

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

DECISION OF THE JUDICIAL CONDUCT COMMISSIONER IN RELATION TO COMPLAINTS CONCERNING HIS HONOUR JUSTICE WILSON

Note: *This summary is intended to assist in the understanding of the Commissioner's decision. It is not a part of the decision. The full decision is the only authoritative document. The full text can be found at www.jcc.govt.nz or at www.justice.govt.nz.*

1. This decision is made following three complaints to the Judicial Conduct Commissioner about the conduct of Justice Wilson, now a Judge of the Supreme Court, in relation to the litigation known as the *Saxmere* case.
2. The extent of the inquiries required for a preliminary examination by the Judicial Conduct Commissioner will vary from case to case. In the present case they have necessarily been extensive. Following the preliminary examination, the Judicial Conduct Commissioner is required to take one of three steps:
 - (a) dismiss the complaint;
 - (b) recommend that a Judicial Conduct Panel be appointed; or
 - (c) refer the complaint to the Head of Bench (in this case the Chief Justice).
3. There are three court decisions which are relevant, each involving Saxmere and the Wool Board Disestablishment Co Ltd (Disco). The first case was before the Court of Appeal in 2007, when Justice Wilson was a member of that Court and was one of the Judges who sat on the appeal. Mr A R Galbraith QC was counsel for Disco. He and Justice Wilson were friends and were joint owners of Rich Hill Ltd, a company which owned and operated a horse stud. Prior to the hearing Justice Wilson spoke with Mr F M R Cooke QC, counsel for Saxmere, and made an informal disclosure of his relationship with Mr Galbraith. Mr Cooke's client, Saxmere, decided to raise no objection to Justice Wilson sitting on the appeal.
4. The Court of Appeal's judgment was adverse to Saxmere's interests. Mr Radford, the sole shareholder and director of Saxmere, subsequently discovered more detail of the relationship between the Judge and Mr Galbraith. Saxmere initiated an appeal, claiming that the scale of the business of Rich Hill Ltd was so large that it was inappropriate for the Judge to have sat on the case. Justice Wilson made a written submission to the Court in which he did not supply financial information but did offer to answer any questions on oath.
5. The appeal was dealt with by the Supreme Court in a case here referred to as Supreme Court No. 1. The Court concluded that a fair-minded lay observer would not reasonably have apprehended that the personal and business relationship between the Judge and Counsel might affect the Judge's impartiality. In the course of their judgments the Judges noted that the decision may have been different if Justice Wilson had been indebted or beholden to Counsel.

6. Saxmere then filed an application for the recall of the Supreme Court No.1 decision. The grounds included a claim that Justice Wilson was beholden to Mr Galbraith because of their financial interdependence and mutual obligations. Justice Wilson filed a second statement with the Court, responding to the claims. He described the difference in shareholders' contributions to Rich Hill Ltd by means of a percentage margin and offered to provide accounts on a confidential basis.
7. The Supreme Court issued a minute seeking disclosure of the dollar amount of the differential. The Judge supplied that in a further statement. The Supreme Court No.2 decision then followed. The Court recalled its earlier decision on the ground that an objective lay observer could reasonably consider that, at the relevant time, Justice Wilson was beholden to Mr Galbraith.
8. The Judicial Conduct Commissioner does not generally release publicly a decision or the reasons for it. But the issues involved here have received such widespread – and often inaccurate – publicity that the Commissioner has concluded that the purposes of the Act under which he operates (the Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004) would best be served by making his decision, the background to it and the reasons for it, publicly available.
9. The principal conclusions which the Commissioner has reached are:
 - (a) There is no basis for dismissing the complaints under s.16 of the Act (paragraph 27).
 - (b) The fact that Justice Wilson and Mr Galbraith were personal friends is not, of itself, a disqualifying factor which should have resulted in the Judge's recusal (paragraph 131).
 - (c) If the only subject of complaint had been about the Judge's conduct up to and during the hearing of the case in the Court of Appeal, then it would have been open to the Commissioner to conclude that the appropriate course would be a reference to the Head of Bench (paragraph 133).
 - (d) The position is different, however, when there are added aspects of the complaints, insofar as they relate to the Judge's conduct in the period leading to the delivery of the Supreme Court No.1 decision. The Commissioner notes four points at issue which are central to his consideration (paragraphs 134 (a) to (d)). These raise contestable matters of fact and judgment.
 - (e) He concludes that he is unable to take the issues any further by way of a preliminary examination. On further inquiry, and in the exercise of its judgment, a Judicial Conduct Panel may well form an opinion which is favourable to the Judge, but a different view is possible.
10. On that basis the Commissioner's decision is to recommend to the Attorney General that a Judicial Conduct Panel be appointed under s.18 (1) of the Act, to enquire further into the conduct that is relevant to the complaints.

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