Federal Court Cour fédérale

Date: 20240216

Docket: T-2550-23

Citation: 2024 FC 255

[ENGLISH TRANSLATION]

Ottawa, Ontario, February 16, 2024

PRESENT: Madam Justice Azmudeh

BETWEEN:

INTELCOM COURRIER CANADA INC.

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

ORDER AND REASONS

I. Overview

[1] This motion is part of an application for judicial review (the application for judicial review). In its motion, the moving party is asking this Court to issue an injunction for a stay of execution pending final judgment in this proceeding.

[2] The moving party, Intelcom Courrier Canada Inc. (Intelcom), is a cargo transportation business that had operated under federal jurisdiction for about 20 years until a Labour Program officer (Officer) with Employment and Social Development Canada (ESDC) determined that Intelcom did not fall under federal jurisdiction with respect to labour relations.

[3] The parties disagree on the date of that decision. ESDC initially decided that Intelcom's activities did not fall under federal jurisdiction on March 6, 2023. Almost two months later, on May 3, 2023, Intelcom informed the ESDC Officer through its counsel that some functional and operational changes had been made to the business since its submissions made in August 2022 and that it considered that they should be taken into account in ESDC's investigation. Intelcom filed additional documents. However, after reviewing the documents, ESDC was not persuaded to change its position and confirmed it on October 31, 2023.

[4] Intelcom applied to this Court for judicial review of the response sent by ESDC in October. If the parties do not agree on the scope of that "decision", it will be for the judge hearing the judicial review application to rule on it on the basis of the reasons accompanying the decision and in the context of the directions given by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65. The issue in this case is whether the moving party has discharged its burden of demonstrating that the legal test for an interlocutory injunction has been met.

II. Decision

[5] The applicant's motion is dismissed for the reasons that follow.

[6] Preliminary issue: should the evidence submitted by the parties in this motion be considered at the merits stage?

[7] I agree with the respondent that the Court should be able to use the evidence submitted by the parties in this motion to decide the issues before it on the merits, including the fundamental issue regarding whether the "decision" under review is indeed a decision.

[8] Under rule 3 and subrule 373(4) of the *Federal Courts Rules*, and in the interests of proportionality and the administration of justice, the Court orders that the evidence be considered as evidence submitted at the hearing of the proceeding, enabling both the applicant and the respondent to file it on their respective records without prejudice to the parties putting forward any arguments regarding its relevance.

III. Legal test: injunction

[9] The conjunctive test for an injunction is defined in *RJR-MacDonald Inc v Canada (Attorney General)*, 1994 CanLII 117 (SCC), [1994] 1 SCR 311 (*RJR-MacDonald*): to be granted an interlocutory injunction for a stay pending final judgment, applicants must demonstrate (1) that there is a serious question to be tried, (2) that irreparable harm will result if the relief is not granted, and (3) that the balance of convenience is in their favour.

The burden is on the applicant to show that its motion meets this well-settled cumulative test.

[10] To establish irreparable harm, the applicant must show that "it will suffer real, definite, unavoidable harm – not hypothetical and speculative harm" (*Janssen Inc v Abbvie Corporation*, 2014 FCA 112 at para 24).

[11] As noted by the applicant, in a motion for a stay, the moving party must meet the burden of demonstrating the existence of irreparable harm which "either cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other" (*RJR-MacDonald* at 341).

[12] This Court's case law is clear that irreparable harm cannot be based on a mere assumption. It must be established by means of clear and compelling evidence (*Newbould v Canada (Attorney General)*, 2017 FCA 106 at paras 28–29).

[13] 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. This was not established in this case (*Glooscap Heritage Society v Canada (National Revenue)*, 2012 FCA 255 at para 31).

[14] In this case, the moving party is challenging ESDC's decision that it does not fall under federal jurisdiction. It first became aware of that decision in March 2023, after which it called on its current counsel, who requested that ESDC conduct a new jurisdictional analysis. In October 2023, the ESDC Officer sent counsel a short email to inform them that the decision dated March 6, 2023, would stand. At no point in time did

the moving party take any measures to change its internal system from a federal system to one adapted to the provincial regimes. In fact, although Intelcom submits in its motion documents that having to adapt its employment-related documentation, procedures and obligations to the various provincial regimes would constitute irreparable harm, there is nothing in the evidence to show that it had taken steps to implement such changes or that it had been sanctioned for non-compliance by any of the provinces where it carries on business following the change of jurisdiction.

[15] I am also of the view that, although it may be costly and very inconvenient to make changes to its internal system, this would not cause disproportionate or irreparable harm to the business. Examples of harm provided by the moving party in its motion include changing all of its documentation, protocols and procedures related to employment and health and safety to adapt them to the various provincial regimes; changing its pay equity and employment obligations; and establishing new policies, programs and training.

[16] I agree with the respondent that such harm would be suffered by any business thus reclassified as falling under provincial jurisdiction by the Labour Program. Because of Canada’s constitutional framework, these are normal impacts and costs that any Canadian business that falls under provincial jurisdiction and has a place of business in more than one province would have to deal with.

[17] The moving party also submits that, without an injunction, its employees across the country, who are currently facing a complete changeover of their rights with respect to labour standards under federal legislation to the various provincial regimes would

suffer harm resulting from these changes and the uncertainty surrounding the labour standards that apply to them.

[18] I disagree. The applicant did not establish real, definite and unavoidable harm to the rights of its employees with regard to labour standards or to the quality of its labour relations with its employees. The legal uncertainty and instability alleged by the applicant are just general inconveniences. Furthermore, the existence of an application for judicial review of a decision dated October 31, 2023, does not create uncertainty or insecurity regarding Intelcom's jurisdiction because the outcome of the application will not be related to a decision on jurisdiction. In this case, the Federal Court will not be asked to review or to determine Intelcom's jurisdiction. Its jurisdiction has remained unchanged since March 2023 and will remain unchanged at the conclusion of the application for judicial review.

[19] As stated above, the three-prong test in *RJR-MacDonald* in conjunctive, meaning that all three criteria must be met for an injunction to be granted. In this case, the applicant failed to demonstrate that it would suffer irreparable harm. Therefore, the test cannot be satisfied.

[20] Accordingly, the motion is dismissed with costs.

ORDER in T-2550-23

THIS COURT ORDERS as follows:

1. The motion is dismissed.

2. The evidence submitted by the parties in this motion is considered as evidence submitted at the hearing of the proceeding.

3. With costs.

"Negar Azmudeh"
Judge

Certified true translation
Margarita Gorbounova

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-2550-23
STYLE OF CAUSE:	INTELCOM COURRIER CANADA INC. AND ATTORNEY GENERAL OF CANADA

MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO, PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES*

JUDGMENT AND REASONS:	AZMUDEH J
DATED:	FEBRUARY 16, 2024

WRITTEN REPRESENTATIONS BY:

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