Federal Court Cour fédérale

Date: 20210709

Docket: T-1315-18

Citation: 2021 FC 728

Ottawa, Ontario, July 9, 2021

PRESENT: The Honourable Mr. Justice Brown

BETWEEN:

CHRIS HUGHES

Applicant

and

CANADIAN HUMAN RIGHTS COMMISSION

Commission

and

TRANSPORT CANADA

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] The Applicant moves under Rule 51 of the *Federal Courts Rules*, SOR/98-106 [*Rules*], for an order quashing Case Management Judge Ring's May 21, 2021 order [Abeyance Oder]

placing in abeyance two contempt motions brought by the Applicant [Two Contempt Motions], and an order that the Two Contempt Motions proceed forthwith.

II. Facts

[2] On June 1, 2018, the Canadian Human Rights Tribunal [Tribunal] released a remedial decision in favour of the Applicant [Remedial Order]. The Remedial Order was based on Transport Canada having unlawfully discriminated against the Applicant in 2014. The Tribunal ordered, generally, two main categories of relief: monetary damages and instatement of the Applicant to a specified position at Transport Canada, subject to the Applicant obtaining the required security clearance.

[3] Transport Canada was ordered to pay five years wages, less statutory deductions, including all pension deductions which were to be paid into the pension plans. The Applicant submits Transport Canada paid him nine months late and did not remit deductions to the Canada Revenue Agency, the Superannuation Plan or the Canada Pension Plan [CPP]. The Applicant says the manner in which the pension deductions are paid into CPP and the Superannuation Fund is through tax information slips, which Transport Canada has not provided to him despite repeated requests to Transport Canada, to the Honourable Marc Garneau former Minister of Transport, and to the Honourable Minister Alghabra the current Minister of Transport.

[4] The Applicant says there is non-compliance by Transport Canada, Minister Garneau and Minister Alghabra of the Remedial Order and thus *prima facie* contempt of court. He says this gave rise to the Two Contempt Motions he has brought, together with a Rule 431 motion seeking

another person to issue the required tax forms – T4, T5 and T1198 [Tax Forms], as discussed below.

[5] The Respondent has laid out the procedural history in this matter and unless specifically mentioned I will rely on it.

[6] The Applicant registered the Remedial Order pursuant to subsection 424(2) of the *Rules*, and under section 57 of the *Canadian Human Rights Act*, RSC 1985, c H-6 [*Human Rights Act*], with the Registry of the Federal Court on July 9. 2018.

[7] On August 7, 2018 and November 13, 2018, he served motions alleging contempt of court against Canada and four Crown servants for failing to execute the Remedial Order.

[8] On November 8, 2019, Case Management Judge Ring heard a motion for a show cause order.

[9] On November 28, 2019, Case Management Judge Ring dismissed the Applicant's motion for a show cause order based on the alleged failure to comply with the Remedial Order [No Contempt Order]. The Applicant appealed the No Contempt Order pursuant to Rule 51 to this Court.

[10] There is an Order of Justice Heneghan in the Court file dated January 15, 2019, determining the Respondent's obligation to satisfy the Tribunal's judgment was not stayed as the Respondent had erroneously argued.

[11] A little over one year later (this delay is not explained) he says in February, 2020, Transport Canada finally paid the Applicant what appears to be most of the sum awarded by the Tribunal – over $500,000 - net of statutory deductions for a net payment of $352,970.07.

[12] However, for whatever reasons, Transport Canada did not provide any forms for use by the Applicant in filing his personal income taxes, perhaps leading the Applicant to allege (as he does now) that the Minister has not remitted required deductions to the Canada Revenue Agency, the Superannuation Plan or CPP. There is no information on the record that those remittances have or have not been made.

[13] On October 20, 2020, Justice Little dismissed the Applicant's appeal of the No Contempt Order in *Hughes v Canada (Human Rights Commission)*, 2020 FC 986 [*Hughes 2020*]. The Applicant has appealed *Hughes 2020* to the Federal Court of Appeal.

[14] On December 29, 2020, the Applicant delivered a second motion alleging contempt of court against Transport Canada, the then-Minister of Transport the Honourable Marc Garneau, and counsel with the Department of Justice. This time he alleged that Transport Canada was in contempt of the Remedial Order by not issuing him the tax forms – T4, T5 and T1198 [Tax

Forms] – in relation to the payment made by Transport Canada to the Applicant in February 2020 pursuant to the Remedial Order. This motion was not accepted for filing by the Court.

