

Editorial

THE HON SIR RON YOUNG ON THREATS TO A FAIR TRIAL

Anyone interested in the criminal justice process in New Zealand should make sure they take the time to read and consider Sir Ron Young's thoughtful and thought-provoking Harkness Henry lecture delivered recently at Te Piringa, the University of Waikato Law School, entitled "Has New Zealand Criminal Justice System been compromised?"¹

Drawing on his extensive experience as a trial judge in both the District and High Court, Sir Ron describes several matters which he considers individually and collectively are eroding the right to a fair trial for criminal defendants.

One of the key points he makes is that increasingly strict governmental constraints on the funding of both prosecutors and legal aid defence lawyers are providing incentives to prosecutors and defence lawyers alike to seek to resolve criminal prosecutions by a negotiated plea arrangement. On the one hand, he notes, prosecutors are now directed to have regard to the costs of proceedings when deciding whether to prosecute and on what charges, and Crown Solicitors are bulk-funded so that every defended trial consumes resources which may be needed for other cases. On the other hand, defence lawyers taking on defendants under the current legal aid funding regime are operating under such tight financial restrictions that mounting a defence if the matter goes to trial is essentially financially unsustainable. Prosecutors and defence counsel therefore each have a real incentive to come to a negotiated outcome which provides a quick resolution outcome. The obvious risk is that such speedy negotiated outcomes may be at the expense of the interests of the defendant, of the victims or of the public.

Some readers of Sir Ron's lecture may note that rich defendants have always been advantaged in the criminal arena both by being able to afford experienced counsel of the highest quality and by being able to access expert evidence regardless of cost - and by raising a prospect of protracted and expensive proceedings which will impact severely on the limited budgets of prosecution agencies. Yet it is surely highly undesirable that the government appears to be not only prepared to tolerate inequalities of outcome between the wealthy and the poor but to require prosecutors to behave in ways which may increase such disparities. It is no wonder that critics of the present system have suggested that the criminal justice system discriminates against the poor and- to a large extent- Maori and Polynesian defendants.

Sir Ron's comments are timely and it is to be hoped that they will be heeded.

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¹ See http://www.waikato.ac.nz/law/news-events/2016_harkness_henry_lecture