

QUEEN'S BENCH FOR SASKATCHEWAN

Citation: **2006 SKQB 335**

Date: **2006 07 20**
Docket: **Q.B. 918/2006**
Judicial Centre: **Saskatoon**

BETWEEN:

IN THE QUEEN'S BENCH
JUDICIAL CENTRE OF SASKATOON

WAL-MART CANADA CORP.,

APPLICANT

- and -

SASKATCHEWAN LABOUR RELATIONS BOARD,

RESPONDENT

- and -

UNITED FOOD AND COMMERCIAL WORKERS, LOCAL 1400

J.R. Beckman, Q.C. and C.A. Sloan

for the applicant

M.A. Baldwin

for the respondent

D.S. Plaxton

for the United Food and Commercial Workers, 1400

D.A. McKillop, Q.C.

for the Attorney General for Saskatchewan

K.C. Wilson

for Foot Locker Canada Inc.

M.D. Nolin

for certain employees of the applicant at Weyburn

FIAT
July 20, 2006

GEREIN, J.

[1] There are three applications. The first motion was brought by the applicant, Wal-Mart Canada Corp., which seeks an order:

- (a) pursuant to Queen's Bench Rule 664 and 673 prohibiting the Saskatchewan Labour Relations Board as presently constituted from hearing and/or making any orders involving Wal-Mart Canada Corp. or until further Order of this Honourable Court; and
- (b) costs of the within application.

[2] The other two applications are brought by United Food and Commercial Workers, Local 1400 which was added as a party with the consent of the applicant. In the one motion the Union seeks an order striking and removing virtually all the material filed in support of the application. In the other, the Union applies for an order dismissing Wal-Mart's motion.

[3] I have concluded that the relief sought by the Union should be granted and that the application brought by Wal-Mart Canada Corp. should be dismissed.

BACKGROUND

[4] To put the applications into context, it is necessary to outline the circumstances. Although there is no admissible evidence before me, I believe my account is accurate.

[5] One Walter Matkowski is a former vice-chairperson of the Saskatchewan Labour Relations Board. His term expired on March 1, 2006, and was not renewed. He maintains this came about through the influence of certain unions with the Department of Labour. In consequence, he commenced an action for damages alleging wrongful conduct by the Government of Saskatchewan.

[6] He also participated in an interview in which he suggested that the Department of Labour interfered with the operation of the Board. An example he gave was that the Department required members of the Board to read the newsletter of the Saskatchewan Federation of Labour. Articles in that publication were critical of him. Other articles in the same publication were critical and disparaging of Wal-Mart. The matter was discussed in the Saskatchewan Legislature. When Wal-mart became aware of these circumstances it filed this application.

[7] It is Wal-Mart's position that the actions of the Unions, the interference by the Government and the presence of certain publications demonstrate that the Saskatchewan Labour Relations Board is biased or, at the very least, there is justification for a reasonable apprehension of bias against Wal-Mart. It is argued that the only way to rectify the situation is to prohibit the Board from holding hearings which involve Wal-Mart.

THE MATERIALS FILED BY WAL-MART

[8] I begin with the affidavit of one Terry Stanley, sworn on June 15, 2006, filed in support of the application by Wal-Mart. It contains only three paragraphs but is four pages in length because it contains a lengthy list of exhibits. The reader will best understand the affidavit if it is quoted in full.

I, **TERRY STANLEY**, of the City of Moose Jaw, in the Province of Saskatchewan, Store Manager, MAKE OATH AND SAY AS FOLLOWS:

1. THAT I am the Store Manager at Wal-Mart Canada Corp. department store in Moose Jaw, Saskatchewan, and as such, have personal knowledge of the facts and matters herein deposed to,

except where stated to be on information and belief, and where so stated, I verily believe the same to be true.

