Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

Citation: 2017 CHRT 17
Date: June 13, 2017
File No.: T2097/1315

Between:

Michael Christoforou

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

John Grant Haulage Ltd.

Respondent

Ruling

Member: J. Dena Bryan

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T2097/1315

Style of Cause: Michael Christoforou v. John Grant Haulage Ltd.

Ruling of the Tribunal Dated: June 13, 2017

Motion dealt with in writing without appearance of parties

Written representations by:

Nikolay Chsherbinin, for the Complainant

Aaron Crangle, for the Respondent

Table of Contents

I. Introduction

[1] This is a complaint made pursuant to sections 7 and 10 of the *Canadian Human Rights Act*, R.C.S., 1985, c. H-6 ("the *Act*"), that the Respondent employer discriminated against the Complainant based on his age and disability, by terminating his employment in response to his request to work reduced hours. The complaint alleges the Respondent employer engaged in adverse differential treatment, termination of employment, and established or pursued a discriminatory policy or practice, contrary to the *Act*. The complaint was referred to the Canadian Human Rights Tribunal ("the Tribunal") by the Canadian Human Rights Commission ("the Commission") on May 28, 2015. The Commission did not participate at the hearing of this matter.

[2] This matter was heard in Toronto on the following dates: October 31st to and including November 4th, 2016, November 14th to and including November 18th, 2016, and on January 23 and 25th, 2017 with submissions on January 27th.

[3] On January 31, 2017, the Respondent submitted a motion for recusal by email. The Complainant responded by email with further response by the Respondent.

II. Respondent's Motion for Recusal

[4] The Respondent's motion that I recuse myself came the Monday following the conclusion of the hearing and submissions. I therefore refrained from further considering the evidence and submissions and my decision thereon pending my review of this motion.

[5] The Respondent bases its motion for recusal on two events that occurred at the end of the day and were not recorded:

1. The Complainant's counsel gave a USB storage drive to me on January 23, 2017; and,
2. The Complainant and his lawyer shook hands with me and said thank-you at the end of the hearing day on January 27, 2017.

[6] Respondent's counsel asserts that as a result of these two events, he has a reasonable apprehension that I am biased toward the Complainant and possibly against the Respondent, and that I may not be impartial in my deliberations and decision-making.

[7] The Complaint's counsel responded to the motion for recusal with a sworn affidavit of the Complainant affirming what he observed. The Complainant and his counsel assert the presentation of the USB storage drive occurred in the presence of Respondent's counsel, and that it was given to everyone in the room with an innocent intent. The Complainant and his counsel assert the handshake, thank-you and goodbye were directed to the Registry Officer and me, as a courtesy, and in full view of the Respondent's representative and Respondent's counsel.

[8] In response to the Complainant's submission, the Respondent's counsel agrees that the Registry Officer and I did not initiate the distribution of the USB storage drive or the farewell handshake and pleasantries, and acknowledges that I may have been taken off guard in both instances. However, the Respondent asserts that I should have declined to accept the USB storage drive, as well as the handshake offered by the Complainant and his counsel, and the fact that I did not is what gives rise to the Respondent's apprehension of bias.

[9] The Respondent's counsel asserts he remains concerned that I have been influenced by these events to consider the Complainant's case more favourably than the Respondent's, which effect the Respondent's counsel is unable to counteract. The Respondent's counsel is not asserting that he saw any indication I am biased, but the fact that I did not reject the Complainant's overtures has raised in Respondent's counsel an apprehension that I am biased in favour of the Complainant, and possibly against the Respondent.

III. Tribunal Member's recollection of events

A. USB storage device

[10] I recall that at the end of the hearing day on January 23rd, the Registry Officer and I were still at our desks. The Complainant, his counsel and Respondent's counsel, were still near their seats and were packing up to leave. The Respondent's representative had already left the room. Complainant's counsel stated in a light-hearted joking manner that he had ordered and just received USB storage devices as promotional items for his firm. Complainant's counsel then proceeded to distribute a sealed device to all of the aforementioned persons in the room.

[11] While in the presence of the aforementioned persons, I opened the plastic and pulled on the device to see where the USB connector was. The connector was on the top of the bottom portion of the figurine. I commented, in mock offence, that the design "was almost pornographic" (I do not recall anyone using the term "phallic" as asserted by Respondent's counsel in his motion), and everyone laughed. Complainant's counsel explained he could not figure out a way to design it any differently. We all left the room. I walked into the adjacent conference room and left the device on the conference room table. The Registry Officer did not open hers, and left it sealed on her desk.

