



[2026] GCHCD 1

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

GUN COURT (HIGH COURT DIVISION)

CASE NO. CAHC2023GC00100

BETWEEN

REX

RESPONDENT

AND

GEOVANY THOMPSON

APPLICANT

IN OPEN COURT

Mrs. Yanique Taylor-Campbell instructed by the Office of the Director of Public Prosecutions appeared for the Respondent

Mr. Isat Buchanan appeared for the Applicant

Dates Heard: May 1, and June 12, 2026

CRIMINAL LAW – Application for Recusal – Porter v Magill – Whether the fair-minded and informed observer having considered the facts, would conclude that there was a real possibility that the tribunal was biased

PALMER HAMILTON, J

BACKGROUND

[1] Mr. Geovany Thompson (hereinafter referred to as ‘the Accused’) was charged with the offences of Possession of a Prohibited Weapon and Unauthorized Possession of Ammunition, to which he pleaded not guilty. On the 1st day of May, 2026, Mr. Buchanan, Learned Counsel for the Accused made an oral application for me to recuse myself from the matter. Learned Counsel Mr. Buchanan also relied on the Affidavit of Geovany Thompson which was filed on the 30th day of April, 2026.

AFFIDAVIT OF GEOVANY THOMPSON

[2] The Accused stated in his Affidavit that during the proceedings his Attorney-at-Law explained to me that he experienced difficulties and delays in his preparation because he was in the parish of Portland and without access to amenities for a significant amount of time due to Hurricane Melissa. It was further stated that I responded to his Attorney dismissively, criticizing him for waiting until the 1st day of December to send a letter regarding these difficulties. He stated that I abruptly cut off his Attorney-at-Law as he was mentioning his responsibilities as a Member of Parliament.

[3] The Accused stated that he observed me make a baseless accusation in open Court that his Attorney-at-Law was illicitly recording the proceedings and further that the tenor and tone of my conduct coupled with my demeanour demonstrated to him that I had utmost contempt for his Attorney-at-Law. The Accused also stated that I openly accused his Attorney-at-Law of not paying attention to what was being said.

[4] At paragraphs 15 to 17 of his Affidavit, the Accused stated that:

15. *I know Mr. Buchanan to be a strong, capable, and zealous advocate on my behalf. However, due to the Court's continuous hostility, I have observed that he is now forced to operate as though he is walking on eggshells. He appears to be constantly calculating his words and actions merely to avoid offending the presiding Judge or getting into trouble, which stifles his ability to advocate for me fearlessly.*
16. *Based on the unequal treatment regarding the hurricane-related delays, the baseless accusations of recording, and the continuous hostility directed at my counsel, I have a real and reasonable apprehension that the presiding Judge is biased against my attorney and I will not receive a fair trial in circumstances where my trial is by judge alone.*
17. *Consequently, I believe that this apparent bias severely prejudices me and prevents me from receiving a fair and impartial trial before this Court. I believe that I will be convicted, not because I am guilty of the offence but because of the court's contempt towards my attorney.*

