Federal Court  Cour fédérale

Date: 20100510

Docket: T-561-09

Citation: 2010 FC 506

Ottawa, Ontario, May 10, 2010

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

RIDGEVIEW RESTAURANT LIMITED

Applicant

and

THE ATTORNEY GENERAL OF CANADA
and STEVE GIBSON

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Attorney General of Canada appeals from the Order of a Prothonotary refusing to strike Ridgeview Restaurant Limited's Notice of Application brought in relation to an authorization to possess dried marihuana issued by Health Canada to the respondent Steve Gibson.

[2] For the reasons that follow, I have concluded that the appeal must be allowed, and the Notice of Application struck out. In light of my conclusion that the Notice of Application should be struck out, Ridgeview's motion to amend its Notice of Application will be dismissed.

Background

[3] On June 4, 2004, Health Canada issued an authorization to possess dried marihuana for medical purposes (an "ATP") to Mr. Gibson, pursuant to the *Marihuana Medical Access Regulations***,** SOR/2001-227(or "*MMAR*"). The ATP allowed Mr. Gibson to possess and use dried marihuana to mitigate severe pain and persistent muscle spasms associated with a spinal cord injury. Health Canada has renewed Mr. Gibson's ATP on an annual basis, most recently on May 7, 2009.

[4] Ridgeview is the corporate owner of a restaurant located in Burlington, Ontario, that carries on business as "Gator Ted's Tap & Grill". Ridgeview holds a license to sell liquor at the restaurant under the Ontario *Liquor Licence Act*, R.S.O. 1990, c. L.19.

[5] Gator Ted's is described as being a family-style restaurant. The owners of Ridgeview are active in the community, and participate in many fundraising activities for local charitable organizations. Gator Ted's also has a presence in the community through its sponsorship of local sports teams.

[6] Mr. Gibson was a long-time patron of Gator Ted's. It is alleged that while on the premises of Gator Ted's, Mr. Gibson displayed his marihuana to restaurant patrons and offered marihuana to others. Mr. Gibson has also allegedly smoked his marihuana on the sidewalk directly in front of the restaurant.

[7] It is also alleged that while on a bus trip organized by the restaurant to take patrons of Gator Ted's and their families to see a hockey game in Hamilton, Mr. Gibson consumed marihuana either near the front of the bus or by the front door of the bus, and that he had entered the bus with a "joint" in his hand. Mr. Gibson's conduct resulted in a number of customer complaints.

[8] In 2005, Mr. Gibson was barred from Gator Ted's because of his conduct. This resulted in Mr. Gibson filing a complaint against Ridgeview and one of its owners, Ted Kindos, with the Ontario Human Rights Commission. Mr. Gibson's complaint is currently pending before the Ontario Human Rights Tribunal.

[9] In 2008, three complaints were filed with Ronald Denault, the Manager of the Marihuana Medical Access Division at Health Canada's Tobacco and Drugs Directorate pursuant to section 68 of the *MMAR*. These complaints were brought by Mr. Kindos, a restaurant employee and a restaurant patron. The complaints relate to Mr. Gibson's use of marihuana near the premises of Gator Ted's, as well as his alleged sale of marihuana to patrons of the restaurant. Ridgeview says that despite having received these complaints, Health Canada has taken no steps to revoke Mr. Gibson's ATP, or to otherwise require his compliance with the permit.

[10] Ridgeview asserts that Mr. Gibson's conduct is not in keeping with the family tone of the restaurant, and has the potential to significantly and adversely affect the business of Gator Ted's. By engaging in conduct that violates the Ontario *Liquor Licence Act*, Mr. Gibson has jeopardized the business and threatened the livelihood of the restaurant's owners and employees. In particular,

Ridgeview asserts that Mr. Gibson's conduct puts it at risk of being subject to fines of up to $250,000, together with the loss of its liquor licence. In addition, Ridgeview faces potential liability before the Ontario Human Rights Tribunal.

