

JERSEY / JUDGMENT

Bisson v Minister for Infrastructure 17-Sep-2019 [2019] JCA 181 (19 September 2019)

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Court of Appeal 19 September 2019 Before : Lord Anderson KBE QC, sitting as a Single Judge.
Between Ms Erin Robyn Bisson Appellant And The Minister for Infrastructure Respondent
judgment on the papers Anderson ja: 1. This is my judgment on an application made in the form of a summons from the Appellant Ms Bisson, dated 9 August 2019 and communicated to me on 15 August 2019. The summons seeks my recusal from Ms Bisson's appeal against the judgment of the Royal Court in this matter, which is currently scheduled for hearing in the Court of Appeal in the week commencing 25 November 2019. 2. The application has its basis in the judgment of this Court in *Bisson v Jersey Police Complaints Authority*

[2017] JCA 156 ("the JPCA case"). Ms Bisson had no involvement in the JPCA case: but the appellant in that case was Mr Roger Bisson, who she explains is her brother. I sat on the JPCA case with McNeill JA and Bompas JA, and delivered the judgment of the Court in which we unanimously dismissed Mr Bisson's appeal against the refusal by the Royal Court of leave to apply for judicial review of a 2016 decision of the JPCA. 3. Ms Bisson makes reference in her application to paragraphs 17, 22, 44 and 45 of this Court's judgment in the JPCA case. In summary: (a) Paragraph 17 of the judgment notes that the Royal Court (Commissioner Michael Beloff QC) criticised Mr Bisson for "making allegations of criminal conduct against various persons whose emptiness of content is matched only by the extravagance of language". (b) At paragraph 22 the Court of Appeal observed that instead of appealing an earlier judgment, Mr Bisson had taken the route of "launching serious and unsupported criminal allegations against a range of individuals", a course for which we could see "no cogent validation". (c) At paragraph 44, the Court of Appeal characterised an insinuation by Mr Bisson concerning the Commissioner as "yet another instance of the Appellant's unhappy tendency to make vexatious allegations of deliberate misconduct for which evidence is entirely lacking". (d) At paragraph 45, the Court of Appeal summarised a challenge by Mr Bisson to the objectivity of the Commissioner, based on the Commissioner's use of phrases such as "scattergun approach" and the making of "serious allegations, unsupported by evidence, against a variety of people". We noted in the following paragraph that "the Appellant's mode of operation throughout these proceedings has been to impugn the honesty of a wide range of people without producing any evidence

to support his claims", and that it was "perfectly appropriate for a judge pointedly to draw attention both to the emptiness of the allegations of a litigant and to the irresponsible manner in which they were developed". 4. Ms Bisson invites me to recuse myself on the basis that, as a party to the judgment of the Court of Appeal in the JPCA case, I had "been in conflict with a family relative" and was treating her family as a joke. She describes my participation in her appeal as "procedurally unfair", and submits that "this appeal is a fait accompli" and that "the Court cannot or will not deal with me fairly". 5. A judge should not hear a case if he or she is actually or apparently biased against one of the parties to it. The legal test for apparent bias is well settled. It is whether "the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased" (Porter v Magill

[2002] 2 AC 357 , per Lord Hope at para 103, cited in Barette v Attorney General

[2006] JCA 128 , paragraph 53). As explained in Otkritie International Investment Management and others v Urumov

[2014] EWCA Civ 1315 , per Longmore LJ at paragraph 1: "The concept of bias extends to any real possibility that a judge would approach a case with a closed mind or, indeed, with anything other than an objective view: a real possibility in other words that he may have pre-judged the case." 6. Recusal applications are sometimes made in cases where the assigned judge has previously expressed views on the credibility or conduct of parties to the litigation. The correct approach to such applications was stated by the English Court of Appeal in Locabail (UK) Limited v Bayfield Properties

