

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20171127**

**Docket: A-429-15**

**Citation: 2017 FCA 234**

**Present: DE MONTIGNY J.A.**

**BETWEEN:**

**SHELDON BLANK**

**Appellant**

**and**

**THE MINISTER OF JUSTICE**

**Respondent**

Heard at Winnipeg, Manitoba, on November 27, 2017.

Order delivered at Winnipeg, Manitoba, on November 27, 2017.

**REASONS FOR ORDER BY:**

**DE MONTIGNY J.A.**

**Federal Court of Appeal**



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**REASONS FOR ORDER**

**DE MONTIGNY J.A.**

[1] This file and file A-521-15 were initially set to be heard by a differently constituted panel of this Court. As a result of unexpected health issues, a member of the panel had to be replaced and the Chief Justice appointed me to the panel. Upon learning of this replacement, Mr. Blank requested that I reconsider my appointment because of my alleged involvement, prior to my appointment to the Bench, in the Access to Information Requests that are the subject of these two

appeals. He was then directed by the presiding judge of the panel to file a proper motion for recusal, supported by affidavit, which he did on November 22, 2017.

[2] In support of his motion, Mr. Blank essentially alleges the same grounds that he presented in a similar motion heard on February 29, 2016 (2016 FCA 190) to substantiate his perception of a reasonable apprehension of bias on my part. In a nutshell, Mr. Blank submits that I have ruled adversely to his interests in previous hearings, that I accepted representations from opposing counsel despite the fact that they were not supported by affidavit while his were, that some of the language used in my previous reasons is proof that I am prejudiced against Mr. Blank, and that officials dealing with access to information requests sometimes sought and received advice from counsel in the Public Law Sector of the Department of Justice (of which I was Chief Legal Counsel between 2001 and 2003).

[3] As is well known, there is a strong presumption that judges will carry their judicial duties with integrity and that they will comply with their solemn judicial oath to administer justice impartially. As a result, the onus of demonstrating bias, real or apprehended, lies with the person alleging it: *Wewaykum Indian Band v Canada*, 2003 SCC 45, [2003] 2 S.C.R. 259, at para 59 [*Wewaykum*]; *Collins v Canada*, 2011 FCA 123, at para 3. There will be good legal cause to recuse myself if I am actually biased against Mr. Blank or his case or otherwise incapable to rule on the present appeal fairly and impartially. Short of actual bias, appearance and perception is also of the utmost importance. The 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 p. 394.

[4] On the issue of actual bias, I can assure Mr. Blank that I hold absolutely nothing against him, that I have always considered his cases both in this Court and in the Federal Court with an open mind and a sincere desire to do justice, and that I will continue to approach his files in the same spirit. Each file is different and turns on its own facts and relevant law. While I may have ruled against Mr. Blank in previous cases, it is by no means a predictor of how I will be ruling in future case and certainly cannot constitute a disqualifying bias. I have carefully read Mr. Blank's records and submissions in the cases at bar, with a genuine willingness to understand his arguments, and I look forward to hearing his oral submissions.

[5] As for apparent bias, I am firmly convinced that a reasonable, fully-informed person, would not conclude that it is more likely than not that I would not decide the present appeal fairly. Most of Mr. Blank's oral arguments went to the merits of the decisions that I have rendered in the past. Obviously, Mr. Blank is entitled to disagree with those decisions; the proper remedy, in such a case, is to appeal to a higher court. Being of the view that a judge erred is not sufficient to give rise to a reasonable apprehension of bias.

[6] I appreciate that Mr. Blank takes exception to some of the words that I have used in earlier reasons; when read in context, I do not believe these words can be interpreted as demeaning and I certainly did not intend to cast any aspersions on Mr. Blank. Read reasonably,

they are nothing more than a comment on the facts and law of these cases and in no way affects or taints my consideration of this case, an entirely different case.

[7] Finally, I ought to repeat what I have stated in my Reasons for Order last year: I have never been involved with Mr. Blank's files, either directly or indirectly, during my time at the Department of Justice. While counsel working in the Access to Information unit of the Public Law Sector were organizationally under my ultimate responsibility, I did not have any involvement whatsoever in the supervision or administration of either the environmental prosecution of the applicant or the response to the access requests which are the subject of these appeals. Indeed, my name appears nowhere on the emails attached to Mr. Blank's affidavit and marked as Exhibit "14" or in the confidential record. The fact that I may have known some of the people whose names appear in the documents referenced by Mr. Blank in his motion record cannot imply that I was in one way or another involved with the files they were dealing with or that I knew anything about these files. In this way, my involvement is far less than that of Mr. Justice Binnie in *Wewaykum*, who did not recuse himself and was found to have acted properly.

[8] For all of the foregoing reasons, the test for recusal has not been made out. Accordingly, the motion for recusal is dismissed.

[9] Although this motion was made in A-429-15, it is the position of the Court that this decision will apply to A-429-15 as well as A-521-15. A copy of these Reasons for Order shall be placed on file A-521-15.

"Yves de Montigny"

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-429-15

**STYLE OF CAUSE:** SHELDON BLANK v. THE  
MINISTER OF JUSTICE

**PLACE OF HEARING:** WINNIPEG, MANITOBA

**DATE OF HEARING:** NOVEMBER 27, 2017

**REASONS FOR JUDGMENT BY:** DE MONTIGNY J.A.

**DATED:** NOVEMBER 27, 2017

**APPEARANCES:**

Sheldon Blank FOR THE APPELLANT  
(ON HIS OWN BEHALF)

Scott Farlinger FOR THE RESPONDENT  
John Faulhammer

**SOLICITORS OF RECORD:**

Nathalie G. Drouin FOR THE RESPONDENT  
Deputy Attorney General of Canada