Read the controversial email correspondence.

Who's who in the emails

Bill
Justice Bill Wilson of the Supreme Court found to have failed to properly disclose his business relationship with Alan Galbraith, in a case in which Galbraith appeared for the successful party. The Government took the unprecedented step of appointing a Judicial Conduct Panel to investigate the judge. The panel could recommend he be sacked if it considered the misconduct warranted it. The judge has applied to the High Court for a ruling that the panel is illegal claiming that the misconduct alleged cannot amount to a sackable offence.

Alan
Alan Galbraith, a leading QC, and a friend of Wilson's with whom he had a thoroughbred racing, breeding and land-owning company. Faced with a dilemma when Wilson failed to fully disclose their business relationship.

E.W. Thomas / Ted

Sir Edmund Thomas, retired, one of New Zealand's most distinguished judges, served on Court of Appeal and Supreme Court. Complained about Wilson's conduct to the Judicial Conduct Commissioner, who in turn, recommended a panel investigation.

Jim

Jim Farmer, rated one of New Zealand's best QCs, a close friend of Alan Galbraith. Farmer was advising Galbraith on how to handle Justice Wilson's failure to fully disclose his conflict of interest. Farmer sought advice from Thomas, another friend.

Colin

Colin Carruthers, a leading QC. Friend of Wilson's and now the judge's legal representative in fight to have the panel ruled illegal.

Sian

Dame Sian Elias, chief justice, formerly shared in racehorse partnerships with Wilson and Galbraith. Said by Thomas to be 'sick in the stomach' on learning the details. If appointment of a panel is ruled to be illegal, it may fall to her to sort out Wilson's misconduct.

Notes:

* Emails that have been repeated as part of a chain have been crossed out.
* Some irrelevant passages have been removed as have personal contact details.
* Farmer has responded to some of Thomas's emails by adding comments in bold.

E.W.THOMAS
From: E.W.THOMAS
Sent: Saturday, 4 July 2009 11:14 a.m.
To: 'James Farmer'
Subject: Alan

Dear Jim

Herewith my thoughts before I rush off to Nelson

1. The first objective must be to ensure that Alan comes out of this squeaky clean.

2. But the second objective cannot be ignored if we are to live with ourselves; that is protecting the integrity of the judiciary.

3. the matter has to be resolved, not just for the future, but for Saxmere. They have to have a rehearing.

3. I am glad to see that Alan is going to see the CJ. But I don't think that this will absolve him - or others of us in the know - from responsibility if nothing happens. Alan will always feel that he is privy to an unacceptable lapse in judicial behaviour; like being an accessory after the fact. And, if the matter does eventually leak, there is a risk that the media will include Alan in their hostile reporting.

4. The only satisfactory solution is for Bill to go. Saying this does not come easily as, although aware that he can run with the hares and hunt with the hounds, I have always liked Bill.

5. I have a residual fear that Sian may not initially see the seriousness of the matter and not act decisively enough. For that reason, Alan may want to consider asking either the Attorney-General to be present or advising Sian that he also proposes seeing the Attorney-General. He should, I feel, also let Sian know that Colin, you and I are aware of the facts and believe that the matter requires firm action.

6. In Sian's shoes I would immediately speak to Bill (Alan should not allow himself to be drawn into a meeting with Bill - that could be compromising depending on how the matter turns out). Assuming that Bill has no explanation, which seems certain, I would put him on immediate sick leave. I would also give him to understand that his resignation was required, and would be the cleanest way out for both the Court and himself.

7. How the Court deals with the rehearing that Saxmere is entitled to is over to the Court, but it seems certain that the media would start nosing out the truth.

8. If nothing is done the matter will eventually leak anyway, and be worse for everyone.

9. I will not intervene unless Alan wants me to, but I would be prepared to let Sian have my thoughts if she is open to discussion.

My email.

Regards

Ted

E.W.THOMAS
From: E.W.THOMAS,
Sent: Monday, 6 July 2009 5:57 p.m.
To: 'James Farmer'
Subject: Wilson

Dear Jim

I am grateful for the call at lunchtime. This must be most disruptive during a trial. But I have always been amazed at your ability to handle both a trial and a crisis at the same time.

I have checked with the Registrar. The Court sits on civil appeals tomorrow, that is, Tuesday, and Wednesday. Paragraph 2 of my email of earlier today applies. The Court does not then sit until 14 and 16 July.

I did not ask questions about Alan's financial position in your call today. Is Alan in jeopardy of not being repaid, or not repaid in full, either in respect of the debt or the guarantee if Bill gets the miff or otherwise? And does the business arrangement mean that Alan and Bill have to have an ongoing business relationship? The fact Alan rang Bill back is unfortunate. At this point he should be maintaining his distance.

Bill is clearly desperate. He has lied about the fact that some monies, if not the half million, were not due at the time of the *Saxmere* hearing; about the fact that repayment of the loan had not been demanded; about the existence of the guarantee, and I suspect he has lied about the conversation with Blanchard as well. It is difficult seeing how Blanchard could think that a non-demand loan should not be disclosed. Bill would still be hock to Alan. And Bill obviously did not mention the guarantee to Blanchard.

I am not al all in favour of the plan Colin, Alan and you have worked out. Frankly, I doubt that it will work. But Alan needs to go to the Chief Justice as soon as possible. Any delay on his part will add to the adverse impression that may arise out of the fact that he must, at the very least, have been somewhat surprised that Francis Cooke did not act on Bill's disclosure and disqualify Bill from sitting. And I am at one with you that the media will eventually get on to this story. The proposed course could then be made to have a "cosy" look about it; The Three Musketeers easing the way for an old mate to make an "honourable" departure. This impression, and remember the media will want a story damning everyone, will be reinforced by the fact that you will be going to *Saxmere* and not the Chief Justice. It is an absolute that *Saxmere* must be informed. But what if they choose do nothing about it? The decision is not for a party to make and the reputation and integrity of the Court requires that the issue be looked at beyond *Saxmere*.

Another reason why I think Alan should go to the Chief Justice at once is that I am not confident that Bill will be prepared to go down alone. The discussions with Alan (and Colin) we know about, and those we do not know about, may be distorted to his (and Colin's) disadvantage.

I am confirmed in my view that Alan should see Sian forthwith. Alan and Colin should, I feel, know that you have kept me informed so that they are aware that the decision as to what to do and when to do it is not entirely in their hands. I would think that they would pick this up from my emails.

Regards

Ted

7

Sent: Monday, 6 July 2009 1:07 p.m.
To: James Farmer
Subject: Wilson

Dear Jim

No doubt Alan and you had a productive discussion over the weekend. I have had some further thoughts and, apropos my earlier email, want to spell out the reasons why I think that Sian has no option but to suspend or put Bill on sick leave immediately.

