NOVA SCOTIA COURT OF APPEAL

Citation: ***New Scotland Soccer Academy v. Nova Scotia (Labour Standards Tribunal)***, 2012 NSCA 40

Date: 20120417
Docket: CA 354453
Registry: Halifax

Between:

Kathy Baker, carrying on business under the firm Name of New Scotland Soccer Academy

Appellant

v.

The Labour Standards Tribunal, Attorney General of Nova Scotia, and Frederico Luis Otto Krause

Respondents

Judges: Saunders, Oland and Bryson, JJ.A.

Appeal Heard: February 2, 2012

Held: Appeal dismissed per reasons for judgment of Saunders, J.A.; Oland and Bryson, JJ.A. concurring.

Counsel: Appellant in person
Alicia Arana-Stirling, for the Respondent Attorney General of Nova Scotia
Respondent Labour Standards Tribunal not appearing
Respondent Frederico Luis Otto Krause not participating

Reasons for Judgment:

[1] This is an appeal from a decision of the Labour Standards Tribunal which reduced, but did not entirely reverse and set aside, a claim for damages awarded against the appellant in an earlier decision by the Director of Labour Standards.

[2] Essentially, the appellant complains that the Tribunal had no jurisdiction over the matter because its officials had "dismissed" the original complaint, thus ending the proceedings and all matters in dispute between the parties. To compensate for the significant inconvenience and expense in having to defend herself in a series of proceedings she says were improper, the appellant seeks substantial "costs" to make up for her "losses".

[3] For the reasons that follow I would dismiss the appeal.

Background

[4] The relatively modest labour dispute between the appellant, Kathy Baker, and the respondent Frederico Krause has produced a long and rather tortured history of litigation.

[5] To set the context for the analysis that follows I need only refer briefly to the material facts. A more fulsome record may be found in the decision of the Labour Standards Tribunal now under appeal and reported at 2011 NSLST 30 (CanLII).

[6] Reference may also be made to an earlier decision of this Court involving the same parties, but different issues, 2010 NSCA 43.

[7] Ms. Baker operated New Scotland Soccer Academy. She had a contract with Mr. Krause for the position of head coach. They had a falling out. Ms. Baker was dissatisfied with Mr. Krause's commitment to her program and came to suspect that he was "moonlighting" for a competitor. In April, 2008, she met with Mr. Krause to discuss what she characterized as negligence and performance issues. She made suggestions for improvement and approached him again at the end of April, 2008, to offer encouragement in fulfilling his responsibilities with the business. On May 26, 2008, Ms. Baker met with Mr. Krause and terminated their contract. She offered him a part-time job as a coach which she believed would best

suit his skills and experience.

[8] Mr. Krause made a formal complaint to the Labour Standards Tribunal. He alleged that he had been wrongfully dismissed and he sought damages. In a decision dated July 27, 2009, the Director of Labour Standards found in favour of Mr. Krause and awarded him approximately $6,000 damages.

[9] Ms. Baker appealed to the Tribunal claiming the Director was without jurisdiction to hear Mr. Krause's complaint. At the same time she appealed to this Court. We declined to hear her appeal on the jurisdictional issue, because the Tribunal had not yet (at that time) made a determination as to whether its Director had jurisdiction; consequently, there was nothing to appeal. However, we were prepared to address the narrow issue of procedural fairness surrounding the Director's order that she post a bond with the Tribunal as security, without notice, and without giving Ms. Baker the opportunity to present argument as to why a bond should not be required, in her circumstances. In that case we found that by proceeding in the appellant's absence, the Tribunal had erred in law. We set aside the Tribunal's order that Ms. Baker be obliged to post a bond, and we remitted the matter to the Tribunal, directing that a newly constituted panel be appointed to hear her appeal. In concluding our reasons (2010 NSCA 43), Farrar, J.A. dealt with costs stating:

