No.39028

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE NEW BRUNSWICK COURT OF APPEAL)

BETWEEN:

NOEL AYANGMA

APPLICANT

and

UNIVERSITY OF MONCTON, CAMPUS OF MONCTON

RESPONDENT

AMENDED REPLY TO RESPONSE FILED BY THE RESPONDENT UNIVERSITY OF MONCTON, CAMPUS OF MONCTON

NOEL AYANGMA, Applicant
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TO: **THE REGISTRAR OF THIS COURT**

AND TO: **SACHA D. MORISSET**
Stewart McKelvey
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3. *Farkas v. Canada (Minister of Citizenship and Immigration)*, [2001] F.C.J. No. 356 at para. 8 (F.C.T.D.) (QL), 2001 FCT 190 (F.C.T.D.);
4. *Del Castillo v. Canada (Minister of Employment and Immigration)* (1994), 79 F.T.R. 207 at para. 24 (F.C.T.D.), [1994] F.C.J. No. 538 (F.C.T.D.) (QL)).
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Additional Documentary Evidence

1. Statement of Claim

1. This is a reply from the response filed on behalf of the Respondent, University of Moncton in the above referenced matter. The Applicant completely disagrees with the Respondent's bold assertions made at paras.26-31 of its response that the application lacks any question of public or national importance warranting the intervention of this Honourable Court.

A. Issues of Public or National Importance

2. The Applicant submits contrary to the Respondent's suggestion, that not only the issues raised in his application, including the issue around impartiality and neutrality of the judges who presided over the disputes which are the subject matter of the proposed appeal, and thus the issue of bias and/or reasonable apprehension of bias arising from the Motions judges' conduct, but also and more importantly, the unjustified and abusive/restrictive access to justice imposed upon the Applicant, which issues as it would be demonstrated below, clearly suggest a travesty akin to miscarriage injustice, which issues are of course of public importance.

3. In short, it is crystal clear from a careful listening to the audio recordings provided to this Court, which audio recordings were before the Court of Appeal and failed to listen to despite having indicated during the hearing, with the consent of the Respondent, that it would listen to, given the seriousness of allegation leveled against the Motions judge, which recordings would have depicted not only the gratuitous and uncalled for sarcastic comments made by the Motions judge, but also the Motions judge's tone of voice, his impatience and as well as his aggressiveness at the hearing as reproduced at paras.48-56 of the Application for Leave, which conduct, the Applicant submits was clearly both unjustified and unwarranted.

4. The Applicant submits, it would be apparent when listening to the audio recordings provided and/or from reading the relevant excerpts of these audio recordings reproduced within the body of the Application for Leave, that the Motions judge has crossed the line and that his conduct was the result of an opinion based on a prejudgment of the matters before him, including for those matters that were clearly not on the docket before him at the time, they comments were made, which matters he later presided over after refusing to recuse himself. The Applicant submits that had the Court of Appeal listened to the audio as it had indicated it would, it would have concluded that the conduct of the Motions judge was unacceptable and that he proceeded with a corrupt mind.

5. The Applicant submits that not only Courts have recognized the importance and usefulness of audio recordings in the in search of truth, listening to the audio recordings in this case, was a must and necessary, in the determination of both the allegation of bias/reasonable leveled against the Motions judge, so as to ascertain whether through his conduct, including the tone of his voice and his demeanor, the Motions judge crossed the line and prejudged the issues before him in favour of the Respondent. This Court will certainly agree that determination of a charge of bias or reasonable could not have been made simply by reviewing the reasons or any transcript as the Court of Appeal had purported to have in the case under consideration

6. The Applicant submits that the Court of Appeal's failure to review the audio recording, and therefore its decision to ignore the evidence adduced (audio recordings), would of course amount not only to substantial error of law, but it would also be fatal to the Court of Appeal judgment. The Applicant submits that this type of error alone would certainly warrant the intervention of this Honourable Court. The Applicant further submits that the scale of the judges' tasks must not cause them to lose sight of the fact that the rules of natural justice must always be observed and that their conduct during hearings and applications for protection, must, at all times, be irreproachable and objective. It goes without saying, that the most basic courtesy and politeness are *de rigueur*.

7. The Applicant submits, there is no place for intimidation, contempt, and offensive innuendo, nor for harshness or inappropriate language from a presiding judge or presiding judges. This exactly what the Right Honourable Mr. Justice Fauteux wrote in the *Livre du magistrat* ["a book for judges"], "[TRANSLATION]

> **The judge will ensure the climate necessary for the operation of justice by his moderation, his discipline and his courtesy in his relations with counsel, the parties and the witnesses." (The Right Honourable Gérald Fauteux, *Le livre du magistrat*, Minister of Supply and Services Canada, 1980, at page 49).**

8. The Applicant submits that procedural fairness requires presiding judges to conduct hearings in an objective, moderate, irreproachable manner, with politeness and basic courtesy, and it cannot be said that this is not what occurred here based on the facts disclosed by the audio recordings, as demonstrated by the excerpts of the audio recordings, which is submitted speak volume and confirm the allegation of bias/reasonable apprehension of bias made against the Motions judge, but they also demonstrate why the Motions judge ought to have recused himself from presiding over a matter or matters he had already pre-judged and and/or opined on, despite not before him at the time.

9. The Applicant submits, contrary to the Respondent' submission, the conduct complained about clearly warrants the intervention of this Court. It is not a surprise that the Respondent had not even attempted to address this reality in its response to the application as there is no dispute even from the Respondent that the Motions judge raised his voice in an intemperate manner or about anything the Applicant had alleged occurred in this case. It would appear from listening to the audio recordings that the Motions judge was very frustrated supposedly by his ego was in line with the serious allegation of bias levelled against him and the request that he recuses himself from hearing any of the matters assigned to him.

10. The Applicant submits that if this Court carefully reviews of the exchanges during the hearings between him and the Motions judge, which exchanges the Court of Appeal had confirmed it will review by listening to the audio recordings in order to determine both the demeanor and the tone of the voice of the presiding Motions judge, and failed to do so, this Court will not only certainly, as a reasonable person would, conclude that Motions judge had crossed the line as an impartial adjudicator, but also prevented the applicant from having a fair hearing where he could fully present his case. ***See (Guermache v. Canada (Minister of Citizenship and Immigration)1,*** 2004 FC 870 (CanLII) at para.13, ***Quiroz Mendez v. Canada (Citizenship and Immigration)2*** 2011 FC 1150, (CanLII), ***(Farkas v. Canada (Minister of Citizenship and Immigration)3***, [2001] F.C.J. No. 356 at para. 8 (F.C.T.D.) (QL), 2001 FCT 190 (F.C.T.D.); ***Del Castillo v. Canada (Minister of Employment and Immigration)*** 4(1994), 79 F.T.R. 207 at para. 24 (F.C.T.D.), [1994] F.C.J. No. 538 (F.C.T.D.) (Ql).

Conclusion:

11. The Applicant submits that upon reading and listening the relevant excerpts of the audio recordings, provided to the Court, this Court can only conclude that the presiding Motions judge lost control of his demeanor by raising his voice and shouting in an angry and sarcastic and demeaning tone of voice in attempt to intimidate the Applicant. The Applicant submits this is clear indication that he lost his temper with the Applicant. Consequently, a reasonable observer in the hearing room would likely think that the presiding judge was angry, and in a state of mind against the Applicant, a lay litigant.

