

## Justice Thomas of The High Court (Te Kōti Matua)



### **Judicial Independence**

*Every judge in New Zealand takes an oath of judicial independence. This means that they promise they will not be influenced by anyone and will decide cases impartially, not showing favouritism to any person, not being affected by sympathy or prejudice and not being influenced by a desire for popularity or fear of being criticised. It means that a judge must focus only on the facts and the law, put all the other matters to one side, making decisions in the interests of justice. This is the fundamental obligation of a judge.*

### **The Presumption of Innocence**

*How we treat a person charged with a crime is a reflection of the values we hold as a society. A criminal conviction has a major impact on a person's life – not only with the potential loss of freedom if there is a sentence of imprisonment or electronic monitoring – but a conviction itself will have serious repercussions for a person's job, their travel opportunities, and their family. Only if a fair process has been followed can the power of the State to punish a person be justified. That is why the starting point is the presumption of innocence – a person charged with a crime is considered innocent until proved guilty. This means the State must prove a person is guilty – someone charged with a crime does not have to prove they are innocent.*

*The presumption of innocence is specifically recognised in our Bill of Rights Act which protects what we regard in New Zealand as fundamental human rights.*

### **The Right to a Fair Trial**

*Our Bill of Rights Act affirms certain rights for people charged with an offence – they have the right to a fair trial – the right to be present at the trial and to present a defence, in other*

*words be able to give their version of events; the right to question witnesses for the prosecution to challenge what they are saying; the right to have a lawyer to help represent their interests; the right to have an impartial decisionmaker such as a judge or jury and the right of appeal in case something went wrong at the trial. It is only if these fair trial rights are recognised and protected that we can be sure that a conviction is safe and that the State is justified in holding that person to account for what they are said to have done.*

*Many factors are relevant to fair trial rights – whether a person is mentally fit to stand trial – do they understand the process? Are they able to they instruct a lawyer? Does the person charged understand English and, if not, an interpreter is provided. Sometimes a person’s identity or parts of the allegations are suppressed before the trial to ensure that they receive a fair trial.*

*The heart of all these considerations, and all our rules about how a trial is run and the evidence that is called at the trial, is the fundamental need to ensure that the trial is fair.*

## Justice Dobson of The High Court (Te Kōti Matua)



### **Judicial Independence**

*The Independence of judges is very important in the big picture, constitutional, sense because we must be fearless in monitoring whether the Executive – the government of the day – has gone beyond the powers given to it by Parliament or has abused those powers. If it has, the Court will order that it put it right, often by requiring a decision to be undertaken again, this time in accordance with the law. Independence is just as important in all the rest of our judging because everyone involved in court cases should be confident that the outcome will be achieved objectively and according to law, and without the judge letting*

*a preference for, or connection with, one side, or a dislike of one side, influence the outcome.*

### **Criminal trials**

*Most of the criminal cases in the High Court are decided by juries. In those cases, the judge is like a referee, making sure that the process is fair to both sides. It always starts with the presumption that the defendant is innocent. The Crown has to prove that the defendant committed whatever crime they have charged him or her with.*

*A defendant never has to prove anything. That's the bedrock of our criminal law and one aspect of it is that a defendant does not have to give evidence and judges won't allow the prosecutor to invite a jury to draw an adverse inference against a defendant because he or she has elected not to.*

*Of course, mistakes do occur that is what the Court of Appeal is there for. But our system that requires the Crown to prove beyond reasonable doubt each element of any charge faced by a defendant certainly should reduce significantly the risk of innocent persons being convicted.*

### **Judge James Johnston of The District Court (Te Kōti ā Rohe)**



*District Court judges hear a wide range of cases. It is a very busy court and it is innovative. It tries to understand and address the underlying causes of offending, cultural differences, restorative justice and solutions focused justice, especially in its youth division.*

*It's family division deals with a wide and growing range of matters including care, guardianship and protection issues for children, protection orders, relationship property disputes and compulsory mental health treatment.*

*We deal on a daily basis with a large cross section of people throughout New Zealand.*

*Cases heard by the District Court are Criminal including Jury Trials, Family Court, Youth Justice, and Civil cases.*

*We are assisted in some courts by Community Magistrates and also by a large network of Justices of the Peace.*

*Some of the cases I hear as a District Court Judge can be dealt with when a person makes their first appearance, but others are more complex, and require more time and attention to resolve so there may be several court appearances.*

## Registrar of the Court of Appeal (Te Kōti Pira)



*The Court of Appeal is New Zealand's intermediate appeal court. It has a key role in developing legal principle, correcting errors, and ensuring consistency in the application of the law.*

*The Court is located in Wellington, but regularly conducts hearings in Auckland, Christchurch and Dunedin.*

*It hears Civil and Criminal appeals from cases in the High Court and, Criminal appeals from jury trials in the District Court.*

*If leave to appeal is granted, the Court also hears Criminal appeals against pre-trial rulings; Appeals on questions of law from the Employment Court; and second appeals from decisions of other courts and tribunals.*

## Justice O'Regan of The Supreme Court (Te Kōti Mana Nui)



*The Supreme Court is New Zealand's final court of appeal. In general, the court will hear appeals only from cases that have been to the Court of Appeal. In exceptional circumstances, the Supreme Court may allow a direct appeal from a lower court.*

*Cases coming before the Supreme Court will normally have already been heard in a lower court and reviewed by the Court of Appeal. So, you have to make an application to have your appeal heard here.*

*The Court can agree to hear an appeal only where it involves a matter of general public importance, a matter of general commercial significance, a significant issue relating to the Treaty of Waitangi, or where a substantial miscarriage of justice may have occurred.*

*When an appeal is heard here at the Supreme Court a bench of five judges hear and decide the case. The judgment issued by the court not only determines that appeal but also sets a precedent for deciding similar cases in other courts.*