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House 10, 618 Maungatautari Road
CAMBRIDGE

18 August 2016

Judicial Conduct Commissioner
filed by email to judicialconduct@jcc.govt.nz

Alleged Judicial Misconduct by Supreme Court Justices Sian Elias, Susan Glazebrook, Mark O'Regan, William Young and Terrence Arnold

Dear Commissioner Ritchie,

By this letter I wish to lodge a formal complaint of judicial misconduct against the above Supreme Court judges. My allegation is they **conspired with one another to convene secretly and off the record with the purpose and effect of exempting themselves from laws passed by the NZ legislature which bind judges and, in so doing, violate their own oaths of office to maintain the rule of law.**

The evidence is a "judgment" they issued: ***Greer v Smith [2015] NZSC196***.

This Greer judgment ("the judgment") declared they have the power – via orders of single judges of their court issued privately in chambers – to prevent public access to Supreme Court of New Zealand public records. And they further ordered in the judgment that such private originating orders are *unappealable*.

It is clear in reading the Judgment that the law it created did not relate to an issue before the Court and, further, that these judges had convened without notice and off the record under cover of a case which had previously been finally determined by them, therefore *functus officio*. That they were acting in a *functus officio* and entirely *ex parte* capacity to change law which binds them is confirmed by the fact that the parties in the case received no notice and were deliberately excluded from any participation.

These judges did not have and do not have the legal power they claimed to exercise. Each must have known they had no such legal power (i.e. jurisdiction) to declare through a secret forum mechanism that they have the power to prevent access to Supreme Court public records by an unappealable private Minute.

Specifically, judges are not legally permitted to convene (as they have done):

1. On their own motion to consider issues *not* before the Court,
2. Without notice or submissions from anyone, to discuss and create new law in an off the record private meeting.

3. With the purpose of violating statutes passed by New Zealand's legislature which bind them, as they clearly did by declaring in the judgment that only laws passed before 1973 pertain to them, thereby unlawfully subverting the *Civil Proceedings Search Rules 1973*, the *Criminal Proceedings (Search of Court Records) Rules 1974*, the *New Zealand Bill of Rights Act 1990*, the *Supreme Court Act 2003* and *The Public Records Act 2005*.

Their actions as described are a violation of Constitutional law – a fundamental doctrine of our democracy.

Because these judges' actions were in multiple breach of their constitutional authority and were designed to insulate themselves from statutes enacted by Parliament which pertain to them, each had to know they were operating outside the law. That all five of them engaged in such unlawful conduct demonstrates a self-evident conspiracy by them. That none of the five refused to participate in this unconstitutional claim to powers they do not have in law provides the prima facie case of the conspiracy.

Until you agree to consider the merits of this complaint I will not waste my time with further submissions on New Zealand's Constitution. Moreover, as a senior lawyer yourself, I would expect you to be vaguely familiar with this separation of powers doctrine central to our democracy and our laws.

I will however advise you as it relates to the alleged conspiracy and hypocritical conduct of these judges that all five judges have lodged submissions to Parliament which repeatedly claim they are accountable as a result of their limited legal authority to only interpret and apply the law in cases before them, as well as by their official judicial function being a "high visibility process". Two examples were their joint submissions opposing the *Judicial Matters Bill* and the *Registry of Pecuniary Interests of Judges Bill*. In each they relied upon Constitutional separation of powers, their consequent subservience to the laws which Parliament enacts and the transparency of their actions as institutional safeguards on their authority and what makes them accountable.

You may be inclined to claim this action is in the course of judicial duties and on this basis outside your jurisdiction because it was a conscious decision by these judges. If you do so, you will force a judicial review. This warning is designed to cause you to properly consider the merits of this complaint and therefore avoid Judicial Review.

Judges of the Supreme Court of New Zealand are not above the law. If you conclude their decision to knowingly violate Constitution Law was a "judicial decision" outside your jurisdiction to officially expose under your governing legislation,¹ you will be guilty of complicity no different than if these judges convened *privately and off the record* to declare Maori are not allowed to be appointed judges or that naturalised citizens are not permitted to vote.

¹ Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004

I implore you to consider the merits of this complaint fully and to decide promptly (with urgency) given the Constitutional issues legitimately raised.

Yours faithfully,

A handwritten signature in black ink, appearing to be 'M. Rabson', written in a cursive style.

Malcolm Rabson