

CANADA / JUDGMENT

Wang v. Sullivan

2024 BCCA 266

COURT

British Columbia Court of Appeal

DECIDED

19 July 2024

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2024 BCCA 266 Wang v. Sullivan COURT OF APPEAL FOR BRITISH COLUMBIA Citation: Wang v. Sullivan, 2024 BCCA 266 Date: 20240719 Docket: CA49323 Between: Julia Wei Hua Winnie Wang Appellant (Claimant) And Kevin Wayne Sullivan Respondent (Respondent) Before: The Honourable Justice Skolrood On appeal from: An order of the Supreme Court of British Columbia, dated August 11, 2023 (Wang v. Sullivan, Vancouver Docket E180535). The Appellant, appearing in person: J. Wang Counsel for the Respondent: K.A. McGoldrick Place and Date of Hearing: Vancouver, British Columbia June 17, 2024 Place and Date of Judgment: Vancouver, British Columbia July 19, 2024 Summary: The appellant applies for the recusal of a justice hearing her appeal on the basis that justice previously heard and dismissed her application for leave to appeal a separate order made in the same litigation. Held: Application dismissed. The justice's prior adjudication of the appellant's application for leave to appeal a separate order does not give rise to a reasonable apprehension of bias. Reasons for Judgment of the Honourable Justice Skolrood:

Introduction

- [1] On June 13, 2024, a few days before the scheduled hearing of this appeal, the appellant, Ms. Wang, filed a letter with the Registry asking that I recuse myself.
- [2] At the outset of the appeal, Ms. Wang was given an opportunity to make submissions in support of her request. At the conclusion of her submissions, the recusal request was denied, with reasons to follow.
- [3] It is well established that a recusal application is to be decided by the judge to whom the application is directed. These are my reasons for declining to recuse myself. They are being released concurrently with reasons of the Division addressing Ms. Wang's appeal.

Background

- [4] The present appeal is from a decision of Mr. Justice Coval dated August 11, 2023 requiring Ms. Wang to pay the respondent, her former spouse, \$6,000 in arrears of s. 7 expenses. Justice Coval ordered that Ms. Wang make payments towards the arrears of \$250 per month commencing August 15, 2023.
- [5] Ms. Wang's recusal request is based on the fact that I previously heard and dismissed her application for leave to appeal a separate order made in the Supreme Court in the family litigation concerning a RESP established for the benefit of the parties' child.
- [6] My reasons for judgment on Ms. Wang's leave application are indexed at 2023 BCCA 409.
- [7] Ms. Wang points to the fact that I described her appeal in that matter as lacking in merit and that I awarded the respondent costs of \$1,000, which she inaccurately characterizes in her recusal application as a fine.

Legal Framework

- [8] In *Pereira v. Dexterra Group Inc.*, 2023 BCCA 201, Justice Griffin provided a thorough and helpful summary of the principles governing an application for recusal based upon actual or apprehended bias:
- [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. Discussion
- [9] Ms. Wang's recusal application appears to be based upon a concern about actual or reasonably apprehended bias on my part due to my involvement in the other matter.
- [10] The threshold that an applicant must meet in order to establish actual or reasonably apprehended bias is high. Justice Griffin explained the rationale for the strict test in *Pereira*:
- [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.
- [11] In order to meet that threshold, Ms. Wang must establish that an informed person, viewing the matter realistically and practically, and having thought through the matter, would conclude that it is more likely than not that I would be unable to decide Ms. Wang's appeal fairly, based upon my prior involvement in her earlier leave application: *Pereira* at para. 12.
- [12] Respectfully, Ms. Wang has not met her burden. Specifically, she has advanced no evidence nor any cogent argument to provide any basis upon which a reasonably informed person would conclude that I am unable to hear and determine her appeal fairly and objectively. While Ms. Wang's apparent discomfort is unfortunate, absent clear grounds for recusal, a litigant's preferences about the judge or judges who hear their case cannot be determinative.
- [13] I would add that where a litigant, such as Ms. Wang, appears repeatedly in our courts, it is not uncommon, and indeed is inevitable, that they will appear before the same judge. That is not a basis for recusal.

[14] For these reasons, I decline to recuse myself and I dismiss Ms. Wang's application. "The Honourable Justice Skolrood"

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Prepared on 28 October 2026 · Esheria