[12] When we resumed the hearing on Wednesday, January 25th, Respondent's counsel objected on the record to the USB storage device being distributed on the 23rd. He raised the concern that there might have been data on the device. Complainant's counsel confirmed there was no data on the devices. Respondent's counsel explained he was very uncomfortable with my having received this device. I acknowledged his concern and directed that the device given to me be returned. The Registry Officer retrieved the USB storage drive from the conference room table, and gave it and the one she was given to Complainant's counsel. This is all on the record.

[13] My perception of this incident is that the USB storage device was a joke or gag, distributed for amusement, and not in an attempt to curry favour with me. I had expressed my mock offence at the design, and called it almost pornographic, in the same spirit. I was not really offended. This event had nothing to do with the issues under consideration by the Tribunal, and did not influence my consideration of the evidence and submissions.

B. Handshakes and thank-you on January 27th

[14] I recall that at the end of the submissions on January 27th, the recording stopped and the Complainant and his counsel were quick to approach the Registry Officer and me, to shake hands and say goodbye. I do not recall either of them saying thank-you, but they may have done so.

[15] I recall that immediately after exchanging goodbyes with the Complainant and his counsel, I turned to look at the Respondent's counsel and the Respondent's representative, with the intention of doing the same with them. Neither indicated any desire to shake hands, and so I waved to them both and wished them well, probably by saying "take care" and/or "all the best", which are my habitual words when saying goodbye. I did not walk over to them to offer a handshake, because they did not seem to want or expect to shake hands. Furthermore, I was mindful that it was late in the day on a Friday, and the Registry Officer and I had to pack up the files and call the courier before we left the hearing space. Immediately after wishing the Respondent and his counsel well, I returned to my desk to pack up the file.

[16] I recall that when we completed our last day of hearing on November 18th, 2016, I shook everyone's hand, including that of the Respondent's representative and his counsel, and wished them holiday greetings and safe travels for their planned trips. I believe the farewell pleasantries were initiated by the Complainant and his counsel on that occasion as well, and I ensured the Respondent's representative and Respondent's counsel were included in the handshakes and goodbyes. The Respondent's representative and counsel would, therefore, have every reason to think I would shake their hands on January 27th, if they had wanted to do so. In my view, my goodbye and best wishes to the Respondent's counsel and Respondent's representative on January 27, 2017, was equivalent to pleasantries I had just exchanged with the Complainant and his counsel.

[17] My perception of the Complainant and his counsel initiating handshakes and goodbyes is that this was not intended to influence me. I observed the Complainant, in particular, to be very polite, smiling and exchanging pleasantries with the lawyers and witnesses on both sides. In order to preserve an atmosphere of even-handedness in the

hearing room, I made sure to include the Respondent's representative, its witnesses and counsel in the same politeness and exchange of pleasantries. I am well aware that people have different comfort levels with expressing pleasantries, and as a consequence, I am not influenced negatively or positively by a person's superficial behaviour regarding social niceties.

IV. Test for Reasonable Apprehension of Bias

[18] In *R. v. S. (R.D.),* 1997 CanLII 324 (SCC), "(herein S.(R.D))" the Supreme Court of Canada, at paragraphs 31 to 36, 38 to 40, and 48 to 49, confirmed the test for bias enunciated by de Grandpré J. in *Committee for Justice and Liberty v. National Energy Board,* 1976 CanLII 2 (SCC):

> II. The Test for Reasonable Apprehension of Bias
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> 31 The test for reasonable apprehension of bias is that set out by de Grandpré J. in *Committee for Justice and Liberty v. National Energy Board*, [1978] 1 S.C.R. 369. Though he wrote dissenting reasons, de Grandpré J.'s articulation of the test for bias was adopted by the majority of the Court, and has been consistently endorsed by this Court in the intervening two decades: see, for example, *Valente v. The Queen,* [1985] 2 S.C.R. 673; *R. v. Lippé,* [1991] 2 S.C.R. 114; *Ruffo v. Conseil de la magistrature,* [1995] 4 S.C.R. 267. De Grandpré J. stated, at pp. 394-95:
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> > …the apprehension of bias must be a reasonable one, held by reasonable and right-minded persons, applying themselves to the question and obtaining thereon the required information….[T]hat test is "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."
> >
> > The grounds for this apprehension must, however, be substantial and I …refus[e] to accept the suggestion that the test be related to the "very sensitive or scrupulous conscience".
>
> 32 As Cory J. notes at para. 92, the scope and stringency of the duty of fairness articulated by de Grandpré depends largely on the role and function of the tribunal in question. Although judicial proceedings will generally be

