

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20100217

Docket: A-384-09

Citation: 2010 FCA 47

Present: TRUDEL J.A.

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

RUDY QUADRINI

Respondent

Dealt with in writing without appearance of parties

Order delivered at Ottawa, Ontario, on February 17, 2010.

REASONS FOR ORDER BY:

TRUDEL J.A.

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20100217

Docket: A-384-09

Citation: 2010 FCA 47

Present: TRUDEL J.A.

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

RUDY QUADRINI

Respondent

REASONS FOR ORDER

TRUDEL J.A.

Background

[1] These are two motions brought on behalf of the applicant, the Attorney General of Canada for:

- (a) an Order staying and suspending the effect of the order contained in paragraph 106 of a decision made by the Public Service Labour Relations Board (PSLRB) on 28 August 2009; and

(b) an Order striking out portions of the respondent's affidavit filed under Rule 307, along with an Order striking out portions of the respondent's written examination in Form 99A.

[2] The parties are engaged in a proceeding in front of the PSLRB regarding a complaint made by the respondent under section 190 of the *Public Service Labour Relations Act*, S.C. 2003, c. 22, s.2 (the Act).

[3] During the course of the proceeding, the employer asserted solicitor-client privilege and objected to the disclosure of some pages of a document that the respondent sought to obtain. The missing pages were part of a document that the respondent had received as the result of an access-to-information request and had been removed by the Canada Revenue Agency's Access to Information and Privacy Directorate pursuant to sections 26 and 27 of the *Privacy Act*, R.S.C. 1985, c. P-21.

[4] Having considered the employer's objection, the Board member delivered a 30-page decision whereby he ordered as follows:

[104] The respondents' objection that the Board has no authority to satisfy itself as to the validity of a claim of solicitor-client privilege is dismissed.

[105] The Registry of the Board will consult with the parties on appropriate dates to reconvene the hearing.

[106] No later than 10 days before the hearing, the respondents will provide to the Board, and copy to the complainant, an affidavit sworn by their solicitor that clearly establishes the

nature of the contents of pages 000007 to 000011 of Exhibit C-40 and the reasons they are subject to solicitor-client privilege.

[107] The parties should be prepared to continue with all remaining phases of the hearing when the hearing reconvenes.

[5] On 28 September 2009, the applicant commenced an application for judicial review of the Board's interim decision.

[6] The pending application for judicial review raises questions of law. The grounds for application are limited to the following:

- . The Board erred in law or exceeded its jurisdiction by dismissing the Applicant's objection that it had no authority as to the validity of a claim of solicitor client privilege;
- . The Board erred in law or exceeded its jurisdiction by deciding that it was the Applicant's responsibility to produce an affidavit by the solicitor who authorized the communications for which privilege is denied;

[7] In support of its application, the applicant served and filed the supporting affidavit and documentary material of Ms. Anne Ross. The respondent later filed his own affidavit and an 18-page written examination containing 112 questions and sub-questions in respect of the affidavit of Ms. Ross. Ensued the motions under examination.

[8] The affidavit of Ms. Ross limits itself to the necessary factual background that could be of assistance to this Court in determining the above-mentioned issues, whereby the respondent's affidavit mainly addresses the merits of his complaint, which are not at play at this stage of the file. I

should add that aside from the property or relevance of portions of the respondent's affidavit and written examination, the language used is often abusive.

[9] As an alternate way to dispose of the second motion, the applicant seeks permission to withdraw Ms. Ross' affidavit. If granted, there would be no need to rule on the respondent's written examination.

Analysis

A. Motion for stay

[10] On the merits, the only issue in this application is whether the provisions of the Act extend the jurisdiction of the PSLRB into matters of solicitor-client privilege, even for the limited purpose of determining whether the privilege is properly claimed.

[11] This question is important as solicitor-client privilege is fundamental to the proper functioning of our legal system. Adjudication of a claim of privilege outside the realm of the enabling statute would be an infringement of the privilege.

[12] Here, the applicant argues that the purpose of the stay pending appeal is to preserve the rights of the parties. To deny the requested stay would effectively render the application for judicial review moot by forcing the employer to reveal information that is the subject matter of the claim to solicitor-client privilege. The applicant also notes that denying the stay would have a deleterious effect on similar claims in the context of PSLRB hearings.

[13] Moreover, the applicant argues that preserving the status quo would serve the interests of both parties.