[11] In 2009, Ridgeview commenced this application for judicial review. In its current form, Ridgeview's application seeks:

> 1. A declaration that the smoking of marihuana by the Respondent Steve Gibson in a public place, or at any establishment licensed under the *Liquor Licence Act of Ontario,* R.R.O. 1990, c. L. 19 (the "LLA"), is not authorized by the Permit;
>
> 2. A declaration that Health Canada does not have authority to authorize the possession or use of dried marihuana for medical purposes by anyone in a manner that is contrary to the express laws of the Province of Ontario prohibiting the holding or consumption of controlled substances on the premises of a holder of a license issued under the LLA;
>
> 3. An order in the nature of prohibition, prohibiting Health Canada from renewing the Permit on account of the flagrant disregard of its terms by the Respondent Steve Gibson;

The Motion before the Prothonotary

[12] The Attorney General brought a motion to strike Ridgeview's Notice of Application before a Prothonotary, asserting that the declarations sought by Ridgeview are nothing more than statements of the law, and are therefore meaningless. The Attorney General further claimed that by challenging Health Canada's issuance of the ATP to Mr. Gibson, Ridgeview was seeking prerogative relief from the Federal Court for strictly collateral purposes: that is, to defend its

position in the human rights proceeding, and/or to shield itself in the event that charges are laid against Ridgeview in the future under the *Liquor Licence Act* of Ontario.

[13] The Attorney General also argued that Ridgeview is a stranger to the relationship between Health Canada and Mr. Gibson, and does not have standing to challenge the issuance of the ATP to Mr. Gibson.

[14] Finally, the Attorney General submitted that the *MMAR* does not authorize Health Canada to refuse to renew an ATP on the grounds asserted by Ridgeview. Consequently, even if the facts alleged by Ridgeview are true, they would not provide a legal basis for Health Canada to refuse to renew Mr. Gibson's ATP.

[15] The Prothonotary did not accept any of the Attorney General's arguments and dismissed the motion to strike.

[16] Insofar as the issue of standing was concerned, the Prothonotary found that Ridgeview was "directly affected" by Health Canada's decision in a number of ways. On top of its commercial interest, Gator Ted's reputation was also in issue. Moreover, the restaurant's staff and patrons, together with those it supports in the community, are subjected to Mr. Gibson's allegedly improper use of marihuana. The Prothonotary concluded that "[t]his may ultimately be found to be sufficient to support direct standing, however, and in any event, the issue of standing is not determinative of this motion."

[17] The Prothonotary also did not accept the Attorney General's submission that the *MMAR* does not confer discretion on the Minister of Health to refuse to grant a renewal of Mr. Gibson's ATP. According to the Prothonotary, the complaints made by Mr. Kindos and others gave rise to a "legitimate expectation" on the part of Ridgeview that Health Canada would comply with its obligations under the *MMAR*.

[18] The Prothonotary rejected the Attorney General's argument that Ridgeview was seeking declarations solely for collateral purposes. The Prothonotary distinguished the decision in *Schreiber v. Canada (Attorney General)*, [2000] 1 F.C. 427, holding that the focus of the Notice of Application in this case was not to clarify Canadian law for another jurisdiction. In this regard, the Prothonotary observed that there are no prosecutions currently under way in which Ridgeview could make use of pure declarations of law. According to the Prothonotary, what was being sought were "declarations and remedies directly related to Ridgeview's role in the community". As such, they were not "vacuous declarations of law in light of the factual matrix giving rise to this application".

[19] As Ridgeview was caught between the *MMAR* on the one hand, and its obligations under the *Liquor Licence Act* of Ontario on the other, the Prothonotary concluded that it ought to have its day in this Court in order to have an applications judge determine whether the declarations sought are meaningless, on the basis of a full evidentiary record.

Standard of Review

[20] The first issue for the Court is to identify the standard of review to be applied to the Prothonotary's decision. As the Federal Court of Appeal observed in *Merck & Co. v. Apotex Inc.*, 2003 FCA 488, 30 C.P.R. (4th) 40 at paras. 18-19, discretionary orders of Prothonotaries ought not to be disturbed on appeal unless the questions raised in the motion are vital to the final issue of the case, or the orders are clearly wrong, in the sense that the exercise of discretion was based upon a wrong principle or a misapprehension of the facts.

