

OFFICE OF THE  
Judicial Conduct Commissioner

**PRIVATE AND CONFIDENTIAL**

**DECISION**

**Date:** 29 September 2021

**The Act**

1. References in this decision to the Act or to sections are, unless otherwise stated, references to the Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004 or to sections of that Act.

**Judges complained about (the Judges)**

2. **Chief District Court Judge Heemi Taumaunu**

**Principal Family Court Judge JJ Moran**

**The Complaints**

3. **Complaint [1]** – This is a matter which I treated as a complaint in accordance with section 12(3) with that course having been advised by me to each of the Judges in my letters to them of 26 August 2021. Copies of those letters are **attached** to this decision. The circumstances arose from media comment on 25 August 2021 about issues in proceedings under the Oranga Tamariki Act 1989 and the Care of Children Act 2004.
4. **Complaint [2]** – This was a complaint by letter of 27 August 2021 in which the Complainant alleged that the Judges:

*“...sought to improperly coerce a presiding judge to treat Crown witnesses more gently in an ongoing court proceeding with both Judges “alleged to have acted in response to an approach by the Crown party to that case”.*

5. This Complainant added:

*“It needs to be stressed the allegations are extremely seriousness [sic]. It appears these Judges not only attempted to unduly influence a part-heard court proceeding, they approached presiding Judge Peter Callinicos at the behest of one party, with the sole purpose of coaxing Judge Callinicos to treat that party’s witnesses better.”*

6. **Complaint [3]** – This Complainant wrote two letters dated 28 August 2021 outlining his separate complaints about each of the Judges. In respect of Judge Taumaunu he said:

*“That he entertained communication from the head of a Crown agency complaining about a District Court judge’s conduct in a case, apparently intended to influence the court’s approach to delivering justice to the parties, and in particular to result in more favourable treatment of Crown witnesses and the Crown. He should have promptly rejected the contact, advising the complaining Crown CEO that it was entirely inappropriate to create even the*

*appearance of judicial susceptibility to such approaches until the trial was over.”*

*“It appears that he compounded his fault by contact with the sitting judge to communicate concerns. Further, again as reported, he was involved in discussion with another Judge about this matter. From what has been reported publicly it appears to me that Judge Taumaunu displayed a poor understanding of his constitutional responsibilities, or cavalier indifference to it. If the facts are as described in the material referenced below, questions must be raised as to his suitability for his judicial role”.*

7. In respect of Judge Moran, Complainant [3] largely repeated the wording of the paragraphs I have quoted from his letter to Judge Taumaunu.
8. In each case, Complainant [3] underscored his concern by reference to a summary taken from a subscription news service and in each case he concluded his complaint by saying:

*“If the reported events have indeed occurred, they assault the basic foundations of our legal and constitutional arrangements, namely the Rule of Law, the Separation of Powers, and the Independence of the Judiciary”.*

9. **Complaint [4]** – This complaint was contained in a letter of 29 August 2021. The essence was:

*“I write to make a complaint about the conduct of Chief District Court Judge Heemi Taumaunu and Principal Family Court Judge Jackie Moran, in attempting to interfere in a case before Judge Callinicos in the Family Court. Since the matter has been the subject of reports in the news media, reports with which you are probably already familiar, I hesitate to weary you by unnecessarily repeating the substance now. My own personal knowledge of the case, indeed, does not extend beyond those reports. It may suffice that I attach herewith copies of the letters which I am sending to Judges Taumaunu and Moran.”*

*“It seems to me that this particular judicial misconduct, as I sincerely hope you will see fit to describe it, is a matter of the greatest public importance. It strikes at the very heart of the administration of justice. If judges are to be influenced and intimidated by private instructions from other judges, and by private representations from influential litigants, there is a complete end to the absolutely fundamental tradition of impartial open justice, administered without fear or favour.”*

10. In the letters which Complainant [4] shared with me, he said to each of the Judges that they had put their own political and cultural agendas ahead of their judicial oath and legal and constitutional obligations and that their “oft-repeated” statements about their obligation to put the interests of children first were obviously hypocritical.
11. Complainant [4] concluded each of his letters to the Judges by saying:

*“In other circumstances I might have assumed that some remaining residue of honour or duty, or even basic decency, would have impelled you to resign, at least when word of your disgraceful conduct became common knowledge. However I can see no reason to suspect that you possess even the shreds of a judicial conscience, and accordingly I am making a formal complaint about your conduct to the Judicial Conduct Commissioner. I shall also forward a copy of this letter to the Attorney-General”.*

12. **Complaint [5]** – this Complainant, in a letter of 2 September 2021 addressed primarily to the Chief Justice and to the Attorney-General, commented on the media coverage. He described the reference to me as a holding complaint and said:

*"I decided rather than make a complaint myself, the issue was of such public important [sic] that the Chief Justice, and/or the Attorney-General, and/or the Law Society, would either alone, or any two or more of them, were more appropriate complainants".*

13. I note that Complainant [5] shared his 2 September 2021 letter with the media and there was reference to it in the Dominion Post of 4 September 2021. My office had responded to Complainant [5] on 3 September 2021 saying that I must deal in the ordinary way with any complaints on the same issue received from other people or with any other matter which may be treated as a complaint in accordance with section 12(3).