bound by the requirements of natural justice to a greater degree than will hearings before administrative tribunals, judicial decision-makers, by virtue of their positions, have nonetheless been granted considerable deference by appellate courts inquiring into the apprehension of bias. This is because judges "are assumed to be [people] of conscience and intellectual discipline, capable of judging a particular controversy fairly on the basis of its own circumstances": *United States v. Morgan*, 313 U.S. 409 (1941), at p. 421. The presumption of impartiality carries considerable weight, for as Blackstone opined at p. 361 in *Commentaries on the Laws of England*, Book III, cited at footnote 49 in Richard F. Devlin, "We Can't Go On Together with Suspicious Minds: Judicial Bias and Racialized Perspective in R. v. R.D.S." (1995), 18 *Dalhousie L.J.* 408, at p. 417, "the law will not suppose a possibility of bias or favour in a judge, who is already sworn to administer impartial justice, and whose authority greatly depends upon that presumption and idea". Thus, reviewing courts have been hesitant to make a finding of bias or to perceive a reasonable apprehension of bias on the part of a judge, in the absence of convincing evidence to that effect: *R. v. Smith & Whiteway Fisheries Ltd.*(1994), 133 N.S.R. (2d) 50 (C.A.), at pp. 60-61.

33 Notwithstanding the strong presumption of impartiality that applies to judges, they will nevertheless be held to certain stringent standards regarding bias -- "a reasonable apprehension that the judge might not act in an entirely impartial manner is ground for disqualification": *Blanchette v. C.I.S. Ltd.*, [1973] S.C.R. 833, at pp. 842-43.

34 In order to apply this test, it is necessary to distinguish between the impartiality which is required of all judges, and the concept of judicial neutrality. The distinction we would draw is that reflected in the insightful words of Benjamin N. Cardozo in *The Nature of the Judicial Process* (1921), at pp. 12-13 and 167, where he affirmed the importance of impartiality, while at the same time recognizing the fallacy of judicial neutrality:

> There is in each of us a stream of tendency, whether you choose to call it philosophy or not, which gives coherence and direction to thought and action. Judges cannot escape that current any more than other mortals. All their lives, forces which they do not recognize and cannot name, have been tugging at them -- inherited instincts, traditional beliefs, acquired convictions; and the resultant is an outlook on life, a conception of social needs.... In this mental background every problem finds its setting. We may try to see things as objectively as we please. None the less, we can never see them with any eyes except our own.
>
> …

> Deep below consciousness are other forces, the likes and the dislikes, the predilections and the prejudices, the complex of instincts and emotions and habits and convictions, which make the [person], whether he [or she] be litigant or judge.

35 Cardozo recognized that objectivity was an impossibility because judges, like all other humans, operate from their own perspectives. As the Canadian Judicial Council noted in *Commentaries on Judicial Conduct* (1991), at p. 12, "[t]here is no human being who is not the product of every social experience, every process of education, and every human contact". What is possible and desirable, they note, is impartiality:

> . . . the wisdom required of a judge is to recognize, consciously allow for, and perhaps to question, all the baggage of past attitudes and sympathies that fellow citizens are free to carry, untested, to the grave.
>
> True impartiality does not require that the judge have no sympathies or opinions; it requires that the judge nevertheless be free to entertain and act upon different points of view with an open mind.

III. The Reasonable Person

36 The presence or absence of an apprehension of bias is evaluated through the eyes of the reasonable, informed, practical and realistic person who considers the matter in some detail (*Committee for Justice and Liberty*, *supra.*) The person postulated is not a "very sensitive or scrupulous" person, but rather a right-minded person familiar with the circumstances of the case.

