CITATION: Bogue v. Miracle, 2025 ONSC 4694
COURT FILE NO.: CV-00019-0077 (Belleville)
DATE: 20250814

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

GLENN BOGUE	)	
Plaintiff	)	*Greg Roberts*, for Glenn Bogue
– and –	)	
ANDREW CLIFFORD MIRACLE, ANDREW CLIFFORD MARACLE III, SMOKIN' JOES and SMOKIN' SPEEDWAY, VIRGINIA MARACLE, LISA SEXSMITH MARACLE operating as SMOKIN' SPEEDWAY and YOLANDA MARACLE	)	
Defendants	)	*Ian J. Collins*, for Andrew Clifford Miracle

REASONS FOR DECISION
(Motion to Recuse)

MEW J.:

Introduction

[1] Andrew Clifford Miracle brings this motion seeking an order that I recuse myself as judge and case manager of this and related court proceedings, including a bankruptcy matter under court

file number BK-19-02561274-0033 (Ottawa). He asserts that my continued involvement with his matters gives rise to an apprehension of bias.

[2] I was appointed by Regional Senior Justice MacLeod on 6 July 2023 as the case manager of a number of related proceedings in which Mr. Miracle is a party. That appointment was made pursuant to Rule 37.15. Its mandate is ongoing.

[3] The genesis of the motion includes comments made during the hearing of a series of motions and applications between 14 and 16 February 2024, my subsequent reasons for decision in those matters in *Bogue v. Miracle*, 2024 ONSC 164, and procedural directions given at a case conference on 2 April 2025.

[4] The grounds for the motion are that:

a. During the course of the hearing, I made a derogatory comment about "Indians"[1] as a race;

b. I made derogatory *ad hominem* comments about Mr. Miracle;

c. I directed an unfair motion structure at the 2 April 2025 case conference;

d. In my decision on the substantive motions, I relied only on a 2019 decision of Kershman J. concerning the meaning and impact of an assignment agreement, while failing to acknowledge and apply a 2021 decision of Kershman J. in which he is said to have reversed himself on the meaning and impact of that assignment agreement;

e. I intended that Mr. Bogue should receive funds from Mr. Miracle through a solicitor's lien;

f. I pre-judged an issue of paramountcy raised by Mr. Miracle.

[5] For the reasons that follow, I would dismiss the motion.

[1] As I did in my decision on the substantive motions and applications, I take the same approach as Tulloch J.A. in *Bogue v. Miracle*, 2022 ONCA 672, at para. 2, and LaForme J.A. in *Tyendinaga Mohawk Council v. Brant*, 2014 ONCA 565, 121 O.R. (3d) 561, at para. 2. Many of the legal issues in the substantive motions dealt with the effect of the *Indian Act*, R.S.C. 1985, c. I-5. I have therefore used the term "Indian", rather than the more respectful term "indigenous", when that terminology has been used by the parties, or as otherwise warranted by the context.

Reasonable Apprehension of Bias

[6] The test for a reasonable apprehension of bias was articulated in the opinion of de Grandpré J. (dissenting in the result) in *Committee for Justice and Liberty et al. v. National Energy Board et al.,* [1978] 1 S.C.R 369, at 394-395, as follows:

> …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...[The] 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."
>
> …
>
> 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".

[7] Allegations of judicial bias call into question not simply the personal integrity of the judge involved, but, also, the integrity of the administration of justice as a whole. The threshold for a finding of real or perceived bias is, necessarily, a high one. In *R. v. S. [R.D.]*, [1997] 3 S.C.R. 484, at para. 141, Cory J. observed:

> … allegations of perceived judicial bias will generally not succeed unless the impugned conduct, taken in context, truly demonstrates a sound basis for perceiving that a particular determination has been made on the basis of prejudice or generalizations. One overriding principle that arises from these cases is that the impugned comments or other conduct must not be looked at in isolation. Rather it must be considered in the context of the circumstances, and in light of the whole proceeding.

Background

[8] The litigation between Mr. Bogue and Mr. Miracle has been going on for a long time. Mr. Bogue is a former lawyer who once acted for Mr. Miracle. He represented Mr. Miracle at an arbitration between Mr. Miracle and Mr. Miracle's son, Andrew Clifford Maracle III, concerning the right to profits and ownership of an on-reserve business, "Smokin' Joes" a.k.a. "Smokin' Joe's". An award of $11,486,238 was obtained in Mr. Miracle's favour. An appeal of the arbitrator's award was dismissed by Kershman J. on 10 October 2017: *Maracle v. Miracle*, 2017 ONSC 5876, leave to appeal to the Court of Appeal denied on 23 March 2018.

