Date: 20210421
Docket: CI 20-01-26779 and CI 20-01-27318
(Winnipeg Centre)
Indexed as: Bartel-Zobarich v.
Manitoba Association of Health Care Professionals
(MAHCP-Bargaining Unit) et al.
Cited as: 2021 MBQB 87

COURT OF QUEEN'S BENCH OF MANITOBA

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	)	
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	)	on her own behalf
- and -	)	
	)	
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(MAHCP-BARGAINING UNIT),	)	MAHCP-Bargaining Unit
CONCORDIA HOSPITAL (EMPLOYER), and	)	
MANITOBA LABOUR BOARD,	)	MICHAEL I. MERNER
	)	for the respondent/defendant
respondents/defendants.	)	Concordia Hospital (Employer)
	)	
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	)	Manitoba Labour Board
	)	
	)	JUDGMENT DELIVERED:
	)	April 21, 2021

***Notice**: Due to the COVID-19 pandemic, this matter was heard remotely, by teleconference.*

GRAMMOND J.

INTRODUCTION

[1] On September 15, 2020, I ordered, on a consent basis, that six motions filed by the respondents/defendants in CI 20-01-26779 and CI 20-01-27318 would be heard together. This decision relates to the adjudication of those motions, in which the respondents/defendants sought a variety of items of relief, summarized as follows:

a) an order striking the Notice of Application in CI 20-01-26779 (the "Application"), without leave to amend;

b) an order striking the Statement of Claim in CI 20-01-27318 (the "Claim"), without leave to amend;

c) in the alternative, an order requiring the applicant/plaintiff ("Ms. Bartel-Zobarich") to post security for costs; and

d) an order declaring Ms. Bartel-Zobarich a vexatious litigant, and prohibiting her from initiating court proceedings without leave.

BACKGROUND INFORMATION

[2] This dispute has a lengthy and unfortunate history. The key facts are:

a) Ms. Bartel-Zobarich was employed at Concordia Hospital (the "Employer") for approximately 22 years as a Radiology Technician, and at all material times the terms of her employment were subject to a collective agreement;

b) In January 2012, Ms. Bartel-Zobarich's employment was terminated for cause, after which the Manitoba Association of Health Care Professionals (MAHCP-Bargaining Unit) (the "Union"), filed a grievance relating to the

termination (the "Grievance"). Ms. Bartel-Zobarich takes the position that her employment was terminated because she was injured on the job and was scheduled for surgery;

c) The Grievance was settled in January 2014 prior to a hearing, and a release executed in favour of the Employer. Ms. Bartel-Zobarich takes the position that the Grievance was settled without her knowledge;

d) Ms. Bartel-Zobarich then filed an unfair labour practice complaint against the Union and the Employer with respect to, among other things, the settlement of the Grievance. After a hearing focused upon the Union's conduct with respect to two specific issues (delay and pension entitlement), the complaint was dismissed by the Manitoba Labour Board (the "Board") on September 21, 2015. On October 30, 2015, the Board dismissed an application to review and reconsider that decision;

e) Ms. Bartel-Zobarich sought a judicial review of the Board's decision in this court in CI 15-01-98811 (the "Judicial Review Application"), which was dismissed on June 22, 2016, with costs to the Union of $5,930.08 and the Employer of $5,817.51, which remain unpaid;

f) Ms. Bartel-Zobarich appealed the Judicial Review Application decision, which was dismissed with reasons at ***Bartel-Zobarich v. MAHCP et al***, 2018 MBCA 109, with costs to the Union of $3,714.82 and costs to the Employer of $3,712.70, which remain unpaid;

g) On February 9, 2018 Ms. Bartel-Zobarich filed a Statement of Claim in CI 18-01-12675 (the "2018 Claim") against the respondents/defendants, alleging, among other things, wrongful termination, failure to accommodate, failure to provide fair representation, bad faith, negligence and breach of settlement. The 2018 Claim was struck out by Sr. Master Lee (as he then was), without leave to amend, because it did not advance a reasonable cause of action and was an abuse of process given the outcome of the Judicial Review Application. He also ordered costs in favour of the Employer in the amount of $500.00, which have been paid;

h) On July 25, 2019, Ms. Bartel-Zobarich filed an appeal with the Workers Compensation Review Office, seeking payment of wage loss benefits, which the Employer defended. Neither the Union nor the Board were a party to the proceeding. The Review Office dismissed the appeal on September 23, 2019. Ms. Bartel-Zobarich filed a further appeal to the Workers Compensation Appeal Commission, which was dismissed on February 14, 2020. She has sought no further relief with respect to that dismissal;

