IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Citation: *Royal LePage Atlantic v. Ross*, 2021 NSSM 64

Claim No: SCCH 21-503704

BETWEEN:

Royal LePage Atlantic/Atlantic Real Estate Services Limited
and Jessica Margolian

Claimant

vs.

Jonathan D. Ross

Defendant

Mr. Gavin Giles, QC for the Claimant

Mr. Nathan Sutherland for the Defendant

DECISION ON PRELIMINARY MOTION

This is my decision pursuant to a virtual hearing held May 6th, 2021, in which Mr, Sutherland on behalf of the Defendant has made a preliminary motion for an Order restraining Mr. Giles from acting in this matter, "in light of his role as the Chief adjudicator of the Small Claims Court of Nova Scotia".

I am denying this motion, for the reasons that follow. Although I have jurisdiction to hear this motion, there is insufficient evidence to conclude that the representation by Mr. Giles of the Claimant would create bias or a reasonable apprehension thereof.

Background:

This claim was filed January 28th, 2021. Briefly stated, it is a claim for monies that the Claimant says are owing due to a Brokerage Agreement which the claimant says is binding upon the Defendant. The Defendant has defended this claim by Defence filed March 1, 2021. The matter came before me on a pre-hearing night on March 17, 2021, and Mr. Sutherland advised at that time of his intention to being a motion to have Mr. Giles removed as counsel for the Claimant, based upon his role as Chief Adjudicator.

The matter was set down before me for a one-hour video hearing for oral argument on May 6th, 2021. The parties filed pre-hearing briefs and authorities, as well as an Agreed Statement of Facts. I thank the parties for their thorough canvassing of the principles in their submissions.

Position of the Parties:

The Defendant Applicant's position is that "it is not in the interests of the administration of justice" for Mr. Giles to act for the Claimant in this matter. This argument is based not on his role as a Small Claims Court Adjudicator, but upon the fact that he is the Chief Adjudicator, which, the Defendant says, "may place him [the Defendant] at a disadvantage before the Court". The Defendant relies upon the case law that has developed with respect to lawyers changing firms, and points to section 2 of the *Small Claims Court Act*, RSNS 1989, c. 430 (the "Act"), section 2, as confirming that Mr. Giles's removal is in the interests of ensuring that the principles of natural justice are maintained.

In response, the Claimant relies upon the common law principle that parties should be entitled to the counsel of their choosing, except in exceptional circumstances. The Claimant characterizes the Defendant's position as an attack on the independence and impartiality of the Adjudicator hearing the case.

The Claimant argues that the motion is properly characterized as an argument that Mr. Giles' participation as counsel gives rise to a "reasonable apprehension of bias" on the part of any adjudicator hearing the case, and argues the "strong presumption" in favour of judicial impartiality.

a) The Jurisdiction of a Small Claims Court Adjudicator to rule on this Motion:

Both parties also addressed the issue of whether I have jurisdiction to issue the Order requested.

I find that I have the authority to rule on this motion, for the reasons that follow.

The Defendant in arguing that I have the authority to rule, relies upon *Cunningham v. Lillies*, 2010 SCC 10 (Canlii). In that case, although the issue involved the jurisdiction of a statutory Court, Justice Rothstein in his decision referenced the decision of the Honourable Justice Bastarache for the proposition that the Supreme Court of Canada has confirmed the "doctrine of jurisdiction by necessary implication", which gives administrative decision makers as well as Courts the right to exercise what powers are necessary to achieve a stated objective:

> *The mandate of this Court is to determine and apply the intention of the legislature (Bell ExpressVu, at para. 62) without crossing the line between judicial interpretation and legislative drafting (see R. v. McIntosh, 1995 CanLII 124 (SCC), [1995] 1 S.C.R. 686, at para. 26; Bristol-Myers Squibb Co., at para. 174). That being said, this rule allows for the application of the "doctrine of jurisdiction by necessary implication"; the powers conferred by an enabling statute are construed to include not only those expressly granted but also, by implication, all powers which are practically necessary for the accomplishment of the object intended to be secured by the statutory regime created by the legislature (see Brown, at p. 2-*

