In the Court of Appeal of Alberta

Citation: Erdmann v Institute of Chartered Accountants of Alberta (Complaints Inquiry Committee), 2012 ABCA 52

Date: 20120216
Docket: 1203-0015-AC
Registry: Edmonton

Between:

Maria Cornelia Erdmann

Applicant
(Appellant)

- and -

Complaints Inquiry Committee of the Institute of Chartered Accountants of Alberta

Respondent
(Respondent)

Reasons for Decision of
The Honourable Mr. Justice Frans Slatter

Application for Ban of Publication

Reasons for Decision of
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[1] The applicant has filed an appeal from findings of professional misconduct made against her by the appeal tribunal of the Institute of Chartered Accountants of Alberta. She now applies for an order that the files of the Court of Appeal be sealed, that she be permitted to prosecute her appeal using a pseudonym, and that the oral argument of the appeal be held *in camera*.

[2] The applicant proposes to argue on the appeal that the findings of professional misconduct are tainted by procedural and other errors, and that the Institute had no jurisdiction over the subject matter of the complaints because they arose from her private, not her professional life.

[3] Rule 6.32 provides that restricted court access orders of the type requested by the applicant should only be granted after notice of the application has been given to the media. Since the appellate rules are still being drafted, that part of the Rules does not strictly apply to appeals. However, R. 6.32 was enacted to comply with the decision of the Supreme Court of Canada in ***Dagenais v Canadian Broadcasting Corp.***, [1994] 3 SCR 835. The procedures followed in the Court of Appeal must respect the principles set out in ***Dagenais***: ***R. v Tremblay***, 2004 ABCA 102 at paras. 7 and 10. The failure to give notice to the media would be sufficient grounds to dismiss or adjourn this application.

[4] The applicant has not, however, established a legal entitlement to the restricted court access order she seeks. She argues that the defendant in unrelated litigation commenced by her in Ontario might make use of the disciplinary proceedings in that action. She also argues that publication of the allegations underlying the appeal might be embarrassing to her, and could affect her personal and professional reputation.

[5] Maintaining the openness of the Court of Appeal file will not affect the fairness of adjudication of the appeal. Compromising the fairness of the proceedings is one of the rare reasons why a court file might be sealed. The use of the disciplinary proceedings in the Ontario litigation will be regulated by the rules of evidence, the Ontario rules of court, and the trial judge. There is no reason to believe that the Ontario court will allow the existence of the Institute's proceedings to be used in an unfair or inappropriate way.

[6] It is, in any event, unclear that the restricted court access order requested by the applicant would to any extent protect her interests. There is already a considerable amount of information about the allegations on the public record: see ***Institute of Chartered Accountants of Alberta v Erdmann***, 2009 ABQB 530, 480 AR 1. The applicant acknowledges that the transcripts of the disciplinary hearing are available to the general public. The defendant in the Ontario action is apparently already aware of the disciplinary proceedings. The principle of open courts weighs against imposing ineffective restricted court access orders.

[7] It is an assumption fundamental to our system of justice that court files and court proceedings are open. As was stated in ***Toronto Star Newspapers Ltd. v Ontario***, 2005 SCC 41, [2005] 2 SCR 188:

> 1 In any constitutional climate, the administration of justice thrives on exposure to light -- and withers under a cloud of secrecy.
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> 2 That lesson of history is enshrined in the *Canadian Charter of Rights and Freedoms*. Section 2(b) of the *Charter* guarantees, in more comprehensive terms, freedom of communication and freedom of expression. These fundamental and closely related freedoms both depend for their vitality on public access to information of public interest. What goes on in the courts ought therefore to be, and manifestly is, of central concern to Canadians.
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> 3 The freedoms I have mentioned, though fundamental, are by no means absolute. Under certain conditions, public access to confidential or sensitive information related to court proceedings will endanger and not protect the integrity of our system of justice. A temporary shield will in some cases suffice; in others, permanent protection is warranted.
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> 4 Competing claims related to court proceedings necessarily involve an exercise in judicial discretion. It is now well established that court proceedings are presumptively "open" in Canada. Public access will be barred only when the appropriate court, in the exercise of its discretion, concludes that disclosure would *subvert the ends of justice or unduly impair its proper administration*. [Emphasis in original]

Court files cannot be sealed simply because of a desire for privacy by the litigants, or to protect individuals from embarrassment or inconvenience. The applicant has not demonstrated any compelling reason to seal this file.

[8] The application is dismissed.

Application heard on February 14, 2012

Reasons filed at Edmonton, Alberta
this 16th day of February, 2012

Slatter J.A.

Appearances:

Maria Cornelia Erdmann, In Person

G.R. McKenzie, Q.C.
for the Respondent