Federal Court  Cour fédérale

Date: 20191125

Docket: T-1316-18

Citation: 2019 FC 1498

Ottawa, Ontario, November 25, 2019

PRESENT: Mr. Justice Gascon

BETWEEN:

GARY CURTIS

Applicant

and

CANADIAN HUMAN RIGHTS COMMISSION AND BANK OF NOVA SCOTIA

Respondents

ORDER AND REASONS

I. Overview

[1] This is an appeal filed by the Applicant, Mr. Gary Curtis, by way of motion pursuant to Rules 51, 359, 364 and 400 of the *Federal Courts Rules*, SOR/98-106 [Rules], against an order made on May 29, 2019 by Prothonotary Aalto [Order]. In his Order, Prothonotary Aalto granted a motion brought by the Respondents, the Canadian Human Rights Commission [Commission] and the Bank of Nova Scotia [BNS], and struck Mr. Curtis' application for judicial review

[Application] as moot, without leave to amend. Prothonotary Aalto also awarded BNS costs in the amount of $1,500. In determining that Mr. Curtis' Application was moot, Prothonotary Aalto, who is acting as case management judge in this matter, applied the legal principles relating to the doctrine of mootness as set out by the Supreme Court of Canada [SCC] in *Borowski v Canada (Attorney General)*, [1989] 1 SCR 342 [*Borowski*].

[2] In his amended Notice of Motion, Mr. Curtis, who represents himself in this appeal, seeks an order from this Court:

a) setting aside the Order of Prothonotary Aalto dismissing his Application as moot;

b) setting aside the Order of Prothonotary Aalto ordering him to pay BNS costs in the amount of $1,500, payable forthwith; and

c) awarding him costs on his appeal.

[3] In essence, Mr. Curtis claims that Prothonotary Aalto erred in determining that the Commission had rendered a decision on his underlying complaint as it never issued a "record of decision", in concluding that his Application was moot, and in granting costs to BNS. Mr. Curtis further submits that Prothonotary Aalto was not impartial and had a conflict of interest as a result of Mr. Curtis' earlier appeals of other adverse orders made against him by Prothonotary Aalto in this matter. Those appeals of earlier orders were recently dismissed by this Court, with costs awarded against Mr. Curtis (*Curtis v Canada (Human Rights Commission)*, 2019 FC 43 [*Curtis*]).

[4] For the reasons set out below, Mr. Curtis' appeal will be dismissed, as Mr. Curtis has failed to demonstrate any error of law or any palpable and overriding error of fact or mixed fact and law in Prothonotary Aalto's Order. In my view, Mr. Curtis' argument that no decision has been rendered by the Commission is totally without merit. Furthermore, Prothonotary Aalto made no reviewable error in striking the Application as moot and in awarding costs to BNS, and I see no reason to interfere with his Order. Prothonotary Aalto has applied the well-recognized principles relating to the doctrine of mootness to findings of facts that are clearly supported by the record before him. In addition, there is no basis for overturning his discretionary decision on costs. As to Mr. Curtis' allegations of partiality and bias, they are wholly unfounded and fly in the face of the Federal Court of Appeal [FCA] jurisprudence in this respect. I further agree with BNS and the Commission that Mr. Curtis' appeal is yet another ill-founded, meritless and vexatious proceeding brought by him in this matter, and that it deserves to be dismissed with costs.

II. Background

A. *Factual Context*

[5] In April 2013, the Commission received a complaint (20130462) filed by Mr. Curtis against BNS [Complaint], in which Mr. Curtis alleged adverse differential treatment and termination of employment based on race and colour contrary to section 7 of the *Canadian Human Rights Act*, 1976-77, c 33, s 1 [CHRA]. After some delays due to parallel recourses undertaken by Mr. Curtis in other fora, the Commission proceeded to investigate the Complaint in accordance with its usual process. The Commission disclosed its investigation report in

August 2018 [Report] and invited the parties to provide their comments. The Report and the parties' submissions were provided to the Commission's decision-makers. In a decision letter dated January 2, 2019, the Commission informed the parties of its decision to dismiss Mr. Curtis' Complaint [Decision].

