

Federal Court



Cour fédérale

Date: 20110503

Docket: T-435-10

Citation: 2011 FC 512

Ottawa, Ontario, May 3, 2011

PRESENT: The Honourable Mr. Justice O'Keefe

BETWEEN:

ABE TOWNSEND

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for an interlocutory injunction pursuant to section 18 of the *Federal Courts Act*, RSC 1985, c F-7 to prevent the Commissioner of the Royal Canadian Mounted Police (RCMP) from applying the RCMP travel directive.

[2] Abe Townsend (the applicant) requests:

1. An order prohibiting the Commissioner of the RCMP from applying the terms of the *RCMP Travel Directive* which came into effect on January 1, 2010 until thirty days from the date of the decision at the final level of the applicant's grievance filed January 20, 2010;
2. An order that the Commissioner of the RCMP apply the terms of the Treasury Board travel directive for the RCMP, as set out in Treasury Board Minutes 704761 and 710531 and the *Treasury Board Travel Directive* until the conclusion of the injunction period; and
3. Costs on a partial indemnity basis.

Background

[3] This case involves policies regarding work related travel for the RCMP.

[4] In 1971, the Government of Canada, through the Treasury Board, enacted the "Travel Directives respecting the Rules, Standards and Procedures that apply to Government Business Travel by Members of the R.C.M. Police" (Treasury Board Minute 704761).

[5] The Treasury Board, with the National Joint Council (NJC), then issued the *Treasury Board Travel Directive* for all public servants in 1972.

[6] Due to the potential effect of this travel directive on RCMP members, in 1972, the RCMP Commissioner proposed amendments to Treasury Board Minute 704761 through Treasury Board Minute 710531 creating exceptions for RCMP members to the new *Treasury Board Travel Directive*.

[7] After the adoption of Treasury Board Minute 710531, the Treasury Board and the NJC agreed that the standard of accommodation for public servants on work related travel was “a single room, in a safe environment, conveniently located and comfortably equipped.”

[8] In 1988, the *Royal Canadian Mounted Police Regulations*, 1988, SOR 88-361, were amended and section 74 stated that:

A member travelling in relation to the performance of the member’s duties is entitled to be paid travelling expenses in accordance with Treasury Board travel policy.

[9] Between 1988 and 2008, hundreds of grievances were filed by RCMP members concerning travel issues. These grievances often involved the standards of accommodation provided to the RCMP members while travelling for their employment duties. Occasionally, RCMP members were housed in shared accommodation or tents.

[10] In 2008, the RCMP Commissioner directed there to be confirmation on the status of the Treasury Board Minutes and the establishment of a clear framework for assessing claims related to RCMP travel. On January 1, 2010, the RCMP Commissioner released the *RCMP Travel Directive*.

[11] The applicant filed a grievance challenging the decision of the Commissioner of the RCMP to create, publish and impose in-house travel directives.

Issues

[12] The issues are as follows:

1. Does the Federal Court have jurisdiction to grant the injunction sought?
2. Has the applicant met the tripartite test for an injunction?

Applicant's Written Submissions

[13] The applicant submits that the Federal Court has jurisdiction to grant the injunction. The applicant was required to challenge the *RCMP Travel Directive* through the grievance process set out in the *Royal Canadian Mounted Police Act*, RSC 1985, c R-10 (RCMP Act). No decision maker in the grievance procedure has jurisdiction to grant interim or interlocutory relief. Therefore, the applicant submits, the Federal Court retains residual discretion to grant an injunction due to the inherent jurisdiction of courts. The Federal Court has exclusive original jurisdiction because the RCMP Commissioner is a “federal board, commission or other tribunal” as defined by section 2 of the *Federal Courts Act* and over which the Federal Court has supervisory jurisdiction.

[14] The applicant submits that he meets the tripartite test for an injunction outlined in *RJR-Macdonald Inc. v Canada (Attorney General)*, [1994] 1 SCR 311, [1994] SCJ No. 17 (QL).

