

CITATION: Huismans v. Huismans, 2026 ONSC 159
COURT FILE NO.: CV-24-97983
DATE: 2026/01/08

SUPERIOR COURT OF JUSTICE – ONTARIO

RE: Peter Huismans, Applicant

AND

William Huismans and Huismans Poultry Farm Ltd., Respondents

BEFORE: Mr. Justice Stanley J. Kershman

COUNSEL: D. Cutler, for the Applicant

J. F. Lalonde and A. Donaldson, for the Respondents

HEARD: December 12, 2015 via Zoom

REASONS FOR DECISION ON RECUSAL MOTION

KERSHMAN J.

[1] A recusal motion is brought by William Huismans (“Willie”) in relation to an application commenced by his brother Peter Huismans (“Peter”) against Willie and a cross application brought by Willie against Peter. The motion requests that Justice Kershman recuse himself from hearing both the application and cross application on the basis of a reasonable apprehension of bias.

Factual Background

[2] This motion arises from a hearing on November 17, 2025 in relation to an application of Peter in court file number CV-24-00097983 (“983”) and Willie’s cross application in court file number CV-24-00097329 (“329”).

[3] Both the application and cross application were heard at that time, save and except for the reply by the counsel for Peter, which was heard on December 12, 2025, after this motion.

[4] During the hearing of the application and cross-application, it is alleged that comments made by Justice Kershman gave rise to a reasonable apprehension that he had prejudged key issues

in the dispute between the brothers regarding the disposition of the assets of the Huisman Poultry Farm Ltd. (“HPF”) and a civil action commenced by Willie against Peter for the misappropriation of funds in HPF in court file number CV-24-00096423-0000 (“Misappropriation Action”) which will be referred to later on in this decision.

[5] The two brothers, Peter and Willie, are shareholders in HPF, a family-owned poultry farm business. The relationship between the brothers has broken down, leading to competing applications for relief related to the sale and distribution of HPF and/or its assets.

[6] On August 14, 2025, Peter commenced a Fresh as Amended Application in 983 seeking, *inter alia*, an order directing him to complete eight transactions to dispose of all HPF assets and distribute the proceeds equally between himself and Willie.

[7] On September 25, 2025, Willie commenced a Fresh as Amended Application in 329 seeking, *inter alia*, an order directing him to sell the main farm property and associated egg quota to Virk Poultry Farm Ltd., In Trust (“Virk”) followed by a buyout of Peter’s shares of HPF at 1/2 of the market value based on a price that Peter allegedly offered on July 17, 2025 and which was allegedly accepted by Willie on July 28, 2025.

[8] The application and cross application were heard together before Justice Kershman on November 17, 2025.

[9] There was also a separate action Misappropriation Action commenced by Willie against Peter, alleging misappropriation and other allegations. That action is still proceeding and was not part of the application and cross application heard on November 17, 2025, even though references were made to it.

[10] The court clarified at the hearing of the application and cross application that the allegations in relation to the Misappropriation Action commenced by Willie against Peter were not being dealt with.

[11] After hearing the matter for approximately a half a day, and without having the benefit of reply from Peter’s counsel, the matter was adjourned for the reply to be heard at a later date.

[12] Prior to the reply being heard, Willie brought the within recusal motion.

Issues

1. Should Justice Kershman recuse himself from 983 and 329, on the basis of reasonable apprehension of bias;
2. If Justice Kershman recuses himself, should both applications be heard *de novo* by an alternative Judge; and,
3. Should leave be granted to file new evidence in the form of an agreement of purchase and sale dated December 8, 2025 from Virk as purchaser and Huismans Poultry Farm Ltd. as seller of 1789 Huismans Road, Ottawa, Ontario and 90% of the total quota under license number 01918 representing 41,520 hens.

Issue #1: Should Justice Kershman recuse himself from 983 and 329, on the basis of reasonable apprehension of bias?

Willie's Position

[13] Willie alleges that during the hearing on November 17, 2025, Justice Kershman made several comments which gave rise to a reasonable apprehension that he had prejudged key issues against Willie's position in the dispute between the two brothers, particularly regarding Willie's illiteracy and the Misappropriation Action.