[6] In the meantime, in July 2018, Mr. Curtis commenced the within Application. In his Application, Mr. Curtis was notably seeking a writ of *mandamus* to compel the Commission to conduct and complete its investigation on the Complaint and to render a decision with respect to the disposition of the Complaint. The Application contains an additional number of *mandamus* requests but they are substantially seeking the same relief that the Commission carry out an investigation of Mr. Curtis' Complaint.

[7] Following the Commission's Decision of January 2, 2019, Mr. Curtis commenced a new application for judicial review in Court File No T-208-19 [New Application]. In his New Application filed on January 29, 2019, Mr. Curtis seeks an order setting aside the Commission's Decision. I pause to note that, in his New Application, Mr. Curtis himself qualifies the Commission's Decision as a "final decision" and asks this Court to set it aside.

[8] Since the Commission had in fact already completed its investigation and had delivered its Decision on Mr. Curtis' Complaint on January 2, 2019, and in light of Mr. Curtis' New Application against the Decision, the Commission brought a motion seeking to have Mr. Curtis' Application dismissed as moot. BNS supported the Commission on this motion. Mr. Curtis however indicated that he would not abandon his Application despite the fact that he had now

filed a new one in respect of the same Complaint, in which he challenges the Decision of the Commission.

[9] In his Order issued on May 29, 2019, Prothonotary Aalto granted the Commission's motion and struck Mr. Curtis' Application.

B. ***Prothonotary Aalto's Order***

[10] In his Order, Prothonotary Aalto noted the following key facts: 1) all of the relief sought in Mr. Curtis' Application basically related to the same issue, namely seeking a writ of *mandamus* to compel the Commission to carry out the investigation of Mr. Curtis' Complaint; 2) on January 2, 2019, the Commission issued its Decision confirming that it had completed its investigation and was dismissing the Complaint; and 3) following the issuance of the Decision, Mr. Curtis commenced his New Application seeking to set aside the Decision.

[11] Prothonotary Aalto then reviewed the procedural history of the Commission's investigation of the Complaint, noting that the investigation was suspended on a number of occasions pursuant to subsection 41(1) of the CHRA, as Mr. Curtis had initiated other proceedings in which the issues raised in the Complaint could be adjudicated.

[12] After citing the SCC decision in *Borowski* as the leading case dealing with the doctrine of mootness, Prothonotary Aalto applied the test as enunciated by the SCC and concluded that this case fell clearly within the parameters of mootness as defined in *Borowski*. More specifically, Prothonotary Aalto engaged in the two-step analysis prescribed by the SCC and first determined

that a decision by this Court would not have any practical effect on resolving any live controversy between the parties as the relief requested by Mr. Curtis had occurred. He also concluded that there was no basis for the Court to exercise its discretion to hear the matter in any event as the issues were discrete between the parties, raised no matters that affect others or would otherwise advance the law, and were now before the Court on the New Application, where Mr. Curtis reiterates the very same grounds and arguments as in his Application.

[13] In dismissing Mr. Curtis' Application, Prothonotary Aalto awarded costs in the amount of $1,500 to BNS, based on a submitted bill of costs, his finding that Mr. Curtis should have discontinued his Application when invited to do so, and his determination that costs were warranted in light of the nature of the allegations made by Mr. Curtis against BNS in the Application.

C. *Standard of Intervention*

[14] Since the FCA decision in *Hospira Healthcare Corporation v Kennedy Institute of Rheumatology*, 2016 FCA 215 [*Hospira*], it is well established that the standard of intervention on appeals of discretionary orders by prothonotaries is the standard enunciated by the SCC in *Housen v Nikolaisen*, 2002 SCC 33 [*Housen*]. On questions of law, questions of legal principle and questions of mixed fact and law where there are extricable questions of law or legal principle, the prothonotaries' orders shall be reviewed on a standard of correctness. On all other questions, particularly questions of fact or mixed fact and law and inferences of fact, the Court may only interfere if the prothonotaries made a "palpable and overriding error" (*Maximova v*

Canada (Attorney General), 2017 FCA 230 [*Maximova*] at para 4; *Hospira* at paras 27, 64-66, 79; *Housen* at paras 19-37).