16.2; Bell Canada, at p. 1756). Canadian courts have in the past applied the doctrine to ensure that administrative bodies have the necessary jurisdiction to accomplish their statutory mandate:

> *When legislation attempts to create a comprehensive regulatory framework, the tribunal must have the powers which by practical necessity and necessary implication flow from the regulatory authority explicitly conferred upon it.*

Re Dow Chemical Canada Inc. and Union Gas Ltd. (1982), 1982 CanLII 3238 (ON SCDC), 141 D.L.R. (3d) 641 (Ont. H.C.), at pp. 658-59, aff'd (1983), 1983 CanLII 1879 (ON CA), 42 O.R. (2d) 731 (C.A.) (see also Interprovincial Pipe Line Ltd. v. National Energy Board, 1977 CanLII 1721 (FCA), [1978] 1 F.C. 601 (C.A.); Canadian Broadcasting League v. Canadian Radio-television and Telecommunications Commission, 1982 CanLII 2945 (FCA), [1983] 1 F.C. 182 (C.A.), aff'd 1985 CanLII 63 (SCC), [1985] 1 S.C.R. 174).

The Claimant in response divides the argument into specific jurisdiction and general jurisdiction. With respect to specific jurisdiction, the Defendant argues:

> *As a statutory Court, this Honourable Court does not enjoy any forms of inherent jurisdiction. Amongst other things, it does not have the power to control its own processes, as does, for example, the Supreme Court of Nova Scotia.*

As I read the provided authorities, I find that even if the Small Claims Court does not have inherent jurisdiction, it does not follow that the Court does not have jurisdiction to consider preliminary appliacations relating to matters within the Court's jurisdiction. It depends on the subject matter.

In *Clarke v. P.F. Collier & Son Ltd*, 1993 Canlii 3447 (NSSC) Justice Haliburton (as he then was) dismissed an appeal to the Supreme Court on the grounds that the Appellant has not exhausted the mechanisms available through the Small Claims Court, and that the Small Claims Court's status as a statutory Court gives it the right to control its own processes, saying:

> *The Small Claims Court is now an autonomous, statutory court. Section 3 of the Small Claims Court Act establishes it as a separate "court of law and of record". **As such, it has an inherent right to control its own processes**. The Court and its Adjudicators must comply with the spirit and/or the law governing its operation. If they do so, then no superior court may interfere, except in accordance with the appeal process established by the Legislature.* [emphasis added]

The Claimant cites the case of *Royal Insurance Company of Canada v. Legge,* 1996 Canlii 5516 (NSSC) within *Imperial Life Financial v. Langille*,1998 Canlii 1611 (NSSC) as authority for the position that "this Honourable Court functions as would an administrative tribunal".

I have reviewed those cases, and I do not think they lead to the conclusion that the Court does not have jurisdiction to hear this motion. *Legge* dealt with an application for a stay of proceedings with respect to a matter that was before the Small Claims Court, and Justice Gruchy in his decison concluded that the curial deference to be shown to the Court included the power in this case, to decide whether the subject matter of a claim fell within its jurisdiction, subject only to the appeal created by section 32 of the Act:

