IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION

Citation: *World Energy GH2 Inc. v. Benoit Ryan*, 2024 NLSC 6
Date: January 16, 2024
Docket: 202304G0023

BETWEEN:

WORLD ENERGY GH2 INC.

PLAINTIFF

AND:

SYLVIA BENOIT RYAN, ZITA HINKS, SHEILA HINKS, AMANDA CORNECT, PATRICK KERFONT (DISCONTINUED), PAUL SKINNER (DISCONTINUED), DEBORAH SYMONDS, ALICIA DRAKE AND PERSONS UNKNOWN

DEFENDANTS

Before: Justice George L. Murphy

Place of Hearing: Corner Brook, Newfoundland and Labrador

Date of Hearing: October 17, 2023

Summary:

Certain of the Defendants applied seeking various relief, including recusal. All claims for relief were dismissed.

Appearances:

Douglas B. Skinner / Andrea N. Williams	Appearing on behalf of the Plaintiff
No appearance	on behalf of Sylvia Benoit Ryan
Zita Hinks	Appearing on her own behalf
Sheila Hinks	Appearing on her own behalf
Amanda Cornect	Appearing on her own behalf
Deborah Symonds	Appearing on her own behalf
Alicia Drake	Appearing on her own behalf

Authorities Cited:

CASES CONSIDERED: *Committee for Justice & Liberty v. Canada (National Energy Board)*, [1978] 1 S.C.R. 369, 68 D.L.R. (3d) 716 (S.C.C.); *R. v. R.D.S.*, [1997] 3 S.C.R. 484, 118 C.C.C. (3d) 353 (S.C.C.); *Idziak v. Canada (Minster of Justice)*, [1992] 3 S.C.R. 631 (S.C.C.); *Oleynik v. Memorial University of Newfoundland*, 2023 NLSC 86; and *Oleynik v. Law Society of Newfoundland and Labrador*, 2022 NLSC 151

REASONS FOR JUDGMENT

MURPHY, J.:

INTRODUCTION

[1] Certain of the Defendants in this proceeding, namely Sheila Hinks and Zita Hinks, filed what they titled "Interlocutory Application for Recusal and Trial by Jury". In this decision I will refer to it as the "Application". While she did not sign the Application, another of the Defendants, Alicia Drake, requested at the hearing of the Application on October 17, 2023 that she be permitted to join as an applicant on the Application and her request was granted. The Defendants who signed the Application and Ms. Drake will hereinafter be collectively referred to as the "Applicants".

[2] The Application has two different sections headed “Relief Sought”. The first claims the following relief:

> Relief Sought
>
> 1. An Order that Justice Murphy Recuse himself.
>
> 2. In the alternative, an Order that the Recusal matter be heard by a Jury of indigenous peers.
>
> 3. An Order that any Decision of the Alliance of Indigenous Nations (A.I.N.) be enforced.
>
> 4. An Order that The Crown must commence Consultation forthwith, particularly regarding advance legal fees.

[3] The second section claims the following relief:

> Relief Sought
>
> 3. An Order that Indigenous Common Law, as cited by the SCC in *R v Desautel*, takes precedence over the Statutes, Rules and Regulations of a governmental Corporation known as CANADA, and NEWFOUNDLAND AND LABRADOR, when the Non-Status and Eastern Metis are present in the Court.
>
> 4. An Order that the Applicant(s) are to have Indigenous Representatives of their Choice at all steps of these proceedings.
>
> 3. An Order that any Decision of the Alliance of Indigenous Nations (A.I.N.) be enforced.
>
> 6. An Order that The Crown must commence Consultation forthwith particularly regarding advance legal fees.

[4] Subsequent to the hearing of the Application, one of the Applicants, namely Sheila Hinks, sent an email to an Assistant Deputy Registrar of this Court in which she attached what purport to be orders of an entity called the Alliance of Indigenous Nations Tribunal. One of those orders purports to recuse me from this proceeding.

