

Court of King's Bench of Alberta

Citation: Sturt v Chartered Professional Accountants of Alberta, 2022 ABKB 801

Date: 20221130
Docket: 2103 14281
Registry: Edmonton

Between:

Paul Sturt

Applicant

- and -

Chartered Professional Accountants of Alberta

Respondent

**Reasons for Decision
of the
Honourable Justice Peter Michalyshyn**

Introduction

[1] This is an application by Paul Sturt in which he alleges rights violations by the Respondent Chartered Professional Accountants of Alberta (“CPA Alberta”) that should result in the remedy of, amongst other things, a permanent injunction or alternatively, a stay or temporary injunction. For reasons which follow the application is dismissed.

Background

[2] For some 12 years ending in mid-2018 Mr. Sturt was a registered member of CPA Alberta. In April, 2019 CPA Alberta received a complaint from Deloitte LLP raising serious allegations of professional misconduct against Mr. Sturt during a number of years he was a registered CPA Alberta member. In December, 2019 Mr. Sturt provided CPA Alberta with an

“interim voluntary restriction”. In the meantime, CPA Alberta continued its investigation into the April, 2019 complaint. An investigation report of November 27, 2020 resulted. On January 5, 2021 Mr. Sturt was advised that the Complaints Inquiry Committee (CIC) of CPA Alberta concluded that the evidence warranted referring the matter to a hearing.

[3] Earlier in the spring, 2019, Mr. Sturt’s former employer filed a complaint against Mr. Sturt with the RCMP. The Respondent has filed no such complaint. Nor has Deloitte LLP.

[4] Notwithstanding the passage of three years leading to the hearing of this application in 2022, there is no evidence of any criminal charge against Mr. Sturt. Nor is there evidence Mr. Sturt has ever been contacted or questioned by the RCMP. Mr. Sturt has made no inquiries of the RCMP for the existence or status of any investigation.

[5] Mr. Sturt now applies for an order granting a stay or injunction enjoining the Respondent from proceeding with the discipline hearing. He seeks other relief in the alternative. The detailed basis for the sought-after relief will be discussed further as these reasons unfold.

Interlocutory and permanent injunctive relief and stay of proceedings

[6] Mr. Sturt primarily seeks the relief of an interlocutory injunction or stay of proceedings. It is not in dispute that the law for both stems from *RJR-MacDonald v Canada (Attorney-General)*, 1994 CanLII 117 (SCC) and its three-part test:

- a) Is there a serious issue to be tried?
- b) Would the applicant for the injunction suffer irreparable harm if the injunction were not granted?
- c) Is the balance of convenience in favour of granting the interlocutory injunction or denying it?

Is there a serious issue to be tried?

[7] While this part of the tripartite test is met on a low threshold, I will say at the outset that I agree with CPA Alberta that no serious issue to be tried exists that Mr. Sturt’s rights under ss 7, 11(c) and 13 of the Canadian *Charter of Rights and Freedoms* are in jeopardy if the hearing is allowed to proceed.

[8] CPA Alberta notes that Mr. Sturt has not challenged the constitutional validity of the provisions of the *Chartered Professional Accountants Act*, SA 2014 c. 10.2 (“the *Act*”) which he says put him in jeopardy. He seeks relief only from the impact on him of these provisions.

[9] Mr. Sturt denies that he has misappropriated funds from his former client. But he says he is unable to afford to defend himself at a lengthy discipline hearing. What’s more, he says a lengthy hearing will cause him stress and negatively affect his mental and physical wellbeing.

[10] As an alternative to a hearing, Mr. Sturt has offered to resign from CPA Alberta and to never again practice as a professional accountant. He says CPA Alberta’s refusal to accept his resignation on Mr. Sturt’s terms – that is, by having CPA Alberta exercise a discretion in Mr. Sturt’s circumstances to waive the statutory requirement of an admission of professional misconduct as part of a sanction agreement – violates his rights under the *Charter*.

[11] Mr. Sturt grounds his *Charter* argument on the principle against self-incrimination addressed by ss 7, 11(c), and 13. He notes that s 13 of the *Charter* prohibits the use of prior compelled testimony to incriminate a person in a subsequent proceeding, while s 11(c) of the *Charter* protects a person who is charged with an offence from being compelled to testify against himself. He notes that s 7 of the *Charter* addresses the principle against self-incrimination as a principle of fundamental justice, when a person's life, liberty or security of the person are at stake.