1. Once Sian is apprised of the facts Bill is compromised. Sitting with Sian he can have no independence, and certainly not the appearance of independence, while Sian contemplates his fate. (Of course, he can't sit with her if she does not obtain his resignation either because he will then be forever indebted to her.) (In addition, the parties are entitled to a Court on which all five members are independent. In circumstances where the CJ is going to differ from the others it would take some "courage" for Bill to tell Sian he was not going to join her.) **Yes, I understand the point – it will arise once Sian has spoken to Bill but hasn't arisen yet until that happens.**

2. I consider that the other permanent members are entitled to know the facts before sitting alongside Bill. If they sit with him and find out later they will, at least, feel justifiably disgruntled. An argument of bias under this head would not be as strong as that contained in paragraph 1, but would, especially with some modification, be arguable. After all, Bill would still be sitting knowing that eventually he may be dependent on their goodwill. (Interestingly, if I were still a member of the Court, I would refuse to sit in these circumstances. But that only serves to confirm that the other members of the Court should not be required to sit with Bill from the moment the CJ knows of the debt.) **Yes, logically that follows from 1 above but same timing.**

3. I am concerned about the cases on which Bill has sat since the time he was required to make disclosure where decisions are still outstanding. As from the moment of disclosure he must have been aware he was in some jeopardy and have been influenced by that knowledge. If I lost an appeal where the hearing had taken place after Bill had made disclosure - or non-disclosure - I would certainly run the point. Win or lose, this would reflect badly on the Court. **I understand that point also but am not sure that right now anything can be done to meet it until the time is reached where Sian knows about it all.**

4. Saxmere is entitled to a rehearing. And, whatever happens, it must be apprised of the facts. There can be no escape from that. **Agreed.** Any delay in dealing with Bill from the time Alan informs Sian of the debt means that the Court (and her as CJ) will then be under the microscope. She cannot risk the reputation of either. **Yes and that is a matter for her.**

5. I said in my last email that I would not intervene without Alan's approval. But I now think that all of us who know the facts - Alan, Colin and me - are implicated. (I cannot see how the three of you could appear before the Court if Bill continues sitting. Either that or he would have to stand down every time the three top counsel in New Zealand appear on an appeal.) For myself, I feel that, depending on how things turn out between Sian and Alan, I would have to take some steps to make it clear that I am not prepared to be complicit to this lapse in judicial ethics. I am still concerned to see that Alan doesn't get burnt by this. I also want to see Sian come out of this without any criticism being able to be levelled against her. But I am also sleeplessly anxious about the integrity of the Court. For that integrity to be maintained the matter not only has to be dealt with but also has to be dealt with firmly and promptly

6. Alan should probably not go into the meeting with Sian without knowing of my concern and thinking. (Incidentally, Alan should take with him such documents as are necessary to establish the debt. – **agreed and Alan intends to.)**

7. Unless I hear from you to the contrary, I presently propose to email Sian to morrow morning and, without going into the matter at all, say that I want to speak to her after Alan has seen her.

Ted, as to paragraphs 5-7 above, obviously it would have been far better if I had never confided any of this in you, because Alan has been relying on me for advice and counsel. My reason for discussing it with you was that because the ramifications of this are so enormous – for Bill, for Alan, for the Supreme Court, for the system as a whole – was to ensure that I gave the best advice that I could to Alan. That remains the case and I would be very concerned if you intervened in the process at this stage (beyond your continuing counsel to me) out of a concern for the system. That concern is of course ultimately paramount but is a concern that will be addressed one way or the other in the forthcoming period. The time for protecting the system will come soon enough but it should do so without prejudicing Alan's position in the meantime. I also think that, despite the disgraceful way in which Bill has acted, he should be given the opportunity to receive advice from Colin as to the honourable course that he should now take which is to take immediate steps to ensure that Saxmere are apprised of the correct position so that they can seek a re-hearing. Of course the inevitable consequence will be resignation by Bill but I do think he should be given the chance of making a voluntary disclosure first. That is not to say that he should be allowed to dither – his response needs to be immediate.

If Bill does seek to implicate Bill, Colin or me, then so be it – we can all handle that. Having you in that particular mix is neither necessary nor desirable.

Ted, please show some patience with this.

If you have the time from your trial please give me a ring. My mobile number, again, is,

Regards

Ted

E W Thomas

E.W.THOMAS

From: James Farmer
Sent: Monday, 6 July 2009 6:08 p.m.
To: ewthomas
Subject: RE: Wilson

Dear Ted,
As discussed, Alan will be arranging an appointment with Sian today at a time that will allow for the other course to be pursued. See my other specific comments below marked in bold.
Regards,
Jim
PS Since starting this reply, I have just received your latest email and so I will in effect be responding to that below. However, 2 points in particular:

1. I don't think that, as a practical matter, anything can or should be done about the hearings set down for this week. It would cause absolute mayhem to attempt to do so.
2. I am opposed to either Alan or Colin being told that you may intervene and won't be doing so. This is a hard enough issue to deal with without having that hanging over our heads. See further my comments below as to why I told you about the matter in the first place.

~~From: E.W.THOMAS~~
Sent: Monday, 6 July 2009 1:07 p.m.
To: James Farmer
Subject: Wilson

Dear Jim

No doubt Alan and you had a productive discussion over the weekend. I have had some further thoughts and, apropos my earlier email, want to spell out the reasons why I think that Sian has no option but to suspend or put Bill on sick leave immediately.

1. Once Sian is apprised of the facts Bill is compromised. Sitting with Sian he can have no independence, and certainly not the appearance of independence, while Sian contemplates his fate. (Of course, he can't sit with her if she does not obtain his resignation either because he will then be forever indebted to her.) (In addition, the parties are entitled to a Court on which all five members are independent. In circumstances where the CJ is going to differ from the others it would take some "courage" for Bill to tell Sian he was not going to join her.) **Yes, I understand the point – it will arise once Sian has spoken to Bill but hasn't arisen yet until that happens.**

2. I consider that the other permanent members are entitled to know the facts before sitting alongside Bill. If they sit with him and find out later they will, at least, feel justifiably disgruntled. An argument of bias under this head would not be as strong as that contained in paragraph 1, but would, especially with some modification, be arguable. After all, Bill would still be sitting knowing that eventually he may be dependent on their goodwill. (Interestingly, if I were still a member of the Court, I would refuse to sit in these circumstances. But that only serves to confirm that the other members of the Court should not be required to sit with Bill from the moment the CJ knows of the debt.) **Yes, logically that follows from 1 above but same timing.**

3. I am concerned about the cases on which Bill has sat since the time he was required to make disclosure where decisions are still outstanding. As from the moment of disclosure he must have been aware he was in some jeopardy and have been influenced by that knowledge. If I lost an appeal where the hearing had taken place after Bill had made disclosure - or non-disclosure - I would certainly run the point. Win or lose, this would reflect badly on the Court. **I understand that point also but am not sure that right now**

10

E.W.THOMAS
From: E.W.THOMAS
Sent: Wednesday, 15 July 2009 12:08 p.m.
To: 'James Farmer'
Subject: Conflict of interest

Dear Jim

I have not heard from you and assume that no news is bad news.

Margaret just called me down from my study to hear an interview by Catherine Ryan on National radio. She interviewed Dean Knight of the Victoria Law School. The interview was solely about judges' conflict of interest and the *Saxmere* case. Bill Wilson and Alan's names were bandied about. At times the discussion got close to the bone.

I suspect that Bill will be desperate and playing for time. Alan will be reluctant to see the Chief Justice and dragging his feet. And so the matter drifts when it cannot be allowed to drift. Cases are being heard each week which may be contaminated by Bill's presence for the reason I gave in an earlier email. I am strongly of the view that the matter must be brought to the Chief Justice's notice by the end of this week. If you cannot persuade Alan to do that before Friday I will feel bound to intervene. The reputation and integrity of the Court is in issue.

You did not overtly say that you told me of this matter in confidence but I acknowledge that the confidentiality was implicit. It is this aspect that has given me much concern. But ultimately it cannot be decisive. If, for example, you had advised me that a Judge of the Supreme Court had accepted a bribe you would not expect confidentiality to attach to such advice.