CLAIMS OTHER THAN RECUSAL

[5] I will first deal collectively with all of the claims for relief other than the claim for an order that I recuse myself from this proceeding. There was no factual or legal basis put forward in the Application to support any of those claims for relief. Accordingly, the request for orders that:

a. the recusal matter be heard by a jury of indigenous peers;

b. any decision of the Alliance of Indigenous Nations (A.I.N.) be enforced;

c. the Crown must commence consultation forthwith, particularly regarding advance legal fees;

d. that Indigenous common law as cited by the Supreme Court of Canada in *R. v. Desautel*, takes precedence over the statutes, rules and regulations of a governmental corporation known as Canada and Newfoundland and Labrador, when the non-status and eastern Metis are present in the Court; and

e. that the Applicants are to have indigenous representatives of their choice at all steps of these proceedings;

are dismissed.

[6] I wish to make comment regarding the reference to the Alliance of Indigenous Nations and/or the Alliance of Indigenous Nations Tribunal. This is not the first time the Applicants referenced these entities in this proceeding. The Applicants and

certain other of the Defendants referred to these entities on prior occasions and have previously filed documents purporting to be from these entities. On an earlier court appearance in this proceeding I advised the Applicants that I had never heard of these entities and I questioned their legal status.

[7] I have not been provided with any evidence whatsoever to establish that these entities are legally recognized bodies with any lawful authority. Further, I have not been provided with any evidence that they are associated with any recognized indigenous group or community. There is no evidence before me that they exist in any capacity. Further, I can find no evidence that they exist other than a website https://allianceofindigenousnations.org. It appears to me that these entities are similar to other similar entities which have been relied on to challenge the jurisdiction of various courts in the country using pseudo-legal type arguments. In any event, the Alliance of Indigenous Nations and/or the Alliance of Indigenous Nations Tribunal, if they even exist, have no jurisdiction or authority over this court and any orders purported to be issued by these entities will not be recognized in this proceeding.

RECUSAL CLAIM

[8] I will now deal with the request that I recuse myself from this proceeding. There are two bases upon which this request is made. The first is an allegation that I am connected to and intimately know John Risley who is the chairperson of the Board of Directors of the Plaintiff. The second is based on complaints by the Applicants regarding decisions or orders I have made in the proceeding to date.

[9] I will first deal with the second basis for the recusal request. I would note that some of the allegations made by the Applicants do not accurately represent what actually occurred in this proceeding to date. To the extent that any of the allegations are accurate, they do not properly form the factual basis of a recusal application. If the Applicants believe that any decisions or orders I previously made in this proceeding constituted an error on my part or were in some manner unlawful, then the proper course of action for the Applicants to challenge such decisions would have been to appeal them to the appropriate appeal court.

[10] Next I will deal with the first basis for the recusal request, namely the allegation that I am connected to John Risley. The Applicants allege that I regularly attend at a fishing lodge in Labrador owned by Mr. Risley. The Applicants challenge my impartiality based on this alleged connection.

THE LAW

[11] The well-established test for reasonable apprehension of bias is that set out by de Grandpré, JJ. in *Committee for Justice & Liberty v. Canada (National Energy Board)*, [1978] 1 S.C.R. 369, 68 D.L.R. (3d) 716 (S.C.C.) where at paras. 40 and 41 he stated:

> 40 The proper test to be applied in a matter of this type was correctly expressed by the Court of Appeal. As already seen by the quotation above, the apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information. In the words of the Court of Appeal, that test is "what would an informed person, viewing the matter realistically and practically — and having thought the matter through — conclude. Would he think that it is more likely than not that Mr. Crowe, whether consciously or unconsciously, would not decide fairly."
>
> 41 I can see no real difference between the expressions found in the decided cases, be they 'reasonable apprehension of bias', 'reasonable suspicion of bias', or 'real likelihood of bias'. The grounds for this apprehension must, however, be substantial and I entirely agree with the Federal Court of Appeal which refused to accept the suggestion that the test be related to the "very sensitive or scrupulous conscience".

[12] The Supreme Court of Canada has consistently stated that the test for recusal focuses largely on the question of impartiality. When it is alleged that a judge is not impartial, the test that must be applied is whether the conduct or actions complained of give rise to a reasonable apprehension of bias (*R. v. R.D.S.*, [1997] 3 S.C.R. 484, 118 C.C.C. (3d) 353 (S.C.C.); *Idziak v. Canada (Minster of Justice)*, [1992] 3 S.C.R. 631 (S.C.C.)).