12. The Applicant further submits that if a judge is angry and shouts at a lawyer, or at lay litigant appearing before him or her, as it appears to be what occurred in the present case, a reasonable person would have a reasonable apprehension that the judge was biased against that litigant or lawyer's case.

13. The Applicant submits that not only his ability to have a fair and impartial hearing before Courts below was not only compromised by the Motions judge's refusal to recuse himself, based on the comments he made on a matter that was not before him and was latter assigned to him, but more importantly, by the Court of Appeal's failure to listen to the audio recordings to ascertain both the Motions judge's tone of voice and demeanor, despite confirming during the hearing of the appeal that it will do so.

14. The Applicant submits that all of this clearly suggests that there had been an injustice in the present case. As such a reasonable person informed of all these circumstances would conclude that the Board would more likely than not, not decide the matter fairly. Contrary to the Respondent's suggestion, all of the above warrants the intervention of this Court, so as to avoid further miscarriage of justice and restore trust in the administration of justice in the province of New Brunswick.

B. Summary Judgment – Limitation Period

15. The Applicant submits that though a finding of apprehension of bias should be sufficient to vitiate the entire proceedings conducted in the Courts below, the issue of the limitation period for Charter claims and as well as the inconsistencies with and across jurisdiction also raise issues of public interest as it relates to both the administration of justice and the conduct of presiding judges. As they depict the lower Courts' misinterpretation of the judgment of this Court in ***Kingstreet Investment v. New Brunswick (Finance)*** Canlii 2007 SCC1, which judgment was reconfirmed in ***Ravndahl v. Saskatchewan***, 2009 SCC 7. stood from the proposition that the limitation period suggested by this Court for an action based on the Charter was 6 years. Specifically ***Kingstreet*** supra suggests the following at para.59:

> 59. My view is that claims such as the present may be subject to an applicable limitation period. The New Brunswick limitation period of Action provide that:
>
> **9. No other action shall be commenced but within six years after the cause of action arose**

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1 *See (Guermache v. Canada (Minister of Citizenship and Immigration),* 2004 FC 870 (CanLII) at para.13

2 *Quiroz Mendez v. Canada (Citizenship and Immigration)* 2011 FC 1150, (CanLII),

3 (*Farkas v. Canada (Minister of Citizenship and Immigration)*, [2001] F.C.J. No. 356 at para. 8 (F.C.T.D.) (QL), 2001 FCT 190 (F.C.T.D.);

4 *Del Castillo v. Canada (Minister of Employment and Immigration)* (1994), 79 F.T.R. 207 at para. 24 (F.C.T.D.), [1994] F.C.J. No. 538 (F.C.T.D.) (QL)).

16. The Applicant submits that this finding that the limitation in the case under consideration is now 2 years, is consistent with the finding of the PEI Courts in ***Ayangma v. Eastern School Board5 2000*** PESCAD 12, which decision referred to this Court's ruling in ***Kingstreet and Ravndaahl supra***, and was recently affirmed by the Court PEI of Appeal in ***Ayangma v. Canada Infoway Inc.*** 2017 PECA 13 at para. 51-52:

> [51] A claim must be commenced within six years from the date that the cause of action arose (*Statute of Limitations*, R.S.P.E.I. 1988, Cap. s-7, s-s. 2(1)(g)). Two Supreme Court of Canada cases have settled the previous uncertainty on the question of applicability of general statutory limitations to Charter claims for *in personam* remedies. Where the cause of action arose outside the limitation period, it was held to be statute barred (***Kingstreet Investments Ltd. v. New Brunswick (Finance)***, 2007 SCC 1, paras.59-61; ***Ravndahl v. Saskatchewan***, 2009 SCC 7, at para.17; applied by this Court in ***Kelly, supra.***)
>
> [52] The appellant's statement of claim pleads that his cause of action arose on July 7, 2005. Since the six-year limitation period set out in s.2(1)(g) of the *Statute of Limitations* is applicable, the appellant's claims commenced over ten years later, on July 21, 2015, are out of time and statute barred.

17. The Applicant submits that the mere fact that the *Statute of Limitations* may have changed in New Brunswick, in 2015 is not sufficient and/or cannot and should not alter the already settled law as to the limitation period for *Charter* claims. The common law does not allow for two sets of law dealing with the same type claims (Charter claims) – One set of law for New Brunswick with a limitation period of two (2) years and another set of law for the rest of Canada, with a limitation period of six (6 years

C. Duty to Consider All the Pleadings and the Evidence Adduced by The Parties

18. The Applicant submits that, in any event, it is also clear that the Motions judge also failed to carry out his duty as required by law and in particular Rule 22 when he systemically ignored paras.47, 48, 50, 52, 55 and 56 of the Statement of Claim attached to this Reply, which Statement of Claim unambiguously showed some later dates than the cut-off chosen by the Motions judge which date was and blindly accepted by the Court of Appeal as the appropriate cut-off date when the Motions judge believed the time started to run for the Applicant, and so did the Court of Appeal, when it failed to review the audio recordings of the proceedings before the Motions judge to ascertain the conduct of the Motions judge whom he alleged had crossed the line .

19. The Applicant submits that in reaching the decision that the action was statute barred, the Motions judge failed to consider all the pleadings and the evidence adduced by the parties, consistent with the jurisprudence set by the New Brunswick Court of Appeal in ***Dupuis v. City of Moncton6***, 2005 NBCA 47 (CanLII), as to the applicability of Rule 22 when the Court stated:

> [17] **Since Rule 22 applies to all cases, the motion judge had a duty to consider the pleadings and the evidence adduced by the parties on the motion for summary judgment in order to determine whether there remained an unresolved question of fact that required a trial: *Caissie v. Sénéchal Estate et al.* (2001), 2001 NBCA 35 (CanLII), 237 N.B.R. (2d) 232 (C.A.), *Cannon v. Lange et al.* (1998), 1998 CanLII 12248 (NB CA), 203 N.B.R. (2d) 121 (C.A.). See, as well, *Dubé v. Dionne et al.* (1998), 1998 CanLII 12207 (NB CA), 201 N.B.R. (2d) 387 (C.A.).**

20. ***Dupuis supra***, at para.19 not also stands from the proposition that:

> [19] The motion judge in this case examined the pleadings. He also considered the affidavit of Maurice Surette, the Assistant Electrical Supervisor for the City of Moncton, with attachments; the affidavit of Sharon Dupuis with attachments, and the affidavit of Brian Murphy with attachments. After an examination of the record and hearing the argument on the motion, he was left with no doubt as to what the court's judgment would be if the matter proceeded to trial.

but also under - Limitation of Action Defence that:

> [20] Whenever a limitation provision is open to multiple reasonable interpretations, the one least inimical to the plaintiff must be favoured: para. 173 *Kenmont Management Inc. v. Saint John Port Authority et al.* (2002), 2002 NBCA 11 (CanLII), 248 N.B.R. (2d) 1 (C.A.). However, in this case the interpretation that the motion judge gave to the limitation provision is the only interpretation that it can reasonably bear.

