Federal Court  Cour fédérale

Date: 20240123

Docket: T-1686-21

Citation: 2024 FC 110

Toronto, Ontario, January 23, 2024

PRESENT: The Honourable Madam Justice Turley

BETWEEN:

CHRISTOPHER JOHNSON

Plaintiff

and

CANADIAN TENNIS ASSOCIATION, MILOS RAONIC, GENIE BOUCHARD, DENIS SHAPOVALOV and FELIX AUGER-ALIASSIME

Defendants

ORDER AND REASONS FOR ORDER

I. Overview

[1] The Court has repeatedly cautioned the Plaintiff, a self-represented litigant, about making baseless allegations of misconduct, bad faith, and impropriety against the Court and counsel for the Defendants. Yet, the Plaintiff continues unabated in levying these allegations. Indeed, the tenor of the Plaintiff's written submissions in this appeal of Associate Judge Coughlan's decision dated

November 8, 2023 under Rule 51 of the *Federal Courts Rules*, SOR/98-106 [*Rules*] is particularly egregious.

[2] There is no merit to the Plaintiff's allegation that the Associate Judge exhibited bias in allowing the Defendant Denis Shapovalov [Defendant]'s motion to strike the Plaintiff's 800-plus written examination questions, in part. Further, the Plaintiff has failed to demonstrate any palpable and overriding error in the underlying decision. Rather, the Associate Judge was justified in finding that the Plaintiff failed to "present clear and cogent responses opposing the striking of the questions": Order dated November 8, 2023 at para 15.

[3] I am dismissing the Plaintiff's motion appealing the November 8, 2023 order, with costs payable forthwith to the Defendant in the amount of $5,000. This costs award is specifically warranted given that the Plaintiff continues to make scandalous and vexatious accusations against the Court and counsel.

II. Background

[4] In the underlying action, the parties elected to conduct written discoveries in accordance with Rule 99 of the *Rules*. Associate Judge Coughlan has been case managing this action since May 30, 2022 and has adjudicated four motions arising out of the Plaintiff's written examinations of the various Defendants: Order dated November 8, 2023 at paras 1-3.

[5] Notably, prior to the underlying motion and in the context of a motion brought by another Defendant seeking to strike or reframe the Plaintiff's written discovery questions, the Associate

Judge advised the parties of the Court's general practice on refusal motions for the parties to prepare a refusals chart. She explained that the chart should set out the questions at issue, as well as each party's position. As the Associate Judge indicated, this "manner of presentation assists the Court with the task of reviewing the impugned questions in an orderly and efficient context": Order dated August 25, 2022 (amended September 1, 2022) at para 9.

[6] The Plaintiff's written examination of the Defendant consisted of over 800 questions (97 questions with various sub-questions). The Defendant brought a motion seeking to strike the majority of the Plaintiff's written discovery questions and revise 13 questions. In support of his motion, the Defendant filed a refusals chart setting out the Plaintiff's questions and the basis of his objection for each question, as well as the revised questions the Defendant was prepared to answer.

[7] The Defendant's position was that the Plaintiff's written examination was "an abuse of the discovery process": Defendant's Written Representations dated January 30, 2023 at para 17 [Defendant's January 2023 Representations]. The Defendant objected to the Plaintiff's written discovery questions on various grounds, including that they were highly improper, argumentative, irrelevant, sought legal positions, and involved personal and commercial information: Defendant's January 2023 Representations at paras 15-16.

[8] The Plaintiff responded with lengthy written representations, much of which did not address the Defendant's objections. While the Plaintiff referred to having completed a refusals chart in his submissions, the Associate Judge determined that he had not completed the chart prepared by the Defendant, but instead "tendered a 337-page document entitled refusal chart". The

Associate Judge rejected that chart for filing and provided the Plaintiff three days "to complete the chart as previously directed, failing which the Plaintiff will be deemed not to have provided a position on the return of the motion": Direction dated October 13, 2023.

