NOVA SCOTIA COURT OF APPEAL

Citation: *Dempsey v. Pagefreezer Software*, 2025 NSCA 36

Date: 20250523
Docket: CA 542305
Registry: Halifax

Between:

Nathan Kirk Dempsey

Appellant

v.

Pagefreezer Software Inc. and Michael Riedijk

Respondents

Judge:	Van den Eynden, J.A.
Motion Heard:	May 8, 2025, in Halifax, Nova Scotia in Chambers
Written Decision:	May 23, 2025
Held:	Motion to recuse dismissed
Counsel:	Nathan Kirk Dempsey, appellant in person Noah Entwisle, for the respondent

Decision:

Introduction

[1] Mr. Dempsey currently has two appeals before this Court (CA 542305 and CA 540475).

[2] Mr. Dempsey filed a recusal motion in CA 542305 seeking to disqualify me from hearing any further motions involving the parties and from sitting as a panel member on the above appeals or any other appeals that might be subsequently filed by the parties. He claimed that because a reasonable apprehension of bias is present I could not hear matters related to the parties.

[3] The respondents did not support the motion. They submitted Mr. Dempsey failed to raise anything that might warrant my recusal.

[4] I heard the recusal motion on May 8, 2025 and delivered a bottom-line oral decision dismissing the motion with written reasons to follow. These are my reasons.[1]

Guiding Principles

[5] The principles that govern Mr. Dempsey's recusal motion are well recognized.

[6] Mr. Dempsey carries the burden of establishing a reasonable apprehension of bias. The burden is onerous as there is a strong presumption of judicial impartiality that must be overcome. The inquiry is fact-specific and requires clear evidence of serious grounds. This Court explained in *R. v K.J.M.J.*, 2023 NSCA 84:

> [56] Establishing a reasonable apprehension of bias is very difficult to do, in part because there is a strong presumption of judicial impartiality. The [claimant] must lead evidence establishing "serious grounds" sufficient to justify that a decision maker should be disqualified owing to an apprehension of bias. Whether such an apprehension exists is highly fact specific and depends on the context. [citations omitted]

[1] There is an *ex parte* interim confidential order in place for both CA 542305 and CA 540475. The publication of this decision does not compromise the substance and purpose of the interim order.

See also *Wewaykum Indian Band v. Canada*, 2003 SCC 45 at paras. 76-77 and *R. v. Teskey*, 2007 SCC 25 at para. 21.

[7] In *R. v. Nevin*, 2024 NSCA 64, this Court reviewed the applicable test:

> [47] […] The test for establishing a reasonable apprehension of bias has been consistently applied by Canadian courts of all levels since the case of *Committee* for *Justice and Liberty v. Canada (National Energy Board*):[2]
>
> > [...] 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. [...] 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 [the trier of fact], whether consciously or unconsciously, would not decide fairly."
>
> [48] The notion of fairness in the context of reasonable apprehension of bias was further commented on by the Supreme Court of Canada in *R. v. R.D.S.*:[3]
>
> > [94] [...] Fairness and impartiality must be both subjectively present and objectively demonstrated to the informed and reasonable observer. ...

[8] Further, in *C.B. v. T.M*, 2013 NSCA 53 this Court stated:

> [32] In *S. (R.D.)* at ¶ 35, the Supreme Court of Canada observed that according to its Commentaries on Judicial Conduct (1991), the Canadian Judicial Council stated at p. 12:
>
> > True impartiality does not require that the judge have no sympathies or opinions; it requires that the judge nevertheless be free to entertain and act upon different points of view with an open mind.
>
> [33] According to *S. (R.D.)*, to successfully assert that a judge might be partial, one must demonstrate that the beliefs, opinions, or biases held by the judge prevent him or her from setting aside any preconceptions and reaching a decision based only on the evidence...

Application of the Principles

[9] Applying these governing principles to Mr. Dempsey's motion leads to the inescapable determination that his recusal motion must be dismissed.

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[2] [1978] 1 S.C.R. 369 at 394-395, 68 D.L.R. (3d) 716.
[3] [1997] 3 S.C.R. 484, 151 D.L.R. (4th) 193.

