

Federal Court of Appeal



Cour d'appel fédérale

Date: 20100528

Docket: A-91-09

Citation: 2010 FCA 141

[ENGLISH TRANSLATION]

Present: PELLETIER J.A.

BETWEEN:

LUC BEAULNE

Applicant

and

PUBLIC SERVICE ALLIANCE OF CANADA

Respondent

Written motion decided without appearance of parties.

Order delivered at Ottawa, Ontario, on May 28, 2010.

REASONS FOR ORDER BY:

PELLETIER J. A.

Federal Court of Appeal



Cour d'appel fédérale

Date: 20100528

Docket: A-91-09

Citation: 2010 FCA 141

Present: PELLETIER J.A.

BETWEEN:

LUC BEAULNE

Applicant

and

PUBLIC SERVICE ALLIANCE OF CANADA

Respondent

REASONS FOR ORDER

PELLETIER J.A.

[1] This is a motion by the respondent, the Public Service Alliance of Canada, to strike certain portions of Mr. Beaulne's affidavit, which was filed in support of his application for judicial review. This motion was unnecessarily challenged by a motion by Mr. Beaulne to have the respondent's motion dismissed.

[2] The respondent's motion seeks the striking out of various paragraphs of Mr. Beaulne's affidavit and related exhibits. Chantal Homier-Nehmé's affidavit mentions the various reasons for which the respondent objects to the receipt of the disputed paragraphs and documents. The affidavit

submitted by Mr. Beaulne's representative does not contradict any of Ms. Homier-Nehmé's statements. It is therefore logical that the facts that she outlines are true.

[3] Mr. Beaulne is seeking a judicial review of a decision by the Public Service Staff Relations Board, before which there was an adversarial context. It is settled case law that the record before the reviewing court is the record that was, or was compiled, before the lower tribunal (see *Association of Architects (Ont.) v. Association of Architectural Technologists (Ont.)*, 2002 FCA 218, [2003] 1 F.C. 331. In general, this case consists of pleadings, exhibits and, if they exist, transcripts. These elements are submitted to the reviewing court through the applicant's affidavit.

[4] In this case, the applicant's affidavit contains numerous documents that were not before the Public Service Staff Relations Board either because it refused to admit them or because they were created after the hearing before the Board. None of these documents or paragraphs of Mr. Beaulne's affidavit referenced therein, listed in the draft order in Tab 15 of the applicant's record, are admissible for the purposes of the application for judicial review.

[5] There will therefore be an order that the Registry strike the following portions of Mr. Beaulne's affidavit by deleting them with black pencil:

- Exhibits 7, 11, 12(a) and pages 76 and 77 of Exhibit 8;
- Exhibits 12(b) 14, 15, 16, 17 and 20;
- Paragraphs 5, 6, 10 and 18 of the affidavit.

[6] Given the respondent's delay in objecting to these irregularities, there shall be no order with respect to costs.

"J.D. Denis Pelletier"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-91-09

STYLE OF CAUSE: LUC BEAULNE and PUBLIC
SERVICE ALLIANCE OF
CANADA

WRITTEN MOTION DECIDED WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY: PELLETIER J.A.

DATED: MAY 28, 2010

WRITTEN REPRESENTATIONS BY:

ROBERT DOUCET FOR THE APPLICANT

JAMES CAMERON FOR THE RESPONDENT

SOLICITORS OF RECORD:

CENTRE HOSPITALIER MÉMORIAL DE WAKEFIELD
WAKEFIELD, QUÉBEC FOR THE APPLICANT

RAVEN, CAMERON, BALLANTYNE & YAZBECK LLP
OTTAWA, ONTARIO FOR THE RESPONDENT