Federal Court Cour fédérale

Date: 20221220

Docket: T-1140-22

Citation: 2022 FC 1769

Ottawa, Ontario, December 20, 2022

PRESENT: The Honourable Mr. Justice Lafrenière

BETWEEN:

COLLINS NJOROGE

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

ORDER AND REASONS

I. Overview

[1] The Applicant, who is self-represented, has moved in writing "pursuant to Rules 55 and 369 of the Federal Courts Rules, SOR/98-106 [Rules], this Court's plenary/inherent powers and/or its authority under the International Covenant on Civil and Political Rights and/or the Convention on the Rights of Persons with Disabilities for an order dispensing with Rule 51(2) and/or the Consolidated General Practice Guidelines in respect of the Applicant's served — but

yet-to-be-filed — appeal [Appeal] of Prothonotary Horne's October 11, 2022 decision; and corollary orders directing (i) the Registry to file the Appeal and (ii) the Attorney General of Canada [AGC] to file its response to the Appeal, if any, in accordance with the Rules."

[2] Despite the verbiage, there is no mistaking that the Applicant is actually seeking an extension of time to appeal the Order of Associate Judge Trent Horne [AJ Horne] dated October 11, 2022 [Order].

[3] The Applicant also requests, what he terms, ancillary orders as follows:

a) an order directing the Canadian Human Rights Commission [CHRC] to bring a formal motion to remove its counsel of record, pursuant to Rule 125;

b) an order that the Court's judgment be made public; and

c) an order for costs against the Respondent and his legal counsel, awarded as special costs, whether or not the Respondent opposes the motion.

[4] As explained in more detail below, the motion for an extension of time to appeal AJ Horne's Order is dismissed, because the Applicant has failed to satisfy the test applicable to an extension of time. The Applicant has also failed to establish that he is entitled to the balance of the relief requested in the notice of motion.

II. Background

[5] A detailed review of the procedural background is required in order to place the present motion in proper context.

[6] The underlying proceeding is an application for judicial review by the Applicant challenging the decision of the CHRC dated April 22, 2022 declining to deal with the Applicant's complaint against the Royal Canadian Mounted Police [RCMP] on the basis that it was deemed to be frivolous. When the proceeding was commenced on June 3, 2022, only the Attorney General of Canada [AGC] was named as respondent.

A. *Dispute over the Certified Tribunal Record*

[7] The Notice of Application included a request pursuant to Rule 317 that the CHRC transmit to the Applicant and to the Registry a certified copy of the following material in the possession of the CHRC:

> 1. all written correspondence (unredacted) – from or to the CHRC, the Applicant, the RCMP, the AGC, and/or the RCMP Agent – in respect of the Complaint.
>
> 2. all internal correspondence relating to the Complaint.

[8] On June 27, 2022, the CHRC transmitted certified copies of the documents that were before the CHRC when it rendered its decision with respect to the human rights complaint filed by the Applicant against the RCMP pursuant to Rule 318. In a covering letter, Ms. Sophia Karantonis, who was at the time counsel with the Legal Services Division of the CHRC, stated

that the CHRC objected to producing all the other documents in its possession requested by the Applicant, setting out four separate reasons for its objection. She indicated, however, that the CHRC remained open to reconsidering its response if the parties were dissatisfied. Ms. Karantonis also advised that she would be representing the CHRC in the matter and asked that all future correspondence or inquiries intended for the CHRC be sent to her attention.

[9] By letter dated July 5, 2022, the Applicant sought directions from the Court on how to proceed in making submissions regarding the CHRC's objection. The matter was referred to Madam Justice Angela Furlanetto, who determined that the application would benefit from case management to help facilitate scheduling and resolution of the outstanding interlocutory issues. On July 13, 2022, Justice Furlanetto ordered that the proceeding be specially managed and be referred to the Chief Justice for the appointment of a case management judge.

[10] On July 19, 2022, the Chief Judge assigned AJ Horne to be the Case Management Judge.

[11] On July 22, 2022, the Applicant wrote to the Court after the parties were unable to agree on a timetable or a procedure for making submissions with respect to the CHRC's Rule 318 objection, or how to deal with the Applicant's anticipated motion to add the CHRC as a respondent.

