BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

[2015] NZREADT 70

READT 025/15

IN THE MATTER OF	an appeal under s 111 of the Real Estate Agents Act 2008
BETWEEN	**EARL HENTON**
	Appellant
AND	**REAL ESTATE AGENTS AUTHORITY (per CAC 302)**
	First respondent
AND	**BARFOOT & THOMPSON LTD**
	Second respondent

MEMBERS OF TRIBUNAL

Judge P F Barber - Chairperson
Mr G Denley - Member
Mr J Gaukrodger - Member

HEARD ON THE PAPERS

DATE OF THIS DECISION 1 October 2015

COUNSEL

The appellant in person
Ms N Copeland for the first respondent
Mr T D Rea for the second respondent

DECISION OF THE TRIBUNAL

Background

[1] Mr E Henton has appealed to us the 13 April 2015 decision of Complaints Assessment Committee 302 dismissing complaints he made to it on 21 January 2014 against the second respondent. We now set out that part of Part 1 of the Committee decision which covers the relevant facts, namely:

> *"1.3 The complaint relates to a property situated at 5 B Ranier Street, Elleslie, Auckland (the property. The complainant was the vendor of that property.*
>
> *1.4 The details of the complaint arise from a previous complaint by the complainant against the licensee and others, which was decided by CAC20003 and upheld on appeal to the Real Estate Agents Disciplinary*

Tribunal in READT [2014] NZREADT2. ("Tribunal decision"). The subject of the earlier complaint concerned the handling of disclosure of an email received by Ms Wallace, the selling licensee, concerning the construction of a childcare centre on a property adjacent to the property. The earlier complaint also raised the issue of the handling of the complainant's concerns and situation by the licensee. The original respondent was Barfoot & Thompson alone but CAC20003 decided to include Ms Wallace as a respondent. CAC20003 decided to take no further action against Ms Wallace or the licensee, and this decision was upheld on appeal.

1.5 *In particular, the complainant raises two further concerns arising from the Tribunal decision.*

1.6 *Firstly, the complainant states that the licensee deducted its commission from the deposit paid on the sale of the property, in circumstances where the licensee knew that the sale and purchase agreement was under threat and the purchaser of the property had attempted to cancel the agreement and seek return of the deposit. The complainant feels that because it was the action of one of their salespeople which had given rise to the situation, the licensee should not, in all the circumstances, have deducted its commission from the deposit.*

1.7 *The licensee also wanted confirmation of whether the commission was deducted before 31 January 2011, until when he was advised the deposit monies would be held.*

1.8 *Secondly, the complainant is concerned that the licensee did not deal with the complaint in a way that complied with its legal requirements.*

1.9 *The complainant requested a remedy, being:*

- *That there be a review of the transaction relating to the deduction of commission from the deposit, arising from evidence summarised at para 45 of the Tribunal decision.*

- *That the licensee be formally advised to adhere to an appropriate complaints process.*

1.10 *The licensee responded to the complaint against it.*

1.11 *In particular, the licensee via its solicitors commented that the matters raised in this complaint have been largely dealt with in the Tribunal decision.*

1.12 *In relation to the deduction of the commission, the licensee produced a timeline and evidence of the documentation around deduction of the deposit. This confirms that the deposit was paid on 15 December 2011, and the commission transferred from the trust account on 31 January 2012, which is consistent with what the complainant was advised.*

1.13 The licensee explains that it was legally entitled to deduction of its commission at the usual time, considering that the agreement was at that time unconditional and had been held in accordance with the rules in the Real Estate Agents Act 2008 ("Act"). The licensee states that there is no legal obligation on an agency to retain funds in a trust account because a vendor asserts that they may have right to compensation or a reduction in commission. The licensee's position is that there were no legal reasons not to deduct commission. The complainant had some dealings with Mr Barfoot of the licensee directly and was apparently told that the monies would be retained until the end of January, which is what happened.

1.14 In relation to the other matter raised, the licensee points to the Tribunal decision which it says deals with the matter of the handling of the complaint by the licensee. The licensee states that this matter is res judicata, because the Tribunal stated that the licensee's response to the complainant's concern was not unreasonable in all the circumstances. The licensee believes that this matter has been dealt with and should not be raised again."

