

CANADA / JUDGMENT

Stenner v. Stenner

2025 BCSC 978

COURT

Supreme Court of British Columbia

DECIDED

28 May 2025

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2025 BCSC 978 Stenner v. Stenner

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Stenner v. Stenner,

2025 BCSC 978

Date: 20250528

Docket: E67647

Registry: New Westminster

Between:

Justyn Stephen Stenner

Claimant

And

Kimberley Shane Stenner

Respondent

Before: The Honourable Mr. Justice Ball

Reasons for Judgment

The Claimant/Applicant appearing in person:

Justyn Stenner

Counsel for the Respondent: Kimberley Shane Stenner:

M. Magaril

Place and Date of Hearing:

New Westminster, B.C.

April 28, 2025

Place and Date of Judgment:

New Westminster, B.C.

May 28, 2025

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Introduction

- [1] The applicant, Justyn Stephen Stenner, brought a motion that I recuse myself from presiding over any proceedings between the parties due to a reasonable apprehension of bias. The applicant also sought an order that the within action be stayed and referred back to the Honourable Mr. Justice Funt for judicial management to ensure procedural fairness and prevent inconsistent judgements. The applicant also sought an order requiring the New Westminster Registry to provide a CD copy of the audio recordings of the hearings held on November 20 and 21, 2024, and related direction hearings.
- [2] The respondent, Kimberley Shane Stenner, opposed the entirety of the foregoing applications.
- [3] At the outset, I am not aware of any jurisdiction which I might have to order an action to be stayed and referred to another judge for judicial management. No legal basis for such an order was cited and therefore no such order shall be made herein.

Background

- [4] This is a high conflict family law proceeding where an application was brought on August 23, 2024 by the respondent to dismiss the notice of family claim (the "NOFC") filed by the claimant because of the prolix pleadings.

- [5] Mr. Justice Funt conducted judicial case management hearings on several occasions in this case. On July 29, 2024, a judicial case management order was pronounced by Funt J. following one such hearing. That order specified that the application to dismiss the NOFC would proceed without a further judicial case conference held before the hearing of dismissal application. This dismissal application was heard by this Court on November 20 and 21, 2024.
- [6] The respondent's application to dismiss the NOFC was scheduled, after an adjournment for lack of court time, for hearing in chambers in Port Coquitlam the week of November 18, 2024. The claimant responded by sending an email to Supreme Court Scheduling ("SCS") and the respondent's counsel which stated that Funt J. had ordered that applications could not proceed until matters were resolved in a Vancouver Registry action involving the same parties (the "Vancouver Action"). SCS responded to the claimant's email November 12, 2024, stating that Funt J. did not make any such order. At that time, there were no outstanding applications nor trial dates scheduled in the Vancouver Action.
- [7] On November 14, 2024, the respondent served an application record index and book of authorities index on the claimant. The claimant responded on November 14, 2024, that if the respondent failed to agree to cancel the scheduled application, he would apply for an immediate emergency stay of proceedings or adjournment and he would apply for special costs payable by counsel for the respondent personally.
- [8] No emergency application was filed by the claimant, but instead on November 19, 2024, Mr. Stenner sent an email to SCS stating that the respondent's application was cancelled and not proceeding. This was clearly not a true statement and had no factual basis. SCS directed that the application brought by the respondent to dismiss the NOFC would proceed on November 20, 2024.
- [9] The hearing of the application by the claimant for an order to cancel a family law agreement then proceeded for two days before Mr. Justice Ball on November 20 and 21, 2024.
- [10] Prior to reasons being issued by this Court on that application, the respondent announced that he intended to apply for an order that I should recuse myself because of an allegation of bias. It is this application, which was ultimately filed on March 17, 2025, to which these reasons respond (the "Recusal Application").

The Recusal Application

- [11] The Recusal Application was filed on March 17, 2025. Mr. Stenner advised he used artificial intelligence to prepare the Recusal Application, a 55 page submission. Mr. Stenner also filed a five-page affidavit with 193 pages of exhibits.
- [12] A repeated argument in the application was that Funt J. made a number of orders in the course of judicial case management which were binding on the court hearing the dismissal application. At the beginning of the hearing on the Recusal Application on March 28, 2025,

the Court inquired of Mr. Stenner if he could identify one such order. Mr. Stenner was unable to direct the Court to any order, although Mr. Stenner did note a number of recommendations and positive suggestions made by Funt J. about the involvement of persons who might assist Mr. Stenner in the court processes. These recommendations and suggestions, made helpfully by Funt J., were not court orders. Mr. Stenner did not follow up these recommendations with the required actions.