[21] The Attorney General submits that in identifying the appropriate standard of review, the Court should have regard to the nature of the motion before the Prothonotary, rather than its outcome. Given that a motion to strike clearly raises a question that is vital to the final issue in the case, the Attorney General says that the Court should consider the matter *de novo*. In support of this argument, the Attorney General relies on the decisions of this Court in *Coffey v. Canada (Minister of Justice)*, 2005 FC 554, 273 F.T.R. 92 and *Professional Institute of the Public Service of Canada v. Canada (Customs and Revenue Agency)*, 2002 FCT 119, 216 F.T.R. 96 [*P.I.P.S.C.*].

[22] Ridgeview made no substantive submissions with respect to the standard of review, submitting just that the Prothonotary's decision should not be interfered with, whichever standard is applied. Mr. Gibson has not participated in these proceedings.

[23] A review of the jurisprudence reveals that the law is divided on this question. In *P.I.P.S.C.*, the Court observed that if the respondent's motion to strike had succeeded before the Prothonotary,

the application would be at an end. As a consequence, the Court held that the motion raised a "question vital to the final issue of the case", with the result that the Court was required to approach the appeal on a *de novo* basis: see para. 18. A similar conclusion was reached by the same judge in *Coffey* at para. 10.

[24] However, the more recent jurisprudence of this Court has held that an appeal from the dismissal of a motion to strike does not raise a question that is vital to the final issues of the case, with the result that such a decision is subject to the more deferential standard of review: see, for example, *Peter G. White Management Ltd. v. Canada*, 2007 FC 686, 158 A.C.W.S. (3d) 696; *Chrysler Canada Inc. v. Canada*, 2008 FC 1049, [2009] 1 C.T.C. 14 at para. 4; *Apotex Inc. v. AstraZeneca Canada Inc.*, 2009 FC 120, [2009] F.C.J. No. 179 at para. 25; *AYC Pharmacy Ltd. v. Canada (Minister of Health)*, 2009 FC 554, 95 Admin. L.R. (4th) 265 at para. 9; and *Horseman v. Horse Lake First Nation*, [2009] F.C.J. No. 476, 2009 FC 368, at para. 2. See also *Sierra Club of Canada v. Canada (Minister of Finance*), [1999] 2 F.C. 211 at para. 21, a decision that pre-dates *P.I.P.S.C.* and *Coffey*.

[25] I do not need to resolve this question in this case, as I am satisfied that the Prothonotary erred in law by exercising his discretion based upon a misunderstanding of the legislative scheme and a misapprehension of the facts.

Legal Principles Governing Motions to Strike

[26] Applications for judicial review are intended to be summary proceedings, and motions to strike Notices of Application add greatly to the cost and time required to deal with such matters. Moreover, as the Federal Court of Appeal observed in *David Bull Laboratories (Canada) Inc. v. Pharmacia Inc.*, 1995] 1 F.C. 588, 51 A.C.W.S. (3d) 799, the striking out process is more feasible in actions than in applications for judicial review. This is because there are numerous rules governing actions which require precise pleadings as to the nature of the claim or the defence, and the facts upon which the claim is based. There are no comparable rules governing Notices of Application for judicial review.

[27] As a consequence, the Federal Court of Appeal has observed that it is far more risky for a court to strike out a Notice of Application than a conventional pleading. Different economic considerations also come into play in relation to applications for judicial review as opposed to actions. That is, applications for judicial review do not involve examinations for discovery and a trial - matters which can be avoided in actions by a decision to strike: *David Bull* at para.10. In contrast, the full hearing of an application for judicial review proceeds in much the same way that a motion to strike the Notice of Application would proceed, namely on the basis of affidavit evidence and argument before a judge of this Court.

[28] As a result, the Federal Court of Appeal has determined that applications for judicial review should not be struck out prior to a hearing on the merits of the application, unless the application is "so clearly improper as to be bereft of any possibility of success". Moreover, "[s]uch cases must be

very exceptional and cannot include cases ... where there is simply a debatable issue as to the adequacy of the allegations in the notice of motion": *David Bull* at para.15.