SUBMISSIONS ON BEHALF OF THE ACCUSED

- [5] Learned Counsel for the Accused submitted that the Presiding Judge ought to recuse herself from this continuing part heard matter on the grounds of apparent bias against him, and by extension the Accused. It was further submitted that the record reveals a pattern of disparate treatment and open hostility toward the Defence that renders the continuation of the trial before the tribunal unsafe and unfair. Learned Counsel contended that it is a cornerstone of our legal system that justice should not be only be done but should manifestly and undoubtedly be seen to be done, ensuring that nothing creates even a suspicion of improper inference with the course of justice. Reliance was placed on the case of **R v Sussex Justices [1924] 1KB 256**, where it was submitted that the common law principle is inextricably linked to the Accused's entitlement to a fair hearing before an independent and impartial tribunal under section 16 (1) of the Charter of Fundamental Rights and Freedom. It was further contended that this principle was recently affirmed in **Lennox Alvaranga and Francis Davis v R [2026] JMCA Crim 5**.
- [6] Learned Counsel for the Accused submitted that the apparent bias test and the objective standard is the correct test to be applied in the circumstances. Reliance was placed on **Porter v Magill [2002] 2 AC 357**, which was reiterated by the Court of Appeal in **Lennox Alvaranga**. It was contended that the Court must ask whether the fair-minded and informed observer, having considered the facts would conclude that there was a real possibility that the tribunal was biased. Further, it was submitted that this objective test relies on the Court's view of the public views and not the Court's own view and that it is an error in law to rely solely on a subjective assessment of fairness. It was submitted that the overarching objective must be to ensure that it is the fair-minded observer, the layman's observer that has been prejudiced by the partiality or actual perceived bias as seen by that observer and not what this Court feels.

- [7] Learned Counsel then went on to deal with the impact of judicial conduct and submitted that the Court must have sufficient regard to the fact that actions, words and conduct toward Counsel or a witness indicate a view that may colour the later directions to a jury or a Judge in a trial alone. Learned Counsel then went on to submit that when applying the objective standard required by **Lennox Alvaranga**, a fair-minded informed observer reviewing the Notes of Evidence of the 5th day of December, 2025 would undoubtedly conclude there is a real possibility of bias based on disparate and unequal treatment, and berating the Defence Counsel and invalidating explanations.
- [8] In relation to disparate and unequal treatment, Learned Counsel for the Accused submitted that when he explained to me that his preparation was hampered by a lack of amenities due to Hurricane Melissa, I was immediately dismissive and hostile. He further submitted that conversely, when the Prosecution announced that their witness was absent due to his house being destroyed by the “*same exact*” hurricane, I immediately expressed deep sympathy. It was contended that this stark contrast shows an inability to hold the balance evenly between the parties. In relation to berating Defence Counsel and invalidating explanations, Learned Counsel for the Accused submitted that I openly berated him and attempted to limit his explanations on the record. Learned Counsel for the Accused submitted that I dismissively interrupted his explanation that he is a Member of Parliament as context for his availability and scheduling constraints. It was also submitted that there were unfounded applications and that I took steps that disrupted permissible cross-examination by launching unfounded accusations at him. Learned Counsel contended that I publicly in front of his client, accused him of illicitly recording the proceedings and further that I discredited him by claiming that he was not paying attention and reprimanded him to not distract anybody else in the courtroom. Learned Counsel concluded by submitting that as per the guidance in **Lennox Alvaranga**, the public view of these proceedings reveals a real danger that the Accused’s position has been prejudiced by perceived partiality against his Counsel.

[9] Learned Counsel for the Accused also submitted that if he has offended this Court or caused this Court to have any dislike for him, it is the Accused who would suffer. He went on to say that he is not, “*casting any aspersion [sic] on this Court*”, and it is how the Accused perceived his inability to advocate for him before this particular Court. Learned Counsel relied on paragraph 15 of the Affidavit of Geovany Thompson. Learned Counsel contended that based on the foregoing that I must recuse myself from this trial as my words and conduct directed at him satisfy the objective test for apparent bias. Further, that my non-recusal deprives the Accused, the trial process, the prosecution, and the justice system of fair consideration of the trial.

[10] Learned Counsel for the Accused also relied on the case of **Carrol Ann Lawrence-Austin v The Director of Public Prosecutions [2020] JMCA Civ 47** which he submitted speaks of apparent bias and further that it substantiates his position that it is how the Accused feels as to his inability to advocate and continue before the tribunal. It was further contended that the Accused has a constitutional right to Counsel of his choice and in the circumstances it would mean that he would have to remove himself as Counsel in light of his inability to advocate effectively before the tribunal for the Accused. It was further submitted that the result of this impact then is to render the trial process unfair and any resultant conviction unsafe. Learned Counsel for the Accused submitted that I should recuse myself to ensure that justice is manifestly and undoubtedly seen to be done.

