

CITATION: Lourenco v. Hegedus, 2017 ONSC 3872
COURT FILE NO.: DC-17-002
DATE: 20170622

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

B E T W E E N:)
)
ADAM LOURENCO) *Peter Brauti*, for the Applicant
)
Applicant)
)
- and -)
)
RICHARD HEGEDUS, CHIEF OF POLICE) *Scott Hutchison and Reem Zaia*, for Chief
OF THE TORONTO POLICE SERVICE,) of Police

DECISION

D.L. Corbett J.:

[1] The respondent Chief of Police moves to quash this application for judicial review on the grounds that it is premature. For the reasons that follow, the motion is granted and the application for judicial review is quashed.

[2] The applicant is a police officer. He faces allegations of misconduct under the *Police Services Act*.¹ Those allegations will be heard in the Toronto Police Service Tribunal. The hearing was scheduled for 13 days starting in October 2016.

[3] The applicant moved to have the Hearing Officer, Inspector Richard Hegedus, recuse himself on the grounds of reasonable apprehension of bias and lack of jurisdiction because of defects in Inspector Hegedus' designation to hear the matter. The hearing dates were vacated and the recusal motion was heard. Inspector Hegedus released his decision on March 3, 2017,

¹ *Police Services Act*, RSO 1990, c. P.15.

dismissing the recusal motion and finding that he was lawfully designated to hear the allegations against the applicant.

[4] The applicant commenced an application for judicial review to challenge the decision of Inspector Hegedus on the recusal and jurisdiction motion. The Chief of Police moves to quash that application on the basis of prematurity.

General Principles

[5] Generally, judicial review is not available until an administrative process has run its course, including any administrative appeals and reviews. This general approach conserves judicial resources and leads to more timely resolution of administrative proceedings.

[6] In rare cases this court will intervene on an application for judicial review in the midst of an administrative process where there are strong reasons to believe that the ongoing process is so deeply flawed that there is a strong likelihood that it will have to be run over again, usually on the basis of bias, reasonable apprehension of bias or want of jurisdiction. This does not mean that judicial review is available before the conclusion of administrative proceedings in any case where an allegation of this kind is made. It must be emphasized that early judicial review is the rare exception, not the rule, and will only be permitted in rare cases where the potential prejudice of the risk of repeating proceedings after review outweighs the prejudice to the general orderly processing of administrative proceedings without interruption until their conclusion. Analogies can be drawn to criminal prosecutions where it is very rare indeed for a proceeding to be interrupted for judicial review or appeal prior to the conclusion of the proceeding.

Bias Allegations

[7] It is a very rare case in which this court will interrupt proceedings on this basis. This allegation is easily made, can be made multiple times during a proceeding, and seldom succeeds. If interlocutory appeals or judicial reviews on this ground were permitted generally, proceedings would be at risk of interruption at the instance of one party with inevitable delays of months or years before resumption of proceedings, with consequent risk to the integrity of the trial process itself.

[8] In this case the record does not establish a strong likelihood that the allegations of reasonable apprehension of bias will succeed. I consider that the prejudice to the general orderly processing of administrative proceedings far outweighs the prejudice from the risk that the 13 day disciplinary proceeding might have to be held again.

Designation of Inspector Hegedus

[9] Inspector Hegedus has been designated a police complaints officer, authorized by the Chief of Police to hear police complaints such as the allegations against the applicant. Inspector Hegedus works full-time in this capacity and generally hears complaints that are not expressly assigned to another person by the Chief of Police, subject to his scheduling constraints. When Inspector Hegedus is not available to hear a complaint that has not been assigned to a specific person, then that matter is assigned to a part-time complaints officer.

[10] The applicant argues that the *Police Services Act*, s.94(1), requires that the Chief of Police expressly assign each hearing to a particular person. Thus, the applicant argues, the administrative practice that is currently in place does not comply with the requirements of the *Act*. In the result, the applicant argues, Inspector Hegedus has not been designated lawfully to hear the complaint against the applicant, and, without that designation, has no jurisdiction to proceed.

[11] This challenge could be overcome, of course, if the Chief of Police specifically designated Inspector Hegedus to hear this case. He has not, to this point, done so. I infer from this circumstance that the Chief of Police stands by the current administrative framework.

[12] This situation is analogous to *MRS Sciences Inc. v. Ontario (Securities Commission)*, 2015 ONSC 6317, aff'd 2017 ONCA 279. In that case the Ontario Securities Commission scheduled a sanctions hearing before a differently constituted panel than the tribunal that had decided liability issues. Jurisdiction was challenged and the Commission ruled that the sanctions hearing panel was constituted properly. Challenge was brought to this court but was quashed as premature: *MRS Sciences Inc. v. Ontario (Securities Commission)*, 2012 ONSC 7198. The sanctions hearing then proceeded to a conclusion and the issue of the constitution of the sanctions hearing panel was raised again and decided on the merits by the Divisional Court. The Divisional Court concluded that the Commission's interpretation of its home statute was entitled to deference and that the constitution of the sanctions panel was reasonable. The Court of Appeal agreed.

[13] I appreciate that there is a legislative distinction between *MRS* and the instant case. The *Securities Act*, RSO 1990, c. S.5, s.9(1) provides only for appeals from "final orders". Swinton J., for the court in *MRS*, noted, however, that notwithstanding this provision, judicial review could be available in exceptional cases:

The application for judicial review is premature. This Court has repeatedly refused to hear an application for judicial review of an interlocutory decision of an administrative tribunal. It has exercised its discretion to do so in exceptional cases but none exist here.

[14] In my view the same principle applies in the case before me. This is not an exceptional case, and review in this court should not take place until the administrative process has run its course. The issue of the propriety of the system generally used to assign police complaint cases can be addressed on judicial review at the end of the administrative process if any party wishes to challenge the final result of that process. Further, like in *MRS*, the interpretation of the *Act* by the Chief of Police in this context is entitled to deference, and on its face seems reasonable: I do not consider there to be a strong likelihood that the process under which Inspector Hegedus has been designated will be found to result in the Inspector lacking jurisdiction to conduct the hearing in this case.

[15] The motion is granted; the application for judicial review is quashed. As agreed by counsel, there shall be no costs of this motion or this application.

[16] Parties are entitled to challenge a decision of a single judge of the Divisional Court to a full panel of the Divisional Court.

[17] Hearing dates are scheduled before Inspector Hegedus starting in early August 2017.

[18] There is one week left in the spring term of this court, and thereafter only one sitting week (in July 2017) before the August hearing dates.

[19] A motion seeking to review this decision will not serve as a stay of this decision pending a challenge motion before a full panel, and thus the hearing may proceed before Inspector Hegedus if a motion has been brought to review this decision but not yet heard by the court. Therefore, if any party wishes to challenge this decision before the full panel, that party should make arrangements immediately through the managing judge of the Divisional Court, Nordheimer J. for scheduling directions.

A handwritten signature in black ink, appearing to read "D.L. Corbett J.", is written above a horizontal line.

D.L. Corbett J.

RELEASED : June 22, 2017