[2] Also by way of background, we set out the reasons which the Committee gave for dismissing those complaints namely:

*"**3. Our reasons for the decision***

3.1 The Committee concluded:

- *That there was no breach of the Act or the Rules, in connection with the deduction of commission from the deposit.*
- *That the matter of the handling of the complaint has been fully dealt with in the Tribunal decision, and therefore the Committee takes no further action on this matter.*

Reason 1

3.2 The licensee seems to acknowledge that the legal position permitted deduction of commission from the deposit, but feels that the circumstances were such that they (Barfoot & Thompson Ltd) should have applied more thought and discretion to the issue. The Tribunal noted that the complainant had felt very frustrated and angry about the fact that he was responsible to pay commission when the sale was under threat. That seems to be the continuing motivation behind the complainants pursuance of the matter.

3.3 The Committee does not propose to revisit the contents of the Tribunal decision, and agrees with the licensee that it was entitled to deduct commission. Further, the date on which this happened is in accord with what the complainant was told would happen.

3.4 In relation to the handling of the complaint, once again the Committee notes and agrees with submissions on behalf of the licensee that this matter has been decided and should not be revisited."

E Henton v REAA and Barfoot & Thompson Ltd & D Wallace [2014] NZREADT 2

[3] Our above decision was issued on 16 January 2014 and dealt with two complaints from Mr Henton arising out of the above sale transaction in which he was the vendor. There was a complaint against Barfoot & Thompson Ltd relating to the way in which Mr Henton's concerns as a vendor about the conduct of its salesperson Ms Wallace were dealt with; and there was a complaint against Ms Wallace relating to her disclosure to the purchasers of information about the property she had sold to them on behalf of the appellant, namely, the said property at 1 Ranier Street, Elleslie. We covered the facts and submissions in detail and found that Mr Henton's appeal, both in respect of Ms Wallace and Barfoot & Thompson Ltd, must be dismissed and we confirmed the Committee's decision to take no further action on them.

Mr Henton's Current Complaints

[4] The matter now before us is the appeal of Mr Henton against the decision of Complaints Assessment Committee 302 determining to take no further action on his current complaints referred to above.

[5] In his 11 May 2015 notice of appeal to us, Mr Henton identifies his appeal grounds as follows:

> *"[a] Complaint issue 1 – funds transfer without investigation into clear title does not meet the ethical requirements test;*
>
> *[b] Complaint issue 2 – to fail to investigate at all a complaint does not meet the requirements of the Act.*
>
> *I was instructed that both these issues were not able to be covered in the prior Tribunal process, therefore reject that application as consistent."*

The Issue Now Before us

[6] The second respondent applies to strike out the appeal referred to above on the grounds that:

[a] The appeal is an abuse of process;

[b] Issues raised in the appeal, to the extent that they may not have been expressly determined in the earlier proceedings, ought nevertheless to have been raised in those proceedings, if at all;

[c] The appeal is frivolous and vexatious;

[d] The appeal is not reasonably arguable; and/or

[e] The proceeding is suitable for determination by a preliminary *"threshold hearing, on the papers, the threshold issue being whether the appeal has any reasonable prospect of success"*.

[7] Mr Rea (counsel for the second respondent) then submits that Mr Henton's complaint now before us on appeal, regarding transfer of funds from the trust account of the second respondent, is frivolous and trivial. He puts it that whether or not the commission was retained in the second respondent's trust account would have had absolutely no effect on Mr Henton. He observed that if Mr Henton had somehow succeeded in obtaining compensation from Barfoot & Thompson Ltd, there could be no reasonable suggestion that it would not have been able to meet that liability without the amount of commission having needed to be preserved in its trust account.

[8] Mr Rea also noted that the deduction of commission in these circumstances is not *"real estate agency work"* and is therefore not capable of being *"unsatisfactory conduct"* and that is clear from the decision of Cooper J in *House & Anor v Real Estate Agents Authority and Anor* [2013] NZAR 1136. As Mr Rea put it, in taking the payment to which it was entitled after the sale transaction of Mr Henton's property had settled, Barfoot & Thompson Ltd was not performing work or services nor acting on behalf of another person and its purpose was not to bring about a transaction.

[9] Essentially, the submission from Mr Rea is that the present appeal is frivolous, vexatious and an abuse of process, and should be stayed or summarily dismissed by us.

The Stance of the Appellant

[10] Mr Henton rejects the application and argument from Mr Rea and seems to be asserting that the second respondent's entire review process of his complaints *"should have been managed in a more constructive way"*. He also seeks, seemingly, to have a direct discussion with our Chairperson on (he puts it) a common sense basis about his concerns.