[9] The Plaintiff tendered a refusals chart on October 16, 2023, but the Associate Judge found that the form of his response was "improper and frustrates the Court's ability to conduct an orderly hearing of this matter". More specifically, the Associate Judge held that the Plaintiff reiterated "the same generic response to each of the Defendant's objections": Direction dated October 17, 2023. The Associate Judge cancelled the hearing scheduled for October 18, 2023 and determined that the Defendant's motion could be dealt with based on the written representations filed by the parties.

[10] By order dated November 8, 2023, Associate Judge Coughlan held that the Plaintiff had failed "to present clear and cogent responses opposing the striking of the questions": Order dated November 8, 2023 at para 15. The Associate Judge allowed the Defendant's motion in part, striking the majority of the Plaintiff's questions, but ordered the Defendant to answer 13 reframed questions within 30 days. Further, the Associate Judge determined that an elevated costs award in the amount of $4,500 payable forthwith was justified based on the Plaintiff's "abusive litigation conduct": Order dated November 8, 2023 at para 23.

III. Issues and Standard of Review

[11] The Plaintiff raises two grounds of appeal in seeking to overturn the Associate Judge's November 8, 2023 order. He alleges that the Associate Judge (i) demonstrated bias; and (ii) made

palpable and overriding errors: Notice of Motion dated November 17, 2023 at para 4 [Notice of Motion].

[12] Decisions on motions to strike discovery questions are interlocutory and discretionary: *Bell Helicopter Textron Canada Limitée v Eurocopter*, 2010 FCA 12 at para 17; *Bard Peripheral Vascular, Inc v WL Gore & Associates, Inc*, 2015 FC 1176 at para 13 [*Bard*].

[13] It is well established that a discretionary order of an Associate Judge is subject to the appellate standard of review set out by the Federal Court of Appeal in *Hospira Healthcare Corporation v Kennedy Institute of Rheumatology*, 2016 FCA 215 at paras 27-28, 65-66, 79 and *Canada (Attorney General) v Iris Technologies Inc*, 2021 FCA 244 at para 33 [*Iris*]. As a result, questions of fact and questions of mixed fact and law are reviewable on a standard of palpable and overriding error, while questions of law will be reviewed on the standard of correctness: *Iris* at para 33.

[14] Here, the Plaintiff alleges that the Associate Judge misapprehended the facts: Notice of Motion at para 4. The onus is thus on the Plaintiff to demonstrate a palpable and overriding error in the Associate Judge's order: *Johnson v Canadian Tennis Association*, 2022 FC 776 at para 23 [*Johnson 2022*]. As explained by the Federal Court of Appeal, this is a high threshold to meet – it is not enough to pull at leaves and branches and leave the tree standing, the entire tree must fall: *Millennium Pharmaceuticals Inc v Teva Canada Limited*, 2019 FCA 273 at para 6 [*Millennium*]; *Mahjoub v Canada (Citizenship and Immigration)*, 2017 FCA 157 at para 61; *Canada v South Yukon Forest Corporation*, 2012 FCA 165 at para 46.

[15] In his written representations, the Plaintiff raises two other issues that he did not identify in his Notice of Motion: (i) whether the November 8, 2023 order meets the Canadian Judicial Council's standards: Plaintiff's Written Representations at paras 5-39; and (ii) whether the order denies his right to conduct examinations for discovery: Plaintiff's Written Representations at paras 55-89. These submissions essentially repeat the same arguments and allegations made in relation to the appeal grounds of bias, and palpable and overriding errors that I address below.

IV. Analysis

A. *Preliminary objections*

[16] The Defendant raises two preliminary objections: (i) the admissibility of the Plaintiff's affidavit; and (ii) the new relief sought by the Plaintiff: Defendant's Written Representations at paras 10, 13-15. I would note that, while the Plaintiff is self-represented, these same two procedural issues arose in a prior Rule 51 appeal: *Johnson 2022* at paras 11, 17-18, 30-31, 43-46. Notably, Justice Diner found that "the present action is becoming increasingly populated with instances of the Plaintiff attempting to obtain relief or file documents without properly placing parties on notice or acting in compliance with the *Rules*": *Johnson 2022* at para 44. Despite Justice Diner's encouragement to "exercise due diligence" and "ensure compliance with the *Rules*", the Plaintiff continues to file non-compliant materials: *Johnson 2022* at para 46.