LAW AND ANALYSIS

[11] The Court of Appeal in **Carrol Ann Lawrence-Austin** undertook a comprehensive review of the law governing judicial recusal and apparent bias and outlined the principles that a Court ought to consider when determining such an application. In **Re Pinochet [1999] UKHL 52**, Lord Browne-Wilkinson identified two categories in which a judge may be disqualified. It is clear from the Application made on behalf of the Accused and from the submissions advanced that this is not a case in which it is alleged that the court has any financial, proprietary, or other personal interest

in the outcome of the proceedings so as to warrant automatic disqualification. Accordingly, the present application does not engage the first category of automatic bias cases as identified in **Re Pinochet**. The second category concerns cases of apparent bias, where although the judge has no personal interest in the matter, his or her conduct or behaviour may give rise to a suspicion that he or she is not impartial.

[12] Learned Counsel for the Accused rightly submitted that the applicable test is from the well-known statement of the Lord Hope of Craighead in **Porter v Magill**, that the question should be “*whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased?*” The test is an objective one and one ought to consider who is regarded as a fair-minded and informed observer. I must make it clear that it is not the assumptions and perceptions of a litigant or in this case, an accused, that are automatically attributed to who the Court ought to consider as a fair-minded and informed observer. In light of the guidance provided by the Court of Appeal and the authorities relied upon, a fair-minded and informed observer is one who:

- (a) is a relative newcomer among the select group of personalities who inhabit our legal village;
- (b) reserves judgment on every point until he or she has seen and fully understood both sides of the argument;
- (c) is not unduly sensitive or suspicious;
- (d) is not complacent;
- (e) knows that fairness requires that a judge must be, and must be seen to be unbiased;
- (f) knows that judges, like anybody else, have their weaknesses;
- (g) takes a balanced approach to any information he or she is given;

- (h) informs himself or herself on all matters that are relevant;
- (i) is able to put whatever he or she has read or seen into its overall social, political, or geographical context; and
- (j) appreciates that context forms an important part of the material which he or she must consider before passing judgment.

[13] Learned Counsel for the Accused heavily relied on Lennox Alvaranga, particularly the Court of Appeal's reaffirmation of the objective test for apparent bias as set out in Porter v Magill. It is not in dispute that that is the applicable test as it remains the correct legal test to be applied in applications such as these. It is apparent from the submissions of Learned Counsel for the Accused that he relied primarily on the legal principle reiterated in the case, rather than the factual circumstances of the case itself. Indeed, the facts of Lennox Alvaranga are readily distinguishable from the facts in the present case. Lennox Alvarnaga concerned allegations relating to juror impartiality and the integrity of the jury process whereas the case at bar arises from comments made by me in the course of managing a part heard trial by Judge alone.

COURT'S NOTES OF EVIDENCE ON THE 5TH DAY OF DECEMBER, 2025

[14] Given the nature of the allegations advanced and the reliance placed on specific exchanges said to demonstrate apparent bias, I consider it both appropriate and prudent to set out the relevant portions of the notes of evidence from the proceedings on the 5th day of December, 2025. I remind myself that the determination of an application of this nature is grounded in the actual words spoken and the context in which they are spoken, rather than the characterisations of those exchanges advanced by Learned Counsel for the Accused. The inclusion of these notes will therefore assist me in ensuring that the remarks are considered fairly, accurately and in their proper context.

