REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Civil Appeal No. P205/2018

Claim No. CV2010-01412

BETWEEN

RENRAW INVESTMENT LIMITED

CCAM AND COMPANY LIMITED &

AUSTIN JACK WARNER

Trading as DR JOAO HAVELANGE CENTRE OF EXCELLENCE

APPELLANT

AND

REAL TIME SYSTEMS LIMITED

RESPONDENT

PANEL:

G. SMITH J.A.
J. JONES J.A.
C. PEMBERTON J.A.

DATE OF DELIVERY: Friday 14 February, 2020

APPEARANCES:

Mr. J. Jeremie SC, Mr. K. Scotland and Mrs. A. Montserin-Watkins instructed by Ms. J. Chang for the Appellant.

Mr. N. Bisnath and Mr. R. Nanga instructed by Mrs. L. Mendonça for the Respondent.

I have read the judgment of Smith J.A. I agree with it and I have nothing to add.

……
Charmaine Pemberton
Justice of Appeal

JUDGMENT

Delivered by G. Smith J.A.

INTRODUCTION

1. The central issue in this matter is whether money received by the Appellant from the Respondent was a loan or a donation/gift.

   There is no dispute that the Appellants' agent/intermediary was Mr. Austin Jack Warner and that the Respondent's agent/intermediary was Mr. Krishna Lalla. Both are well known in the business and political landscape of Trinidad and Tobago.

2. The Respondent claimed that it had paid to the Appellant the sum of $1,505,493.00 as a loan at the request of Mr. Warner who explained to him that the Appellant was experiencing financial difficulties.

   The Appellant admitted receiving the payment but claimed that it was a donation made by Mr. Lalla for the financing of the UNC's 2007 General Election campaign.

3. Although three (3) parties are named and referred to as the "Appellant" both in the High Court and on this appeal, there was no issue that any one of them did not receive any money. The case has always proceeded on an assumption of joint action by the Appellants through their intermediary, Mr. Austin Jack Warner.

4. When the trial judge considered the evidence in the round, particularly certain email correspondence between the parties and the political events after May, 2010, he found that Mr. Lalla was a UNC financier and that he and Mr. Warner formed a

clandestine political alliance for the financing of the UNC's 2007 General Election campaign. He found that Mr. Warner wanted to portray an image to the UNC that he was its main financier and to do this he sourced money from Mr. Lalla on the basis that the money would be repaid. He therefore found that the money received by the Appellant from the Respondent through their agents/intermediaries was a loan and not a donation/gift, and ordered the Appellant to repay the money. He also made comments and/or inferences on the lack of campaign financing regulations and the issues that arose therefrom.

5. The Appellant has now appealed the trial judge's findings of fact.
   They also appeal the inferences and comments relating to campaign financing made by the trial judge which the Appellant says are not supported by evidence and which give the appearance that the trial judge was biased.

6. I am of the view that this appeal should be allowed as the trial judge made material errors in his analysis of the evidence.
   On the issue of apparent bias, I find that the Appellant has satisfied the test of apparent bias.

BACKGROUND

7. The Respondent's pleaded case was that in or around August 2007 it entered into an oral agreement to loan the Appellant money. The agreement was made between the Respondent acting through its agent or intermediary Mr. Krishna Lalla, and the Appellant acting through Mr. Austin Jack Warner, as a principal party acting on his own behalf and as the agent and/or the intermediary of the other Appellants.
   It claimed that Mr. Warner had represented to Mr. Lalla that the Appellants were experiencing difficulties in meeting their financial obligations and the purpose of the loan was to assist and/or enable the Appellants to meet their financial obligations.
   The loan was to be repaid before 28 February 2008. Mr. Warner was to repay the monies from the proceeds of the sum of USD$10,000,000.00 which he expected to

receive from Federation International de Football Association (FIFA) by February, 2008.

Further, Mr. Warner indicated that he would secure the repayment of all sums loaned by executing a charge over the Appellant's property known as the Centre of Excellence.

Between 9 October 2007 and 1 November 2007 the Respondent loaned the Appellants (hereafter referred to collectively as the Appellant) the sum $1,505,493.00 which was paid by way of five cheques made in favour of "Centre of Excellence/Indoor Facility".

Mr. Warner never executed the charge over the Centre of Excellence.

8. The Appellant filed a defence in which it admitted that it had received the monies but claimed that the monies were not a loan and that it did not agree to repay same.

   It averred that the monies were received as a donation pursuant to an agreement and/or arrangement for the financing of the UNC's 2007 General Election campaign. That election was held on 5 November, 2007.

   The Appellant alleged that Mr. Lalla had offered to finance the UNC's election campaign to the tune of $20,000,000.00 along with Mr. Warner. The intention was to re-brand and rebuild the UNC given the challenge being faced with a newly formed political party, the Congress of the People.

   It was also intended that benefits would accrue to Mr. Lalla should the UNC be successful in the election.

   Mr. Lalla and Mr. Warner on behalf of the the Appellant and the Respondent would be the conduit relative to the said financing pursuant to Mr. Lalla's request.

   The Appellant supported its contention by arguing that all payments towards the campaign financing were made by Mr. Lalla close in time to the holding of the general election with the last payment by cheque having been made on 1 November 2007.

   The Appellant also claimed that Mr. Lalla requested that the cheques be made out to the Centre of Excellence to give the appearance of mere business transactions.

9. In its Reply to the Defence, the Respondent maintained that neither it, nor Mr. Lalla entered into any agreement and/or arrangement to finance the UNC's 2007 General Election campaign with respect to the monies paid.

Further, that by 2007 the UNC was an established and well-known political party and that there was no effort to rebrand or rebuild it.

Mr. Lalla was a supporter of the UNC but not a financier of the party. By 1999, Mr. Lalla had retired from business and as such there would have been no need to give the appearance of a business transaction. If Mr. Lalla had been desirous of financing the election campaign as alleged, there would have been no need to secure such financing from third parties.

10. The Appellant filed three witness statements through: (i) Mr. Warner; (ii) Mr. Ronald Phillip, a UNC election campaign manager who worked with Mr. Lalla during the campaign for the 2007 General Election; and (iii) Mr. Einool Hosein, a former employee of Mr. Lalla.

    The Respondent filed three witness statements through: (i) Mr. Lalla; (ii) Ms. Romila Marajh, the Respondent's General Manager; and (iii) Mr. Chandresh Sharma, the then treasurer and member of the National Executive of the UNC in 2007.

