SUPREME COURT OF NOVA SCOTIA

Citation: *Mehta v. Acadia University Faculty Association*, 2022 NSSC 69

Date: 20220314
Docket: Ken. No. 506256
Registry: Kentville

Between:

Rakesh ("Rick") Mehta

Plaintiff

v.

Acadia University and Acadia University Faculty Association

Defendants

Judge:	The Honourable Justice Ann E. Smith
Heard:	January 24, 2022, in Kentville, Nova Scotia
Counsel:	Rakesh "Rick" Mehta, Self-Represented, Plaintiff Jack Graham, Q.C., for Acadia University, Defendant Ronald Pink, Q.C., for Acadia University Faculty Association, Defendant

By the Court:

Introduction

[1] This Court heard motions by each of the parties in this dispute on January 24, 2022.

[2] The underlying action was commenced by the Plaintiff, Rakesh ("Rick") Mehta ("Dr. Mehta") against Acadia University ("Acadia") and the Acadia University Faculty Association ("AUFA") on May 19, 2021.

[3] Each Defendant moves, pursuant to *Civil Procedure Rule* 4.07, to strike Dr. Mehta's action against it on the basis that the Court lacks jurisdiction to hear the matter. AUFA filed a Defence to the claim. Acadia did not.

[4] AUFA also moves, pursuant to *Civil Procedure Rule* 13.03, for Dr. Mehta's action against it to be dismissed on the basis that Dr. Mehta has not pleaded a sustainable cause of action, or material facts supporting a cause of action against it, including a cause of action in defamation.

[5] Dr. Mehta's motion is more difficult to describe, in part because it does not comply with the *Civil Procedure Rules*. For example, it does not refer to the *Civil Procedure Rules* which govern the motion, but simply states, "AUFA's Notice of

Defence is not substantiated with evidence". Leaving aside the issue of the inadequacy of the Notice of Motion, the Court notes that Dr. Mehta seeks various remedies in his Notice of Motion, including the dismissal of what he describes as Acadia and AUFA's "joint motion" on the basis that "the Notice of Defence filed by the Acadia University Faculty Association is not substantiated with evidence, which demonstrates that the opposing parties and their counsels have been conducting themselves in bad faith in this proceeding. In contrast, the plaintiff has demonstrated that he has acted in good faith by substantiating his claims with evidence".

[6] One of the remedies sought by Dr. Mehta on his motion is $50,000 "due to the university violating the settlement agreement it signed". As set out later in this decision, an arbitrator appointed pursuant to the Collective Agreement in place between the Defendants determined that Acadia had not violated the terms of the settlement.

[7] In Dr. Mehta's Affidavit in support of his motion, he states that he seeks financial compensation in the amount of $3,026,000, which amount he says includes lost income of $2,461,000.

[8] This Court notes that Acadia and AUFA have not filed "joint motions". Each Defendant is represented by its own counsel and filed and made separate submissions.

Background

[9] In this action, Dr. Mehta states that he was employed as a professor in the Department of Psychology at Acadia between July 1, 2003, and August 31, 2018. He states that his award of tenure took effect July 1, 2008.

[10] Dr. Mehta also states that Acadia was his employer and that the terms and conditions of his employment were set forth in the collective agreement that was negotiated between Acadia and AUFA, (the "Collective Agreement").

[11] Dr. Mehta also states in his Statement of Claim that "this matter comes to the Supreme Court of Nova Scotia pursuant to the Nova Scotia *Defamation Act* (1989).

[12] Dr. Mehta goes on to state in his Statement of Claim that:

> In an email message to Mr. Cristian Cocos dated September 19, 2019, Dr. Ricketts (President, Acadia University) wrote the following false statement: "Rick Mehta was dismissed for cause – he was terminated for his behaviour, not his views". And in a letter that he circulated to the Acadia University community on October 30, 2019, without my knowledge or consent Dr. Ricketts implied that I was dismissed for cause (i.e., professional misconduct).

> The fact of the matter is that, in his termination letter to me, Dr. Ricketts stated that he was terminating my employment under the guise of the "Fifteenth Collective Agreement between the Board of Governors of Acadia University and the Acadia University Faculty Association" and that he was terminating my employment for "just cause". The term "just cause" is not defined in the collective agreement but it is clear that the decision to terminate my employment was based on Acadia University and AUFA agreeing that my employment should be terminated. Worded somewhat differently, my employment was terminated based on the defendants' opinions rather than an objective finding of professional misconduct on my part.

[13] Dr. Mehta further states that a "settlement meeting between the defendants and myself was held on April 1, 2019". A settlement was reached. Dr. Mehta states in the Statement of Claim that the second line in the settlement agreement is worded "and whereas Dr. Mehta's employment was terminated", as opposed to 'and whereas Dr. Mehta's employment was terminated for cause', this wording is the logical and lawful equivalent of stating "And whereas Dr. Mehta's employment was terminated without cause" and explains why Acadia University was willing to give me $50,000 in settlement funds and why Acadia University and AUFA demanded that I "keep the terms of these Minutes strictly confidential".

[14] Dr. Mehta also states in the Statement of Claim that "when I signed the settlement, I believed that Acadia University was getting a good deal by agreeing to give me a one-time payout of $50,000 instead of $1000,000/year plus benefits for three years and that AUFA was getting a good deal by me signing the settlement in which I agreed they had provided me with full and fair representation when all

parties and William Kaplan (the mediator and arbitrator for my employment dispute) knew that this statement is false".

[15] Dr. Mehta goes on to state in his Statement of Claim:

> On September 8, 2020, I mailed an open letter to over 500 people at Acadia University in which I stated that I was waiting patiently for the president of the university to issue a statement in which he explains that Acadia University is operating under three legal frameworks that are corrupt (Canadian Charter of Rights and Freedoms, Nova Scotia Human Rights Act, Nova Scotia Trade Union Act) and that this fact in turn explains why he was being a "naughty little president".

[16] Dr. Mehta also states in his Statement of Claim that he retained the services of a lawyer, Mr. Adam Harris, to assess if he was able to pursue a claim of defamation against the defendants. Mr. Harris proposed terms of settlement of Dr. Mehta's case against AUFA, to its legal counsel, Ronald Pink, Q.C., which Mr. Pink advised were rejected by his client. Dr. Mehta continues as follows:

> Since Mr. Pink had stated that my counsel "[had] not identified any grounds which might suggest that AUFA had any role to do anything, even if defamatory, which would attract any liability to AUFA" I drafted an affidavit that contains all of the relevant facts pertaining to his case, including the facts that:
>
> > (a) The defendants colluded to not only dismiss me from Acadia University, but to also destroy my reputation, because the defendants are politically aligned with Prime Minister Justin Trudeau whereas I am not, and
> >
> > (b) This dispute is taking place in the larger context of a war between God and Satan with me being aligned with Jesus Christ and with the defendants being aligned with Satan.

