



Appeal Court orders Fantino to resume testifying at disciplinary hearing



*In this file photo, OPP Commissioner Julian Fantino speaks to the media regarding his 40-years of service in law enforcement in Orillia, Ont., on Friday, Feb. 13, 2009.
(THE CANADIAN PRESS/Nathan Denette)*

TORONTO — An adjudicator hearing a messy disciplinary case involving Ontario's top police officer showed no bias and need not step down, the province's highest court ruled Friday.

The decision sided with a lower court that found Ontario Provincial Police Commissioner Julian Fantino had failed to prove the adjudicator was unfit to hear the case.

"The Divisional Court found that an informed person viewing the matter realistically and practically -- and having thought the matter through -- would not conclude there was any apprehension of bias on the part of the adjudicator," the Appeal Court ruled.

"I would go further and say that the events in this case fall far short of the type of conduct that would give rise to a reasonable apprehension of bias."

The adjudicator, retired justice Leonard Montgomery, had been hearing the disciplinary case against two senior officers Fantino charged with misconduct.

Fantino was under cross-examination last fall when he accused Montgomery of bias and pressed him to step down.

"This commissioner interrupted his cross-examination 13 months ago for what the Court of Appeal is basically saying was for meritless reasons," defence lawyer Julian Falconer said Friday.

"My clients are simply anxious to finish this case up. Enough is enough."

Fantino's lawyer Tom Curry expressed disappointment at the decision, adding that he would consider now trying to take the case to the Supreme Court of Canada.

"I certainly haven't ruled such a thing out," Curry said.

"I felt that the case did clearly meet the legal requirements for a finding of a reasonable apprehension of bias."

The defence in the misconduct case against Supt. Ken MacDonald and Insp. Alison Jevons has alleged that Fantino only laid the charges to appease the police union and because he suspected MacDonald of leaking information.

During the disciplinary hearings, Falconer has also accused Fantino of witness tampering and political interference.

"This is a political prosecution and nothing the commissioner has done in the last 13 months in front of the various judges . . . has done anything other than to simply further confirm their concerns," Falconer said Friday.

Fantino has rejected allegations of any untoward conduct on his part.

The hearing saw Montgomery clash with Fantino and prosecutor Brian Gover, who said provincial attorney general backed his request for the adjudicator to step down.

The bias allegation came when Montgomery expressed concerns after Fantino changed his evidence.

Montgomery in turn complained Gover was trying to intimidate him and decried any government involvement in the quasi-judicial process.

The labyrinthine affair began in April 2004, when Susan Cole of Gananoque, Ont., called 911 to say her estranged husband, a provincial police sergeant, had taken a baseball bat to her car.

Cole complained the responding officers asked her to leave her home rather than arrest her spouse.

MacDonald and Jevons investigated Cole's complaint, and concluded the responding officers had not followed proper procedure.