> *As I said in **Hingley v. Provincial Medical Board (N.S.) et al** (1990), 1994 NSCA 2 (CanLII), 131 N.S.R. (2d) 395, with respect to administrative tribunals, "curial deference should be paid to an administrative tribunal both prospectively and retrospectively". The Small Claims Court should be permitted to carry on with its normal procedures as established by its **Act**. In order to deal with this action, the Small Claims Court will have to decide if the subject matter falls within its jurisdiction. Such a decision is clearly subject to the right of an aggrieved party to appeal. Section 32 of the **Small Claims Court Act** reads:*
>
> *32.(1) A party to proceedings before the Court may appeal to the Supreme Court from an order or determination of an adjudicator on the ground of*
>
> *(a) jurisdictional error;*
> *(b) error of law; or*
> *(c) failure to follow the requirements of natural justice....*
>
> *In my view the determinations of fact which give rise to the jurisdiction of the Small Claims Court must be made by that Court. The Supreme Court has no jurisdiction to interfere with the Small Claims Court's factual determinations or conclusions while the matter is still pending before that Court. It has even less jurisdiction to interfere with that Court prior to its making any determinations.*
>
> *The Small Claims Court is not supervised by the Supreme Court, other than by prerogative remedies or judicial review. This Court's relationship to the Small Claims Court is as an appellate tribunal only. The Nova Scotia Legislature removed from the jurisdiction of the Supreme Court the subject matter of actions properly taken pursuant to the **Small Claims Court Act**. It appears premature to interfere in the process of a matter being conducted by a duly constituted court. It is not for this Court, at this stage, to decide whether the subject matter of the action is beyond the monetary limits of that Court. That Court must judge for itself the questions concerning the monetary value of the claim.*

Taken all together, I find that on the threshold question of whether I have jurisdiction to consider an application to restrain or disqualify Mr. Giles from acting for the Claimant in this matter, the answer is, I do. The matter in dispute between the parties is a claim as to whether the Defendant was obligated by an Real Estate Brokerage Agreement to pay a sum of money to the Claimant, which falls clearly within section 9 (a) of the Act as a

"monetary award in respect of a matter or thing arising under a contract or tort". The claim has been filed for $25,000, the monetary maximum allowed by the Court.

As the subject matter of the claim is within the Court's jurisdiction, I consider that the correlative jurisdiction to manage procedural issues arising out of the claim, is confirmed by both sections 2 and 3 of the Act, and the considerable line of authority stating that the Court is entitled to control its own processes regarding matters within its jurisdiction.

The Claimant argues that the remedy sought is beyond the parameters of matters governed under section 2 as elements of "natural justice", arguing that the Defendant is not arguing bias (an obvious element of natural justice) as the grounds of his application.

For reasons I will outline below, I am of the view that the application sounds in bias or reasonable apprehension thereof. I am also of the view that ensuring that the precepts of natural justice are observed in this Court are within my jurisdiction, and are mandated by section 2 of the Act (as well as being a essential requirement for any administrative decision maker).

This is by far not the first time this Court has issued decisions on issues relating to bias or conflict. I note the Decision of Chief Adjudicator Giles in *Farmer v. Hirtle*, 2014 NSSM 82, in which the learned Adjudicator dismissed a motion to recuse himself made by the Respondent in a taxation (based upon a claim of conflict arising out the business relationship with one of the lawyers in the case) and *Farmer v. Hirtle*, 2015 NSSM 11, a further decision in that case wherein the learned Adjudicator dismissed an application to disqualify Mr. Rubin Dexter from representing the Respondent, on the grounds that he was a recent retiree from the Small Claims Court "bench", and therefore subject to the three year "cooling off" period required of judges. There are several reported cases available on Canlii wherein other Adjudicators of this Court have dealt with recusal applications, as well as other preliminary objections to jurisdiction.

The Merits:

The Applicant frames his argument through the reasoning in the Supreme Court decision in *McDonald Estate v. Martin*, [1990] SCJ No. 41. That case created the test for assessing the potential for conflict raised by lawyers transferring from one firm, to another firm acting opposite to a former client.

Drawing upon that case, the defendant argues that the relevant issues are:

1. Concern for maintaining the high standards of the legal profession and the administration of justice;
2. The value that a litigant should not be deprived of choice of counsel without good cause;
3. The desirability of permitting reasonable mobility in a legal profession.

Defendant's counsel then referenced *Johnston v Law Society* [1990] PEIJ No. 134, and *Kornberg v Kornberg* 1990 MJ No. 92.

