PE1458/C

Justice Directorate
Civil Law and Legal System Division

T: 0131 244 4823
E: robert.sandeman@scotland.gsi.gov.uk

Andrew Howlett
Assistant Clerk
Public Petitions Committee

By email:
Andrew.Howlett@scottish.parliament.uk

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Dear Andrew,

PETITION PE1458

Please find the Scottish Government's response to the issues raised in Petition PE1458. Please accept my apologies for the delay in responding.

The petition calls on the Scottish Parliament to urge the Scottish Government to create a Register of Pecuniary Interests of Judges Bill (as is currently being considered in New Zealand's Parliament) or amend present legislation to require all members of the Judiciary in Scotland to submit their interests & hospitality received to a publicly available Register of Interests.

The Committee has asked:

- What is your view, and the reasons for it, on what the petition seeks?
- How effective are the systems currently in place that deal with such interests of members of the Judiciary in Scotland?

For the reasons outlined below, the Scottish Government is of the view that it is not necessary to establish a register of judicial interests, as suggested by the Petitioner.

The Scottish Government considers there are sufficient safeguards in place to ensure the impartiality of the judiciary in Scotland. These are set out below.

Judicial oath

First, all judges of the Court of Session and the High Court of Justiciary must take a judicial oath under which those judges must swear that they will do right to all manner of people without fear or favour, affection or ill-will.

Statement of Principles of Judicial Ethics

Second, a Statement of Principles of Judicial Ethics for the Scottish Judiciary was issued in 2010 by the Judicial Office for Scotland as guidance for all holders of judicial office in Scotland.

Paragraph 5 of the Statements of Principles discusses financial conflicts of interest in the context of judicial impartiality:

> "Plainly it is not acceptable for a judge to adjudicate upon any matter in which he, or she, or any members of his or her family has a pecuniary interest. Furthermore, he or she should carefully consider whether any litigation depending before him or her may involve the decision of a point of law which itself may affect his or her personal interest in some different context, or that of a member of his or her family, or the interest of any business in which a judge holding a part-time appointment may be involved. It may be that the pecuniary interest which a judge, or a member of his or her family, may possess in the outcome of some particular litigation is so limited that the litigants would have no objection to the judge handling the case. An example of such an interest might be the holding of shares in a public company, which is involved in litigation. In such a case, it may be reasonable for the interest to be declared, thus affording litigants the opportunity of objecting to his or her handling of the case. Where litigants have no objection to such an interest, it is conceived that normally the interest declared can thereafter properly be ignored. However, on the other hand, there may be exceptional circumstances in which a declared interest, to which litigants do not object, is nevertheless of such a nature as to cause the judge to decline to proceed, although it is thought that such situations will be rare."

Judiciary and Courts (Scotland) Act 2008

Third, the Judiciary and Courts (Scotland) Act 2008 sets out various rules which may be invoked if a holder of any judicial office in Scotland were to be accused of not acting impartially because of their personal financial interests. It is understood, however, that these rules have yet to be used in this way.

Under section 28 of the Act, the Lord President has a power to make rules for the investigation of "any matter concerning the conduct of judicial office holders" and the Complaints about the Judiciary (Scotland) Rules 2011 came into force in February 2011. These allow complaints to be made to the Judicial Office of the Scottish Court Service.

Sections 35, 40 and 41 of the Act also provide a mechanism whereby the fitness for office of various members of the judiciary may be investigated.

Law Commission of New Zealand paper

It is worth noting that the Law Commission of New Zealand's issues paper[1] which considered the question of a register of judicial pecuniary interests noted the complexity of the issue and discussed a number of questions which would require to be addressed if such a register were to be created. Similar questions would have to be fully considered if such a proposal were to be brought forward for Scotland. These are reproduced here for the Committee's convenience and interest:

Q1 Is the present law on recusal for financial interests deficient?
Q2 What precisely is sought to be caught and addressed by legislation relating to a register of judges' pecuniary interests?
Q3 Is there a practical need for register of judges' pecuniary interests?
Q4 To whom should the legislation apply?
Q5 What must be disclosed?
Q6 What should be the ambit of usage of disclosures?
Q7 What of the security of judges?
Q8 Who is to administer and monitor disclosure by the judges?
Q9 Would the enactment of legislation of this character have an adverse impact on the recruitment and retention of judges?.
Q10 Is this subject area one which presently calls for legislation?

Conclusion

In general terms, a register of interests such as that suggested by the Petitioner could be established administratively and without legislative provision. That would be a matter for the Lord President, in his capacity as Head of the Scottish judiciary.

However, the Scottish Government does not consider there is currently any evidence to suggest that the existing safeguards are not effective and does not therefore consider that a register such as that advocated in the Petition is necessary.

I hope the information in this letter, the terms of which have been cleared by the Cabinet Secretary for Justice, is of assistance in the Committee's consideration of the petition.

Yours sincerely,

Robert Sandeman
Head of Courts Team

[1] http://www.lawcom.govt.nz/sites/default/files/publications/2011/03/lc2919-towards-a-new-courts-act-first-issues-paper-150.pdf