[2000] QB 451 : "[25] The mere fact that a judge, earlier in the same case or in a previous case, had commented adversely on a party or witness, or found the evidence of a party or witness to be unreliable, would not without more found a sustainable objection. In most cases, we think, the answer, one way or the other, will be obvious. But if in any case there is real ground for doubt, that doubt should be resolved in favour of recusal. We repeat: every application must be decided on the facts and circumstances of the individual case... [26] ... It is, however, generally undesirable that hearings should be aborted unless the reality or the appearance of justice requires that they should." 7. That passage was cited by Lord Lloyd Jones, giving the Opinion of the Privy Council in Stubbs v The Queen

[2018] PC 30 at paragraph 16: "A judicial ruling necessarily involves preferring the submissions of one party over another. However, it is obviously not the case that any prior involvement by a judge in the course of litigation will require him to recuse himself from a further judicial role in respect of the same dispute. In the great majority of such cases there will simply be no basis on which it could be suggested that the judge should recuse himself, notwithstanding earlier rulings in favour of one party or another, and there will often be great advantages to the parties and to the administration of justice in securing judicial continuity. The issue will only arise at all in circumstances where prior involvement is such as might suggest to a fair-minded and informed observer that the judge's mind is

closed in some respect relevant to the decision which must now be made. It is not possible to provide a comprehensive list of factors which may be relevant to this issue which will necessarily depend on the particular circumstances of each case. (See generally, *Locabail (UK) Ltd v Bayfield Properties Ltd*

[2000] QB 451 per Lord Bingham of Cornhill CJ at para 25; *Livesey v The New South Wales Bar Association*

(1983) 151 CLR 288 at p 299). However, relevant factors are likely to include the nature of the previous and current issues, their proximity to each other and the terms in which previous determinations were pronounced." 8. Also of significance are the words of the English Court of Appeal in *Dobbs v Triodos Bank NV*

[2005] EWCA Civ 468 , at paragraph 7: "It is always tempting for a judge against whom criticisms are made to say that he would prefer not to hear further proceedings in which the critic is involved. It is tempting to take that course because the judge will know that the critic is likely to go away with a sense of grievance if the decision goes against him. Rightly or wrongly, a litigant who does not have confidence in the judge who hears his case will feel that, if he loses, he has in some way been discriminated against. But it is important for a judge to resist the temptation to recuse himself simply because it would be more comfortable to do so. The reason is this. If the judges were to recuse themselves whenever a litigant - whether it be a represented litigant or a litigant in person - criticised them (which sometimes happens not infrequently) we would soon reach the position in which litigants were able to select judges to hear their cases simply by criticising all the judges that they did not want to hear their cases. It would be easy for a litigant to produce a situation in which a judge felt obliged to recuse himself simply because he had been criticised - whether that criticism was justified or not." That passage as it seems to me applies with at least the same force in the relatively small jurisdiction of Jersey, where an over-scrupulous approach to recusal could cause serious problems for the administration of justice. 9. Applying the legal principles outlined above, I have no hesitation in rejecting the application for my recusal. It is true that the Court of Appeal's judgment in the JPCA case, to which I was a party, was strongly critical of Mr Bisson's conduct in certain respects. But his sister had no involvement in the JPCA case. I have never been called upon to form or to express a view on her conduct or her character, and approach her unrelated case with an entirely open mind. A fair-minded and informed observer would not, in my judgement, consider there to be a real possibility that I would be biased in my approach. In those circumstances, it is unnecessary for me to recuse myself from the hearing of Ms Bisson's appeal. Indeed on the principle in *Triodos* (above), it would be wrong for me to do so. 10. Though I should not be understood to be offering her any encouragement, I observe finally that if Ms Bisson is not prepared to accept this ruling, she is entitled to renew her application before a full bench of the Court of Appeal. Authorities Court in *Bisson v Jersey Police Complaints Authority*

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[2006] JCA 128 . Otkritie International Investment Management and others v Urumov

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