IN THE HIGH COURT OF AUSTRALIA
CANBERRA REGISTRY

BETWEEN: ANTON TUTOVEANU
Plaintiff

and

COMMONWEALTH OF AUSTRALIA
Defendant

AFFIDAVIT

I, Anton Tutoveanu, of 490 Pitt Street, Haymarket NSW 2000, computer scientist, affirm as follows:

1. The news article [Exhibit 'JE 1', page 4].
2. The written advice dated 25th August 2025 [Exhibit 'AT 3', pages 6-14].

AFFIRMED by the deponent
at Sydney in New South Wales
on 25th August 2025.

Before me:

Signature
[name and qualification of witness administering oath or affirmation]

David Marshall-Martin

JP 189419

c/o DCJ Appointments and Applications
6 Parramatta Square, 10 Darcy Street
PARRAMATTA NSW 2150

Signature of deponent

IN THE HIGH COURT OF AUSTRALIA
CANBERRA REGISTRY

Affidavit of Anton Tutoveanu affirmed on 25th August 2025

INDEX OF EXHIBITS

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Defendant

EXHIBIT "JE 1"

This is the exhibit marked "JE 1" produced and shown to Anton Tutoveanu at the time of affirming his affidavit this 25th August 2025.

Before me Article

David Marshall-Martin

JP 189419

~~Solicitor~~/Justice of the Peace

Judge and Jewry

Justice James Edelman has been appointed as the first Jewish Justice of the High Court of Australia since 1931.

By JOSHUA LEVI
December 1, 2016, 12:00 am

JUSTICE James Edelman has been appointed as the first Jewish Justice of the High Court of Australia since Sir Isaac Isaacs, who retired from the court in 1931.

"It's extremely exciting and a wonderful appointment," Edelman told *The AJN* this week.

"I was telephoned by the Prime Minster and Attorney General on Monday."

Edelman, who grew up in Perth, had his bar mitzvah at Temple David, but has travelled a fair bit since then.

"I went to the shul in Oxford in England, went back to Perth and moved to Queensland.

"I see myself as Jewish, but very liberal," the 42-year-old said.

"I fast on Yom Kippur, don't eat ham, bacon or prawns and am bringing up our children Jewish."

Edelman said being Jewish won't have much of an impact on his judicial rulings because the law is based on an underlying natural foundation and moral base that transcends religion.

Edelman hold degrees of Bachelor of Economics, Bachelor of Laws, Bachelor of Commerce, and a Doctor of Philosophy.

In 2011, he was appointed to the Supreme Court of Western Australia and was appointed to his current position as Judge of the Federal Court of Australia in April 2015.

Edelman is expected to remain on the High Court until the statutory retirement age of 70.

JOSHUA LEVI

IN THE HIGH COURT OF AUSTRALIA
CANBERRA REGISTRY

BETWEEN: ANTON TUTOVEANU
Plaintiff

and

COMMONWEALTH OF AUSTRALIA
Defendant

EXHIBIT "AT 3"

This is the exhibit marked "AT 3" produced and shown to Anton Tutoveanu at the time of affirming his affidavit this 25th August 2025.

Written advice

Before me

David Marshall-Martin

JP 189419

~~Solicitor~~/Justice of the Peace

IN THE HIGH COURT OF AUSTRALIA
CANBERRA REGISTRY

BETWEEN: ANTON TUTOVEANU
Plaintiff

and

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Defendant

WRITTEN ADVICE

INTRODUCTION

1. This advice is for a pre-trial interlocutory application regarding the partial recusal of specified judicial officers.

PRE-TRIAL APPLICATION

2. "The plaintiff makes an interlocutory, pre-trial application for:

    1. Bias

        a. Anyone with interest in the case that may conflict with impartial judicial duties, such people who may be:

            i. Israelian
            ii. Palestinian
            iii. Jewish
            iv. Muslim

    2. Questions of Law

        b. Declaratory relief:

            i. Whether the Israeli Government and its Defense Force (IDF) is a ***terrorist organisation*** for the purposes of the *Criminal*

Code 1995 (Cth).

ii. If true, when Commonwealth subjects purchase products[1] that have been made by Israel, is that considered providing support to or financing terrorism?

iii. Is the Governor-General a Commonwealth officer that is susceptible to a writ of mandamus from the High Court?"

EVIDENCE

3. The plaintiff provided an affidavit with exhibits 'JE 1' and 'AT 3'.

CHRONOLOGY

4. On 1st December 2016 an article was published by The Australian Jewish News[2].
5. On 10th July 2025 the plaintiff lodged an interlocutory application prior to substantive proceedings seeking to issue a Constitutional or Other Writ pursuant to s 75(v) of *Commonwealth Constitution*.
6. On 25th August 2025 the plaintiff provided submissions on the first order sought with direction for continuing towards determining several questions of law.

