

Federal Court  
of Appeal



CANADA

Cour d'appel  
fédérale

**Date: 20110117**

**Dockets: A-69-10**

**A-232-10**

**A-233-10**

**Citation: 2011 FCA 14**

**CORAM: BLAIS C.J.  
LÉTOURNEAU J.A.  
NADON J.A.**

**BETWEEN:**

**ROBERT GRAVEL**

**Appellant**

**and**

**TELUS COMMUNICATIONS INC.**

**Respondent**

Hearing held at Québec, Quebec, on January 10, 2011.

Judgment delivered at Ottawa, Ontario, on January 17, 2011.

**REASONS FOR JUDGMENT BY:**

**LÉTOURNEAU J.A.**

**CONCURRED IN BY:**

**BLAIS C.J.  
NADON J.A.**

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**REASONS FOR JUDGMENT**

**LÉTOURNEAU J.A.**

[1] The appellant, who is self-represented, is challenging three decisions of the Federal Court. The first, in file T-2087-09, struck a certain number of paragraphs from his affidavit and struck out, in their entirety, the affidavits of two witnesses which he had submitted in support of an application for judicial review of a labour arbitrator's decision.

[2] The two other decisions, in files T-2086-09 and T-2087-09, allowed in part his motion to have paragraphs struck from affidavits produced, this time, by the respondent on judicial review. However, those decisions also refused the filing of an amended affidavit of the appellant and the additional affidavits of two of his witnesses whose affidavits were struck out in full by the first decision.

[3] The three decisions of the Federal Court which are the subject of these appeals result from the exercise of discretion. In the absence of evidence establishing that this power was exercised unlawfully or in a perverse or capricious manner, this Court cannot intervene to substitute its discretion for that of the Federal Court.

[4] Discretion is exercised unlawfully or in a perverse or capricious manner when it is contrary to statutory requirements, has regard to irrelevant considerations or fails to have regard to relevant considerations, or does not place sufficient importance or weight on relevant considerations. It goes without saying that these must be considerations that would have influenced or did influence the decision if, depending on the case, they had or had not been taken into account.

[5] I have carefully considered the paragraphs and affidavits that were struck out or refused. In the first decision, the judge hearing the case acknowledged that it has been established in the case law of this Court that on judicial review, motions to strike all or part of an affidavit should only be brought in exceptional circumstances, especially when the element to be struck out is

related to the relevancy of the evidence: see *Canadian Tire Corp. Ltd. v. P.S. Partsource Inc.*, 2001 FCA 8. The reason is quite simple: applications for judicial review must quickly proceed on the merits, and the procedural impacts of the nature of a motion to strike are to delay unduly and, more often than not, needlessly, a decision on the merits.

[6] However, in this case, the judge was of the opinion that the motion to strike brought before her met the criterion of exceptional circumstances.

[7] I must note that the first motion to strike submitted to the judge was brought on more than just a lack of relevancy. Certain allegations constituted arguments; others provided opinions or conclusions.

[8] Last, to the extent that the intent was to use the affidavit to establish the truth of the facts raised, a certain number of allegations were hearsay, whose reliability and, more specifically, necessity in relation to the issue could not be demonstrated. I am satisfied that the allegations struck out cannot be used as evidence in support of an allegation of a denial of natural justice or breach of procedural fairness, since they are irrelevant with regard to either of those issues.

[9] There is no doubt that the appellant, as he himself pointed out at the hearing, is at a disadvantage because of his lack of knowledge of and familiarity with the legal and judicial process. Had they been drafted differently, some of the allegations that were struck out would certainly have survived. However, we must take and consider them in the form they were in

before the Federal Court and see if that Court's discretion was exercised in accordance with the above-stated legal principle.

[10] I am satisfied that had the affidavits in issue not been struck out or refused as they were by the three decisions of the Federal Court, they would have caused prejudicial delays in the judicial review process and needlessly bogged down the hearing on the merits by initiating a debate that is quite peripheral to the issue in dispute.

[11] In the three cases submitted to this Court for review, I see no reason or justification to interfere with the three decisions. For these reasons, I would dismiss the appeal with costs, limited to a single set for the hearing.

“Gilles Létourneau”

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J.A.

“I agree.  
Pierre Blais C.J.”

“I agree.  
M. Nadon J.A.”

Certified true translation  
Sarah Burns

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-69-10

**STYLE OF CAUSE:** ROBERT GRAVEL v. TELUS  
COMMUNICATIONS INC.

**PLACE OF HEARING:** Québec, Quebec

**DATE OF HEARING:** January 10, 2011

**REASONS FOR JUDGMENT BY:** LÉTOURNEAU J.A.

**CONCURRED IN BY:** BLAIS C.J.  
NADON J.A.

**DATED:** January 17, 2011

**APPEARANCES:**

Robert Gravel

SELF-REPRESENTED

Jean-François Dolbec  
Pierre-Étienne Morand

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

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