I urge you to persuade Alan to <u>actually meet</u>, and <u>not</u> just arrange an interview, with the Chief Justice by the end of the week.

Regards

Ted

E W Thomas

12

E.W.THOMAS

From: James Farmer
Sent: Wednesday, 15 July 2009 10:33 p.m.
To: ewthomas
Subject: RE: Conflict of interest

Dear Ted,

My non-response should not be taken as an indication of bad news but rather the problems that normally surround contact between in this case 3 very busy people.

There have been positive developments but I am now reluctant to convey these to you if there is any prospect of your informing the Chief Justice of the source of your information. I would in fact be dismayed if you were to do that. As you say there was an implicit understanding of confidentiality in our discussions. I do not accept that a bribe of a Judicial Officer is in the same category as the present situation. There is a bright line between criminal conduct (which a bribe is) and improper conduct, including the conduct in the present case. In the former case, I accept that the obligation goes but in the latter case it does not (cf. legal professional privilege).

I should also indicate that I now have a detailed understanding of the facts that existed at the time of the Saxmere hearing and those that have evolved subsequently. All I am willing to indicate at this stage to you is that the picture is more complex than I originally indicated to you and it would be prudent to be cautious about any allegations that are made.

I am prepared to elaborate on some of these matters but only if you assure me that nothing will be said to anyone to indicate the source of any information that you convey.

Regards,
Jim

From: E.W.THOMAS
Sent: Wednesday, 15 July 2009 12:08 p.m.
To: James Farmer
Subject: Conflict of interest

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E.W.THOMAS
From: E.W.THOMAS
Sent: Friday, 17 July 2009 10:19 a.m.
To: 'James Farmer'
Subject: Conflict of interest

Dear Jim

Sorry about the delay. Rather than communicate by email I was proposing to ring you today when you get free from your trial.

First up, although I might prefer otherwise, if I do get in touch with the Chief Justice, I will not disclose the source of my information. I will, if it is put to me, deny that it is you. Indeed, I may not wait for it to be put to me.

Secondly, of course there is a distinction between a judge committing a crime and a judge failing to disclose a conflict of interest. But I disagree that there is a bright line between the two. A bribe in the form of telling the judge that he can use your holiday house for a weekend might not be considered as serious as a conflict of interest in which the judge's ability to act impartially is negligible. As with everything, it's all a matter of fact and degree. What makes this case so serous is that Bill was required to disclose the conflict and chose not to divulge certain pertinent facts.

I have always assumed that the facts could be more complex than what you initially outlined. The basic position, which has been your position as well as mine, is that -

1) Saxmere (for one) must have a rehearing.

2) It is inevitable that the media will get on to it and make Bill's tenure impossible - and the Court itself will suffer in the process.

3) The facts are so serious that Bill has no option but to resign.

I feel very strongly that any judge or lawyer who is privy to this situation has a duty to act. If nothing is done the judge or lawyer is complicit in covering the facts up. You have the excuse that you are personally advising Alan. I do not.

I think that where we essentially differ is in our perception of the position when Bill is continuing to sit. I do not share the view that everything is okay providing the Chief Justice and the other members of the Court do not know that Bill failed to make full disclosure. In my view the Court is compromised every time Bill sits. The Court is dysfunctional - contaminated might not be too strong a word - and every litigant is appearing before a Court which, for the reasons I gave in an earlier email, is not as independent as the litigant has the right to expect.

I was most reassured by your original advice to Alan that he should see the Chief Justice on the first Tuesday after the Court's decision was handed down. This also had to be the best course for Alan. When Colin, Alan and you departed from that course I invited you to let them know that you had told me about the matter so that they would realise that, if they did not act, the matter would not be allowed to drift. I am now most reassured that Alan is actually seeing the Chief Justice before the end of the week. I assume that what is now contemplated is a full disclosure?

It must be your choice now whether you update me on developments. But I would appreciate a call. You have my word that I will not say anything to anyone to indicate the source of my information. (I have already told Margaret and my brother seeking their advice as to what they think I should do.)

Having just made a controversial speech, Sian needs this issue on her plate like hole in the head.

Regards

Ted

E W Thomas

Sent: Friday, 17 July 2009 5:16 p.m.
To: ewthomas
Subject: RE: Conflict of interest

Thanks, Ted.
The broad facts as I understand them are that Bill has talked to the Chief Justice about the situation and made disclosure to her. Just what the disclosure is, however, I do not know and therefore I have advised Alan to make his own full disclosure which I believe he will.
The Saxmere situation is more complex than I had previously understood because, although there was some imbalance on the partnership accounts at the time of the hearing, that had been countered by some contra arrangement under which Bill had undertaken some other obligations that were otherwise Alan's. My understanding is that, since then, however, the position has deteriorated substantially. There are discussions going on at the moment that would lead to Bill being completely bought out. None of that would necessarily deal with the interim situation over the last few months in relation to other cases.
If there is a complexity as to how Sian responds to the situation in terms of her current c- troversy, that is a matter for her.

another question.

Regards,
Jim

From: E.W.THOMAS [mailto:
Sent: Friday, 17 July 2009 10:19 a.m.
To: James Farmer
Subject: Conflict of interest

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I have always assumed that the facts could be more complex than what you initially outlined. The basic position, which has been your position as well as mine, is that -

1) Saxmere (for one) must have a rehearing.

2) It is inevitable that the media will get on to it and make Bill's tenure impossible - and the Court itself will suffer in the process.

3) The facts are so serious that Bill has no option but to resign.

I feel very strongly that any judge or lawyer who is privy to this situation has a duty to act. If nothing is done [illegible] covering the facts up. You have the excuse that you are personally advising

E.W.THOMAS

18

E W Thomas

From: James Farmer
Sent: Saturday, 18 July 2009 1:16 p.m.
To: ewthoma
Subject: RE: Conflict of interest

Ted,
See my responses below (in bold).
Regards
Jim

From: E.W.THOMAS [mailto:
Sent: Saturday, 18 July 2009 11:11 a.m.
To: James Farmer
Subject: RE: Conflict of interest

Dear Jim

Thanks for your email. It is what is not said that is interesting. I take it that the negotiations to buy Bill out are for the purpose of allowing him to remain on the Court. **Absolutely not. Alan has been pressing for this for some time as a means of curtailing the continued build up of debt which Bill apparently has no way of dealing with given his Judge's salary. Coincidentally (subject to all the other points you make) it will mean that henceforth there is no business relationship between Bill and Alan – which removes at least *one* dimension of the problem *for the future only of course*.**

Does this mean the end to the three basics on which Alan, Colin and you were so adamant: (1) Bill must resign; (2) Saxmere must get a rehearing; (3) and the media will eventually get on to it and hound Bill out of office? **I believe that each of Alan, Colin and I believe all 3 of these. How (1) and (2) are achieved is a different question.**

I find it puzzling that when talking to you for the purpose of getting advice Alan would not have been fully aware of the "contra arrangements" and the effect of those arrangements. **Yes I am sure he was. I don't mean to give an impression that anyone (apart from Bill probably) is saying that there wasn't a situation that required disclosure at the time. I am just saying that the financial arrangements were more complex than I at least first thought and that there was a counter obligation. Neither Alan nor I would say that that had the effect of completely balancing the obligations that went the other way. I have only recently seen the detail of the situation. None of that alters the basic point that disclosure should have been made.**

The other difficulty if Bill remains on the Court is that, having regard to what has transpired, it would not seem possible for Alan, Colin or you to appear before him. No doubt he would not sit on those occasions. **This is probably where you and I part company. I certainly don't intend not to appear in the Supreme Court. Whether Bill sits is a matter between him and the Chief Justice who knows the situation. I am not a keeper of the Court's conscience and am of the view that my primary obligation is to Alan, not just as a matter of professional obligation but by virtue of my deep friendship for him. There is a limit to how far I will go to uphold the integrity of the judicial system if the Judges themselves won't.**

19

Sian is overseas from tomorrow until the 6th August. So I have just heard. Alan has however met with her and it is plain that she does know the situation.

