

5 December 2011

Mr David Gascoigne
Office of the Judicial Conduct Commissioner
P.O. Box 2661
WELLINGTON

posted, emailed and faxed to 04 472 6159

RE: Formal complaint against Sian Elias J

Dear Mr Gascoigne,

This is a formal complaint against Supreme Court Chief Justice Sian Elias for judicial misconduct in relation to SC6/2011 Siemer v Heron ("the proceedings").

The alleged judicial misconduct is the public issuance of a factually false and legally misleading judgment and press release. Both were publicly broadcast on or about 8 November 2011.

RELEVANT FACTS

As the Appellant in the proceedings, I applied for leave to appeal to the Supreme Court on 19 January 2011.

By NOTICE OF RESULT OF APPLICATION FOR LEAVE TO APPEAL, the Supreme Court Registrar Gordon Thatcher "certified" that the Supreme Court "delivered a judgment" on the 30th day of March 2011 which stated

"A The application for leave to appeal is granted.

B The ground approved is whether leave of the Court of Appeal was required under s 67 of the Judicature Act for the applicant's appeal against security for costs fixed by order of the High Court or whether appeal was available as of right under s 66 of the Judicature Act."

A copy of that certification, sealed by the Supreme Court of New Zealand, is attached.

There was no subsequent amendment to the approved ground. The appeal along the approved ground was heard in the \$100 million Supreme Court building on 15 September 2011.

By reserved judgment dated 8 November 2011, the five permanent judges of the New Zealand Supreme Court, which included Elias J, issued a judgment which stated –

"The appeal is dismissed"¹

However, any grammar school student reading the judgment can easily determine the appeal was not dismissed. Moreover, I clearly prevailed on the only approved ground. In other words, the appeal was undeniably successful.

¹ SC06/2011 [2011] NZSC 133

As has become customary in the New Zealand Courts, Sian Elias concluded the legal protections did not apply to me, but this was merely a contrarian order of a superfluous nature. It was not an approved issue in the appeal.

Perhaps more worrisome, the judges actually issued a press release with the judgment which stated -

“The Supreme Court has unanimously dismissed the appeal.”

(a copy of this press release dated 8 November 2011 is also attached).

ELIAS CJ HAS A DUTY NOT TO MISLEAD THE PUBLIC IN HER HONOUR'S PUBLIC COURT ROLE

The result of Elias CJ's misconduct is that lawyers and public would naturally conclude after a review of the 30 March 2011 “judgment” granting leave that the Learned Supreme Court judges had declared no right of appeal exists to an order of security for costs by the subsequently issued “dismissal” of the actual appeal, and as further reported in the Judges’ “press release”. This would not only be a false conclusion but a direct contradiction to the factual reality.

It defies logic that Elias CJ would be so inept that her misleading the public as to a legal ruling of New Zealand's highest court was inadvertent.

It is duly noted that issuance of misleading press releases by courts and judges is particularly disdained by international governing bodies such as the United Nations for obvious reasons. What Elias J has done undermines the rule of law and amounts to unfettered State propaganda.

Because Sian Elias CJ is the Head of Bench it would be inappropriate to refer this complaint to the Head of Bench. While you may decide – appropriately, as Commissioner – to recommend convening of a conduct panel given the obvious seriousness of the misconduct, it is suggested that this is a matter which needs to be referred to the Attorney General for action without delay due to Bill of Rights Act and rule of law implications.

This recommendation for urgency in requesting action by the Attorney General is reinforced by the reported facts that you have a greater backlog of judicial misconduct complaints than you receive in a year and have professed under oath to not have an official office due to limited resources, coupled with the unacceptable result of a materially deceptive and legally unsafe judgment remaining on the records for years before you get around to investigating it.

Respectfully submitted,



Vince Siemer
27 Clansman Terrace
Gulf Harbour 0930

enclosure