[15] On the 5th day of December, 2025, the part heard trial was set to continue with the examination-in-chief of one of the Crown's witnesses. However, another witness for the Crown was interposed and was to be cross-examined by Learned Counsel for the Accused. Before the commencement of that cross-examination, there was an indication that Learned Counsel for the Accused wished to bring something to my attention. An exchange then ensued, which forms part of the basis of the application. The relevant portions are set out below:

Her Ladyship: *Counsel, you want to bring something to my attention?*

Mr. Buchanan: *That is so, M'Lady. I had written to the Court on the 1st of December and the third report on the 2nd of December in relation to the difficulties I was having with the technology. I had requested some assistance from the Court through the Registry to get access to the notes of evidence. If I may just submit my document...*

Her Ladyship: *You may have to talk to Crown Counsel and let me take it from there. Counsel, what concerns me is that you waited. Hurricane Melissa hit us the 28th of October and your letter is dated the 1st of December. It begs the question as to why is it that you would have waited so long to rectify that situation, because what you are trying to say now at the eleventh hour, is that you are hampered or impeded by not having your notes and we can't go on with your matter today?*

Mr. Buchanan: *No, M'Lady. I am prepared to proceed with the witness that is here today.*

Her Ladyship: *But, Mr. Buchanan...*

Mr. Buchanan: *I am here to deal with the examination-in-chief. And M'Lady, I can say off the record that I was in the parish of Portland and we were without access for amenities for a significant amount of time. I am not making any excuses. I am just stating that the reality, M'Lady, coupled with this particular case, that I cannot even say that I can rely on memory.*

Unfortunately, from where I sit the delay in this matter has caused significant embarrassment for the Defence.

- Her Ladyship:* *I don't think I understand what you mean.*
- Mr. Buchanan:* *M'Lady, that is as far as I can go.*
- Her Ladyship:* *You are saying that because the matter was not able to be completed in a week or two weeks consecutively it has caused the delay. Is that what you are saying?*
- Mr. Buchanan:* *Well, it may be. Coupled with that it has caused this matter to be delayed.*
- Her Ladyship:* *Counsel, you do recognise that dates that are set for part heard matters have to be done in conjunction with the diary of Defence Counsel, so if Defence Counsel is not available on a particular date and the Crown Counsel now is not available then the matter can't go on.*
- You ought to be aware of that.*
- Mr. Buchanan:* *M'Lady, I am fully aware of that.*
- Her Ladyship:* *I am not sure I understand the direction you are going.*
- Mr. Buchanan:* *M'Lady, perhaps if you could permit me just to finish what I am saying in terms of my explanation, is that in relation to delay, whether it is my fault, my friend's diary or the court's diary it still amounts to delay in continuation which I am compelled to raise on record in relation to Mr. Geovany Thompson.*
- Her Ladyship:* *I look forward to seeing where that delay is...*
- Mr. Buchanan:* *M'Lady, I am sufficiently raising it because I know I do not have the forum...*
- Her Ladyship:* *This is not the forum to raise it. What I am saying is that Melissa passed from the 28th of October, you waited until the 1st of December, 2025 when this matter should have been continued today, the 5th of December, 2025 before you penned this letter to seek assistance with Notes of Evidence. That is where I am going. So I am not quite sure how you are going to benefit from that point that you are seeking to raise at this time.*
- Mr. Buchanan:* *Well, M'Lady, I said, coupled with that. I am explaining to the Court if I were to rely on my own memory the Defence would*

be embarrassed. I am not casting any aspersion on the Court to say that the Defence from where I sit is embarrassed. I am also, M'Lady, a Member of Parliament and I am responsible...

Her Ladyship: That doesn't matter here.

Mr. Buchanan: Well, I am just telling you, M'Lady. I can only explain as to what my tardiness is in preparing this matter, I am only one person and...

Her Ladyship: Well, you know being a Member of Parliament does not affect these Courts.

Mr. Buchanan: M'Lady, I am merely responding to your statement.

Her Ladyship: In other words, it should not be raised. I am going to suggest that you do not raise that as an excuse.

Mr. Buchanan: It is not an excuse, M'Lady.

Her Ladyship: Why are you raising it then?

Mr. Buchanan: M'Lady, because you said, why did I wait until the 1st.