14. The Attorney-General is quoted in the Dominion Post article of 4 September 2021 as saying he would not be making a complaint to me though he was aware that a complaint had already been made. The Chief Justice was said to have declined to comment.

15. By email of 22 September 2021, Complainant [5] asked that I proceed to examine his complaint. He added that he understood the New Zealand Law Society Rule of Law Committee was seized of the matter.

### **Section 12(3)**

16. The nature of the media coverage of 25 August 2021 persuaded me of the need to treat the matter as a complaint. As noted in paragraph 3 above, I wrote separately to the Judges on 26 August 2021 advising that I had done so. I said that in taking that step I had been mindful of the functions each of them had in ensuring the orderly conduct of Court business and making directions about and setting standards for best practice and procedure. However, I also advised them that I was required by section 15(1) to conduct a preliminary examination.

17. My reasons for treating that media coverage as a complaint include the perception I have of a growing and wide-ranging concern felt (rightly or wrongly) by parties to proceedings, complainants and others in the community about challenges being faced by women and children in the Court system.

### **Preliminary examination**

18. In accordance with section 11(4), I have dealt with all the complaints together.

19. Section 15(1) requires me to conduct a preliminary examination of each complaint I receive and form an opinion on whether:

- a. there are any grounds for exercising my power under section 15A to take no further action in respect of the complaint; or
- b. there are any grounds for dismissing the complaint under section 16; or
- c. the subject matter of the complaint, if substantiated, could warrant the referral of the complaint to the Head of Bench under section 17; or
- d. the subject matter of the complaint, if substantiated, could warrant consideration of the removal of the Judge from office by way of a recommendation under section 18.

20. Insight into what a preliminary examination may involve is gained from some observations made by Justice Kós in *V R Siemer v Judicial Conduct Commissioner and M Peters [2013] NZHC 1853*. The following passages are quoted from paragraph [11] of his judgment:

*“...the Commissioner’s statutory jurisdiction is a limited one. The Commissioner does not make ‘merit determinations on judicial misconduct’ ...Rather...he operates as a clearing house for complaints.”*

*“Section 15(1) of the Act provides the Commissioner must conduct a preliminary examination. If he forms the opinion that the complaint calls in question the legality or correctness of the judgment, he must dismiss it. If the complaint is about a judicial decision that is subject to a right of appeal, again he must dismiss it.*

*“If the complaint is frivolous, vexatious, not in good faith or about a matter that is trivial, he may dismiss it.”*

*“On the other hand he may form the opinion that there are grounds to refer the complaint to the Head of Bench or to recommend that a Judicial Conduct Panel be appointed by the Attorney-General to inquire into any matter concerning the conduct of a Judge.”*

*“That is as far as the Commissioner’s substantive statutory jurisdiction goes. It follows that any further ‘merit determinations on judicial misconduct’ are ones for the Panel to make. The Commissioner’s role is simply to determine whether there is sufficient basis for the matter to be dealt with by a Panel (although the decision then rests with the Attorney-General) or whether the complaint is better dealt with in another way.”*

21. In accordance with section 15(2) I was able to seek responses from each of the Judges and they have both responded. Their letters (but without any attachments) of 3 September 2021 are **attached** to this decision.
22. It will be noted that Judge Taumaunu has denied any attempt to direct Judge Callinicos in relation to his judicial function or to influence the outcome in relation to the substantive merits of the case. He says his engagement and that of Judge Moran with Judge Callinicos concerned in-court conduct not decision-making.
23. For her part, Judge Moran says complaints about Judge Callinicos’ conduct:

*“...were numerous, they were serious, and they had to be addressed promptly by the Heads of Bench in order to prevent their recurrence and to maintain public confidence in the Court.”*

24. Judge Taumaunu has made reference to the involvement of Justice William Young of the Supreme Court and, in particular, he has noted that Justice Young had substantial input into a letter written by Judge Taumaunu to Judge Callinicos on 20 May 2021.
25. As indicated by Judge Taumaunu, Justice Young has written to me. The letter (dated 3 September 2021) is also **attached** to this decision. It outlines in some detail issues leading to the 20 May 2021 letter.
26. I do not regard it as necessary to analyse the content of Justice Young’s letter in detail. That can, if necessary, be for others but it is appropriate to note the following points:
  - From late April 2021, at the request of the Chief Justice, Justice Young provided advice to the Judges.
  - He regarded the cancellation of a proposed meeting with Sir Wira Gardiner and Judge Callinicos as appropriate but saw no reason why Sir Wira could not relay his concern to the Chief District Court Judge. Nor did Justice Young see anything inappropriate in Judge Moran listening to complaints from Oranga Tamariki and Sir Wira. He regarded the

concern and complaints as relating to the conduct of the business of the Court which is at the heart of the statutory responsibility of Judges Taumaunu and Moran.

