

Federal Court of Appeal



Cour d'appel fédérale

Date: 20240110

Docket: A-160-23

Citation: 2024 FCA 5

**CORAM: STRATAS J.A.
LASKIN J.A.
GOYETTE J.A.**

BETWEEN:

R. MAXINE COLLINS

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Ottawa, Ontario, on January 10, 2024.

Order delivered from the Bench at Ottawa, Ontario, on January 10, 2024.

REASONS FOR ORDER BY:

THE COURT

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REASONS FOR ORDER

[1] The appellant moves for an order that Stratas J.A. recuse himself from this appeal. She says that Stratas J.A. is biased against her. She relies on various directions, orders and judgments Stratas J.A. has made or concurred with in cases involving her since 2011.

[2] On this motion, the parties have filed motion records. The parties have also made oral submissions at the outset of the hearing of this appeal. The Court has considered the parties' submissions and now can rule on the appellant's recusal motion.

A. The principles governing a recusal motion

[3] The Chief Justice assigns judges of this Court to serve on panels to hear and decide cases. The judges have no input into this decision.

[4] In this case, consistent with the Court's standard practice, Stratas J.A. had no input into the Chief Justice's decision to assign him to this case.

[5] From time to time, judges receive a list of the cases to which they are assigned. Stratas J.A. learned that he was assigned to this case roughly a month ago. When he was assigned to it, he had no concern about his ability to accept the assignment.

[6] Once assigned to a matter, a judge cannot refuse the assignment or recuse, absent good legal cause.

[7] One example of good legal cause is actual bias in favour of or against a side on all or part of the case. A judge with that mental state must recuse forthwith and refrain from being involved in it at all.

[8] Another legal cause for recusal is if the judge is not actually biased but the circumstances are such that a reasonable, fully informed person, thinking the matter through, would conclude that it is more likely than not that a judge, whether consciously or unconsciously, would not decide the case fairly: *Committee for Justice and Liberty et al. v. National Energy Board et al.*, [1978] 1 S.C.R. 369 at 394.

[9] The two tests—one for actual bias, the other for apparent or apprehended bias—give voice to the fundamental principle that “justice should not only be done, but should manifestly and undoubtedly be seen to be done”: *R. v. Sussex Justices*, [1923] EWHC KB 1, [1924] 1 K.B. 256.

[10] The judge against whom an allegation of actual bias is made, here Stratas J.A., is the only person who can confirm or deny the allegation. Thus, whether acting alone or on a panel, only that judge can decide the issue of actual bias.

[11] But where, as here, the Court is comprised of three judges on a panel and where the individual judge denies the allegation of actual bias, the appearance may nevertheless be such that the judge must recuse for reasons of fairness and to maintain the reputation of the Court and the public’s confidence in the administration of justice. Due to the broader sweep of apparent or apprehended bias—an institutional rather than an individual concern—all three judges comprising the Court must consider and determine the issue.

[12] There is a strong presumption that judges will obey their judicial oaths and act impartially. Unwarranted allegations of judicial bias can harm the administration of justice: *Es-Sayyid v. Canada (Public Safety and Emergency Preparedness)*, 2012 FCA 59, [2013] 4 F.C.R. 3. Alleging judicial bias is “a serious step that should not be undertaken lightly”: *R. v. S.(R.D.)*, [1997] 3 S.C.R. 484 at para. 133.

[13] Thus, motions such as this should be brought only where there is a “real likelihood or probability of [actual or apparent] bias”, supported by “cogent evidence”: *Yukon Francophone School Board, Education Area #23 v. Yukon (Attorney General)*, 2015 SCC 25, [2015] 2 S.C.R. 282 at para. 25; *Cojocar v. British Columbia Women’s Hospital and Health Centre*, 2013 SCC 30, [2013] 2 S.C.R. 357 at paras. 22 and 27. A wholly unwarranted motion should normally be met with an enhanced award of costs.

