

Background briefing on behalf of Hon. Justice Wilson**24 June 2010**

1. This background briefing is provided on behalf of Hon. Justice Wilson, a Judge of the Supreme Court. He has today issued a judicial review application in the High Court. The purpose of this briefing document is to assist the media to understand the background and reasons for His Honour's actions. As the matter is now before the Court, no further comment from the Judge will be made. Mr Colin Carruthers QC, representing the Judge, will be available for comment. His contact details: crc@crcarruthers.co.nz and 021 666 305, 04 471 4275.
2. The application concerns the decision of the Acting Attorney-General to appoint a Judicial Conduct Panel and the earlier decision of the Judicial Conduct Commissioner to recommend that appointment. The Panel is to inquire into allegations that the Judge misbehaved, when sitting as a Judge of the Court of Appeal in the Saxmere Company case, in a way which warranted consideration of his removal from office.
3. The application seeks a Court order that the Commissioner's recommendation and the Attorney-General's decision to appoint a Panel were not properly made.
4. The primary contention in the application is that there is no legal basis for the appointment of a Panel.
5. By law, a Panel can only be appointed where the conduct complained of may warrant consideration of removal of a Judge. New Zealand's Constitution Act provides for the removal of Judges for "misbehaviour". Precedent requires that there must be serious wrongdoing before removal will be contemplated.
6. In the United States, only seven Federal Court Judges have been removed from office in over 200 years – all for committing serious criminal offences, such as taking bribes, tax evasion and perjury. In the United Kingdom, a judge was removed from office for embezzlement of money held by the Court.
7. The contention in the application now made to the High Court is that the Commissioner has failed to identify or apply the correct test for removal and that, if he had done so, he could not have recommended the appointment of a Panel and the Attorney-General would not have had power to appoint one.
8. As the Judicial Conduct Commissioner noted in his decision, much of the publicity about this matter has been wrong. It has been asserted repeatedly that the Judge had borrowed money from Mr A R Galbraith QC to fund a bloodstock company which they had owned together for over 10 years. The facts are that the Judge borrowed money from his bank. He and his co-shareholder Mr Galbraith each lent money to the company to fund its development. The company owed the Judge \$74,249 less than it owed to Mr Galbraith, as the other shareholder, at 31 March 2007. Neither the Judge nor Mr Galbraith owed the other money. The only indebtedness was to them as shareholders by the company which had sufficient assets to repay the shareholders. At the time the Judge heard the Saxmere case in the Court of Appeal in early April 2007, neither he nor Mr Galbraith were aware of the extent of the difference. Later, when the company's accounts were available to them in July 2007, they did not regard the difference as significant.
9. Mr Galbraith acted as counsel in the Court of Appeal hearing of the Saxmere case, at a time when this funding difference existed. The Supreme Court later held that the circumstances led

to the view that the Judge may not have appeared to be impartial, and therefore, that he should not have sat, with Mr Galbraith appearing before him as one of the three Judges who heard the case in the Court of Appeal. There was no suggestion of any actual bias. The issue was one of appearance.

10. The Supreme Court ruled that the Judge's attempt to disclose the position to Saxmere's lawyers was not adequate. However, the Judicial Conduct Commissioner has found that the Judge's views about what should have been disclosed were formed in good faith and that the issues around disclosure were contestable matters of judgement. There is no question of dishonesty or bad faith.
11. The application made by the Judge to the High Court is by way of judicial review. Given the publicity which has occurred, the Judge has asked his solicitors to make public that the application has been issued, with the following points:
 - (a) first and foremost, a judicial review application is a normal Court proceeding, open to the public, just as is any Court hearing;
 - (b) second, such an application for review is an important constitutional right of any citizen who is affected by the decision-making of a Government official (the High Court has the power on judicial review to ensure that Government officials apply the law correctly);
 - (c) third, the factual matters in the Judicial Conduct Commissioner's report to the Attorney General are not in dispute. The Court is being asked to determine whether those facts can be said to be misbehaviour by the Judge, such that he could be removed from office; and
 - (d) the Judge is not challenging Saxmere's rights in any way.
12. A rehearing of the Saxmere case in front of a different panel of Judges of the Court of Appeal was ordered and is to be held next week.

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