

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Ashraf v. Fraser*,
2024 BCSC 727

Date: 20240501
Docket: S223722
Registry: Vancouver

Between:

Affan Ashraf

Petitioner

And:

Helene Fraser, Paul Pabello and Jazz Aviation LP

Respondents

Before: The Honourable Justice Shergill

Reasons for Judgment

In Chambers

Plaintiff, appearing in person:

A. Ashraf

Counsel for Defendants:

G. Litherland
K. Draskovic
J. Chiang
(appeared on March 28, 2024)

Place and Dates of Hearing:

Vancouver, B.C.
March 26-28, 2023

Place and Date of Judgment:

Vancouver, B.C.
May 1, 2024

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I. OVERVIEW

[1] This is an application brought by the Respondents to have the Petition against them struck and to prohibit Affan Ashraf from commencing any actions or appeals in this Court without prior leave.

[2] The underlying Petition is brought by Affan Ashraf, a former flight attendant who worked for the Respondent Jazz Aviation LP. Through it, Mr. Ashraf seeks relief against Jazz and two of its employees, Helene Fraser and Paul Pabello, who he says were involved in incidents with him at work. The orders he seeks include: (a) production of documents; (b) stay of the decision of a Registrar settling the terms of an order pronounced by Justice Thomas; (c) alternatively that the matter be remitted back to the trial list for reconsideration of Justice Thomas' decision; and (d) "disciplinary proceeding" against Jazz and their legal counsel.

[3] The Respondents say that the current proceeding is meritless and raises issues that have already been addressed by previous courts, including the trial and appellate courts in BC and the Federal Court. They argue that Mr. Ashraf must be stopped from continually re-litigating the same issues and claims. Consequently, they have brought this application in an effort to put an end to all current and future litigation commenced by Mr. Ashraf against them.

[4] It will come as no surprise that Mr. Ashraf defends his right to bring these and other court proceedings against the Respondents. He argues that this Petition raises important legal issues which are distinctly different than what was before other judges or courts. Further, he submits that he is wholly within his legal rights to bring court proceedings until the merits of his claims against the Respondents are adjudicated on by a court.

[5] For the reasons that follow, I find in favour of the Respondents on both their request to have the proceedings against them struck, and to have orders made against Mr. Ashraf for instituting vexatious proceedings.

II. BACKGROUND

[6] As the orders are sought on substantially the same facts, it is useful to begin with a factual background.

[7] Mr. Ashraf was hired by Jazz on April 16, 2016. During a training session held only a few weeks later, he alleges that Ms. Fraser used inappropriate language and made racial jokes directed at Mr. Ashraf (the “First Incident”). Mr. Ashraf found the conduct offensive and reported it to his superiors. To Mr. Ashraf’s knowledge, the matter was dealt with informally through an apology from Ms. Fraser to Mr. Ashraf, and Jazz educating Ms. Fraser about the company’s harassment policy. Mr. Ashraf says that Jazz’s response to Ms. Fraser was inadequate and showed a disregard for its own harassment policies. In his view, the First Incident poisoned the work environment against him and is related to subsequent events.

[8] Around February 2019, an employee submitted a written complaint to Jazz about Mr. Ashraf (the “Complaint”). The Complaint detailed various concerns about Mr. Ashraf not following protocol or policies during a recent flight, behaving rudely, and swearing at the complainant. Mr. Ashraf was suspended for one day. He denies that his conduct was inappropriate and says that these complaints were false and constitute a “forgery”.

[9] On October 14, 2019, an altercation occurred between Mr. Ashraf and Mr. Pabello (the “Second Incident”) while onboard a flight. Mr. Ashraf says that Mr. Pabello yelled at him during a flight, used profane language, and physically assaulted him, causing an injury to his hand. Mr. Ashraf complained to the employer and an internal investigation was conducted. Mr. Ashraf says that despite admitting that Mr. Pabello acted improperly, and educating him on his conduct, Jazz did not take adequate disciplinary action against Mr. Pabello. He submits that this failure arises due to a bias against Mr. Ashraf and favouritism to Mr. Pabello.

[10] Mr. Ashraf’s employment was terminated for cause on November 21, 2019, not long after the Second Incident. Reasons for the termination are detailed in a termination letter dated December 5, 2019. They center around the employer’s view

that Mr. Ashraf failed to follow the chain of command during the Second Incident thus causing safety and customer service concerns; and that he subsequently failed to take responsibility or show any insight into his own actions that contributed to the situation.

[11] Mr. Ashraf disagreed that the employer had cause to terminate him and brought the matter to his union.

[12] The Canadian Flight Attendant Union filed a grievance on Mr. Ashraf's behalf, asserting that the termination was without cause. However, the Union subsequently withdrew the grievance, upon receipt of a legal opinion about the merits of the grievance. The legal opinion is dated February 4, 2020, and details reasons why the grievance should be withdrawn.

[13] Mr. Ashraf was not happy about the Union's decision to withdraw his grievance. First, he disagreed with what was contained in the termination letter and felt that the allegations against him were fabricated and racially motivated. According to Mr. Ashraf, Jazz had admitted by its actions that both Ms. Fraser and Mr. Pabello were guilty of wrongdoing. Yet Jazz failed to punish them but instead terminated Mr. Ashraf's employment. In Mr. Ashraf's eyes this reflected a pattern of dishonesty on the part of Jazz and discrimination against him. Second, Mr. Ashraf believed that the Union was improperly influenced by Mr. Pabello to withdraw the grievance. Mr. Pabello served on the executive of the Union and was also at the center of the Second Incident which led to Mr. Ashraf's termination. Mr. Ashraf believed that this created a conflict of interest.

[14] What followed next can only be described as a dizzying array of legal proceedings commenced by Mr. Ashraf before multiple courts and tribunals. Most of these are detailed at paras. 6-14 of Justice Thomas' decision which is indexed at 2023 BCSC 532 (the "*BCSC Decision*"). They are also summarized in the numerous judgments rendered by the BC Court of Appeal which I will refer to later.

A. Canada Industrial Relations Board and Judicial Review

[15] Convinced that the Union had acted improperly, Mr. Ashraf filed a complaint against the Union's decision to withdraw his grievance, to the Canada Industrial Relations Board ("CIRB"). He alleged the Union breached its duty of fair representation under s. 37 of the *Canada Labour Code*, R.S.C. 1985, c. L-2 [*Labour Code*] by withdrawing the grievance. The CIRB did not agree and dismissed the complaint on May 5, 2020. Mr. Ashraf sought reconsideration of the CIRB's decision. The reconsideration application was dismissed on August 13, 2020.

[16] Approximately three years later on June 15, 2023, Mr. Ashraf applied for judicial review of the CIRB decision dismissing his reconsideration application.

[17] Similar to what has transpired before this Court in the matter that is before me, Mr. Ashraf commenced his judicial review application in an action that had already been dismissed by the Federal Court (Federal Court Action T-1287-20). The Federal Court refused to accept the judicial review proceeding for filing, stating that if Mr. Ashraf wished to seek judicial review of the CIRB's decision, he would have to commence it properly.

B. Federal Court Proceedings

[18] Before seeking judicial review of the CIRB's decision (which as noted above, he did not do until June 2023), Mr. Ashraf attempted to commence a class action proceeding against Jazz in Federal Court Trial Division (Federal Court Action T-1287-20).

[19] On October 26, 2020, Mr. Ashraf filed an 84-page Statement of Claim seeking certification and appointment as a representative plaintiff. The proposed class action alleged breach of duty of care, fiduciary duty, and various human rights and *Charter* violations. The impugned conduct related to the events surrounding Mr. Ashraf's alleged wrongful dismissal.

[20] On January 7, 2021, Justice Manson struck the Statement of Claim without leave to amend: *Ashraf v. Jazz Aviation LP*, 2021 FC 28, at para. 5. In so doing

Justice Manson noted that the essential character of the claim arose out of the employment relationship that was governed by a collective agreement and was therefore outside the jurisdiction of the Federal Court. Further, the Court held that the various allegations, inclusive of the *Charter* claims, did not disclose any reasonable cause of action: at paras. 8 and 9.