2. Attached hereto and marked as exhibits to this Affidavit are:
 - (a) Exhibit "A" is a copy of the profile of Deb Higgins, former Minister of Labour for the Government of Saskatchewan from the Government of Saskatchewan website.
 - (b) Exhibit "B" is a copy of the profile of Deb Higgins, former Minister of Labour for the Government of Saskatchewan from the Caucus website.
 - (c) Exhibit "C" is a copy of a membership and contact list from the Saskatchewan Federation of Labour website.
 - (d) Exhibit "D" is a copy of a Saskatchewan Federation of Labour Newsletter dated January, 2003.
 - (e) Exhibit "E" is a copy of a Saskatchewan Federation of Labour Newsletter dated September, 2003.
 - (f) Exhibit "F" is a copy of a Saskatchewan Federation of Labour Newsletter dated October, 2003.
 - (g) Exhibit "G" is a copy of a Saskatchewan Federation of Labour Newsletter dated December, 2003.
 - (h) Exhibit "H" is a copy of a Saskatchewan Federation of Labour Newsletter dated February, 2004.
 - (i) Exhibit "I" is a copy of a Saskatchewan Federation of Labour Newsletter dated March, 2004.
 - (j) Exhibit "J" is a true copy of the Saskatchewan Federation of Labour Newsletter dated April, 2004.
 - (k) Exhibit "K" is a copy of an application to the Saskatchewan Labour Relations Board dated July 20, 2004 from the United Food and Commercial Workers' Union, Local 1400.
 - (l) Exhibit "L" is a copy of a Saskatchewan Federation of Labour Newsletter dated September, 2004.
 - (m) Exhibit "M" is a copy of a Saskatchewan Federation of Labour Newsletter dated October, 2004.

- (n) Exhibit "N" is a copy of a Saskatchewan Federation of Labour Newsletter dated December, 2004.
- (o) Exhibit "O" is a copy of Decision from the Saskatchewan Labour Relations Board dated January 20, 2005.
- (p) Exhibit "P" is a copy of a letter dated February 16, 2005 from the Saskatchewan Labour Relations Board addressed to McKercher McKercher & Whitmore LLP, Plaxton Gillies, Baker & McKenzie LLP, and MacPherson Leslie & Tyerman LLP.
- (q) Exhibit "Q" is a copy of a Saskatchewan Federation of Labour Newsletter dated March, 2005.
- (r) Exhibit "R" is a copy of a Saskatchewan Federation of Labour Newsletter dated May, 2005.
- (s) Exhibit "S" is a copy of a Saskatchewan Federation of Labour Newsletter dated June, 2005.
- (t) Exhibit "T" is a copy of a Saskatchewan Federation of Labour Newsletter of October, 2005.
- (u) Exhibit "U" is a copy of an article from the Regina Leader-Post newspaper dated May 6, 2006.
- (v) Exhibit "V" is a copy of an article from the Regina Leader-Post newspaper dated May 11, 2006.
- (w) Exhibit "W" is a copy of an article from the Saskatoon Star-Phoenix newspaper dated May 18, 2006.
- (x) Exhibit "X" is a copy of a letter dated May 25, 2006 from McKercher McKercher & Whitmore LLP addressed to the Saskatchewan Labour Relations Board.
- (y) Exhibit "Y" is a copy of a letter dated May 31, 2006 from the Saskatchewan Labour Relations Board addressed to McKercher McKercher & Whitmore LLP.
- (z) Exhibit "Z" is a copy of a letter dated June 1, 2006 from the Saskatchewan Labour Relations Board addressed to McKercher McKercher & Whitmore LLP.
- (aa) Exhibit "AA" is a copy of a letter dated June 5, 2006 from Plaxton Gillies addressed to the Saskatchewan Labour Relations Board.

3. I make this Affidavit in support of an application for an Order prohibiting the Saskatchewan Labour Relations Board as presently constituted from hearing and/or determining any matter and/or making any Orders involving Wal-Mart Canada Corp. or until further Order of this Honourable Court.

[9] The remaining material filed by Wal-Mart consists of the following documents annexed to its memorandum of argument.

- (1) extracts from Hansard;
- (2) an unsigned draft affidavit of one Walter Matkowski with 39 exhibits attached;
- (3) a transcript of "John Gormley Live" radio broadcast on May 8, 2006; and
- (4) a copy of the statement of claim in *Walter Matkowski v. Government of Saskatchewan et al.*, filed in Saskatoon on May 10, 2006.

APPLICATION TO STRIKE THE MATERIAL

[10] Queen's Bench Rule 319 explicitly states what may be contained in an affidavit.

319. Affidavits shall be confined to such facts as the witness is able of his own knowledge to prove, except on interlocutory motions, on which statements as to his belief, with the grounds thereof, may under special circumstances be admitted.

The exception in Rule 319 does not apply here. Even if Wal-mart had filed an interlocutory motion, which it did not, Mr. Springer does not attest to anything based on information and belief. Rather, he swears that he has ". . . personal knowledge of the facts and matters herein deposed to" He then goes on to

swear in paragraph 2 that various exhibits are attached to his affidavit. What does that achieve?