[17] Acadia and AUFA both say that this Court lacks jurisdiction to determine the matters raised in the Statement of Claim. They rely upon *Civil Procedure Rule* 4.07.

Underlying Events

[18] Dr. Mehta was terminated from his employment as a professor at Acadia University on August 31, 2018.

[19] At all material times, Dr. Mehta was a member of the faculty union, AUFA. His union grieved his termination. It gave notice of its intention to proceed to arbitration in accordance with Article 14.31 of the Collective Agreement. On October 30, 2018, AUFA also filed a grievance on behalf of Dr. Mehta alleging that Acadia breached the Collective Agreement by denying Dr. Mehta access to the services and facilities of the University since his termination.

[20] AUFA retained legal representation from Ronald A. Pink, Q.C. and Katrin MacPhee for Dr. Mehta's grievances and the matter of his termination. AUFA also facilitated the involvement of Peter Barnacle, counsel for the Canadian Association of University Teachers ("CAUT") in Dr. Mehta's grievance and the matter of his termination. Acadia was represented by Jack Graham, Q.C.

[21] William Kaplan was agreed by AUFA and Acadia to act as arbitrator to arbitrate both Dr. Mehta's grievances and the manner of his termination. The matters were originally scheduled for nineteen days of arbitration.

[22] On January 11, 2019, Dr. Mehta, AUFA's legal counsel, Anthony Pash, and Jack Graham, Q.C. participated in a case management conference with Arbitrator Kaplan. AUFA and Acadia agreed to attempt to mediate both of Dr. Mehta's grievances with William Kaplan on April 1, 2019.

[23] During the mediation, Dr. Mehta had his own counsel, Barry Mason, Q.C. representing his interests. He also had the benefit of general counsel for CAUT. The Union's counsel of course was also present, since it had initiated the grievance process as part of its duty to provide Dr. Mehta with fair representation.

[24] The parties agreed to terms of settlement. Dr. Mehta, Acadia and AUFA voluntarily entered into a settlement agreement and a mutual release and confidentiality agreement to both grievances.

[25] One of the terms of the settlement agreement required the parties to keep the terms of settlement strictly confidential. Dr. Mehta signed both the settlement agreement and the mutual release and confidentiality agreement. The Minutes of Settlement stated at the outset that neither party was admitting culpability. As such, the question of whether Dr. Mehta was terminated for just cause, or not, was not determined by Arbitrator Kaplan. The settlement agreement contained a confidentiality clause which provided as follows:

> 1. Both grievances are resolved without any admission of liability or culpability by any of the parties.
>
> 2. …
>
> 3. The parties agree to keep the terms of these Minutes strictly confidential except as required by law or to receive legal or financial advice. It is agreed and understood that Dr. Mehta will have to disclose the financial payment provided herein to counsel in his current matrimonial proceedings but will only do so after having cautioned everyone about the confidential required that he has entered into.
>
> 4. If asked, the parties will indicate that the matters in dispute proceeded to mediation and were resolved, and they will confine their remarks to this statement. Stated somewhat differently, it is an absolute condition of these Minutes that no term of these Minutes be publicly disclosed. Any allegation of a breach of this term may be brought before William Kaplan who will continue to possess jurisdiction under the collective agreement and applicable statutes to fashion an appropriate remedy, including repayment in full of the sum set out in paragraph 5, should the breach be established.

[26] Shortly afterwards, Acadia took the position that Dr. Mehta had breached the terms of the settlement agreement. AUFA took no position on Acadia's allegation.

[27] The issue went back to be determined by Arbitrator Kaplan, who had retained jurisdiction to deal with any issues arising out of the settlement agreement. On May 24, 2019, Arbitrator Kaplan issued a decision in which he found that Dr. Mehta had breached the minutes of the settlement agreement of April 1, 2019. He stated:

> It is noteworthy that all of the provisions of the Minutes were carefully and comprehensively reviewed with Dr. Mehta by Association counsel, CAUT counsel on his personal attorney prior to Dr. Mehta signing. Moreover, as Dr. Mehta is aware, following extensive discussion, the Minutes were carefully calibrated to restrict, as much as possible, limitations on what the parties could say. Put another way, and by deliberate design, Dr. Mehta's academic freedom remained virtually unfettered: Dr. Mehta could not disclose any of the terms of the Minutes, including the payment provision, and could only say that the matters had been resolved. Otherwise, he was completely free to speak and write about his experiences at Acadia University. Nevertheless his tweets provide ample evidence of repeated breaches even after he was directed to cease.

> Simply put, there was no ambiguity in the Minutes themselves, or in the discussion that preceded their signing, about the obligations that followed. There was no admission of liability or culpability by anyone; indeed, the parties were firmly fixed in their views. But they decided, nevertheless, to settle the matters in dispute provided the terms of the settlement were kept confidential. Quite clearly Dr. Mehta is attempting to suggest by use of the term vindicated and by his repeated reference to "severance" that there was some kind of an acknowledgment of University wrongdoing when that was specifically not the case (and likewise, there was no finding of wrongdoing by Dr. Mehta). Nevertheless, Dr. Mehta repeatedly broke his promise of confidentiality and to limit his comments about how this matter was resolved. Indeed, the tweets and correspondence continue. Settlements in labour law are sacrosanct and given the repeated and continuing breaches, together with the absence of any mitigating circumstance of explanation, I find that the University is no longer required to honour the payment provision.

[28] At no point did Dr. Mehta attempt to have AUFA seek judicial review of Arbitrator Kaplan's May 24, 2019 decision.

[29] On November 10, 2019, Dr. Mehta sent correspondence and enclosures to Arbitrator Kaplan, copied to Acadia and AUFA, alleging Acadia had breached the Minutes of Settlement. In this correspondence, Dr. Mehta refers to "a response that President Ricketts gave to a member of the public, a letter that Chris Callback sent to [the Plaintiff]" and an enclosed copy of an open letter that Dr. Rickett sent to the Acadia community in response to the Psychology's Department's open letter to Dr. Ricketts dated October 23, 2019.

