

Date: 20081217

Docket: A-451-07

Citation: 2008 FCA 405

**CORAM: LÉTOURNEAU J.A.
NOËL J.A.
BLAIS J.A.**

BETWEEN:

JOHN C. TURMEL

Applicant

and

CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION

Respondent

Heard at Toronto, Ontario, on December 15, 2008.

Judgment delivered at Toronto, Ontario, on December 17, 2008.

REASONS FOR JUDGMENT BY:

LÉTOURNEAU J.A.

CONCURRED IN BY:

**NOËL J.A.
BLAIS J.A.**

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REASONS FOR JUDGMENT

LÉTOURNEAU J.A.

[1] Mr. John C. Turmel who is self-represented seeks by way of judicial review a declaratory relief against the respondent.

[2] The facts underlying the applicant's demand can be summarized as follows.

[3] Mr. Turmel was an independent candidate in the 2007 Ontario general election. On September 18, 2007, he participated in a debate program hosted by Rogers Television (Rogers) for six candidates of the riding of Brant.

[4] Mr. Turmel wore a button showing his party affiliation. He was required to remove his button by the moderator, which he did. He was subsequently removed from the debate because, according to Rogers, he interrupted a fellow candidate.

[5] Six days later, he complained to the respondent, alleging that his removal from the debate violated his equitable share of the free-time partisan political broadcast required by the CRTC regulations.

[6] A staff member of the respondent informed Mr. Turmel that the respondent was seeking a response from Rogers and requesting that Rogers keep a tape of the broadcast in question.

[7] By the same occasion, Mr. Turmel was informed that his complaint would be placed on the public file at the end of three weeks unless he objected. Failing an objection, the matter of the complaint would be dealt with by the respondent during licence renewal time or by interested parties. He did not object to this process proposed by the respondent.

[8] On October 1, 2007, Mr. Turmel wrote to the respondent requesting it to compel Rogers to give the applicant an equitable share of time before Election Day. However, three days later, on

October 4, 2007, he brought the issue before this Court by seeking an order in the nature of mandamus against the respondent. The application was dismissed by Décary J.A. on November 5, 2007.

[9] After a review of the facts, the parties' submissions and the law, I have come to the conclusion that this application for judicial review should be dismissed.

[10] The first difficulty encountered in these proceedings originates from the fact that the respondent rendered no decision which can be the subject of judicial review or against which relief can be sought. Mr. Turmel did not pursue his complaint before the respondent and request the respondent to rule on it. Instead, he applied to this Court for a mandamus.

[11] This Court cannot, in the context of the present proceedings, exercise the jurisdiction conferred upon the respondent and proceed to assess the merit of Mr. Turmel's complaint. There is no evidence on the record that the respondent refused to deal with the complaint. On the contrary.

[12] Moreover, had Mr. Turmel pursued his complaint and obtained a decision from the respondent, he would have had a right of appeal on leave from that decision pursuant to subsection 31(2) of the *Broadcasting Act*, S.C. 1991, c. 11. The existence of a right of appeal, whether or not limited by a requirement to obtain leave, is a bar against judicial review: see section 18.5 and subsection 28(2) of the *Federal Courts Act*, R.S.C. 1985, c. F-7 as amended and *Pachul v.*

Canadian Radio-Television and Telecommunications Commission (2002), 289 N.R. 117 (F.C.A.).

He would have been barred from bringing this judicial review proceeding.

[13] For these reasons, I would dismiss the application for judicial review without costs since the respondent did not seek them.

“Gilles Létourneau”

J.A.

“I agree
Marc Noël J.A.”

“I agree
Pierre Blais J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-451-07

STYLE OF CAUSE: JOHN C. TURMEL v. CANADIAN RADIO-
TELEVISION AND TELECOMMUNICATIONS
COMMISSION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: December 15, 2008

REASONS FOR JUDGMENT BY: LÉTOURNEAU J.A.

CONCURRED IN BY: NOËL J.A.
BLAIS J.A.

DATED: December 17, 2008

APPEARANCES:

John C. Turmel

FOR HIMSELF

Regan Morris
Peter McCallum

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Canadian Radio-television and Telecommunications
Commission
Gatineau, Quebec

FOR THE RESPONDENT