[14] Specifically, when Willie's counsel proposed that Willie be ordered to finalize the sale to Virk in accordance with his cross application, Justice Kershman stated "Oh yes. You're going to ask a gentleman who cannot read or write to finalize an agreement for purchase and sale for a – a deal that's worth an excess of \$20 million." Willie suggests that these comments are sarcastic.

[15] Justice Kershman further commented on Willie's illiteracy saying "I'm not suggesting he hasn't worked for 50 years. He – he – he, in his own affidavit, says he can't read or write"; "But he – he – he certainly doesn't know how to read a right according to his..."; and "I – I can work my whole life, but still not know how to read or write. I might – I wouldn't... Be a judge. But I –

I – I could work my whole life without learning how to read a right. It might be difficult, but I could do it.”

[16] According to his counsel, Willie, his son and daughter-in-law suggested that the comments made by Justice Kershman were “ableist” comments and that Willie was not getting a fair hearing.

[17] “Ableism,” which refers to negative attitudes, stereotypes, and discriminatory behaviour towards persons with disabilities, is a prohibited ground of discrimination under the *Human Rights Code*, R.S.O. 1990, c. H.19.

[18] Willie argues that despite his illiteracy, Willie and his “entourage” (Willie’s counsel’s words) pursued discussions with Virk and secured a new agreement of purchase and sale on December 8, 2025, for a purchase of the farm and 90% of the total quota under license 01918, representing 41,250 hens for \$23,610,120 on basically the same terms and conditions as the July 16, 2025 offer.

[19] In his cross application, Willie seeks an order allowing him to take the necessary steps to complete the Virk agreement of purchase and sale.

[20] Willie’s position is that Justice Kershman’s conduct and comments during the November 17, 2025 hearing give rise to a reasonable apprehension of bias and as such, he must recuse himself from the proceedings and an alternative judge should be appointed to adjudicate on these proceedings and to conduct a *de novo* hearing of the application and the cross application.

Peter’s Position

[21] Peter’s position is that it is not appropriate or necessary for Justice Kershman to recuse himself from hearing the application and cross application nor is it necessary for the proceedings to be heard *de novo* by an alternative judge because Justice Kershman did not make any comments that would probably lead to a conclusion that there existed a reasonable apprehension of bias.

[22] Peter argues that it was Willie that made the issue of Willie’s illiteracy a main focus of the proceedings and it was clearly not a situation where Justice Kershman or Peter raised the issue of Willie’s disability “out of the blue” (Peter’s counsel’s words).

[23] Peter argues that no reasonable or plain reading of Justice Kershman's comments made at the November 17, 2025 hearing are capable of bearing the interpretation offered by Willie in support of an attempt to have Justice Kershman to recuse himself from the proceedings.

[24] Peter notes that there is no affidavit evidence from Willie in support of the motion and no affidavit evidence from Willie's son or daughter-in-law who viewed the proceedings. The evidence is that of Charles Godin, who is an articling student with Willie's counsel.

[25] Peter argues that no explanation was given as to why Willie, who had previously delivered several affidavits in the proceedings, had not provided evidence of his own in support of the recusal motion.

[26] Peter argues that there was no evidence that Justice Kershman has a predisposition against Willie's position. A judge's questions do not equate to pre-judging issues in dispute, nor does a judge, confirming that he had heard and understood the answer to the question posed, does not equate to an apparent disposition against the party.

Test on a Recusal Motion

[27] The test on a recusal motion is set out in the case of *Mazumder v. Bell Canada*, 2005 CanLII 30333 (Ont. S.C.), aff'd 2007 ONCA 143, leave to appeal to S.C.C dismissed, 32025 (September 20, 2007.)

[28] In that case, the court at paragraphs 7 to 12 sets out the test that deals with the allegation that a judicial officer is biased or there is an apprehension of bias.

[29] At paragraph 11, the court says:

This basic test calls for a two part objective analysis (*Authorson, supra*, at para. 6):

- a) the person, considering the alleged bias must be reasonable, and
 - b) the apprehension of bias itself must be reasonable
- in the circumstance of a case.

[30] As noted in paragraph 12 of the decision, the Divisional Court said that:

[The] reasonable person must be an informed person with knowledge of all of the relevant circumstances, including the traditions of integrity and impartiality that form part of the background of the judicial system, and also must be aware of the fact that impartiality is one of the duties that judges and masters swear to uphold. Mere suspicion of bias is not enough. The moving party must demonstrate a real likelihood or probability of bias.

