

18 October 2024

Petitions Committee

By email: parliamentary.petitions@parliament.govt.nz

Tēnā koutou,

Re: Petition of Wayne Jessop

The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) is grateful for the invitation to submit to the Petitions Committee (**the Committee**) on the petition of Wayne Jessop ‘Charge families who do not cooperate with the investigation of a murdered child’ (**the petition**). This submission has been prepared with the assistance of the Law Society’s Criminal Law Committee.

The petition

The petition requests:

That the House of Representatives bring about a law change so that any family members or friends can be charged with a crime for refusing to cooperate with Police in the investigation of a murdered child.

Mr Jessop states that the reason for the petition is:

... to make family members accountable as a group for their actions and to prevent what I believe is the cover-up of senseless murders. Over the last 7 years there have been 57 needless deaths of young children in New Zealand.

In a written submission to the Committee, Mr Jessop states that law reform is required ‘to make the killers [of young family members] and any associates involved in coverups accountable.’ He considers that no action is taken where the murder of a young person is ‘covered up’ and refers to law in the United States where ‘anyone involved in the coverup is charged with murder or accomplice to murder.’

Law Society’s comments

The Law Society notes that Mr Jessop’s written submission differs in its request from the Petition. While the Petition relates to a refusal to cooperate with Police, the written submission appears to relate to those who assist in ‘covering up’ the murder of a young person. We have therefore addressed both aspects separately, below.

Helping to ‘cover up’ the murder of a young person and failure to report child abuse or risk

There are range of Crimes Act provisions which already criminalise conduct associated with assisting an individual to conceal a crime, and failing to report that a young person is at risk. These include:

- Section 176 of the Crimes Act, accessory after the fact to murder. This could apply, for example, where a person tampers with or conceals evidence against the alleged offender, or otherwise assists them in evading arrest. This does not always require the prior conviction of a principal offender (see section 137 of the Criminal Procedure Act 2011).
- Section 116 of the Crimes Act, conspiring to defeat justice, may also capture conduct such as the provision of false and misleading statements in court proceedings or in contemplation of court proceedings.
- Section 195A makes it an offence for those who live with a child and know they are at risk of death by the unlawful act of another person, to fail to take reasonable steps to protect them from that risk. Section 195A was inserted into the Crimes Act in 2011, following a recommendation by the Law Commission, to cover culpable conduct by those in close proximity to a child at risk. This appears to cover some of the conduct Mr Jessop has in mind.

Refusal to cooperate with Police during an investigation

Criminalising a refusal to cooperate with Police during an investigation into the death of a child is considerably more challenging than the criminalisation of the conduct outlined above. Such an offence would require either:

- Police to prove the individual was aware of information relevant or necessary to the investigation, but did not disclose it. This would be difficult given the intention of the petition is to cover criminal investigations that have been unable to proceed, due to the failure of witnesses and other individuals to cooperate. That is, the Police are unlikely to be aware of the existence of information that they have not been provided; or
- If the onus were reversed in some manner, the individual charged with refusing to cooperate, would need to prove a negative – that they did not know information relevant or necessary to the investigation. This would, in most circumstances, be virtually impossible.

Under the common law, individuals are generally not obliged to answer questions put to them by Police, whether or not those answers may incriminate them.¹ More specifically, if an individual is detained or investigated in the course of investigation, the New Zealand Bill of Rights Act 1990 protects their right to ‘refrain from making any statement and to be informed of that right.’² The Bill of Rights also protects against individuals being compelled as a witness.³ These are some of the most guarded rights, given the associated risk to an individual’s liberty, the potential for misuse, and the likely impracticability of enforcing an obligation to cooperate.

¹ See, for example: *Environment Protection Authority v Caltex Refining Co Pty Ltd* (1993) 178 CLR 477 at 526. This is subject to certain limitations such as the provision of identifying details in certain circumstances, and other confined exceptions. Those exceptions are often limited, for example in the case of examination orders under the Search and Surveillance Act, to the production of documentation, not a compulsion to speak to Police.

² Section 23(4) Bill of Rights.

³ Section 25(d) Bill of Rights.

Next steps

In summary, the Law Society is of the view that no further legislative provisions are required to criminalise the conduct to which Mr Jessop refers. Criminalisation of a refusal to cooperate with Police would be impracticable, and infringe long-standing and fundamental rights protected in common law and by the Bill of Rights.

We hope the above information is of assistance to the Committee. Should the Committee have any questions, they are welcome to contact the Law Society via Shelly Musgrave, Law Reform and Advocacy Advisor (shelly.musgrave@lawsociety.org.nz).

Nāku noa, nā

A handwritten signature in blue ink that reads "David Campbell". The signature is written in a cursive, slightly slanted style.

David Campbell
Vice President