Her Ladyship: That point is irrelevant. That you are a Member of Parliament does not feature here. You appearing before me, you are appearing before me as one who should be a responsible Counsel. Counsel, that is whom I am addressing. I am addressing Counsel, responsible Counsel at that. So, you are prepared, Counsel to go on with Miss Beepot?

Mr. Buchanan: That is so, M'Lady.

Her Ladyship: And we can continue with Mr. Lobban?

Mr. Buchanan: Mr. Lobban's examination-in-chief, that is so, M'Lady.

Her Ladyship: Madam Crown, were you made aware of the difficulties that Counsel indicated he is having?

Mrs. Taylor-Campbell: M'Lady, Counsel spoke to me yesterday, M'Lady, about his challenge in relation to his notes, M'Lady. But was just yesterday, M'Lady, and I made an enquiry in relation to the matter today, M'Lady, that it was brought to my attention.

Her Ladyship: Because you could have probably made your copy available to Counsel in the interim. But you having been made aware only yesterday that is not a feasible option.

Mrs. Taylor-Campbell: Yes, M'Lady.

[16] During cross-examination of the witness the following exchange took place:

Mrs. Taylor-Campbell: M'Lady, I am asking the Court, I am not sure if the writer would be able to repeat that last line for me.

Her Ladyship: Yes, I was just about to ask if the Court Reporter could assist with that last answer. It was a mouthful. I have, a mixture is as a result of the analysis of the mixture on the swab.

(Notes read back)

Mr. Buchanan: Thank you for that.

Her Ladyship: That's it?

Mr. Buchanan: No.

Her Ladyship: Yes, Counsel.

Mr. Buchanan: Just for clarity, it is the same technique that was used for the ammunition?

Her Ladyship: The same?

Mr. Buchanan: The same technique, the same procedure?

Witness: Are you speaking about the nine live rounds?

Mr. Buchanan: The nine live rounds, yes.

Witness: That is so.

Mr. Buchanan: Right. And can you account for the insufficient quantity? Can you say what you mean by insufficient quantity in relation to swabs?

Witness: Not enough DNA was deposited on the swab after the live round was swabbed.

Mr. Buchanan: Thank you. Now in relation to...

Her Ladyship: It seems Counsel is not taking notes.

Mr. Buchanan: No, that's not so.

Her Ladyship: Counsel, you know it is not permissible to record.

Mr. Buchanan: No, M'Lady. I have questions and I am asking them based on the answers.

[17] Once cross-examination of the witness was complete, the Court was to resume the evidence of the witness whose examination-in-chief was interrupted by the interposition of this other witness. The following exchange then took place:

Mrs. Taylor-Campbell: M'Lady, Detective Corporal Lobban is to continue his evidence, M'Lady, and...

Her Ladyship: Is he here?

Mrs. Taylor-Campbell: And he is not here.

Her Ladyship: As yet?

Mrs. Taylor-Campbell: M'Lady, I received a message whilst we were in the process of continuing with the evidence of Miss Beepot, M'Lady. I was not able to get to Mr. Lobban, M'Lady, and upon making some checks, M'Lady, I received a message that he was severely affected by the hurricane, M'Lady, and that he is in the process of rebuilding, M'Lady.

Her Ladyship: If you have an issue Counsel, I really hope you won't be asking somebody else to repeat what is being said because you are not paying attention.

Mr. Buchanan: M'Lady, I am listening.

Her Ladyship: It looked to me that you were trying to communicate with the officer at the door, when he is supposed to be focusing on the accused. Please don't distract anybody else in the courtroom.

Yes, Madam Counsel.

Mrs. Taylor-Campbell: Yes, M'Lady. He indicated to me that he is in the process of rebuilding. Unfortunately, he could not be here, M'Lady, today. There are some challenges...

Her Ladyship: Which challenging parish was he in?

Mrs. Taylor-Campbell: I didn't ascertain before M'Lady, but he did say that his house was severely damaged, M'Lady. I can ask that question, M'Lady, but I did not ask previously.

