

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Masjoody v. Simon Fraser University*,
2025 BCCA 175

Date: 20250528
Docket: CA49479

Between:

Masood Masjoody

Applicant/Appellant
(Plaintiff)

And

Simon Fraser University and Amélie Trotignon

Respondents
(Defendants)

Before: The Honourable Madam Justice DeWitt-Van Oosten
(In Chambers)

On appeal from: An order of the Supreme Court of British Columbia, dated
November 16, 2023 (*Masjoody v. Trotignon*, 2023 BCSC 2224,
Vancouver Docket S204587).

The Applicant/Appellant,
appearing in person:

M. Masjoody

Counsel for the Respondents:

Y. Li-Reilly

Place and Date of Hearing:

Vancouver, British Columbia
May 1, 2025

Place and Date of Judgment:

Vancouver, British Columbia
May 28, 2025

Summary:

The applicant/appellant seeks two orders: (1) reactivation of his appeal; and (2) an order waiving the payment of appeal fees. HELD: Both orders are denied. The appeal is bound to fail. Consequently, it is not in the interests of justice to grant leave to have the appeal removed from the inactive list. Given the latter conclusion, the no-fees application is rendered moot. There is no appeal to advance.

Reasons for Judgment of the Honourable Madam Justice DeWitt-Van Oosten:

Introduction

[1] The appellant, Dr. Masood Masjoody, applies under R. 50(3) of the *Court of Appeal Rules*, B.C. Reg. 120/2022 [*Rules*] to have his appeal removed from the inactive list. He also applies for an order waiving fees to advance his appeal: R. 85(4).

[2] An appeal may be reactivated when a justice grants leave to proceed. Dr. Masjoody bears the onus of establishing good reason to do so. Relevant factors for consideration include: (a) the extent of delay in pursuing the appeal; (b) the explanation for the delay; (c) prejudice arising from the delay; and (d) the likelihood of success in the appeal. The overarching question is whether it is in the interests of justice to reactivate the appeal: *Mill v. Orogenic Gold Corp.*, 2024 BCCA 258 (Chambers) at paras. 9–10.

[3] When he filed this application, Dr. Masjoody took the position that the application should proceed without notice. He said the respondents did not file notices of appearance in compliance with the requirements of R. 7(1) and, consequently, had no standing to participate in the appeal without first obtaining permission. I reviewed Dr. Masjoody’s application material and determined it was in the interests of justice that the respondents participate. At my direction, they were served with the application and supporting materials. The respondents subsequently filed a response and appeared at the hearing.

[4] The respondents say they filed notices of appearance in January 2024, once properly served with the notice of appeal. Dr. Masjoody says he properly served the

notice of appeal long before that date. I do not consider it necessary to resolve this issue. In my view, it was both appropriate and fair that I hear from the respondents in the reactivation application. As such, even if leave to participate was formally required (something I need not decide), I effectively granted that permission by directing that the respondents be served with the application material, thereby enabling them to attend the hearing and make submissions: *Court of Appeal Act*, S.B.C. 2021, c. 6, s. 32.

Background

[5] This is not Dr. Masjoody’s first time before this Court. The appeal he seeks to reactivate forms part of a litigation chronology involving two prior appeals. (See also, *Masjoody v. Burnaby Beacon*, 2025 BCCA 170.)

[6] In 2020, Dr. Masjoody was a sessional instructor at Simon Fraser University (“SFU”), a respondent in this appeal. SFU terminated his employment for cause on the basis of allegedly disruptive and insubordinate workplace and workplace-related conduct. Dr. Masjoody’s employment relationship with SFU was governed by a collective agreement containing a mandatory arbitration clause. Workplace disputes arising under those types of agreements generally fall within the exclusive jurisdiction of arbitrators, not the courts: *Weber v. Ontario Hydro*, [1995] 2 SCR 929, 1995 CanLII 108 at paras. 50–58; *Northern Regional Health Authority v. Horrocks*, 2021 SCC 42 at paras. 17–23.

[7] Instead of invoking the arbitration process, Dr. Masjoody filed a civil claim in the British Columbia Supreme Court against SFU and another sessional instructor, Dr. Trotignon (also a respondent in this appeal). He sought general, special, aggravated, and punitive damages for defamation and conspiracy. In August 2021, the civil claim was struck by Justice Fitzpatrick of the Supreme Court on grounds that the collective agreement governed the employment relationship, the arbitration provisions applied, and the Supreme Court had no jurisdiction to adjudicate the matter. Justice Fitzpatrick included a term in the final order seizing herself of any further applications brought in the Supreme Court proceedings (unless she was

unavailable): *Masjoody v. Trotignon*, 2021 BCSC 1502 at paras. 84–90, 97 (“Original Decision”).

