Federal Court  Cour fédérale

Date: 20160415

Docket: T-569-15

Citation: 2016 FC 418

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, April 15, 2016

PRESENT: The Honourable Mr. Justice LeBlanc

BETWEEN:

DAVID LESSARD-GAUVIN

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

ORDER AND REASONS

Introduction

[1] This is a multi-part motion filed by the applicant regarding an application for judicial review challenging the Canadian Human Rights Commission's (the Commission) dismissal of a total of six similar complaints involving prohibited grounds of discrimination not covered by the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6 (CHRA) (the Act).

[2] The applicant instituted his case in April 2015. However, at the respondent's request, the Court struck the applicant's Notice of Application on June 30, 2015, on the ground that it was premature because the Commission had not yet rendered a final decision regarding the various complaints filed by the applicant. However, the Court allowed the applicant to serve and file a re-amended Notice of Application in the event that the Commission should dismiss said complaints. In the interim, it suspended proceedings.

[3] In three of the six cases submitted to the Commission, the applicant alleges that he was discriminated against because of his language. In each case, the complaint arose from the applicant's participation in a Federal Public Service screening process in which an essential qualification of the position to be filled was command of the English language. The three processes in question were designed to fill positions in Western Canada and the Prairies. In two of the three other cases, the applicant complained that he was discriminated against because of his social condition, i.e. his status as a student, which in one case would have deprived him of certain rights stipulated in the collective bargaining agreement, and in the other, the right to participate in internal screening processes. Finally, in the last case, which also involved the Federal Public Service screening process, the applicant argued that he had been discriminated against because of his political convictions on the ground that, in the context of his security interview, there was an attempt to gather information on complaints and court remedies initiated with—and against—various government agencies.

[4] The Commission rendered its final decisions regarding said complaints between September 24 and December 30, 2015. On January 19, 2016, the applicant filed a re-amended Notice of Application with the Court stating that he sought no fewer than 44 declaratory and

other types of conclusions. This is ultimately the core of his recourse. He is seeking to have "any existing or future Canadian legislative instrument" that includes a closed, restrictive or exhaustive list of prohibited grounds of discrimination declared incompatible with Section 15 of the *Canadian Charter of Rights and Freedoms* (the Charter). In particular, he is seeking a finding that, in order for any such instrument to comply with Section 15 of the Charter and the standards of international law, it must be interpreted as comprising an open list of prohibited grounds of discrimination, which must include language, opinion, political conviction and social condition, in this case the status of student.

[5] His avowed objective is to "reposition Canada as a leader in matters of fundamental rights" and to align the right to equality in Canada with his idea of international rights, in particular the International Covenant on Civil and Political Rights (Motion record, page 31). He is also asking the Court to recognize that this action is the "work" that he has to complete for a course on equality and discrimination offered at the Laval University Faculty of Law during the 2016 winter session. He says this work will be evaluated and graded (Notice of Motion, at paragraph 9).

Motion under study

[6] This motion was filed on January 27, 2016. As I have already mentioned, it contains several parts. In particular, the applicant is seeking:

a. To receive authorization to file any new affidavits in support of the re-amended Notice of Application within 20 days of the date of this order;

b. To be granted both private and public interest standing, the current case being in the public interest, according to him;

c. To have counsel remunerated by government assigned to him and that a sum of money be granted to him by the government to enable him to retain the services of expert witnesses;

d. That an *amicus curiae* be appointed by the Court;

e. That it be declared that the re-amended Notice of Application raises questions of general importance within the meaning of Rule 110 of the *Federal Courts Rules* SOR/98-106 (the Rules) or constitutional questions within the meaning of Section 57 of the *Federal Courts Act* R.S.C., 1985, c. F-7 and that, if applicable, the notices required under these provisions be served by the Administrator on the attorneys general of each province and territory and every provincial and territorial human rights commission or, subsidiarily, by the applicant at an affordable cost;

f. That the Attorney General of Canada be ordered not to adopt an "aggressive," "energetic" or "very defensive" attitude of opposition.

g. That the 20-day time limit specified in Rule 309 for serving and filing the Applicant's record be extended to 40 days;

h. That the Court make the necessary arrangements to have the hearing of the applicant's recourse held at Université Laval in Québec to allow the maximum number of students to attend; and

i. To specify Rule 174's impact on this case to which the order issued on June 30, 2015, refers.