[9] Mr. Bogue says that he acted for Mr. Miracle pursuant to a contingency fee agreement under which he would receive a fee of 25% of the amount awarded by the arbitrator.

[10] Mr. Miracle, personally, has not yet collected any of the money awarded by the arbitrator. He has, however, as a result of the arbitrator's decision, acquired his son's share in the Smokin' Joes business.

[11] On 23 September 2019, Andrew Maracle (the son) made an assignment in bankruptcy. Mr. Miracle is by far the largest creditor of the bankrupt.

[12] Mr. Bogue has only so far been paid a nominal amount by Mr. Miracle for his services. Accordingly, in 2019, he applied to this court for the appointment of a receiver over the assets, undertakings and properties of Mr. Miracle, Mr. Maracle and their "Smokin' Joes" business. Kershman J. ordered the appointment of a receiver pursuant to s. 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, on 11 October 2019 (the parties dispute whether Justice Kershman had, by that time, been informed of Mr. Maracle's declaration of bankruptcy).

[13] In his 2019 receivership decision, Kershman J. made a finding that an assignment agreement entered into between Mr. Miracle and his current lawyer, Ian Collins, included an acknowledgment that Mr. Miracle owed Mr. Bogue $2,871,000.

[14] Mr. Miracle appealed the receivership order made by Kershman J. One of his grounds of appeal was that the final order made by Kershman J. contravened sections 29 and 89 of the *Indian Act*, which prohibit the enforcement by a non-status Indian against the assets of a "Indian" situated on a reserve.

[15] The Court of Appeal viewed the question of the application of the *Indian Act* as a threshold issue that needed to be determined before the appeal as a whole could be heard. As that issue had not been fully canvassed before the application judge, the matter was remitted to him for determination: *Bogue v. Miracle*, 2021 ONCA 278.

[16] On 15 November 2021, Kershman J. held that in the particular circumstances of the case, the appointment of a receiver and manager of Mr. Miracle's property was permitted by the "commercial mainstream" exception under s. 89 of the *Indian Act*.

[17] Mr. Miracle took a further appeal to the Court of Appeal from Kershman J's 15 November 2021 decision. On 29 September 2022, the Court of Appeal allowed Mr. Miracle's appeal, holding that Mr. Bogue's receiver, acting on behalf of a creditor who is not an "Indian" for the purposes of the *Indian Act*, cannot recoup profits from Mr. Miracle's on-reserve businesses: *Bogue v. Miracle*, 2022 ONCA 672.

[18] Other grounds of appeal which Mr. Miracle had also raised on that appeal, were not considered.

[19] The motions and application which were argued before me between 14 and 16 February 2024 consisted of:

a. An application by Mr. Miracle in court file number CV-23-371 for a vexatious litigant order against Glenn Bogue;

b. A motion by Mr. Miracle in court file numbers CV-19-077 and CV-23-136 seeking security for costs against Glenn Bogue;

c. A motion for summary judgment brought by Glenn Bogue against Mr. Miracle in court file number CV-23-136;

d. A motion for summary judgment brought by Rod Gram against Mr. Miracle in court file number CV-23-136;

e. A motion by Mr. Bogue in court file numbers BK-19-02561274-0033 (Ottawa) and CV-19-077 for a charging order against the funds being held by the Trustee in Bankruptcy of Mr. Maracle, and/or declarations in court file numbers CV-13-284 and CV-19-077 that the bankruptcy proceeds and any funds secured in the receivership are subject to a solicitor's lien; and

f. A motion by Mr. Miracle in court file number BK-19-02561274-0033 directing payment out to him of a bankruptcy dividend by the Trustee in Bankruptcy of Mr. Maracle.

[20] I declined to deal with the issue of whether, regardless of any entitlement on Mr. Bogue's part to a lien or a charging order against funds held by Mr. Maracle's Trustee in Bankruptcy, only an Indian could maintain a claim against funds held by the Trustee in Bankruptcy of another Indian. I did so, without prejudice to Mr. Miracle seeking such relief in the future.