[30] These are the materials that Dr. Mehta relies on to support his defamation claim. In September 15 and 18, 2019 emails to counsel for AUFA, Dr. Mehta described Dr. Ricketts' email to the member of the public:

> […] My settlement states only that Acadia terminated my employment, not that Acadia terminated my employment for cause; this was the primary reason why I signed the agreement. In the email exchange below, Peter Ricketts has told a member of the public that I was dismissed for cause; that clearly is not true. Would it be possible to send this to Kaplan for a ruling that Ricketts violated the settlement?
>
> > […] In my view, the administration has breached the settlement twice:
> >
> > > 1) By stating that my employment was terminated for cause, when the words "for cause" are absent from my settlement, and
> > >
> > > 2) By referring to a confidential document in a letter to and not including "Personal and Confidential" in that even though, based on my past conduct, the administration could easily foresee that their letter would end up on social media and in public presentations.
>
> I think that the heart of the problem is that Kaplan's ruling of May 24/19 contains two errors in his statement "Dr. Rick Mehta, a tenured professor, was terminated by Acadia University for cause on August 31, 2018". The first error is an error of fact that arises because he added the words "for cause", which are absent from the second line of the settlement. The second error, and I realize that I may be nitpicky in saying this, is that he claims that I was terminated whereas the second line of my settlement states that my employment was terminated.
>
> I think that the problem that we have can easily be resolved if you contact Kaplan and ask him to either revise his original ruling or ask for a new ruling that states explicitly that my employment at Acadia was terminated without cause. That would ensure that your client, the administration, and I are all on the same page on this issue.
>
> I would be even more grateful if you would ask Kaplan to disclose the real reason why your client colluded with the administration to have me dismissed.
>
> I hope that you will respond to my message. If I cannot seek legal recourse through you, please let me know how I can proceed so that my personal and professional reputations are not sullied because of a factual error in Kaplan's ruling on May 24/19, which easily could have been avoided if you had taken a position when the administration had claimed that I breached my settlement.

[31] Dr. Mehta, Acadia and AUFA provided written submissions to Arbitrator Kaplan regarding the alleged breaches of the settlement agreement by Acadia.

[32] On December 4, 2019, Arbitrator Kaplan issued a decision finding that there had been no breach of the Minutes of Settlement by Acadia (*Acadia University v. Acadia University Faculty Association*, 2019 CanLII 114784 (ON LA)).

[33] Arbitrator Kaplan found that Dr. Mehta's submissions attempted to recast and retry the grievances that were fully and finally resolved by the Minutes of Settlement. Arbitrator Kaplan stated:

> […] For his part, Dr. Mehta saw things differently and referred at length and to many matters which may be fairly described as tangential to his specific allegations of breach. Furthermore, his brief contains an extended narrative that attempts to recast and retry the grievances that were fully and finally resolved by the Minutes. Dr. Mehta asks for damages and, in addition, requests that an earlier award that concluded that he was in breach of the confidentiality provisions of the Minutes be set aside.
>
> Decision
>
> Having carefully considered the submissions of the parties and following a thorough review of Dr. Mehta's extended brief and appendices, I conclude that there has been no breach by the University of any provision of the Minutes. Simply put, nothing in any of Dr. Mehta's submissions lays even a scant evidentiary foundation for any conclusion of any breach of any kind of the Minutes. Certainly, there is absolutely nothing in the October 30, 2019 letter from the University president that would give rise to a claim under the Minutes, even assuming for the sake of argument that Dr. Mehta was entitled to independently advance one. The other claimed breach, like so many of the other submissions in Dr Mehta's brief, is completely unfounded. The conclusion that there has been no breach of the Minutes is reinforced by the fact that the parties – the University and the Association – are agreed – on the facts – that there has been no breach and that there is, therefore, no matter in dispute to be properly back before me.
>
> Accordingly, and for the foregoing reasons, I must conclude that there has been no breach of the Minutes. Dr. Mehta's claims, and requests for relief are dismissed.

[34] At no point, did Dr. Mehta attempt to have AUFA seek judicial review of Arbitrator Kaplan's December 12, 2019, decision.

Issues

[35] The issues to be determined by this Court are as follows:

1. Should Dr. Mehta's claims against Acadia and AUFA each be dismissed pursuant to *Rule* 4.07 for lack of jurisdiction?
2. Should Dr. Mehta's claim against AUFA be summarily dismissed pursuant to *Rule* 13.03?
3. Should Dr. Mehta's motion against Acadia or AUFA be allowed?
4. What costs should be awarded, depending on the Court's determination of issues 1, 2 and 3?

Evidence

[36] The evidence on the motion consisted of the Affidavit of Anthony Pash, filed by AUFA in support of its motion for dismissal for lack of jurisdiction. Mr. Pash was President of AUFA during the 2018 – 2019 Acadia term. AUFA did not rely upon Anthony Pash's Affidavit in support of its motion for summary judgment pursuant to the pleadings.

[37] Acadia filed the Affidavit of Dr. Peter Ricketts, President and Vice Chancellor of Acadia.

[38] Dr. Mehta filed his own Affidavit.

[39] No affiant was cross examined.

Analysis and Findings

Issue 1: Should Dr. Mehta's claims against Acadia and AUFA each be dismissed pursuant to Rule 4.07 for lack of jurisdiction?

[40] As noted above, Acadia and AUFA each brings a motion to have Dr. Mehta's action against them dismissed on the basis that the Supreme Court of Nova Scotia lacks jurisdiction over his claim. They rely on *Civil Procedure Rule* 4.07 which provides:

> **4.07**
>
> (1) A defendant who maintains that the court does not have jurisdiction over the subject of an action, or over the defendant, may make a motion to dismiss the action for want of jurisdiction.
>
> (2) A defendant does not submit to the jurisdiction of the court only by moving to dismiss the action for want of jurisdiction.
>
> (3) A judge who dismisses a motion for an order dismissing an action for want of jurisdiction must set a deadline by which the defendant may file a notice of defence, and the court may only grant judgment against the defendant after that time.

[41] Each of Acadia and AUFA rely upon the Supreme Court of Canada's decision in *Weber v. Ontario Hydro*, [1995] 2 SCR 939 (SCC) ("*Weber*").

[42] In *Weber* the Supreme Court confirmed that an arbitrator has exclusive jurisdiction over disputes that arise "expressly or inferentially" from a collective agreement. Such disputes must proceed to arbitration. In *Cherubini Metal Works*

Ltd. v. Nova Scotia (Attorney General), 2007 NSCA 38 the Nova Scotia Court of Appeal confirmed that disputes which, in their essential character, arise out of a collective agreement cannot be the subject of a lawsuit.

[43] Where the enabling legislation, in this case, the Nova Scotia *Trade Union Act*, mandates arbitration as the chosen dispute resolution process, there is no overlapping jurisdiction with the courts. Rather, arbitrators have exclusive jurisdiction to hear the dispute. The framework for determining whether an arbitrator has exclusive jurisdiction over a matter pursuant to a collective agreement was set out by Justice McLachlin in *Weber*, as follows (paras. 56 and 57):

> [56] […] the task of the judge or arbitrator determining the appropriate forum for the proceeding centres on whether the dispute or difference between the parties arises out of the collective agreement.
>
> Two elements must be considered: the dispute and the ambit of the collective agreement.
>
> [57] […] The question in each case is whether the dispute, in its essential character, arises from the interpretation, application, administration, or violation of the collective agreement.

