

**Date: 20080513**

**Docket: A-397-07**

**Citation: 2008 FCA 178**

**CORAM: NADON J.A.  
PELLETIER J.A.  
TRUDEL J.A.**

**BETWEEN:**

**OSMOSE PENTOX INC.**

**Appellant**

**and**

**SOCIÉTÉ LAURENTIDE INC.**

**Respondent**

Hearing held at Montréal, Quebec, on May 13, 2008.

Judgment delivered from the bench at Montréal, Quebec, on May 13, 2008.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**TRUDEL J.A.**

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**BETWEEN:**

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**REASONS FOR JUDGMENT OF THE COURT**

(Delivered from the bench at Montréal, Quebec, on May 13, 2008.)

[1] This is an appeal from a decision of the Federal Court dated August 17, 2007 (2007 FC 844, Justice Yves de Montigny), affirming a previous order by Prothonotary Richard Morneau, who refused to recuse himself at the appellant's request.

[2] This Court will not intervene unless the judge has made a palpable and overriding error in applying the facts of the case to the law (*Housen v. Nikolaisen*, 2002 SCC 33).

[3] In the case at bar, the parties have been before the Federal Court since May 7, 2002, but have not yet been heard on the merits because of the guerrilla warfare-style legal tactics they are engaging in (at paragraph 2 of the judge's reasons).

[4] Among the many interlocutory proceedings that were exchanged is the appellant's application for the disqualification of Prothonotary Richard Morneau based on an apprehension of bias on his part.

[5] In support of the alleged bias, the appellant essentially raised three grounds for disqualification, namely:

- (a) statements made at a hearing on May 5, 2003;
- (b) the fact that he allegedly acted in the case as both mediator and adjudicator; and finally
- (c) comments made in an order dated December 14, 2005, in which he severed the case so that the issues regarding liability would be decided before the financial issues. According to the appellant, it was this order that triggered its apprehension of bias.

[6] Justice de Montigny was of the opinion that the appeal should be dismissed for the simple reason that the application came too late, having been made a little more than 14 months after the order dated December 14, 2005.

[7] The judge nevertheless went on to conduct a detailed analysis of the prothonotary's decision and the grounds for the allegations.

[8] We agree with the conclusion to the effect that [TRANSLATION] "nothing in the words or actions of the prothonotary [could] raise any apprehension of bias whatsoever in a reasonable person who is well acquainted with the case".

[9] We are also of the view that the judge correctly instructed himself in law when he stated the concept of bias and the requirements arising from it.

[10] At the beginning of his analysis, the judge suggested he would first have to rule on the standard of review applicable to the prothonotary's decision. After merely quoting a few Federal Court judgments, he added that this issue [TRANSLATION] "has no impact on the outcome of the [present] case, in that the prothonotary correctly interpreted the applicable law and did not err in his assessment of the alleged facts" (at paragraph 15 of the judge's reasons).

[11] In support of this assertion, at paragraphs 25 through 32 of his reasons, he makes a new determination with regard to the appellant's allegations against the prothonotary.

[12] In cases dealing with disqualification, we prefer this approach involving an analysis *de novo* by the court reviewing the order made by the decision-maker whose disqualification is sought.

[13] The independence and impartiality of the judiciary lie at the heart of procedural fairness. Any allegation of judicial bias imperils the fundamental interests of justice.

[14] An analysis *de novo* of the grounds alleged in support of an application for disqualification allows us to retain “some scope to review that determination” (*R. v. R.D.S.*, [1997] 3 S.C.R. 484) while bearing in mind that judges are presumed to be impartial.

[15] As Justice de Montigny made no error warranting this Court’s intervention, the appeal will be dismissed with costs.

“Johanne Trudel”

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J.A.

Certified true translation  
Michael Palles

**FEDERAL COURT OF APPEAL**

**SOLICITORS OF RECORD**

**DOCKET:** A-397-07

**(APPEAL FROM AN ORDER BY DE MONTIGNY J. DATED AUGUST 17, 2007,  
DOCKET NO. T-697-02)**

**STYLE OF CAUSE:** OSMOSE PENTOX INC. v.  
SOCIÉTÉ LAURENTIDE INC.

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** May 13, 2008

**REASONS FOR JUDGMENT OF THE COURT BY:** NADON J.A.  
PELLETIER J.A.  
TRUDEL J.A.

**DELIVERED FROM THE BENCH BY:** TRUDEL J.A.

**APPEARANCES:**

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Pierre Archambault FOR THE RESPONDENT

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