

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Masjoody v. Trotignon*,
2024 BCCA 22

Date: 20240118
Docket: CA49479

Between:

Masood Masjoody

Appellant
(Plaintiff)

And

Amélie Trotignon and Simon Fraser University

Respondents
(Defendants)

Before: The Honourable Mr. Justice Groberman
(In Chambers)

On appeal from: An order of the Supreme Court of British Columbia, dated
November 16, 2023 (*Masjoody v. Trotignon*, 2023 BCSC 2224,
Vancouver Docket S204587).

Oral Reasons for Judgment

The Appellant, appearing in person:

M. Masjoody

No one appearing on behalf of the
Respondents

Place and Date of Hearing:

Vancouver, British Columbia
January 18, 2024

Place and Date of Judgment:

Vancouver, British Columbia
January 18, 2024

Summary:

The applicant applied to a chambers judge for an order that the Registrar, the Chief Justice, and six other judges of the Court be precluded from exercising powers in this matter on the basis that he reasonably apprehended that they would be biased. Held: Application dismissed. Neither a single Justice nor a panel of the Court has jurisdiction to prohibit the Registrar or a Justice from exercising their judicial powers. If the applicant considers that a judicial officer before whom he is scheduled to appear ought not sit due to reasonable apprehensions of bias, his recourse would be to apply to that individual seeking that they recuse themselves.

[1] **GROBERMAN J.A.:** Mr. Masjoody applies for an order precluding the Registrar, the Chief Justice, and six other judges of the Court from exercising powers in this matter and from having any role in the conduct of the appeal.

[2] I do not intend to discuss the evidence presented in Mr. Masjoody's affidavit, because it is obvious to me that I do not have the power to disqualify the Registrar or other judges from fulfilling their judicial roles, nor does a panel of the Court.

[3] Judicial independence dictates that no judge or combination of judges has the power to "recuse" another judge — *R. v. Anderson*, 2017 BCCA 154. Rather, it is up to each individual judge (and the Registrar) to determine for themselves whether they will recuse themselves from hearing particular matters. In making those decisions, they may be assisted by submissions from counsel or from litigants.

[4] It is not for other judges to make the decision as to whether a particular judge or judicial officer will sit. If a judge or judicial officer errs by sitting in a situation where there is a reasonable apprehension of bias, the matter may be corrected by a court with appellate jurisdiction over the decision in issue.

[5] The Chief Justice does have the ability to play a role in determining the composition of a panel and in determining which judge sits in chambers on a particular day. The Chief Justice could, in theory, refuse to assign a judge to a specific case. In British Columbia, the tradition is that the Chief Justice exercises such power sparingly. Judges are assigned to appeals and to chambers in a more-or-less random manner to ensure proper coverage and to even out the workload.

For the most part, the composition of panels and the rota for chambers is treated as an administrative matter.

[6] I note that it is debatable whether even the Chief Justice could systematically prevent a judge from sitting on a matter if the basis for that decision were the judge's past decisions or associations. It is essential for judicial independence that such considerations play a very limited role in the assignment of judges (see *Wachowich v. Reilly*, 2000 ABCA 241).

[7] As I have no jurisdiction to make the orders sought, I am dismissing the application. The alternative relief sought is that the matter be referred to a division of this Court for determination must also be dismissed, as a division of this Court would, similarly, have no ability to disqualify judges or judicial officers from performing their functions in this case.

[8] On the face of it, Mr. Masjoody's allegations may appear to be far-fetched, but if he considers them to be of importance, the proper way to address them would be to await a situation in which Mr. Masjoody considers that a judge or judicial officer who has been assigned to a hearing ought not to exercise judicial functions in that case. He can then apply to that individual seeking that they recuse themselves.

"The Honourable Mr. Justice Groberman"