

CANADA / JUDGMENT

Fontaine v. Canada (Attorney General)

2015 BCSC 68

COURT

Supreme Court of British Columbia

DECIDED

16 January 2015

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2015 BCSC 68 Fontaine v. Canada (Attorney General) IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Fontaine v. Canada (Attorney General), 2015 BCSC 68 Date: 20150116 Docket: L051875 Registry: Vancouver Between: Larry Philip Fontaine et al Plaintiffs And The Attorney General of Canada et al Defendants Brought under the Class Proceedings Act, R.S.B.C. 1996, c. 50 Before: The Honourable Madam Justice B.J. Brown Reasons for Judgment - Direction Re: Standing Counsel for Stephen Bronstein and Bronstein & Co.: Mark D. Andrews, Q.C. Gavin Cameron Counsel for the Court Monitor: Louis Zivot Howard Drabinsky Counsel for the Attorney General of Canada: Catherine A. Coughlan Brent Thompson Counsel for the National Consortium: P. Jonathan Faulds, Q.C. Counsel the Assembly of First Nations: Stuart Wuttke Valerie Richler Counsel for Independent Counsel: Peter Grant Karenn Williams Place and Date of Judgment: Vancouver, B.C. January 16, 2015

- [1] This Direction is issued in respect of a Request for Direction ("RFD") brought on December 2, 2014, in accordance with the Court Administration Protocol appended to the Implementation Order[1] in relation to the Indian Residential Schools Settlement Agreement (the "IRSSA" or "Settlement Agreement"). This RFD relates to procedural issues that have arisen out of an RFD brought by the Court Monitor on November 14, 2014 (the "Court Monitor's RFD"). Mr. Bronstein is challenging the standing of a number of the parties in this proceeding.
- [2] The Court Monitor is responsible for receiving and investigating complaints relating to the conduct of counsel in the administration of the Independent Assessment Process ("IAP") established under the IRSSA. The Court Monitor's RFD is the latest step in a review of the conduct of Stephen Bronstein and Bronstein & Co. in relation to numerous claimants in the IAP. The Court Monitor's RFD asks this Court to determine whether disqualification of Mr. Bronstein and Bronstein & Co. from further participation in the IAP process is appropriate and asks this Court to order that Mr. Bronstein and Bronstein & Co. pay costs associated with the investigation and pay compensation to individual claimants harmed through his alleged misconduct. The Court Monitor's RFD is scheduled to be heard on March 24 through 27, 2015.

- [3] Mr. Bronstein characterizes these proceedings as a private disciplinary matter in which the challenged parties lack a sufficient interest to participate. For the reasons that follow, I disagree. Preliminary Issue
- [4] Among other parties, Mr. Bronstein challenged the standing of the Chief Adjudicator to participate in these hearings. In a joint direction issued November 25, 2014, it was held by the Administrative Judges[2] that participation in counsel conduct review proceedings was not an appropriate role for the Chief Adjudicator under the IRSSA framework.[3] The Chief Adjudicator subsequently confirmed by letter dated December 8, 2014 that he would not participate in the Court Monitor's RFD. Accordingly, Mr. Bronstein's challenge to the standing of the Chief Adjudicator is moot and I do not propose to address the issue of the Chief Adjudicator's standing any further.

Facts

- [5] The Court Monitor's RFD was delivered to Mr. Bronstein, the Attorney General of Canada, the Chief Adjudicator, the Tsilhqot'in National Government (the "TNG"), the Assembly of First Nations (the "AFN"), Independent Counsel, and the National Consortium.
- [6] The TNG was granted the right to participate in future hearings relating to the Bronstein Review by decision of this Court made on January 29, 2014. Mr. Bronstein takes no issue with the right of the TNG to participate in the RFD.
- [7] Mr. Bronstein challenges the standing of all other parties except the Court Monitor.
- [8] The AFN, the National Consortium, and Independent Counsel are signatories to the IRSSA. They are also members of the National Administration Committee ("NAC"), a body established under subsection 4.11(12) of the IRSSA with a mandate to ensure national consistency with respect to the implementation of the IRSSA. Until the delivery of the Court Monitor's RFD, these parties have not been actively involved the proceedings reviewing Mr. Bronstein's alleged misconduct.
- [9] Canada is also a signatory to the IRSSA and member of the NAC. It is the sole payor of settlement funds available under the IAP. Canada has participated in the Bronstein counsel conduct review from the outset. In a scheduling call on November 26, 2014, Canada indicated that it intended to call evidence on the Court Monitor's RFD.
- [10] This RFD is the latest in a series of RFDs arising out of the alleged misconduct of Mr. Bronstein. The first such RFD was brought by the Court Monitor in November 2012. The alleged misconduct relates primarily to the employment by his firm, Bronstein & Co. of Ivon Johnny, who provided various services to the firm's IAP claimant clients, including form-filling services. Mr. Johnny is alleged to have stolen from and intimidated Mr. Bronstein's IAP claimant clients. As a result of these allegations, this Court has barred Mr. Johnny from further participation in the IAP process.