Regards

Ted

E.W.Thomas

From: James Farmer
Sent: Friday, 17 July 2009 5:16 p.m.
To:
Subject: RE: Conflict of interest

Thanks, Ted.
The broad facts as I understand them are that Bill has talked to the Chief Justice about the situation and made disclosure to her. Just what the disclosure is, however, I do not know and therefore I have advised Alan to make his own full disclosure which I believe he will.
The Saxmere situation is more complex than I had previously understood because, although there was some imbalance on the partnership accounts at the time of the hearing, that had been countered by some contra arrangement under which Bill had undertaken some other obligations that were otherwise Alan's. My understanding is that, since then, however, the position has deteriorated substantially. There are discussions going on at the moment that would lead to Bill being completely bought out. None of that would necessarily deal with the interim situation over the last few months in relation to other cases.
If there is a complexity as to how Sian responds to the situation in terms of her current controversy, that is a matter for her. I must say that, irrespective of the merits of what she has to say about prisoners' human rights vis a vis victims' rights and about amnesties (which elsewhere have led to nothing but more crime), she is amazingly naïve to think that a Government that has so recently been elected on a platform to be tougher on crime and which has been addressing the issue of overcrowding in prisons would not react in the way that it has. Not that she would care I guess – but whether that is courage or plain stupidity is another question.
Regards.
Jim

From: E.W.THOMAS
Sent: Friday, 17 July 2009 10:19 a.m.
To: James Farmer
Subject: Conflict of interest

Dear Jim

20

E.W.THOMAS

From: James Farmer
Sent: Sunday, 19 July 2009 9:54 a.m.
To:
Subject: FW: Conflict of interest

Ted,
I have reviewed this morning my understanding of the position at the time of the Saxmere hearing, in the light of accounting information that Alan has recently given to me and to try and get a better understanding of what I perhaps inaccurately described as a contra arrangement. A better description of the latter is that Bill did assume independent obligations to the bank to repay what would otherwise have been an unsecured imbalance (as it was at the time) between Bill and Alan. The imbalance was there but Bill had entered into a separate arrangement with the bank to assume the primary obligation for it and to satisfy that obligation to the bank. I believe that Bill would argue that because of that fact there was no financial dependency on Alan *at the time*. Similarly, in relation to the guarantee which the company gave to the bank of Bill's other indebtedness (debt that Bill has to third parties), Bill entered into a separate arrangement with the bank and gave security for it to reduce that indebtedness which he has been doing. The fact remains however that the company guarantee remains in place as collateral cover for this indebtedness and presumably will do so until Bill has sold his interests in the company to Alan (which will happen shortly).

For myself, I strongly doubt that any of this changes Bill's obligations of disclosure at the time but, as I say, I believe Bill would take a different view. Alan has not seen the memorandum that Bill gave to the Supreme Court stating the position (nor have I) but neither of us believes it will have been adequate, though Alan does think that if the facts had been presented properly it is doubtful that anyone would have taken objection to his sitting. Of course they never got that opportunity.

Subsequent developments in the state of the company shareholder accounts would however make it, I believe, impossible for any argument to be advanced that would meet the test now laid down by the Supreme Court. In particular, the original security that Bill gave does not, I think, cover what is essentially new debt. I do not know the terms of the disclosure made by Bill to the parties in the subsequent hearings in which Alan appeared but it can be assumed that it was not proper disclosure.

I think I have said all I can now on this topic but am happy to discuss with you if you like. My basic position however will be that given that Sian has had a discussion with Bill and now with Alan she will be sufficiently informed of the position to decide whether she wants to take the matter further I do not think she is in a very happy position in that respect, bearing in mind that Judges are removable only by Parliament, that Bill does have his own (wrong) view of the matter and will be highly resistant to resigning even if pressured to do so and will no doubt assert Independence of the Judiciary as a reason why he should not be pressured None of which you (or I) would agree with but Sian will be in a difficult position and I would think it possible that if Bill does go down he will endeavour to ensure that he takes her with him

Regards,
Jim

From: James Farmer
Sent: Saturday, 18 July 2009 1:16 p.m.
To:
Subject: RE: Conflict of interest

Ted,
See my responses below (in bold)
Regards
Jim

From: E.W.THOMAS
Sent: Saturday, 18 July 2009 11:11 a.m.
To: James Farmer
Subject: RE: Conflict of interest

21

E.W.THOMAS

From: E.W.THOMAS
Sent: Sunday, 19 July 2009 8:56 p.m.
To: 'James Farmer'
Subject: RE: Conflict of interest

Dear Jim

Most reassuring. I did not mean to convey that you could **not** sit if Bill remains and decides to sit in a case in which Colin, Alan or you are counsel. It is for Bill to stand down. But I think that you may have to consider whether you are under an obligation to advise the Court that it must consider whether Bill has a conflict of interest. You also expose your clients, if successful, of the possibility of an application for a rehearing, and a rehearing, if the losing party is subsequently alerted to the background. As from the beginning, it is clear that the only satisfactory answer is for Bill to resign.

But perhaps when your case is over we can have a quiet chat over lunch.

All the best

Regards

Ted

~~E.W.Thomas~~

From: James Farmer
Sent: Saturday, 18 July 2009 1:16 p.m.
To:
Subject: RE: Conflict of interest

Ted,
See my responses below (in bold).
Regards
Jim

From: E.W.THOMAS
Sent: Saturday, 18 July 2009 11:11 a.m.
To: James Farmer
Subject: RE: Conflict of interest

Dear Jim

Thanks for your email. It is what is not said that is interesting. I take it that the negotiations to buy Bill out are for the purpose of allowing him to remain on the Court **Absolutely not. Alan has been pressing for this**

22

E.W.THOMAS

From: James Farmer
Sent: Sunday, 19 July 2009 9:12 p.m.
To: ewthomas
Subject: FW: Conflict of interest

Rest of email reply below.

From: James Farmer
Sent: Sunday, 19 July 2009 8:59 p.m.
To:
Subject: RE: Conflict of interest

Sure – would like that. It has not been easy to think these issues through while being fully engaged in a difficult trial. However, I have done what I can because I recognize the importance of the issue to everyone concerned. However, these are issues that are unprecedented in my experience at least.

I think a new dimension that has emerged is Sian's position. It is probably the case that she has been aware – to what extent I do not know – for some time of the fact that the real situation does not accord with what Bill has been declaring or that he has not been making full and proper disclosure She has had at least one and probably more than one discussion with Bill – going back how far I don't know

That is why I say that not only is Sian herself in a difficult position but that Bill will, if he is forced to resign, be likely to implicate Sian in the whole thing and in effect assert that he has had some sort of clearance from her. These are issues that you may need to think about if you do intervene. Bill is being ejected from all his horse arrangements – not because of the legal issues – but because he is a partner who doesn't meet his obligations.