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5 ***Ayangma v. Eastern School Board 2000*** PESCAD 12

6 ***Dupuis v. City of Moncton***, 2005 NBCA 47 (CanLII),

21. The case at bar, is another example of departure from well settled law set by the New Brunswick Court of Appeal in ***Whelton v. Mercier et al***[7] 2004 NBCA 83, which stands from the following proposition under "***Failure to file and serve an Affidavit of Documents***" as it was the case here:

> [26] The delivery of an affidavit compliant with Rule 31.03(4) should lead to the disclosure of every document related to a matter in issue. Armed with this affidavit, the adverse party can insist that documents of interest to him or her be produced. Through production of those documents, he or she can acquire a thorough understanding of the case. An Affidavit of Documents that complies with the *Rules of Court* is generally indispensable in uncovering the truth. This is particularly so in cases such as the present, where the answers to controversial questions lie deep within documents held exclusively by one party. In cases of this nature, motions for summary judgment should, as a general rule, be dismissed with costs if the moving party has not complied with the requirements of Rule 31.

22. The Applicant submits it is clear from a careful review of the Statement of Claim attached to this Reply, that the Motions judge erred in law and in fact in not choosing the limitation period which was the least inimical to the Applicant as it was required to do by law, prior to concluding that the Applicant's action was time barred. The Applicant submits this is substantial error warranting the intervention of this Court as such decision amounts to an injustice because it put an end to the Applicant's action and denies him his day in Court.

Conclusion

23. It therefore follows that the Courts below may have also erred in law in applying the new *Limitations of Actions Act* to the facts of this case in deciding that the action, which was based on the events, which arose in 2013-2014, was statute barred.

D. Restriction of Access to Justice

24. In ***Hryniak v. Mauldin***, 2014 SCC 7 (CanLII), [2014] 1 SCR 87, KARAKATSANIS J., writing for this Court, recognized at para. 1 the importance of ensuring access to justice which is what the Applicant is complaining about in the present, when she stated that:

> Ensuring access to justice is the greatest challenge to the rule of law in Canada today. Trials have become increasingly expensive and protracted. Most Canadians cannot afford to sue when they are wronged or defend themselves when they are sued, and cannot afford to go to trial. Without an effective and accessible means of enforcing rights, the rule of law is threatened. Without public adjudication of civil cases, the development of the common law is stunted

25. The Applicant submits that this ordeal is nothing but a travesty full of abuse and misuse of the power entrusted on a judge of the Court, given the fact that the decision to bar the Applicant's access to justice was simply to protect the Respondent, without any evidence that it was willfully attacked, harassed or annoyed by the Applicant, in any shape or form.

26. There is no evidence before this Court, including in the decision under attack which could form the basis of the drastic restriction imposed on the Applicant restricting his access to the Courts in New Brunswick Applicant who was simply on the evidence before the Court, seeking an impartial forum to right the wrongs perpetrated against him by the Respondent. It is clear from the evidence before this Court, including the evidence arising from two decisions under consideration by this Court (SCC 300928 and 30931), and as well as the panoply of decisions rendered in the PEI Courts from which such a drastic measure could have legally been justified against the Applicant, given that the PEI Courts have failed to do so in several occasions.

27. A decision to bar someone from the Court or restrict his access to the Courts cannot be made in a vacuum or be based either on a previous decision which had been vacated by a higher court and thus no longer legally sound or simply because an individual is pursuing his constitutional rights to right the wrongs perpetrated against him over 3 decades.

28. As previously stated, this case is nothing, but a travesty and an injustice perpetrated against the Applicant at all level of the judicial system, which travesty on itself would raise an issue of public interest involving a blatant and abusive restriction of a citizen access to the Court. This is clearly not what the law was intended to serve as the alleged conduct clearly defeats the purpose of the law.

29. **The Applicant submits that to restrict a citizen's access to justice would require more than two decisions from the same judge who was asked to recuse himself and refused to do so, and let alone be based from a judgment which had been vacated by a higher court. in another jurisdiction, where the Courts had been unable to declare the Applicant "vexatious litigant" over more than two decades of litigations involving more than 150 decisions.**

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7 *Whelton v. Mercier et al* 2004 NBCA 83

30. The Applicant submits that not only the decision under attack fails to meet the threshold for declaring someone "vexatious litigant" but it is also inconsistent with both *Ayangma v. Attorney General* supra, and the decision of the Alberta Court of Appeal which set out at para.38 relying on *644036 Alberta Ltd v Morbank Financial Inc*2014 ABQB 681 at paras 51-97, 26 Alta LR (6th) 153, litigation", the difference between a vexatious litigation and a vexatious litigant.

31. The Applicant submits that while conducting a vexatious proceeding, the remedy is sanctioned by costs, declaring someone vexatious litigant, which is more drastic and involves more, including harassment and annoyance of the other party, which there is no evidence for before this Court and was none were before the Courts below, is sanctioned by a restriction to access to the Courts, which remedy is more such drastic and the litigant is by the same token declared "vexatious litigant" which is clear not the case here.

Overall Conclusion

32. Though the Applicant does not submit that there was actual bias. Rather, he nonetheless submits that the tone of the voice and the demeanor of the Motions judge, including his refusal to recuse himself and as well as the sarcastic comments he made about the Applicant's qualifications provide a reasonable basis for the appearance of bias. The tone and temper of the Motions judge and as well as the manner he conducted the hearings and the comments would suggest unfairness to an impartial observer, and so would the Court of Appeal's failure to review the audio recording the ascertain same and arriving at the conclusion that the was not bias or reasonable apprehension of bias arising from the Motions judge's overall conduct. Referencing the Supreme Court of Canada judgment in ***R. v. S.(D.)8***, 1997 CanLII 324 (SCC), [1997] 3 S.C.R. 484, the Applicant submits that the words and actions of a the Arbitrator, that of the Applications judge and as well as the conduct of the appeal create an appearance of unfairness. For the justice system to have "the respect and confidence of its society … fairness and impartiality must be both subjectively present and objectively demonstrated to the informed and reasonable observer." The Applicant submits that the overall conducted of the Courts below is nothing but a travesty akin to a miscarriage of justice.

33. The Applicant further submits that justice must not only be done, but also be seen to be done. "This standard of fairness requires that a court hold its hearings in a serene manner, without bias or appearance of bias, allowing each party the opportunity to fully and adequately present his or her case," relying on ***R. v. Roy9,*** (2002), 2002 CanLII 41133 (QC CA), 167 C.C.C. (3d) 203 (Que. C.A.) at p. 208, this is not what occurred here. While no trials/hearings or appeals are perfect, judges' conduct should not devolve, as here, into condescension, mockery or ridicule of a party, and in this case the Applicant, a lay litigant, such that a reasonably informed observer would conclude the trial or hearing was conducted unfairly, it results in reversible error.

34. The Applicant submits that failure by the Court of Appeal to listen to the audio recording despite having indicated that it will to do so, and therefore ignoring this crucial evidence, and reaching a conclusion that there was no evidence of reasonable apprehension of bias, arising from the Motions judge's tone of voice and his demeanor as alleged, is not only flawed and problematic as it illustrates a general prejudice towards the Applicant, but it is also unjudicial and fatal to the Court of Appeal's judgment. The Plaintiff resubmits that this a travesty and a miscarriage of justice that warrants the intervention of this Court so as to restore trust, in the administration of justice in the province of New Brunswick.

