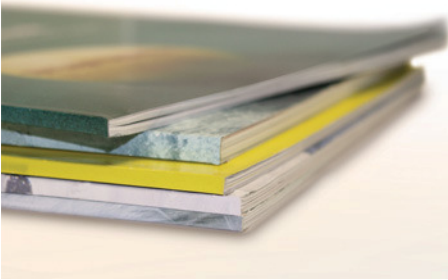


Justice Must Be Seen To Be Done

As originally appeared in Resolution – Jersey Winter 2009/10



BY KAI MCGRIELE

The Judicial Committee of the Privy Council (Jersey's final appellate court) has recently delivered its judgment in Peter Michel's appeal against his convictions for money laundering offences committed in Jersey ([2009] UK PC 40).

The judgment has been widely reported in the legal media, not least for its comments about the trial judge, Sir Geoffrey Nice QC, Commissioner ("the Commissioner"). The tone of the judgment is set from the introductory paragraph which reads:

"Not often is defence counsel, appealing against conviction on the grounds of an unfair hearing, able to turn the appeal court's feeling from initial rueful concern to eventual deep dismay simply by reference to the number and character of the judge's interventions in the course of the trial".

Mr Michel ("the Appellant") was initially convicted in August 2006 on one count of money laundering before Sir Richard Tucker, Commissioner and then subsequently in May 2007 was convicted on a further nine counts of money laundering before the Commissioner. He was sentenced to six years imprisonment in June 2007.

The Court of Appeal dismissed an appeal against conviction in May 2007. The Appellant then obtained Special Leave from the Board of the Privy Council.

The facts of the underlying case in summary are that the Appellant and his personal assistant, in the course of their accountancy business, set up corporate/trust structures for their clients using false details. They would then place funds on deposit, and either purchase property on their clients' behalf, meet their expenses, or physically return the funds in cash (i.e. personally deliver the cash) while maintaining their clients' anonymity.

No Knowledge

The Appellant and his assistant did not dispute most of the facts alleged but maintained the defence that they did not know or suspect that any of their offshore clients were criminals or that they were dealing in the proceeds of crime.

The central ground of appeal was that the Appellant did not receive a fair trial before the Commissioner in May 2007. This ground was entirely based upon the Commissioner's conduct at the hearing and in particular his interruptions of the evidence of prosecution witnesses as well as the Appellant. By way of illustration, during the Appellant's own evidence, the Commissioner intervened with substantive questions on 273 occasions. The court was not solely concerned with the frequency of the interruptions; it indicated that of much greater concern was that of their character. For the most part the interruptions

were cross examination and generally hostile. The judgment states:

“By his questioning the Commissioner evinced not merely scepticism but sometimes downright incredulity as to the defence being advanced. Regrettably too, on occasion the questioning was variously sarcastic, mocking and patronising.”

The Court of Appeal had previously dismissed the appeal finding the trial was not unfair and upheld the conviction ([2007] JCA 239), but even the Court of Appeal found it *“very surprising that the Commissioner had intervened to the extent to which he did”*.

Indeed, the legal representatives for the Crown appearing before the Privy Council conceded that the Commissioner’s interventions were both *“excessive and inappropriate”*. However, the Court of Appeal concluded that these interventions did not result in the trial being unfair.

The Court of Appeal placed great weight on the fact that the Commissioner’s questioning of the Appellant only took into account one and a half days of the trial which left nearly seven days for the Jurats to form an impression of the Appellant’s evidence, divorced from the Commissioner’s comments. Further factors which the Court of Appeal took into account were that there was only one single objection to the Commissioner’s questioning of the Appellant, and that the Appellant was an intelligent and articulate man who at almost every intervention had a plausible answer to the judge’s questions.

Fairness of the Trial

The Privy Council did not agree with the Court of Appeal’s final conclusion as to the fairness of the trial, however it did make pains to pay tribute *“to the very careful and thorough way”* which it considered the Court of Appeal had dealt with this most *“troubling of cases”*. The Privy Council stated that there was a wider principle in play in cases such as the present one. It referred to previous case law and of note the case of **Randall v. R** [2002] 2 Crim App R, 267, 284 in which it was stated in clear terms by Lord Bingham:

“... the right of the criminal defendant to a fair trial is absolute. There will come a point when the departure from good practice is so gross, or so persistent or so prejudicial, or so irremediable that an appellant court will have no choice but to condemn a trial as unfair and quash a conviction as unsafe, however strong the grounds of believing the defendant to be guilty ... The right to a fair trial is one to be enjoyed by the guilty as well as the innocent.”

Judge’s Intervention

The Privy Council, concluding its judgment, stated that a judge is permitted to intervene in order in the course of a trial to clear up any ambiguities, clarify any answers given or promote the orderly elicitation of evidence:

“He must not appear hostile to witnesses, least of all the defendant. He must not belittle or denigrate the defence case. He must not be sarcastic or snide. He must not comment on the evidence whilst it is being given. And above all must not make obvious to all his own profound disbelief in the defence being advanced.”

The Privy Council, however, found the Commissioner’s intervention had breached each one of these canons.

The Privy Council exercised admirable restraint, which it acknowledged in its closing remarks, stating that it would resist the temptation to include a number of additional citations from the transcript of the trial demonstrating further the Commissioner’s transgressions.

Conviction Quashed

The Privy Council held that the appeal should be allowed, the conviction quashed on the ground that the Appellant did not receive a fair trial, and the case be remitted to the Court for Appeal for that court to decide whether or not to order a fresh trial.

At the time of writing, the Court of Appeal is yet to receive confirmation from either party that it would like the matter to be heard in the January sitting in

2010.

Kai McGriele
English Solicitor
kmcgriele@applebyglobal.com
TEL: +44 (0)1534 818 344

This publication is intended only to provide a summary of the subject matter covered. It does not purport to be comprehensive or to provide legal advice. No person should act in reliance on any statement contained in this publication without first obtaining specific professional advice.

January 2010

© Appleby

B62665.1 Bahrain
Bermuda
British Virgin Islands

Cayman Islands
Hong Kong
Isle of Man

Jersey
London
Mauritius

Seychelles
Zurich