

# Court of King's Bench of Alberta

Citation : Douglas v NE2 Canada Inc et al, 2025 ABKB 321

Date: 20250602  
Docket: 2401 02570  
Registry: Calgary

Between:

**Charles Dunphy Douglas and  
Ryan David Beckwermert**

Plaintiffs/Respondents

- and -

**NE2 Canada Inc., Alberta Labour Relations Board  
and Director of Employment Standards**

Defendants/Applicant

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**Reasons for Decision  
of the  
Honourable Justice M.H. Hollins**

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[1] The Defendant, NE2 Canada Inc, applies to strike the Plaintiffs' application for judicial review based on their alleged failure to serve the notice properly.

[2] This matter arises from an employment relationship between the Plaintiffs and NE2 Canada Inc. The Director of Employment Standards (the Director) awarded the Plaintiffs roughly \$1M for the termination of their employment by NE2. NE2 appealed this finding to the Labour Relations Board (the Board), which reduced that award to roughly \$400,000. The Plaintiffs filed

an application for judicial review of the Board's decision, which is scheduled for hearing this fall.

[3] The Plaintiffs failed to name the Director as a party to their Originating Notice and failed to serve the Director. NE2 says that these are mandatory requirements which must be done within 6 months of the Board's decision. Although the Respondents later attempted to add the Director by way of a Consent Order, this was beyond the 6-month deadline for service and done without the consent of NE2, so the Applicants argue the Originating Notice is a nullity and is not saved by the later order.

[4] NE2 brings this application to strike the Originating Notice of Application of the Plaintiffs/Respondents, on the basis of non-compliance with the *Employment Standards Code* and the *Rules of Court* regarding service of pleadings.

[5] I agree with NE2 that the Plaintiffs' failure to serve the Director, which flowed from their failure to name the Director as a party to the judicial review, was fatal to their application. While the result is inarguably harsh, in my view, the jurisprudence precludes any other response.

### **Procedural History**

[6] No party has raised any issue with NE2's appeal from the Director to the Board, which named the Director and the Plaintiffs. The Board's decision, reducing the Plaintiffs' awards, was issued on January 22, 2024. Under Rule 3.15 of the *Alberta Rules of Court*, Alta Reg 124/2010, the Plaintiffs were required to file and serve their Originating Notice of Application seeking judicial review of the Board's decision within 6 months of that date.

[7] On February 14, 2024, the Plaintiffs advised the Director by correspondence that they were considering judicial review of the Board's. The Director said it taking no position on the review of the Board's decision. The Plaintiffs filed their Originating Notice on February 21, 2024 but named only NE2 and the Board as parties. They served NE2, the Board and the Minister of Justice with that Originating Application on the same date.

[8] On August 30, 2024, someone at the Board raised the failure of the Plaintiffs to name and serve the Director. The Plaintiffs then applied to add the Director as a party with the consent of the Director and the Board but without notice to or the consent of NE2. That Consent Order was granted on January 17, 2025 by a Justice of this Court but it is acknowledged by the Plaintiffs that that Order cannot stand unless they are successful in their opposition to this application.

[9] When NE2 was notified that the Director had been added as a party and served with the Originating Notice, it brought this application to strike the Notice. Neither the Director nor the Board take any position on this application to strike.

### **Was the Director "Directly Affected by the Application"?**

[10] Under R.3.15(3), an Originating Notice of Application for a judicial review must, within 6 months of the decision under review, be filed and served on (a) the person or body in respect of whose act or omission a remedy is sought (here, the Board); (b) the Minister of Justice or the Attorney General of Canada, or both, as the circumstances require, and (c) every person or body directly affected by the application.

[11] The Plaintiffs say they were not required to serve the Director because the Director was not “directly affected by the application”. NE2 argues that the Director is a necessary party to the judicial review by operation of s.96(2) of the *Employment Standards Code*, RSA 2000, c.E-9 which reads as follows:

*96(1) If a notice of appeal meets all the requirements for an appeal, the Registrar must*

- (a) refer the appeal to the appeal body, and*
- (b) Give to the appellant and to each party to the appeal, written notice of the date, time and place at which the appeal will be considered.*

*(2) The Director is a party to every appeal to the appeal body and to every proceeding resulting from an order or resulting from a decision of the appeal body. [emphasis added]*

[12] Here, the “appeal body” was the Board. However, s.96(2) clearly requires that the Director be named as a party, not just to the appeal to the Board, but to “every proceeding resulting from an order or resulting from a decision of the [Board]”. The judicial review is a proceeding resulting from a decision of the Board.