[8] Dr. Masjoody appealed the Original Decision (CA47689) but did not succeed in having it set aside: 2022 BCCA 135 (“First Appeal”). This Court upheld Justice Fitzpatrick’s conclusion that the Supreme Court lacked jurisdiction to hear the civil claim because the “essential character” of Dr. Masjoody’s dispute with the respondents was “inextricably bound up with and related to his employment”, and therefore governed by the mandatory dispute-resolution process in the collective agreement: at para. 51.

[9] Following release of the judgment in the First Appeal, Dr. Masjoody sent a letter to this Court (filed February 8, 2023), asking that the First Appeal be reopened on the basis that, among other things, “[t]he division did not address at all, thereby did not adjudicate, the sought order that the seizure of the applications in the court below by Fitzpatrick J. be set aside”. The Court declined to reopen the appeal. A memorandum was sent to the parties, dated February 16, 2023:

The division has received and reviewed Mr. Masjoody’s letter dated December 22, 2022 (filed on February 8, 2023) requesting that his appeal be re-opened to address new issues and issues he says were raised on appeal but not adjudicated. Given the extraordinary nature of re-opening an appeal, the division must be satisfied that an applicant such as Mr. Masjoody meets the threshold of showing a clear and compelling case that the grounds raised for re-opening are capable of demonstrating a potential miscarriage of justice. In Mr. Masjoody’s case, the division is not so satisfied.

Mr. Masjoody’s appeal was decided on the legal question of jurisdiction and an application of the framework for determining when labour relations legislation ousts the courts’ jurisdiction over disputes between parties to a collective agreement established in *Weber v. Ontario Hydro*, [1995] 2 S.C.R. 929, 1995 CanLII 108. The decisive issue on the appeal was whether the judge erred in her identification of the essential character of the dispute, a question of law reviewable on a standard of correctness. On that standard and applying the factors set out in *Gichuru v. Vancouver Swing Society*, 2021 BCCA 286, and the authorities cited therein, the division is not satisfied that Mr. Masjoody has shown a clear and compelling case that there are grounds capable of demonstrating a potential miscarriage of justice.

[Emphasis added.]

[10] In March 2023, Dr. Masjoody filed a second appeal, attempting once again to challenge the Original Decision (CA48922). As previously set out, Justice Fitzpatrick’s final order dismissing the civil claim included a term seizing herself of any further applications brought in the Supreme Court proceedings. Dr. Masjoody challenged this aspect of the final order, alleging that Justice Fitzpatrick had no jurisdiction to seize herself because of a reasonable apprehension of bias. The appeal was referred to a division by the Court’s Registrar and summarily dismissed without hearing from the respondents: 2023 BCCA 220 (“Second Appeal”).

[11] In the Second Appeal, the Court concluded that Dr. Masjoody sought to raise an issue that could have been, but was not raised in his First Appeal: at para. 18. In those circumstances, the Court determined that cause of action estoppel applied. In the absence of “compelling circumstances”, cause of action estoppel prevented Dr. Masjoody from proceeding with a second challenge to the Original Decision: at para. 20. The Court also concluded as an independent ground for dismissal that the Second Appeal was moot. The Original Decision put an end to the causes of action advanced by Dr. Masjoody’s civil claim. Consequently, to the Court’s understanding, there was no need for the parties to reappear on that claim: at para. 27. Indeed, it is my understanding that at the time judgment was released in the Second Appeal, there were no further appearances scheduled before Justice Fitzpatrick. In these circumstances, the Court found “no compelling reason” why it should exercise its discretion to hear the Second Appeal: at para. 28.

