

To The Hon Amy Adams
Minister for the Environment
23 September 2013

Ref: Kenderdine's role in the Turitea wind farm

Thank you for your letter dated 20 September.

Surprisingly the very serious constitutional matters I raised have once again been delegated to you, the Minister for Conservation.

On 26 August I wrote to the Attorney-General with specific and entirely relevant questions addressed to him and to date they remain unanswered.

You provided a similar response to me on 1 February 2013 after my 13 December 2012 letter to Minister of Justice Hon Judith Collins remained unanswered. When I asked for clarification from you on 1 February you did not respond.

Your 20 September letter to me, however, does not address the issues I raised with the Attorney-General. These are constitutional matters and are not, I believe, the province of the Minister for the Environment.

We need reassurance that New Zealand is a society free of corruption, that our politicians are people of integrity and that the Judiciary and the Executive are truly independent.

To gain closure and to restore confidence in process I would appreciate a well reasoned, logical, prompt and legally sound response to the numerous points below. It has been almost nine months since the discovery of the Government's involvement in covering up Kenderdine's fraud and the obfuscation by you on behalf of the Government is totally unacceptable. Resolving the constitutional, ethical and possibly criminal issues at stake, may well avoid further process.

You drew my attention to the language used in section 149J of the Resource Management Act 1991 regarding the appointment of a board of inquiry.

The word "current" is an adjective qualifying the words "retired and former" and can mean nothing other than that the retired or former judge appointed to chair a board of inquiry must have a warrant, i.e. be *current*.

Kenderdine on her personal website has falsely claimed that she was an Alternate Environment Court Judge until 2011.

[KENDERDINE'S WEB PAGE](#)

This lie was exposed by the Marlborough District Council on 1 August. See page 23 comment 4.

[SOURCE](#)

- 1 Why did Kenderdine do this? Is Kenderdine, touting for business as a consultant while chairing the Historic Places Trust, not showing that she is fully aware of her need to continue to deceive the public that she had a warrant, i.e. was “current” when issuing the Final Decision on 6 September 2011? Does her very public statement not confirm that a warrant is essential, even though she had not had a warrant for thirteen months, was no longer on the Judicial Roll and was just plain Ms Kenderdine?
- 2 Is it not true that retired or former judges can be reissued a warrant, providing they have not reached the mandatory age at which they are permanently excluded from holding a warrant?
- 3 If Kenderdine, as you are claiming, a former judge, does not need a judicial warrant to pass a legally binding decision contestable only on a point of law, why have judicial warrants at all?
- 4 Please provide legal precedents, i.e. New Zealand case law, where a member of the public, without the authority of a judicial warrant, which also requires obedience to the judicial oath, has passed a legally binding decision, which can only be challenged on a point of law.
- 5 Kenderdine was not as you incorrectly assert a “retired judge” but a “former judge.” Kenderdine had reached the compulsory retirement age five years and one month before the final decision was released and had not been a judge with a warrant for 13 months, after the maximum two, two year reappointments from 2006. You claim this is not relevant. What basis do you have for stating that it is not relevant?
- 6 Is it correct that judges revert to ordinary citizenship after retiring and surrendering their judicial warrants?
- 7 If this is the case how is it that Kenderdine, a former judge, who was permanently removed from the judicial roll on 6 August 2010, is not liable for manifest failures and held accountable when she made actionable errors as an ordinary citizen, when at the same time accepting payment from the public purse? Kenderdine was an ordinary citizen when she issued the final report that contained inexcusable errors of fact that were pointed out via written submissions at the draft stage.
- 8 Why did Kenderdine not correct the errors of fact drawn to her attention by written submission on the Draft decision?
Was it because she no longer possessed a judicial warrant and no longer had to apply the judicial oath and diligence?
Was it that she no longer possessed mental acuity having reached compulsory removal from the judiciary thirteen months earlier on 6 August 2010?
Or was it because it was always a done deal and it was convenient not to read the submissions?
Whatever the reason there is no excuse for errors being carried forward into the final report and for the terms of reference for the Board not being met. The report
 - (a) must state the board's decision;
 - (b) must give reasons for the decision;
 - (c) must include the principal issues;
 - (d) must include the findings of fact.Out of the four criteria, only (a) was accomplished.
The Turitea Board of Inquiry failed to meet the requirements for a Board of Inquiry as outlined in the Cabinet Manual.
What is your response to this?
- 9 Explain how the validity of her appointment at the start of the Board of Inquiry was extended to the thirteen month period when she was no longer a warranted judge but an ordinary citizen. During this time Kenderdine repeatedly, falsely claimed in at least 5 official documents, seen by hundreds of submitters, to be either a Retired Environment Judge or an Environment Judge. The MFE website to this day falsely states Kenderdine was a Judge on the release of the Final Decision 6 September 2011.
What process was followed to make an extension from 6 August 2010?
Was this extension approved by Cabinet and did Cabinet know that it had no basis in law?

Was Cabinet simply not told?

Or was it some un-official arrangement cobbled together by the Hon. Dr Smith who commissioned the Board of Inquiry? If so what is the legality of such a matter?

Provide examples of where a similar action has been done in the past.

Where is the documentation as a matter of public record, and where is the public notification that this extension took place? Or is this impossible to provide because the extension was deliberately contrived?

- 10 Why did Kenderdine not recuse herself on 6 August 2010 when she permanently lost her warrant?
- 11 Why did the Attorney-General who oversees the granting and removal of warrants not require Kenderdine to stand down or pass the process onto some other warranted and eligible judge?
- 12 Why did the Attorney-General issue a press release on 20 August 2010 announcing Kenderdine as Chair of the Historic Places Trust describing her as a *former* judge?
- 13 Was Kenderdine pressured to continue, despite not being eligible to act as chair?
- 14 Was monetary consideration, raised by you in your letter, a motivating factor for Kenderdine who was already in receipt of what ordinary citizens would consider a gold plated pension?
- 15 Is it normal practice to moonlight as a consultant, as Kenderdine is indeed doing, while chair of the Historic Places Trust? During the thirteen months masquerading as a judge she appears to have been receiving income from four different sources.
- 16 Why was the fact that Kenderdine had no judicial authority kept secret from the public until the truth was forced out into the open when, Sir David Gascoigne, Judicial Conduct Commissioner produced the evidence? Why was the government hiding the fact that the process was not presided over by a warranted judge with judicial independence?
- 17 Explain why Kenderdine was allowed to fraudulently sign off as Environment Judge 13 months after she compulsorily surrendered her judicial warrant.
- 18 Do any other former, warrantless judges in New Zealand do this as a matter of course without an age or time restriction and without public knowledge? If so please give specific examples.
- 19 How can anyone be convinced that judicial independence applies to someone who is regarded in the eyes of the law as an ordinary citizen?
- 20 You comment that you take the process of appointment of board members to a board of inquiry very seriously. In light of the above where is the rigorous screening you claim to be in evidence and how did Kenderdine slip through?

Yours sincerely

Paul Stichbury.

Copy to: The Right Hon John Key, Hon Bill English, Hon Judith Collins, Hon Dr Nick Smith, Hon Amy Adams, Hon Gerry Brownlee, Hon Tony Ryall, Hon Chester Borrows, Hon Anne Tolley, Hon Christopher Finlayson, The Law Commission.

Note: Full supporting documentation is available online

<http://turiteadocuments.wordpress.com/turitea-wind-farm-documents/>