

Grounds for Removal of Judges Too Limiting - NZ Minister for Justice

The refusal of a judge of the district court to resign despite being invited to do so by the New Zealand Minister for Justice, Mr Doug Graham, has prompted the Minister to suggest that the present grounds for dismissal of a judge are unduly limiting, reports *Law Talk* (No. 485, 15 September) in its lead story.

The issue arose after the refusal of District Court Judge Martin Beattie to resign his office. The judge had faced criminal charges over travel allowance claims but was found not guilty by the jury.

Advice from NZ's Solicitor-General, John McGrath, QC that under present law, the judge could not be prevented from returning to his duties prompted the Minister to state that he was "not satisfied that the grounds for removal are wide enough."

Mr Graham suggested that the issue for determination was whether or not under section 7 of the *District Courts Act* 1947, the judge had been guilty of "misbehaviour". The Minister said that he had directed his officials to investigate whether or not the Act ought to be amended to include as a ground for removal the fact that a district court judge had brought the district court into disrepute.

Mr McGrath said that the statutory context of the power to remove was the constitutional principle of judicial independence and said: "This context, in my opinion, militates against interpreting the word 'misbehaviour' in an expansive way, such as to allow the executive a broad and subjective discretion as to circumstances justifying removal".

In the face of there being no specific process for removal set down in legislation, the Solicitor-General noted that, with no conviction recorded, a tribunal would need to be established to conduct a factual inquiry to establish whether misbehaviour warranting removal from office had occurred.

He suggested that, when considering the behaviour of a district court judge, such a tribunal should include members of the District Court and High Court benches. If a tribunal found that misbehaviour warranting removal from office had occurred, the decision to remove would then be open to the Minister.

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