

**PROTOCOL CONTAINING GUIDANCE ON EXTRA-JUDICIAL
EMPLOYMENT AND OFFICES
(SENIOR COURTS, DISTRICT COURT, EMPLOYMENT COURT, ENVIRONMENT
COURT, MAORI LAND COURT)**

The following protocol is published in accordance with s 143(1) of the Senior Courts Act 2016, s 18(1) District Court Act 2016, s 200AB(1) Employment Relations Act 2000, s 250B(1) Resource Management Act 1991, s 7AB(1) Te Ture Whenua Maori Act 1993.

Introduction

- (a) Judges of the Senior Courts must not undertake any other paid employment or hold any other office (whether paid or not) without the approval of the Chief Justice in consultation with the appropriate head of Court¹.
- (b) Judges of the District Court, Employment Court, Environment Court, and Maori Land Court must not undertake any other paid employment or hold any other office (whether paid or not) without the approval of the appropriate head of Court.²
- (c) Such approvals may be given only if the Chief Justice in consultation with the appropriate head of Court or appropriate head of Court is satisfied that undertaking the employment or holding the office is consistent with judicial office.
- (d) Sections 143(1) of the Senior Courts Act 2016, s 18(1) District Court Act 2016, s 200AB(1) Employment Relations Act 2000, s 250B(1) Resource Management Act 1991, s 7AB(1) Te Ture Whenua Maori Act 1993 requires the Chief Justice (in consultation with the appropriate head of Court) to develop and publish a protocol containing guidance on:

¹ s 142 Senior Courts Act 2016.

² s 17 District Court Act 2016, s 200AA Employment Relations Act 2000, s 250A Resource Management Act 1991, s 7AA Te Ture Whenua Maori Act 1993.

- (i) the employment or types of employment that may be undertaken consistent with judicial office; and
 - (ii) the offices or types of office that may be held consistent with judicial office.
- (e) After consultation with the President of the Court of Appeal, Chief High Court Judge, Chief District Court Judge, Chief Judge of the Employment Court, Principal Environment Judge, and Chief Judge of the Maori Land Court, the Chief Justice has developed the following protocol.
- (f) This protocol deals with the matters referred to in sections 143(1) of the Senior Courts Act 2016, s 18(1) District Court Act 2016, s 200AB(1) Employment Relations Act 2000, s 250B(1) Resource Management Act 1991, s 7AB(1) Te Ture Whenua Maori Act 1993 only. Other guidance in relation to judicial conduct is contained in the Guidelines for Judicial Conduct.

1. General provisions

- (a) In this protocol, “Judge” means a Judge of the Supreme Court, Court of Appeal or High Court or an Associate Judge of the High Court, District Court, Employment Court, Environment Court, Maori Land Court and includes:
- (i) A part-time Judge of the Court of Appeal or High Court and a part-time Associate Judge of the High Court, District Court, Employment Court, Environment Court, Maori Land Court and
 - (ii) An acting Judge of the Supreme Court, Court of Appeal or High Court or an acting Associate Judge of the High Court, District Court, Employment Court, Environment Court, Maori Land Court during the period that he or she is acting as a Judge of the relevant Court or as an Associate Judge.
- (b) It is generally not consistent with judicial office for a Judge to undertake employment or hold an office if the amount of time required to carry out the responsibilities of that employment or office, (and the

responsibilities of any other such employment or office) interferes with the Judge's discharge of his or her judicial duties.

- (c) If approval has been given to the undertaking of any employment or the holding of any office but the undertaking of that employment or holding of that office subsequently interferes with the Judge's discharge of his or her judicial duties, the Judge should consult with his or her head of Court and, in consultation with the head of Court, consider resigning from that employment or office or any other employment undertaken or office held by the Judge so as to avoid that outcome.
- (d) The holding of any office by a Judge (such as a member of an inquiry) will not be treated as interfering with the Judge's discharge of his or her duties if arrangements have been made by or with the approval of the head of Court for those duties to be carried out by an acting Judge or Judges or otherwise.
- (e) If approval has been given to the holding of office in an organisation under a provision of this protocol and the organisation becomes involved in contested legal proceedings, the Judge should consult his or her head of Court about the situation. If the Judge is able to resign from the office, he or she should consider doing so in consultation with the head of Court. It may not be possible for the Judge to do so if he or she is named as a party in the proceedings.
- (f) If approval has been given to the holding of an office under a provision of this protocol but any other proviso set out in the relevant provision becomes applicable to the entity, the Judge should consult with his or her head of Court and should, in consultation with the head of Court, consider resigning from the office.
- (g) These provisions qualify all the other provisions of this protocol.

