



# In The Supreme Court of Bermuda

## CIVIL JURISDICTION

2024: No. 346

**BETWEEN:**

- (1) K. AMANI LAWRENCE
- (2) EUGENE JOHNSTON

**APPLICANTS**

**AND**

- (1) THE PUBLIC SERVICE COMMISSION
- (2) THE MINISTER OF THE CABINET OFFICE
- (3) THE HEAD OF THE PUBLIC SERVICE
- (4) THE ATTORNEY GENERAL OF BERMUDA
- (5) THE GOVERNOR OF BERMUDA

**RESPONDENTS**

**AND**

- (1) NALINI SALICK
- (2) SHAKIRA DILL-FRANCOIS

**INTERESTED PARTIES**

*Application for recusal of the judge on the grounds of apparent bias determined on the papers*

**Date of receipt of all submissions: 4 February 2026**

**Date of Decision: 25 February 2026**

*Representation:*

Ms K Amani Lawrence in person

Mr Eugene Johnston in person

*Ben Adamson of Conyers Dill & Pearman Limited for the Public Service Commission*

*Paul Harshaw* of Canterbury Law Limited for the Minister of the Cabinet Office, the Head of the Public Service and the Attorney General of Bermuda

*Richard Horseman* of Wakefield Quin Limited for HE Governor of Bermuda

The interested parties did not participate in the hearing, were not represented by counsel and made no written submissions

## **RULING ON RECUSAL APPLICATION**

**MARTIN J**

### **Introduction**

1. This is the court's ruling on an application made by Mr Johnston and Ms Lawrence that I should recuse myself from hearing their respective substantive applications for judicial review on the grounds of apparent bias.
2. There are two aspects to the application made by each applicant. The first is a submission that because (i) I refused to grant leave to Mr Johnston and Ms Lawrence to add various parties to the proceedings and (ii) I refused to grant leave to commence judicial review proceedings in relation to twelve out of sixteen heads of relief, I have formed a view on the ultimate merits of their respective applications, or at least to those parts of their application for which I refused leave. It is said that this gives rise to an appearance of bias.
3. The second submission is that in the course of the *ex parte* hearings I expressed concerns about the way in which the application was being presented that gave the impression that I did not have an open an impartial mind to the merits of the claims Mr Johnston and Ms Lawrence wish to bring. It is said that this also gives rise to an appearance of bias.

### **Summary and disposition**

4. For the reasons I have set out below, I have decided that these points are not well founded and that there is no reason why I am not able to continue to hear the substantive merits of the applications. I do not consider that a fair minded and informed observer would conclude that I am unable to bring an impartial and independent mind to the substantive claims being made by Mr Johnston and Ms Lawrence as a result of having initially refused leave to claim certain relief, or as a result of any concern over the conduct of the *ex parte* application for leave to issue the proceedings or the application for leave to appeal from my decision to partially refuse leave.
5. I should make it clear at the beginning that no application has been made on the grounds of actual bias. Nonetheless, I should state formally that I have no interest in the outcome of the application for relief whether that be financial, personal, professional, political or philosophical and I do not know either of the applicants personally. Although Ms Lawrence did spend time as a summer student at my law firm more than 20 years ago, I have had no personal or professional contact with either of the applicants which would engage any of the principles that would justify recusal. Similarly, I have no prior connections with the other parties to the proceedings. Nor have I formed or expressed any view as to the ultimate merits of the substance of claims that either Mr Johnston or Ms Lawrence have set out in their applications.