[21] And so began the first chain of appeals. Mr. Ashraf unsuccessfully appealed Justice Manson's decision to the Federal Court of Appeal. The appeal was dismissed on January 27, 2022, with costs to Jazz: *Ashraf v. Jazz Aviation*, 2022 FCA 13.

[22] Mr. Ashraf then asked for reconsideration of the Federal Court of Appeal decision. This was heard by a three-judge panel and dismissed on February 23, 2022.

[23] Unabated, around March 10, 2022, Mr. Ashraf filed a 684 page application for leave to appeal the Federal Court of Appeal judgments to the Supreme Court of Canada.

[24] While Mr. Ashraf's leave application to the SCC was pending, he filed two further motions before the Federal Court of Appeal. He also commenced an action before the BC Supreme Court (which is discussed later).

[25] The first of the two applications to the Federal Court of Appeal was filed on May 23, 2022, and sought a stay of the costs assessment ordered by the Federal Court of Appeal. The second application was filed a month later and sought to transfer the Federal Court proceedings to the BC Supreme Court. Both motions were dismissed on August 26, 2022, and costs were awarded to Jazz for each application: *Ashraf v. Jazz Aviation*, 2022 FCA 148; *Ashraf v. Jazz Aviation*, 2022 FCA 149.

[26] Mr. Ashraf then sought a stay of both Federal Court of Appeal decisions. That application too was dismissed. The dismissal came with an order by Justice Pelletier pronounced October 3, 2022, that Mr. Ashraf be barred from filing any further

motions in the file without first obtaining leave. Mr. Ashraf's attempt to appeal Justice Pelletier's order to the Federal Court of Appeal was rejected for filing by the Court on November 2, 2022.

[27] On March 9, 2023, the Federal Court of Appeal made a costs assessment in favour of Jazz in the amount of \$2,177.86. This set off another chain of appeals initiated by Mr. Ashraf.

[28] Mr. Ashraf appealed the costs assessment. That appeal was dismissed by the Federal Court on June 5, 2023, and Mr. Ashraf was ordered to pay further costs to Jazz. Mr. Ashraf then sought leave to appeal the June 5, 2023, decision. The document was rejected for filing on June 27, 2023, due to procedural irregularities.

[29] By the time Mr. Ashraf appealed the June 5, 2023, he was out of time. Undeterred, Mr. Ashraf sought an extension of time on July 4, 2023. This application was dismissed by Justice Rennie of the Federal Court of Appeal, on August 15, 2023, with costs payable to Jazz.

[30] On August 21, 2023, Mr. Ashraf served a 75-page Motion Record for reconsideration of the August 15 Order. Justice Rennie dismissed this application on October 3, 2023, and ordered Mr. Ashraf to pay further costs to Jazz. Justice Rennie also barred Mr. Ashraf from filing any material in this file without first obtaining leave.

C. Canadian Human Rights Commission and Judicial Review

[31] While Mr. Ashraf's Federal Court proceedings were underway, he also filed a complaint against Jazz before the Canada Human Rights Commission. The complaint was made on February 4, 2021, and alleged discrimination during his employment. It was dismissed by the Commission on June 29, 2022.

[32] In July 2022, Mr. Ashraf filed an application for judicial review of the Commission's decision before the Federal Court. The Federal Court dismissed this application on October 19, 2022.

[33] Mr. Ashraf immediately filed a motion for reconsideration of the October 19 decision. The reconsideration application was dismissed by Justice Heneghan on September 12, 2023.

[34] Mr. Ashraf appealed Justice Heneghan's decision. Frustrated by the continuous onslaught of appeals, Jazz asked that Mr. Ashraf be required to post security for costs. On November 8, 2023, Chief Justice de Montigny of the Federal Court of Appeal ordered Mr. Ashraf to post security for costs in the amount of \$8,927.56 within 90 days of the Order, and that the Appeal of Justice Heneghan's decision be stayed pending Mr. Ashraf's posting security for costs.

[35] Mr. Ashraf did not post security for costs as required. Rather, Mr. Ashraf filed a Notice of Motion for reconsideration of Chief Justice de Montigny's Order. That application was dismissed on December 14, 2023, with costs to the Respondents.

[36] On January 23, 2024, Jazz applied to the Federal Court of Appeal to have Mr. Ashraf declared a vexatious litigant. Jazz's application was consented to by the Attorney General of Canada. On March 4, 2024, the Federal Court of Appeal declared Mr. Ashraf a vexatious litigant under s. 40 of the *Federal Courts Act*, R.S.C. 1985, c.F-7. Pursuant to the Order, Mr. Ashraf has been barred from instituting new proceedings in the Federal Court of Appeal without leave. The Court also ruled that Mr. Ashraf's appeal shall not be continued without leave. Mr. Ashraf was ordered to pay further costs to Jazz.

[37] Mr. Ashraf appealed the March 4 order. The appeal was dismissed by the Federal Court of Appeal on March 26, 2024.

D. BC Supreme Court Action

[38] On May 6, 2022, a month before he sought to have his Federal Court proceedings transferred to the BC Supreme Court, Mr. Ashraf had already commenced litigation in BC by way of Notice of Civil Claim ("BCSC Action").

[39] The BCSC Action sought relief against the same parties that are respondents in this litigation—namely, Mr. Ashraf’s two co-workers and his employer. Through it, Mr. Ashraf sought damages for his dismissal and for the two Incidents. A variety of causes of action were advanced, including, wrongful dismissal; breach of fiduciary duty; breach of the *Human Rights Code*, R.S.B.C. 1996, c. 210; breach of the *Criminal Code*, R.S.C. 1985, c. C-46; breach of the *Charter of Rights and Freedoms*; defamation; and libel: *BCSC Decision* at para. 14.

[40] The factual basis for the BCSC Action was the same as for the various Federal Court, CIRB, and Human Rights Commission proceedings: *BCSC Decision* at para. 15-17.

[41] On June 13, 2022, Mr. Ashraf filed a notice of application seeking to have his BCSC Action determined summarily. The Respondents brought a cross application to have the proceeding struck or dismissed. After various hiccups the matter proceeded before Justice Thomas by way of summary trial.

[42] Justice Thomas dismissed the BCSC Action on February 24, 2023, and ordered costs and disbursements to the Respondents in the amount of \$10,000. The *BCSC Decision* was appealed by Mr. Ashraf.

[43] Mr. Ashraf refused to sign the draft order prepared by counsel for the Respondents. The parties attended before Registrar Gaily to settle the terms of the order from the *BCSC Decision*. The order was entered on May 29, 2023.

[44] This Petition was filed by Mr. Ashraf on June 8, 2023. It was filed in the same BCSC Action that had already been dismissed by Justice Thomas. It is unclear why the Registry accepted it for filing, given that Justice Thomas had already dismissed the BCSC Action.

E. BC Court of Appeal

[45] On March 24, 2023, Mr. Ashraf filed a Notice of Appeal of the *BCSC Decision*. Mr. Ashraf also brought an application for a fee waiver, which was heard

ex parte and granted by Justice Harris on May 23, 2023. In granting the no fee application, Justice Harris stated that he was “reluctantly prepared to say that I will not find that the appeal is absolutely bound to fail”: *Ashraf v. Jazz Aviation LP* (23 May 2023), Vancouver CA48944 (B.C.C.A. in chambers), at para. 15 (“*BCCA No. 1*”).

[46] The Respondents brought an application for security for costs in relation to the appeal. Justice Frankel granted the application and ordered Mr. Ashraf to pay \$10,000 as security for costs by August 14, 2023. At para. 27 of his Reasons, indexed at 2023 BCCA 284 (“*BCCA No. 2*”), Justice Frankel held that Mr. Ashraf’s appeal was without merit and “bound to fail”. In so doing, he addressed Justice Harris’ comment about the merits of the appeal, noting that Justice Harris “expressed that view at a very early stage in this appeal without any developed submissions by Mr. Ashraf and without hearing from the respondents”: *BCCA No. 2* at para. 20.