[29] Unless a moving party can meet this very stringent standard, the "direct and proper way to contest an originating notice of motion which the respondent thinks to be without merit is to appear and argue at the hearing of the motion itself." *David Bull* at para. 10. See also *Addison & Leyen Ltd. v. Canada*, 2006 FCA 107, [2006] 4 F.C.R. 532 at para. 5, rev'd on other grounds 2007 SCC 33, [2007] 2 S.C.R. 793.

[30] The reason why the test is so strict is that it is ordinarily more efficient for the Court to deal with a preliminary argument at the hearing of the application for judicial review itself, rather than as a preliminary motion: see the comments of the Federal Court of Appeal in *Addison & Leyen* at para. 5.

[31] It is clear from a review of the Prothonotary's reasons that he was mindful of these principles. The question is whether he erred in their application in this case.

The Question of Standing

[32] Section 18.1(1) of the *Federal Courts Act*, R.S.C. 1985, c. F-7, affords anyone "directly affected" by the matter in respect of which relief is sought the right to seek judicial review of that decision.

[33] The Attorney General submits that Ridgeview does not have standing to bring this application as it is not directly affected by the renewal of Mr. Gibson's ATP. The regulatory relationship created by the *MMAR* exists only between Health Canada and Mr. Gibson, and Ridgeview is a stranger to that relationship.

[34] To the extent that Ridgeview asserts a commercial interest in the issues raised in the application, the Attorney General says that this does not provide a sufficient basis for standing: *Canwest Mediaworks Inc. v. Canada (Minister of Health)*, 2007 FC 752, 159 A.C.W.S. (3d) 193 at paras.16-17, aff'd 2008 FCA 207, 382 N.R. 365.

[35] Moreover, the Attorney General argues that the degree of proximity between Health Canada's renewal of Mr. Gibson's ATP and the harm alleged by Ridgeview is too remote to justify the relief sought in the application. That is, any potential harm to Ridgeview's reputation is not directly attributable to Health Canada's renewal of Mr. Gibson's ATP. Rather, it is a result of where it is that Mr. Gibson chooses to use his marihuana, and attacking the regulatory decision that allows him to use dried marihuana for a medical purpose "overshoots the mark".

[36] The Attorney General further argues that the Prothonotary was wrong in asserting that "the issue of standing is not determinative of this motion". Clearly, if Ridgeview has no standing to challenge the renewal of Mr. Gibson's ATP, the application must be struck.

[37] Relying on the decision of the Federal Court of Appeal in *Apotex Inc. v. Canada (Governor in Council)*, 2007 FCA 374, 63 C.P.R. (4th) 151 at paras. 13-14 (*Apotex*) at paras. 13 and 14, Ridgeview argues that the Court should not exercise its discretion to determine standing at this stage in the proceeding. According to Ridgeview, the Court does not have all the necessary facts in order to properly consider the issue of standing.

[38] In the alternative, Ridgeview submits that it is not plain and obvious that it lacks standing to bring this application. The restaurant's staff and patrons and those whom it supports in the community are subjected to Mr. Gibson's improper use of marihuana. Ridgeview says that this conduct is attributable to Health Canada's decision to renew Mr. Gibson's ATP, as Mr. Gibson would have no legal basis to obtain or use dried marihuana in public places in the absence of this decision.

[39] According to Ridgeview, Health Canada cannot ignore its obligations under the *MMAR* when renewing an ATP, and then claim that it is not responsible to those affected by the misuse of that permit.

[40] Ridgeview further asserts that Health Canada's failure to give due consideration to the complaints filed with respect to Mr. Gibson's alleged misuse of his ATP has placed Ridgeview at risk. Not only has it been left vulnerable to significant fines, the potential non-renewal of its lease and the loss of its liquor licence, but Ridgeview also faces the risk of sanctions from the Ontario Human Rights Tribunal. Moreover, the business and reputation of the restaurant have also been

adversely affected by Mr. Gibson's continued improper use of his ATP and Health Canada's refusal to adhere to the *MMAR*.