- [13] By way of example, in the exhibits attached to the 3rd affidavit of Justyn Stenner at page 21, lines 19 to 41, a discussion between Mr. Stenner and Funt J. occurs concerning the best mechanism to appoint "some sort of power of attorney, litigation guardian, representation agreement, explore those and trying to get that in place.". The Court, at lines 40 and 41, stated "Let me be clear. I'm not ordering any of those." [emphasis added]. Later at page 10 to 11 of the same affidavit, the Court advises Mr. Stenner that he should get advice on "the appropriate form of legal representation and the further step of then retaining counsel with respect to his challenge to the separation agreement ". The Court then continued to address Kimberley Stenner as follows: "Let's - just to be clear, there is no finding here in terms of the dispute between you and Justyn."
- [14] Mr. Stenner's allegations that this Court failed to follow orders made in earlier judicial case management conferences is not supported by the facts, the court record, or the transcripts from those conferences.
- [15] Mr. Stenner was clearly advised by Funt J. during case management conferences that he should obtain assistance with Court proceedings in light to Mr. Stenner's ongoing assertions of cognitive issues. Justice Funt actually had telephone contact (unsworn) during one case management conference with a medical practitioner. Whatever Mr. Stenner did with that advice, no admissible evidence of the extent of any cognitive deficiency was presented during the hearing dates of November 20 and 21, 2024.
- [16] It was also alleged in the claimant's submissions that the order of this Court providing for access in the Court Registry to transcripts of the two days of hearing in November 2024 caused a denial of the claimant's rights to understand the case against him. Again, there was no request for accommodation by Mr. Stenner based on cognitive issues, and certainly no expert medical, psychological or psychiatric evidence in admissible form was presented during the November hearings in support of such a request for accommodation.
- [17] The claimant has been able to attend the Court Registry on numerous occasions. There is no factual assertion concerning any attempt by the claimant to attend in the registry to review the transcript from November 20 and November 21, 2024 during the period from December 5, 2024, when recusal was first requested by Mr. Stenner until March 17, 2025, when Mr. Stenner filed the Recusal Application. I granted an order permitting him to attend the registry to review the transcripts. Prior to that, Mr. Stenner had not submitted a valid request for the court records.

The Law

- [18] Judicial impartiality is presumed, carries considerable weight and is not easily displaced. The onus of demonstrating bias is clearly on the party alleging bias: *Speckling v. Communications, Energy and Paperworkers' Union of Canada, Local 76*, 2025 BCCA 24 at paras. 53, 56. Mr. Stenner's submission to the opposite is simply incorrect.
- [19] The test for reasonable apprehension of biased is well established. The test is what would an informed person, viewing the matter realistically and practically, and having thought the matter through, conclude: *Speckling* at para. 55; *Yukon Francophone School Board, Education Area #23 v. Yukon (Attorney General)*, 2015 SCC 25 at para. 20. Would the reasonable person think it is more likely than not that the decision-maker, whether consciously or unconsciously, would not decide fairly": *Wewaykum Indian Band v. Canada*, 2003 SCC 45 at para. 60 [*Wewaykum*].
- [20] The reasonable person must be an informed person, with knowledge of all relevant circumstances, including 'the traditions of integrity and impartiality that form a part of the background and apprised also of the fact that impartiality is one of the duties that judges swear to uphold': *R. v. S. (R.D.)*, [1997] 3 S.C.R. 484 at para. 111, 1997 CanLII 324 (SCC).
- [21] In *DeCotiis et al v. DeCotiis et al*, 2004 BCSC 117, the Court made it clear that a judge should not recuse themselves without good reason so as not to bring the administration of justice into disrepute:
- [10] There is, however, another aspect of these matters that must not be forgotten. It is the duty of a judge to hear cases that come before him or her, and a party should not be able to unilaterally choose not to have a matter by a particular judge simply because that that party would prefer another just here the case. If one party, without sound reason, is able to unilaterally determine that a particular judge will not hear a case. It also tends to bring the administration of justice into disrepute.
- See also: *Dempsey et al. v. Envision Credit Union et al.*, 2005 BCSC 1730 at para. 11.
- [22] Justice Beames summarized the law succinctly in *A.N.H. v. L.D.B.*, 2025 BCSC 207:
- [39] To summarize the legal principles set out earlier, the onus is on the claimant to establish grounds for recusal and that onus is a high one. There is a presumption that I do and will act according to my oath of office, just as there is a presumption that I know the law. The presumption that I have acted in accordance with my oath of office, can be displaced by cogent evidence.

