

JERSEY / JUDGMENT

Syvret v Chief Minister and Others

[2011] JRC 116 (20 June 2011)

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judgment

the commissioner: 1. This is an action brought by Mr. Stuart Syvret against the Chief Minister of Jersey, the States Employment Board, the States of Jersey and Her Majesty's Attorney-General. I have two applications before me. The first is an application by the Defendants to strike out the Order of Justice. The second is an application by Mr. Syvret that I should recuse myself from any further involvement in the proceedings. Logically, I should deal first with the question of recusal, but some explanation of the nature of the action is necessary in order to understand either application. I shall therefore begin by summarising Mr. Syvret's pleaded allegations. The Order of Justice 2. The Order of Justice is long, discursive and repetitive. It is also clear that it has been drafted, at least in part, with a view to using these proceedings as a platform for making a number of essentially political criticisms of government of Jersey. The pleading makes serious allegations relating to the system for protecting children against criminal abuse, and allegations of dishonesty and criminality against a large number of named and unnamed officers, employees and advisers of the Jersey government. The legal relevance of these allegations to Mr. Syvret's claim is not always apparent. However, due allowance must be made for the fact that Mr. Syvret is acting in person and has no legal training. If it is clear what point he is trying to make, and what its legal implications are (whether he realises it or not), and if it gives fair notice to the Defendants of some legally and factually coherent basis for a claim against them, then the action should be allowed to proceed, with appropriate directions for amending the pleading to make good any deficiencies. 3. Mr. Syvret is a well-known Jersey politician. He was a member of the States of Jersey from 1990 to 2010, serving as a Senator for all but the first three years of that period. By his own account (paragraph 13 of the Order of Justice):- "throughout his near twenty-years as a States member, the Plaintiff consistently posed the traditional political/judicial 'establishment' of Jersey and consistently argued for different political policies, for improvements in public administration and for the introduction of effective checks and balances." He pleads (paragraphs 14-15) that there was substantial public support for his views, and that he had a "highly credible political mandate", for which reason, he had "often been subjected to political hostilities and obstructions by those in power in Jersey". 4. The States of Jersey is the supreme legislative and executive authority of the Bailiwick, under the Crown. For many years, its executive functions were performed by committees, each with responsibility for particular

departments of government. In 2005, significant changes were made to the constitution of the Bailiwick by the States of Jersey Law. Part IV of the Law introduced a ministerial system of government. It created a Council of Ministers comprising the Chief Minister and nine ministers. Ministers, selected by the States from among its members. They were answerable to the States for the performance of their functions, and were subject to removal by the States in accordance with a statutory procedure. Article 26(1) provides that a Minister in his official capacity is a corporation sole. 5. Mr. Syvret had been the President of the Health and Social Services Committee of the States from 1999 to 2005. Thereafter, he became the Minister for Health and Social Services, until he was dismissed by vote of the States in September 2007. 6. There is a comprehensive statutory scheme in Jersey for protecting the welfare of children. Statutory functions under the scheme are assigned to a number of public authorities, including the Minister for Health and Social Services. Under Article 42, where the Minister is informed that a child has been taken into protection or has reasonable cause to believe that the child is suffering or at risk of suffering harm, he has a duty to investigate with a view to taking action to safeguard or promote the child's welfare. Article 42(8) provides that any administration of the States is bound to assist the Minister with his enquiries if asked by him to do so, unless it would be unreasonable to do so. 7. In the course of 2007, Mr. Syvret as Minister of Health and Social Services, came to the conclusion that standards of child protection in Jersey were inadequate. Between paragraphs 78 and 160 of the Order of Justice, he pleads what amount to particulars of this state of affairs, citing six institutions at which he alleges that children had been criminally abused. 8. As a result of information supplied to him, apparently by constituents and other members of the public, Mr. Syvret embarked on a number of enquiries into specific cases (paragraphs 32-35). In the course of these enquiries, he became dissatisfied with the assistance given to him by officials and care workers (paragraphs 36-42). At paragraphs 39-41, Mr. Syvret pleads: "39. The Plaintiff, rather than receiving the assistance and support he could properly expect from the relevant public employees, and receiving the statutory assistance as guaranteed by Article 42, paragraph 8 of the Children (Jersey) Law, was instead subjected to a criminal conspiracy to obstruct him in the discharge of his duties, harass him, to damage his public standing and to unlawfully engineer his removal from ministerial office. These actions all cause great personal harm, damage and loss to the Plaintiff. 40. The action against the Plaintiff being

- unambiguously - an attempt to sabotage effective child protection in Jersey, thus permitting, failing to prevent, sustaining and concealing the abuse of children. 41. The Plaintiff, being lawfully engaged in attempting to expose several criminal offences against children, the obstructive and sabotaging actions taken against him constituting a conspiracy to pervert the course of justice. 42. Further, given that many, if not all, of those so acting to obstruct and sabotage the Plaintiff's lawful duties, being the holders of 'public office', the actions against both him and the vulnerable children of Jersey amounting to the common law offence of 'misconduct in a public office.'" Mr. Syvret initially expressed these concerns to the public servants in question. He then criticised them publicly at a session of the States on 16 July 2007 (paragraph 38). 9. This angered those who had been criticised. On 25 July 2007, a number of senior officials met to discuss how Mr. Syvret might be removed from office

(paragraphs 44-46). Mr. Syvret characterises this as "a conspiracy... against the Plaintiff to prevent him from discharging his lawful duties in respect of child protection" (paragraph 47). In later paragraphs, Mr. Syvret refers to it as a 'criminal conspiracy', which he says was joined successively by the Jersey Child Protection Committee (paragraph 48), two named senior officials (paragraph 49), the Chief Minister and the Council of Ministers (paragraphs 51-2). 10. The Chief Minister and the Council of Ministers then appointed a consultant called Andrew Williamson (referred to at paragraph 53 as a 'tame placeman') to produce a report on failures of child protection on the island. Mr. Williamson produced a report which Mr. Syvret describes as "dishonest and defective", because it did not, as an honest report would have done, conclude that "child protection standards and practices in Jersey were in a state of catastrophic failure" (paragraphs 54-6). In this regard, the Chief Minister and the Council of Ministers were acting, he says, "criminally and in direct contradiction of the public good" (paragraph 57). 11. Article 20 of the States of Jersey Law 2005 provides that only the States may dismiss a minister. The statutory procedure, which is mandatory, is that the Chief Minister must give the minister in question an opportunity to be heard by the other ministers. Thereafter, if a majority of the other ministers agrees, the Chief Minister lodges a 'proposition for dismissal' with the States, stating the reason, upon which the States will then vote. The Chief Minister and the Council of Ministers now put in hand the procedure for dismissing Mr. Syvret. Mr. Syvret complains that they gave him only five days notice of the hearing before the other ministers, for a day when he was unable to attend. He says that they gave him a written statement of the case against him only 24 hours in advance (paragraphs 58-60). Mr. Michael Birt, then Deputy Bailiff, ruled that this was sufficient notice to give Mr. Syvret an effective opportunity to defend himself, a ruling which Mr. Syvret claims was contrary to due process and vitiated by an (unparticularised) conflict of interest (paragraphs 61-2). The proposition for Mr. Syvret's dismissal was approved by the Council of Ministers and lodged with the States (paragraph 63). On 11 September 2007, the States met to consider it. Mr. Syvret alleges that the Deputy Bailiff Mr. Birt, who presided over the session of the States, would not allow him to argue his case, whereupon a vote was taken and he was dismissed (paragraphs 64-9). 12. The Solicitor-General, appearing for the Defendants, has put before me the record of the debate in Jersey Hansard, and Mr. Syvret accepted before me that I could take it as an accurate account of the proceedings. From this, it is apparent that the reason given, rightly or wrongly, by the Chief Minister for proposing Mr. Syvret's dismissal was that Mr. Syvret had insulted and abused officials and employees of the child protection services, undermining their morale and making it impossible for them to work with him. Mr. Syvret does not of course accept that this criticism of him was justified, or indeed that it constituted the real reason for proposing his dismissal. 13. Mr. Syvret does not seek to found any claim on the decision of the States to dismiss him. He accepts (paragraph 64) that he is not entitled to do so, because of the privileges of the States. I shall come to them in due course. But he relies on his dismissal as evidence of a "consistent pattern of oppression" directed against himself, other aspects of which he does seek to make the basis of a claim. His dismissal was also, he says, associated with by a "deliberate campaign of misinformation" designed to portray him as a trouble-maker (paragraphs 73-4). These things

