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JURISDICTION : SUPREME COURT OF WESTERN AUSTRALIA
IN CHAMBERS

CITATION : RAYNEY -v- REYNOLDS [No 3] [2022] WASC 324

CORAM : HILL J

HEARD : 19 SEPTEMBER 2022

DELIVERED : 21 SEPTEMBER 2022

FILE NO/S : CIV 1827 of 2015

BETWEEN : LLOYD PATRICK RAYNEY
Plaintiff

AND

MARK REYNOLDS
Defendant

Catchwords:

Courts and judges - Application for recusal - Application brought after trial heard and decision reserved - Whether reasonable apprehension of bias arising from historical working relationship between trial judge and counsel - Whether there is a duty to disclose prior association - Turns on own facts

Legislation:

Nil

Result:

Application dismissed

Category: B

Representation:

Counsel:

Plaintiff : N Ekanayake
Defendant : In person

Solicitors:

Plaintiff : Bennett
Defendant : In person

Cases referred to in decision:

Charisteas v Charisteas [2021] HCA 29
Ebner v Official Trustee in Bankruptcy [2000] HCA 63; (2000) 205 CLR 337
Johnson v Johnson [2000] HCA 48; (2000) 201 CLR 488
Livesey v The New South Wales Bar Association [1983] HCA 17; (1983) 151
CLR 288
Michael Wilson & Partners Ltd v Nicholls [2011] HCA 48; (2011) 244 CLR
427
MTI v SUL [No 2] [2012] WASC 87
R v Sussex Justices; Ex parte McCarthy [1924] 1 KB 256
Rayney v Legal Profession Complaints Committee [2018] WASC 73
Re JRL Ex parte; CJL [1986] HCA 39; (1986) 161 CLR 342
Smits v Roach [2006] HCA 36; (2006) 227 CLR 423
Stanley v Layne Christensen Co [2006] WASC 56
Vakauta v Kelly [1989] HCA 44; (1989) 167 CLR 568
Webb v R [1994] HCA 30; (1994) 181 CLR 41

HILL J:

1 On 21 and 22 July 2020, I heard the trial in these proceedings. At
the conclusion of the trial, I reserved my decision.

2 On 29 June 2022, the solicitors for the plaintiff wrote to the Chief
Justice of Western Australia to enquire as to the progress of the
delivery of the outstanding judgment.¹ The Chief Justice responded
providing an update as to when the decision would be handed down,
namely that it was anticipated it would be delivered before the end of
next month.²

3 Following this exchange, on 18 July 2022, my chambers were
copied into an email exchange between the defendant and the solicitors
for the plaintiff.³ By this email, the defendant gave notice that he
expected to make an application for me to recuse myself from
delivering judgment in this matter. The basis for the application was
my previous employment and subsequent partnership at Bennett & Co
between 1994 and 2005, a predecessor firm to the plaintiff's current
solicitors.

4 On 1 August 2022, the defendant filed a formal summons. On
9 August 2022, programming orders were made for the filing of any
further affidavits and submissions in relation to the application.

5 In support of his application, the defendant relied on two
affidavits; an affidavit of himself filed 25 July 2022 and an affidavit of
Mr Hugh Selby, who appeared as pro-bono counsel for the defendant at
the hearing of the matter, which was filed on 25 July 2022. The
application was opposed by the plaintiff who relied on an affidavit of
Fabienne Rebecca Sharbanee filed 1 August 2022.

Factual background

6 The factual basis for the application was not in dispute between
the parties.

7 The defendant relied on the previous working relationship between
myself and Mr Bennett, who appeared as counsel for the plaintiff at
trial, and the failure to disclose this to the defendant or in open court.
The Supreme Court website accurately records that I joined Bennett &

¹ Affidavit of Mark Edward Reynolds filed 25 July 2022 Attachment 2.

² Defendant's submissions [14].

³ Affidavit of Mark Edward Reynolds filed 25 July 2022 Attachment 3.