[12] Before me, Dr. Masjoody says the Court incorrectly determined that he was raising a new issue in the Second Appeal. He points out that in his factum in the First Appeal, he asked that the term of the final order seizing Justice Fitzpatrick of future applications be set aside. I have reviewed that factum (filed November 17, 2021). It referenced the impugned term and asked that it be set aside. However, the notice of appeal (filed August 17, 2021) challenged only that part of the final order which “dismissed [Dr. Masjoody’s] action for lack of jurisdiction”. Additionally, Part 2 of the factum in the First Appeal, which set out the legal and factual errors relied upon by Dr. Masjoody in challenging the Original Decision, does not appear to have

identified judicial bias (either actual or a reasonable apprehension of bias), as a specific ground of appeal. Finally, as I read Part 3 of that factum, Dr. Masjoody’s substantive arguments in support of his grounds of appeal did not make explicit arguments alleging bias or show how the legal test for bias was met. In this context, considered as a whole, it is not surprising to me that the Court viewed the Second Appeal as seeking to advance an issue that was not raised or advanced in any meaningful way in the First Appeal.

[13] In October 2023, Dr. Masjoody filed a notice of application in the Supreme Court proceedings. He sought a number of orders, including (but not limited to) orders that Justice Fitzpatrick:

- be recused and “pronounced disqualified” from any involvement in those proceedings due to actual bias against Dr. Masjoody;
- alternatively, that she be recused and “pronounced disqualified” from any involvement in those proceedings due to a reasonable apprehension of bias against Dr. Masjoody;
- that she be pronounced to have had no jurisdiction to determine any legal matter related to Dr. Masjoody since July 14, 2021, due to bias or a reasonable apprehension of bias; and,
- that any other order already pronounced by her in those proceedings should be voided and without effect.

[Paraphrased, emphasis added.]

[14] Justice Fitzpatrick declined to recuse herself or grant the sought-after orders: 2023 BCSC 2224 (“Application Decision”):

[39] I have carefully considered Dr. Masjoody’s allegations, as set out in the factual basis and legal basis of his notice of application. I am unable to accede to his position that I have shown bias or that there is objectively a reasonable apprehension of bias on my part in terms of the decision that I made in July 2021.

[40] I accept that Dr. Masjoody is unhappy about some of the words that I used in the *Reasons*. However, ultimately my decision was based on my conclusion that this Court had no jurisdiction to address the dispute between the parties. I explicitly stated that, if Dr. Masjoody was entitled to any remedy, he was required to undertake the process set out in the collective agreements to which he was a party. I am not aware as to whether he has undertaken that process, but that certainly was open to him.

[Italics in original.]

[15] The respondents also had two applications before Justice Fitzpatrick, both of which remain outstanding. As explained in the Application Decision, they had filed an application for an injunction to prohibit Dr. Masjoody from disseminating his allegations against them over the Internet. That application led to a consent order dated April 27, 2021, which required Dr. Masjoody to remove certain postings from the Internet and to abide by certain other requirements, pending a hearing of the injunction application. The injunction application has not yet been determined: Application Decision at paras. 3, 27, 65.

[16] The issue of costs in relation to Dr. Masjoody's civil claim also remains outstanding in the Supreme Court proceedings. In the Second Appeal, this Court was of the mistaken impression that when she dismissed the civil claim for want of jurisdiction in 2021, Justice Fitzpatrick ordered Dr. Masjoody to pay costs: Second Appeal at para. 8. This was incorrect. As confirmed in the Application Decision, costs have not yet been addressed: at paras. 48–49. Instead, alongside the injunction application, the issue of costs has been adjourned generally: Application Decision at paras. 3, 27, 65.

[17] In November 2023, Dr. Masjoody filed an appeal from the Application Decision ("Third Appeal"). The Third Appeal was placed on the Court's inactive list one year later, in November 2024. By that time, Dr. Masjoody had filed an appeal record, factum, and appeal book. He had also brought at least one Chambers application in the appeal, dated December 21, 2023, in which he sought to have the Chief Justice, six justices of this Court, and the Court's Registrar prevented from participating in the Third Appeal. That application was dismissed on January 18, 2024: 2024 BCCA 22.

[18] In his notice of appeal for the Third Appeal, Dr. Masjoody lists the orders that he seeks:

- 1- Set aside the aforementioned orders of Justice Fitzpatrick.
- 2- Order that Justice Fitzpatrick is recused and pronounced disqualified from any involvement in the proceedings in the court below due to actual, or in the alternative, a reasonable apprehension of, bias against the appellant;

- 3- Order that Justice Fitzpatrick has had no jurisdiction to determine any legal matter related to the appellant since Justice Fitzpatrick's involvement in the proceedings in the court below; and
 - 4- Order that any order pronounced by Justice Fitzpatrick in the proceedings in the court below is voided and without effect.
 - 5- Costs.
- [Emphasis added.]