> **3. Costs**
>
> [36] The appellant sought costs on this appeal. She outlined in considerable detail the time, energy, and expenses that she has incurred dealing with the fallout from Mr. Krause's complaint. In total, she has incurred $4,955 in disbursements alone. This does not take into account the time she has had to take away from her business and family.
>
> [37] It is unusual to award costs in a Tribunal appeal. **Rule** 90.51 of the **Civil Procedure Rules** provides:
>
> > 90.51 No costs may be ordered paid by or to a party in a tribunal appeal unless the Court of Appeal orders otherwise.
>
> [38] Although it is tempting to do so, I would not deviate from the general rule in this case. Our analysis and relief is restricted to the single issue of NSSA's obligation to post the bond, and does not address the broader aspects of Ms.

> Baker's intended appeal to the Tribunal on the merits, since that appeal has not yet taken place (see [6], supra). Further, there is no one before us at this stage to challenge Ms. Baker's claim to costs and disbursements. Accordingly, there will be no order for costs, today. However, my disinclination to award costs is without prejudice to Ms. Baker's right to seek costs of this appearance, should further proceedings in matter case cause her to be before this Court again.
> (Underlining mine)

[10] The present appeal concerns the decision and order of the Tribunal dated July 25, 2011, which, as noted earlier, is now reported as 2011 NSLST 30 (CanLII). Following a 3-day hearing that began in October, 2010 and continued in March and April, 201l, the Tribunal allowed Ms. Baker's appeal in part and varied the order of the Director by reducing the amount of damages Ms. Baker was obliged to pay to Mr. Krause for wrongful dismissal, back wages, vacation pay, etc. The effect of that decision reduced the award to Mr. Krause from $6,026 to $2,884.40 (subject to further reduction by the operation of applicable statutory deductions).

[11] Now Ms. Baker challenges the Tribunal's July 25, 2011 decision and confirmatory order, once again raising the issue of jurisdiction, but this time approaching it from a different perspective. Her argument is that Mr. Krause's lawyer at the time effectively withdrew his complaint before the Tribunal when he brought an action in the Small Claims Court for the same matter, and the same damages. Once the Tribunal learned of Mr. Krause's parallel actions, its officials notified the parties by letter dated September 30, 2008, that the complaint filed by Mr. Krause was "… now closed as the matter is being dealt with through small claims court." Various banks and other lending institutions which had been ordered to freeze Ms. Baker's accounts as security for the wages and damages she was said to owe, received similar written communication from Mr. Michael David, a Labour Standards officer advising them that such third party orders were "now cancelled as the matter in which it relates (sic) is now closed."

[12] The difficulty giving rise to the present appeal, almost four years later, surrounds action taken in the days following Mr. David's communication.

[13] What happened was this. In a letter to Mr. David dated October 30, 2008, Mr. Brian J. Hebert (who was Mr. Krause's lawyer at the time) said they wished to reconsider their stratagem of seeking damages in the Small Claims Court. Mr.

Hebert said he had hoped to claim "Wallace" type damages for "the bad faith conduct of the employer" but that his research led him to conclude that there was a "$100 limit on general damages" in the Small Claims Court such that "$100 will be the most our client could get for bad faith conduct." Mr. Hebert concluded his letter to Mr. David with the question:

> After he withdraws the claim in Small Claims Court, could he start a new complaint under the Labour Standards Code?

[14] Mr. David replied that same day with a letter sent by facsimile. I will reproduce the letter verbatim. It was copied to the appellant, Kathy Baker. Mr. David wrote:

> Dear Mr. Hebert:
>
> **Re: Federico Krause v. Kathryn Baker, COB as New Scotland Soccer Academy Our file: 48837**
>
> I have reviewed your written request dated October 30, 2008, with the Director of Labour Standards. He supports your request and states that the complaint can be reopened if the Small Claims Court claim has been withdrawn.
>
> Therefore, if you provide me with documentation supporting that a withdrawal has been made, I will reopen my investigation into this matter. However, I want to be clear that this office only has the ability to award notice in the maximum amount of one week of pay for this complaint if I find that Mr. Krause was dismissed without cause. However, if I determine that Ms. Baker violated Section 30 (sic) the *Labour Standards Code*, with or without cause, then the penalty could be a maximum of three months of pay.
>
> In addition, I will look into the unpaid pay issues within the original complaint.
>
> If you would like the claim reopened with our office, please forward documentation supporting a withdrawal of the Small Claims Court claim. If you have any questions or concerns, please do not hesitate to contact me. My contact information is above.
>
> Regards,
>
> Michael David
> Labour Standards Officer
> cc: Kathy Baker.

[15] Subsequently, and after receiving further correspondence from Mr. Hebert confirming that they had withdrawn their suit in the Small Claims Court, Mr. David wrote the parties saying " the investigation has been reopened" and that he "will likely move to an active investigation within two weeks". That communication was dated November 5, 2008.

[16] In this appeal Ms. Baker repeats her previous assertion that the Tribunal did not have jurisdiction over her. She says Mr. Krause's first complaint was "dismissed with the consent of Mr. Krause's legal counsel" and that the Director erred in law and jurisdiction when he decided that he could re-open the old complaint that had been "dismissed". She also complains the Tribunal failed to deal with this critical issue when she first raised it. She asks that the decision and confirmatory order of the Tribunal be quashed and that the Tribunal be prohibited from taking any further action against her with regard to this dispute. Ms. Baker's second principal argument is with respect to costs. What she claims as "costs" are more appropriately characterized as damages, as well as significant disbursements related to this appeal, and the previous appeal, for what she describes as a terrible waste of her time, loss of business, hardship, and out-of-pocket expenses.

[17] With that brief review of the circumstances, I will turn to an analysis of the issues.

Issues

[18] Although the appellant has represented her own interests throughout these extensive proceedings — and has done a commendable job on each occasion — she acknowledges that she has had the benefit of legal advice from time to time.

[19] In her written and oral submissions Ms. Baker makes two principal submissions, the first relating to jurisdiction, and the second to do with costs. Each, she says, raises a question of law, reviewable on a standard of correctness.

[20] Appeals to this Court from proceedings before the Tribunal are governed by s. 20 of the **Labour Standards Code**, R.S.N.S. 1989, c. 246. The material portions of s. 20 provide:

> **Determination by Tribunal and appeal to court**

> 20 (1) If in any proceeding before the Tribunal a question arises under this Act as to whether
>
> ...
>
> (b) an employer ... has done anything prohibited by this Act,
>
> the Tribunal shall decide the question and the decision or order of the Tribunal is final and conclusive and not open to question or review except as provided by subsection (2).
>
> (2) Any party to an order or decision of the Tribunal may, within thirty days ... appeal to the Nova Scotia Court of Appeal on a question of law or jurisdiction.

[21] Thus, appeals to this Court, in the circumstances that arise in this case, are confined to matters of law or jurisdiction. Based on that statutory framework I will restate the appellant's submissions as follows:

i. Did the Tribunal err in law or jurisdiction by considering this complaint; and

ii. Should costs be awarded to the appellant for her appeal(s) to this Court?

[22] I agree with the appellant that her first issue raises a question of law, reviewable on a standard of correctness. Her second "issue" is not presented as a ground of appeal said to challenge the Tribunal's decision; rather the appellant asks us to exercise our discretion by awarding her "costs" in any event.

Analysis

[23] I will start with Ms. Baker's first issue relating to jurisdiction. She argues, in effect, that the Tribunal's decision is a nullity because the Tribunal "did not have jurisdiction over the complaint". In her factum the appellant says:

> Krause's complaint was dismissed with the knowledge and consent of his legal counsel. The matter was both Functus Officio and Res Judicata.