[44] Further, in *Weber*, the Supreme Court confirmed that the legal characterization of the dispute does not impact exclusive arbitral jurisdiction:

> [48] Underlying both the Court of Appeal and Supreme Court of Canada decisions in *St. Anne Nackawic* is the insistence that the analysis of whether a matter falls within the exclusive arbitration clause must proceed on the basis of the facts surrounding the dispute between the parties, not on the basis of the legal issues which may be framed. The issue is not whether action, defined legally, is independent of the collective agreement, but rather whether the dispute is one "arising under [the] collective agreement." Where the dispute, regardless of how it

> may be characterized legally, arises under the collective agreement, then the jurisdiction to resolve it lies exclusively with the labour tribunal, and the courts cannot try it.
>
> [Emphasis added]

[45] More recently, in *Northern Regional Health Authority v. Horrocks*, 2021 SCC 42 ("*Horrocks*") Justice Brown re-confirmed the exclusive jurisdiction model:

> [1] Labour relations legislation across Canada requires every collective agreement to include a clause providing for the final settlement of all differences concerning the interpretation, application or alleged violation of the agreement, by arbitration or otherwise. The precedents of this Court have maintained that the jurisdiction conferred upon the decision-maker appointed thereunder is *exclusive*. […]
>
> [Emphasis of SCC]

[46] In *Horrocks*, the Supreme Court carved out two exceptions to the exclusive arbitral model for disputes arising from the collective agreement. First, it said that exclusive jurisdiction extends only to disputes which expressly or inferentially arise out of the collective agreement and that not all actions between a unionized employer and employee fall outside the Court's jurisdiction (para. 22). Second, the Court said that the exclusive arbitral jurisdiction is subject to the residual curial jurisdiction to grant remedies that lie outside of the remedial authority of an arbitrator to ensure that there is no "deprivation of ultimate remedy". (para. 23).

[47] Section 42 of the Nova Scotia *Trade Union Act* provides that all disputes arising from a collective agreement must be remedied via the collective agreement's

full and final dispute resolution process, whether that process be "arbitration or otherwise".

[48] It is noted that Article 18.20 of the Collective Agreement defines a grievance as "any complaint arising out of the interpretation, application, administration or alleged violation of this Collective Agreement or existing and approved practice if not in conflict with Articles of this Agreement, in which case the latter have precedence". This language "interpretation, application, administration or alleged violation of this Collective Agreement" mirrors step two of the *Weber* framework.

[49] Article 18.11 provides that "except as otherwise specified in this Agreement, the procedures detailed hereunder shall be the sole method to be used for the resolution of complaints or grievances arising from the interpretation of this Agreement."

[50] Article 14.01 provides that discipline of employees shall be only for just cause.

[51] Article 19.36 provides that the decision of the arbitrator shall be final and binding on all Parties.

[52] Therefore, if Dr. Mehta's complaints as set forth in his Statement of Claim are found, in their essential character, to arise from the Collective Agreement, either

expressly or inferentially, his claims against both Acadia and AUFA fall within the exclusive jurisdiction of an arbitrator and cannot be determined by this Court.

[53] Dr. Mehta waived solicitor-client privilege over correspondence from his then lawyer, Mr. Adam Harris, by including copies of same in his Affidavit. One such letter, provided as follows:

> "In my view, and in being forthright, you have exhausted all valid legal options in pursuing Acadia University and other related parties with regard to your termination of employment and related matters. As you know, you are well beyond the deadline to appeal the arbitration and subsequent decisions. You have previously ruled out a filing with the Nova Scotia Labour Board. I have declined to pursue a claim based in defamation on your behalf for the reasons stated in my letter to you dated October 13, 2020. Our further written demand to Acadia and the Union was met, as expected, with an aggressive response opposing the relief requested.
>
> You have indicated that you wish to pursue a claim in the Supreme Court of Nova Scotia for a ruling that your employment was terminated "without cause". As we have discussed, an action or application in court must be based on a civil wrong, such as defamation, negligence or other grounds. There must be some legal basis for the claim you are pursuing. The pleadings require a genuine issue requiring a trial or the claim would likely face a swift summary judgment motion brought by the defendants and would likely result in costs awarded against you. Any further pursuit of these requests, in court or otherwise, is likely to be fruitless.
>
> [Emphasis added]

[54] It is noted that the tort of defamation has been found in certain cases to fall within the exclusive jurisdiction of an arbitrator appointed pursuant to a collective agreement.

[55] For example, in *Masjoody v. Trotignon*, 2021 BCSC 1502, the British Columbia Supreme Court found that the defamation claims of Dr. Masjoody, a

university professor, fell within the exclusive jurisdiction of an arbitrator. In that case, Dr. Masjoody commenced an action in defamation against his employer, Simon Fraser University and a former colleague for termination of his employment for "just and reasonable cause". Dr. Masjoody commenced an action in Court. The matter did not proceed to arbitration. Justice Fitzpatrick stated:

> [85] In my view, the inescapable conclusion is that the "essential character" of Dr. Masjoody's dispute with Dr. Trotignon, SFU and the unnamed persons who are involved in the dispute…concern Dr. Masjoody's treatment at his workplace arising from his employment with SFU.
>
> [86] There is no dispute that Dr. Masjoody's allegations of harassment, including sexual harassment, defamation, conspiracy and (essentially) wrongful termination are matters covered within the purview of the TSSU Collective Agreement. There is also no doubt that, under that process, an arbitrator has the ability to grant Dr. Masjoody any remedy determined to be appropriate: *Weber* at paras. 56-57. […]
>
> [89] The fact that the legal causes of action in the ANOCC principally relate to defamation and conspiracy do not detract from that fundamental exercise of considering the relevant matrix of this case. In any event, the claims in *Weber* were also tort claims. Other court proceedings involving harassment and criminal conduct (*Fereira* at paras. 56-57) and defamation claims (*Haight-Smith* at paras. 31-44, citing in part *Giorno v. Pappas*, [1999] O.J. No. 168 (C.A.); *Stene* at para. 64) did not detract from a consideration of the relevant facts toward concluding that the dispute in questions arose within the context of a collective agreement.
>
> [Emphasis added]

[56] The Court in *Masjoody*, dismissed the action on jurisdictional grounds.

