

**CITATION:** London District Catholic School Board v. Myriam Michail, 2020 ONSC 700

**COURT FILE NO.:** 2208/19

**DATE:** January 31, 2020

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

<b>B E T W E E N:</b>	)	
	)	
LONDON DISTRICT CATHOLIC SCHOOL BOARD	)	Elizabeth M. Traynor and Liam J. Ledgerwood, Lawyers of the Applicant/Responding Party
Applicant/Responding Party	)	
	)	
- and -	)	
	)	
MYRIAM MICHAIL	)	Self represented
	)	
Respondent/Moving Party	)	
	)	<b>HEARD:</b> In writing

**ENDORSEMENT**

**The Honourable Mr. Justice H. S. Arrell**

**INTRODUCTION:**

[1] The moving party Myriam Michail brings this motion to transfer this London file to Hamilton.

[2] The applicant, the London District Catholic School Board, is opposed.

**FACTS:**

[3] There has been extensive litigation between Ms. Michail and her former employer the LDCSB including an attendance before the Ontario Court of Appeal (*Michail v Ontario English Catholic Teacher's Association*, 2019 ONCA 319).

[4] The LDCSB has brought an application to have the respondent declared a vexatious litigant. That hearing is set to be completed in London on June 10<sup>th</sup>, 2020. No judge is seized of the application in London. It is that matter which Ms. Michail wishes transferred to Hamilton.

[5] On consent the parties agreed that a Divisional Court appeal commenced by Ms. Michail regarding judicial review of a hearing in London would be moved to Hamilton. There is nothing in the materials before me to indicate that case has any bearing on the current application regarding vexatious litigation.

[6] The parties are located in London. Counsel for the LDCSB is located in London. The various proceedings in support of an alleged vexatious litigant originated and took place in London. Ms. Michail's employment with the LDCSB took place in London. There is nothing regarding this application for determination of a vexatious litigant that has any connection to Hamilton.

**POSITION OF THE PARTIES:**

[7] Ms. Michail argues that she will be unable to get a fair and just determination of the vexatious litigant hearing on its merits in London. The respondent argues further that there have been substantial administrative problems with the London court office which she alleges has caused severe prejudice and has led to a failure of justice.

[8] Ms. Michail further argues that her health has deteriorated which she alleges is as a result of this litigation. She further argues that appearing before a judge in London triggers her anxiety and PTSD symptoms and any further hearings in London would only serve to exacerbate those symptoms. She also points out that she will be relying on documents in the Hamilton Divisional Court file for this current application.

[9] The LDCSB argues that there is no evidence in this record to support a motion for transfer on the basis of reasonable apprehension of bias in London. It is further argued that there is a strong presumption of judicial impartiality. No particular judge is seized of this matter and the onus of demonstrating bias lies with Ms. Michail and she has failed to do so.

**ANALYSIS:**

[10] This motion is governed by the Practice Direction of Central South and is therefore heard by the Regional Senior Justice in writing.

[11] Rule 13.1.02(2)(b) of the *Rules of Civil Procedure* governs the transfer of actions from one region to another. That rule basically says that the transfer is at the discretion of the motion judge and will be granted if it is in the interests of justice taking into account the eight enumerated areas of inquiry, none of which are paramount.

[12] In reviewing the eight enumerated areas of inquiry all would be answered on the basis that London is the jurisdiction where this matter should be heard.

[13] There is no evidence before me in this record to substantiate that a judge hearing this matter would in anyway be biased, since no judge has yet been assigned.

[14] There is a strong presumption of judicial impartiality. See. *Consentino v Dominaco Developments Inc.* 2018 ONSC 4092 at paras 35 and 39.

[15] The onus of demonstrating bias lies with the party who alleges its existence on a balance of probabilities. Such an allegation requires cogent evidence. See. *R v Nero*, 2016 ONCA 160 at para 31.

[16] The bald assertion by Ms. Michail that she cannot get a fair hearing in London or that all judges in that region are biased against her is without any evidentiary foundation and is not persuasive.

[17] The onus is on Ms. Michail to rebut the presumption of judicial impartiality with cogent evidence showing that a reasonable person, apprised of all the relevant circumstances, would conclude that the judge would not decide the matter fairly. See. *R v Grant*, 2016 ONCA 639 at para 128. Ms. Michail has not done so.

**CONCLUSION:**

[18] My conclusion is that, similar to the Ontario Court of Appeal which found Ms. Michail has an “idiosyncratic and unsubstantiated distrust of the legal system.” See. *Michail v Ontario English Catholic Teachers Association*, 2019 ONCA 219 at para 18.

[19] Ms. Michail has not produced any cogent evidence that directly or indirectly supports her assertion that she cannot get a fair hearing in London.

[20] The balance of convenience clearly favors London. Any documents required for the London hearing that may be in the Divisional Court File in Hamilton can easily be reproduced as required.

[21] I am not satisfied that there is any medical limitation on Ms. Michail proceeding in London versus Hamilton and in fact I would of thought that with London requiring less travel for her, it would be more convenient.

[22] The transfer motion is therefore dismissed.

[23] Costs of this motion are fixed at \$500.00 payable by Ms. Michail to counsel for the LDCSB in trust within 60 days.



Arrell, J.

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**B E T W E E N:**

**LONDON DISTRICT CATHOLIC SCHOOL  
BOARD**

**- and -**

**MYRIAM MICHAIL**

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**ENDORSEMENT**

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**HSA**

**Released:** January 31, 2020