    At the trial, each witness was cross-examined.

11. The trial judge rejected the Appellant's case and summed up his reasons as follows:

> **"44. When the Court considered the evidence in the round, the emails, the subsequent events after May, 2010 with the formation of the Partnership Government, it felt on a balance of probabilities, that it was more likely than not that Mr Lalla advanced to Mr Warner significant sums but the sums advanced were made available pursuant to loan arrangements. It is plausible and probable, having regard to the evidence of Mr Phillip and Mr Hosein as well as the various emails which outlined the facilitation of a line of credit from Mr Lalla to Mr Warner, to conclude that Mr Lalla and Mr Warner forged a clandestine political alliance for the financing of the 2007 elections after they had agreed to have Mr Warner replace Mr Basdeo Panday as the political leader**

> **of the UNC. Thereafter they engaged in a shadow election campaign which was conducted from Mr Lalla's office. This was done, it appears, in addition to and independent of Mr Warner's involvement with the official Rienzi Complex coordinated campaign. On a balance of probabilities, this Court is of the view that Mr Warner may have wanted to portray an image, to the UNC that he was its main financier but to do so, he sourced finance from Mr Lalla, on the basis and expectation that the sums advanced, would be repaid upon his receipt of an anticipated payment of US$10M FIFA payment which was due in February, 2008.**
>
> **45... The Court therefore finds as a fact that there was an agreement in August 2007 for Mr Lalla to provide or source loans for Mr Warner to finance their political objective and it was agreed that the said loans would have been repaid by February, 2008. The Court further finds that the Claimant, acting in reliance on the representations made to it by Mr Lalla, loaned to the Defendant, the sum of $1,505,493.00 on the basis that the said sum was to be repaid by February, 2008."**
>
> **(my emphasis)**

The Appellant has now appealed the trial judge's findings.

ANALYSIS

12. In his written reasons, the trial judge summed up the evidence and then referred specifically to the matters he found relevant in coming to a "**Resolution of the matter**" from paragraphs 31 et seq.

13. As I indicated in paragraph 11 above, the trial judge in paragraph 44, summed up his reasoning by indicating that he had regard to "**the evidence in the round**" and more specifically, "**the emails**" and "**the subsequent events after May, 2010 with the formation of the Partnership Government.**"

14. With respect to the emails, the trial judge divided them up into three categories:
    (a) emails before the sums were advanced;
    (b) emails after the sums were advanced; and
    (c) emails exchanged in February 2008.

(a) With respect to the emails exchanged before the funds were advanced, the trial judge found that they evidenced that Mr. Warner sought clarity as to the progress of a promissory note, that Mr. Warner asked Mr. Lalla for a temporary loan and that Mr. Warner was experiencing cash flow problems.

(b) With respect to the emails exchanged after the sums were advanced, the trial judge found that some of the emails fell within the time period of the height of the election campaign; none of the emails referenced any gift or donation; and that Mr. Warner outlined his financial difficulties. By the time the election was over it was probable to conclude that all the outstanding bills for the unsuccessful election campaign would have to be addressed and the emails of the 28 November and 7 December, 2007 made specific references to "loan monies advanced".

(c) With respect to the emails exchanged in February 2008, it appears that these most influenced the trial judge in his decision. As the trial judge indicated at paragraph 39, there were two emails of 7 and 21 February 2008 which were of significance. In the email of the 7 February, Mr. Warner made reference to "loans". In the email of the 21 February, Mr. Warner mentioned that he was expecting "two million dollars (in an unstated currency) and that "of which I shall give you (Mr. Lalla) one."

    As the trial judge noted about these emails at paragraph 39 of his reasons, "**The correspondence demonstrated that the financial arrangement between the two**

men was not gratuitous but was one characterised by an expectation of repayment and representations as to part payments…"

15. With respect to the political events after May 2010 with the formation of the Partnership Government, the trial judge was "**instilled**" with **"a sense of disquiet**" about the transactions between Mr. Warner and Mr. Lalla for "campaign financing" as it appeared to be the "**…functional equivalent of bribes…**" or kick-backs for campaign financing as demonstrated when Mr. Warner's counsel put a case to Mr. Lalla that he and his related companies benefited substantially from contracts between 2010 to 2015 when the People's Partnership, of which Mr. Warner was a cabinet member, formed the Government.[1] The trial judge found that as part of this arrangement, the money advanced to the Appellant was "**…to finance their political objective and it was agreed that the said loans would have been repaid by February, 2008."**[2]

16. The Appellant contends that in coming to these findings of fact the trial judge made substantial errors.

17. In deciding on this issue, I am guided by the learning as set out in **Beacon Insurance Co Ltd v Maharaj Bookstore Ltd [2014] UKPC 21; [2014] 4 All ER 418, at paragraphs 11-17**.

    This principle has been recently cited with support in **Paymaster (Jamaica) Limited & Anor v Grace Kennedy Remittance Services Limited [2017] UKPC 40** by Lord Hodge at paragraph 29 and he usefully quoted Lord Reed in **Henderson v Foxworth Investments Limited [2014] UKSC 41** as follows:

> **"In Henderson (para 67) Lord Reed stated:**
>
> **"in the absence of some other identifiable error, such as (without attempting an exhaustive account) a material error of law, or the making of a critical finding of fact which has no basis in the evidence, or a demonstrable misunderstanding of relevant evidence, or a demonstrable failure to consider relevant evidence,**

[1] See paragraph 47 of the trial judge's reasons in **Claim No. CV2010-01412**
[2] *Supra* at paragraph 45

an appellate court will interfere with the findings of fact made by a trial judge only if it is satisfied that his decision cannot reasonably be explained or justified.""

18. In arriving at his conclusions on the email evidence and the events after May 2010, the trial judge made certain identifiable errors.

19. Firstly, as I set out in paragraph 11 above, the trial judge in paragraph 44 summed up his reasons. A critical finding of fact that he made in coming to his conclusions is that:

"On a balance of probabilities, this Court is of the view that Mr Warner may have wanted to portray an image, to the UNC that he was its main financier but to do so, he sourced finance from Mr Lalla, on the basis and expectation that the sums advanced, would be repaid…"

20. Not even counsel for Mr. Lalla could find any basis for this critical finding by the trial judge with respect to Mr. Warner's portraying that he was the main financier of the UNC (United National Congress political party). This was a critical element of his fact-finding for which there was no evidence.