ALL OF THIS IS RESPECTFULLY SUBMITTED this 25th day of February 2020.

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8 *R. v. S.(D.)*, 1997 CanLII 324 (SCC), [1997] 3 S.C.R. 484,

9 *R. v. Roy*, (2002), 2002 CanLII 41133 (QC CA), 167 C.C.C. (3d) 203 (Que. C.A.)

Authorities

1. *Guermache v. Canada (Minister of Citizenship and Immigration),* 2004 FC 870 (CanLII) at para.13
2. *Quiroz Mendez v. Canada (Citizenship and Immigration)* 2011 FC 1150, (CanLII),
3. *Farkas v. Canada (Minister of Citizenship and Immigration),* [2001] F.C.J. No. 356 at para. 8 (F.C.T.D.) (QL), 2001 FCT 190 (F.C.T.D.);
4. *Del Castillo v. Canada (Minister of Employment and Immigration)* (1994), 79 F.T.R. 207 at para. 24 (F.C.T.D.), [1994] F.C.J. No. 538 (F.C.T.D.) (QL)).
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10. 1 *R. v. Roy,* (2002), 2002 CanLII 41133 (QC CA), 167 C.C.C. (3d) 203 (Que. C.A.)

Additional Document

Statement of Claim

8

Pièce "L" à l'appui de l'affidavit d'Edgar Robichaud affirmé solennellement devant moi à Moncton, Nouveau-Brunswick, ce 1er jour de septembre 2018.

Commissaire aux serments en ma qualité d'avocat

FILE No. MC 386-2017

COURT OF QUEEN'S BENCH OF NEW BRUNSWICK
TRIAL DIVISION
JUDICIAL DISTRICT OF MONCTON

BETWEEN

NOEL AYANGMA

PLAINTIFF

AND

UNIVERSITY OF MONCTON, MOCTON CAMPUS

DEFENDANT

NOTICE OF ACTION WITH STATEMENT OF CLAIM ATTACHED

TO: University of Moncton Campus of Moncton

LEGAL PROCEEDINGS HAVE BEEN COMMENCED AGAINST YOU.

IF YOU WISH TO DEFEND THESE PROCCEDINGS, either you or a New Brunswick lawyer acting on your behalf must prepare your Statement of Defence in the form prescribed by the Rules of Court and serve it on the plaintiff or the plaintiff's lawyer at the address shown below and, with proof of such service, file it in this Court Office together with the filing fee of $50,

(a) if you are served in New Brunswick, WITHIN 20 DAYS after service on you of this Notice of Action With Statement of Claim Attached, or

(b) if you are served elsewhere in Canada or in the United States of America, WITHIN 40 DAYS after such service, or

(c) if you are served anywhere else, WITHIN 60 DAYS after such service.

Dossier No. _____

COUR DU BANC DE LA REINE DU NOUVEAU BRUNSWICK
PREMIERE DIVISION
CIRCOMCRIPTION JUDICIARE DE MONCTON

COURT OF QUEENS BENCH
TRIAL DIVISION
MONCTON, N.B.
FILED/REGISTERED
MAY 29 2017
COUR DU BANC DE LA REINE
DIV DE PREMIÈRE INSTANCE
MONCTON, N.B.
DÉPOSÉ/ENREGISTRÉ

NOEL AYANGMA

DEMANDEUR

ET

UNIVERSITÉ DE MONCTON, CAMPUS DE MOCTON

DEFENDRESSE

AVIS DE POURSUITE ACCOMPAGNÉ D'UN EXPOSÉ DE LA DEMANDE

A : Université de Moncton, Campus de Moncton

UNE POURSUITE JUDICIAIRE A ÉTÉ ENGAGÉE CONTRE VOUS.

SI VOUS DESIREZ PRÉSENTER UNE DÉFENCE DANS CETTE INSTANCE, vous-même ou un avocat du Nouveau-Brunswick chargé de vous représenter devrez rédiger un exposé de votre défense en la forme prescrite par les Règles de procédure, le signifier au demandeur ou à son avocat à l'adresse indiquée ci-dessous et le déposer au greffe de cette Cour avec un droit de dépôt de $50 et une preuve de sa signification :

a) DANS LES 20 JOURS de la signification qui vous sera faite du présent avis de poursuite accompagné d'un exposé de la demande, si elle vous est faite au Nouveau-Brunswick ou

b) DANS LES 40 JOURS de la signification, si elle vous est faite dans une autre région du Canada ou dans les États-Unis d'Amérique ou

c) DANS LES 60 JOURS de la signification, si elle vous est faite ailleurs.

IF YOU FAILED TO DO SO, you may be deemed to have admitted any claim made against you, and without further notice to you, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE.

YOU ARE ADVISED THAT :
(a) you are entitled to issue documents and present evidence in the proceeding in English or French or both;

(b) the plaintiff intends to proceed in the English. language; and

(c) your Statement of Defence must indicate the language in which you intend to proceed. Where the claim is for a liquidated demand or to recover a debt, with or without interest, insert the following notice:

IF YOU PAY THE PLAINTIFF or the plaintiff's lawyer the amount of the plaintiff's claim, together with the sum of $100 for the plaintiff's costs, within the time you are required to serve and file your Statement of Defence, further proceedings will be stayed or you may apply to the court to have the action dismissed.

THIS NOTICE is signed and sealed for the Court of Queen's Bench by Lyne M. Richard, Clerk of the Court at Moncton, on the 29th day of May, 2017. Court Seal (Clerk)

(Clerk) Greffier
Address of court office
Palais de Justice Moncton
145 Assumption Blvd.
P.O. Box 5001
Moncton NB E1C 8R3

DATED this 29th day of May 2017

TO: University of Moncton
118 Antonine Maillet Avenue
Moncton, New Brunswick
E1A 3E9

SI VOUS OMETTEZ DE LE FAIRE vous pourrez être réputé avoir admis toute demande formulée contre vous et, sans autre avis, JUGEMENT POURRA ÊTRE RENDU CONTRE VOUS EN VOTRE ABSENCE.

SACHEZ QUE :
a) vous avez le droit dans la présente instance, d'émettre des documents et de présenter votre preuve en français, en anglais ou dans les deux langues;

b) le demandeur a l'intention d'utiliser la langue ...., et

c) l'exposé de votre défense doit indiquer la langue que vous avez l'intention d'utiliser. Si la demande a pour objet la perception d'une somme déterminée ou le recouvrement d'une créance avec ou sans intérêts, ajouter le paragraphe suivant :

Si, dans le délai accordé pour la signification et le dépôt de l'exposé de votre défense, VOUS PAYEZ AU DEMANDEUR ou à son avocat le montant qu'il réclame, plus $100 pour couvrir ses frais, il y aura suspension de l'instance ou vous pourrez demander à la cour de rejeter l'action.

CET AVIS est signé et scellé au nom de la Cour du Banc de la Reine par ..... greffier de la Cour à ..... ce ..... 2017 ..... Sceau de ....

..... la Cour (greffier)
Adresse du greffe
Moncton Law Courts
145 Blvd Assumption
P.O. Box 5001
Moncton NB E1C 8R3

Datée du.....jour de .....