## Background

6. To put the recusal application into context, and to understand the various arguments raised, it is useful to summarise the nature of each of the claims being made, and my approach to those matters on the initial application for leave to commence the judicial review proceedings in this case.
7. Mr. Johnston says that the recommendation of the Public Service Commission (“the PSC”) to appoint Ms Dill-Francois as Solicitor General was invalid because the job description for the post that was used was not the approved job description at the time the post was advertised. He says that he did not apply for the post because the job description for the post as advertised said that the post required applicants to have 5 years’ management experience at a senior level in Government with responsibility for the professional development of staff. This was experience he did not have, so he believed he did not have the necessary minimum qualifications to be eligible for appointment. He did not apply.
8. In fact, the approved job description at the time of the advertisement did not include a requirement for management experience but required a minimum of 15 years’ post qualification experience. It has been admitted that the job description had not been updated and amended at the time the post was advertised. Mr. Johnston says that he met the requirement of 15 years’ post qualification experience and says that he could have and would have applied for the job had he understood that he met the minimum requirements for eligibility. He says that the PSC’s recommendation to appoint Ms Dill-Francois as Solicitor General was unlawful because the PSC based its recommendation on the wrong job description and took into account matters which were not relevant to the determination of the application that they were required to make.
9. Ms Lawrence’s case is that she was properly qualified for the post of Chief Parliamentary Counsel and had acted in that post for 18 months. She said that because she is a Bermudian applicant she is entitled to priority consideration for the post. She says that the PSC’s recommendation was invalid because the PSC failed to take proper account of her qualifications and experience and the established policy of giving priority in promoting qualified Bermudian applicants.
10. I considered that both of these claims are arguable and I granted leave to commence the proceedings for judicial review in each case. The relevant procedural rules require the court to consider the relief sought and the affidavit evidence in support thereof<sup>1</sup>.
11. In considering the relief sought and the affidavit evidence in support, I took the view that the factual nexus alleged in the affidavits in support of the two applications was insufficient to support the grant of leave in respect of twelve out of the sixteen prayers for relief set out in the Form 86A that accompanied the applications. These included prayers to strike down as unconstitutional various documents including the job advertisements, the job descriptions for the posts, the Government’s recruitment code and the grant of declaratory relief as to the constitutional status of the office of Attorney General. I considered that these prayers were not relevant to the substantive claims being made by Mr Johnston and Ms Lawrence which relate

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<sup>1</sup> RSC Order 53 rule 3 (2).

to two specific recommendations for appointment made by the PSC. Accordingly, I refused leave to issue judicial relief proceedings in respect of those claims for relief which I considered to go beyond what was necessary to give Mr Johnston and Ms Lawrence effective redress for the claims for which I had given leave.

12. In addition, I considered that the addition of the other parties was unnecessary because the only decision that was being challenged was the recommendation of the PSC in each case. I therefore directed that those additional parties should not be made parties to these proceedings.
13. Mr Johnston and Ms Lawrence appealed against my decision. The Court of Appeal ruled that I was wrong to take a narrow approach on the initial leave application, and that while I was correct to be concerned about the scope of the relief, those matters should not have engaged the court's attention at that stage, but should be dealt with later at the *inter partes* hearing for directions stage. The Court of Appeal also decided that I was wrong to limit the parties to the proceedings to the PSC. The Court of Appeal allowed the appeal and remitted the matter to the judge to determine those directions and for the matters to proceed to a hearing<sup>2</sup>.
14. When the matter came back before me on the directions hearing, I considered that it was my duty under the Guidelines for Judicial Conduct<sup>3</sup> to raise the question whether because I had refused leave to claim certain heads of the relief sought on the leave application, was there any concern that I am not able to bring an independent mind to determining the merits of the claims of either Mr Johnston or Ms Lawrence?
15. Although they had not themselves raised the issue, Mr Johnston said that he and Ms Lawrence had been considering applying for my recusal but had not yet decided whether they were going to do so. I indicated that if they intended to do so, then they must do so at an early stage. After briefly conferring, Mr Johnston and Ms Lawrence decided that they wished to make formal applications for my recusal. The directions hearing was then adjourned so that the recusal application could be filed and the issue properly briefed by all parties. It was agreed that efficiency would best be served by making written submissions rather than making submissions at an oral hearing. The parties have put in submissions in writing and have put those before the court. Ms Lawrence has also put in an affidavit.
16. I should make it clear that I raised the question of recusal not because I had concerns about my own ability to bring an impartial and independent mind to the case, but because I wanted to ensure that if this was a concern in the minds of any of the parties, then the issue should be addressed at the earliest opportunity. I felt that raising the question was consistent with my obligations under the Guidelines for Judicial Conduct. I mention this because the suggestion is made by both Mr Johnston and Ms Lawrence that if there had been no concern in my own mind about my independence, then I would not have raised the recusal issue.

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<sup>2</sup> Paragraph 29 of the Court of Appeal's decision.

<sup>3</sup> Guidance at paragraph 78 (iv) of the Guidelines for Judicial Conduct.

