Federal Court  Cour fédérale

Date: 20210129

Docket: T-1609-19

Citation: 2021 FC 101

Ottawa, Ontario, January 29, 2021

PRESENT: Mr. Justice Norris

BETWEEN:

DOUG DIXON

Applicant

and

TD BANK GROUP AND
TD CANADA TRUST MS JACQUELINE ROVER

Respondents

ORDER AND REASONS

[1] This is an appeal by the applicant, Doug Dixon, under Rule 51 of the *Federal Courts Rules*, SOR/98-106, of the Order of Prothonotary Furlanetto dated November 16, 2020, dismissing Mr. Dixon's motion that she recuse herself from this matter because of an alleged conflict of interest.

[2] For the reasons that follow, this motion is dismissed.

[3] On October 26, 2020, Mr. Dixon, who is self-represented, brought a motion for an order to recuse Prothonotary Furlanetto, Prothonotary Milczynski and Prothonotary Aalto from hearing all matters connected with this file because of an alleged conflict of interest. The underlying matter is an application by Mr. Dixon for judicial review of the decision of the Canadian Human Rights Commission to dismiss his complaint against the respondents on the basis that the complaint was frivolous within the meaning of paragraph 41(1)(d) of the *Canadian Human Rights Act*, RSC 1985, c H-6. Further background concerning the application for judicial review may be found in the Order and Reasons of Justice Walker dated November 12, 2020, dealing with other preliminary aspects of the application: see *Dixon v TD Bank Group*, 2020 FC 1054.

[4] Although Mr. Dixon alleges that the Prothonotaries are in a conflict of interest, he has not identified what that conflict is. It appears that his real concern is that the Prothonotaries, either in fact or in appearance, would not judge any further procedural matters fairly because they had ruled against him in the past. Thus, according to Mr. Dixon, they should all be recused on the basis of bias, either actual or reasonably apprehended.

[5] The recusal motion was put before Prothonotary Furlanetto, who had been appointed the Case Management Judge. Quite properly, Prothonotary Furlanetto assessed only the allegation that she should recuse herself; she did not address the allegations with respect to either Prothonotary Milczynski or Prothonotary Aalto. After setting out the applicable jurisprudence and legal test, Prothonotary Furlanetto concluded that “no legal cause for recusal has been made out.” Mr. Dixon now appeals this determination.

[6] As stated by the Federal Court of Appeal in *Hospira Healthcare Corp v Kennedy Institute of Rheumatology*, 2016 FCA 215 at paras 28 and 66, the standard of review on an appeal of a discretionary decision of a Prothonotary is correctness for questions of law, and palpable and overriding error for questions of fact and questions of mixed fact and law for which there are no extricable questions of law: see also *Housen v Nikolaisen*, 2002 SCC 33 at paras 8, 10, 25 and 37. Therefore, to succeed on this appeal, Mr. Dixon must demonstrate either an error of law or a palpable and overriding error of fact or mixed fact and law on the part of Prothonotary Furlanetto.

[7] In her Order, Prothonotary Furlanetto summarized the applicable legal principles comprehensively and correctly. She also stated the correct legal test for a recusal motion based on an allegation of bias.

[8] As for a palpable and overriding error with respect to matters of fact or mixed fact and law, the Federal Court of Appeal has confirmed that this is "a high and difficult standard to meet:" see *Rodney Brass v Papequash*, 2019 FCA 245 at para 11. A palpable and overriding error "is one that is obvious and substantial enough to potentially change the result of the case:" see *Hospira Healthcare Corporation v Kennedy Trust for Rheumatology Research*, 2020 FCA 177 at para 7; see also *Canada v South Yukon Forest Corporation*, 2012 FCA 165 at para 46, quoted with approval in *Benhaim v St-Germain*, 2016 SCC 48 at para 38.

[9] The sole basis for Mr. Dixon's argument that Prothonotary Furlanetto should recuse herself was his dissatisfaction with the Direction she made on December 11, 2019, concerning

service of the originating Notice of Application, which in turn had implications for when the respondents were required to file their Notice of Appearance. As Prothonotary Furlanetto correctly held, disagreement with a Court's decision alone is incapable of supporting an allegation of bias: see *Blank v Canada (Justice)*, 2017 FCA 234 at para 5.