A: Université de Moncton
118 Avenue Antonine Maillet
Moncton, Nouveau Brunswick
E1A 3E9

CLAIM

[1] The Plaintiff claims damages including general, special and punitive damages against the Defendant, the University of Moncton (Moncton Campus), arising from (a) a series of willful and/or negligent misrepresentations and deceit by the Defendant arising from the series of breaches of various Articles of the Collective Agreement dealing with both the discrimination clause and the conduct of selection process, including Articles 4.04, 14.03, 14.16.10 (b) to the Defendant's willful and/or negligent misrepresentations arising from (i) the flawed and bad faith interpretation of the minimum criteria published (ii) the flawed interpretation of the successful candidate's qualifications for the position Human Resource Management Professor including her education, training and experience/expertise (iii) the flawed and bad faith assessment of the Plaintiff's qualifications including his education, training and experience/expertise as they relates to the minimum stated criteria published by the Defendant.

[2] The Plaintiff also claims against the Defendant, pursuant to s.24(1) of the Charter, the same type of heads of damages referred to at para.1 noted above for arising from the Defendant's deliberate/wilful failure not only to deny him the opportunity to pursue gaining employment as a full time professor in the province of New Brunswick contrary to section 6(2) of the Charter (Mobility Rights) but also for its refusal to recognize one of his areas of expertise.

[3] The Plaintiff also claims costs of the proceeding.

The Parties:

(a) The Plaintiff :

[4] The Plaintiff lives and has been living at all material times in Charlottetown, Prince Edward Island. He was also at all material times and is presently a "Chargé de cours" at the University of Moncton, Moncton Campus, Faculty of Administration in Department of Administration, teaching one or two courses per day and per semester since 2010.

[5] The Plaintiff is a Canadian Citizen and a person of colour who immigrated from Cameroon-Central Africa, in 1985, was at all material times 59 years old. He is now aged 63.

[6] The basis for the Plaintiff's treatment as a "Chargé de cours" is the PhD in Business Administration. In the course of education training, the Plaintiff took four (4) courses in human resource management: three (3) at the Masters' level MBA (Personnel Management, Industrial Management and Human Resource Management) an one at the PhD level (Organizational Behaviour).

[7] The Plaintiff states that he always had very good evaluations for all courses he had taught as a "Chargé de cours" since 2010 and that he had at all material times extensive pedagogical experience, close to 28 years, including at the university level gained as a "Chargé de cours" with the Defendant since 2010.

(b) The Defendant, the University of Moncton

[8] The Plaintiff states the Defendant operates in a unionized environment with two separate entities of the same union without a bridge between the two entities: one for permanent professors and librarians and the second one for the "Chargés de cours" and others.

[9] The Plaintiff further states that all material times he belonged to the second unit of the union.

[10] The Plaintiff states that the Defendant, the University of Moncton, was created in 1963. Since its creation, it has become the single most important centre for social, cultural and economic development of New Brunswick's Acadian population.

[11] The Plaintiff states that the Defendant was established under *The Université de Moncton Act*, and is an "employer" within the meaning of subsection 1(1) of the *Industrial Relations Act*, R.S.N.B. 1973, c. I-4.

[12] The Defendant has three constituent campuses in Moncton, Edmundston and Shippagan; it is Canada's largest campus amongst its three (3) campuses. It is also Canada's largest French-language university outside Quebec and has awarded more than 52,000 degrees.

[13] The Defendant offers 175 study programs, including 37 at the master's degree level and 7 at the doctorate level. Fields of studies include administration, arts, education engineering, forestry, law, nursing, nutrition, psychology, sciences, social work and many more with 30 research centers, chairs and institutes.

[14] The Defendant's student population originates mainly from New Brunswick but also from almost all countries of the "Francophonie international." The Defendant benefits from many exchange programs and institutional agreements supporting student mobility at the international level. Numerous international internships are made available to students every year.

[15] The Defendant is one of the few francophone universities in Canada that offer international students the opportunity to work and study at the masters level. With one of lowest faculty-student ratios in the country, exchanges between the professors and students and overall quality of learning are enhanced. The 5000 students enrolled at the Defendant University benefit from a personalized teaching style with quality that can only be provided in a medium-sized university.

(c) Filling on a temporally basis (one year contract) the Human Resource Management Professor Position in 2013.

[16] The Plaintiff states that as a result of the Human Resource Management Professor, Dr. Naji Abdelhadi's (PhD) departure in 2013, from the Department of Administration and the Faculty of Administration; the Defendant decided to fill on a temporally basis, the permanent position held by Dr. Naji Abdelhadi (PhD), pursuant to Article 14.05 of the Collective Agreement of the Unit I.

[17] The Plaintiff states that Article 14.05 allows the filling a position on a temporally basis, without following the normal process stipulated at Article 14.12 of the same Collective Agreement.

[18] The Plaintiff further states that though already in the employ of the Defendant and the Department of Administration, and meeting all the required qualifications to be appointed for that position at all material times of the filling of the impugned vacant position on a temporally basis, and a member of the Unit II of same Union, he was not approached nor considered for the vacant position.

[19] The Plaintiff states that the Defendant hired Ms. Stephanie Maillet, an individual that it knew or ought to have known, had only her Bachelor Degree in Psychology obtained in 2008 (i) was completely lacking in the required minimum education (PhD) to teach at the university level and as well as the required training (administration) to teach at the Faculty of Administration and the Department of Administration (ii) was also completely lacking in the required pedagogical experience teaching at the university level or elsewhere.

[20] The Plaintiff states that none of the facts mentioned above, including her status at the Faculty of Administration, were known to him before June 21st, 2015.

(d) Filling position of Professor, Human Resource Management (Permanent staffing)

[21] The Plaintiff states that on October 1st, 2013, just one month after the beginning of the semester, the then Dean, Mr. Gaston Leblanc, requested an authorization to fill the same position on a permanent basis.

[22] The Plaintiff states that in January 2014, the Defendant posted the same position to fill the position vacated by Dr. Naji Abeldahi (PhD) on a permanent basis. The Defendant set the dateline for applying for this position to be January 13th, 2013 and struck a selection committee composed of all professors of the Department of Administration, including Dr. Vivi Koffi.

[23] The Plaintiff submits that the minimum qualifications to teach in any department, except the Law School, are stated in Article 14.16.10 of the Collective agreement.

[24] The Plaintiff specifically states that the criteria set and published by the Defendant for the permanent human resource management position, included the following criteria: a PhD in Business Administration; a PhD in Industrial Relations or a PhD in a related field, with specialization in human resources with excellent pedagogical qualities preferably at the university level.

[25] The Plaintiff further states that while the Defendant could have also exceptionally considered candidates without a PhD, those candidates must have been at all material times in the process of obtaining a PhD in the domain within one year and that in this specific case, they must provide a recommendation from their thesis director indicating when the PhD would be in fact obtained.

[26] The Plaintiff states that following the announcement of the vacant position, referred to in paras.23. 24 and 25 of his Statement of Claim, he applied for this position by submitting on January 7th, 2014, a complete Dossier composed (i) a cover letter, a resume, certified copies of transcripts of his degrees and other documentation including teaching licenses showing his pedagogical experience.

[27] The Plaintiff states that on March 3rd, 2014, he was advised by the then Dean, Dr. Gaston Leblanc, that his candidacy for the position was not retained.