- He outlined further advice and assistance he provided in May 2021 and has made the comment that:

*“There seemed to be a pattern of conduct. Those on the receiving end of this conduct considered, understandably, that they had been bullied”.*

- He outlined points he felt were relevant to the Judges engaging with Judge Callinicos. I have particularly noted the points numbered 4-8 on pages 2 and 3 of his letter.
- He referred to section 24(3) of the District Court Act 2016 which provides:

*“(3) The Chief District Court Judge must ensure the orderly and efficient conduct of the court’s business and, for that purpose, may, among other things,—*

- (a) determine the sessions of the court; and*
- (b) assign Judges to those sessions; and*
- (c) assign Judges to particular divisions or jurisdictions; and*
- (d) assign Judges to the hearing of cases and other duties; and*
- (e) determine the places and schedules of sessions for individual Judges (including varying the places and schedules of sessions for Judges from time to time); and*
- (f) manage the workload of individual Judges; and*
- (g) delegate administrative duties to individual Judges; and*
- (h) oversee and promote the professional development, continuing education, and training of Judges; and*
- (i) make directions and set standards for best practice and procedure in the court.”*

- He also referred to section 6(7) of the Family Court Act 1980 which provides:

*“(7) the Principal Family Court Judge is responsible for ensuring the orderly and expeditious discharge of the business of the court in consultation with the Chief District Court Judge.”*

### **Section 15(1)(a)**

27. This is the section which requires me to form an opinion on whether there are grounds for exercising my power under section 15A to take no further action which (in accordance with section 15A(1)) can occur when I am satisfied that further consideration would, in all the circumstances, be unjustified.

28. I am satisfied that none of the factors set out in section 15A(2) have application in this instance. However, I have considered section 15(1)(a) in the context of Justice Young’s point that having decided prompt action was required, it was appropriate for the Judges to approach Judge Callinicos in the way they did i.e. by making it expressly clear that the approach did not bear on his substantive decisions but on his in-court behaviour. The point seems legitimate but the reaction to its application in this instance (where proceedings had not been completed) persuades me against taking no further action.

### Section 15(1)(b)

29. This section requires me to form an opinion on whether there are grounds for dismissing the complaints under section 16. None of the grounds are met. The aspects of section 16 which could be said to have any relevance are considered in the following paragraphs 30-34.

30. **Section 16(1)(a) (jurisdiction)** – a complaint will most commonly be beyond my jurisdiction if it invites me to act contrary to section 8(2) which provides:

*“(2) It is not a function of the Commissioner to challenge or call into question the legality or correctness of any instruction, direction, order, judgment or other decision given or made by a Judge in relation to any legal proceedings”.*

31. While it may be possible to mount an argument that the actions of the Judges could fall within the scope of section 8(2) that is not my opinion. I prefer the view that the complaints relate to issues of conduct.

32. **Section 16(1)(b) (judicial functions or directions)** – in my opinion the complaints have a bearing on judicial functions or judicial duties.

33. **Section 16(1)(c) (sections 12 and 13)** – the requirements of those sections have been met.

34. **Section 16(1)(f) (rights of appeal or judicial reviews)** – I do not see that the decision could, realistically, be subject to judicial review. Section 16(1)(f) does not provide a basis for the dismissal of the complaints.

### Section 15(1)(d)

35. This section requires me to form an opinion on whether the subject matter of the complaints, if substantiated, could warrant consideration of the removal of the Judges from office by way of a recommendation under section 18(1) which provides:

*“(1) The Commissioner may recommend to the Attorney-General that he or she appoint a Judicial Conduct Panel to inquire into any matter or matters concerning the alleged conduct of a Judge if the Commissioner is of the opinion that –*

*(a) an inquiry into the alleged conduct is necessary or justified; and*

*(b) if established, the conduct may warrant consideration of the removal of the Judge.”*

36. I have noted the views of certain of the complainants about whether the Judges should remain in office. My opinion, however, is that a recommendation under section 18 could not be justified in this instance. I have reached that view on my assessment of all of the information available to me. The background provided by the Judges themselves and by Justice Young has been relevant and that includes the provisions of section 24(3) of the District Court Act 2016 and section 6(7) of the Family Court Act 1980.

### Section 15(1)(c)

37. This is the section which requires me to form an opinion on whether the subject matter of a complaint, if substantiated, could warrant referral of the complaint to the Head of Bench under section 17. Having reached my decisions in relation to sections 15A, 16 and 18, section 17 leaves me with no choice but to refer these complaints to the Head of Bench.

38. It must be noted that the section does not require me to refer any specific conduct to the Head of Bench. Rather, it requires me to refer the complaints themselves. That is in keeping with the view of Justice Kós that it is not my role to make merit determinations of Judicial

Conduct but rather to form an opinion on which of the steps in section 15(1) should be taken in relation to the complaints.

