CITATION: 2025 NBKB 262

Docket: FC-183-2023

IN THE COURT OF KING'S BENCH OF NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF FREDERICTON

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BETWEEN:

ANDREW SAA GBONGBOR,

Plaintiff,

-and-

MULTICULTURAL ASSOCIATION OF FREDERICTON, LISA BANFORD DeGANTE, and NIKOL RALCHEVA,

Defendants.

DECISION

Dates of Hearing: October 21, 2025

Date of Decision: November 19, 2025

Subject Matter: **Summary Judgment; Wrongful Dismissal**

Before: Justice Terrence J. Morrison

At: Burton, New Brunswick

Appearances: The Applicant, Andrew Saa Gbongbor, *per se*

Mark Heighton and Emma Jean Griffin, for the Defendants

DECISION

Morrison, J.

I. INTRODUCTION

A. *Overview*

[1] The plaintiff commenced the within action against the defendants for wrongful dismissal. The thrust of the plaintiff's action is that his dismissal was as a result of workplace discrimination, harassment and racism on the part of the defendants. The plaintiff alleges that in addition to, or as part of, the racial discrimination and harassment the defendants acted in bad faith in connection with his termination. Accordingly, the plaintiff is seeking both general damages and punitive damages.

[2] The defendants bring this Motion seeking summary judgment on the grounds that:

(1) The plaintiff was not dismissed, rather he was a fixed-term employee whose contract was not renewed;

(2) The substance of the plaintiff's claims is based on racial and social discrimination and harassment, and have been adjudicated and dismissed by the Human Rights Commission ("HRC") and such claims are therefore barred by the doctrine of issue estoppel;

(3) Even if the plaintiff was entitled to reasonable notice, his losses have been fully mitigated and therefore he is not entitled to recover damages.

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[3] In the alternative, the defendants submit that the racial and social discrimination and harassment allegations should be struck as not disclosing a reasonable cause of action and are vexatious and an abuse of process. This is based on two arguments:

(1) That the harassment/discrimination allegations have already been dismissed by the HRC; and

(2) There is no cause of action for discrimination or harassment.

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[4] Also, in the alternative to the summary judgment request, the defendants submit that the defendants Lisa Banford and Nikol Ralcheva (the "Individual Defendants") ought to be removed as defendants as there is no legal cause of action against them. The Individual Defendants say that at all material times they were acting in the course of their employment and have not independently committed any tortious conduct. Further, the plaintiff was employed by the Multicultural Association of Fredericton ("MCAF") and not the Individual Defendants, therefore the Individual Defendants are not the legal cause of the plaintiff's alleged damages.

B. *Non-Compliance With Rule*

[5] Rule 22.02 requires the respondent to a motion for summary judgment to set out in affidavit or other evidence specific facts showing there is a genuine issue requiring a trial. As often stated by our Court of Appeal, parties to a motion for summary judgment must put their best foot forward and "lead trump or risk losing". In the present case, the plaintiff (respondent) has not responded in any way to this motion for summary judgment. The plaintiff has not filed any affidavit or other evidence in response.

[6] The plaintiff has also failed to comply with Rule 22.03 which requires, in this case, the plaintiff to file a written brief at least 4 days before the hearing. No brief was filed by the plaintiff.

[7] When this action was commenced, the plaintiff was represented by counsel. In December of 2023, the plaintiff became self-represented. While some latitude can and should be given to self-represented litigants, it is clear that self-represented litigants are not relieved from the obligation of complying with the Rules of Court (*Murray v. New Brunswick Police Commission*, 2012 Carswell NB 355, at para. 10; *Walton v. Mathias*, 2023 NBKB 109, at para. 41).

[8] The plaintiff commenced his action pursuant to the simplified procedure under Rule 79. Under that rule, the plaintiff was required to serve an Affidavit of Documents by October 18, 2023, and witness affidavits by December 18, 2023. Despite several requests, the defendants were required to bring a motion to compel delivery of the Affidavit of Documents. To date, the plaintiff has yet to file any sworn evidence. The latitude that may be given to a self-represented litigant has its limits. The plaintiff has clearly exceeded them.

[9] The only document submitted by the plaintiff in this proceeding is entitled "Response to the Defendants' Affidavits", dated October 28, 2024 (Record on Motion, p. 377). This document was in response to the affidavits filed by the defendants in accordance with Rule 79. The plaintiff's response does not comply with the Rules of Court. It contains a mixture of

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opinion, argument and fact, but is neither an affidavit or a formal pleading. In any event, it was not filed in response to this Motion for summary judgment.