[12] Mr. Sturt further argues that CPA Alberta's insistence on an admission of guilt, combined with Mr. Sturt's own precarious financial and health situation, "creates a substantial risk that [he] will give a false confession in order to secure an end to the disciplinary proceedings against him". (at para 61 of Mr. Sturt's Brief dated December 16, 2021) In turn, Mr. Sturt says, that false confession could be used against him in possible subsequent proceedings, thus giving rise to his *Charter*-protected self-incrimination concerns. As he puts it at para 64 of his Brief:

CPA Alberta has, as a result [of its position regarding an admission] created conditions in which Mr. Sturt is under substantial pressure to admit wrongdoing, even though this may expose him to criminal jeopardy. He simply does not have realistic alternatives.

[13] In oral argument on the application, counsel for Mr. Sturt clarified that Mr. Sturt had no intention of perjuring himself by making a false confession.

[14] With that clarification, it is hard then not to conclude that Mr. Sturt's concern for criminal jeopardy is entirely without foundation. Because Mr. Sturt agrees he cannot admit to misconduct he says he did not commit, and without that admission, CPA Alberta will not enter into a sanction agreement which is Mr. Sturt's only path to avoiding what he says will be a ruinous discipline hearing. So yes Mr. Sturt has a dilemma – one which will be explored further in the balance of these reasons – but it is clearly not a dilemma that calls for a remedy based on the *Charter*'s protections against self-incrimination based on a false confession that will never be made.

[15] If I am wrong or have mis-stated Mr. Sturt's position regarding the jeopardy of a false confession and a sanction agreement, the reality is that his *Charter* self-incrimination rights are barely, if at all engaged, in the circumstances of this case. I agree entirely with the submission of CPA Alberta that statutory protections exist (eg, s 87(3) of the *Act*, and s 6 of the *Alberta Evidence Act*) to help ensure Mr. Sturt's rights under ss 11(c) and 13 are not violated by his participation in the discipline proceedings. Section 11(c) of course engages only when a person "is charged with an offence", and Mr. Sturt is not that person. On his own evidence (his affidavit of July 27, 2021) he states he has no idea if police even have an open, active investigation. Likewise, any s 7 concerns – and there is little basis to conclude that any 'life, liberty or security of the person' interests under s 7 of the *Charter* are seriously engaged in Mr. Sturt's case – are addressed at the stage of hypothetical criminal proceedings. The cases are uniform that discipline hearings should be allowed to proceed notwithstanding potential *Charter* rights that may be asserted in due course in other proceedings: *Thomson Newspapers Ltd. v Canada (Director)*, 1990 CanLII 135 (SCC); *R v S(RJ)*, 1995 CanLII 121 (SCC); *Nash v Ontario*, 1995 CanLII; 2934; *Kirby v Chartered Professional Accountants of Newfoundland and Labrador Complaints Authorization Committee*, 2018 NLSC 136; *R v Iyer*, 2014 ABQB 356.

[16] In conclusion regarding Mr. Sturt's arguments based on *Charter*-protected rights, I find there is no serious issue to be tried.

The CIC's discretion

[17] Moving past his *Charter* arguments, Mr. Sturt argues he should be allowed to avoid the Respondent's disciplinary process by reason of his voluntary proposed "settlement" – again that without admitting wrongdoing, nevertheless he would never again practice as a chartered professional accountant. The Respondent however argues that Mr. Sturt's proposal is not available under the *Act* – and that it cannot be procedurally unfair to Mr. Sturt that CPA Alberta applies its own unchallenged legislation. For reasons which follow I accept the Respondent's views and agree that on this point too there is no serious issue to be tried.

[18] At issue are the *Act's* provisions regarding sanction agreements at s 74, which sets out requirements for a valid sanction agreement, one of which is an admission of unprofessional conduct. A sanction agreement must also be recommended for approval by a four-person panel of the CIC, one of whom must be a public member under the *Act*. Only after the full CIC has approved the sanction agreement could Mr. Sturt apply to the CIC to resign instead of having the proceedings continue.