[47] Mr. Ashraf did not post security for costs as required, and the Respondents sought to have his appeal dismissed as abandoned. Mr. Ashraf justified his failure to comply with Justice Frankel’s order on the grounds that he was awaiting leave to appeal it to the Supreme Court of Canada. Justice Voith rejected this excuse and dismissed Mr. Ashraf’s appeal as abandoned. He ordered Mr. Ashraf to pay costs in the lump sum amount of \$1,000.00. The Reasons were delivered on November 16, 2023, and are indexed at 2023 BCCA 434 (“*BCCA No. 3*”).

[48] Undeterred, Mr. Ashraf filed an application on November 17, 2023, to vary the order of Justice Voith. This was dismissed by a division of the Court of Appeal on February 7, 2024, with fixed costs in the amount of \$1,500 to the Respondents. In his Reasons for Judgment indexed at 2024 BCCA 45 (“*BCCA No. 4*”), Justice Harris agreed with Justices Frankel and Voith that Mr. Ashraf’s appeal was devoid of merit: para.10. He went on to say that there was no prospect that a division of the Court of Appeal would reach a different conclusion to that of Justice Thomas: para.11.

[49] After *BCCA No. 4*, Mr. Ashraf refused to sign the order prepared by the Respondents' counsel, insisting that cross-examination be conducted in the case. The Registrar granted the Respondents' application to enter the order based on written materials.

[50] The order from *BCCA No. 4* was entered on February 29, 2024. On the same day, Mr. Ashraf filed a letter at the Court of Appeal Registry asking various questions of the Registrar and seeking to have his file re-opened "to consider all the issues within the appeal". The request was not acceded to.

F. Supreme Court of Canada Leave Applications

[51] As of the date of this hearing, Mr. Ashraf has filed three applications for leave to appeal to the Supreme Court of Canada.

[52] The first was the 684-page application referenced earlier, seeking leave to appeal the Federal Court of Appeal decisions. This was dismissed on February 2, 2023 in *Affan Ashraf v. Jazz Aviation LP*, 2023 CanLII 6100 (SCC). On July 18, 2023, the Supreme Court of Canada issued a Certificate of Taxation granting the Respondents costs in the amount of \$952.58 in relation to this matter.

[53] Mr. Ashraf's second attempt before the Supreme Court of Canada was made in August 2023, in relation to *BCCA No. 2*. The 86-page amended application for leave to appeal was filed on August 31, 2023. It was dismissed by the Supreme Court of Canada on December 21, 2023 in *Affan Ashraf v. Jazz Aviation LP, et al.*, 2023 CanLII 122416 (SCC). A Bill of Costs and Notice of Taxation are currently pending assessment.

[54] Mr. Ashraf's third knock at the Supreme Court of Canada door was made on November 1, 2023, seeking leave to appeal Justice Rennie's decision of October 3, 2023 dismissing Mr. Ashraf's reconsideration application for an extension of time in the federal court proceedings. On March 11, 2024, Mr. Ashraf filed an 86-page Notice of Motion seeking cross-examination. No decisions have yet been made in relation to either of these matters.

G. Events Leading up to This Petition Hearing

[55] On August 21, 2023, the Respondents filed a Notice of Application to dismiss the Petition and to have orders made against Mr. Ashraf for instituting vexatious proceedings (the “Striking and Vexatious Litigation Application”).

[56] On September 6, 2023, counsel for the Respondents and Mr. Ashraf, appeared before Justice Marzari for the hearing of the Striking and Vexatious Litigation Application. Due to lack of time, Justice Marzari adjourned the application generally, and ordered the parties to re-set it for one day. Further, she ordered that until a decision was rendered on the Striking and Vexatious Litigation Application, Mr. Ashraf was prohibited from commencing any appeal, action, petition, application or proceeding in the BC Supreme Court against any of the Respondents, without leave of the Court (the “Marzari Order”).

[57] The matter was first set for hearing on December 12, 2023, but due to no judge being available, it was re-set for hearing on March 26 and 27, 2024 (“this hearing”).

[58] On February 26, 2024, Mr. Ashraf advised the Respondents that he would be appearing in court the next day seeking leave to submit a “short notice of the application” for cross-examination of various persons, including himself. He was asking for this application to be heard on March 26, 2024 “with the petition submitted on June 08, 2023”.

[59] On February 27, 2024, Mr. Ashraf and Mr. Litherland appeared in Chambers before Associate Judge Robertson. Associate Judge Robertson dismissed Mr. Ashraf’s short leave application and ordered that any future application by Mr. Ashraf seeking leave pursuant to the Marzari Order, must be brought on eight days’ notice to the Respondents (“Robertson Order”).

[60] On March 7, 2024, Mr. Ashraf served a copy of an Affidavit of Affan Ashraf filed March 7, 2024, ostensibly for use at this hearing. He also filed a short leave application seeking an “order under Rule 8-5(1) that the main application be brought

on short notice". This short leave request did not comply with either the Robertson Order or the Marzari Order. The short leave request was not granted.

[61] This hearing on the Striking and Vexatious Litigation Application proceeded on March 26 and took three days to complete. Mr. Ashraf was self represented throughout the hearing.

[62] Mr. Ashraf was advised at the outset that this hearing was only in relation to the Striking and Vexatious Litigation Application brought by the Respondents, and that the Court would not be hearing the underlying Petition or any application brought by Mr. Ashraf for document production or cross-examination of any affiants. Nevertheless, at the conclusion of this hearing Mr. Ashraf sought orders related to the relief that was not before this Court.

[63] This now brings me to the issues raised in the application before me.

III. STRIKING OF PROCEEDINGS

[64] The Respondents bring this application under Rule 9-5(1)(a), (b) and (d) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009. In particular, they submit that this court lacks jurisdiction to grant the relief sought; the pleadings fail to disclose a reasonable cause of action; the matters raised in the Petition are *res judicata*; and the Petition is otherwise an abuse of process.

[65] Rule 9-5 provides as follows:

Scandalous, frivolous or vexatious matters

(1) At any stage of a proceeding, the court may order to be struck out or amended the whole or any part of a pleading, petition or other document on the ground that

- (a) it discloses no reasonable claim or defence, as the case may be,
- (b) it is unnecessary, scandalous, frivolous or vexatious,
- (c) it may prejudice, embarrass or delay the fair trial or hearing of the proceeding, or
- (d) it is otherwise an abuse of the process of the court,

and the court may pronounce judgment or order the proceeding to be stayed or dismissed and may order the costs of the application to be paid as special costs.

[66] Pursuant to Rule 9-5(2), no evidence is admissible on an application brought under subrule (1)(a). Rather, the facts as pleaded are assumed to be true “unless they are manifestly incapable of being proven”: *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42 (“*Imperial Tobacco*”), at para. 22.

[67] In considering an application for striking of pleadings under Rule 9-5(1)(a), the court is to determine whether it is “plain and obvious” that the claim has no reasonable prospect of success: *Imperial Tobacco* at para. 17.

[68] In *Willow v. Chong*, 2013 BCSC 1083 at para. 20, Justice Fisher explained that a pleading is unnecessary or vexatious if:

- 1) it does not go to establishing the plaintiff’s cause of action;
- 2) it does not advance any claim known in law;
- 3) it is obvious that the action cannot succeed;
- 4) it would serve no useful purpose and would be a waste of the court’s time and public resources; or
- 5) the pleading is so confusing that it is difficult to understand what is pleaded.

(cited with approval in *Nevsun Resources Ltd. v. Araya*, 2020 SCC 5 at para. 65)

[69] The motion to strike “is a tool that must be used with care”. The law is not static, and the approach must be generous and err on the side of permitting a novel but arguable claim to proceed to trial: *Imperial Tobacco* at para. 21.