Co as an articled clerk in 1994 and was promoted to partner in 2001. On 30 June 2005, I retired from the partnership of Bennett & Co and joined Deacons, now Norton Rose Fulbright (Prior Working Relationship).⁴

8 When the defendant raised the possibility of an application with Mr Bennett and asked for clarification as to the history of our Prior Working Relationship, Mr Bennett responded by email dated 18 July 2022 stating that since I retired from the partnership, there has been no professional or social relationship between us. Mr Bennett noted that 15 years had elapsed between the date of my retirement from the partnership of Bennett & Co and the trial in these proceedings.⁵

9 Mr Selby, who appeared as pro bono counsel for the defendant at the trial, raised two matters in respect of the conduct of the trial which were described as 'two concerning actions'. First, was the allegation by Mr Bennett that the defendant had intimidated one or more of the plaintiff's witnesses. Mr Selby's evidence is that had he known of the Prior Working Relationship, he would have pressed Mr Bennett to either set out the evidence in support of the allegation or to formally withdraw it.⁶ The second aspect was that, during the closing address of the plaintiff, counsel for the plaintiff made repeated 'disparaging' references to the defendant's failure to give evidence. Mr Selby's evidence is that he made the forensic decision not to interrupt Mr Bennett's closing address but that he would have taken a different decision had he known of the Prior Working Relationship.⁷

10 The defendant referred to an additional three matters which he contends take on a different interpretation given what he now knows of the Prior Working Relationship between myself and counsel for the plaintiff. These were:

- (a) a change of date of the directions hearing from 11 December 2019 to 16 December 2019 which he contends was known to Mr Bennett but not to him;⁸
- (b) at the hearing of his application on 16 December 2019 to adjourn the trial and for the trial to be tried by a jury, two affidavits (one relatively lengthy) was provided by the plaintiffs

⁴ Affidavit of Mark Edward Reynolds filed 25 July 2022 Attachment 1.

⁵ Affidavit of Mark Edward Reynolds filed 25 July 2022 Attachment 3.

⁶ Affidavit of Hugh Selby filed 25 July 2022 [12] - [15].

⁷ Affidavit of Hugh Selby filed 25 July 2022 [16] - [17].

⁸ Affidavit of Mark Reynolds filed 25 July 2022 [5A].

shortly prior to the hearing.⁹ At the conclusion of the hearing, I delivered reasons for decision;¹⁰

- (c) I ordered that he pay the costs of both applications without giving him an opportunity to be heard. The costs orders on that date were that he pay the plaintiff's costs of the application.¹¹

11 In relation to the hearings in December 2019, Ms Sharbanee's evidence is that:

- (a) the matter was listed for a directions hearing on 11 December 2019. At that time, the defendant's applications were adjourned to Monday, 16 December 2019 at 2:15 pm;¹²
- (b) both parties filed written submissions in relation to the defendants' applications; the plaintiff on 13 December 2019 and the defendant on the morning of 16 December 2019;¹³
- (c) two affidavits were filed by the plaintiff in opposition to the applications which were provided to the court and the defendant by email at 12:33 pm;¹⁴
- (d) at the conclusion of the hearing, I gave ex tempore reasons dismissing the application for trial by jury and granting the application to adjourn the trial.¹⁵

Parties' submissions

12 The defendant's submissions described the basis for the application as flowing from the perception that an undisclosed, prior long-term professional relationship between the trial judge and counsel for the plaintiff gives rise to the possibility of an apprehended bias perceived by a fair-minded lay observer that meets the test set down by the High Court in *Charistead v Charistead*.¹⁶ The defendant emphasised that each of these applications required consideration by reference to the particular facts and that the facts of this application were significantly different to each of the authorities referred to by the parties.

⁹ Affidavit of Mark Reynolds filed 25 July 2022 [5B].

¹⁰ Affidavit of Mark Reynolds filed 25 July 2022 [5C].

¹¹ Affidavit of Mark Reynolds filed 25 July 2022 [5D].

¹² Affidavit of Fabienne Rebecca Sharbanee filed 1 August 2022 [2.6].

¹³ Affidavit of Fabienne Rebecca Sharbanee filed 1 August 2022 [2.8].

¹⁴ Affidavit of Fabienne Rebecca Sharbanee filed 1 August 2022 [2.8] - [2.9].

¹⁵ Affidavit of Fabienne Rebecca Sharbanee filed 1 August 2022 [4].

¹⁶ *Charistead v Charistead* [2021] HCA 29; Defendant's submissions [1].