Regards,
Jim

From: E.W.THOMAS
Sent: Sunday, 19 July 2009 8:56 p.m.
To: James Farmer
Subject: RE: Conflict of interest

Dear Jim

Most reassuring I did not mean to convey that you could **not** sit if Bill remains and decides to sit in a case in which Colin, Alan or you are counsel It is for Bill to stand down But I think that you may have to consider whether you are under an obligation to advise the Court that it must consider whether Bill has a conflict of interest. You also expose your clients, if successful, of the possibility of an application for a rehearing, and a rehearing, if the losing party is subsequently alerted to the background As from the beginning it is clear that the only satisfactory answer is for Bill to resign

But perhaps when your case is over we can have a quiet chat over lunch

All the best

Regards

Ted

23

E.W.THOMAS
From: E.W.THOMAS
Sent: Thursday, 23 July 2009 10:12 p.m.
To: 'James Farmer'
Subject: Conflict of interest

Dear Jim

Either you have been bullshitting me or Alan has been bullshitting you. As you know, and as I know and accept, you have not been bullshitting me. So where does this leave Alan?

Sian rang me back from Hong Kong on Sunday night and discussed this matter with me for over half an hour. I read from notes that I had prepared, my informant being "anonymous".

First, Alan has not put the facts to her. He has not given her the material which you said he was preparing, including the position in relation to his subsequent appearances in the Supreme Court. She had coffee with Alan only the day or so before and Alan had told her no more than that he was buying Bill out.

Secondly, Bill has not spoken to the CJ about the matter since the Court's judgment came out. He has not made full disclosure as you claimed. Sian spoke to Bill before the hearing and he gave her a "categorical assurance" that he was not "beholden" to Alan. No indebtedness was mentioned. Nor was there any reference to a guarantee. She believes (correctly no doubt) that if she were to approach Bill again she would get the same categorical assurance.

Sian said that she could not or was not prepared to act on the basis of an anonymous report. She would act, however, if she received a complaint or formal communication. She might handle the inquiry herself or refer the matter to the Judicial Conduct Officer (presently Ian Haynes, but about to change).

She absolutely refused to believe my understanding (from my informant) that Alan, Colin and you were of the view that Bill must resign and that Saxmere must get a rehearing. But she seemed aware that Colin had been seeing Bill. She pretty much accepts that the issue will break in the media eventually

Sian thought that I should try and get the "anonymous" informant to make a formal complaint or communication. At no time did she suspect that my informant was you. Indeed, she seems to think that Saxmere is behind it. They copped an earful, which seems somewhat inexplicable.

I suggest that as soon as you are clear of your trial we get together and I will show you my notes of what I read to her and of my conversation with her. I cannot understand Alan. If the truth is eventually ferreted out and he has not been forthcoming he will lay himself open to the charge of being party to a cover up.

Speaking of a cover up, I implore you not to email me and tell me that you have spoken to Alan again and find that Alan and/or you got it all wrong. Frankly, I would find that hard to believe

For your information, the cases in the Supreme Court where Alan appeared in front of Bill are

(1) *New Zealand Recreational Fishing Council Inc* v *Sanford Limited* [2009] NZSC 54 (*NZRFC v Sanford*)
(2) *New Zealand Exchange Limited* v *Bank of New Zealand* [2008] NZSC 54 (*NZEL v BNZ*)
(3) *Ngai Tahu Property Limited* v *Central Plains Water Trust* [2009] NZSC 24 (*Ngai Tahu*)
(4) *The Commerce Commission* v *Carter Holt Harvery* [2009] NZSC 48 (*Commerce Commission v CHH*)

All these appeals resulted in unanimous decisions except the *Sanford* case where Sian dissented form the other four. Two are applications for leave, which were granted, and which means that they are still in the pipeline.

As indicated, I have kept your name out of it in a way that has not even made you a suspect. But I remain uneasy about preserving the confidentiality. If I had told Sian that my information came from you I don't think it would necessarily have made any difference. She would still want some sort of formal communication. It might work if I were able to write and say that you were my source. But there has to be a bottom line at which I cannot be expected to preserve the confidentiality any longer (apart from my memoirs). I cannot, for example, accept that Bill can ever sit if Alan, Colin or you appear as counsel. Knowing what he knows and his gratitude at not being "dobbed in" would leave him beholden to each of you - or, rather, having the appearance of being beholden. And, of course, we should all find it impossible to sleep at night if Saxmere does not get a rehearing (as well as at least one of the other cases where Bill and Alan coincided).

I said earlier that Alan's, Colin's and your plan to approach Bill would not work and it has not worked. If anything, it is now a bigger mess than ever. Your initial advice to Alan was undoubtedly the right advice. If Alan had followed that advice I suspect the whole matter would be well on the way to being cleared up by now. I know that you are a great mate of Alan's, but you are also a great mate of mine and I don't think it is too much to ask that you help sort things out in a way that preserve the integrity of the Court - without prejudice or damage to Alan.

But get your trial out of the way first.

Regards

Ted

E W Thomas

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E.W.THOMAS

From: James Farmer

Sent: Friday, 24 July 2009 11:11 a.m.

To:

Subject: RE: Conflict of interest

Ted,
We are not sitting today. I got your email therefore. I won't respond in detail but I do not welcome the pressure that you are putting on me. I am not very happy about the fact that you have told Sian that Colin, Alan and I all think that Bill should resign even though that is the fact.

It is pretty obvious to me and it is surely to you that (a) Bill has spoken at some point to Sian but may not have given her the full story (he didn't give the Court and the parties the full story so why should he have done so with Sian);

I thought that from my last email and our discussion at Court the other day that you had got the message that if this matter is probed, it will be likely to bring down Sian as well as Bill. While I have no brief for Bill, I do regard Sian as a close friend and I will always put friendship and loyalty above concerns about the "system" which has its own processes for looking after itself. I would always have thought that would be your position too but am now worried that you won't leave this alone.

You won't know but in the last day or two Saxmere has applied to the Supreme Court to recall the Judgment (on what grounds I don't know) so they are clearly looking after their own position and it must be the case that Bill's position will be exposed in the course of the next round.

There are other points in your email that, if I had the time, I would want to address but I will leave this as it is beyond saying that (1) I won't under any circumstances be making any sort of complaint to anyone (2) I would be appalled if you did and also if you did not continue to observe confidentiality.

Regards,
Jim

From: E.W.THOMAS
Sent: Thursday, 23 July 2009 10:12 p.m.
To: James Farmer
Subject: Conflict of interest

Dear Jim

Either you have been bullshitting me or Alan has been bullshitting you. As you know, and as I know and accept, you have not been bullshitting me. So where does this leave Alan?

Sian rang me back from Hong Kong on Sunday night and discussed this matter with me for over half an hour. I read from notes that I had prepared, my informant being "anonymous".

First, Alan has not put the facts to her. He has not given her the material which you said he was preparing, including the position in relation to his subsequent appearances in the Supreme Court. She had coffee with Alan only the day or so before and Alan had told her no more than that he was buying Bill out.

Secondly, Bill has not spoken to the CJ about the matter since the Court's judgment came out. He has not made full disclosure as you claimed. Sian spoke to Bill before the hearing and he gave her a "categorical assurance" that he was not "beholden" to Alan. No indebtedness was mentioned. Nor was there any reference to a guarantee. She believes (correctly no doubt) that if she were to approach Bill again she would get the same categorical assurance.

