

SUPREME COURT OF NOVA SCOTIA

Citation: Doncaster v. Field, 2015 NSSC 79

Date: 20150311

Docket: No. 1207-003679

Registry: Truro

Between:

Ralph Ivan Doncaster

Applicant

v.

Jennifer Lynn Field

Respondent

Decision

Judge: The Honourable Justice Campbell

Heard: March 11, 2015 in Truro, Nova Scotia

Oral Decision: March 11, 2015

Written Decision: March 20, 2015

Counsel: Patrick Eagan for the Applicant
Janet Stevenson for the Respondent

Campbell, J. (orally)

[1] Mr. Doncaster has made a motion that I recuse myself from hearing matters pertaining to him and that I be replaced as the case management judge.

[2] In May of 2013 Saunders J.A. dealt with what he referred to as a demand by Ralph Doncaster that Justice Saunders recuse himself from hearing a case.¹ Justice Saunders at that time noted that Mr. Doncaster was a named party in 103 ongoing cases in various courts in Nova Scotia. Ms. Stevenson has noted here that the divorce matter between her client, Jennifer Field and Ralph Doncaster has now been the subject of 13 reported decisions of the Nova Scotia Supreme Court and Court of Appeal.

[3] Those statements are made, not to cast aspersions upon Mr. Doncaster's motives. Nor or they intended to suggest that even though he is recognized as being one of the most active self-represented litigants in the courts in Nova Scotia² he is engaging in, to use the phrase used by Justice Saunders, a "trespass upon legitimate advocacy". They are not made to suggest that he is a "self-serving

¹ *Doncaster v. Chignecto- Central Regional School Board* 2013 NSCA 59

² *Doncaster v. Chignecto- Regional School Board* 2012 NSSC 383 per. Coady J. at para. 1.

litigant” a “vexatious litigant,” a “faux litigant” or a “paper terrorist”. In the course of those proceedings, well more than 100 of them, it is not unreasonable to assume that judges may have been required to reach conclusions and make findings that are not satisfactory to Mr. Doncaster. Like most people, he’s probably not right all of the time. It might be said that even if he is right 100% of the time, judges for whatever reason might not always see the wisdom in his arguments or just might not agree with him.

[4] As of April 29, 2013 he had 13 matters before the Court of Appeal, in 12 of which he was the Appellant. So, it is fairly safe to say, that judges have, for whatever reason, on those occasions at least, disagreed, to some extent with Mr. Doncaster.

[5] Mr. Doncaster has of course requested that other judges recuse themselves from cases involving him. I have already made reference to his application with respect to Justice Saunders of the Court of Appeal. He has also either requested recusal or alleged bias on the part of Justice Scanlan, then sitting as a judge of the Supreme Court, Justice Bourgeois then of the Supreme Court, Justice Scaravelli of the Supreme Court, Judge Gabriel of the Provincial Court, Judge Tax of the Provincial Court, and Judge Curran of the Provincial Court.

[6] The practical issue in a recusal motion is that a judge is required to assess his or her own impartiality and ability to try a case fairly, having regard to the impressions that would be formed by a reasonably informed person as to that impartiality. At the same time judges are obliged to hear cases and not take the easy way out by granting recusal motions just because they have been made. Judges have a duty to the system to do their jobs. Granting such motions as a matter of course allows a party to engage in judge shopping while succeeding in grinding out the litigation and expense for the other parties involved.

[7] While there is no empirical research upon which to ground the assertion it might be suggested without much fear of contradiction that few judges are eagerly awaiting their opportunity to be the next one to have the opportunity to take on what has been acknowledged as the acrimonious matter of *Doncaster v. Field*.

[8] Mr. Doncaster has made a motion to have me disqualified from hearing his matters and to have me removed as the case management judge with respect to his ongoing matters. His argument is based on a decision from February 22, 2013 when I was a Judge of the Nova Scotia Provincial Court. That decision is reported as *R. v. Doncaster*.³ That case was overturned on appeal because Mr. Doncaster

³ 2013 NSPC 13

was not offered an opportunity to have his trial conducted in French. He asserts, among other things, that because that decision was overturned on appeal this “may have some effect of influencing [me] against [him] in these proceedings.”

[9] Judges routinely hear matters involving litigants who have appealed their rulings, both successfully and not. A judge’s impartiality is not in any way influenced by the fact that a party has appealed a ruling. If that were the case, the pool of judges capable of hearing matters involving some litigants would be very small indeed.