[57] In the unreported Nova Scotia arbitration decision of Arbitrator Christie, *CUPE, Local 434 v. Art Building Products Canada Limited* (July 23, 2000) Arbitrator Christie determined that, as arbitrator, he had jurisdiction to decide a grievance involving, among other claims, allegations of defamation. Arbitrator

Christie concluded that the dispute, which involved the alleged defamation of the grievor by the employer, arose if not expressly, then certainly inferentially, from the interpretation, application, administration or violation of the collective agreement. He determined that the allegedly defamatory statements which were the subject of the grievance were made in the context of the imposition of discipline on the grievor, discipline claimed by the employer to have been imposed under and in accordance with the collective agreement. Arbitrator Christie concluded:

> I will not digress into the question of whether this limited provision for grievances against discipline meets the requirements for Section 42 of the Nova Scotia *Trade Union Act*. I quote it only to make the point that just as an employee could grieve some other unspecified disciplinary action by the Employer, demotion or suspension for example, so too is the Grievor entitled to grieve the "disciplinary" publication to other employees of his alleged misrepresentation to the Employer, and to have that discipline remedied if he has made out the case that he was defamed.
>
> [Emphasis added]

[58] The British Columbia Court of Appeal in *Stene v. Telus Communications Company*, 2019 BCCA 215 emphasized that a Court must apply the *Weber* principles analytically to the facts:

> [64] This broad grant of authority has been interpreted to imply that the ambit of the collective agreement did not prevent arbitrators from assuming jurisdiction over cases involving various torts, including negligent misrepresentation (*Maynard v. Arvin Ride Control Products* (2000), 49 C.C.L.T. (2d) 305 (Ont.S.C.J.)) and defamation (*Haight-Smith*, *Giorno*). In each case, the tort was closely associated with the employment relationship and was so captured by the collective agreement.

[59] A review of the remedies that Dr. Mehta seeks in his Statement of Claim helps to define the true nature of his claims:

> (1) I ask that the Supreme Court of Nova Scotia rule that my employment as a tenured professor at Acadia University was terminated without cause.
>
> (2) I ask that the Supreme Court of Nova Scotia rule that both the Nova Scotia *Trade Union Act* and the Nova Scotia *Human Rights Acts* are unconstitutional because the are incompatible with a free society.
>
> (3) Related to the paragraph 1 above, I ask that the Supreme Court of Nova Scotia recommend that all parts of Canada remove their trade union acts and provincial-human rights acts.
>
> (4) I ask that the Supreme Court of Nova Scotia order a judicial review of all legislation in this province with the explicit goal of ensuring that all courts in this province – on a go-forward basis – work under the premises of the free society that Canadian soldiers fought and died for in World War 2 instead of the "just society" that has been imposed on Canadians – without their knowledge or informed consent – first by their federal government and by the Queen Elizabeth II in 1981 via the Charter, followed by poor legislation and policies that have been implemented by provincial and municipal governments.
>
> (5) I ask that Supreme Court of Nova Scotia order that legal databases such as Can LII issue a disclaimer in the headings of all rulings conducted under the guise of labour law in Canada so that people are aware that what they are reading are theatre productions instead of genuine hearings that these theatre productions should not be treated as credible sources of information.
>
> (6) I ask that the Supreme Court of Nova Scotia rule that it is not longer recognizing the Canadian *Charter of Rights and Freedoms* because the Charter is incompatible with a free society and that, on a go-forward basis, the Supreme Court of Nova Scotia will act as if the Charter is null and void. I hope that his decision by the Supreme Court of Nova Scotia will put political pressure on Parliament to remove this legislation so that Canada can once again become a free society.
>
> (7) If it is at all possible to do so, I request that the Supreme Court of Nova Scotia rule that the Supreme Court of Canada has a duty to do a judicial review of all of its rulings since the Charter was implemented and to overturn all of its rulings that are inconsistent with a free society. The general idea is that it should lead to the overturning of not only the rulings that I have reference in the affidavit that I sent to the defendants (i.e., all of the rulings that are referenced in Labour Board Nova Scotia's rulings against me…and the Supreme Court of Canada's ruling in Trinity Western University, but also other infamous rulings such as the ones against Ernst Zundel and James Keegstra and the ones in favour of Henry Morgentaler and carbon taxes to fight so-called "climate change".

> (8) While the purpose of my court application is to obtain a ruling that will benefit all Canadians, I would be deeply grateful if the Supreme Court of Nova Scotia also ruled that I am entitled to:
>
> (a) The $50,000 in settlement funds that was promised to me,
>
> (b) $15,000 to cover the costs of Mr. Harris's services, and
>
> (c) Punitive damages (I ask that the amount be derived via an open and honest discussion in court, but that the amount would include lost wages and damages for both the psychological and physical consequences of my having been mobbed in the workplace…and that the total amount be divided equally between Acadia University and AUFA, with payment being made within 30 days of the court making its ruling).
>
> [Emphasis added]

[60] The first remedy claimed is that the Court rule that Dr. Mehta's employment with Acadia was terminated without cause. He also wants, in essence, for this Court to overturn Arbitrator Kaplan's decision that he had breached the terms of the settlement agreement – that is his claim for the $50,000 "that was promised to me". None of the remedies Dr. Mehta seeks are directly related to a claim in defamation.

[61] In an open letter that Dr. Mehta says he sent to over 500 people at Acadia dated September 8, 2020, Dr. Mehta refers to Dr. Ricketts' letter of October 30, 2019 (which he now says defamed him) and states:

> In a letter that Dr. Ricketts attempted to circulate without my knowledge (please see the attached letter), the president claims that he dismissed me because I had engaged in numerous acts of professional misconduct. The truth of the matter is that he dismissed me without cause and then lied about it because he is a "naughty little president".

[62] This Court finds that Dr. Mehta's complaints against each of Acadia and AUFA arise from Acadia's decision to terminate his employment. The essential

character of his disputes with Acadia and AUFA, irrespective of his characterization of them as being "in defamation", arise expressly and inferentially from the Collective Agreement. They are all about his employment, and Acadia's decision to terminate that employment. His claim against AUFA apparently is that it failed to fairly represent his interests. Such allegations fall to be determined solely by the Nova Scotia Labour Board and not this Court.

[63] The framing of Dr. Mehta's claims as being against Acadia and AUFA as being in defamation, is simply a re-hashing and a re-casting of his previous attempts to have his termination from Acadia overturned. His claim in "defamation" is entirely, expressly or inferentially, related to his former employment relationship with Acadia. Indeed, when he first learned of the documents, he now says were defamatory, he sent these to Arbitrator Kaplan, taking the position, then, that Acadia had breached the Minutes of Settlement. Arbitrator Kaplan reviewed these materials and determined that Acadia had not breached the settlement agreement. AUFA also agreed that Acadia had not breached the terms of settlement.

[64] Dr. Mehta did not respond before this Court directly to the position of Acadia and AUFA that the Court lacked jurisdiction to hear the claim; nor did he respond directly to AUFA's motion to strike his claim based on the failure to plead the facts necessary to make a claim against it. Rather he gave the Court a written document,

which the Court accepted during the hearing of the motions, which he said constituted his submissions, subject to additional comments he might make.

[65] In this document, Dr. Mehta statements included:

> The Charter starts by stating "Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law;". Similarly, I have observed that the court sessions at this courthouse begin with the declaration "God Save the Queen", not "Queen's Counsels Save the Queen".
>
> To state the obvious, the "supremacy of God" is a prerequisite to "rule of law". The "supremacy of God" is making reference to the King James Version of the Bible, which dates back to 1611.
>
> Recognizing the "supremacy of God" in a Canadian courtroom means that if the court officers, judges, and/or lawyers are members of secret societies or are worshippers of Satan, they are expected to set aside their oaths to secret societies and/or their Satanic beliefs while they are on the job because they recognize that only God is supreme.