[12] On July 25, 2022, AJ Horne scheduled a case management conference to take place on August 26, 2022.

[13] After hearing from the parties and Ms. Karantonis on August 26, 2022, AJ Horne issued the following direction:

> Further to a case management conference on August 26, 2022, any motion by the applicant to amend the notice of application (including any request to add the Canadian Human Rights Commission as a respondent) shall be brought in writing, and served and filed by August 31, 2022. Responding motion materials shall be served and filed by September 21, 2022. The respondents to the motion may raise any objections to disposition of the motion in writing in their written representations (subrule 369(2)). The applicant's written representations in reply (if any) shall be served and filed by September 29, 2022.

[14] Later that same day, the Applicant made an informal request to the Registry for an extension of the timelines to comply with direction; however, he was instructed to draft a formal letter in support of his request.

[15] On August 29, 2022, the Applicant wrote the Registry to request that AJ Horne extend the timeline for submitting his motion from August 31, 2022 to Monday, September 5, 2022. Neither counsel for the Respondent nor Ms. Karantonis were consulted before the Applicant submitted his request. Nevertheless, AJ Horne extended the deadline for service and filing of the Applicant's motion to amend to September 6, 2022 as September 5 was a holiday.

B. *Applicant's motion to amend the Notice of Application and to add the CHRC as a respondent*

[16] On September 6, 2022, the Applicant filed his motion for leave to amend the Notice Application pursuant to Rule 75, and to add the CHRC as a respondent pursuant to Rule 104(1)(b). I pause here to note that no affidavit was filed in support of the motion. The motion

record simply contains the Applicant's written representations and a draft pleading with the proposed amendments to the Applicant's Rule 317 request underlined. These are reproduced below:

> 1. all written correspondence (unredacted) – from or to the CHRC, the Applicant, the RCMP, the AGC, and/or the RCMP Agent – in respect of the Complaint , including:
>
> > (i) the records sought in my March 2, 2022 and May 9, 2022 requests for information, pursuant to the Access to Information Act, from the CHRC; and
> >
> > (ii) the records sought in my March 3, 2022 and March 21, 2022 applications for disclosure, before the CHRC rendered the Final Decision.
>
> 2. all internal CHRC correspondence relating to the Complaint, including extant materials created by the CHRC and or its agents via electronic case management systems, including Horizon.
>
> [Emphasis in original.]

C. *Order under appeal*

[17] Following receipt of the responding motions records of the Respondent and the CHRC, and the Applicant's written representations in reply, AJ Horne disposed of the Applicant's motion in writing by Order dated October 11, 2022 with detailed reasons. In short, the Applicant was granted leave to amend item 2 in his Rule 317 request; however, the balance of the relief requested in the notice of motion was dismissed, with costs fixed at $800.00 made payable to the Respondent in any event of the cause.

[18] In arriving at this decision, AJ Horne rejected the Applicant's arguments that the CHRC should be added as a respondent to the proceeding pursuant to Rule 104. He observed that there is no act of Parliament that requires the CHRC to be named as a respondent in this proceeding

and that Rule 303(1)(a) in fact expressly excludes the tribunal in respect of which the application is brought from being named as a respondent.

[19] Turning to the applicable jurisprudence, AJ Horne considered *Hicks v Canada (Attorney General)*, 2019 FCA 311 [*Hicks*], in which the Federal Court of Appeal affirmed at para 10 that: “[a]n administrative tribunal is obligated to be impartial—even after it has made a decision—because the matter may be remitted to it after the appeal is determined.” AJ Horne concluded that to the extent the CHRC has a role in this matter, it is as an intervener, citing *Hicks* at para 11.

[20] AJ Horne was not persuaded that the rules or the jurisprudence cited by the Applicant left room for the discretionary addition of the tribunal as a respondent. He stated that even if Rule 104 granted such a discretion, he would not exercise his discretion on the motion since the presence of the CHRC was not necessary to ensure that all matters in dispute in the proceeding may be effectually and completely determined.