[10] Mr. Doncaster also argues that comments were made in that February 2013 decision, in which Mr. Doncaster was found guilty of mischief, which suggest that I would not be capable of deciding his matters impartially.

[11] During the course of the matter Mr. Doncaster, as a self-represented litigant was afforded every opportunity to make his case. Mr. Doncaster filed a Charter motion consisting of some 250-300 pages at 7:30 pm the night before the hearing. That was in addition to other Charter motions that he had before the court for consideration that day. I recognized that while he had been able to file briefs on technical areas of the law the ability to create briefs and copy case law along with “a claim to possess above average intelligence” should not prejudice the position of

a self-represented litigant by having him treated as “almost a lawyer”. The decision states at para. 11:

Despite his being a rather confident and accomplished self-represented accused, I was prepared to allow Mr. Doncaster considerable latitude in the course of the trial. I am prepared to allow him very considerable latitude within the scope of basic procedural fairness to both himself and the Crown.

[12] I agreed to hear his Charter motion and noted at para 15:

Despite his facility with legal processes and legal language, Mr. Doncaster is being treated in this matter with a degree of deference that would otherwise be accorded to the most naïve of self-represented litigants.

[13] Through the course of the matter it was noted repeatedly that Mr. Doncaster should be given special consideration as a self-represented litigant. For example, at page 55 of the transcript:

The Court: Once again, on the basis of Mr. Doncaster being a self-represented litigant, I will allow a vastly wide range of questioning provided that it remains in the civil and decent tone that it has so far.

[14] At page 57:

Mr. Doncaster: Can I ask...

The Court: Mr. Doncaster, it's probably easier when an objection is made, what a lawyer would do...

Mr. Doncaster: Yeah, yeah.

The Court: I'm just trying to help you here.

Mr. Doncaster: Yeah, yeah.

The Court: ...is when the other lawyer stands up...

Mr. Doncaster: Oh, I sit down first..sorry,sorry...

The Court: ...you sit down.

Mr. Doncaster: Yeah, sorry.

The Court: That makes it a lot easier for you to not interrupt.

Mr. Doncaster: Sorry, sorry. Yeah, yeah, and I know...

The Court: You know it kind of gets your head in the right space.

Mr. Doncaster: And I know, I said my ADHD it's going to ...I have that....

The Court: I'm just trying to help you out.

Mr. Doncaster: Sure.

[15] At page 111:

The Court: Okay, again, if you were not a self-represented litigant, I would be listening to Mr. Theurkauf saying no way, that's not going to happen, but in the circumstances I think it's appropriate for ..if indeed Mr. Doncaster wishes to recall Ms. Field and almost deal with it as an omitted question to have the actual document itself verified. ...

[16] That issue arose because Mr. Doncaster wished to have a document entered but there as concern that he should not have to expose himself to full cross examination to do that. I noted at page 109:

The Court: My concern is that Mr. Doncaster would then be exposed to the full brunt of cross examination on all matters if he takes the...if he takes the stand.

[17] At page 118:

The Court: But because you're a self –represented litigant I will allow this questioning...but I would not otherwise have done so.

[18] At every turn Mr. Doncaster was afforded accommodation for his condition in addition to those accommodations arising from his representing himself in the trial. A reasonably informed person reading the entire transcript would be left with the overall impression that Mr. Doncaster was not being treated in a way that would suggest that I, as the trial judge, was predisposed to find against him then, or that I would be inclined to do so now. The comment made with respect to my findings in the matter should be read having regard to what took place during the trial itself.

[19] In the decision on the matter findings were made. Mr. Doncaster raised the issue of legal justification and colour of right. Mr. Doncaster asserted that he had an honest belief that his life was in danger when his brother in law threatened to have him killed. The decision notes that Mr. Doncaster said that he honestly believed that he had the right to go to the home then occupied by his former

spouse, to have Ms. Field intervene in some way and that he was legally justified in acting as he did.

[20] The decision states that the reasonableness of the belief is not an issue. It is whether it amounts to “an honest belief in a state of facts or in civil law.” The conclusion was that Mr. Doncaster did not have an honest belief that he had a right to be there. “He simply acted without turning his mind to it. The belief that he had a right to be at a home where he had never lived, while engaged in divorce proceedings with his wife, because he had among other things helped to negotiate the mortgage is quite simply not capable of being believed.”

[21] Mr. Doncaster claimed that the death threat was such that he believed he had the right to be at the house. The decision notes that “he admitted in his evidence in retrospect that it was ‘a little irrational’”. The decision states that there was no evidence as to the specific nature of the death threat or of its immediacy.