13 Specifically, the defendant submitted that:¹⁷

- (a) unconscious bias that is likely to arise from the Prior Working Relationship is a matter that I may not be aware or conscious of;
- (b) the Prior Working Relationship, that continued from the position of articulated clerk to partner, amounted to a significant mentor-mentee relationship, such that the mutual trust which is implicit in such a relationship would not be displaced over time;
- (c) the Prior Working Relationship was not disclosed by either the trial judge or the plaintiff's lawyer to the defendant which meant that some decisions made by the defendant as to how to present his case were adversely affected;
- (d) he is a fair-minded lay observer and believes the Prior Working Relationship should have been disclosed to him and, if it had been, different decisions would have been made in the conduct of the trial as outlined by Mr Selby in his affidavit.

14 In his submissions, the defendant contended that the significance of this matter was increased by the fact that I had previously rejected his application for a trial by jury.¹⁸

15 The defendant makes plain that there is no allegation of actual bias nor a suggestion that a conscious decision was made not to mention the Prior Working Relationship.¹⁹

16 The defendant's application is opposed by the plaintiff. The plaintiff submits that while the application relies on the Prior Working Relationship, no 'logical connection' between this and the ability or inability for me to decide this matter on its merits has been articulated.²⁰

17 In his submissions in reply, the defendant refers to a number of cases and papers which discuss the potential influence of a cognitive phenomenon such as bias.²¹ The defendant also contends that, in light of the decision of the High Court in *Charisteas v Charisteas*, there was

¹⁷ Defendant's submissions [4].

¹⁸ Defendant's submissions [5].

¹⁹ Defendant's submissions [2] - [3].

²⁰ Plaintiff's submissions [37].

²¹ Defendant's submissions in reply [4] - [7].

an obligation on the plaintiff's solicitors to disclose the prior working relationship to him or in open court.²²

Legal principles

18 A judge should be disqualified from hearing a matter if a fair-minded lay observer might reasonably apprehend that the judge might not bring an impartial mind to the resolution of the question the judge is required to decide.²³ The apprehension of bias principle is based on the view that it is of fundamental importance that justice should not only be done but should manifestly and undoubtedly be seen to be done.²⁴

19 While the fair-minded lay observer 'is not to be assumed to have a detailed knowledge of the law, or of the character or ability of a particular judge, the reasonableness of any suggested apprehension of bias is to be considered in the context of ordinary judicial practice'.²⁵ The question must also be determined by remembering that the judge is a professional 'whose training, tradition and oath or affirmation require [the judge] to discard the irrelevant, the immaterial and the prejudicial'.²⁶

20 An assertion that a judge is or appears to be biased goes nowhere unless the connection between the events that give rise to the apprehension of bias and the possibility of departure from impartial decision making is articulated.²⁷

21 While a judge should refrain from sitting on a matter if their participation might lead to a reasonable apprehension of pre-judgment or bias, a request by a party for the judge to disqualify themselves does not, of itself, establish the grounds for a possible appearance of pre-judgment or bias.²⁸

22 While it is important that justice must be seen to be done, it is also important 'that judicial officers discharge their duty to sit and do not, by acceding too readily to suggestions of appearance of bias, encourage parties to believe that by seeking the disqualification of a judge, they

²² Defendant's submissions in reply [10].

²³ *Charisteas v Charisteas*.

²⁴ *R v Sussex Justices; Ex parte McCarthy* [1924] 1 KB 256, 259 (Lord Hewart CJ); *Rayney v Legal Profession Complaints Committee* [2018] WASC 73 [2] (Martin CJ).

²⁵ *Johnson v Johnson* [2000] HCA 48; (2000) 201 CLR 488 [12] - [13]; *Webb v R* [1994] HCA 30; (1994) 181 CLR 41, 73 (Deane J).

²⁶ *Johnson v Johnson* [12].

²⁷ *Michael Wilson & Partners Ltd v Nicholls* [2011] HCA 48; (2011) 244 CLR 427 [63] (Gummow A-CJ, Hayne, Crennan & Bell JJ) [67].