A. The Petition

[70] Under “Part 1 - Order Sought” Mr. Ashraf summarizes his position in the Petition as follows:¹

[1]. This application is for a legal dispute and issue related to the decision of a Registrar, dated May 29, 2023, brought before this Court for adjudication. The Registrar on May 29, 2023 has acted unlawfully and improperly, where this court may have the authority to review the matter and make determination, with respect to the settlement of the Order.

[2]. The Decision is unreasonable in the following respects and as described further in this Petition:

- a. Mr. justice Thomas Reasons dated February 24, 2023, judgement has not assessed the merits of Mr. Ashraf case, committing a palpable and overriding error of facts and an error of law in misapplying the legal test for the admission of hearsay evidence.
- b. The cost order of 10,000\$ is unconstitutional;
- c. Breached the duty of procedural fairness and the rules of natural justice by failing to provide a fair trail for not hearing the Application submitted on June 13 and 22, 2022.

[71] The relief being sought is articulated as follows under Part 1:

[3]. Accordingly, the Petitioner seeks the following relief:

- i. An interlocutory Order directing Jazz to file the record of proceedings for full disclosure;
- ii. An interlocutory Order staying the Decision and until both application June 13 and 22, 2022 has been fully and finally decided, with respect to admission of guilt from the Defendant, where its a simple matter of further discoveries that may require 2 days of hearing to settle the applications.
- iii. In the alternative, an Order remitting the matter back to the trail for reconsideration on proper notice to all parties;
- iv. Further disagreement to the Order settle on May 29 ,2023: as the Application dated June 13 and 21, 2022 were not heard;
- v. Disciplinary proceeding against Jazz Aviation LP for the misconduct;
- vi. Disciplinary proceeding against Defendant counsel (Harris& Company LLP);
- vii. Costs of the proceeding against any party who opposes the Petition;

¹ All typographical errors in the quoted excerpt appear in the original document.

[72] The bulk of the Petition is found under “Part 2: Factual Basis”. In this section, Mr. Ashraf attempts to articulate the grounds on which he has brought the Petition. Many of the paragraphs are difficult to understand, and contain a rambling mix of facts, law, and legal argument. Notably, the Petition:

- 1) refers to the First and Second Incident;
- 2) quotes various passages of the *BCSC Decision*, including:
 - i. para. 20 where Justice Thomas notes that if this court had jurisdiction to hear the matter, pre-trial processes such as disclosure and discoveries would need to be conducted, making the matter unsuitable for summary trial;
 - ii. paras. 4, 5, 16, 25, in which Justice Thomas sets out Mr. Ashraf’s allegations against his employer, co-workers, and the Union, which lead to the various failed legal challenges that proceeded the matter being commenced in BC Supreme Court.
- 3) sets out what appear to be legal arguments under the heading “Merit and Cost”, with reliance on Ontario rules of civil procedure;
- 4) alleges that Jazz was guilty of “adverse differential treatment” and failing to “provide a harassment-free workplace”;
- 5) raises 19 “issues” which appear more to be a glossary of terms rather than any discernable legal claim, such as: credibility, criminal contempt; decision on merit; disclosure or full disclosure; discover; discretion; duty of care; fiduciary duty; frivolous; prima facie; private interest standing; procedural fairness; punitive damages; redécouvre; vexatious; vicarious; scandalous; obstruction of justice; compensatory damages;
- 6) alleges that the employer exhibited a pattern of “dishonesty and discrimination against the Petitioner” and that Mr. Ashraf was subjected to

disparate treatment because “I was terminated while the employees involved in the two incidents were not”;

- 7) makes extensive reference to the *Canada Labour Code* and the requirement for the employer to provide a harassment free workplace;
 - 8) alleges that the Union breached its duty of fair representation;
 - 9) asserts that the employer and Union are vicariously liable to provide environments that are free from discrimination and harassment, or otherwise breach the *Canada Labour Code*;
 - 10) asserts that *BCSC Decision* is unreasonable and breached the duty of procedural fairness and the rules of natural justice by failing to assess the merits of his case; and
 - 11) argues that the employer should be held responsible for failing to comply with the “collective agreement, article 27”.
- [73] The issues raised in the Petition fall into two broad categories, as follows:

- 1) matters that relate to the employment relationship with Jazz:
 - a) Part 1, item 3.i – seeking an interlocutory order for the “record of proceedings” which is directed at the employer’s files in relation to the investigation of the two Incidents and the matters surrounding Mr. Ashraf’s dismissal.
 - b) Part 1, item 3.v – allegations that Jazz should be subjected to “disciplinary proceedings” as it was guilty of misconduct in relation to the circumstances surrounding Mr. Ashraf’s termination.
 - c) Part 1, item 3.vi – seeking a “disciplinary proceeding” against defendant’s counsel for failing to answer certain questions from the date of his termination onwards (see also Part 2, para. 32).

- d) Part 2, paras. 4, 5, 11, 14-28 – allegations against Jazz, Mr. Ashraf’s co-workers, and the Union about being mistreated, abused, assaulted, and harassed during his employment; the employer conducting an improper or unfair investigation of the Incidents; being terminated without cause; and the Union’s improper handling of his grievance.
- 2) matters that relate to re-visiting the *BCSC Decision*:
- a) Part 1, item 3.ii – seeking a stay of the *BCSC Decision* pending a “[full] and [final]” decision on the summary trial application that was heard by Justice Thomas.
 - b) Part 1, item 3.iii – alternatively asking that the matter be remitted back to the trial list for reconsideration of the *BCSC Decision*.
 - c) Part 1, item iv – challenging the Registrar’s settlement of the terms of the *BCSC Decision*.
 - d) Part 2, paras. 6-7, 12, 29-35 alleging that he was denied procedural fairness and natural justice because Justice Thomas failed to assess the merits of Mr. Ashraf’s case.
 - e) Part 2, paras. 8-10,13, challenging the costs award made by Justice Thomas.

[74] A third category of issues was raised in the Application Response filed by Mr Ashraf on August 28, 2023. These relate to conduct of the Respondents and their counsel during the course of this litigation. Mr. Ashraf alleges that the Respondents have committed perjury and are in contempt of court for “knowingly provid[ing] false and misleading information to the court in numerous other documents”: Application Response, Part 3, para. 21. At the hearing, Mr. Ashraf expanded these allegations to include the counsel for the Respondents.

[75] It is important to note here that to the extent that it is possible to understand what is being argued by Mr. Ashraf, I have considered all of the legal arguments and

authorities provided by him in this application hearing. Many of these have no binding authority on this court and do not provide useful guidance (such as American jurisprudence on *res judicata* or Ontario rules of civil procedure). Others focus on matters that are not properly before this Court, such as alleged *Criminal Code* violations and *Charter* complaints.

B. Analysis

[76] The Respondents' jurisdiction argument centers around the essential character of the issues raised in the Petition, and whether they are captured by a collective agreement. There is no dispute that Mr. Ashraf's employment with Jazz was governed by a collective agreement which contains provisions addressing all aspects of his employment relationship.

[77] Mr. Ashraf confirmed at this hearing that all of the allegations made in the Petition against the Respondents stem from his employment relationship with Jazz. They pertain to conduct specifically covered by the collective agreement. Indeed, in the Petition itself, Mr. Ashraf specifically alleges that Jazz breached the *Canada Labour Code* and failed to comply with the collective agreement. This is consistent with what he asserted before Justice Thomas: *BCSC Decision* at para. 21. I pause here to note also that the facts on which this Petition lies are the same facts that grounded the claim advanced before Justice Thomas.

[78] As Justice Thomas noted, the court is required to consider three factors in order to determine whether it has jurisdiction to hear a dispute involving workplace issues: *BCSC Decision* at para. 37, citing *Weber v. Ontario Hydro*, [1995] 2 S.C.R. 929, 1995 CanLII 108 (SCC). These are: (1) the ambit of the collective agreement; (2) the essential character of the dispute between the parties; and (3) whether the collective agreement provides the plaintiff with an effective remedy.

