

Federal Court of Appeal



Cour d'appel fédérale

**Date: 20101015**

**Docket: A-91-09**

**Citation: 2010 FCA 269**

**Present: Pelletier J.A.**

**BETWEEN:**

**LUC BEAULNE**

**Applicant**

**and**

**PUBLIC SERVICE ALLIANCE CANADA**

**Respondent**

Written motion decided without appearance of the parties

Order delivered at Ottawa, Ontario, on October 15, 2010.

**REASONS FOR ORDER:**

**PELLETIER J.A.**



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**REASONS FOR ORDER**

**PELLETIER J.A.**

[1] Mr. Beaulne is filing a motion to set aside the order issued by this Court on May 28, 2010, on the ground that this order was obtained by fraud. This motion is accompanied by a second one whereby Mr. Beaulne is requesting an order to have Board Member John Mooney appear before the Federal Court of Appeal.

[2] The order dated May 28, 2010, ordered the registry to strike from the applicant's record certain documents that were not before the lower Court when it made its decision. Mr. Beaulne requested a review of this order, which was denied. This motion is Mr. Beaulne's third attempt to bring before the Court these documents, which it has already declared to be inadmissible.

[3] Mr. Beaulne is basing his request on the allegation that counsel for the respondent, Ms. Homier-Nehmé, misrepresented the veracity of the facts on February 3, 2010. In its decision on May 28, 2010, the Court notes the following:

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.

[4] Since they remained silent when Ms. Hormier-Nehmé made allegations during the first motion concerning these documents, Mr. Beaulne and his representative lack credibility when they attempt to question the integrity of a member of the Bar.

[5] Mr. Beaulne justifies himself by citing a passage from the Court's reasons, in which it justifies dismissing the request for reconsideration.

It is settled case law that the record before the reviewing court is the record that was, or was compiled, before the lower tribunal [...] In general, this case consists of pleadings, exhibits and, if they exist, transcripts...

[6] Mr. Beaulne claims that the documents in issue are his arguments before the Public Service Labour Relations Board. If the use of the term "argument" led to confusion, the Court is responsible for clarifying that the documents to which it referred by using this term are the originating document, that is to say the application that the applicant addressed to the Public Service Labour Relations Board, and the response filed by the respondent. In any event, the documents that the applicant would like to file with this Court are not the argument but rather the evidence that the Board did not see fit to receive.

[7] The applicant's motion to set aside the order issued by this Court on May 28, 2010, will therefore be dismissed.

[8] As for the motion to have Board Member John Mooney testify before this Court, it will also be dismissed. The Federal Court of appeal is not a trial court. It does not hear oral testimony. It bases its actions on sworn statements or transcripts.

[9] The Court believes that this motion is a blatant abuse of process and deserves to be sanctioned. The record filed by the respondent sets out the fact that due to the two previous orders made by this Court, through which Mr. Beaulne was ordered to pay the costs of these motions, Mr. Beaulne owes the respondent the amount of \$2,457.08 (\$1,228.54 x 2). It requires that Mr. Beaulne honour this obligation within the next 30 days, failing which his application will be dismissed. This seems to impose an unwarranted financial burden impeding Mr. Beaulne's rightful access to this Court. On the other hand, the stubbornness displayed by Mr. Beaulne or his representative regarding this issue caused the applicant to sustain financial prejudice and slowed the case's progress.

[10] The respondent is entitled to costs in this motion, which the Court sets at \$1,228.54 (which includes disbursements and taxes). The obligation to pay the costs in this motion is stayed until the Court rules on Mr. Beaulne's application.

“J.D. Denis Pelletier.”

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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 CANADA

**WRITTEN MOTION DECIDED WITHOUT APPEARANCE OF THE PARTIES**

**REASONS FOR ORDER:** PELLETIER J.A.

**DATED:** October 15, 2010

**WRITTEN REPRESENTATIONS:**

ROBERT DOUCET FOR THE APPLICANT

JAMES CAMERON FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

CENTRE HOSPITALIER MÉMORIAL DE WAKEFIELD, QUEBEC FOR THE APPLICANT

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