[24] Ms. Baker elaborated on this submission at the hearing. She referred to the extensive record on appeal where on six occasions Mr. Michael David said he "closed" the file and on another occasion said it was "dismissed". He "lifted" the holds placed on her bank accounts. He returned the money owing to her. All indications suggested that Mr. Krause's claim had been dismissed. Once Mr. Krause withdrew his claim in the Small Claims Court, as confirmed in writing by his lawyer, it could not be re-litigated by re-opening the file as a labour standards complaint. Otherwise, the appellant says claims like this could go on forever. Accordingly, the appellant says the Tribunal acted without jurisdiction. The only way the Tribunal could "reclaim" jurisdiction would be if Mr. Krause had appealed their decision. He never did. It is now too late since any appeal by Mr. Krause would be statute barred as out of time.

[25] In her submissions, Ms. Baker also complained that in its July, 2011 decision, the Tribunal "failed to deal with her jurisdictional issue". At the hearing before us she expanded upon this alleged failing. She said the issue focussed on by the Tribunal was what *they* thought to be the jurisdictional dispute, that being whether there could be two parallel arenas with authority to consider the same claim at the same time. Thus, once Mr. Krause initiated and then withdrew his suit in the Small Claims Court, the Tribunal concluded that it could go on to consider his complaint under their legislation. The appellant says that question was not *her* issue. Rather, the point she was trying to make was that their officer, Mr. Michael David, had, in fact, dismissed Mr. Krause's claim such that it could not be dealt with again.

[26] Despite the appellant's able submissions, I respectfully disagree.

[27] This is how the Tribunal defined the issues before it:

> 29. There are two issues presently before the Tribunal. The first was dealt with by way of a preliminary motion by the Respondent in which she suggested the Tribunal was without jurisdiction in this matter. The essence of her motion was the Tribunal, pursuant to Section 83(3)(a) is not permitted to entertain this matter as the Complainant has started an action in another venue. The Director took an opposing view.
>
> 30. Secondly, the issues of back pay, vacation pay, constructive dismissal and discrimination all have to be dealt with by the Tribunal if we find we have

> jurisdiction to deal with the matter.

[28] While the Tribunal may not have been as clear as it might in describing the scope of the jurisdictional issue before it, I am satisfied that it addressed both the question of "competing" venues as well as Ms. Baker's point that because Mr. David had "dismissed" the complaint, it could not thereafter be considered by the Tribunal.

[29] I say that for the following reasons. A reading of the transcript makes it clear that the appellant's jurisdictional issue was front and center during the proceedings before the Tribunal. When the hearing commenced on October 20, 2011, Ms. Baker made thorough submissions, with references to case law and exhibits in support of her leading argument that because Mr. Krause's "complaint was closed ... there's nothing for which a Board to act on (sic) ... So in other words, once the claim is withdrawn, they no longer have jurisdiction over the matter." The appellant's submission was strongly opposed by counsel for both the Tribunal and Mr. Krause. The Tribunal Chair saw the issue as being so important that he requested written briefs, reasoning that that issue would have to be resolved before deciding whether the Tribunal would or could go on to consider the merits.

[30] Further, a reading of the whole of the Tribunal's decision causes me to think that its members were alive to Ms. Baker's objection. For example, one sees this statement by the Tribunal in its reasons:

> 33. The original response by the Labour Standards officer who was investigating this matter was to inform the Complainant the file would be closed and he would no longer entertain the complaint as a result of him proceeding in Small Claims Court. This was communicated on September 16, 2008 by way of email.
>
> 34. Subsequent to this, the lawyer for the Complainant wrote the Labour Standards officer on October 30, 2008 and asked for the Labour Standards matter to be reopened if they withdrew the Small Claims Court Action. This Action in Small Claims Court was withdrawn and the Director of Labour Standards proceeded with investigating the complaint and rendering a decision.
>
> (Underlining mine)

These statements by the Tribunal were followed by references to its own jurisprudence where, in other cases, it had seen fit to consider a complaint, notwithstanding the fact that a similar claim had been initiated in a different venue.