are said to have been (i) criminal offences, contrary to Article 47 of the States of Jersey Law 2005, which creates an offence of blackmailing, threatening, assaulting, obstructing or molesting any member of the States in respect of any matter submitted or intended to be submitted to it, or attempting to do any of these things (paragraphs 222-3); and (ii) breaches of a common law duty of care owed to Mr. Syvret by the States of Jersey (paragraph 226). 14. The nature of Mr. Syvret's loss is pleaded in different parts of the Order of Justice. In summary he pleads the effect of the conduct of the Defendants upon him under two heads. First, he alleges that in his capacity as a Minister, the conduct complained of prevented him from performing his statutory duties, denied him natural justice, infringed his human rights, and subjected him to "political oppression and harassment, all of which was unlawful and served no legitimate purpose" (paragraph 70). Secondly, in his personal capacity, he suffered damage to "his welfare, his career, his family life and his health" (paragraph

- 72) and was subjected to "hardship, suffering and loss" (paragraph 224). At paragraphs 249-253, he puts the point in this way:- "249. The Plaintiff has suffered emotional and psychological injury as a direct consequence of the systemic culture of concealment to be found at a high level in public administration in Jersey in respect of child protection failures, and - expressly and in particular - as a consequence of the unlawful actions conducted against him in attempts to maintain that culture of concealment. 250. The concealments - and overt obstructions and oppressions inflicted or caused or permitted to be inflicted upon the Plaintiff by the Defendants directly resulted in the Plaintiff having to shoulder and carry the burden - virtually single-handedly - of investigating many examples of child protection failure and of concealed child abuse. 251. The Plaintiff had been provided with no training of any description in respect of often harrowing interviews with the survivors of child abuse. 252. The Plaintiff had been provided with no support, assistance, counselling or respite in respect of engaging in such work. 253. The systemic failures of public administration in Jersey to correctly address child protection and the proactive efforts to obstruct and oppress the Plaintiff, had the effect of making the burden upon the Plaintiff of undertaking work which would have been immensely demanding at the best of times, dramatically more difficult, damaging and harmful to him." 15. After describing the events which led up to his dismissal as Minister, Mr. Syvret goes on to plead a number of events occurring afterwards, which are said to show that the "Jersey establishment" was determined to cover up serious shortcomings in the system of child protection in Jersey. These include political pressure alleged to have been applied to a former Minister of Home Affairs to prevent her from supporting police investigations of child abuse; the alleged failure of the police to investigate the improper use of funds of the Jersey Care Leavers Association (an organisation for people who had been in care in Jersey); unspecified attempts to obstruct the investigation of child abuse by the Deputy Chief Officer of the States of Jersey Police Force; the suspension of the Chief Officer of the force in order (it is alleged) to obstruct the investigation of child abuse and conspiracies to pervert the course of justice; and what is alleged to be a politically motivated failure on the part of the Jersey authorities to act on complaints made to the police by Mr. Syvret of various alleged crimes acts and to prosecute those responsible for

them (paragraphs 161-201). All of these matters occurred, as he made clear in his oral submissions to me, between his dismissal and the middle of 2009. He pleads that they constituted breaches of his human right as a citizen to be protected from criminal acts (paragraph 202). 16. The Order of Justice goes on to allege that this state of affairs was attributable, at least in part, to the political role and consequent conflicts of interest of the Attorney-General under Jersey's constitution (paragraphs 203-221). This has "given rise to - and enabled the continuance of - many unlawful breaches of the Plaintiff's rights by the Defendants and has enabled various torts against the Plaintiff" (paragraph 221). It has also "deprived him of the proper protections of the law in respect of these unlawful acts against him" (paragraph 225). 17. Taken as a whole, these allegations are said at paragraphs 21-22 to constitute breaches of Mr. Syvret's human rights, breaches of the Children (Jersey) Law 2002, conspiracies to pervert the course of justice, breaches of Article 47 of the States of Jersey Law 2005, misfeasance in public office, and 'various torts', by which Mr. Syvret has "suffered wrong, harm and injury, the destruction of his career and of his family life, personal financial ruination and great suffering and mental anguish, and seeks appropriate relief from the courts." 18. Paragraphs 227-248 plead the distribution of legal responsibility for these alleged wrongs between the various Defendants. 19. The Chief Minister is sued in right of his office, and the States Employment Board as being vicariously liable for the acts of officials and other public employees. They are alleged to have "failed to require proper, ethical, competent, honest and lawful conduct from their employees, in particular those senior civil servants named above who unlawfully obstructed, misled, lied to, hampered and undermined the Plaintiff" (paragraph 229). These failures are said to have been so gross as to constitute "pro-active malfeasances designed to thwart the Plaintiff in the proper and rightful discharge of his statutory duties", and an active participation in the conspiracy to bring about Mr. Syvret's dismissal as Minister (paragraphs 230-232). 20. The Chief Minister (alone) is also alleged to be responsible for the government's Communications Unit, which is said to have been involved in politically partisan attempts to undermine Mr. Syvret, this being (it is said) an unlawful use of public funds (paragraph 234). 21. The States of Jersey is said to have had a statutory obligation to ensure the free and safe discharge of the duties of its elected members, and to protect the "human rights of the public to participate in the free expression of the legislature" (paragraphs 240-1). At paragraph 242, Mr. Syvret pleads:- "The States of Jersey are culpable Defendants because of their failure to have in place proper procedures, safeguards and checks and balances to ensure that those charged with statutory duties - as in respect of the Children (Jersey) Law, in the extant case of the Plaintiff - are able to so discharge such duties without suffering intimidation, oppression, obstructions and harm." It is said that "the public interest has been profoundly damaged by the malfeasant actions committed against the Plaintiff" (paragraph 244). 22. The Attorney-General is alleged to have "unlawfully supported - and proactively engaged in - the criminal obstructions placed in the path of the Plaintiff when he was attempting to discharge his statutory duties as described in the Children (Jersey) Law"; to have unlawfully failed to prosecute those who had committed criminal offences against the Plaintiff; and to have allowed his role as legal adviser to the executive and the legislature to conflict with his duties as a prosecutor