[10] Mr. Dempsey did not establish any grounds let alone the requisite "serious grounds" to support his allegation that I am not impartial to his interests and thus should be disqualified from hearing any matter that involves the parties.

[11] In support of his recusal motion Mr. Dempsey points to:

> 1. My referral of a motion he filed in 2023 to the panel hearing his related appeal CA 525687;
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> 2. My subsequent participation in the unanimous panel that dismissed his appeal CA 525687; and
>
> 3. My dismissal of his motion to be excused from filing requirements pursuant to *Civil Procedure Rule* 90.30(1) in his pending appeal CA 540475.

Fourthly, he suggests my decisions outlined above demonstrate my collusion in a "post-democratic institutional framework" and my intention to prevent "the public disclosure of a scandal".

[12] Mr. Dempsey's reliance on items 1-3 above are misguided. His fourth submission is absurd and baseless. I will explain.

Referral of motion to panel

[13] Rule 90.37(12)(d) permits a judge of the Court of Appeal to refer a motion to the Court of Appeal. The Rule provides:

> (12) A judge of the Court of Appeal hearing a motion, in addition to any other powers, may order any of the following:
>
> […]
>
> (d) the motion be referred to the Court of Appeal for hearing and disposition;

[14] Mr. Dempsey's 2023 motion pertained to the sealing and confidentiality of materials that were before this Court in the related appeal. There was an interim order in place; however, Mr. Dempsey wanted to amend the terms and to obtain a final order. His motion came before me in chambers on October 10, 2023. The respondents did not consent to his motion; rather, they left it to my discretion.

[15] I did not adjudicate Mr. Dempsey's motion. I referred it to the panel hearing his appeal because ultimately the panel would need to grapple with this issue. At

the time of referral, I explained to Mr. Dempsey that I was not prepared to adjudicate this issue because it could prematurely bind the panel's consideration of the matter. This is evident in the transcript of the chambers appearance.

[16] A proper exercise of my discretion is in no way indicative of bias. I had the discretion to refer Mr. Dempsey's motion to the panel hearing his appeal (of which I was a member) and doing so was appropriate in the circumstances. Mr. Dempsey identified no error or procedural irregularity in my referral.

Dismissal of prior appeal

[17] Mr. Dempsey's appeal CA 525687 (heard on December 4, 2023) was unanimously dismissed by the panel. The panel determined his appeal was without merit. The panel sealed the record. It is obvious from his recusal submissions Mr. Dempsey is disgruntled with this Court's disposition of his appeal. However, he identified no factual or procedural error nor any error in law. Even if he had, that is not in and of itself indicative of bias.

Dismissal of request to be excused from filing requirements

[18] Mr. Dempsey filed a motion seeking to be relieved of his obligation to file paper copies of the appeal book as required under Rule 90.30(1) and paper copies of his factum as required under Rule 90.32(1)(a), or alternatively, the appeal book alone. These Rules require:

> 90.30 Appeal book
>
> (1) An appellant must do both of the following unless a judge of the Court of Appeal permits otherwise:
>
> (a) file five copies of the appeal book for the use of the Court of Appeal;
>
> (b) deliver a copy of the appeal book to each respondent.
>
> 90.32 Factum
>
> (1) An appellant must do both of the following no more than ten days after the day the appeal book is delivered, or when a judge of the Court of Appeal directs:
>
> (a) file five copies of a factum for the use of the Court of Appeal;
>
> (b) deliver a copy of the factum to each respondent.

[19] Like other appellants, Mr. Dempsey must comply with these Rules unless a judge orders otherwise.

[20] I heard Mr. Dempsey's motion in chambers on April 24, 2025. The respondents did not consent to his motion. Rather, after pointing out several concerns with the motion for the Court's benefit, they took no position on the motion, leaving it to my discretion.