[…]

A. The Nature of Judging

38 As discussed above, judges in a bilingual, multiracial and multicultural society will undoubtedly approach the task of judging from their varied perspectives. They will certainly have been shaped by, and have gained insight from, their different experiences, and cannot be expected to divorce themselves from these experiences on the occasion of their appointment to the bench. In fact, such a transformation would deny society the benefit of the valuable knowledge gained by the judiciary while they were members of the Bar. As well, it would preclude the achievement of a diversity of backgrounds in the judiciary. The reasonable person does not expect that judges will function as neutral ciphers; however, the reasonable person does demand that judges achieve impartiality in their judging.

> 39 It is apparent, and a reasonable person would expect, that triers of fact will be properly influenced in their deliberations by their individual perspectives on the world in which the events in dispute in the courtroom took place. Indeed, judges must rely on their background knowledge in fulfilling their adjudicative function. As David M. Paciocco and Lee Stuesser write in their book *The Law of Evidence* (1996), at p. 277:
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> > In general, the trier of fact is entitled simply to apply common sense and human experience in determining whether evidence is credible and in deciding what use, if any, to make of it in coming to its finding of fact.[Emphasis in original.]
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> 40 At the same time, where the matter is one of identifying and applying the law to the findings of fact, it must be the law that governs and not a judge's individual beliefs that may conflict with the law. Further, notwithstanding that their own insights into human nature will properly play a role in making findings of credibility or factual determinations, judges must make those determinations only after being equally open to, and considering the views of, all parties before them. The reasonable person, through whose eyes the apprehension of bias is assessed, expects judges to undertake an open-minded, carefully considered, and dispassionately deliberate investigation of the complicated reality of each case before them.
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> […]
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> 48 We conclude that the reasonable person contemplated by de Grandpré J., and endorsed by Canadian courts is a person who approaches the question of whether there exists a reasonable apprehension of bias with a complex and contextualized understanding of the issues in the case. The reasonable person understands the impossibility of judicial neutrality, but demands judicial impartiality…
>
> 49 Before concluding that there exists a reasonable apprehension of bias in the conduct of a judge, the reasonable person would require some clear evidence that the judge in question had improperly used his or her perspective in the decision-making process; this flows from the presumption of impartiality of the judiciary. There must be some indication that the judge was not approaching the case with an open mind fair to all parties. Awareness of the context within which a case occurred would not constitute such evidence; on the contrary, such awareness is consistent with the highest tradition of judicial impartiality.

[19] In *Wewaykum Indian Band v. Canada*, 2003 SCC 45, (herein "*Wewaykum*") the Supreme Court of Canada expanded the court's guidance regarding the principle of impartiality at paragraphs 57 to 59, and 67:

IV. Analysis

A. The Importance of the Principle of Impartiality

57 The motions brought by the parties require that we examine the circumstances of this case in light of the well-settled, foundational principle of impartiality of courts of justice. There is no need to reaffirm here the importance of this principle, which has been a matter of renewed attention across the common law world over the past decade. Simply put, public confidence in our legal system is rooted in the fundamental belief that those who adjudicate in law must always do so without bias or prejudice and must be perceived to do so.

58 The essence of impartiality lies in the requirement of the judge to approach the case to be adjudicated with an open mind. Conversely, bias or prejudice has been defined as

> a leaning, inclination, bent or predisposition towards one side or another or a particular result. In its application to legal proceedings, it represents a predisposition to decide an issue or cause in a certain way which does not leave the judicial mind perfectly open to conviction. Bias is a condition or state of mind which sways judgment and renders a judicial officer unable to exercise his or her functions impartially in a particular case.
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> (*R. v. Bertram*, [1989] O.J. No. 2123 (QL) (H.C.), quoted by Cory J. in *R. v. S. (R.D.)*, [1997] 3 S.C.R. 484, at para. 106.)

59 Viewed in this light, "[i]mpartiality is the fundamental qualification of a judge and the core attribute of the judiciary" (Canadian Judicial Council, *Ethical Principles for Judges* (1998), at p. 30). It is the key to our judicial process, and must be presumed. As was noted by L'Heureux-Dubé J. and McLachlin J. (as she then was) in *S. (R.D.)*, *supra*, at para. 32, the presumption of impartiality carries considerable weight, and the law should not carelessly evoke the possibility of bias in a judge, whose authority depends upon that presumption. Thus, while the requirement of judicial impartiality is a stringent one, the burden is on the party arguing for disqualification to establish that the circumstances justify a finding that the judge must be disqualified.