The defendant further relies upon Section 2 of Act, which states:

> *It is the intent and purpose of this Act to constitute a court wherein claims up to but not exceeding the monetary jurisdiction of the court are adjudicated informally and inexpensively but in accordance with established principles of law and natural justice.*

Finally, the defendant applicant references Section 5.1-2 of the Nova Scotia Barristers Society Code of Professional Conduct, which states:

> *5 .1-2 When acting as an advocate, a lawyer must not:*
> *…*
>
> *(c) appear before a judicial officer when the lawyer, the lawyers associates or the client have business or personal relationships with the officer that give rise to or might reasonably appear to give rise to pressure, influence or inducement affecting the impartiality of the officer, unless all parties consent and it is in the interests of justice.*

Having reviewed the *MacDonald* authorities, as Defendant's counsel indicated before me, the third principle is not at issue in this case. Overall, I do not find that the case law which has developed around conflicts created by lawyers changing firms to be of assistance in the decision I am required to make in the current motion.

In these cases, there is no question as to whether the lawyer transferring had had access to privileged information which could create an unresolvable conflict – they worked at a firm who represented a client whose opponent is now represented by their new firm. The analysis in *MacDonald* focuses more on what it is reasonable to conclude as to whether or not the transferring lawyer will use the information acquired, or be perceived to have done so.

In the present case before me, the analysis is not so straightforward. There is a live issue to be determined as to what information or influence the Chief Adjudicator has access to, which would trigger a "conflict" between his representation and my ability to adjudicate this claim.

Section 5.1-2 of the NSBS Code of Conduct is illustrative of the standards outlined in the *MacDonald* line of authority, and the overall requirement that counsel are to avoid conflict in Court appearances where they have "business or personal relationship" with the decision maker that (reading between the lines) would give rise to bias or a reasonable apprehension of bias.

I note that while I am bound by the Code of Conduct as a practicing member of the Bar Nova Scotia, I do not, in my role as Adjudicator, stand in the shoes of the regulator and administer the terms of the *Barristers and Solicitors Act*, RSNS 1989, c. 30. If the submission is that Mr. Giles's representation is somehow contrary to the Code of Conduct, that is not a matter for my determination. The Code of Conduct does however, reflect the core issue brought forward by the Defendant in this case: What is the "business or professional relationship" between Mr. Giles and myself, which requires his removal?

Put another way, how is Mr. Giles's representation contrary to the precepts of section 2 of the Act, that requires a process free from bias or a reasonable apprehension thereof?

The Claimant approaches the argument from a different perspective, stating, the "real attack is on this Honorable Court and all of the Adjudicators thereof", arguing that the real issue is that the appearance of the Chief Small Claims Court Adjudicator in the Small Claims Court creates a bias or a reasonable apprehension of bias.

I should note that at the hearing of this matter, Mr. Sutherland explained that the Defendant did not seek recusal in this matter, as any such application would apply to all adjudicators, not just myself. He also reiterated that the Defendant's position was that the focus should be on Mr. Giles's representation as contrary to the *MacDonald* principles of upholding the administration of justice, and of the intent of section 2 of the Act and the NSBS Code of Conduct.

For the reasons I have outlined above, I conclude that the creation of bias or a reasonable apprehension thereof is the issue in this case. Applying section 2 of the Act, I conclude that if Mr. Giles's role as Chief Adjudicator would lead to bias or a reasonable apprehension thereof, the only solution available under section 2 would be to issue the Order sought by the Defendant. Recusing myself would not solve the problem, as the Defendant has confirmed his position that Mr. Giles could not appear before the Court, not just before me specifically.

I think that an exploration is necessary of the recusal principles, if we are to get to the heart of how the relationship between Mr. Giles and myself should lead to his disqualification. That is because there has to be a reason why the Defendant is seeking Mr. Giles' removal. If his removal is "in the interests of justice", why?

I do not think there is any doubt that the Defendant's argument that Mr. Giles is in a position to influence the Adjudicator hearing the matter, either in actuality or in reasonable apprehension. The "business or personal relationship" with me that gives rise to or might reasonably appear to give rise to pressure, influence or inducement affecting my impartiality, is my role as Adjudicator and his role as Chief Adjudicator.