[15] The FCA has repeatedly affirmed that the "palpable and overriding error" standard is a "highly deferential standard" (*Figueroa v Canada (Public Safety and Emergency Preparedness)*, 2019 FCA 12 at para 3; *1395804 Ontario Ltd (Blacklock's Reporter) v Canada (Attorney General)*, 2017 FCA 185 at para 3; *NOV Downhole Eurasia Limited v TLL Oilfield Consulting Ltd*, 2017 FCA 32 at para 7; *Revcon Oilfield Constructors Incorporated v Canada (National Revenue)*, 2017 FCA 22 at para 2; *Cobalt Pharmaceuticals Company v Bayer Inc*, 2015 FCA 116 at para 53). As Justice Stratas metaphorically stated in *Mahjoub v Canada (Citizenship and Immigration)*, 2017 FCA 157 [*Mahjoub*] and in *Canada v South Yukon Forest Corporation*, 2012 FCA 165 [*South Yukon*], in order to meet this standard, "it is not enough to pull at leaves and branches and leave the tree standing. The entire tree must fall" (*Mahjoub* at para 61; *South Yukon* at para 46). Describing what "palpable" and "overriding" mean, Justice Stratas further wrote in *Mahjoub*:

> [62] "Palpable" means an error that is obvious. Many things can qualify as "palpable." Examples include obvious illogic in the reasons (such as factual findings that cannot sit together), findings made without any admissible evidence or evidence received in accordance with the doctrine of judicial notice, findings based on improper inferences or logical error, and the failure to make findings due to a complete or near-complete disregard of evidence.
>
> [63] But even if an error is palpable, the judgment below does not necessarily fall. The error must also be overriding.
>
> [64] "Overriding" means an error that affects the outcome of the case. It may be that a particular fact should not have been found because there is no evidence to support it. If this palpably wrong fact is excluded but the outcome stands without it, the error is not "overriding." The judgment of the first-instance court remains in place.

[16] A palpable and overriding error has also been described by the FCA as an error which is obvious, plainly seen and apparent, the effect of which is to vitiate the integrity of the reasons (*Madison Pacific Properties Inc v Canada*, 2019 FCA 19 at para 26; *Maximova* at para 5).

[17] The SCC has recently echoed these principles in *Salomon v Matte-Thompson*, 2019 SCC 14 [*Salomon*]: "[w]here the deferential standard of palpable and overriding error applies, an appellate court can intervene only if there is an obvious error in the trial decision that is determinative of the outcome of the case" (*Salomon* at para 33, citing *Benhaim v St-Germain*, 2016 SCC 48 at para 38). The SCC also referred to another metaphor used by the Quebec Court of Appeal in *JG v Nadeau*, 2016 QCCA 167, at paragraph 77, where the Court affirmed that [TRANSLATION] "a palpable and overriding error is in the nature not of a needle in a haystack, but of a beam in the eye." Put simply, palpable means an error that is obvious and apparent while overriding refers to an error that goes to the core of a case's outcome and has the effect of changing the result (*Maximova* at para 5; *South Yukon* at para 46).

III. Analysis

[18] After having reviewed Prothonotary Aalto's Order, read the record and considered the written and oral submissions by the parties, I find that Mr. Curtis has failed to demonstrate any error of law or any palpable and overriding error of fact or mixed fact and law in the Order.

A. *The Decision*

[19] Mr. Curtis first suggests that the Commission never rendered a decision when it issued

and sent its decision letter of January 2, 2019 because there is no "record of decision." I find that this argument is without merit. On the contrary, there is no doubt that the January 2, 2019 Decision of the Commission is a "decision" on Mr. Curtis' Complaint, and Mr. Curtis has offered no evidence nor any sound argument in support of his position.