## The legal test for recusal

17. The legal test for recusal on the grounds of an appearance of bias is set out in **Porter v McGill**<sup>4</sup>:

*“The question 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.”*

18. A fair minded and informed observer is not unduly sensitive or suspicious and always reserves judgment until he or she has seen and fully understood both sides of the argument. Nor is he or she complacent, and will not shrink from the conclusion, if justified objectively, that things that a judge has said or done, may make it difficult for them to judge the case before them impartially<sup>5</sup>.

19. As to the judge having formed a premature view on the merits of the case, it was said in **Stubbs v R**<sup>6</sup>

*“The appearance of bias as a result of pre-determination or pre-judgment is a recognised ground for recusal. The appearance of bias includes a clear indication of a prematurely closed mind (Amjad v Steadman-Byrne [2007] EWCA Civ 625; [2007] 1 WLR 2484 per Sedley LJ at para 16). The matter was expressed by Longmore LJ in Otkritie International Investment Management Ltd v Urumov [2014] EWCA Civ 1315 (at para 1) in the following terms:*

*“The concept of bias ... extends further 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 might in some way have ‘pre-judged’ the case.”*

20. The court is slow<sup>7</sup> to accede to recusal applications on insubstantial grounds for obvious reasons. It would be inimical to the efficient administration of justice to allow parties to raise objections about judges based on personal preference or in order to get the matter before a judge whom a party thinks will be sympathetic to their arguments. The basis for recusal must be based on solid evidence of a real risk of bias, and a recusal is only justified for the maintenance of public confidence in the independence and impartiality of the judiciary.
21. These principles have been applied in Bermuda cases and are uncontroversial. Recent examples of the application of these principles can be found in **Athene Holding Ltd v Siddiqui and Others**, **Moulder v Cox Hallet Wilkinson and Others** and **Durham v AG**<sup>8</sup>.

## The grounds for recusal alleged by Mr Johnston and Ms Lawrence

22. Mr Johnston and Ms Lawrence advance two grounds to support their application. The first ground is what they refer to as the “appearance ground”. This is (in summary) that I have

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<sup>4</sup>[2001] UKHL 67 at paragraph 103 per Lord Hope.

<sup>5</sup>This is a paraphrase of the statements made in **Helow v Secretary of State for the Home Department and Others** [2008] UKHL 62 at paragraphs 1-3 per Lord Hope.

<sup>6</sup>[2018] 3 WLR 1368 at paragraph 15 per Lord Lloyd Jones JSC.

<sup>7</sup>**Ewart Brown v DPP and Others** [2021] SC (Bda) 74 (civ) (10 September 2021); **F v F** [2014] Bda LR 79.

<sup>8</sup>[2019] SC (Bda) 21; [2024] SC (Bda) 14 civ and [2025] SC (Bda) 66 civ respectively.

*“already reached a concluded view and [I am] unlikely to be open to further argument”*<sup>9</sup> because I took the view on the leave application that the addition of several additional parties was unnecessary and that the relief that was sought went beyond that which was appropriate to provide redress in respect of their respective applications for judicial review.

23. The second ground is what they refer to as the “unfairness ground”. This is (in summary) that in the course of argument I evinced a hostile and argumentative disposition, that I cut off Mr Johnston’s argument, and that I behaved in a manner which was “unjudicial”<sup>10</sup>.
24. The main points in support of both grounds are (a) the length and content of the leave ruling (b) the manner of the leave to appeal hearing (c) the content of the Court of Appeal judgment and (d) verbal exchanges made during the directions hearing<sup>11</sup>. These points are further broken down into four main issues which relate to each of these categories<sup>12</sup>.
25. The first issue that is raised is that it is “unusual” to have such a lengthy decision on a leave application. The second issue is that the court made too many interventions during the initial application for leave to commence judicial review proceedings. This theme is repeated in relation to the application for leave to appeal from the court’s partial refusal of leave. The third issue is that the I appeared (to Ms Lawrence) to have made my mind up and was focused on separating the applications rather than treating them as one joint application, that Mr Johnston’s complaint was a ‘subsidiary’ complaint (not my word, but taken from the Court of Appeal’s ruling) and that the court had no power to quash procedural codes and other recruitment documents. The fourth issue is that (according to Ms Lawrence) I was belligerent, dismissive, argumentative and rude in the way that the applications were handled. Mr Johnston also makes the same point in the joint submissions but did not put in an affidavit.

