

Questionnaire 2022 of the 4th Study Commission IAJ-UIM
“Judicial Workplace and Judicial independence”.



Judges Association of New Zealand
TE HUNGA KAIWHAKAWĀ O AOTEAROA

QUESTION : What is the impact on judicial independence of the judicial workplace (including nominations and appointments, independence in decision making, governance, assignments, fund and other resources)? Please provide examples in the judicial workplace that foster judicial independence and identify barriers and practices that impede or negatively impact judicial independence.

The Constitution Act 1986 recognises the three branches of government - the Legislature (Parliament), the Executive (Cabinet and Ministers outside Cabinet, plus government departments), and the Judiciary. Each operates independently of the others. This is known as "the separation of powers".

The independence of the Judiciary in these arrangements exists to ensure impartiality in judicial decision-making and is fundamental to the constitutional balance under the Constitution Act 1986 and to the principle of legality that underlies it. Judges when judging should be subject only to the law. This principle is not unique to New Zealand - it is well recognised in other democratic countries and is also spelt out in international documents such as the Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA Region (19 August 1995); the United Nations Basic Principles on the Independence of the Judiciary (1985), and the International Covenant on Civil and Political Rights (1976).

Independence of the judges is secured by ancient guarantees of security of tenure and salary (s23 and s24 Constitution Act 1986) and by constitutional conventions which prevent the Executive directing the Judiciary. Parliament directs the Judiciary only by legislation. An important constitutional convention in this context is that the Attorney-General acts independently of political considerations in recommending judicial appointments.

Judges also have immunity from being sued in their private capacity in respect of actions taken against them in their role as judges. Judges are protected against removal from office except on the grounds of misbehaviour or incapacity. The removal process may even require an address from the House of Representatives.

Independence does not prevent interaction between the various branches. The Executive may consult the Judiciary on policy and legislative proposals which impact upon the judiciary and the courts. The Judiciary may comment on issues relating to proposed and existing legislation that directly affect the operation of the courts, the independence of the judiciary, the rule of law, or the administration of justice. The [*Terms of Reference*](#) for the Judiciary's Legislation and Law Reform Committee provide

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more information on the relationship between the Judiciary and the Executive and Parliament on law reform matters.

For their part, members of the Executive respect the judicial function. The formal position is set out in the Cabinet Manual which states that:

"the separation of the Executive and the Judiciary under the New Zealand system of government means that Ministers must exercise prudent judgment before commenting on judicial decisions - either generally or in relation to the specifics of an individual case (for example, the sentence). Ministers, following long established principle, do not involve themselves in deciding whether a person should be prosecuted or on what charge. Therefore, they should not express comment on the results of particular cases or on any sentence handed down by a court. Sentencing is a complex process. Ministers must avoid commenting on any sentences within the appeal period and should avoid at all times any comment that could be construed as being intended to influence the courts in subsequent cases. It is, however, proper for Ministers to comment on the effectiveness of the law, or about policies on punishment (that is, on those matters where the Executive has a proper involvement), but not where the performance of the courts is brought into question."

The [*Statement of Principles*](#) (from 2018) sets out the Principles Observed by Judiciary and Ministry of Justice in the Administration of the Courts which documents the responsibilities of the judiciary and Ministry in the operation of the courts

1.1 The constitutional principle of separation of powers requires that the courts be independent of the Executive to ensure impartiality in judicial decisions. As well as requiring freedom from interference in individual judicial decisions, the constitutional principle also depends on institutional independence in organising and managing the work of the courts.

1.2 The legislation under which the courts of New Zealand operate places on the judiciary the responsibility for the orderly and efficient conduct of the business of the courts. One of the purposes of the legislation is to improve the transparency of court arrangements “in a manner consistent with judicial independence”.

1.3 The judiciary is responsible for the work of the courts, but is supported by the Ministry of Justice, a department of the Executive government. The Secretary for Justice (through the Minister for Courts) is accountable to Parliament for the expenditure of the public funds needed to administer justice in the courts.