[7] The applicant also asks the Court to rule on the Commission's objection to his request to have material transmitted in accordance with Rule 317. The substantial list of material that the applicant is requesting be transmitted is presented in the appendix to this order.

[8] One part of the motion is not challenged, another is out of order, and some parts of the motion are premature. Thus, the respondent does not oppose the application to file any new affidavits in support of the re-amended Notice of Application within 20 days of the date of this order. Given the order issued on June 30, 2015, this application is justified and, consequently, allowed.

[9] Moreover, the applications regarding the time limit for filing the Applicant's record and setting the location of the hearing are premature. At this stage, there is no basis for overriding the procedure and time limits set out in Part 5 of the Rules. In particular, I find it hazardous to make changes to the time limit for filing the Applicant's record when the parameters of his recourse have not been finalized, and the rationale for doing it is strictly hypothetical. The issue of the place at which the hearing should be held must be resolved in accordance with the requisition for hearing stipulated in Rule 314.

[10] Finally, the application regarding the scope of Rule 174 on how the applicant should conduct and word his pleading and understand, in doing so, the order issued on June 30, 2015, is out of order, because the applicant is ultimately seeking the Court's advice on this matter, a role that it must refrain from playing (*Thom v. Canada*, 2007 FCA 249, at paragraph 14; *Bernard v. Canada (Revenue Agency)*, 2015 FCA 263, at paragraphs 39-43).

[11] That said, all other aspects of the motion are challenged by the respondent.

[12] In the days following the hearing of this motion (the main motion), the applicant filed a motion under Rule 369 (the motion in writing) requesting an order to (i) transform this

proceeding into a specially managed proceeding; (ii) authorize the filing of a document identifying, for the benefit of the Court, the relevant passages of the authorities that he submitted in support of this motion (the reference document); and, (iii) draw his attention to any evidentiary and procedural issues in the Motion record that he filed along with the main motion and allow him to remedy them. The respondent opposed the motion, except the part regarding the filing of the reference document.

[13] Because it is closely related to the main motion, the motion in writing will be addressed in these reasons.

Public interest standing

[14] In exercising the discretion to grant public interest standing, the Court must consider three factors: (i) whether the case before the Court raises a serious justiciable issue; (ii) whether the party seeking this standing has a real stake or a genuine interest in the case; and, (iii) whether the proposed case is a reasonable and effective way to bring the issue before the courts *Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45, at paragraph 20, [2012] 2 S.C.R. 524 [*Downtown Eastside Sex Workers*]).

[15] Even if a purposive approach is appropriate in assessing these factors, the Supreme Court of Canada, in *Downtown Eastside Sex Workers*, above, noted that the courts have long recognized that limitations on standing are necessary, and consequently, "not everyone who may want to litigate an issue, regardless of whether it affects them or not, should be entitled to do so" (*Downtown Eastside Sex Workers*, at paragraph 22). The considerations that favour such an

approach are related to (i) properly allocating scarce judicial resources and screening out the mere busybody; (ii) ensuring that courts have the benefit of contending points of view of those most directly affected by the determination of the issues; and, (iii) preserving the proper role of courts and their constitutional relationship to the other branches of government (*Downtown Eastside Sex Workers*, at paragraph 25). Ultimately, the Court must seek to strike a balance between ensuring access to the courts and preserving judicial resources (*Downtown Eastside Sex Workers*, at paragraph 23).

[16] In this case, as the respondent noted, the applicant already has sufficient personal interest in light of the part of his recourse relating to the decisions rendered by the Commission regarding his six complaints and the scope of the Act. Consequently, it is neither useful nor necessary to determine whether, in addition, he should be granted public interest standing in this regard (*Finlay v. Canada (Minister of Finance)*, [1986] 2 S.C.R. 607, at paragraph 22). The applicant's real motive for seeking this dual standing appears to be to facilitate funding for his recourse. We will return to this.

[17] This issue becomes relevant with respect to the "non-federal" part of his recourse, as it were, because the applicant does not have a direct interest in having provincial and territorial human rights legislation declared unconstitutional. Evidently, the applicant has an academic interest in being granted public interest standing, but that is not a valid justification.

