



Summary of Judgment

**Wong Wa Fun (“Applicant”) v
Wong Wai-Fun, Stella, Chairperson of Inquiry Committee (“Putative Respondent”);
Secretary for the Civil Service (“1st Putative Interested Party”);
Jonathan Kwan (“2nd Putative Interested Party”); and
Jane Ho (“3rd Putative Interested Party”)**

HCAL 890/2022

Decision : **Application for leave to apply for judicial review dismissed**
Date of Hearing : **9 November 2022**
Date of Judgment : **11 November 2022**

Background

1. The Applicant is a “Senior Court Prosecutor II” of the Department of Justice (“DoJ”), and so a civil servant subject to the rules governing members of the civil service. During his tenure as a Senior Court Prosecutor, the Applicant issued three emails on various dates containing remarks/comments which were purportedly in breach of the Civil Service Code, Civil Service Regulations, and Prosecution Code. In one of the emails sent from the Applicant’s office account to both the then Secretary of Justice and the then Director of Public Prosecutions, copied to all staff of the DoJ, the Applicant alleged that the Hong Kong Police Force had lied about the motive behind the arrest of certain individuals on 30 August 2019. The emails generated extensive complaints to the DoJ from members of the public and staff of the DoJ.
2. A disciplinary inquiry (“disciplinary inquiry”) was ordered against the Applicant by the Secretariat on Civil Service Discipline (“SCSD”) related to the issuance of the emails. An inquiry committee (“IC”) was empaneled and the hearing of the disciplinary inquiry commenced on 24 January 2022.
3. During the hearing of the disciplinary inquiry on 23 August 2022, the Applicant raised the issue of apparent bias in that the legal adviser to the IC (“Legal Adviser” i.e. 2nd Putative Interested Party)¹ and the legal representative of the Assisting Officer (“Legal Representative” i.e. 3rd Putative Interested Party)² were

¹ The Legal Adviser was responsible for advising on the law and procedure of the disciplinary inquiry.

² The Legal Representative assumed the role of prosecuting the disciplinary charges on behalf of SCSD.



members of the same set of barristers' chambers. After hearing the relevant submissions on the issue, the Chairperson/IC of the disciplinary inquiry ruled that there was insufficient reason to substantiate a complaint of apparent bias, and as such the disciplinary inquiry was ordered to continue (the "**Decision**").

4. On 7 September 2022, the Applicant applied for judicial review against the Decision of the IC, namely that there was no apparent bias where the Legal Adviser and Legal Representative were members of the same set of barristers' chambers.
5. On 13 September 2022, a rolled-up hearing was ordered, and it was heard on 9 November 2022 before the Honourable Mr Justice Coleman.

Grounds of Review

6. The Applicant's ground of review is that there was apparent bias when the Legal Adviser of the IC and the Legal Representative were members of the same set of barristers' chambers, which rendered the IC's Decision irrational.

Department of Justice's Summary of the Court's rulings

(Full text of the CFI's judgment at

https://legalref.judiciary.hk/doc/judg/word/vetted/other/en/2022/HCAL000890_2022.doc)

7. CFI dismissed the Applicant's judicial review for the following key reasons:
 - (1) ***Incorrect approach***. The Applicant framed his challenge on an "irrationality" approach which is strictly not the right approach as there was no exercise of discretion involved in deciding the question as to whether there was a real possibility of bias. Instead, the question of apparent bias is a question of law to be answered in light of the relevant facts and the Court is well able to assume the vantage point of a fair-minded and informed observer with knowledge of the circumstances (see paras. 35 – 36).
 - (2) ***Lack of merits***.
 - (a) The Applicant had failed to put forward any facts which would lead a fair-minded and informed observer, properly acquainted with those facts, to conclude that there was a real possibility of bias (see paras. 39-



41).

- (b) Neither the Legal Adviser nor the Legal Representative was the decision-maker of the disciplinary inquiry. Instead, the role of the Legal Adviser was to advise on points of law and only matters relevant to the proper conduct of the hearing of the disciplinary inquiry (see paras. 42-43).
 - (c) As a matter of law, the mere fact that judges have present or past close professional connections with those appear before them does not, of itself, create a risk of bias nor appearance of bias (see para. 46). Further, the fact that the Chairperson had ruled against the Applicant on three separate legal issues would not somehow lead a fair-minded to conclude that there was a real possibility of bias (see paras. 45-47).
 - (d) It is simply not reasonably arguable that the sole fact that the Legal Adviser and Legal Representative were members of the same set of barristers' chambers could give rise to apparent bias, regardless of whether this question is approached as a matter of law or matter of irrationality (see paras. 48, 51).
 - (e) The Chairperson did not fail to make her own independent inquiry prior to deciding that there was no apparent bias. The fact that the Chairperson had accepted that there was no conflict of interest in the appointment of the Legal Adviser and Legal Representative has no bearing on apparent bias, since the presence or absence of a conflict of interest is not coterminous with the presence or absence of the appearance of bias (see para. 49).
8. CFI further ordered the Applicant to pay costs on an indemnity basis. In so ordering, the following factors were taken in account:
- (a) a rolled-up hearing was ordered which lead to the full participation of the Secretary for Civil Service ("**SCS**" i.e. 1st Putative Interested Party). SCS's assistance was important in clarifying any misconception or misunderstanding about the independence of barristers who are members of the same set of chambers (see para. 54); and



- (b) it is unnecessary to make any finding of bad faith before indemnity costs are ordered, and indemnity costs are appropriate because: (1) the intended application for judicial review is utterly unmeritorious to the extent of being frivolous or vexatious; (2) the application was brought for a tactical purpose; (3) the application was formulated in a hopeless and confusing way; and (4) the presentation and preparation of the case is inexcusable when the Applicant is a seasoned court prosecutor (see paras. 55-56).
9. Lastly, CFI reiterated that barristers are independent sole practitioners and, unlike solicitors of a firm who share an economic interest, are sole proprietors and individual economic units (see paras. 61-63).

Civil Division

Department of Justice

November 2022