(1) The Plaintiff's affidavit is not admissible

[17] The general rule is that an appeal of an Associate Judge's order is to be decided based on the materials that were before them: *Johnson 2022* at para 31; *Canjura v Canada (Attorney*

General), 2021 FC 1022 at para 12 [*Canjura*]; *Onischuk v Canada (Revenue Agency)*, 2021 FC 486 at para 9 [*Onischuk*]. It is only in exceptional circumstances that new evidence may be admissible, including where the new evidence (i) could not have been made available earlier; (ii) will serve the interests of justice; (iii) will assist the court; and (iv) will not seriously prejudice the other side: *Canjura* at para 12.

[18] The Plaintiff has not established that there are any exceptional circumstances to justify the admission of his affidavit in this case. In particular, I agree with the Defendant that the Plaintiff makes bald and unsupported allegations in his affidavit against the Associate Judge and counsel for the Defendant that are not in the interests of justice to admit and do not assist the Court.

[19] Furthermore, the Plaintiff's affidavit largely repeats the legal arguments that he makes on this motion. Yet, the purpose of an affidavit is to set out relevant facts, "without gloss or explanation": *Coldwater First Nation v Canada (Attorney General)*, 2019 FCA 292 at para 19; *Canada (Attorney General) v Quadrini*, 2010 FCA 47 at para 18. To the extent that the Plaintiff's affidavit contains facts, they are irrelevant to the issues on this appeal.

[20] For these reasons, I decline to admit the Plaintiff's affidavit, sworn on November 17, 2023, as evidence on this appeal.

(2) Request for new relief not properly before the Court

[21] The relief sought on a motion (including a Rule 51 appeal which is brought by way of a motion) must be identified in the party's Notice of Motion, in accordance with Rule 359 of the

Rules: *Energizer Brands, LLC v The Gillette Company*, 2020 FCA 49 at para 38; *Johnson 2022* at paras 43-44.

[22] The Plaintiff seeks additional relief in his written submissions that was not identified in his Notice of Motion, namely that the Court "rebuke" the Defendant's counsel and "throw out all of the Defendants' 324 questions and all of [his] answers": Plaintiff's Written Representations at pp 47-48. As such, the relief sought is not properly before this Court on this appeal.

[23] In addition to not being properly before the Court, this new relief is also without foundation. There is simply no basis upon which to "rebuke" Defendant's counsel. As set out below, the Associate Judge made no palpable and overriding errors in allowing the Defendant's motion to strike, in part. Further, there is no basis to "throw out" the Defendant's written examination of the Plaintiff. The Plaintiff did not object to any questions asked and he answered the questions of his own volition.

B. *The Plaintiff has not established bias*

[24] Allegations of bias against members of the judiciary are very serious and must not be made lightly, as they engage the very foundation of our judicial system: *Firsov v Canada (Attorney General)*, 2022 FCA 191 at para 57 [*Firsov*]; *Njoroge v Royal Canadian Mounted Police*, 2023 FC 1181 at para 15 [*Njoroge*]; *Tétreault v Boisbriand (City)*, 2023 FC 168 at para 28 [*Tétreault*]; *Ernst v Canadian National Railway Company*, 2021 FC 16 at para 50.

[25] The onus of demonstrating bias falls on the person alleging it and the threshold is high: *ABB Inc v Hyundai Heavy Industries Co, Ltd*, 2015 FCA 157 at para 55; *Njoroge* at para 12; *Tétreault* at para 33. The Plaintiff must establish that "an informed person, viewing the matter realistically and practically – and having thought the matter through – … [would] think that it is more likely than not that the [decision-maker], whether consciously or unconsciously, would not decide fairly": *Firsov* at para 56, citing *Yukon Francophone School Board, Education Area #23 v Yukon (Attorney General)*, 2015 SCC 25 at paras 20-21, 26.