[18] With respect to the existence of a serious justiciable issue, notwithstanding serious reservations raised by the respondent regarding the merit of the case instituted by the applicant, a preliminary question of paramount importance arises here, that of the Court's jurisdiction to

declare provincial laws unconstitutional, particularly when, as in this case, nothing directly or indirectly ties the constitutional argument to the implementation of a federal act or regulation or to federal government action. Keep in mind that the Court was created pursuant to Section 101 of the *Constitution Act, 1867* 30 & 31 Victoria, c. 3 (U.K.) "for the better Administration of the Laws of Canada," an expression that must be interpreted not in its broader meaning of all provincial and federal laws in force in Canada, but in its narrower meaning of existing federal regulations and federal common law (*Northern Telecom v. Communication Workers*, [1983] 1 S.C.R. 733, on p. 745, 147 DLR (3d) 1; Halsbury's Laws of Canada (online), *Administrative Law*, "Federal Courts: Test for Establishing Jurisdiction" in HAD-24 "Existing Body of Federal Law" (2013 Re-edition).

[19] In this sense, the Court does not occupy the same position as provincial superior courts in the Canadian judicial system. They are courts of general jurisdiction. They cross the dividing line in the federal-provincial scheme of division of jurisdiction and are entitled to rule on all matters of provincial or federal law, including constitutional adjudication (*Canada (Attorney General) v. Law Society of British Columbia*, [1982] 2 S.C.R. 307, 137 DLR (3d) 1).

[20] Pursuant to these principles, the Court, in *Hughes v. Canada* (1994), 80 F.T.R. 300, 49 A.C.W.S. (3d) 21 [*Hughes*], found that it did not have jurisdiction to declare a provincial law incompatible with the Charter and that such recourse should in fact be filed with the Superior Court of the province concerned and directed against the government of this province (*Hughes*, at paragraph 15).

[21] Thus, virtually all of the non-federal portion of the applicant's recourse appears to be jurisdictionally defective, and consequently, fatally flawed.

[22] Be that as it may, the applicant has not convinced me that he has a real or genuine interest in the outcome of the case, insofar as it concerns the constitutional validity of provincial and territorial human rights legislation, or that his recourse constitutes, in this regard, a reasonable and effective way to bring the issue before the Court.

[23] Moreover, his interest in this part of his recourse is strictly theoretical and seems first and foremost to be the focus of an academic project. Furthermore, this part of the recourse is devoid of any basis in fact, since the legislation at issue has never been tested by the applicant. Now, Charter issues must not be decided in the absence of factual basis (*Mackay v. Manitoba*, [1989] 2 S.C.R. 357, p. 362, 17 A.C.W.S. (3d) 169). The applicant's interest in the compatibility of these laws with Section 15 of the Charter seems to be that of a busybody within the meaning of Supreme Court of Canada case law on standing. As the Court mentioned in a decision rendered in one of several recourses—18 in all—filed by the applicant since 2013 before this Court and the Federal Court of Appeal, he "takes a shotgun approach" (*Lessard-Gauvin v. Canada (Attorney General)*, 2014 FC 739, at paragraph 1 [*Lessard-Gauvin* 2014]).

[24] This case is another example in terms of its scope and lack of proportion (to have "any existing or future Canadian legislative instrument" declared incompatible with Section 15 of the Charter), as well as its origin (a series of fabricated complaints to the Commission, in all likelihood to support a recourse to align the right to equality in Canada with the applicant's idea of international rights). I note, in this regard, that despite the applicant's best efforts to get

human rights defence organizations interested in his case (45 in all), he was not offered any concrete support.

[25] Once again, not everyone who may want to litigate an issue, regardless of whether it affects them or not, should be entitled to do so (*Downtown Eastside Sex Workers*, above, at paragraph 22). In my view, the applicant does not have a genuine interest in having provincial and territorial human rights legislation declared unconstitutional and therefore should not be authorized to debate this issue. The Supreme Court stated that "it would be intolerable if everyone had standing to sue for everything, no matter how limited a personal stake they had in the matter" (*Downtown Eastside Sex Workers*, at paragraph 1).

[26] Nor am I convinced that the case instituted by the applicant is a reasonable and effective way to bring the issue before the Court, assuming of course that the Court has jurisdiction to rule on it. Several matters related to the assessment of this third test (*Downtown Eastside Sex Workers*, at paragraph 51) run counter to granting public interest standing in this case.