[66] Dr. Mehta's submissions to the Court continue:

> On November 24, 2021 – You wore a face mask even though you were sitting by yourself in your office in Halifax, something that the counsel did not do. This fact is important because in the Statement of Claim that I submitted against two health care clinics on May 19, 2021 (a separate but related matter), I stated that the two matters that I submitted are "taking place in a context in which much of the Western world is in a state of mass psychosis, as evidenced (as one example) the seemingly large number of people [who] believe that putting underwear on their faces is going to protect them from the world's deadliest disease", I went on to explain how even the legal profession in this province is not immune and therefore is also in a state of psychosis. I was proven right on these points during the court session that was held on December 14, 2021, in which Justice Hunt claimed that we are living in the midst of a "pandemic" but failed to produce any evidence for this claim; similarly, the counsels for the defendants – who were the ones who raised these issues – did not refute my claim that we are living in an age of mass psychosis and failed to provide any evidence that the legal profession in Nova Scotia is of sound mind. Thus, the only conclusion that can be derived is that the court has repeatedly discriminated against me for not being mentally disabled.
>
> I ask that the court stop discriminating against me.

[67] Dr. Mehta accused this Court of denying his right to free speech during the hearing of these motions when the Court interrupted Dr. Mehta after he wrongly stated that this Court wore a mask while in my office during a case management conference. Wearing a mask while supposedly in my office alone, in Dr. Mehta's view showed that I was, in his words, "of unsound mind". I corrected Dr. Mehta with the truth – that I was in a courtroom wearing a mask during this case management conference. That truth did not deter Dr. Mehta who said that the same point applied because I was in a courtroom alone wearing a mask. That too, is incorrect. This Court was in a courtroom with a Court Clerk.

[68] This Court finds that it lacks jurisdiction to hear Dr. Mehta's claim. The Statement of Claim is dismissed in its entirety against both Defendants.

Issue 2: Should Dr. Mehta's claim against AUFA be summarily dismissed pursuant to *Rule* 13.03?

[69] *Rule* 13.03(1) provides that a judge must set aside a statement of claim, or a statement of defence that (a) discloses no cause of action or basis for a defence or contest; (b) makes a claim based on a cause of action in the exclusive jurisdiction of another court or tribunal; and (c) makes a claim, or sets up a defence or ground of contest, that is clearly unsustainable when the pleading is read on its own.

[70] *Rule* 13.03(2)(b) provides that a judge must grant summary judgment and dismiss the proceeding when the statement of claim is wholly set aside. A motion for summary judgment on the pleadings must be determined only on the pleadings, and no affidavit may be filed in support of or opposition to the motion (*Rule* 13.03(3). AUFA does not rely upon any affidavit evidence in support of its motion for summary judgment on the pleadings.

[71] In *Nova Scotia v. Carvery,* 2016 NSCA 21, the Nova Scotia Court of Appeal confirmed that summary judgment on the pleadings should be ordered when it is "plain and obvious" that a pleading "discloses no cause of action or defence" (para. 25).

[72] In *Holloway Investments v. Hardit Corporation*, 2020 NSSC 132 the Supreme Court of Nova Scotia stated that a statement of claim must "plead a valid and recognizable cause of action" and "clearly set out the facts necessary to sustain that claim." "If it does not do so, summary judgment on the pleadings must be granted, as the pleading discloses no cause of action and is accordingly unsustainable" (para. 28).

[73] The summary judgment rule must be read in tandem with *Civil Procedure Rule* 38, which relates to pleadings, and which requires that pleadings must provide

sufficient information to allow the other party to respond (*Holloway Investment Inc*., at para. 23).

[74] As was stated by the Nova Scotia Court of Appeal in *Canada (Attorney General) v. Walsh Estate*, 2016 NSCA at para. 18, a plaintiff "must plead facts material to the causes of action they assert".

[75] Based on the pleadings, there is absolutely no basis for Dr. Mehta's claim against AUFA.

[76] Dr. Mehta's Statement of Claim does not identify any allegedly defamatory statement made by a representative of AUFA. At paragraph 3(4) of the pleadings Dr. Mehta attributes, incorrectly, a quote from a press release issued by CAUT to AUFA.

[77] When asked by this Court during the hearing of the motions to articulate why it is that he says that AUFA defamed him, he responded that it was by "omission" rather than commission because AUFA and its counsel, Mr. Pink, had not negotiated with the University a definition of "just cause" in the Collective Agreement. Dr. Mehta is an educated man and he received legal advice concerning the elements necessary to make out a case in defamation. Yet, he dragged AUFA into this proceeding, without any legitimate or remotely valid reason for doing so.

[78] Dr. Mehta has failed to plead a cause of action in defamation or any other cause of action against AUFA. He has not plead any material facts to support the elements of any cause of action, including defamation, against AUFA.

[79] As such, Dr. Mehta claim against AUFA is clearly unsustainable and is dismissed.

Issue 3: Should Dr. Mehta's motion against Acadia or AUFA be allowed?

[80] This Court lacks jurisdiction to hear Dr. Mehta's motion, because it lacks jurisdiction over the entire claim. Even if the Court had jurisdiction, and assuming that Dr. Mehta's motion is a motion for summary judgment on evidence, such motion would be dismissed. The evidence before the Court clearly shows that there are material facts in dispute and that a trial would be required to resolve those matters. As such, Dr. Mehta's motion would be dismissed on that basis, even if the Court had jurisdiction to hear it.

Issue 4: What costs are payable by Dr. Mehta to each of the Defendants?

[81] Dr. Mehta has repeatedly demonstrated that he has no regard or respect for this Court, the Supreme Court of Nova Scotia, Court officials or opposing legal counsel. In fact, it seems that in this process, anyone who disagrees with anything

Dr. Mehta says is faced with a barrage of complaints and personal insults. For example, he has stated that this Court needs to be "spanked" "on the bottom" seemingly for trying to help him understand the Court processes that needed to be followed in order for his matter to be heard. He has completely disregarded the Court's directions about the kind of documents which he may file with the Court.

[82] On July 22, 2021, shortly after the Defendants filed their motions in this case, Dr. Mehta emailed the Court and the Defendants proposing that the Court schedule a "judgement session" instead of the Defendants' motions, to allow the parties to "kiss and make up". On September 8, 2021, Dr. Mehta emailed the Court and the Defendants requesting that counsel for the Defendants draft an order against their clients and provide him the draft to review before the revised version was submitted to the Court.

[83] On October 4, 2021, Dr. Mehta emailed the Court and the Defendants' counsel reiterating his drafting proposal and stating that he understood the parties would be editing a draft ruling for the Justice to deliver. He requested that the upcoming case management conference be used instead to deliver this ruling.