[79] Justice Thomas concluded that the collective agreement was broad and covered the myriad of issues raised in the BCSC Action. As the collective agreement provided Mr. Ashraf with an effective remedy, *Weber* applied, and the Court had no jurisdiction to hear the matters raised by Mr. Ashraf. Consequently, the action was

dismissed with costs and disbursements to the defendants in the amount of \$10,000: *BCSC Decision*, at paras. 22, 38, 51-53.

[80] In coming to this conclusion, Justice Thomas rejected Mr. Ashraf's argument (which is also advanced before this Court) that the BC Supreme Court had jurisdiction to hear the employment matters by virtue of a recital in a Federal Court of Appeal judgment: *BCSC Decision* at paras. 41-43.

[81] The recital relied on by Mr. Ashraf is contained in the Federal Court of Appeal Order pronounced February 23, 2022, where the Court dismissed Mr. Ashraf's request for a reconsideration of a Federal Court of Appeal decision to dismiss his appeal. As the recital is fully laid out in *BCSC Decision* at para. 39, I have only set out the salient portion below:

WHEREAS Mr. Ashraf's pleadings also raise legitimate causes of action, such as fiduciary duties and negligence, in respect of which this Court has no jurisdiction over those causes of action as they arise in disputes between subject and subject (in which case the provincial superior courts have jurisdiction); and ...

[82] As he did before Justice Thomas, Mr. Ashraf has seized upon this passage and insists that the Federal Court has determined that the BC Supreme Court has jurisdiction to hear his dispute related to employment matters. That is simply not the case. For the same reasons as articulated by Justice Thomas at paras. 41-43, the comments of the Federal Court of Appeal do not impact my conclusions regarding jurisdiction.

[83] I also reject Mr. Ashraf's argument that s. 9 of the *Supreme Court Act*, R.S.B.C. 1996, c. 443 [Act] provides this Court with inherent jurisdiction to hear the matters raised, regardless of *Weber*. This argument was also addressed by Justice Thomas, who succinctly captured Mr. Ashraf's position as follows:

[44] The main thrust of Mr. Ashraf's argument is that s. 9 of the *SCA* or, alternatively, the inherent jurisdiction of this court provide the ability to assert jurisdiction over this matter. He says the court should do so because he has a right to have this matter fully litigated and has been denied this right in every forum he has pursued.

[84] As Justice Thomas noted at para. 45, this issue was addressed by the Supreme Court of Canada in *Weber* wherein the Court held at para. 67 that the “exclusive jurisdiction of the arbitrator is subject to the residual discretionary power of courts of inherent jurisdiction to grant remedies not possessed by the statutory tribunal.” I find that in this case, the remedies that Mr. Ashraf seeks against the Respondents are fully within the jurisdiction of the tribunal.

[85] In addition to the above, I am supported in my conclusions by the numerous decisions of the BC Court of Appeal that have discussed the merits of Mr. Ashraf’s appeal of the *BCSC Decision*.

[86] In *BCCA No. 2* at para. 3, Justice Frankel cited with approval the following passage from *Bruce v. Cohon*, 2017 BCCA 186, in which Justice Newbury summarized the principles in *Weber*:

[7] In 1995, in *Weber v. Ontario Hydro* 1995 CanLII 108 (SCC), [1995] 2 S.C.R. 929 and its sister case, *New Brunswick v. O’Leary* 1995 CanLII 109 (SCC), [1995] 2 S.C.R. 967, the Supreme Court of Canada adopted the “exclusive jurisdiction” model of ‘final and binding’ clauses in labour legislation. Under this model, once it is shown that the parties’ dispute ‘arises from’ a collective agreement, the claimant may proceed only under the dispute resolution mechanism (arbitration) set out in that agreement. The courts have no jurisdiction to entertain the dispute unless the remedy claimed is one the arbitrator may not grant, or the remedy granted would be otherwise inadequate. (*Weber*, at para. 57.)

[87] At para. 27, Justice Frankel agreed with Justice Thomas’ decision that the BC Supreme Court did not have jurisdiction over Mr. Ashraf’s claims as they fall under the collective agreement. Finding no error “in the chambers judge’s application of *Weber*”, Frankel J.A. concluded that the appeal was without merit and bound to fail.

[88] This conclusion was reiterated by a three-judge panel of the Court of Appeal, in *BCCA No. 4*, as follows:

[11] There is no prospect that a division of this Court would reach a different conclusion to that of the Supreme Court judge. *Weber* is binding on us, and is dispositive of this appeal. In my view, Mr. Ashraf has not laid any basis to conclude that the remedies available to him under the dispute resolution procedures provided for by his collective agreement were unavailable or inadequate.

[89] Similarly, in the proceeding before me, Mr. Ashraf has not provided any basis for concluding that the remedies available to him under the dispute resolution procedures provided for in his collective agreement, were not available to him or were inadequate.

[90] I therefore conclude that this Court does not have jurisdiction to hear the employment related matters raised by Mr. Ashraf in this Petition.

[91] I turn now to the other aspect of Mr. Ashraf's Petition, which relate to his attempts to re-visit the *BCSC Decision* and have his case determined "on the merits".

[92] This must first be rejected on jurisdictional grounds. It is clear that this Petition is nothing more than a thinly veiled attempt to appeal the *BCSC Decision*. Simply because Mr. Ashraf has called it a "Petition" and filed this pleading in the BC Supreme Court Registry, does not give this Court jurisdiction to hear the matters raised in it. Mr. Ashraf has provided no legal authority that would support his challenge to the *BCSC Decision* in this forum. The proper forum to challenge a decision made by a Justice of this Court is through an appeal to the BC Court of Appeal. That appeal was filed by Mr. Ashraf and was dismissed as abandoned by Justice Voith in *BCCA No. 3*. Mr. Ashraf's application to vary the order of Justice Voith was also dismissed in *BCCA No. 4*.

[93] Second, even if this Court had the jurisdiction to re-visit the issues that were determined by Justice Thomas, which it does not, Mr. Ashraf's position is wholly without merit. Mr. Ashraf provided no basis on which a court could conclude that the costs order made by Justice Thomas was "unconstitutional". Further, there is no support for Mr. Ashraf's assertion that he was denied procedural fairness because Justice Thomas determined his case by summary trial rather than giving Mr. Ashraf an opportunity for a full trial. It was Mr. Ashraf who brought the summary trial application that was heard by Justice Thomas. In addition, there is no legal basis that would permit this Court to consider Mr. Ashraf's case "on the merits" in the face of jurisdictional issues that arise. As noted by Justice Thomas, it is not procedurally

unfair for the court not to consider a dispute that falls within the ambit of a collective agreement; this “is a policy decision made by the legislature” that is binding on the courts: *BCSC Decision* at para. 47.

[94] Third, Mr. Ashraf’s claim that the Registrar acted unlawfully is improperly brought, not supported by any particulars, and is devoid of legal merit. Rule 23-6 of the *Supreme Court Civil Rules* sets out an appeal procedure that must be followed if a party wishes to appeal a decision or order of a registrar. That procedure was not followed by Mr. Ashraf. Further, Mr. Ashraf has provided no factual basis or legal authority that could support a challenge to the Registrar’s settlement of the terms of the order from the *BCSC Decision*.

[95] Fourth, I reject Mr. Ashraf’s argument that by seeking cross-examination on affidavits or document production, the Petition raises new issues which were not a part of the BCSC Action. Seeking an order for cross-examination on affidavits or an order for document production, relates directly to the issues that are raised in the proceeding. To obtain such orders a party must bring an application within an existing proceeding. There is no standalone form of relief for discovery of documents or cross-examination on affidavits; nor are these issues actionable in their own right. Further, given that Mr. Ashraf was the one that brought the summary trial application on short notice, and before any disclosure could reasonably take place, it is disingenuous for him to now assert that he was denied procedural fairness.

