Date: 20071030

Docket: T-414-07

Citation: 2007 FC 1120

Toronto, Ontario, October 30, 2007

PRESENT: Kevin R. Aalto, Esquire, Prothonotary

BETWEEN:

DENNIS BOISSONNEAULT

Applicant

and

CANADA POST CORPORATION

Respondent

REASONS FOR ORDER AND ORDER

[1] This is a motion pursuant to Rule 369 by the Applicant for an Order permitting the Applicant to file a further affidavit in the form of the proposed draft affidavit in the Applicant's Motion Record. The Applicant also seeks leave of the Court to permit Mr. Rodney L. Hoff to represent him in these proceedings as well as an extension of time to file the Applicant's Record.

[2] Upon a review of the Motion Record of the Applicant, the Motion Record of the Respondent and the Applicant's Written Reply to the Responding Motion Record, it is apparent that

there is little merit to the affidavit and that it should not be allowed to be filed. There is also no basis upon which to permit Mr. Hoff to act for the Applicant.

[3] In this Application, the Applicant seeks to quash a settlement with the Human Rights Commission and have the matter determined by the Federal Court. The Applicant, who is self represented, has filed a nine page affidavit with twenty exhibits in support his Notice of Application. He now seeks to file a further affidavit which is alleged to reply to the responding affidavit filed by the Respondent. As well, it raises matters which are subsequent to the settlement in dispute. The Respondent opposes the filing of the affidavit primarily on the grounds that the proposed affidavit contains bald assertions and statements that are argumentative, abusive, prejudicial, irrelevant, immaterial and will not assist the Court in determining the issue in dispute. As such, the proposed affidavit does not meet the requirements of Rule 81 (1) of the *Federal Courts Rules* which provides as follows:

81. (1) Affidavits shall be confined to facts within the personal knowledge of the deponent, except on motions in which statements as to the deponent's belief, with the with the grounds therefore, may be included.	**81.** (1) Les affidavits se limitent aux faits dont le déclarant a une connaissance personnelle, sauf s'ils sont présentés à l'appui d'une requête, auquel cas ils peuvent contenir des déclarations fondées sur ce que le déclarant croit être les faits, avec motifs à l'appui.

[4] In reviewing the proposed affidavit, it is quite clear that it contains much that is argumentative, abusive and prejudicial and will not advance the interests of justice. One example from the affidavit is contained in paragraph 10. The first part of paragraph 10 reads as follows:

> "Para 30 of the Respondents SWORN Affidavit has deliberately and with purpose **TAMPERED WITH A PIECE OF EVIDENCE** to suit their nefarious needs, up till this point the Applicants have been aware of how the Respondents have twisted the rules of the Collective Agreement Duty to Accommodate Law and Privacy Law to their own advantage, a trait that persists through out with CP. As will be seen, but to now alter evidence to suit their needs is unacceptable and deserves the utmost condemnation! **Exhibit 2 page 13 This makes CP's testimony very discreditable!** This is despicable in the extreme, and can only corroborates [sic] the depths this Corporation is prepared to go to, to keep this case from ever being heard in Federal Court. This alone should be enough to discredit all that Canada Post have been trying to blur the truth and minimise [sic] the suffering and loss the Applicant is enduring at their hands. . . "

[5] There are many other examples of this type of vituperative language. There are also many examples of statements which are pure argument ["that's acting in Bad Faith. CP will stop at nothing" (par. 14); . . . this is farcical, CP are flip flopping . . . (par. 2)]; or are abusive and prejudicial ["Yet another distortion of the rules to suit CP" (par. 7); "tampered with a piece of evidence" (par. 10); "just by the fact of CP altering evidence alone should send shudders down any reasonable person's spine!" (par. 17); "That's despite CP Altering Evidence to their betterment!" (par. 31)]. Further, the affidavit relates matters which occurred subsequent to the impugned settlement. In all, a fair reading of the entire proposed affidavit leads to the conclusion that it does not meet the requirements of Rule 81 and does not comply with the jurisprudence of this Court. As noted by Prothonotary Hargrave in *Hughes* v. *Canada (Customs and Revenue Agency)* [2004] F.C.J. No. 1285 at par. 7:

In *Mazhero* (*supra*) Mr. Justice of Appeal Evans observed that "…the discretion of the Court to permit the filing of additional material should be exercised with great circumspection.", going on to adopt a passage from *Deigan v. Canada* (1999) 168 F.T.R. 277 at page 278:

> "The new Federal Court rules allow the filing of a supplementary affidavit and of a supplementary record, however such should be allowed in limited instances and special circumstances, for to do otherwise would not be in the spirit of judicial review proceedings, which are designed to obtain quick relief through a summary procedure. While the general test for such supplementary material is whether the additional material will serve the interests of justice, will assist the Court and will not seriously prejudice the other side, it is also important that any supplementary affidavit and supplementary record neither deal with material which could have been made available at an earlier date, nor unduly delay the proceedings." Diegan was affirmed by the Trial Division (1999) 165 F.T.R. 121. These principles, on which the Court should exercise its discretion to allow in supplemental evidence, were more clearly set out by Mr. Justice of Appeal Nadon in Atlantic Engraving (*supra*) at page 246:
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> i) The evidence to be adduced will serve the interest of justice;
> ii) The evidence will assist the Court;
> iii) The evidence will not cause substantial or serious prejudice to the other side (see *Eli Lilly and Co. v. Apotex Inc.* (1997), 76 C.P.R. (3d) 15 (T.D.); *Robert Mondavi Winery v. Spagnol's Wine & Beer Making Supplies Ltd.* (2001), 10 C.P.R. (4th) 331 (T.D.)).
>
> The Court of Appeal in Atlantic Engraving then went on to add a further requirement, that an applicant, wishing to file additional material, must show that it was not available before cross-examination, for Rule 312 is not a means by which a party may split its case: the obligation on a party is to put forward its best case at the earliest opportunity:
>
> Further, an applicant, in seeking leave to file additional material, must show that the evidence sought to be adduced was not available prior to the cross-examination of the opponent's affidavits. Rule 312 is not there to allow a party to split its case and a party must put its best case forward at the first opportunity (see *Salton Appliances (1985) Corp. et al. v. Salton Inc.* (2000), 181 F.T.R. 146, C.P.R. (4th) 491 (T.D.); *Inverhuron & District Ratepayers Association v. Canada (Minister of Environment*) et al. (2000), 180 F.T.R. 314 (T.D.)).

