SUPREME COURT OF NOVA SCOTIA
Citation: *O'Neil v. O'Neil*, 2026 NSSC 99

Date: 20260327
Docket: Ant No. 543556
Registry: Antigonish

Between:

Raymond Gerard O'Neil

Applicant

v.

Adrian Ignatius O'Neil

Respondent

DECISION ON MOTION TO RECUSE AND FOR CHANGE OF VENUE

Judge:	The Honourable Justice Scott C. Norton
Heard:	March 25, 2026, in Antigonish, Nova Scotia
Decision:	March 27, 2026
Written Decision:	April 2, 2026
Counsel:	Justin E. Adams, for the Applicant Adrian O'Neil, self-represented Respondent

By the Court:

Overview

[1] The respondent, Adrian O'Neil, moves for an order that this matter be transferred from the Antigonish Judicial Centre to the Halifax Judicial Centre and for an order that I recuse myself from this matter. He also seeks a stay of the proceeding until the motion is decided and an order that the Chief Justice request an appointment of a judge from outside the Pictou/Antigonish District or an out-of-province judge to oversee the matter.

[2] In this proceeding, Raymond O'Neil filed an Application in Court seeking an accounting from the respondent for the respondent's dealings as power of attorney for their late mother. I am not seized of this proceeding.

[3] In a related proceeding, SAT 545329, the respondent brought an Application in Court (later converted to an Action) seeking a declaration that the defendants (including the applicant in this proceeding) exercised undue influence over their mother in connection with the transfer of real property. I was scheduled by the Chief Justice to hear that proceeding as a result of the District Judge recusing himself. By decision dated February 2, 2026, I granted the defendants' motion for summary judgment on evidence and an order dismissing the proceedings against them on grounds that the plaintiff's claim was barred by the passage of time (*O'Neil v. O'Neil*, 2026 NSSC 39).

[4] The parties appeared for the motion in this proceeding by MS Teams. The respondent consented to the request to change the place of the proceeding to Halifax in accordance with Rule 32.02(4). I ordered that the place of the proceeding be changed to Halifax. The Order will require a change to the Style of Cause to change the court reference from Ant No. 543556 to Hfx No. 543556.

[5] At the conclusion of the hearing, I advised the parties that I would provide a bottom-line decision on March 27, 2026, and on that date, I dismissed the request for my recusal with reasons to follow. These are my reasons.

Analysis

[6] As to the request for my recusal, the question is whether Adrian O'Neil has demonstrated that there are grounds for a reasonable apprehension of bias. Adrian

O'Neil's grounds for alleging bias are an adverse ruling by me on a summary judgment motion in a separate but related proceeding; and, that I was assigned to hear this and the related proceeding by the Chief Justice following on the decision of the District Judge to recuse himself.

[7] In *Fraser v. MacIntosh*, 2024 NSCA 85, Justice Beaton, writing for the court, denying the appeal, described the legal test as follows:

> [26] There is a strong presumption in favour of judicial impartiality. Mr. Fraser bears a heavy burden to demonstrate judicial bias (*Ward v. Murphy*, 2024 NSCA 81 at paras 26-27).

[8] In *Fraser v. Nova Scotia Barristers' Society*, 2024 NSCA 79, Justice Derrick was faced with a request by Mr. Fraser that she recuse herself. Justice Derrick reviewed the legal principles in paras. 40 to 46:

> [40] When a motion for recusal is made, the judge whose recusal is being sought must hear and determine the issue (*Bossé v. Lavigne*, 2015 NBCA 54, at paragraph 5). This approach was taken in *Arsenault-Cameron v. Prince Edward Island,* [1999] 3 S.C.R. 851, and by Saunders, J. of this Court in *Doncaster v. Chignecto-Central Regional School Board*, 2013 NSCA 59, at para. 14.
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> [41] Delay in bringing a recusal motion may be a basis for dismissing it (*R. v. McQuaid*, 1996 NSCA 254, at paras. 34-35; *R. v. Van Wissen*, 2018 MBCA 100, at para. 14). I have decided the applicant's motion on its merits, and have not taken into account any delay in bringing it.
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> [42] The law that governs recusal motions grounded in allegations of a reasonable apprehension of bias is well-settled and long-standing. As stated in *Committee for Justice and Liberty v. National Energy Board*, [1978] 1 S.C.R. 369, at pp. 394-395 and repeated in *R. v. R.D.S.*, [1997] 3 S.C.R. 484, at paragraph 31:
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> > …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…[T]hat 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 decision-maker], whether consciously or unconsciously, would not decide fairly.
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> [43] The Supreme Court of Canada in *Yukon Francophone School Board, Education Area No. 23 v. Yukon Territory (Attorney General)*, 2015 SCC 25 noted its consistent endorsement of the reasonable apprehension of bias test, and set out the governing principles in paragraphs 22 and 23:

