Federal Court  Cour fédérale

Date: 20190619

Docket: T-732-19

Citation: 2019 FC 831

Toronto, Ontario, June 19, 2019

PRESENT: Mr. Justice Diner

BETWEEN:

CADOSTIN, MACKENZY

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

ORDER AND REASONS

[1] The Applicant, Mr. Cadostin, applied for and obtained a position with what is now Crown-Indigenous Relations and Northern Affairs Canada [CIRNA]. Following an investigation of his job references, the Public Service Commission [Commission] determined that he committed fraud. Corrective action included the revocation of the Mr. Cadostin's appointment. In this motion for injunctive relief, he seeks to enjoin this corrective action. After a review of the evidence presented, I find that Mr. Cadostin fails to meet the tripartite test required to obtain the injunction he seeks. As a result, the motion is dismissed. My reasons follow.

I. Background

[2] Mr. Cadostin applied for the position with CIRNA in January 2017, using the same references that he had used in another job application process for another federal department. As the Commission had already begun an investigation for that initial job application under the *Public Service Employment Act*, SC 2003, c 22, sections 12 and 13 [PSEA], it initiated a second investigation vis-à-vis Mr. Cadostin's appointment with CIRNA under PSEA's section 69. The first investigation later concluded that Mr. Cadostin had committed fraud; the CIRNA investigation later came to the same conclusion, albeit with more exigent corrective action. It is this second investigation which Mr. Cadostin has challenged in the underlying application for judicial review, and thus forms the backdrop to this motion.

[3] In the course of the CIRNA appointment process, Mr. Cadostin had to submit three references, including his current supervisor. The investigation found that he submitted four references, none of which were his current supervisor.

[4] The Commission, which supported the findings of the Investigator, found that Mr. Cadostin fabricated these references, completing them on his home computer and himself sending emails and references from the supposed referees. The Investigator found that the supposed references also shared similar characteristics, including addresses from free online email providers, the referees' unanimous refusal to speak to the Investigator by phone, and their failure to provide requested information including contacts, roles, organizations and titles.

[5] The Investigator also found Mr. Cadostin's explanations for the suspicious elements pertaining to his references to be contradictory, incoherent, and lacking in credibility. He found the lack of a reference by Mr. Cadostin's current supervisor was problematic, and that his evidence regarding the supervisor evolved during the testimony, adding further credibility concerns. The Investigator found it clear that Mr. Cadostin was being intentionally misleading to avoid a negative reference from the supervisor.

[6] In applying the legal test, the Investigator adopted the definition for fraud in an appointment process set out in the jurisprudence (*Seck v Canada (Attorney General)*, 2012 FCA 314). The Investigator considered the submissions filed by Mr. Cadostin, but remained unconvinced in light of the significant evidence militating against Mr. Cadostin's explanations. As a result, on April 16, 2019, the Commission accepted the Investigation Report and ordered corrective action, which included the revocation of Mr. Cadostin's appointment at CIRNA.

II. Issue to be decided

[7] The sole issue raised by this motion is whether the Court should grant an interlocutory injunction to stay the Commission's corrective action. Mr. Cadostin asks that he be placed back in the role he occupied, pending the outcome of the underlying judicial review. To obtain his injunction, Mr. Cadostin must establish that there is: (a) a serious issue to be tried in the underlying application for judicial review; (b) irreparable harm that will result if the injunction is not granted; and (c) a balance of convenience favouring the injunctive relief: *RJR-MacDonald*

Inc v Canada (Attorney General, [1994] 1 SCR 311. As the test is conjunctive, all three elements must be successful to grant the relief sought.

III. Analysis

A. *Serious Issue*

[8] On the first prong of the *RJR-MacDonald* test, namely the serious issue, I have difficulty with some of Mr. Cadostin's arguments – particularly as Mr. Cadostin must prove this element on an elevated standard, because the injunctive relief would result in a more beneficial remedy than that available in the underlying application for judicial review: CIRNA would have to reinstate Mr. Cadostin to his prior position, whereas a successful outcome on judicial review would only result in the return of the matter to the Commission for redetermination (see *Shoan v Canada (Attorney General)*, 2016 FC 1031, at paras 22–23). Furthermore, significant deference is owed to the Commission's decisions under PSEA due to its discrete and special nature (*Dayfallah v Canada (Attorney General)*, 2018 FC 1120 at para 35).

[9] Mr. Cadostin raises numerous arguments both in this motion, and the underlying application for judicial review, on the grounds of (i) procedural fairness, (ii) *Charter* violations, and (iii) the unreasonableness of the Commission's factual findings.

[10] I have decided to leave those substantive arguments for the more fulsome assessment of a judicial review hearing. There, Mr. Cadostin may focus on those items, and any serious issues they may raise given that I find the determinative issue for the purposes of this motion the fact

that Mr. Cadostin has failed to meet the second and third prongs of the *RJR-MacDonald* test, as will be explained next.