21. Secondly, the trial judge failed to properly assess the evidence of two of Mr. Warner's witnesses, namely, Mr. Einool Hosein and Mr. Ronald Phillip. The evidence of these witnesses corroborated the testimony of Mr. Warner in very material particulars.

22. Mr. Hosein was "a top-level employee of Krishna Lalla"[3] for twenty-three years. He testified that he was very much aware of the relationship between Mr. Warner and Mr. Lalla and had actually been present at a meeting when campaign financing was discussed. According to Mr. Hosein, during one of these meetings:

[3] See paragraph 1 of the Witness Statement of Mr. Hosein

> "…several companies belonging to Mr. Warner were identified to receive campaign financing from Mr. Lalla. These companies were identified to be given money to pay for campaign financing. I specifically recall that one such company was the Centre of Excellence which was given several cheques over a period of time during the course of the campaign just as the other companies did."[4]

23. In a similar vein, Mr. Ronald Phillip met with Mr. Warner and Mr. Lalla around the time of the money being paid out. Mr. Phillip was "hired" to run a shadow election campaign for Mr. Warner from the offices of Mr. Lalla. Mr. Lalla was to be financier for this project. In fact, he even stated that Mr. Lalla was "the UNC financier for the 2007 General Elections Campaign."[5] Mr. Phillip fulfilled his obligations under "unfavourable working conditions"[6] at one of Mr. Lalla's offices and eventually accepted $20,000.00 in cash for his services and he stated "I am also aware that Mr. Krishna Lalla issued several cheques to companies of Mr. Warner for campaign financing purposes but I cannot recall specifically recall which companies and the amounts issued."[7]

    This evidence, like that of Mr. Einool Hosein, substantially corroborated Mr. Warner's case that Mr. Lalla advanced money to Mr. Warner and his affiliated companies to finance the election campaign and lends credence to Mr. Warner's assertions that the money was not advanced by way of a loan.

24. The evidence of these two witnesses was very relevant since it dealt with events at, or around the time that the cheques were handed over.

    Further, the trial judge recognised that these witnesses were not extensively cross-examined and that, "**In relation to their assertions about their involvement in the**

[4] *Supra* at paragraph 13
[5] See paragraph 5 of the witness statement of Mr. Phillip
[6] *Supra* at paragraph 10
[7] *Supra* at paragraph 11

2007 elections, their testimony was not tested and <u>there was no basis upon which the Court could conclude that their evidence was contrived</u>."[8] (my emphasis)

25. In a similar way, Mr. Warner was not extensively cross-examined. In fact, his cross-examination consisted of counsel for Mr. Lalla putting his case to Mr. Warner.

26. The court therefore had the unassailed and corroborated evidence contrary to Mr. Lalla's case that the money paid over to Mr. Warner and his affiliates by Mr. Lalla was for the purpose of campaign financing. This substantial corroborating evidence should have been considered by the trial judge. Instead, at paragraph 32 of his reasons, the trial judge purported to discount the evidence of Mr. Hosein and Mr. Phillip by stating that they did not give direct evidence of the five cheques paid over to Mr. Warner's affiliates or evidence of payments to Mr. Warner. This completely ignored the corroboration their testimony gave to Mr. Warner's case. Further, the trial judge's conclusion that their evidence did not directly relate to the five cheques was not wholly accurate since Mr. Hosein's unassailed evidence was that the Centre of Excellence (to whom the five cheques was issued) "…was given several cheques over a period of time during the course of the campaign just as the other companies did."[9]

27. The trial judge erred by failing to consider and/or assess the very relevant evidence of Mr. Hosein and Mr. Phillip.

28. Third, while the trial judge was entitled to have regard to the evidence contained in the emails between Mr. Lalla and Mr. Warner in coming to his conclusion he does not appear to have taken into consideration the very relevant cross-examination of Mr. Lalla on the emails. In this cross-examination Mr. Lalla himself discounted the effect and meaning of these emails in relation to any loan to the Appellant.

[8] See paragraph 32 of the trial judge's reasons in **Claim No. CV2010-01412**
[9] See paragraph 13 of the witness statement of Mr. Hosein

29. To appreciate the significance of this cross-examination it is necessary to repeat some of the background facts to this case.

30. Mr. Lalla's case in his witness statement was that Mr. Warner approached him and indicated that he (Mr. Warner) "needed to raise a loan of approximately $20,000,000.00 to assist the defendant (Mr. Warner and his affiliated companies) in its business as it was having liquidity problems at the time."[10] He also reiterated that he never offered to finance the UNC election campaign and categorically reaffirmed that the money advanced was a loan to Mr. Warner and "not a contribution to the UNC disguised to look like a business transaction for purposes of future gain."[11]
    It was Mr. Lalla who put the emails into evidence which he alleged supported his case.

31. In cross-examination Mr. Lalla admitted that none of the emails show that Mr. Warner or his affiliates admitted to this specific loan or any loan between the parties.
    The trial judge made no reference to Mr. Lalla's cross-examination and concession on the emails.
    This omission is even more concerning when taken in light of the following:
    a) The trial judge himself accepted that Mr. Lalla's evidence contained "**a significant flaw…in relation to his denial that he provided funds which were used in the 2007 election campaign**."[12]
        In fact, the trial judge accepted the unassailed evidence of Mr. Warner, Mr. Hosein and Mr. Phillip that "**Mr. Lalla and Mr. Warner forged a clandestine political alliance for the financing of the 2007 elections…**".[13]
    b) The trial judge accepted that "**It appears that Mr. Lalla had advanced significant funds to Mr. Warner**" without reference to whether these specific five cheques were included in that arrangement and to whether Mr. Lalla's cross-examination, especially so on the five emails, put a further dent in his case.

[10] See paragraph 9 of the witness statement of Mr. Krishna Lalla
[11] *Supra* at paragraphs 23 to 25
[12] See paragraph 33 of the trial judge's reasons in **Claim No. CV2010-01412**
[13] *Supra* at paragraph 44

32. In failing to assess the very relevant cross-examination of Mr. Lalla on the emails, the trial judge erred.

33. Fourth, at paragraph 43 of his reasons, the trial judge purported to look at the inherent probability of Mr. Warner's case. However, in doing so, it appears that he may have misunderstood the evidence as it was presented.