[96] Finally, I turn to the issues raised in relation to the “disciplinary proceeding” that Mr. Ashraf seeks against Jazz and its legal counsel. Putting aside that Mr. Ashraf has provided no explanation of what he means by “disciplinary proceeding”, he has also provided no basis on which a duty of care could be found to exist on either the part of the Respondents or their legal counsel which would entitle him to this relief.

[97] Insofar as the allegations advanced relate to Jazz’s conduct during the period of Mr. Ashraf’s employment, they fall within the ambit of the collective agreement and outside the jurisdiction of this Court.

[98] The allegations which relate to the Respondents' conduct during the litigation process are equally unfounded. These have been characterized by Mr. Ashraf as perjury and contempt of court. There is no factual foundation on which these allegations are properly grounded.

[99] I similarly reject any claims advanced by Mr. Ashraf against the Respondents' counsel. The main point of contention appears to be counsel's "refusal" to answer questions. Mr. Ashraf was not able to provide any legal basis for his assertion that the Respondents' counsel are under a legal obligation to answer Mr. Ashraf's questions relating to the issues concerning his claims against the Respondents. It is trite law that opposing counsel does not owe a duty of care to the other party in a litigation: *Rassaf v. Borden Ladner Gervais*, 2015 BCSC 2413, at para. 16.

[100] I now turn to issues of *res judicata*, abuse of process, and collateral attack. I find that this Petition is objectionable on all of those grounds.

[101] The Petition is a procedural nullity. It does not fit within the criteria set out under Rule 2-1 of the *Supreme Court Civil Rules* for when a proceeding can be commenced by way of petition. Further, it was filed in the BCSC Action that was dismissed by Justice Thomas. I am not aware of any procedural rule that would permit Mr. Ashraf to commence a proceeding in this manner.

[102] The Petition is an abuse of process. Mr. Ashraf chose to first bring forward his claims through a Notice of Civil Claim, rather than a petition. Even if the matters raised fit within the ambit of Rule 2-1, it is not open to him now to re-litigate the same matters by simply framing them as a petition. As noted by the Court in *0927745 B.C. Ltd. v. Charlie's Chocolate Factory Ltd.*, 2014 BCSC 610 at para. 12, "commencing a proceeding by way of a petition versus a notice of civil claim is not a matter of mere form". Proceedings that have been improperly commenced by petition are to be discouraged. It is evident that Mr. Ashraf filed the Petition in an attempt to re-litigate his claim while an appeal was already underway before the BC Court of Appeal. Further, there is a strong inference that can be drawn that Mr. Ashraf employed this strategy to avoid paying a filing fee for a new action. A week after this Petition was

filed, Mr. Ashraf attempted to use the same strategy in the Federal Court, by bringing his judicial review application of the CIRB decision in an action that had already been dismissed by the Federal Court. In that case, his effort was thwarted, and the Federal Court refused to accept the judicial review proceeding for filing.

[103] The Petition is a collateral attack on the *BCSC Decision*. The claims advanced against the Respondents are essentially the same as those advanced in the BCSC Action and were dismissed by Justice Thomas.

[104] To the extent that the issues raised in relation to the Respondents and the Union were addressed by both Justice Thomas and the Federal Court, they are also *res judicata*. Mr. Ashraf's appeal of Justice Thomas' decision was dismissed as abandoned by Justice Voith. Mr. Ashraf's application to vary *BCCA No. 3* was dismissed by a division of the Court of Appeal in *BCCA No. 4*. Similarly, appeals of the numerous federal court decisions have all resulted in a dead end for Mr. Ashraf.

C. Conclusion

[105] Having regard to all of the above, I have no difficulty in concluding that the Petition discloses no reasonable claim, that the allegations made by Mr. Ashraf in his Petition are frivolous and vexatious, and constitute an abuse of process.

[106] In coming to these conclusions, I have considered Mr. Ashraf's request to permit him to amend his pleading in order to correct any procedural irregularities or inadequacies. In my view, there are no amount of amendments that would cure the deficiencies that give rise to this Order.

[107] The Respondents' application to strike the Petition is granted.

IV. VEXATIOUS PROCEEDINGS

[108] The Respondents also wish to have Mr. Ashraf's proceedings deemed vexatious. To that end, they seek various orders pursuant to s. 18 of the *Supreme Court Act*, which would impose restrictions on Mr. Ashraf to prevent him from filing further proceedings, motions, actions and appeals without leave of this Court.

A. Analysis

[109] Section 18 of the *Act* is aimed at limiting the right of a person who has persistently instituted vexatious legal proceedings, to commence a legal proceeding. It provides as follows:

Vexatious proceedings

18. If, on application by any person, the court is satisfied that a person has habitually, persistently and without reasonable grounds, instituted vexatious legal proceedings in the Supreme Court or in the Provincial Court against the same or different persons, the court may, after hearing that person or giving the person an opportunity to be heard, order that a legal proceeding must not, without leave of the court, be instituted by that person in any court.

[110] Section 18 of the *Act* gives the Court the ability to control its own process with respect to litigants that have brought vexatious proceedings. Though such litigants are often referred to in the jurisprudence as “vexatious litigants”, that term is not actually used in this provision. Section 18 only refers to vexatious proceedings.

[111] Thus, pursuant to s. 18, the Court may order a litigant that has “habitually, persistently and without reasonable grounds” instituted vexatious legal proceedings, to seek leave from the Court, before being able to institute any further legal proceedings.

[112] The Respondents submit that an order under s. 18 is necessary to stop Mr. Ashraf from continually re-litigating the same issues and claims, and bringing meritless applications and proceedings, all while refusing to pay any of his costs orders. They seek to put an end to what they say is “Mr. Ashraf’s continued unreasonable consumption of scarce judicial resources and his clear efforts to put the Respondents to maximum legal expense” (Respondents’ Written Submissions, at para. 86).

[113] Mr. Ashraf argues that his conduct is not vexatious. Rather, he has instituted multiple legal proceedings in an effort to have his claims against the Respondents determined on their merits. He submits that his only aim is the pursuit of justice. The corollary is that the Court cannot and should not prevent him for pursuing this

objective. In support of his position, Mr. Ashraf relies in part on para. 47 from the *BCSC Decision*, wherein Justice Thomas noted that “Mr. Ashraf has been prevented from having this matter litigated on its merits”; and para. 50 where Justice Thomas stated that his “judgement has not assessed the merits of Mr. Ashraf’s case”.

[114] In *Holland v. Marshall*, 2010 BCSC 1560, at paras. 7-8, leave to appeal ref’d 2010 BCCA 579, Justice B.J. Brown noted that to succeed on a s. 18 application, the applicant must demonstrate that: (a) the proceedings are vexatious in the sense of having been taken in the absence of objectively reasonable grounds; and (b) the proceedings have been brought habitually or persistently, such that the litigant has continued obstinately in the course of conduct, despite protests or criticism.

[115] In determining whether proceedings are vexatious, the court must look to the whole history of the matter, and not just on whether there was originally a good cause of action: *Lang Michener v. Fabian* (1987), 37 DLR (4th) 685, 1987 CanLII 172 (ON SC) at p. 8-9, cited with approval in *Dick v. Coquitlam (City)*, 2023 BCCA 261, at para. 22.

[116] In *Lang Michener* the Ontario High Court noted that in determining whether proceedings are vexatious, the court must look at the whole history of the matter and not just whether there was originally a good cause of action. The Court described the characteristics of a typical vexatious proceeding, which are summarized below to include:

- 1) bringing actions to decide issues that have already been determined by a court of competent jurisdiction;
- 2) raising issues that obviously cannot succeed or no reasonable person can reasonably expect to obtain the relief sought;
- 3) bringing actions for an improper purpose, such as to harass or oppress other parties, rather than to assert legitimate rights;
- 4) rolling forward grounds and issues into subsequent actions, and repeating and supplementing them, often with actions against lawyers who have acted for or against the litigant in earlier proceedings;
- 5) failing to pay the costs of unsuccessful proceedings; and

6) persistently taking unsuccessful appeals from judicial decisions.

