

Federal Court of Appeal



Cour d'appel fédérale

Date: 20160531

Docket: A-420-15

Citation: 2016 FCA 163

**CORAM: NOËL C.J.
TRUDEL J.A.
GLEASON J.A.**

BETWEEN:

**THE PROFESSIONAL INSTITUTE OF THE
PUBLIC SERVICE OF CANADA AND
STÉPHANE AUBRY**

Appellants

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Ottawa, Ontario, on May 31, 2016.
Judgment delivered from the Bench at Ottawa, Ontario, on May 31, 2016.

REASONS FOR JUDGMENT BY

THE COURT

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REASONS FOR JUDGMENT BY THE COURT
(Delivered from the Bench at Ottawa, Ontario, on May 31, 2016).

THE COURT

[1] This appeal arises in the context of an Application for Judicial Review commenced in the Federal Court by the appellants with respect to the 2014 Standard on Security Screening, adopted by the Treasury Board of Canada on October 20, 2014. Pursuant to the *Financial Administration Act*, R.S.C. 1985, c. F-11, the 2014 Standard applies to all federal departments and agencies.

[2] Pending the determination of their application for judicial review, the appellants sought an interlocutory injunction to prevent the Treasury Board from implementing particular screening measures in the 2014 Standard as they apply more particularly to employees and others requiring “reliability status”. Reliability status underpins all other security levels discussed in the 2014 Standard.

[3] The Federal Court dismissed the motion for interlocutory injunction without costs. We sit on the appeal of the Federal Court’s Order, dated September 22, 2015 (2015 FC 1101).

[4] Referring to the three part test known as *RJR-MacDonald* test (*RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311, 111 D.L.R. (4th) 385), the Federal Court found that the appellants had established one or more serious issues (reasons at paragraphs 97-119). However, the appellants were found to have failed on the second and third branch of the test, *i.e.* the irreparable harm and the balance of convenience.

[5] It is trite law that to be successful, the appellants must persuade us that the Federal Court committed reviewable errors in its application of these parts of the test.

[6] The appellants have conceded that the Federal Court had no evidence before it to demonstrate that the 2014 Standard would impact any member of the bargaining unit before the Application for Judicial review was heard on the merits. Thus, even if a breach of a privacy right equates to irreparable harm, the appellants have failed to show the likelihood of any such breach. The claim for irreparable harm is therefore entirely speculative. It thus follows that the Federal

Court did not err in dismissing the motion for the injunction as proof of irreparable harm is a necessary pre-condition for the grant of an injunction.

[7] As a result, the appeal will be dismissed with costs.

“Marc Noël”

Chief Justice

“Johanne Trudel”

J.A.

“Mary J.L. Gleason”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-420-15

STYLE OF CAUSE: THE PROFESSIONAL INSTITUTE
OF THE PUBLIC SERVICE OF
CANADA AND STÉPHANE
AUBRY v. ATTORNEY
GENERAL OF CANADA

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: MAY 31, 2016

REASONS FOR JUDGMENT BY THE COURT BY: NOËL C.J.
TRUDEL J.A.
GLEASON J.A.

DELIVERED FROM THE BENCH BY: THE COURT

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