> • The objective of the test is to ensure not only the reality, but the appearance of a fair adjudicative process.
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> • The issue of bias is "inextricably linked to the need for impartiality".
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> • Impartiality "connotes absence of bias, actual or perceived" (*Valente v. The Queen*, [1985] 2 S.C.R. 673, at p. 685).
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> • Impartiality and the absence of bias have both legal and ethical requirements. "Judges are required – and expected – to approach every case with impartiality and an open mind".
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> • Public confidence in the legal system is "rooted in the fundamental belief" that judges will adjudicate free or bias or prejudice and "must be perceived to do so" (*Wewaykum Indian Band v. Canada*, [2003] 2 S.C.R. 259, at paragraph 57).

[44] A judge confronted by a recusal motion is expected to assess subjectively whether they are able to adjudicate with impartiality. And even in the event a judge concludes they are able to judge impartially, they must then consider "whether there is nevertheless a reasonable apprehension of bias (*Bossé*, at para. 7). The test for a reasonable apprehension of bias is objective (*R. v. K.J.M.J.,* 2023 NSCA 84, at para. 57).

[45] Due to a strong presumption of judicial impartiality, an applicant's burden on a recusal motion is a heavy one, requiring cogent evidence of bias. The grounds advanced in support of a reasonable apprehension of bias "must be considered in the context of the circumstances, and in light of the whole proceeding" (*R.D.S.*, at para. 141).

[46] These principles have been emphasized by this Court in *Nova Scotia (Attorney General) v. MacLean*, 2017 NSCA 24:

> [39] First, as a matter of law, there is a strong presumption of judicial impartiality, which is not easily displaced. Second, there is a heavy burden of proof upon the person making the allegation to present cogent evidence establishing "serious grounds" sufficient to justify a finding that the decision-maker should be disqualified on account of bias. Third, whether a reasonable apprehension of bias exists is "highly fact-specific". Such an inquiry is one where the context, and the particular circumstances, are of supreme importance. The allegation can only be addressed carefully in light of the entire context. There are no shortcuts. See *Wewaykum Indian Band v. Canada*, 2003 SCC 45.

[9] In deciding this motion, I have not considered that there was any delay in bringing it.

[10] An adverse ruling against a party does not, on its own, justify the recusal of the judge in a separate but related proceeding. In *Beard Winter LLP v. Shekhdar*,

2016 ONCA 493, Justice Doherty for the Ontario Court of Appeal said that judges should be reluctant to entertain allegations of bias that are advanced without an air of reality, at paras. 10-11:

> [10] It is important that justice be administered impartially. A judge must give careful consideration to any claim that he should disqualify himself on account of bias or a reasonable apprehension of bias. In my view, a judge is best advised to remove himself if there is any air of reality to a bias claim. That said, judges do the administration of justice a disservice by simply yielding to entirely unreasonable and unsubstantiated recusal demands. Litigants are not entitled to pick their judge. They are not entitled to effectively eliminate judges randomly assigned to their case by raising specious partiality claims against those judges. To step aside in the face of a specious bias claim is to give credence to a most objectionable tactic.
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> [11] … The moving party is certainly entitled to his own opinion about the adequacy of the reasons and the correctness of those decisions. However, the personal opinion of the losing litigant as to the quality and correctness of the court's decision counts for little when assessing a partiality claim. It is understandable that losing litigants sometimes firmly believe that the court got it all wrong. To jump from that conclusion to allegations of racism and corruption is irresponsible and irrational.
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> [Emphasis added.]

[11] Here, the moving party alleges that my decision dismissing his claim in a related matter disclosed a "… repeated failure to address or acknowledge significant discrepancies in the evidence of Defendant Justice Lawrence O'Neil…" As is apparent from my decision, the evidence of Lawrence O'Neil was not material to the question before the court. The issue was determined on the basis of the evidence of Adrian O'Neil as to when he had sufficient knowledge of the claim for the purpose of limitation. Adrian O'Neil has said he has or plans to appeal that decision. That is his right and his remedy.

[12] The fact that I was assigned to hear this related matter by the Chief Justice after the District Judge recused himself is not evidence upon which a reasonable and informed person, viewing the matter realistically and practically – and having thought the matter through – would conclude bias.

[13] I am completely satisfied I have and will fairly and impartially adjudicate the issues before me in this proceeding based on the evidence and the law as is my legal and ethical obligation and the guiding principle for my judicial role. I believe that any informed person, viewing the motion evidence realistically and practically and

having thought the matter through would find that I have and would decide the issues raised in this proceeding fairly.

[14] The moving party has not overcome the heavy burden to establish judicial bias. The motion is dismissed. No costs are awarded on the motion.

Norton, J.