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E.W.THOMAS

From: James Farmer
Sent: Sunday, 20 September 2009 6:22 p.m.
To:
Subject: RE: Poygate!!!

Dear Tim,
I am in LA briefing expert evidence – back next Thursday.
Not happy reading.
Regards,
Jim

From: E.W.THOMAS
Sent: Sunday, 20 September 2009 5:57 p.m.
To: James Farmer
Subject: Poygate!!!

Dear Jim

I found this today on the website ("Kiwisfirst?).

PONYGATE!

The Meteoric Rise and Fall of Supreme Court Justice Bill Wilson

5 August 2009
There are many honest lawyers in New Zealand, though it often seems few of them sit as judges. The cloak-and-dagger process of judicial appointments does little to improve this quotient. Nor does the surprising statistic that no judge has ever been removed from the NZ bench for misconduct - - in judicial history! New Zealand Supreme Court Justice Bill Wilson just may become the first.

Kiwisfirst confirmed this week that Judge Bill Wilson violated longstanding New Zealand law when he continued to play an active business role in his horse breeding company after his appointment to the Court of Appeal. Wilson minimally failed to notify the Chief High Court Judge of his continued commercial involvement. Section 4(2A) of the Judicature Act prevents a judge from undertaking any employment or hold any other office, whether paid or not, unless the Chief High Court Judge is satisfied that the employment or other office is compatible with judicial office.

The breach of his judicial oath was revealed in a recall application by south island woolgrower Saxmere Company Limited and three other appellants in a Supreme Court application filed on 28 July 2009.

Last year, Saxmere filed a complaint that Judge Wilson was personally promoting his company Rich Hill Limited on the company's website. The Judge was pictured along with the other director of the private company, referring to his judicial title. A senior lawyer who prefers to remain anonymous stated *"This goes beyond a technical violation and bad taste. The clear inference is that Judge Wilson was promoting his judicial influence to advance his private company."* Though Wilson's self-promoting image has recently been removed from the Rich Hill Ltd. website, Wilson J remains a

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E.W.THOMAS

From: James Farmer
Sent: Monday, 21 September 2009 2:09 p.m.
To:
Subject: RE: Poygate!!!

Sorry, Ted (Sir Edmund). I am working with an economist called Tim Bresnahan from Stanford and he must have been on my mind!
Kiwifirst, incidentally, is a pretty outrageous and obsessive website which a year or so ago did a profile of all the Judges. If any of them read it, they would have been highly offended.
Jim

From: E.W.THOMAS
Sent: Sunday, 20 September 2009 10:04 p.m.
To: James Farmer
Subject: RE: Poygate!!!

Who the Hell is Tim?

E W Thomas

From: ~~James Farmer~~
Sent: Sunday, 20 September 2009 6:22 p.m.
To:
Subject: RE: Poygate!!!

Dear Tim,
I am in LA briefing expert evidence – back next Thursday.
Not happy reading.
Regards,
Jim

From: E.W.THOMAS
Sent: Sunday, 20 September 2009 5:57 p.m.
To: James Farmer
Subject: Poygate!!!

Dear Jim

I found this today on the ~~website ("Kiwisfirst?).~~

35

E.W.THOMAS

From: James Farmer
Sent: Monday, 21 September 2009 7:17 p.m.
To:
Subject: RE: Poygate!!!

Ted, See my comments and queries below:

From: E.W.THOMAS
Sent: Monday, 21 September 2009 2:34 p.m.
To: James Farmer
Subject: RE: Poygate!!!

Dear Jim

Yes, "Kiwifirst" is written by one Vince Siemer, a right wing American crackpot who is regularly committing contempt of court, see the other articles in his diatribe. Fortunately, no one would believe that I would have anything to do with such a shithead; so no one will think that I have leaked information to him.

Have you? There is a saying that if someone gets into bed with a dog he will catch flees. Siemer will not hesitate to disclose his sources of information.

But does he have any information over and beyond what he has obtained from the Court files? There could be some other source. How otherwise would he know that there has been a complaint to the Judicial Conduct Commissioner - if that is in fact the case?

The fact of a complaint to the Commissioner has been widely publicized e.g. NBR. The complaint though is against the Solicitor General for failing to advise Wilson J on his appointment of his duty to disclose his directorship. The complaint was made by the husband of Sue Grey, who is Saxmere's lawyer.

In a way, Siemer's intervention may assist Bill Wilson. No one will want to give the time of day to Siemer. There is, therefore, a danger that Bill's breach will be seen as nothing more than a Siemer rant. That has to be countered, and I wondered if someone should get in touch with the Judicial Complaints Commissioner, who is now David Gascoigne.

Who do you have in mind? If you are thinking of doing it yourself, then you will ultimately be an even bigger loser than Bill. I would hate to see you do this to yourself.

I am still worried about Alan's position. The notion that the amount Bill owes Alan is less than first thought because Bill has taken over liability for some of Alan's debts does not ring true when Bill cannot pay what he owes Alan anyway.

Alan has now bought Bill out so there is no question of indebtedness.

If it is no more than a "paper" reduction, that will no doubt come out - with, I would have thought, repercussions for Alan

Regards

Ted

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E.W.THOMAS

From: James Farmer
Sent: Tuesday, 22 September 2009 4:34 a.m.
To: E.W.THOMAS
Subject: RE: Poygate!!!

Glad to hear that you didnt contact him I would have been amazed if you had but had read your email as hinting that you might have but that no one would think you would have Equally of course neither I nor anyone else would think you would in any circumstance break a confidence especially one owed to a friend You are distressing me very much with statements that you are considering doing so

--- original message ---
From: "E.W.THOMAS" <ewthomas@xtra.co.nz>
Subject: RE: Poygate!!!
Date: 21st September 2009
Time: 9:23:55

Dear Jim

I resent the thought that I may have tipped Siemer off. I did not know of the website, "Kiwifirst", until my son sent it to me. I now think that I may have made a mistake in not disclosing the source of my information in my letter to the powers that be. It would have carried much more clout.
Perhaps, if I am to be compared to someone getting into bed with a dog and catching fleas it is not too late. Just back off that sort of drivel.

Regards

Ted

E W Thomas

From: James Farmer
Sent: Monday, 21 September 2009 7:17 p.m.
To:
Subject: RE: Poygate!!!

Ted, See my comments and queries below:

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E.W.THOMAS
From: E.W.THOMAS
Sent: Tuesday, 22 September 2009 2:38 p.m.
To: 'James Farmer'
Subject: Wilson

Dear Jim

Thank you for your emails. I will "imply" an apology.

But let's clear the air. As you know I am slow to anger, but your comment made me unbelievably angry, and I am still angry. The problem is that, if you could think I would have any truck with a lowlife like Seimer, others such as Colin, Alan, the Chief Justice, the Attorney-General and the Solicitor-General could think the same. At some point I will need to clarify that, if Seimer has an informant, it is certainly not me.

I note that you are distressed. You sound like Weatherston. We are all distressed. Those who have expressly used the word "sick" to describe how they felt about this whole sorry business include you, me, the Chief Justice and the Attorney-General. To make matters worse, it is a distress that could have been avoided if Alan had followed your original advice and tabled the true facts with the Chief Justice at the outset.

