Date: 20071024

Docket: A-46-07

Citation: 2007 FCA 332

CORAM: **LINDEN J.A.**
NADON J.A.
PELLETIER J.A.

BETWEEN:

MICHAEL KINDRATSKY

Appellant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

Heard at Calgary, Alberta, on October 22, 2007.

Judgment delivered from the Bench at Calgary, Alberta, on October 22, 2007.

REASONS FOR JUDGMENT OF THE COURT BY: NADON J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Calgary, Alberta, on October 22, 2007)

NADON J.A.:

[1] We are all agreed, on the authority of Re. *Peralta et al. and the Queen in Right of Ontario et al* [1985] 16 D.L.R. (4th) 259, Ontario Court of Appeal, that Mr. Justice Hughes of the Federal Court did not err in determining that the *Stoppage of Pay and Allowances Regulations*, S0R/84-886, as amended, were not *ultra vires*.

[2] More particularly, we note that ss. 22(3) of the *Royal Canadian Mounted Police Act*, (the "Act") R.S. c. R. 9 empowers Treasury Board to make regulations "respecting the stoppage of pay and allowances of members who are suspended from duty".

[3] We are satisfied that in enacting s. 2 of the Regulations and in authorizing the Commissioner to order the stoppage of pay and allowances of a member suspended from duty, Treasury Board fully complied with the authority given to it by the legislation. There can be no doubt that section 2 is a regulation "respecting the stoppage of pay and allowances".

[4] By the use of the word "respecting" it is our view that Parliament did not intend for Treasury Board itself to set out or specify those particular instances which would justify a stoppage of pay and allowances. Had that been Parliament's intention, more specific language would have been used such as stipulating that Treasury Board had the power to make regulations "prescribing" or "determining" when a stoppage of pay and allowances would be justified. However, it did not.

[5] To paraphrase the words of MacKinnon J.A., found at pages 272 and 273 of Re. *Peralta*, we are satisfied that subdelegation to the Commissioner was intended by necessary implication, and that, as a result, the *prima facie* rule of construction *delegatus non potest delegare* must give way to the intent of the legislation.

[6] We also see no merit in the Appellant's argument that the Regulations are invalid because s. 2 thereof refers, not to section 12.1 of the Act pursuant to which the Commissioner may suspend a member from duty, but to a non-existent section 13.1. We are satisfied that the reference to a

suspension from duty in section 2 of the Regulations was clearly meant as a reference to s. 12.1 of the Act. Thus, there can be no doubt as to Parliament's intention.

[7] For these reasons, the appeal will be dismissed with costs.

"M. Nadon"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-46-07
(Appeal from the Order of the Honourable Mr. Justice Hughes dated December 18, 2006, Docket No.: T-1785-05)	
STYLE OF CAUSE:	**MICHAEL KINDRATSKY** **Appellant** **and** **THE ATTORNEY GENERAL OF CANADA** **Respondent**
PLACE OF HEARING:	Calgary, Alberta
DATE OF HEARING:	October 22, 2007
REASONS FOR JUDGMENT OF THE COURT BY:	**LINDEN J.A.** **NADON J.**A. **PELLETIER J.**A.
DELIVERED FROM THE BENCH BY:	NADON J.A.

APPEARANCES:

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Mr. David J. Stam	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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