34. In paragraph 43 of his reasons the trial judge summed up that "**…it is probable to conclude that when the Partnership formed the government having lost the 2007 election, the stars would have been aligned as Mr. Lalla then stood to benefit from his years of loyal support.**" The trial judge concluded from this that it is "**unlikely**" that Mr. Lalla would have sued Mr. Warner for money donated as a gift. Mr. Warner was a frontline minister in the People's Partnership government and a suit by Mr. Lalla against Mr. Warner and his affiliated companies would have undermined his relationship with the government of the day.

35. While the trial judge could look at the inherent probability of a story, it must be done fairly against the relevant evidence and cases of both parties.

    In the first place, this case was never put to Mr. Warner in cross-examination. There was no testing as to whether the continued relationship between Mr. Lalla, Mr. Warner and the UNC was the same after 2010 as before or more specifically, around the time the money was paid out.

    Second, there was no balancing of the trial judge's assumptions as against the case advanced by Mr. Warner. As the trial judge recognised at paragraph 47 of his reasons, counsel for Mr. Warner put to Mr. Lalla a case that his affiliated companies benefited substantially from contracts between 2010 and 2015. However, this was in line with Mr. Warner's case that both parties got what they wanted from their relationship in that Mr. Warner got money for campaign financing (as the trial judge accepts) and Mr. Lalla and his affiliates received benefits as a result of his gift or donation to the 2007 election campaign. In other words, the totality of the evidence suggested that it was

more probable that the money paid to Mr. Warner and his affiliates in 2007 was by way of donation or gift rather than a loan.

36. Having identified these four errors in the trial judge's assessment of the evidence, the issue now remains as to whether they are sufficient to undermine the conclusions of the trial judge as summarised in paragraph 44 of his reasons.

37. While the trial judge was entitled to look at the emails and the subsequent events after May 2010 in coming to his conclusions, they must now be balanced by (i) the cross-examination on the emails which detracted from their effect; (ii) the other unassailed evidence of Mr. Hosein and Mr. Phillip which corroborated Mr. Warner's case in a very material way; (iii) the unfounded assumption of the trial judge that Mr. Warner wanted to portray an image to the UNC that he was its main financier which led the trial judge to conclude that he sourced loans from Mr. Lalla to do so; (iv) the incomplete hypothesis of probabilities of subsequent events after the May 2010 elections on Mr. Lalla's case, i.e. that it was unlikely that Mr. Lalla would have wanted to sue Mr. Warner after the latter's People's Partnership government was elected.
    In my view, a proper assessment of the evidence leads to the conclusion that on a balance of probabilities, Mr. Warner established his case that the five cheques paid over by Mr. Lalla's affiliates were indeed by way of a donation for campaign financing with the expectation and (it seems) actual realisation of benefits for Mr. Lalla and his affiliates, and not a loan to Mr. Warner and his affiliates to assist with liquidity problems.

38. I am therefore of the view that this appeal should be allowed and consequential orders should be made.

39. While this is enough to dispose of this appeal, I would like to examine a submission from both parties based on apparent bias as an alternative to these findings. However, since this is only an alternative to my conclusions on the appeal, I propose to be a little less expansive in dealing with this issue.

40. The Appellant alleges in summary that the learned judge's decision ought to be set aside in any event because of the appearance of bias or as the Appellant framed it, because "the Learned Trial Judge was apparently biased."

41. It is important to emphasise that we are not dealing here with actual bias but only the appearance of bias. As Warner and Weekes JJA stated in the seminal decision of **Basdeo Panday v Senior Superintendent Wellington Virgil Mag. App. No. 75 of 2006** at paragraph 26:

> "**An allegation of apparent bias does not involve a finding of judicial impropriety or misconduct, or breach of the judicial oath. It involves a finding that circumstances exist from which a reasonable and informed observer may conclude that there was bias in the conduct of the proceedings. Except where actual bias is alleged, it is not useful to investigate the individual's state of mind. The courts have recognised that bias operates in such an insidious manner that the person alleged to be biased may be unconscious of the effect. It is trite law that if a reasonable apprehension of bias arises, the whole proceeding becomes infected. Credibility issues no longer arise; the reasonable apprehension of bias remains and the proceedings cannot be saved."**

42. In Trinidad and Tobago, we have accepted that the test for determining apparent bias is as stated in **Porter and another v Magill [2002] AC 357**, namely "**The question is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a <u>real possibility</u> that the tribunal was biased.**" (my emphasis)

Further, as Mendonça JA stated in **The Attorney General of Trinidad and Tobago v Dr. Wayne Kublalsingh and ors Civ. App. No P018 of 2014** at paragraph 9, the test for apparent bias involves a two-step approach:

> "**The Court must first ascertain all the circumstances which have a bearing on the suggestion that the Judge is or would be biased. It**

must then ask whether those circumstances would lead a fair-minded and informed observer to conclude that there is a real possibility that the Judge is or would be biased."

43. I propose to adopt this approach here.

(i) The relevant circumstances

44. The circumstances relied on by the Appellant to raise a case of apparent bias are to be found in (a) paragraphs 47 and 48 of the trial judge's reasons; and (b) a speech given by the trial judge at an Anti-Corruption Conference hosted by the Trinidad and Tobago Transparency Institute on the 21 March 2019.

(a) Because of its direct relevance to the issue, I quote directly from paragraphs 47 and 48 of the trial judge's reasons with my emphasis:

"**47. Mr Warner was a former Member of Parliament and was a member of the Persad Bissessar Cabinet and the fact that he gave instructions to Mr Scotland to put to Mr Lalla that he and/or his companies benefited substantially from contracts between 2010-2015 after outlining what Mr Lalla's primary concern was, has instilled a sense of disquiet in the Court's mind.**

48. Money advanced to fund elections has for far too long played a central and dominant role in this Republic's politics. There is an entrenched public perception that elected officers can be sold to the highest bidder and that campaign contributions are the functional equivalent of bribes which ensure that favourable treatment is given by Government to those who provide the said funds. The evidence adduced in this matter demonstrates that this perception may well be the reality which unfolds. In the absence of regulations, financiers can legitimately purchase goodwill and exercise undue influence over politicians and political parties. The insular interests of these persons may consequently be considered

as relevant and/or paramount considerations when executive decisions are undertaken. <u>Such an approach to governance is untenable, unethical and inconsistent with oath of public office</u> which mandates that all decisions and actions should be made freely, fairly and in the best interest of the citizens of the Republic. <u>The absence of campaign finance regulations has led to a culture of kickbacks and corruption</u> and although within the recent past some progress has been made by virtue of the enactment of procurement legislation and the appointment of the procurement board, <u>the dire need for a proper regulatory framework has to be prioritised and election campaign finance reform should be effected as a matter of urgency.</u> Courts in a developing democracy should not in 2018, have to decide whether sums received were the spoils of campaign financing, as there should be clear and cogent guidelines regulating same. The veil of secrecy and anonymity must be removed and there should be full disclosure as to the identity of financial contributors, with caps placed on the amounts which can be received by a political party from individuals, companies or institutions. In addition, safeguards and/ or prohibitions need to be formulated with respect to the award of contracts to financiers. Taxpayers' money and the resources of the State do not belong to any political party and cannot be used to court a party's financiers. After 55 years of independence, a limit must be placed on the influence of moneyed interests in the nation's politics."

