Pegasus Scholarship Report 2018

Crown Law, Wellington, New Zealand

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Pegasus Report

Overview

In September 2018 I commenced a three-month placement with Crown Law in Wellington, New Zealand. I was initially primarily placed with the Criminal Law team however due to the nature of the governmental department, I also assisted other teams within the Office. This was particularly beneficial to me as a mixed common-law practitioner. These are my experiences and observations over the thirteen-week long placement.

Criminal Law

Despite New Zealand forming part of the Commonwealth, their legal system has developed many differences to ours. Crown Law does not have a readily comparable body in our system, despite superficially appearing to be very similar to the Crown Prosecution Service. The Crown Law Criminal Department mainly handles appeal matters. Each region within New Zealand has an assigned '*warrant*' which is awarded to a privately practising lawyer in that geographical area. The firm of the lawyer who obtains it, known as the '*Crown Solicitor'*, then conducts all first instance hearings and trials on behalf of the Crown. Therefore there is a much sharper delineation between Prosecution and Defence practitioners throughout New Zealand than in England and Wales. When an appeal is made by the Defence (or the Prosecutor believes there may be grounds for an Appeal), the case comes to Crown Law who determine whether to oppose it (or if there are grounds to make a cross-appeal), and their lawyers conduct the appeal hearings.

This system therefore gave me great experience in working on high level criminal work, as the hearings I attended were mainly Court of Appeal or Supreme Court level. This gave me consistent exposure to higher appellate courts.

Whilst respecting that many of the cases I assisted in remain ongoing, the following are examples of the work/cases I assisted in:

- An immunity request. Whether an individual should obtain immunity from Prosecution following information provided;
- Requests pursuant to the Mutual Assistance in Criminal Matters Act 1992. This Act outlines when New Zealand authorities can provide or request assistance to/from other jurisdictions in relation to criminal behaviour spanning numerous countries. This is not

extradition, it covers a situation where, for instance, a defendant has been detained in the USA attempting to import drugs from New Zealand. The USA would then request details of addresses from which the containers came from (potentially leading to search warrants), information regarding bank accounts held in New Zealand and such like to bolster their investigation. Crown Law would then, under the Act, have a number of considerations before acceding to such a request, including the position under the New Zealand Bill of Rights Act (1990).

- Researching points of law for forthcoming appeal hearings. I assisted in the research of a matter which went before the New Zealand Supreme Court, concerning whether a Defendant has a right to a '*judge alone'* trial (New Zealand allows far more serious cases to be tried in front of a judge rather than a jury).

In my final weeks of the scholarship I appeared as Junior Counsel on a two week-long jury trial with a lawyer from the Wellington Crown Solicitor's Office in the District Court following permission being given by the Learned Judge. '*Junioring*' is a much different concept in New Zealand to what we are accustomed to in this jurisdiction and it is not rare for two lawyers to be present throughout a trial for either side (with all of them having rights of audience). This was an incredible experience as it enabled me to work alongside an experienced practitioner from a different jurisdiction and discuss ideas and approaches with them, as well as seeing how such a trial is conducted in New Zealand.

Whilst with the criminal team, I noted a number of ostensible differences between New Zealand's jurisdiction and ours within this practice area:

- New Zealand has jury and *'judge-alone'* trials, and Defendants can often select which to face. A judge alone trial can be for very serious offences and therefore is not comparable to District Judge trials. This is often a highly thought out and tactical move as to which a Defendant selects;
- The approach to the Defendant's right to silence. The Defendant is not subject to any adverse inference or comment by a Prosecutor for failing to give evidence and/or answer questions at interview. Any comment regarding this (as would ordinarily occur in England and Wales) would be an automatic ground of appeal. As such, a Defendant not giving evidence in the trial is much more common;

The Treaty & Tikanga Maori

New Zealand is one of the few countries in the world trying to counterbalance the position of an indigenous population and a Western structured legal system. There has been a longstanding inequality between the '*Pakeha*' (the European settlers) and the Maori, with much of it stemming from the highly controversial Treaty of Whitangi signed in 1840. In 1975 the Treaty was recognised as a document with true legal force following the Treaty of Whitangi Act and the Whitangi Tribunal was created in order to determine claims by Maori Groups under the Treaty. This includes compensation for land taken by the Crown in the 19th Century, recognition of Maori rights in certain areas of the country and over certain institutions within the community. Such a system is very difficult conceptually to grasp and understand, and can only be understood with a knowledge and appreciation of *Tikanga Maori*.

During my time with Crown Law, His Honour Justice Williams (the first permanent Maori Court of Appeal Judge) came to Crown Law and presented a seminar to reinforce the concept of *Tikanga Maori*. This, he described is essentially the *'Maori way of doing things'* and without a basic knowledge of such a concept, one cannot understand Maori perspectives and effectively give recognition to Maori rights. The Maori did not (and do not) operate in the same way as a Westernised legal structure may expect, and this cultural difference must be appreciated and incorporated into the current system. This process continues to develop throughout the New Zealand legal system with it now formally recognised that *Tikanga* is part of the legal structure. The Whitiangi Tribunal has a role in providing redress and being at the forefront of addressing Maori rights. The end goal and the mantra being pursued is that there should no longer be a *'Maori'* perspective and *'the Crown'* perspective but that they become so closely aligned that "*the Crown is Maori*".

I saw the Tribunal in action for a week when it was sitting in Wellington. Its cases are long running in nature and generally quite alien to us as a concept (potentially most closely aligned to an Inquiry). A panel of six hear evidence relating to Maori rights regarding a certain claim against the Treaty. In the case I attended, known as the *Freshwater* case, the claim concerned who should control the Freshwater in New Zealand (currently the Crown) and to what extent. Essentially this covers things such as who can issue licences, can decide how it is provided to homes and how, what is released into it and such like. The Tribunal however is not only conducting a balancing exercise between the Crown and the Maori, but also which Maori groups should have what rights. For instance in the hearing I attended there were over 20

parties within the proceedings; the Crown, bodies representing widespread Maori interests (such as the Maori Council) and then also specific Maori *iwi* or groups.

Civil Law

I also assisted in various civil law matters, most notably providing research-based assistance in an ongoing employment discrimination case. This was a class-action regarding contracts awarded in certain public sector jobs. This gave me an insight into such a wide ranging case which could have effects nationwide in New Zealand.

Whilst I was undertaking my placement, the Court of Appeal also reached a decision in the '*Kiwi Fruit'* case. This is a headline case in New Zealand because of the impacts it has upon so many people and also the impact it could have on how government departments operate. Again as it is ongoing, I cannot overly comment upon it but I was given an insight into complex legal arguments, put forward by leading Counsel and the foundation and basis for such arguments.

Other Benefits

Being placed with a governmental organisation I also had incredible access to improve my skills and learn throughout the placement. For instance I had the following experiences:

- Attended a moot with the Deputy Solicitor-General as he prepared for a Supreme Court case;
- Had access to wide-ranging seminars put on by the organisation in all legal areas, including talks from USA Prosecutors, Baroness Hale, University Lecturers and Policy Team members working closely with the current coalition government.

I cannot overstate how enjoyable and interesting the placement was and would recommend any young Barrister interested to apply.