### **The Head of Bench**

39. The referral of these complaints to a Head of Bench presents an obvious issue in that I would, ordinarily, be making the referral to the Chief Justice given the status of the Judges about whom the complaints have been made. The complicating factor is the acknowledged involvement of the Chief Justice (and the next most senior Judge, Justice Young) in the background to the matters leading to the complaints.

40. Nevertheless, I believe the referral should be to the Chief Justice. I have confidence that she will ensure that the whole of the circumstances will be subject to appropriate scrutiny not just by her but by the judiciary as a whole so that there is a prospect of these crucial issues of judicial independence being fully understood at all levels. It may be that the Guidelines for Judicial Conduct or other guidance offered to Judges can be reviewed and improvements made to aspects of intervention by Heads of Bench when proceedings have not been completed.



Alan Ritchie  
**Judicial Conduct Commissioner**

OFFICE OF THE  
**Judicial Conduct Commissioner**

26 August 2021

**PRIVATE AND CONFIDENTIAL**

His Honour Judge H M Taumaunu  
Chief District Court Judge  
Chief Judge's Chambers  
DX SX11240  
WELLINGTON

Dear Judge

I am aware of media comment on issues arising from proceedings under the Oranga Tamariki Act 1989 and the Care of Children Act 2004.

I am also aware of a decision issued by Judge Callinicos on 15 July 2021.

In accordance with section 12(3) of the Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004 (the Act), I have decided to treat as a complaint the media comment on your conduct and that of the Principal Family Court Judge.

In taking that step I am mindful of your functions as Head of Bench including ensuring the orderly conduct of court business and making directions about, and setting standards for, best practice and procedure.

However, I am required by section 15(1) of the Act to conduct a preliminary examination and, in accordance with section 15(2), I am seeking your response.

I have written in similar terms to the Principal Family Court Judge.

Yours sincerely



Alan Ritchie  
**Judicial Conduct Commissioner**

OFFICE OF THE  
**Judicial Conduct Commissioner**

26 August 2021

**PRIVATE AND CONFIDENTIAL**

Her Honour Judge Moran  
Principal Family Court Judge  
Chief Judge's Chambers  
DX SX11240  
WELLINGTON 6143

Dear Judge

I am aware of media comment on issues arising from proceedings under the Oranga Tamariki Act 1989 and the Care of Children Act 2004.

I am also aware of a decision issued by Judge Callinicos on 15 July 2021.

In accordance with section 12(3) of the Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004 (the Act), I have decided to treat as a complaint the media comment on your conduct and that of the Chief District Court Judge.

In taking that step I am mindful of functions you may have including ensuring the orderly conduct of court business and making directions about, and setting standards for, best practice and procedure.

However, I am required by section 15(1) of the Act to conduct a preliminary examination and, in accordance with section 15(2), I am seeking your response.

I have written in similar terms to the Chief District Court Judge.

Yours sincerely



Alan Ritchie  
**Judicial Conduct Commissioner**



**CHIEF DISTRICT COURT JUDGE FOR NEW ZEALAND  
TE KAIWHAKAWĀ MATUA O TE KŌTI-Ā-ROHE O AOTEAROA  
Judge Heemi Taumaunu**

3 September 2021

Alan Ritchie  
Judicial Conduct Commissioner  
PO Box 2661  
WELLINGTON  
[judicialconduct@jcc.govt.nz](mailto:judicialconduct@jcc.govt.nz)

Tēnā koe Alan

**Response to complaints regarding Judge Callinicos and recent media correspondence**

Thank you for your letter dated 26 August 2021. In response to recent media commentary you have self-initiated a complaint under section 12(3) of the Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004 against myself and the Principal Family Court Judge. You have also received various other complaints that have been made on a similar basis. This letter should be treated as addressing your self-initiated complaint and the other complaints that are filed with your office.

As I understand it, the media commentary that gives rise to the complaints suggests that:

- a. The Principal Family Court Judge and I have inappropriately communicated with the Acting CEO of Oranga Tamariki, Sir Wira Gardiner, about a case that was part-heard and involved Oranga Tamariki as a party; and
- b. The Principal Family Court Judge and I have breached the Judicial Conduct Guidelines by failing to observe the principle of judicial independence. Some of the media reports suggest that we have attempted to interfere with, or influence, the substantive decision in the case.

**Context**

It will be helpful to place this matter in context. I became involved in concerns about Judge Callinicos' behaviour when the "Mrs P" media concerns were brought to my attention in mid April 2021. By the 29th of April 2021, as a result of discussions with the Principal Family Court Judge, I became aware of other concerns that related to Judge Callinicos in respect of Oranga Tamariki social workers and the Chief Legal Counsel for Oranga Tamariki. Because of the on-going nature of these issues, I raised my concerns with the Chief Justice who asked Justice Willie Young to provide assistance.

