

Federal Court of Appeal



Cour d'appel fédérale

Date: 20151102

Docket: A-549-14

Citation: 2015 FCA 238

Present: STRATAS J.A.

BETWEEN:

RACHEL EXETER

Appellant

and

**ATTORNEY GENERAL OF CANADA
(Deputy Head, Statistics Canada)**

Respondent

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on November 2, 2015.

REASONS FOR ORDER BY:

STRATAS J.A.

Federal Court of Appeal



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REASONS FOR ORDER

STRATAS J.A.

[1] In a letter dated October 30, 2015 and sent to this Court, Ms. Exeter asks that I recuse myself from the panel hearing this appeal (“the present appeal”), scheduled to be heard on November 4, 2015. I shall deal with her letter as a motion for recusal.

[2] Ms. Exeter focuses upon reasons I wrote for the Court dismissing one of her earlier appeals: 2014 FCA 119 (“the earlier appeal”). Ms. Exeter alleges that in my reasons I misquoted

or falsely quoted a statement she made during argument. She also takes issue with other “erroneous findings” in those reasons, including the finding that her appeal was vexatious and an abuse of process. In her view, those findings were based on the alleged misquote or false quote. From all of this, she alleges that I will not have an open mind when hearing the present appeal.

[3] The reasons in the earlier appeal, concurred in by the Chief Justice and Webb J.A., speak for themselves. Those reasons show that the Court’s findings—not just my findings—were based on more than the alleged misquote or false quote.

[4] The Chief Justice appointed me to sit on the present appeal. I had no input into that decision. Having been appointed to this appeal panel, I cannot recuse myself absent good legal cause. The law is clear that good legal cause exists if I were biased in fact against Ms. Exeter or her case or otherwise unable to decide the present appeal fairly. Further, good legal cause exists if the legal test for apparent bias is made out. That test is whether a reasonable, fully-informed person, thinking the matter through, would conclude that it is more likely than not that I, whether consciously or unconsciously, would not decide the present appeal fairly: *Committee for Justice and Liberty et al. v. National Energy Board et al.*, [1978] 1 S.C.R. 369 at page 394.

[5] On the issue of actual bias or unfairness, I confirm that I have approached and will continue to approach the present appeal with an open mind. Each appeal is separate and deserves separate consideration. In the earlier appeal, I was one of three judges who concluded that it had no merit. That is now irrelevant to my consideration of the present appeal. One appeal may have

no merit but another appeal may. It all depends on the facts in the record and the law. I decide appeals on that basis.

[6] I have already read Ms. Exeter's memorandum with an open mind and I will consider her oral submissions in the appeal with an open mind and I look forward to them. I assure Ms. Exeter that I have never had any ill-will or other negative sentiment against her or any of her proceedings. I do not believe that the reasons in the earlier appeal misquoted Ms. Exeter but if they did, that was accidental.

[7] On the issue of apparent bias, I find that the test is not made out. In my view, the facts alleged by Ms. Exeter in her letter (summarized above), the reasons setting out the bases for the dismissal of the earlier appeal, and the explanations I have provided in these reasons would lead the reasonable, fully-informed person to conclude that I will decide the present appeal fairly and with an open mind.

[8] Therefore, I dismiss the motion for recusal.

"David Stratas"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:

A-549-14

STYLE OF CAUSE:

RACHEL EXETER v. ATTORNEY
GENERAL OF CANADA (Deputy
Head, Statistics Canada)

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY:

STRATAS J.A.

DATED:

NOVEMBER 2, 2015

WRITTEN REPRESENTATIONS BY:

Rachel Exeter

ON HER OWN BEHALF

SOLICITORS OF RECORD:

William F. Pentney
Deputy Attorney General of Canada

FOR THE RESPONDENT