[19] The relief sought in his factum in the Third Appeal is to the same effect. Under Part 4 of the factum, Dr. Masjoody describes the orders sought:

- a. The judgment under appeal be set aside.
 - b. Judge Shelley Colleen Fitzpatrick be recused, and pronounced disqualified, from any involvement in the SFU Action in the court below due to actual, or, in the alternative, a reasonable apprehension of bias against the appellant.
 - c. Judge Shelley Colleen Fitzpatrick be pronounced to have had no jurisdiction to determine any legal matter related to the plaintiff since July 14, 2021, due to bias or a reasonable apprehension of bias.
 - d. Any order already pronounced by Judge Shelley Colleen Fitzpatrick in the proceedings in the court below be voided and without effect and the underlying matters of such orders be remitted to the court below for hearing before a different adjudicator.
 - e. The Costs of these appeal proceedings be awarded to the appellant.
- [Emphasis added.]

[20] From this material, it is obvious that in addition to challenging the Application Decision, the Third Appeal seeks to revisit and have this Court make pronouncements about the final order that was the subject matter of both the First and Second Appeals, including the term seizing Justice Fitzpatrick of future applications in the Supreme Court proceedings. Dr. Masjoody says such is not the case. However, for the reasons set out below, I am of the view this submission is without merit.

Discussion

[21] I do not consider it necessary to address each of the factors relevant to a decision on whether to reactivate an appeal. Nor do I consider it necessary to respond to each of Dr. Masjoody's detailed submissions in support of reactivation

or the many documents he has included in his material (including documents submitted to the Canadian Judicial Council in support of complaints made against judges who have decided matters against him). I have reviewed, generally, those submissions and documents, the respondents' material, the Application Decision, the decisions of this Court in the First and Second Appeals, as well as various other parts of the appeal file. The reasoning I set out here takes all of that into account. Based on that review, I have concluded it is not in the interests of justice to grant Dr. Masjoody leave to proceed with the Third Appeal because the appeal is bound to fail: *Grosz v. Royal Trust Corporation of Canada*, 2022 BCCA 57 at para. 30 (Chambers); *Huang v. Li*, 2022 BCCA 450 at para. 68 (Chambers); *Shoolestani v. Ichikawa*, 2018 BCCA 155 at para. 34 (Chambers). By "bound to fail", I mean there is no realistic possibility that a division of this Court would grant the relief sought by Dr. Masjoody in his notice of appeal and factum for the Third Appeal.

[22] Dr. Masjoody says he has always had a *bona fide* intention to pursue the Third Appeal and has been diligent in doing so. He says the delay that led to the Third Appeal being placed on the inactive list is not significant, and importantly, it was due to events beyond his control (he alleges deliberate judicial delay in finalizing the order arising out of the Application Decision). However, I am of the view that even if the delay in the Third Appeal has not been inordinate, is adequately explained, and the delay has not caused the respondents prejudice, the obvious lack of merit to the Third Appeal overrides all other considerations.

[23] The Third Appeal has both prospective and retrospective aspects to it. Dr. Masjoody wants this Court to set aside the Application Decision for judicial bias (both real and apparent) and order that Justice Fitzpatrick not hear any future applications in the Supreme Court proceedings (Vancouver Docket S204587). On that same basis, he wants this Court to invalidate any and all orders Justice Fitzpatrick has made against him in the Supreme Court proceedings since 2021.

[24] In my view, even though the Third Appeal challenges a Supreme Court order that was not before this Court in either of the First or Second Appeals (it had not yet issued), both the prospective and retrospective aspects of the Third Appeal are *res judicata* and I see no realistic possibility that a division of this Court would take jurisdiction over the Third Appeal and adjudicate the appeal on the merits.

[25] As explained by Justice Voith, writing for the Court in the Second Appeal, there are two forms of *res judicata*: issue estoppel and cause of action estoppel.