[27] On the one hand, the applicant, by his own admission, does not have the financial and technical resources to litigate this case, and I am not satisfied, as I have just mentioned, that this case will be pleaded, at least in terms of its non-federal component, in a sufficiently concrete and well-developed context. Nor does he seem to have the capacity to plead the case based on the comments of the Court stating that the applicant institutes multiple proceedings, has difficulty maintaining them and stubbornly refuses to comply with the Rules of the Court (*Lessard-Gauvin* 2014, above, at paragraph 15). On the other hand, there are other realistic ways to debate whether provincial and territorial human rights legislation complies with the Charter, in

particular through remedies instituted by parties who, unlike the applicant, may have legal standing, in order to increase, in a more favourable context, the likelihood of a more effective and efficient use of judicial resources.

[28] Finally, I feel bound to consider the potential impact of the applicant's case on the rights of parties whose interests are also, if not more, affected by the implementation of provincial and territorial human rights legislation. In particular, I fear that the failure of the remedy instituted by the applicant, in the diffuse and disembodied context in which he presents himself, might impede future challenges by persons who have specific complaints based on facts. In other words, in a case like this one, our limited judicial resources should be allocated to support these persons.

[29] *Vriend v. Alberta,* [1998] 1 S.C.R. 493 (*Vriend*) is of little assistance in this context. On the one hand, the question of standing involved extending a recourse instituted by the applicants in this matter to other provisions of the same act at issue (the *Alberta Human Rights Act*), and did not involve the recourse itself, as initially worded. On the other hand, the fact that homosexuals have been victims of discrimination in every aspect of their lives had already been recognized by the courts, meaning that the constitutionality of the provisions at issue did not depend on a particular factual context. Finally, Mr. Vriend had a direct and genuine interest in the issue, having challenged the Alberta Human Rights Commission regarding his termination after he had revealed his sexual orientation to his employer. This was a nexus that is missing in this case where provincial and territorial human rights legislation is at issue.

[30] In light of his entire recourse, I find that the applicant does not satisfy the case law criteria to be granted public interest standing.

Application for financial assistance and corollary relief

[31] This is not the applicant's first such application. Until now, they have all been dismissed, which has not stopped him from pursuing numerous other proceedings instituted before this Court, the Federal Court of Appeal and various administrative organizations and tribunals. It must be borne in mind that although now permissible, public interest advance costs orders "are to remain special and, as a result, exceptional" (*Little Sisters Book and Art Emporium v. Canada (Commissioner of Customs and Revenue)*, [2007] 1 S.C.R. 38, at paragraph 36 [*Little Sisters*]). The party seeking such an order must therefore simultaneously demonstrate that:

a. It is impecunious to the extent that, without such an order, that party would be deprived of the opportunity to proceed with the case;

b. It has established a *prima facie* case of sufficient merit to warrant pursuit; and

c. There must be special circumstances sufficient to satisfy the court that the case is within the narrow class of cases where this extraordinary exercise of its powers is appropriate (*British Columbia (Minister of Forests) v. Okanagan Indian Band*, 2003 SCC 71, at paragraph 36, [2003] 3 S.C.R. 371 [*Okanagan*]).

[32] However, it should be pointed out that the fact that these conditions all exist in a given case does not necessarily mean that such an order is required. All the foregoing is at the discretion of the Court (*Little Sisters*, at paragraph 72). In particular, these orders must be granted with caution, as a last resort, in circumstances where the need for them is clearly

established (*Little Sisters*, at paragraph 36). In other words they apply "only to those few situations where a court would be participating in an injustice—against the litigant personally and against the public generally—if it did not order advance costs to allow the litigant to proceed" (*Little Sisters*, at para 5).

[33] This is a stringent test. In particular, basing his recourse on the Charter is not, in itself, sufficient to meet this test. In fact, the courts must see to it that the justice system does not become a proxy "for the public inquiry process, swamped with actions launched by test plaintiffs and public interest groups" (*Little Sisters*, at paragraph 39).

[34] In this case, I see nothing before me that would induce me to set aside previous decisions of the Court rejecting the applicant's application for financial assistance in cases T-1076 (order of Justice Yves De Montigny, now Federal Court of Appeal justice, August 2, 2013, Ottawa (FC), at pp. 8-9) and 13-T-64, T-1899-13 and T-309-14 (*Lessard-Gauvin* 2014, above, at paragraph 8). Once again, one cannot expect to obtain this type of assistance simply by raising the Charter and wanting to establish a precedent. Here, the applicant has failed to convinced me, as he failed to convince my two colleagues in prior cases, that he cannot pay for the costs of this case and that he has no other viable options to allow this litigation to proceed, a case which at first glance does not have the scope, for the jurisdictional reasons cited above, that the applicant wishes to give it.

