

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20181002**

**Docket: A-51-18**

**Citation: 2018 FCA 178**

**CORAM: NADON J.A.  
NEAR J.A.  
GLEASON J.A.**

**BETWEEN:**

**VICTORIA H F SCOTT, PhD**

**Appellant**

**and**

**MINISTER OF PUBLIC SAFETY AND  
EMERGENCY PREPAREDNESS representing  
THE CANADIAN SECURITY INTELLIGENCE SERVICE**

**Respondent**

Heard at St. John's, Newfoundland and Labrador, on October 2, 2018.

Judgment delivered at St. John's, Newfoundland and Labrador, on October 2, 2018.

**REASONS FOR JUDGMENT BY:**

**GLEASON J.A.**

**CONCURRED IN BY:**

**NADON J.A.  
NEAR J.A.**

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**REASONS FOR JUDGMENT**

**GLEASON J.A.**

[1] The appellant seeks to set aside the decision of the Federal Court (*per* Roy J.), reported as 2018 FC 18, in which the Federal Court declined to extend the time for the appellant to commence an application for judicial review in respect of a decision made some two years

previously by the Canadian Security Intelligence Service (CSIS). The appellant alleges that the Federal Court's decision should be set aside because she claims there is a reasonable apprehension that Justice Roy was biased in light of the roles he held as a government lawyer prior to his appointment to the bench.

[2] I disagree. Even if the newspaper reports and website extracts referred to in the appellant's submissions were properly before the Court, they do not demonstrate a reasonable apprehension of bias.

[3] There is no indication that Justice Roy was previously involved in any matter involving the appellant and the mere fact that he held the positions as outlined in the appellant's material is insufficient to establish a reasonable apprehension of bias, see, for example, *Wewaykum Indian Band v. Canada*, 2003 SCC 45, [2003] 2 S.C.R. 259 (*Wewaykum*) at paras. 76, 81-85; *Amos v. Canada*, 2017 FCA 213 (*Amos*) at paras. 18-22. Neither his past functions as General Counsel in the Criminal Law Policy Section at the Department of Justice nor as Deputy Secretary to the Clerk of the Privy Council and National Security Advisor to the former Prime Minister required Justice Roy to have recused himself from deciding the appellant's motion.

[4] Those who wish to disqualify a judge bear a heavy onus in light of the presumption of impartiality and must prove that the facts are such that an informed person, viewing the matter realistically and practically and having thought the matter through, would conclude that it is likely that the judge would not decide the case fairly: *Committee for Justice and Liberty v. Canada (National Energy Board)*, [1978] 1 S.C.R. 369 at p. 394, (1976) 9 N.R. 115.

[5] No such conclusion can be drawn in this case as there is no evidence or even any suggestion that Justice Roy was in any way involved in the appellant's complaint against CSIS. As we held in *Amos*, absent such involvement, prior employment is insufficient to rebut the presumption of impartiality. In addition, as in *Wewaykum*, the passage of time militates strongly against a finding of bias in this case. Thus, an informed person, having thought the matter through and viewing it realistically, would not conclude that there was a reasonable apprehension that Justice Roy was biased.

[6] I would therefore dismiss this appeal with costs.

“Mary J.L. Gleason”

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J.A.

“I agree.  
M. Nadon J.A.”

“I agree.  
D. G. Near J.A.”

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-51-18

**STYLE OF CAUSE:** VICTORIA H F SCOTT, PhD v.  
MINISTER OF PUBLIC SAFETY  
AND EMERGENCY  
PREPAREDNESS representing  
THE CANADIAN SECURITY  
INTELLIGENCE SERVICE

**PLACE OF HEARING:** ST. JOHN'S, NEWFOUNDLAND  
AND LABRADOR

**DATE OF HEARING:** OCTOBER 2, 2018

**REASONS FOR JUDGMENT BY:** GLEASON J.A.

**CONCURRED IN BY:** NADON J.A.  
NEAR J.A.

**DATED:** OCTOBER 2, 2018

**APPEARANCES:**

Victoria Scott FOR THE APPELLANT  
(self-represented)

Jan Jensen FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

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