[10] This is also the main complaint Mr. Dixon raises in this appeal. He writes: "The Applicant would like to think that he is a reasonable fully-informed person thinking the matter through and thought that the Prothonotaries committed a critical error in allowing the Respondents to critically late [sic] file their Notice of Appearance." He also seeks to distinguish the factual circumstances of his case from those of the controlling authorities cited by Prothonotary Furlanetto.

[11] Mr. Dixon falls well short of demonstrating any error on the part of Prothonotary Furlanetto, let alone a palpable and overriding one. Even if she had erred in her Direction concerning service of the originating Notice of Application (which she did not), this would in no way be evidence of bias, real or apprehended: see *Hociung v Canada (Public Safety and Emergency Preparedness)*, 2019 FCA 214 at para 54. The recusal motion was wholly without merit. The same is true of this appeal.

[12] I would add two further observations.

[13] First, even though the issue of the respondents' standing was not formally raised in the Notice of Motion that had been put before her, Justice Walker chose to address it "in order to

bring some finality to what is an important outstanding concern for Mr. Dixon" (at para 16). After careful analysis, Justice Walker concluded that the respondents' Notice of Appearance was filed in accordance with Rules 3 and 305 of the *Federal Courts Rules* and the Court's directions. She was also prepared to find, in the alternative, that the respondents had acted in good faith throughout and would have been entitled to relief against any non-compliance with the Rules in any event. Justice Walker specifically found that the Court's Prothonotaries (including, of course, Prothonotary Furlanetto) had "made repeated attempts, to the benefit of both parties, to resolve initial skirmishes and to ensure proper service on both parties of each required document. They have accommodated Mr. Dixon as a self-represented litigant" (at para 32).

[14] In fairness to Mr. Dixon, he brought his recusal motion before he had the benefit of Justice Walker's Order and Reasons. However, his decision to appeal Prothonotary Furlanetto's Order notwithstanding Justice Walker's conclusions suggests that he has not taken those conclusions to heart. So that there can be no further doubt about the matter, the issue of the filing of the respondents' Notice of Appearance is a dead letter. It is time to move on.

[15] Second, since Mr. Dixon is representing himself in this matter, he presumably has not had the benefit of advice from a lawyer regarding the recusal motion or the present appeal. If he had had such advice, he would have been told that alleging bias against a judge 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: see *R v S(RD)*, [1997] 3 SCR 484 at para 113; see also *Ahamed v Canada*, 2020 FCA 213 at para 8. He would have been told that only a serious and substantial demonstration made by convincing evidence can

rebut the strong presumption that judges will carry out their duties properly and with integrity: see *Ignace v Canada (Attorney General)*, 2019 FCA 239 at para 16 and the cases cited therein. And he would have been told that groundless and wholly unsupported allegations of judicial bias should not be made because of the damage they cause to the administration of justice: see *Sir v Canada*, 2019 FCA 101 at para 8.

[16] The Court has a responsibility, where appropriate, to extend some latitude to a self-represented litigant when this is necessary to ensure that they are able to present their case fully and fairly. Thus, for example, the Court was prepared to entertain this appeal despite the fact that Mr. Dixon did not file it in time (the respondents having consented to an extension of time). It was also prepared to accept Mr. Dixon's Reply for filing despite the fact that it, too, was late. However, self-represented litigants "are not granted any additional rights or special dispensation" (*Hociung v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 699 at para 12; see also *Sauve v Canada*, 2014 FC 119 at para 19). Like any party before the Court, it is Mr. Dixon's responsibility to conduct this litigation in accordance with the principles set out in the previous paragraph. Neither the original recusal motion nor this appeal should ever have been brought.

[17] The respondents have not sought costs on this motion but have expressly reserved the right to seek costs for this motion at the conclusion of the hearing of the underlying application for judicial review.

ORDER IN T-1609-19

THIS COURT ORDERS that

1. The motion appealing the Order of Prothonotary Furlanetto dated November 16, 2020, is dismissed.
2. This Order is made without prejudice to the right of the respondents to seek costs for this motion at the conclusion of the hearing of the underlying application for judicial review.

"John Norris"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1609-19
STYLE OF CAUSE:	DOUG DIXON v TD BANK GROUP ET AL

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

ORDER AND REASONS:	NORRIS J.
DATED:	JANUARY 29, 2021

WRITTEN REPRESENTATIONS BY:

Doug Dixon	ON HIS OWN BEHALF
Bonny Mak Justin P'ng	FOR THE RESPONDENTS

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