(b) The relevant content of the trial judge's speech at the Anti-Corruption Conference is:

"The Court's findings of fact however has (sic) been appealed as the defendants continue to insist that the sums claimed ought not to be repaid because they represented gifts or donations for the 2007 election.

> This case reinforced and highlighted the significant role which campaign financiers play in our national life. Evidence was adduced to suggest that KL also provided significant financing to the other major political party. Evidential (sic) the moneyed interest unashamedly hedged their bets so as to insure (sic) that their concerns are addressed and contracts are awarded to them irrespective of the party which capture the reign of power. The inescapable conclusion is that big business financiers inevitably gets (sic) big pay-outs.
>
> The position adopted by JW, a former Cabinet Minister, was quite frankly, unfathomable. Without hesitation or embarrassment, he stoutly defended the claim and advanced the proposition "you were repaid by the award of contracts." The fact that JW intrepidly gave instructions to his attorney, to put to KL, that he and/or his companies benefited substantially from contracts between 2010-2015, instilled significant disquiet in the Court's mind and the court felt compelled to address the issue. Consequently para 48 of the judgment stated as follows…." (my emphasis)

45. The Appellant alleges that these statements would cause a fair-minded observer to conclude that there was a real possibility that the trial judge was biased against him since they indicate that the trial judge had a perception (perhaps unconscious) that politicians like Mr. Warner could be bought and sold by businessmen and may have given "kickbacks" to them.

46. The Respondent replied that (i) the judge's observations were in respect of the need for legislative reform to curb abuse in campaign financing and that it is perfectly legitimate for a judge to express a view on such a matter of public interest; (ii) the judge's views did not form part of the reasoning in this case; and (iii) in any event, the observations applied equally to both parties and are not evidence of partiality to one side only; that is, to either only Mr. Lalla or only Mr. Warner, but to both.

(ii) Apparent bias

47. Campaign financing is not illegal in Trinidad and Tobago. Further, there was no pleading of illegality with respect to the acts of the Appellant and Respondent, neither was there any pleading nor allegation of moral turpitude in respect of the money advanced. Even further, no party put any case to the other about the morality, ethics or otherwise of campaign financing.

48. On his own motion, the trial judge expressed in very strong terms, his antipathy against campaign financing which was not regulated by some form of statutory framework.

    So for instance, he stated that "**There is an entrenched public perception"** that "**campaign contributions are the functional equivalent of bribes**...".

    That such system manifests "**an approach to government that is untenable, unethical and inconsistent with the oath of public office**" and that "**The absence of campaign financing has led to a culture of kickbacks and corruption...**".

    No evidence was led on these matters and no case was put to the parties on these matters. These views represented the personal views of the trial judge on the issue of campaign contributions and would lead to a real possibility in the eyes of the fair-minded observer that the trial judge's views on campaign contributions were coloured by his personal and strong antipathy for the same.

49. More specifically, the trial judge expressed a strong antipathy against persons who eventually hold public office and who participate in this unregulated campaign financing (like Mr. Warner).

    So for instance, after expressing his general antipathy for unregulated campaign financing as the equivalent of bribes, the trial judge stated "**The evidence adduced in this matter demonstrates that this perception may well be the reality that unfolds**" and then proceeded to berate this approach to campaign financing by persons who take "**the oath of public office."**

    Even further, in the trial judge's later speech at the Anti-Corruption Conference, he singled out Mr. Warner's actions in the case as "quite frankly unfathomable" and stated that it "instilled significant disquiet in the court's mind...".

These statements in their entirety would lead to a real possibility in the mind of a fair-minded observer that the trial judge's personal views on the morality or ethics behind unregulated campaign financing coloured his views against a public official (like Mr. Warner) who accepted unregulated campaign financing.

50. That being the case, as Warner and Weekes JJA stated in **Panday v Virgil** above, "**the whole proceeding becomes infected. Credibility issues no longer arise; the reasonable apprehension of bias remains and the proceedings cannot be saved."**

51. Therefore, even if the appeal were not allowed on the main grounds, on this basis the case would have been remitted for rehearing in the High Court before another judge.

ORDERS

52. I make the following orders:

    i. The appeal is allowed.

    ii. The orders of the trial judge are set aside.

    iii. The Respondent/Claimant's claim is dismissed.

53. We will hear the parties on the question of costs.

……
Gregory Smith
Justice of Appeal

JUDGMENT

Delivered by J. Jones J.A.

54. I have read the judgment of my brother Smith J.A. in draft and I agree with him that in coming to the conclusion that the money was advanced as a loan to the Appellant the Judge made material errors in his assessment of the evidence sufficient for us to set his finding aside however I wish to make a few comments of my own on the issue. Where I differ from the rest of the panel is on the question of the existence of apparent bias.

Was the sum advanced as a loan or a gift

55. The issue here is whether the sum of $1,505,493.00 was provided to Warner by the Respondent by way of a loan or a gift. Ultimately this was a finding of fact by the trial judge. It is not necessary here for me to refer to the law on the role of this court in relation to findings of fact by a trial judge. The law has already been accurately stated by my brother Smith J.A. Nor is it necessary for me to repeat in detail the facts of the case. They are set out in the judgment of Smith J.A.

