Federal Court Cour fédérale

Date: 20251021

Docket: T-721-23

Toronto, Ontario, October 21, 2025

PRESENT: Associate Judge Trent Horne

BETWEEN:

NADIRE ATAS

Applicant

and

THE ATTORNEY GENERAL OF CANADA AND THE HONOURABLE JUSTICE D.L. CORBETT

Respondents

ORDER AND REASONS

I. Background

[1] This application for judicial review challenges a decision of the Canadian Judicial Council [CJC] that summarily dismissed the applicant's complaint against a number of judges.

[2] The notice of application was issued on March 31, 2023.

[3] The applicant brought a motion to disqualify Justice Corbett's counsel on the basis of what was described as "disqualifying conflict of interest." I dismissed the motion (*Atas v Canada (Attorney General)*, 2024 FC 908 [*Atas I*]). The applicant appealed, and the appeal was dismissed by Justice Pallotta (*Atas v Canada (Attorney General)*, 2025 FC 626 [*Atas II*]). No further appeal was filed; the order of Justice Pallotta is final.

[4] A case management conference was held on June 25, 2025. During the case management conference, the applicant expressed an intention to bring a motion for an order that I recuse myself from the proceeding. I issued a scheduling order the same day. The scheduling order set a deadline of July 9, 2025 for the applicant to serve and file any recusal motion, and also a deadline of September 3, 2025 for the service and filing of an applicant's record.

[5] The applicant made an informal request for an extension of time to serve and file a recusal motion. I issued a direction on July 21, 2025 granting the applicant an extension of time to July 25, 2025 to serve and file such a motion. The applicant did not request an extension of time to serve and file an applicant's record.

[6] The applicant sent a series of emails to the Court with scores of tabs of materials comprising over 2,600 pages purporting to be a motion for recusal. The tabs included a significant number of authorities but not written representations. I issued an order on July 31, 2025 stating that the documents submitted as the applicant's motion for recusal may not be received for filing because they did not comply with Rule 364 of the *Federal Courts Rules*, SOR/98-106 [Rules].

[7] The applicant missed the September 3, 2025 deadline to serve and file an applicant's record. I issued the following direction on September 4, 2025:

> The Court's order of June 25, 2025 set a September 3, 2025 deadline for the service and filing of an applicant's record. No such record was submitted by that date.
>
> The applicant is directed to write to the Court by September 11, 2025 with a status update, and in particular to advise if an extension of time to serve and file an applicant's record will be sought, and whether any such request will be on consent, unopposed, or contested.

[8] The applicant wrote to the Court on September 11, 2025 and requested an extension of time to September 22, 2025 to serve and file an applicant's record. The letter stated "I am committed to fulfilling this obligation by the new deadline."

[9] I issued a further order on September 12, 2025. The order included the following recitation, and set a peremptory deadline of September 29, 2025 for the applicant to serve and file an applicant's record. This order was not appealed and is final.

> **AND UPON** being satisfied that the applicant should be granted an extension of time, but that this should be the last extension of time for the service and filing of an applicant's record, and that any further deadline must be peremptory. The applicant will be given more time than what was requested to serve and file an applicant's record, but any failure to meet this deadline will result in the proceeding being dismissed for delay without further notice. The applicant is encouraged to serve and file an applicant's record well before the deadline to ensure that any technical issues or obstacles are overcome;

[10] The applicant missed the deadline to serve and file an applicant's record, but did serve and file a motion for recusal on September 29, 2025. The applicant's motion does not request an

extension of time to serve and file an applicant's record, or a variance of the September 12, 2025 order. No responding materials have been filed on the recusal motion.

II. Analysis

A. *The application must be dismissed for delay*

[11] Dismissing a proceeding for delay, and foreclosing a determination of the merits, should only be done in exceptional circumstances. In the context of status reviews, there is consistent jurisprudence stating that, given the draconian effect of dismissing a claim for delay, the focus should be on the overall interests of justice in the case. The overarching concern should be whether the party in default recognizes their responsibility to move the action along and is taking steps to do so (*Roots v HMCS Annapolis (Ship)*, 2015 FC 1339 at para 28).

