The New Zealand Judiciary

The recently published 1997 Report of the New Zealand Judiciary *contained a foreward by the Chief Justice, the Right Honourable Sir Thomas Eichelbaum which is reprinted here with his kind permission.*

The 1997 Judicial Annual Report continues the practice of regular public reporting by the Judiciary, and enables the Judiciary to present its perspective, increase public awareness of its role and make an informed contribution to public debate.

In this foreword I have the opportunity, as head of the Judiciary, to express personal views on current issues and future trends. They are not necessarily the views of the Judiciary as a whole, and indeed, in a Judiciary of more than 150 Judges it would not be possible to obtain unanimity on some of the issues discussed.

In last year's Report I referred to controversies involving charges against Judges, and bail decisions. During 1997 two of the three cases where Judges were before the court were resolved. Bail cases continued to be controversial because of understandable public concern when persons on bail commit serious offences.

Following consultation with the Police, the New Zealand Law Society, Crown Solicitors and others to seek ways of improving bail procedures, a Practice Note was issued in June 1997. Its main objectives were to ensure that as much relevant material as possible was before the court when bail applications were dealt with and that, if appropriate, the Police had the opportunity to seek more time to complete their case. It is a requirement of the Practice Note that the Judge's reasons for granting or refusing bail be recorded.

The right to be brought before an independent judicial officer to apply for bail is an important plank in any country's civil rights. This is emphasised by our Bill of Rights, under which persons are entitled to bail unless the Police are able to show good cause for their continued detention. Equally the presumption of innocence is a primary principle of a democratic society. So while the public may often assume the person before the court is a murderer or rapist, in the eyes of the law they are, until proved otherwise innocent persons entitled to their liberty unless there is sufficient case for their continued detention in custody. These principles are fundamental. If any of the critics of bail decisions, or a constituent, relative or friend, were accused of a serious crime, these are the standards by which they would wish the case to be dealt with. They would be justifiably angry if any other basis were adopted.

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Despite all care, in a small percentage of cases persons released on bail will commit a crime of violence while at liberty. Human behaviour being as unpredictable as it is, there will always be such cases. The Practice Note, which will be monitored for any further improvements, will reduce the risk but short of a draconian law forbidding bail altogether, which is unacceptable in a free society, there is simply no way of pre-empting those happenings.

The prosecutions of the District Court Judges have generated sustained public comment. Much of the public debate has focused on the different outcomes for the defendants, Judges Hesketh and Beattie, who were accused of similar charges. At times the debate seemed to lose sight of the fact that while Judge Hesketh pleaded guilty, Judge Beattie was acquitted by a jury after trial. This episode has shown that the Judiciary is not above the law and that the Rule of Law is firmly in place.

The cases have led to calls for changes to the way that Judges are appointed, dismissed and, if necessary, disciplined. While as a way of maintaining public confidence in the judiciary, greater transparency in these processes is to be welcomed, there are dangers in widening the grounds for dismissal of a Judge. New Zealand can take pride in a Judiciary which remains resolutely impartial in the conduct of its duties. To broaden the grounds for dismissing a Judge from office, as has been proposed, could expose Judges to the kinds of pressure that might hinder them from exercising their functions "without fear or favour" as required by their judicial oath.

Nevertheless it is seen by the public that there is a need for a system dealing with complaints against Judges; that is, those not involving allegations of criminal wrongdoing that would be dealt with by the courts. Currently such complaints are handled by the Chief District Court Judge and myself, and we deal conscientiously with the relatively small number received. But from the public's perception, it may be said that the system is not readily accessible; that it is not as systematic as it could be, that it is non-transparent, and that being conducted by the heads of the Judiciary, it is not seen as neutral. There are increasing calls for the establishment of a Judicial Commission, on the model

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existing in some countries overseas. Such a body could be responsible for judicial appointments, complaints against Judges, or both. During the year I discussed the issues publicly in the Neil Williamson Memorial Lecture. I do not propose to repeat my remarks here, save to emphasise my view that appointments and complaints are separate issues, and would best be dealt with by two distinct bodies.

To date the Government has not committed itself to any policy in respect of these suggestions, which will attract differences of opinion both within and outside the Judiciary. They have the potential for far reaching and probably irrevocable changes in the way our Judiciary is regarded, and its composition. It is appropriate therefore that the proposals should be the subject of careful consideration and wide debate, both as to the principles, and the detailed implementation.

In the Williamson lecture I stated that the Judiciary must show a willingness to amend its traditions, philosophies and processes to keep them appropriate to current conditions. Concepts which I flagged for future consideration included a code of judicial conduct, performance evaluations of Judges by their peers and the Bar, and a Courts Charter, informing the public of the delivery they may expect from the judicial system. Although there will be differences of opinion among the Judiciary about my proposals, I am sure Judges will be supportive of my underlying theme, that in the end the strength of the Judiciary as an institution is dependant on maintaining public confidence.

In the search for ways of gathering and strengthening confidence a distinction must be drawn between popularity and respect. The Judiciary is unlikely ever to be popular with the community, and indeed popularity would give concern whether the Judiciary was doing its job. But earned respect is an appropriate goal.

The Judiciary is becoming increasingly involved in participating in public debate, through the media, on issues that concern the administration of justice. This is a welcome development and has been facilitated by the appointment of a communications adviser, employed by the Judiciary and reporting directly to the Heads of Court. There is a necessary partnership between the media and the courts in ensuring that the administration of justice is consistently exposed to the light of public scrutiny. At times there is tension in that relationship, as the courts are concerned with the just and efficient disposal of cases while the media must satisfy the wider interests of their owners and audiences. In the interests of maintaining a healthy balance in the relationship the Judiciary is aware of the need to be prepared to present its perspective in a way that assists public understanding of its role and of how the courts work.

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The quality of a country's Judiciary is dependant on the quality of its personnel, the key point here being to attract the best possible appointees to the bench. That ability in turn is grounded on a number of elements, notably the standards of the law profession, the willingness of leading lawyers to give public service, and the extent to which governments are prepared to underpin Judiciaries with appropriate facilities, conditions of engagement and support services. These contribute to the attraction or otherwise which judicial appointment may hold for potential candidates, and also to the quality of the product which the Judiciary is able to deliver. Like all other state departments the courts have to compete for resources which are not always forthcoming; for example Judges who have urged for many years that the quality of sentencing would be enhanced by a computerised Sentence Information System, and that court hearings would be conducted more effectively and quickly with modern evidence recording, have chafed at the lack of quicker progress on these topics. The quality of the support services and facilities provided has been a concern for the Judiciary for a number years so the continued progress of the change programme initiated by the newly established Department for Courts is of great significance to the Judges. The Department has embarked on an ambitious and far sighted agenda to remodel case processing, move into a modern system of evidence recording, and generally improve court services. These steps will enhance the standards of service which the courts can provide to the public, and their full implementation is essential to the maintaining of both the quality of the Judiciary, and of the public confidence to which I referred earlier.

Chief Justice Eichelbaum concludes his remarks by thanking Judges and court staff for their help and support during a demanding year.