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Rare ruling focuses on maintaining values of adversarial system



A recent Court of Appeal decision that found a motion judge had shown a reasonable apprehension of bias reinforces the court's willingness and strong desire to assure the fair, efficient and effective operation of the administration of justice in Ontario, Toronto commercial arbitrator [Marvin Huberman](#) tells [Law Times](#).

In [Stuart Budd & Sons Ltd. v. IFS Vehicle Distributors ULC](#), the appeal court set aside Ontario Superior Court Justice David Corbett's \$50,000 costs order against IFS and also ordered the joinder and *forum non conveniens* motion be heard again before a different judge, after concluding that IFS "did not receive the fair hearing to which they were entitled."

"I have no doubt that the motion judge was well-intentioned. I have no doubt that he put a great deal of effort into resolving the jurisdiction issue," wrote Justice Gloria Epstein.

"However, my review of the three endorsements leads me to conclude that the motion judge's actions gave rise to a reasonable apprehension of bias. He made unwarranted negative comments about the appellants — their counsel, their position and their arguments — prior to the conclusion of argument and arbitrarily curtailed argument," she added.

As Huberman says in the article, the Court of Appeal decision "takes a very responsible view of maintaining the core values of our traditional adversarial system of litigation." He adds that the

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ruling also serves as a warning to the bench that judges must take a rigorous look into the admissibility of evidence.

“The court is really telling people in the administration of justice, particularly trial judges, that we have to protect and preserve and assure the public that the principles at the core of the system are being maintained and promoted.”

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