[10] As a result of the plaintiff's failure to comply with the requirements of Rule 22, not only has he failed to put his best foot forward, he has put no foot forward at all. As a result, the factual assertions advanced by the defendants are left unanswered and unchallenged.

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II. FACTS

A. *Employment History*

[11] The plaintiff immigrated to Canada as a refugee from Sierra Leone in June 2004. He began work with MCAF in July 2005. Between that time and January 2016, the plaintiff worked either in a casual or part-time position, sometimes only working during school breaks and on an as-needed basis. During this period, the plaintiff's hours varied significantly depending on the time of year and the availability of funding. There were also several gap periods that lasted weeks or months, when the plaintiff did not work at all.

[12] In January 2016, the plaintiff began full-time employment with MCAF via a series of fixed-term employment contracts varying in length, duties, pay and work hours (Record, p. 184). The first of these fixed-term contracts began on January 11, 2016, and had a 2-month term, expiring on March 31, 2016 (MCAF's fiscal year-end). The plaintiff signed the contract, confirming he understood its terms and accepted them. From March 2016 until March 31, 2020, the plaintiff's contract was renewed on roughly a yearly basis, corresponding to MCAF's fiscal

year (Record, p. 185-188; Record, p. 356-358). Beginning in March 2020, the plaintiff accepted shorter fixed-term contracts necessitated by the restrictions imposed during the COVID-19 pandemic. The 12-month fixed-term contracts resumed with the April 1, 2021 offer of employment. The plaintiff continued on fixed-term contracts until March 31, 2023, when his contract was not renewed. The evidence is that the contracts provided for automatic termination unless the term was extended by written agreement. The evidence also is that the plaintiff responded (usually by email) that he understood and accepted the terms of the contracts (Record, p.185-190).

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[13] The last fixed-term contract entered into by the plaintiff was dated April 1, 2022 (Record, p. 296) and had a termination date of March 31, 2023. This, too, provided for automatic termination. By email dated April 1, 2022, the plaintiff accepted the terms of the contract and stated, "I have read carefully," (Record, p. 306).

[14] In or around February 2023, MCAF received 3 written complaints regarding the plaintiff's cancellation of a planned outing at the last minute and incidents of his leaving children in his care unattended. Given these performance issues, among others, it was decided among Lisa Banford DeGante (Executive Director, MCAF), Nikol Ralcheva (Director of Human Resources, MCAF), Mrs. Caporossi and Donna Gordon (Chair of MCAF Human Resources Committee and Vice-President of the Board of Directors) not to renew the plaintiff's contract (Record, p. 360). On March 30, 2023, Ms. Ralcheva and Ms. Banford DeGante met with the plaintiff and explained that his contract would not be renewed due to performance concerns.

B. *Human Rights Complaint*

[15] On July 12, 2023, the plaintiff filed a complaint with the HRC alleging that Ms. Banford, Ms. Ralcheva and the MCAF discriminated against him based on colour, national origin, race and social condition (the "Human Rights Allegations"). While allegations that fall outside the 1-year limitation period were dismissed via a refusal by the HRC of the plaintiff's request for an extension of the time limit, the remaining allegations moved forward to adjudication. These remaining complaints also focused on the plaintiff's allegations of racial, social discrimination and harassment. Ultimately, the HRC dismissed the remainder of the complaint for lacking merit (Record, p. 590).

[16] Contemporaneously with filing the HRC complaint, the plaintiff commenced the within action on July 24, 2023.

C. *Re-employment and Payments to Plaintiff*

[17] After the termination of his contract on March 31, 2023, the plaintiff commenced employment with St. Thomas University as of May 17, 2023, with an annual salary of $56,551.00.

[18] The plaintiff brought a separate complaint against MCAF, alleging breaches of the *Employment Standards Act*. To resolve that complaint, MCAF made a without-prejudice payment to the plaintiff, totaling $3,533.09, which was equivalent of 4 weeks' pay.

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[19] On October 28, 2024, counsel for the defendants made an offer of further payment to the plaintiff of $1,913.32, in exchange for discontinuance without costs. The plaintiff rejected the offer and returned the cheque.

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[20] The defendants filed the within Notice of Motion on December 16, 2024. The defendants filed and served an Amended Notice of Motion on October 9, 2025, which is subsequent to the issuance of the HRC decision on September 18, 2025. In the Amended Notice of Motion, the defendants raise the issue of *res judicata* and issue estoppel as a bar to the plaintiff's claims.