[20] The CHRA does not prescribe the form of a Commission's decision. As master of its own process, the Commission decides how to notify parties of its decisions. In this case, it chose a letter of decision containing its Decision to dismiss Mr. Curtis' Complaint. The letter of the Commission is a decision that respects the requirements of the CHRA. The letter provides two different types of notice of decisions described in the CHRA. It is helpful to reproduce the relevant parts of this letter, as they appear in Prothonotary Aalto's Order:

> I am writing to inform you of the decision taken by the Canadian Human Rights Commission in the complaint (20130462) of Gary Curtis against Bank of Nova Scotia.
>
> Before rendering the decision, the Commission reviewed the report disclosed to you previously and any submission(s) filed in response to the report. After examining this information, the Commission decided, pursuant to paragraph 41(1)(*e)* of the *Canadian Human Rights Act*, to deal only with the September 2011 to April 25, 2012, allegations in the complaint because the other allegations in the complaint spanning from November 2007 to the summer of 2011 are separate and apart from the more recent allegations and do not form a continuous pattern of discrimination with the later allegations.
>
> The Commission also decided, pursuant to subparagraph 44(3)(*b*)(i) of the *Canadian Human Rights Act*, to dismiss the complaint because having regard to all the circumstances of the complaint, further inquiry is not warranted.
>
> Accordingly, the file on this matter has now been closed.
>
> [Emphasis added.]

[21] First, the Commission decided not to deal with part of the Complaint, pursuant to paragraph 41(1)(*e*) of the CHRA. Subsection 42(1) of the CHRA describes the notice that must be sent to the complainant in this situation. It provides that "when the Commission decides not to deal with a complaint, it shall send a written notice of its decision to the complainant setting out the reason for its decision." The letter is indeed in a written format, and provides the following reasons for that conclusion: "the other allegations in the complaint spanning from November 2007 to the summer of 2011 are separate and apart from the more recent allegations and do not form a continuous pattern of discrimination with the later allegations." This part of the Decision thus complies with the requirements of the CHRA.

[22] Second, after investigating the September 2011 to April 25, 2012 allegations, the Commission decided to dismiss this remaining part of Mr. Curtis' Complaint pursuant to subparagraph 44(3)(*b*)(i) of the CHRA, which provides that the Commission shall dismiss a complaint if it is satisfied that "having regard to all the circumstances of the complaint, an inquiry into the complaint is not warranted." In this situation, paragraph 44(4)(*a*) of the CHRA provides that "the Commission […] shall notify in writing the complainant and the person against whom the complaint was made." The Decision accomplishes this and thus once again complies with the CHRA.

[23] In particular, contrary to what Mr. Curtis argues, there is no requirement that the letter be accompanied by a "record of decision." Indeed, Mr. Curtis has not referred to any convincing authority in support of his position in that respect. In fact, in the context of judicial reviews of Commission's decisions to dismiss complaints pursuant to paragraph 44(3)(*b*) of the CHRA, the

FCA and this Court both accepted that a language merely referring to the investigator's report, as was used here, constitutes sufficient reasons. When the Commission adopts an investigator's recommendations and provides no reasons or only brief reasons, the investigator's report is to be treated as constituting the Commission's reasoning for purposes of the decision under paragraph 44(3)(*b*) of the CHRA (*Canada (Attorney General) v Sketchley*, 2005 FCA 404 at para 37; *Kwan v Amex Bank of Canada*, 2017 FC 1053 [*Kwan*] at paras 19, 28-32, aff'd 2018 FCA 189).

[24] Mr. Curtis also argued at the hearing before this Court that the January 2, 2019 letter should have been signed by a member of the Commission (also often referred to as a Commissioner), rather than by someone on behalf of the Director of the Registry Services. Not only was this argument absent from Mr. Curtis' written submissions, but it is also without merit and has been specifically rejected by this Court in *Kwan*, at paragraph 40. As was the case in *Kwan*, the letter represents the means by which the Commission's Decision was communicated to Mr. Curtis. The fact that the letter was signed by the Director of Registry Services does not support a conclusion that the Decision was not duly made by the Commission itself.

[25] I would add that, in the context of determining whether there was a decision for the purpose of commencing a judicial review, the FCA suggested that to have a "decision", there must be a determination that is binding and which has finality (*Ferrow v Canada (Minister of Employment and Immigration)*, [1983] 1 FC 679, 1983 CanLII 3675 (FCA) at p 296). This is clearly the case here.