[28] The Plaintiff further states that upon receiving the letter, dated March 3rd 2014, he called the then Dean, Dr. Gaston Leblanc. The latter reassured him that his candidacy was not retained because the education and experience/expertise of those candidates retained and interviewed for the position were closely related to the position and that their training all was in the domain of human resource management. The Plaintiff believed him at the time.

[29] The Plaintiff states that it is only on or about March 27th, 2015, that he became aware about the information provided to him by the then Dean, Dr. Gaston Leblanc, was misleading and false.

[30] The Plaintiff states that the information he came across was from a publication depicting both the Dean, Dr. Gaston Leblanc, of the Faculty of Administration and the then Assistant Director of the Department of Administration, Dr. Vivi Koffi, also a member of the selection committee, struck to fill the position on a permanent basis and the author of the selection committee minutes, presenting a cheque in the amount of $5, 000 to Ms. Maillet for the purpose of completing her doctorate degree in psychology.

[31] The Plaintiff states that this announcement picked up his curiosity and raised some serious concerns and doubts about what may have occurred at all material times during the selection processes which led to appointments of Ms. Maillet both on a temporally basis in 2013 and as well as on a permanent basis in 2014.

[32] The Plaintiff states that following his discovery referred to at paras.29-31 of his Statement of Claim and having suspected foul play, he immediately requested to meet with the then Dean of the Faculty of Administration, Dr. Gaston Leblanc. This was to obtain further clarification as to the real reason for the rejection of his candidacy over that of candidate that obviously did not have a PhD at all material times of the filling of both positions on a temporally and permanent basis. Also, to a candidate who was pursuing doctorate studies in a domain (psychology) not related to the position being filled.

[33] The Plaintiff states that his meeting with the past Dean of the Faculty of Administration, Mr. Gaston Leblanc, took place on May 12th, 2015.

[34] The Plaintiff states he knew Dr. Gaston Leblanc as his professor of marketing in 1985-1986, before and after he became the Dean of the Faculty of Administration and had the greatest respect for him both as his professor and Dean. He believed him when he told him that his candidacy was rejected because the experience/expertise of those candidates retained for the interview were directly related to the position to be filed. The plaintiff was deeply disappointed with Mr. Gaston, and his positive opinion quickly changed after March 27th, 2015 when he found out that he was the person presenting the award of $5,000 to Ms. Maillet for the purpose of completing her doctorate in psychology.

[35] The Plaintiff further states the purpose of that meeting was to inquiry about the real reason for the rejection of his candidacy while retaining at the same time the candidacy of the candidate, Ms. Maillet. A person whom the Faculty or the Department of Administration knew or ought to have known, on the face of her educational and training backgrounds, that she met neither the minimum education criteria nor the stated required experience, and was thus not qualified for either the position filled on the temporally or on permanent basis.

[36] The Plaintiff states that he could no longer trust the Dean of the Department of Administration, charged with the initial screening of the candidates. This feeling was based on the unpleasant experience and the astonishing revelation of the fact that the candidate he had hired on two occasions and had previously indicated to him that she was the best candidate for the job, may not so be the best and/or was not even qualified to teach at the university level and let alone at the Faculty of Administration, because she was not in the domain. As a result of this mistrust, the entire May 2015 meeting was taped.

[37] The Plaintiff states that during the meeting of May 12th, 2015, with Dean, Dr. Gaston Leblanc, he not only continued to maintain that Ms. Maillet was the best candidate for the position and that her education background was in the domain, but he also stated among other things, that Ms. Stephanie Maillet possessed at all material times a PhD in Organizational Behaviours and that she was the best suited candidate as to the stated criteria for the position. He also suggested that there was not discrimination in the selection process and that he would not hire someone whose training was in psychology to teach a course in the Department of Administration such a "production" and that even if he is asked to invite such a candidate to an interview he would not do so.

[38] The Plaintiff states that Dean, Dr. Leblanc ironically did exactly what he had suggested he would not do, inviting Ms. Maillet, whom he knew or ought to have known had an education and training in psychology, with a simple Bachelor Degree in Psychology obtained in 2008 and not even a Masters' Degree or a PhD Degree, to teach management courses, at the Faculty of Administration and in the Department of Administration.

[39] The Plaintiff states that not satisfied with any of the explanations provided to him by the Dean, during the May 12th, 2015 meeting and having left with more questions/concerns than answers, regarding the rejection of his candidacy over that on Ms. Maillet, in the filling of the vacant position of Professor, Human Resource Management first in 2013 on a temporally basis and again in 2014 on a permanent basis, he filed, first level grievances, alleging both a breach of various sections of Collective Agreement and discrimination in both positions given to Ms. Maillet in 2013 and 2014.

[40] The Plaintiff states that on May 27th, 2015, Dean Leblanc denied his grievances, indicating not only that the Defendant did not violate the Collective Agreement related to the "Chargées and Chargés de cours", but also because the Plaintiff grievances were not arbitral because the Plaintiff was not an employee as stipulated in Article 2.19 of the relevant Collective Agreement, and as such the Plaintiff was not bound by the Collective Agreement.

[41] The Plaintiff states that the next day being May 28th, 2015, he filed a second stage grievances.

[42] The Plaintiff further states that notwithstanding the filing of the second level grievances alleging a potential breach of the Collective Agreement and foul play in the selection process and interpretation of the minimum selection criteria; he continued to inquire about the real reasons as to why he was denied the opportunity to compete for the position, the vacant human resource management position. The conducting of in-depth searches on line and his endeavours to have all the record straight, led him to Ms. Stephanie Maillet's profile on or about June 21st, 2015.

[43] The Plaintiff states that upon a cursory review of Ms. Maillet's profile, it became apparent not only that she was not qualified for the position as suggested and maintained by the Defendant and in particular Dean, Dr. Gaston Leblanc, and that she clearly lacked a PhD at all material times, but also that her area of expertise (psychology) was not in the required domain, as indicated by Dr. Gaston Leblanc.

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[44] The Plaintiff further states and astonishingly so, that the same profile showed that the basis of Ms. Maillet's appointments at all material times (in 2013 and in 2014), was contrary to the Defendant's bold assertion, a simple Bachelor Degree in Psychology and not even a Masters' degree, which Bachelor Degree she obtained from the University of Moncton in 2008.

[45] The Plaintiff states that on June 30th, 2015, the Defendant rejected in second level grievances.

[46] The Plaintiff further states that immediately following the rejection of his second level grievance on June 30th, 2015, he filed on the same day, a human rights complaint alleging discrimination on the basis of colour, race, age, national/ethnic, in both selection processes.

[47]. The Plaintiff states that as part of the human rights process denying all the allegations, the Defendant disclosed on December 18th, 2015, additional information relevant to the filling of the position of Professor, Human Resource Management on a permanent basis. The additional information disclosed included both the Defendant's minutes of the screening process used to screen him out, dated February 7th, 2014 and Dean, Dr. Gaston Leblanc's recommendation, dated March 27th, 2014, recommending the appointment of Ms. Maillet, to the position of Professor, Human Resource Management on a permanent basis.

[48] The Plaintiff states that a review of the December 18th, 2014's letter revealed additional material facts indicating the process and the basis for the exclusion of his candidacy, which included the verification of whether the Plaintiff met the specialization in human resources and/or whether he had specialized publication.