[117] Each of these indicia are present in this case.

[118] Mr. Ashraf has repeatedly and persistently brought proceedings and appeals on issues that have already been determined by a court of competent jurisdiction. When it was evident that he had exhausted all avenues at the Federal Court, Mr. Ashraf tried to transfer his case to the BC Supreme Court. When that was rejected, he filed the Notice of Civil Claim in the BC Supreme Court and immediately sought summary relief. When his claim was dismissed, he filed an appeal and refused to endorse the draft form of order. When the Registrar proceeded to settle the terms of the order, Mr. Ashraf commenced this Petition, and raised the same issues that he had raised before Justice Thomas.

[119] Mr. Ashraf's singular goal of seeking retribution against the Respondents in circumstances where no reasonable person can reasonably expect to obtain the relief sought, has taken him to two tribunals (the Canada Industrial Relations Board and the Canadian Human Rights Commission); two trial courts (the Federal Court Trial Division and the BC Supreme Court); two appeal courts (the Federal Court of Appeal and the BC Court of Appeal); and the Supreme Court of Canada. With the exception of some short leave applications and a no fee status ruling, Mr. Ashraf has been rebuffed at every stage of his legal crusade. The reasons for rejecting his claims and appeals are as numerous as the grounds on which they have been brought. They include the expiry of limitation periods, lack of jurisdiction, failing to disclose a reasonable cause of action; and *res judicata*.

[120] Between criminal complaints, human rights complaints, class proceedings, civil actions, petitions, judicial reviews, motions, applications, appeals, reconsideration requests, and leave applications, Mr. Ashraf has left no stone unturned in his relentless quest for "justice". The central theme in all of these proceedings are the circumstances surrounding Mr. Ashraf's termination at Jazz, and his view that he was mistreated by his co-workers, employer, and Union.

[121] Operating on the assumption that bigger is better, his court filings have often included pleadings from previous failed proceedings, and encompassed dozens (if not hundreds) of pages. One of his leave applications to the Supreme Court of Canada was 684 pages long.

[122] In each successive filing following a failed bid, Mr. Ashraf has thrown his net wider and farther. He has cast aspersions against the Court. He has suggested that Justice Thomas acted improperly and with bias because he applied “a preconceived notion formed beforehand without adequate evidence and merit that lead to violation of the legal obligation under the Charter” (Petition, Part 2, para. 33). He has gone so far as to suggest that the order of Justice Voith was made in bad faith: *BCCA No. 4*, at para. 11.

[123] Mr. Ashraf’s most recent gambit has included lobbying unsubstantiated allegations of wrongdoing against counsel for the Respondents.

[124] Mr. Ashraf has failed to pay the costs of unsuccessful court proceedings. To date, he owes \$21,880.14 in costs to Jazz or the Respondents. This is comprised of eight costs awards made by the Federal Court (Trial and Appeal Divisions, collectively); one award made by the BC Supreme Court (Justice Thomas); two awards made by the BC Court of Appeal; and one award made by the Supreme Court of Canada. It does not include the costs awards that are pending determination, including from this failed proceeding.

[125] Mr. Ashraf’s obstinate pursuit of the Respondents has continued in the face of substantial judicial criticism. Mr. Ashraf first faced criticism from both levels of Federal Court. In dismissing one of Mr. Ashraf’s appeals, the Federal Court of Appeal unequivocally found that Mr. Ashraf’s breach of *Charter* claim was ill-founded as the *Charter* does not apply to Jazz. It also found that Mr. Ashraf’s claims against the Respondents fell exclusively within the ambit of the collective agreement.

[126] Despite the Federal Court of Appeal’s clear decision on these issues, Mr. Ashraf nonetheless argued throughout his BCSC Action that Jazz had breached

his *Charter* rights, and that he was entitled to a remedy against Jazz for conduct related to his employment and dismissal.

[127] Justice Thomas' unequivocal ruling about the Court's inability to hear the employment related claims on jurisdictional grounds, and the subsequent three decisions of the Court of Appeal finding no merit to Mr. Ashraf's arguments, have been completely ignored by Mr. Ashraf. Rather than giving him pause, he has pressed on making groundless claims and advancing the same arguments in this Petition proceeding that have already been rejected by countless courts.

[128] Not even a vexatious litigant order, such as the one pronounced by the Federal Court of Appeal on March 4, 2024, which bars Mr. Ashraf from instituting new proceedings in that Court without leave, has deterred Mr. Ashraf from persisting before this Court with his meritless claims.

[129] Consequently, I am satisfied that an order should be made under s. 18 of the *Act*.

[130] I now turn to the terms of the Order. The main question for me is whether the s. 18 order should be restricted by subject matter or parties. Counsel for the Respondents asks for a broadly worded order that would prevent Mr. Ashraf from instituting any legal proceeding before this Court, regardless of who it is against and what it is about.

[131] In *Dick* at paras. 23-30, Justice Griffin addressed the need for broad vexatious litigation orders to protect the public, particularly where litigants (such as Mr. Ashraf), persist in attempting to re-litigate claims that are found to be meritless. Although Justice Griffin was referring to s. 22 of the *Court of Appeal Act*, S.B.C. 2021, c. 6, her following comments have equal application to the circumstances of this case:

[30] In short, Mr. Dick has proven himself unable to resist abusing the process of the court. He makes very little effort to file sensible and complete documents, initiating applications that then cause others to expend valuable resources trying to make sense of what he is seeking, including resources to review the lengthy and convoluted history of the litigation. This drives up the

costs for opposite parties but also wastes very limited public resources devoted to staffing and running the courts, as well as wasting judicial resource. These limited resources end up being spent on his duplicative and frivolous matters, and are then less available to the people who truly need access to justice. These circumstances in my view justify the broad vexatious litigant order envisioned by s. 22.

[132] It was evident during the course of this lengthy hearing, that Mr. Ashraf has no respect or understanding of the concept of finality of litigation. To defend his continuous abuse of the court process, he asserted at the hearing that “it’s never too late to re-open a case”. Further, he stated that he was allowed to pursue further litigation as “I have doubts of bad faith...I am allowed to have my doubts”. Mr. Ashraf was unable to provide the Court with any legal authority to support either of these propositions.

[133] In my view, a narrowly worded order restricted only to these parties will not achieve the intended purpose of protecting the public and putting an end to Mr. Ashraf’s vexatious litigation. Rather, it will likely give Mr. Ashraf further incentive to be more creative in his efforts to extract some form of relief or compensation for alleged historical wrongs arising from his employment at Jazz, with no regard to whom he implicates or what grounds he advances.

[134] Mr. Ashraf has shown himself to be a person who will do anything or say anything in order to advance his cause.

[135] When Mr. Ashraf was before Justice Thomas, he advised the Court that he had sworn an information with the police to have charges brought against the Respondents, and that the charges were stayed. He further stated that he appealed the stay to the Federal Court and that it was upheld: *BSCS Decision*, at paras. 13 and 32. No evidence was provided to support these assertions.

[136] At this Petition hearing, Mr. Ashraf advised that he had gone to the police to lay an information alleging perjury by the Respondents, and that the Defendants were criminally charged on February 2, 2024. However, when pressed, he admitted that no charges had been laid. Rather, he stated that he had attended at the police

station to make a complaint against the Respondents, but was advised by the police that his file would be closed as he had to exhaust all avenues of appeal before they would take any further steps.

[137] As another example, during the hearing Mr. Ashraf was asked whether he had commenced any proceedings against a Stephane Bedard or Tanya Martin. Both their names showed on the court docket as defendants in the BCSC Action. Mr. Ashraf admitted that he knew these persons to be co-workers who were present at a meeting that he had attended while employed at Jazz. However, he emphatically denied filing any court documents with their names on them.