Going to his wife’s home and knocking on the doors and windows after getting no answer to a phone call, seems to be in no way responsive to the issue of the threat. It is irrational in that it doesn’t make sense at all. I cannot accept that the two would be connected. A lawful excuse or colour of right is based on honest belief and not an ex post facto reasoning. Legal justification and colour of right amount to more than being able to morally justify one’s actions to oneself, after the fact. Mr. Doncaster has not raised a reasonable doubt with the assertion that he believed his life was in danger.

[22] Mr. Doncaster asserted that he had a colour of right and a legal justification. I found that he did not. I did not accept that he made a legal assessment in the heat of the moment to justify his attendance at the home. I held that his legal reasoning was made after the fact, as a way to justify his actions.

[23] While I accept that the ruling is one that doesn't accept his version of the evidence it is not based on any finding that he had lied or intentionally misled the court. There is no suggestion whatsoever of that. Mr. Doncaster, like many people, in my view, interpreted his past actions in light of his present understanding. He himself acknowledged an element of irrationality in what he did.

[24] There was no finding that Mr. Doncaster was a person who was generally not to be believed or a person who had or would lie to the court. His recollection of his state of mind at the time as not reliable. An informed and reasonable person would not conclude from that that I would not be capable of assessing his future cases fairly.

[25] Mr. Doncaster at the conclusion of the trial and sentencing refused to sign the probation order. In the decision I made reference to reasons he gave for that. The keep and peace and good behaviour aspect of the order requires, to some extent the application of what I referred to as "common sense." The decision does

little more than reflect Mr. Doncaster's own statements in court, which read in part as follows.

The Court:.... It requires a degree of common sense, and I know that can be a problem but it requires a level of the application of common sense to the law, and it's...

Mr. Doncaster: Can I speak to that actually?

The Court: ...breach the peace...breaching the peace is quite simply what it says. Keep the peace and be of good behaviour. There is no more explanation that can be given to it other than a very, very, very, very, very, very long and complicated one.

Mr. Doncaster: Sure. Yeah. You said an important thing, common sense. If you... people with Aspergers are actually said to lack common sense. It's common sense is actually social instincts that we've inherited, and that cause us to behave in a certain way. So say for... when I talked before about I might not be able to show you respect because to me a judge is the same as a

janitor⁴, it's how you treat me and how you talk to me and that how I behave with you. Whereas most people actually inherit a social instinct that causes them to feel a little bit of fear when they interact with someone who has authority. And so there's a term, neurotypical that Aspies use. In other words neurotypical is people who have normal social instincts and behave the way that most normal people behave. I don't have all those same social instincts.

I don't have the common sense that everybody else talks about

(emphasis added). I behave in far more concrete and logical ways and don't have some of the same emotional responses to certain social conditions that other people have, And so I think even...I know you decided that I didn't believe I had, but I mean the honest truth still is... it doesn't change my subjective ... I mean you just didn't... you don't understand how people like me work. I guess you didn't believe me, or whatever, but the point was nothing in my common sense told me that I shouldn't have gone there, and so for you to say that, you know, it's common sense, yeah, but it's like you're expecting me to know what common sense is when genetically I don't have all the same common sense that a neurotypical does.

⁴ It should be noted that when that reference was made earlier in the trial, my response to Mr. Doncaster, who advised as well that he had "pissed off" some judges before, was, "I appreciate your letting me know that."

And it's ...so in other words, it's something neurotypicals already know and they expect people like me, with Aspergers to know it. And sometimes I've seen them get upset because when I say, well what are you talking about? And they think I'm being belligerent or just, you know, playing stupid when the fact, the reality is that I don't have those same social instincts that tell me that, you know, what other people think is acceptable behaviour. But where you know, but as I said, I'm very intelligent. If you explain it to me I can gain that knowledge.

So, basically, it's like society expects people like me, people that don't have those social instincts, it's like no, I mean you're human, you must have them, because they think ...sort of like when I was talking with the witness Danielle Pointon. Her judgment is based on her putting herself in what was my shoes and thinking how she would've felt upon her own emotional instincts that we all, you know, inherit. And however in some cases people inherit things differently. There's neurodiversity in all species. So, yeah, I ...and I could see you seem a bit.... my perception anyways that you're a bit annoyed with it, I'm kind of....

The Court: I'll put on the record to you sir, I'm not annoyed.

Mr. Doncaster: Okay, good.

The Court; I am paid to do this job. I'm paid to do it until midnight. I'm paid to do it until three o'clock this morning. I'm not annoyed.