i) On August 28, 2019, Ms. Bartel-Zobarich filed a complaint under ***The Public Interest Disclosure (Whistleblower Protection) Act***, C.C.S.M. c. P217 (the "***PIDA***"), against the Union and the Employer, (the "***PIDA*** Complaint") which was dismissed by the Board on December 6, 2019 in writing, but without formal, written reasons (which

were not required). On March 10, 2020, the Board dismissed an application to review and reconsider that decision; and

j) Ms. Bartel-Zobarich filed the Application on March 26, 2020, and the Claim on June 8, 2020, both of which are now at issue.

ISSUES

[3] The issues before me are:

a) Is the Application and/or the Claim frivolous or vexatious?

b) Is the Application and/or the Claim an abuse of process?

c) Does the Claim disclose a reasonable cause of action?

d) If neither the Application nor the Claim are struck, should Ms. Bartel-Zobarich be required to post security for costs? and

e) Should Ms. Bartel-Zobarich be declared a vexatious litigant?

MOTIONS TO STRIKE

[4] The relevant Court of Queen's Bench Rule provides:

> 25.11(1) The court may on motion strike out … a pleading or other document, with or without leave to amend, on the ground that the pleading or other document,
>
> …
>
> (b) is scandalous, frivolous or vexatious;
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> (c) is an abuse of the process of the court; or
>
> (d) does not disclose a reasonable cause of action ….

Analysis

[5] The Application includes the following allegations:

a) as against the Union: misrepresentation, breach of fiduciary duty, negligence, and a failure to pursue the Grievance while Ms. Bartel-Zobarich was "winning";

b) as against the Employer: wrongful dismissal "as per initial grievance", breach of settlement, various statutory violations, and a failure to accommodate; and

c) as against the Board: a denial of natural justice, making unreasonable and incorrect decisions, and a failure to accept evidence, including with respect to the ***PIDA*** Complaint.

[6] The Claim includes the following allegations:

a) as against the Union:

i) misrepresentation under ***The Labour Relations Act***, C.C.S.M. c. L10 (the "***LRA***");

ii) a failure to protect Ms. Bartel-Zobarich's wages, pension and seniority under the collective bargaining agreement;

iii) a failure to advance the Grievance; and

iv) a failure to provide fair representation and to act in good faith;

b) as against the Employer:

i) termination without just cause;

ii) a failure to accommodate a return to work under the ***The Workers Compensation Act***, C.C.S.M. c. W200; and

iii) damages for emotional stress and for ruining her "social standing";

c) as against the Board:

i) a denial of natural justice, because of the failure to accept evidence;

ii) undue bias; and

iii) making an unreasonable decision.

[7] Both the Application and the Claim very clearly relate to Ms. Bartel-Zobarich's employment, including the termination thereof. It is also clear that in support of the Application and the Claim, Ms. Bartel-Zobarich seeks to rely upon a variety of documents filed in past proceedings, including the Judicial Review Application, the appeal thereof, and the 2018 Claim. It is clear, therefore, on the face of both the Application and the Claim that Ms. Bartel-Zobarich is in large part seeking to relitigate issues that have been or could have been addressed in past proceedings. The fact that she has again raised many issues that were adjudicated previously is important, because of the general rule that "…no one should be twice vexed by the same cause".[1]

[8] One narrow aspect of the Application that, on its face, has not been adjudicated previously is the request for a judicial review of the Board's decision to dismiss the ***PIDA*** Complaint. Having said that, the Board dismissed that complaint because the Union is not subject to the ***PIDA***, and, with respect to the Employer, Ms. Bartel-

[1] *Glenko Enterprises Ltd. v. Keller*, 2008 MBCA 24, at para. 31.

Zobarich failed to establish on a *prima facie* basis that her termination was reprisal for a disclosure under the ***PIDA***. The Board stated in *Lydia Bartel-Zobarich v. Concordia Hospital et al.* (6 December 2019), MLB Decision 162/19/PIDA, that:

> It does appear that the Complainant's various applications, court proceedings and complaints stem from dissatisfaction with the settlement reached on all matters related to her termination. In that regard, the present complaint under [*PIDA*], in attempting in effect to re-open the settlement agreement over the termination, is an abuse of process. Further, the complaint raises issues that are *res judicata*, that is, with multiple decisions having already been reached under various pro-sections.

