

Her Majesty The Queen v. Mario Trunzo (accused)
(CR 09-01-29895; 2012 MBQB 211)

Indexed As: R. v. Trunzo (M.)

Manitoba Court of Queen's Bench
Winnipeg Centre
McKelvey, J.
March 7, 2012.

Summary:

The accused faced a second degree murder charge relative to a 22-day judge and jury trial. The Crown moved for an order that the presiding judge recuse herself from presiding over the trial, based on an alleged reasonable apprehension of bias. The judge's son was an articling student with the law firm who represented the accused. The son had not participated in the defence of the accused. The only "facts" or "evidence" supporting the recusal motion was based upon the family relationship.

The Manitoba Court of Queen's Bench dismissed the motion.

Courts - Topic 691

Judges - Disqualification - Bias - Reasonable apprehension of bias - The accused faced a second degree murder charge - The Crown moved for an order that the presiding judge recuse herself because her son was articling at defence counsel's law firm - It argued that such a relationship raised an actual perception of bias and a reasonable apprehension of bias - The Manitoba Court of Queen's Bench stated that the burden of proof rested with the Crown, as the moving party, to establish the circumstances that would serve to justify a recusal - "Cases involving a request for recusal and the necessary determinations as to whether a reasonable apprehension of bias exists are wholly fact-driven. A real likelihood or probability of bias must be shown. Mere suspicion is not enough in the circumstances." - See paragraph 12.

Courts - Topic 691

Judges - Disqualification - Bias - Reasonable apprehension of bias - In a criminal law context, the Crown submitted that the presiding judge should recuse herself from presiding over the trial because her son was articling at defence counsel's law firm - The Crown argued that such a relationship raised a reasonable apprehension of bias - The Manitoba Court of Queen's Bench reviewed the governing legal principles and referenced the Ethical Principles for Judges related to impartiality and conflicts of interest - "What is being said in the Ethical Principles for Judges and case law is that a judge should not sit where a reasonable, fair-minded and informed person would have a reasonable suspicion that the judge would not be impartial. Further, that person must be informed with respect to the facts, including the traditions of integrity and impartiality underpinning our judicial system and the taking of the judicial oath. The test is objective in nature. The matter of bias denotes a state of mind that is in some way predisposed to a particular result, or that is closed with regard to particular issues" - See paragraphs 13 to 19.

Courts - Topic 691

Judges - Disqualification - Bias - Reasonable apprehension of bias - The accused faced a second degree murder charge relative to a 22-day judge and jury trial - The Crown moved for an order that the presiding judge recuse herself because her son was articling at defence counsel's law firm (a large criminal defence firm) - It argued that such a relationship raised a reasonable apprehension of bias - The Manitoba Court of Queen's Bench dismissed the motion - In the circumstances, 'no reasonable, fair minded and informed person, considering the matter, would have a reasoned suspicion of a lack of impartiality' (Ethical Principles for Judges at E.15)" - There was no evidence that the son had contact with the file or that the recusal request had any foundation beyond the existence of the family relationship - Further, the jury would be the finders of fact and would reach the final determination as to the appropriate verdict - See paragraphs 21 and 22.

Courts - Topic 691

Judges - Disqualification - Bias - Reasonable apprehension of bias - In a criminal law context, the Crown moved for an order that the presiding judge recuse herself because her son was articling at defence counsel's law firm - It argued that such a relationship raised a reasonable apprehension of bias - The Manitoba Court of Queen's Bench, subsequent to a review of the applicable law and the Ethical Principles for Judges, dismissed the motion - "The blanket proposition that the existence of a family member at a law firm or a law department precludes a judge from hearing a case is untenable unless the family member has had contact with the case in question or other reasonable factors have been put forth by way of affidavit evidence relevant to the facts and context of that case that warrant a recusal. There have not been any such factors put forward here." - See paragraph 28.

Courts - Topic 693

Judges - Disqualification - Bias - Evidence - [See fourth **Courts - Topic 691**].

Cases Noticed:

R. v. R.D.S., [1997] 3 S.C.R. 484; 218 N.R. 1; 161 N.S.R.(2d) 241; 477 A.P.R. 241, refd to. [para. 6].
Kalo v. Human Rights Commission (Man.) (2008), 226 Man.R.(2d) 139; 2008 MBQB 92, refd to. [para. 8].
Ultracuts Franchises Inc. v. Wal-Mart Canada Corp. (2005), 196 Man.R.(2d) 163; 2005 MBQB 222, refd to. [para. 9].
Wewayakum Indian Band v. Canada and Wewayakai Indian Band, [2003] 2 S.C.R. 259; 309 N.R. 201; 2003 SCC 45, refd to. [para. 9].
Boardwalk Reit LLP v. Edmonton (City) et al. (2008), 437 A.R. 199; 433 W.A.C. 199; 57 C.P.C.(6th) 1; 2008 ABCA 176, refd to. [para. 15].
Makowsky v. John Doe et al., [2007] B.C.T.C. Uned. E55; 2007 BCSC 1231, affd. [2008] B.C.A.C. Uned. 22; 2008 BCCA 112, refd to. [para. 15].
Metis Child, Family and Community Services v. A.J.M. et al. (2006), 200 Man.R.(2d) 175; 2006 MBQB 32 (Fam. Div.), refd to. [para. 15].
De Cotiis et al. v. De Cotiis et al., [2004] B.C.T.C. 117; 2004 BCSC 117, refd to. [para. 15].

Essex (County) Roman Catholic Children's Aid Society v. T.P., [1989] O.J. No. 606 (Prov. Ct. (Fam. Div.)), reld to. [para. 15].

G.W.L. Properties Ltd. et al. v. Grace (W.R.) & Co. of Canada Ltd. et al. (No. 2) (1992), 21 B.C.A.C. 167; 37 W.A.C. 167; 74 B.C.L.R.(2d) 283 (C.A.), reld to. [para. 15].

Authors and Works Noticed:

Canadian Judicial Council, Ethical Principles for Judges (1998), generally [para. 6].

Counsel:

Nadine C. Vasas and Breta M. Passler, for the Crown;

Darren M. Sawchuk and Mandeep S. Bhangu, for the accused.

This motion was heard and decided on March 7, 2012, by McKelvey, J., of the Manitoba Court of Queen's Bench, Winnipeg Centre, who delivered the following written reasons on August 8, 2012.

Motion dismissed.

Editor: E. Joanne Oley