- [11] On February 22, 2013, Mr. Bronstein and the Court Monitor entered into a consent order under which Mr. Bronstein agreed to subject his IAP practice to a review. The Court Monitor reported to this Court on the results of the review in June, 2014. On August 14, 2014, this Court directed Mr. Bronstein to address concerns the Court had with his practice. In response to a further RFD, this Court articulated its continuing concerns in its Direction of October 15, 2014. The Court Monitor's RFD that is at the root of the present RFD is the latest step in this process. Submissions by Parties
- [12] Mr. Bronstein submits that the onus is on the party seeking standing to establish their interest in the proceeding. Mr. Bronstein asserts that the impugned parties do not have a direct interest in the litigation. He further argues that they do not qualify for public interest standing because there is a reasonable and effective manner in which the matter can be brought to the Court's attention, namely through the Court Monitor. Mr. Bronstein characterizes the RFD as an outgrowth of the review process, which was carried out under the terms of a consent order which to which he agreed. He argues that the review to which he consented did not contemplate the involvement of third parties. Mr. Bronstein also raises concerns that the confidential information of his clients will be shared beyond the parties directly interested in the counsel conduct review process. He argues that he will suffer prejudice given the risk of increased length and costs associated with the participation of additional parties.
- [13] The AFN submits that it has an acute interest in preserving the integrity of the IAP process and in ensuring that those individuals who suffered abuse receive full and equitable compensation. A settlement agreement is a binding contract and as a party to the contract the AFN is fully entitled to assert its views on the administration of the IAP process.
- [14] Independent Counsel points out that the IRSSA and the Implementation Order provide that on an application to the Court for direction, notice must be given to all affected parties, with "Parties" being a defined term in the IRSSA meaning "collectively and individually the signatories to this Agreement." Independent Counsel argues that it has a direct interest in the integrity of the IAP both as signatory to the IRSSA and as member of the NAC. It points out that such parties have played an important role in similar proceedings in the past.[4]
- [15] Canada argues that it has a direct interest as signatory to the IRSSA and payor of funds available under the IAP. Canada has participated in these proceedings since the outset. Mr. Bronstein's challenge is not in reality a challenge to Canada's standing but rather an attempt to have Canada removed as a party to the proceedings. Canada is a necessary and proper party to the proceedings. It has an interest in the integrity of the process and through its role as financier. Canada has previously participated in similar cases where costs were recovered against counsel in respect of an investigation into proven misconduct.[5] As Canada is a legitimate party to these proceedings, even if there were any evidence that its participation would cause delay, which there is not, this would not justify removing it as a party. Canada is also seeking costs.

- [16] Similarly, the National Consortium submits that the signatories to the IRSSA are by that very fact parties to supervisory proceedings and that they are not to be subjected to standing rules applicable to a stranger to the Settlement Agreement. The participation of NAC members in supervisory proceedings has been a longstanding practice.
- [17] The Court Monitor argues that all members of the NAC have standing in the present RFD. The Court may give instructions limiting the scope of submissions but this is not a question of standing. In addition to the stake that the members of the NAC have in maintaining the integrity of the IAP, Canada has a financial stake in the outcome of this RFD.

Analysis

- [18] In my view, Mr. Bronstein has fundamentally mischaracterized the nature of counsel conduct review proceedings carried out under IRSSA. Such proceedings are carried out as part of the Court's supervisory jurisdiction to ensure the proper administration of the IRSSA. [6] These proceedings must be viewed in light of the fact that the IRSSA is fundamentally a contractual arrangement set up by the parties in settlement of outstanding civil claims. These parties have an ongoing interest to see that the IRSSA in general, and the IAP in particular, is administered with integrity. These parties therefore have a direct interest in the subject matter of the proceedings and there is no basis on which their standing can be challenged.
- [19] Moreover, the members of the NAC have long played an important role in the context of IAP RFDs, including in RFDs relating to the conduct of form-fillers in the Manitoba Form-Fillers decision and the conduct of counsel in the Blott decision.[7] As this Court observed in the Blott decision:
- [101] It is the common practice of the courts supervising the administration of the Settlement Agreement to afford the National Administration Committee ("NAC") the opportunity to make joint or several submissions from its constituent members in regard to any issue which arises in relation to the interpretation or administration of the Settlement Agreement.[8]
- [20] I conclude that Mr. Bronstein's challenge to the standing of NAC members to participate in the Court Monitor's RFD is without legal foundation. While not directed to the issue of standing in the strict sense, it may also be noted that the Court has significant experience in determining issues involving the conduct of IAP claimants' counsel and will ensure that the participation of the AFN, Canada, the National Consortium and Independent Counsel does not impair the fairness to the process.
- [21] I would dismiss Canada's request for costs for the reasons given in the Blott II decision.[9]
- Direction

- [22] In accordance with the reasons outlined above, I would direct that this RFD be dismissed with respect to the standing issue. I make no direction as to costs. "The Honourable Madam Justice B.J. Brown"
- [1] I refer to the Implementation Order of Chief Justice Brenner, dated March 8, 2007. Substantially identical orders were made by the superior courts of Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Yukon Territory, Northwest Territories and Nunavut.
- [2] Perell J. of the Ontario Superior Court of Justice and I currently serve as the Administrative Judges for the purposes of the IRSSA.
- [3] Fontaine et al. v. Canada et al., Joint Direction of November 25, 2014 (Unreported).
- [4] Fontaine et al. v. Canada (Attorney General) et al., 2012 BCSC 839 [Blott]; Fontaine et al. v. Canada (Attorney General) et al., 2014 MBQC 113 [Manitoba Form-Fillers].
- [5] Fontaine et al. v. Canada et al., 2012 BCSC 1671 at para 56 [Blott II].
- [6] Blott, supra note 2 at para. 112.
- [7] Supra note 2.
- [8] Ibid.
- [9] Supra note 3 at paras. 67-69.

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