[9] In other words, the Board dismissed the ***PIDA*** Complaint for a lack of merit, on substantially the same basis that the respondents/defendants now argue that the Application and the Claim should be struck. As such, the request for judicial review of the ***PIDA*** Complaint is not new.

[10] Another significant problem with both the Application and the Claim is that at all material times, Ms. Bartel-Zobarich was a member of a bargaining unit. As such, this court has no jurisdiction to consider her allegations of "wrongful dismissal" or related employment issues.

[11] A third significant problem is that Ms. Bartel-Zobarich signed a release in favour of the Employer when the Grievance was settled in 2014, which prohibits further proceedings against it "…arising out of or in consequence of" her employment. Ms. Bartel-Zobarich did not seek to overturn the settlement in the unfair labour practice proceeding before the Board, and in my view the language of the Release is sufficiently broad to include her claims for "emotional stress" and reputational damage. In other words, the Employer can rely upon the release as a shield to both the Application and the Claim.

[12] Despite these obvious issues with the Application and the Claim, I note that in ***Grant v. Winnipeg Regional Health Authority et al.***, 2015 MBCA 44 (CanLII), the court held that:

> [36] The remedy of striking out a pleading … is to be used sparingly. It is reserved only for the 'clearest of cases' (*Ellett and Kyte v. Qualico Securities (Winnipeg) Ltd. et al.* (1990), 1990 CanLII 11333 (MB CA), 64 Man.R. (2d) 318 at para. 6 (C.A.)). A claim or defence, or part thereof, should not be struck out unless the moving party demonstrates that it is 'plain and obvious' that the cause of action or defence, as pleaded, is certain to fail (*Odhavji Estate v. Woodhouse*, 2003 SCC 69 at para. 15, [2003] 3 S.C.R. 263).

Frivolous and Vexatious

[13] In ***Bartmanovich v. Manitoba Crop Insurance Corp.***, 1995 CanLII 16101 (MB QB), [1995] M.J. No. 190 (QL), aff'd [1996] M.J. No. 17 (QL) (C.A.), the court stated at para. 8 that to strike a pleading as frivolous or vexatious, it must be shown that "…the pleadings are made without any probable justification in law, *mala fide[s]* with a clear intent only to annoy or embarrass the opposing party".

[14] In ***Kreiner v. Auditor General (Man.)***, 2007 MBCA 154 (CanLII), the court stated:

> 3 To strike out on the ground of frivolity under Queen's Bench Rule 25.11(b), the appellants must show that there is no probable justification at law for the claim advanced.

[15] I have no difficulty in concluding that the Application and the Claim were filed to annoy or embarrass the respondents/defendants, as contemplated in ***Bartmanovich***, because the allegations relate to issues that arose in a unionized workplace over which this court has no jurisdiction, except on judicial review, which has already been heard relative to the settlement of the Grievance. In addition, in 2014 Ms. Bartel-Zobarich released the Employer from further claims. Further, the 2018 Claim, which contained

allegations very similar to the Application and the Claim, was struck. The only argument that, on its face, differentiates the substance of the Application or the Claim from the 2018 Claim is the request for a judicial review of the Board's decision to dismiss the ***PIDA*** Complaint. Having said that, the ***PIDA*** Complaint is nothing more than a further iteration of Ms. Bartel-Zobarich's complaints relative to workplace allegations, and specifically events that arose between 2007 and 2012. I have concluded, therefore, that the request for a judicial review of the dismissal of the ***PIDA*** Complaint has no probable justification in law, is frivolous, and should be struck.

Abuse of Process

[16] In ***Solomon v. Smith***, 1987 CanLII 117 (MBCA), 45 D.L.R. (4th) 266, the court stated:

> … Maintaining open and ready access to the courts by all legitimate suitors is fundamental to our system of justice. However, to achieve this worthy purpose, we must be vigilant to ensure that the system does not become unnecessarily clogged with repetitious litigation of the kind here attempted. There should be an end to this litigation. To allow the plaintiff to retry the issue of misrepresentation would be a classic example of abuse of process — a waste of the time and resources of the litigants and the court and an erosion of the principle of finality so crucial to the proper administration of justice.

[17] In ***M.R.F. v. K.D.***, 2005 MBCA 58 (CanLII), the court stated:

> 22 … attempts to relitigate a matter already decided against the party advancing the matter or collaterally attacking the decision of a court can be considered an abuse of process.
>
> [citations omitted]

> 23 In determining whether there is abuse of process, the court is not required to accept as true all of the contents of the pleadings. In *Solomon*, this court confirmed the broad and flexible nature of the plea of abuse of process. Notwithstanding that the issues, the parties and even the court may not be identical, where there is a sufficient identity of issues that the matter would be considered repetitious and a waste of the time and resources of the litigants and the court, that may be sufficient to successfully invoke the plea of abuse of process, depending upon all of the circumstances.