[11] It does nothing more than compel the court to examine the exhibits to determine their admissibility. To put it another way, Mr. Springer does no more than prove that copies of 27 documents are attached as exhibits to his affidavit. He says nothing in his affidavit about the content of the documents. He discloses nothing about their authenticity or where they originated; and above all he offers nothing about whether the information they contain is true, accurate or reliable.

[12] Even taking a generous approach, I must reject some of the exhibits out of hand. The profiles of the former Minister of Labour (Ex. "A" and "B") and the membership list (Ex. "E") are obviously not relevant. The copies of correspondence, (Ex. "P", "Y", "Z" and "AA") equally are not relevant.

[13] On the other hand, the newsletters, being 14 in number (Ex. ("D") to ("F"), ("M), ("N") and ("Q") to ("T") are admissible to prove that they exist and to prove what they contain. The same can be said about the application to the Board (Ex. "K"), the decision (Ex. "O") and the three newspaper articles (Ex. "L", "M" and "N"). However, none of these exhibits are admissible to prove the accuracy or truth of what they contain.

[14] The same must be said about the transcript of the radio broadcast. It is attached to an affidavit of one Ryan Kraikas who attests that he prepared the transcript. That does nothing more than prove he performed that task. It says nothing about the accuracy, truth or reliability of what is contained in the transcript.

[15] The affidavit of Walter Matkowski and his statement of claim have no value. The first is not sworn and as such is not admissible. The second is nothing more than allegations by a plaintiff in a pleading the validity of which have not been tested. The same is true of the defence filed denying Mr. Matkowski's claim. I am mindful of the old adage that "pleadings are nothing more than legalized lies". The truth will not be known until there has been a trial.

[16] It is argued on behalf of Wal-Mart that this court should follow the principled approach to the admissibility of the various documents and admit them into evidence on the basis of necessity and reliability. Reference is made to *TELUS Communications Inc. v. Telecommunications Workers Union*, [2005] F.C.J. No. 1253. I disagree, as the documents meet neither requirement.

[17] There is no necessity for their admission. Mr. Matkowski is around and about. He must be available to swear an affidavit. The critical allegations originate with him. Absent any explanation for his absence, there is no basis upon which to conclude that it is necessary to accept the proffered documents as evidence.

[18] Reliability presents an equal problem. Nothing is under oath. Since everything attributed to Mr. Matkowski has an aura of self-interest, it does not generate confidence in its reliability. At no time have the allegations been tested for accuracy and truthfulness. In reality, contradictions are found within the very documents. A good example is the Leader Post article of May 11, 2006 (Ex. "V"). It reports Mr. Matkowski as saying that members of the Board are required to read the Labour Reporter newsletter. Two paragraphs later a spokesperson for

the Department of Labour is reported as saying the Board has no required reading. It is impossible to say which account is true.

[19] Finally, there are the extracts from Hansard. They are admissible by reason of s. 6 *The Saskatchewan Evidence Act*, S.S., c. C-16.

6 Publications in *The Saskatchewan Gazette* and all copies of the statutes of the province, the journals of the Legislative Assembly, sessional papers and all other documents printed or purporting to be printed by the Queen's Printer shall be deemed to be authentic and make proof of their contents without other evidence;

That provision enables the extracts to be filed to prove what was said, but not as proof that the remarks were true. They are two entirely different things.

[20] In the end, the only documents which are properly before me are the exhibits to the affidavit of Terry Stanley, as identified above, and that is so only to the extent that it is proven that they exist. The same applies to the extracts from Hansard and the transcript of the radio broadcast.

SUMMARY

[21] It is alleged that there was interference with the Board and that it was required to read publications which were highly disparaging of Wal-Mart. Yet there is absolutely no evidence before this court to prove the allegations.

[22] The many newsletters contain negative comments about Wal-Mart. However, there is no admissible evidence to prove that these newsletters were provided to the Board or, much more importantly, that any member actually read

them. In the same vein, Mr. Matkowski has not come forward to assert his allegations under oath.

[23] Without such evidence it is impossible to conclude that bias exists within the Saskatchewan Labour Relations Board or that there is justification for a reasonable apprehension of bias. To conclude otherwise, this court would be acting on pure conjecture or fantasy. That is not good enough.

CONCLUSION

[24] In the result, the application of Wal-Mart Canada Corp. is dismissed. The Union will have its taxable costs, but only of the application by Wal-Mart and the Union's application to strike the material filed. The Board will have no costs.

J.