[15] In another motion dated February 22, 2021, Mr. Hughes sought an order under Rule 431 that Transport Canada be compelled to produce those same tax forms under the Remedial Order [Rule 431 Motion].

[16] On March 6, 2021, the Applicant delivered a third motion titled “Contempt of Court Charge #3”, alleging contempt of court against the current Minister of Transport, the Honourable Omar Alghabra, and counsel with the Department of Justice, also relating to the Tax Forms.

[17] On March 13, 2021, Mr. Hughes delivered an amended version of his December 29, 2020 motion, now dated March 6, 2021 and titled “Contempt of Court Charge# 2 Refiled.” The Applicant says the Canadian Human Rights Commission acknowledged service but the Attorney General did not, leading the Applicant to ask the Court to validate service under Rule 147.

[18] The Applicant says the Attorney General sent a letter to the Court on March 24, 2021 with availability for a case management conference to discuss the three motions and advise on service issues. The Applicant says the Attorney General did not mention a vexatious litigant motion in this letter. The Attorney General also said in its letter, “we have contacted Mr. Hughes and did not receive a response,” the Applicant says this comment was not true. The Applicant says a vexatious litigant motion was not on the agenda, because it was not mentioned in Case Management Judge Ring’s direction scheduling the case management conference.

[19] On March 24, 2021, Transport Canada filed a motion under section 40 of the *Federal Courts Act*, RSC 1985, c F-7 [*Act*], seeking an order, *inter alia*, that the Applicant be declared a vexatious litigant [Vexatious Litigant Motion]. The Applicant says this was supposed to be heard in a different case management conference. I pause to note that would be a matter to be scheduled by the Case Management Judge. The Applicant says he asked the Court Registry to remove the Vexatious Litigant Motion due to redactions under Rule 72 and 74 but they did not. Again, I pause to note the Registry cannot be faulted to declining to act on the Applicant's demand.

[20] At the case management conference on March 30, 2021, counsel for the Attorney General said he wished to add the Vexatious Litigant Motion to the agenda, the Applicant says he "strenuously objected" but Case Management Judge Ring allowed it to be added and to proceed. As noted that was for the Case Management Judge to schedule; she was obviously not convinced with the Applicant's reasons for a further case management conference.

[21] On March 31, 2021, Case Management Judge Ring directed that the Two Contempt Motions be accepted for filing but placed them into abeyance, pending the outcome of the Respondent's Vexatious Litigant Motion under section 40 of the *Act*, and the Applicant's Rule 431 Motion regarding the tax documents. The Applicant says neither the Applicant nor the Respondent requested an abeyance. He says Case Management Judge Ring placed the Two Contempt Motions in abeyance on her own initiative, which was a "shock" to the Applicant.

[22] On April 13, 2021, Prothonotary Milczynski set timelines for the Applicant's response to the Vexatious Litigant Motion, and Transport Canada's reply. In that direction, the Case Management Judge noted the Vexatious Litigant Motion should be determined first. The Applicant says the Court fast tracked the Vexatious Litigant Motion over his objections.

[23] On April 15, 2021, the Chief Justice set the Vexatious Litigant Motion for hearing on June 30, 2021 [Vexatious Litigant Hearing].

[24] On April 27, 2021, the Applicant abandoned the Rule 431 Motion.

[25] On May 3, 2021, the Applicant says he attempted to file a Motion to Strike the Vexatious Litigant Motion. Case Management Judge Ring did not allow the Motion to Strike to be filed and had the motion rejected via Direction dated May 5, 2021 stating the Applicant should oppose the Vexatious Litigant Motion and the hearing and not bring a Motion to Strike. The Applicant says this action was beyond Case Management Judge Ring's jurisdiction and the Motion to Strike should have been accepted and argued. I pause to note there is no merit in this suggestion by the Applicant – a party who opposes a motion simply files a response, and opposes it; there is no need to initiate a separate motion to strike.

[26] On May 11, 2021, the Applicant wrote to the Court demanding that the Two Contempt Motions be "fast tracked" and heard before the Vexatious Litigant Motion.

III. Decision under review

[27] On May 21, 2021, Case Management Judge Ring ordered that the Two Contempt Motions be held in abeyance pending determination of the Vexatious Litigant Motion [Abeyance Order].

