

Federal Court



Cour fédérale

Date: 20090811

Docket: T-91-09

Citation: 2009 FC 813

OTTAWA, Ontario, August 11, 2009

PRESENT: The Honourable Louis S. Tannenbaum

BETWEEN:

MATTHEW G. YEAGER

Applicant

and

**STOCKWELL DAY, MINISTER (AS HE THEN WAS),
DEPARTMENT OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS and
MINISTER, DEPARTMENT OF PUBLIC SAFETY and
ATTORNEY GENERAL OF CANADA**

Respondents

REASONS FOR ORDER AND ORDER

[1] Within the context of an application for judicial review, the applicant has presented the following preliminary motions, namely:

- a) A motion in virtue of rule 317 of the *Federal Courts Rules* in which the applicant seeks an order against the respondent for the production of documents which, he contends, are relevant to the underlying application for judicial review.
- b) A motion for cross-examination of the respondent Stockwell Day, (then Minister of Public Safety and Emergency Preparedness) or a certain Ms. Lynn Garrow.

The Motion for Production of Documents

[2] By his underlying application for judicial review which originates with a request for documents from the respondents concerning the establishment of a Correctional Service Canada Review Panel, to which request the respondents' reply was:

“4. The Government (i.e., Respondents) is taking the position that there are “no relevant records in the department” and further made representations to staff at the Information Commissioner of Canada, to wit: “Public Safety had nothing to do with the Panel. Your request was sent to the wrong department.”

[3] An affidavit sworn by Ms. Seguin-Brant has been filed by the respondents (page 40 of the Respondents' Motion Record) which in para. 13 thereof states:

“13. By letter dated June 15, 2007, Mr. Yeager was informed that a search was conducted in relation to his request, but there were no

relevant records in the department. Attached as Exhibit “G” is a true copy of the June 15, 2007 letter.”

[4] The applicant obviously does not believe the above assertion.

[5] By his underlying application for judicial review, the applicant seeks the following:

(i) An Order to set aside the negative decision of the Minister with respect to:

Formal Request: Specifically, this request pertains to the recently appointed CSC Review Panel. It has been generated because of a refusal by the Panel members to participate in an interview prior to completion of their report due at the end of October, 2007. This request has six (6) parts:

- a) A copy of the Panel’s budget breakdown in terms of activities and staffing;
- b) A copy of the Panel’s budget breakdown in terms of activities and staffing;
- c) A copy of the appointment papers by the Minister to the Panel Members proper, including their official resumes;
- d) All E-mails, post-its, hand-written comments, and Blackberry messages pertaining to a decision taken on or about May 4, 2007, not to consent to Panel Member interviews by criminologist Matthew G. Yeager;
- e) Copies of all comments sent in by E-mail to info@cscrp-cescc.ca; and
- f) Copies of all submissions sent in, to date, from interested parties by mail, courier, hand delivery, or the like.

- (ii) An Order requiring the Minister to release the above information to the applicant so that he may conduct independent research in the public interest;
- (iii) All costs in this matter;
- (iv) An award of punitive costs as a sanction for violating the Act, including costs for excessive delay and obstruction of this request; and
- (v) Any other remedy that this Honourable Court may deem just.

[6] Turning now to the preliminary motion for the production of documents (Rules 317 and 318), we note that the applicant is seeking the following:

- 1. An Order that the respondents provide a copy of all material relevant to this application that is in the possession of the respondents; to wit:
 - a. All E-mails, Blackberry messages, hand-written notes, Post-its, memoranda, reports, and directives related to the Minister's
 - i. Creation of the CSC Review Panel;
 - ii. Ongoing supervision of the Review Panel; and
 - iii. Responsibility for the work of the Review Panel.
- 2. an Order extending time in which to take cross-examination and prepare the Application Record in this matter; and
- 3. Such further and other relief as this Honourable Court deems just.

[7] At this stage there is evidence that the respondents do not possess the material requested (affidavit of Sylvie Seguin-Brant), and for this reason alone the motion must be dismissed.

[8] In addition, I believe that the preliminary motion (Rules 317, 318) is an attempt to obtain information which is requested in the principal proceeding (application for judicial review) and that a judgment granting the motion would put an end to the principal application for judicial review, insofar as it duplicates the requests in the principal application. Accordingly, this is an additional reason why the motion pursuant to Rule 317 cannot be granted.

The Motion to Cross-Examine the Respondents

[9] The underlying application is for judicial review of a so-called decision of the respondents which simply denied a request for the production of documents stating that they did not possess them.

[10] Since the underlying application is one for judicial review, cross-examinations are only permitted of deponents of affidavits. Neither the Minister Stockwell Day, nor Ms. Lynn Garrow have filed affidavits in the present instance, thus cross-examination cannot be authorized.

[11] While the applicant's motions will be dismissed in accordance with the above reasons, the Court notes that the applicant has been advised that the information he seeks may be available from another source, but apparently the applicant has not moved to try to obtain same.

[12] For the above reasons, the applicant's motion for production of documents, as well as the motion for cross-examination of the respondents will be dismissed.

ORDER

IT IS ORDERED THAT the motion for production of document is hereby dismissed, and

IT IS FURTHER ORDERED THAT the motion to cross-examine is dismissed, the whole
with costs.

"Louis S. Tannenbaum"

Deputy Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-91-09

STYLE OF CAUSE: Matthey G. Yeager v. Stockwell Day, Minister (as he then was) Department of Public Safety Emergency Preparedness, and Minister, Department of Public Safety and The Attorney General of Canada

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: June 22, 2009

REASONS FOR ORDER AND ORDER: TANNENBAUM D.J.

DATED: August 11, 2009

APPEARANCES:

Mr. Matthew G. Yeager FOR THE APPLICANT

Ms. Sadian Campbell FOR THE RESPONDENTS

SOLICITORS OF RECORD:

Self-represented FOR THE APPLICANT

John H. Sims, Q.C., FOR THE RESPONDENTS
Deputy Attorney General of Canada