

NOTE: PUBLICATION OF NAME, ADDRESS, OCCUPATION OR IDENTIFYING PARTICULARS OF APPELLANT PROHIBITED BY S 201 OF THE CRIMINAL PROCEDURE ACT 2011 AND PURSUANT TO SS 107RA AND 107G OF THE PAROLE ACT 2002. SEE

<http://www.legislation.govt.nz/act/public/2011/0081/latest/DLM3360347.html>

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

**SC 64/2022
[2023] NZSC 40**

BETWEEN R (SC 64/2022)
Appellant

AND CHIEF EXECUTIVE OF THE
DEPARTMENT OF CORRECTIONS
Respondent

Court: Glazebrook, O'Regan and Williams JJ

Counsel: A J Ellis and G K Edgeler for Appellant
B C L Charmley for Respondent

Judgment: 26 April 2023

JUDGMENT OF THE COURT

The application for recusal is dismissed.

REASONS

[1] On 11 April 2023, we delivered our judgment granting the appellant leave to appeal.¹ We dealt with that application for leave despite Mr R's application to recuse all members of the Court from considering the application for leave and, if leave was granted, then the substantive appeal. In this judgment we give our reasons for declining to recuse ourselves from considering the case.

¹ *R (SC 64/2022) v Chief Executive of the Department of Corrections* [2023] NZSC 31.

[2] Counsel for Mr R, Mr Ellis, submits that, because judges are appointed on the advice of the Attorney-General, they are tainted by dependence on the largesse of the Senior Law Officer. Particular factual or other distinctions are drawn in relation to individual judges. For example the fact that the Chief Justice is appointed on the advice of the Prime Minister rather than the Attorney-General is said to render her even more apparently partial. An allegation of apparent bias is also made against the late Simon France J.

[3] The essence of Mr Ellis' submission is that a judicial appointments commission should be established in order to ensure a more constitutionally appropriate distance is maintained between the judiciary and the executive on matters of judicial appointments.

[4] As the Court of Appeal noted in *Lawler v R*, to accept the core of Mr Ellis' argument would be to disqualify the entire senior judiciary for apparent bias in any case in which the Crown is a party, leaving his client without a bench to hear his appeal at all.²

[5] We do not in any event accept that, on the grounds advanced, there are circumstances surrounding the appointment of the judges of this Court that might possibly lead to a reasonable apprehension that we may decide the case other than objectively and on its merits.

[6] The application for recusal is dismissed.

Solicitors:
Crown Law Office, Wellington for Respondent

² *Lawler v R* [2013] NZCA 308 at [79].