²⁸ *Livesey v The New South Wales Bar Association* [1983] HCA 17; (1983) 151 CLR 288, 294.

will have their case tried by someone thought to be more likely to decide the case in their favour'.²⁹ A judge should not disqualify himself or herself on the basis of bias or a reasonable apprehension of bias unless substantial grounds are established.³⁰

23 If a party does not object to a judge hearing a case as soon as the facts necessary to establish an apprehension of bias are known, then that party will be seen to have waived the right to subsequently object.³¹

24 While a reasonable apprehension of bias must be firmly established to justify a judge recusing themselves from hearing a matter, in a case of real doubt, it will often be prudent for a judge to decide not to sit in order to avoid the inconvenience that could result if an appellate court were to take a different view on the matter of disqualification.³²

25 In the relatively recent decision of *Charisteas v Charisteas*, the High Court considered the position of apprehended bias on the basis of an undisclosed social relationship between counsel and the trial judge which continued between judgment being reserved and delivery of judgment. In a unanimous decision of the court, the court stated that:³³

Ordinary judicial practice, or what might be described in this context as the most basic of judicial practice, was relevantly and clearly stated by Gibbs CJ and Mason J in *Re JRL; Ex parte CJL* in 1986 by adopting what was said by McInerney J in *R v Magistrates' Court at Lilydale; Ex parte Ciccone* in 1972:

The sound instinct of the legal profession - judges and practitioners alike - has always been that, save in the most exceptional cases, there should be no communication or association between the judge and one of the parties (or the legal advisers or witnesses of such a party), otherwise than in the presence of or with the previous knowledge and consent of the other party. Once the case is under way, or about to get under way, the judicial officer keeps aloof from the parties (and from their legal advisers and witnesses) and neither he nor they should so act as to expose the judicial officer to a suspicion of having had communications with one party behind the back of or without the previous knowledge and consent of the other party. For if something is done which affords a reasonable basis

²⁹ *Re JRL Ex parte; CJL* [1986] HCA 39; (1986) 161 CLR 342, 352 (Mason J).

³⁰ *Re JRL Ex parte; CJL*, 352; *MTI v SUL [No 2]* [2012] WASC 87 [13] (Newnes & Murphy JJA).

³¹ *Vakauta v Kelly* [1989] HCA 44; (1989) 167 CLR 568, 572 (Brennan, Deane and Gaudron JJ); *Smits v Roach* [2006] HCA 36; (2006) 227 CLR 423 [43] (Gleeson CJ, Heydon and Crennan JJ).

³² *Ebner v Official Trustee in Bankruptcy* [2000] HCA 63; (2000) 205 CLR 337 [20].

³³ *Charisteas v Charisteas* [13].

for such suspicion, confidence in the impartiality of the judicial officer is undermined. (citations omitted)

26 The court went on to state that:³⁴

It may be accepted that many judges and lawyers, barristers in particular, may have continuing professional and personal connections. The means by which their contact may be resumed is by a judge making orders and publishing reasons, thereby bringing the litigation to an end. It is obviously in everyone's interests, the litigants in particular, that this is done in a timely way.

27 The statements of the High Court are consistent with the *Guidelines for Judicial Conduct* published by the Australian Institute of Judicial Administration which in Ch 3, deals with Impartiality. The Guidelines state that:

Friendship or past professional association with counsel or a solicitor is not generally to be regarded as a sufficient reason for disqualification. An existing commercial or business relationship between the judge and counsel or a solicitor in a matter to be heard by the judge will require very careful consideration, as will the question of the extent and detail of the disclosure required by the judge in the circumstances.

28 While it is possible for an association with a party's lawyer to be a disqualifying association, in each case, as was noted by the plurality of the High Court in *Ebner v Official Trustee in Bankruptcy*:³⁵

[T]he 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.

29 The plurality went on to discuss the question of disclosure and whether there is a duty or obligation to disclose any interest or association. Their Honours held that:³⁶

It is necessary to distinguish between considerations of prudence and requirements of law.

³⁴ *Charistead v Charistead* [22].

³⁵ *Ebner v Official Trustee in Bankruptcy* [30] (Gleeson CJ, McHugh, Gummow and Hayne JJ).

³⁶ *Ebner v Official Trustee in Bankruptcy* [68] - [72].

As a matter of prudence and professional practice, judges should disclose interests and associations if there is a serious possibility that they are potentially disqualifying. It is common, and proper, practice for a judge who owns shares in a company which is involved in a case in which the judge is sitting to inform the parties of that fact and to give them an opportunity to raise an objection should they wish to be heard. In most cases, the outcome is that no objection is raised and, by reason of waiver, any potential problem disappears. One reason for the practice is that it gives the parties an opportunity to bring to the attention of the judge some aspect of the case, or of its possible consequences, not known to, or fully appreciated by, the judge.