After citing s. 83(3)(a) of the **Labour Standards Code** which directs that "the Tribunal shall not entertain the application" in cases where:

> (a) ... the employee is proceeding with or has commenced or was successful in an action for the recovery of the unpaid pay ...

the Tribunal then referred to its previous jurisprudence in disputes where it had assumed jurisdiction over the complaint because, in those other cases, the merits of the claim had not been heard. In other words, whether the employee "was successful in an action for the recovery" of back pay or other damages, had never been determined. It seems to me that this was the same factor which convinced the Tribunal in this case that it was free to exercise jurisdiction over the dispute between Mr. Krause and Ms. Baker.

[31] However, even if the appellant were right in her criticism, I think there is a more definitive answer to her concern. All Mr. David did was "re-open" his "investigation". In this, Mr. David's actions were purely administrative. He never conclusively determined the outcome of the dispute between the parties. It was not his role to do so. That was the Director's function. Mr. David never pronounced any final judgment on the merits. Mr. David's investigation would not result in a binding decision. Rather, the ultimate authority to address the merits of this complaint lay not with the investigator, but with the Tribunal itself. While his use of the word "dismissed" on a single occasion may, in hindsight have been unfortunate, the fact remains that he never adjudicated the claim. Rather, Mr. David's decision to reopen the investigation was purely a matter of departmental administration, to move the file along, as is contemplated in the legislation. In my respectful opinion, Mr. David's actions merely permitted the Director to conduct a review of the complaint and either attempt to settle it or, failing settlement, make an order to force compliance, as the **Code** (for example, s. 21) requires. The Director's decision could then be appealed to the Tribunal, as it was here.

[32] Finally, as counsel to the Attorney General made clear in her own able submissions, there is nothing in the Tribunal's jurisprudence or legislation to bar the actions taken here. I am satisfied that once Mr. Krause saw fit to withdraw his suit in the Small Claims Court (which meant that there had never been an adjudication of the merits of his claim), Mr. David was entitled to reopen his investigation such that the Director, and later the full Tribunal, were bound to deal with it.

[33] In support of her arguments before the Tribunal and in this Court the appellant relied heavily upon the decision of the Manitoba Court of Appeal in **Northwood Oaks Ltd. v. Winnipeg (City) Board of Revision**, [1999] M.J. No. 578 (Q.L.)(C.A.). With respect, that case is easily distinguishable and of no assistance to the appellant in the circumstances here.

[34] The narrow issue before the Manitoba Court of Appeal in **Northwood Oaks** concerned the effectiveness of a notice of withdrawal filed by an agent of record for commercial property owners, whose actual authority had been terminated. In that case, the applicants, who owned various apartment blocks in Winnipeg, appealed their property assessments as being too high. During the course of proceedings challenging the assessments, the applicants decided to terminate the services of their former tax consulting company, and appoint a new tax agent. Eventually, the (former) tax consulting company filed with the assessors a notice of withdrawal of the appeals when in fact what it intended to file was a notice of its withdrawal as the agent of record. The applicants had not authorized the withdrawal of their appeals. Three years passed before the applicants discovered that their appeals had been withdrawn. They then attempted to have their appeals heard. The Assessment Board refused. The owners brought an application in the Queen's Bench for a declaration that their assessment appeals were valid. The motions judge granted a declaratory order stating that the appeals remained valid on the basis that notice of withdrawal had been improperly filed without the applicants' authority. On appeal, Twaddle, J.A. confined his analysis to principles of agency law. He reasoned that the Assessment Board was not bound to verify the authority of the agent before acting upon the agent's representations:

> [21] ... The tax consulting company thus remained the agent of record when the notice withdrawing the complaints was filed. The notice of withdrawal was therefore effective and the complaint cannot subsequently be reactivated. ...

Respectfully, care must be taken when reading Justice Twaddle's analysis so that context is not lost, and his *obiter* remarks and reference to other cases do not deflect the reader's attention from the principal issue the court was asked to decide.