[21] I dismissed Mr. Miracle's application for a vexatious litigant order against Mr. Bogue and his motion for security for costs. I dismissed Mr. Bogue's motion for a charging order, as well as Mr. Gram's motion for summary judgment against Mr. Miracle. I granted Mr. Bogue's motion for a declaration of a solicitor's lien, and granted Mr. Bogue summary judgment against Mr. Miracle in the amount of $2,858,500 plus costs (net of a costs award of $30,000 which the Court of Appeal had previously made against Mr. Bogue in Mr. Miracle's favour).

[22] Mr. Miracle appealed my decision. His appeal was dismissed: *Bogue v. Miracle*, 2025 ONCA 188 (CanLII). An application for leave to appeal to the Supreme Court of Canada is pending. However, Mr. Miracle was denied a stay of the Court of Appeal's decision pending that application for leave to appeal: *Gram v. His Majesty the King*, unreported endorsement of Roberts J.A. in court file number M55969 (COA-24-CV-0478), dated 9 May 2025.

[23] Mr. Bogue accumulated various costs awards in his favour along the way, totaling $122,841.28. On 28 August 2024, Fairburn A.C.J.O. ordered Mr. Miracle to pay into court security for costs in the total amount of $115,026.90: *Bogue v. Miracle,* 2024 ONCA 643. Roberts J.A. subsequently ordered the monies paid into court as security for costs to be paid out to the

credit of Mr. Bogue. As a result, some $117,513.08 was paid out of court to Mr. Bogue's lawyer on 10 July 2025.

Bias Alleged

[24] The issue of bias was not raised by Mr. Miracle in his appeal to the Court of Appeal. It only emerged for the first time in a case conference memorandum dated 20 July 2025, delivered by Mr. Miracle's lawyer.

[25] During the course of his submissions on the recusal motion, Mr. Miracle's counsel stated that Mr. Miracle is not asserting actual bias on my part. Rather, what Mr. Miracle raises is the appearance of bias.

[26] Mr. Miracle's principal allegations are discussed in the paragraphs that follow.

Derogatory Comments

[27] Notwithstanding counsel's statement that no assertion of actual bias is made, Mr. Miracle makes serious allegations about comments which he says were made during the course of the argument of the motions. Neither Mr. Miracle nor his lawyer, Mr. Collins, ordered a transcript of those proceedings. Nor did they ask to be provided with access to the audio recording of the hearing. Instead, the evidence concerning the comments that I am alleged to have made were contained in affidavits, made 17 months after the event, from Mr. Miracle and his spouse, both of whom were present throughout the argument of the motions.

[28] If the comments alleged by Mr. Miracle had been made, I would have no quarrel with them being described as racist. They would be the type of comments wholly unbecoming a judge. One would expect such comments to form the basis for a complaint to Canadian Judicial Council. I would have no hesitation in disqualifying myself from further involvement in Mr. Miracle's cases on grounds of reasonable apprehension of bias if I had said what he alleges.

[29] Upon becoming aware that the allegations of inappropriate comments had been made by Mr. Miracle, I ordered a transcript of what I believed to be the relevant exchanges between myself and Mr. Collins. Mr. Collins has confirmed that the transcript portion that I ordered is the salient one.

[30] It is clear from the transcript – and now conceded by Mr. Collins – that I did not make the offensive statement alleged by Mr. Miracle and by his wife, Sunisa Miracle.

[31] Nor was any evidentiary basis tendered for the existence of the alleged derogatory *ad hominem* comment – calling Mr. Miracle a "liar" – that I am alleged to have made during the course of exchanges between myself and counsel during the hearing.

[32] To the extent that there was anything said in the exchanges that occurred between the court and counsel that could be perceived as offensive or inappropriate, it arose from a discussion of a

decision of the Supreme Court of Canada in *McDiarmid Lumber Ltd. v. God's Lake First Nation*, [2006] 2 S.C.R. 846. The court had not been provided with a copy of this authority in advance, but counsel for Mr. Miracle made reference to it during the course of his oral argument. He told the court that it involved non-payment by a band of Indians for work that had been done by a lumber company. The lumber company had sought a garnishment. In response to the court's comment concerning the case that it was "sounding pretty familiar so far, isn't it?", counsel responded, "yeah, seems to be", but then went on to provide some context for what had happened in that case, and why Mr. Miracle's case could be distinguished from the facts (and result) in that case.

[33] While I am satisfied that a reasonable person, having regard to the context as a whole, would not find what was said during the exchanges between the court and counsel to be objectionable, let alone capable of supporting a reasonable apprehension of bias, if Mr. Miracle was genuinely offended by what was said, I regret both having caused such offence, and that I was not sufficiently sensitive to the possibility that offence might be taken. That said, I am not persuaded that a reasonable and right-minded person, viewing the matter realistically and practically, and having thought the matter through, would conclude that, as a result of what was said, and its context, I would not decide issues involving Mr. Miracle in the ongoing litigation fairly.

[34] Mr. Miracle also takes exception to my comment, at para. 129 of my decision on the motions, that "the fact is that every possible obstacle to Mr. Bogue [collecting his fees through the normal civil process] has been placed in Mr. Bogue's way by [Mr. Miracle]". Fairburn A.C.J.O. came to a similar conclusion, in reviewing the history of this litigation and concluding that it was appropriate to order Mr. Miracle to pay substantial security for costs into court in respect of his then pending appeal from my decision: see *Bogue v. Miracle*, 2024 ONCA 643, at para. 21.

[35] As I have already noted, the litigation between Mr. Bogue and Mr. Miracle has been going on for years. The case has been to the Court of Appeal three times. There have been multiple motions and many case conferences. To date, with the exception of a nominal amount and, now, the recovery of some costs, Mr. Miracle has, in fact (and I use the terminology advisedly) managed to thwart (perhaps a less pejorative word than "obstruct") Mr. Bogue's efforts to collect the fees that he says he is owed.

[36] There is still some distance to go in the litigation. In particular, there has not yet been a determination of the extent to which the *Indian Act* could operate as a bar to Mr. Bogue's collection efforts.

[37] I do not accept that a reasonable and right-minded person would conclude that any future issues arising between Mr. Bogue and Mr. Miracle cannot be adjudicated fairly because of my comment that the latter has succeeded in placing obstacles in the path of Mr. Bogue's efforts to collect his fees. There are any number of ways that one could say that Mr. Miracle has enjoyed great success in the deployment of defences to Mr. Bogue's claims against him. I do not believe

that a reasonable person would find the language I used offensive or inappropriate, let alone sufficient to support a reasonable apprehension of bias.

Case Conference Directions

[38] As to directions that were given by me at a case conference concerning the scheduling of motions and the delivery of materials – arrangements that Mr. Collins concurred with at the time, but now says he should not have agreed to – no explanation is offered as to why those directions demonstrate possible bias against Mr. Miracle, as distinct from any of the other affected litigants. As it turns out, that schedule was disrupted by the failure of Mr. Miracle to comply with it, and the subsequent bringing of this motion, which was heard at a time originally designated to hear other motions.

Application of Previous Decisions of Kershman J.

[39] The other grounds raised by Mr. Miracle in support of his allegations of apprehension of bias arise from certain findings that I made on the previous motions.

[40] Mr. Miracle says that I made errors because I relied on a decision of Justice Kershman made in 2019 which, according to Mr. Miracle, Justice Kershman disavowed two years later. Mr. Miracle argues that because these alleged errors were not addressed, and therefore not corrected, by the Court of Appeal, my continued involvement in the case could give rise to a reasonable apprehension of bias.

[41] I do not accept that argument. Taking it to its logical conclusion, any time an appeal is taken from a judge's decision, and a particular ground of appeal is not addressed by the Court of Appeal (which might occur for a variety of reasons), it would then be open to challenge any continued involvement of the judge in the case, or other matters involving the aggrieved party, because that party asserts that the judge made an uncorrected error and could therefore not be trusted to treat the parties fairly and adhere to the judge's judicial oath going forward.

[42] I understand that Mr. Miracle is aggrieved because I adopted certain findings made by Justice Kershman. I explained in my reasons for decision why I did so. Mr. Miracle is entitled to be disappointed at the outcome of the motions that I heard, and his subsequent lack of success at the Court of Appeal. Just because judges have made some decisions that Mr. Miracle does not like does not mean they are biased judges. No reasonable person with an appreciation of how the administration of justice works would harbour a reasonable apprehension of bias against Mr. Miracle on the part of judges who have made decisions that Mr. Miracle does not like.

Conclusion and Further Observations

[43] It is not as if Mr. Miracle has been entirely unsuccessful during the course of this litigation. The summary judgment motion brought by Mr. Gram was dismissed. So was Mr. Bogue's motion for a charging order. And, far from the paramountcy issue raised by Mr. Miracle having been

predetermined, it was expressly deferred to a future hearing (that hearing is now scheduled to take place on 3 October 2025).

[44] Nevertheless, Mr. Collins submitted that even if, taken individually, each of the various grounds raised in support of Mr. Miracle's motion would not on their own give rise to a reasonable apprehension of bias, when considered cumulatively, they do.

[45] I disagree. Furthermore, and quite aside from the lack of merit of the substantive grounds raised by Mr. Miracle, there are two other aspects of his motion that need to be mentioned, either or both of which severely undermine his cause.

[46] In the first place, this is not the only time that Mr. Miracle has attempted to obtain the removal of a judge assigned to his cases whose decisions he does not like. Similar allegations (albeit not involving assertions of racist or offensive comments) were made against Justice Kershman. I was assigned to these matters in Justice Kershman's place by the Regional Senior Justice, not because the Regional Senior Justice thought there was any substance to Mr. Miracle's allegations of bias, but, rather, because of Kershman J.'s transition to supernumerary status.

[47] More significantly, Mr. Miracle has failed, without any cogent explanation or excuse, to explain why his allegations of bias have only been raised for the first time well over a year after the impugned comments and decision were made. There is a cardinal principle that an objection on the basis of reasonable apprehension of bias concerning the conduct of a presiding judge should be made within a reasonable time, as the Supreme Court of Canada stated in *R. v. Curragh Inc.*, [1997] 1 S.C.R. 537, at para. 113:

> A judge will not be disqualified by reason of bias unless the application for disqualification is made in a timely and seasonable fashion. Unless objection is taken promptly upon discovery of the alleged bias, the right to have or to have had an unbiased adjudicator is lost[.]

Disposition

[48] Mr. Miracle's failure to raise his concerns about reasonable apprehension of bias in a timely manner would, in and of itself, be grounds to dismiss his motion.

[49] As I have explained, the substance of Mr. Miracle's complaints also fails the meet the high threshold of reasonable apprehension of bias.

[50] Mr. Bogue submits that Mr. Miracle's motion to have me removed on the grounds of reasonable apprehension of bias is purely tactical. Unfortunately, the lack of substantive merit, the timing of the motion to recuse, and the absence of accurate, or any, evidentiary support for the most serious of the allegations made by Mr. Miracle, provides an ample basis for that submission.

[51] The recusal motion is dismissed.

Costs

[52] Mr. Bogue asks for his costs of the motion on a substantial indemnity basis.

[53] Mr. Miracle submits that there should be no costs awarded in Mr. Bogue's favour. Noting that Mr. Bogue was the only party who appeared on the motion, Mr. Miracle's position is that if he were to have been successful on the motion, he would not have the basis to demand costs from Mr. Bogue. Logically, therefore, he argues that the converse should also apply.

[54] I am of the view that Mr. Bogue is entitled to costs.

[55] There is an ample basis to support Mr. Bogue's contention that this motion was tactical. Its purpose was to remove a judge, some of whose decisions Mr. Miracle does not like. It is not the first time he has attempted to employ this tactic. By opposing the motion, Mr. Bogue argues that his purpose has been to oppose what he regards as an attempt to pervert the course of justice, by effectively allowing Mr. Miracle to pick and choose the jurist(s) he does not want to have hearing his case. Furthermore, Mr. Bogue sees it as in his best interests to keep this litigation on track. The longer the litigation drags on, the greater the erosion of the funds held by the Trustee due to professional fees.

[56] Mr. Bogue suggests that substantial indemnity costs are warranted because, in particular, of the serious but ultimately unfounded allegations that a racist comment had been made and because of the lack of any attempt by either Mr. Miracle or his lawyer to check the accuracy of the recollection provided by Mr. Miracle in his July 2025 affidavit concerning words that were allegedly spoken in February 2024 by reference to either the court recording or a transcript.

[57] The costs outline provided by Mr. Bogue calculates his partial indemnity costs to be $15,127.88, and his substantial indemnity costs, inclusive of HST, to be $19,450.13.

[58] I agree that Mr. Miracle's prosecution of the recusal motion amounts to vexatious and abusive conduct in the course of this litigation. That said, costs should be proportionate. Although the motion was heard on a compressed timetable, the amount claimed by Mr. Bogue strikes me as unreasonably high, whether on a substantial indemnity or partial indemnity basis.

[59] Mr. Miracle is ordered to pay Mr. Bogue's costs of this motion in the all-inclusive amount of $12,500 forthwith.

Mew J.

Released: 14 August 2025

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