

R (on the application of Darsho Kaur) v (1) Institute of Legal Executives Appeal Tribunal (2) Institute of Legal Executives [2011] EWCA CIV 1168

Mrs Kaur was a student member of ILEX. She and a number of other students were charged with a variety of disciplinary offences relating to cheating in exams. The Disciplinary Tribunal which heard Mrs. Kaur's case comprised two lay members and a serving ILEX Council member. The Appeal Tribunal was similarly constituted, the Chair this time being the Council's vice-president.

ILEX's regulatory responsibilities are dealt with by a subsidiary company, ILEX Professional Standards Limited (IPSL). The intention was to place the investigatory and prosecutorial arms of regulation in a separate body from ILEX itself. ILEX was, however, its sole shareholder.

Mrs Kaur appealed on the basis that the presence of a Council member and a director of ILEX on the Disciplinary Tribunal and the vice-president on the Appeal Tribunal was in breach of the doctrines that no one may be a judge in his own cause and/or of apparent bias.

Reliance was placed by the Court of Appeal on *Porter v Magill* [2001] UKHL 67, *R v Bow Street Metropolitan Stipendiary Magistrate (ex parte Pinochet)* [2000] 1 AC 119 (*Pinochet No. 2*) and, in particular, *Re P (A Barrister)* [2005] 1 WLR 3019.

In *Re P* the issue was whether the lay member of the Visitors to the Inns of Court, Ms. Sara Nathan, could participate as a member of the tribunal when she was a member, albeit as a lay representative, of the Professional Conduct and Complaints Committee (PCCC) which was the body responsible for making the decision as to whether to prosecute a member of the Bar against whom a complaint had been made. It was held in that case that she would be a judge in her own cause and should have recused herself, notwithstanding that she had had no prior involvement in the case in her capacity as a member of the PCCC.

The Court of Appeal concluded that whilst there was no suggestion that either the council member of the Disciplinary Tribunal or the vice-president sitting on the Appeal Tribunal were actively involved in the prosecution of Mrs Kaur, they were actively involved in the total governance of ILEX, and were responsible for its regulatory policies and thus their membership of either of those tribunals offended against both doctrines.

The appeal was allowed and the decisions of both tribunals quashed.