In the Court of Appeal of Alberta

Citation: Reinink v Alberta (Labour Relations Board), 2024 ABCA 280

Date: 20240827
Docket: 2301-0301AC
Registry: Calgary

Between:

Renxian Reinink

Applicant

- and -

Alberta Labour Relations Board and Health Sciences Association of Alberta

Respondents

Reasons for Decision of
The Honourable Justice Jolaine Antonio

Application for Permission to Appeal

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The Honourable Justice Jolaine Antonio

[1] On February 21, 2024, I heard two applications by the applicant, Renxian Reinink. The first was for permission to extend the time to appeal a 2019 Court of Queen's Bench decision dismissing her application for judicial review of a decision by the Alberta Labour Relations Board. The second was for a restricted court access order. Oral submissions were made by the applicant and the respondent Health Sciences Association of Alberta at the hearing on February 21. Each party filed written submissions in advance. On February 23, I issued a decision denying both applications: *Reinink v Alberta (Labour Relations Board)*, 2024 ABCA 63 [*Reinink*].

[2] On February 26, the applicant advised the Court for the first time that she had not received a copy of the respondent's memorandum of argument or supporting affidavit in advance of the February 21 hearing. By letter filed March 1, she objected to my decision as a result. She said she was surprised by the submissions made on behalf of the respondent and did not have adequate opportunity to address them at the hearing. A Case Management Officer responded by letter, informing her that to challenge my decision, she should file a formal application for permission to appeal pursuant to Rule 14.5(1)(a) of the *Rules of Court*, Alta Reg 124/2010.

[3] The applicant then filed the formal application that is at issue here.

[4] The applicant argues that because she did not receive a copy of the respondent's written submissions before the February 21 hearing, the resulting decision should be set aside. The respondent concedes that "due to an administrative error, [its] Memorandum of Argument and accompanying Affidavit did not reach the Applicant directly". It argues the applicant should nevertheless have been aware of the filings due to an automated email that would have been sent by the Court's electronic filing system. It highlights that the applicant did not notify it or the Court of any issue with service until February 26, after the hearing.

[5] Although the applicant, who is self represented, does not cite Rule 14.5(1)(a) in her materials, I proceed on the basis that she wishes to appeal my decision and, as such, requires my permission pursuant to Rule 14.5(2).

[6] In order to obtain permission to appeal the decision of a single judge of this Court, the applicant must show "there is a *compelling reason* to require the applicant and the respondent to reargue and three judges of the Court of Appeal to decide an issue": *Ouellette et al v Law Society of Alberta*, 2021 ABCA 283 at para 14 [*Ouellette*]; see also *Can v Alberta Securities Commission*, 2023 ABCA 47 at para 6 [*Can*]; *Xu v Ma*, 2024 ABCA 81 at para 5 [*Xu*].

[7] An important consideration is whether the applicant has identified a serious issue justifying another level of review. Assessment of the seriousness of the issue involves consideration of a number of factors: the perceived strength of the argument – the Court must be satisfied that the issue has a reasonable chance of success; the importance of the issue to the parties; and the general importance of the issue within the larger legal system: *Alberta Health Services v Wang*, 2017 ABCA 261 at para 6; *SRG Takamiya Co v 58376 Alberta Ltd*, 2019 ABCA 301 at para 6; *Goldstick Estates (Re)*, 2023 ABCA 225 at para 6.

[8] That the respondent did not serve the applicant copies of its responding materials is by no means a trivial matter. As the applicant rightly points out, Rule 14.41(a) requires the respondent to an application to file *and serve* the materials it intends to rely on at least five days before the hearing. The respondent cannot simply hope that the Court's electronic filing system will send an email notification.

[9] As such, I directed the respondent to provide the applicant with its materials and invited the applicant to make whatever further written submissions she might wish to make in support of her original applications. The applicant provided those further submissions on July 23. The respondent indicated on August 7 that it would not provide any further submissions.

[10] Upon review of the applicant's further submissions, I am satisfied that the respondent's failure to serve its materials in advance of the hearing does not in this case constitute a compelling reason for either of the applicant's original applications to be re-heard by a panel of this court.

[11] I denied the applicant's application to extend time because I determined her proposed appeal had no reasonable chance of success and because there was no special circumstance that excused or justified her failure to appeal in time: *Reinink* at paras 5–6. The further submissions provided by the applicant, now with the benefit of the respondent's submissions, do not change these conclusions. With respect to the merits of the proposed appeal, the applicant largely re-argues what she argued in her original written submissions, in part verbatim. The applicant does elaborate on the reason for her delay, arguing the COVID-19 pandemic was a "special circumstance" that should excuse it. But the order at issue was pronounced in June 2019, and the pandemic did not start until March 2020. Moreover, the applicant did not attempt to file a notice of appeal until December 2023, well after all public health restrictions were lifted. The pandemic does not excuse or justify the applicant's failure to appeal in time.

[12] I denied the applicant's application for a restricted court access order because she had not established the exceptional circumstances required for such an order: *Reinink* at para 8. The further submissions provided by the applicant do not address the access application in any way, and therefore do not change my conclusions in this regard either.

[13] As the applicant has now had adequate opportunity to make submissions in response to those filed by the respondent, and as those submissions do not impact the basis for my decision in any way, the applicant has no reasonable chance of success on appeal. There is no "*compelling*

reason to require the applicant and the respondent to reargue and three judges of the Court of Appeal to decide" the matter: *Ouellette* at para 14; see also *Can* at para 6; *Xu* at para 5.

[14] The application for permission to appeal is denied.

[15] Rule 9.4(2)(c) is invoked, and the Court will prepare the resulting order.

Written submissions filed on March 13, April 4, April 22 and July 23, 2024

Reasons filed at Calgary, Alberta
this 27th day of August, 2024

Antonio J.A.

Submissions:

Applicant, R. Reinink

T.S. Zurbrigg
for the Respondent, Alberta Labour Relations Board

D. Scott, KC
for the Respondent, Health Sciences Association of Alberta