[18] In ***Nygård International Partnership v. Canadian Broadcasting Corporation et al.***, 2011 MBQB 124 (CanLII), the court stated:

> [16] Abuse of process has been succinctly described in the oft-quoted passage by Arbour J. in *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63, [2003] 3 S.C.R. 77:
>
> > 35 Judges have an inherent and residual discretion to prevent an abuse of the court's process. This concept of abuse of process was described at common law as proceedings 'unfair to the point that they are contrary to the interest of justice'.
> >
> > [citations omitted]

[19] In ***Coombs v. Canada (Attorney General)***, 2014 FC 232 (CanLII), the court stated:

> [53] … Despite the applicants' commitment to pursuing every possible option, repackaging or re-characterizing the same application time and time again with the same allegations that have previously been adjudicated upon will not open up new avenues of relief or yield a different result.

[20] The allegations in the Application and the Claim have been considered, adjudicated and dismissed in multiple forums, including in this court. It is plain and obvious that there have been no new substantive issues or causes of action raised, and that every aspect of the Application (including a review of the dismissal of the ***PIDA*** Complaint) and the Claim represent attempts to re-litigate. Accordingly, neither the Application nor the Claim are justified in law, and both are certain to fail.

[21] I will exercise my discretion, therefore, to prevent an abuse of process, and to maintain the court's integrity, by striking the Application and the Claim. It would be unfair to permit either proceeding to advance, and to do so would be contrary to the interests of justice.

Reasonable Cause of Action

[22] In ***M.R.F.***, the court stated that a pleading should be struck for failing to disclose a reasonable cause of action if is "plain and obvious" or "beyond doubt" that no reasonable cause of action has been pleaded. Further, the court must take all facts alleged as proven.

[23] In ***Grant*** the court considered the test applicable to striking out a pleading for failing to disclose a reasonable cause of action or defence. The court stated:

> [35] The purpose of Queen's Bench Rule 25.11(d) is to ensure the effectiveness and fairness of the litigation process by the weeding out of hopeless claims or defences, without the necessity and cost of the full civil process…
>
> [citations omitted]
>
> …
>
> [37] On a motion to strike, the claim or defence should be read generously… If a claim or defence has a reasonable prospect of success, it should not be struck out (*Imperial Tobacco Canada Ltd.* at para. 17; *Driskell v. Dangerfield et al.*, 2008 MBCA 60 at paras. 11-13, 228 Man.R. (2d) 116).

[24] In ***Kirsh v. Sinclair et al.***, 2015 MBQB 147 (CanLII), the court stated:

> [16] Every action is required to be based on "a reasonable cause of action".
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> [17] "Reasonable cause of action" has been defined as:
>
> > "... a factual situation the existence of which entitles one person to obtain from the court a remedy against another person." (per *Lord Diplock in Letang v. Cooper*, [1964] 2 All E.R. 929 (C.A.) at 934).

[25] In this case, the Claim does not disclose a reasonable cause of action, because it reflects neither the essential elements of a cause of action nor sufficient material facts. In addition, and as I have stated above, given that Ms. Bartel-Zobarich was a member of a bargaining unit, there can be no claim against the Employer or the Union relative to her employment in any event.

[26] The Board raised an additional, specific argument with respect to this aspect of its motion, namely that it is a non-corporate body created by statute, and there is neither an express provision in the ***LRA***, nor a necessary implication that it is a suable entity. The Board pointed to ***Lucas v. Manitoba (Taxicab Board)***, [1985] M.J. No. 65 (QL), 31 Man.R. (2d) 97 (C.A.), where the court considered a similar question regarding the Manitoba Taxicab Board. The court stated:

> 12 Kroft J. in *B.G. Ranches v. Man. Agricultural Lands Protection Bd.*, [1983] 4 W.W.R. 681, held that there were a number of material factors which demonstrated the suability or non-suability of these boards. The factors which he relied upon can be paraphrased as follows:
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> 1. Whether there were provisions specifically making the Board a body corporate or politic.
>
> 2. Whether there was a provision specifically saying that the Board can or cannot be sued.
>
> 3. Whether there was a power permitting the Board to contract or be contracted with.
>
> 4. Whether there was a power upon the Board to acquire, hold or dispose of personal or real property.
>
> 5. Whether there was a power granted to carry on any kind of business activity.