[15] The applicant submits that there is a serious issue to be tried because the RCMP Commissioner lacked jurisdiction to create the 2010 *RCMP Travel Directive*. By virtue of the RCMP being listed in Schedule IV of the *Financial Administration Act*, RSC 1985, c F-11, the

Treasury Board is responsible for the determination of the terms and conditions of employment of the RCMP. The Federal Court has previously held in *Wilson v Canada (Attorney General)*, 2010 FC 250 at paragraph 32, that the *Financial Administration Act* does not expressly grant the RCMP Commissioner the jurisdiction to set the terms and conditions of travel.

[16] The applicant submits that RCMP members will suffer irreparable harm if the injunction is denied. Substandard quality of accommodation or other breaches of the *Treasury Board Travel Directive* does not result in financial loss but rather loss of human dignity which cannot be remedied in damages.

[17] The applicant submits that the balance of convenience is in favour of the applicant since the respondent neither asserts nor demonstrates that it will suffer harm if the injunction is granted.

Respondent's Written Submissions

[18] The respondent submits that the Federal Court lacks jurisdiction to grant an injunction in this case. As the applicant has submitted a grievance pursuant to section 31 of the RCMP Act which has yet to be decided by the RCMP grievance committee, the application before this Court is premature.

[19] The respondent also submits that the applicant does not meet any of the factors under the tripartite test for injunctive relief.

[20] The respondent submits that the applicant has not set out a *prima facie* case. The RCMP Commissioner has not attempted to replace the Treasury Board as the employer, as was the case in *Wilson* above. Rather, the Commissioner exercised his authority to review the existing RCMP travel provisions and re-issue them in an understandable format. The respondent agrees with the applicant that RCMP members must conform to the *Treasury Board Travel Directive* where an exception for the RCMP has not been approved. The only reference to accommodation in the 1971 and 1972 Treasury Board Minutes or the RCMP Regulations is contained in subsection 4(1) of the 1971 Treasury Board Minute 704761 which states that RCMP members will receive reasonable expenses for accommodation while in travel status or on temporary duty. The respondent submits that the RCMP Commissioner determines what are reasonable expenses and for major events that may include shared accommodation. This is within the RCMP Commissioner's control and management of the RCMP pursuant to section 5 of the RCMP Act.

[21] The respondent submits that the applicant has not proven that he will suffer irreparable harm if the injunction is not granted. The applicant must show that the harm will, not may, occur to him personally. The applicant has not presented any evidence about how his entitlement to single room accommodation will be affected by the *2010 RCMP Travel Directive*.

[22] The respondent submits that the balance of convenience favours the Crown.

[23] Finally, the respondent submits that the outcome that the applicant seeks would not be achieved through an injunction. There was no express entitlement to a single room accommodation in the earlier travel directives so an order to apply the 1971 and 1972 Minutes and the *Treasury*

Board Travel Directive would not address the applicant's grievance regarding receiving single room accommodation.

Analysis and Decision

[24] **Issue 1**

Does the Federal Court have jurisdiction to grant the injunction sought?

The applicant has not commenced an application for judicial review, as he is required to use the grievance procedure set out in the section 31 of the RCMP Act in order to challenge the *RCMP Travel Directive* prior to proceeding to the Federal Court. Because of this, I do not have jurisdiction to award the interlocutory injunction under section 18 without an application for judicial review before this Court. In any event, since the parties have argued the tri-partite test for an injunction and the application may have been able to have been brought under another section of the *Federal Courts Act*, I will consider the submissions of the parties made with respect to the tri-partite test for injunctive relief.

[25] **Issue 2**

Has the applicant met the tripartite test for an injunction?

Were I to find that this Court had jurisdiction to grant the injunction, I would still conclude that the applicant does not meet the requirements for obtaining an injunction.

[26] The Supreme Court held in *RJR-MacDonald* above, that the test for an interlocutory injunction requires analysis of three factors. Firstly, the Court must assess whether there is a serious

issue to be tried on the merits of the case. Secondly, the Court considers whether the applicant will suffer irreparable harm if the injunction were refused. Thirdly, it must be determined which of the two parties will suffer the greater harm from the granting or refusal of the injunction.