[26] Issue estoppel arises when: (a) the same question has been decided in a judicial decision; (b) that judicial decision is final; and (c) the parties to the judicial decision (or their privies) were the same persons as the parties to the proceedings in which the doctrine of issue estoppel is being raised: Second Appeal at para. 16, relying on *Angle v. M.N.R.*, [1975] 2 S.C.R. 248 at 254, 1974 CanLII 168. See also *Cliffs Over Maple Bay (Re)*, 2011 BCCA 180 at paras. 24–48. In the latter case, this Court approved of another “well-known formulation of issue estoppel” at para. 31, citing from *McIntosh v. Parent* [1924] 4 D.L.R. 420 at 422, 1924 CanLII 401 (Ont. C.A.). I find that formulation helpful:

... When a question is litigated, the judgment of the Court is a final determination as between the parties and their privies. Any right, question, or fact distinctly put in issue and directly determined by a Court of competent jurisdiction as a ground of recovery, or as an answer to a claim set up, cannot be re-tried in a subsequent suit between the same parties or their privies, though for a different cause of action. The right, question, or fact, once determined, must, as between them, be taken to be conclusively established so long as the judgment remains ...

[27] Cause of action estoppel arises when someone brings an action against another person but that same cause of action has been determined in earlier proceedings by a court of competent jurisdiction: *Angle* at 254. To properly engage this doctrine:

1. There must be a final decision of a court of competent jurisdiction in the prior action;
2. The parties to the subsequent litigation must have been parties to or in privity with the parties to the prior action ...;

3. The cause of action and the prior action must not be separate and distinct; and
4. The basis of the cause of action and the subsequent action was argued or could have been argued in the prior action if the parties had exercised reasonable diligence.

Bjarnarson v. Manitoba (1987) 38 D.L.R. (4th) 32 at 34, 1987 CanLII 993 (Man. Q.B.), *aff'd* (1987) 45 D.L.R. (4th) 766, 1987 CanLII 5396 (Man. C.A.), as taken from *Grandview v. Doering* [1976] 2 S.C.R. 621, 1975 CanLII 16, and cited in *Cliffs Over Maple Bay (Re)* at para. 28.

[28] I have concluded that both forms of estoppel apply to the Third Appeal.

[29] The doctrine of issue estoppel applies to what I have described as the “prospective” aspect of the Third Appeal, namely, Dr. Masjoody’s request that the Application Decision be set aside and Justice Fitzpatrick be “recused, and pronounced disqualified, from any involvement in the SFU Action in the court below due to actual, or, in the alternative, a reasonable apprehension of bias against the appellant”.

[30] The October 2023 application in the Supreme Court, which led to the Application Decision, sought to prevent Justice Fitzpatrick from presiding over any further applications related or connected to Dr. Masjoody’s civil claim against the respondents on the basis of judicial bias. See para. 13, above. The issue before this Court in the Second Appeal was whether Dr. Masjoody could proceed with an appeal that challenged the term of Justice Fitzpatrick’s 2021 order seizing her of future applications in the civil claim. (Indeed, in his factum in the Third Appeal, Dr. Masjoody states that he has been trying to challenge this term from the start of the appellate processes involving his civil claim: Factum at paras. 69–72.)

[31] As with the October 2023 application, the Second Appeal was grounded in an allegation of a reasonable apprehension of bias. Dr. Masjoody included a copy of the related notice of appeal (filed March 8, 2023) in his reactivation application and the allegation of judicial bias was front and centre in that notice: “Justice Fitzpatrick does not have any jurisdiction in this matter due to a reasonable apprehension of bias”. I was also provided with copies of letters he sent to the Court

for purposes of the Court’s determination of whether the Second Appeal should be summarily determined. Allegations of judicial bias were also front and centre in those letters. For example, in a letter dated May 5, 2023, Dr. Masjoody stated:

... I, the appellant, seek that the order of [Justice] Fitzpatrick be set aside that made this blatantly biased judge be seized of the matter in the court below. This is sought due to a reasonable apprehension of [Justice] Fitzpatrick’s bias, upon which establishment the Court should inevitably declare that [Justice] Fitzpatrick has not had jurisdiction to determine **any matter** regarding the appellant, Masood Masjoody, and, consequently, any such matter ruled on by [Justice] Fitzpatrick should be remitted to the court below for a hearing before a new adjudicator of the court below, according to clear binding rulings of the Supreme Court of Canada.

[Underlining and bold in the original.]

[32] The Court did not allow Dr. Masjoody to pursue the Second Appeal, fully aware of the fact that the appeal alleged bias: at para. 10. The effect of the Second Appeal was that the term of the 2021 final order seizing Justice Fitzpatrick of any future applications in the Supreme Court proceedings remained intact. The challenge to that term on the basis of a reasonable apprehension of bias had been dismissed. Dr. Masjoody proceeded to file a subsequent application in the Supreme Court seeking the same form of relief on the same basis: Justice Fitzpatrick’s recusal and lack of jurisdiction due to judicial bias. He was not successful.