[]

- [45] Returning to the test for recusal, would an informed person, with knowledge of all the relevant circumstances and in light of the whole proceedings, viewing the matter realistically and practically, conclude that there is a reasonable apprehension, sometimes referred to as a real likelihood or probability, that I am biased or that I cannot decide this case fairly?

Analysis

- [23] Mr. Stenner raises numerous issues that he says demonstrate bias. These include that I failed to abide by orders made in judicial case management conferences by Funt J., that I favoured opposing counsel's submissions, that I failed to accommodate the claimant's cognitive disabilities, that I interrupted his submissions, and that I rescheduled the recusal application.
- [24] I have already addressed that there were no orders made by Funt J. in the case management conferences which I failed to follow. The claimant did not direct me to any such order in oral submissions.
- [25] With regard to favouring opposing counsel's submissions, no decision has been made on the application to dismiss the NOFC and therefore no basis in fact for the claimant to make allegations of favourable treatment of evidence of Kimberley Shane Stenner. I have made no ruling on my assessment of the evidence.
- [26] With regard to failing to accommodate the claimant's cognitive disabilities, the claimant did not request any accommodations based on cognitive disabilities. These issues were discussed with Funt J. in case management conferences but were not presented by the claimant nor supported by admissible evidence in the hearing in November 20 and 21, 2024.
- [27] It was also noted that Mr. Stenner raised as a basis for asserting bias that Mr. Magaril, counsel for the respondent, had once appeared before me on an unrelated case. Mr. Stenner argued that this prior appearance gave rise to a "professional relationship" between myself and Mr. Magaril, citing *Wewaykum* repeatedly. An appearance of counsel for any party before a particular justice in open court, regardless of the outcome of proceedings in that court, does not give rise to a "professional relationship" as envisioned in *Wewaykum*. In that case, Justice Binnie had previously been employed as Associate Deputy Minister of Justice, and was apparently asked for advice on some documents at an early stage of proceedings. On this basis, it was alleged that the earlier decision of the Supreme Court, the reasons for which were written by Binnie J., was tainted and ought to be set aside. The case at bar is clearly distinguishable from *Wewaykum*.
- [28] I have only ever encountered Mr. Magaril in open court when he has appeared before me as counsel. We do not have a professional relationship. In the prior case where Mr. Magaril was counsel, I had no prior association of any kind with counsel or the clients and no financial or other interest that would impact the outcome of the litigation. The same is true for the case at bar. Courts are obliged to decide cases based on evidence and submissions of

counsel or parties, which are properly before the court. Counsel routinely appear before the same justices, and this does not create a professional relationship, nor does it compromise judicial impartiality. The fact that a chambers judge heard a brief matter on a chambers list, without prior association with the parties, particularly a "professional association" and made an order, positive or negative, does not provide a basis for an allegation that the judge is disposed in favour of or opposed to the counsel involved or their respective client.

- [29] With respect to scheduling, this Court is responsible to use available court time in a responsible fashion in accordance with Supreme Court Family Civil Rule 1-3(1)(b) to "secure the just, speedy and inexpensive determination of every family case on its merits". The NOFC was originally filed in June 2023. This matter has been before the courts already for nearly two years. The application to strike the NOFC was made in August 2024. The recusal application is important and is a serious assertion. For this reason alone, the application ought to be heard and dealt with promptly and expeditiously. Additionally, delaying the hearing from March to June of 2025, as originally sought by Mr. Stenner, would not have served the parties in achieving a just, speedy, and inexpensive resolution to their case. The delay into the summer would prolong the parties' already long legal dispute unnecessarily.

Conclusion

- [30] The application of the claimant is primarily based on "orders" concerning the attendance or appointment of legal counsel for the claimant by the case management judge in this case. No such orders have been produced nor filed as evidence before this Court.
- [31] Based on the lack of any factual or legal basis for this Court to grant an order for recusal in this action, I decline to make such an order and dismiss the claimant's application. The claimant shall pay the costs of this two-day application to the respondent based on Appendix "B", Party and Party Costs, on Scale B as a matter of ordinary difficulty, forthwith after assessment thereof.
- [32] As I told the parties at the close of submissions in this matter, it is my intention to publish reasons on the outcome of November 20 and November 21, 2024 hearing shortly.

"Ball, J."

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