Federal Court of Appeal | Cour d'appel fédérale

Date: 20101213

Docket: A-98-10

Citation: 2010 FCA 342

CORAM: **LÉTOURNEAU J.A.**
NADON J.A.
TRUDEL J.A.

BETWEEN:

NEELAM MAKHIJA

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Montréal, Quebec, on December 13, 2010.

Judgment delivered from the Bench at Montréal, Quebec, on December 13, 2010.

REASONS FOR JUDGMENT OF THE COURT BY: LÉTOURNEAU J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Montréal, Quebec, on December 13, 2010)

LÉTOURNEAU J.A.

[1] This is an appeal against a decision of Martineau J. (judge) of the Federal Court whereby he affirmed a decision of the Registrar of Lobbyists (Registrar) that the appellant breached Rules 2 and 3 of the Lobbyists' Code of Conduct (Code) enacted to complement the *Lobbyists Registration Act*, R.S.C. 1985 (4th Supp.), c. 44 (Act) in force between May 11, 2000 and July 1, 2003.

[2] Notwithstanding the able arguments of counsel for the appellant, we are satisfied, as the judge was, that there was sufficient evidence before the Registrar to support his conclusions that the appellant, for payment, engaged in communications with public office holders in an attempt to influence the awarding of a financial contribution by Technology Partnerships Canada, failed to inform the four companies he had an agreement with of his obligations under the Act and the Code, and signed with Infowave statements that he did not engage in lobbying, knowing that these statements would be relied on.

[3] When reviewing the decision of the Registrar with respect to the breach of Rule 3 of the Code, the judge understood that the Registrar had made a violation of Rule 3 one of "absolute liability, in which a breach can occur without a requisite mental element." He, himself, would have preferred an interpretation that made the violation one of strict liability, requiring evidence of either negligence or of a conscious failure to disclose obligations before a breach could be found. Here is how he put his views in paragraphs 70 and 71 of his reasons for judgment:

> 70 The Registrar therefore found, reasonably, that the Applicant, in violation of Rule 3, had not disclosed his obligations under the Code. He accepted that the Applicant did not believe he was subject to the Code but did not consider this to be a defence. In other words, he interpreted Rule 3 of the Code as providing something akin to absolute liability, in which a breach can occur without a requisite mental element. This interpretation is clearly implicit in the Registrar's reasoning and as such it is transparent and intelligible, as required by Dunsmuir, above.
>
> 71 It seems unfair that the applicant would be reported for failing to disclose obligations that he did not know or believe he had in the first place. If I were deciding the case at first instance, I may have preferred an interpretation that required evidence either of negligence or of a conscious failure to disclose

> obligations before a breach could be found. Such requirements would better accord with the purpose of the Code, namely, to ensure that lobbying is conducted ethically.

[4] Not surprisingly, counsel for the appellant builds an argument on these two paragraphs that the Registrar erred in implementing an absolute liability regime. The appellant submits that he made an honest and reasonable mistake of fact as regards his obligation to disclose under the Code and the judge erred in not accepting the appellant's defence.

[5] With due respect, we believe the judge misinterpreted the ruling of the Registrar on this issue and mischaracterized the appellant's argument.

[6] What the appellant raised before the Registrar, the judge and us is not a mistake of fact, but an error of law. His submission is twofold: he did not know that the Act applied to him and he did not know that his acts were an attempt to influence the awarding of a grant, contribution of other financial benefit by or on behalf of Her Majesty in right of Canada. In fact, the appellant is mistaken as to the scope of the Act and the meaning or definition of "attempt to influence". It is an error of law in both cases and an error of law is no excuse unless it is an officially induced error or one that is invincible such as when the law is not published: see *R. v Jorgensen*, [1995] 4 S.C.R. 55, *Lévis (City) v Tétreault*, 2006 SCC 12.

[7] The judge's analogy with the penal regime is unfortunate and misleading since breaches of the Code are not sanctioned by charges and penalties and, in any event, the defence of error of law is no excuse whether the offence is one of *mens rea*, strict liability or absolute liability: see under

the heading Offences and Punishment subsection 14(1) of the Act which excludes from the scheme of contraventions to the Act and Regulations subsection 10.3(1) of the Act which contains the obligations to comply with the Code; see also subsection 10.3(2) of the Act which excludes breaches of the Code from the application of section 126 of the *Criminal Code* which creates an indictable offence for contravening an Act of Parliament.

[8] Moreover, to put it in terms of mental state as suggested by counsel for the appellant, the evidence shows that at best the appellant was negligent in not enquiring, and at worst wilfully blind, as to the scope of the Code and his obligations under it.

[9] For these reasons, the appeal will be dismissed with costs.

"Gilles Létourneau"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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