

30 August 2024

Hon Judith Collins
Attorney General

By email: j.collins@ministers.govt.nz

Tēnā koe, Attorney General

[New concerns regarding further comments made by Hon Shane Jones](#)

I write further to my letter of 23 August regarding the comments made by Hon Shane Jones about High Court Judge, Justice Cheryl Gwyn, as reported by media on 22 August. Comments made by the Minister yesterday have necessitated this further correspondence.

The Law Society is concerned by what appears to be a developing pattern of commenting adversely on the impartiality, personal views, and ability of the judiciary (including named judges), or otherwise calling into question the performance of the courts.

The comments made by the Minister now include:

- a) Comments made in February 2024 about the Supreme Court, following the decision in *Smith v Fonterra & Ors*. These are reported as suggesting, amongst other things, the ‘Americanisation’ of the courts and a ‘destructive’ approach by the Supreme Court.¹
- b) Comments in April 2024 regarding the Waitangi Tribunal’s issuance of a summons to the Minister for Children. Reports indicate the Minister compared the Supreme Court to a star chamber and made comments that could be interpreted as suggesting the Tribunal will be reformed as a consequence of the decisions with which the Minister disagreed.²
- c) Comments reported on 22 August 2024, from a meeting with seafood industry members, in which the Minister is said to have called Justice Gwyn a ‘Communist Judge’. The Minister did not appear to resile from those comments when later questioned by media.³

Comments reported on 29 August 2024, made when responding to media questions about the comments referred to at (c). The Minister is quoted as having stated that the decisions of the court were ‘beginning to show elements of totalitarianism,’ and when later questioned about these comments, suggested they instead referred to the Waitangi Tribunal, stating *‘I am entitled to challenge that creep which I regard as happening in the Waitangi Tribunal as a type of anti-*

¹ See, for example: <https://newsroom.co.nz/2024/02/19/shane-jones-criticised-over-attack-on-supreme-court-ruling/>

² See, for example: <https://newsroom.co.nz/2024/04/19/ministers-accused-of-cabinet-manual-breach-with-threats-to-waitangi-tribunal/>

³ See <https://www.stuff.co.nz/politics/350386759/minister-calls-judge-communist-meeting-seafood-lobby-over-maori-rights>

democratic totalitarianism.' Reports suggest the Minister then acknowledged he was talking about the members of the Tribunal.⁴

As you noted in your letter of 15 March 2024, the constitutional convention of comity requires that *'each part of government respects the boundaries of the other institutions of government.'*

It is fundamental for our democracy that judges, and the institution of the judiciary, are not the subject of personal attack or criticism. Ministers of the Crown have a duty to respect and uphold the role of the judiciary. These fundamental constitutional requirements are reflected in the obligations set out in the Cabinet Manual. For these very same reasons, members of the judiciary cannot speak out in defence of themselves or their decisions.

On each of the occasions set out above, there were alternative, appropriate ways in which to debate the issues raised. What is not appropriate is personal criticism or comment on individual judges, or broader criticism of the judiciary's competence as an institution. The judiciary has on each occasion respected its constitutional role and refrained from comment.

The Law Society is of the view that the totality of the Minister's comments have breached the fundamental principles of comity and mutual respect. As I stated in my letter of 23 August, the comments implicate the objectivity and impartiality of the judiciary. They also undermine the competence of the judiciary in carrying out its constitutional role.

We acknowledge your statement to media that you intend to raise these further comments with the Minister, and strongly support you doing so. However, the Law Society considers that stronger assurances are now required. We ask for a clear public statement to be given reminding all Ministers about their obligations and duties in respect of the judiciary. We also suggest making it clear the likely consequences that will follow if those obligations are again breached, including the wider impact of loss of comity and potential for tension between the branches of government.

Further, we ask for a commitment to explore a mechanism to hold Ministers to account for their conduct in respecting the boundaries with the judiciary outside of the House. Such comments made in the House would not be appropriate, and would likely be called out as such. Continued comments would be a matter for the Privileges Committee. The current issue has shown that outside of the House, there is no effective process for potential breaches of the Cabinet Manual to be scrutinised and remedial or disciplinary action recommended.

Once again, the Law Society thanks you for your continued efforts to uphold and protect the role of the judiciary.

I look forward to hearing from you.

Nāku noa, nā



David Campbell
Vice President

⁴ See <https://www.rnz.co.nz/news/political/526522/minister-shane-jones-to-get-another-talking-to-over-judiciary-commentary>