[35] The appellant also attempted to ground her jurisdictional attack upon the Tribunal's decision, on the doctrines of *functus officio* and *res judicata*. In her

factum she says:

> 2. ... The LSD decided to re-open the old complaint that had been dismissed.
>
> 3. The matter was both Functus Officio and Res Judicata. ...

Further, when describing the issues, she states:

> 35. The issues on appeal may be summarized as follows:
>
> a. The LST did not have jurisdiction over the complaint. Krause's complaint was dismissed with the knowledge and consent of his legal counsel. The matter was both Functus Officio and Res Judicata.
>
> b. The Appellant seeks costs.

[36] Ms. Baker did not offer any further elaboration in either her written or oral submissions. With respect, neither doctrine has any application to this case.

[37] This is not an appeal where I am required to undertake a lengthy review of these principles. Detailed and helpful analyses may be found in such cases as **Hoque v. Montreal Trust Co. of Canada**, [1997] N.S.J. No. 430 (Q.L.)(C.A.), leave to appeal dismissed [1997] S.C.C.A. 656; **Danyluk v. Ainsworth Technologies Inc.**, 2001 SCC 44; **Doucet-Boudreau v. Nova Scotia (Minister of Education)**, 2003 SCC 62; **Toronto (City) v. C.U.P.E., Local 79**, 2003 SCC 63; **Nova Scotia Government & General Employees Union v. Capital District Health Authority** , 2006 NSCA 85; **Kameka v. Williams** , 2009 NSCA 107; and **British Columbia (Workers' Compensation Board) v. Figliola**, 2011 SCC 52.

[38] For the purposes of this appeal it is enough for me to emphasize the *missing* elements that block their application here.

[39] Whether arising in the context of litigation before a court of competent jurisdiction, or in proceedings before administrative tribunals, the rationale surrounding the application of such doctrines as *res judicata* and *functus officio* is to preserve and enforce the rule about finality. In other words, for the due and proper administration of justice, there must be finality to any given proceeding so as to ensure fairness and certainty in decision making. Once an administrative

tribunal has completed its work, it has no further power to deal with the complaint. Once a court has issued its final judgment, the matter may only be re-opened by means of an appeal (subject of course to exceptions enabling a court to correct slips, or address errors in expressing its manifest intent). Doctrines such as *res judicata*, estoppel, and *functus officio* exist to ensure finality, thus avoiding the prospect of wasted resources; duplicative litigation; potentially inconsistent results; collateral attack; circumvention of appropriate review mechanisms; abuse of process; or other risks that would undermine confidence in the fairness, integrity and finality of the decision-making process.

[40] No such concerns arise here. This is not a case where a party has attempted to re-litigate a matter where the cause of action, or material issues, have already been decided. Questions of fairness, certainty and finality do not arise. As I previously explained, the actions taken by Mr. David were purely administrative in carrying on with his investigation of the complaint. Nothing he did was “final” or could be considered as a conclusive adjudication of the merits. That task fell within the Tribunal’s jurisdiction. The Tribunal properly dealt with the appellant’s jurisdictional challenge and only after rejecting it, went on to address the substance of Mr. Krause’s complaint together with Ms. Baker’s appeal, on their merits.

[41] To conclude on this point, nothing in the circumstances of this case would give rise to a defence or plea from the appellant that the Tribunal was virtually powerless to consider the case because the actions of its investigator in reopening the file, amount to *res judicata* or *functus officio*.

