Date: 20011206

Docket: T-806-01

Neutral Citation: 2001 FCT 1340

BETWEEN:

FAITH S. BRADLEY-SHARPE

Applicant

and

THE CANADIAN HUMAN RIGHTS COMMISSION

Respondent

and

THE ROYAL BANK OF CANADA

Respondent

REASONS FOR ORDER AND ORDER

BLAIS J.

[1] This is a motion brought by Ms. Faith Bradley-Sharpe pursuant to Rules 392(2) and 399(2) of the *Federal Court Rules*, [hereinafter referred to as the "Rules"].

[2] Rule 392(2) of the Rules reads:

392.(2) Unless it provides otherwise, an order is effective from the time that it endorsed in writing and signed by the presiding judge or prothonotary or, in the case of an order given orally from the bench in circumstances that render it impracticable to endorse a written copy of the order, at the time it is made.	(2) Sauf disposition contraire de l'ordonnance, celle-ci prend effet au moment où elle est consignée et signée par le juge ou le protonotaire qui préside ou, dans le cas d'une ordonnance rendue oralement en audience publique dans des circonstances telles qu'il est en pratique impossible de la consigner, au moment où elle est rendue.

[3] Rule 399(2) of the Rules reads:

399.(2) On motion, the Court may set aside or vary an order (a) by reason of a matter that arose or was discovered subsequent to the making of the order; or (b) where the order was obtained by fraud.	(2) La Cour peut, sur requête, annuler ou modifier une ordonnance dans l'un ou l'autre des cas suivants : (a) des faits nouveaux sont survenus ou ont été découverts après que l'ordonnance a été rendue; (b) l'ordonnance a été obtenue par fraude.

[4] In D. Sgayias et al., *Federal Court Practice 2000* (Toronto: Carswell, 2001) at page 756, the note under Rule 399 reads as follows:

> Rule 399 permits the Court to set aside or vary an order in three situations:
> - where the order was made in the absence of another party;
> - where a new matter has arisen; and
> - where the order was obtained by way of fraud.

[5] The self-representing applicant, Ms. Bradley-Sharpe, brings this motion for the purpose of having the order of Mr. Justice Denault dated August 22, 2001 set aside.

[6] Mr. Justice Denault's order, now being contested by Ms. Bradley-Sharpe, granted the following in favour of the respondent Royal Bank of Canada:

> The Respondent is granted 15 days from the date of the Respondent's receipt of the Canadian Human Rights Commission's materials to file the Respondent's Affidavit.

FINALITY OF AN ORDER

[7] It is important to note that the policy of the law strongly favours finality of court orders, this is to ensure the certainty of the transactions in issue and the integrity of the judicial process as per *Nu-Pharm Inc*. v. *Canada (Attorney General)*, [2000] 1 F.C. 463 (F.C.A.) and *Zolfiqar* v. *Canada (Minister*

of Citizenship and Immigration), [1998] F.C.J. No. 1790 (F.C.T.D.). This is also confirmed by the applicant, herself, when she writes at page 4 of her motion record:

> [...] the courts have been reluctant, in past, to vary an order or a judgment because of its finality [...]

[8] In addition, any application brought to set aside a judgment is exceptional and must be brought with due diligence as per *Moutisheva* v. *Canada (Minister of Employment and Immigration)*, [1993] A.C.F. No. 988.

[9] Furthermore, in *Zenca Pharma Inc*. v. *Canada (Minister of National Health and Welfare)*(2000), 196 D.L.R. (4th) 299 (F.C.A.), Strayer J.A. held:

> [para 6] [...] Rule 399 cannot be used as a vehicle for revisiting judgments every time a change occurs in the facts.

[10] The applicant relies upon the case of *Annacis Auto Terminals (1997) Ltd*. v. *Cali (The)*, [1999] F.C.J. No. 1579 (F.C.T.D.), where Prothonotary Hargrave outlined the stringent three-fold test that must be satisfied for an order to be varied or set aside:

> [para 20] [...] Although the Rule 399 provides an exception, a moving party must meet a stringent test in order to vary an order or to set it aside. The test is three-fold: First, there must be new matter arising or discovered subsequent to the order; second, the moving party must establish that it could not with reasonable diligence have discovered the new matter sooner; and third, that if the new matter had initially been brought forward it would probably have resulted in a different original order: see Re *Saywack* v. *Canada (M.E.I.)*, [1986] 3 F.C. 189 (F.C.A.), at page 201 and following, approving *Dumble* v. *Cobourg and Peterbrough R.W. Co.* (1881), 29 Gr. 121 (Ont. Ch.) and *Canada* v. *Palmier* (1998), 137 F.T.R. 71 at 73.

[11] The applicant has divided her motion record into three (3) parts as per the test outlined above. However, the applicant's arguments are unclear and difficult to grasp. If the applicant relies upon 399(2)(a) of the Rules, it requires there to be the presence of a new matter. If however she relies on 399(2)(b) of the Rules, it requires there to be a clear allegation of fraud.

[12] In my view, the applicant refers to the correct test, as set out in *Annacis, supra*, for varying or setting aside an order under Rule 399(2)(a) of the Rules, however fails to show any "new matter arising or discovered subsequent to the order" in the present circumstances. It seems that the applicant has amassed too many differing issues and has tried to fit them all into the branches of the required test. This is simply not acceptable and not sufficient to meet the test.

[13] I find that the purpose of this motion is confused. It fails to show any reason as to why the order of Mr. Justice Denault should be overturned. Seeing as an application to set aside a judgment is a very serious issue that requires exceptional circumstances.

O R D E R

[14] Therefore, this motion is dismissed.

Pierre Blais
Judge

OTTAWA, ONTARIO
December 6, 2001