

NOVA SCOTIA COURT OF APPEAL

Citation: MacEwan v. Henderson, 2003 NSCA 133

Date: 20031205

Docket: CA 202004

Registry: Halifax

Between:

Patricia MacEwan

Appellant

v.

Roy Henderson

Respondent

JUDGE: By the Court

APPEAL HEARD: November 28, 2003

JUDGMENT DELIVERED: December 5, 2003

SUBJECT: Recusal of judge

SUMMARY: Self-represented appellant made an application for judge to recuse himself from hearing a small claims appeal on the basis that at the setting down hearing the judge had made remarks reflective of bias. Judge's decision not to recuse himself appealed.

ISSUES:

1. Did the judge err in refusing to disqualify himself from hearing the appeal?
2. Was it an error for the judge to hear the recusal motion or should another judge have been appointed to do so?

RESULT: Fact specific. Appeal dismissed with costs. Actual or reasonably apprehended bias goes to jurisdiction and, if found, a new hearing must follow. An application for recusal is properly heard by the judge whom the party is asking to withdraw from presiding over further proceedings. There was therefore no error on that account. Applying the principles and standard set out in **R. v. R.D.S.**, [1997] 3 S.C.R. 484 to the record and considering, individually and collectively, the various points which the appellant says are reflective of disqualifying bias on the part of the judge, panel not persuaded that the judge erred in dismissing the application for recusal. As this was not an appeal pursuant to the **Small Claims Act** R.S., c. 430, s.31(6), but an appeal from a Supreme Court order, costs not limited in amount by the Small Claims regulations.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 4 pages.