[26] I also cannot help but underscore that, despite his claims that the January 2, 2019 Decision is not a "decision", Mr. Curtis has filed his New Application in which he is attacking that very decision of the Commission that he says does not exist. In his own proceedings in Court File No T-208-19, he himself qualifies the Commission's decision letter as a "final decision" on his Complaint. Needless to say, Mr. Curtis cannot seriously argue such contradicting positions at the same time. This "having your cake and eating it too" approach just cannot work, has no place before the Court, and only serves to underscore the frivolous and vexatious nature of Mr. Curtis' current appeal.

[27] For all these reasons, I find that Prothonotary Aalto has committed no error of law nor any palpable and overriding error of fact or mixed fact and law in considering the January 2, 2019 letter as a Commission's Decision.

B. *Mootness*

[28] I also find no error in Prothonotary Aalto's finding that Mr. Curtis' Application is moot.

[29] It is well recognized that the leading authority on the doctrine of mootness is *Borowski*. Mr. Curtis has not provided any convincing argument to the contrary. *Borowski* mandates a two-step analysis in considering whether a matter is moot (*Borowski* at p 353). First, the Court must determine whether the dispute has disappeared in the sense that there is no longer a live controversy and if the issues have become academic. Second, if the response to the first question is affirmative, the Court must decide if it should exercise its discretion and hear the matter in any event. In determining whether it should exercise its discretion to hear the matter in any event, the

Court should be guided by the following principles: the presence of an adversarial context; the concern for judicial economy; and whether the Court would be encroaching upon the legislative sphere rather than fulfilling its role as the adjudicative branch of government (*Borowski* at pp 358-363).

[30] This is exactly the analysis undertaken and conducted by Prothonotary Aalto in his Order. There was absolutely no live issue left to be determined, as the sole issue raised in the Application, namely, an order of *mandamus* compelling the Commission to undertake an investigation of the Complaint, ceased to exist when the Commission concluded its investigation and rendered its Decision on January 2, 2019. Mr. Curtis of course has a right to disagree with the Decision, and he has in fact exercised his right to seek judicial review of the Decision in his New Application. However, as far as the Application is concerned, the investigation was completed by the Commission, the Decision was rendered, and the *mandamus* remedy sought by Mr. Curtis clearly became moot. In other words, the task that Mr. Curtis says the Commission should accomplish has already been fulfilled. This is evidenced by the fact that Mr. Curtis has since filed his New Application essentially raising the same issues as the Application.

[31] It is worth reminding that a *mandamus* is an extraordinary, discretionary remedy having its own set of requirements. The basic principal requirements for the issuance of a writ of *mandamus* are well settled and have been outlined by the FCA in *Apotex Inc v Canada (Attorney General)*, [1994] 1 FC 742 [*Apotex*] at para 45, aff'd [1994] 3 SCR 110 (see also *Lukács v Canada (Transportation Agency)*, 2016 FCA 202 at para 29; *Complexe Enviro Progressive Ltée v Canada (Transport)*, 2018 FC 1299 at paras 68-70). These conditions are cumulative and they

must all be satisfied before a court can consider issuing a writ of *mandamus* (*Rocky Mountain Ecosystem Coalition v Canada (National Energy Board)* (1999), 174 FTR 17 at para 30 (FCTD)). These conditions were described in detail in *Apotex*, at pages 766-769. They notably establish that, while a *mandamus* can be issued to compel the performance of a legal duty, it cannot compel the exercise of a discretion in a particular way, and cannot dictate the result to be reached (*Canada (Chief Electoral Officer) v Callaghan*, 2011 FCA 74 at para 126). Among the criteria to be considered are: the Court must be satisfied that a public legal duty is owed to the applicant; the decision-maker has refused to fulfill the duty; and with regard to all the circumstances – including the lack of any other remedy –, an order compelling a public officer to perform the duty is warranted.

[32] This is not the case here. The Commission's investigation has been completed and a final decision has been issued in respect of Mr. Curtis' Complaint. An order to carry out and complete the investigation could not be issued since the Commission is now *functus officio*. The Commission cannot be found to have refused to fulfill the duty owed to Mr. Curtis since it has, in fact, fulfilled it. Furthermore, Mr. Curtis cannot, at the same time, ask the Commission to render a decision (in this Application) and simultaneously attack the very same decision once it has been rendered (as he does in his New Application).