(paragraphs 245-7). 23. By way of conclusion, Mr. Syvret pleads that the matters pleaded in his Order of Justice raise important questions concerning the concentration of power in Jersey in the hands of "the same narrow power-clique", and the inadequacy of the island's constitutional arrangements. The jurisdiction to strike out the Order of Justice 24. The Royal Court has power to strike out an Order of Justice or other pleading under Rule 6(13) of the Royal Court Rules, which provides as follows:- "(1) The Court may at any stage of the proceedings order to be struck out or amended any claim or pleading, or anything in any claim or pleading, on the ground that - (a) it discloses no reasonable cause of action or defence, as the case may be; (b) it is scandalous, frivolous or vexatious; (c) it may prejudice, embarrass or delay the fair trial of the action; or (d) it is otherwise an abuse of the process of the Court, and may make such consequential order as the justice of the case may require. (2) No evidence shall be admissible on an application under paragraph (1)(a)." 25. The Rule is in substantially the same terms as the corresponding rule in England, and the practice has for many years corresponded to that applied in England. Evidence is admissible, so far as the application to strike out is based on grounds (1)(b), (c) or (d) of the rule, and in appropriate cases a pleading may be struck out on the ground that some essential factual allegation is so plainly wrong that a pleading based on it would be vexatious or abusive. However, it is common ground that the Court's summary jurisdiction to strike out a pleading on that or any other ground can be invoked only in plain and obvious cases. 26. There are many aspects of Mr. Syvret's pleaded claims which experience suggests he will find hard to prove. But I am not concerned on this application with the quality of the evidence. Although both parties put in evidence in support of their position on the strike-out application, I cannot decide any questions of fact. In the first place, I am sitting as a Commissioner without Jurats. I have the same powers in this court as the Bailiff, namely to decide questions of law, including questions of procedure. The Jurats are the sole judges of fact, and no question, however obvious the answer, can be decided in their absence. Secondly, the allegations of fact made by Mr. Syvret in his Order of Justice are by their nature unsuitable for summary determination. They concern, among other things, the acts of public officials not all of which are a matter of record, and the motives for which those acts are said to have been done. If Mr. Syvret's allegations disclose any cause action available to him, then they can be resolved only at a trial. Thirdly, the politically controversial character of Mr. Syvret's allegations is such that if they are proper matters to be raised in proceedings such as these, then it would be in the public interest that they should be determined at a trial and not at an interlocutory hearing. 27. For the same reasons, I am not prepared to accede to the Solicitor-General's invitation to infer that Mr. Syvret will be unable to prove his allegations at a trial from his mere failure to support with evidence allegations that are sufficiently made on his pleadings. 28. It follows that, subject to the recusal application, I must decide whether the Order of Justice should be struck out on the assumption that the factual allegations are true. I need hardly add that I have no idea whether they are in reality true or not, and nothing that I say in this Judgment should be taken as expressing even a provisional view on that question. The main question which I have to decide is whether, as a matter of law, the factual allegations in the Order of Justice would if true entitle Mr. Syvret to the relief which

he claims. The recusal application 29. In advance of the hearing, Mr. Syvret gave notice that he proposed to apply to me to recuse myself on account of apparent bias. In a draft Affidavit, he identified two grounds for his application. The only ground which was pursued was that I know four persons who are said to be 'interested' in the action. They are Sir Philip Bailhache, who was the Bailiff of Jersey between 1995 and 2009; Mr. Michael Birt, who was Deputy Bailiff from 2000 to 2009, before succeeding Sir Philip as Bailiff; Sir Philip's brother, Mr. William Bailhache, who was Attorney-General between 2000 and 2009, before becoming Deputy Bailiff; and Mr. Timothy Le Cocq, who succeeded him as Attorney-General. 30. Neither Sir Philip Bailhache nor Mr. Birt are parties to the action. But it is said that they are interested in it because allegations are made about them in the Order of Justice which would, if established, be highly discreditable to them, "career-ending" in Mr. Syvret's words. In Sir Philip's case, what is said is (i) that he was a member of the governing body of a school which had for many years ignored complaints of abuse, and (ii) that without declaring this personal interest in the whole question of child abuse, he refused to allow Mr. Syvret's written comments on the proposition to dismiss him to be published officially (paragraphs 67-8, 84-6, 97). Mr. Birt, as Deputy Bailiff, is alleged to have wrongly ruled that Mr. Syvret had been given a reasonable opportunity to defend himself before the Council of Ministers before they lodged the proposition to dismiss him with the States; to have prevented Mr. Syvret from defending himself at the session of the States on 11 September 2007; and to have failed when he was Attorney-General in 1998 to proceed with a prosecution for child abuse at a foster home called Blanche Pierre Group Home (paragraphs 61-2, 69, 145). In addition, Mr. Syvret relies on the fact that Mr. Birt, as Bailiff, appointed me as a Commissioner with a view to my hearing these proceedings. 31. Mr. Syvret sues the Attorney-General ex officio. Mr. William Bailhache and Mr. Timothy Le Coq were successive holders of the office. Their interest in the proceedings is said to arise because of the implications for their careers and reputation of allegations made in the Order of Justice. Mr. William Bailhache is alleged to have obstructed a further investigation in 2008 into the same incidents of child abuse at Blanche Pierre Group Home, and to have "interfered" with a police investigation of child abuse at an orphanage by requiring the police to release suspects without charge (paragraphs 150, 158-9). So far as I can discover from the Order of Justice, no allegation is made in respect of Mr. Le Cocq's conduct of his office. 32. The facts relating to my own connection with these four individuals were disclosed, so far as I was aware of them, in a written statement which I read out in court at the outset of the hearing, and then delivered to the parties. A copy of the statement is attached as an Annexe to this Judgment. I have made inconsequential changes to certain dates, having had the opportunity to check them since it was written. 33. The test for apparent bias is not in dispute. It is the same as the common law test applied in England and Scotland, as modified to take account of Article 6 of the European Convention on Human Rights. It requires me in the first instance to ascertain all the relevant circumstances and then to ask whether those circumstances would lead a fair-minded and informed observer to conclude that there was a real possibility of bias: *Porter v. Magill*

[2002] 2 AC 357 at [103] (Lord Bingham). In *Helow v Secretary of State for the Home Department*

[2008] 1 WLR 2416, Lord Hope summarised the approach of the hypothetical fair-minded and informed observer as follows:- "1. My Lords, the fair-minded and informed observer is a relative newcomer among the select group of personalities who inhabit our legal village and are available to be called upon when a problem arises that needs to be solved objectively. Like the reasonable man whose attributes have been explored so often in the context of the law of negligence, the fair-minded observer is a creature of fiction. Gender-neutral (as this is a case where the complainer and the person complained about are both women, I shall avoid using the word "he"), she has attributes which many of us might struggle to attain to.