It is, however, neither useful nor necessary to describe this practice in terms of rights and duties. At most, any "duty" to disclose would be a duty of imperfect obligation. A failure to disclose is relevant (if at all) only because it may be said to cast some evidentiary light on the ultimate question of reasonable apprehension of bias. A failure to disclose has no other legal significance. In particular it does not, of itself, give a litigant any right to have the judge desist from further hearing the matter or to have the ultimate decision in the matter set aside for want of procedural fairness.

To describe the practice of making disclosure as a matter of right or duty may distract attention from the fundamental question to be answered which is whether the reasonable apprehension of bias test is established.

...

Disclosure of association may raise more difficult questions than are presented by the straightforward case of ownership of shares in a corporation. It is impossible to identify all of the kinds of association which might be thought to reveal a serious possibility of being potentially disqualifying. As we have said earlier, the application of the apprehension of bias principle requires identification of what it is said might lead a judge to decide a case other than on its legal and factual merits, and the articulation of the logical connection between that matter and the feared deviation from the course of deciding the case on its merits.

30 The plurality concluded that in that case that the failure to disclose the association had no legal consequence.

Disposition

31 It is not contended by the defendant that there is any continuing professional or personal connection between myself and counsel for the plaintiff. What is relied on for the purposes of this application is the

Prior Working Relationship and the failure to disclose that to the defendant or his counsel at trial.

32 In this case, the defendant did not make clear what was alleged to be the connection between the Prior Working Relationship and the possibility of departure from impartial decision making. In oral submissions, the defendant relied on the matters which he said would have been approached differently if he had been made aware of the Prior Working Relationship, which I specifically address below.

33 The Prior Working Relationship ceased in June 2005. After leaving Bennett & Co, I joined Deacons, now Norton Rose Fulbright, where I was a partner until 2015. In May 2015, I joined Clifford Chance as a partner where I remained until my appointment to this court on 4 June 2019.

34 The Prior Working Relationship cannot be described as 'long and recent', although I accept it was relatively long. However, the Prior Working Relationship ended more than 14 years prior to the commencement of my case management of this matter and 15 years prior to the trial.

35 While the Prior Working Relationship was identified by the defendant, it was not entirely clear why it was said that this could lead me to decide the case other than on its legal and factual merits. Several matters were referred to in the defendant's submissions as giving rise to a reasonable apprehension of bias including that counsel for the plaintiff must have played a significant role in my success, which would not be forgotten, that there must have been some form of friendship and/or respect which developed and was maintained, which was expected to endure over later years and decades, and that there may be cues which are known to us and not to others. There is no evidence before the court in relation to these matters although the defendant says that they can be inferred from the Prior Working Relationship. However, it was not clear how any of these matters (even if true) would mean that there was a possibility that I would depart from my obligation of impartial decision making consistent with the oath that I have taken.

36 The High Court's decision in *Charisteads v Charisteads* acknowledged that a continuing professional and personal connection between a trial judge and counsel is not a sufficient basis by and of itself on which to ground an application for recusal. As the court held

in that case, even where there is a continuing connection, what is required is the cessation of contact between a trial judge and counsel from the commencement of the trial until the publication of reasons and making of orders.

37 Many of the defendant's submissions focussed on the failure to disclose the Prior Working Relationship. In my view, this does not assist the defendant. As was made plain by the High Court in ***Ebner v Official Trustee in Bankruptcy***, the fundamental question is not whether any connection is disclosed, but whether the defendant has established there is a reasonable apprehension of bias.

38 I turn then to consider the specific matters on which the defendant relied as being consequences that arose from the failure to disclose the Prior Working Relationship.

39 First, the determination of the application for a jury trial on 16 December 2021. The fact that, at the conclusion of the hearing, ex tempore reasons were delivered does not, in my view, support an inference the application was pre-judged. At that time, the matter was listed for trial for 3 days commencing 28 January 2020. For this reason, the application had to be heard and determined as quickly as possible. Two applications brought by the defendant were heard and determined that day. The second application (which was opposed by the plaintiff) was an application to vacate the trial. On this application, I granted the defendant's application and listed the matter at a time that his proposed counsel was available.

