

Date: 20081027

Docket: T-2169-07

Citation: 2008 FC 1203

Ottawa, Ontario, October 27, 2008

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

YURI BOIKO

Plaintiff

-and-

CANADIAN HUMAN RIGHTS COMMISSION

Defendant

TRANSCRIPT OF REASONS FOR ORDER

Let the attached edited version of the transcript of my Reasons for Order delivered orally from the bench at Ottawa, Ontario, on Thursday September 11, 2008, be filed to comply with section 51 of the *Federal Courts Act*.

"Luc Martineau"

Judge

FEDERAL COURT

BETWEEN:

YURI BOIKO

Plaintiff

-and-

CANADIAN HUMAN RIGHTS COMMISSION

Defendant

*** * * * ***

**DECISION OF THE HONOURABLE MR. JUSTICE MARTINEAU
DELIVERED ORALLY FROM THE BENCH**

at the Courts Administration Service,
Room 1104, 90 Sparks Street, Ottawa, Ontario,
on Thursday, September 11, 2008 at 10:50 a.m.

*** * * * ***

APPEARANCES:

Mr. Yuri Boiko on his own behalf

Mr. Christopher Rootham on behalf of the Defendant

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Ottawa, Ontario

--- Upon commencing the Decision of the Honourable Mr. Justice Martineau delivered orally from the bench on Thursday, September 11, 2008 at 10:50 a.m.

JUSTICE MARTINEAU: I will read you my decision which I am delivering orally from the bench.

The Plaintiff seeks to appeal a decision of Prothonotary Tabib, dated September 5, 2005. In essence, the Plaintiff seeks an adjournment of Defendant's motion to strike his claim which is scheduled to be heard today by Prothonotary Aronovitch. I note that it is the second time that a request for adjournment is made and denied by the prothonotary.

I can only intervene with the discretionary decision rendered on September 5, 2008 by the prothonotary if the questions raised in the motion are vital to the final issue of the case, which is not the case with respect to an adjournment, or if the prothonotary based her decision on a wrong principle or upon a misapprehension of the facts.

1 In this regard, I have read the
2 parties' written representations and also considered
3 their submissions orally made before me today. I
4 have decided after due consideration to accept the
5 arguments made by the Defendant.

6 I realize the challenge a self-
7 represented litigant like the Plaintiff faces in
8 this proceeding, but in the absence of some
9 compelling legal error made by the prothonotary, the
10 hearing of the Defendant's motion to strike should
11 proceed today as scheduled and as already announced
12 to the Plaintiff upon the serving and filing of the
13 Defendant's motion to strike last July 28, 2008.

14 I also wish to state that a
15 reasonable person would not come to the conclusion
16 that the conduct or decisions made earlier by the
17 prothonotary in this proceeding raise a reasonable
18 apprehension of bias. While the Plaintiff may
19 disagree with the prothonotary's findings and
20 conclusions, this is simply not a ground for
21 alleging bias which is a very serious reproach.

22 That being said, I do not need to
23 decide whether the prothonotary was right or wrong
24 in qualifying the second motion for adjournment as
25 an abuse of process. It is suffice to state that

1 other convincing reasons not to grant an adjournment
2 are contained in the two decisions made by the
3 prothonotary.

4 In conclusion and for those
5 reasons, I am dismissing the present motion in
6 appeal. Moreover, in the exercise of my discretion
7 and considering all relevant factors, there will be
8 no costs.

9 My order will read as follows:
10 Upon hearing the motion of the Plaintiff for an
11 order to appeal the decision of Prothonotary Tabib
12 issued on September 5, 2005 and for the reasons
13 delivered from the bench, this Court orders that the
14 motion in appeal be dismissed without costs.
15 --- Whereupon the Court concluded at 10:55 a.m.

I HEREBY CERTIFY THAT I have, to the best
of my skills and abilities, accurately recorded
by Stenomask and transcribed therefrom, the foregoing proceeding.

Suzanne Hubbard, Stenomask Reporter