[41] The Federal Court of Appeal observed in *Apotex* that it will not always be appropriate to make a binding decision on a question of standing in the context of a motion to strike, particularly when the motion is to strike out a Notice of Application for judicial review. The Court should exercise its discretion sparingly in this regard, and should only terminate applications for judicial review for lack of standing on motions to strike in very clear cases.

[42] Because the Court may not have all the necessary facts or the benefit of full legal argument, the Court must decide whether it is appropriate in the circumstances of a particular case to render a decision on standing at the preliminary stage, or whether the question should be left for the hearing of the merits of the application: *Apotex* at paras. 13-14.

[43] It is unclear from the Prothonotary's reasons whether he chose to exercise his discretion to decide the issue of standing on the motion to strike or not.

[44] On the one hand, the Prothonotary rejected the Attorney General's arguments on the standing question, stating that "Ridgeview *is directly affected and has standing* because it is affected in more ways than simply its commercial interest which in and of itself would not be sufficient to provide it with standing" [emphasis added]. This appears to be an unequivocal determination of the standing question.

[45] However, after reviewing the ways in which Ridgeview's interests are allegedly affected, the Prothonotary goes on to state that "This may ultimately be found to be sufficient to support direct standing". This suggests that the Prothonotary was leaving the ultimate decision on standing to the applications judge.

[46] In the absence of an explicit exercise of discretion by the Prothonotary to finally decide the question of standing, *Apotex* teaches that "the legal standard to grant a motion to strike must inform all legal questions": para. 14. That is, the question for the Prothonotary was whether it was plain and obvious that Ridgeview's application is so clearly improper as to be bereft of any possibility of success. As will be explained below, I am satisfied that this is indeed the case, and that the Prothonotary's decision concluding otherwise was based upon a misunderstanding of the legislative scheme and a misapprehension of the facts.

[47] A review of the regulatory scheme discloses that Ridgeview is indeed a stranger to the ATP process. The applications process is set out at Part 1 of the *MMAR*, and does not contemplate any role for third parties such as Ridgeview. Can it nevertheless be said that Ridgeview is "directly affected" by the grant of an ATP to Mr. Gibson?

[48] In *Friends of the Island Inc. v. Canada (Minister of Public Works)* [1993] 2 F.C. 229 (T.D.), rev'd on other grounds (1995), 185 N.R. 48, 56 A.C.W.S. (3d) 316, and *Nova Scotia (Attorney General) v. Ultramar Canada Inc.*, [1995] 3 F.C. 713 (T.D.) this Court rejected arguments that the

words “directly affected” in subsection 18.1(1) of the *Federal Courts Act* should be given a relatively restricted meaning.

[49] That said, the jurisprudence teaches that in order to be “directly affected” by a matter in respect of which relief is sought for the purposes of section 18.1 of the *Federal Courts Act*, the decision at issue must be one which directly affects the party’s rights, imposes legal obligations on it, or prejudicially affects it directly: *Pall Mall Canada Ltd. v. Canada (Minister of National Revenue)*, [1976] 2 C.F. 500, 67 D.L.R. (3d) 505 (F.C.A.). A party who is only affected in the commercial sense by a decision, but who was not a party to that decision, has no standing to seek judicial review: *Canwest Mediaworks* at paras. 16-17.

[50] I have considered Ridgeview’s contention that it is not appropriate to decide the question of standing at this stage in the proceedings as the record in this matter is not yet complete. Ridgeview says that it is still waiting for information from the Attorney General as to what happens with complaints brought under section 68 of the *MMAR*. However, as will be explained further on in these reasons, it is clear on the face of the Regulations that the existence of a complaints process in Part 3 of the *MMAR* is not linked in any way to the applications process described in Part 1. Thus the information still being sought by Ridgeview could have no bearing on the issue of standing.

[51] The fact that there is no linkage between the complaints and applications processes also means that Ridgeview could have no legitimate expectation that the complaints filed with respect to Mr. Gibson’s conduct would create a “direct connection” sufficient to give it standing in this matter.