2. The observer who is fair-minded is the sort of person who always reserves judgment on every point until she has seen and fully understood both sides of the argument. She is not unduly sensitive or suspicious, as Kirby J observed in *Johnson v Johnson* (2000) 201 CLR 488, 509, para 53. Her approach must not be confused with that of the person who has brought the complaint. The "real possibility" test ensures that there is this measure of detachment. The assumptions that the complainer makes are not to be attributed to the observer unless they can be justified objectively. But she is not complacent either. She knows that fairness requires that a judge must be, and must be seen to be, unbiased. She knows that judges, like anybody else, have their weaknesses. She will not shrink from the conclusion, if it can be justified objectively, that things that they have said or done or associations that they have formed may make it difficult for them to judge the case before them impartially.
3. Then there is the attribute that the observer is "informed". It makes the point that, before she takes a balanced approach to any information she is given, she will take the trouble to inform herself on all matters that are relevant. She is the sort of person who takes the trouble to read the text of an article as well as the headlines. She is able to put whatever she has read or seen into its overall social, political or geographical context. She is fair-minded, so she will appreciate that the context forms an important part of the material which she must consider before passing judgment." 34. A judge is often placed in the position that he must decide issues without regard to his personal opinions, either of the issues themselves, or of the personalities involved. Although a judge is subject to the same test of apparent bias as any other decision-maker, the fair-minded and informed observer is taken to know and attach due weight to the ordinary incidents of the judicial function. *Helow* itself arose out of an immigration appeal by a Palestinian refugee. It came before a Judge of the Court of Session in Scotland who subscribed to a journal, some issues of which contained articles expressing strong pro-Israeli views. The House of Lords accepted that if the Judge had shared those views, she would have been bound to recuse herself. There was, however, no reason to believe that she did. Lord Hope observed at [8]:- "The Extra Division referred in its discussion section of its opinion to the fact that the judge had taken the judicial oath 2007 SC 303, para 44. This is, of course, a factor to be taken into account along with all the other facts. In this case, however, where the issue is whether a judge having access to this material

is to be associated with its contents, I would attach more weight to the other factor that the Division mentioned. The judge can be assumed, by virtue of the office for which she has been selected, to be intelligent and well able to form her own views about anything that she reads. She can be assumed to be capable of detaching her own mind from things that they contain which she does not agree with. This is why the complete absence of anything said or done by her to associate herself with the published material that the appellant complains of is so crucial to what the observer would make of this case. In the absence of anything of that kind there is no basis on which the observer would conclude that there was a reasonable possibility that the judge was biased." Lord Rodger, while accepting that the question was whether the Judge might have been influenced, perhaps subliminally, by reading the journal over a period of years, said, at [23]:- "In assessing the position, the observer would take into account the fact that Lady Cosgrove was a professional judge. Even lay people acting as jurors are expected to be able to put aside any prejudices they may have. Judges have the advantage of years of relevant training and experience. Like jurors, they swear an oath to decide impartially. While these factors do not, of course, guarantee impartiality, they are undoubtedly relevant when considering whether there is a real possibility that the decision of a professional judge was biased." Lord Mance said, at [57]:- "It remains to mention two considerations to which attention was paid during submissions. The first is the oath that Lady Cosgrove will as a judge have taken, in familiar terms: "I ... do swear that I will well and truly serve our Sovereign ... in the office of judge of the Court of Session, and I will do right to all manner of people after the laws and usages of this realm, without fear or favour, affection or ill will. So help me God." In *R v S (RD)* [1997] 3 SCR 484, L'Heureux-Dubé and McLachlin JJ identified the taking of the judicial oath as often the most significant occasion in the career of a judge (para 116), and said (para 117) that "Courts have rightly recognised that there is a presumption that judges will carry out their oath of office ... This is one of the reasons why the threshold for a successful allegation of perceived judicial bias is high. However, despite this high threshold, the presumption can be displaced with 'cogent evidence' that demonstrates that something the judge has done gives rise to a reasonable apprehension of bias." They went on to say, at para 119, that "The requirement for neutrality does not require judges to discount the very life experiences that may so well qualify them to preside over disputes. It has been observed that the duty to be impartial 'does not mean that a judge does not, or cannot bring to the bench many existing sympathies, antipathies or attitudes. There is no human being who is not the product of every social experience, every process of education, and every human contact with those with whom we share the planet. Indeed, even if it were possible, a judge free of this heritage of past experience would probably lack the very qualities of humanity required of a judge. Rather, the wisdom required of a judge is to recognise, consciously allow for, and perhaps to question, all the baggage of past attitudes and sympathies that fellow citizens are free to carry, untested, to the grave. True impartiality does not require that the judge have no sympathies or opinions; it requires that the judge nevertheless be free to entertain and act upon different points of view with an open mind.'" So viewed, the judicial oath appears to me more a symbol than of itself a guarantee of the impartiality that any professional judge is by training and

experience expected to practise and display. But on no view can it or a judge's professional status and experience be more than one factor which a fair-minded observer would have in mind when forming his or her objective judgment as to the risk of bias." 35. In *Helow*, the House of Lords declined to regard the mere exposure of the judge to extreme views as a ground for recusal, in the absence of any reason for believing that she associated herself with them. But Lord Hope's observations on this point should not be applied too generally. There is a qualitative difference between a judge's association with a journal and his association with a person involved in the litigation before him. Journals are not always, or even usually read from cover to cover, and readers rarely feel an instinctive loyalty to a journal such as would carry an instinctive assent to whatever might be contained in it. Loyalty to individuals is, or at least might reasonably appear to be more insidious. Lord Hope's remarks should be regarded as illustrative of a more general principle that the association of the judge with a source of potential bias must be of a kind which is relevant to the disposition of the case. The decision of the High Court of Australia in *Ebner v. Official Trustee in Bankruptcy*

[2000] 205 CLR 337 is authority for a more flexible approach to the pecuniary interests of judges than has traditionally been taken in England. However, it is in my judgment at one with English law in holding that it is necessary to identify what it is that might lead the judge to decide the case otherwise than on its merits and that there must be a logical connection between that matter and his potential deviation from deciding the case on its merits. Gleeson CJ, McHugh J, Gummow J and Hayne J, delivering the leading judgment for the majority, said at [30]:- "It is not only association with a party to litigation that may be incompatible with the appearance of impartiality. There may be a disqualifying association with a party's lawyer, or a witness, or some other person concerned with the case. In each case, however, the question must be how it is said that the existence of the "association" or "interest" might be thought (by the reasonable observer) possibly to divert the judge from deciding the case on its merits. As has been pointed out earlier, unless that connection is articulated, it cannot be seen whether the apprehension of bias principle applies. Similarly, the bare identification of an "association" will not suffice to answer the relevant question. Having a mortgage with a bank, or knowing a party's lawyer, may (and in many cases will) have no logical connection with the disposition of the case on its merits." 36. I consider that the fair-minded and informed observer would conclude that there was no real possibility of bias arising out of any connection between me and the four persons said to be interested in these actions. My reasons are as follows. 37. As far as Mr. William Bailhache and Mr. Le Cocq are concerned, the alleged connection is too slight to warrant serious consideration. I have shaken hands and exchanged greetings with them before formal sessions of the Royal Court in which they were participants and I was an onlooker. In addition, Mr. Le Cocq appears to have nothing to do with the matters alleged by Mr. Syvret. 38. In the case of Sir Philip Bailhache and Mr. Birt, the connection is more substantial because in the past they have entertained me along with other members of the Court of Appeal in their official capacities as Bailiff and Deputy Bailiff respectively. It

