



Briefing for the Public Petitions Committee

Petition Number: [PE01458](#)

Main Petitioner: Peter Cherbi

Subject: Register of Interests for members of Scotland's judiciary

Calls on the Parliament to urge the Scottish Government to create a Register of Pecuniary Interests of Judges Bill (as is currently being considered in New Zealand's Parliament) or amend present legislation to require all members of the Judiciary in Scotland to submit their interests & hospitality received to a publicly available Register of Interests.

The New Zealand Register of Pecuniary Interests of Judges Bill

As indicated in the initial [SPICe briefing](#), the petition appears to be at least partly motivated by the New Zealand [Register of Pecuniary Interests of Judges Bill](#) ("the Bill"), which is a Member's Bill introduced by a member of the New Zealand Green Party (Dr Kennedy Graham) proposing a mandatory register of New Zealand judges' pecuniary interests. In this respect the Public Petitions Committee has asked for more information on this Bill.

Content of the Bill

According to the Bill's general policy statement its purpose is,

"to promote the due administration of justice by requiring judges to make returns of pecuniary interests to provide greater transparency within the judicial system, and to avoid any conflicts of interest in the judicial role."

In this regard the Bill includes, *inter alia*, the following provisions:

- The setting up of a register of pecuniary interests compiled and maintained by the Judicial Conduct Commissioner ("The Registrar") (sections 6(2), 16, 17 and 18).
- A requirement on judges:
 - to make an initial return of their pecuniary interests to the Registrar 90 days after appointment (section 7); and

- to make an annual return to the Registrar of their pecuniary interests (section 8).
- A general obligation on judges to ensure that they fulfil all the obligations imposed by the proposed Act (section 21).
- A description of the information which every return of pecuniary interests must contain (section 9). This includes: company directorships; shareholdings in companies of more than 5% of the voting rights; employment relationships; real estate interests; names/details of debtors and creditors (where the value is greater than NZ \$50,000); details of offices held; details of membership of bodies receiving government funds etc.
- An indication that certain matters do not have to be disclosed (sections 10 and 11) – primarily family debts/property settlements and also short term debts.
- An indication that there is no requirement to disclose the actual value, amount or extent of any asset, payment, interest, gift, contribution or debt (section 14).
- An obligation on the Registrar to:
 - publish on a website and in booklet form the information contained in the returns received from judges and to make it available for inspection at the Registrar’s office (section 19);
 - publish the name of any judge who fails to make a return (section 20); and
 - destroy all returns and information relating to an individual judge when a judge leaves office (section 23).

The definition of “judge” appears to be a wide one and covers various New Zealand judges and also coroners and temporary judges (section 5). The definition of “pecuniary interest” (section 5) is also drafted broadly covering:

“any interest in anything that reasonably gives rise to an expectation of a gain or loss of money for a judge, or their spouse or partner, or child or step-child or foster child or grandchild ... whether or not such an expectation exists in relation to any of those matters in any particular case.”

Status of the Bill

The first reading of the Bill was on 27 June 2012 when a decision was made to refer the Bill to the [Justice and Electoral Committee of the New Zealand Parliament](#) (“the Committee”) for further consideration.¹ The Committee has

¹ See http://www.parliament.nz/en-NZ/PB/Debates/Debates/b/4/a/50HansD_20120627_00000028-Register-of-Pecuniary-Interests-of-Judges.htm and [2](http://www.parliament.nz/en-</p>
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since considered evidence submitted by a number of parties including the New Zealand Bar Association, the New Zealand Law Society, the Judicial Conduct Commissioner and New Zealand's Acting Chief Justice.² According to the Committee's website, it is due to report on its findings by 25 February 2014. Based on information provided by the New Zealand Parliament's Information Service, it appears that once the report is issued, it will be reported to the House of Representatives and a second reading held. From there, a Committee stage will be held before the third reading and, if passed, Royal Assent.

The New Zealand Law Commission ("Law Commission") has also separately considered the issue of a register of pecuniary interests in parallel to the Bill. It published its initial findings in 2011 in an [Issues Paper](#). The [Issues Paper](#) did not take a view on the proposed register, but instead considered the various pros and cons and requested views from interested parties.

The Law Commission subsequently took a view on the proposed register as part of a larger report entitled [Review of the Judicature Act 1908: Towards a New Courts Act](#), which was tabled in the New Zealand Parliament at the end of 2012.³ The report recommended that there was not a need for the establishment of a register of judges' pecuniary interests by statute, concluding that,

"While it could be argued that there is merit in adopting a pre-emptive approach to avoid potential future situations arising, we are not convinced that a register would be effective in revealing actual or even potential conflicts of interest in many cases, and in our view the potential problems it would create outweigh the benefits ... In our view, the best way to deal with potential judicial conflicts of interest is to have clear, robust and well-publicised rules and processes for recusal."⁴

The New Zealand government published a response to the Law Commission's recommendation in April 2013.⁵ In paragraph 36 of this response, the New Zealand Ministry of Justice stated that it agreed with the Law Commission's conclusion that,

"a pecuniary interests register would not deliver sufficient benefit, given the work required to maintain it, and therefore should not be established"⁶

[NZ/PB/Debates/Debates/a/e/4/50HansD_20120627_00000036-Register-of-Pecuniary-Interests-of-Judges.htm](#) for a transcript of the debate. See also <http://inthehouse.co.nz/node/13635> for a video of the debate

² For the written evidence submitted see http://www.parliament.nz/en-NZ/PB/SC/Documents/Evidence/?Custom=00DBHOH_BILL10444_1. See also <http://www.stuff.co.nz/national/politics/7707464/Disclosure-bill-for-judges-challenged> for a brief press article on one of the Committee's hearings

³ See pages 63–74

⁴ See paragraphs 6.56 and 6.58

⁵ See <http://www.justice.govt.nz/publications/global-publications/g/government-response-to-the-law-commissions-report-review-of-the-judicature-act-1908-towards-a-new-courts-act>

⁶ See also paragraph 15 of the [Cabinet Minute on the Government Response to the Law Commission Report: Review of the Judicature Act 1908: Towards a New Court Act](#)

The Ministry of Justice also endorsed the Law Commission's conclusion that the judiciary be statutorily required to produce rules and processes for recusal (i.e. the rules requiring judges to disqualify themselves from dealing with a case if there is a conflict of interest).

On this basis, there appears to be evidence that the current New Zealand government does not currently support the setting up of a register of judges' pecuniary interests and instead wishes to strengthen the rules relating to recusal.

Angus Evans

Senior Research Specialist

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