I have managed to preserve your confidence to date, but I have not done so as a matter of principle. If principle were to prevail I would be free to disclose my source. After all, a reporter can be required to disclose his or her source if the public interest so requires. So too, reserving the integrity of the Court must outweigh any claim to confidentiality. My restraint has been based on personal loyalty, not principle. Going through my collected papers I have been surprised at the number of occasions that I have assisted your career or promoted your interests. You will have forgotten them, or most of them, as had I. But loyalty can be strained and your comment certainly had that effect. I am not, therefore, prepared to give you a blanket assurance that your identity as the source of my information will not be disclosed. Much will depend on developments.

I feel let down, as well as distressed, at the way this matter has developed at the hands of Colin, Alan and yourself. Initially, that is, even before the judgment in the application to set aside the Court's decision in Saxmere had been given, you described Bill's behaviour as totally unacceptable. You were horrified by it. You said that you, and Colin and Alan, believed that Bill had to resign. His indebtedness was of the order of half a million. Alan had been demanding repayment for some time. Alan "needs the money" you said more than once. Colin had said that Bill "had feet of clay". Bill's position was so untenable that, if he didn't resign, the facts would come out in the media and he would be forced to resign. Resignation was inevitable. You had little sympathy for Bill.

Somewhere along the way, it was decided to back pedal. You were persuaded to go along with what I described at the time as a "fool's errand"; trying to persuade Bill to resign. Of course, that did not work. Subsequent developments have the faint smell of a cover up. Bills' indebtedness at the time of the Saxmere case is now allegedly reduced by him having accepted responsibility for certain of Alan's liabilities, for which Alan will remain primarily liable, when Bill couldn't even afford to repay Alan what he already owes him. Yeah, right!

At the outset I urged you to tell Colin and Alan that you had told me of Bills' non-disclosure to the Court. They had a right to know that I knew of the situation when deciding what to do. As it is, if Bill survives on the Bench, and it looks as though he will, I cannot see how it can be said that he will not be beholden to Colin, Alan and you for, at the very least, your forbearance. Depending on the court's decision, therefore, the fact Bill may sit in future when Colin, Alan or you appear as counsel remains a problem. To say that all is well now that Alan has bought Bill's interest out is to miss the point.

I should add that I do not regard your call to me informing me that Colin had confronted you and, having shown you my letter to the Chief Justice and attached notes, accused you of being the informant as being covered by any confidentiality. Nothing could be more natural than that you would ring me, castigate me for using your name in vain without coming back to you, inquiring who was my informant, and so on. Indeed, it would be suspiciously odd if you had not rung me. Having said that, I have no present or firm plans to disclose that call.

I suggest we have lunch. I have in fact discussed the matter, including your involvement, with three people; Margaret, my son Simon and my brother Lloyd (all in confidence). Without committing myself, I would like to indicate the circumstances in which I would think disclosing your involvement is justified without coming back to you for comment at the time. I for one am not prepared to lose sight of the importance of maintaining the integrity of the Court.

Regards

Ted

E W Thomas

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E.W.THOMAS

From: James Farmer
Sent: Tuesday, 22 September 2009 6:11 p.m.
To:
Subject: RE: Wilson

Ted,

I'm very happy that you have cleared the air. Now I want to do the same.

The only reason that I asked the question of you that has created offence is because I read your email as hinting at that. I was obviously wrong in my reading so the apology does not need to be implied. I expressly express it. However, as no one else has read the email, no one else can possibly think that you could have talked to Siemer. Your email says that you will need to clarify that you are not Siemer's informant. You are proposing to do this by disclosing – exactly to whom I am not sure – that I am your informant. So what conclusion will be drawn from that? I am the sort of person who makes disclosures (in breach of my obligation of confidence to Alan) and, having talked to you to some extent about what I have learned from Alan about Bill, it can be assumed that I would do the same with Siemer. Of course that is preposterous because, as you know, I spoke to you because I was hoping to get some help in how to advise Alan on an unprecedented and incredibly difficult situation. But I ask again: what does Siemers have to do with this issue between you and me and whether he is relevant to your decision to name me as an informant?

For the record, I do not accept that Bill's survival in any way makes him beholden to me. How on earth could it? I have no obligation to make disclosure of such information that I have had and indeed my view (though it is not yours) is that I would breach my duty to Alan as an adviser to him on a legal matter if I were to make disclosure. Whatever the position may be about newspaper reporters, it is not relevant.

But, in any event, it is plain that:

(a) The CJ has sufficient knowledge of the facts to make her "sick in the stomach" and I believe that she (and now the Court) have much more detailed knowledge than I have ever had.
(b) If there is a "faint smell of a cover up", then it will be by the court and/or the CJ who has told you in no uncertain terms that the matter is with the court and you should leave it with them. If the court fails to do the right thing on the material that I believe it now has then that will be its responsibility.

For the record also, I have never seen the text of statements made by Bill to the Court and have no direct knowledge of his discussions with the CJ so do not know what he has either told her or not told her. I do believe however in this respect that events may have moved on since you wrote your letter, as you would of course expect them to. Nor have I ever seen the accounts of the farm partnership. While I have been straight with you as to what I believe the situation to have been, I have never been party to the detail of it. I believe it likely that the court now is.

Finally, Ted, I acknowledge of course what you have done for me over the years. I like to think that I may have done things for you as well. Where that fits into this I am not sure. If you are saying that I am in your debt and have failed to repay that debt so that it is now open to you to disclose that I have breached my obligation of confidence to Alan then so be it. But I can't follow the logic. It would presumably mean that I would feel free to publish your account of your discussion with the CJ and that she felt sick in the stomach – leaving it to others to draw their own conclusions from her remark. Needless to say, there are no circumstances in which I would reveal what you have told me of that.

I do assume that you will wait now to see what transpires from the court which, as the CJ said to you, is seised of the matter - a matter which includes your allegations as well as whatever Saxmere is saying in its

latest application.

Regards,
Jim

From: E.W.THOMAS
Sent: Tuesday, 22 September 2009 2:38 p.m.
To: James Farmer
Subject: Wilson

Dear Jim

Thank you for your emails. I will "imply" an apology.

But let's clear the air. As you know I am slow to anger, but your comment made me unbelievably angry, and I am still angry. The problem is that, if you could think I would have any truck with a lowlife like Seimer, others such as Colin, Alan, the Chief Justice, the Attorney-General and the Solicitor-General could think the same. At some point I will need to clarify that, if Seimer has an informant, it is certainly not me.

I note that you are distressed. You sound like Weatherston. We are all distressed. Those who have expressly used the word "sick" to describe how they felt about this whole sorry business include you, me, the Chief ...ce and the Attorney-General. To make matters worse, it is a distress that could have been avoided if ...I followed your original advice and tabled the true facts with the Chief Justice at the outset.

...serve your confidence to date, but I have not done so as a matter of principle. If ...I be free to disclose my source. After all, a reporter can be required to disclose ... requires. So too, reserving the integrity of the Court must outweigh ...een based on personal loyalty, not principle. Going through my ...casions that I hav...

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E.W.THOMAS

From: James Farmer
Sent: Monday, 5 October 2009 11:48 a.m.
To:

Ted,
I last emailed you on 22 September setting out reasons why you should not take further precipitate action and leave it to the Court to do what the CJ has asked you to do – namely leave it in their hands. It seems to me that your silence since then and in particular a lack of any assurance that you would leave it there is ominous. Given the threat that you have made to breach the confidentiality between us (which I actually think is already breached to some extent), I feel entitled to ask what, if anything, you have done since our last communication and what, if anything, you are intending to do.
Regards,
Jim

Wilson

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E.W.THOMAS

From: James Farmer
Sent: Sunday, 11 October 2009 4:42 p.m.
To:
Subject: RE: Wilson

Thanks, Ted. It is a relief to know that you are alive and well. Your silence was giving rise to other concerns than just what you might be doing behind the scenes. There are some points in your email that I do feel I have to respond to and have done so in bold below. Other parts of the email just repeat matters of difference between us and so I will let them go.
Regards,
Jim

From: E.W.THOMAS
Sent: Sunday, 11 October 2009 3:38 p.m.
To: James Farmer
Subject: Wilson

Dear Jim

I refer to your "silence is ominous" email of the other day.