FACTS

7. The interlocutory declaratory relief involves making a determination on geo-political events occurring in Israel and Palestine as of 2025.
8. Israel's population has more than 70% of citizens identifying as Jewish[3] and one of its active political parties is called National Religious Party–Religious Zionism[4].
9. The High Court's judicial officer James Edelman has more than a negligible heritage and background of identifying as Jewish.

STATUTORY PROVISIONS

The Constitution (Cth)

10. *The Constitution* (Cth) initialises the powers of Australian courts to make orders in event of legal causes of action. It is the entry point of the law:
11. "**5. Operation of the Constitution and laws.**

[1] Exhibit 'AT 1', page 53
[2] Exhibit 'JE 1', page 4
[3] https://www.cbs.gov.il/en
[4] https://zionutdatit.org.il/

This Act, and all laws made by the Parliament of the Commonwealth under the Constitution, shall be binding on the courts, judges, and people of every State and of every part of the Commonwealth, notwithstanding anything in the laws of any State; ..."

Evidence Act 1995 (Cth)

12. "**Part 2.1—Witnesses**

Division 1—Competence and compellability of witnesses

...

16 Competence and compellability: judges and jurors

...

(2) A person who is or was a judge in an Australian or overseas proceeding is not compellable to give evidence about that proceeding unless the court gives leave."

13. "**Part 3.2—Hearsay**

Division 1—The hearsay rule

59 The hearsay rule—exclusion of hearsay evidence

(1) Evidence of a previous representation made by a person is not admissible to prove the existence of a fact that it can reasonably be supposed that the person intended to assert by the representation.

...

Division 3—Other exceptions to the hearsay rule

...

75 Exception: interlocutory proceedings

In an interlocutory proceeding, the hearsay rule does not apply to evidence if the party who adduces it also adduces evidence of its source."

14. "**Part 3.4—Admissions**

81 Hearsay and opinion rules: exception for admissions and related representations

(1) The hearsay rule and the opinion rule do not apply to evidence of an admission.

(2) The hearsay rule and the opinion rule do not apply to evidence of a previous representation:

(a) that was made in relation to an admission at the time the admission was made, or shortly before or after that time; and

(b) to which it is reasonably necessary to refer in order to understand the admission.

...

82 Exclusion of evidence of admissions that is not first-hand

Section 81 does not prevent the application of the hearsay rule to evidence of an admission unless:

(a) it is given by a person who saw, heard or otherwise perceived the admission being made; or

(b) it is a document in which the admission is made.

...

88 Proof of admissions

For the purpose of determining whether evidence of an admission is admissible, the court is to find that a particular person made the admission if it is reasonably open to find that he or she made the admission."

15. "**Part 4.2—Judicial notice**

...

144 Matters of common knowledge

(1) Proof is not required about knowledge that is not reasonably open to question and is:

(a) common knowledge in the locality in which the proceeding is being held or generally; or

(b) capable of verification by reference to a document the authority of which cannot reasonably be questioned."

LEGAL PRINCIPLES

Recusals

Earlier

16. *Re JRL; Ex parte CJL*[5]:

"The problem is governed by the principle that a judge should disqualify himself from hearing, or continuing to hear, the matter if the parties or the public entertain a reasonable apprehension that he might not bring an impartial and unprejudiced mind to the resolution of the issues (Reg. v. Watson; Ex parte Armstrong [1976] HCA 39; (1976) 136 CLR 248, at pp 258-263; Livesey v. New South Wales Bar Association [1983] HCA 17; (1983) 151 CLR 288, at pp 293-294). This principle, which has evolved from the fundamental rule of natural justice that a judicial officer

[5] *Re JRL; Ex parte CJL* [1986] HCA 39; (1986) 161 CLR 342 Mason J at [4]f and Wilson J at [4]

should be free from bias, reflects a concern with the need to maintain public confidence in the administration of justice. This concern is expressed in the cognate principle that, not only must justice be done, it must be seen to be done.

It seems that the acceptance by this Court of the test of reasonable apprehension of bias in such cases as Watson and Livesey has led to an increase in the frequency of applications by litigants that judicial officers should disqualify themselves from sitting in particular cases on account of their participation in other proceedings involving one of the litigants or on account of conduct during the litigation. It needs to be said loudly and clearly that the ground of disqualification is a reasonable apprehension that the judicial officer will not decide the case impartially or without prejudice, rather than that he will decide the case adversely to one party. There may be many situations in which previous decisions of a judicial officer on issues of fact and law may generate an expectation that he is likely to decide issues in a particular case adversely to one of the parties. But this does not mean either that he will approach the issues in that case otherwise than with an impartial and unprejudiced mind in the sense in which that expression is used in the authorities or that his previous decisions provide an acceptable basis for inferring that there is a reasonable apprehension that he will approach the issues in this way. In cases of this kind, disqualification is only made out by showing that there is a reasonable apprehension of bias by reason of prejudgment and this must be "firmly established" (Reg. v. Commonwealth Conciliation and Arbitration Commission; Ex parte Angliss Group (1969) 122 CLR 546, at pp 553-554; Watson, at p 262; Re Lusink; Ex parte Shaw (1980) 55 ALJR 12, at p 14; 32 ALR 47, at pp 50-51). Although it is important that justice must be seen to be done, it is equally important that judicial officers discharge their duty to sit and do not, by acceding too readily to suggestions of appearance of bias, encourage parties to believe that by seeking the disqualification of a judge, they will have their case tried by someone thought to be more likely to decide the case in their favour."