[49] The Plaintiff further states that though the criteria referred to at para.48 of this Statement of Claim were not part of the criteria published by the Defendant as reproduced at paras.24-25 of this Statement of Claim, they were used to screen him out and not Ms. Maillet, who clearly met neither the stated minimum criteria nor the newly added criteria used to screen him out on February 7th, 2014.

[50] The Plaintiff states the letter of recommendation disclosed on December 18th, 2015 and dated March 27th, 2014, from the Dean of the Faculty of Administration, Dr. Gaston Leblanc, specifically indicated that Ms. Maillet did well in her interview, knowing well that it was inaccurate, based on her mediocre performance, scoring only 52/80 or 65%.

[51] The Plaintiff further states the Defendant, through Dr. Gaston Leblanc, also indicated that Ms. Maillet was by reason of her training in human resources, the best suited candidate for both the position and the Faculty's need.

[52] The Plaintiff states that in its response to his Human Rights Complaint December 18th, 2014, the Defendant also continued to claim that Ms. Maillet was qualified for the position and that her training was in the required domain and that her doctorate was in the required field, which is in human resource management; even though it knew or ought to have known at all material times of her appointments that her thesis was in psychology.

[53] The Plaintiff states that on December 22nd, 2016, the Commission finally released its Report in which it recommended pursuant to s.19(2) of the Act that his complaint of discrimination against the Defendant be dismissed with regard to any allegations relative to the alleged discriminatory words that occurred after July 1st, 2014. This was because the information was insufficient to demonstrate a solid arguable case based on his race, colour, national/ethnic origin and age in so as to permit an extension of time pursuant to s.18(2) of the *New Brunswick Human Rights Act*, and therefore recommended these allegations be dismissed as being time-barred on the basis that the Plaintiff allegations of discrimination made by the Plaintiff were time barred based on an arbitrary cut-off date of July 1st, 2014.

[54] The Plaintiff states that as a "Chargé de cours" teaching only one or two course per day and per semester at all material times, and because of the secrecy around the filling of the vacant position, he was unaware of the fact that the Defendant had offered the vacant position to a person whom it knew or ought to have known, did not meet any of the minimum education and training criteria stipulated at Article 14.16.10 in in the Collective Agreement and/or those set by the Faculty of Administration as stated at paras.24-25 of the Statement of Claim.

[55] The Plaintiff states that he only became first aware of some of the material facts which gave rise to his action against the Defendant as stated in paras.1-4 of his Statement of Claim, after he had discovered between March 27th, 2015 after review of the announcement made by the Defendant awarding Ms. Maillet the sum of $5000 for the purpose of completing her doctorate in psychology. Also, on June 21st, 2015, when he accessed Ms. Maillet's profile on line, showing that the basis of both her appointments on a temporally and permanent basis, was in fact a Bachelor Degree in Psychology obtained in 2008, from the University of Moncton, which is neither a PhD nor even a Masters' Degree.

[56] The Plaintiff states he became fully aware of all the material facts which led to his claim against the Defendant, including the refusal for to consider his candidacy for reasons other than the stated or published criteria or qualifications, after he received the Defendant's response to his human rights complaint against the Defendant dated December 18th ,2015. This response also included both the minutes prepared by the Department of Administration on February 7th, 2014 and the letter of recommendation dated March 27th, 2014, recommending the appointment of Ms. Maillet notwithstanding her complete lack of qualifications and her mediocre performance during the interview with a score of 65%.

Allegations:

[57] The Plaintiff alleges that the Defendant denied him the opportunity to fill on a temporally basis the position of Professor, HRM Resource Management and the opportunity to compete for the same permanent position on a permanent basis, contrary to Article 4.04 of the Collective Agreement and s.6(2) of the s.6(2) of the Charter, and by so doing deprived him from his constitutional right (Mobility Rights) to pursue a gaining livelihood in the Province of New Brunswick contrary to s.6(2) of the Charter (Mobility Rights). s.6

[58] The Plaintiff further alleges that in order to promote the candidacy of a candidate, Ms. Maillet, a young Acadien whom it knew or ought to have known was completely lacking in the minimum criteria for the position, the Defendant, engaged in a series of willful/false and/or negligent misrepresentations, including but not limited to willful/false and negligent misrepresentations arising from (i) its misrepresentations of the selection process and the published minimum criteria when it suggested that it was looking for those candidates with training in human resources and that those candidates with a PhD in Business Administration or in Industrial Relations did not possess that training (ii) its willful and/negligent misrepresentations of the qualifications of Ms. Maillet, including her education and training backgrounds by falsely suggesting that she had a Doctorate in Human Resources (Organizational Behaviours) when she did not; that her thesis was in the domain of Human Resources when in fact it was; that she had a PhD in Psychology when in fact she had a DPs which is not a PhD, (iii) the willful and negligent misrepresentations of the Plaintiff's education and training backgrounds and qualifications as they relate to the minimum stated criteria published. s.15

a) Allegations Related to the Breaches of the Collective Agreement

[59] The Plaintiff alleges that the Defendant breached various Articles of the Collective Agreement dealing with both the discrimination clause and the conduct of selection process, including articles 4.04, 14.03, 14.16.10.

[60] The Plaintiff alleges that in considering the candidacy of Ms. Maillet, a young Acadian person, on the basis of her Bachelor Degree in Psychology obtained in 2008, and with absolutely no pedagogical experience including at the university level, to teach at the Faculty of Administration courses that she had neither taught or even taken herself in her Bachelor Degree in Psychology Program; while at the same ignoring the plaintiff's candidacy, notwithstanding his qualifications and training in business administration, with a PhD in Business Administration and extensive pedagogical experience, including at the university level and the fact that he was already in the employed, was clearly discriminatory and contrary to Article 4.04 of the Collective Agreement.

[61] The Plaintiff specifically alleges that even though Article 14.05 the Collective Agreement may have permitted an appointment without following the normal selection process provided pursuant to Article 14.12 of the Collective Agreement as it ought to have been the case in the filling of the position on a permanent basis, such appointments must also be made in accordance with both Articles 14.03 and 14.16.10 of the Collective Agreement, and that this did not occurred in the present case.

[62] The Plaintiff alleges that the Defendant wilfully/negligently failed to do so, as in the present case, when it deliberately and wilfully chose to appoint a candidate whom it knew or ought to have known, completely lacked all the minimum qualifications for the position, and thus a candidate it knew or ought to have known her appointments would not meet the requirements under Articles 14.03 and 14.16.10, was clearly contrary to the Collective Agreement.

[63] The Plaintiff further alleges that because of the Defendant's deliberate, wilful and/or negligent repeated breaches of the Collective agreement, he had suffered substantial damages, including special damages for loss of income and other heads of damages referred at para.1 of his Statement of Claim as a result of the Defendant's conduct and repeated breaches.

(b) Allegations Regarding the Allegations of Wilful/Negligent Misrepresentations

[64] The Plaintiff alleges that the Defendant wilfully and/or negligently misrepresented (i) the selection process including in the manner it interpreted the required minimum criteria it had published and had invited qualified candidates to apply (ii) the successful candidate's qualifications for the position Human Resource Management Professor including her education, training and experience/expertise (iii) the Plaintiff's qualifications including his education, training and experience/expertise, as they related to the minimum stated criteria published by the Defendant.

