Petition PE1458 Register of Interests for Scotland's Judiciary

Given the submission from Lord Carloway dated 23 August 2019 has only recently been published, I would like to name a number of observations in this submission to the Justice Committee.

I would observe Lord Carloway does not address important issues raised with the Justice Committee in relation to serving members of Scotland's judiciary holding judicial positions in the UAE and other States with poor Human Rights records.

Noting comments from member John Finnie MSP in relation to this matter, and the facts presented to the Committee in my previous submissions along with media coverage, I recommend members pursue this matter to the fullest extent, given this is a very clear issue where a register of judicial interests would, and should include such service - where members of Scotland's judiciary are swearing judicial oaths in countries condemned by rights organisations for multiple Human Rights abuses.

To address the remaining points in Lord Carloway's letter, the Justice Committee will be aware from previous work and evidence taken by the Public Petitions Committee that former Lord President refused at least two invitations to give evidence to MSPs, and only attended the Petitions Committee on November 2015, some six months after his retirement as Lord President.

Lord Carloway's evidence to the Public Petitions Committee took place on 29 June 2017. I would highlight my previous submission to the Petitions Committee of 4 September 2017 http://www.parliament.scot/S5_PublicPetitionsCommittee/Submissions%202017/PE1458_III_PetitionerSubmission.pdf and media coverage provided to the Petitions Committee in relation to that hearing.

I feel it appropriate to request members of the Justice Committee watch the video coverage of Lord Carloway's evidence of 29 June 2017 to the Public Petitions Committee, and pay particular attention to Lord Carloway's responses to MSP Alex Neil.

I note Lord Carloway states it is unfortunate this issue is being raised by the Justice Committee at a time during which he is seeking to recruit more members of the judiciary.

The statistics of Scotland's judiciary, often difficult to obtain and varying, depending on what the Judicial Office publish, indicate there are currently between 650 - 700 members of the judiciary in Scotland.

A handful of judges, around seven - are already required to declare their interests in the standing register of interests for the Scottish Courts & Tribunal Service Board.

The limited disclosure of the seven judges, and non-judicial members are included in the SCTS Annual report, published each year.

A further limited disclosure of financial shareholdings of SCTS Board members, is available via a Freedom of Information request, which I have submitted to the Justice Committee along with this written submission.
This leaves the bulk of Scotland's judiciary who are not declaring anything, no interests, no financial disclosures, nothing - other than a short biography for a select few judges.

As a result of this petition there is now a Register of Recusals - which has existed since April 2014 and now holds over 180 recusals of members of the judiciary and tribunal members - on varying grounds which in itself, does confirm and bolster the need for a full register of judicial interests.

There are however, problems with the Register of Recusals http://www.scotland-judiciary.org.uk/68/0/Judicial-Recusals- as some recusals are not being made and some are not being listed. Notably, Lord Carloway's explanation to the Public Petitions Committee in regard to unpublished and omitted recusals should be looked at further.

I also ask Committee members to note - there is not one recusal from a Justice of the Peace in the entire Register of Recusals.

Given there are some 450 Justices of the Peace in Scotland, and taking into account the recusal statistics from other branches of the judiciary - from Sheriffs, to Court of Session Senators and Tribunal members, the lack of recusals from JPs are a matter of concern and should be investigated further.

I recommend members of the Justice Committee read my submission of 29 November 2017 to the Public Petitions Committee, which contains important information on the Register of Recusals - http://www.parliament.scot/S5_PublicPetitionsCommittee/Submissions%202017/Pe1458_JJJ.pdf

On a further matter of judicial appointments to which Lord Carloway raises, I would recommend members of the Committee read published revelations in the book "Acid Attack" @acid_book by journalist Russell Findlay @RussellFindlay1

In one example of a judicial appointment, contained in the Acid Attack book, are substantiated references to Lord Carloway's appointment of a full-time sheriff - a year after the Sheriff's troubling conduct in relation to organised crime criminal clients.