[14] The applicant's arguments have persuaded me that the three-stage test in *RJR – MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 has been satisfied. There is a serious question to be tried; the applicant will suffer irreparable harm if the relief is not granted; and the balance of inconvenience favours him.

[15] Having decided to grant the requested stay, I now turn my attention to the motion regarding the respondent's affidavit and written examination.

[16] This file is quite simple. The legal question at issue is limited and well defined. An applicant for judicial review does not have to file an affidavit, especially when the legal error asserted appears on the face of the record.

[17] I therefore accept the applicant's proposal to withdraw Ms. Ross' affidavit, hence eliminating the need for discovery.

[18] The question of the respondent's affidavit remains. As a general rule, the affidavit must contain relevant information which would be of assistance to the Court in determining the application. As stated by our Court in *Dwyvenbode v. Canada (Attorney General)*, 2009 FCA 120,

the purpose of an affidavit is to adduce facts relevant to the dispute without gloss or explanation. The Court may strike affidavits, or portions of them, where they are abusive or clearly irrelevant, where they contain opinion, argument or legal conclusions, or where the Court is convinced that admissibility would be better resolved at an early stage so as to allow the hearing to proceed in a timely and orderly fashion (*McConnell v. Canadian Human Rights Commission*, 2004 FC 817, affirmed 2005 FCA 389).

[19] Applying these principles to a thorough examination of the respondent's 46-paragraph affidavit, I conclude that very large portions of it must be struck out. Copy of the affidavit with the irrelevant and offensive portions removed is appended to these reasons.

[20] Finally, I must deal with two procedural matters. Firstly the respondent has listed eleven issues to be determined on the stay motion (see paragraph 23 of his Motion Record). I have already considered those that were relevant and simply ignored sub-paragraphs (d) (e) (f) (g) (h) (j) and (k) as being irrelevant.

[21] Secondly, I note that the respondent's written representations included in his Motion Record exceed 30 pages. The Registry shall inform the respondent of this Court's requirements to avoid in the future the possible return of his documents.

Conclusion

Accordingly, on the motion to stay:

[22] The motion to stay and suspend the effect of the order contained in paragraph 106 of the decision made by the PSLRB on 28 August 2009 will be granted until the final disposition of the application in this Court.

On the motion to strike-out portion of the respondent's affidavit and written examination:

[23] The applicant will be authorized to withdraw the affidavit of Anne Ross and it shall therefore be removed from the Record.

[24] The respondent's Record shall be considered to have been duly served and filed;

[25] The respondent's affidavit, as served and filed, shall be removed from the Record and replaced by the one appended to these reasons.

[26] The respondent's written examination shall also be removed from the Record.

[27] Costs of this motion to follow the event.

"Johanne Trudel"

J.A.

Federal Court
of Appeal



Cour d'appel
fédérale

Court File No.: A-384-09

FEDERAL COURT OF APPEAL

BETWEEN

ATTORNEY GENERAL OF CANADA

Applicant

and

RUDY M. QUADRINI

Respondent

AFFIDAVIT OF RUDY M. QUADRINI

I, Rudy Moreno Quadrini, Ontario public servant of the town of Aurora, in the Regional Municipality of York, in the Province of Ontario, SWEAR THAT:

1. I am the complainant in an unfair labour practice complaint against Mr. Larry Hillier and the Canada Revenue Agency (“CRA”) (both “respondents”) before the Public Service Labour Relations Board (“PSLRB”) (File: 561-34-196) initiated over 2 years ago on November 9, 2007. Hearings for this proceeding are continuous and scheduled to resume again on February 15, 2010. There is literally no end in sight to this *federal case*, which primarily involves a very straightforward, negligent breach of contracts.

Nature of the proceeding

2. The matter before you is isolated to a judicial review application of the PSLRB's interlocutory decision, wherein, the PSLRB ordered (at p. 30 of Exhibit "A" to the Applicant's affidavit):
 - a. the dismissal of the respondents' objection to the PSLRB's authority to satisfy itself that a document is subject to *solicitor-client privilege* (hereinafter, "privilege") in the context of a complaint filed under section 190 of the *Public Service Labour Relations Act* (PSLRA"), (as ruled on at para. 95 respecting para. 2.1 of Exhibit "A" supporting the Applicant's affidavit);and
 - b. the respondents to provide both the PALRB and myself with a sworn affidavit that clearly establishes the nature of the contents of the documents for which privilege was claimed and the reasons they are subject to privilege.
3. Rule 301(d) required the Applicant to set out a precise statement of the relief sought in its Notice of Application but it failed to do so. I can only presume the Applicant seek the PSLRB's order to be overruled or overturned. I respectfully request that this Honourable Court sustain the order.
4. [...]

