

PASTUCH v. FINANCIAL & CONSUMER AFFAIRS

Q.B.G. 963/13 – J.C.R.

BALL J.
June 13, 2013

Brian Pederson for himself and Alena Pastuch, applicants
S. Udemgba for Financial & Consumer Affairs staff
C. Ohashi for Financial & Consumer Affairs hearing panel
Bill Johnson, Q.C. granted leave to appear on behalf of the Leader Post

ORAL JUDGMENT

Alena Pastuch and Brian Pederson have filed applications requesting a variety of court orders relating to ongoing proceedings being conducted by a panel of the Financial and Consumer Affairs Authority of Saskatchewan (FCAA). Those proceedings are scheduled to resume on June 21, 2013. Because that is only eight days away, I will provide you with an oral decision now.

The applications and the affidavits filed in support of the applications are unclear about the nature and extent of the orders being applied for and the grounds on which they are being sought. However, in his representations to the court this morning, Mr. Pederson, on behalf of both applicants, stated that they have two concerns. One relates to an alleged lack of full disclosure by the FCAA staff. The other relates to the publication of information presented or yet to be presented to the FCAA hearing panel to Ms. Pastuch's health.

With respect to the first concern, Mr. Pederson asks the court for a variety of orders including:

1. An order in the nature of *mandamus*, directing the hearing panel to order an indefinite stay of the proceedings;
2. An order transferring the entire process to the Court of Queen's Bench for the purposes of conducting a hearing;
3. An order requiring the hearing panel to issue a series of subpoenas directed to a series of individuals requiring them to answer a series of questions.

On the substantive issue of disclosure, the evidence indicates that questions surrounding the applicants' requests for disclosure, FCAA compliance with disclosure obligations, have been raised and dealt with on an ongoing basis since 2009. The FCAA representatives insist that all relevant disclosure has been provided; the applicants say that it has not. The disagreement

PASTUCH v. FINANCIAL & CONSUMER AFFAIRS

Q.B.G. 963/13 – J.C.R.

BALL J.
June 13, 2013

is one that has been presented to, and addressed by, the hearing panel on a number of occasions. The applications before me today are not an appeal of the panel's determinations regarding disclosure.

With respect to the remedial orders arising from the alleged lack of disclosure, it is clear that *The Securities Act, 1988*, S.S. 1988-89, c. 8-42.2 confers exclusive jurisdiction on the Commission to conduct hearings into alleged violations of the Act. Section 9(4) of the Act states:

9(4) In the case of a hearing or review, the Commission, the Chairperson or the Director, as the case may be, has the same power as is vested in the Court of Queen's Bench for the trial of civil actions to:

- (a) summon and enforce the attendance of witnesses;
- (b) compel witnesses to give evidence on oath or otherwise; and
- (c) compel witnesses to produce documents, records, securities; exchange contracts and other property or things.

This Court will not usurp the jurisdiction and authority of the Commission by making decisions that only the Commission may make under s. 9(4) of the Act.

Mr. Pederson argues that the Commission's hearing panel is biased, apparently because he and Ms. Pastuch have been unsuccessful in their continuing demands for the panel to order more and better disclosure. The fact that they have been unsuccessful does not mean that the panel is biased.

Of paramount importance to this decision is the fact that there is no appeal of the panel's decisions before me. In fact, most appeals under the Act are not to this Court, but to the Court of Appeal, as mandated by s. 11 of the Act.

While this Court does have supervisory authority over administrative tribunals by way of judicial review, that is by making orders in the nature of *certiorari* and *mandamus*, there are no grounds for doing so in this case. There is no common law or statutory authority that would enable the court to assume responsibility for when that responsibility has been conferred upon the Commission by *The Securities Act, 1988*:

I turn now to the question of a proposed publication ban. The most recent application filed by Ms. Pastuch and Mr. Pederson asks the court to "consider a publication ban of all proceedings in these matters". However, this morning Mr. Pederson made it clear that he was

PASTUCH v. FINANCIAL & CONSUMER AFFAIRS

Q.B.G. 963/13 – J.C.R.

BALL J.
June 13, 2013

seeking a publication ban related only to what he referred to as Ms. Pastuch's personal medical information. As a preliminary comment, I must say that I have found the assertions of Ms. Pastuch as set out in her affidavit to be convoluted and so confused as to be virtually unintelligible. More importantly for the purposes of the disposition of this application, s. 9(13) of *The Securities Act, 1988* states:

(13) A hearing or review is open to the public unless the Commission, the Chairperson or the Director, as the case may be, considers it in the public interest to order otherwise.

This means that an application for an order limiting public access to any part of the hearing must, in the first instance, be made to the hearing panel itself. It would be an unwarranted and inappropriate interference with the proceedings before the hearing panel for this Court to make that decision.

For all of these reasons, the applications filed by Ms. Pastuch and Mr. Pederson are dismissed.