

The Right to a Fair Trial: Lady Scott's Problem

Introduction

1. The Hon Lady Scott QC will introduce the Lord Advocate at the Justice Scotland Human Rights Day Lecture 2016 (Laigh Hall, 9th of December). Lady Scott is a Senator of the College of Justice, a founding member of the Justice organisation and was its first chair.
2. This paper¹ will briefly explain why the facts contained in the above paragraph effectively disqualify Lady Scott from any further judicial duties.

Lady Scott's Problem

3. The law states that all judges must be independent and impartial: It is settled law that if a friend or relation is a party to a case or even a witness then a judge will be unable to judge the case impartially and as such the judge is disqualified from sitting.²
4. So, what about the situation here? After Lady Scott has introduced the Lord Advocate (no doubt in glowing terms) and after they have attended the social gathering following then it will be clear that she can no longer judge impartially. The fair minded and informed observer³ will conclude that there is a real possibility that Lady Scott will be biased in any case that involves the Lord Advocate. This is in the sense that she will unconsciously favour him due to them working and socializing together at an event. Additionally, she will be unconsciously bound by the glowing terms of her introduction.
5. **Note:** The Lord Advocate is a member of the Scottish Executive and is responsible for the prosecution of all crimes in Scotland. In civil matters the Scottish Executive represented by the Lord Advocate are either a party, or a potential party, in all trials and civil cases.
6. Lady Scott must⁴ disclose her links to the Lord Advocate before any case that she is scheduled to hear. It is difficult to imagine that any accused or any party to a civil case will even consider waiving their right to an impartial judge.
7. **Lady Scott's Problem:** After introducing today's lecture by the Lord Advocate, Lady Scott is disqualified from sitting as a judge.

¹ The Fair Trial section at the Scottish Human Rights Union contains this and more detailed papers on bias: www.shru.org

² *Davidson v the Scottish Ministers* 2005 1 S.C. (H.L.) 7 at Paragraph 6

³ The test for apparent bias: *Magill v Porter* [2002] 2 AC 357

⁴ The common law rules on declinature: *Clancy v Caird* [2000] ScotCS 96 at paragraph 10. See also *Davidson* at Para 19.