[…]

B. Reasonable Apprehension of Bias and Actual Bias

[…]

> 67 Of the three justifications for the objective standard of reasonable apprehension of bias, the last is the most demanding for the judicial system, because it countenances the possibility that justice might not be seen to be done, even where it is undoubtedly done — that is, it envisions the possibility that a decision-maker may be totally impartial in circumstances which nevertheless create a reasonable apprehension of bias, requiring his or her disqualification. But, even where the principle is understood in these terms, the criterion of disqualification still goes to the judge's state of mind, albeit viewed from the objective perspective of the reasonable person. The reasonable person is asked to imagine the decision-maker's state of mind, under the circumstances. In that sense, the oft-stated idea that "justice must be seen to be done", which was invoked by counsel for the bands, cannot be severed from the standard of reasonable apprehension of bias.

[20] The Canadian Human Rights Tribunal is not a court, as were the entities considered in *R. v. S. (R.D.),* and *Wewaykum*, and its decision-makers are not judges; they are adjudicators. The adjudicator's words, demeanour and actions need to be viewed in the context of the administrative tribunal.

V. Analysis

[21] Sections 48.9(1) and 50(1) of the *Act* state that the parties shall have a full and ample opportunity to be heard, in a proceeding, which is as informal and expeditious as the principles of natural justice will allow:

> 48.9 (1) Proceedings before the Tribunal shall be conducted as informally and expeditiously as the requirements of natural justice and the rules of procedure allow.
>
> […]
>
> 50. (1) After due notice to the Commission, the complainant, the person against whom the complaint was made and, at the discretion of the member or panel conducting the inquiry, any other interested party, the member or panel shall inquire into the complaint and shall give all parties to whom notice has been given a full and ample opportunity, in person or through counsel, to appear at the inquiry, present evidence and make representations.

[22] I was assigned this case in March, 2016. I conducted numerous case management conference calls, which were recorded and summarized. I adjudicated two contested

interim motions prior to the hearing, which lasted for 13 days in the period between October 13th, 2016 and January 27th, 2017.

[23] I fully considered pre-hearing motions and submissions and provided detailed reasons for direction and rulings. Throughout the hearing, I ensured procedural fairness by allowing both parties to present evidence, question witnesses, raise issues, know the case they had to meet, respond to allegations, make objections and motions, and respond to same. I made my best effort to provide a thoughtful, thorough adjudication of motions and objections. This is all part of the official record, and I am confident that a review of the record will confirm that both parties had a full and fair opportunity to present their case.

[24] The principle of natural justice which is applicable here is the right to an adjudicator who is unbiased. Neutrality and impartiality are not the same and procedural fairness does not require neutrality. (see *R. v. S.(R.D.), per L'Heureux-Dubé and McLachlin JJ. supra,* para. 34)

[25] Adjudicators and judges will often challenge counsel on their submissions to ensure they have an opportunity to address a concern, and may deem it necessary to re-direct counsel during a hearing. Similarly, it may be necessary to remind witnesses to answer questions put to them, explain why an answer is inadmissible, *etc*. To preserve impartiality, the adjudicator's interventions must be for the purpose of ensuring justice is in fact done, and appear on their face as fair and conducive to the efficacy of the hearing (*Yukon,* para. 27). When such procedural conduct appears harsh, rude, disrespectful, and unfair or exhibits pre-judgement, then certainly the presumption of impartiality will give way to an apprehension of bias. (*Zundel v. Citron,* [2000] 4 FCR 225 (C.A.) paras. 36-37; *Yukon,* para. 54-55.)

[26] The circumstances of the hearing may require procedural action, decision or intervention by the adjudicator in order to ensure a full and fair hearing, for example, orderly conduct of the hearing. Such intervention by the adjudicator may not appear neutral, in the senses that there is an expressed purpose and goal to the intervention. Any such intervention by the adjudicator, however, must maintain the appearance of

impartiality, i.e., the adjudicator remains open-minded to the arguments to be made by counsel and has not pre-judged an aspect of the matter. (*Wewaykum, supra,* para. 58).