56. For my purposes it is sufficient for me to repeat the facts that were not in dispute. The undisputed evidence before the Judge was as follows:

    (i) the arrangements for the payment of the money were made by Krishna Lalla (Lalla) and Jack Warner (Warner) both of whom were involved, albeit in different capacities, in a political party, the United National Congress, (the UNC);

    (ii) the money, in the sum of $1,505,493.00, was procured by Lalla for Warner through the Respondent, a limited liability company, and received by Warner through the medium of the Center of Excellence/indoor facility;

    (iii) the Respondent, through its General Manager, was told by Lalla that Warner was having liquidity problems, that the money was to be a loan

to Warner to be repaid in February 2008 and that security for the loan would be provided;

(iv) the money was paid to Warner by way of 5 cheques all dated and presented for payment during the period October 9 2007 to November 1 2007;

(v) the cheques were collected by Lalla from the Respondent and given to Warner personally;

(vi) save for the cheques the Respondent created no documents with respect to the transaction;

(vii) no security for the loan was provided nor was the money repaid in February 2008 or at all;

(viii) a general election in which the UNC participated was held in Trinidad and Tobago on November 5 2007 four days after the date of the last cheque.

57. The Judge was presented with two differing versions of why the money was advanced to Warner. Lalla's version was that he had been approached by Warner in August 2007 seeking a loan of $20,000,000.00 for the Appellant whom Warner said was having liquidity problems. The agreement between them was that Warner would repay the sums loaned by February 2008, provide security for the loan by way of a promissory note and a charge over the Centre of Excellence Indoor Facility and that Lalla would assist Warner in obtaining the loan. Lalla then approached the general manager of the Respondent who agreed that it would lend Warner the sum of $1,505,493.00.

58. There was no communication between the Respondent and Warner everything was done through Lalla. The only direct evidence in support of this version of the transaction came from Lalla himself. He, and ultimately the Judge, relied heavily on emails passing between himself and Warner both before and after the payment of the money as proof that the transaction was a loan transaction.

59. The version presented by Warner was that the money was paid in furtherance of an offer by Lalla to finance the UNC's election campaign. According to Warner the money

was paid by way cheques made out to the Appellant and then made available to the UNC. Apart from Warner's evidence direct evidence in support of this version came from two witnesses Ronald Phillip and Einool Hosein.

60. Ultimately the Judge found that the money was provided by way of a loan. He determined that:

> "….. there was an agreement in August 2007 for Mr. Lalla to provide or source loans for Mr. Warner to finance their political objective and it was agreed that the said loans would have been repaid by February 2008. The Court further finds that [the Respondent], acting in reliance of representations made to it by Mr. Lalla, loaned to [the Appellant] the sum of $1,505,493.00 on the basis that the sum be repaid by February 2008."

61. In essence the Judge accepted neither version of the transaction. He rejected the claim by Lalla that the money was loaned to pull the Appellant out of financial difficulty. He accepted Warner's version that the money was to finance the UNC's political campaign but rejected the claim by Warner that the money was a gift and found that the agreement was that the money be paid back in February 2008.

62. I agree with my brother Smith J.A. when he identifies four errors made by the Judge in arriving at his conclusion but I am of the opinion that there are two additional errors made by the Judge. In my view these errors on their own or in combination with those identified by Smith JA are sufficient to undermine the conclusions drawn by the Judge as to the nature of the transaction.

63. The Judge fell into error when, although acknowledged by him, he refused to take into consideration the fact that the Respondent created no internal documents with respect to the payment of the money and when he failed to consider the fact that the Respondent continued to provide the money in tranches to Warner even though no security documents were forthcoming.

64. While accepting that there were no internal documents to establish the purpose for which the sums were advanced the Judge was of the view that he was not tasked with the responsibility of reviewing the manner in which the Respondent conducted its financial affairs and was not prepared to draw any inferences that the lack of documentation suggested that the sums were advanced as a gift for campaign financing. In coming to this conclusion the Judge failed to recognize that this was a claim by the Respondent for the repayment of money that it said it had loaned to the Appellant. It was the Respondent who was seeking to have the Judge accept that the money was paid by it as a loan. In these circumstances the manner in which the Respondent conducted its financial affairs was very relevant to the case and the lack of documentation with respect to the loan an important factor to be considered in his assessment of the nature of the transaction. This was not a loan by a private individual but rather a loan by a limited liability company governed by a Board of Directors. The lack of documentation pointed more to an off record transaction, such as a gift to a political party, rather than a loan given in the normal course of business. The Judge therefore erred when he refused to take this fact into consideration.

65. Further the Judge failed to take into consideration the evidence that the money was advanced in tranches and that sums continued to be advanced even though no security for the loan was forthcoming and that, despite cross-examination in this regard, the Respondent could provide no reason for continuing to make the payments in those circumstances.

Was there evidence of apparent bias on the part of the Judge.

66. Where I differ from the majority is on their finding of apparent bias on the part of the Judge. I do not agree that there is evidence of bias on the part of the Judge sufficient to affect his findings in this case.

67. The grounds of appeal contain no specific allegation of bias. The only reference to this comes in the application for fresh evidence filed by the Appellant. By that application the Appellant seeks to adduce evidence of out of court comments made by the Judge

in a paper presented at a conference held by the Trinidad and Tobago Transparency Institute held on March 21 2019 some 9 months after he delivered the judgment (the out of court comments). We allowed the application for fresh evidence but no application was made at that time to amend the Notice of Appeal. Nonetheless we heard submissions from both parties on the issue.

68. According to the Appellant the conduct and the behaviour of the Judge in this matter and in the public domain arouses the suspicion that he was not impartial relative to his decision. The conduct complained about are the comments made by the Judge at paragraphs 47 and 48 of the judgment and the out of court comments. Both of these are recited verbatim in the judgment of my brother Smith J.A. and there is no need for me to repeat them here.

69. On the basis of these two statements the Appellant contends that the Judge single-handedly engaged in a lobbying campaign for certain pieces of legislation to be implemented buttressed by his opinion of a public perception that elected officials could be bought and sold to the highest bidder. The Appellant submits that the perceptions outlined by the Judge at paragraphs 47 and 48 of the judgment clearly coloured his judgment, his overall approach to this case as well as the views formed of Warner. This, they say, amounted to an apparent bias sufficient to make the conclusions arrived at by the Judge unsound and unreliable.

70. The Respondent on the other hand submits that (i) the criticism contained in the paragraphs captures both Lalla and Warner equally;(ii) it is clear that the Judge's views on campaign financing did not form part of his reasoning in the case; and (iii) the Judge was entitled to set out his views in this way.