seems to me that this is not a relevant connection, unless the fair-minded and informed observer would conclude that it might induce in me a feeling of loyalty, perhaps unconscious, which would affect my assessment of the issues. In my judgment, this is not the position. In the first place, official entertaining does not bring together companions of choice. Such entertaining is simply part of the courtesies of office on both sides. The fair-minded and informed observer would appreciate that. Secondly, he would appreciate that judges commonly have to consider the conduct of officials or fellow-judges, with whom they may have had official relations. Those dealings may have been more or less cordial, but in either case, a judge is unlikely to feel personal loyalty for a purely official connection, and is perfectly capable of detaching his mind from whatever views or impressions he may previously have formed about the official in question. Thirdly, while this is a less weighty consideration, it seems to me to be of some relevance that I am hearing a striking out application in which I am concerned only with issues of law. I am bound to assume in Mr. Syvret's favour that the factual allegations in his Order of Justice are true. If the Court were finding the facts, it would be the Jurats who would perform that function, not me. 39. It remains to deal with Mr. Syvret's argument that I am affected by apparent bias because Mr. Birt selected me for appointment. 40. Manifestly, neither the Bailiff nor the Deputy Bailiff could properly hear these proceedings themselves, given what is said about them in the Order of Justice. The only other persons entitled to exercise the judicial functions of the Bailiff in the Royal Court are Lieutenant Bailiffs and Commissioners. Lieutenant Bailiffs are generally residents holding office during the tenure of the Bailiff who appointed them. Commissioners are usually, but not invariably non-residents. They are appointed by the Bailiff under Article 10 of the Royal Court (Jersey) Law 1948 and hold office for a period specified in the appointment. There being no power in any one other than the Bailiff to appoint either Lieutenant Bailiffs or Commissioners, the implication of Mr. Syvret's present submission is that no one can hear his proceedings. 41. The Bailiff asked me to sit as a Commissioner because he considered that a non-resident judge was less likely to have connections or knowledge which would disable him from hearing these proceedings. He therefore appointed me on 7 December 2010 for a fixed period of three years. I was sworn in on 19 January 2011. 42. In my judgment, these facts do not disclose apparent bias. In many legal systems, as indeed in England before 2006, judges are selected by the executive notwithstanding that their functions may include considering the lawfulness of executive action. Their independence is sufficiently secured by restrictions on their removal, at any rate without cause. I did not seek appointment as a Commissioner and having been appointed for a fixed term, I am not beholden to the Bailiff, nor would the fair-minded and informed observer suppose that I might be. 43. Mr. Syvret also took the point that Sir Philip Bailhache might have been involved in my original appointment to the Court of Appeal. Appointments to the Court of Appeal are made by Her Majesty on the advice of the Privy Councillor responsible for the affairs of Jersey, in my case the Home Secretary. The Bailiff is normally involved in the selection. I have made enquiries and I am told that Sir Philip attended a meeting at the Home Office in April 1995 at which four appointments were

considered, including mine. I was informed that Her Majesty had approved my appointment in June 1995. Since this was some sixteen years ago, I find it difficult to take this point seriously. Does the Order of Justice disclose a cause of action? 44. It is convenient to dispose first of some causes of action apparently asserted by Mr. Syvret which are plainly bad. It will then be possible to deal with those parts of his claim which call for fuller analysis. 45. The first point to be made is that this is a private law action for damages and for declarations as to Mr. Syvret's legal rights. It is clear that the only claims that Mr. Syvret can bring are those which involve a violation of some right which he enjoyed in his personal capacity. Any duty which the Defendants may have owed not to obstruct him in the performance of his functions as a Minister under the Children (Jersey) Law, was owed to the Minister, a corporation sole under the States of Jersey Law 2005 and a legally distinct person. Any cause of action resulting from that is vested in the Minister. It does not belong to the individual who happened to hold office at the relevant time. Mr. Syvret therefore has no claim in respect of it. 46. Secondly, the various public officers and bodies whom Mr. Syvret has sued owed him no general duty in his private capacity to observe proper standards of government, for example in the matter of protecting children or enforcing the criminal law. In his private capacity, Mr. Syvret is just an ordinary citizen like any other. Public authorities may be amenable to judicial review by a person with standing to apply. But they owe their public duties to the state, as representing the citizen body as a whole. They do not owe them to each individual citizen who can claim to have been affected by misgovernment in his health or his pocket. They are not therefore actionable in an ordinary civil suit like this one. Even where negligence is alleged or proved, the courts do not in general recognise the existence of duties of care in the performance of public functions which if they existed would be owed by public authorities to every one: *Yuen Kun Yeu v. Attorney-General of Hong Kong*

[1988] AC 175; *Hill v. Chief Constable of West Yorkshire*

[1989] AC 53 . 47. Third, by statute and under the general law, the proceedings of the States are protected by a number of privileges which are not consistent with some of the claims that Mr. Syvret wishes to make. It was decided in earlier litigation involving Mr. Syvret that the Court has no jurisdiction in respect of proceedings or decisions of the States in the exercise of disciplinary sanctions which were within its powers: *Syvret v. Bailhache and Hamon*

[1998] JLR 128 . Exactly the same reasoning must apply to a decision to dismiss a minister under the power conferred by Article 20 of the States of Jersey Law 2005. Mr. Syvret accepts this. But he contends that things happening outside the States which brought about his dismissal may nevertheless be actionable. I am afraid that he is wrong about this. Under Article 34 of the Law:- "no civil or criminal proceedings may be instituted against any member of the States - ... (b) by reason of any... matter or thing brought by the member before or within the States... by petition, proposition or otherwise." It follows that the immunity extends to the decision of the Council of Ministers to approve the lodging of the

proposition for Mr. Syvret's dismissal and to the actual lodging of the proposition by the Chief Minister. 48. It is true that some of Mr. Syvret's allegations also relate to antecedent conspiracies to bring about his dismissal, which he alleges to have been hatched by officials. It is, however, settled law that a person cannot claim damages arising out of any conduct outside the legislature which caused the legislature to act as it did: *Hoani Te Heuheu Tukino v. Aotea District Maori Land Board*

[1941] AC 308 ; *British Railways Board v. Pickin*

[1974] AC 765 , 787-8 (Lord Reid), 790 (Lord Morris), 796 (Lord Wilberforce), 802 (Lord Cross). The reason is not that such a claim attacks the validity of legislation. On the contrary, it usually asserts its validity and claims damages for its consequences. The reason for the rule is that such a claim attacks the process by which legislation is made, and goes beyond the proper function of the Courts in their dealings with the legislature. The Courts do not "evaluate the sufficiency of the legislative process leading up to the enactment of the statute" : *Wilson v First County Trust Ltd (No 2)*

[2004] 1 AC 816 at [67] (Lord Nicholls). These decisions concerned legislation proper, including (in *Pickin*) private Acts of Parliament authorising the compulsory acquisition of specific land. But for this purpose I do not think that there can be any difference of principle between legislation and other non-justiciable functions of the legislature, such as a vote of no confidence in a government or a minister. 49. These considerations leave as the only potential cause of action a claim for damages for the stress, suffering and the adverse impact on his family life which Mr. Syvret claims to have experienced as a result of the harassment and obstruction to which he was subjected when he sought to uncover child abuse as a Minister in 2007. This came about, according to paragraphs 249-253 of the Order of Justice (quoted above), because the failure of officials and care workers to perform their duties made it necessary for him to "shoulder and carry the burden - virtually single-handedly, of investigating many examples of child protection failure and concealed child abuse." In the absence of any support, counselling or respite, and without any training for the task, he suffered from stress induced by overwork and by the harrowing interviews which he conducted personally with survivors of child abuse. 50. There are four possible bases disclosed in the Order of Justice for contending that these consequences resulted from a breach of duty on the part of the Defendants. The first and principal basis is that the acts of which Mr. Syvret complains were unlawful by statute. The second is the tort of misfeasance in public office. The third is a common law duty of care to protect Mr. Syvret from unreasonable stress in the performance of his functions as a Minister. The fourth is the violation of Mr. Syvret's rights under the Human Rights Convention, so far as his health and family life suffered from his experiences as a Minister in 2007. I shall consider these possibilities in turn. Breach of statutory duty 51. Mr. Syvret relies on two statutory provisions: the general provisions of the Children (Jersey) Law 2002 , which he alleges were broken by those whom he accuses of neglecting the welfare of children in Jersey; and Article 47 of the States of Jersey Law 2005 , which creates a

criminal offence of bringing unlawful pressure on a member of the States to influence his conduct as a member. Neither provision is a promising basis for the duty which Mr. Syvret claims was owed to him. 52. In the first place, the statutory duties of public authorities will not normally be enforceable by a civil action unless the duty was imposed for the protection of a limited class of persons of whom the Plaintiff is one, and even then not unless the statute as a matter of construction confers a private right of action on members of that class: *X (Minors) v. Bedfordshire County Council*