[33] The Third Appeal, which seeks to challenge the Application Decision, advances fundamentally the same allegations made in the Second Appeal and October 2023 application. It raises the same question: whether Justice Fitzpatrick should be recused from the Supreme Court proceedings and no longer preside over applications in those proceedings because of judicial bias. For instance, Dr. Masjoody’s factum in the Third Appeal asserts a number of errors in the Application Decision, including that: “[d]ue to her failure to admit, at the very least, a reasonable apprehension of bias, the judge failed to void her previous orders in the proceedings despite having been decidedly unfair in the eyes of a reasonable and informed person”.

[34] In my view, it is plain that the Third Appeal raises in substance the same question or issue Dr. Masjoody sought to have determined in the Second Appeal. The fact that the Third Appeal targets a separate and subsequent order does not change its true focus. This question was definitively decided with dismissal of the Second Appeal—a final judicial decision. The same parties involved in the Second Appeal are before the Court in the Third Appeal. The test for issue estoppel, as explained in *Angle* and confirmed by this Court in *Cliffs Over Maple Bay (Re)*, is clearly met.

[35] Dr. Masjoody says issue estoppel does not apply because in the Second Appeal, the Court did not adjudicate the actual merits of his bias allegations. Instead, the Second Appeal was dismissed for different reasons and now, there is a new and subsequent order under review. Respectfully, that submission misses the point. The Second Appeal sought to have Justice Fitzpatrick removed from the Supreme Court proceedings on the basis of judicial bias. The October 2023 application sought precisely the same thing. The Third Appeal does as well. Regardless of the specific order being challenged in this appeal, the relief sought functionally mirrors what was sought and denied in the Second Appeal. The question raised, whether Justice Fitzpatrick should be recused and no longer participate in the Supreme Court proceedings, has been answered.

[36] In *Danyluk v. Ainsworth Technologies Inc.*, 2001 SCC 44, the Supreme Court of Canada noted that “[an] issue, once decided, should not generally be re-litigated to the benefit of the losing party and the harassment of the winner. A person should only be vexed once in the same cause”: at para. 18. I find those comments apposite.

[37] That brings me to the “retrospective” aspect of the Third Appeal.

[38] In my view, cause of action estoppel applies. In the Third Appeal, Dr. Masjoody seeks to invalidate all of the orders made by Justice Fitzpatrick in the Supreme Court proceedings since 2021. Those orders, including the final order, were before the Court in both the First and Second Appeals. There are two final decisions of a court of competent jurisdiction (namely, this Court), rejecting appeals

specific to those orders. Both decisions upheld the orders. The parties to the Third Appeal were parties in both the First and Second Appeals. The orders Dr. Masjoody seeks to have invalidated in the retrospective part of the Third Appeal do not arise out of separate and distinct causes of action. They all arose within the context of the same cause of action, namely, Dr. Masjoody’s civil claim, of which the Application Decision also forms a part. Finally, the basis for seeking invalidation of these orders in the Third Appeal is the same basis that was squarely advanced in the request to reopen the First Appeal and in the Second Appeal—actual or a reasonable apprehension of judicial bias. The test for cause of action estoppel as explained in *Angle* and confirmed in *Cliffs Over Maple Bay (Re)*, is clearly met.

[39] Although not necessary for me to do so, I will add that had I decided neither issue estoppel nor cause of action estoppel were engaged here, I still would have reached the conclusion that the Third Appeal is bound to fail and it is not in the interests of justice to reactivate it.

[40] As I explained in *Speckling v. Communications, Energy and Paperworkers’ Union of Canada, Local 76*, 2025 BCCA 24:

[52] It is trite law that judicial impartiality is foundational to our justice system. As reaffirmed by the Supreme Court of Canada in *Wewaykum Indian Band v. Canada*, 2003 SCC 45 at para. 57, “... public confidence in our legal system is rooted in the fundamental belief that those who adjudicate in law must always do so without bias or prejudice and must be perceived to do so”.

[53] However, the law also presumes judicial [impartiality]. This presumption “... carries considerable weight, and the law should not carelessly evoke the possibility of bias in a judge, whose authority depends upon that presumption”: *Wewaykum* at para. 59. The party alleging judicial bias bears the burden of rebutting the presumption. Where the allegation, as here, is one of actual bias, the appellant must prove that the judge consciously or unconsciously heard and determined the case without an open mind, “allowing extraneous influences to affect [their] mind” or “relying on inappropriate preconceptions”: *Wewaykum* at paras. 64–65.