"... It has been recognized that in a case such as the present, where there is no allegation of actual bias, the test of reasonable suspicion may be a difficult one to apply involving questions of degree and particular circumstances which may strike different minds in different ways: Re Shaw; Ex parte Shaw (1980) 55 ALJR 12, at p 16; 3[1948] VicLawRp 33; 2 ALR 47, at p 54; Livesey, at p 294. A court of review must be careful not to exaggerate the significance of actions or statements made by a judge in the course of a proceeding. There must be "strong grounds" (Reg. v. Australian Stevedoring Industry Board; Ex parte Melbourne Stevedoring Co. Pty. Ltd. [1953] HCA 22; (1953) 88 CLR 100, at p 116) for inferring the existence of a reasonable suspicion. ..."

17. *Dovade Pty Ltd v Westpac Banking Group*[6]:

"**(c) Claim of reasonable apprehension of bias.**

[6] Dovade Pty Ltd & Ors v Westpac Banking Group & Anor [1999] NSWCA 113 (Mason P, Sheller JA, Stein JA) at [90]-[93], [99]-[102]

We have indicated why the facts of this case (including those relating to Mrs Rolfe's shareholding in Westpac) do not attract the "bright line" principle stemming from ***Dimes***. The appellants' alternative submission is that a reasonable bystander would apprehend bias from the objective facts, alternatively from the non-disclosure of them by the judge.

It was common ground that the test to be applied was whether, in all of the circumstances of the particular case, the parties or the public might entertain a reasonable apprehension that the judge might not bring an impartial and unprejudiced mind to the resolution of the question involved (see ***Livesey v The New South Wales Bar Association*** (1983) 151 CLR 288 at 293-4; ***Webb v The Queen*** (1994) 181 CLR 41 at 47, 51-2, 67-8, 87). As Deane J pointed out in ***Webb*** (at 67-8), the fair-minded observer is assumed to know all of the material objective facts. See also ***S & M Motors Pty Ltd v Caltex Oil (Australia) Pty Ltd*** (1988) 12 NSWLR 358 at 380-1; ***Gascor v Ellicott*** [1997] 1 VR 332 at 340, 342-3.

In ***Gascor*** Tadgell JA observed (at 342) that:

Although the criterion of apprehension of partiality or prejudice is possibility, not likelihood, a reasonable apprehension is to be established to the court's satisfaction: it is a reasonable and not a fanciful or fantastic apprehension that is to be established; and the apprehension is to be attributed to an observer who is "fair-minded" - which means "reasonable". As Mason CJ and McHugh J pointed out in ***Webb v R*** *at 52 "… it is the court's view of the public's view, not the court's own view, which is determinative". Even so, the court is to be satisfied that the criterion* **is** *met not that it* **might** *be. In* ***Builders' Registration Board of Queensland v Rauber*** *(1983) 57 ALJR 376 at 384, Brennan J observed that:*

> *Each of the indicia which a party proves and relies upon to show a reasonable suspicion [which is to be substantially equated with a reasonable apprehension] of bias must be examined, and the Court is called on to determine whether, upon such indicia, a reasonable suspicion of bias arises.*

(The parenthetical clause in the passage cited from Brennan J is added by Tadgell JA.)

A claim of apprehended bias should be considered in the context of the judicial function and the public perception of it. There is a presumption that public officers have acted with honesty and discretion (**Broom's Legal Maxims** 10th ed p642). In the case of a judicial officer, this is no empty form. It is reinforced by the accountability necessarily inherent in the public processes of litigation and the disappointed litigant's right of appeal. Every judge swears to *"do right to all manner of people according to law without fear or favour, affection or ill-will"*. This public oath is not a talisman against error, but it forms the constant back-drop to the way in which each judge functions on and off the bench. The history and reach of the oath were discussed by Sir Gerard Brennan on his swearing in as Chief Justice of the High Court of Australia (see 183 CLR at px.). The level of public confidence in the judiciary is based upon experience and a general perception of the rule of law."

