

Federal Court of Appeal



Cour d'appel fédérale

Date: 20230210

Docket: A-479-19

Citation: 2023 FCA 33

**CORAM: PELLETIER J.A.
WEBB J.A.
RIVOALEN J.A.**

BETWEEN:

GARY CURTIS

Appellant

and

**CANADIAN HUMAN RIGHTS
COMMISSION**

and

THE BANK OF NOVA SCOTIA

Respondents

Heard at Toronto, Ontario, on January 24, 2023.

Judgment delivered at Ottawa, Ontario, on February 10, 2023.

REASONS FOR JUDGMENT BY:

RIVOALEN J.A.

CONCURRED IN BY:

**PELLETIER J.A.
WEBB J.A.**

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REASONS FOR JUDGMENT

RIVOALEN J.A.

[1] The appellant, Gary Curtis, appeals from the order dated November 25, 2019 of the Federal Court (*per* Gascon J.): (2019 FC 1498) (Federal Court Order).

[2] In the order under appeal, the Federal Court affirmed the order made on May 29, 2019 by Prothonotary Aalto (now Associate Judge) in which he granted a motion brought by the respondents and struck the appellant's application for judicial review because it was moot. Associate Judge Alto dismissed the appellant's application for judicial review seeking an order of *mandamus* on the basis that the Commission had done its duty with respect to Mr. Curtis' complaint when it decided that it would not proceed with the complaint. He found that, as a result, the application for judicial review was moot. The Federal Court reviewed the facts and the law and came to the same conclusion as the Prothonotary.

[3] The Prothonotary awarded costs to the Bank of Nova Scotia in the amount of \$1,500. The Federal Court ordered costs to the Bank of Nova Scotia in the amount of \$1,250 and costs to the Commission in the amount of \$750.

[4] As previously noted, the Federal Court provided the background leading up to the Prothonotary's order, reviewed the order in some detail and applied the standard of review as set out in *Hospira Healthcare Corporation v. Kennedy Institute of Rheumatology*, 2016 FCA 215, [2017] 1 F.C.R. 331. That is, with respect to questions of law and questions of mixed fact and law, where there is an extricable legal principle at issue, the applicable standard is correctness. With respect to questions of fact and questions of mixed fact and law, the applicable standard is palpable and overriding error. In order to be successful, the appellant must convince this Court that the Federal Court committed a palpable and overriding error in respect to a finding of fact or a finding of mixed fact and law or applied the law incorrectly.

[5] Before us, the appellant advances four arguments.

[6] First, he submits that the Prothonotary erred by basing his order on the wrong amended notice of application.

[7] Second, he submits that the Federal Court erred in fact and in law as there was no “record of decision” issued by the Canadian Human Rights Commission (Commission). The appellant argues that the letter from the Commission, dated January 2, 2019 is not a decision as it does not conform with the requirements of the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6 (CHRA).

[8] Third, the appellant submits that neither the Prothonotary nor the Federal Court properly applied the doctrine of mootness. He submits that the Commission and the Bank of Nova Scotia are respondents with respect to the amended notice of application seeking a writ of *mandamus*, which is the subject of the present judicial review. However, the Bank of Nova Scotia is the sole respondent in the separate notice of application in which he is seeking a review of the Commission’s decision, communicated in its letter dated January 2, 2019. As a result, the appellant argues he is deprived from challenging the evidence that might have been filed on behalf of the Commission and will not be entitled to seek relief against the Commission. According to the appellant, there remain live issues between him and the Commission.

[9] Finally, the appellant argues that the Federal Court erred when it affirmed the Prothonotary's costs order and when it granted costs to the Bank of Nova Scotia and the Commission.

[10] I cannot accept any of the appellant's arguments for the following reasons.

[11] First, the amended notice of application at issue here sought an order in the nature of a writ of *mandamus* to compel the Commission to complete its investigation of the appellant's complaint against the Bank of Nova Scotia in CHRC file #20130462. The other requests for relief in that application all flow from CHRC file #20130462. This application was before the Prothonotary and was the subject of his order. The Prothonotary did not base his order on the wrong amended notice of application. I see no error.

[12] Second, on the question of whether the Commission actually rendered a decision when it issued its letter of January 2, 2019, the Federal Court found that the CHRA does not prescribe the form of the Commission's decisions and that the letter respects the requirements of the CHRA. When the Commission previously dealt with the appellant's complaint, it set out its decision in a form called Record of Decision which, admittedly, has a more formal aspect than a mere letter. That said, the form does not affect the legal effect of the decision set out in the Commission's letter of January 2, 2019. Relevant portions of the Commission's letter were reproduced in the reasons (Federal Court Order at para. 20). The letter states that the Commission dismissed the appellant's complaint in file #20130462 against the Bank of Nova Scotia pursuant to paragraph 41(1)(e) and subparagraph 44(3)(b)(i) of the CHRA. The

Commission decided that further inquiry was not warranted, and the file on the matter was closed.

[13] The Federal Court found that the appellant had failed to demonstrate any error of law or any palpable and overriding error of fact or mixed fact and law in the Prothonotary's finding that the January 2, 2019 letter from the Commission was its decision (Federal Court Order at para. 27). I see no reviewable error.

[14] On the question of mootness, the Federal Court found no error in the Prothonotary's application of the leading authority (*Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342, 57 D.L.R. (4th) 231). I would agree. All issues in the amended notice of application pertain to the appellant's request for an order of *mandamus* to force the Commission to do its duty with respect to his complaint against the Bank of Nova Scotia in the Commission's file #20130462. The Commission did its duty when it assessed the appellant's complaint according to sections 40 and 41 of the CHRA, and dismissed it for the reasons which it gave in its letter dated January 2, 2019. On January 29, 2019, the appellant filed a separate application for judicial review of the Commission's decision. For the reasons given by the Federal Court, the application for a writ of *mandamus* at the source of the present proceeding is moot.

[15] Finally, regarding the costs awards, the Federal Court judge did not err when he exercised his discretion and decided not to interfere with the Prothonotary's costs award nor did he err when he exercised his discretion and ordered costs against the appellant (Federal Court Order at paras. 36–38). I have not been convinced that there were any palpable and overriding errors of

fact or mixed fact and law with respect to the amount and allocation of costs awarded against the appellant. I find no reason to interfere with either costs award.

[16] In summary, I have considered all of the appellant's arguments and am of the view that the Federal Court did not err in rendering its order. Indeed, I substantially agree with the findings of law and mixed fact and law as they have been set out by the Federal Court.

[17] For these reasons, I would dismiss the appeal with costs in the amount of \$500 to each of the respondents.

"Marianne Rivoalen"

J.A.

"I agree.

J. D. Denis Pelletier J.A."

"I agree.

Wyman W. Webb J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-479-19

STYLE OF CAUSE: GARY CURTIS v. CANADIAN
HUMAN RIGHTS COMMISSION
AND THE BANK OF NOVA
SCOTIA

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JANUARY 24, 2023

REASONS FOR JUDGMENT BY: RIVOALEN J.A.

CONCURRED IN BY: PELLETIER J.A.
WEBB J.A.

DATED: FEBRUARY 10, 2023

APPEARANCES:

Gary Curtis FOR THE APPELLANT
Self-represented

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CANADIAN HUMAN RIGHTS
COMMISSION

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