...

[55] ... The test to be applied for a reasonable apprehension of bias is well-established. As explained in *Yukon Francophone School Board, Education Area #23 v. Yukon (Attorney General)*, 2015 SCC 25, at para. 20, the Court must ask:

... 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 ...

[56] *Yukon Francophone* set out various principles that guide the reasonable apprehension analysis. First, as noted, there is a strong and not easily displaced presumption of judicial impartiality. Second, to succeed in showing a reasonable apprehension of bias, an appellant must establish “a real likelihood or probability of bias”. This is a heavy burden. In deciding whether the burden has been met, a judge’s impugned comments are not assessed in isolation. Rather, bias allegations must be considered in the context of the circumstances and in light of the entirety of the proceeding: at paras. 25–26. Finally, the Supreme Court of Canada reminded appellate courts in *Yukon Francophone* that there can be a fine line between robust management of a case, which is permitted, and improper interference. Consequently, a cautious approach to appellate intervention is warranted ...

[Emphasis added.]

[41] Dr. Masjoody asserts that Justice Fitzpatrick showed bias in dismissing his civil claim against the respondents and that she continues to do so. At the very least, from his perspective, her conduct gives rise to a reasonable apprehension of bias. Based on my review of this matter, the judicial bias allegations are not borne out by the record. Instead, they are solely grounded in Dr. Masjoody’s interpretation of Justice Fitzpatrick’s reasoning, a (respectfully) myopic view of his case, and conjecture about possible motives for her various rulings. As stated at para. 57 of *Speckling*, the fact that a plaintiff or appellant does not agree with a judge’s resolution of the case, their findings of fact, or the manner in which they have articulated those findings, does not mean the judge was biased. See also *Pereira v. British Columbia (Labour Relations Board)*, 2023 BCCA 165 at para. 89; leave to appeal to SCC ref’d, 2023 CanLII 122403.

[42] Dr. Masjoody is a self-represented litigant. The Canadian Judicial Council recognizes that the courts “... have responsibility to ensure that self-represented persons are provided with fair access and equal treatment by the court ...”: Canadian Judicial Council, “Statement of Principles on Self-Represented Litigants

and Accused Persons”, online: <<http://www.cjc-ccm.ca>> (May 9, 2025) at 1 (“Statement of Principles”). However, as with all litigants, those who represent themselves are subject to the courts’ authority to maintain control over their proceedings and procedures: Statement of Principles at 5.

[43] It is clear to me that the Third Appeal reflects another attempt by Dr. Masjoody to raise the same issues he raised in his request to reopen the First Appeal and in the Second Appeal, with the same underlying objective, namely, to challenge the judicial integrity, impartiality, and validity of Justice Fitzpatrick’s authority and decision-making. His material is replete with serious and, from my perspective, unfounded allegations of misconduct with respect to Justice Fitzpatrick, other justices of this Court, the Court’s Registrar, and other system participants. If someone has made a factual error, it is characterized as a “lie”. If something has not gone his way, it is said to be the result of bias. Adverse decisions have resulted in complaints to the Canadian Judicial Council. The publication of judicial decisions that included critical commentary of his position, or submissions made by him, are described as “defamatory”. This is not an exhaustive list. I note that in 2025 BCCA 170, Dr. Masjoody was recently found to meet the criteria for a vexatious litigant in this Court. See paras. 52, 61–65 of that decision.

[44] The Third Appeal is the latest in a series of attempts by Dr. Masjoody to raise the bias issue. Such repeated challenges may be characterized as vexatious and an abuse of process, weighing against reactivation: *Harrison v. British Columbia (Ministry of Attorney General)*, 2016 BCCA 210 at para. 22. I appreciate that Dr. Masjoody feels strongly about the rightness of his position. However, he has had ample opportunity to advance his position, he has not succeeded, and it is time for the challenges to the 2021 final order to come to an end.

Disposition

[45] For the reasons provided, I am satisfied it is not in the interests of justice to allow the Third Appeal (CA49479) to proceed and I dismiss the application to

reactivate. Given this result, and my conclusion that the Third Appeal is bound to fail, I also dismiss the application for a waiver of appeal fees.

“The Honourable Madam Justice DeWitt-Van Oosten”