[1995] 2 AC 633, 731 (Lord Browne-Wilkinson). Statutory schemes establishing a scheme of social welfare for the benefit of the public at large do not in general confer private rights of action. As Lord Browne-Wilkinson observed in *X (Minors)* at page 731:- "Although regulatory or welfare legislation affecting a particular area of activity does in fact provide protection to those individuals particularly affected by that activity, the legislation is not to be treated as being passed for the benefit of those individuals but for the benefit of society in general." Although the application of this principle has been modified in the case of child protection legislation, in order to give effect to the European Convention on Human Rights, the principle itself holds good, and is of general application. It has, for example, been applied to other welfare legislation, such as that governing education: see *Keating v. Bromley LBC*

[1995] 2 AC 633, *Phelps v. Hillingdon LBC*

[2001] 2 AC 619. It makes no difference to the operation of these principles that the act complained of was a criminal offence. The fact that an act is criminal does not of itself mean that it is actionable. On the contrary, the presumption is that it is not: *Lonrho v. Shell Petroleum (No. 2)*

[1982] AC 173, 185-6 (Lord Diplock). 53. Secondly, it has been held ever since *Gorris v. Scott*

(1874) LR 9 Ex. 125 that any right of action for breach of a statutory duty, will be limited to claims in respect of loss of a type which it was the object of the statute to prevent. This principle, which was once regarded as a particular feature of actions for breach of statutory duty, can now be seen as illustrating a more general principle that an action in tort lies only to recover loss which it was the object of the relevant duty to prevent: *Kuwait Airways Corp v Iraqi Airways Co (Nos 4 and 5)*

[2002] 2 AC 883 at [128] (Lord Hoffmann). The limitation has been applied to actions in negligence (*South Australia Asset Management v. York Montagu Ltd.*

[1997] AC 191); to actions in torts of strict liability, such as conversion (as in the *Kuwait Airways* case); and to intentional torts such as misfeasance in public office (*Three Rivers DC v. Bank of England (No. 3)*

- [2003] 2 AC 1 , 195). 54. In the light of the developing jurisprudence of the European Convention on Human Rights, it may well be that in order to give effect to the right to private and family life under Article 8, the Children (Jersey) Law 2002 a private right will be treated as arising in favour of children against those charged by the Law with their protection. This has been held in relation to the corresponding legislation in England: *D v. East Berkshire Community NHS Trust*
- [2004] QB 558 ,
- [2005] 2 AC 373 . But on no view could the Law be said to create private rights of action in favour of the public at large or those such as Mr. Syvret who fall outside the class intended to be protected and have suffered no loss of the kind which the statute was intended to prevent. 55. Turning to Article 47 of the States of Jersey Law, which creates a criminal offence of bringing unlawful pressure on a member of the States to influence his conduct as a member, it is not easy to extract from the Order of Justice any facts which could be said to constitute a breach of this provision. But in any event it is in my judgment clear for two reasons that Article 47 is not intended to confer a private right of action. The first is that although in one sense the provision exists to protect a particular class of persons (members of the States) from outside interference with the performance of their functions, it does so not for their benefit but for the purely public purpose of protecting the integrity of proceedings of the States. The second is that unlawful interference with the performance of the functions of a member of the States could not cause him any loss within the mischief of the Article. The loss claimed by Mr. Syvret, namely stress, leading to ill-health and impairment of his family life, is plainly not loss of a kind which Article 47 was intended to prevent. It follows that the sole remedy for its violation is a criminal prosecution, brought with the consent of the Attorney-General: see Article 51.
- Misfeasance in public office 56. The ambit of this venerable tort is now well-defined, as a result of the decision of the House of Lords in *Three Rivers DC v. Bank of England (No. 3)*
- [2003] 2 AC 1 . The leading speech for the majority was given by Lord Steyn. At page 191, he identified the two limbs of the tort as follows:- "First there is the case of targeted malice by a public officer, i e conduct specifically intended to injure a person or persons. This type of case involves bad faith in the sense of the exercise of public power for an improper or ulterior motive. The second form is where a public officer acts knowing that he has no power to do the act complained of and that the act will probably injure the plaintiff. It involves bad faith inasmuch as the public officer does not have an honest belief that his act is lawful." 57. The requirement of the second limb that the public officer should know that his act will probably injure the Plaintiff is much more than a mere requirement of foreseeability. It is a form of intent, which is framed as a requirement that the Defendant should know of the probability of harm in order to accommodate the case where the Defendant has been reckless. As in other areas of law recklessness, i.e. the state of mind in which the consequences of an act are deliberately ignored, is legally tantamount to intent. Thus at page 195, Lord Steyn points out that it follows from the elements of the tort

as he has defined them that the Plaintiff will not necessarily be entitled to claim all foreseeable loss flowing from the breach:- "In both forms of the tort the intent required must be directed at the harm complained of, or at least to harm of the type suffered by the plaintiffs." 58. Mr. Syvret alleges many unlawful omissions and abuses of power by many public servants. But the only ones which are pleaded (or capable) of being targeted against him or known to be likely to cause damage to him or others in a similar position, are the allegations pleaded principally at paragraphs 39, 47 and 51 of the Order of Justice. These paragraphs allege that public employees responsible for child protection, later joined by senior officials and ministers, conspired "to obstruct him in the discharge of his duties, harass him, to damage his public standing and to unlawfully engineer his removal from ministerial office." The alleged purposes of these actions, as Mr. Syvret has pleaded them, were (i) to prevent him from performing his ministerial functions in relation to child protection, and (ii) to bring about his removal from office. I have already pointed out that Mr. Syvret's inability to perform his public functions as a minister cannot give rise to a claim by him in his personal capacity. Nor can he complain about his removal from office as a Minister, which was an Act of the States, for which the law will not give him relief, whatever may have brought it about. 59. That leaves as the sole permissible basis, and as I understand it from Mr. Syvret's submissions the sole intended basis for this claim, the contention that the harassment to which he was subjected caused him stress which damaged his mental and physical health and his family life. The difficulty about this is that on his pleaded case the stress and damage to Mr. Syvret's health and family life was not the harm which the relevant public servants intended or expected to bring about. The claim as pleaded is that they intended and perhaps expected to stop him investigating child abuse and to procure his removal from office. Damage to Mr. Syvret's health and family life was no more than an incidental consequence. It may or may not have been a foreseeable consequence, but that is irrelevant. Misfeasance in public office is an intentional tort. 60. In my judgment the Order of Justice does not disclose a cause of action for misfeasance in public office. Negligent infliction of stress 61. It is important to appreciate under this head that what is alleged against the Defendants is not that they directly inflicted physical or psychological damage upon Mr. Syvret. It is that they put him in a position where he inflicted it upon himself by overworking and taking on tasks such as interviewing victims for which, by his own admission, he was unfitted by training or experience. The question is whether any of the Defendants owed him a duty of care to protect him from this kind of harm. In my judgment, they did not. 62. There are circumstances in which a Plaintiff may claim damages for physical and psychological injury suffered while intervening to rescue persons or property from a hazard created by the Defendant's negligence. The leading cases are *Haynes v. Harwood*