### **The respondents’ positions**

26. The PSC put in written submissions setting out the legal principles referred to above and cited other cases in which the principles have been applied in Bermuda. These principles are reflected in **Porter v MacGill** and do not need to be repeated here. Particular attention was drawn to the principles that (i) judges have a duty to sit unless the threshold for recusal is met (ii) the mere fact that a judge has commented adversely on the case is not sufficient to justify recusal without more (iii) the judge can and should act robustly and with proportionate scepticism in managing cases.
27. The other respondents put in written submissions which set out the same principles but took no position on the question of whether I should accede to the application. The respondents submitted that it is ultimately a matter for the judge to assess and decide.
28. It is right to note that Mr Johnston and Ms Lawrence did not meet the agreed timeline for the service of their submissions and affidavit materials that had been agreed, so the other parties

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<sup>9</sup>Applicants’ submissions at paragraph 13 citing **Broughal v Walsh Bros Builders Ltd** [2018] 1 WLR 5781 at paragraph 35 per Patten LJ.

<sup>10</sup> Applicants’ written submissions at paragraph 40.

<sup>11</sup> Applicants’ written submissions at paragraphs 36-47.

<sup>12</sup> Applicants’ written submissions paragraph 21.

did not have an opportunity to comment on or respond to the submissions made by Mr Johnston and Ms Lawrence, although they had seen Ms Lawrence's third affidavit.

### **Analysis of the issues raised by Mr Johnston and Ms Lawrence**

29. The various points made by Mr Johnston and Ms Lawrence relate to both grounds they advance, and so it is convenient to deal with them by category of complaint rather than individually under each respective ground.

#### *The length of the leave and leave to appeal rulings*

30. It is unusual for the court to set out its detailed reasons for the grant of leave to commence judicial review proceedings. This is because (in routine cases) the basis of the application is usually set out fully in the affidavit in support and relates directly to the administrative decision or action which is the subject of challenge. If the court is satisfied that leave should be granted, there is little need for detailed explanation.
31. However, in cases where leave is refused, the court routinely gives reasons explaining why: this is to enable the disappointed applicant to understand the reasons for the refusal and so that a challenge can be made to that refusal if the applicant wishes to do so. In this case, I granted leave on some grounds but refused leave on others. The reasons for refusal were not expressed in summary form because (i) the grounds which were being advanced were lengthy (ii) the factual background relied upon was unusual (if not unique) (iii) each principal ground for refusal required explanation (iv) the challenges made by the applicants relate to the appointment of very senior positions within the Attorney General's Chambers and those affected had a right to know and understand what the court had ordered and why.
32. There is nothing inherently wrong with giving detailed reasons for a decision to refuse some aspects of the relief being sought, while granting others, and giving directions for the orderly conduct of the proceedings. The publication of the judgment is routine and is required by the principles of open justice. Similarly, the same applies to the ruling on the leave to appeal application.
33. In my judgment, it is difficult to see that there is any basis on which it could be said that giving detailed reasons and following the normal protocol for publication of a ruling supports a claim of an appearance of bias. The absence of reasons and transparency for refusing leave on some grounds and not others is more likely to be the source of legitimate complaint.

#### *Too many "interventions"*

34. The transcript reveals that on the leave application there were three topics that generated discussion between the court and Mr Johnston, who took the leading role in the advocacy on behalf of himself and Ms Lawrence, although strictly they are each representing themselves as litigants in person.
35. The first topic related to whether Mr Johnston had deposed in his affidavit facts that supported his claim that he had been disadvantaged by the advertisement of the wrong job description. Mr Johnston admitted that he had not complained about that in his affidavit<sup>13</sup>.

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<sup>13</sup> Transcript 1 page 23.

This went to whether the facts relied on were a sufficient basis to support his claim to judicial review. However, I allowed Mr Johnston to supplement his application by way of submission that he would have applied for the job if the correct job description had been advertised, and leave was granted on that basis. It is difficult to see how this exchange could possibly support an allegation of the appearance of bias.