[42] Before leaving this issue it is worth noting that the communications between Mr. David and Mr. Hebert which form the basis of Ms. Baker's appeal all span a period of little more than a month. There is nothing to indicate that during this brief interval the appellant was prejudiced by the Tribunal's decision to "reopen" the investigation. Her resolve was unaffected. The record discloses that the appellant carried on a running correspondence with Mr. David in a continuing effort to resolve the dispute. Simply to illustrate, I will refer to parts of two e-mails sent by the appellant to Mr. David. The first is dated 2008-11-05 7:50 PM and reads in part:

> Hi Michael,
>
> I just received your letter in the mail that Federico's complaint has been

> re-opened. He has dropped his Small Claims complaint because the defense I filed showed that he would not succeed in winning. This also made it more challenging for my counter suit. I have spent a lot of time on this already and unless I sue him for the value of my time I will not recoup these costs.
>
> In light of this, I would like to drop off to you all the documentation that had been filed in the Court for my defense. Hopefully, it will show that most of the claims he is now filing again are not founded such as wrongful dismissal. I do agree that there is some pay owed but I am asking that that be waived in lieu of the time I have spent defending myself against his claims that caused his case to be dropped in the first place. …

[43] The second dated 2009-06-19 1:26 PM:

> Hi Michael,
>
> Here is my response …
>
> A lot of time has passed, a lot of mistakes have occurred on both sides and money or assets are owed both ways. My hope is that Mr. Krause will see the logic in neither of us pursuing any of this anymore. I do not want to take him to Small Claims to retrieve equipment or damages but if he presses the pay issue then I'll have to in order to re-coup the loss. Common sense shows that this is pretty much a "dead heat" and it's time for us to move on. Should he decide to pursue, I will fight it and I have retained David Fisher a skilled an experienced lawyer in the field of Labour Law. …

[44] From all of this, it is apparent that Ms. Baker persisted in her attempts to negotiate a reasonable and mutually satisfactory settlement with the Department of Labour's officials, notwithstanding her present complaint that they had no jurisdiction over her.

[45] Finally, it bears repeating that this was Ms. Baker's appeal. It was she who challenged the Director's order by taking an appeal to the Tribunal. She was largely successful, managing to shave off more than half of the original award made against her. In such circumstances it hardly behoves the appellant to challenge the Tribunal's jurisdiction. For all of these reasons I would dismiss Ms. Baker's first ground of appeal.

[46] I turn now to the appellant's second principal issue, that being, her claim for

costs.

[47] At the hearing we were satisfied that the appellant understood the difference between "costs" and "damages", and appreciated the fact that her demands were really directed towards recovering full compensation from Mr. Krause for her own losses and inconvenience in the present appeal, and the one reported at 2010 NSCA 43, as opposed to costs in their traditional sense.

[48] For example, in addition to the out-of-pocket expenses incurred for printing, binding and filing the appeal books, the appellant also claims for bank charges incurred after the Tribunal issued third party orders freezing her accounts; time spent attending and preparing for several days of hearings before the Labour Standards Tribunal, and the Court of Appeal; lost revenue from her business when attending to such matters; compensation for hardship through the stress of these proceedings and actions taken against her bank accounts and clients; and costs as a "message" to signal this Court's "disapproval" of the actions taken by the Tribunal throughout. In addition to those costs, the appellant seeks two orders, one quashing the Tribunal's decision and another prohibiting the Tribunal from hearing this matter again.

[49] With respect, I see no reason to depart from our customary practice which is to decline to award costs in appeals from administrative tribunals. None of the circumstances here are so unique or exceptional as to call for a variation. For example, there is no merit to the appellant’s complaint that “a message needs to be sent” because she fell victim to improper treatment at the hands of the Tribunal in having to repeatedly defend herself against Mr. Krause’s complaint. On the contrary, in my respectful view, the Tribunal fulfilled its statutory obligations and conducted itself fairly throughout. As well, much of the “costs” award sought by the appellant are not costs at all, but rather separate heads of damage for which Ms. Baker claims relief. We were advised at the hearing that these demands for compensation were, in fact, included by Ms. Baker in her counterclaim to the suit initially brought by Mr. Krause in the Small Claims Court. The appellant will have to decide whether she wishes to pursue her counterclaim (should that option still be available to her). But such demands for damages are not properly characterized as “costs” on appeal to this Court.

[50] For all of these reasons I would dismiss the appeal, but without costs to any

party.

Saunders, J.A.

Concurred in:

Oland, J.A.

Bryson, J.A.