[1935] 1 KB 146 and *Baker v. T. E. Hopkins & Son Ltd*

[1959] 1 WLR 966 . The hallmark of the 'rescue' cases is that the rescuer's act in intervening and thereby exposing himself to danger was the foreseeable consequence of the Defendant's conduct. On this basis, the rescuer is a person whom any reasonable person in the position of the Defendant should have contemplated as being affected by his action in just the same way as some one directly threatened by the hazard. This is the category of tortious liability which seems to present the closest analogy with the situation described by Mr. Syvret in his Order of Justice. However, the analogy is not nearly close enough for his purposes. In the first place, the Defendants did not create any hazard. They did not cause children to be abused. They simply failed, according to Mr. Syvret's narrative, to perform a statutory obligation duty to investigate it and prevent a recurrence. I know of no case in which it has been held that a mere failure by A to rescue persons or property from a danger created by some one else, can give rise to liability to B when B tries to rescue them instead and suffers damage in consequence. Secondly, while the limits of foreseeability will not often be capable of summary decision, the present is an extreme case. It is absurd to suggest that any reasonable person in the position of the Defendants should have contemplated that a Minister would personally conduct an investigation of child abuse of a kind which Mr. Syvret accepts (indeed asserts) he was neither trained nor fit to conduct. As the Minister, he was in a position to direct officials to undertake this work or, if he could not rely on them, to employ outside agencies for this purpose. 63. The other way in which a cause of action in negligence might be put is that some one owed Mr. Syvret a duty of care analogous to an employer's duty to protect his employees from undue stress at work. This seems to me to be even more difficult to justify. The point may be tested by asking who might owe him such a duty. It is common ground that as a Minister, Mr. Syvret was not an employee but an independent officer. He was not subject to direction by any one other than those to whom he was politically answerable, primarily the States but arguably also the Chief Minister or the Council of Ministers. Subject to that, he was in charge of his own department. In my judgment, a Minister's colleagues and the legislature to which he is answerable, do not owe a duty of care to the Minister to relieve the pressure of his work upon him by ensuring that his subordinates are diligent and competent or forcing him to delegate to some one else if they are not. European Convention on Human Rights 64. I can deal shortly with this point. Mr. Syvret relied on Article 4 (prohibition of slavery and forced labour), alleging that it was violated by conduct on the part of the officers and employees of the States which forced him to overwork and thereby undermine his health. Since Mr. Syvret was not obliged to be a Minister or to undertake the investigatory functions of his department personally, this argument cannot be taken seriously. 65. In my judgment, no Convention right of Mr. Syvret's is engaged in this case. The ordinary context in which the state's obligations to protect physical and mental health arise is Article 2 (the right to life). The state has a negative obligation not itself to imperil human life and a qualified positive obligation to put in place a legal and administrative framework for the protection of life. The obligation has no application in cases where human life is not at risk. There is no suggestion that it was at risk here. The direct infliction by the state of mental suffering may violate Article 3 (prohibition of

torture), but it is not suggested that the Defendants inflicted any suffering on Mr. Syvret by their own acts. None of these rights, on the face of it, has any bearing on Mr. Syvret's complaint that he has been driven to overwork by the failure of the state's servants to perform its obligations to children. 66. The protean character of Article 8 (respect for private and family life) makes it difficult to rule out the possibility that in some circumstances a state might violate Article 8 by allowing a person to suffer mental anguish which impaired his family relationships. However, the same considerations which rule out a successful action in negligence seem to me to be fatal to a complaint under this head. On his own pleading, Mr. Syvret is the author of his own misfortunes.

Conclusion

67. The elements of the various torts alleged by Mr. Syvret are apt to seem technical, but the overall result is not at all technical and it can be summarised quite simply. Mr. Syvret's fundamental problem is that he is trying to bring a private claim in respect of what he alleges was a public wrong. But it is not open to every citizen to claim damages or other kinds of personal relief from the state for the failure of its Ministers and officials to perform their public duties to an appropriate standard - duties to protect children from abuse and to observe and enforce the criminal law. Mr. Syvret is an ordinary citizen with no greater rights in respect of these matters than any one else. He derives no special status from the fact that he was once a minister or from the fact that he is still the spokesman for those who, rightly or wrongly, are dissatisfied with the standards of government in Jersey. For that reason, he has been obliged to dress up this action as an action for personal psychological injury inflicted specifically on him. However, on his own pleading, he inflicted this injury upon himself by doing things which no one had any legal duty, or indeed right, to stop him doing. I conclude that the Order of Justice discloses no cause of action and must be struck out in its entirety. 68. It remains to deal with two other matters which arose in argument. Limitation 69. If I had concluded that Mr. Syvret was entitled in law to claim for the stress-induced damage which he says that he has suffered, I would not have struck out that claim on the ground that it was time-barred. The statutory limitation period for actions in tort is three years from the time that the cause of action arose. The time bar is subject to any rule of law suspending the running of time. One such rule is embodied in the maxim *à qui est empêché d'agir, la prescription ne court point*, which suspends the running of time during any period when it was practically impossible for the Plaintiff to enforce his rights: *Eves v. Le Main*

[1999] JLR 44, *Boyd v. Pickersgill and Le Cornu*

[1999] JLR 284. The ambit of *empêchement* as an answer to a plea of limitation has yet to be fully worked out in the case-law. Moreover, the facts which might be relevant to it have not yet been pleaded, because limitation would normally be raised in the Defence and *empêchement* in Reply. It is by no means clear and obvious from the material before me when the injury to his mental health and family life, if it happened at all, became or should have become manifest. Nor am I in a position to say what if any other relevant

factors might have prevented Mr. Syvret from bringing these proceedings earlier. Judicial Review 70. Rule 6/14 of the Royal Court Rules provides (in summary) that where the only relief sought in an action should have been sought by an application for judicial review, and an application is made to strike out the action, the Court has a discretion to direct that the action should proceed as if it had been begun by way of application for judicial review. Before I can exercise this discretion, I must be satisfied among other things that leave would have been granted to move for judicial review if an application had been made. At the conclusion of the argument, I drew Mr. Syvret's attention to this provision. He submitted that if I concluded that relief was available to him only in proceedings by way of judicial review, I should allow this action to continue on that basis. 71. A substantial part of the Order of Justice is concerned with the alleged failure of the police to investigate or the Attorney-General to prosecute cases of child abuse. I have given my reasons for saying that Mr. Syvret cannot complain about this in a private law action. On the other hand, it is clear that subject to establishing some locus standi this could give rise to an application for judicial review. 72. It seems to me probable, and I am willing to assume that Mr. Syvret would have sufficient locus standi. Nevertheless, I do not propose to allow that part of the Order of Justice to proceed as an application for judicial review, because it seems to me to be clear that at the time that this action was begun (26 November 2010) leave to move for judicial review would have been refused on the ground of delay. The incidents of alleged child abuse referred in the Order of Justice occurred over a considerable period before 2009. Mr. Syvret has not suggested that these cases were unknown to him between 2007 and 2009. Every case which can be sufficiently identified from his Order of Justice was included among six cases of historic abuse which we re-examined by the Law Officers in 2008 of six cases of historic abuse. On 26 August 2008, the Attorney-General made a public statement relating to those six cases. Charges were laid in relation to three of them. A decision was made in a fourth that no charges would be brought. Subsequently, on 3 June 2009, the Attorney-General announced that in the remaining two cases no charges would be brought. In those cases where no charges were brought, the reason was said to be that there was insufficient evidence to justify a prosecution. The reasons for this conclusion were summarised, and legal advice was said to have confirmed it. An attempt to force the reopening of a criminal investigation now, more than two years later, would be highly prejudicial to the proper administration of justice, unjust to those under investigation who had been exonerated, and quite possibly distressing to victims and their families, who have not themselves sought to challenge these decisions by way of judicial review. No grounds have been given by Mr. Syvret, either in his Order of Justice or in his evidence, for believing that the Attorney-General and his advisers were wrong in the view that they took of the available evidence, and no justification has been offered for the delay in making his present allegations. Authorities States of Jersey Law 2005. Children (Jersey) Law 2002. Royal Court Rules. European Convention on Human Rights. Porter v. Magill