71. The English case of **Locobail(UK)Ltd v Bayfeild Properties [2000] QB 451** dealt with appeals to the Court of Appeal on the question of bias. Dealing with bias in a joint judgment **Lord Bingham of Cornhill; Lord Woolf MR and Sir Richard Scott V-C** stated:

> "Any judge (for convenience, we shall in this judgment use the term "judge" to embrace every judicial decision-maker, whether judge, lay justice or juror) who

allows any judicial decision to be influenced by partiality or prejudice deprives the litigant of the important right to which we have referred and violates one of the most fundamental principles underlying the administration of justice. Where in any particular case the existence of such partiality or prejudice is actually shown, the litigant has irresistible grounds for objecting to the trial of the case by that judge (if the objection is made before the hearing) or for applying to set aside any judgment given. Such objections and applications based on what, in the case law, is called "actual bias" are very rare, partly (as we trust) because the existence of actual bias is very rare, but partly for other reasons also. The proof of actual bias is very difficult, because the law does not countenance the questioning of a judge about extraneous influences affecting his mind; and the policy of the common law is to protect litigants who can discharge the lesser burden of showing a real danger of bias without requiring them to show that such bias actually exists." **at pages 471-472.**

72. The issue in this appeal surrounds the policy of the common law to protect litigants who can discharge the lesser burden of showing a real possibility of bias referred to above. It is this common law policy that we have come to refer to as "apparent bias". It treats with situations where partiality and prejudice is seen to have influenced a judicial decision.

73. The test is objective. It requires a determination on whether the comments made by the judge would lead a fair-minded and informed observer to conclude that there is a real possibility the judge is or would be biased. This is the same test adopted by my brother Smith J.A.. In the context of apparent bias, it matters not whether these preconceived notions in fact coloured the Judge's decision it is simply whether that fair minded and informed observer would have concluded that there was a real possibility of bias.

74. In **The Attorney General of Trinidad and Tobago v Kublalsing CA No. P018 of 2014** the Court of Appeal examined the meaning of the words "real possibility" and the

characteristics to be attributed to a fair minded observer. According to **Mendonca J.A. at paragraph 3**.:

> "It has been pointed out that the test incorporates the words "real possibility" as opposed to "real probability." In other words, the burden on the person alleging apparent bias is not as onerous as the burden of proving that it is more likely than not that the tribunal is biased (see Civil Appeal No. 145 of 2009 **Sadiq Baksh and ors. v Magistrate Ejenny Espinet and others** per Narine, J.A. at para. 65). On the other hand, mere suspicion of bias is not enough. A real possibility must be demonstrated on the available evidence."

75. With respect to the attributes of a fair-minded observer **Mendonca J.A.** states at paragraph 8 of the judgment:

> "Among the attributes of the fair-mined and informed observer are:
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> a) Being fair-minded, he always reserves judgment on every point unless he has seen and fully understood both sides of the argument. He will therefore not come to hasty conclusions. He is not to be confused with the person who makes the complaint. The assumptions the complainant make are not to be attributed to the observer unless they can be justified objectively.
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> b) He is informed. He can distinguish between what matters are relevant and what are irrelevant. He will take the time to inform himself on all matters that are relevant. He is also able to determine what weight should be given to facts that are relevant. He is able to put whatever he has read or seen into its overall context and will appreciate that context forms an important part of the material which he must consider.
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> c) He is not complacent. He knows that fairness requires that a Judge must be seen to be unbiased. He however knows that Judges have their weaknesses and therefore will not shrink from the conclusion, if it can be justified objectively, that things Judges may have said or

done or associations they may have formed may make it difficult to judge the case before them impartially. He will note that the oath a judge takes is a factor to be considered, but not treat it as a guarantee of impartiality.

d) He is a member of the community in which the case arose and will possess an awareness of local issues, and social and political reality that forms the backdrop to the case gained from the experience of having lived in that society.

e) He will assume that the judge by virtue of his or her office is intelligent and will be able to form his or her own views and be capable of detaching his or her own mind from things that he or she does not agree with, and is aware of the legal traditions and culture of this jurisdiction and that that culture played an important role in ensuring the high standards of integrity on the part of the Judiciary.

f) He is not an insider. He is not a party to the action, and is not unduly sensitive or suspicious.

(see Civil Appeal 250 of 2009 **Basdeo and Oma Panday v Her Worship Ms. Ejenny Espinet and anor.** at paras. 32-37)."

76. In the context of this case therefore the Appellant must satisfy us that a fair minded and informed observer, with the attributes identified above, would conclude that the statements made by the Judge in the judgment and the out of court comments showed that there was a real possibility that the Judge's decision was influenced by his partiality or prejudice in promoting legislation to regulate campaign financing. In my opinion a fair minded and informed observer would not have come to this conclusion.

77. Applying the two step test advocated in **In re Medicaments [2001] 1 WLR 700** and adopted in this jurisdiction in **The AG v Kublalsingh** what then are the circumstances which have a bearing on the suggestion that the Judge was biased and would these circumstances lead the fair minded and informed observer to conclude that there is a real possibility of bias.

78. The relevant facts of the case have been recited earlier in this judgment. The circumstances that have a direct bearing on the suggestion that the Judge was biased are simply that the Judge used the opportunity raised by the case presented by the Appellant, and particularly the question posed in cross-examination, to make comments in the judgment and by way of the out of court statements on the propriety of campaign financing in the absence of regulations and the need for legislation to regulate such contributions. The out of court comments do no more than repeat what was contained in paragraphs 47 and 48 of the judgment.

79. What the Appellant must show is not simply that the Judge used the opportunity to make the statements but that a fair minded and informed observer would conclude that the Judge's desire to make these statements caused him to arrive at the decisions made by him. In my opinion the Appellant has not made out such a case.

80. The paragraphs under consideration were made at the end of the judgment. The Judge first addressed what he considered to be an entrenched public perception that public officials could be bought and sold to the highest bidder. He stated his opinion that the evidence in the case demonstrated that this might be "the reality that unfolds". Thereafter he describes what he considers to be the evil in campaign financing and concludes that such an approach to governance is "untenable, unethical and inconsistent with the oath of public office". Finally he calls for the enactment of procurement legislation and election campaign finance reform and deplores the fact that in the absence of clear and cogent guidelines courts are being called upon to decide whether sums received were the spoils of campaign financing.