[35] In my opinion, the applicant has failed to establish his alleged impecuniosity as thoroughly as required: (i) the evidence regarding his attempts to obtain a loan from a financial institution is, as the respondent points out, insufficient; (ii) there is no reason to believe that he

cannot find a job; (iii) despite his claim that he is impecunious, he is leading several cases before the Court, the Federal Court of Appeal and other bodies; (iv) he indicated to de Montigny J., in case T-1076, that he had funds available to purchase a building (also see *Lessard-Gauvin* 2014, above, at paragraph 8); and, (v) the Court does not have a complete financial statement, including alternative sources of funds as required by Federal Court of Appeal case law (*Al Telbani v. Canada (Attorney General)*, 2012 FCA 188). The applicant may well be offended by this requirement, but this is of little assistance to him since I am bound by it.

[36] As the respondent points out in his response to the motion in writing, there is also the fact that the applicant, by his own admission, (Motion Record, motion in writing, at paragraph 4 of his written arguments) intends to pursue the case even in the absence of an order for interim costs. That runs directly counter to the requirement that the party seeking interim costs must be impecunious to the extent that, without such an order, that party would be deprived of the opportunity to proceed with the case (*Okanagan*, at paragraph 36). Furthermore, if I am not mistaken, I do not believe that this type of order was designed for busybodies, which distinguishes, inter alia, this case from *Schmidt v. Canada (Attorney General)*, 2016 FC 269, upon which the applicant relies heavily.

[37] The applicant's application for financial assistance is therefore denied.

[38] For the same reasons, I am of the opinion that it is not necessary to override the usual rules for service applicable to the Notice of Constitutional Question, which, at any rate, does not appear to me to be an initiating document. Moreover, under Section 57 of the *Federal Courts Act*, only the Attorney General of Canada and the attorney general of each province must be

served a Notice of Constitutional Question. There is no basis for requiring or even allowing this list to be extended to other entities, by order. In this regard, since the applicant is seeking findings of constitutional invalidity, I see no point in relying on Section 110 of the Federal Courts Rules dealing with Questions of General Importance. Although these two provisions are complementary, they do not apply concomitantly (Brian J. Saunders, Donald J. Rennie and Graham Garton, *Federal Courts Practice 2016*, Toronto, Thomson Reuters, p. 473). Neither do I see any point or need, at least at this stage, to appoint an *amicus curie* to the case (an exceptional measure if ever there was one).

Role of the Attorney General of Canada.

[39] The applicant asks the Court to declare that it would be unseemly and inappropriate for the Attorney General to adopt an "aggressive," "energetic" or "very defensive" attitude of opposition. According to him, his role should be limited to helping the Court shed light on the points of law raised by this case rather than defending tooth and nail the interests of the departments and agencies targeted by his complaints to the Commission.

[40] Here again, this is not the first time that the applicant has submitted such a request to the Court. In every case until now, he has been told that by representing the interests of the departments targeted by his complaints and proceedings, the Attorney General was simply doing what the *Department of Justice Act*, R.S.C., 1985, c. J-2, and in particular paragraph 5(*d*) of the Act, orders him to do (order of Yves de Montigny J., case T-1076, above, on pp. 7-8; *Lessard-Gauvin* 2014, above, at paragraph 11). It must be remembered that this provision orders

the Attorney General to regulate and conduct "all litigation for or against the Crown or any department, in respect of any subject within the authority or jurisdiction of Canada."

[41] In each case, the Court noted that the applicant's argument was based on an erroneous understanding of the Attorney General's role. It is no different in this case.

[42] At any rate, at this stage there is no basis in this case for the reprimand sought by the applicant.

Application under Rule 317

[43] The applicant's application to have documents transmitted under Rule 317 is very wide-ranging (see the Appendix to this order) and goes well beyond the normal scope of such an application. The applicant readily acknowledges this, but maintains that Rule 317 must be applied differently depending on the nature of the judicial review. He argues that in this case his recourse consists of several parts, which would expand the scope of the material to be transmitted.

[44] The Commission was represented at the hearing of the main motion. On February 6, 2016, the Commission, in compliance with Rule 318, sent the applicant the documents in its possession when it rendered its decision regarding each of the six complaints filed by the applicant. However, it opposed the transmission of any other documents on the basis that, notwithstanding two exceptional cases that do not apply here, a document that has not been

considered by the organization whose decision is impugned is not relevant within the meaning of Rule 317.

