

Federal Court



Cour fédérale

**Date: 20110401**

**Docket: T-2049-09**

**Citation: 2011 FC 406**

**Ottawa, Ontario, April 1, 2011**

**PRESENT: The Honourable Mr. Justice Lemieux**

**BETWEEN:**

**IRENE J. BREMSAK**

**Applicant**

**and**

**PROFESSIONAL INSTITUTE OF THE  
PUBLIC SERVICE OF CANADA**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] Yesterday, March 31, 2011, I convened the parties by telephone to discuss a concern which the Court has expressed to the parties since the time I was assigned to this case. That issue is whether the proceeding which is before the Court was premature because of the existence of two outstanding complaints made by Ms. Bremsak against the Professional Institute of the Public Service of Canada (the Institute) which are currently before the Public Service Labour Relations Board (PSLRB).

[2] The proceeding before this Court, which was heard in Vancouver on October 20 and 21, 2010 and currently is under reserve after the completion of written arguments in December of last year, is a contempt proceeding brought by Ms. Bremsak against the Institute for breach of a Federal Court Order which stems from a PSLRB decision and order dated August 26, 2009, a decision which was authorized to be filed in this Court pursuant to section 52 of the *Public Service Labour Relations Act* (S.C. 2003, c. 22, s. 2) (the *Act*) which states the filing of a PSLRB decision must be filed in this Court at the request of a party affected by one of its orders unless; 1) there is no indication of failure to comply with that PSLRB decision and order; or 2) there is no good reason why the filing of the order in the Federal Court would serve no useful purpose. Subsection 52(2) of the *Act* provides that an order of the Board becomes an order of the Federal Court when filed with this Court “and it may subsequently be enforced as such.”

[3] On December 4, 2009 the Vice-Chairperson of the PSLRB ordered the filing of the 26<sup>th</sup> of August 2009 decision and order with the Court which took place on December 8, 2009.

[4] The applicant is the beneficiary of the 26<sup>th</sup> August, 2009 decision and order in that the policy under which she had been suspended from five appointed or elected offices in the Institute was declared unlawful. That decision ordered the Institute to promptly restore Ms. Bremsak’s status as an official of the Institute in the offices she has been suspended.

[5] It is unnecessary to detail the steps which the Institute took to challenge the decision and order of August 26, 2009: judicial review application in the Federal Court of Appeal, unsuccessful

stay application of the restoration order, subsequent discontinuance of the judicial review application. The fact is the applicant has never been restored to the positions she had been suspended from as an Institute official. All of the terms of the elected offices she held have now expired.

[6] What matters occurred on October 20, 2009. On that day, the Institute's Executive Committee suspended the applicant from membership for five (5) years in the Institute which disqualified her from holding office in the Institute. The Executive Committee found substantiated two harassment complaints made against her by Institute members in March and June 2009. These complaints had been investigated by an outside investigator.

[7] The applicant appealed the Executive Committee's October 20, 2009 decision suspension of membership to the PSLRB; that proceeding is still pending before the Court.

[8] At the contempt hearing, as I had previously had in a pre-hearing conference, I raised the question of the prematurity of the hearing before me. I did so because one of the Institute's arguments before the Vice-Chairperson of the PSLRB against filing the Board's August 26, 2009 decision in the Federal Court was that it would serve no useful purpose to file it with the Federal Court because she has been suspended from membership and cannot hold office. The Vice-Chairperson write: "Essentially the respondent [the Institute] argues that given the suspension of membership, the Board's August 26, 2009 decision is no longer enforceable." The Vice-Chairperson was of the view the Institute's argument whether that decision can still be enforced was one which should be assessed by the Federal Court. She was also of the view that the Institute had

not complied with some elements of the Board's 26<sup>th</sup> August, 2009 decision namely the order of reinstatement.

[9] The Institute's counsel made the same argument before Prothonotary Lafrenière when he heard the parties on the issue whether Ms. Bremsak had made out a *prima facie* showing of contempt warranting the sending of the matter to a contempt hearing before a judge of this Court. He was of the view the Institute's lawful excuse defence could not be decided by him.

[10] Clearly a central aspect of the Institute's defence to a finding of contempt is lawful excuse. During the hearing in Vancouver I had ruled out any evidence by either party on the issue of whether the Executive Committee's decision to suspend her from membership on the basis of the harassment complaint could not be entertained by the Court because the matter of the validity of the Executive Committee's decision was before the PSLRB and it would be improper for me to adjudicate on the issue which Parliament had mandated the PSLRB, a specialized tribunal in labour matters, to deal with. In my view, success or failure by Ms. Bremsak before that tribunal is material to her success or failure in the contempt hearing. In the interest of justice, I expressed, yesterday, my opinion to the parties that I should stay the proceedings before me until the PSLRB adjudicated on her complaints on her membership suspension or until a judicial review of that decision was determined, a matter which must be dealt with by the Federal Court of Appeal.

**ORDER**

**THIS COURT ORDERS that** this Court's decision in this matter is stayed until further order of this Court. No costs are awarded.

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"François Lemieux"

Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-2049-09

**STYLE OF CAUSE:** IRENE J. BREMSAK v. PROFESSIONAL  
INSTITUTE OF THE PUBLIC SERVICE OF  
CANADA

**CONSIDERED AT OTTAWA  
ONTARIO:** Teleconference held on March 31, 2011, in Chambers

**REASONS FOR ORDER  
AND ORDER:** LEMIEUX J.

**DATED:** April 1, 2011

**REPRESENTATIONS:**

Ms. Irene J. Bremsak FOR THE APPLICANT

Mr. Stephen Welchner FOR THE RESPONDENT  
Ms. Patizia Campanella

**SOLICITORS OF RECORD:**

Non applicable FOR THE APPLICANT

Welchner Law Office Professional FOR THE RESPONDENT  
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