COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Pereira v. Dexterra Group Inc.,* 2023 BCCA 201

Date: 20230510
Docket: CA48495

Between:

Corinne Pereira

Appellant
(Plaintiff)

And

Dexterra Group Inc. and Margaret Klonarakis

Respondents
(Defendants)

And

The Attorney General of British Columbia

Respondent
(Pursuant to the *Constitutional Question Act*)

Before: The Honourable Justice Griffin
The Honourable Mr. Justice Butler
The Honourable Mr. Justice Grauer

On appeal from: An order of the Supreme Court of British Columbia, dated August 25, 2022 (*Pereira v. Dexterra Group Inc.*, 2022 BCSC 1481, Terrace Docket S21140).

Oral Reasons for Judgment

The Appellant, appearing in person:	C. Pereira
Counsel for the Respondent, Dexterra Group Inc.:	D.A. Crawford, K.C.
Counsel for the Respondent, Attorney General of British Columbia:	F. Zaltz
Place and Date of Hearing:	Vancouver, British Columbia May 10, 2023

Place and Date of Judgment: Vancouver, British Columbia
May 10, 2023

Summary:

The appellant has initiated more than one legal proceeding arising out of circumstances of her former employment and her relationship with her former employer, co-employees and union. One of the members of the present division sat on two other divisions that dismissed two of her other appeals. Each of the prior appeals was taken from different judgments even though all arose from the same general factual background. The appellant made a motion that the judge recuse herself. Held: Motion dismissed. The appellant did not meet her burden for establishing a reasonable apprehension of bias or produce any evidence to substantiate it. The mere fact that the judge participated in her previous appeals was insufficient to ground a motion of recusal.

GRIFFIN J.A.:

Overview

[1] The appellant has asked that I recuse myself from hearing the present appeal because I sat on divisions that heard two previous appeals she brought in different proceedings. Both were dismissed.

[2] The present appeal is from a decision of Justice Punnett made August 25, 2022, indexed at 2022 BCSC 1481, dismissing claims brought by Ms. Pereira against her former employer, the respondent Dexterra Group Inc. (“Dexterra”) and dismissing her application for an injunction against a former co-employee.

Facts

[3] The factual background is as follows.

[4] The appellant worked as a guest services agent at a work camp owned by her employer. There was a collective agreement between her employer and her union.

[5] There are several separate streams of litigation initiated by Ms. Pereira arising from her experience working for Dexterra: civil claims against her former employer Dexterra and against a co-worker; civil claims against her union; judicial review proceedings taken from decisions of the Labour Relations Board (“LRB”) involving her complaints; judicial review proceedings taken from decisions of

WorksafeBC involving her complaints; and a private prosecution she initiated against numerous persons.

[6] The two appeals I sat on involved: (1) the private prosecution, with reasons indexed at 2023 BCCA 31; and (2) judicial review of decisions of the LRB, with reasons indexed at 2023 BCCA 165.

Issue

[7] The issue is whether I should recuse myself from the appellant's present appeal on the basis that I was a member of those two divisions. For the reasons that follow, I have concluded I should not grant the appellant's request.

Discussion

[8] In essence, the appellant is challenging my ability to be impartial and act fairly towards her, simply because I was a judge on other appeals brought by her.

[9] All proceedings arise from the same foundational facts about what she says happened in her employment, and many of the same parties. However, there are different lower court judgments involved in the Stay of Prosecution Appeal and the LRB Judicial Review Appeal and in the present appeal, and each appeal therefore alleges different errors by the judges whose judgments are challenged on appeal.

[10] Judges are held to the highest standards of impartiality. The protection of the interests of the parties to a case and the administration of justice requires judges to be disqualified if they are biased or if there is a reasonable apprehension that they are biased: *R. v. Valente*, [1985] 2 S.C.R. 673, 1985 CanLII 25 (S.C.C.); *R. v. S.(R.D.),* [1997] 3 S.C.R. 484, 1997 CanLII 324 (S.C.C.); *Yukon Francophone School Board, Education Area No. 23 v. Yukon (Attorney General)*, 2015 SCC 25 [*Yukon Francophone School Board*]; *R. v. Anderson*, 2017 BCCA 154.

[11] There is a strong presumption of judicial impartiality that is not easily displaced: *Yukon Francophone School Board* at para. 25. Judicial impartiality

requires judges to approach each case with an open mind, free from inappropriate or undue assumptions: at para. 22.

[12] The strong presumption that judges act impartially means that a party must meet a high burden to prove that a reasonable apprehension of bias exists. The longstanding test as repeated in *Yukon Francophone School Board* is:

> [20] The test for a reasonable apprehension of bias is undisputed and was first articulated by this Court as follows:
>
> > ... 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. [Citation omitted.]
>
> (*Committee for Justice and Liberty v. National Energy Board*, [1978] 1 S.C.R. 369, at p. 394, per de Grandpré J. (dissenting))

[13] The approach to this test is "inherently contextual and fact-specific": *Yukon Francophone School Board* at para. 26.

