

Federal Court of Appeal



Cour d'appel fédérale

Date: 20170314

Docket: A-131-16

Citation: 2017 FCA 52

**CORAM: STRATAS J.A.
BOIVIN J.A.
WOODS J.A.**

BETWEEN:

ELIZABETH BERNARD

Applicant

and

**CECILIA CLOSE, ANDREA STEVENS and
THE ATTORNEY GENERAL OF CANADA**

Respondents

Heard at Ottawa, Ontario, on March 14, 2017.
Judgment delivered from the Bench at Ottawa, Ontario, on March 14, 2017.

REASONS FOR JUDGMENT OF THE COURT BY:

STRATAS J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Ottawa, Ontario, on March 14, 2017).

STRATAS J.A.

[1] The applicant seeks an order quashing a decision of the Public Service Labour Relations and Employment Board dated March 2, 2016 (files 566-02-7231 and 566-02-7232): 2016 PSLREB 18.

[2] The applicant was not a party to the Board proceedings, is not a member or employee of the union involved in the Board proceedings, and has no relationship with the individual respondent grievors before the Board. The applicant has offered no evidence suggesting that the Board's decision affected her legal rights, imposed legal obligations upon her, or prejudicially affected her in some way: *League for Human Rights of B'Nai Brith Canada v. Odynsky*, 2010 FCA 307, [2012] 2 F.C.R. 312; *Rothmans of Pall Mall Canada Ltd. v. Canada (M.N.R.)*, [1976] 2 F.C. 500, 67 D.L.R. (3d) 505 (C.A.); *Irving Shipbuilding Inc. v. Canada (A.G.)*, 2009 FCA 116, [2010] 2 F.C.R. 488. Thus, the applicant is not "directly affected" by the proceedings before the Board within the meaning of subsection 18.1(1) of the *Federal Courts Act*, R.S.C. 1985, c. F-7.

[3] Nor does the applicant have public interest standing. In considering this, we are to consider in a cumulative way whether a serious justiciable issue is raised, whether the applicant has a "real stake" or "genuine interest" in the matter, and whether in all the circumstances, this application is a reasonable and effective way to bring the issue before the courts: *Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45, [2012] 2 S.C.R. 524 at para. 37.

[4] In applying these factors, we should keep front of mind the rationales underlying them: "properly allocating scarce judicial resources and screening out the mere busybody; ensuring that courts have the benefit of contending points of view of those most directly affected by the determination of the issues; and preserving the proper role of courts and their constitutional relationship to the other branches of government": *Downtown Eastside* at para. 25.

[5] The application alleges that the Board's decision is invalid because two statutory provisions were breached: the Board member involved in the decision failed to satisfy a legal residency requirement and the Board member released the decision beyond the time permitted by law. We shall assume the applicant has raised a serious justiciable issue.

[6] We note that the Board member is now retired and the time likely has passed for challenges to be brought against other decisions she was involved in. However, the interpretation and application of the two statutory provisions may well arise in the future concerning other Board members. Parties who are directly affected and legally represented may well want to litigate those issues themselves. The statutory provisions are also virtually identical to many others under other statutes. This is not a situation where an issue of significance is evasive of review.

[7] In this case, any parties dissatisfied with the Board's decision were represented and faced no impediments against applying for judicial review. But they did not so apply. Perhaps their union, thinking of the interests of all of its members, was satisfied with the outcome reached by the Board. This suggests a conscious choice by the parties or their union to accept the Board's decision or at least a conscious unwillingness to contest it. Granting standing to the applicant would disrupt that choice. See the concerns expressed by the Supreme Court in *Downtown Eastside*, above, at para. 27 and *Hy and Zel's Inc. v. Ontario (Attorney General)*, [1993] 3 S.C.R. 675 at p. 694.

[8] In these circumstances, to permit the applicant to litigate this matter, the Court would have to have before it at least some evidence explaining the applicant's interest in the matter. On this, the applicant has filed no evidence whatsoever except to show that her collective agreement contains a clause similar to the one in issue here. But if a dispute were to arise under the clause in her collective agreement, that can be litigated by persons directly affected.

[9] We do not consider it to be a wise use of judicial resources in a case like this to permit a litigant whose interest in the matter is at best only jurisprudential to judicially review a decision of relevance mainly to the particular private parties in that matter, in circumstances where the parties do not wish to litigate further. There are potentially tens of thousands similarly situated to the applicant who would also have standing if we were to grant standing to this applicant: see the concerns expressed by the Supreme Court in *Downtown Eastside*, above, at para. 26 and *Canadian Council of Churches v. Canada (Minister of Employment and Immigration)*, [1992] 1 S.C.R. 236 at p. 252. The issues said to be of concern in this case may well arise again and are not evasive of review.

[10] At the outset of the hearing of this application, we raised with the parties the propriety of the style of cause and received submissions on this. In our view, the respondent "Treasury Board (Department of Citizenship and Immigration)" is not an entity known to law. In its place, we shall substitute the Attorney General of Canada. The amended style of cause shall appear on these reasons and the judgment of the Court.

[11] Therefore, we shall dismiss the application for judicial review for want of standing. The respondents agree in these circumstances that there should be no costs.

"David Stratas"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:

A-131-16

THIS IS AN APPLICATION FOR JUDICIAL REVIEW OF THE DECISION OF THE PUBLIC SERVICE LABOUR RELATIONS AND EMPLOYMENT BOARD, DATED MARCH 2, 2016, FILE NOS. 566-02-7231 AND 566-02-7232

STYLE OF CAUSE:

ELIZABETH BERNARD v.
CECILIA CLOSE, ANDREA
STEVENS AND THE ATTORNEY
GENERAL OF CANADA

PLACE OF HEARING:

Ottawa, Ontario

DATE OF HEARING:

MARCH 14, 2017

REASONS FOR JUDGMENT OF THE COURT BY:

STRATAS J.A.
BOIVIN J.A.
WOODS J.A.

DELIVERED FROM THE BENCH BY:

STRATAS J.A.

APPEARANCES:

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ON HER OWN BEHALF

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