[11] It seems that, despite our decision referred to above [2014] NZREADT 2 and its appeal decision from Cooper J in the High Court also referred to above, Mr Henton has concerns over the actions of Barfoot & Thompson Ltd and is of the view that his concerns have not been dealt with by *"clear answers"* as he puts it. Inter alia, he also seeks from us *"a constructive process"*. He puts it that *"the strike out is a simple request to ignore a complaint"* and that *"to strike out a complaint would undermine a key process"* and that we exist to hear and judge real estate issues. He maintains that he has a basic right to make a complaint and have it reviewed by us and that to him it would be a *"potentially worrying precedence that the Tribunal removes his complaints without adequate explanation"*.

[12] In those of his 21 July 2015 submissions under the heading *"Conclusion"*, Mr Henton states that his stance is simply about *"doing the right thing"* and, a little later, he said that his complaint is simply about raising the ethical standards of real estate agents. Then, rather puzzlingly, he states: *"I reiterate that I am open to a direct discussion with the chairperson to progress far more efficiently. Unfortunately, Glaister Ennor have taken it upon themselves to highlight their significant prior interactions of the Tribunal. This may cause a change of Chairperson"*.

The Stance of the Authority regarding the Strike Out Application of the Second Respondent

[13] Ms Copeland records that the Authority is neutral in respect of Mr Rea's strike out application on complaint issue number 1 as put by Mr Henton, and as set out above, is *"funds transfer without investigation into clear title does not meet the ethical requirements test"*. However, Ms Copeland accepts that the transfer of funds from the Barfoot & Thompson Ltd trust account is not an issue previously considered by us. Ms Copeland then goes on to state:

> *"2.3 The Tribunal can of course regulate it own procedure, and the Authority accepts that the Tribunal has the power to strike out a proceeding where it is not reasonably arguable. Counsel for the Authority submits that it will be rare for such a high threshold to be met. The Authority is neutral as to whether that threshold has been met in this case.*
>
> *2.4 The Authority also accepts that the Tribunal can strike out a proceeding for abuse of process where there has previously been a complaint about a transaction, and then a new complaint is made, even though that new complaint may involve different issues. However, the fact that a second complaint has been made about the same transaction does not, by itself, mean there is an abuse of process. Each case will be highly context and fact specific.*
>
> *2.5 The principle of finality in litigation is an important one and may be an important consideration in a Committee (or the Tribunal) deciding to take no further action. In this particular case, it is acknowledged that Mr Henton says that he was informed that some of his "topics" would not be addressed on his last appeal and they would require a different complaint."*

[14] Ms Copeland then records that the Authority is neutral also as to whether Mr Henton's new complaint (i.e. the said complaint number 1) and this current appeal is an abuse of process and will abide our decision in that respect.

[15] With regard to Mr Henton's said complaint number 2, namely, *"to fail to investigate at all a complaint does not meet the requirements of the Act ... I was instructed that both these issues were not able to be covered in the prior Tribunal process, therefore reject that application as consistent"*, the Committee determined that matter had already been considered by us in *Henton v Real Estate Agents Authority and Ors* [2014] NZREADT 2 and should not be revisited. She submits that the Committee was correct and, accordingly, that aspect of the appeal to us should be dismissed.

Our Decision on Strike Out Application of Second Respondent

[16] Mr Rea filed very helpful written submissions covering the principles concerning striking out of proceedings and also dealt with abuse of process and *res judicata*.

[17] In final submissions on his strike out application, Mr Rea submitted that the stance of neutrality taken by the Authority, with regard to Mr Henton's complaint number 1, does not recognise the relationship between both Mr Henton's grounds of appeal and, particularly (he puts it), that complaint issue 2 is the foundation for complaint issue 1. He referred to our said substantive decision in *Henton v REAA*

[2014] NZREADT 2 to the effect that the second respondent salesperson, Ms Wallace, did nothing wrong and that the second respondent had acted appropriately in addressing the appellant's concerns. Mr Rea then submitted: *"Given those findings, which are res judicata, there can be no possible basis on which the second respondent's deduction of commission from the deposit, after the transaction had been settled so that agency work was no longer involved, could amount to either unsatisfactory conduct or misconduct"*; and he again submitted that the current appeal before us is untenable, frivolous and vexatious and should be struck out.

[18] We consider that the issues now pursued by Mr Henton have no reasonable prospect of success. The relevant real estate transaction had been completed and Barfoot & Thompson Ltd merely took its commission from its trust account by transfer to itself. That is not real estate work but, in any case, is proper commercial conduct. That means any issue about the second respondent's handling of Mr Henton's concerns is irrelevant to us because his complaint did not relate to real estate work.