[33] As part of his submissions on the issue of mootness, Mr. Curtis also alleges that the Commission has relied on the wrong Notice of Application in this file and that Prothonotary Aalto misapprehended the facts and the law in his Decision. I am not persuaded by these submissions. In respect of the Notice of Application, the Commission relied on the Notice that

had been served on it. Prothonotary Aalto engaged in a thorough review of the issues raised in the Notice of Application and dismissed Mr. Curtis' arguments. It is clear from the transcripts of the hearing before Prothonotary Aalto (which were submitted by Mr. Curtis) that the amended version of Mr. Curtis' Notice of Application was considered by Prothonotary Aalto, and that no error was made in respect of the Notice at issue. Furthermore, Mr. Curtis does not point to any remedy sought in any version of his Application that could actually be granted by the Court and was not properly considered by Prothonotary Aalto in his Order.

[34] For the above reasons, I am satisfied that Prothonotary Aalto has committed no error of law nor any palpable and overriding error of fact or mixed fact and law in striking the Application as moot, without leave to amend.

C. *The Costs Award*

[35] Mr. Curtis further argues that the Court should intervene and set aside Prothonotary Aalto's order of costs in favour of BNS. This argument is also without merit.

[36] Subsection 400(1) of the Rules provides that the Court has "full discretionary power over the amount and allocation of costs." Costs awards are highly discretionary (*Alani v Canada (Prime Minister)*, 2017 FCA 120 at para 11, citing *Nolan v Kerry (Canada) Inc*, 2009 SCC 39 at para 126), and courts will only rarely intervene. As such, an award of costs will be reviewed on the standard articulated by the SCC in *Housen*, meaning that Mr. Curtis had to demonstrate an error of law or a palpable and overriding error.

[37] In making his costs award, Prothonotary Aalto correctly considered the nature of the motion, Mr. Curtis' conduct (including his refusal to discontinue his Application despite having been invited to do so and his allegations of wrongdoing on the part of BNS), and the success of BNS on the motion. There was ample evidence to support these factual findings and they clearly warranted a costs award against Mr. Curtis. As to the amount awarded, I find Prothonotary Aalto's determination of $1,500 to be very reasonable in the circumstances and in light of BNS' bill of costs. There is no reason whatsoever for the Court to intervene.

[38] Once again, Mr. Curtis has not demonstrated any error of law nor any palpable and overriding error in the costs award made by Prothonotary Aalto in favour of BNS. I pause to add that, as far as costs awards are concerned, Mr. Curtis should not be surprised by the Court's conclusion as he has already been told, in the recent *Curtis* decision, about the limited scope for the Court's intervention on this front.

D. ***Partiality and Bias***

[39] Mr. Curtis' allegation of partiality and bias against Prothonotary Aalto is also totally baseless. The sole ground raised by Mr. Curtis for suggesting bias on the part of Prothonotary Aalto is that Mr. Curtis had previously appealed orders made by Prothonotary Aalto in his disfavour in this matter, appeals that were unsuccessful and determined to be totally without merit.

[40] As the FCA clearly established in *Collins v Canada*, 2011 FCA 123 [*Collins*] at paras 3-4, in *Gandhi v Canada (Attorney General)*, February 7, 2017 Order, File No A-44-16 and in

Canada (Procureur général) c Yodjeu, 2019 CAF 178 at paras 12-15, there is a strong presumption that judges will comply with their solemn judicial oath to administer justice impartially. Such a presumption is not easily rebutted, and convincing evidence is needed to prove an allegation of reasonable apprehension of bias against a judge. In this case, Mr. Curtis has not offered a single iota of evidence to support his claim of partiality and apprehension of bias on the part of Prothonotary Aalto.

[41] The FCA has specifically stated that it will be particularly difficult for a litigant to establish a disqualifying bias based on a judge's previous encounters with a litigant in his or her judicial capacity. The Court is aware of no authority suggesting that a judge is disqualified by bias solely on the ground that she or he has rendered an interlocutory decision adverse to a litigant in the same or in a related proceeding, or has written reasons for deciding an appeal in a related matter (*Collins* at para 4).