[27] This tripartite test is conjunctive and, as such, the applicant must satisfy all three elements of the test before he will be entitled to relief. Failure to meet all three components results in the motion being dismissed (see *Musqueam Indian Band v Canada*, 2008 FCA 214 at paragraph 3).

[28] While the applicant might succeed on the question of serious issue, he cannot succeed on an assessment of irreparable harm.

[29] Irreparable harm is injury of a serious nature for which any redress after trial cannot fairly or adequately compensate (see *RJR-MacDonald* above, at paragraph 64).

[30] The burden is on the applicant seeking an injunction to show that irreparable harm will result to him personally if the injunction is not granted. Proof that persons who are not parties to the proceeding will suffer irreparable harm unless an injunction is granted is not sufficient to obtain an injunction (see *Canada v Amnesty*, 2009 FC 426 at paragraphs 32 to 34).

[31] The applicant submits that RCMP members will suffer irreparable harm in the form of loss of dignity, which is not remediable with damages. He does not address any harm that he would personally face.

[32] The applicant submitted in oral arguments that this case is analogous to *International Longshore and Warehouse Union, Canada v Canada (AG)*, 2008 FCA 3, where the union was required only to show evidence that irreparable harm would result to its members and not to the union specifically. The applicant submits that he filed his grievance and application for an interlocutory injunction as the staff relations representative (SRR) for RCMP members stationed in Nova Scotia. As such, he submits that he was acting in a similar capacity as a union.

[33] I do not find this argument persuasive. While the applicant provided little information on his SRR position, it appears that he represents only members in Nova Scotia, whereas, any injunction would affect RCMP members nationally.

[34] Furthermore, even if the applicant were permitted to show irreparable harm to RCMP members generally, as opposed to himself personally, he still has not succeeded in doing so. The applicant must provide non-speculative evidence that harm will occur. As confirmed by this Court in *Canada (Attorney General) v Canada (Information Commissioner)*, 2001 FCA 25 at paragraph 12:

...the fact that irreparable harm may arguably arise does not establish irreparable harm. What the respondents had to prove, on a balance of probabilities, is that irreparable harm would result from compliance with the subpoena issued on behalf of the Commissioner (*Metropolitan Stores (MTS) Ltd. v. Manitoba Food & Commercial Workers, Local 832*, [1987] 1 S.C.R. 110 (S.C.C.), at para. 35). The alleged harm may not be speculative or hypothetical (*Imperial Chemical Industries plc v. Apotex Inc.* (1989), [1990] 1 F.C. 221 (Fed. C.A.)).

[Emphasis added]

[35] The applicant has not produced any evidence that harm will occur to RCMP members. His submissions are based on the premise that due to the 2010 *RCMP Travel Directive*, RCMP members may be assigned shared accommodation in the future which would result in loss of dignity. This does not meet the threshold of clear, non-speculative evidence that irreparable harm will occur if an injunction is not granted.

[36] The lack of irreparable harm is determinative and the application must be dismissed, with costs to the respondent.

JUDGMENT

[37] **IT IS ORDERED that** the application for judicial review is dismissed with costs to the respondent.

“John A. O’Keefe”

Judge

ANNEX

Relevant Statutory Provisions

Federal Courts Act, RS, 1985, c F-7

2. . . .

“federal board, commission or other tribunal” means any body, person or persons having, exercising or purporting to exercise jurisdiction or powers conferred by or under an Act of Parliament or by or under an order made pursuant to a prerogative of the Crown, other than the Tax Court of Canada or any of its judges, any such body constituted or established by or under a law of a province or any such person or persons appointed under or in accordance with a law of a province or under section 96 of the Constitution Act, 1867 ;

18.(1) Subject to section 28, the Federal Court has exclusive original jurisdiction

(a) to issue an injunction, writ of certiorari, writ of prohibition, writ of mandamus or writ of quo warranto, or grant declaratory relief, against any federal board, commission or other tribunal; and

(b) to hear and determine any application or other proceeding for relief in the nature of relief contemplated by paragraph (a), including any proceeding brought against the Attorney General of Canada, to obtain relief against a federal board, commission or other tribunal.

