Worksheet 1.18 - answers

For each scenario, note whether a principle of natural justice is at risk of being breached, and if so which one and in what way.

- Justices Smith and Jones are settling in for a Judge-alone trial of a traffic-related case. JP Smith leans over to JP Jones and whispers … "That's funny, I used to know that woman when I was on the pony club committee. I didn't know she had become a cop!"

The basis of this potential breach of natural justice is the principle nemo judex in causa sua or no-one may judge in their own cause. This does not mean that JP Smith herself would gain any benefit from judging this case, but that she may be personally biased when she judges it. There is also a basis in subsection 25(a) of the NZ Bill of Rights Act 1990 which states that everyone has the right to a fair and public hearing by an independent and impartial court.

Although there is a very small risk that the low-level acquaintanceship in the past between the Justice and the police prosecutor would lead the Justice to be biased either positively or negatively about her, any risk is enough. JP Smith needs to declare to both parties the detail that she has just told JP Jones and let the parties (defence particularly) decide whether they wish to continue. If not, the case will need to be adjourned.

- JP Moven sits very rarely, and only ever for Saturday arrest court. He is active in the community, and has become more and more dismayed at the amount of tagging and other vandalism around his small town. He recently wrote to the local paper saying:

  > "...the youth of today should all be ashamed, every one of them. I am disgusted at the state of our town. They all need to be sent on a boot camp to learn to behave". He signed the letter with his name and 'JP' after it. He is due to sit in court this weekend.

This example also shows a potential breach of principle nemo judex in causa sua or no-one may judge in their own cause, and subsection 25(a) of the NZ Bill of Rights Act 1990 which states that everyone has the right to a fair and public hearing by an independent and impartial court.

JP Moven clearly is not impartial; he has quite possibly prejudged any young person who comes before him this weekend or may be biased in his thinking once faced with them. He needs examine within himself whether he can in fact continue to sit as an impartial judicial

officer. Although everyone is entitled to a general opinion, the skill of an impartial Justice is to put aside one's entire pre-knowledge or opinion of the world and how it works, and make decisions in court based only on the evidence presented. It is not acceptable to publicly state opinions such as JP Moven's, and he is at risk of breaching the principles of natural justice (and being appealed).

- JP Pallace is getting rather tired and wishes he could get home before lunchtime. He's rather bored with the cases today as they have both been on careless driving and the defendants really don't seem to have a leg to stand on. Once the defendant has begun presenting his own case from the witness stand and has been speaking for 4 minutes, His Worship interrupts and says: "Come on Mr James, you just said you were distracted that day. Why don't you just accept the evidence that has been given and we can all get on with it? Stand down".

JP Pallace is at risk of breaching the natural justice principle audi alteram partem, hear the other side, and subsection 25(e) of the NZ Bill of Rights Act 1990 which states that everyone has the right to be present at the trial and to present a defence.

Although Mr James has begun to exercise this right, it does not appear that he has unreasonably taken up the time of the court by speaking for 4 minutes. If he had spoken for perhaps 20 minutes and had begun to repeat himself, it might be opportune for the bench to ask him if he has any further points to make. This would be a matter of judgement… it is not a black and white rule that a defendant must be allowed to speak for as long as he or she wishes, or bring as many witnesses as he or she wishes to. It is a matter of allowing a reasonable presentation of the defence case, under the same conditions as the prosecution.

The tiredness or otherwise of the Justice is not an appropriate reason to take into account when exercising your judgement about the reasonable length of the defendant's defence. If necessary, take an adjournment for a break.

- JP Wallermann is very interested in the new liquor ban infringement regime. He takes it upon himself to read widely about the background to the policy and the new law. He knows about alcohol abuse and some of the physiology about how alcohol affects the body. He knows he will be sitting in court tomorrow, and there are likely to be extra arrests tonight as people follow up on a big sports game in town. He goes into town and watches the people at the bars and in the street, and sees a couple of arrests.

Although it is important to stay up to date with changes in the law and some of the background to it, it is not expected that Justices would go to the lengths that JP Wallermann does.

He could potentially at risk of breaching the principle of natural justice nemo judex in causa sua or no-one may judge in their own cause, and subsection 25(a) of the NZ Bill of Rights Act 1990 which states that everyone has the right to a fair and public hearing by an independent and impartial court. If either of the people he saw arrested (or anyone else

arrested at that location last night) appear before him he should let it be known that he was near and/or that he saw it, and seek the consent of the parties to continue.

Because he is only hearing arrests the next day, and not actually making decisions on the facts, he would not be in a position to demonstrate actual bias.

However he must not go out to seek further information or evidence for an actual case that he is or might be hearing.

- JP Jansen works in a court where the Registrar provides the Justices with the list the previous day, as a matter of administrative efficiency. He becomes worried about one case on the list – he happens to know a little about it because one of his friends mentioned he had seen the incident on the street recently, and because his friend knew the name of the person involved. JP Jansen recognises it now. He phones his friend and says "Hi John, I just wondered, could you tell me again about what happened the other day? You know, when young Jacqui got herself into a spot of bother?"

Just making this phone call breaches the principle of natural justice nemo judex in causa sua or no-one may judge in their own cause, and subsection 25(a) of the NZ Bill of Rights Act 1990 which states that everyone has the right to a fair and public hearing by an independent and impartial court.

Justices must not make any of their own enquiries outside of the courtroom. In other words, you do not 'enter the arena'.

- Justices Slane and Slain have a Mr Jool on their list. He doesn't appear when the Registrar calls his name. An announcement is made in the foyer, but he doesn't turn up. They are about to proceed with formal proof when a young man comes hurriedly into the courtroom and approaches the bench. The Registrar stops him. He says "My mate heard my name called out and phoned me. I never knew I had to be here today! I've had nothing in the post! Lucky I live nearby eh?"

  JP Slane says, "Right, well, you're here now, let's get on with it".

This sort of situation does arise from time to time. This shows the importance of proof of service. It is clearly a breach of the natural justice principle audi alteram partem, hear the other side, and all of section 24 as well as subsection 25(e) of the NZ Bill of Rights Act 1990.

The Justices should adjourn the case to a new date and time and ensure the defendant is clear as to what that date and time is and that it is in this same court.

Sometimes there is a whole series of problems in finding a date, place and time for a trial or court appearance to proceed - service problems, post problems, transport, illness or

misunderstanding. If it gets to a point that the defendant has been put to extra cost and effort through no fault of their own (e.g. the prosecutor has not turned up twice in a row), then you may think about dismissing the charge. If on the other hand the defendant has caused delay unreasonably, then going ahead with formal proof may be an option.