

## **2.7 Deputy T.M. Pitman of the Attorney General regarding ...**

Given the small size of Jersey's community, what checks and balances, if any, are in place within our justice system to ensure that no conflict of interest arises or that a fair hearing is compromised due to those sitting in judgment having close past links through the practice or friendship.

### **Mr. T.J. Le Cocq Q.C., H.M. Attorney General:**

The principal check on possible judicial bias or lack of independence in Jersey or elsewhere is the high standards of integrity of the judges and other persons acting in a judicial capacity, but in addition to that, a party to any judicial proceedings has a right to challenge the judge or the presiding person if a lack of independence, real or apparent, is suspected. All courts and tribunals in Jersey whether criminal or civil, are public authorities and obliged to conform to Article 6 of the E.C.H.R. (European Convention on Human Rights) which guarantees the right to a fair trial. Furthermore, every member of the judiciary subscribes to a code of conduct which at paragraph 15 states that: "They shall not sit in a case where they have a financial or other interest or where the circumstances are such that a fair-minded and informed observer, having considered the given facts, would conclude that there was a real possibility that the member was biased." In all other cases, they are bound not to abstain from their duty to sit. If a judge and I include Jurats, has a financial or other interest in the outcome of a case he will disqualify himself and decline to sit to determine that outcome. Similarly, if in his view, a fair-minded and informed observer would conclude that there was a real possibility that the judge was biased, he will also disqualify himself. As I mentioned, any party has the right to apply to a judge to disqualify himself and the judge will consider that application by applying the correct legal tests. If the judge declines to disqualify himself, then that decision can be challenged in the case of a judge at the Royal Court by an appeal to the Court of Appeal.

### **2.7.1 Deputy T.M. Pitman:**

Obviously, I am not aiming this at anyone in particular, but I have to ask the Attorney General. Am I right in thinking that a scenario could not happen, or would not happen, where perhaps a commissioner or a judge is overseeing a case with a background in one company? Perhaps the Attorney General, but certainly not the present one, would have a background in that former company and then perhaps even a Jurat or perhaps their spouse could be from that company. What I am trying to explain is that I am sure the Attorney General would agree justice has to be seen to be done as well as be done. Would that sort of scenario be avoided?

### **The Attorney General:**

Relationships, either past or present, professional relationships or friendships between judges themselves or between judges and counsel in cases they are presiding over or considering on appeal, has never been viewed as affecting the independence or impartiality of the court. They do not amount to a conflict or any suggestion of bias. Judges and counsel are expected to fulfil their oaths of office and exercise their functions of Ministers of Justice impartially and professionally. Relationships such as the one that the Deputy has suggested would not amount to a personal interest in the outcome of the case. In fact, that matter was considered by the Royal Court and the Court of Appeal in the case of *The Attorney General v Borough* in the Royal Court. The Court said: "There is no doubt that in every jurisdiction judges are closely acquainted with counsel and indeed, with appellate judges who sit in judgment upon their decisions at first instance. None of these relationships affect in the generality the independence or impartiality of the Court." The Court of Appeal upheld the judge's decision not to recuse himself in those circumstances.

### **2.7.2 Deputy M. Tadier:**

How often are fair-minded and informed observers called upon in order to decide on whether there is a conflict?

**The Attorney General:**

The use of the formula, a fair-minded observer, is a reference to the test that a judge applies when he, himself, considers whether or not he should disqualify himself from presiding over a case. If he is wrong and if a party feels that they have suffered an injustice as a result, it is open to the party, if they have applied to the judge to recuse himself and he refuses, to appeal to the Court of Appeal. The Court of Appeal will, itself, apply the fair-minded and reasonable person test.

**2.7.3 Deputy M. Tadier:**

In other words, the Attorney General is saying that the judge uses this as a mental exercise. He creates in his mind a fair-minded and informed observer for himself and then applies the test in his own way although that can be challenged subsequently.

**The Attorney General:**

As I mentioned, the reference to a fair-minded person is the reference to the standard that the judge measures any perception of conflict against. That standard has been defined within case law and it has a more refined definition and I have used the simple formulated expression of it. For example, the individual that one would refer theoretically against would be reasonable. He would not be unduly suspicious. He would not be unduly naïve. He would be fully aware of all the material facts including the oath that the judge takes and the training that judges get and also, the legal obligations on the judge under Article 6 of the E.C.H.R. There are a number of different factors that go up to make the composite of the fair-minded in a reasonable individual and it would not be possible in the context of an answer to an oral question to give a full explanation.

**2.7.4 Deputy J.H. Young:**

The Attorney General referred to both courts and tribunals and the training for achieving fair hearings. Is the Attorney General able to confirm that all those people sitting in judgment receive training and follow the Codes of Practice that apply in the United Kingdom published by the Judicial Studies Board particularly for tribunals?

**The Attorney General:**

It is my understanding that all judges of the Royal Court undertake proper training. I cannot talk to the training, if any, that is undertaken by members of tribunals in general.

**2.7.5 Deputy M.R. Higgins:**

I would like to thank the Attorney General for his explanations which are very interesting. It has also brought to mind something that has been referred to me. Because of my interest in the legal profession, I have had many people come to me with different matters. One was the fact that a judge in a divorce case denied knowledge of this woman's husband but then it turned out that he knew him rather more closely than he had indicated. What is the remedy for this particular person in those circumstances because it appears that he denied initially having any major contact with him but papers came to light later which appeared to show that he did have a much closer relationship?

**The Attorney General:**

As I mentioned, if the judge should have recused himself and failed to do so, then that decision can be reviewed by an application to the Court of Appeal. If there is no appeal as such because the judge has not made a decision, an application may be made, I think, to the Royal Court or to the Court of Appeal again to review the matter on the grounds that the judge should have disqualified himself.

**2.7.6 Deputy M.R. Higgins:**

Obviously, the person concerned does have no means to bring an action before the Court of Appeal. How can a person challenge the situation if they do not have the funds to be able to do so?

**The Attorney General:**

In Jersey there is a legal aid system, a *tour de rôle* and in the event that there is a proper legal basis for a claim and the person cannot afford to bring that claim, then that claim should be brought on their behalf by a legal representative appointed under the *tour de rôle*.

**2.7.7 Deputy J.H. Young:**

If I may follow up the Attorney General's answer. Is it not correct that for a person to succeed in bringing an appeal under legal aid they would need to have a greater than 50 per cent chance of success in their case?

**The Attorney General:**

I am unable to answer that question. I am not sure if there is a *de facto* percentage applied when legal aid is allocated. I would have to make inquiries to find out the answer to that.

**2.7.8 Deputy T.M. Pitman**

Deputy Higgins really asked my question. I thank the Attorney General for his answers but I think we have to remember that people in the legal profession are human too. Perhaps he agrees that I am sure Sir Alex Ferguson would say he could quite conveniently put his feelings aside and referee the Manchester derby but I think most people would not agree. My other question goes to the Jurat side and with the jury system, obviously the recruiting and vetting process is quite long and intricate. How is that replicated in Jersey with the Jurat system? Is it the same process?

**The Attorney General:**

My understanding of the situation is that the Jurats, by dint of their training and over time by dint also of their experience, have a thorough understanding of the requirements on them. They have taken oaths of office and they understand the necessity to consider the questions of whether they can properly sit on a case on every occasion. In a sense, that is a system which I have certainly seen working in practice where Jurats have disqualified themselves for sitting in appropriate circumstances. There is, however, no external scrutiny, as far as I am aware, in the way of a jury selection process. There is not such a process.

[10:30]