36. The second topic was a legal issue. Mr Johnston submitted that the court can strike down the government's whole recruitment code, as opposed to the decision that resulted from the application of the code's provisions. I asked for authority for this proposition and Mr Johnston was unable to point to one<sup>14</sup>. This point goes to the scope of the application, and therefore the witnesses, and the extent of appropriate disclosure, and ultimately the relief that would be appropriate.
37. Following the conclusion of the hearing, Mr Johnston and Ms Lawrence sent in a supplemental submission referencing numerous cases that were said to support the submission that the court had such a power. On analysis, each of those decisions related to decisions taken and did not address recruitment codes, job descriptions, advertisements or similar documents. In order to make the distinction clear in the cases which were cited by Mr Johnston and Ms Lawrence, I emphasised in bold type the decision that was set aside, to show that the relevant procedural code or equivalent document was not set aside. Ms Lawrence said that she felt that this was 'biting'. I was actually addressing submissions that were made after the hearing had concluded and was carefully explaining why those authorities did not (in the court's view) support the proposition for which they were being advanced.
38. On the leave to appeal application, Mr Johnston produced an additional authority which had not been cited before which had a reference to the court being able to strike down a policy which had led to an unlawful decision. On the strength of this the court was prepared to adjourn Ms Lawrence's leave to appeal application to an *inter partes* hearing. I was not prepared to do the same in Mr Johnston's case because his grounds of challenge do not involve the application of the recruitment code to him: he did not apply for the post, he was not interviewed, the recruitment code was not applied to him in the selection process, and he made no complaint about it in his affirmation. It is therefore difficult to see how this analysis gives rise to an appearance of bias: I made my reasoning clear, and it was based on legal principle. The Court of Appeal differed on this point (at least at the initial leave stage), but that is not a ground for asserting an appearance of bias on my part.
39. As part of this discussion, Mr Johnston insisted that he had raised this issue in his grounds. I referred him to his affirmation in which he had not challenged the code, which he accepted. There was then a debate as to whether Mr Johnston could challenge the issue of the code itself, which had been issued long before the facts of the present case arose. I took the view that Mr Johnston was not in a position to recharacterize his application when the facts set out in his affirmation did not support that recharacterization or to rely on past events that did not relate to the subject matter of his present judicial review application<sup>15</sup>. Nonetheless, the

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<sup>14</sup> Transcript 1 page 26.

<sup>15</sup> Transcript 2 pages 10-11. The point of disagreement was that Mr Johnston wished to rely upon the procedure that had been followed in his recruitment to his present position some years previously as evidence in support of

transcript shows that Mr Johnston was able to present all his arguments fully. The fact that I did not agree with Mr Johnston's submissions does not give rise to an appearance of bias.

40. The third topic of discussion was another legal issue. This related to the addition of parties who were not legally responsible for making the decision<sup>16</sup>. I took the view only those parties whose actions are the subject of a legal challenge are the proper parties to an application for judicial review. I took the view that this is consistent with the usual application of principles under the rules concerning joinder and non-joinder of parties<sup>17</sup>. Mr Johnston did not produce authority to show that other parties were necessary or proper parties. The court is normally required to consider this question and is required to apply the Overriding Objective to ensure proceedings are conducted in a proportionate and cost-efficient manner. It is difficult to see that the court raising a question as to who are the proper parties to the application gives rise to an appearance of bias. That the Court of Appeal later expressed a different view (at the initial leave stage) does not mean that the approach I took in analysing the issue at first instance gives rise to an appearance of bias.

#### *Joint application*

41. The application was presented as a joint application. I took the view that although it may be an application which may for reasons of administrative convenience be heard together at the leave stage, it was not a joint application in any strict legal sense. This is because the two applications are based on different facts, involve different applicants, different posts, and in no way does the outcome of one application affect or depend upon the outcome of the other.
42. This is a view that the court was entitled to take as part of its case management responsibility and was relevant to the directions that may be appropriate for the conduct of the proceedings. In the event, no decisions have yet been made about the ultimate case management directions. The parties indicated on the last hearing that the directions have largely been agreed, and so it is difficult to see how this assessment can be the subject of an allegation of an appearance of bias or a closed mind as to the appropriate directions that ought to be made.

