COURT OF APPEAL FOR ONTARIO

DATE: 20180904
DOCKET: M49554 (C65674)

Paciocco J.A. (Motion Judge)

BETWEEN

Myriam Michail

Applicant (Appellant by Appeal)

and

Ontario English Catholic Teachers' Association ('OECTA'), et al, London District Catholic School Board ('LDCSB'), Ontario Labour Relations Board ('OLRB')

Respondents (Respondents by Appeal)

Myriam Michail, acting in person

Tyler Boggs, for the Ontario English Catholic Teachers' Association

Elizabeth Traynor and Liam Ledgerwood, for the London District Catholic School Board

Aaron Hart, for the Ontario Labour Relations Board

Heard: August 30, 2018

REASONS FOR DECISION

[1] Myriam Michail, the self-represented appellant, worked for many years with the respondent, London District Catholic School Board (the "LDCSB"). In 2010, issues arose between them and she initiated a grievance. In 2015, a grievance decision was rendered that disappointed the appellant.

[2] The appellant asked her union, the Ontario English Catholic Teachers' Association (the "OECTA"), also a respondent in this motion, to challenge the grievance decision by way of judicial review. In the meantime, the LDCSB took the position that the appellant's employment contract had been frustrated, which led to another grievance. She was further disappointed when, instead of bringing the judicial review application and pursuing that grievance, the OECTA proposed to accept a settlement of her disputes with the LDCSB.

[3] The appellant therefore filed an application before the Ontario Labour Relations Board (the "OLRB") alleging unfair representation by the OECTA contrary to *Labour Relations Act, 1995*, S.O. 1995, c. 1, Schedule A, s. 74. The application before the OLRB, itself a respondent in these proceedings, was unsuccessful.

[4] The appellant decided to seek judicial review of both the initial grievance and the OLRB decision in a combined application, which she brought in London, Ontario. Instead of bringing the combined judicial review application in the Divisional Court, as is usual, she sought leave under *Judicial Review Procedure*

Act, R.S.O. 1990, c. J.1, s. 6(2) to have it heard by a single judge on an urgent basis.

[5] A motion judge (the "motion judge") directed her to resolve the leave issue before attempting to argue the merits of the combined judicial review application, so her application was bifurcated. Another judge (the "application judge") denied the leave application so the combined judicial review application was not heard. Pursuant to *Judicial Review Procedure Act*, s. 6(3), he transferred that judicial review file to the Divisional Court in London, Ontario.

[6] Since the appellant based her s. 6(2) leave application on the stress and financial strain she was under, the application judge also encouraged the appellant to take steps to have the combined judicial review application heard in Toronto, where it could be reached more quickly than in London. Instead, the appellant opened a file in the Divisional Court in Hamilton, which would be more convenient to her.

[7] Currently, as I understand it, the file record from the initial application file was sent to Hamilton, and the 11 volumes of material filed by the OLRB remain in the London Divisional Court file. The appellant claims that the files are incomplete, and the transfers of documents that occurred, improper.

[8] The appellant also initiated an appeal in this court from the application judge's decision denying her leave to bring her combined judicial review

application before a single judge. Her appeal includes the decision of the motion judge requiring her to obtain leave to argue her s. 6(2) leave application separately from the merits of her combined judicial review application, and she raises issues relating to a constitutional challenge she brought before the OLRB that have yet to be adjudicated in the Superior Court of Justice. She also raises issues related to the state of the court record in London and Hamilton, including a constitutional challenge to provisions of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 that have not been litigated in the Superior Court of Justice.

[9] Initially, the Office of the Registrar of this court refused to file the appellant's 95 page notice of appeal, but relented.

[10] Then the OECTA and individual respondents linked to the OECTA requested that the appeal be quashed under *Rules of Civil Procedure,* R.R.O. 1990, Reg. 194, r. 2.1 as frivolous, vexatious, and an abuse of process. Reasons cited in the request include the simultaneous judicial review proceeding now in the Divisional Court in Hamilton which raises some of the same issues now under appeal, and the jurisdictional problems this appeal will have before this court given that it appears to be an attempt to appeal an interlocutory decision. Without commenting on the propriety of the appeal, the Office of the Registrar declined to dismiss the appeal under r. 2.1.

[11] The appellant has now brought a motion in the appeal requesting several orders. Specifically, the appellant moves for:

1. An order pursuant to r. 61.09(4) of the *Rules* relieving her from compliance with the 30 page limit on her factum;
2. An order transferring the Divisional Court files in Hamilton and London to this court to be used as part of the record on appeal; and
3. An order extending the time to perfect the appeal, to an uncertain date, depending on the nature of the relief that is granted under r. 61.09(4).

[12] The appellant supports her request for relief from the page limits for her factum based on the complexity of her case, and her personal challenges as a self-represented litigant suffering from stress related illness. She finds it necessary to approach things in a "linear" manner, and wants to include, in her factum, screen shots of the documents and cases referred to in the factum to facilitate her argument.

[13] The respondents take no position on this request, other than the OECTA, which opposes it. As a fallback position, the OECTA asks that if I permit a longer factum, I limit it to 40 pages. The appellant's draft factum, not yet completed, is currently at 75 pages.

[14] In my view, I must dismiss the appellant's motion for relief from compliance with the page limit as being contrary to the interests of justice.

[15] First, the 30 page limit for facta is imposed to keep appeals manageable, efficient and cost-effective for the litigants and the court. I agree with counsel for the OECTA that it is burdensome and expensive for responding parties to have to cope with lengthy pleadings. Permitting the appellant to file an overlong factum would work unfairness to the respondents.

[16] Second, I have reviewed the 95 page notice of appeal filed in this matter, with care. It is repetitive and includes extensive material not contemplated by the *Rules*. For example, the notice of appeal raises issues that have not yet been the subject of adjudication below, including information about the treatment of the Divisional Court files, and the constitutionality of provisions of the *Courts of Justice Act*.

[17] Third, the appellant bases her request, in part, on her personal organizational preferences. She wishes to include, in the body of her factum, documents that should be in her appeal book and compendium, exhibit book, and book of authorities. She says that doing so helps her organize her thoughts, and, in her view, makes for easier argument. I see no basis for permitting the appellant to redesign the manner of pleading and argument, developed by this court over many years, a process faithfully followed by many self-represented litigants. In my view, the appellant must pay heed to and comply with the *Rules*.

[18] In short, I am persuaded that if the appellant restricts herself to appropriate content for court documents as described in the *Rules*, removes immaterial information, and takes a disciplined approach to setting out appropriate bases for proper grounds of appeal, she can comply with the page limits. The motion for relief from the page limit imposed by the *Rules* is dismissed.

[19] I also dismiss the appellant's request to have the Divisional Court files transferred, en masse, to this court. Those files cannot be used as the court record in this court, and the appellant has not satisfied me of the need for all of the documents contained in those files to be before this court.

[20] On the consent of the other parties, I will, however, grant the appellant an extension of time to perfect her appeal. I do accept that the task before the appellant, while possible, will be challenging for her. I have also been advised by counsel for the LDCSB that a motion to quash this appeal is pending. I have every confidence in all the circumstances that this motion will materialize. If that motion succeeds, it will be unnecessary for the appellant to file the documents in question since the appeal will be quashed, leaving the appellant to pursue her combined judicial review application through to conclusion in the Divisional Court. It is therefore prudent to leave time for the LDCSB motion to quash to be brought and heard before forcing this matter forward. I have been given no indication that the respondents would be prejudiced by a generous extension. The appellant shall therefore have until December 28, 2018 to perfect her appeal.

[21] Since the respondents are not seeking costs, no costs will be ordered.