[2002] 2 AC 357. Helow v Secretary of State for the Home Department

- [2008] 1 WLR 2416 . Ebner v. Official Trustee in Bankruptcy [2000] 205 CLR 337. Royal Court (Jersey) Law 1948. Yuen Kun Yeu v. Attorney-General of Hong Kong [1988] AC 175. Hill v. Chief Constable of West Yorkshire
- [1989] AC 53 . Syvret
- v. Bailhache and Hamon
- [1998] JLR 128 . Hoani Te Heuheu Tukino v. Aotea District Maori Land Board
- [1941] AC 308 . British Railways Board v. Pickin
- [1974] AC 765 . Wilson v First County Trust Ltd (No 2)
- [2004] 1 AC 816 . X (Minors) v. Bedfordshire County Council
- [1995] 2 AC 633 . Keating v. Bromley LBC
- [1995] 2 AC 633 . Phelps v. Hillingdon LBC
- [2001] 2 AC 619 . Lonrho v. Shell Petroleum (No. 2)
- [1982] AC 173. Gorris v. Scott (1874) LR 9 Ex. 125. Kuwait Airways Corp v Iraqi Airways Co (Nos 4 and 5)
- [2002] 2 AC 883 . South Australia Asset Management v. York Montagu Ltd.
- [1997] AC 191 . Three Rivers DC v. Bank of England (No. 3)
- [2003] 2 AC 1 . D v. East Berkshire Community NHS Trust
- [2004] QB 558 ,
- [2005] 2 AC 373 . Haynes v. Harwood [1935] 1 KB 146. Baker v. T. E. Hopkins & Son Ltd
- [1959] 1 WLR 966 . Eves
- v. Le Main
- [1999] JLR 44 . Boyd
- v. Pickersgill and Le Cornu
- [1999] JLR 284 . STATEMENT 1. In this action, the Plaintiff, Mr. Stuart Syvret, claims damages, declarations and other relief against the Chief Minister of Jersey, the States Employment Board, the States of Jersey and H. M. Attorney-General, for various alleged torts, including breaches of the Children (Jersey) Law, conspiracy to pervert the course of justice, and misfeasance in public office. He has given notice that he proposes to apply to me to recuse myself on account of apparent bias. 2. So far as the grounds of that application appear from the material before me, there are two. First, that I am a friend and acquaintance of four persons who are said to be 'interested' in the action. They are Sir Philip Bailhache, who was the Bailiff of Jersey between 1995 and 2009; Mr. Michael Birt,

who was deputy Bailiff from 2000 to 2009, before succeeding Sir Philip as Bailiff; Sir Philip's brother, Mr. William Bailhache, who was Attorney-General between 2000 and 2009, before becoming Deputy Bailiff; and Mr. Timothy Le Cocq, who succeeded him as Attorney-General. Secondly, it is said that I may derive remuneration from the Criminal Offences Confiscation Fund, and that if so I have an interest in a "continuous flow of successful criminal convictions" and in the continuance of a fund whose operations he alleges to be illegal. 3. The purpose of this statement, which I am making at the outset of the hearing, is to disclose those facts of which I am aware which may be relevant to the application. 4. I am a resident of the United Kingdom and am Queen's Counsel in practice at the English bar. I was appointed as a Judge of Courts of Appeal of Jersey and Guernsey in June 1995 and sworn in, in January 1997. This entails sitting for one week in each year in each Bailiwick, in addition to very occasional special sittings. I was appointed as a Commissioner under Article 10 of the Royal Court (Jersey) Law 1948, on 7 December 2010, for a fixed term of three years by the present Bailiff. I have notified the Bailiff of my intention to relinquish all judicial office in Jersey later this year, before taking office as a Justice of the Supreme Court of the United Kingdom. 5. The Bailiff and Deputy Bailiff of Jersey are ex officio the senior judges of the Court of Appeal, although they rarely sit in it. By tradition, the Bailiff is also a member of the Court of Appeal of Guernsey. In the course of their functions, both of them occasionally entertain non-resident judges of the Court of Appeal during their sittings in Jersey. 6. I have never sat with Sir Philip Bailhache in the Court of Appeal of Jersey. I have sat with him once in the Court of Appeal of Guernsey, in 2004 for a period of three days. During my sittings in the Court of Appeal in Jersey, it would be normal for me to meet Sir Philip in the Royal Court building. These meetings have been confined to brief exchanges of courtesies and occasional discussions of current legal

issues.

Together with the other judges of the Court of Appeal sitting with me at the time, I have been entertained to dinner in a restaurant by Sir Philip in his capacity as Bailiff, on three or four occasions over the fifteen years that I have been a judge of the Court of Appeal. I have also attended four large official dinners over the same period for the Jersey judiciary, two in London and two in Jersey, at which I believe that he was present. 7. I have never sat judicially with Mr. Birt in either Jersey or Guernsey. About six or eight years ago, when he was Deputy Bailiff, he entertained me and the two appeal judges sitting with me at the time, to dinner at his home. Otherwise, my meetings with him have been confined, so far as I can recall, to occasional encounters in the Royal Court Building and have consisted of the normal exchange of greetings. I cannot recall whether Mr. Birt was present at the four official dinners which I have mentioned, but he may well have been. 8. When he was Attorney-General, Mr. William Bailhache occasionally appeared before me as Counsel on behalf of the Crown. To the best of my recollection, the only occasions on which I have met him out of court have been in the Jurats' robing room immediately before the swearing in of new judges of the Court of Appeal. These

meetings have been brief and inconsequential. I believe that I was introduced to Mr. Le Cocq on a similar occasion in the Jurats' robing room last year, but otherwise I cannot recall ever having met him. 9. The allegations of child abuse at Haut de la Garenne received a certain amount of coverage in the English press, and I was aware of them in general terms from that source. Otherwise, I know nothing about Mr. Syvret or any of the matters in issue in this action, apart from what I have read in the materials put before me for these applications. I have had no occasion to discuss them with any of the four persons mentioned above, or indeed with any one else. 10. I have asked the court administration about the source of my remuneration as a judge of appeal and a commissioner. I am told that it is not paid from the Criminal Offences Confiscation Fund. Page Last Updated: 14 Oct 2015 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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