[19] Also, the appellant had every opportunity to cover these deposit concerns in his original complaint and the litigation which led to our decision in *Henton v REAA and Ors* [2014] NZREADT 2. In any case, in that decision we found that the response of Barfoot & Thompson Ltd to Mr Henton's complaints was not unreasonable in all the circumstances.

[20] We find this aspect of the appellant's case to be vexatious and an abuse of process and it is therefore dismissed, i.e. the strike-out application by the second respondent is granted.

[21] We observe that the appellant's repeated wish to engage in a constructive process with our Chairperson shows a puzzling lack of understanding of the legal process by Mr Henton. This is particularly so when another issue, which we deal with below, is that he seeks to remove Judge Barber from this litigation.

The Appellant's Application for Recusal of Judge P F Barber

[22] In a memorandum to us dated 18 August 2015 the appellant states *"I am not comfortable with the current rostering of the chair".* He then goes on to say that he has observed some concerning actions which do not give him confidence in a fair and reasonable hearing. By memorandum in reply of 20 August 2015, Mr Rea responded to those alleged *"concerning actions"* of the chairperson and, by covering that response, we outline Mr Henton's concerns about the chairperson as follows:

[a] Mr Henton refers to a hearing of 5 December 2012 being part of *Henton v Real Estate Agents Authority and Ors* when, as he puts it, there was *"open discussion of another case at the hearing between Judge Barber and Tim Rea"* which Mr Henton found *"somewhat strange and very casual".*

Mr Rea observes that, apparently, Mr Henton finds it concerning that such a discussion took place without the party to the other case being present, and that the discussion indicated to Mr Henton that the chairperson and Mr Rea were *"so openly comfortable with each other, which undermines the requirement of independence"*. Mr Rea then continues:

"9 The case that was the subject of the relevant exchange between counsel and the Tribunal was a previous decision, already concluded and recently decided by the Tribunal, addressing the issue of interpretation of "real estate agency work", Murphy v Complaints Assessment Committee 10060 & Anor [2012] NZREADT 52.

10 This was not an inappropriate ex parte communication about an unrelated proceeding (which appears to be Mr Henton's understanding), and the "recommendations" sought by Judge Barber were, in fact, submissions on the application of that case to the circumstances of the case before the Tribunal, which involved consideration of the same legal issue.

11 Further, inconsistent with any suggestion of bias by the chairperson, the application pursued by counsel for determination of the threshold issue in favour of Mr House and Barfoot & Thompson was dismissed by the Tribunal, with the Tribunal's decision recorded in [2013] NZREADT 18."

[b] Mr Henton refers to an occasion on 25 November 2013 at the hearing of the appellant's substantive appeal against the Committee's decision dismissing his earlier complaints against Ms Wallace and the second respondent. Mr House had been removed as a party as a result of the finding of the High Court but, nevertheless, appeared at the hearing of 25 November 2013 as a briefed witness on behalf of the second respondent. In that respect Mr Rea states:

"13 Mr Henton appears to suggest bias of the Chairperson in favour of Mr House or Barfoot & Thompson as a result of the chairperson's alleged request to Mr House whether he had the time for the remainder of the hearing or wanted leave (or words to that effect).

14 Mr House was a briefed witness, attending the hearing voluntarily, and he was neither compelled to attend, nor to stay for the whole hearing, nor was he a party to the proceeding. The statement attributed by Mr Henton to the Chairperson is simply the usual statement made by His Honour (and by every Judge in every case) to a witness once they have completed their evidence, to the effect that they are free to go if they wish, or otherwise they are free to remain and observe the remainder of the hearing."

[c] Mr Henton complains that cases referred to in submissions from Mr Rea were identified by our chairperson not because of their relevance to the issues but because they highlight the *"prior relationships"* between Mr Rea and our chairperson. With regard to that allegation against our Chairperson Mr Rea states:

