

Federal Court



Cour fédérale

Date: 20110503

Docket: T-345-11

Citation: 2011 FC 513

Montréal, Quebec, May 3, 2011

PRESENT: Richard Morneau, Esq., Prothonotary

BETWEEN:

**54039 NEWFOUNDLAND AND
LABRADOR LIMITED T/A
GEORGE STREET ASSOCIATION**

Applicant

and

ST. JOHN'S PORT AUTHORITY

Respondent

REASONS FOR ORDER AND ORDER

[1] This application involves a challenge of a decision of the St. John's Port Authority (SJPA) to lease certain lands. As part of the application, the applicant George Street Association (GSA) requested, pursuant to rule 17 of the *Federal Courts Rules* (the rules), a certified copy of "all materials that informed and briefed the SJPA and that it considered and relied on to make its decision."

[2] On March 17, 2011, the SJPA brought a motion to strike the application on the grounds that the SJPA is not a “federal board, commission or other tribunal” subject to judicial review, that the application is time barred under s. 18.1(2) of the *Federal Courts Act*, RSC, 1985, c. F-7, and that the GSA lacks standing to bring the application. On March 23, 2011, the SJPA filed a Notice of Objection to producing the materials requested by the GSA under rule 317.

[3] On March 25, 2011, I issued a written direction to the parties directing them to provide written submissions on the SJPA’s objection to production. Upon reviewing the materials filed by the parties I have determined that, for the following reasons, any production under rule 317 should be deferred until the SJPA’s March 17, 2011 motion to strike has been resolved.

[4] The GSA does not require any further material to address the issues raised by the SJPA’s motion to strike. The issues to be determined on the motion to strike do not concern any aspects of substantive review of the underlying decision and can be resolved without production under rule 317.

[5] In my view, the issues of relevance, specificity, and confidentiality raised by the parties in their pleadings are not determinative at this stage of the proceedings. These issues will be relevant to the scope of production, once it has been determined whether production under rule 317 is required at all. If the SJPA is not a “federal board, commission or other tribunal” under s. 2 of the *Federal Courts Act*, the GSA is not entitled to any production and the scope of production had the SJPA been acting as a federal tribunal will be moot.

[6] The outcome here is the logical result of s. 18.1 of the *Federal Courts Act*, under which only a decision of a “federal board, commission or other tribunal” is subject to judicial review in the Federal Court. Rule 317 cannot be used to compel the production of materials from an entity that is not a federal tribunal. If the GSA’s position here were to be accepted, parties could access information they have no entitlement to simply by naming an entity as a respondent in an application for judicial review and requesting production under rule 317. This cannot be the case.

[7] The motion to strike will proceed without production.

ORDER

THIS COURT’S JUDGMENT is that the SJPA’s objection to producing material under rule 317 is upheld pending the determination of its motion to strike, the whole with costs to follow.

Consequently and following the direction of this Court dated April 20, 2011, the SJPA shall, on or before May 10 , 2011, serve and file its moving motion record on its motion to strike. The GSA shall, on or before May 17, 2011, serve and file its motion record in response. The SJPA may, on or before May 20, 2011, serve and file written representations in reply.

The Court would appreciate if in addition to the filings mentioned above, a courtesy copy of any record filed could also be sent at the same time by counsel to the Registry of the Court in Montreal.

The hearing of the SJPA’s motion to strike shall be carried by video-conference with counsel in St. John’s (at a precise location to be provided by the Registry later on) and the Court in Montreal at one of the following three dates upon which counsel will be consulted by the Registry in accordance with the usual practice ordinarily followed:

1. June 1, 2011 at 9:30 a.m., Montreal time;
2. June 7, 2011 at 2:00 p.m., Montreal time;
3. June 22, 2011 at 2:00 p.m., Montreal time.

“Richard Morneau”

Prothonotary