III. ANALYSIS AND DECISION

A. *Summary Judgment*

(1) General principles

[21] I had occasion to summarize the main principles for consideration on motions for summary judgment in *Estaphen v. Dykeman et al*, 2020 NBQB, at paragraphs 13–14:

> [13] Amendments to Rule 22, which came into force in 2017, have significantly altered the legal landscape with respect to parties seeking summary judgment. These were in response to the encouraged use of summary judgment as part of a "cultural shift" toward simplified adjudication outlined in *Hryniak v Mauldin*, 2014 SCC 7. In *O'Toole v Peterson*, 2018 NBCA 8, Chief Justice Drapeau (as he then was) identified the key changes implemented by the new rule. In particular, he pointed out that a court is no longer restricted to cases where there is "no merit" to the defence. The court clearly stated that the test for summary judgment under the new rule is simply whether there is a genuine issue requiring a trial (para. 68).

[14] In *Russell et al v* Northumberland *Co-Operative Ltd.*, 2019 NBCA 70, the Court of Appeal expanded on the import of the 2017 amendments. The key points from *O'Toole* and *Russell* can be summarized as follows:

1. The only test for summary judgment is whether there is a genuine issue requiring a trial;

2. The burden of proof is on the moving party to establish there is no genuine issue requiring a trial and it is on the balance of probabilities;

3. The importance of the parties putting their best foot forward and leading trump or risk losing is more significant under the new Rule 22;

4. The rule provides for a two-step process to determine whether there is a genuine issue requiring a trial;

5. In step one the judge must determine if the evidence presented reveals a genuine issue requiring a trial. If, on the filed evidence alone, the judge can fairly and justly adjudicate the dispute there will be no genuine issue requiring a trial and the judge **must** grant summary judgment;

6. If the judge cannot adjudicate the dispute on the filed evidence he will proceed to step two. A judge only proceeds to step two if the assessment of the filed evidence leads to the conclusion that there **may** be a genuine issue requiring a trial. The judge will then determine if a trial can be avoided by resorting to the fact-finding powers of Rules 22.04(2) and (3) (the "mini-trial");

7. The guiding principle is that it will always be in the interest of justice for a judge to make use of the mini-trial where possible.

(2) Was the plaintiff dismissed?

[22] The defendants submit that the plaintiff was not dismissed but was on a fixed-term contract which was not renewed. The defendants argue that, as a result, the plaintiff was not wrongfully dismissed and is not entitled to reasonable notice. In support of their position, the

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defendants rely on *Burns v. UNB*, 2017 NBQB 104. In *Burns*, the plaintiff was employed over a period of 38 years under a series of contracts. In concluding that the plaintiff was employed under a fixed-term contract, the Court considered factors such as:

(1) Gaps in employment between contracts;

(2) Contracts of differing lengths, salary and position; and

(3) The terms were negotiated.

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[23] In the present case, the evidence of the defendants is that the plaintiff worked for MCAF through a series of different fixed-term contracts varying in length, duties, position, remuneration and work hours. The evidence is that the fixed-term nature of the contracts was known and understood by the plaintiff. This evidence stands uncontradicted by the plaintiff.

[24] The defendants' evidence also is that because MCAF is a non-profit organization relying on external funding for its operations, hours of work and wages and the availability of positions varies on a year-to-year basis and is not guaranteed (Record, p. 358). As a result, MCAF offers fixed-term contracts to most of its employees as a standard practice.

[25] I conclude that the plaintiff was employed under a fixed-term contract which terminated automatically upon its expiration. The plaintiff's contract was not renewed upon its expiration. The plaintiff was therefore not dismissed. In *Burns*, the Court concluded, at para. 17:

> 17 **I find that an employee whose contract is not renewed at the conclusion of a fixed term contract is not entitled to reasonable notice.** The case law indicates that the contract is simply terminated and neither party is under any obligation to continue the contract of hiring. I find that the contracts were clear and comprehensive. I find that Burns was not an indefinite hire employee but rather a

> contract term employee. There were no ambiguities to be interpreted in regard to termination. **Burns is not entitled to any reasonable notice. The plaintiff was not wrongfully dismissed.** [Emphasis added]

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[26] The conclusion that an employee whose contract is not renewed at the conclusion of a fixed-term contract is not entitled to any reasonable notice was affirmed by the Court of Appeal (*Burns v. UNB*, *2018 NBCA 11*). It is now abundantly clear that where an employment contract is for a fixed term, the employment relationship terminates at the end of the term without any obligation on the employer to provide notice or payment in lieu of notice (*Howard v. Benson Group Inc.*, 2016 ONCA 256, at para. 21). In the present case, the plaintiff's employment ended when his fixed-term contract was not renewed. The plaintiff was not terminated, wrongfully or otherwise, and he is not entitled to damages for wrongful dismissal.

(3) Did the plaintiff fully mitigate?