#### *Belligerent, dismissive, argumentative and rude*

43. These adjectives have been used by Ms Lawrence to describe the court's manner. However, no specific examples of what words or actions justify these descriptions. The transcript does not contain any belligerent or dismissive or argumentative or rude words or comments. I have carefully listened to the recording in real time and have not identified an exchange that would merit the use of any of these adjectives.
44. The application was not one at which the merits of the evidence was being assessed, but whether there was sufficient evidence to support the grant of leave to pursue judicial review proceedings, and whether the applications each had a foundation that was arguable in law. It is clear from the transcripts and the court recording that the court did not exhibit "a barrage of hostility" towards either Mr Johnston or Ms Lawrence's cases, nor was any "immoderate, ill-tempered or offensive" language used of a the type that justified the court's conclusion in

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his leave to appeal application which had not been relied upon in the initial application for leave to issues judicial review proceedings.

<sup>16</sup> Transcript 1 pages 29 and 30.

<sup>17</sup> RSC Order 15 rule 4.

**Serafin v Malkiewicz and Others** that the judge’s conduct of the hearing was unfair<sup>18</sup>. Having given due allowance for differences in perspective, in my view a fair-minded and informed observer, being fully cognizant of the legal process, would consider that Mr Johnston and Ms Lawrence are being ‘unduly sensitive’.

45. Mr Johnston has set out several extracts from the transcript of the hearings upon which he relies for his submission that a fair minded and informed observer would conclude that the applicants would not receive a fair trial<sup>19</sup>. Having reviewed these extracts, which are the same material that Ms Lawrence relied upon, and for the same reasons, I do not consider that a fair minded and informed observer familiar with the ordinary administration of justice would conclude from these extracts that there is a real danger that either of the applicants will not receive a fair hearing according to law.

#### **No appearance of a closed mind**

46. In this case, the court has granted leave to Mr Johnston and Ms Lawrence to bring their claims. It would be odd to conclude that a fair minded and informed observer would think that in so doing the court has expressed any unfavourable view of the merits of those claims or has in any way expressed any preconceived notion of their ultimate outcomes.
47. The fact that I indicated that much of the relief sought in the Form 86A Notice went beyond what is appropriate on the facts disclosed in the initial affidavits in support of the claims does not impinge on the court’s ability (i) to act in accordance with the Court of Appeal’s directions and guidance and/or (ii) to do justice between the parties.
48. Mr. Johnston made particular reference to the last paragraph of my ruling on the *ex parte* leave to appeal application in which I expressed the view that even if I had the power to strike down the Government’s whole recruitment code, I would not grant leave to bring proceedings do so on the facts of this case. He says that this shows a concluded view on the merits. However, this is not a correct interpretation of that sentence in its context: it is a fundamental principle of judicial review proceedings that the court will only interfere to strike down a provision to the minimum extent necessary to achieve justice in a particular case. That is because the court’s role in judicial review proceedings is supervisory, and the doctrine of judicial restraint requires the court to maintain the balance between judicial oversight and the independence of public bodies. My point was that even if the court had power to strike down a particular provision of the code because it led to an unlawful decision, the court would not strike down the *whole* of the recruitment code.
49. In light of the Court of Appeal’s direction, I am satisfied that a fair minded and informed observer would conclude that as the assigned judge I can still entertain all the relevant arguments on the merits fairly and impartially. The question of the appropriate relief depends on the ultimate outcome application and does not relate to whether the applications are well founded. I have not expressed any view on the merits of the facts of either case nor upon the

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<sup>18</sup> [2020] UKSC 23 at paragraph 48. The schedule annexed to the judgment in that case contained relevant extracts that supported the court’s conclusion.

<sup>19</sup> Paragraph 9 of the applicants’ submissions, paraphrasing the summary given in **Re H (A Child: Recusal)** [2024] 1 FLR 1235.

credibility of the witnesses nor upon the likelihood of success of either case. Therefore, the principles set out in **Stubbs** and **Broughal** are not engaged.

50. The Court of Appeal has indicated that it may be that the range of issues to be determined at the ultimate hearing should be narrowed, and that this should be dealt with by the judge with co-operative input from the parties at the directions hearing. Implicit in this statement there is no concern being expressed about my ability as the judge to approach the proceedings with an independent and impartial mind. This can be contrasted to the situation where a judge has made factual findings which were overturned on appeal, which usually requires that the case be remitted for re-hearing before a different judge.
51. I am satisfied that the interests of the public administration of justice, including the maxim that justice must be done and manifestly be seen to be done, are not in any way undermined by the case proceeding before me. In my view, a fair minded and informed observer would not consider that there is any evidence of a real risk of bias in this case as a result of my initial refusal of leave in relation to the prayers for relief summarised above, or the limitation of the parties to the PSC.