[45] A document is relevant within the meaning of Rule 317 if it can influence the manner in which the Court will rule on the case (*Canada (Human Rights Commission) v. Pathak*, [1995] 2 FC 455, at paragraphs 9-10, 94 F.T.R. 80 (*Pathak*)). The requirement was interpreted as restricting the material that could be requested under Rule 317 to those in the tribunal's docket related to the decision under appeal (*Pathak*, at paragraph 23). In this sense, Rule 317 is not a substitute for mechanisms for transmitting material that applies to cases or mechanisms for disclosing information set forth in the *Access to Information Act*, R.S.C., 1985, c. A-1. It does not have the same theoretical basis and therefore does not aim to achieve the same objectives (*Atlantic Prudence Fund Corp v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 1156, 98 A.C.W.S. (3d) 960; *Pauktuutit, Inuit Women's Assn v. Canada*, 2003 FCT 165, 229 F.T.R. 25).

[46] The Court will depart from this approach when the basis for the challenge to the tribunal's decision is connected to an allegation of bias or a breach of procedural fairness, and the documents required are relevant to the issue (*Gagliano v. Canada (Commission of Inquiry into the Sponsorship Program and Advertising Activities)*, 2006 FC 720, 293 F.T.R. 108).

[47] What is the situation in this case? The applicant argues that his recourse consists of four parts:

a. The "classic" part, through which he seeks to have the Court invalidate the Commission's decisions not to investigate his complaints;

b. The "jurisdiction" part, where he seeks to obtain the delegation documents of the person who signed the Commission's last decision;

c. The "constitutional" part, where he seeks to obtain the Commission's documents pertaining to *Vriend*, above, and the La Forest Report, believing that "[t]he more material the Commission will be able to provide pertaining to the constitutionality of Sections 2 and 3 of the CHRA, the better"; and

d. The "procedural" part, through which he seeks to understand the pre-decision process, in particular, regarding the period where the Commission considered the applicant's complaint forms to be "banal information requests," believing that it was an "intriguing period" upon which he "wishes to shed light."

[48] With respect to the first part of the applicant's case, the "classic" part, I have no indication that the Commission did not transmit all the relevant documents on February 6, 2016, i.e. all the documents before the Commission when it made the decisions under appeal.

[49] With regard to the three other parts, in addition to the fact that the documents concerned were not before the Commission when it made said decisions, I have serious doubts as to their relevance. The Commission decided not to investigate the complaints filed by the applicant because the grounds of discrimination raised are not stipulated in the Act. The applicant was fully aware of this, his avowed ultimate goal being to challenge the constitutional validity of the Act on this basis. Thus, the complaints filed before the Commission were, as it were, a mandatory step. In this context, I do not see the relevance of the delegation of authority documents of the person who signed the last decision. At best, these documents are strictly accessory or peripheral to the true issue in dispute. The same is true of the documents sought for the "procedural" part of the case. Understanding the so-called pre-decision process is not helpful

to the debate. In each case, the documents sought will not affect the manner in which the Court will rule on the matter (*Pathak*, above, at paragraph 10).

[50] Finally, the documents created for the Commission in the aftermath of *Vriend* and the Court of Appeal for Ontario's ruling in *Haig v. Canada* (1992), 9 O.R. (3d) 495, regarding their possible impact on the Act are not relevant. It will be up to the Court, in due course, to measure this impact using the judicial tools at its disposal. Moreover, I note that the La Forest Report is available online, and therefore easily accessible to the public.

[51] I also note that among the documents whose transmittal is sought, the applicant is requesting a history, from April 1998 to date, of all complaints declared admissible by the Commission not involving the prohibited grounds of discrimination set forth in Section 3 of the Act, as well as a history of all actions taken on a number of complaints, including the creation date, closing date and reopening date of the complaint case. This amounts to asking the Commission to create documents, which Rule 317 does not require it to do (*Terminaux Portuaires du Québec Inc. v. Canada (Conseil canadien des relations du travail)*, (1993) 164 N.R. 60, 41 A.C.W.S. (3d) 669).

[52] Finally, insofar as the applicant challenges the validity of the Act itself, he moves beyond the scope of the Commission's administrative action. It is Parliament's action—or inaction—that he is challenging. It is up to him to discharge his burden of proof at this level of government. In this regard, Rule 317, which I reiterate has a very specific and defined purpose, is not in my view of any assistance to the applicant, insofar as it applies only to the tribunal whose administrative action is challenged.