[12] This proceeding has been before the Court for more than two and a half years. The applicant has missed more than one deadline to serve and file an applicant's record. The September 12, 2025 order set a firm and fixed deadline of September 29, 2025 at 4:00 pm Eastern to serve and file an applicant's record. The consequences of missing the deadline were unambiguously set out in the order: "the deadline for the applicant to serve and file an applicant's record is peremptory, meaning it will not be extended. If the applicant misses this deadline, the proceeding will be immediately dismissed for delay without further notice."

[13] The applicant missed the deadline, has offered no excuse or explanation, and has not requested any variance of the September 12, 2025 order, and has not appealed that order. It is not in the interests of justice to permit this matter to continue after the applicant was given a clear

warning as to the consequences of missing the peremptory deadline to serve and file an applicant's record. I am not satisfied that the applicant recognizes her responsibility to comply with the Court's orders or move the matter forward. The application must be dismissed for delay.

B. *Recusal*

[14] The applicant's service of a recusal motion does not suspend the deadline for an applicant's record. The dismissal of the proceeding for delay renders the recusal motion moot. In any event, the applicant's recusal motion would have been dismissed.

[15] The legal principles applicable on a motion for recusal are well known: see *Wewaykum Indian Band v Canada*, 2003 SCC 45. In short, the test for disabling bias is reasonable apprehension of bias.

[16] The genesis for the modern formulation of the test is contained in the dissenting judgment of Mr Justice de Grandpré in *Committee for Justice and Liberty et al v National Energy Board et al*, 1976 CanLII 2 (SCC), [1978] 1 SCR 369, at 394:

> ...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. In the words of the Court of Appeal, 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 decision-maker], whether consciously or unconsciously, would not decide fairly.

[17] There are a number of key legal principles that apply on motions for recusal or disqualification of a judicial officer.

[18] First, the onus of demonstrating bias lies with the person who is alleging its existence. "Mere suspicion" is not enough, and a real likelihood or probability of bias must be demonstrated (*R v S (RD)*, 1997 CanLII 324 (SCC), [1997] 3 SCR 484, [1997] SCJ No 84 (QL) ("*R v S (RD)*"). The Federal Court of Appeal also instructs that "the onus of establishing a reasonable apprehension of bias lies with the person who alleges it, and the threshold for perceived bias is high" (*ABB Inc v Hyundai Heavy Industries Co, Ltd*, 2015 FCA 157 at para 55).

[19] The inquiry into whether a decision-maker's conduct creates a reasonable apprehension of bias, as a result, is inherently contextual and fact-specific, and there is a correspondingly high burden of proving the claim on the party alleging bias (*Yukon Francophone School Board, Education Area #23 v Yukon (Attorney General)*, 2015 SCC 25 at para 26).

[20] Second, the reasonable person referred to in the governing test must be "informed". A reasonable person must be informed not only of the relevant circumstances of the particular case, but also of the tradition of integrity and impartiality that are the backdrop for our judicial system and which are reflected in and reinforced by the judicial oath. In *R v S (RD)*, Cory J stated at para 116:

> Often the most significant occasion in the career of a judge is the swearing of the oath of office. It is a moment of pride and joy coupled with a realization of the onerous responsibility that goes with the office. The taking of the oath is solemn and a defining moment etched forever in the memory of the judge. The oath requires a judge to render justice impartially. To take that oath is the fulfilment of a life's dreams. It is never taken lightly. Throughout their careers, Canadian judges strive to overcome the personal biases that are common to all humanity in order to provide and clearly appear to provide a fair trial for all who come before them. Their rate of success in this difficult endeavour is high.

[21] Third, on an application which alleges bias by a case management judge, the applicant must establish that a reasonable, right-minded and properly informed person, viewing the matter realistically and practically, would view the case management judge's continued involvement as consciously or unconsciously biased as a result of his or her prior participation in other matters involving the moving party. Bias in such circumstances means a predisposition to decide the issues in a way which would suggest that the case management judge's mind was not completely open (*Hardy Estate v Canada (Attorney General)*, 2013 FC 728 ("*Hardy*") at para 56).