[13] Actual bias need not be established (*R. v. R.D.S.* at para. 109; *Oleynik v. Memorial University of Newfoundland*, 2023 NLSC 86).

[14] In this jurisdiction, my colleague, Noel, J. in *Oleynik v. Law Society of Newfoundland and Labrador*, 2022 NLSC 151 referred to the correct legal test at para. 25:

> 25 The Supreme Court of Canada has enunciated the legal test for judicial recusal or removal for bias. The question is: would an informed person - viewing the matter realistically and practically, and having thought the matter through - think that it is more likely than not that I, whether consciously or unconsciously, could not decide the appeal fairly: (*Wewaykum Indian Band v. Canada*, at para. 74). Oleynik is not required to show actual bias on the part of the judge, but the reasonable apprehension of bias is sufficient to meet the test for disqualification. Reasonable apprehension of bias is therefore an objective standard: *Brooks v. Law Society of New Brunswick*, 2015 NBCA 18, at para. 8; *Cabana v. Newfoundland and Labrador*, 2014 NLCA 34 (at para. 19); *Stuart Budd & Sons Ltd. v. IFS Vehicle Distributors ULC*, 2016 ONCA 60 (at para. 47).

[15] Noel, J.'s comments at paras. 26 and 27 outline certain considerations in applying the legal test:

> 26 There is a strong presumption of judicial impartiality. The grounds for apprehension of bias to rebut the presumption of impartiality must therefore be "serious" and "substantial": *Wewaykum*, at para. 76.
>
> 27 The inquiry is highly fact-specific and contextual: (*Wewaykum*, at para. 77). I must apply the facts, on which Oleynik seeks my disqualification, to the governing legal standard.

[16] The standard of proof is no different for a represented or self-represented litigant as was pointed out by Noel, J. in *Oleynik v. Memorial University of Newfoundland*. At para. 51 he said:

> 51 The standard of proof to establish the test for bias is no different for a represented or self-represented litigant. The party who alleges bias has the burden of rebutting the presumption of impartiality and proving a reasonable apprehension of bias. The applicant has the "high burden of proving the claim" of bias and must demonstrate "substantial" evidence of bias (See *Yukon Francophone School Board, Education Area No. 23 v. Yukon Territory (Attorney General)*, 2015 SCC 25, at para. 25; and *Committee for Justice & Liberty v. Canada (National Energy Board,* [1978] 1 S.C.R. 369, at page 395).

[17] The Applicants base their Application on an alleged connection between myself and John Risley. The allegation is that I regularly attend at the fishing camp in Labrador owned by Mr. Risley and therefore I intimately know him. The Applicants offered no evidence other than rumor and speculation to attempt to prove their allegation.

[18] Rumor and speculation are not sufficient to rebut the presumption of impartiality nor to meet the requirement for substantial evidence of bias. While there is no obligation on a judge in respect of whom an application for recusal has been brought to defend himself or herself, I felt it was appropriate in this case that I put certain facts on the record, which I did prior to the Applicants making their submissions on this Application. I explained that I was an avid fly fisherman and that I had been at many fishing lodges in Labrador with friends over the years, including a lodge which I believe to be owned by John Risley called the Rifflin' Hitch. I explained that the last time I was there was in 2007, approximately seven years before I was appointed as a judge of the Court. I also put it on the record that I had never been to the Rifflin' Hitch lodge or any other fishing lodge or camp with John Risley.

[19] In my view, an informed person viewing the matter realistically and practically in light of the foregoing facts and having thought the matter through would not think that I could not decide this matter fairly. In my assessment, such facts do not come close to meeting the objective standard for a reasonable apprehension of bias. The Applicants have not established any basis for an order that I recuse myself. Accordingly, the request for that order is dismissed.

COSTS

[20] Generally speaking, a successful party is entitled to costs against an unsuccessful party on an application. There are different bases on which costs can be awarded, including in some cases on a full indemnity basis. In this case, no submissions were made on the issue of costs at the hearing of the Application and therefore I make no order regarding same at present. However, should the Plaintiff wish to make a submission on costs, they shall notify the Court in writing within 21

days of the date of this decision. Upon receipt of any such written notification, the Court will schedule a date to hear submissions from the Applicants and the Plaintiff on the issue of costs.

GEORGE L. MURPHY
Justice