[14] This Court has had occasion to consider the question of judges hearing multiple matters involving the same party. The mere fact that a judge has heard another proceeding involving the same party does not displace the presumption of judicial impartiality. In *Jean Louis v. Jean Louis*, 2021 BCCA 481, this Court held:

> [14] The fact that a judge heard another matter in the same proceeding or a related proceeding involving the same party or witness does not displace the presumption of judicial impartiality, including where the judge decided against that party: see *Taylor Ventures Ltd. (Trustee of) v. Taylor*, 2005 BCCA 350; *Moshinsky-Helm v. Helm*, 2021 ABCA 373; *Klippenstein v. Manitoba Ombudsman*, 2015 MBCA 15; *Apotex Inc. v. Sanofi-Aventis Inc.*, 2008 FCA 394.

[15] As summarized in *Taylor Ventures Ltd. (Trustee of) v. Taylor*, 2005 BCCA 350 [*Taylor*], the question of whether there is a reasonable apprehension of bias should be considered with the following principles in mind:

a) a judge's impartiality is presumed;

b) a party arguing for disqualification must establish that the circumstances justify a finding that the judge must be disqualified;

c) the criterion of disqualification is the reasonable apprehension of bias;

d) the question to be determined is what would an informed reasonable and right-minded person, viewing the matter realistically and practically, and having thought the matter through, conclude;

e) the test for disqualification is not satisfied unless it is proved that the informed, reasonable and right-minded person would think it more likely than not that the judge, whether consciously or unconsciously, not decide fairly;

f) the test requires demonstration of serious grounds on which to base the apprehension; and

g) each case must be examined contextually and the inquiry is fact-specific.

Taylor at para. 7, referencing *S.(R.D.)*.

[16] A party's preference for the makeup of a division is not a consideration and neither are extraneous factors unrelated to the matter at hand. A judge's history of judicial decisions or personal characteristics is not enough: *Yukon Francophone School Board* at para. 59. In *Anderson*, the respondent sought recusal of a member of a division of the Court of Appeal, alleging that the judge had previously ruled in favour of the timber industry, and requested a judge with different personal characteristics instead. Justice Groberman responded that the preference of the parties should not play a role in whether a judge should recuse themselves adding that "the composition of a panel that is to hear an appeal should not be affected by a groundless allegation of bias": at para. 18.

[17] The strictness of the criteria required to show a reasonable apprehension of bias reveals that judges must necessarily not habitually yield to parties who want them to step down. Doing so would erode the administration of justice and damage

the reputation of the judiciary. Judges have a duty to hear the cases assigned to them, which cannot be displaced by a party selecting one judge over another preferentially and without good reason. An additional danger of frequent recusals is that parties could use such motions strategically, which includes attempting to judge-shop or delay the proceedings: *De Cotiis v. De Cotiis*, 2004 BCSC 117 at paras. 10–11; *Anderson* at para. 16; *Liszkay v. Robinson*, 2003 BCCA 506 at para. 53.

[18] In my respectful view, the appellant is mixing up the notion that she lost her previous appeals on the merits, with the notion of bias. Indeed, she goes even further and states that the judges of this Court who have heard her appeals and dismissed them “have acted dishonestly” and she says she has written to the Canadian Judicial Council to complain against them. She says because I have twice sat on appeals of hers that have been dismissed, I have “proven twice that [I] cannot be trusted”. She says that because her appeals were dismissed and importantly, because the reasons for judgment did not recite the points she thought were relevant, in the manner she thought they should be dealt with, this is evidence of corruption of all judges who have heard her cases.

[19] I cannot accept the appellant’s position. The fact that a judge dismisses a claim or defence or even an appeal is not a sign that the judge is biased against that party and unable to hear other arguments with an open mind. It is also not a sign of corruption. Further, the fact that a judge writing reasons for judgment does not repeat everything a litigant alleges or advances does not mean that a judge is biased or corrupt. A judge must make up his or her own mind as to what is relevant to address in reasons for judgment. The appellant does not have the right to dictate reasons for judgment, she has the right to appeal the reasons if she does not accept them, and in respect of reasons of this Court, she has the right to seek leave to appeal to the Supreme Court of Canada.

[20] The appellant has used her motion to recuse as an opportunity to reargue her previous appeals and to undertake a detailed criticism to the reasons for judgment

dismissing her previous appeals. This is inappropriate and borders on an abuse of process. She uses language that is intemperate and disrespectful, describing statements in reasons for judgment she does not agree with as “lies” for example, and describes as a cover-up any failure to write reasons for judgment in the precise manner she wishes.

[21] The appellant has not provided any evidence to displace the presumption of impartiality or to substantiate any reasonable apprehension of bias or corruption or suggestion that I might not treat her fairly. The fact that I was on divisions hearing her previous appeals from different judgments, which appeals were not decided in her favour, is insufficient for a finding of a reasonable apprehension of bias which would result in disqualification. A reasonably informed person, viewing the matter realistically and practically, would not conclude that I am biased or that I would not hear the present appeal fairly and with an open mind. There is no evidence of bias or corruption or dishonesty, and it would be disruptive to the legal process if unhappy litigants were permitted to “judge-shop” until they found one who agreed with them.

[22] The appellant has not met her burden for establishing a basis for my recusal. I therefore decline to recuse myself and dismiss her motion.

“The Honourable Justice Griffin”