[26] The threshold is high because there is a strong presumption that judges will honour their oath and act impartially: *Cojocaru v British Columbia Women's Hospital and Health Centre*, 2013 SCC 30 at para 22; *Wewaykum Indian Band v Canada*, 2003 SCC 45 at para 59 [*Wewaykum*]. That presumption can only be displaced with clear and convincing evidence: *Wewaykum* at paras 59, 76; *Patel v Canada (Attorney General)*, 2023 FC 922 at para 83; *Tétreault* at para 32.

[27] The basis of the Plaintiff's bias allegation is that the Associate Judge and Defendant's counsel both attended the same law school. He asserts that it is "unfair" that the Associate Judge has granted everything that the Defendants requested, while rejecting his submissions for filing: Plaintiff's Written Representations at para 40. He repeatedly states that "an impartial Court" would have sided with him: Plaintiff's Written Representations at paras 47, 63.

[28] The Plaintiff made these very same arguments in his appeal of Associate Judge Coughlan's October 26, 2023 order. I also dismissed that appeal: *Johnson v Canadian Tennis Association*, 2023 FC 1605 [*Johnson 2023*]. After canvassing the relevant jurisprudence, I concluded that bias

is simply not established by virtue of merely obtaining a law degree from the same law school as a lawyer for one of the opposing parties:

> [33] The fact that a judge may have attended the same law school as one of the litigant's counsel does not support the conclusion, on a balance of probabilities, that "the judge was, in fact, biased or that a reasonable, right-minded and properly informed person would conclude that the judge did not decide the case impartially": Patel at para 83. Indeed, if merely attending the same law school was sufficient to justify a bias finding, judges would be routinely disqualified from sitting on cases.

[29] Furthermore, the fact that a judge does not decide in a party's favour does not, in and of itself, support a bias finding: *Collins v Canada*, 2011 FCA 171 at paras 10-11; *Johnson 2023* at para 35; *Njoroge* at para 15; *Tétreault* at para 34; *Onischuk v Canada (Revenue Agency)*, 2021 FC 486 at para 43.

[30] At the heart of the Plaintiff's bias argument is a disagreement with not only the Associate Judge's November 8, 2023 order under appeal, but with essentially every decision the Associate Judge has taken that has not been in his favour: Plaintiff's Written Representations at paras 40-54. In the Plaintiff's written submissions, he seeks to rehash the history of the underlying proceedings to date. This is not, however, a wholesale review of the Associate Judge's case management of these proceedings: *Johnson 2023* at paras 23, 29, 30.

[31] On this appeal, my inquiry is limited to whether the Plaintiff has established that bias affected the Associate Judge's November 8, 2023 order and her ruling against him. Reviewing the Associate Judge's order, I do not find any merit to the Plaintiff's allegations. Throughout his submissions, the Plaintiff baldly alleges that the Associate Judge treated him unfairly. He further

asserts that the Associate Judge used "haughty, scolding language" and made "disrespectful accusations": Plaintiff's Written Representations at paras 13, 25.

[32] I do not agree with the Plaintiff's above-noted description of the Associate Judge's language and treatment of him based on her order. In my view, upon reading the Plaintiff's submissions on the motion before the Associate Judge, she was entirely justified in describing the Plaintiff's litigation conduct as "abusive". Not only does the Plaintiff continue to level unfounded allegations of misconduct and impropriety against the Court and the Defendant's counsel, but he also continues to disregard the Court's orders about the purpose and scope of discovery.