5. [...]

6. [...]

7. [...]

The Nature of the Order and the Objection

8. The PSLRB has *not* ordered the respondents to disclose or produce certain documents in question *nor* effectively waived any privilege claim attached to them as alleged by the Applicants in their affidavit. (Specifically, see para. 10-13 of Applicant’s Exhibit “A” on this point). As the respondents had proposed in argument, and I agreed in counter-argument, the PSLRB ordered *only* a descriptive and detailed affidavit of the nature and contents of these documents from the respondents to substantiate their alleged privilege claim. (Specifically, see para. 96-102 of Applicant’s Exhibit “A” on this point). I also deny the PSLRB member’s suggestion (at para. 98 thereof) that my proposal to modify the subject procedure was because he is not a lawyer. Both the PSLRB member and the Applicants will note that it was the PSLRB member who had raised this very issue at the last hearing when he said that a procedure might have to be designed because I am not a lawyer. [...]

The Narrow Nature of the Underlying Proceeding and my Legal Rights

9. [...]

10. [...]

11. In contrast, the PSLRB has included in a list of its roles and responsibilities as a quasi-judicial tribunal (at para. 89, 90 & 95 of Exhibit “A” to the Applicant’s affidavit), ordering “...*the disclosure of documents or things*”, applying “... *legal principles to individual cases, observing the requirements of due process and natural justice*”, “*deciding diverse points of law up to, and including, questions that arise from constitutional and quasi-constitutional authorities*”. It also says, “*It is neither legally sound nor effective policy to hold that it cannot determine all classes of issues concerning the disclosure of evidence that come before it, including...*” privilege.

12. [...]

13. [...]

14. [...]

15. [...]

16. [...] So, since October 3, 2007, I have unsuccessfully sought, both directly from the respondents, and indirectly through various other channels, the legal basis I thought must exist to support their position to deny me an offer they seem to have admitted I was entitled to in the letter.

17. [...] My initial decision to pursue then not pursue further recourse under the *Privacy Act* to challenge the exemptions is irrelevant for purposes of both the complaint and this proceeding.

18. [...]

19. [...]

Quest for the Truth, Finality and Fairness

20. [...]

21. [...]

22. [...]

23. [...]

24. I seek the documents in question [...] to confirm or dispel any illegal acts, as are pivotal to my case. The documents in question are also necessary to identify every responsible party or person involved in the refusal that may be subject to punitive prosecution under section 205 of the PSLRA; (refer to para. 65-70 and 74 of Exhibit “B” supporting the Applicant’s affidavit). Although the PSLRB has discouraged such a prosecution, it has been held in abeyance until a finding is made on the complaint.

25. The documents in question are central to this proceeding and the PSLRB complaint. They are vital to the finality of the Settlement Agreement based upon its terms. [...]

26. [...]

Background Information

27. [...]

28. [...]

29. [...]

30. [...]

31. [...]

The Letter of September 13

32. [...]

The Settlement Agreement

33. [...]

The HRA and Collective Agreement

34. [...]

35. [...]

36. [...]

37. [...]

38. [...]

39. [...]

Nature of the Documents at Issue

40. Despite all my legal rights and entitlements to a job offer, the CRA has refused to give me one for no apparent legitimate reason. In law, and under principles of natural justice, I'm entitled to know the legal basis, if any, supporting such an action taken against me. Their refusal is unfounded, personally motivated and detrimental to me.

41. [...]

42. [...]

43. [...]

44. [...]

45. [...]

46. I make this affidavit in support of my notice of appearance on the application and for no other or improper purpose.

Sworn before me at the City of Toronto in the Province of Ontario on November 27, 2009.

(s)

Commissioner for Taking Affidavits
Or as the case may be)

(s) Rochelle S. Dickenson
Registry officer

(Signature of Deponent)

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-384-09

STYLE OF CAUSE: Attorney General of Canada v.
Rudy Quadrini

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY: TRUDEL J.A.

DATED: February 17, 2010

WRITTEN REPRESENTATIONS BY:

Caroline Engmann

FOR THE APPLICANT

Rudy Quadrini

ON HIS OWN BEHALF

SOLICITORS OF RECORD:

John H. Sims, Q.C.
Deputy Attorney General of Canada

FOR THE APPLICANT