[28] Also on May 21, 2021, Case Management Judge Ring granted the Applicant an extension of time to file his response to the Vexatious Litigant Motion to June 4, 2021 [Timelines Order].

[29] In a motion dated May 28, 2021, the Applicant tendered for filing this motion under Rule 51 appealing the Abeyance Order and Timelines Order, setting a hearing for June 2, 2021. Rule 51 says:

Appeal	**Appel**
51 (1) An order of a prothonotary may be appealed by a motion to a judge of the Federal Court.	**51 (1)** L'ordonnance du protonotaire peut être portée en appel par voie de requête présentée à un juge de la Cour fédérale.

[30] In a further motion dated June 2, 2021, the Applicant seeks an order under section 44 of the *Act*, that, *inter alia*, Transport Canada is required under the Remedial Order to produce the Tax Forms as those he complains of in the Two Contempt Motions, and that he sought in his now-abandoned Rule 431 Motion [Section 44 Motion]:

***Mandamus*, injunction, specific performance or appointment of receiver**	***Mandamus*, injonction, exécution intégrale ou nomination d'un séquestre**

44 In addition to any other relief that the Federal Court of Appeal or the Federal Court may grant or award, a *mandamus*, an injunction or an order for specific performance may be granted or a receiver appointed by that court in all cases in which it appears to the court to be just or convenient to do so. The order may be made either unconditionally or on any terms and conditions that the court considers just.	**44** Indépendamment de toute autre forme de réparation qu'elle peut accorder, la Cour d'appel fédérale ou la Cour fédérale peut, dans tous les cas où il lui paraît juste ou opportun de le faire, décerner un *mandamus*, une injonction ou une ordonnance d'exécution intégrale, ou nommer un séquestre, soit sans condition, soit selon les modalités qu'elle juge équitables.

[31] At a case management conference on June 8, 2021, Justice Bell set June 30, 2021 as the day on which this Court would hear the Rule 51 appeal of the Abeyance Order. The appeal of the Timelines Order was resolved by agreement of the parties.

[32] Therefore, the decision under review in this appeal is the Abeyance Order issued by Case Management Judge Ring on May 21, 2021.

IV. Issues

[33] The issue is whether Case Management Judge Ring committed a palpable and overriding error in placing the Two Contempt Motions in abeyance pending the outcome of the Vexatious Litigant Motion.

V. Standard of Review

[34] On an appeal from a discretionary order of a Prothonotary under Rule 51, the Court applies the standards of review established in *Hospira Healthcare Corp. v Kennedy Institute of Rheumatology*, 2016 FCA 215 [Nadon JA] at paras 68-69 and 79 and used in *Hughes 2020* at para 62. The Federal Court may only interfere with a discretionary decision of a Prothonotary if the Prothonotary made an error on a pure question of law, or if the Prothonotary made a palpable and overriding error on a question of fact or mixed fact and law. This standard is set out in *Housen v Nikolaisen*, 2002 SCC 33 [*Housen*]:

> 8. On a pure question of law, the basic rule with respect to the review of a trial judge's findings is that an appellate court is free to replace the opinion of the trial judge with its own. Thus the standard of review on a question of law is that of correctness: *Kerans*, *supra*, at p. 90.
>
> [Emphasis added]

[35] Justice Stratas in *Canada v South Yukon Forest Corporation*, 2012 FCA 165 explains what the Applicant must show to establish a palpable and overriding error on appeal:

> [46] Palpable and overriding error is a highly deferential standard of review: *H.L. v. Canada (Attorney General)*, 2005 SCC 25, [2005] 1 S.C.R. 401; *Peart v. Peel Regional Police Services* (2006) 2006 CanLII 37566 (ON CA), 217 O.A.C. 269 (C.A.) at paragraphs 158-59; *Waxman*, *supra*. "Palpable" means an error that is obvious. "Overriding" means an error that goes to the very core of the outcome of the case. When arguing palpable and overriding error, it is not enough to pull at leaves and branches and leave the tree standing. The entire tree must fall.
>
> [Emphasis added]

[36] Justice Stratas provides additional guidance in *Mahjoub v Canada (Citizenship and Immigration)*, 2017 FCA 157:

> [61] Palpable and overriding error is a highly deferential standard of review: *Benhaim v. St. Germain*, 2016 SCC 48, [2016] 2 S.C.R. 352 at para. 38; *H.L. v. Canada (Attorney General)*, 2005 SCC 25, [2005] 1 S.C.R. 401. When arguing palpable and overriding error, it is not enough to pull at leaves and branches and leave the tree standing. The entire tree must fall. See *Canada v. South Yukon Forest Corporation*, 2012 FCA 165, 431 N.R. 286 at para. 46, cited with approval by the Supreme Court in *St. Germain*, above.
>
> [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.
>
> [65] There may also be situations where a palpable error by itself is not overriding but when seen together with other palpable errors, the outcome of the case can no longer be left to stand. So to speak, the tree is felled not by one decisive chop but by several telling ones.
>
> [Emphasis added]

[37] On an appeal under Rule 51, a case management judge is assumed to be very familiar with the particular circumstances and issues in a proceeding (*Hughes 2020* at para 67). A case management judge's decision must be afforded deference, especially on factually suffused questions (*Hughes 2020* at para 67). In addition, where a Court is exercising a jurisdiction that is not unlike scheduling or adjourning a matter, the decision maker is afforded a broad discretion

(*Mylan Pharmaceuticals ULC v AstraZeneca Canada, Inc*, 2011 FCA 312 [*Mylan*] [Stratas JA] at para 5).

VI. Analysis

A. *Vexatious Litigant Motion*

[38] The Applicant says the Federal Court has no jurisdiction to consider a vexatious litigant motion under Section 40 of the *Act*:

Vexatious proceedings	**Poursuites vexatoires**
40 (1) If the Federal Court of Appeal or the Federal Court is satisfied, on application, that a person has persistently instituted vexatious proceedings or has conducted a proceeding in a vexatious manner, it may order that no further proceedings be instituted by the person in that court or that a proceeding previously instituted by the person in that court not be continued, except by leave of that court.	**40 (1)** La Cour d'appel fédérale ou la Cour fédérale, selon le cas, peut, si elle est convaincue par suite d'une requête qu'une personne a de façon persistante introduit des instances vexatoires devant elle ou y a agi de façon vexatoire au cours d'une instance, lui interdire d'engager d'autres instances devant elle ou de continuer devant elle une instance déjà engagée, sauf avec son autorisation.

[39] The Applicant submits Enforcement of Orders under Part 12 of the *Rules* are "matters". He says Part 12 of the *Rules* are for litigants who have won their legal claims and are seeking to enforce a Court Order to realize their "fruits of judgment". He says he is legally entitled to the Tax Forms directly linked to the Remedial Order, which can be enforced through Part 12 of the *Rules*.

[40] The Applicant says instead of complying with the Remedial Order and tax law, the Respondent is trying to delay compliance with the Vexatious Litigant Motion. He says this is an abuse of process, see *Norman v Soule*, 1991 CanLII 921 (BCSC).

[41] The Applicant submits the Respondent's Vexatious Litigant Motion is an improper and illegal application designed to delay judgment. He says there is only one case, *Goela v VIA Rail Canada Inc.*, 2006 FC 562 [Snider J] where the Crown attempted to shut down a Part 12 matter and the Court declined to issue a section 40 declaration. In this case, he said jurisdiction was not raised.

[42] The Applicant submits it was incumbent on Case Management Judge Ring in reviewing the Vexatious Litigant Motion and the letters of the Applicant (and his Motion to Strike) to address the jurisdictional issue.

[43] In my view, there is no merit to the submissions the Court has no jurisdiction to deal with vexatious litigants when proceeding under Part 12, or that the Vexatious Litigant Motion is an abuse of court. Those who proceed in a vexatious manner under Part 12 of our *Rules* proceed in that manner at their peril. They certainly do not have licence to act in a vexatious manner. I am not persuaded Rule 40 does not apply to proceedings under Part 12; I see no reason for this Court to create such an exemption where none is created by express words. In any event, this Court has complete jurisdiction to control its processes including crafting of orders to restrain those litigants who proceed in a vexatious manner: see *Mylan* at para 5 and *Coote v Lawyers'*

Professional Indemnity Co., 2013 FCA 143 at paras 12-13 [*Coote*] [Stratas JA] which highlight the discretion of the Court.

[44] Insofar as bringing the Vexatious Litigant Motion allegedly being an abuse of process, I am not persuaded this motion qualifies for that characterization if only because of the very great number of motions and directions already filed to date. I appreciate the Applicant's frustration given his relatively lengthy battle to win his human rights complaint, and the fact the Respondent elected, as ultimately determined, to unjustly withhold payment of more than $518,000 for a considerable period of time, which refusal to pay the Applicant was remedied only by Order of this Court per Justice Heneghan. However, that frustration does not transform the bringing of a Vexatious Litigant Motion into an abuse of process in the circumstances.