I communicated with Judge Callinicos on a number of occasions. I attach a copy of the email correspondence that I have had with Judge Callinicos. You will note that the emails have offered pastoral support and I have also attempted to engage with the Judge on an informal basis. My attempts to engage informally were intended to discuss the behavioural concerns and offer the Judge professional assistance to gain insight and to learn methods to correct the behaviour in future. Those attempts to engage informally have ultimately been rejected by the Judge.

### **Sir Wira Gardiner**

When I was informed by Judge Callinicos on Friday 30 April that Sir Wira Gardiner had arranged to meet him in person on 14 June, I emailed Judge Callinicos and informed that the meeting with Sir Wira had been suspended at my direction. I was concerned about the need to maintain judicial independence, as is noted in my email to Judge Callinicos dated 30 April 2021, at 5.16pm. I considered it appropriate, in the first instance, that I should meet with Sir Wira in my capacity as Head of Bench (instead of Sir Wira meeting with the Judge presiding over the part-heard case), to hear the concerns.

I met with Sir Wira on Monday 3 May but was unable to discuss the issues of concern at that meeting. We subsequently discussed the matter briefly by telephone that afternoon and I then invited Sir Wira to outline the concerns in writing. Sir Wira wrote to me by letter dated 5 May 2021 (copy attached) in which our meeting is incorrectly referred to as being Monday 4 May. The meeting was actually on Monday 3 May 2021.

I should note that:

- a. Oranga Tamariki was entitled to raise concerns regarding judicial conduct with the Principal Family Court Judge; and
- b. Similarly, Oranga Tamariki were entitled to instigate communication with my office; and
- c. There was nothing inappropriate in the receipt of those concerns by the Principal Family Court Judge, or myself, or my actions in clarifying them with Sir Wira.

### **20 May 2021 - Letter to Judge Callinicos**

I then wrote to Judge Callinicos on 20 May 2021 (copy of letter and edited transcript of the "B" case and the "Mrs P" case is attached). Justice Willie Young had substantial input into this letter. It letter outlined in detail the serious concerns that I had referred to in my email to Judge Callinicos dated 30 April 2021 at 3.50pm. Amongst other things, this letter referred to a pattern of concerning behaviour that included reference to the "B" case, and also included reference to the "Mrs P" case and the disproportionate reaction on the part of the Judge towards the Chief Legal Advisor for Oranga Tamariki, Ms Erin Judge and her colleague.

The letter identified that any discussion with the Judge would respect the integrity of the "B" litigation and the Judge's judicial independence. The letter drew the Judge's attention to the guidelines for judicial conduct and stated that discussion would only be directed towards the Judge's conduct in court, and not the substantive merits of the case. The overall context of my letter of 20 May 2021 addresses a pattern of conduct of concern on the part of the Judge which I believed was at a level which had to be addressed, and addressed promptly given that it was apparently not confined solely to the "B" case.

### **Judicial Independence**

As you have noted in your letter, the statutory role of the Chief District Court Judge includes the requirement to ensure the orderly conduct of the business of the court. Part of the role includes dealing with individual judges about behavioural concerns as they arise to the extent considered reasonably appropriate and necessary.

I consider that the Head of Bench has a duty to raise issues of conduct with judges where there is an apparent breach of the Judicial Conduct Guidelines, and that accordingly I had a duty to raise such issues with Judge Callinicos. The Judge appeared to me to have been engaging in a pattern of bullying behaviour. This was apparent on the face of the transcripts of both the "Mrs P" case and the "B" case.

His disproportionate reaction to the actions of the Chief Legal Advisor for Oranga Tamariki, Ms Erin Judge and her colleague also seemed to fit into this category of conduct.

I made it clear to the Judge that I was not wishing to discuss the merits of the part-heard case, but that I had a legitimate interest in addressing the behavioural concerns that had been relayed to me. I also made it clear to the Judge that even though your office was investigating the "Mrs P" complaint, this did not alter or restrict the nature of my statutory obligations, namely to ensure the orderly conduct of the business of the court.

At no stage in relation to the "B" case was there any attempt to direct the Judge in relation to his judicial function or to influence the outcome in relation to the substantive merits of the case. Our engagement with the Judge relevant to the "B" case concerned in-court conduct (not decision-making) that appeared from the transcript unacceptable and contrary to the Judicial Conduct Guidelines.

**Involve ment of Chief Justice and Justice Young**

Subsequently I understand that Judge Callinicos raised these issues with the Chief Justice. I understand that Justice Willie Young intends to write to you separately about this aspect of the matter. I also understand that he intends to inform you that both he and the Chief Justice have been aware of, and fully support, the approach that the Principal Family Court Judge and I have taken in respect of this matter.

Please let me know if you require any further information.

Ngā mihi



Heemi Taumaunu  
Chief District Court Judge



**PRINCIPAL FAMILY COURT JUDGE OF NEW ZEALAND**  
**TE KAIWHAKAWĀ MATUA O TE KŌTI WHĀNAU**  
**Judge Jacquelyn Moran**

3 September 2021

Mr Alan Ritchie  
Judicial Conduct Commissioner  
[judicialconduct@jcc.govt.nz](mailto:judicialconduct@jcc.govt.nz)

Dear Mr Ritchie,

**Complaints regarding communications with Judge Callinicos**

Your letter of 26 August 2021 refers to your decision to treat as a complaint against the Chief District Court Judge and myself, the adverse media comment about our communications with Sir Wira Gardiner, the then Acting CEO of Oranga Tamariki, concerning the conduct of Judge Callinicos in a part heard case to which Oranga Tamariki was a party. You invite my response.

You have subsequently notified me of complaints about the same subject matter made by Mr VR Siemer and Dr Sharpe respectively.

Any judgment about the propriety of our contact with Sir Wira must be formed against the background of the serious allegations of misconduct levelled against the judge.

**BACKGROUND**

**Meeting with Oranga Tamariki on 14 April 2021**

I hold monthly meetings with senior officers of Oranga Tamariki including, in the past, the CEO, Grainne Moss, the Chief Legal Officer, Erin Judge, and the Regional Manager, Alison McDonald. At those meetings difficulties that the Napier Office were experiencing with Judge Callinicos were frequently raised.

At the meeting of 14 April 2021 this subject took a serious turn. It was attended by Sonya Stevens, Acting Chief Legal Officer in the absence of Erin Judge, and Regional Manager Alison McDonald. This time the conduct of Judge Callinicos became a major agenda item. In essence, they alleged abusive and bullying conduct by Judge Callinicos towards the social workers and Oranga Tamariki lawyers in Napier that was extreme. They provided numerous examples of the judge's conduct in Oranga Tamariki cases that the leadership team believed were seriously undermining the confidence of the Napier community and compromising the safety of children and referred particularly to the case of *B* that had recently been adjourned part heard. I was told that the three social worker witnesses were so badly treated by the judge that they were left feeling mocked and beaten to the extent

that psychological support had to be organised for them. One of them, who was pregnant, was later certified by her doctor as unfit for work.

#### The case of *P*

You are familiar with this litigation although not, perhaps, with the way in which Judge Callinicos treated Mrs *P* as a witness in the initial hearing in the Family Court. The allegations of bullying conduct in the case of *B* mirrored that complained of by Mrs *P* and showed that this sort of conduct on the part of the judge was ongoing. It needed to be confronted and quickly. I understand that an excerpt from the NOE in *P* will be included in the Chief Judge's response.

#### Erin Judge:

Miss Judge was, until going on secondment in or about March 2021, the Chief Legal Officer for Oranga Tamariki.

During the Covid-19 lockdown in 2020 I had regular communication with senior members of the profession, including Ms Judge, as the Covid environment necessitated processes and protocols being developed to deal with situations as they arose. On 29 April 2020 Ms Judge emailed me because their local lawyer, Ms Ciochetto had been told by the Family Court registry that Judge Callinicos required in-person attendances for two Oranga Tamariki matters the following day.

Ms Judge sought to clarify a policy matter regarding personal attendances in all cases in the Napier Family Court and I saw nothing wrong with that. I contacted Judge Callinicos who was unaware of the advice that had been given and took no issue with remote participation because it was in accordance with the national policy. I informed Ms Judge accordingly. I understood the matter was at an end.

What transpired is detailed in the Chief Judge's letter of 20 May 2021 to Judge Callinicos. In short, in a judgment of 1 May 2020, which did not involve Ms Judge, Judge Callinicos was harshly critical of her actions and those of Ms Ciochetto. Neither lawyer was put on notice or had an opportunity to be heard. The judge directed that they were to provide him with a letter of apology but not an explanation. He directed that a copy of the judgment be sent to me.

I was not surprised when, on 5 June 2020, Ms Judge wrote to me and provided an explanation for her actions. In her comprehensive letter she alleged inappropriate, threatening and unprofessional conduct by Judge Callinicos towards Oranga Tamariki staff in the Napier office. I discussed this letter with Ms Judge and mistakenly believed that she consented to its being referred to Judge Callinicos. She did not. The letter was marked confidential and was in the nature of a serious complaint. I should have treated it as such.

Judge Callinicos's response to receiving this communication was to file a complaint with the Standards Committee of the New Zealand Law Society. I was startled by this action which I saw as entirely disproportionate to what had occurred. The complaint was actively pursued by the judge for over a year, and I understand that both lawyers have been the subject of adverse findings. This is despite a letter I wrote in support of Ms Judge earlier this year.

Relevance:

The point that I endeavour to make from this background is that the complaints about the Judge's conduct were numerous, they were serious, and they had to be addressed promptly by the Heads of Bench in order to prevent their recurrence and to maintain public confidence in the court.

But what of Sir Wira's intervention in a part heard case?

SIR WIRA GARDINER:

On 20 April 2021 an invitation was extended to me from the office of Sir Wira Gardiner to meet him for lunch.