[42] I must add that Mr. Curtis should have been well aware of these principles as he recently tried, unsuccessfully, to make similar arguments before the Ontario Superior Court of Justice in *Curtis v Pinto*, 2018 ONSC 618. In that case, the motion judge went to great lengths to explain that the appeal of a judge's earlier order does not give rise to a reasonable apprehension of bias. Regrettably, it appears that Mr. Curtis has chosen to ignore this, and he once again repeated arguments of the same nature before this Court.

[43] Accusations of partiality and bias are quite serious and should never be brought lightly, especially when an applicant has a history of raising similar arguments and having them

dismissed by the courts. Gratuitous and unsupported allegations of bias such as those made by Mr. Curtis in this case can only lead to further orders of costs as they amount to an abuse of the Court's process.

IV. Costs on this Appeal

[44] BNS is seeking costs in the amount of $1,500 plus disbursements and HST, to be fixed and payable forthwith, and has submitted a bill of costs to support its claim. In advancing its position, BNS argues that Prothonotary Aalto's costs award was itself made to deter improper and frivolous motions, yet Mr. Curtis's reaction was to bring this baseless motion on appeal of the Order. BNS submits that, in these circumstances, a costs award should follow.

[45] The Commission is also seeking costs in the amount of $1,000 on this appeal, something it does not usually do in keeping with its role as a public interest litigant. The Commission submits that it is entitled to costs in this particular case as Mr. Curtis unnecessarily brought this appeal. In the circumstances, says the Commission, Mr. Curtis' appeal of Prothonotary Aalto's Order bears many badges of vexatiousness and contains gratuitous and unsupported allegations of partiality. Mr. Curtis refused to abandon his Application even if it had become moot and despite the fact that he had filed his New Application basically raising the same issues. The Commission claims that this appeal should not have been filed, that it should not have continued, and that it constitutes a waste of public resources.

[46] I agree with both BNS and the Commission. Costs can be awarded against an applicant who brings unnecessary and frivolous motions, even when such applicant is a self-represented

party. I am persuaded that this appeal was unnecessary and that an award of costs is warranted in the circumstances. Vexatiousness comes in all shapes and sizes. One of its manifestations is the number of meritless proceedings or motions brought by an applicant, or the reassertion of proceedings and motions that have already been determined (*Canada v Olumide*, 2017 FCA 42 at para 32). This is precisely what happened here. For the second time in these proceedings, Mr. Curtis has appealed what was clearly a thoughtful and well-reasoned Order of the case management judge, and has repeated baseless allegations of bias with respect to a judicial decision-maker.

[47] In these circumstances, I shall fix the costs to be awarded to BNS on this appeal at $1,250 and the costs to be awarded to the Commission at $750, both inclusive of HST and to be payable forthwith by Mr. Curtis. Evidently, these are in addition to the costs Mr. Curtis already has to pay further to Prothonotary Aalto's Order.

ORDER in T-1316-18

THIS COURT ORDERS that:

1. Mr. Curtis' appeal against Prothonotary Aalto's Order dated May 29, 2019 is dismissed;

2. Costs are awarded to the Bank of Nova Scotia in the total amount of $1,250, fixed and payable forthwith; and

3. Costs are awarded to the Canadian Human Rights Commission, in the total amount of $750, fixed and payable forthwith.

"Denis Gascon"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1316-18
STYLE OF CAUSE:	GARY CURTIS v CANADIAN HUMAN RIGHTS COMMISSION AND BANK OF NOVA SCOTIA
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	JUNE 25, 2019
ORDER AND REASONS:	GASCON J.
DATED:	NOVEMBER 25, 2019

APPEARANCES:

Gary Curtis	FOR THE APPLICANT (ON HIS OWN BEHALF)
Daniel Poulin Julie Hudson	FOR THE RESPONDENT (CANADIAN RIGHTS COMMISSION)
Ian R. Dick	FOR THE RESPONDENT (BANK OF NOVA SCOTIA)

SOLICITORS OF RECORD:

Legal Services Division Canadian Human Rights Commission Ottawa, Ontario	FOR THE RESPONDENT (CANADIAN RIGHTS COMMISSION)
Hicks Morley Hamilton Stewart Storie LLP Toronto, Ontario	FOR THE RESPONDENT (BANK OF NOVA SCOTIA)