[138] When the Court Clerk searched the court files during this hearing, she located a short leave court application prepared by Mr. Ashraf which had Mr. Bedard's and Ms. Martin's names added to it in the style of cause. Only then did Mr. Ashraf admit that he had named Mr. Bedard and Ms. Martin as respondents in a court filing, even though they were not named in the Petition. However, Mr. Ashraf insisted that he had decided not to pursue Mr. Bedard and Ms. Martin, and did not name these additional co-workers in any other court filings. It is difficult to ascertain the veracity of this assertion without going through each document of the voluminous court file. Suffice it to say that I find little reliance can be placed on bald assertions made by Mr. Ashraf in the course of this litigation.

[139] There exist very good reasons to pronounce a s.18 order that goes beyond these parties and covers other persons, known or unknown, whom Mr. Ashraf may set his sights on in the future.

[140] There is good reason to make an order that goes beyond the subject matter of Mr. Ashraf's employment with Jazz, and also covers matters arising from his litigation against Jazz. Notably, while the original complaint made by Mr. Ashraf arises from events during his employment with Jazz, after each legal defeat he has broadened his scope wider and wider. Most recently, he has attempted to bring additional co-workers into the litigation (albeit using improper legal procedures), tried to seek relief against legal counsel for Jazz for alleged improper conduct (again

using improper legal procedures), and has cast aspersions on the Court. In my view, it is only a matter of time that Mr. Ashraf will commence separate litigation against these persons in order to advance his goals.

[141] Having said that, I am not prepared to make an open-ended order that is not restricted by the above subject matter. Mr. Ashraf is currently enrolled in a paralegal program which he anticipates completing by the end of this year. It is doubtful that Mr. Ashraf will be able to secure employment as a paralegal, given his conduct of instituting vexatious proceedings in this court and the Federal Court. Nevertheless, I will allow for the possibility that Mr. Ashraf may have reasonable grounds in the future to institute legitimate legal proceedings unrelated to the subject matter of his employment (or termination of employment) with Jazz or related litigation.

[142] Consequently, I am not prepared at this time, to pronounce an order that is not restricted by subject matter. However, nothing in these reasons should be read to mean that I have foreclosed that possibility from occurring in the future, should Mr. Ashraf persist with his vexatious conduct.

B. Conclusion

[143] I find the following comments by Justice McKinnon in *West Vancouver School District No. 45 v. Callow*, 2014 ONSC 2547, to be particularly apt in this case:

[1] Roger Callow is a litigant possessed of seemingly inexhaustible stamina. His behaviour suggests that he views the Canadian court system as something akin to a perpetual, all-day, all you can eat buffet. Having been rebuked by the courts and tribunals of British Columbia, the Federal Court of Canada and the Supreme Court of Canada, Mr. Callow has now taken aim at Ontario. Ontario lacks the jurisdiction to deal with his case. As a result, Mr. Callow's litigation must be stopped. Now.

[144] While Mr. Ashraf's litigation has not yet crossed provincial boundaries, given the proliferation of litigation that he has already left in his wake, it is only a matter of time – unless he is stopped.

[145] I am satisfied that Mr. Ashraf has habitually, persistently and without reasonable grounds, instituted vexatious legal proceedings in the Supreme Court of

British Columbia. Consequently, an order under s. 18 of the *Supreme Court Act* prohibiting Mr. Ashraf from instituting legal proceedings without leave of the Court, is warranted.

[146] I am also satisfied that it is appropriate to make the s. 18 order broad, and cover any legal proceedings continued, commenced or attempted to be commenced, by Mr. Ashraf in relation to: any of the Respondents; his employment with Jazz; and any proceedings which are in any way connected to the subject matter of the proceedings in the BC Supreme Court Registry File Number VA S223722, including the BCSC Action or this Petition.

[147] Finally, given Mr. Ashraf's past obstructive conduct in relation to approving draft orders, his signature on the Order flowing from this hearing should be dispensed with.

V. COSTS

[148] Costs generally follow the event. In this case, the Respondents were successful and are entitled to their costs of this Petition proceeding.

[149] By bringing no fee applications and filing this Petition in a dismissed proceeding, Mr. Ashraf has used all means possible to immunize himself from paying court fees. At the same time, he has ignored the cost awards made against him by the Federal Court (trial and appellate), the BC Courts (trial and appellate) and the Supreme Court of Canada. Mr. Ashraf has also shown no ability or willingness to pay costs in the future.

[150] Mr. Ashraf has forced the Respondents to expend substantial resources in defending against his vexatious claims through numerous proceedings in various Courts, with no prospect of recovering the costs awarded to them. Mr. Ashraf has driven up the Respondents' legal costs through incomprehensible pleadings and submissions, which frequently run into the hundreds of pages. The Respondents have borne substantial costs in defending against Mr. Ashraf's actions. Mr. Ashraf

has in turn failed to pay any of the costs ordered against him, which currently exceed \$21,000.

[151] Given Mr. Ashraf’s conduct during this litigation, a special costs award would be warranted. However, Counsel for the Respondents is not seeking such an award, noting that there are already 11 unpaid costs orders, and no prospect of recovery. Instead they have asked that a lump sum award of \$3,000 be granted.

[152] Having regard to the tariff items, the length of the hearing, and the number of applications that have been brought in this Petition proceeding, I am satisfied that an award of lump sum costs of \$3,000, payable by Mr. Ashraf to the Respondents, is appropriate.

VI. ORDERS MADE

[153] I therefore Order as follows:

- 1) The Petition filed June 8, 2023 is dismissed.
- 2) The Petitioner, Affan Ashraf (and anyone acting on his behalf) may not, except with leave of a justice of the Supreme Court of British Columbia, institute further proceedings in any Registry of the Supreme Court of British Columbia, in relation to: any of the Respondents; his employment with Jazz; any proceedings which are in any way connected to the subject matter of the proceedings in the BC Supreme Court Registry File Number VA S223722, including the BCSC Action or this Petition. For further clarity:
 - a) The term “institute further proceedings” includes but is not limited to, the act of commencing, or attempting to commence, or continuing: any action, suit, cause, matter, appeal, petition proceeding, requisition proceeding, application or motion. This includes any appeals to the BC Supreme Court of a Registrar’s order, Associate Judge’s order, or Provincial Court Judge’s order.
 - b) Matters related to Mr. Ashraf’s “employment with Jazz” include but are not limited to: any acts of Mr. Ashraf’s co-workers while he was employed at Jazz or which lead to his discipline or termination by Jazz; any matters related to his termination; and any actions or omissions of his Union during the course of Mr. Ashraf’s employment with Jazz, including the Union’s decision to withdraw Mr. Ashraf’s grievance.

- c) Matters related to the “subject matter of the proceedings”, include but are not limited to actions or omissions of the Respondents’ counsel or any other persons or decision makers (including Justices, Associate Judges, or Registrars of this Court) which were done during the course of the BCSC Action or this Petition proceeding.
- 3) Any application filed pursuant to paragraph 2 of this Order must be brought with a minimum of eight days’ notice to the affected parties or their known counsel.
- 4) The Petitioner, Affan Ashraf, must describe himself in any application for leave or document to which this Order applies as “Affan Ashraf” and not by using initials, an alternative name, structure, or a pseudonym.
- 5) Any document or process filed by the Petitioner, Affan Ashraf, in contravention of this Order, or any process inadvertently filed or received by the Registry in contravention of this Order, is a nullity.
- 6) The Respondents will not be obliged to respond to any process that is filed by Affan Ashraf in contravention of this Order, or any document or process inadvertently filed or received by the Registry in contravention of this Order.
- 7) The Petitioner shall pay the Respondents costs of this proceeding in the lump sum amount of \$3,000.00.
- 8) The Petitioner’s signature on this Order is dispensed with.

“Shergill J.”