In my email of 22 September I indicated that I could not give you an assurance that the confidentiality you seek could be maintained.

What I am seeking is for you to *maintain* the confidentiality that at any early stage in this sorry saga you accepted was owed by virtue of the fact that I was seeking some input from you (a lawyer and retired Judge) in how I should advise Alan, something I was not finding easy. I am not sure (see further below) if you continue to agree that that obligation exists albeit that you are of the view that it is overridden by some greater obligation to the system.

I suggested that we have lunch after you returned from the United States and discuss the matter. But I have not heard from you. I have not responded to your email of the same date as, frankly, it does not do you justice. **Ted, I have my own personal views of your action in writing to the Chief Justice, Attorney General and Solicitor General and enclosing notes that include information that has come from me but I don't see any point in making the situation worse by calling names. I would suggest you do the same.**

I admit to having made two critical mistakes in this saga. One was not taking action as soon as you advised me of the meeting between Alan, Colin and you – **Just to be absolutely clear, Alan, Colin and I have never had a meeting at which this subject has been discussed – i have had separate discussions with Alan and with Colin** - when, contrary to Alan's and your original intention, the three of you decided to try and persuade Bill to resign – **This is not a correct statement either – at most there was a belief by all of us that if the media made this a cause celebre (as they are now doing) the inevitable result was that Bill would be forced to resign. Based on the Court's reference to the lack of any indebtedness, it certainly was my view (I will not speak for the others) that Bill had probably been less than accurate and frank but I repeat I have never seen Bill's statement(s) and nor has Alan.**, a forlorn hope that I correctly pointed out from the outset was doomed I will forever wonder what got into three of the best brains in the profession at this meeting to cause them to change course and let Bill off the hook. Clearly, each of you must have then sworn to maintain complete secrecy – **absolute rubbish and speculation that is wrong**; something that I imagine was essential if Bill was to have a hope of surviving. The second mistake I made was not to disclose your identity as my source when I wrote to the Chief Justice with copies of the letter to the Attorney-General and Solicitor-General. **You have never explained to me what asserting that I am your "informant" (an appalling word anyway) was going to achieve other than making me look bad. If it was somehow to give credibility to what you were saying, then I suggest that you also disclose the detail of your**

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discussion with Sian and her telling you that she had been sick in the stomach by the whole thing Or, I consider that you have also made critical mistakes. One was in not insisting at the meeting with Alan and Colin that your original advice to Alan to go direct to the Chief Justice and disclose Bill's indebtedness should be adhered to. The other mistake was not telling Alan and Colin that you had told me of the whole sorry mess. In my early emails I reiterated that it was important that they know I was aware of Bills indebtedness to Alan so that they could take that fact into account when making their decisions. **Neither Alan nor Colin nor I would ever have thought that you would have breached an admitted obligation of confidentiality to me and I repeat what I have said above about this alleged secrecy pact.** Would they have taken the same course if they had known that their efforts at maintaining secrecy might be thwarted? I think that you should still tell them.

I sat down one morning and listed all the possible options open to me if Bill continues to sit on the Court. There is a surprising, if not staggering, number of strategies available. Some do not involve disclosing that you are my source, some involve revealing that fact, and some involve disclosing only that you rang me after Colin had confronted you with the Chief Justice's letter, and my notes of our conversations, demanding to know if you were the informant. As I said before, it would have been unnatural for you not to ring me if only to find out whom I had got my information from.

For the moment, however, I am mainly waiting for the Court's decision. The other day some one told me of the article in the 2 October issue of NBR relating to the proceeding and I looked it up on NBR's website. I see that the Court has requested the company accounts to ascertain what a "6%" shortfall in Bill's obligations to the company mean in real figures, and that they have described it as "indirect indebtedness"! What will Alan do when the Court's judgment comes out if the figures the Court refers to do not represent the situation as he believed it to be at the time of the *Saxmere* hearing? Alan knows that Bill gave the Chief Justice a "categorical assurance" that he was not beholden to him. Would not that assurance have required mention of the "6%" shortfall to the company? As you have said from the outset, Alan needed the money **Alan has never told me that he "needed the money".**, and he must have had to make up the shortfall himself if the company was not to fall into default.**Of course any shortfall would have to be made up but default by the company has never been an issue.** With respect, I would not describe that indebtedness "indirect".

All that I have done pending the Court's decision is to confer with a group of retired appellate judges seeking their input and advice. Again, I did not disclose that you were the source of my information. Interestingly, the ex-judges were quick to take the line that the overriding principle was the integrity of the Court; one went so far as to say the "whole system" is at stake. I can only reiterate my disappointment that Alan, Colin and you do not appear to share that view. These judges were also at one in holding that the need to defend the integrity of the Court was more important than any obligation of confidence I might feel to my source (although none knew or suspected that it was you). **Yes well I did see the headline reference to retired Judges in NBR on Friday.** I can understand your wish not to be exposed as my source to Alan and Colin. But I must reiterate that I am not prepared to give you an assurance that this will not prove necessary if Bill continues to sit on the Court. The integrity of the Court and the judiciary must come first. **Presumably this signals the end of legal professional privilege.**

Further, however, your claim to confidentiality must be put in perspective. Prior to the meeting with Alan, Colin and you, when you must have **[interesting choice of words, Ted, confirming what I say above about the alleged secrecy pact]** entered into something akin to a pact not to breathe a word to anyone, you had already told me all the salient facts. At that time you did not make a point of expressly insisting on confidentiality as you were certain that everything would eventually come out anyway. This certainty was reinforced by the paragraph in the Court's judgment saying, in effect, the position would be different if Bill was beholden to Alan. So, you were only telling me at that stage what you believed the whole world would know sooner rather than later. I can see that confidentiality assumed greater importance after that fatal meeting when the three of you decided to "keep mum" and hope that the whole thing would blow over if and when Alan bought Bill out. **This rather reads like an attempt to resile from your earlier acceptance of your obligation of confidence to me.**

Much, if not everything, depends on whether Bill remains on the Court. If he does it is difficult to know how matters will develop. And, if Bill stays, I am still concerned that it would be improper for Bill to sit on any appeal in which Alan, Colin or you appear as counsel. As you are not prepared to give this point the time of day it will be necessary for me to obtain a respectable outside opinion to confirm that my thinking is not astray. But I think that can be done without disclosing your name. I would think, however, that any effective action would at least require me to disclose that I am aware that Colin, Alan and you came to know of my letter and accompanying notes to the Chief Justice

All this will, of course, become academic if the media dig deep enough and Bill decides that he must resign or

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someone decides to kick him off the Court. It will be interesting to see if you are prepared to trust the system which you are so keen to protect to run its course. I actually think that it will and you will see the result that you are wanting. Continued intervention and anonymous talking to NBR (by whatever retired Judges it was from) will not facilitate that process but will simply lead to trial by media.

Regards

Ted

E W Thomas