#### **No appearance of unfairness**

52. The *ex parte* application for leave to commence judicial review proceedings is necessarily one-sided. It is incumbent upon the applicant to make a full and fair presentation of the facts, as on any *ex parte* application, so that the court can exercise its powers appropriately. This includes a duty to disclose points that militate against the grant of leave, and to draw any relevant legal authorities to the court's attention, irrespective of whether they support or undermine the application.
53. Mr. Johnston's affirmation left out some important factual averments that went to the heart of his case; nonetheless, I allowed him to supplement his case by oral submission. Mr. Johnston did not bring all the relevant legal authorities to the court's attention. He submitted further cases and written argument after the hearing and subsequently relied upon previously uncited authorities on the application for leave to appeal. Nonetheless, I entertained and addressed all of those arguments in a carefully reasoned decision.
54. The court is always entitled to raise concerns over the adequacy of the factual and legal basis of the application and to test the submissions of counsel where it is appropriate to do so. That is the judge's job. A judge is supposed to participate actively in the proceedings and does not have to just sit quietly if he or she thinks important issues need to be addressed more fully, or if the court needs to understand the precise nature of the case that is being presented, or if the basis of the application appears to be insufficient, inconsistent or unclear.
55. Mr. Johnston is representing himself, so he is a litigant in person in these proceedings. However, he is a professional litigation lawyer with more than 15 years' experience and specialises in civil litigation in the field of public administrative law and is a full-time employee of the Attorney General's Chambers. Ms Lawrence is also representing herself, and addressed the court on her own behalf, albeit briefly to adopt all the submissions already made by Mr. Johnston. Ms Lawrence is also a professional lawyer who has over 20 years' experience in public service and is a senior draftsman in the Attorney General's Chambers.

56. When the court engages with parties, the court is mindful of the experience and understanding of the parties in relation to the substantive and procedural issues in the proceedings. Where the court may give considerable latitude to litigants in person who have no prior legal experience, the court is entitled to engage more searchingly with persons who are qualified and experienced lawyers and particularly one who is an experienced litigation professional who specialises in administrative law.
57. After carefully considering the arguments, I am satisfied that the fair minded and informed observer, not being unduly sensitive or suspicious, and being familiar with the litigation process and the facts of the case, would not be justified in thinking that because I tested the factual and legal premises of some of Mr Johnston’s submissions, this gave the appearance of bias against him or Ms Lawrence or to conclude that there is a real danger they will not get a fair hearing on the merits at the trial of their applications<sup>20</sup>.
58. Hargun CJ refused a recusal application in **Athene Holding Ltd v Siddiqui and Others**<sup>21</sup> based on different grounds, but approved the following statement of Turner J in **Charles Thomas Miley v Friends Life Limited**<sup>22</sup> which is relevant in the present context:

*“At the risk of stating the obvious, any judge who is invited to recuse himself on the ground of apparent bias must be very careful not to allow any personal considerations whatsoever to contaminate his conclusions. Nevertheless, this should not preclude such a judge from acting with the same level of robustness and proportionate scepticism, where this is necessary, as he would approach any other application. To proceed otherwise would be unfairly to prejudice the other side out of an undue sensitivity to the perception that such robustness may be wrongly attributed to the personal feelings of the judge as opposed to the legitimate demands of firm management with the aim of applying the overriding objective.”*

59. For the reasons given above, I have concluded that there is no proper basis for me to recuse myself from hearing the matter on the grounds of apparent bias and accordingly I dismiss the recusal applications. I will reserve the costs of the recusal applications until the determination of the applicants’ pending application for a protective costs order.

25 February 2026



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**THE HON. MR. JUSTICE ANDREW MARTIN**  
**PUISNE JUDGE OF THE SUPREME COURT**

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<sup>20</sup> See also the analysis in **Trew v HSBC Bank Bermuda Limited and Others** [2022] Bda LR 13 (CA) at paragraph 11 per Bell JA.

<sup>21</sup> [2019] Bda LR 21.

<sup>22</sup> [2017] EWHC 1583 at paragraph 22.