The *MMAR* creates no duty on the Minister with respect to the ATP renewals process that Ridgeview has a right to enforce.

[52] I am thus satisfied that it is plain and obvious that this application cannot succeed because Ridgeview lacks standing. As such, the application is bereft of any possibility of success. There is no decision or "matter" here directly affecting the rights or obligations of Ridgeview. The difficulties that Ridgeview has encountered with Mr. Gibson that have given rise to this application for judicial review are clearly not the direct result of Health Canada's issuance of an ATP to Mr. Gibson. Rather, they are the result of Mr. Gibson's alleged failure to comply with federal, provincial and/or municipal laws. Consequently, Ridgeview is not "directly affected" by Health Canada's decision to renew Mr. Gibson's ATP.

[53] While this finding is sufficient to dispose of this appeal, I will address the Attorney General's other arguments in the event that a reviewing Court takes a different view of this matter.

Relief by Way of Prohibition is Not Available

[54] The Attorney General also submits that the relief sought by Ridgeview in this application is not available to it. This is because the *MMAR* does not authorize Health Canada to refuse to renew an ATP on the grounds alleged by Ridgeview. It therefore follows that to the extent that the application seeks relief by way of prohibition, it is bereft of any possibility of success.

[55] Ridgeview argues that it had the legitimate expectation that the complaint made under section 68 of the *MMAR* with respect to Mr. Gibson's conduct would be provided to the Minister, and that steps would be taken to ensure the proper administration and enforcement of the Regulations. This would include the complaint being given due consideration by the Minister in the renewal process. Ridgeview further argues that without a complete evidentiary record, it cannot be determined how any of the formal complaints were dealt with, or if they were provided to the Minister as required.

[56] The Prothonotary appears to have accepted that Ridgeview had such a legitimate expectation. As a consequence, he was not persuaded that this application should be struck.

[57] The difficulty with this finding is that there is no linkage between the complaints process contained in Part 3 of the *MMAR* and the renewals process in Part I. Section 18 of the *MMAR* states that the Minister shall refuse to renew an ATP for any of the reasons set out in section 12. The only reasons identified in section 12 for refusing to renew an ATP are that the person is not ordinarily resident in Canada, or because information, statements or other items included in the application are false or misleading. As the Prothonotary himself observed, the *MMAR* are completely silent as to where, when and how a party holding an ATP can use marihuana for medical reasons.

[58] Insofar as the complaints process is concerned, section 68 of the *MMAR* provides that:

> (1) An inspector shall receive and make a written record of any complaint from the public concerning a person who is a holder of an authorization to possess or license to produce with respect to their possession or production of marihuana.

> (2) The inspector shall report to the Minister any complaint recorded under subsection (1).
>
> (3) The Minister is authorized to communicate to any Canadian police force or any member of a Canadian police force, any information contained in the report of the inspector, subject to that information being used only for the proper administration or enforcement of the Act or these Regulations.

[59] Thus while complaints under section 68 of the *MMAR* may potentially result in the Minister reporting the holder of an ATP to the police, the fact that the permit holder may have failed to comply with federal, provincial or municipal legislation does not, on the face of the Regulations, provide the Minister with the authority to refuse to renew the permit.

[60] It also bears noting that there is no request in the application form for the renewal of an ATP for a representation or warranty regarding the applicant's compliance with federal, provincial and municipal legislation. Consequently, there could be no false or misleading representation in this regard that could lead to the refusal of a renewal.

[61] As a consequence, to the extent that Ridgeview seeks to prohibit Health Canada from renewing Mr. Gibson's ATP because of his alleged non-compliance with federal and provincial legislation, it is plain and obvious that the application is bereft of any chance of success.

The Application is Brought for a Collateral Purpose

[62] I am also satisfied that the Prothonotary's conclusion that this application was not being brought for a collateral purpose was based upon a misapprehension of the facts.

[63] In the *Schreiber* case, Justice MacKay held that it is "not within this Court's practice to issue a declaration about the state of the law, without argument based on conflicting interests, for use in another forum": at para. 42.