1.4 The judiciary and the Ministry of Justice therefore share responsibility for delivering justice through the courts. Both have interests in developing and maintaining a system of justice that is just, fair, accessible, modern, and effective, and which delivers timely, impartial, and open justice. The effective and efficient functioning of courts is assisted by the Ministry and the judges maintaining a constructive relationship involving open communication and respect for their respective responsibilities and institutional constraints.

1.5 The purpose of this statement of principles is to recognise the respective separate responsibilities of the judiciary and the Ministry, and responsibilities that are shared between the judiciary and the Ministry.

2. The roles of the Ministry and the judiciary

2.1. The Secretary for Justice, as Chief Executive of the Ministry of Justice, is responsible to the Minister for Courts. The Minister is responsible to Parliament for the proper use of the public resources used to support and run the courts, and for ensuring that sufficient resources are available to provide an

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accessible and effective justice system. The Secretary for Justice is formally responsible under the State Sector Act 1988 for employing staff who support the judiciary, including the Registry staff of the courts. Registrars, Deputy Registrars and other officers may be appointed under the State Sector Act 1988 to support the conduct of the business of each court, but act under judicial direction in doing so.

2.2. The Chief Justice is head of the judiciary in New Zealand and is also ultimately responsible under the Senior Courts Act 2016 for the orderly and efficient conduct of the Senior Courts’ business. The Chief Judge of the District Court is ultimately responsible under the District Court Act 2016 for the orderly and efficient conduct of the business of the District Court. The Chief Judges of the Employment Court, Māori Land Court and Environment Court similarly have statutory responsibilities for the orderly and expeditious discharge of the business of their courts.

2.3. In conducting the business of the courts, it is necessary for the judiciary to engage with the Ministry of Justice on matters of overlapping responsibility, including in the assessment of need and in the provision of facilities and resources to support the courts. Where the engagement is in relation to matters affecting all courts, the Chief Justice and the Secretary for Justice need to lead the engagement. This statement addresses the basis for the necessary engagement to ensure that it does not compromise the constitutional principle of judicial independence and is similarly respectful of the Executive’s different statutory and constitutional responsibilities.

3. Judicial responsibilities

3.1. The judiciary’s responsibilities in relation to conducting the business of the courts include:

- a) the scheduling of sittings of the court, the assignment of judges and judicial officers, and the listing of cases and applications (including those for alternative dispute resolution);
- b) the use to be made of courts and their precincts;
- c) the direction and supervision of Registry staff in relation to the business of the court;
- d) the selection and supervision of immediate judicial support staff such as personal assistants, clerks and other similar staff (subject to paragraph 4.2(d));
- e) the management of staff to support the Chief Justice and heads of bench;
- f) the provision of judicial education and training;
- g) the control and supervision of the use of information technology for the business of the court;
- h) the custody and control of court records, whether or not held electronically, and control over access to them;
- i) measuring court performance.

4. Ministry of Justice responsibility for court support

4.1. The Secretary for Justice is solely responsible for decisions on all matters of expenditure of public money. The Secretary is accountable to the responsible Minister for the financial management, financial performance, and financial sustainability of the department.

4.2. Ministry of Justice responsibilities in relation to the business of the courts include:

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- a) providing the judiciary with support to enable heads of bench to discharge their responsibility for the orderly and efficient conduct of court business, including those responsibilities in paragraph 3 above;
- b) supporting the judiciary in improving access to justice and best practice in the courts;
- c) the provision, maintenance and operation of technology and buildings for the operation of the courts;
- d) discharging its responsibilities with respect to staff in accordance with the State Sector Act 1988;
- e) the maintenance of court registries;
- f) ensuring security and safety in court buildings;
- g) measuring and reporting on the use of the resources for which it is responsible;
- h) supporting the offices of the Chief Justice and the offices of the heads of the other courts to enable them to discharge their responsibilities.