B. *Stay of proceedings – the Abeyance Order*

[45] There is no doubt the Case Management Judge has the ability to Order a case held in abeyance as was done here. See: *Coote* at para 8 which states this jurisdiction is founded upon section 50 of the *Act* and the Court's plenary jurisdiction to manage and regulate its own proceedings, as I have already held.

[46] The Respondent submits in such cases, a stay is authorized where no party is unfairly prejudiced and it is in the interests of justice to do so. This discretion is guided by the factual circumstances of each case and the principle of securing "the just, most expeditious and least expensive determination of every proceeding on its merits" (*Coote* at para 12; Rule 3 of the *Rules*). As stated by the Federal Court of Appeal in *Coote* at para 13, the "Court should exercise

its discretion against the wasteful use of judicial resources. The public purse and the taxpayers who fund it deserve respect."

[47] The Applicant in reply submits *Coote* does not apply. He says that in *Coote* the appeals stayed by the Federal Court of Appeal were within the vexatious litigant proceedings in the Federal Court. The applicant in *Coote* filed a motion to strike the section 40 application in the Federal Court and it was dismissed. He appealed that under Rule 51, which was dismissed and appealed to the Federal Court of Appeal. He says in *Coote* the section 40 motion was opened February 15, 2013, the first appeal was filed March 19, 2013 and the second appeal was filed May 1, 2013.

[48] The Applicant distinguishes *Coote* because he filed all three enforcement motions prior to the Respondent filing the Vexatious Litigant Motion. He says the Respondent is in *prima facie* contempt of court and clearly in non-compliance with tax laws. Therefore, he says *Coote* is not comparable in this case.

[49] From the above, I can see that *Coote* is a different case on its facts, but this does not preclude an abeyance order generally, nor does it preclude the Abeyance Order made in this case.

C. *Role of the Court in enforcement of orders*

[50] The Applicant says on numerous occasions this Court should have been proactive under Part 12 to encourage a non-compliant party to obey a Court order. The Applicant asked Case

Management Judge Ring to challenge the Attorney General on why they have not provided the requested information, but she did not. The Applicant submits it was incumbent on Case Management Judge Ring to ask why the Attorney General failed to comply with the Remedial Order and when they would be filing the Tax Forms.

[51] He submits this failure and the Abeyance Order are errors in law and a misapprehension of the facts in this case. He submits Case Management Judge Ring is allowing a collateral attack on the Remedial Order and Part 12 of the *Rules* and is giving the appearance of shielding two Ministers from contempt charges.

[52] The Applicant submits the Crown's filing of a Vexatious Litigant Motion against an enforcement file, instead of filing the Tax Forms "is a massive abuse of State power and an attack on the *Canadian Human Rights Act*; an assault on the dignity of this Court and finally it undermines and makes a mockery of the Canadian Taxation system." He says it is an error in law for Case Management Judge Ring to have ignore these facts and the laws of contempt/enforcement of orders.

[53] I am not persuaded Case Management Judge Ring erred in these respect. At the hearing before me, while initially reluctant to share the Minister's position, counsel for the Respondent informed the Court he understood the Respondent was not providing the Tax Forms for three reasons. First, the Applicant has chosen to enforce the Tribunal's Order under Rule 424(2) of the *Rules* and section 57 of the *Human Rights Act*, but because there is no requirement in that Order to provide Tax Forms, there is no such obligation to enforce in this Court. Second, and in general

terms, the Respondent says the Applicant is not entitled to the Tax Forms because, and this is only counsel's understanding as other counsel will argue the point, the Applicant was never an employee of Transport Canada – his discrimination complaint was launched because Transport Canada did not hire him, and Transport Canada has not hired him since the Tribunal's decision; never having been an employee, no Tax Forms are owed. The third basis for not supplying the Tax Forms is the Applicant does not need such forms to file his taxes: for this, the Minister cites *McLeod Masonry (1979) Ltd. v The Queen*, [2000] 3 CTC 2271 (TCC) [Proulx J].

[54] I asked for this information when counsel asserted the Tax Forms were not owed to the Applicant; I asked for the basis for this important assertion. I suggested at the hearing the Applicant might benefit from the advice of a tax professional in these circumstances. I am not asked to and make no findings on that.