[33] The Plaintiff also argues that the Associate Judge exhibited bias in denying him the right to respond to the Defendant's costs submissions of October 27, 2023: Plaintiff's Written Representations at pp 41-43. More specifically, the Plaintiff asserts that "[t]his demonstrates that a biased Associate Judge has rewarded Mr. Hafso's Defendants for carrying out their strategy to put me on trial in order to deflect attention away from their copyright infringement": Plaintiff's Written Representations at p 43. This argument is without merit.

[34] The Associate Judge provided the parties with the opportunity to file written submission on costs. These submissions were due at the same time: Direction dated October 17, 2023; Order dated November 8, 2023 at para 17. There was no opportunity for either party to reply to the other party's costs submissions. It was not incumbent on the Associate Judge to ask the Plaintiff how he responded to the Defendant's submissions, as asserted by the Plaintiff: Plaintiff's Written Representations at p 42.

[35] In light of the above, the Plaintiff has not demonstrated any bias on the part of the Associate Judge. Rather, I find that the Associate Judge responded in a fair, measured, and justified manner to the Plaintiff's conduct on the motion.

C. *The Plaintiff has not demonstrated any palpable and overriding errors*

[36] As set out above, the threshold to establish palpable and overriding error is high. A wide margin of deference is afforded to case management judges on an interlocutory motion, given their familiarity with the history, facts, and complexities of the matter at hand. In particular, as aptly stated by Justice Leblanc (as he then was), case management judges are best placed "to direct and control the discovery process": *Bard* at para 42. The Plaintiff has failed to establish any palpable and overriding error in the Associate Judge's order.

(1) The Plaintiff failed to provide clear and cogent responses to the Defendant's objections

[37] In his written submissions, the Plaintiff undertakes a paragraph-by-paragraph forensic analysis of the November 8, 2023 order: Plaintiff's Written Representations at pp 34-46. He states that he "found and corrected palpable and overriding errors in almost every paragraph": Plaintiff's Written Representations at p 34.

[38] The Federal Court of Appeal has cautioned against "parsing individual paragraphs of the Federal Court's reasons closely and alleging defects" in a search for palpable and overriding errors: *Millennium* at para 11. However, this is precisely what the Plaintiff does in this case. For example, he alleges that the Associate Judge "misapprehended the facts" in finding that the Plaintiff "simply

reiterated the same generic response" to each of the Defendant's objections. The Plaintiff asserts that this is a palpable and overriding error, because he provided other responses in addition to the one relied on by the Associate Judge: Plaintiff's Written Representations at pp 39-40.

[39] As emphasized by the Federal Court of Appeal, " an inquiry into palpable and overriding error overlooks matters of form and gets at the substance of what the first-instance court did": *Millennium* at para 10. Here, Associate Judge Coughlan allowed the Defendant's motion to strike the majority of the 800-plus questions because the Plaintiff failed to "present clear and cogent responses opposing the striking of the questions":

> [15] Although the Plaintiff has been given ample opportunity to conduct a proper examination of Shapovalov and indeed, has been given instructions on the scope and purpose of discovery, he has squandered his opportunity and ignored the Court's instructions. He has done so to his own detriment. It is not for this Court to sort through 820 questions to determine which ones are relevant and should be answered, when the party seeking the answers has not bothered to present clear and cogent responses opposing the striking of the questions.
>
> [Emphasis added]

[40] Having reviewed the Plaintiff's responses, I find no palpable and overriding errors in the Associate Judge's order. I agree with the Associate Judge that the Plaintiff's responses were neither clear nor cogent. The Plaintiff's responses failed to engage with and respond to the substance of the Defendant's objections, but rather largely repeated the same response, or variations of the same response, over 300 times.