[22] Fourth, there is a strong presumption that judges will comply with their solemn judicial oath to administer justice impartially. This presumption is not easily rebutted. To prove an allegation of reasonable apprehension of bias against a judge requires convincing evidence. It will be particularly difficult for a litigant to establish a disqualifying bias on the basis of a judge's previous encounters with a litigant in his or her judicial capacity. A judge will not be disqualified solely on the ground that she or he has rendered an interlocutory decision adverse to a litigant in the same or a related proceeding (*Collins v Canada*, 2011 FCA 123 at para 4). The simple fact that judges render a judgment which is unfavourable to a party cannot in itself result in a conclusion of bias. A reasonable apprehension of bias must be shown to exist either in the judgment itself, in the comportment of the judge or by some other means (*Collins v Canada*, 2011 FCA 171 at para 11; see also *Johnson v Canadian Tennis Association*, 2022 FC 1759 at para 13).

[23] Fifth, a decision to recuse oneself should only be exercised sparingly and in the most clear and exceptional circumstances (*Hardy* at para 58).

[24] Having carefully reviewed the applicant's motion record, I cannot conclude that an informed person, viewing the matter realistically and practically, and having thought the matter through, would think that it is more likely than not that I would be unable, consciously or unconsciously, to decide the applicant's matters fairly.

[25] In most circumstances on a recusal motion, the member of the Court must step back and independently assess their own conduct without having the benefit of the perspective or analysis of another member of the Court. I am not in such a position here. The applicant's assertions of bias or unfair treatment are in respect of my order in *Atas I*, which was unsuccessfully appealed in *Atas II*.

[26] The applicant asserts that there is a reasonable apprehension of bias arising from my order in *Atas I* because of: framing and lack of engagement with allegations; misapplication of Rule 81; prejudgment of evidence; unequal treatment of hearsay; improper credibility findings; derogatory statements; failure to scrutinize collusion allegations; undue deference; dismissal of key evidence; misapplication of conflict test; dismissal of *amicus* conflict; inflammatory language; and disproportionate costs. All these issues were, or could have been, raised in the appeal of *Atas I*.

[27] The appeal was dismissed in its entirety. In *Atas II*, Justice Pallotta found, among other things:

(a) there is no basis to interfere with the June 13, 2024 order (para 54);

(b) there is no merit to the argument that AJ Horne besmirched Ms Atas's application for judicial review and motion or misapprehended her CJC complaint on a matter of substance that played a central role in his reasons dismissing the motion (para 55);

(c) Ms Atas has not established any basis to interfere with AJ Horne's conclusion that she failed to demonstrate that Stockwoods LLP or any of its lawyers should be removed as Justice Corbett's counsel of record (para 56);

(d) Ms Atas has failed to establish any error in the ruling to reject her affidavit that would warrant setting aside the order that is under appeal (para 57); and

(e) Ms Atas has not identified an error in AJ Horne's treatment of [the Mudryk affidavit] that would warrant setting aside the order under appeal (para 58).

[28] It is readily apparent that the applicant's recusal motion is an improper collateral attack on the order in *Atas II*.

III. Costs

[29] The Court has complete discretion over the amount and allocation of costs (Rule 400(1)).

[30] The issues in this application for judicial review are relatively straightforward, yet after more than 30 months it has not advanced past the exchange of evidence. The applicant has vexed the respondents with almost entirely unsuccessful motions and appeals (there are more than 200 entries in the Court file) yet has neglected or refused to serve and file an applicant's record. A costs award against the applicant is necessary to address the applicant's abuse of the resources of the respondents and the Court, and to provide partial compensation to the respondents.

ORDER in T-721-23

THIS COURT ORDERS that:

1. This application is dismissed for delay.

2. Within 10 days of the date of this order, the applicant shall pay $1,000.00 in costs to the Honourable Justice DL Corbett.

3. Within 10 days of the date of this order, the applicant shall pay $1,000.00 in costs to the Attorney General of Canada.

"Trent Horne"
Associate Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-721-23
STYLE OF CAUSE:	NADIRE ATAS v AGC ET AL

MATTER CONSIDERED WITHOUT THE PERSONAL APPEARANCE OF THE PARTIES

ORDER AND REASONS:	HORNE A.J.
DATED:	OCTOBER 21, 2025

WRITTEN REPRESENTATIONS (MOTION TO RECUSE) BY:

Nadire Atas	FOR THE APPLICANT ON HER OWN BEHALF

SOLICITORS OF RECORD:

Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT ATTORNEY GENERAL OF CANADA
Stockwoods LLP Barristers Toronto, Ontario	FOR THE RESPONDENT THE HONOURABLE JUSTICE D.L. CORBETT