[21] Insofar as the Applicant’s request for leave to amend his Rule 317 request, AJ Horne noted that Rule 75 provides that the Court may, at any time, allow a party to amend a document, on such terms as will protect the rights of all parties. He then referred to the decision of the Federal Court of Appeal in *Canada v Pomeroy Acquireco Ltd*, 2021 FCA 187 [*Pomeroy*] which confirmed, at para 4, that “[t]he controlling principle for allowing an amendment at any stage of a proceeding is whether the amendment assists in determining the real questions in controversy between the parties, provided it would not result in an injustice not compensable in costs and that it would serve the interests of justice.”

[22] AJ Horne considered the function and limits of Rule 317 as reviewed by the Federal Court of Appeal in *Tsleil-Waututh Nation v Canada (Attorney General)*, 2017 FCA 128, including:

- Rule 317 plays a limited role […] (para 106);
- Rule 317 means what it says. The only material accessible under Rule 317 is that which is "relevant to an application" and is "in the possession" of the administrative decision-maker, not others […] (para 107);
- it is often said in the case law that Rule 317 is restricted to the actual material the administrative decision-maker had before it when making the decision and nothing more […] (para 112); and
- Rule 317 does not in any way serve the same purpose as documentary discovery in an action […] (para 115).

[23] AJ Horne also referred to a recent decision of the Federal Court of Appeal in Canada *(Minister of Health) v Preventous Collaborative Health*, 2022 FCA 153 [*Preventous*], in which the Federal Court of Appeal considered whether a third-party challenger has a right to access the tribunal's internal record. In that case, the Court held that Rule 317, which requires a decision-maker on judicial review to provide its record of the decision under review, does not apply to section 44 applications under the *Access to Information Act*, RSC 1985, c A-1 [ATIA]. This is because section 44 applications are "a fresh review of the matter" by the Federal Court, not judicial reviews. The Federal Court of Appeal confirmed that Rule 317 is a limited purpose tool to obtain an administrator's record on a judicial review: *Preventous* at para 10.

[24] AJ Horne accordingly concluded that it was inappropriate to use a Rule 317 request in an application for judicial review to sidestep the procedures and limitation periods set out in the AITA, and that amendments in this respect were improper on their face, stood no chance of success, and should be refused.

[25] As for proposed amendment to add item 1(ii), AJ Horne noted that the Applicant's motion materials did not provide any information regarding the records in question or how the records may relate to the decision under review. He concluded that in the absence of such information, the amendment should be refused.

[26] Finally, AJ Horne granted the Applicant leave to amend item 2 of his Rule 317 request for internal CHRC correspondence, including a "Horizon" case management system.

[27] Insofar as costs of the motion, AJ Horne observed that the Respondent was almost entirely successful on the motion, that no explanation had been provided by the Applicant as to why the permitted amendment was not included in the Notice of Application in the first instance, and that revisiting the Rule 317 request would have the effect of adding cost and delay to the proceeding. Based on these factors, AJ Horne concluded that costs should be awarded to the Respondent in the amount of $800.00, payable in any event of the cause.

D. *Applicant's attempt to appeal the Order of AJ Horne*

[28] On October 20, 2022, the Applicant wrote to the Registry to give notice of his intention to appeal the Order. In his letter, the Applicant acknowledged that the deadline to appeal pursuant to Rule 51 was the following day. The Applicant stated that he had been unwell in

relation to his attention-deficit/hyperactivity disorder and requested a two-week extension to serve and file the required documentation. He also requested that the letter be brought to the attention of AJ Horne "to ensure he is aware that I am unable to file a recusal motion tomorrow as communicated in my October 12, 2022 correspondence."

[29] That same day, the CHRC submitted a letter to the Registry, copied to the Applicant and Respondent's counsel, regarding a typographical error in AJ Horne's Order. The letter was signed by Ms. Ikram Warsame, a colleague of Ms. Karantonis at the Legal Services Division of the CHRC.

[30] On November 3, 2022, the Applicant served the Respondent with a motion record to appeal AJ Horne's Order. It is unclear whether service was effected on the CHRC.