[84] On October 6, 2021, Dr. Mehta wrote to the Court, with copies to the Defendants, in which he stated that he suspected the Court was "being naughty". He

referred to the Court as “not of sound mind” and needing to spank itself “on its own bottom”.

[85] On November 3, 2021, a few days after the October 29, 2021 case management conference, Dr. Mehta emailed the Court and the Defendants providing a draft order for the Court in which he stated, “the judiciary of the Supreme Court of Nova Scotia is not of sound mind and therefore is incompetent”. He further stated in this email that “all lawyers in Nova Scotia [should be] disbarred immediately unless they can provide proof that they have represented individuals in their struggle against the effects of the Health Protection Act order”. He stated that “the Schulich School of Law be told to revise their curriculum so that the first year of their program is devoted to getting future lawyers to understand why the Bible is the cornerstone of a free society”.

[86] On November 6, 2021, Dr. Mehta emailed the Court and the Defendants stating that he saw little evidence of ‘competence’ on the part of this Court during the October 29, 2021 case management conference. He requested that the case management conference be redone and that this Court start the session by swearing or making an oath that I would “tell or speak the truth, the whole truth, and nothing but the truth”.

[87] On November 9, 2021 Dr. Mehta emailed the Court and the Defendants stating that the proceeding was being contaminated "in large part by the court's handling of the matter". He called the parties, counsel and others "naughty" and said that they were "in need of the legal equivalent of a spanking on [their] bottoms". Dr. Mehta referred to the Court's rules as "logically incoherent" and stated that he hoped the Court would take heed of his advice as he "was very much looking forward to getting to the 'hugs and kisses' stage once this matter is resolved".

[88] On November 10, 2021, Dr. Mehta emailed the Court and the Defendants attaching a copy of his correspondence to various provincial arbitrators and the Schulich School of Law in September to assist with drafting a ruling for this Court to read aloud in the courtroom.

[89] On November 10, 2021 Dr. Mehta emailed the Court and the Defendants with various complaints about this Court. He referred to the Court as "naughty" and stated that because it was "unwilling to give itself a spanking on its own bottom", he was "willing to give the court a spanking on its bottom". He stated that this was necessary as the Court and counsel were "in a state of mass psychosis". This was apparently because of the Court's requirement that Dr. Mehta wear a mask while in the Courthouse in light of Public Health protocols during the COVID-19 pandemic.

[90] On November 12, 2021, Court Officials wrote to Dr. Mehta advising that he did not have permission to communicate with this Court via email and advising that if needed to communicate with the Court he must do so in writing either by dropping off the correspondence to the Court in person, by regular mail, courier or facsimile. He was referred to *Civil Procedure Rule* 87 "Communications with a Judge", provided further information regarding Motions, enclosed various Civil Procedure Rules as well as the Court's Motion Instructions Document and the Civil Law Handbook for Self-Represented Litigants.

[91] On November 12, 2021 Dr. Mehta sent an email to the Prothonotary, copied to defence counsel in which he stated that he did not "understand Justice Smith's sudden desire to hold another 'case management' conference when a perfectly reasonable option for her is to send me (*sic*) draft of her decision to rule in my favour so that I can provide her with feedback".

[92] Three days later, on November 15, 2021, Dr. Mehta emailed the Court and the Defendants enclosing a letter to the Court and the Defendants in which he accused the Court of "being naughty on October 29". He requested that this Court begin the next court session by saying, "It is clear that Acadia University, AUFA, their counsels, Dr. Wayne MacKay and Arbitrator Kaplan – who henceforth shall be referred to as "Silly Billy" – have been naughty, and now it's going to cost them.

What is the price of being naughty in a free society? The legal equivalent of a spanking on your bottoms is given with the hope that you repent from your sins. Since these naughty little boys – often described as 'beta males', 'soy boys' or 'cucks' by truth tellers such as Paul Joseph Watson – believe that the law is a toy for their amusement, in my capacity as not only a judge but also a mother, I am first going to take away their toys […]".

[93] On November 16, 2021, Dr. Mehta emailed the Court and the Defendants accusing the Court of being "run by adults who lack capacity." He also accused the Court of discriminating against [him] for having a functional brain".

[94] The above-noted communications with the Court and counsel are only a sampling of the kind of missives that Dr. Mehta chose to send to the Court. There are many more. It is to be remembered that all these communications were made before and after the first case management conference on October 29, 2021. The Court's only task at that conference was to schedule the hearing of the motions and to set filing dates for submissions and affidavits. The Court made no rulings. Dr. Mehta indicated his agreement with all the filing deadlines set.

[95] Dr. Mehta has dragged Acadia University and AUFA into this process. He seems to be having fun. He questions in one of his communications sent to the Court and to counsel, whether "it is a sin to be having so much fun".

[96] Despite the disparaging remarks Dr. Mehta has aimed at defence counsel throughout this proceeding, counsel have consistently treated Dr. Mehta with curtesy and professionalism. Arbitrator Kaplan was not immune from Dr. Mehta's criticism. Dr. Mehta refers to Arbitrator Kaplan, as "Silly Billy" in communications to the Court.

[97] During the first case management conference, on October 29, 2021, the Court interrupted Dr. Mehta after he claimed, as he had in writing prior to the conference, that his claim should be allowed because he had filed "evidence" when neither Acadia nor AUFA had done so. This "evidence" appears to be documents that Dr. Mehta attached to a Statement of Claim which he commenced against other parties in a different proceeding. The reason for the Court's interruption was to prevent Dr. Mehta proceeding with an argument which had no merit and would take up Court time. As the Court explained to Dr. Mehta, at the pleadings stage, evidence in support or defence of a claim is not filed. The Court directed Dr. Mehta to the relevant *Civil Procedure Rule*.

[98] Dr. Mehta seems to think that he can abuse the processes of this Court with impunity. He cannot. The Court's decision on costs will reflect that.

[99] The Supreme Court of Nova Scotia is not a plaything for Dr. Mehta to try to batt around for his own amusement. The time it has taken to deal with Dr. Mehta's meritless claims and voluminous email messages sent to the Prothonotary and to this Court have taken away from time better spent by the Court and Court officials on legitimate disputes between other litigants.

[100] Successful parties are normally entitled to their costs on the motion. There is no reason, and if fact every reason, why that should be the case here. As outlined above, Dr. Mehta's numerous communications to the Court and counsel, after he was directed by this Court as to what constituted appropriate communications, is relevant. The need for counsel to review, and in some cases, respond to these various communications, added to their costs. Dr. Mehta's treatment of Court staff and missives sent via email to this Court, have also caused judicial resources to be wasted. He has ignored the Court's attempts to assist him with what constitutes proper communications with the Court.