[41] As illustrated in the example below, the Plaintiff did not address the Defendant's objection or explain the relevance of his question. Rather, the Plaintiff simply stated that he is seeking to clarify contradictory claims and that he had answered similar questions posed by the Defendant:

Question Refused	Defendant's Position	Plaintiff's Position
5d. Tennis Canada selects Canadian players to represent Canada at various international competitions, including the Davis Cup, Billie Jean King Cup (formerly known as the Fed Cup), the Olympic and Paralympic Games, and various junior and senior tournaments. Has Tennis Canada ever selected you to represent Canada at these and other international events?	This question is unnecessary, irrelevant, unreasonable, and cannot be said to reasonably advance the Plaintiff's legal position.	I ask specific questions to seek truth about infringing conduct and to clarify contradictory, illogical or bogus claims in Statement of Defence and pleadings. I answered his similar questions seeking similar information. He seeks an unfair advantage by evading relevant questions, hiding behind "privilege", and concealing truth and evidence crucial to advancing my case.

[42] In finding that the Plaintiff failed to provide "clear and cogent responses", the Associate Judge noted that the Plaintiff "has been given instructions on the proper scope and purpose of discovery": Order dated November 8, 2023 at para 15. Indeed, in a decision on another Rule 51 appeal brought by the Plaintiff, Justice Régimbald made clear that "the fact that Mr. Johnson believes that the Defendants were not truthful in their responses and provided inconsistent statements, is not a ground for oral discovery": *Johnson v Canadian Tennis Association*, 2023 FC 483 at para 32.

(2) Alleged factual errors are without merit

[43] I will not address every factual error alleged by the Plaintiff in his paragraph-by-paragraph analysis of the underlying order as they are without merit. Nevertheless, I highlight two alleged factual errors below to underscore the absence of any palpable and overriding errors in the Associate Judge's order.

[44] In response to paragraph 6 of the Associate Judge's November 8, 2023 order, the Plaintiff submits that the Associate Judge erred in stating that he asked 820 questions, when he only asked 97 questions: Plaintiff's Written Representations at p 35. While it is true that 97 questions were asked, each question had numerous sub-questions, totalling 800-plus questions. Indeed, question 10 alone had 21 sub-questions.

[45] Further, the Plaintiff alleges that the Associate Judge's statement that "Schedule A was not included in the Plaintiff's motion record" is false and a ground alone to overturn the order: Plaintiff's Written Representations at pp 36, 38. The Plaintiff, however, misconstrues the Associate Judge's finding.

[46] The Associate Judge did not dispute that the Plaintiff tendered a refusals chart, but rather took issue with the form of the refusals chart that he tendered. She noted that the Plaintiff had not completed "the refusals chart prepared by the Defendant at the direction of the Court", but instead submitted a 337-page document entitled refusal chart: Direction dated October 13, 2023; Order dated November 8, 2023 at paras 6-7.

(3) The Plaintiff was not denied his right to discovery

[47] The Plaintiff argues that the Associate Judge's order denies his right to a proper examination for discovery: Plaintiff's Written Representations at paras 55-89. He makes two principal arguments: (i) the Associate Judge allowed the Defendant to ask the Plaintiff questions; and (ii) the revised questions denies the Plaintiff the right to ask questions in his own words. Both arguments are meritless.

[48] First, the Plaintiff did not take issue with the Defendant's written discovery questions and thus the Associate Judge never adjudicated on the propriety of the questions. It is simply erroneous to state that the Associate Judge "allowed Mr. Shapovalov to ask me 324 questions. But she disallowed all of my questions": Plaintiff's Written Representations at para 63.

[49] Second, the Plaintiff alleges that the order denies him the right to ask discovery questions "in his own words". This is the Plaintiff's own doing. The Associate Judge appropriately noted that he had "squandered his opportunity" to ask proper questions: Order dated November 8, 2023 at para 15. In addition to the completed refusals chart, the Plaintiff's written submissions were not responsive to the Defendant's stated objections. The Associate Judge determined that his written representations contained largely irrelevant or improper arguments. Even where the Plaintiff did address the relevance of the questions, the Associate Judge found that the Plaintiff "assails" the Defendant and the Defendant's counsel, and provided several examples in her order to that effect: Order dated November 8, 2023 at para 11.

