

Arrangement to be followed if legal practitioners have concerns about the conduct of court proceedings

Purpose

The Heads of Bench¹ and the President of the New Zealand Law Society have agreed on an informal process for dealing with concerns raised by members of the profession about conduct in court by judges which is thought to depart from the standards expected under the published guidelines for judicial conduct.

The process applies where a practitioner does not want to invoke the formal complaints process available under the Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004 but is concerned about a pattern of behaviour thought to be inappropriate. Its purpose is to allow such concerns to be advised to the judge through the relevant head of the bench to which the judge belongs on a basis that maintains the confidence of the practitioner or practitioners concerned. The arrangement may be invoked by the President of the Law Society in circumstances where formal investigation and sanction is not sought or is inappropriate because the matter is not of sufficient gravity but there is a perception of departure from expected standards which should be communicated to the judge concerned.

The arrangement is not suitable for allegations of serious misconduct. Such allegations should be referred to the Judicial Conduct Commissioner.

Process for referral of concerns

The New Zealand Law Society will advise practitioners that a concern about the behaviour of a Judge may be brought to the attention of the practitioner's local NZLS Branch President or the Branch President in the area where the conduct occurred, or to the President of the Criminal Bar Association, or to the President or local President of the New Zealand Bar Association.

The local President will consider the information available, taking into account any similar reported behaviour, in deciding whether to pass the information on to the President of the New Zealand Law Society. The local President should encourage any allegation of serious misconduct to be referred to the Judicial Conduct Commissioner. Those concerns not warranting such referral or where the matter is not serious and the practitioner does not wish to make a formal complaint, may be referred to the President of the New Zealand Law Society on a strictly confidential basis.

1 Chief Justice, President of the Court of Appeal, Chief High Court Judge, Chief District Court Judge, Chief Māori Land Court Judge, Chief Employment Court Judge, Principal Environment Court Judge; Principal Family Court Judge, Principal Youth Court Judge, Chief Judge of the Court Martial, Chief Coroner.

Where the President of the New Zealand Law Society considers it appropriate to do, he or she will pass on the concerns to the relevant head of bench. In doing so, the President will describe the behaviour or pattern of behaviour and the effect on the lawyers involved but will not identify the lawyers concerned.

The head of bench will draw the concerns to the attention of the judge and convey any response the judge wishes to make.

Further advice and acknowledgement of effect of arrangement

The parties agree that if the President and the head of bench consider it appropriate to do so the President may after three months advise the head of bench whether there remain concerns.

The arrangement is informal and intended to provide a known and accessible method of communication which has always existed. It does not create or restrict rights or affect the freedom of action of the practitioner or the judge. Because judges are necessarily independent of direction or discipline except under the statutory process of the Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004, a judge is under no obligation to make any response to the information supplied.

The arrangement will be available publicly on the NZLS website.