

The Fair Trial Project

Newsletter

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In this issue

This issue starts with a look at two campaigns: ‘Judges with a conflict of interest’ and ‘the Lord Advocate’s wife’. The order is then: the latest news followed by questions and correspondence and to finish, our Chief Executive, Tom Muirhead, reports on what has been happening on ‘the front line’ this month.

Fair Trial: Featured Campaign - Judges with a conflict of interest

A summary of the 'Judges with a conflict of interest Campaign' is available to view on the web-site. A full submission will be available later this month. This campaign explains that giving judges the responsibility for the smooth running of the Scottish Courts and Tribunals System conflicts with their duty to judge impartially.

Judges should only have one function, that is to judge. Any other function potentially interferes with their ability to judge a case fairly. Covid-19 has caused a backlog of cases. It is possible that a judge who has the responsibility for the smooth running of the court system will be torn between two conflicting duties. For example, if an appeal concerns a case or trial that took many days in the courts below, then it is possible that this will affect the judge deciding the issue. A concern about the disruption caused to the courts below, if the case is sent back for a retrial, conflicts with a duty to decide the case fairly.

Fair Trial: Upcoming Campaign – The Lord Advocate's Wife

This campaign explains that it is impossible to get a fair trial when the chief prosecutor's wife is a senior judge. Each time a criminal trial takes place in Scotland, the prosecution is taking place in front of the prosecutor's wife or one of her colleagues.

A summary of the campaign is available on the web-site.

Fair Trial Project News – The latest news...

The Scottish Legal Complaints Commission refused our complaint. The complaint was against all advocates, solicitor advocates and lawyers and complained that their taking part in trials and hearings with the press and public excluded was civil and criminal fraud. There will be an update on this next month.

The Scottish Courts and Tribunals Service have not yet replied to our complaint about hearings and trials taking place in closed courts (with the press and public excluded).

A complaint has been made to the Crown Office and Procurator Fiscal Service (COPFS) regarding running criminal prosecutions in closed courts

Questions and correspondence

Question via email: Why should a judge only judge and not do anything else?

Answer: In brief, there are three pillars of government: A legislature, an executive and a judiciary.

The legislature makes the law by passing legislation. The executive runs the country under the laws made by the legislature. The judiciary interprets the law to resolve disputes between citizen and citizen and citizen and the state.

When a judge or group of judges become involved with the legislature (by advising on legislation as an example) they have a conflict of interest whenever the legislation that they advised upon comes before them. It is possible that the advice they gave to the legislature will affect them subconsciously whenever they have to decide a dispute based on this law.

When a judge or a group of judges become involved with the executive this can affect their ability to resolve a dispute impartially when the subject matter of the dispute is a rule, practice or procedure that they have taken part in making.

A fully detailed paper on this topic will be published in the library section of the web-site later in the year.

Please email questions, suggestions, comments, hints and tips, about the web-site or any campaign to: info@fairtrialproject.org

The Front Line – Tom Muirhead reports on campaigning.

Way out in left field 1 – Greenpeace fined £80000 for contempt of court

I plan to write to Greenpeace and ask if I can complain on their behalf about their £80,000 fine. See Newsletter 1 for more information.

Way out in left field 2 – Lady Dorrian’s Seminars

On the 30th of July 2020 Lady Dorrian (the Lord Justice Clerk, Scotland’s second most senior judge) gave an online seminar on Sections 274 and 275 of the Criminal Procedure (Scotland) Act 1995.

The seminar was open to all, and I attended on-line on behalf of the Fair Trial Project. John Scott QC, who organised the seminar for the society of solicitor advocates, informed everyone that solicitor advocates and prosecutors were in attendance.

Lady Dorrian while giving the seminar stated that this was the same seminar that she had given the Faculty of Advocates the month before. John Scott QC suggested that the Solicitor Advocates and Faculty of Advocates work together, with Lady Dorrian and other judges, on joint events so they don’t have to do the same talk twice.

During the seminar Lady Dorrian coached the attendees on how to argue various points of law. She advised: do not argue this in this way, instead argue this.

During the Q and A at the end, you could tell that Lady Dorrian knew and was friendly with some attendees. This could be seen by the way they greeted each other and asked after each others health and well being before a question was asked. This was more than good manners. Many of the Solicitor Advocates present seemed to have an excellent relationship with Lady Dorrian.

My written questions to Lady Dorrian about whether she could keep an impartial mind whenever the subject matter of the seminar or the attendees appeared before her were ignored. Will Lady Dorrian subconsciously strive to keep to her view on the law given at the seminar whenever a contrary argument based on real life facts comes before her?

My view on this is that this seminar makes it clear that Lady Dorrian has links to the Faculty of Advocates and Solicitor Advocates. It is possible that these links will affect her subconsciously whenever a) these attendees are involved in a case that she is judging; and b) whenever this area of law is involved in a case or appeal.

I contend that Lady Dorrian, by giving these seminars, has disqualified herself from deciding any case or appeal that concerns the Criminal Procedure (Scotland) Act 1995 or involves any of the legal professionals who took part in them. Lady Dorrian and all attendees have a duty to disclose the links they have to each other. Any failure to disclose is criminal and civil fraud.

A list of links, like this one, that judges have to legal professionals and government will be published on the web-site in November alongside a more detailed paper on Lady Dorrian's seminars

Please Like and Share

As we build the site, it would be a great help if you can forward this email, and details of the web-site, to everyone you know. Please 'Like' our Facebook page and Share our web-site or campaigns on any social media site that you use.

Next month...

Progress reports on campaigns and complaints.

The Fair Trial Project has written to the Scotch Whisky Association informing them that they did not get a fair hearing when they challenged the introduction of minimum pricing regulations...