[27] While the decision not to renew the plaintiff's contract was motivated by performance and disciplinary issues with the plaintiff, MCAF did not allege or assert cause for the plaintiff's termination. It simply did not renew the plaintiff's contract. Even if the plaintiff was entitled to damages for wrongful dismissal (which I find he is not) he has fully mitigated any losses.

[28] The plaintiff's employment with MCAF ended on March 31, 2023. The evidence is that he secured new employment with St. Thomas University on May 17, 2023 – 7 weeks after his MCAF employment terminated. His annual salary at St. Thomas University was $56,551.00,

which is higher than his salary at MCAF, which was $45,000.00 per year. In September 2023, MCAF made a without-prejudice payment of $3,533.09, the equivalent of 4 weeks' pay. On October 28, 2024, MCAF made a final offer of $1,913.32, which was intended to represent the remaining 3 weeks between when the plaintiff left his employment with MCAF and when he started his new position at St. Thomas University.

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[28] In light of the post-termination payments and offer of payment, together with the plaintiff's significantly increased salary at St. Thomas University, it is clear that the plaintiff has fully mitigated his damages. An employee who has fully mitigated his or her damages will generally not be entitled to any further award (Howard A. Levitt, *Law of Dismissal in Canada*, 3rd ed., (Toronto: Thompson-Reuters Canada Limited, 2025) at 9:1).

[29] In my opinion, there is no genuine issue requiring a trial and the defendants are entitled to summary judgment as against the plaintiff.

(4) Res judicata/Issue estoppel

[30] Although not necessary to my decision, I will comment briefly on one of the other grounds for dismissal of the plaintiff's claim asserted by the defendants.

[31] I agree with the defendants' assertion that the plaintiff is barred from advancing the Human Rights Allegations on the basis of issue estoppel. The three pre-conditions for the doctrine are met:

(a) The same issue as one decided in a previous decision;

(b) Prior judicial decision which is final;

(c) Parties to the proceeding are the same.

(*Danyluk v. Ainsworth Technologies Inc.,* 2001 SCC 44 at para. 25)

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[32] The Human Rights allegations are essentially the same as the allegations set out in paragraphs 14, 15, 19, 20, 26, 27, 32 and 34(a) of the Amended Statement of Claim. The HRC exercises a judicial function (*Ross v. New Brunswick School District No. 15*, [1996] 1 S.C.R. 825). The HRC decision is a final decision. The parties to the Human Rights complaint before the HRC encompass all the same defendants in this action.

[33] In *Ryall v. BBM & All Affiliated Companies*, 2007 NBQB 86, the defendant sought summary judgment against the plaintiff who brought an action against the defendant employer alleging she had been constructively dismissed as a result of discrimination by her employer. Prior to commencing her action, she filed a complaint of discrimination with the HRC. The complaint had been decided and dismissed. One of the grounds advanced by the defendant on the motion was that the plaintiff's cause of action was essentially the same as the discrimination complaint which had already been decided. On the question of issue estoppel, Creaghan, J. stated, at para. 7-9:

> 7 After extensive investigation her complaint was found to be without merit by the Commission on November 2, 2002. Clearly the issue of discrimination and harassment in the workplace has been adjudicated by the Human Rights Commission. The Plaintiff took no steps to have that decision set aside or judicially reviewed. This matter must now be seen as having been finally decided by an authorized tribunal and viewed as *res judicata* by way of Issue estoppel.

> 8 As stated by the Ontario Court of Appeal in *Rasanen v. Rosemount Instruments Ltd.* (1994), 112 D.L.R. (4th) 683 (Ont. C.A.), p. 14 per Abella, J.A.:
>
> > Issue estoppel is intended to preclude relitigation of issues that have been determined in a prior proceeding.
>
> 9 The law also is that *res judicata* can apply to decisions of administrative tribunals *Danyluk v. Ainsworth Technologies Inc.*, [2001] S.C.J. No. 46 (S.C.C.).

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[34] The facts of this case are remarkably similar to those in *Ryall*. The Human Rights allegations in the plaintiff's complaint to the HRC are essentially the same as those upon which the present action is based. In my view, the harassment and discrimination allegations contained in the plaintiff's Statement of Claim are *res judicata* by way of issue estoppel. Once those allegations are removed, the plaintiff's cause of action is effectively eviscerated.

[35] In my view, given my conclusions outlined above, the plaintiff has no realistic path to success in this action. I am satisfied there is no genuine issue requiring a trial. Accordingly, I hereby grant summary judgment in favour of the defendants against the plaintiff.

IV. <u>CONCLUSION</u>

[36] The defendants' motion for summary judgment is granted. The defendants are entitled to costs which, in the circumstances, I fix at $1,000.

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Terrence J. Morrison
Justice of the Court of King's Bench