Analysis

[31] This matter arises as a result of the application and cross application that was deemed urgent. Counsel requested a half day hearing, and when they were told that there was not that much time available, they chose a two-hour time slot for a complicated motion and cross motion. The materials were voluminous, considering the application, the cross application, the affidavits, the factums, and the compendiums.

[32] In reality, the matter could not be heard in two hours and had to go over to a second day. According to the transcript, on the first day, the matter commenced at approximately 2:08 p.m. and ended approximately 5:04 p.m. This did not include the hearing of the reply that was expected to take additional time and had to be scheduled for a later date.

[33] The later date was set, and the court was advised that Willie had prepared a recusal motion regarding Justice Kershman as a result of an apprehension of bias.

[34] Willie's affidavit material in his cross application makes it clear that he is illiterate and that he cannot read and write. That fact was brought up by Willie and not by the court. The court did ask questions about Willie and his ability to read, write, and understand what was happening in such a complicated series of transactions.

[35] Based on the evidence, the court heard that both brothers ran a large poultry operation that have been started by their parents or their father that involved over 40,000 hens. Both Peter and Willie have been involved with the business for a lengthy period of time and each had specific roles within the business. Peter handled the financial and administrative matters while Willie managed and ran the poultry operation with several employees. The evidence is that it was

Peter and not Willie who handled the financial affairs of HPF. No evidence to the contrary was provided. The court makes a finding to this effect.

[36] At a certain time, Willie brought the Misappropriation Action against Peter. The court stated at the hearing of the application and cross application that the Misappropriation Action was not being dealt with at the hearing. The court heard little to no evidence with respect to the Misappropriation Action.

[37] Paragraph 7 of Willie's factum says:

During the hearing, Justice Kershman made several comments that demonstrated a prejudgment of the merits and an apparent predisposition against Willie's position, regarding Willie's illiteracy and the civil action Willie commenced against Peter for misappropriation of HPF funds.

[38] The court reviewed the transcripts and notes and there do not appear to be any comments prejudging the Misappropriation Action. Other than that statement, there were no other allegations in relation to prejudging the Misappropriation Action. None were brought up by Willie's counsel in oral argument.

[39] The issue of literacy was raised by Willie in his affidavit, and not by the court.

[40] This litigation involved a series of complicated commercial transactions, whether it be those set out in Peter's application or those set out in Willie's cross application.

[41] A judge hearing a matter has the right to ask questions and make comments in relation to the matter in order to properly understand the context of the case and the various elements involved in the arguments before the court. It also has the right to probe as to the parties' abilities to do what they say they can do in order to come to a decision on the application and cross application. The court notes that no decision has been made on the application and the cross application.

[42] In the submissions made by Willie's counsel, he said that there were numerous incidences of the apprehension of bias throughout the hearing of the application and the cross application. When the court asked Willie's counsel to provide what other incidents there were in the transcript about allegations of bias, he said there were none.

[43] Willie's counsel argued that it was not his idea to bring the recusal motion. Rather, the motion was based on the perspective of his client as well as his client's son and daughter-in-law that there was an apprehension of bias.

[44] As stated at paragraph 15 of the *Mazumder* case:

The party alleging an apprehension of bias has the onus of proof. Allegations alone are insufficient. As described in *Authorson, supra*^[7], a careful examination of the facts must reveal a "real likelihood" or "probability" of bias. The court must not be intimidated by a litigant who makes unfounded allegations because he is unhappy with decisions made against him. If a judge or master steps aside merely for the asking then justice would neither be done nor be seen to be done.

[45] The court finds that Willie has not provided an evidentiary basis for the serious allegations made against a judicial official: *Mazumder*, at para. 17. Willie did not file an affidavit on the motion even though he had filed several affidavits on the application and cross application. The court agrees that it asked questions and made comments about Willie's literacy and his potential to complete the transactions as proposed in the cross application. At the same time, the court finds that the questions and comments do not reveal a real likelihood or probability of bias.

[46] Therefore, applying the objective test of whether Willie's claim of an apprehension of bias is reasonable, the court finds that it is not.

[47] In conclusion, the court is confident that it can preside over these proceedings, impartially and fairly. For these reasons, Willie's recusal motion is dismissed.

Issue #2: If Justice Kershman recuses himself, should both applications be heard *de novo* by an alternative Judge?