[31] On November 4, 2022, counsel for the Respondent emailed the Applicant and Ms. Warsame to request their availability for a case management conference for the purpose of seeking guidance from the Court on how best to proceed with the Applicant's appeal motion, which appeared to be out of time. The Applicant responded to the email within minutes as follows:

> It is unfortunate that the AGC is now raising issues of timeliness notwithstanding its knowledge, since October 20, 2022, of the Applicant's intentions and circumstances giving rise to the 2-week delay. On a related note, you have personally requested time extensions -- on medical grounds -- with no opposition on my end. Reasonable accommodations are a mutual endeavor.
>
> In light of the foregoing, a case management conference is, respectfully, unnecessary and will only serve to unduly delay the resolution of the issues in dispute on their merits.

> Please be further advised that, prior to your e-mail below, I was unaware Ms. Karantonis (copied below) had <u>formally withdrawn</u> as the CHRC's counsel in respect of this matter. I request such confirmation in a timely manner.
>
> [Emphasis in original.]

[32] On November 7, 2022, counsel for the Respondent wrote to the Registry to requisition a case management conference. She noted that it was unclear whether the Applicant's motion record had been accepted for filing and indicated that the Respondent was seeking guidance from the Court.

[33] On November 8, 2022, the Applicant emailed Ms. Karantonis, with a copy to Ms. Warsame, repeating his request that she provide him with "any <u>formal correspondence</u>" respecting her withdrawal as counsel of record in respect of the proceeding.

[34] On November 9, 2022, Mr. Justice Patrick Gleeson directed that a case management conference be held the next day, subject to the parties immediately advising that they are unavailable. The Applicant promptly responded that he was unavailable but waived his right to attend, stating that he would rely instead on the contents of his November 4, 2022 email.

[35] A series of emails were exchanged between the Applicant and Ms. Warsame on November 9, 2022. It all started with an email from Ms. Warsame to inform the Applicant that she would be acting as counsel for the CHRC and that all correspondence should be directed to her attention. She further advised the Applicant that the CHRC was not a party to the proceeding and its role was limited to Rule 317 requests.

[36] This prompted the following response from the Applicant:

> Whether or not the CHRC is a proper respondent vis-a-vis T-1140-22 is a disputed matter, as you are well aware. The appeal presently before the Court is based, at least in part, on the basis of representations by Ms. Karantonis (copied above) in her capacity as the CHRC's counsel.
>
> For greater clarity, my position is that Ms. Karantonis requires leave of the court before she can remove herself from the record and cease acting for the CHRC. Absent an order from the Court to that effect, I am unable to recognize Ms.Warsame as the CHRC's counsel in this matter.

[37] Ms. Warsame replied that since Ms. Karantonis is no longer employed by the Commission, any emails written to her would not be delivered to the Commission.

[38] The Applicant was not swayed. According to him, the appropriate course of action would be to bring a motion under Rule 125 so the Court may determine whether it is appropriate that Ms. Karantonis be allowed to withdraw.

[39] On November 10, 2022, Justice Gleeson presided over a brief case management conference with counsel for the Respondent and Ms. Warsame. At the end of the conference, Respondent's counsel advised Justice Gleeson that she would follow up with a letter to the Registry to confirm instructions whether the Respondent would consent to the Applicant's informal request for an extension of time. Later that day, she wrote to advise that the Respondent did not consent and that if the Applicant brought a motion requesting an extension of time, the Respondent intended to oppose it.

[40] Justice Gleeson subsequently issued an oral direction that reads in part as follows:

> …In the absence of the Respondent's consent or non-opposition to the Applicant's informal request for relief, the Court requires that the Applicant file a formal motion (see the Court's June 8, 2022 *Consolidated Practice Guidelines* at paras 4 -7). In the circumstances, the Registry shall retain, but not accept for filing, the Applicant's Rule 51 motion record.

E. *The Applicant's motion for extension of time to appeal and other relief*

[41] On November 22, 2022, the Applicant brought the present motion. In support of the motion, the Applicant filed a lengthy affidavit in which he describes himself as a public interest advocate, "motivated to contribute, in any meaningful manner, to the protection of litigants, self-represented or otherwise, and the eradication of arbitrary and discriminatory behaviour, policies, practices, and decisions." In his written representations, the Applicant argues that "the key consideration […] is whether the interests of justice are served by requiring a racialized, differently-abled, self-represented litigant to bring forward a formal motion seeking relief against a two-week delay in circumstances where (i) the Respondent — the supposed guardian of public interest and protector of the rule of law — failed to raise a timely objection, procedural or otherwise, resulting in unnecessary costs, delay, and other prejudice; and (ii) the Registry failed to conduct itself in accordance with the Rules."

[42] Both the Respondent and the CHRC filed responding motion records. The Respondent submits that the motion should be dismissed in its entirety. The CHRC opposes the Applicant's request for an order directing the CHRC to file a motion to remove its former counsel pursuant to Rule 125 but takes no position with respect to the Applicant's other requests.

[43] The Applicant did not file written representations in reply. Instead, he submitted a letter on December 6, 2022 expressing the view that replying to the Respondent's responding motion record "in light of apparent breaches of the principles of natural justice and procedural fairness, could be construed as a waiver of [his] procedural rights under Canadian law and international human rights law."

III. Issues to be Determined

[44] The issues to be decided in this motion are:

1. Should the Applicant be granted an extension of time, dispensing with Rule 51(2) of the Rules, to file his Notice of Motion pursuant to Rule 51?

2. Should the Applicant be granted any of his ancillary orders requesting:

    a. that the Canadian Human Rights Commission bring a motion to remove Sophia Karantonis as counsel of record;

    b. an order that this Court's judgment be made public; and

    c. costs against the Respondent and his counsel?

IV. Analysis

[45] The Applicant has advanced numerous arguments in his written representations. While I have not found it necessary to address all of the arguments in these reasons, the Applicant may be assured that I have carefully considered all of them and reviewed all the material he filed in support of the motion.

A. *The Respondent's response to the Applicant's late service of the Rule 51 Motion*

[46] Before turning to the issues identified above, I wish to address the Applicant's complaint that the Respondent was late to object to the Applicant's request for an extension of time to appeal the Order and failed to comply with Rule 58(2), The said Rule requires a party to bring a motion under Rule 58(1) as soon as practicable after a moving party obtains knowledge of an irregularity. According to the Applicant, the Respondent's conduct was "not only unconscionable and reprehensible, in light of his special role in public law proceedings, but also creates or perpetuates the disproportionate burdens faced by marginalized litigants, including the Applicant." In my view, this argument is unfounded and without merit.

[47] The fact is that there was no irregularity in this case. Rule 51(2) specifically requires that a notice of motion filed to appeal an order of a prothonotary (now Associate Judge) must both be served and filed within 10 days after the order under appeal was made.

[48] Rule 8 gives the Court the discretion to extend the time period in the *Rules*, but only upon the filing of a motion. While relief from the requirement to bring a formal motion for an extension of time may be sought from this Court by way of letter, this informal procedure is only available if the request is made on consent or is unopposed: *Consolidated General Practice Guidelines,* June 8, 2022 (Informal requests for interlocutory relief) [*Guidelines*]. Paragraph 5 of the *Guidelines* plainly states that the letter requesting interlocutory relief must confirm that all parties either consent or do not oppose the request.

[49] The evidence before me establishes that the Applicant did not consult counsel for the Respondent before sending his letter to the Registry on October 20, 2022 to request a two-week extension to bring his motion to appeal. The Applicant did not follow the proper procedure by bringing a motion for extension time as required by Rule 51(2). Nor did he submit a letter in a form compliant with the *Guidelines*. Having failed to properly request an extension of time, the Applicant cannot be heard to complain about delay he attributes to the Respondent, but he himself caused.

[50] The Applicant may have been lulled into a belief that he would be permitted to proceed as he did because AJ Horne had previously granted him an extension of time following a similar informal request for additional time to file a motion, without seeking the consent the consent of the Respondent. However, he should not have assumed that his informal request for extension of time addressed to the Court generally would be treated the same way as was done by the Case Management Judge, who has intimate knowledge of the case and is given great latitude to manage it.

[51] Given that it was likely that a judge would be dealing with the Applicant's request since it involved an appeal of an associate judge, it was reasonable for the Respondent to wait to hear whether the Court was prepared to entertain the deficient request. It was only upon service of the Rule 51 motion record that the Respondent realized that the Applicant had taken a step that was non-compliant with the *Rules*. As the record shows, counsel for the Respondent acted promptly to seek the Court's guidance on how best to proceed when she could not determine based on th

entries in the Court's proceedings management system whether the Applicant's motion record had been accepted for filing.

[52] The Applicant was given an opportunity to persuade the Court that the Respondent was acting unreasonably and that an extension of time should be granted informally at the case conference convened by Justice Gleeson. He did so by relying on his written arguments set out in his email dated November 4, 2022, reproduced at para. 31 above. These are essentially the same arguments being advanced before me. Justice Gleeson decided that a formal motion was required. Given that the Applicant's arguments were not accepted by my colleague, I am not prepared to revisit his procedural determination.

B. *Should the Applicant be granted an extension of time, dispensing with Rule 51(2) of the Rules, to file his Notice of Motion pursuant to Rule 51?*

[53] The Applicant seeks to be dispensed from compliance with the 10-day deadline to appeal set out in Rule 51(2). In doing so, he relies on Rule 55, which allows the Court to vary a rule or dispense with compliance with a rule in special circumstances.

[54] However, Rule 55 is a general rule, while Rule 8 is a specific rule that governs motions for an extension of time. Given that Rule 8 directly applies to the issue in question, it should be applied: *Koch v Borgatti Estate*, 2022 FCA 201 at para 70.

[55] In the oft-cited decision in *Canada (Attorney General) v Hennelly* (1999), 244 NR 399, 1999 CanLII 8190 (FCA) [*Hennelly*] at para 3, the Federal Court of Appeal identified factors to

be addressed by a party seeking an extension of a time period prescribed by the *Rules*. The four factors listed by the Court are whether the party seeking the extension of time can show: (i) a continuing intention to pursue the application; (ii) that the application has some merit; (iii) that no prejudice arises from the delay; and (iv) that there is a reasonable explanation for the delay.

[56] The Applicant's motion for extension of time turns solely on the merits of his appeal, since the Respondent, quite properly, does not dispute that the three other factors listed in *Hennelly* have been established.

[57] The Applicant has included his proposed Rule 51 motion record as an exhibit in the present motion. I therefore have the benefit of the Applicant's evidence and full submissions on appeal.

[58] The standard of review applicable in a Rule 51 motion is the appellate standard set out in *Housen v Nikolaisen*, 2002 SCC 33, correctness for questions of law and palpable and overriding error for questions of fact and questions of mixed fact and law, except where an extricable question of law arises.

[59] It appears from reading the Applicant's written representation in support of his appeal that he does not take issue with AJ Horne's reasons or his conclusions. In fact, the Applicant does not identify any error by AJ Horne in the Order, let alone a palpable or overriding one.

[60] The Applicant instead grounds his Rule 51 motion on allegations of an apprehension of bias and a lack of procedural fairness. The Applicant claims that AJ Horne had predetermined the motion as he did not understand his arguments, mischaracterized them, and did not assess them or reference them in his reasons.

[61] These questions are legal questions; accordingly, the standard of correctness would apply. The Court must be satisfied the duty of procedural fairness was met. In so doing, the focus is on whether a fair and just process was followed having regard to all the circumstances.

[62] The Applicant alleges bias on the part of AJ Horne on the basis of race, ethnicity or disability. However, the grounds put forward suggesting bias or a reasonable apprehension of bias must be serious and specific. There is a strong presumption of judicial impartiality and the law does not lightly or carelessly evoke the possibility of bias in a judge whose oath of office and authority depends upon that presumption.

[63] The test for reasonable apprehension of bias, as set out in *Committee for Justice and Liberty v National Energy Board*, 1976 CanLII 2, [1978] 1 SCR 369 at 394 is settled law:

> What would an informed person, viewing the matter realistically and practically – and having thought the matter through – conclude? Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly.

[64] On the record before me, the Applicant has not identified any particulars of the Order or AJ Horne's history of decisions relating to the Applicant that would indicate an apprehension of bias. All the Applicant does is identify as a racial minority and as a person with a disability and

quote case law. There is a dearth of evidence that AJ Horne was in any way predisposed towards a particular result. To the contrary, it appears from the few dealings that AJ Horne had with the Applicant that he was acutely sensitive to the fact that the Applicant was representing himself and quite open to accommodate his needs when requested.

[65] Insofar as the Applicant's argument that he was not provided procedural fairness, the Applicant's evidence does not support a link between his allegation that his submissions were not heard and the decisions, reasons or actions of AJ Horne.

[66] To be clear, AJ Horne was under no obligation to cite each of the stated facts or arguments of the Applicant in his decision. A lack of detailed reasons, in itself will not justify a *de novo* or correctness review or invite the Court to deviate from the principle of deference owed to an Associate Judge's findings: *Maximova v Canada (Attorney General),* 2017 FCA 230 at para 11.

[67] In the case at hand, I am satisfied that AJ Horne did consider the evidence and arguments that were relevant to the issues raised in the motion before him, as evidenced by his detailed reasons explaining how he reached his conclusions. The Applicant complains that AJ Horne referred to recent decisions of the Federal Court of Appeal in *Pomeroy* and *McCain Foods Limited v JR Simplot Company*, 2021 FCA 4 that were not argued by the parties; however, I fail to see any unfairness in doing so since the decisions were cited, along with other decisions, for general principles that had long been settled.

[68] The Applicant simply makes bald allegations of bias and lack of procedural fairness. In the absence of any evidence to support the serious allegation of bias or breach of procedural fairness, I find that the Applicant has failed to establish that his appeal has any merit.

[69] The Applicant has failed to establish an arguable case that his appeal has any merit on the substance, or based on the other grounds addressed above. In the circumstances, no useful purpose would be served by allowing the appeal to proceed when it would merely delay an unavoidable outcome. The Applicant's request for an extension of time to file his motion record to appeal the Order of AJ Horne shall accordingly be dismissed.

C. *Should the Applicant be granted any of his ancillary orders?*

(1) Should the CHRC be required to file a formal motion to remove Ms. Karantonis as solicitor of record pursuant to Rule 125?

[70] The Applicant seeks an order directing the CHRC to bring a formal motion under Rule 125 if it intends to remove Ms. Karantonis as counsel of record to facilitate this Court's determination as to whether it is appropriate that the solicitor be allowed to withdraw. Rule 125 states:

125 (1) Where a solicitor of record ceases to act for a party and the party has not changed its solicitor of record in accordance with rule 124, the Court may, on a motion of the solicitor, order that the solicitor be removed from the record.	**125 (1)** Lorsque l'avocat inscrit au dossier ne représente plus une partie et que celle-ci n'a pas effectué le changement conformément à la règle 124, la Cour peut, sur requête de l'avocat, rendre une ordonnance de cessation d'occuper.

[71] According to the Applicant, his reasoning is predicated on the rule of law, evidenced by Rule 125 and this Court's jurisprudence. I disagree.

[72] The facts in this case are very similar to those in *Pidasheva v Canada (Minister of Employment and Immigration),* [1994] FCJ No 2068, 93 FTR 106. In that case, the applicant objected to the change of solicitor without prior notice, although both lawyers worked for the Department of Justice. The Court held at paragraph 7 that it was "inconceivable for the Court to impose on the Deputy Attorney General of Canada a duty to file and serve a solicitor change notice each time a different counsel from the Department of Justice had to deal with a case or appear in court to represent the Minister." The Court also held at paragraph 6 that "[…] the respondent's solicitor has always been and continues to be the Deputy Attorney General of Canada, whoever is the person performing that function."

[73] The same reasoning applies here. There is no duty to apply for leave to remove a solicitor of record, or even serve and file a notice of change of solicitor in Form 124A each time a different counsel from the same government organization is assigned to deal with a case before this Court.