81. The fair minded and informed observer would first appreciate that there is nothing inherently wrong in a judge making out of court statements on the judge's perception of the law and the need for law reform in lectures on legal matters. Indeed, the guidelines for Judicial Conduct provide that:

> "3.14 Subject to the proper performance of judicial duties, a judge may engage in (extra judicial) activities such as (but not limited to):
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> g) Speaking, writing, lecturing, teaching and participating in activities including but not limited to those concerning the law, the legal systems, the administration of justice and related matters."

82. In the case of **Timmins v Gormley** on appeal and dealt with in **Locabail** the question centred on out of court comments made in a number of articles. The allegation of apparent bias was made by a defendant based on a number of articles written by a registrar in favour of claimants in motor vehicular accidents. It was alleged here that by the articles the registrar has shown an unconscious but settled prejudice against the insurers of the defendants who were the real defendants in the case. According to the Judges:

> "It is not inappropriate for a judge to write in publications of the class to which the recorder contributed. The publications are of value to the profession and for a lawyer of the recorder's experience to contribute to those publications can further rather than hinder the administration of justice. There is a long established tradition that the writing of books and articles or the editing of legal textbooks is not incompatible with holding judicial office and the discharge of judicial functions. There is nothing improper in the recorder being engaged in his writing activities. It is the tone of the recorder's opinions and the trenchancy with which they were expressed which is challenged here. Anyone writing in an area in which he sits judicially has to exercise considerable care not to express himself in terms which indicate that he has preconceived views which are so firmly held that it may not be possible for him to try a case with an open mind."

83. Here no complaints were made of the manner in which the case was conducted and the judges themselves were satisfied that there was nothing in the judgment itself that supported any allegation of apparent bias. The decision in the case therefore turned on the contents of the articles written by the registrar. Accepting that it was "a difficult and anxious application to resolve" the judges concluded:

> "We have, however, to ask, taking a broad common sense approach, whether a person holding the pronounced pro-claimant anti-insurer views expressed by the recorder in the articles might not unconsciously have leaned in favour of the claimant and against the defendant in resolving the factual issues between them. Not without misgiving, we conclude that there was on the facts here a real danger of such a result. We do not think a lay observer with knowledge of the facts could have excluded that possibility, and nor can we."

84. In **Lieuwe Hoekstra and others v Her Majesty's Advocate 2000 S.C.C.R 367**, relied on by the Respondent, the question was whether statements made by a judge in an article published in the newspaper critical of the European Convention less than a month after refusing to entertain an appeal seeking to apply the Convention gave rise to apparent bias. In concluding that the statements made in the article did give rise to apparent bias the Court of Appeal stated:

> "Judges, like other members of the public and other members of the legal profession, are entitled to criticise developments in our law, whether in the form of legislation or in the form of judicial decisions. Indeed, criticism of particular legislative provisions or particular decisions is often to be found in judges' opinions. Similarly, judges may welcome particular developments in our law. It is well known that in their extrajudicial capacity many prominent judges—not only in England—publicly advocated incorporation of the Convention and equally publicly welcomed the government's decision to incorporate. But what judges cannot do with impunity is to publish either criticism or praise of such a nature or in such language as to give rise to a legitimate apprehension that, when called upon in the course of their judicial duties to apply that particular branch of the law, they will not be able to do so impartially."

85. Looking at the statements made by the Judge through the lens of the fair minded and informed observer such an observer would appreciate that the Judge, as anybody else, is entitled to have a position on campaign financing and, in the appropriate case, is entitled to express his views. That informed observer would appreciate that the Judge had evidence before him, which evidence the Judge accepted, that the payments were made for the purpose of financing the political campaign of the UNC. This observer would understand that the case made out by the Appellant was directly relevant to the issue of campaign financing and as such it was not inappropriate for the Judge to consider same. Nor in that context was it inappropriate for the Judge to express his views on the issue.

86. Further that observer would appreciate that it was more likely than not that, as the Judge stated, his disquiet concerning the issue of campaign financing was prompted by the specific question put by the Appellant to Lalla in cross-examination and that this line of questioning placed what the Judge considered to be the evil of campaign financing under scrutiny.

87. This observer, not being unduly sensitive or suspicious, would conclude that there was nothing in the findings made by the Judge or the language used which would point to the fact that the Judge's views on campaign financing caused him to prejudge any of the issues in the case. The observer would appreciate that this was the case presented by the Appellant and that the Judge was entitled to accept or reject the case as presented. Further the comments made by the Judge was a criticism of the behaviour of both sides.

88. The fair minded and informed observer would understand that a mere suspicion of bias was not enough and that what the Appellant had to show was a real possibility that the Judge was biased and that this bias coloured his findings. The said observer would appreciate that this was not a case where the Judge expressed himself "in terms which indicate that he has preconceived views which are so firmly held that it may not be possible for him to try a case with an open mind" as was the position in **Timmins** and **Hoesktra**. He would recognise that in the context of the judgment the

statements were made after the Judge had identified his findings on the issue and supported the findings by reference to the evidence.

89. It seems to me that in the circumstances presented by this case the fair minded and informed observer would not have concluded that there is a real possibility that the decision given by the Judge in the case on appeal was influenced by his partiality or prejudice in favour of legislation to regulate campaign financing but rather would conclude that the comments were triggered by the evidence and the case presented by the Appellant.

90. In these circumstances I am of the view that the Appellant did not satisfy the test of establishing apparent bias on the part of the Judge. The Appellant is required to show more than a mere suspicion of bias. In my opinion the Appellant has not shown that there is a real possibility that the Judge's finding that the money was advanced as a loan to Warner for the purpose of financing the UNC's campaign was influenced by his aversion to campaign financing in the absence of regulations.

91. That said there is no doubt that the Judge's comments were unnecessary to what he was called upon to determine and added nothing to the conclusions arrived at by him. The statements were made at the end of the judgment and are a prime example of what has come to be known as judicial activism. While it is not my intention to engage in a discourse on judicial activism it is perhaps appropriate to borrow the caution given by the court in **Hoesktra**:

> "But what judges cannot do with impunity is to publish either criticism or praise of such a nature or in such language as to give rise to a legitimate apprehension that, when called upon in the course of their judicial duties to apply that particular branch of the law, they will not be able to do so impartially."

Judges have a duty to hear cases presented before them impartially and without prejudice. In order to discharge that duty a judge should refrain from language or comments that may result in a reasonable apprehension that they may not be able to impartially adjudicate in that area of the law in the future.

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Judith Jones
Justice of Appeal