[50] In his written submissions on this appeal, the Plaintiff criticizes the phrasing of the 13 reframed questions at length: Plaintiff's Written Representations at paras 71-84. The Plaintiff had

the opportunity to comment on the Defendant's proposed reframing of the 13 questions when he filed his motion materials at first instance. Yet, again, rather than engaging with the substance of the reframed question, he simply gave a variation of the same response to each reframed question:

> *He cannot write his own questions*. I asked specific questions to seek truth about infringing conduct and to clarify contradictory, illogical or bogus claims in Statement of Defence and pleadings. I answered his similar questions seeking similar information. He seeks an unfair advantage by evading relevant questions, hiding behind "privilege", and concealing truth and evidence crucial to advancing my case.
>
> [Emphasis in original]

(4) No basis to interfere with the Associate Judge's costs award

[51] Finally, the Plaintiff makes extensive submissions about the Associate Judge's costs award: Plaintiff's Written Representations at pp 41-46. It is well established that costs awards are "quintessentially discretionary": *Nolan v Kerry (Canada) Inc*, 2009 SCC 39 at para 126. On that basis, a court should only interfere with a costs award on appeal where the court below "made an error in principle or if the costs award is plainly wrong": *Sun Indalex Finance, LLC v United Steelworkers*, 2013 SCC 6 at para 247, citing *Hamilton v Open Window Bakery Ltd*, 2004 SCC 9 at para 27.

[52] There is no basis to interfere with the Associate Judge's costs award. The Associate Judge thoroughly canvassed and applied the relevant facts and law in finding that the Plaintiff's abusive litigation conduct merits a costs award on an elevated scale: Order dated November 8, 2023 at paras 17-23. This is wholly consistent with one of the main objectives of a costs award, namely to "deter litigation misbehaviour and abuse": *Garshowitz v Canada (Attorney General)*, 2017 FCA 251 at para 29.

D. *An elevated costs award is justified in this appeal*

[53] I agree with the Defendant that an enhanced costs award against the Plaintiff is justified in this appeal. Unfortunately, the costs awards against the Plaintiff to date have not fulfilled their deterrence objective. The Court has cautioned the Plaintiff about his repeated baseless allegations of misconduct, bad faith, and impropriety made against the Court and counsel, but to no avail. Indeed, in the context of this appeal, the Plaintiff has escalated those allegations, and the language and tenor of his submissions particularly merit sanction by the Court.

[54] I also find that an elevated costs award is justified as this appeal was vexatious and unnecessary: Rule 400(3)(k) of the *Rules*. Not only has the Defendant had to incur further costs to defend against the motion, but it has also taken up scarce Court time and resources. While the Plaintiff is self-represented, that is not an excuse in this case. In the context of the numerous motions and Rule 51 appeals in the underlying action, the Plaintiff has been advised about the proper scope and purpose of examinations for discovery, as well as the requirement to comply with the *Rules*.

[55] Based on the foregoing, I exercise my discretion to award costs in the amount of $5,000 payable forthwith.

ORDER in T-1686-21

THIS COURT ORDERS that:

1. The Plaintiff's motion appealing Associate Judge Coughlan's order dated November 8, 2023 is dismissed.
2. The Plaintiff shall pay the Defendant Denis Shapovalov costs in the total amount of $5,000 forthwith.

"Anne M. Turley"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1686-21
STYLE OF CAUSE:	CHRISTOPHER JOHNSON v CANADIAN TENNIS ASSOCIATION, MILOS RAONIC, GENIE BOUCHARD, DENIS SHAPOVALOV AND FELIX AUGER-ALIASSIME

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

ORDER AND REASONS FOR ORDER:	TURLEY J.
DATED:	JANUARY 23, 2024

WRITTEN REPRESENTATIONS BY:

Christopher Johnson	FOR THE PLAINTIFF ON HIS OWN BEHALF
Blake P. Hafso	FOR THE DEFENDANT DENIS SHAPOVALOV

SOLICITORS OF RECORD:

McLennan Ross LLP Barristers and Solicitors Calgary, Alberta	FOR THE DEFENDANT DENIS SHAPOVALOV