[53] Even based on a liberal interpretation of Rule 317, the applicant did not convince me that the Commission erred in only sending him the documents it had in its possession when it decided not to investigate his complaints.

Motion in writing

[54] A specially managed proceeding is generally granted based only on more serious grounds because it exempts the parties concerned from the application of time limits and deadlines with which all litigants must normally comply.

[55] In this case, I am not convinced that it is necessary to order this case to be conducted as a specially managed proceeding. The applicant tells us that the procedural schedule could be disrupted by numerous interveners, including the attorneys general of the provinces. As I have already said, the non-federal part of the applicant's case does not seem to me to be within the Court's jurisdiction. The provincial attorneys general's potential interest in this matter appears to me rather tenuous, if not non-existent, in this context. With respect to potential interveners, in light of the interest shown by all of those contacted by the applicant to date, their presence appears to me to be just as unlikely as it is strictly speculative. In this regard, there is no basis for a specially managed proceeding.

[56] This application for a specially managed proceeding was also based on the premise that an order for interim costs would be issued. It will not be granted. Moreover, the fact that the applicant raises a constitutional question is not in itself sufficient to exempt him from the application of time limits and deadlines stipulated by the Rules. After all, the applicant was the

one who chose to proceed summarily. Moreover, the applicant appeared confident that he could conduct his case within the time limits stipulated in Part 5 of the Act since the main motion, an omnibus motion if ever there was one, does not contain an application for conducting the case as a specially managed proceeding, and the request to have the time limit extended for filing the Applicant's record seemed primarily related to academic requirements.

[57] At this point in the case and in the absence of a more compelling argument, I see no need to order it to be conducted as a specially managed proceeding.

[58] With respect to the applicant's request to have any evidentiary and procedural issues relating to this motion drawn to his attention, and allow him to remedy them, I agree with Roy J. in *Lessard-Gauvin* 2014, above:

> [9] The technical assistance, which the applicant demands, seems to be that the Court office prepare the cases, that the tribunals whose decision is challenged produce the documentation required under Rule 317 without the applicant's having to comply with this Rule, in particular by serving a motion that would identify the materials requested, and that the applicant be advised of the evidentiary and procedural issues.
>
> [10] However, the applicant should be aware that similar motions have been dismissed in the cases where he himself was the applicant (A-210-13, Nadon J.A., August 9, 2013; Pelletier J.A., January 7, 2014) and he wanted the Court office to prepare the appeal case. With respect to a request to be made under Rule 317 and to warn him about evidentiary issues, the Court and its staff do not and cannot become involved in the choices made by the parties to state their case. The Court is and must be perceived as the impartial arbiter between the parties. It cannot favour either party. The applicant is responsible for conducting his cases before this Court, and what he is requesting here largely exceeds advice on a technical point of procedure. Although Rule 60 may be used in some circumstances, these circumstances would still have to be established in this case. What the applicant seems to be seeking is ex ante protection against future gaps [in the evidence]. I would

> decline to provide such an assurance. It is one thing to permit affidavits of service to be filed (*Mayflower Transit Inc. v. Bedwell Management Systems Inc.*, 2003 FC 943, (2003) CRP (4th) 429), another to grant the request for ex ante protection.

[59] This request will therefore be denied.

[60] Another comment is necessary. The applicant argues that his two motions in this case must be examined through the prism of *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87, which he characterizes as an "authority." He argues that this decision calls for a "cultural shift" from the legal profession and the judiciary in terms of the way civil proceedings are viewed from the standpoint of access to justice. Albeit important, I recognize this ruling for what it is: an invitation to make this shift to simplify pre-trial procedures and emphasize proportional procedures tailored to the needs of the particular case, in this instance the summary judgment motion, rather than holding a conventional trial.

[61] I do not interpret this decision as a repudiation of case law on public interest standing or of tests for granting interim costs. Nor do I view it as making formal trial procedures obsolete, as the Rules already recommend, through their guiding principle enshrined in Rule 3, stating that Court proceedings should be conducted in the most expeditious and least expensive manner. I most certainly do not interpret it as creating a duty to grant the first person who comes along all the formal and substantive procedural advantages he requests.

Costs

[62] Given the conclusions to which I arrived regarding the two motions filed by the applicant in this case, the respondent will be entitled to costs. I set costs at $500, including disbursements, and I order that they be paid without delay.