D. *Treatment of the Applicant*

[55] The Applicant submits he received adverse differential treatment by Case Management Judge Ring. He says Case Management Judge Ring allowed the Attorney General to file documents with an incorrect style of cause but refused the Applicant's motion record with the same error.

[56] The Applicant says the correct Respondent in this case should be the Attorney General but was listed in the court file as Transport Canada. He says he tried to explain this discrepancy to Case Management Judge Ring but says she would not listen and forced the Applicant to

redraft his motion and get a new affidavit, causing a two-month delay and extra costs to the Applicant.

[57] The Applicant provides examples of other cases managed by Case Management Judge Ring in which she allowed various delays to occur and in this case, she set a three-month window for all steps knowing the Applicant did not have computer access for a month. He says this is adverse differential treatment and a rush to judgment which he submits are grounds to quash and vary the order.

[58] I am not persuaded of these arguments; essentially, they are allegations that lack evidentiary and legal bases.

E. *Conflict of interest*

[59] The Applicant submits the Canadian Judicial Council ethical principles state judges should not preside over cases from their prior government local office for a cooling off period of 2 – 5 years. He says the facts "appear to show a conflict of interest" respecting Case Management Judge Ring. He says Case Management Judge Ring was appointed in November 2017 and started working on this matter in August 2018. This file is related to human rights litigation that has been handled by the Vancouver office of the Department of Justice since 2010 and as Case Management Judge Ring worked at this office prior to her appointment, she should not be presiding over this case.

[60] He says on May 11, 2021, he asked the Chief Justice to remove Case Management Judge Ring from all Vancouver local files involving the Applicant but has not heard back. The Applicant says this matter is currently before the Canadian Judicial Council.

[61] He submits these facts "appear to show a conflict of interest" and may explain why Case Management Judge Ring is fast tracking the Vexatious Litigant Motion, slowing down and stopping the Two Contempt Motions and the giving "adverse differential treatment" against the Applicant in favour of the local office where she used to work.

[62] The Respondent submits, and I agree, the onus of establishing a reasonable apprehension of bias lies with the person who alleges it, and the threshold for perceived bias is high (*ABB Inc. v Hyundai Heavy Industries Co*., 2015 FCA 157 [Gauthier JA] at para 55). It seems to me the Applicant is alleging reasonable apprehension of bias when he alleges conflict of interest. The case law holds such an allegation is "'a serious step that should not be taken lightly' because doing so calls into question not only the personal integrity of the judge but also the integrity of the administration of justice" (*Dixon v TD Bank Group*, 2021 FC 101 [Norris J] at para 15).

[63] With respect, I find there is no merit in these submissions. Once again, they lack an evidentiary basis. Making such serious allegations and failing to substantiate them is a factor to be taken into consideration in costs: see *Stubicar v Canada (Deputy Prime Minister)*, 2013 FCA 203 [Gauthier JA].

F. *Prejudice to the Applicant*

[64] The Applicant submits he suffers prejudice and harm from the lack of tax information slips. He cannot file his 2019 tax return on his own given the complexity of the payment he received. He says he is facing late filing penalties and interest by the Canada Revenue Agency and the British Columbia Medical Services Plan has cancelled his supplementary health benefits because of no 2019 tax return. In reply, the Applicant also states he was cut off from COVID-19 benefits because he did not file a 2019 tax return and has had to resort to high interest loans to survive.

[65] The Respondent submits the abeyance does not unfairly prejudice the Applicant. He submits the abeyance is in the interests of justice and keeping with the principles of Rule 3. The Respondent submits the power of contempt is discretionary and courts have consistently discouraged its routine use to obtain compliance with court orders. Its objective is to ensure the smooth running of the judicial process and to protect the dignity of the courts. Contempt is an enforcement power of last resort rather than first resort (*Carey v Laiken*, 2015 SCC 17 at paras 30 and 36).

[66] In reply, the Applicant says neither Transport Canada nor the Attorney General have stated why they refuse to file the Tax Forms and why they are non-compliant with the Remedial Order regarding pensions. I understand this underlying grievance and have at least some level of appreciation of why the Minister is not providing the Tax Forms; this point appears to be one for another hearing on another day.

[67] The Respondent submits there is no urgency in the Two Contempt Motions and there is no relief available to the Applicant even if they were to proceed. It is unclear why the Respondent submits there would be no relief to the Applicant; he might succeed which should stimulate the production of the Tax Forms.