I recommend the Justice Committee request evidence from journalist Russell Findlay, who has written extensively on matters related to the judiciary and justice issues in Scotland.

Of further note to the Justice Committee should be Lord Carloway's swift appointment of former Lord Advocate Frank Mulholland - direct from the position of Lord Advocate to the judicial bench, and a position as a Senator of the Court of Session.

Clearly, in anyone's mind - making a top prosecutor a top judge in an instant - creates the possibility of voluminous conflicts of interest - particularly in the instance of Mr Mulholland - who stood with Lord Carloway on the Scottish Government's move to remove the use of "corroboration" from Scots Law - the instance where evidence must be validated by two independent sources. It is of note the Justice
Committee heard evidence from both Lord Carloway & former Lord Advocate Mulholland on this issue, and concluded it should not go ahead.

However, we are now in a situation where Scotland's former top prosecutor is a top judge. Clearly yet another example of why a register of judicial interests for all members of the judiciary - should exist.

I previously provided evidence to the Public Petitions Committee of the instance where, as members will be aware from media coverage - the Lord Advocate's wife - who is also a judge - was scheduled to hear a damages claim involving her husband - the Lord Advocate.

Clearly, a register of judicial interests for all members of the judiciary would help to inform litigants, court users, legal representatives and the public of such clear conflicts of interest, rather than leaving it to the last minute in a court hearing to realise the judge is related to one of those being sued in court.

I also recommend members of the Justice Committee read two fresh reports in relation to the petition's aim of creating a register of judicial interests, and - reports of Scottish judges serving in the UAE - which have been previously commented upon by Committee members prior to publication of these news reports on Scottish Television (STV), here: https://stv.tv/news/politics/1438215-judging-for-ourselves-if-court-rulers-have-conflict-of-interest/ and here https://stv.tv/news/politics/1438211-scots-judges-facing-pressure-to-declare-their-interests/

A 75 second Video report relevant to this petition, and information of interest to the Justice Committee can be found on STV Twitter feed here: https://twitter.com/STVNews/status/1135520783080574977

This petition is now in its eighth year, and has been with the Justice Committee for over a year, after the Public Petitions Committee agreed to support the petition in May 2018 after six years of evidence.

The evidence accumulated by the Public Petitions Committee, and the hard work of MSP members past and present of the Public Petitions Committee is as fresh today as when it was taken during the PPC's extensive deliberations on this petition.

That work, including the evidence of all who gave it, and Public Petitions Committee members efforts to keep this issue alive, in the realisation members of the judiciary should declare their interests, and that there is no valid argument against a register of judicial interests, is to be commended, and therefore should be carried through to the creation of a register of interests for all members of Scotland's judiciary.

A list of evidence accumulated by the Public Petitions can be found on the Public Petitions Committee link here http://www.parliament.scot/gettinginvolved/petitions/registerofjudicialinterests and within the files of the Petitions Committee in relation to copies of media coverage & related issues brought to the attention of it's members.

Evidence gathered by the Public Petitions Committee includes:
Extensive written submissions of evidence (over 62 written submissions) across 25 hearings of the Public Petitions Committee,

Evidence from Cabinet Secretaries,

Evidence from one Lord President and one retired Lord President,

Key evidence from Scotland's first Judicial Complaints Reviewer Moi Ali, and supporting evidence from Judicial Complaints Reviewer Gillian Thompson.

Evidence from law academics,

A full debate which took place in the Scottish Parliament in October 2014 - which concluded with members from all parties supporting the petition,

Multiple media reports on the petition and reports in relation to the judiciary - including undeclared conflicts of interest -

And a clear public interest and public expectation of transparency in court in this petition being brought into legislation to enable court users, the public, legal representatives of litigants, the media and politicians to see that the judiciary is held to the same levels of transparency as all others in public life.

It is now time, after eight years - for the Scottish Parliament to move ahead with this volume of evidence, the vast majority of which supports bringing transparency to the judiciary, and create a register of interests for all members of Scotland's judiciary

Peter Cherbi, Petitioner PE1458

18 November 2019