Federal Court of Appeal | Cour d'appel fédérale

Canada

Date: 20090903

Docket: A-229-09

Citation: 2009 FCA 256

Present: TRUDEL J.A.

BETWEEN:

PROFESSIONAL INSTITUTE OF THE PUBLIC SERVICE OF CANADA

Applicant

and

GUY VEILLETTE

Respondent

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on September 3, 2009.

REASONS FOR ORDER BY: TRUDEL J.A.

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REASONS FOR ORDER

TRUDEL J.A.

[1] The Professional Institute of the Public Service of Canada (Institute) is a bargaining agent certified under the *Public Service Labour Relations Act* with approximately 57,000 members (Edward Gillis affidavit, applicant's motion record, page 30).

[2] Mr. Veillette, a federal public servant, held various bargaining agent positions with the Institute between 1999 and January 2007, when the Institute's board of directors imposed a disciplinary penalty on him following a physical altercation with another delegate. Mr. Veillette was suspended from his bargaining agent duties for a two-year period ending January 15, 2009.

[3] After hearing Mr. Veillette's complaint, the Public Service Labour Relations Board (Board) ordered, in a decision dated May 7, 2009, that Mr. Veillette be reinstated "as a steward in the bargaining agent positions that he held when he was suspended" (order of the Board, applicant's motion record, page 28).

[4] The Board determined, among other things, that the disciplinary process leading to the suspension and the suspension imposed on the respondent were inconsistent with the principles of natural justice.

[5] Moreover, the author of the Board's reasons stated that she would remain "seized for a period of 45 days to deal with any issue arising from [that] decision."

[6] The Institute applied for judicial review of that decision of the Board [2009 PSLRB 58; 561-34-153]. In this application, the Institute is bringing a motion for the following:

1. An order staying the proceedings before the Public Service Labour Relations Board of Canada (the Board);

2. An order staying the 2009 PSLRB 58 decision dated May 7, 2009, until this Court has ruled on the application for judicial review of that decision;

3. Any other order that the applicant may consider appropriate and that this Court may make.

[7] To better understand the dispute between the parties, it should be added that, on the expiration of his two-year suspension (January 15, 2009), the respondent was again suspended for an indefinite period from all elected or appointed Institute positions, [TRANSLATION] "as an administrative not a disciplinary measure" until the end of proceedings in his case before the Board. This second suspension, announced on January 27, 2009, gave rise to a new complaint filed with the Board, which ruled in favour of the respondent, not by ordering that he be reinstated as a bargaining agent representative, but by ordering that the applicant amend its *Policy relating to Members and Complaints to Outside Bodies* to ensure that it complied with the Act (2009 PSLRB 64, May 29, 2009).

[8] In his written submissions, the respondent refers to a second appeal, A-266-09, which is the Institute's application for judicial review of that second decision of the Board. For purposes of the stay requested, that case is not before the undersigned.

[9] Therefore, with respect to this case, the stay of the order will only be granted if the applicant discharges its burden in accordance with the three-stage test established in *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311.

[10] This three-stage test requires that the applicant demonstrate that

a. there is a serious question to be tried;

b. it would suffer irreparable harm if the stay is not granted; and

c. the balance of convenience weighs in its favour.

[11] The applicant must meet each stage of the test, and the analysis must be carried out in the proper sequence.

1) Serious question to be tried

[12] The threshold for this test is low. Without expressing any opinion on the merits of the application, I accept the applicant's argument that the relationship between the *Public Service Labour Relations Act*, S.C. 2003, c. 22, s. 2, and in particular subsection 188(*c*) thereof dealing with unfair labour practices by employee organizations, and the Institute's ability to self-regulate in disciplinary matters is a serious question, which is important for the Institute and all of the employee associations subject to the aforesaid Act.

2) Irreparable harm

[13] The second stage of the test is irreparable harm. The applicant must therefore satisfy me, on a balance of probabilities, that reinstatement of the respondent will result in irreparable harm. The alleged harm may not be speculative or hypothetical (*Canada (Attorney General) v. Canada (Information Commissioner)*, 2001 FCA 25, paragraph 12).

[14] In its written submissions, the applicant argues as follows:

> [TRANSLATION]
> 8. By reinstating the respondent Veillette in his bargaining agent duties, the Board created a situation in which no remedy could compensate the applicant for the harm suffered, that is, for having to remove from a union executive position a member who had been duly appointed in accordance with staffing rules for those bargaining agent positions, which must normally be voted on by members or union executive;
>
> 9. This is an actual harm that is unavoidable and that cannot be remedied if the Court sets aside the Board's decision or the reinstatement order;
>
> *Teamsters Local Union 847 v. Canadian Airport Workers Union*, 2009 FCA 44, paragraph 29.
>
> 10. It is outside the province of adjudicative or judicial tribunals to determine who should receive a representation mandate, as this choice belongs exclusively to qualified voters;
>
> 11. The order against the applicant and its president will require them to remove union officials who were duly elected or appointed to their duties;
>
> 12. Divesting an elected person of his or her mandate issued in accordance with rules that were democratically adopted by the annual general meeting (AGM) of members, which is the applicant's supreme governing body, is an act that is contrary to the very principle of delegative democracy and not compensable if the decision requiring the removal of the elected person is set aside;
>
> 13. Condoning such interference in the conduct of the applicant's affairs is a usurpation of members' power to elect their officers. In this regard, it is harm to the public interest for which no monetary redress can compensate.

[15] Without giving further details, the Institute thus argues that removing the incumbents of the positions that Mr. Veillette held constitutes irreparable harm. Surprisingly, this argument is inconsistent with the statements of the Institute's executive secretary, who signed the affidavit in support of the motion at issue. In fact, according to the affidavit, reinstating Mr. Veillette would

violate the Institute's bylaws and regulations, since there would then be two incumbents of Mr. Veillette's positions: the person elected or appointed to each of the positions and Mr. Veillette.

[16] Whichever way one considers the irreparable harm (removal of the current incumbents or violation of the Institute's bylaws), I am of the opinion that the Institute has failed to show irreparable harm.

[17] The harm alleged by the applicant in very general terms is nothing more than the ordinary consequence of a reinstatement order.

[18] In addition, the applicant also asks the Court to consider at this stage the public interest of the Institute's general members.

[19] It is more appropriate to take this into consideration at the third stage of the analysis. That said, in any event, the exercise of union democracy that led to the choice of the respondent is just as important as the subsequent exercise that led to the choice of his replacements. In this context, one should not be given preference over the other by being granted greater importance. According to the aforementioned affidavit, the positions that the respondent held in 2007, and to which other incumbents were appointed, are terms of two or three years. Regular members will therefore be called upon again to exercise their right.

[20] As I find that the Institute has not proved irreparable harm, there is no need to discuss the third stage, the balance of convenience.

[21] The stay motion will be dismissed without costs.

"Johanne Trudel"

J.A.

Certified true translation
Tu-Quynh Trinh

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET:	A-229-09
STYLE OF CAUSE:	Professional Institute of the Public Service of Canada v. Guy Veillette

MOTION IN WRITING DECIDED WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY:	TRUDEL J.A.
DATED:	September 3, 2009

WRITTEN SUBMISSIONS:

Robert Dury	FOR THE APPLICANT
Guy Veillette	REPRESENTING HIMSELF

SOLICITORS OF RECORD:

Trudel Nadeau, Montréal, Quebec	FOR THE APPLICANT