Her Ladyship: I am sorry to hear that his house was severely damaged. I am sure if the same fate has befallen the Counsel in Portland.

Mrs. Taylor-Campbell: The Investigating Officer when I spoke to him, M'Lady, he was not able to reach Corporal Lobban. He did indicate to me that it was not like Corporal Lobban, M'Lady, and I verily believe that is so, M'Lady. He is apologizing to the Court profusely, M'Lady, about his absence, M'Lady. But he could not be here today and he also apologized for not reaching out before, M'Lady. And because he was in the box I did not reach out to him, M'Lady.

Her Ladyship: Although he was bound over to return today.

Mrs. Taylor-Campbell: Yes, M'Lady. So I apologize to the Court for his absence today, M'Lady. If the Court is minded, M'Lady, just for me to communicate to find out his earliest availability for the Court.

Her Ladyship: No, Counsel, we will have to set an early date when he has to be here himself.

Mrs. Taylor-Campbell: That is so, M'Lady.

Her Ladyship: I do understand the challenges in light of unfortunately being a victim of the devastation that has taken place. He having lost his roof and many of those person who have lost their roofs, unfortunately are householders.

Mrs. Taylor-Campbell: He did indicate that he has to relocate.

Her Ladyship: Yes, I understand.

Mrs. Taylor-Campbell: And I apologize to Counsel and the Accused on his behalf.

- [18] For ease of reference and in the interest of transparency, I consider it appropriate to also set out the contents of the letter filed on the 1st day of December, 2025 by Learned Counsel for the Accused.

*The Registrar
Supreme Court of Judicature of Jamaica
Criminal Division
King Street*

Dear Sirs,

Re: Request for Transcript in the continuing Trial of Geovany Thompson

I represent the defendant mentioned at caption who is before the court for the trial of his matter before the Hon. Ms. Justice Lisa Palmer-Hamilton. The trial is set to continue on Friday, December 5, 2025. Unfortunately I have lost my notes on the trial during the recent passage of hurricane Melissa. This matter has left the defence quite disadvantaged and prejudiced to be in a position to effectively move forward in the circumstances.

In light of the foregoing I humbly seek the kind indulgence of this court to provide me with the transcript in this matter so that I can put myself in a better position to continue effectively. I am grateful for any kind assistance this court can offer to ensure that Mr. Thompson can have a fair trial. It has already been difficult because the matter is being heard for such a long period of time and for short periods at numerous intervals.

I look forward to a response at your soonest.

Yours faithfully

*Per: Isat Buchanan
Attorney-at-Law*

- [19] The issue before me is, whether, on a balance of probabilities, the Court would find that the fair-minded observer having all the facts would have concluded that there was a possibility of bias on the part of the Learned Judge. I must ascertain all the relevant facts and circumstances surrounding the allegation of apparent bias. Consequently, it is prudent that one must first examine the facts being relied

upon by the Accused and their context before considering whether they are capable of giving rise to an appearance of bias.

[20] I will now consider each of the complaints arising from the exchanges outlined above. The first complaint concerns my response to Learned Counsel's explanation regarding the difficulties he experienced following the passage of Hurricane Melissa and my remarks concerning his role as a Member of Parliament. Having carefully reviewed the entirety of the exchange, I am unable to conclude that a fair-minded and informed observer would view my remarks as dismissive or hostile towards Learned Counsel for the Accused. Nor would a fair-minded and informed observer conclude that I was biased against Learned Counsel for the Accused. In my opinion, a fair-minded and informed observer could reasonably conclude after examining the Notes of Evidence in its entirety that my primary concern was the delay in bringing the matter to the Court's attention. Hurricane Melissa impacted the island on the 28th day of October, 2025, yet the Court was not informed of the difficulties Learned Counsel had until the day the matter was set to continue. In those circumstances, it is my view that the fair-minded and informed observer would conclude that it was entirely proper for me to enquire why assistance had not been sought earlier. My repeated references to the timing of the letter demonstrates that my concern was directed towards the efficient management of the proceedings and not towards Learned Counsel for the Accused personally. I also wish to note that, although the Notes of Evidence do not disclose this fact, the evidence establishes that the letter dated the 1st day of December, 2025 was filed at the incorrect registry. Consequently, the correspondence did not come to the attention of the Court prior to the 5th day of December, 2025, thereby contributing to the delay in the Court becoming aware of the difficulties being experienced by Learned Counsel for the Accused.