> *"16 The decisions of the Tribunal cited in the application to strike out Mr Henton's appeal are Nightingale v Real Estate Agents Authority & Ors* [2012] NZREADT 55 and *Adams v Real Estate Agent Authority & Ors* [2014] NZREADT 34. *These decisions were cited as they are decisions by the Tribunal granting applications to strike out appeals as an abuse of process, and they are, therefore, directly relevant to the application made to strike out Mr Henton's appeal*.
>
> *17 It is correct that counsel for the second respondent acted as counsel in both of those cases, and that Judge Barber was sitting as the Chairperson of the Tribunal, but they are not referred to in submissions to highlight that fact, and rather, they are relied upon due to their relevance.*
>
> *18 Even if that were not the case, and counsel was trying to highlight this fact to the Tribunal (presumably so as to subliminally influence His Honour's reasoning), that has no relevance to any possible ground for recusal of the Chairperson."*
>
> Mr Henton had also put it: *"noticeably, deliberately or otherwise, the cases all show Judge Barber reducing fines, or changing decision in favour of Tim Rea, as the corresponding links via those cases through those referrals. ..."*

[d] Mr Henton puts it that Justice Cooper was very critical of the handling of the cases referred to above by us and by our Chairperson. Mr Rea's response to that is as follows:

> *"19 There is nothing unusual about a High Court Judge expressing dissatisfaction at the opening of a hearing about the Court's time being taken up with an appeal from an interlocutory decision. To the contrary, it is to be expected.*
>
> *20 However, notwithstanding Justice Cooper's initial reservations concerning the use of judicial resources, the issue for determination by the Court was one of substantial importance to the industry, and the decision in House v Real Estate Agents Authority [2013] NZAR 1136 has provided useful guidance, as indicated by the fact that it has been formally reported in the New Zealand Administrative Reports. This has nothing to do with any possible issue warranting recusal."*

[e] Mr Henton then seems to put it that a significant reason for him still complaining is that his current issues were excluded from his prior hearing before us referred to above. He then states:

> *"In the three months to supply documentation there was ample time to clearly define what was seen as in the scope, and what wasn't in the scope, for reasons known only to him, Judge Barber elected not to document either prior to the hearing or in his judgment these details that were so obviously key to the hearing.*

As Mr Rea put it, this is a process issue that does not involve any ground potentially warranting recusal. In any event, we consider that to suggest that we were, somehow, remiss in the defining by Mr Henton of his issues for the previous litigation hearing is curious and we reject that assertion of Mr Henton.

[f] Mr Henton seems to be saying that we did not manage his said substantive case (before us in 2013) correctly from his point of view. We also reject those assertions but, as Mr Rea put it, they involve alleged process issues where Mr Henton is critical of our handling of the proceedings and do not involve any grounds potentially warranting recusal.

[23] We do not accept that there has been any failing in our case management or in our processes regarding the said litigation brought by Mr Henton. The only reason these matters have taken so long to be resolved is that the appellant has refused to accept the finality of the proper judicial process and continues to seek to engage in further proceedings in an abuse of process. Also, Mr Henton seemed to be putting it that, because his proceedings have taken nearly four years and, according to him, have been managed by Judge Barber, it is not appropriate to leave Judge Barber to *"brush it all under the carpet"*. The appellant continues that, while the correct decision may be to strike out his current proceedings, such a decision would be *"tainted"* if made by Judge Barber and would then undermine the integrity of this Tribunal. He then remarks *"In short, any process that drags out for nearly four years, in itself demonstrates some poor hearing management"*. However, the process has not been dragged out by Judge Barber but has dragged on due to the respective stances of the parties.

[24] Finally, Mr Henton seems to be stating that it must be a very simple request of his to receive a clear ruling but that he has, as a consumer, been put through four years of *"topic manipulation and various legal charades"* which he says *"has not been very impressive to say the least"*. He again requests that our chairperson *"be changed to ensure there is more confidence in the process"*.

[25] Mr Rea puts it that there are no proper grounds for the appellant's application for recusal of our Chairperson and continues:

"26 Mr Henton's assertions in support of his application, insofar as they allege a lack of impartiality by the Chairperson, do not satisfy the test of the standard of a "fair minded and properly informed observer". The balance of the assertions in support of the application are irrelevant to any recusal grounds, involving alleged shortcomings in the Tribunal's processes, and it is not accepted in any event that there is any merit to those allegations.

27 The Chairperson has a duty to sit and determine the current proceeding unless grounds for disqualification exist, which they do not, and it follows, therefore, that the request for recusal should be declined."

Submissions of the Authority on Recusal

[26] On 2 September 2015 we received very helpful submissions from Ms Copeland on the above issue raised by Mr Henton. They read as follows:

*"**2 General principles***

2.1 The requirement for judicial officers to be independent and impartial in their decision making is a fundamental prerequisite to public confidence in the courts.