B. Applying the principles to this case

(a) Actual bias

[14] In this case, Stratas J.A. declares that he is not biased. He has sat on previous cases and motions involving the appellant and has never had nor has he developed an *animus* against the appellant. As for this appeal, he confirms that he is approaching it with an open, persuadable mind. He has worked hard to understand the evidentiary record and the written submissions filed to date in this appeal. He is and remains committed to reviewing the appellant’s written and oral submissions carefully in light of the facts and the applicable law.

[15] As well, Stratas J.A. confirms that he has always treated the appellant like any other litigant who appears before him: with due courtesy and fairness, interest in her submissions, and a willingness to listen and consider those submissions. The appellant has not suggested otherwise. Stratas J.A. intends to do likewise in this appeal.

[16] Thus, Stratas J.A. rejects the appellant's allegations of actual bias.

(b) Apparent or apprehended bias

[17] As for apparent or apprehended bias, we are all of the view that the appellant's allegations and submissions have no merit.

[18] The appellant has referred to a number of motions and appeals involving her on which Stratas J.A. has sat. She alleges that Stratas J.A. has consistently ruled against her in various matters.

[19] One or more previous rulings by a judge against a litigant—indeed, the overall win-loss record of a litigant before a judge—cannot, by themselves, demonstrate apparent or apprehended bias. A reasonable, fully informed person appreciates that a judge may rule against a party on a number of occasions. And that person also appreciates that a losing streak may be justified by the facts and the law of the individual cases. See *Canada (Attorney General) v. Yodjeu*, 2019 FCA 178 at para. 15; *Oberlander v. Canada (Attorney General)*, 2019 FCA 64 at para. 10; *Abi-Mansour v. Canada (Passport Canada)*, 2016 FCA 5 at para. 14; and *R. v. Perciballi* (2001), 146 O.A.C. 1, 54 O.R. (3d) 346 at para. 21, aff'd 2002 SCC 51 at para. 1.

[20] Here, we have reviewed the reasons offered in the various matters the appellant raises and the circumstances surrounding them. The reasons offered are not slapdash or rash. Rather, they consistently show a careful, considered and rational approach on the facts and the law.

[21] But, in any event, the results of the appellant's matters before Stratas J.A. have not been one-sided. A review of the orders and directions involving the appellant shows that Stratas J.A. has exercised his discretion in the appellant's favour on some issues.

[22] There is nothing in the various matters that suggests that there is an appearance or apprehension of *animus* or bias against the appellant. Although the appellant has not always been successful in matters involving Stratas J.A., the reasons of the Court in each matter show due and careful consideration of the appellant's submissions and decisions based on a careful and objective application of the law to the facts.

[23] The appellant focuses on a recent ruling of Stratas J.A. It permitted the respondent to file a book of authorities even though it was late. This ruling cannot be taken to be something that could create an appearance or apprehension of bias. Judges of this Court regularly permit the late filing of authorities in the absence of prejudice. Not permitting a filing like that hurts everyone: it leaves the parties and the Court without a convenient collection of authorities to review.

[24] The appellant's main concern is a general one about both Federal Courts. She says that they tend to believe the submissions of lawyers rather than self-represented litigants like her.

That is not a ground for Stratas J.A. to recuse. There is no evidence of lack of even-handedness on Stratas J.A.'s part.

[25] Further, we are all of the view that nothing has been done in this appeal that would create an appearance or apprehension of *animus* or pre-judgment of the appellant's case.

C. Disposition

[26] Therefore, we will dismiss the appellant's recusal motion with costs. Costs shall be on the usual scale since the respondent did not ask for enhanced costs.

“David Stratas”

J.A.

“J.B. Laskin”

J.A.

“Nathalie Goyette”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-160-23

STYLE OF CAUSE: R. MAXINE COLLINS v.
ATTORNEY GENERAL OF
CANADA

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: JANUARY 10, 2024

REASONS FOR ORDER: STRATAS J.A.
LASKIN J.A.
GOYETTE J.A.

DELIVERED FROM THE BENCH BY: STRATAS J.A.

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