[101] Dr. Mehta is free to spend his own money in pursuit of frivolous claims and personal attacks against counsel and the Court, but that comes with costs'

consequences. He is not free to cause other parties to have to expend legal fees to respond to such claims and attacks. Dr. Mehta was advised by his then lawyer, that an action against the Defendants which did not identify a viable cause of action would likely result in motions to strike his claim and costs awarded against him. That is exactly what has happened.

[102] I decline to award solicitor and client costs, as proposed by each Defendant. While Dr. Mehta's conduct increased the costs of these motions, it is to be remembered that he is a self-represented litigant. The Court's award of costs on a party and party basis will be sufficient to censure his conduct in the circumstances.

[103] The starting point for the Court's costs' determination is the Tariffs. *Civil Procedure Rule* 7.02 provides the Court with the authority to "make any order about costs as the judge is satisfied will do justice between the parties".

[104] The guiding principles in awarding costs were considered by the Nova Scotia Court of Appeal in *Armoyan v Armoyan*, 2013 NSCA 136 (CanLII). Hunt J. recently summarized the Court's comments from *Armoyan* in *Grue v McLellan*, 2018 NSSC 151 (CanLII), [2018] NSJ No. 262:

> 6 In *Armoyan v. Armoyan*, 2013 NSCA 136 (CanLII), the Nova Scotia Court of Appeal provided direction with respect to the principles to be considered when determining costs. Specifically, Justice Fichaud stated:

> 1. The court's overall mandate is to do "justice between the parties": para. 10;
>
> 2. Unless otherwise ordered, costs are quantified according to the tariffs; however, the court has discretion to raise or lower the tariff costs applying factors such as those listed in *Rule* 77.07(2). These factors include an unaccepted written settlement offer, whether the offer was made formally under Rule 10, and the parties' conduct that affected the speed or expense of the proceeding: paras. 12 and 13.
>
> 3. The *Rule* permits the court to award lump sum costs and depart from tariff costs in specified circumstances. Tariffs are the norm and there must be a reason to consider a lump sum: paras. 14-15
>
> 4. The basic principle is that a costs award should afford a substantial contribution to, but not amount to a complete indemnity to the party's reasonable fees and expenses: para. 16
>
> 5. The tariffs deliver the benefit of predictability by limiting the use of subjective discretion: para. 17
>
> 6. Some cases bear no resemblance to the tariffs' assumptions. For example, a proceeding begun nominally as a chambers motion, signaling Tariff C, may assume trial functions; a case may have "no amount involved" with other important issues at stake, the case may assume a complexity with a corresponding work load, that is far disproportionate to the court time by which costs are assessed under the tariffs, etc.: paras. 17 and 18; and
>
> 7. When the subjectivity of applying the tariffs exceeds a critical level, the tariffs may be more distracting than useful. In such cases, it is more realistic to circumvent the tariffs, and channel that discretion directly to the principled calculation of a lump sum which should turn on the objective criteria that are accepted by the *Rules* or case law: para. 18.
>
> [emphasis added]

[105] In *Tri-Mac Holdings Inc. v. Ostrom*, 2019 NSSC 44 this Court cited the excerpts above from *Grue v. McLellan* and stated:

> [5] These principles provide the broad background for costs awards generally.
>
> [6] Courts will depart from Tariff C amounts when the basic award of costs under the Tariff would not adequately serve the principle of substantial but not complete indemnity for legal fees of the successful party.

> [7] […] A party may waste his or her own money on unnecessary motions and meritless arguments, but they should not be allowed to drag someone else with them. The manner in which this matter was pursued was wasteful and that willingness to expend money in that way should not be forced upon the opposing party.
>
> [emphasis added]

[106] Courts will depart from Tariff C amounts when the basic award of costs under the Tariff would not adequately serve the principle of substantial but not complete indemnity for legal fees of the successful party. The Tariff C costs in this case would amount to $1,000 - $2,000 based on the length of the hearing (more than one-half day, but less than a full day).

[107] When an order following a motion is determinative of the entire matter in a proceeding, as is the case here, the judge may multiply the maximum amounts in the range of costs set out in Tariff C by 2, 3 or 4 times, depending on:

(a) the complexity of the matter;

(b) the importance of the matter to the parties; and

(c) the amount of effort involved in preparing for and conducting the motion.

[108] In this case, a multiplier of 4 applied to a basic Tariff amount of $2,000 amounts to $8,000.00. I consider the importance of the matters to Acadia and AUFA as well as the effort involved in preparing for and conducting their own motions and responding to Dr. Mehta's motion to be highly relevant in the setting of costs.

[109] Counsel for AUFA provided Affidavit evidence of actual legal fees incurred in responding to these motions (to January 7, 2022) in the amount of $34,782.16 (inclusive of GST and disbursements). The Court did not receive an indication of actual fees incurred by Acadia.

[110] Using a multiplier of 4 results in costs of $8000. I find that a payment of $8,000 does not do justice between the parties either for Acadia and AUFA advancing their own motions, or in responding to Dr. Mehta's motion.

[111] *Rule* 77.01(1) provides that a judge who fixes costs may add an amount to or subtract an amount from tariff costs. One of the factors leading to an increase in costs is the conduct of a party affecting the speed or expense of a proceeding.

[112] Dr. Mehta's conduct has done just that. There were two case management conferences during which Dr. Mehta raised issues and made lengthy, irrelevant comments which directly added to the length of the conferences.

[113] He sent voluminous amounts of communications to counsel and the Court, even after he was directed by this Court on what constituted proper communications with the Court. As stated earlier, many of these communications necessitated responses from counsel and Court staff.

[114] Taking into account all of these considerations, I find that a lump sum costs award of $10,000 payable by Dr. Mehta to each of Acadia and AUFA does justice between the parties and reflects the Court's conclusion that Dr. Mehta's actions substantially contributed to the costs of the parties in the circumstances.

[115] These costs are payable to each Defendant no later than May 30, 2022.

Conclusions

[116] Acadia's summary judgment motion is granted and Dr. Mehta's claim against it is dismissed on the basis that the Court lacks jurisdiction to adjudicate the claim. The action against Acadia is dismissed in its entirety.

[117] AUFA is granted summary judgement and Dr. Mehta's claim against it is dismissed on the basis that the Court lacks jurisdiction to adjudicate the claim. The action against AUFA is dismissed in its entirety. AUFA's motion for summary judgment on pleadings pursuant to *Civil Procedure Rule* 13.03 is also granted, and the action against AUFA dismissed on that basis.

[118] Dr. Mehta shall pay costs in the amount of $10,000 to Acadia on or before May 30, 2022. Dr. Mehta shall pay costs in the amount of $10,000 to AUFA on or before May 30, 2022.

[119] I request that counsel for the Defendants prepare a draft form of order reflecting the Court's decision. The draft order should be provided to Dr. Mehta for his review, as to form. If agreement cannot be reached on the contents of the draft order, I ask that this Court be advised, and the Court will settle the form of the Order.

Smith, J.