

**PE1458/A**

F.A.O. Andrew Howlett  
Assistant Clerk to the  
Public Petitions Committee  
The Scottish Parliament  
T3.40  
EDINBURGH  
EH99 1SP

E-mail: [petitions@scottish.parliament.uk](mailto:petitions@scottish.parliament.uk)

Date: 31 January 2013

Dear Mr Howlett

**Consideration of Petition PE1458**

I refer to your letter dated 9 January 2013 which has been passed to me for my attention.

The terms of the Petition have been considered by both the Society's Criminal Law and Civil Justice Committees.

In particular, the Society makes reference to the very useful SPICe briefing for the Public Petitions Committee prepared on 20 December 2012.

The Society notes that New Zealand's Parliament is at present considering a Member's Bill by Dr Kennedy Graham (Register of Pecuniary Interest of Judges Bill) which proposes a mandatory Register of New Zealand Judges' financial interests following upon the resignation of a former New Zealand Supreme Court Judge accused of misconduct for allegedly failing to disclose a large debt owed to a lawyer appearing in a case before him.

The Society also notes that the New Zealand Law Commission has prepared an "Issues Paper" which provides a detailed review of the pros and cons surrounding the setting up of such a Register.

In terms of Chapter 8 of this paper, the Society notes that the New Zealand Law Commission sets out the following questions in its conclusion at The questions are as follows:-

Question 1 - is the present law of recusal for financial interests deficient?

Question 2 – what precisely is sought to be caught and addressed by legislation relating to a Register of Judges' pecuniary interests?

Question 3 – is there any practical need for a Register of Judges' pecuniary interests?

Question 4 – to whom should the legislation apply?

Question 5 – what must be disclosed?

Question 6 – what should be the ambit of usage of disclosures?

Question 7 – what of the security of Judges?

Question 8 – who is to administer and monitor disclosure by the Judges?

Question 9 – would the enactment of legislation of this character have an adverse impact on the recruitment and retention of Judges?

Question 10 – is this subject area one which presently calls for legislation?

The Society respectfully suggests that these are issues which the Scottish Parliament should also consider should it be minded to introduce legislation proposing a Register of Pecuniary Interests for Judges in Scotland.

In response to the Public Petitions Committee's first question, while the Society believes that Judges should attain the highest possible standard of judicial conduct in order that the community has confidence in them, the Society questions whether a Register of Pecuniary Interests similar to the one proposed in New Zealand, as referred to above, would be necessary, particularly taking into account the Public Petitions Committee's second question "How effective are the systems currently in place that deal with such interests of members of the judiciary in Scotland?".

The Society again refers to the very helpful SPICe briefing which sets out the current position in Scotland and states that the rules governing the Scottish Judiciary in particular are

- (1) the Judicial Oath;
- (2) the Statements or Principles of Judicial Ethics for the Scottish Judiciary and
- (3) the Judiciary and Court (Scotland) Act 2008.

With reference to the first question, the Society is not aware of any evidence to suggest that these rules are not working in practice. The Society makes particular reference to the complaints about the Judiciary (Scotland) Rules 2011 made in exercise of the Lord President of the Court of Session's powers in terms of Section 28 of the Judiciary and Courts (Scotland) Act 2008 which apply in relation to complaints about the conduct of judicial office holders, and also

**PE1458/A**

Section 35 which allows the First Minister to set up a Tribunal to investigate whether a Judge of someone holding judicial office is unfit to hold the office by reason of inability, neglect of duty or misbehaviour. Section 40 of the Act also deals with the removal of Sheriff Principal Sheriffs and part time Sheriffs, as well as Justices of the Peace in terms of Section 41 of the Act.

While those serving on the bench should attain the highest possible standards of judicial conduct and ethics, the Society believes that more evidence should be produced to demonstrate that the systems in place are not effective and accordingly a Register of Pecuniary Interests of Judges is required as sought in terms of the Petition.

I trust this information is of assistance to you, but should you require further information, please do not hesitate to contact me.

Yours sincerely

**Alan McCreadie**  
Deputy Director, Law Reform