[65] The Plaintiff alleges that the Defendant has committed a series of false and wilful misrepresentations and conducted itself in the manner indicates bad faith in the appointments of Ms. Maillet first on a temporally basis in 2013 and subsequently in 2014, even though it knew or ought to have known that Ms. Maillet not only did not have a PhD at all material times, but also that her education and training was not in the required domain of the administration and/or industrial relations or human resource management.

[66] The Plaintiff further alleges that in appointing Ms. Maillet first on a temporally basis and subsequently on a permanent basis, the Defendant also knew or ought to have known the fact that the Doctorate in Psychology, Ms. Maillet was pursuing was not a PhD, nor a degree that could be considered to be in an area related to the position.

[67] The Plaintiff further alleges that the mere fact the Defendant knew or ought to have known that the candidate it was about to appoint, was appointed on the basis of a simple Bachelor Degree in Psychology and excluded the candidacy of the Plaintiff who in fact had a PhD in Business Administration and was thus, not only far better qualified than Ms. Maillet, but also met the minimum criteria for the positions, and thus met the profile and qualities of the candidate it was in fact looking for, clearly suggests that the Defendant acted in bad faith, causing substantial damages to the Plaintiff.

[68] The Plaintiff specifically states that the materials facts which gave rise to the Defendant's false/wilful/negligent misrepresentations occurred:

68.1 the first misrepresentation occurred when the Defendant decided to appoint Ms. Maillet on temporally basis in 2013, by completing ignoring Articles 4.04, 14.03 and 14.16.10 of the Collective Agreement;

68.2 the second misrepresentation occurred when the Defendant (the selection committee) decided to screen in Ms. Maillet on February 7th, 2014, for an interview notwithstanding her clear lack of qualifications and her failure to meet any of the minimum criteria that it itself set and published in January 2014. Even though it knew or ought to have known based on her Dossier that she was clearly not qualified for the position as there was nothing to support that she met any of the minimum criteria for the position advertised;

68.3. the third misrepresentation occurred when the selection committee recommended Ms. Maillet's to Dean, Dr. Gaston Leblanc, for the position after she had been screened in alongside other qualified candidates on February 7th, 2014 and interviewed for the position, even though it knew or ought to have known based on her Dossier that she was clearly not qualified for the position as there was nothing to support that she met any of the minimum criteria for the position advertised;

68.4 the fourth misrepresentation occurred when, the selection committee deliberately and wilfully screened out the Plaintiff on February 7th, 2014, on the basis of criteria not published in the posting. Even though it knew or ought to have known, based on his Dossier, that he was clearly qualified for the position and met all the minimum criteria for the position advertised and was thus better qualified than Ms. Maillet in the area of education and training and pedagogical experience, including experience teaching at the university level.

68.5 the fifth misrepresentation occurred when Dr. Gaston Leblanc also recommended Ms. Maillet's appointment to the VRER (Vice Recteur à l'enseignement à la recherche), Mr. Neil Boucher, on March 27th, 2014, even though it knew or ought to have known based on her Dossier that she was clearly not qualified for the position as there was nothing to support that she met any of the minimum criteria for the position advertised and when it suggested that the education criteria called for those candidate who had specialization in human resources and ignored those with PhD in Business Administration or in Industrial Relations;

68.6 the sixth misrepresentation occurred when Dr. Gaston Leblanc, the then Dean of the Faculty of Administration, suggested in his letter of recommendation dated March 27th, 2014, that Ms. Maillet did well in her interview when he knew or ought to have known based on the interview scoring of Ms. Maillet of 52/80 or 65% that it was a mediocre interview result;

68.7 the seventh misrepresentation occurred when Dr. Gaston Leblanc, Dean of the Faculty of Administration, suggested in his letter of recommendation dated March 27th, 2014, that Mr. Maillet with a Bachelor Degree in psychology, was better suited for the need of the Faculty in the area of human resources;

68.8 the eighth misrepresentation also occurred on May 12th, 2015, during the meeting between Dean Leblanc and the Plaintiff, when he stated that he would not hire someone with a degree in psychology to teach a course such as production and that even if he was asked to have such a person to an interview, he would refuse, knowing well that this exactly is what the Defendant did, with his approval, when not only the selection committee screened in Ms. Maillet on February 7th, 2014, interviewed her and recommended her to him, who in return recommended her to the "VRER" on March 27th, 2015;

68.9 the ninth misrepresentation occurred on May 12th, 2015 during the meeting between Dr. Gaston Leblanc and the Plaintiff, when the former continued to assert that Ms. Maillet (with her Bachelor Degree in Psychology) was the best suited candidate for the position, that her training was in the domain of human resources and that she had a PhD in Organizational Belaviours, when he knew or ought to have known that it was not true.

68.10 the tenth misrepresentation occurred when the "VRER" Mr. Neil Boucher accepted Dean Leblanc's recommendation and confirmed Ms. Maillet's appointment, effective July 1st, 2015;

68.11 the eleventh misrepresentation occurred on December 18th, 2015, when the Defendant, through counsel, suggested that Ms. Maillet was about to obtain a doctorate degree in the required field, which was in the human resources, when it knew or ought to have known that it was not;

68.12 the twelfth misrepresentation occurred on February 18th, 2017 when the Defendant through counsel repeated that:

"... Notamment, Mme Maillet était sur le point d'obtenir un doctorat dans le domaine des ressources humaines, comme stipulé dans l'annonce du poste »

68.13 the thirteenth misrepresentation occurred when the Defendant suggested in the "liste des membres de l'Assemblee de la FESR" that Ms. Maillet possessed a PhD, when in fact it knew or ought to have known that Ms. Maillet's doctorate is not a PhD.

[69] The Plaintiff alleges overall as it relates to all the thirteen misrepresentations that the Defendant knew or ought to have known or was wilfully blind to the fact the Plaintiff, who was better qualified, would lose an opportunity to pursue gaining employment in the Province of New Brunswick and/or find himself in lengthy litigation with the Defendant over something, a process that was protected by the Collective Agreement.

[70] The Plaintiff alleges the Defendant acted in bad faith when it made additional series of deliberate and wilful misrepresentations during the May 12th, 2015 meeting with the then Dean and through counsel, in utter attempt to undermine his qualifications and elevate Ms. Maillet's total lack of qualifications.

[71] The Plaintiff also alleges that the Defendant acted in bad faith when it applied a double standard in its approach to screening candidates and when it conducted itself in a willful manner and in particular when it willfully screened out the Plaintiff's candidacy based on criteria not published in the posting and thereby failed to apply same standard to the successful a candidate whom it knew or ought to have known on the face of her Dossier and her profile, did not meet either any of stated and as well as unstated the criteria for the position with the intention of deceiving those susceptible to review its selection process and on which a reasonable person would and did rely to his detriment.

[72] The Plaintiff states that because of the Defendant's refusal to hire him first on a temporally basis and later on a permanent basis and to treat him differently and adversely by denying him his constitutional rights through a series of deliberate, false, negligent and/or willful misrepresentations, to pursue gaining livelihood in the Province of New Brunswick as a full time professor, a guaranteed under s.6(2) of the Charter, a right not to be deprived of on the basis of any prohibited grounds of discrimination, including on the basis of his race, colour, age and national/ethnic origin, he is entitled to the heads of damages claimed at paras.1-2 of his Statement of Claim.