[21] Mr. Dempsey did not persuade me that I should exercise my discretion and excuse him from filing as required. By choice, he presented no evidence of his financial circumstances. Nor did he even suggest he was unable to pay the associated costs[4] of producing and filing the requisite number of hard copies. Rather, he preferred to file electronic copies to avoid the financial and logistical responsibility of printing, binding and delivery of the required materials.

[22] Mr. Dempsey erroneously suggested that this Court had in effect a "general order approving a system for electronic filing" as per Rule 82.12(1). I explained to him that during the COVID pandemic, this Court did temporarily relax the hard copy filing requirements to some extent; however, that is no longer the case. Although he seemed to appreciate this, he nonetheless thought he should still be exempted from the Rule.

[23] As Mr. Dempsey is aware, during the hearing of this motion, I indicated my support of this Court's pursuit of an electronic e-filing system and my hope that it will be implemented in the not-too-distant future. However, that is not exclusively within the control of this Court. Further, implementation would most certainly not be before the date his appeal book and factum were required to be filed.

[24] While I can understand an appellant wanting to avoid the costs of producing multiple hard copies of the record in the proceedings under appeal, particularly an extensive record, the Rules, as they currently stand, require hard copies. Mr. Dempsey is being treated the same as any other appellant. He provided no valid reason to be excused from the filing requirements. As an aside, after dismissing his motion, Mr. Dempsey promptly filed his appeal book in hard copy as required.

[25] Mr. Dempsey's complaints under items 2 and 3 above are tied to matters I either addressed as a chambers judge or participated in as a panel member. The words of Justice Saunders in *Doncaster v. Chignecto-Central Regional School Board*, 2013 NSCA 59, are insightful in this instance:

[4] Mr. Dempsey estimated the costs of compliance with the Rule to be in the range of $2,500 to $3,500.

> [15] [The appellant] does not assert that I ought to recuse myself because he lost a case at a previous trial or Chambers appearance over which I presided. It is obvious but perhaps bears repeating that such an assertion would hardly be a basis for recusal in any event. That isn't how things work. Otherwise disgruntled litigants would invariably demand the recusal of any judge who had found against them, eventually whittling the juridical pool down to zero.
>
> > The mere fact that a party has lost some motion or suit before a judge (without a jury) does not entitle that litigant to be thereafter free of that judge. That is so both in later suits of a broadly similar nature, and in later motions in the same suit. **Broda v. Broda**, 2001 ABCA 151 at 16.

Collusion in a post-democratic institutional framework etc.

[26] As noted, Mr. Dempsey speculates I somehow colluded in a "post-democratic institutional framework" and wish to block the "public disclosure of a scandal" that victimizes him. He says my "cognitive liberty" is in question; however, the impacts on my cognitive liberty might be beyond my control and are "extraneous to [my] natural state and behavioural baseline". In fact, he suggests my recusal may not matter as the "cognitive liberty" of other judges on this Court have likely been similarly impacted.

[27] I questioned Mr. Dempsey regarding the foundation for these submissions as that was not clear in his written submissions. In oral submissions he explained that had I received a COVID-19 vaccine this could have affected my ability to make decisions in a democratic manner through "cognitive tampering". Mr. Dempsey admitted he had "no proof related to this" but stated, without any support, that "cognitive tampering" could not be ruled out as an explanation for the decisions of this Court that were contrary to his interests.

[28] It is obvious from Mr. Dempsey's oral and written submissions that he heavily relies upon these unfounded allegations to support his view that I should recuse myself from adjudicating any further matters involving the parties. Mr. Dempsey's conjectures reveal nothing more than an absurd attempt to rationalize outcomes that he disagrees with.

Conclusion

[29] I dismissed Mr. Dempsey's recusal motion because his allegations of bias are without merit.[5]

[30] In other words, his unfounded assertions would not lead an informed person, viewing the matter realistically and practically and having thought the matter through, to conclude that it is more likely than not that I would, consciously or unconsciously, not decide Mr. Dempsey's matters fairly and impartially.

Van den Eynden, J.A.

[5] Subsequent to the dismissal of Mr. Dempsey's recusal motion, I decided the respondents' security for costs motions (2025 NSCA 32).