[27] The absence of impartiality, i.e., bias, may be indicated by words or actions suggesting that the adjudicator has pre-judged an issue, or that the adjudicator has a predisposition towards one side or another or a particular result. Bias unfairly and improperly affects the outcome because it connotes a favourable or unfavourable disposition that is undeserved, that rests on knowledge that the subject ought not to possess, or that is excessive in degree. (*S.(R.D.)* per Cory J., para. 105). A party cannot counter the bias through evidence or submissions. Procedural fairness requires that the outcome/decision is based on a fair hearing, evidence, legislation, jurisprudence and submissions thereon. The decision-maker is transparent in the reasons for the decision and is not influenced by irrelevant considerations.(*Yukon Francophone School Board, Education Area #23 v. Yukon (Attorney General),* 2015 SCC 25 (herein "*Yukon"),* para. 24).

[28] The apprehension of bias must be objective and reasonable in the context of the circumstances, and in light of the whole proceeding. (*S.(R.D.*) per Cory J., para. 111, 141). The Respondent is not claiming that there is any indication of apprehended or actual bias prior to January 23, 2017. Nor is the Respondent claiming any indication of actual bias arising from the events on January 23rd and 27th; just an apprehension that I might be biased against the Respondent and in favour of the Complainant as I review the evidence and submissions, and decide the issues.

[29] In its submissions, the Respondent noted the Complainant is a nice person, and Respondent's counsel urged me not to be swayed by that in my decision-making. Following submissions, I made closing comments to confirm that I would carefully review all of the recorded testimony, all of the exhibits in the context of the testimony given, and that I would read all of the submissions in order to decide the issues. In other words, the witnesses' likeability was not relevant to my decision-making process.

[30] The parties and counsel are aware that I have and will continue to consider their submissions fully and carefully before deciding and ruling. None of my actions, comments

or decisions in this inquiry have given the Respondent any reasonable basis to fear that I would consider anything outside the scope of evidence, exhibits or submissions to decide the issues.

[31] I have prior experience as a litigation lawyer and administrative tribunal adjudicator. I understand that procedural fairness requires that the decision-maker decide the issues based on the evidence presented, and not on information external to the hearing process that the parties cannot be aware of and respond to. Only the submissions, law and evidence presented to me by the parties in the presence of one another, with a chance to respond, can be considered by me in deciding the issues.

[32] The Respondent's counsel is also aware of the principles of natural justice. I confirmed the principles of natural justice on many occasions throughout this matter, so Respondent's counsel knows that I am aware of the principles of natural justice, both in the context of a court and an administrative tribunal.

[33] My response to the Complainant's distribution of the USB storage device, and to his initiation of a handshake and goodbyes, may not have appeared neutral, but colourlessness or absolute neutrality is not required in order to be impartial. Pursuant to s. 48.9(1) of the *Act*, informality is encouraged so long as it does not compromise natural justice. Specifically, so long as it does not compromise my impartiality as an adjudicator, or reasonably appear to do so.

[34] In this hearing, I spoke to counsel several times to request that they display civility toward each other and the tribunal, and to not talk/argue over one another during objections. I did so as a procedural matter to ensure a full, fair and orderly hearing, but the fact that I had to speak to counsel will not have any influence as regards to the merits of the complaint. The questions of alleged discrimination raised in this case are not decided based on the personality or hearing room conduct of the lawyers. Only the demeanour of witnesses during their testimony as it relates to credibility and reliability is relevant; a person's likeability is not relevant.

[35] I confirmed during this hearing that because I had no jurisdiction under the *Act* to award costs, I concluded that I should not draw a negative inference regarding either

party's pursuit of judicial review or appeal, especially involving proceedings between different parties and/or under different legislation. Likewise, any comment by either party that they intend to pursue a judicial review of any ruling I make, is not relevant to my deliberations of this matter. The *Act* gives all parties the right to full and fair participation, including judicial review.

[36] The Respondent's apprehension that I am biased toward the Complainant or against the Respondent, because of the events that occurred on January 23rd and January 27th, is not objective and/or reasonable in light of the Respondent's actual experience with me as an adjudicator since March, 2016, and the Respondent counsel's knowledge of the concept of an unbiased, impartial decision-maker. If viewed by a reasonable and informed person who knew of my conduct throughout this proceeding, my specific experience, and the concepts of neutrality and impartiality, the events in question would not give rise to a reasonable apprehension of bias.

VI. Conclusion

[37] For the foregoing reasons, I will not recuse myself from this matter.

[38] As I stated at the conclusion of the hearing, I will review the evidence and submissions thoroughly and carefully, and make a decision supported by comprehensive reasons.

Signed by

J. Dena Bryan
Tribunal Member

Ottawa, Ontario
June 13, 2017