

Date: 20090325

**Dockets: A-12-09
A-13-09**

Citation: 2009 FCA 96

Present: NADON J.A.

BETWEEN:

CONSEIL DES INNUS DE PESSAMIT

Applicant

and

**ASSOCIATION DES POLICIERS
ET POLICIÈRES DE PESSAMIT**

Respondent

Motion in writing decided without appearance of the parties.

Order made at Ottawa, Ontario, on March 25, 2009.

REASONS FOR ORDER BY:

NADON J.A.

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REASONS FOR ORDER

NADON J.A.

[1] I find that the application of the Canada Industrial Relations Board (the “Board”) for permission to make written submissions regarding the applicant’s application to stay the proceedings in case 27113-C before the Board must be dismissed.

[2] In my opinion, as was suggested by Justice Rothstein (as he then was) at paragraph 4 of his reasons in *Via Rail Canada v. Cairns*, 2003 FCA 319 (F.C.A.), subsection 22(1.1) of the *Canada*

Labour Code, R.S.C. 1985, c. L-2 (the “Code”) does not allow the Board to intervene to provide its submissions in a stay application.

[3] I agree with the applicant’s arguments that only the tests developed by case law are relevant to the determination of a stay application, that is, whether there is a serious question to be tried, whether the applicant will suffer irreparable harm should the stay not be granted and, lastly, the balance of convenience.

[4] Subsection 22(1.1) of the Code reads as follows:

22. (1.1) The Board has standing to appear in proceedings referred to in subsection (1) for the purpose of making submissions regarding the standard of review to be used with respect to decisions of the Board and the Board’s jurisdiction, policies and procedures.

22. (1.1) Le Conseil a qualité pour comparaître dans les procédures visées au paragraphe (1) pour présenter ses observations à l’égard de la norme de contrôle judiciaire applicable à ses décisions ou à l’égard de sa compétence, de ses procédures et de ses politiques.

[5] In my opinion, that provision allows the Board to intervene for the purpose of making submissions regarding the standard of review to be used with respect to decisions of the Board and the Board’s jurisdiction, policies and procedures, but solely in the context of a determination on the merits of the application for judicial review.

[6] For these reasons, the Board's application will be dismissed with costs.

“M. Nadon”

J.A.

Certified true translation
Tu-Quynh

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET:

A-12-09

STYLE OF CAUSE:

CONSEIL DES INNUS DE
PESSAMIT v. ASSOCIATION DES
POLICIERS ET POLICIÈRES DE
PESSAMIT

MOTION IN WRITING DECIDED WITHOUT APPEARANCE OF THE PARTIES

REASONS FOR ORDER BY:

NADON J.A.

DATED:

March 25, 2009

WRITTEN SUBMISSIONS:

J. Dubé et Associés

FOR THE APPLICANT

Marie-Claude Grignon

FOR THE CANADA INDUSTRIAL
RELATIONS BOARD

SOLICITORS OF RECORD:

J.Dubé et Associés
Montréal, Quebec

FOR THE APPLICANT

Ken Rock
Mani-Uternam, Quebec

FOR THE RESPONDENT

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