[13] Indeed, the Plaintiffs acknowledge that they were required to name the Director and failed to do so. However, they say that that oversight can be fixed at any time - subject to the Rules regarding amending pleadings – and the Director served outside the 6-month timeline in R.3.15.

[14] The Plaintiffs argue that the requirement to name the Director as a party does not make the Director a party “directly affected by the Application” for two reasons: (1) because the Director takes no position on this particular judicial review; and (2) because this is a review of the Board’s decision, not the Director’s decision and so the latter is not directly affected by the outcome.

[15] I disagree. It is abundantly clear that, where service is required by the Rules of Court, the fact that the party to be served expresses no interest or intention to participate in the proceedings is irrelevant to compliance with the Rules; *ENMAX Corporation v Alberta (Labour Relations Board)*, 2018 ABQB 431 at paras.12, 29 and *Kyambadde v Calgary Police Service*, 2024 ABKB 370 at para.13.

[16] The Director said it was unable to take any position on the review of the Board’s decision because such review was not governed by the *Employment Standards Code*. Unfortunately, no one – including the Director - seemed to identify the need for the Director to be a party to the judicial review, regardless of that fact.

[17] Secondly, a party may be “directly affected” in a variety of ways. The Plaintiffs rely on a commonly-cited phrase from the Alberta Court of Appeal saying that “directly affected” should be interpreted restrictively; *Normtek Radiation Service Ltd v Alberta Environmental Appeal Board*, 2020 ABCA 456. The phrase “interpreted restrictively” appears nowhere in that judgment. Further, the Court of Appeal also actually overturned the Environmental Appeal Board and the reviewing Justice, both of which had interpreted the phrase “directly affected” as excluding Normtek from participating in an appeal from the decision of the designated Director because the panel felt the prior interpretation had been too narrow.

[18] Further, *Normtek* and some other cases cited for this interpretive approach, (eg *McIver v Alberta (Ethics Commissioner)*, 2017 ABQB 695) were dealing with a party's standing to participate, not whether or not the applicant had served everyone it was required to serve. I echo Justice Campbell's comments in *Kainaiwa/Blood Tribe v Alberta*, 2024 ABKB 401 where she highlights the difference between standing and service; paras.52-54.

[19] The Plaintiffs argued that the Director had no interest in this proceeding because it was a review of the Board's decision, not of the Director's decision. That is only technically true. The decision under review is the Board's decision on the propriety of the Director's decision. If the legislators shared counsel's view, the Director would not have been a required party by statute.

[20] The *Employment Standards Code* makes the naming of the Director mandatory in any proceeding, including in this Court and beyond, where that proceeding originated before the Director. That is not optional depending on the Director's position or involvement, nor does this Court have the authority to dispense with that requirement.

[21] In my view, that fact that the Director is (or should have been) a party to this judicial review makes the Director a party "directly affected". The Director may waive the right to participate or may not participate, but it must be named and as a named party, it must be served.

[22] The failure to do so is unfortunately fatal to this review and the application to strike the Originating Notice of Application is granted. I agree with the bench and my colleagues that the Rule is harsh and inflexible but also recognize that this Court has no discretion in these circumstances; *Kyambadde* at paras.21-24.

[23] Counsel may advise my office if they cannot agree on costs.

Heard on the 16<sup>th</sup> day of April, 2025.

**Dated** at the City of Calgary, Alberta this 2<sup>nd</sup> day of June, 2025.

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**M.H. Hollins**  
**J.C.K.B.A.**

**Appearances:**

Grant Stapon, KC and Keely Cameron  
for the Plaintiffs/Respondents

Richard F. Steele and James D. Murphy  
for the Defendant/Applicant, NE2 Canada Inc