[21] The fair-minded and informed observer would also take into account that the matter before the Court on that date was a continuing part heard trial for which judicial time had been allocated and arrangements made. The fair-minded and informed observer would recognise that Judges have a duty to ensure the efficient

administration of justice, and efficient management of time and resources and are therefore entitled to enquire into circumstances that may affect the progression of a trial. Viewed in that context, the remarks could not be said to have been indicative of the appearance of bias.

[22] Respectfully, I also do not accept that my comments concerning Learned Counsel for the Accused role as a Member of Parliament would lead a fair-minded and informed observer to conclude that there was an appearance of bias. That remark, read in its proper context, shows that my response was that his responsibilities as a Member of Parliament did not bear upon the issue with which I was concerned, namely the delay in notifying the Court of the difficulties he was facing. Further, the Notes of Evidence show that I was addressing Learned Counsel for the Accused in his professional capacity as an Attorney-at-Law appearing before the Court. The fair-minded and informed observer would appreciate that all Attorneys-at-Law are subject to the same professional obligations irrespective of any public office they may hold. In my view, the Notes of Evidence do not reveal a refusal by me to hear Learned Counsel for Accused concerns. In fact, I made enquiries as to whether the Learned Crown Counsel had been made aware of the difficulties and I made the observation that her notes could have been made available to Learned Counsel for the Accused in the interim.

[23] When the exchange is viewed in its entirety and in its proper context, I am satisfied that the fair-minded and informed observer would regard my comments as part of a legitimate discussion concerning case management, preparation for trial, and the late notification of difficulties arising from Hurricane Melissa. Such an observer would not conclude that there was a real possibility that I was biased against Learned Counsel for the Accused or his client.

[24] The next complaint concerns my remarks during the cross-examination of the witness, namely my observation and remarks that Learned Counsel for the Accused was not taking notes and that it was not permissible to record proceedings. Learned Counsel for the Accused submitted that I publicly and

baselessly accused him of illicitly recording the proceedings, thereby undermining his credibility before his client and demonstrating hostility towards him. The Accused similarly deposed that he observed me make a baseless accusation against his Attorney-at-Law and that this, together with the tenor and tone of my conduct, led him to believe that I held contempt for his Counsel. However, the issue before me is not whether Learned Counsel for the Accused or his client subjectively perceived the exchange as hostile or unfair. The applicable test is an objective one, a point which Learned Counsel for the Accused placed considerable reliance throughout his submissions. The issue to be determined by me is not whether Learned Counsel Mr. Buchanan or the Accused personally perceived my remarks as hostile, baseless, or unfair, but whether the fair-minded and informed observer, having considered all the facts and circumstances, would conclude that there was a real possibility of bias.

- [25]** The Notes of Evidence show that I did not accuse Learned Counsel for the Accused of not taking notes, I made a comment on what I observed, that is, that it appeared that Learned Counsel for the Accused was not taking notes and that it looked to me like he was trying to communicate to the police officer in the courtroom. Learned Counsel for the Accused submitted that I went on to say that the distraction of the police officer could lead to an attempted escape. Respectfully, I disagree with Learned Counsel for the Accused submissions on this point. It must be noted that the Notes of Evidence do not contain any reference to the possibility that distraction of the police officer could lead to an attempted escape by the Accused. In fact, when Learned Counsel for the Accused was making this application, I drew his attention to the fact that no such comment appears in the Notes of Evidence. Learned Counsel for the Accused accepted that those words were not used by me and he explained that his submission was based on his interpretation of my remarks. The fact that Learned Counsel for the Accused and his client were led to believe that I was expressing a concern about the possibility of an attempted escape does not transform that belief into a statement made by

me. Nor can such a belief, without more, form part of the factual basis upon which an allegation of apparent bias is to be assessed.

