The Doctrine of Judicial Immunity

One often sees assertions from various OPCA adherents that the judge is criminally liable, or even that they have "arrested" a judge, as in the case of ***Dezi Freeman*** and ***Jim Rech***. who both "metaphorically" arrested magistrates, (as they were not deprived of their liberty and freedom of movement, either by cooperation, or physically restraining them, so no valid arrest had occurred.) or in the case of ***Harley Williamson*** who took it one step further, walking behind the judicial bench, placing his hand on the Registrar's shoulder and stating that he was under arrest, to which he was subsequently convicted of obstructing, hindering or intimidating a public officer in the function of his duties. (See *Williamson v Johnson [2016] WASC 232)*

There is a point that seems to be disregarded in these instances. The doctrine of judicial immunity confers immunity from criminal responsibility for acts or omissions by the judicial officer in the exercise of the officer's judicial functions, even where an act done is in excess of authority, or an officer is bound to do an act omitted.

As High Court Chief Justice Murray Gleeson said in ***Fingleton v The Queen [2005] HCA 34; 227 CLR 166***:

> *"The general principle is as stated by Lord Denning MR in Sirros v Moore [1975] QB 118, at 132:*
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> *"Ever since the year 1613, if not before, it has been accepted in our law that no action is maintainable against a judge for anything said or done by him in the exercise of a jurisdiction which belongs to him. The words which he speaks are protected by an absolute privilege. The orders which he gives, and the sentences which he imposes, cannot be made the subject of civil proceedings against him. No matter that the judge was under some gross error or ignorance, or was actuated by envy, hatred and malice, and all uncharitableness, he is not liable to an action."*
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> *An allegation of judicial misconduct by a dissatisfied litigant often, perhaps even typically, will be accompanied by an accusation of malice or want of good faith in the exercise of judicial authority. In In **re McC (A Minor) [1985] AC 528** at 540, Lord Bridge of Harwich said:*
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> *"It is, of course, clear that the holder of any judicial office who acts in bad faith, doing what he knows he has no power to do, is liable in damages. If the Lord Chief Justice himself, on the acquittal of a defendant charged before him with a criminal offence, were to say: 'That is a perverse verdict', and thereupon proceed to pass a sentence of imprisonment, he could be sued for trespass. But, as Lord Esher MR said in **Anderson v Gorrie [1895] 1 QB 668** at 670:*
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> *"…the question arises whether there can be an action against a judge of a court of record for doing something within his jurisdiction, but doing it maliciously and contrary to good faith. By the common law of England it is the law that no such action will lie.'"*
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> *This immunity from civil liability is conferred by the common law, not as a perquisite of judicial office for the private advantage of judges, but for the protection of judicial independence in the public interest. It is the right of citizens that there be available for the resolution of civil disputes between citizen and citizen, or between citizen and government, and for the administration of criminal justice, an independent judiciary whose members can be assumed with confidence to exercise authority without fear or favour. As O'Connor J, speaking for the Supreme Court of the*

*United States, said in **Forrester v White [1988] USSC 3; 484 US 219** at 226-227, that Court on a number of occasions has "emphasized that the nature of the adjudicative function requires a judge frequently to disappoint some of the most intense and ungovernable desires that people can have." She said that "…if judges were personally liable for erroneous decisions, the resulting avalanche of suits … would provide powerful incentives for judges to avoid rendering decisions likely to provoke such suits.*

This does not mean that judges are unaccountable. Judges are required, subject to closely confined exceptions, to work in public, and to give reasons for their decisions. Their decisions routinely are subject to appellate review, which also is conducted openly. The ultimate sanction for judicial misconduct is removal from office upon an address of Parliament. However, the public interest in maintaining the independence of the judiciary requires security, not only against the possibility of interference and influence by governments, but also against retaliation by persons or interests disappointed or displeased by judicial decisions."

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