Royal Canadian Mounted Police Act, RS, 1985, c R-10

5.(1) The Governor in Council may appoint an officer, to be known as the Commissioner of the Royal Canadian Mounted Police, who, under the direction of the Minister, has the control and management of the Force and all matters

2. . . .

« office fédéral » Conseil, bureau, commission ou autre organisme, ou personne ou groupe de personnes, ayant, exerçant ou censé exercer une compétence ou des pouvoirs prévus par une loi fédérale ou par une ordonnance prise en vertu d'une prérogative royale, à l'exclusion de la Cour canadienne de l'impôt et ses juges, d'un organisme constitué sous le régime d'une loi provinciale ou d'une personne ou d'un groupe de personnes nommées aux termes d'une loi provinciale ou de l'article 96 de la Loi constitutionnelle de 1867.

18.(1) Sous réserve de l'article 28, la Cour fédérale a compétence exclusive, en première instance, pour :

a) décerner une injonction, un bref de certiorari, de mandamus, de prohibition ou de quo warranto, ou pour rendre un jugement déclaratoire contre tout office fédéral;

b) connaître de toute demande de réparation de la nature visée par l'alinéa a), et notamment de toute procédure engagée contre le procureur général du Canada afin d'obtenir réparation de la part d'un office fédéral.

5.(1) Le gouverneur en conseil peut nommer un officier, appelé commissaire de la Gendarmerie royale du Canada, qui, sous la direction du ministre, a pleine autorité sur la Gendarmerie et tout ce qui s'y rapporte.

connected therewith.

(2) The Commissioner may delegate to any member any of the Commissioner's powers, duties or functions under this Act, except the power to delegate under this subsection, the power to make rules under this Act and the powers, duties or functions under section 32 (in relation to any type of grievance prescribed pursuant to subsection 33(4)), subsections 42(4) and 43(1), section 45.16, subsection 45.19(5), section 45.26 and subsections 45.46(1) and (2).

...

31.(1) Subject to subsections (2) and (3), where any member is aggrieved by any decision, act or omission in the administration of the affairs of the Force in respect of which no other process for redress is provided by this Act, the regulations or the Commissioner's standing orders, the member is entitled to present the grievance in writing at each of the levels, up to and including the final level, in the grievance process provided for by this Part.

...

32.(1) The Commissioner constitutes the final level in the grievance process and the Commissioner's decision in respect of any grievance is final and binding and, except for judicial review under the Federal Courts Act, is not subject to appeal to or review by any court.

(2) Le commissaire peut déléguer à tout membre les pouvoirs ou fonctions que lui attribue la présente loi, à l'exception du pouvoir de délégation que lui accorde le présent paragraphe, du pouvoir que lui accorde la présente loi d'établir des règles et des pouvoirs et fonctions visés à l'article 32 (relativement à toute catégorie de griefs visée dans un règlement pris en application du paragraphe 33(4)), aux paragraphes 42(4) et 43(1), à l'article 45.16, au paragraphe 45.19(5), à l'article 45.26 et aux paragraphes 45.46(1) et (2).

...

31.(1) Sous réserve des paragraphes (2) et (3), un membre à qui une décision, un acte ou une omission liés à la gestion des affaires de la Gendarmerie causent un préjudice peut présenter son grief par écrit à chacun des niveaux que prévoit la procédure applicable aux griefs prévue à la présente partie dans le cas où la présente loi, ses règlements ou les consignes du commissaire ne prévoient aucune autre procédure pour corriger ce préjudice.

...

32.(1) Le commissaire constitue le dernier niveau de la procédure applicable aux griefs; sa décision est définitive et exécutoire et, sous réserve du contrôle judiciaire prévu par la Loi sur les Cours fédérales, n'est pas susceptible d'appel ou de révision en justice.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-435-10

STYLE OF CAUSE: ABE TOWNSEND
- and -
ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: November 10, 2010

DATE OF HEARING: Ottawa, Ontario

**REASONS FOR JUDGMENT
AND JUDGMENT OF:** O'KEEFE J.

DATED: May 3, 2011

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