To seek the source of such pressure and influence, I turned first of all to the Agreed Statement of Facts filed by the parties. The advisability of relying upon this Agreement, as an Agreement, arose as an issue before me at the hearing of this matter. I clarified with Counsel for the Defendant that his client was not resiling from the Agreement. I

based that question on his statement that there was “little hard evidence on how Mr. Giles might be able to influence you”. While that is true, if there was evidence to be found, I looked for it int the Agreements made regarding his role:

> Role of the Chief Adjudicator
>
> 11. There is little publicly available information about the Chief Adjudicator or the role of the Chief Adjudicator.
>
> 12. The Chief Adjudicator is listed on the Nova Scotia Courts website alongside the Chief Justices of the Nova Scotia Courts and the Registrar of the Bankruptcy Court.7
>
> 13. For the purposes of this motion hearing, the parties agree that that the role of Chief Adjudicator includes the following and/or is limited in the following ways:
>
> a. The Chief Adjudicator does not direct individual Adjudicators with respect to the exercise of their discretion on specific matters.
>
> b. As part of the Court’s COVID-19 precautions, Adjudicators must seek leave from both the Chief Adjudicator and the Department of Justice to conduct hearings in person where the circumstances warrant.
>
> c. The Chief Adjudicator does not have any disciplinary role with respect to individual Adjudicators.
>
> d. The Chief Adjudicator does not review or comment upon individual Adjudicators’ opinions or reasons for decisions.
>
> e. The Chief Adjudicator does not counsel members of the public with respect to whatever rights they might have to take the reasons for decision rendered by individual Adjudicator’s on appeal, except in his capacity as legal counsel when retained to represent a client on a specific matter.
>
> 14. The above facts related to the role of the Chief Adjudicator are not posted publicly. Claimant Counsel relayed the above facts to Defendant’s counsel, Nathan Sutherland, in correspondence in February 2021.
>
> 15. Jonathan Ross, was unaware of these facts before Claimant Counsel communicated them to Mr. Sutherland in February 2021;

In *Bosse* v. *LaVigne*, 2015 NBCA 54, the Court provides an excellent summary of the considerations to be taken into account on a recusal application:

> *7 The relevant principles that emerge from these decisions are summarized below:*
>
> *1) Impartiality is "the state of mind of the arbitrator disinterested in regard to the result and capable of being persuaded by the evidence and arguments submitted", while partiality "denotes a predisposed state of mind of somehow*

to a certain outcome or closed on certain issues ": S. (RD) , at paras. 104 and 105 ;

2) With a few exceptions, either in case of necessity, judges have an ethical as well as a legal obligation not to judge cases which they feel themselves incapable of judging impartially and those in respect of which a reasonable person, impartial and knowledgeable would have reason to suspect the existence of a conflict;

3) The analysis is "inherently contextual" and "depends very much on the facts of each case": Commission scolaire francophone du Yukon , at para. 26 and Wewaykum , at para. 77;

4) A judge's conviction that he will be unable to judge impartially connotes a subjective test. It is a decision that the judge makes by asking himself whether he would be able to judge impartially. If he answers in the negative, the challenge generally follows;

*5) Although the judge's subjective decision that he would **not be** able to judge impartially will usually result in disqualification, the contrary decision does not always result in the dismissal of the motion for disqualification;*

(6) When determining that he would be able to judge impartially, the judge must next consider whether there is nevertheless a reasonable apprehension of bias;

7) To determine whether there would be a reasonable apprehension of bias, the judge must ask himself the following question: "[A] reasonable and knowledgeable person who would study the situation in depth and in a 'practical and realistic' manner would be of the opinion that "in all likelihood the [judge], consciously or not, will not render a just decision"? »: Gaudet , at para. 3, citing Committee for Justice and Liberty, at para. 40;