The meeting took place on 27 April 2021. It soon became clear that the primary purpose of the meeting was for Sir Wira to speak to me about the serious concerns that existed in the Napier office of Oranga Tamariki over the conduct of the resident Family Court Judge, Peter Callinicos.

Sir Wira first detailed concerns of a general nature. He said that, for a long time, Oranga Tamariki had experienced difficulty in recruiting and retaining lawyers and social workers in the Napier office which was attributed solely to the manner in which Judge Callinicos treated them in court. He referred me to a number of examples including minutes issued by the judge which were highly critical, not only of aspects of social work practice, but which amounted to personal attacks on the social workers.

Sir Wira then went on to speak of a case where the social workers had been bullied by the judge during their evidence and had to get professional support. He did not identify the case, but it sounded like the one mentioned in the meeting of 14 April. He did not mention that it had been adjourned part-heard and I quite overlooked the fact that I had been told this on 14 April.

Sir Wira was clear that the situation was so serious that he had no option but to take steps to protect his social workers from further harm. He spoke of going to the media if necessary but that this, from his perspective, was a last resort. He suggested that he travel to Napier and have a discussion with Judge Callinicos "over a cup of tea" and, in so doing, try to identify and address the issues that were clearly concerning him regarding the operation of the Napier office so that everyone could move forward. I agreed.

Immediately upon returning to Chambers I looked out my minute of the 14 April meeting to confirm that the case of which Sir Wira spoke was indeed the case mentioned at that meeting. It was. My minute reminded me that the case had been adjourned part heard.

I spoke to the Chief Judge, and we agreed that it was not appropriate for Sir Wira to discuss that case with the judge and he directed that the meeting should be suspended.

## JUSTIFICATION

I reject the charge that I have acted improperly. As heads of the Family Court Bench the Chief Judge and I are responsible to the public for the conduct of the business of the Court and thus the behaviour of our judges. On the material available to us, it appeared that Judge Callinicos had been guilty of misconduct in his judicial capacity. We were required to deal with this appropriately and quickly. We assumed that we could do so in a comparatively informal way, discussing the behaviour with the judge and putting in place arrangements to ensure that it was not repeated. As it turned out, this assumption was wrong.

Please let me know if there is anything further you would like from me.

Yours sincerely,

A handwritten signature in black ink, appearing to read "JJ Moran".

J.J. MORAN  
Principal Family Court Judge



## Supreme Court of New Zealand | Te Kōti Mana Nui o Aotearoa

The Honourable Justice William Young KNZM | Te Hōnore Kaiwhakawā Mātāmua William Young KNZM

3 September 2021

Mr Alan Ritchie  
Judicial Conduct Commissioner  
[judicialconduct@jcc.govt.nz](mailto:judicialconduct@jcc.govt.nz)

Dear Mr Ritchie

### **Chief District Court Judge Taumaunu and Principal Family Court Judge Moran**

I have been informed of the complaints processes now underway in respect of the Chief District Court Judge and the Principal Family Court Judge. I have suggested to them that I should write to you directly about my involvement in the events leading up to the current complaints. I assume that you are interested primarily in the letter of 20 May 2021 from the Chief District Court Judge to Judge Callinicos and the communications that led up to that letter and these are the focus of this letter. I will, however, touch briefly on subsequent events.

From late April, I have, at the request of the Chief Justice, provided advice and assistance to the Chief District Court Judge and the Principal Family Court Judge about the Mrs P case and, as they emerged, other issues in relation to Judge Callinicos arising out of (a) Sir Wira Gardiner's concerns and (b) the complaints the Judge had made to the Law Society about the Oranga Tamariki lawyers. The Chief Justice asked me to become involved because of the potential complexity of the situation.

I saw a draft of the Chief District Court Judge's 3.50 pm email of 30 April to Judge Callinicos and indicated to him that I thought it was appropriate.

I was aware of the proposed meeting between Sir Wira Gardiner and Judge Callinicos and that it either was to be, or had, been cancelled. This cancellation was appropriate. It would have been wrong for Sir Wira and Judge Callinicos to meet in the manner proposed in relation to a part-heard case. On the other hand, I saw no reason why Sir Wira could not relay his concerns to the Chief District Court Judge. Any litigant is entitled to take concerns about the conduct of a judge to that judge's head of bench; this on the basis that the head of bench can be expected to deal with those concerns appropriately. And likewise, there was nothing inappropriate in the Principal Family Court listening to complaints from Oranga Tamariki and Sir Wira. Those concerns and complaints related to the conduct of the business of the Court which is at the heart of their statutory responsibilities. It would also have been appropriate for Oranga Tamariki/Sir Wira Gardiner to have complained direct to you, if they wished to do so. That this is so is, I think, apparent from s 14(6) of your Act which I take to address (possibly amongst other situations) complaints made about part-

heard proceedings. As it recognises, in the case of such a complaint, there will be a judgment call as to whether it should be taken up immediately with the Judge.