[68] In reply, the Applicant submits there is urgency. The Tax Forms are close to 15 months late and "it is unconscionable that the Crown would even make such arguments". He says the Attorney General fails to address why they have not filed the Tax Forms, if they had done so, the Two Contempt Motions would not have been filed.

[69] The Respondent submits, and I agree, that if the Vexatious Litigant Motion succeeds, the Court may review the Two Contempt Motions to assess whether it is in the interests of justice to allow them to proceed. The Respondent says the outcome of the Section 44 Motion which is scheduled to be hearing concurrently with the Vexatious Litigation Motion on September 9, 2021 will also inform the Two Contempt Motions; I can only say I am hopeful it will.

[70] The Respondent submits should the Section 44 Motion fail, the Two Contempt Motions will have no chance of success and will be unnecessary. Should the Section 44 Motion succeed on the point of whether or not the Remedial Order requires Transport Canada to produce tax forms, this will also inform the outcome of the Two Contempt Motions.

[71] The Respondent submits keeping the Two Contempt Motions in abeyance pending determination of the Vexatious Litigant Motion and Section 44 Motion will ensure the Court is protected against the wasteful use of judicial resources.

[72] I accept these submissions. In my view, the Section 44 issue will be important because it might shed light on the lawfulness of the Minister's position in refusing to provide the Applicant with forms, that I can take judicial notice of, many Canadians are provided Tax Forms for income tax purposes.

VII. Conclusion

[73] At the root of this case and the Two Contempt Motions and other related proceedings is the issue of who, if anyone, should issue the Tax Forms requested by the Applicant but adamantly refused by the Respondent. This issue hopefully will be determined on September 9, 2021, i.e., in about two months time. I am not satisfied either that a show cause proceeding could be arranged with any greater dispatch, or that a show cause proceeding should proceed at all in the absence of determining if the Respondent Minister or his officials are under any duty to issue such tax forms. It seems to me the Case Management Judge recognized this to be the case. Thus, not only am I unable to find her Order tainted by palpable and overriding error, I am of the view the Abeyance Order was the appropriate Order to make in the circumstances of this case. It certainly fell well within the discretion of the Case Management Judge given the considerable deference scheduling Orders are owed under our jurisprudence.

[74] In my respectful view, Case Management Judge Ring did not make an error on a question of law or make a palpable and overriding error on a question of fact or mixed fact and law. Therefore, the Abeyance Order will not be overturned. The Applicant's motion therefore will be dismissed.

VIII. Costs

[75] The Applicant seeks an order of costs in the amount of $150. The Respondent seeks an order of costs in the amount of $750. There is no reason costs should not follow the event. As noted, the Applicant made very serious but unsubstantiated allegations of conflict of interest and adverse differential treatment tantamount to a claim of reasonable apprehension of bias against Case Management Judge Ring. Without those unsubstantiated allegations, I would have assessed costs against the Applicant in the $400 range. But I cannot ignore these unsubstantiated allegations in assessing costs.

[76] That said, neither may I ignore the refusal of the Respondent (until the hearing) to simply tell the Applicant why he has not been given the Tax Forms he, like many Canadian taxpayers, might reasonably expect. I make no determination on this issue, except to express surprise no explanation was provided until the hearing of this motion.

[77] In the circumstances and in my discretion, I find an award of $450 payable by the Applicant to the Respondent is reasonable and will so order.

JUDGMENT in T-1315-18

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.
2. The Applicant shall pay to the Respondent all-inclusive costs fixed in the amount of $450.

"Henry S. Brown"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1315-18
STYLE OF CAUSE:	CHRIS HUGHES v CANADIAN HUMAN RIGHTS COMMISSION v TRANSPORT CANADA
PLACE OF HEARING:	HELD BY WAY OF VIDEOCONFERENCE
DATE OF HEARING:	JUNE 30, 2021
JUDGMENT AND REASONS:	BROWN J.
DATED:	JULY 9, 2021

APPEARANCES:

Chris Hughes	FOR THE APPLICANT (ON HIS OWN BEHALF)
Brian Smith	FOR THE COMMISSION
Craig Cameron S. Rezapour	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Canadian Human Rights Commission Legal Services Division Ottawa, Ontario	FOR THE COMMISSION
Attorney General of Canada Vancouver, British Columbia	FOR THE RESPONDENT