8) The elements of this objective test are as follows: (1) the person considering the allegation of bias must be a reasonable person, not a person of a scrupulous or finicky nature, but rather a sane person; (2) it must be a knowledgeable person, aware of all the relevant circumstances; (3) the apprehension of bias must itself be reasonable having regard to the circumstances of the case; (4) the situation should be examined in depth, not just superficially, and the examination should be done realistically and practically; (5) the analysis begins with a strong presumption of judicial impartiality and seeks to determine whether this has been rebutted to such an extent that the fear that the judge will not render a just decision on the merits is a real probability;

9) *The knowledgeable person is expected to be familiar with "the historical traditions of integrity and impartiality, and also be aware of the fact that impartiality is one of the obligations that judges have made on the subject. oath to respect ": R. c. Elrick , at para. 14, cited in S. (RD) , at para. 111 ;*

10) *The grounds for a reasonable apprehension of bias must be substantial and the evidence supporting it must be strong; the applicable test is rigorous and the onus of establishing bias rests on the party making the allegation of bias; "[T] he grounds underlying the apprehension of bias must be of such gravity as to rebut the strong presumption that the judge will abide by his or her oath of office and '[will] decide the case fairly in light of the of its own circumstances "": Gaudet , at para. 5, citing a passage from United States v. Morgan , 313 US 409 (1941), at p. 421, which the Court cited with approval in S. (RD); or, in other words, "[s] hen there is a strong presumption of judicial impartiality which is not readily rebuttable […], the test for determining whether there is a reasonable apprehension of bias requires a" real " probability of bias "" : Commission scolaire francophone du Yukon , at para. 25.*

So: reviewing *Bosse*, and the Agreement, what evidence is there that would lead a reasonably informed person to conclude that Mr. Giles is in a position to influence my decision making?

All of the evidence before me supports the conclusion that adjudicators of the Small Claims Court are independent decision makers. I and every other Adjudicator swear an oath to "do right to all manner of people after the laws of the Province without fear, favour, affection or ill will". (the Act, section 6 (6)). It goes without saying that the ability to judge objectively, is a requirement of the role.

The terms of my appointment (and that of Mr. Giles), can be found in Section 6 of the Act:

> Adjudicator
>
> 6 (1) Each sitting of the Court shall be presided over by an adjudicator.
>
> (2) The Governor in Council may appoint on the recommendation of the Attorney General such adjudicators as the Governor in Council deems necessary.
>
> (3) No person shall be appointed or serve as an adjudicator unless that person is a practising member in good standing of the Nova Scotia Barristers' Society.
>
> (4) An adjudicator holds office for such term and upon such conditions and remuneration as the Governor in Council determines.
>
> (5) The jurisdiction of an adjudicator extends throughout the Province.
>
> (6) Before taking office, each adjudicator shall take and subscribe the following oath before a judge of the Supreme Court:

I, ..., of . . . . . ., in the County of . . . . . ., make oath and say, that I will well and truly serve our Sovereign Lady the Queen in the office of Adjudicator of the Small Claims Court of Nova Scotia, and I will do right to all manner of people after the laws of the Province without fear, favour, affection or ill will.

Sworn to at . . . . . .,
in the County of . . . . . .,
this . . . . . day of . . . . . .,
19 . . ., before me . . . . . .

. . . . . .

(7) The oath of office shall be transmitted to the Attorney General.

(8) An adjudicator shall be described or designated as an Adjudicator of the Small Claims Court of Nova Scotia.

(9) Where an action is commenced before an adjudicator who dies, ceases to hold office, is incapacitated or is otherwise unable to complete the proceeding, the action may be continued or recommenced as determined by another adjudicator. R.S., c. 430, s. 6; 1992, c. 16, s. 115.