[26] After a careful examination of the Notes of Evidence, I am satisfied that the fair-minded and informed observer could not conclude that my behaviour or conduct gave rise to a suspicion that I am not impartial. When Learned Counsel for the Accused responded that he was not recoding but rather asking questions based on the witness's answers, I did not pursue the matter any further. There was no finding that Learned Counsel was in fact recording the proceedings. It would be inaccurate to characterise my remarks as a baseless accusation. The fair-minded and informed observer would see that my remarks appear to have risen from an observation I made in the course of the proceedings rather than from a preconceived view about Learned Counsel for the Accused. The fair-minded and informed observer would appreciate that Judges have a responsibility to ensure that proceedings are conducted in accordance with the rules governing the Court. In those circumstances it would be unlikely for the fair-minded and informed observer to conclude that the exchange demonstrated hostility, prejudice, or a lack of impartiality.

[27] Finally, I do not accept that there was a stark contrast between the manner in which I dealt with the Crown and the Defence in relation to the issue of Hurricane Melissa. In my view, the fair-minded and informed observer, having examined the Notes of Evidence, would be slow to characterise my responses as demonstrating disparate and unequal treatment as between the Crown and the Defence. In relation to Learned Counsel for the Accused explanation regarding the impact of Hurricane Melissa on his preparation, my comments were directed to the timing of the notification and the fact that the issue was only being brought to my attention on the date fixed for the continuation of the trial. In contrast, when Crown Counsel indicated that a Crown witness was unavailable due to being affected by the same hurricane, the Notes of Evidence reflect that I engaged with the explanation and acknowledged the difficulties being experienced by persons whose homes had been damaged. Significantly, I expressly acknowledged the possibility that

Learned Counsel for the Accused may have suffered similar effects from the hurricane. This, in my opinion, undermines Learned Counsel for the Accused suggestion that I drew any adverse or dismissive distinction between the circumstances he faced and those of the Crown witness or other affected persons. It is noteworthy that the letter dated the 1st day of December, 2025 does not expressly state how the notes were lost during the passage of Hurricane Melissa. Although I do not see any reference in the Notes of Evidence as to the precise circumstances in which the notes were lost, I recall Learned Counsel for the Accused stating that his notes had in fact been destroyed.

[28] The fair-minded and informed observer would see that the Notes of Evidence do not disclose a materially different approach to the parties, but rather it shows me responding to two different procedural situations, namely, one involving the late notification of difficulties that Learned Counsel for the Accused was facing and the confirmed availability of a witness already bound over to attend Court. In those circumstances, the fair-minded and informed observer would not conclude that I treated the Defence and the Crown in a disparate manner so as to give rise to a real possibility of bias.

[29] Having considered the exchanges individually and cumulatively, I do not accept that the Notes of Evidence disclose hostility, utmost contempt or animus towards Learned Counsel for the Accused and/or his client. In my view, the fair-minded and informed observer would not conclude from these exchanges that Learned Counsel was being treated in a manner that prevented him from fearlessly representing his client. I would add that the maintenance of professionalism, civility, and respect within the courtroom is a responsibility shared by all participants in the judicial process. Where disagreements arise, they should be addressed in a manner consistent with those obligations. Applications alleging bias are serious matters and should not be approached lightly. Such an application concerns public confidence in the administration of justice and should therefore be advanced and determined with careful regard to the objective evidence.

CONCLUSION

[30] Based on the foregoing, it is my view that the fair-minded and informed observer would not conclude that there was bias or the possibility of bias on the part of this Tribunal. Therefore, the Application for Recusal is refused.