In May I provided further advice and assistance. This followed the emails of Judge Callinicos of 3 May in which he made it clear that he would not meet the Chief District Court Judge and Principal Family Court Judge. In relation to the Mrs P case, he considered that their roles should be treated as displaced or suspended by the complaint to you about the case. As to the B case, he considered that discussion would be inappropriate because the case was part-heard.

I have gone through the transcripts of the Mrs P and B cases. I considered that the conduct of Judge Callinicos had been inconsistent with appropriate standards of judicial conduct as currently provided for in clauses 31 – 34 of the Guidelines for Judicial Conduct 2019 and, as well, also inconsistent with the guidance given by appellate courts as to the extent to which judges should intervene in hearings. This is because I saw the interventions of Judge Callinicos in those cases as excessive, partisan (as amounting to cross-examination) and, at times, demeaning (for instance as putting down Mrs P to her face or to her witnesses).

I also went through the documents associated with the complaints that Judge Callinicos had made to the Law Society about the Oranga Tamariki lawyers. I came to the view that they were disproportionate and inappropriate. I was also concerned at what I saw as gratuitous criticism made by Judge Callinicos in a judgment of 1 May 2020 that is connected to the subject matter of the Law Society complaints.

There seemed to be a pattern of conduct. Those on the receiving end of this conduct considered, understandably, that they had been bullied.

I had a substantial role in the drafting of the letter of 20 May 2021 which the Chief District Court Judge sent to Judge Callinicos. As will be apparent from that letter, I considered that the responsibilities of the Chief District Court Judge and Principal Family Court Judge under s 24(3) of the District Court Act 2016 and s 6(7) of the Family Court Act 1980 were not displaced or suspended by the complaint to you in relation to the Mrs P case. And, more importantly for present purposes, I considered that it was also appropriate for them to engage with Judge Callinicos in relation to his in-court conduct in the B case, a conclusion which I will expand on:

1. There was an apparent pattern of bullying. Its nature was such as to suggest that there might well be other instances of bullying which had not come to notice. It raised issues that the Chief District Court Judge and Principal Family Court Judge were undoubtedly required to address.
2. It was highly desirable for all known components of this pattern of conduct (including the B case) to be addressed as quickly as possible and at the same time.
3. On the approach adopted by Judge Callinicos, he would not engage in relation to his conduct in the Mrs P case until your investigation was complete (something which could have taken some months, although in fact it did not) and likewise would not engage in respect of the B case while it was undetermined, a process which would necessarily take some months.
4. The purpose of the principles of judicial independence is to preserve independent decision-making by judges; it is not to protect judges from criticism about their conduct – particularly where there are good grounds to believe that such criticism is justified.

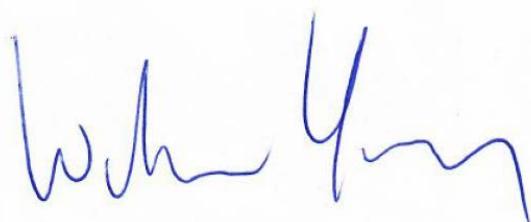
5. It is contrary to the principles of judicial independence for the colleagues of a judge (including the judge's head of bench) to seek to influence the judge's decision-making in a particular case. It is, however, not contrary to those principles for a head of bench to engage with judge about his or her behaviour in court. Such engagement is obviously appropriate if it is credibly alleged that a judge has sat in court while under the influence of alcohol or has been making racist or sexist remarks from the bench. I consider that the same is true of bullying. If the circumstances warrant it, such engagement may be appropriate in relation to alleged judicial misconduct in a case which is part-heard. In my judgment, intervention in relation to the B case was appropriate given the character of the Judge's conduct and that it was a component of a pattern of behaviour.
6. The concerns about the in-court behaviour of Judge Callinicos in the B case were that he was acting in a partisan way, cross-examining witnesses, and in doing so, sometimes demeaning them and putting them down. The concerns did not relate to his decision-making. This is spelt out in considerable detail in the letter of 20 May.
7. In his letter of 20 May, the Chief District Court Judge made it clear that he and the Principal Family Court Judge were not seeking to influence Judge Callinicos as to how he decided the B case.
8. Given the experience of the three judges, they would have been well-able to discuss Judge Callinicos' in-court behaviour without encroaching on the independence of his decision-making.

I should add the Chief Justice, who was fully consulted throughout, shared, and continues to share, my assessment of the situation.

There was correspondence between lawyers (on behalf of Judge Callinicos) and the Chief Justice subsequent to the letter of 20 May. As well there was a meeting between the Chief Justice and me and his lawyers. The correspondence and meeting were on a confidential basis. Subject to the confidentiality considerations being able to be resolved, the Chief Justice would be happy to provide you with copies of the correspondence. But in light of all of this having occurred after 20 May, there may be no utility in doing so.

If you would like me to supply you with the disclosure minute and the recusal judgment issued by the Judge, please let me know.

Yours sincerely

A handwritten signature in blue ink, appearing to read "William Young".

William Young