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JUSTICE FOR ALL

CAITRIONA FOGARTY

I am Caitriona Fogarty a Jersey lawyer.

I knew Geoffrey long before I really knew Geoffrey. He was the English judge who agreed to finish a Jersey trial started by another off -Island judge who had severed an indictment, tried a tenth of it, and then flounced off the case in a huff.

Like all lawyers facing a judicial unknown quantity, I took a very good look at Geoffrey the first time I appeared before him, as did no doubt the lawyer acting for my client's co-accused, the subject of the eventual Privy Council case. Geoffrey probably did not notice the scrutiny. But if he had done, he had nothing to fear. By the end of that short first appearance I knew that the case was in good hands. He was firm, fair, and above all polite to counsel. This latter point is utterly essential in any complex case where there are a number of accused and a number of lawyers. The tenth of the trial already tried had been the most unpleasant experience I had ever had in a court of law since the day I qualified. With Mr Nice (as he then was) it was clear that there would be no tantrums, no throwing of weight about, no bullying. In short, Geoffrey, as the trial was to make plain, was indeed "The Very Nice Sir Geoffrey" as his nickname became between defence Counsel over the course of the next five months". It was a huge relief. In fact I was so horrified after reading the Privy Council judgment of 2009 , that I wrote a long letter outlining what had happened in the Royal Court and the factors which underpinned the case (some of which I touch on here) for onward provision to the Privy Council. It was obvious that the judgment could destroy Geoffrey. I had been at the trial. None of the Counsel appearing before the Privy Council had been there. As I said in that letter, had it not been for the inclusion of names I



would have thought the judgment referred to some other case. It bore no resemblance whatsoever to the case in which I had appeared. It has certainly shown me just how easily a court may be bamboozled.

What Geoffrey did not know (and this is something Jersey lawyers took for granted) was that the jurisdiction had undergone rapid and significant changes in the few years prior to the trial of Peter Michel and Simone Gallichan over which he was to preside. The Island has always been savage on any form of dishonesty by Islanders towards investors. There had been, however, a rapid and hugely significant change in Island financial services prior to the coming into force of the Proceeds of Crime (Jersey) Law on 1 July 1999 under which the charges to be tried were framed. About this change, a non-local judge could not be expected to know.

As all lawyers of a certain vintage know, there was a time when jurisdictions tax arrangements were its own affair. This changed with the advent of the “global” economy. The expansion of the European Union, the growing concepts of tax harmonization and unfair tax advantage led to profound change in the European jurisdictions of which the UK was one. Jersey is not part of the EU and has a separate relationship with it under Protocol 3, negotiated by the UK which is responsible for Jersey’s external affairs. It is a third country as regards fiscal harmonization and financial services. Nevertheless, a certain pressure was applied to ensure greater conformity, both legal and moral, in the “global” world.

The Island to which I returned after a long absence in 1985 was a place where knowing your client (or KYC in financial services jargon) effectively meant having had a long relationship with him. The lawyer had, of course, to be satisfied that his client was not involved in criminal activity which broadly meant guns or drugs, and if a service provider was personally confident that neither guns nor drugs underlay the financial services activity of the client, he could be ‘satisfied’ and do what was asked of him. Jersey, like other low tax jurisdictions, did very well out of this state of affairs. Thus the enactment of the 1999 Law, which was some years in the preparation, and which made the checks to be performed before doing business extremely rigorous, was a major upheaval. The change was neither welcomed nor understood by all FS providers such as Mr Michel at that time, although that is not the position today.



I well remember my astonishment on returning to the Island after a long period away but long before the change in the law, at the £50 English banknote cash machines of the 1980s and early 90s located outside and inside high street banks, seemingly on every street corner, that allowed cash to be drawn in immense sums to be handed to or withdrawn by a FS client, no questions asked provided that neither guns nor drugs were involved..

As I studied for the local law exams I became aware of concepts such as the Exempt Company used by non-locals which paid no Jersey taxes provided that its activities in the Island were ‘administrative’ in nature. Local financial service providers usually had a plethora of foreign corporate nameplates affixed to their entrance halls and multiple telephone lines for the provision of corporate “administration” installed at the service providers address, and it was to the owners of such companies that these immense sums could be transferred – provided of course there was no suspicion about drugs or guns.

It is easy to see now how such facilities, amongst others, might be utilized by organized criminals, including tax evaders, as indeed the evidence in the Michel case showed that they were. What is less easy to see from the perspective of 2017 is that before the 1999 Law, such things were perfectly legitimate in Jersey. The activities facilitated by the Exempt Company, the related International Business Company, and the English note cash machines, coupled with long professional acquaintance (nothing to do with drugs or guns, mind) might be perfectly legal in Jersey although the effects of their operation might be illegal elsewhere. Broadly it was up to other jurisdictions to enforce their own laws. It may now seem like the Wild West. Well – times have most definitely changed and for the better. In today’s world a man is deemed to be a rogue until proven otherwise by extensive statutory KYC.

If Geoffrey and indeed the two Jurats at the trial – neither of whom had a professional background in financial services - were to understand the evidence in the Michel case, they had to know about the landscape before and after 1 July 1999. The prosecution case was investigated largely by English lawyers who could not be expected to know - and indeed appeared not to know - about these things, which led to the drawing of misleading and in some cases downright unfair conclusions from the evidence. Fortunately Geoffrey was mightily puzzled by some of the testimony both written and oral. He asked for assistance and as a lawyer educated during the



relevant period before and after the 1999 Law I was in a position to help by the provision of a substantial and no doubt rather boring exposition of the bones of the culture change.

The evidence in the case showed that it was not just Peter Michel who failed to change his ways after 1 July 1999. Major high street banks and others were quite clearly doing many of the same things as Michel after the relevant date. Why was Michel prosecuted and they not prosecuted? I don't know. Maybe it was because the jurisdiction did not need the small operators but did need the major banks; maybe their temporary transgressions were overlooked in return for the provision of evidence against the smaller unnecessary scapegoat. Probably a Policy decision – taken in the so-called public interest. I have never liked “policy” decisions of this kind when all are supposed to be equal before the law. But that is another story.

The Michel case and its consequences were undoubtedly traumatic for Geoffrey. However from my perspective it enabled me to get to know him, to attend some of his lectures and become acquainted with the important work in the wider world he has undertaken during a lifetime as a lawyer. My admiration for his legal achievements and even more for his personal fortitude in the face of adversity is unbounded. My former tendency to treat all judges as if they were angry hornets has been much modified. Being a judge is no doubt a lonely life, but a judge is also a real person, a man of feeling, and capable of great humanity.

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