[64] The Prothonotary distinguished *Schreiber*, in part because of his belief that "there are no current prosecutions under way for which Ridgeview could make use of pure declarations of law". With respect, that is not entirely accurate. While the proceeding before the Ontario Human Rights Tribunal is not technically a "prosecution", it is an ongoing legal proceeding in another forum.

[65] The fact that Ridgeview is seeking declaratory relief in this Court to assist it in its human rights case was made very clear by counsel for Ridgeview's submission at the hearing of the appeal that his client is coming to the Federal Court to have it declared "that by not welcoming this gentleman [Mr. Gibson] into his premises he is not being discriminatory, he [Mr. Kindos] is just complying with the law".

[66] There are also no "conflicting interests" between Ridgeview and the Attorney General in this case with respect to the declaratory relief being sought. The Attorney General does not dispute the basic legal propositions that Ridgeview asks this Court to declare.

[67] That is, the Attorney General agrees with Ridgeview that the smoking of marihuana in a public place, or at any establishment licensed under the *Liquor Licence Act* of Ontario, is not authorized by the permits issued by Health Canada. The Attorney General also agrees that Health

Canada does not have authority to authorize the possession or use of medical marihuana by anyone in a manner that is contrary to the laws of Ontario.

[68] It appears that the only practical benefit to be derived by Ridgeview from such declarations would be to assist it in its defence in the human rights proceeding, and in any future potential proceedings under Ontario liquor laws. In the circumstances, I am satisfied that the application is improper.

Conclusion on the Appeal

[69] For the foregoing reasons, I conclude that the Prothonotary's decision was clearly wrong, as it was based upon a misunderstanding of the legislative scheme and a misapprehension of the facts. I am also satisfied that it is plain and obvious that the application for judicial review is bereft of any chance of success. Consequently, the appeal will be allowed, and the Notice of Application is struck as against the Attorney General of Canada.

Costs

[70] I see no reason why costs should not follow the event, both here and for the proceeding before the Prothonotary. Counsel for the Attorney General has suggested a total of $3,000 as being an appropriate figure for costs for both proceedings. Counsel for Ridgeview suggested that it should be entitled to costs in the amount of $15,000 if it was successful in resisting the appeal. In my view, the figure suggested by the Attorney General is far more appropriate.

The Motion to Amend the Notice of Application

[71] After the Attorney General filed his appeal of the Prothonotary's Order, Ridgeview brought a motion seeking leave to amend its Notice of Application to include a request for the following additional relief:

> 3A. an order in the nature of *mandamus* requiring Health Canada to comply with section 68 of the *Marihuana Medical Access Regulations*, SOR/2001-227, in respect of the formal complaints made in relation to the conduct of the Respondent Steve Gibson;

[72] The relief sought through the amendment is directed specifically at Health Canada, who is represented in this proceeding by the Attorney General of Canada. Given that Ridgeview's Notice of Application has been struck out as against the Attorney General of Canada, it follows that there is no longer anything to amend, and the motion is dismissed without prejudice to Ridgeview's right to commence a separate application for *mandamus*. The Attorney General shall have his costs of this motion, fixed in the amount of $300.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. The Attorney General of Canada's appeal is allowed. The Order of the Prothonotary is set aside, and the Notice of Application for judicial review is struck out as against the Attorney General of Canada.

2. The Attorney General of Canada shall have his costs relating to the motion to strike, both here and before the Prothonotary, in the total amount of $3,000.

3. Ridgeview's motion to amend its Notice of Application is dismissed without prejudice to Ridgeview's right to commence a separate application for *mandamus* Costs of the motion are awarded to the Attorney General in the amount of $300.

"Anne Mactavish"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-561-09
STYLE OF CAUSE:	RIDGEVIEW RESTAURANT LIMITED v. ATTORNEY GENERAL OF CANADA and STEVE GIBSON
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	April 27, 2010
REASONS FOR JUDGMENT AND JUDGMENT:	MACTAVISH J.
DATED:	May 10, 2010

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No appearance	FOR THE RESPONDENT (STEVE GIBSON)

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Nil	FOR THE RESPONDENT (STEVE GIBSON)