The Act therefore stipulates that I as well as Mr. Giles and every other adjudicator, are appointed to our position by the Attorney General though Order in Council. The OIC database on the Nova Scotia Government website provides the terms of my most recent appointment (OIC 2019-361) and that of Mr. Giles (OIC 18-348). They are identical in all particulars but for date, and from the standpoint of our appointments, it should be noted that the "Chief" designation does not appear. From the perspective of appointment status, there is no distinction between us:

OIC 2019- 361:

The Governor in Council on the report and recommendation of the Attorney General and Minister of Justice dated December 11, 2019, and pursuant to Section 6 of Chapter 430 of the Revised Statutes of Nova Scotia, 1989, the *Small Claims Court Act*, is pleased to:

a) re-appoint the following as adjudicators of the Small Claims Court for a term of three (3) years, effective December 19, 2019:

i. Nelson Blackburn, QC of Guysborough;

ii. J. Walter Thompson, QC of Halifax;

iii. W. Augustus Richardson, QC of Halifax.

b) re-appoint the following as adjudicators of the Small Claims Court for a term of three (3) years, effective December 21, 2019:

i. Darrel Pink of Halifax;

ii. Raffi Balmanoukian of New Glasgow;

iii. Nancy Elliott of Halifax;

iv. Dale Darling, QC of Halifax;
v. Bernard Conway of Kentville;
vi. Tuma Young of Sydney;
vii. Leigh Davis of Halifax;
viii. Shelley Martin of Truro;
ix. Bryna Hatt of Port Hawkesbury.

OIC 2018-348:

The Governor in Council on the report and recommendation of the Attorney General and Minister of Justice dated December 4, 2018, and pursuant to Section 6 of Chapter 430 of the Revised Statutes of Nova Scotia, 1989, the *Small Claims Court Act*, is pleased to:

(a) re-appoint the following as adjudicators of the Small Claims Court for a term of three (3) years, effective December 21, 2018:

i. Douglas Shatford, QC, of Amherst;
ii. Brian Creighton of Amherst;
iii. Brent H. Silver of Bridgewater;
iv. Michael O'Hara of Dartmouth;
v. C. Gavin Giles, QC, of Halifax;
vi. Angela Walker of Halifax;
vii. J. Scott Barnett of Halifax;
viii. Lynn Connors, QC, of Kentville;
ix. Ray E. O'Blenis of Pictou;
x. Patricia Fricker-Bates of Sydney;
xi. Demetrius Kachafanas of Sydney;
xii. Peter Lederman, QC, of Truro;

(b) re-appoint the following adjudicators of the Small Claims Court for a term of three (3) years:

i. A. Robert Sampson, QC of Sydney, effective December 21, 2018;
ii. Shawn O'Hara of Bridgewater, effective January 19, 2019; and
iii. Andrew Nickerson, QC of Yarmouth, effective January 19, 2019;

(c) appoint the following as adjudicators of the Small Claims Court for a term of one (1) year, effective December 21, 2018:

i. Darrel Pink of Halifax;
ii. Dale Darling of Halifax;
iii. Raffi Balmanoukian of New Glasgow;
iv. Shelley Martin of Truro;
v. Bryna Hatt of Port Hawkesbury;
vi. Nancy Elliott of Halifax;
vii. Tuma Young of Sydney;
viii. Leigh Davis of Halifax;
ix. Bernard Conway of Kentville.

Taking into account all of the evidence before me as to the relationship between Mr. Giles and myself, I am unable to find support for the proposition that there can be actual bias

in Mr. Giles' appearance before me. There is no line that can be drawn between his role and an ability to influence me.

The Defendant is clear in his submission that his dispute is not with adjudicators appearing before the Court, and only with the "Chief" appearing, and so that is the question I must answer. I can understand how an uninformed observer might consider that appellation as indicative of authority. However, as I have indicated above, there is no evidence before me to show that Mr. Giles in fact, has any ability to influence me any more than any other litigant. However, what of a "reasonable apprehension?" What would a knowledgeable observer conclude?

I consider that a knowledgeable observer would need some evidence of an ability on the part of Mr. Giles to "influence me". Objectively, reviewing the evidence before me, I cannot find that such indicia exist, and therefore any apprehension of bias, would not be reasonable.

For all of the reasons above, the Defendant's application is denied.

Dated at Halifax, Nova Scotia on May 27th, 2021.

Dale Allane Darling, QC

Adjudicator