2. Paid employment

- (a) Subject to the exceptions listed below it is generally not consistent with judicial office for a Judge to undertake paid employment of any kind.
- (b) The exceptions are:
 - (i) acting as an editor of a legal publication;
 - (ii) being author of a legal text;
 - (iii) acting as a moderator for the Council of Legal Education;
 - (iv) acting as assessor for a doctoral or masters thesis or similar academic work.
- (c) "Paid employment" means any employment or undertaking of services on the basis that the Judge receives and retains payment for the service provided by him or her.

3. Commercial activities

- (a) It is not consistent with judicial office for a Judge to hold office in a public issuer or other entity that solicits investment from the public.
- (b) It is generally consistent with judicial office for a Judge to hold office (such as a director) in a private company or similar entity owned by the Judge and/or family members and/or friends.

4. Trustee of private trust or executor/trustee of estate

It is generally consistent with judicial office for a Judge to be a trustee of a trust in which the Judge is a beneficiary (such as a personal superannuation scheme) or a family trust associated with the Judge and/or family members and/or friends or to act as an executor or trustee of a deceased estate of a family member or friend.

5. Body corporate committee member

It is generally consistent with judicial office for a Judge to be a member of a body corporate committee for a unit title development that includes a unit owned by the Judge and/or a party associated with the Judge or an analogous body such as the board of a flat-owning company.

6. Arbitration, adjudication and mediation

- (a) It is generally not consistent with judicial office for a Judge to act as arbitrator, adjudicator or mediator.
- (b) The exception is if the Judge is acting as part of his or her judicial role and within the scope of the relevant legislation and/or rules.

7. Extra-judicial bodies exercising disciplinary functions

- (a) It is generally not consistent with judicial office for a Judge to hold an office which requires him or her to exercise disciplinary powers or determine whether a person should be referred to a body which exercises such disciplinary powers or to serve on an extra-judicial body that has either such function.
- (b) The exception is if such service by a Judge is authorised by statute.

8. Service on Government committees and inquiries

- (a) It is not consistent with judicial office for a Judge to accept appointment by Executive Government to any other office or to conduct any inquiry.
- (b) The exceptions are:
 - (i) appointment as member of an inquiry or as a member of a working party or committee where appointment is approved by the Chief Justice; or
 - (ii) participation is authorised by or required by statute.

9. Community involvement

- (a) It is generally consistent with judicial office for a Judge to hold office as a member of a board, committee or sub-committee of a community organisation (“organisation”) provided that:
- (i) The holding of the office is not likely to reflect adversely on the Judge’s impartiality or standing;
 - (ii) Finances of the organisation are not unsound;
 - (iii) The organisation is not conducted for the economic advantage of its members;
 - (iv) The objectives of the organisation do not include political change or promotion of law reform directed at sectional interests;
 - (v) The organisation is not involved in matters of public controversy;
 - (vi) The Judge is not likely to become involved in disputes between the organisation and the government;
 - (vii) The organisation does not undertake public fundraising in circumstances where the prestige of judicial office is used in support of that fundraising or the Judge’s name is used to promote a fundraising appeal;
 - (viii) The organisation is not carrying on a business that is commercial and entrepreneurial in nature;
 - (ix) The responsibilities of the office do not require the Judge to provide legal or investment advice to the organisation;
 - (x) The organisation complies with legislative or regulatory requirements that are binding on it; and

- (xi) The Judge receives no payment for serving in the office other than meeting fees and reimbursement of expenses.
- (b) “Community organisation” means a charitable organisation, religious organisation, civic organisation, cultural organisation, school, pre-school, sports club, social club, law-related institution, body administering the award of scholarships, fellowships or research grants, residents’ association, ratepayers’ association and any similar body, but does not include a university or other tertiary educational institution.

10. Politics

It is generally not consistent with judicial office for a Judge to undertake employment with, or hold office in, any political party or similar body that promotes candidates for public office whether at a national, regional or local level.

Sian Elias

Chief Justice

7 March 2017