[48] This issue is now moot.

Issue #3: Should leave be granted to file new evidence in the form of an agreement of purchase and sale dated December 8, 2025 from Virk as purchaser and Huisman's Poultry Farm Ltd. as seller of 1789 Huisman's Road, Ottawa, Ontario and 90% of the total quota under license number 01918 representing 41,520 hens.

Willie's Position

[49] Willie argues that this evidence should be allowed. He argues that in Ontario, the court has discretion to admit additional evidence before a matter resumes. He relies on the *Palmer v. The Queen*, [1980] 1 SCR 759.

[50] He argues that the Virk agreement of purchase and sale is relevant because it is the “best deal” available, is open for acceptance, and that the purchaser is serious and can close the deal quickly.

[51] He also argues that there is an overriding consideration of the promotion of fair and accurate adjudication. If the agreement of purchase and sale is excluded, he argues that there is a risk of miscarriage of justice.

Peter's Position

[52] Peter offered no submissions in relation to this issue, other than to say that the Rocky Hill Farm Ltd. (“Rocky Hill”) offer provided a higher price, which would mean a greater benefit to HPF and its shareholders.

Analysis

[53] In this particular case, Willie has been able to secure an updated agreement of purchase and sale from Virk who had previously put in an offer dated July 17, 2025, which was acceptable to Peter and who conveyed that offer to Willie.

[54] The new offer from Virk is essentially the same as the July 17, 2025 offer, including the price. The court finds that this is evidence that this potential purchaser is still interested in the property.

[55] The court is not saying that Rocky Hill is not interested in the property.

[56] The admission of this document is at the court’s discretion. The court exercises its discretion and allows Willie leave to file the new agreement of purchase and sale dated December 8, 2025 from Virk, In Trust.

Costs

[57] Both parties have submitted either costs outlines and/or bills of costs.

[58] Peter sought partial indemnity costs of \$2,806 inclusive of disbursements and HST and \$4,209 on a substantial indemnity basis inclusive of disbursements and HST.

[59] Willie sought partial indemnity costs of \$5,557.56 inclusive of disbursements and HST. He sought substantial indemnity costs of \$8,131.75 inclusive of disbursements and HST.

[60] Willie was not successful on the recusal portion of the motion. He was successful to allow the Virk agreement of purchase and sale to be introduced as evidence. Notwithstanding this limited success, the court finds that Peter should be entitled to his costs on a partial indemnity basis.

[61] In the case of *Aganeh v. Aganeh*, 2017 ONSC 6386, at para. 16, the court said as follows:

Direk, Stinson J. of this court ruled that costs follow the normal rule even when accompanied by allegations that could lead to the removal of the judge from further involvement in the proceedings. In *Schreiber*, Newbould J. applied the ordinary costs rules as well in a motion to recuse. Both judges awarded costs against the unsuccessful moving party in favour of the responding party on a partial indemnity basis.

[62] At para. 26 in *Aganeh*, the court said the following:

The fixing of costs is a discretionary decision under section 131 of the *Courts of Justice Act*. That discretion is generally to be exercised in accordance with the factors listed in Rule 57.01 of the *Rules of Civil Procedure*. These include the principle of indemnity for the successful party (57.01(1)(0.a)), the expectations of the unsuccessful party (57.01(1)(0.b)), the amount claimed and recovered (57.01(1)(a)), and the complexity of the issues (57.01(1)(c)). Overall, the court is required to consider what is “fair and reasonable” in fixing costs, and is to do so with a view to balancing compensation of the successful party with the goal of fostering access to justice: *Boucher v Public Accountants Council (Ontario)*, 2004 CanLII 14579 (ON CA), (2004), 71 O.R. (3d) 291, at paras 26, 37.

[63] Notwithstanding the limited success of Willie in this motion, the real issue was the recusal by the judge, on which Willie was not successful. Bearing in mind, the factors set out in Rule 57.01

of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, including which party was successful, the lawyers' time, and whether any parties action has delayed the matter, the court finds that in this case, costs should be awarded to Peter on a partial indemnity basis, which in this case would be \$2,806 inclusive of disbursements and HST and payable by January 22, 2026. Willie cannot take any fresh steps in the litigation in this file or in 329 until these costs are paid.

[64] Order accordingly.

Mr. Justice Stanley J. Kershman

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Kershman J.

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