[74] The evidence before me is that Ms. Karantonis is no longer employed by the CHRC and the Applicant's file was transferred to Ms. Warsame, another counsel of the CHRC. On October 20, 2022, Ms. Warsame wrote to the parties on behalf of the CHRC and submitted a letter to the Registry. I agree with the CHRC that by taking this step, Ms. Warsame is deemed to be the solicitor of record for the CHRC: see Rule 123.

[75] On November 9, 2022, Ms. Warsame advised the Applicant that she would be acting as counsel for the CHRC. In my view, the Applicant's argument is overly technical and devoid of any practical merit. The change of solicitor did not adversely affect the Applicant in any way since he could easily contact the CHRC by email and at the same office address as Ms. Karantonis.

[76] For the above reasons, I find that Rule 125 is not applicable to the facts of this case and that the CHRC is not required to bring a formal motion under Rule 125 to change its solicitor of record.

(2) Should an order be issued that this Court's judgment be made public?

[77] The Applicant seeks an order that this Court's judgment — including the essential findings, evidence and legal reasoning — be made public. It is wholly unclear why such an order is being requested.

[78] As a general rule, decisions of this Court are public documents unless a legislative provision or court order prohibits public access. There is no confidentiality order or publication ban requested or anticipated in this matter.

[79] In the circumstances, I find that this order is not necessary.

(3) Should an order for costs be issued against the Respondent and his legal counsel?

[80] The Applicant seeks an order for costs against the Respondent and his legal counsel, awarded as special costs, whether or not the Respondent opposes the motion.

[81] The Applicant relies on Rule 400(3), which states, among other things, that "any conduct of a party that tended to shorten or unnecessarily lengthen the duration of the proceeding" is a relevant factor in awarding costs, as is any step in the proceeding that is "improper, vexatious or unnecessary." He also relies on Rule 404(1) which provides that "[w]here costs in a proceeding are incurred improperly or without reasonable cause or are wasted by undue delay or other misconduct or default, the Court may make an order against any solicitor whom it considers to be responsible, whether personally or through a servant or agent."

[82] The Applicant claims that the Respondent's conduct leading up to the present motion can be properly characterized as unreasonable, frivolous, vexatious, unconscionable, and reprehensible and ought to give rise to special costs. He also submits that this Court ought to publicly express its disapproval of the Respondent's conduct in these proceedings. Similarly, he says, the actions and omissions of Respondent's counsel are inconsistent with legal counsel's duty of honesty and candour, as an officer of the Court, and under the Law Society of Ontario's Rules of Professional Conduct, including Rule 3.2-7.

[83] I find that there is no merit to these arguments. First, the Respondent has been entirely successful on the motion. Second, contrary to the Applicant's assertions, the evidence before me

demonstrates that Respondent's counsel has taken reasonable positions throughout the litigation and has been quite patient and fair in her dealings with the Applicant.

[84] Finally, the Respondent submits that in light of the Applicant's alleged health issues, costs of this motion should be borne by each party. In my view, this is an eminently reasonable position to take.

V. Conclusion

[85] For the above reasons, the Applicant's motion is dismissed without costs.

ORDER IN T-1140-22

THIS COURT ORDERS that:

1. The motion is dismissed.

2. Each party shall bear their own costs of the motion.

"Roger R. Lafrenière"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1140-22
STYLE OF CAUSE:	COLLINS NJOROGE v ATTORNEY GENERAL OF CANADA

MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES*

ORDER AND REASONS:	LAFRENIÈRE J.
DATED:	DECEMBER 20, 2022

WRITTEN REPRESENTATIONS BY:

Collins Njoroge	FOR THE APPLICANT (ON HIS OWN BEHALF)
Nicole Walton	FOR THE RESPONDENT ATTORNEY GENERAL OF CANADA
Ikram Warsame	FOR THE CANADIAN HUMAN RIGHTS TRIBUNAL

SOLICITORS OF RECORD:

Attorney General of Canada Ottawa, Ontario	FOR THE RESPONDENT ATTORNEY GENERAL OF CANADA
Legal Services Division Canadian Human Rights Tribunal Ottawa, Ontario	FOR THE CANADIAN HUMAN RIGHTS TRIBUNAL