[27] It is clear that the Board was created pursuant to the ***LRA***, and that it is a non-corporate body. Moreover, while the ***LRA*** confers upon the Board specific powers relative to its process and the determination of questions before it (s. 142), there is no provision reflecting that the Board can sue or be sued. Similarly, there is no provision in the ***LRA*** pursuant to which the Board can enter into contracts, buy property, or carry on business. I can see no basis, therefore, for a necessary implication that the Board is a suable entity, so the Claim against it should be struck out.

Conclusion

[28] The Application and the Claim are struck, without leave to amend. There is no need to consider whether Ms. Bartel-Zobarich ought to post security for costs.

VEXATIOUS LITIGANT

Relevant Legal Principles

[29] ***The Court of Queen's Bench Act***, C.C.S.M. c. C280, section 73(1) provides:

> Order restraining vexatious litigant
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> 73(1) If a judge is satisfied that a person has persistently instituted vexatious proceedings or conducted proceedings in a vexatious manner, the judge may order that
>
> (a) the person must not institute a further proceeding; and
>
> (b) any proceeding already instituted by the person must not be continued;
>
> except with leave of a judge.

[30] In ***Green v. University of Winnipeg et al***, 2018 MBCA 137 (CanLII), the court said:

> [1] Access to the courts is a fundamental right in our judicial system. But it is a right that can be abused when individuals use the system in unreasonable, unmeritorious ways. A balance must be found between appropriate use of judicial resources and endless court actions that result in harassment by means of litigation. That balance allows access to be limited but only as far as is necessary and only upon clear grounds….
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> …
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> [27] Whether a proceeding is vexatious is a matter to be determined by objective rather than subjective standards [citations omitted]. No one list of factors is exhaustive and no one factor is determinative. Nor is it necessary that all of the factors listed in the cases be present (see *Bossé c Caisse Populaire Acadienne Ltée*, 2018 CarswellNB 299 at para 35 (CA)). Rather, it is a holistic determination taking into consideration a variety of factors.
>
> [28] What should be remembered is that the order is exceptional and should be used only when the court determines that the litigant has "taken himself over the line" (many cases have used this language, see, for example, *Lindsay v*

Canada (Attorney General), 2005 BCCA 594 at para 26). In Manitoba, the point was made in *Winkler*. Justice Davidson indicated that a vexatious litigant order (at para 34):

> [S]hould be used in only the rarest of circumstances. It is difficult to think of a more fundamental human right than the right to access to our justice system. No one should have that right restricted except for the clearest and most compelling of reasons.

[29] A leading case in this area is *Re Lang Michener and Fabian (1987)*, 1987 CanLII 172 (ON SC), 37 DLR (4th) 685 (Ont SC (H Ct J)). In that case, Henry J identified the following non-exhaustive factors to assist the Court in ascertaining whether a matter was vexatious (at p 691):

(a) the bringing of one or more actions to determine an issue which has already been determined by a court of competent jurisdiction constitutes a vexatious proceeding;

(b) where it is obvious that an action cannot succeed, or if the action would lead to no possible good, or if no reasonable person can reasonably expect to obtain relief, the action is vexatious;

(c) vexatious actions include those brought for an improper purpose, including the harassment and oppression of other parties by multifarious proceedings brought for purposes other than the assertion of legitimate rights;

(d) it is a general characteristic of vexatious proceedings that grounds and issues raised tend to be rolled forward into subsequent actions and repeated and supplemented, often with actions brought against the lawyers who have acted for or against the litigant in earlier proceedings;

(e) in determining whether proceedings are vexatious, the court must look at the whole history of the matter and not just whether there was originally a good cause of action;

(f) the failure of the person instituting the proceedings to pay the costs of unsuccessful proceedings is one factor to be considered in determining whether proceedings are vexatious;

(g) the respondent's conduct in persistently taking unsuccessful appeals from judicial decisions can be considered vexatious conduct of legal proceedings.

Analysis

[31] Clearly, to deny any litigant ready access to the courts is a serious matter, and a high bar must be met before an order will be granted.

[32] Here, the Application and the Claim relate to issues surrounding Ms. Bartel-Zobarich's employment that have already been determined, and as I have concluded above, neither proceeding can reasonably be expected to succeed. What Ms. Bartel-Zobarich fails to recognize in her relentless pursuit of these matters is that she cannot simply continue to file new proceedings after similar, previous proceedings have been dismissed. Whether Ms. Bartel-Zobarich does not understand or does not respect this concept is not clear. It is clear that she disagrees with the outcomes of the various proceedings, and that she believes she has certain entitlements, so she has pursued a series of complaints arising from her employment that ended many years ago. In fact, Ms. Bartel-Zobarich advised me that she had "no choice" but to continue her pursuit.

[33] Ms. Bartel-Zobarich has repeatedly raised grounds and issues from previous proceedings, which she has rolled forward, reiterated and supplemented, referring to the Employer's failure to adhere to the law as the "origin of the current dilemma". She also believes that her pension entitlement amount is incorrect, and she has alleged that a variety of errors were made in connection with the termination of her employment that were carried forward in each subsequent proceeding. Ms. Bartel-Zobarich seems either unwilling or unable to understand that a legal framework applies to her factual situation, within which any allegations must be brought. It is not enough to repeat her

dissatisfaction and to make assertions of unfairness without regard to the reality that these issues have already been decided.

[34] I am also mindful of the fact that both the Employer and the Union are owed costs of just under $10,000 each, which remain unpaid. Ms. Bartel-Zobarich advised me in court that she cannot afford to pay the costs, but in an e-mail to Union counsel dated May 11, 2020, she refused to pay costs "for something [she] did not do", because "your client did not do his job". Again, Ms. Bartel-Zobarich displayed either a refusal or an inability to understand the reality that she is required to pay the costs ordered by the court.

[35] In addition, Ms. Bartel-Zobarich has alleged "undue bias" against the Board, but put forward no evidence to support that serious allegation. She has personally attacked the Union's in-house counsel, accusing him in the Application of "fail[ing] in his fiduciary responsibility" and acting in bad faith, again without evidence to support the allegations. Since Ms. Bartel-Zobarich had independent legal counsel when the Grievance was settled, she has also disparaged her own lawyer by denying that she knew about or approved of the settlement.

[36] Ms. Bartel-Zobarich has filed 72 affidavits in this matter, including many after a case management conference on September 15, 2020, when I commented upon the volume of material already on the record, and advised her that no additional affidavits should be forthcoming.

[37] At the hearing of the motions, Ms. Bartel-Zobarich apologized for the volume of material that she filed, but advised that new information became available in 2019

when she obtained her Worker's Compensation Board and Health Employees Benefit Plan files. Thereafter, she concluded that crucial evidence was missing from the record in the Judicial Review Application and the appeal thereof. I note, however, that Ms. Bartel-Zobarich sought leave to file new evidence on the appeal, which was denied. Moreover, Ms. Bartel-Zobarich has not identified any new evidence that would materially change the outcome of any of the previous proceedings, or that could properly be put before the court at this stage of these long-standing disputes.

[38] I am mindful of the general goal expressed in the Court of Queen's Bench Rules that civil proceedings be determined expeditiously, and that proportionality should be considered in every case. I am satisfied that the respondents/defendants should not be put to the repeated cost and effort of defending themselves from Ms. Bartel-Zobarich's repetitive allegations.

[39] Based on Ms. Bartel-Zobarich's past behaviour and her submissions, I expect that after receipt of my decision on the motions to strike, she will continue to file further proceedings in this court with respect to the same issues, unless serious action is taken. To permit her to do so without previous permission would be unjust.

[40] Accordingly, Ms. Bartel-Zobarich is hereby declared a vexatious litigant relative to her employment at Concordia Hospital. She must obtain leave to file any further proceedings in this court against any of the respondents/defendants in this matter, or against anyone else with respect to any aspect of her employment, including the termination thereof.

COSTS

[41] With respect to costs, I note that on May 11, 2020 Union counsel warned Ms. Bartel-Zobarich that the Application would fail and that the Union would seek costs against her. Not only did she choose to pursue the Application, she filed the Claim as a separate proceeding.

[42] The Union requested a costs award pursuant to the Court tariff. The Employer requested a costs award on a solicitor and client basis. The Board requested costs in an unspecified amount.

[43] With regard to the factors in Rule 57, I have determined that Ms. Bartel-Zobarich will pay costs to the respondents/defendants on a Class 3 basis. The respondents/defendants should submit their respective bills of costs for my review, with a copy to Ms. Bartel-Zobarich.

CONCLUSION

[44] The Application and the Claim are struck.

[45] Ms. Bartel-Zobarich is declared a vexatious litigant relative to her employment at Concordia Hospital, and must obtain leave to initiate any new proceedings in this court as set out above.

_____

J.