Mr. Doncaster: Okay

The Court: Annoyed is not something I'm allowed to be.

Mr. Doncaster: Okay, well then....

The Court: If I'm doing something that you're perceiving as annoyed [sic], please let me know and I'll correct [sic] because I certainly don't want to be telegraphing that to you in the slightest, sir.

Mr. Doncaster: Okay, all right. It was just when you raised your voice a little that usually implies a little bit or impatience or annoyance, so...

The Court: So that is a level of understanding that you are but apparently do have, that when someone raises their voice you understand that there is frustration there, so that...that...to that extent we do share a common context.

Mr. Doncaster: Oh yeah, I didn't ...I didn't say I don't have ...like I say again just because I don't have some social instincts doesn't mean I don't have any, you know...

The Court: Okay, fair enough.

Mr. Doncaster: I... I still you know, when my daughters smile a big smile, it makes me feel good. I still have that emotional instinct.

The Court: Hm...mmm

Mr. Doncaster: I, you know, if I'm working up on my roof I still have a little bit of fear that again is, ..is an instinct that humans have. However, I'm kind of getting off the topic a little bit. Say for instance, you know, when I was trying to date in university, well I didn't have the social instinct of flirting. It's actually a social instinct in most people in...they don't realize it, but the ability to sense whether another person is sexually interested in you is actually instinctual knowledge. It's built on instincts that you get a feeling when you subconsciously recognize certain behaviour in other people. That as something I didn't have. So I had a...you know, work off the more blunt and obvious things. And so again, when it comes to the... you know, I ...I think I'm far more concrete and so if I logically ...if nothing sets off

any...like if nothing I'm doing is dangerous, just because someone might perceive it as dangerous, I don't get it. Whereas most people think well, you might know that...like you said...it's almost like you thought I should know that would've made my ex afraid of my actions. I honestly didn't. Never entered my mind.

The Court: This isn't the opportunity to reargue the case.

Mr. Doncaster: No, no, yeah, yeah, I'm just trying to explain though that the...what Aspergers is. And so why where a neurotypical person with normal social instincts just from their common sense knows what you mean by keep the peace and be of good behaviour, whereas like I say..

The Court: Okay.

Mr. Doncaster: ...someone with Aspergers, I'm...I'm...and like I say people might feel like I did very well in computers because computers are very concrete. You know, you change one line of code, you know it's... it's a number is equal to something or it's not equal to something, whereas you know, the kind of social instincts, as I said, it seems like it could be, it could not be.

The Court: Okay.

Mr. Doncaster: Whereas the other conditions I think we can agree that certainly the other conditions are very clear and obvious, you know. What's 30 metres? Well, we can measure it out. You know, where is Kali Lane? Well, that's a known fact. There's no...there's no common sense required in interpreting those. And to say I need common sense to interpret keep the peace and be of good behaviour, you know, in essence it amounts to discriminating against me under, I think it's Section 15, to say well I'm supposed to know... I'm supposed to have common sense. Yet, my mental disability is that some of the things you consider common sense I just don't have.

[26] Later on in that lengthy exchange, Mr. Doncaster agreed with the summary that we were dealing with a person with a "common sense deficit". I stated; "But as I've indicated many, many, many times and now I'll another many to make it four manys, in this situation I think it's appropriate for me to accommodate your disability, your Aspergers disability and your common sense deficit." At that point I told Mr. Doncaster that while I would normally not attempt to define the term "keep the peace and be of good behaviour" because it required the application of

common sense, I would direct him to case cites that might enable him to understand the concept in more concrete terms:

The Court: So, they would be cases that I'm sure would've been referenced in cases across the country that have talked about it and that would give you a very...having...once you review those and all of the cases that are referenced to those cases, that will give you the ability to write that legal dissertation that I was talking about.

Mr. Doncaster: Okay

The Court: So, I hope that gives you the understanding. That's...that's...that is an understanding of keep the peace and be of good behaviour that is...is as deep as I can give you.

Mr. Doncaster: Sure

The Court: And to the extent that I understand it, then I would presume that you do on the basis not of relying on common sense but relying on the actual wording of the...of the case law.

Mr. Doncaster: All right. Thank you very much. That's great.

The Court: Are you satisfied with it?

Mr. Doncaster: Oh yeah, that's very good. Yeah.

The Court: Thank you

The Clerk: Mr. Doncaster will sign the...

Mr. Doncaster: Yeah, I'll sign that. Yeah.

The Court: Thanks

Mr. Theurkauf: I'll get it for you.

The Court: That's okay.