40 I have listened to the audio recording of the hearing on 16 December 2019. Almost the entirety of the defendant's submissions that were made that day concerned the defendant's application for an adjournment of the trial. In respect of the application for a jury trial, the court directed the defendant's attention to the fact that this application was also made by him and asked the defendant whether he would like an adjournment in order to review the affidavits that had been only recently filed by the plaintiff. The court adjourned for 15 minutes to enable the defendant to review the affidavits. At the re-commencement of the hearing, the defendant, while noting that he did not consider the time he had been given was adequate to consider the detail of the affidavits that had been filed, did not seek an adjournment of the hearing, seek to cross-examine the deponents or ask for an opportunity to put on answering evidence. Having reviewed the hearing of the application and my reasons for decision, I do not

consider there is anything in the conduct of the hearing that is capable of giving rise to any reasonable apprehension of bias.

41 Second, the defendant contends the delivery of ex tempore reasons at the conclusion of the hearing was done without the court having an opportunity to review the affidavits. The affidavits were provided to the court at 12:33 pm, approximately two hours prior to the commencement of the hearing. The transcript of my reasons are annexed to the affidavit of Ms Sharbanee. In my reasons I refer to the affidavits of both the plaintiff and Ms Sharbanee which were filed in support of the submission that at that time the plaintiff continued to be the subject of prolonged and extensive adverse publicity. Mr Rayney's affidavit was 11 pages long which included eight pages of annexures. Ms Sharbanee's affidavit was longer at 67 pages but 62 pages comprised internet searches and copies of articles. For the reasons I have already given, I do not consider the delivery of ex tempore reasons at the conclusion of a hearing that required urgent determination is capable of giving rise to any reasonable apprehension of bias.

42 Third, in relation to the costs order, the defendant was unsuccessful in one application. The usual order in these circumstances is for costs to follow the event. The application on which he was successful, namely an adjournment of the trial, sought the indulgence of the court namely to vacate the trial to accommodate his pro-bono counsel. It is also the usual order in these circumstances for the successful party to pay the costs of the application.³⁷ In these circumstances, I do not consider there is anything in the order for costs that is capable of giving rise to any reasonable apprehension of bias.

43 The other two matters were matters that arose during the course of the trial: first an allegation that the defendant had intimidated one or more of the witnesses during a lunch break and second the comments of counsel for the plaintiff which referred on numerous occasions to the defendant's failure to give evidence at trial. In relation to the first matter, while counsel for the defendant did not require the allegation to be withdrawn, he addressed this matter specifically in his closing submissions.³⁸ In respect of the second matter, counsel for the defendant also addressed this in his closing submissions but describing it 'as a motif to the 10 steps the defendant could have taken to give evidence' and submitting the steps would have been taken if the case against the defendant called for it. That is, counsel for the defendant

³⁷ *Stanley v Layne Christensen Co* [2006] WASCA 56 [52].

³⁸ ts 171 - 172, 174.

addressed both of the matters which are said to be consequence of the failure to disclose any association. I do not consider there is anything in the manner in which the trial was conducted or the decisions that were made by counsel for the defendant that is capable of giving rise to any reasonable apprehension of bias.

44 I do not consider that the failure to disclose the Prior Working Relationship deprived the defendant of any opportunity to advance arguments or submissions at trial. Accordingly, the failure to disclose the Prior Working Relationship was of no legal consequence.

45 In this case, there is no suggestion that there is any continuing professional or personal connection between myself and counsel for the plaintiff. The events that are the subject of this proceeding occurred in June 2014, nine years after I retired from the partnership of Bennett & Co. The matters that are connected to these proceedings namely, the murder of Mrs Rayney in August 2007, the charging of Mr Rayney with her murder and his acquittal in 2012 also took place well after the conclusion of the Prior Working Relationship.

46 The defendant did not, in his oral or written submissions, clearly articulate what he said was the logical connection between the Prior Working Relationship and the 'feared deviation' from the course of deciding this case on its merits.

47 I do not consider that there are any grounds, let alone any substantial grounds, on which the Prior Working Relationship between myself and counsel for the plaintiff might give rise to a reasonable apprehension to a fair-minded lay observer that I might not decide the case on its merits.

48 For these reasons, I consider the defendant's application should be dismissed.

I certify that the preceding paragraph(s) comprise the reasons for decision of the Supreme Court of Western Australia.

FD

Associate to the Honourable Justice Hill

21 SEPTEMBER 2022