2.2 Independence or impartiality may be compromised, in actuality or appearance, by a conflict of interest, judicial behaviour on the bench, or associations and activities off the bench. If compromised, then a judicial officer will be disqualified from hearing the case.

2.3 The Supreme Court in Saxmere Co Ltd v Wool Board Disestablishment Co Ltd[1] confirmed that the test for disqualification in New Zealand is whether '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'.[2] Adopting the Australian approach in Ebner v Official Trustee in Bankruptcy[3], the Supreme Court indicated that test proceeds in two stages:[4]

(a) Rigorous identification of what it is said might lead a judicial officer to decide a case other than on its legal and factual merits; and

(b) Articulation of a logical connection between this and the feared deviation from the course of deciding the case on its merits.

2.4 Only if there is a real, rather than a remote, possibility of bias will the judicial officer be disqualified.

2.5 The test is an objective one, assessed from the perspective of a fair-minded lay observer. The use of the fair-minded lay observer is to ensure that the test covers apparent, as well as actual bias.

2.6 The Supreme Court, after reviewing New Zealand and Australian authorities, has ascribed the following attributes to this observer:

(a) They are presumed to be intelligent and to view matters objectively;

(b) They are neither unduly sensitive nor complacent about what may influence a judicial officer's decision;

(c) They are a non-lawyer, but are reasonably informed about the workings of the judicial system;

(d) They are informed about issues and facts in the case alleged to give rise to an appearance or apprehension of bias;

(e) They understand that judicial officers are expected to be independent in decision making and have taken an oath to that effect;

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1 *Saxmere Co Ltd v Wool Board Disestablishment Co Ltd* [2009] NZSC 72 (Tab 1).
2 At [3], citing *Ebnder v Official Trustee in Bankruptcy* [2000] 205 CLR 337.
3 *Ebner v Official Trustee in Bankruptcy* (2000).
4 *Saxmere Co Ltd v Wool Board Disestablishment Co Ltd*, above n 1, at [4].

(f) They understand that judicial officers are obliged to sit on cases before them unless grounds for disqualification exist;

(g) They understand that our legal system is adversarial in nature, and issues are decided between litigants irrespective of the merits or demerits of their counsel; and

(h) They understand the relationships that conventionally exist between judicial officers and members of the legal profession.

2.7 The test sets a high threshold for disqualification. It is not sufficient to simply allege that the judicial officer has an interest in the case. The applicant must show a logical connection between that interest and a departure from impartial decision making; and there must be a real, and not a remote possibility of that departure.

2.8 Where the test is satisfied, this is typically because of a strong relationship between the judicial officer and someone involved in the case, or a financial interest in the outcome. Although in theory judicial conduct in earlier proceedings could satisfy the test, the fair minded lay observer, who understands the judicial role, will understand that a judicial officer is able to put past proceedings to one side and approach new proceedings with a fresh mind.

3 Real Estate Agents Authority's position

3.1 The Authority, of course, has no preference for who sits on the Tribunal, but as a matter of principle, recusal should only take place where there is a proper basis for it to occur.

3.2 As the Supreme Court recorded in Saxmere:

> *[88] An aspect of the administration of justice which is of particular relevance is that judges should not automatically disqualify themselves in response to litigants' suggestions that there is an appearance of lack of impartiality. Judges allocated to sit in a case have a duty to do so unless they are disqualified. If a practice were to emerge in New Zealand of judges disqualifying themselves without having good reason, litigants may be encouraged to raise objections which are based solely on their desire to have their case determined by a different judge who they think is more likely to decide in their favour. Such a development would soon raise legitimate questions concerning breach of the rights of other parties.*
>
> *(Citations omitted)*

3.3 While the Authority ultimately abides the decision of the Tribunal, it is submitted that when applying the general principles above, none of the points raised by the appellant in support of his application, either individually or cumulatively, would appear to justify recusal.

Submissions of the Authority on Recusal

Our Decision on the Application for the Recusal of Judge P F Barber

[27] We consider that Mr Rea's reaction to the appellant's application that Judge Barber recuse himself shows the lack of merit in that application. We agree with Mr Rea's reasoning. We also agree with the above submissions of Mr Copeland. Judge Barber declines to recuse himself and we, accordingly, dismiss the appellant's application that he do.

[28] Pursuant to s 113 of the Act, we record that any person affected by this decision may appeal against it to the High Court by virtue of s 116 of the Act.

_____
Judge P F Barber
Chairperson

_____
Mr G Denley
Member

_____
Mr J Gaukrodger
Member