Mr. Doncaster: See, that's another thing...

The Court: No, no I'll...

Mr. Doncaster: Common sense might say you're not supposed to approach the Judge on..

The Court: No, no

Mr. Doncaster: But again, and I know logically I maintain no harm so therefore my interpretation would be to perceive no harm, but...

The Court: I don't perceive it.

Mr. Doncaster: Yeah, but like I say I can tell I certainly had lot of cases where people have claimed ...misperceived harm on my part.

The Court: When I sense harm, everybody knows it.

Mr. Doncaster: Yeah, yeah. Thank you again Your Honour.

The Court: Thank you.

Court was adjourned for the day at 5:39 pm.

[27] That long excerpt, which is only a portion of the full exchange in court, was what was intended to be reflected in the last paragraphs of the decision. In those paragraphs I noted that Mr. Doncaster would from his review of the cases I provided to him, obtain at best a superficial understanding of the phrase, “keep the peace and be of good behaviour”. His inability to grapple with the degree of uncertainty inherent in some legal concepts provides insight into his actions. “Filing a notice of a Charter application based on a delay, three days before the

trial and filing 300 pages with a claim for \$10,000 the night before the trial would suggest that in those instances the concept of reasonable behaviour had indeed elude him.” (emphasis added)

[28] That is not to suggest that he can never be reasonable. It is a reference to the unreasonableness of those actions.

[29] The decision goes on to conclude that shared experience and shared understanding of human behaviour on some elementary level constitutes common sense. The inability to grasp those concepts and to react appropriately when faced by them, “is a very unfortunate condition that seriously limits one’s ability to understand the law in anything more than a superficial way”. That statement does not say that Mr. Doncaster cannot act reasonably. It simply says that he can only get a superficial understanding of the law.

[30] The decision goes on to say that while Mr. Doncaster should be accommodated by providing him with the kind of direction that I endeavoured to provide, “the law simply cannot operate like some kind of algorithm, in the absence of common sense”. Once again, that is not a suggestion that Mr. Doncaster is likely to behave in one way or another.

[31] In an application for recusal a judge's impartiality is to be presumed. The party arguing for disqualification of the judge has to establish the circumstances justifying it. That involves showing that there is a reasonable apprehension of bias. The question is then what an informed, reasonable and right-minded person, viewing the matter realistically, and practically, and having thought the matter through would think. The test is not satisfied unless it is proved that the informed, reasonable and right-minded person would think that it is more likely than not, that the judge, whether consciously or not, would not decide fairly. It requires showing serious grounds on which to base the apprehension.

[32] The inquiry is highly fact specific.

[33] Judges have a duty to hear the cases assigned to them and should not hastily recuse themselves to avoid the dealing with the issue, or because it's more convenient. Unfavourable comments by a trial judge do not necessarily indicate a reasonable apprehension of bias. Merely deciding a case against a party is not enough. The presumption of judicial impartiality remains.

[34] The issue is not whether Mr. Doncaster perceives that I am biased against him. It is whether an informed, reasonable and right minded person, viewing the matter realistically and practically and having thought the matter through, would

reach that conclusion. That is not to suggest that Mr. Doncaster is not an informed reasonable and right minded person inclined to view matters realistically and practically and capable of thinking matters through. It is however, not his opinion or perception that governs the issue.

[35] I am not satisfied that I should disqualify myself from hearing Mr. Doncaster's matters. There has been no finding to suggest that I have made any determination about his general credibility or about the reliability of his evidence in a general way. I have made no finding that he lied to the court or that he was likely to lie or make misrepresentations to the court. His evidence was not accepted on one aspect of his testimony not because of any finding of intent to mislead.

[36] Comments were made with regard to Mr. Doncaster's ability to deal with issue of reasonableness. I have reviewed my decision and the transcript. The comments made with regard to Mr. Doncaster's deficit of common sense were based on his comments in court about the nature of his condition and the limitations that it creates. Mr. Doncaster himself argued that while he does have some common sense in some matters, he lacks some social instincts. That condition provides some insight into his behaviour and the decision was intended to reflect that.

[37] The decision read as a whole and with reference to the transcript of the proceedings would not lead a reasonable person to conclude that I am not capable of hearing Mr. Doncaster's matters impartially.

[38] I would like to thank counsel for the manner in which this motion was argued. Counsel for the applicant in a recusal motion is placed in an awkward position. Mr. Eagan has put forward Mr. Doncaster's position frankly, professionally and with admirable tact.

[39] Costs in this matter are awarded to Ms. Field, in the amount of \$1,000.

J.