[6] There are other authorities to the same effect There are other authorities to the same effect [see, for example, *Innovation and Development Partners/IDP Inc.* v. *Canada*, [1993] F.C.J. No. 602 and *Expressvu Inc.* v. *NII Norsat International Inc. (c.o.b. Aurora Distributing)*, [1997] F.C.J. No. 276]. Thus, leave to file the proposed affidavit is denied.

[7] The Applicant also seeks leave to have Mr. Hoff represent him in these proceedings. There is correspondence in the Motion Record in which Mr. Hoff describes himself as Agent and Power of Attorney for Mr. Boisseaunault. Mr. Hoff is not a solicitor. Rule 119 mandates that a person may act in person or be represented by a solicitor. There is no rule which permits an individual in a proceeding to be represented by a non-solicitor. The jurisprudence of the Federal Courts has consistently upheld this rule [see, *Scheuneman* v. *Attorney General of Canada*, [2003] F.C.A. 439; and *Erdmann* v. *Her Majesty the Queen*, [2001] F.C.A. 138]. It is arguable that the Court, only in the most unusual of cases, will stray from the requirement of self-representation or solicitor representation [see, for example, *Parmar* v. *Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 1000; *Morrisroe* v. *Canada (Minister of Justice)*, [1996] F.C.J. No. 1178; *Giagnocavo* v. *Canada*, [1995] F.C.J. No. 1355 (F.C.A.); and, *Moss* v. *Canada*, [2006] F.C.J. No. 1415]. In *Moss*, Justice Russell observed:

> "As regards representation by her husband, she now says "there is precedent that the Court's have allowed my husband to speak on my behalf because I am unable to represent myself nor am I able to afford representation as I live on a disability pension." However, the Applicant does not address Rules 119 or 121 and she doesn't explain how the Court could allow her husband to represent her in an action, or what precedents she is relying upon."

[8] This case is similar. There are no precedents upon which the Applicant relies and there are no grounds set out which would permit the Court to grant the relief requested. There is no factual or legal basis in the motion materials which support granting leave to Mr. Hoff to represent the Applicant. That part of the motion is also denied.

[9] Finally, the Applicant seeks an extension of time to serve and file the Applicant's Record. Given that this Application got off to a somewhat rocky start by having named the wrong party as Respondent, which error has now been corrected, in the circumstances the Applicant should have additional time to serve and file the Applicant's Record. The time will be extended to November 16, 2007.

[10] The Respondent seeks its costs. The Respondent has been substantially successful in its opposition to the motion. In considering costs it should also be noted that the Applicant is an in-person litigant. However, as Justice Hugessen noted in *Scheuneman* v. *Her Majesty the Queen*, [2003] F.C.T. 37 at par. 4:

> The plaintiff's lack of legal training does not give him any additional rights and if he insists upon representing himself, he must play by the same rules as everyone else.

One of those rules is that costs usually follow the event. They are discretionary. Rule 400(1) provides:

400. (1) The Court shall Have full discretionary power over the amount and allocation of costs and the determination of by whom they are to be paid.	**400.** (1) La Cour a le pouvoir discrétionnaire de déterminer le montant des dépens, de les répartir et de désigner les personnes qui doivent les Payer.

[11] Given the fact that the proposed affidavit does not meet the requirements of affidavits in the Federal Court and that there is no basis for supporting the right to be represented by a non-solicitor, it is appropriate that the Respondent receive costs. In balancing all of the facts and considering the factors set out in Rule 400(2), an appropriate award of costs is $500 payable by the Applicant to the Respondent within 30 days of the date of this Order.

ORDER

THIS COURT ORDERS that:

1. This motion, insofar as it seeks to file a further affidavit of the Applicant, is dismissed.

2. This motion, insofar as it seeks leave to permit Mr. Rodney L. Hoff to represent the Applicant in this proceeding, is dismissed.

3. The Applicant is granted an extension of time to November 16, 2007 to serve and file the Applicant's Record.

4. The time for taking subsequent steps in the proceeding is extended to run from the date of service of the Applicant's Record on the Respondent.

5. The Applicant shall pay costs fixed in the amount of $500, inclusive of GST, to the Applicant within 30 days of the date of this Order.

"Kevin R. Aalto"
Prothonotary

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	T-414-07
STYLE OF CAUSE:	DENNIS BOISSONNEAULT Applicant and CANADA POST CORPORATION Respondent
MATTER CONSIDERED AT TORONTO, ONTARIO PURSUANT TO RULE 369	
REASONS FOR ORDER AND ORDER BY:	AALTO, P
DATED:	OCTOBER 30, 2007

WRITTEN SUBMISSIONS BY:

Dennis Boissonneault	FOR THE APPLICANT
Frances R. Gallop Natasha L. Savoline	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Dennis Boissonneault c/o Rodney L. Hoff	FOR THE APPLICANT
Filion Wakely Thorup Angeletti LLP Barristers & Solicitors Toronto, Ontario	FOR THE RESPONDENT