Date: 20091028

Docket: A-337-09

Citation: 2009 FCA 312

Present: **PELLETIER J.A.**

BETWEEN:

PROFESSIONAL INSTITUTE OF THE PUBLIC SERVICE OF CANADA

Applicant

and

IRENE BREMSAK

Respondent

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on October 28, 2009.

REASONS FOR ORDER BY: PELLETIER J.A.

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REASONS FOR ORDER

PELLETIER J.A.

[1] The applicant Professional Institute of the Public Service of Canada (the Institute) has filed two motions seeking a stay of the orders of the Public Service Labour Relations Board in relation to the respondent Ms. Irene Bremsak, in one case until the Institute's application for judicial review has been heard and disposed of, and in the other case, until a parallel case, *Institut professionnel de la fonction publique du Canada c. Veillette* (dossier no. A-266-09) is heard and disposed of. Since both motions raise the same issues, they will be dealt with in one set of reasons, with a copy being placed on each file.

[2] Ms. Bremsak was suspended from a number of positions she held within the Institute, to which she had been either elected or appointed, because her act of initiating proceedings against the Institute before the Public Service Labour Relations Board (the Board) created a conflict of interest between her duty of loyalty to the Institute and her interest in pursuing her complaint against the Institute. In proceeding as it did, the Institute relied upon a policy entitled “Policy relating to members and complaints to outside bodies” (the Policy).

[3] The Board found that the Policy was overly broad and lacked proportionality. It found that it constituted a “form of penalty” within the meaning of section 188 of the *Public Service Labour Relations Act*, S.C. 2003, c. 22, s. 2 specifically paragraph 18(*c*) and subparagraph 18(e)(ii). As a result the Board ordered the Institute to:

(a) rescind the policy as it applies to Ms. Bremsak and to amend it to conform to the requirements of the Act;

(b) revoke Ms. Bremsak’s suspension from elected and appointed positions;

(c) inform the Institute’s membership and officials that the suspensions have been revoked. To that end, the Board ordered the Institute to publish a notice which it prepared “in the next edition of one of its [the Institute’s] regular and significant publications…”.

[4] According to Ms. Bremsak’s affidavit, the Institute has not yet complied with the Board’s order, notwithstanding that it was made on August 26, 2009. The Institute’s first application for a stay was filed on September 3, 2209 while the second was filed on September 21, 2009.

[5] The requirements for the issuance of a stay of execution are well known:

(a) there must be a serious issue to be tried;

(b) the applicant must satisfy the Court that it will suffer irreparable harm if it is not granted the stay; and

(c) the balance of convenience must favour the applicant.

See *RJR-MacDonald Inc. v. Canada (Attorney General)* [1994] 1 S.C.R. 311

[6] In my view, there is clearly a serious issue to be tried in that the application of section 188 of the Act to the Institute's internal processes is a matter which is neither trivial nor a foregone conclusion. The critical issue is whether the Institute will suffer irreparable harm if it is required to comply with the Board's order and, in particular, if it is required to reinstate Ms. Bremsak to those offices to which she was originally elected or appointed.

[7] This question came before my colleague Trudel J.A. in *Institut professionnel de la fonction publique du Canada c. Veillette* , 2009 CAF 256, [2009] A.C.F. No. 1004, in which she was asked to grant a stay of an order of the Board reinstating Mr. Veillette in circumstances similar to those in this case. The Institute argued in that case that irreparable harm flowed from the fact that other persons had been elected or appointed to the offices from which the Mr. Veillette had been suspended would necessarily have to be removed from office in order to reinstate Mr. Veillette. My colleague dismissed this argument, saying that it was nothing more than the normal consequence of an order for reinstatement, a common remedy in labour relations. Furthermore, there was no reason

to prefer the democratic rights of those who had elected Mr. Veillette's replacements to those of the persons who had elected Mr. Veillette in the first instance.

[8] In this case, the applicant raises a different argument which is that Ms. Bremsak's recourse to an outside tribunal to pursue a remedy against her union puts her in a position where she is unable to carry out her duties with undivided loyalties. The Institute says that it should not be placed in a position where Ms. Bremsak can provide advice and influence and make decisions in her role in the offices to which she has been appointed or elected, while she continues to have a conflict of interest. In summary, the Institute's primary concern is to avoid having a member occupy a leadership position while at the same time challenging the Institute before an outside tribunal.

[9] While the present circumstances create an awkward situation for the Institute, they do not, in my view, rise to the level of irreparable harm. Ms. Bremsak may be opposed to her union with respect to a specific dispute but there is no reason to believe that she does not support the union's overall goals and objectives and is incapable of distinguishing between her interests and those of the membership of the union. If events should show that Ms. Bremsak has abused her position, then the normal disciplinary procedure, as provided in the Bylaws, would apply.

[10] In any event, the balance of convenience strongly favours Ms. Bremak. In the interval since she was suspended, the term of a number of posts to which she was elected has expired. If the order of the Board is stayed until the matter is finally resolved, all them may expire before she has the

opportunity to resume them, assuming she is successful. At that point, the issue would be moot from Ms. Bremsak's point of view.

[11] Insofar as staying the Board's order until the *Veillette* case is concerned, there are enough differences between the two cases that the resolution of that case would not be determinative of the ultimate issue in this case. As a result, the issues of irreparable harm and balance of convenience must be addressed, and when they are, the result is the same in both motions.

[12] I would therefore dismiss each application for a stay of the order of the Board with costs of the motion to be costs in the cause.

"J.D. Denis Pelletier"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-337-09
STYLE OF CAUSE:	PROFESSIONAL INSTITUTE OF THE PUBLIC SERVICE OF CANADA and IRENE BREMSAK

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY:	PELLETIER J.A.
DATED:	OCTOBER 28, 2009

WRITTEN REPRESENTATIONS BY:

STEVEN WELCHNER	FOR THE APPLICANT
IRENE BREMSAK	FOR THE RESPONDENT, ON HER OWN BEHALF

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