B. *Irreparable Harm*

[11] Irreparable harm cannot be quantified in monetary terms and cannot be cured because one party is unable to collect damages from the other (*RJR-MacDonald* at p 341). The threshold for finding irreparable harm is high. As summarized in *Montenegro v Canada (Public Safety and Emergency Preparedness)*, 2016 FC 609 at para 12:

> The Federal Court of Appeal has held that to "establish irreparable harm, there must be evidence at a convincing level of particularity that demonstrates a real probability that unavoidable irreparable harm will result unless a stay is granted. Assumptions, speculations, hypotheticals and arguable assertions, unsupported by evidence, carry no weight" (*Glooscap Heritage Society v Canada (National Revenue)*, 2012 FCA 255 (CanLII) at para 31; see also *Gateway City Church v Canada (National Revenue)*, 2013 FCA 126 at paras 15-16).

[12] As such, Mr. Cadostin cannot satisfy this element of the test by relying on mere assertions, assumptions, or hypotheticals. Rather, he must tender evidence at a convincing level of particularity that demonstrates a real probability that unavoidable irreparable harm will result unless a stay is granted.

[13] The loss of an office and loss of employment do not constitute irreparable harm. As Justice Mactavish held in *Shoan*:

> [42] I am also not persuaded that any harm that Mr. Shoan may have sustained to his reputation is "irreparable" as that term is used in the jurisprudence. Should Mr. Shoan's application for judicial review ultimately succeed, it would be open to him to commence

> an action for damages, both in relation to his lost income, and with respect to the harm that he says that he has sustained to his reputation and career prospects: *Weatherill v. Canada (Attorney General)*, [1998] F.C.J. No. 58 at para. 30, 143 F.T.R. 302.

[14] Likewise here, if Mr. Cadostin is ultimately successful on the merits of his judicial review application, he could seek to recover any lost income through an action for damages.

[15] Mr. Cadostin also alleged that this matter has irreparably harmed his reputation. I agree with the Respondent that by filing this injunction, as well as the underlying application for judicial review – and both of these in the context of an open court – Mr. Cadostin has himself provided public access to the Commission's investigations and findings, and in doing so, any reputational damage has already occurred. Furthermore, like the income issue, reputational harm would also be compensable in damages as pointed out above in the extract from *Shoan*.

[16] Mr. Cadostin asserted at the hearing of the motion that he has lost friends at work, and also suffered health consequences, both of which constitute irreparable harm. Again, the determination of irreparable harm is a factual assessment based on clear and non-speculative evidence. Mr. Cadostin has failed to provide sufficient evidence to substantiate either of these grounds.

[17] Finally, Mr. Cadostin relied on *Sleep Country Canada Inc v Sears Canada Inc*, 2017 FC 148 and *Reckitt Benckiser LLC v Jamieson Laboratories Ltd*, 2015 FC 215 to support his argument, however, both of those cases differ vastly in their context and facts. For example, in both cases, the Court found it would be "difficult to the point of impossibility" to quantify

damages, and as a result, the Court found irreparable harm (*Reckitt* at para 51; *Sleep Country* at para 135). As already explained above, that would not be the case here. Any harm that Mr. Cadostin has suffered is reparable. Mr. Codastin, having failed to demonstrate irreparable harm, cannot succeed in obtaining an injunction.

[18] Despite my finding on the second prong of the *RJR-MacDonald* test, some brief analysis is nonetheless warranted on the third and last prong for injunctive relief.

C. *Balance of Convenience*

[19] The third part of the *RJR-MacDonald* test considers which party will suffer the greater harm from granting the interlocutory injunction, pending a decision on the merits of the application for judicial review. We have already established the fact that any harm to Mr. Cadostin is compensable monetarily.

[20] On the other hand, the Commission's corrective action has already been carried out by CIRNA. Granting the injunction would mean reinstating Mr. Cadostin in the position from which he was removed, which would involve both practical difficulties and require that CIRNA employ an individual who the Commission found had committed fraud in an appointment process – meaning that he may not have been qualified for the role in the first place. This would not be in the public interest.

[21] The Commission is charged with promoting and protecting the public interest and has carried out its responsibility under its legislation. The PSEA is designed to ensure integrity, and

merit-based appointments within the public service process. To maintain and safeguard the fundamental values of the public service, including the commitment to ensuring that appointments in the public service are based on merit, Parliament gave the Commission power to investigate and correct fraudulent appointment processes (see PSEA at sections 69–76).

[22] As a result, the public interest would be harmed by restraining the Commission's action in this case, in that it would prevent the Commission from carrying out its statutory duties and effectively exercising its enforcement responsibilities (*RJR-MacDonald* at p 346). If there have indeed been breaches of fairness or other fatal flaws in the Commission's decision, those will be addressed at the judicial review hearing.

[23] In sum, the balance of convenience favours the Respondent.

IV. Conclusion

[24] As Mr. Cadostin has failed to meet the second and third parts of the *RJR-MacDonald* test, injunctive relief cannot be granted.

ORDER in T-732-19

THIS COURT ORDERS that:

1. This motion to enjoin the corrective action taken against Mr. Cadostin is dismissed.

2. Costs are awarded to the Respondent.

"Alan S. Diner"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-732-19
STYLE OF CAUSE:	CADOSTIN, MACKENZY V ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	OTTAWA, ONTARIO
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ORDER AND REASONS:	DINER J.
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APPEARANCES:

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