appeal, of which I was a member, in *Muir v Commissioner of Inland Revenue*.²² The *Muir* appeal reinforced my view that I did not have a conflict in the *Saxmere* appeal. The Court found in *Muir* that the Judge was not conflicted even though he had an interest in the same type of business (forestry) and an association with the authors of a report produced to the Court. In contrast, in *Saxmere* the appeal did not involve any connection with my business interests and my association was with counsel.
- 23 At paragraph [13] of his third affidavit, Mr Radford refers to the different approaches which I followed in the *NZ Exchange/BNZ* and *Ngāi Tahu/Central Plains* hearings. The reason for those differences is that in *NZ Exchange I* believed (consistently with my position in *Saxmere*) that I did not have a

¹⁷ Exhibit F to Mr Radford's first affidavit and Exhibit J to his second affidavit.

¹⁸ Exhibit ZB to Mr Radford's first affidavit.

¹⁹ Paragraph 35 of Mr Radford's first affidavit.

²⁰ Near the top of the second page of the article in the *New Zealand Farmers Weekly*, a copy of which is exhibited to the affidavit of Mr Sissons.

²¹ At paragraph 65 of his first affidavit and in Exhibits P and ZG to that affidavit, and in paragraph 69 of his second affidavit and in Exhibits D4, W, ZB and ZF to that affidavit.

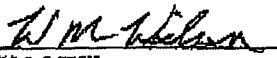
²² [2007] 3 NZLR 495.

conflict but (unlike in *Saxmere*) I was sure that my association with Mr Galbraith would not be of concern to either party. By the time of the *Ngāi Tahu* hearing, Saxmere had sought leave to bring the present appeal. Because I did not know whether leave would be granted and, if so, what the outcome of the appeal would be, it seemed prudent to make formal disclosure.²³ In doing so, I sought to make clear²⁴ that I believed that there was no reason why I should not sit. No party or intervener objected to my doing so.

24 I do not know why Mr Radford referred in his third affidavit²⁵ to my having been a director of Cards NZ Ltd (previously Visa New Zealand Ltd). As Mr Radford recognises, I resigned as a director (and Chairman) of that company when I was appointed a Judge. If it is being alleged that I had a conflict in *NZ Exchange/BNZ* because the Bank was a shareholder in Cards NZ Ltd, along with other New Zealand registered banks, I reject that allegation. For completeness, I should record that, before becoming a director, I had acted as counsel for the Bank in various matters unrelated to the dispute with the Exchange. I had also acted as counsel for other banks. While in practice, I had also advised the Exchange on unrelated matters.

25 It appears to me that Mr Radford's discussion of the position in "Other Jurisdictions" at paragraphs [42] to [46] of his third affidavit constitutes a submission rather than evidence. I therefore do not think it appropriate that I should reply to it.

26 I would welcome the opportunity to confirm on oath the contents of this statement, and to be questioned on them.


W M Wilson
19 December 2008

²³ Exhibit B to Mr Radford's third affidavit.

²⁴ At paragraphs 5 and 6 of Exhibit B to Mr Radford's third affidavit.

²⁵ Paragraph 40 and Exhibit V.