"If any general principle can be derived from the discussion in ***Auckland Casino Ltd***, it is that a reasonable apprehension of bias may well arise in a case where a close member of a judge's family owns an asset such as a parcel of shares, to the knowledge of the judge, in circumstances where the outcome of the dispute might affect the value of that property. This is not to be seen as a categorical statement, or one incapable of being subject to proper exceptions. But this is clearly a situation where the ***Livesey*** principle may apply depending on the circumstances.

... the relationship that now exists between a banking corporation and its customers is necessarily highly impersonal and remote. ... No one would reasonably apprehend that the judge might be diverted from the judicial oath to do justice without fear or favour, affection or ill will by the mere existence of such a link.

...

Obviously, there will be situations where the affairs of a particular bank branch or group of bank personnel are involved in litigation, or where the judge has some special association with the branch or bank personnel. ... that there may be actual bias or at least its appearance to a reasonable observer."

18. *Minister for Immigration v Jia Legeng* [2001] HCA 17

19. *Smits v Roach* (2006) 227 CLR 423

20. *Murlan Consulting Pty Ltd v Ku-ring-gai Municipal Council* [2009] NSWCA 300

21. *CUR24 v DPP* [2012] NSWCA 65

Recent

22. *McIver v R* [2020] NSWCCA 343 at [74]

23. *Charisteas v Charisteas* [2021] HCA 29

24. *QYFM v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs*[7]:

"... it was emphasised in *Livesey* that the determination of questions of apprehended bias can involve evaluations of degree on which reasonable minds might differ and that a conclusion of apprehended bias on the part of an individual judge implies no criticism of that judge. As for sensitivities between judges at different levels of the judicial hierarchy, so for sensitivities between judges within a multi-member court.

If, upon objection being taken, a procedure is followed according to which the judge in question places his or her knowledge of all relevant facts on the record at the outset, there is no reason why the requisite evaluative judgment ought not be formed by each judge of a multi-member court on the totality of the evidentiary

[7] *QYFM v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2023] HCA 15 Kiefel CJ and Gageler J (as they were) at [31]-[32]

> material before that court. The judge's state of mind itself being a question of fact, there is also no reason why the same procedure should not be adopted in the unusual (and ordinarily unnecessary and inappropriate) event of an objection being made on the ground of actual bias. In such an event, the determination of the objection would remain for the court even though the disclosure by the judge in question of his or her state of mind would in practice resolve the question of jurisdictional fact as to whether or not actual bias existed."

25. *Director of Public Prosecutions v Smith* [2024] HCA 32

Most cited

26. *Ebner v Official Trustee in Bankruptcy* [2000] HCA 63

27. *Johnson v Johnson* [2000] HCA 48

28. *Re Refugee Review Tribunal; Ex parte H* [2001] HCA 28

SUBMISSIONS

Admissibility

Is a news article admissible to prove the assertion that the judicial officer James Edelman is Jewish?

29. The author of the article is Joshua Levi who represents that: "Edelman told The AJN ... *"I see myself as Jewish ..."* "

30. The evidence appears to be first-hand hearsay.

31. *Evidence Act 1995* (Cth) permits the information as fact in several ways:

    a. s 75 exception in interlocutory proceedings

    b. s 81 exception of admissions

    c. s 144 matter of common knowledge

32. It is submitted s 144 is likely the most appropriate[8] section for the asserted factual representation.

Apprehended bias

33. The plaintiff submits that an average-minded observer would perceive bias regarding judicial officers that belong to the class of persons specified in 1.a.i.-iv. of the interlocutory application.

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[8] The other sections aren't procedurally ideal (s 75 exception usually follows a subsequent subpoena to the source and s 81 may imply connotation).

34. For example there is sufficient link[9] between the ethno-religious Jewish identity and the geo-political region of Israel which can lead to a perception of apprehended bias to the broader community and median members of the public.

Mental Health

35. Although it is perhaps a great distance from contracting a medical condition akin to nervous shock, being exposed to distressing content of extreme violence can have a greater impact on persons having special connection to surrounding areas, place or persons.

Personal Security

36. There is foreseeable potential for harassment or vilification by extremists in society.

Judicial Integrity

37. For the principles identified in case law above.

Public Criticism

38. The high profile nature of the proceedings motivates a high standard of integrity especially considering the available resources.

39. The public may have irrational and emotionally charged opinions.

ORDERS SOUGHT

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40. The judicial officer James Edelman be recused from hearing and determining 2.a.i and 2.a.ii of the pre-trial interlocutory application dated 10th July 2025.

Directions

41. The plaintiff is to file an asserted chronology of relevant events surrounding the State of Israel and Palestinian territories from 7th October 2023 to present.

42. The plaintiff is to file accompanying written submissions.

Dated: 25 August 2025

.....

Anton Tutoveanu

Plaintiff

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[9] Unconscious, sub-conscious, conscious emotions sway the state of mind.