ORDER

THIS COURT ORDERS that:

1. The main motion is dismissed, except with respect to the applicant's request to be authorized to file any new affidavit in support of the re-amended Notice of Application within 20 days of the date of this order, which is granted;

2. The motion in writing is dismissed, except with respect to the applicant's request to be authorized to file a document identifying, for the benefit of the Court, the relevant passages of the authorities that he submitted in support of the main motion, which is granted;

3. The whole with costs to the respondent set in the amount of $500, including disbursements, and payable without delay.

"René LeBlanc"

Judge

APPENDIX

Request for material in the possession of a tribunal (Rule 317)

1. Case 20150314 as submitted to the Commission for decision regarding the admissibility of the complaint, also including the decision rendered by the Commission and the relevant extracts of the minutes or records of the Commission's meeting related to this case;

2. Case 20150316 as submitted to the Commission for decision regarding the admissibility of the complaint, also including the decision rendered by the Commission and the relevant extracts of the minutes or records of the Commission's meeting related to this case;

3. Case 20150317 as submitted to the Commission for decision regarding the admissibility of the complaint, also including the decision rendered by the Commission and the relevant extracts of the minutes or records of the Commission's meeting related to this case;

4. Case 20150318 as submitted to the Commission for decision regarding the admissibility of the complaint, also including the decision rendered by the Commission and the relevant extracts of the minutes or records of the Commission's meeting related to this case;

5. Case 20150319 as submitted to the Commission for decision regarding the admissibility of the complaint, also including the decision rendered by the Commission and the relevant extracts of the minutes or records of the Commission's meeting related to this case;

6. Case 20150635 as submitted to the Commission for decision regarding the admissibility of the complaint, also including the decision rendered by the Commission and the relevant extracts of the minutes or records of the Commission's meeting related to this case;

7. All records related to "cases" 20150299 and 11500299;

8. All records, information, policies, standards, guides, guidelines, orders, directives, training manuals, etc. used to write reports on Sections 40/41 for each of the six previously mentioned cases. For this item, please include only materials that were not transmitted to the Commissioners.

9. All records or information, with the exception of the complaint itself, included in the "Horizon" software application or any other case management tools with respect to complaint cases 11500299, 20150299, 20150314, 20160316, 20150317, 20150318, 20150319 and 20150635. In particular, but without limitation, please provide a dated history of all the actions taken on these complaints, including, but not limited to, the creation date, closing date and reopening date of the complaint case, if applicable. If some elements of these complaint cases have been deleted from the Horizon application, please list these elements and the reason for their removal;

10. All records regarding the interpretation of the concept of "frivolous" complaint under the CHRA and the Canadian Human Rights Commission's (CHRC) concept of jurisdiction;

11. All records relating to *Vriend v. Alberta*, whose final decision was rendered by the Supreme Court of Canada on April 2, 1998, and its potential impacts on the CHRA, the CHRC or the Canadian Human Rights Tribunal;

12. A history, from April 2, 1998, to date, of all complaints declared admissible by the CHRC and that do not involve the 11 grounds of Section 3 of the CHRA;

13. All records related to *Haig v. Canada*, whose final decision was rendered by the Court of Appeal for Ontario, and its potential impacts on the CHRA, the CHRC or the Canadian Human Rights Tribunal;

14. The records explaining how the Commission decides to dismiss a complaint because it is inadmissible under subsection 41(1) of the CHRA and its duty to send a notice under Section 42 of the CHRA;

15. All records mentioning guidance, policies, standards, guidelines, directives, orders, etc. (in other words, everything that is not in the Act or regulations) followed by the Commissioners in their review and decision to dismiss a complaint due to its inadmissibility under subsection 41(1) of the CHRA. Please also include any training or upgrading material to the attention of the commissioners on this subject;

16. The document(s) authorizing Monette Maillet, dated December 30, 2015, to sign on behalf of the Commission, a decision dismissing the complaint because it was deemed inadmissible (subsection 41(1) and Section 42 of the CHRA).

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-569-15
STYLE OF CAUSE:	DAVID LESSARD-GAUVIN v. THE ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	FEBRUARY 23, 2016
ORDER AND REASONS:	LEBLANC J.
DATED:	APRIL 15, 2016

APPEARANCES:

Representing himself	FOR THE APPLICANT
Ludovic Sirois Marie-Emmanuelle Laplante	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Representing himself Montréal, Quebec	FOR THE APPLICANT
William F. Pentney Deputy Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT