

Issues raised in recent litigation involving the office of Chief Magistrate¹

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The Queensland Court of Appeal has delivered its finding that that the jury's verdict in the criminal prosecution of the Chief Magistrate, Di Fingleton was "not unsafe" and that 12 months' imprisonment was not "manifestly excessive" according to law. However, the Court saw the need for a certain release date³ and suspended the term after 6 months' real time.⁴ Nevertheless, the punishment remains undoubtable severe. The gaoling of Ms Fingleton can only be described as tragic. Her Worship is another casualty of the law and order campaign brought by both sides of government that has created new offences and increased penalties. Being 'tough on crime' is an oft-bleated election promise. Ms Fingleton was convicted of a charge provided by statute, which came into operation in July 2002, a few months before the now infamous email was sent.⁵

This is not the forum to debate the criminality or otherwise attaching to the email. The most senior Court in the State has settled those issues. There is however ample public evidence to suggest that in many quarters Ms Fingleton is regarded as an utterly decent person, who tried her best to discharge her role as Chief Magistrate, but unfortunately made some grave mistakes. However, and sadly, our prisons house many other people in similar circumstances. Because of her position and profile, Ms Fingleton's incarceration has raised discussion of the utility and purpose of gaol as a form of punishment. Some senior lawyers in our community have sought to have that discussion with government policy-makers with limited success for some years. For example the research paper published in 2000 by Justice Davies of the Court of Appeal and his then Associate, in

¹ **R v Fingleton** [2003] QCA 266; **Cornack v Fingleton** [2002] QSC 391; **Gribbin & Thacker v Fingleton** [2002] QSC 392 and **Thacker v Fingleton** (unreported) ([Judicial Committee Determination](#)) 11 October 2002.

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³ Given section 157(2) of the [Penalties and Sentences Act 1992](#) limiting the operation of section 135 of the [Corrective Services Act 2000](#) so that the usual half-time eligibility for post-prison community-based release does not apply to sentences of up to 2 years' duration.

⁴ Under section 144 of the [Penalties and Sentences Act](#).

⁵ Section 119B of the [Criminal Code](#) was inserted by the [Criminal Law Amendment Act 2002](#). It in effect increased the maximum penalty for specific conduct associated with interfering with the administration of justice from 1 or 2 years to 7 years imprisonment. The Attorney-General, in his [second reading speech](#) (6 March 2002, p.377) observed:

"Anyone convicted of doing, or threatening to do, any injury or detriment to such a person or their family should be dealt with severely, because this behaviour strikes at the heart of both the civil and criminal justice systems. The bill provides for a maximum penalty of seven years imprisonment for these offences. Of course, even harsher penalties can also be imposed through existing offences, if actual physical or emotional harm is caused."

queried whether current sentencing practices actually work.⁶

However, further agitation in the public forum should not focus only on the criminal trial, as that would ignore the broader questions that arise for the justice system from the conflicts within the magistracy which preceded civil and criminal litigation against the Chief Magistrate. The discussion to date has been understandably emotional from those who are close to Ms Fingleton but who perhaps have a limited knowledge of all of the events. Some have sought to attribute her demise to theories based on gender issues and political and personal agendas.⁷ A proper examination of all of the material suggests that the issues litigated in the civil and criminal proceedings go to the heart of the due administration of justice.

First, a disclosure. Last year I was part of the team of lawyers who acted for three magistrates in the three separate civil proceedings against the Chief Magistrate before the Supreme Court⁸ and a Judicial Committee.⁹ Magistrate Cornack had been purportedly suspended, Magistrate Gribbin faced demotion from his position as Beenleigh Co-ordinating Magistrate and Magistrate Thacker had been forcibly transferred to Townsville. I was also one of the lawyers involved in litigation against the previous Chief Magistrate Stan Deer concerning a forced transfer of my spouse Magistrate Payne,¹⁰ which precipitated amendments to the *Magistrates Act* in 1999.¹¹ These amendments set up the Judicial Committee to review transfer decisions by a Chief Magistrate on their merits as an alternative to public litigation in the Supreme Court.

⁶ [*Do current sentencing practices work?*](#) GL Davies & KR Raymond (2000) 24 Crim LJ 236: “Given its ineffectiveness in attaining, except in a limited way, any of the above purposes, other than punishment, imprisonment must remain a last resort. And it should be remembered by judges, then imposing it because punishment is necessary, that they do not delude themselves or others into thinking that, by imposing it, they are deterring the person or others or rehabilitating him or her. And it should also be remembered that, in any case in which rehabilitation is a realistic possibility, an additional burden may be imposed on society if effective steps are not taken, consistently with the need to satisfy reasonable public expectations of punishment, to encourage that end also. It may also be inhumane not to do so.

As mentioned earlier courts, and even police, generally come into the process of crime prevention too late to have other than a marginal effect. The most effective way of preventing crime is by preventing young people from becoming criminals. That is not a popular solution. It does not conform to public opinion, encouraged by politicians and the media, that the solution lies in more and longer gaol terms. Empirical evidence has shown that to be wrong. Putting more people in gaol longer has been a very expensive failure and its cost is increasing at an alarming rate. But the public does not want to hear that and many politicians who know it are not courageous enough to tell them.”

⁷ For example Courier Mail articles “Jail term indicts society” Anne Warner, 6 June 2003, “Ugly brawling before Fingleton’s fall” Tony Koch, 7 June 2003.

⁸ supra n.1.

⁹ The Judicial Committee was constituted under Part IV of the [*Magistrates Act 1991*](#) and comprised of Justice Davies, Justice White and Chief Judge Wolfe. The Chief Justice originally chaired the Committee however a conflict arose due to the Chief Justice’s statutory responsibilities under section 58 of the [*Crime & Misconduct Act 2001*](#) when the CMC started its criminal investigation against the Chief Magistrate.

¹⁰ **Payne v Deer** [2000] 1 Qd R 535.

¹¹ Effected by the [*Stipendiary Magistrates and Other Acts Amendment Act 1999*](#).

All of these magistrates were vindicated in their respective civil actions, which were decided by independent justices of the Supreme and District Court. The purported suspension of Magistrate Cornack was found to be outside the power of a Chief Magistrate and to have interfered with her Worship's judicial independence; the threat to demote Magistrate Gribbin was set aside as unlawful, as were each of the transfer decisions, after merits review by the Judicial Committee in Magistrate Thacker's case and upon judicial review by Magistrate Payne. Each magistrate was awarded costs.¹² Ms Fingleton's and Mr Deer's liability for these costs and their own substantial legal costs were met by the taxpayer.

In the case of Ms Fingleton, the inter-relationship between the civil proceedings and the criminal investigation was unfortunate, but governed by statute. Sections 20(1)(g), 38(2) and 15 of the *Crime and Misconduct Act* arguably imposed a statutory duty upon Magistrates Gribbin and Thacker to refer Ms Fingleton's alleged misconduct to the CMC. In any event it would have been improper if they had not.

The subsequent criminal investigation of Ms Fingleton was undertaken by the CMC and supervised by the Chief Justice.¹³ Ms Fingleton chose to litigate the civil proceedings before the investigation in relation to the criminal matters were completed – an unusual if not dangerous course given that she would have to give evidence, swear affidavits and correspond about the very matters that might be the subject of a criminal trial. This course is reflective of a mistaken belief that criminal charges would not be brought.

The decision to prosecute was then made by the Director of Public Prosecutions Leanne Clare. The trial was prosecuted by an independent NSW prosecutor, Margaret Cunneen and presided over by a senior Supreme Court judge.¹⁴ The appeal was heard by senior appeal court judges.¹⁵

Given the utter independence of the investigation and the earlier vindication of the other magistrates in their civil actions it has been quite wrong for some commentators to blame any of the magistrates involved in the civil litigation against Ms Fingleton or for that matter her predecessor – and if I may say, any of lawyers who acted for them – for her present circumstances or for the perceived present uncertainties in the magistracy.¹⁶ Ms Fingleton's criminal and earlier civil litigation have already been a significant challenge for the judicial and political community. The present challenge is to address the tensions

¹² Save for Ms Thacker before the Judicial Committee. There is no statutory power to award costs under the *Magistrates Act*.

¹³ As required by section 58 of the *Crime & Misconduct Act*.

¹⁴ Justice John Helman. Even though the charges faced by the Chief Magistrate would ordinarily be heard in the District Court, special arrangements were made to permit a Supreme Court judge to preside. His Honour was the most senior judge of the Supreme Court that was not disqualified by any prior relationship with either the Chief Magistrate or any of the witnesses in the trial.

¹⁵ The court comprised McPherson, Davies and Williams JJA. The prosecution and defence submitted that it would not be appropriate for the President of the Court to sit, having regard to Her Honour's and prior connections with the Chief Magistrate and her husband's involvement in the civil litigation as counsel.

¹⁶ Two of the lawyers have since been appointed to the Supreme Court by the present government.

that have arisen between the magistracy and government and to restore public confidence in the Magistrates Court. Focussing political and editorial comment solely on the harshness of Ms Fingleton's punishment – and indeed whether the conduct was criminal - whilst impugning the process of appointments to the courts has been almost entirely unhelpful in meeting this challenge. It is unhealthy for the 'rule of law' in this State. The 'rule of law' is what sets us apart from 'under-civilised' political systems such as in Zimbabwe or Burma where there is no judicial check on the force of executive power. The community should be vigilant in protecting the rule of law.¹⁷ 'Litigation' of important and complex issues in the media is necessarily imprecise. This case is no exception. Important lessons will not be learnt by the politicians, the media or even the judiciary if the discussion was merely to seek to scapegoat particular personalities for what has recently occurred in the magistracy. Some examination of the detail is necessary.

Judicial Independence

The central issue in the litigation between Ms Cornack and Ms Fingleton was the process undertaken by the latter when a third magistrate passed on some oral unspecified and informal comments said to have been made by some practitioners about Ms Cornack's judicial demeanour and also Ms Fingleton's own view of some judicial decisions of Ms Cornack. Ms Fingleton purported to suspend Ms Cornack even before any real opportunity was given to answer these comments and views of her judicial conduct. Ms Cornack successfully resisted this curtailment of her judicial powers and independence.

Judicial Independence is not merely a protection for judges. It protects the citizenry. It serves to protect the 'rule of law'. It exists to ensure that when citizens come before the courts they are entitled to the application of an independent judicial mind on the issues in dispute according to law and not due to a bias or perspective affected by other factors. Most importantly, as noted by the Chief Justice of the High Court, this independence is not limited to independence from government and outside sources but independence from other judicial officers.¹⁸ Also, Justice Mackenzie aptly observed in *Cornack v Fingleton* (supra) at para [28]:

“Judicial independence is one of the cornerstones of a free society. Any legislative incursion upon it could only be achieved by the clearest of words. The long title of the *Magistrates Act* 1991 is “An Act relating to the office of Magistrates, the judicial independence of the Magistracy, and for related purposes”. The fact that the Act was premised on recognition of the principle of judicial independence was reinforced by the

¹⁷ [Gleeson CJ, 13th Commonwealth Law Conference, Melbourne 17 April 2003](#): “The independence of the judiciary from the legislative and executive branches of government, important in any political society, and essential in one organised on federal lines, is largely taken for granted. The fact that the personal independence of judges, and the institutional independence of courts, is simply assumed by most Australians is gratifying; but it is important that those involved in public life should be aware of the arrangements which secure that independence. It is unlikely ever to be the subject of frontal assault, but encroachments can occur in consequence of lack of knowledge of, or concern for, basic principles.”

¹⁸ Gleeson CJ *ibid*: “This is not a personal privilege conferred upon judges as a beneficial term of employment. It is a constitutional guarantee, laid down, in the public interest, to ensure that the judicial power is exercised independently.”

then Attorney-General in introducing the Bill when he said in the second reading speech “... the independence of the judiciary is of paramount importance and must not be compromised. This legislation will ensure that such independence is statutorily recognised.””

In addition to performing ‘normal’ judicial duties, a Chief Magistrate is required to discharge the difficult role of “ensuring the orderly and expeditious exercise of the jurisdiction and powers of Magistrates Courts”.¹⁹ These responsibilities include the administrative allocation of courts and duties to about 75 magistrates throughout the State. ‘Personality’ and personnel issues are likely to arise in much the same way as those faced by a head of department or CEO of a private corporation. But a significant further complexity is that, as a matter of law, magistrates are neither public servants nor employees: they are each independent judicial officers, not just from the executive but from each other.

The outcome of the civil litigation suggests that in dealing with certain magistrates Ms Fingleton struggled with notions of natural justice, judicial propriety and judicial independence.²⁰ These deficiencies could be attributed to Ms Fingleton’s background in political environments and her limited practical experience in litigation before her appointment. Some of her communications suggested a non-appreciation of the differences between a court and a caucus or party room.²¹ Those of her supporters, including those in government circles, who argue that the real problem is the Courts’ historical misogyny and conservatism do not fully understand the judicial function and the rule of law. Ms Fingleton’s problems did not arise out of gender politics (two of the civil litigants, two of the judges involved in the proceedings, the DPP and the trial prosecutor were all female) or because she was progressive (several of the magistrates with whom she had conflict might be labelled as ‘progressives’). Rather, the judgments of the Supreme Court and the Judicial Committee reveal that they were caused by a poor appreciation of her statutory powers and responsibilities as Chief Magistrate.

The Transfer power

In **Payne v Deer** Chief Magistrate Stan Deer reprimanded Magistrate Payne for refusing to go to Townsville on 3 weeks notice. Ms Payne was then the mother of 5 school age and infant children and had resided in Brisbane for all of her professional career as a lawyer prior to her appointment as the first indigenous judicial officer in Queensland. In **Thacker v Fingleton** (Judicial Committee Determination) Magistrate a mother of two young children was also being forced to relocate to Townsville from Brisbane. Given the

¹⁹ Section 10A of the *Magistrates Act 1991*.

²⁰ Mackenzie J in **Cornack v Fingleton** [2002] QSC 391 at para 48: “... the fundamental proposition underlying the applicant’s [Magistrate Cornack’s] belief that the process followed by the Chief Magistrate impinged on her internal judicial independence has been made out.”

²¹ **Thacker v Fingleton** ([Judicial Committee Determination](#)) 11 October 2002 para. 16: “With the increasing professionalization of the Magistracy, especially, the position of the Chief Magistrate should desirably be regarded as first among equals. Departure from that approach by heads of jurisdiction has been notorious for provoking disharmony and that is obviously inimical to an effectively performing court and, ultimately, the public interest.”

difficulties that have besieged the only two Chief Magistrates who have held the so-called ‘transfer power’ in respect of other magistrates, any further attempts by government to amend the laws relating to this issue should show some circumspection. If reported comments from the Attorney-General shortly after the decisions in the civil proceedings are any indication however, the signs are not good. The Attorney could not have carefully read the decisions before reportedly stating “they [the decisions] place any current or future chief magistrate in an almost impossible position to make these [transfer] decisions.”²² His misunderstanding of the underlying issue is further exemplified by his comment that he regarded it as “an inherent obligation” of magistrates that they serve in regional Queensland. The government’s response to the current issues befalling the magistracy will be inadequate if this level of insight determines its response. A patchwork response to the needed reconsideration of this power will fail.

First and foremost, when passing laws that might affect the judiciary, a government’s primary obligation must be to ensure that there is no infringement upon judicial independence. Politicians have sometimes found it hard to accept or discharge this responsibility. When the *Magistrates Act* was enacted in 1991, purporting to “*promote judicial independence*” it enshrined a framework in which, for the first time in the history of the Queensland magistracy, magistrates were susceptible to forced transfer.²³ In 1999, when amendments were made to the *Magistrates Act*, there was no consultation of the magistracy as a whole by the former Attorney-General Mat Foley. It was rushed in as a result of the first litigation. Recent litigation has revealed that these amendments have succeeded in providing a mechanism for protecting magistrates from arbitrary exercise of the transfer power, albeit one that involves public litigation. But they have not provided any real answers to address the underlying issue of judicial independence for a court which is growing in stature, responsibility and recognition as an important court. The Magistrates Courts service approximately 95 % of all litigants in the State.²⁴ It is important that it functions well and should be resourced to be able to do so.

The power, if there be one, for a Chief Magistrate to force another magistrate to relocate their home to continue sitting as a judicial officer is therefore one that could clearly affect the independence of those susceptible to such a direction. It does not involve a lot of imagination to expect that on a bench of 75 judicial officers there will be differences in personality. There will also be political differences. Moreover there will be differences in their respective personal circumstances. Thankfully, the courts are no longer the reserve of white middle class men. However, with these changes in the demographic make up of the courts, the government must recognise that significant corresponding changes in resource allocation and expectations are necessary. If you appoint younger

²² It should be noted that in the 6 months since Ms Fingleton stood aside, there have been a number of transfers with apparently little if any disagreement between the Acting Chief Magistrate and the other magistrates.

²³ Prior to then, movement throughout the State was based on a promotion-based process as used in the public service. For example, a Division II magistrate sitting in particular centre could apply for appointment to another centre which might be more remote but would ensure an increase in their conditions because it was a Division I appointment.

²⁴ See statistics compiled by the Queensland Government’s Office of Economic and Statistical Research at <http://www.oesr.qld.gov.au/data/tables/cjsq2000/cjsq2000.htm>.

women and men with young children to the bench [or who still have elderly parents, for that matter] then you have to accommodate the whole of their circumstances.²⁵

The political retort, “if you take the job, you take the conditions” has resonance in the general community when they consider their own employment conditions, but it has little force in a sophisticated democracy where the protection of the rule of law is a paramount consideration. It is best met by quoting the current Chief Justice of the High Court Murray Gleeson when he spoke of the “Changing Judiciary” in 2001.

“There is a danger that the judiciary itself may become bureaucratized. In our enthusiasm to respond to various pressures, including those that come from increasing numbers, and the complexity of court structures, we may risk losing some the vitality that comes from our individual independence of one another. Leaders of the judiciary, and organizations such as the Judicial Conference, need to take care not to stifle this individual independence. They need to strike a balance between institutional goals which include efficiency, appropriate accountability, and education and the preservation of personal independence. Judges can be led, but they are not amenable to command and direction in the same manner as employees or subordinates. Courts, and their members, are awkward to manage. I prefer it that way. The day the judiciary becomes easy to manage is the day it will have changed beyond my recognition.”

Secondly, of course, in a geographically vast State such as Queensland it will sometimes be difficult to make sure that there is a magistrate willing to serve every place where a Court is required. However, it is the responsibility of government to ensure that a Chief Magistrate, reposed with the considerable responsibility and power to administer 75 other judicial officers, must be equipped with the resources and tools available to do so in a fashion that does not promote fear, favour or disharmony *and* most importantly does not infringe judicial independence. Novel ideas such as “virtual” courts, centre sharing, and financial incentives to make remote areas less unattractive are but a few of the obvious matters to be considered.

If it is to be a mandatory requirement that judicial officers are to be not just willingly but forcibly uprooted and relocated on a routine basis across the State at the discretion of a Chief Magistrate then the government will attract to that bench lawyers who are childless, retiring or predominantly male, who will be easier to “manage”. Such a result would be counter to what the citizenry expects – a court reflective of the demographic make-up of the community and sufficiently resourced to be independent of government. Senior executives in private industry and government departments are not as susceptible to such capricious conditions.

It is of course true that when family responsibilities come into play “employers” and “employees” will often differ as to what are the priorities. It is also possible that Chief Magistrates will bring their own baggage and personal experience into the equation – whether they have had children, whether they were transferred involuntarily etc – and are

²⁵ Indeed section 10(4)(b) of the *Magistrates Act* was amended in 1999 to require that a Chief Magistrate take into account a magistrate’s “*personal circumstances and all other relevant considerations*”.

unlikely to have many skills in human resource management (many lawyers are hindered by this). Some excerpts from the merits review findings of the Judicial Committee are apposite, at paras [15], [16] and [18]:

“It is clear that some Magistrates are critical of the Chief Magistrate for not taking a sufficiently collegial approach to these issues. While ultimately it must fall to the Chief Magistrate to make the decision, the degree of acceptance with which that decision is received - by the particular Magistrate concerned and the Magistracy more broadly - will be enhanced if the process leading to the decision is as collegial as possible. Consistently, it should in our view be productive rather than destructive that Magistrates are given the opportunity freely to discuss the desirability of the present transfer policy; there should be no potential difficulty in letting it be known that certain positions will have to be filled; and there should be no difficulty in the Chief Magistrate's consulting more broadly with her colleagues should a proposed transfer become problematic.

With the increasing professionalisation of the Magistracy, especially, the position of the Chief Magistrate should desirably be regarded as first among equals. Departure from that approach by heads of jurisdiction has been notorious for provoking disharmony and that is obviously inimical to an effectively performing court and, ultimately, the public interest.

We think it desirable in the public interest that we publish this determination...”

When this decision was handed down it was perhaps understandable that the Attorney-General wished to speak publicly in support of the current Chief Magistrate given that Her Worship was appointed by his government. But there is a danger that speaking in such a manner suggests an unhealthy political relationship which is concealing the true issues such as transfer that need to be addressed by government. There has to be less public posturing by government and more considered appreciation of the institutional and legal reforms that are necessary to avert any further controversy in the Courts.

Five Issues

What is clear is that the civil litigation was important and necessary and addressed the important notion of judicial independence in the magistracy. In my view, the opportunity should now be taken to address five of the underlying issues.

First, a further review of the Magistrates Act 1991 is necessary. At the very least, the directions and reprimand powers need to be removed, given their intolerable tension with judicial independence.²⁶ Justice Mackenzie aptly remarked in **Cornack v Fingleton**

²⁶ See observations by Justice Mackenzie in **Cornack v Fingleton** [2002] QSC 391 at para 29: “In an article “The Limits of Judicial Accountability: A Hard Look at the *Judicial Officers Act 1986*”, (1987) 10 UNSW Law Journal 3, Professor Shimon Shetreet identified as a “major problem” the granting of disciplinary powers to administrative heads of the judiciary. At page 11 he said the following: “A major problem in the Judicial Officers Act concerns the granting of disciplinary powers to the administrative heads of the judiciary collectively and individually. The result is the introduction of hierarchical patterns into the judiciary, which in turn have the result of chilling judicial independence. These hierarchical patterns may even bring about attempts by judges to influence other judges’ decisions, or give rise to latent pressures on the judges which may result in subservience to judicial superiors. Hierarchical patterns are usual in the civil service, a typically hierarchical organisation, but are objectionable in the context of the judiciary whose members must enjoy internal independence vis-à-vis their colleagues and judicial superiors. Both

(supra) at para. 32:

The history of representations to remove the power to reprimand and the expressed willingness of the government to monitor the progress of the legislation and introduce changes where necessary are both recorded in the judgment in *Gribbin and Thacker v Fingleton*, delivered contemporaneously with this judgment. Perhaps the time is opportune to revisit the issues in light of the comments of the Chief Justice of Australia and the evidence in these cases.

The review should also look at how differences of opinion over administrative arrangements on the court might be resolved. A professional process of mediation should be required of judges before recourse to litigation. The transfer power in particular needs examination. The review need not be rushed and should be performed with the assistance of senior judicial officers and fulsome discussion with the magistracy.

Secondly, there should be provision for judicial education on how to conduct themselves both in and outside court. Judges and magistrates are usually just lawyers at the time of appointment. Invariably the appointment suggests a high degree of experience and learning as lawyers. But there is of course a sliding scale. Being an experienced and learned lawyer does not necessarily mean that one has a balanced personality. Often it is likely that social skills are less refined in busy lawyers, having regard to the pressures involved in litigation. Judicial officers need continuing ‘education’ about their responsibilities to the community and the community’s expectations of the judicial arm of government. This education can no longer be left to occur by osmosis, avuncular nudges or be limited to a one-week ‘training’ program upon appointment. This education should also extend to ‘heads of jurisdiction’. The Judicial Committee correctly observed that the position of Chief Magistrate merely placed Ms Fingleton as ‘first amongst equals’, a concept she found difficult to accept when administering the transfer power. The Magistrates Court is entrenched in the hierarchy of the public service, and magistrates have hitherto been unsophisticated in their appreciation of such concepts as judicial independence and their responsibilities in general.

Thirdly, the [NSW Judicial Commission](#) model should be examined as an appropriate model to adopt in determining conflict between judicial officers or allegations of judicial misconduct. Recourse to the courts should only occur if a process of resolution within a ‘college of judicial learning’ were to fail.

Fourthly, the all-powerful media has to recognise that the due functioning of the courts as the judicial arm of government can only work with a responsible and intelligent media which focuses on circumstances such as those involving Ms Fingleton with an intention to foster democratic and apolitical resolution. At present most commentary has focussed on personalities. It has to be recognised that the due maintenance of the rule of law rests not just with lawyers (including judges) and politicians but also with the media and the

the International Bar Association Standards and the Universal Declaration on the Independence of Justice recognise this issue and emphasize the importance of internal judicial independence.”
(footnotes omitted) The extent of the powers referred to is more limited than those in s 10(8) – see last paragraph of quotation in para [31].”

citizenry.

Finally, and this may be an overly optimistic thought, there must be recognition by government and opposition parties that the judiciary should not be politicised either in its makeup or in its function. Those who control the media agenda and political discussion should look carefully at how the government and the media itself respond in future to ensure that there is no further diminution of the rule of law or any greater burden placed upon judicial functioning in this State. The entire community will suffer if politicians, the media and judges do not learn the lessons, which so poignantly arise in the circumstances surrounding Ms Fingleton.

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