[19] The requirement of an admission in such circumstances would treat Mr. Sturt no differently than other regulated professionals, such as members of the Law Society of Alberta: *Legal Profession Act*, RSA 2000, c-L-8, ss 60-61. Still, Mr. Sturt argues that in his unique circumstances he should be exempted from this comprehensive statutory code governing the discontinuance of disciplinary proceedings against regulated accounting professionals.

[20] Mr. Sturt relies heavily on part of the decision in *Yee v Chartered Professional Accountants of Alberta*, 2020 ABCA 98, and the suggestion in one of the three judgments in that case that CPA Alberta has a broad discretion to stay or dismiss otherwise meritorious complaints.

[21] CPA Alberta says the judgment in *Yee* relied upon by Mr. Sturt is *obiter* and unpersuasive, or is simply wrongly decided.

[22] Relying on *Yee*, Mr. Sturt says that if indeed CPA Alberta has discretion to stay or dismiss otherwise meritorious complaints, then the dilemma Mr. Sturt finds himself in – as described above – should be a reason for CPA Alberta to exercise that discretion in his favour.

[23] The outcome in *Yee* is found in a series of three sets of reasons. The decision of the majority – the point on which all members of the panel agreed – has nothing to do with the discretion point argued by Mr. Sturt. The discretion point is the subject of two of the concurring decisions, each with strongly-held and expressed views as to whether CPA Alberta has the discretion that Mr. Sturt asks it to exercise in his case. No majority opinion emerged because the third judge on the panel elected not to enter the discretion fray. As such, the views expressed in *Yee* on both sides of the CPA Alberta discretion point are each clearly *obiter* and are of no more than persuasive value to me.

[24] I find it unnecessary to conclude which of these clashing views is the more persuasive, for I find the facts upon which the *obiter* comments in the decision even most sympathetic to Mr. Sturt are based are manifestly distinguishable from the facts on this application.

[25] Contrary to the facts in *Yee*, on Mr. Sturt's application there are simply no parallel proceedings that could reasonably justify any kind of a stay of the discipline proceedings against him. As noted, Mr. Sturt currently faces no criminal charges. It is no more than speculation that he ever will. He has identified no other collateral proceedings not already settled.

[26] Further, unlike the facts of the case in *Yee* (the facts at least as described at para 56 of the concurring reasons), in Mr. Sturt's case there is no credible basis for the contention that the complainant – Deloitte LLP, the auditor of Mr. Sturt's former employer – acted with any improper motives. There is nothing remotely similar to what is described in *Yee*, at para 53, wherein the concurring judge gives as an example of what might trigger an "inferred" discretion:

...a complaint [...] filed out of spite, for revenge as a result of some personal grievance, in order to improperly pressure the accountant to do something (including settling litigation), or for another collateral purpose.

On such facts, the concurring decision in *Yee* goes on to say, the CIC chair, or other participants in the system, should be open to arguments that the discipline proceedings should be stayed or diverted. In *Yee*, a finding was made at para 56 of that concurring decision, that:

On the face of it, it appears that the professional disciplinary process was being used to pressure the appellant into meeting the numbered company's demands.

No such finding can be made from the record in Mr. Sturt's application.

[27] All of this leads to the conclusion that even if the CIC has the discretion inferred by the concurring decision in *Yee*, it is a discretion that, as stated at para 53:

...should obviously be exercised with caution. Allowing abuses of the disciplinary process can only serve to undermine the credibility and integrity of that process.

On the facts of Mr. Sturt's case it would be inappropriate to exercise discretion in his favour, if any such discretion can indeed be inferred, and as such I conclude that on this ground too there is no serious issue to be tried.

Procedural fairness

[28] The question now is whether there is a serious issue to be tried arising from Mr. Sturt's objections to procedural unfairness arising from the November 27, 2020 investigation report and other aspects of the investigation.

[29] I pause to address a threshold point that does not apply to the *Charter*-based grounds argued by Mr. Sturt. That is to say, that his application based on procedural unfairness is premature: *Robertson v Edmonton (City) Police Service*, 2004 ABQB 519, and like cases, which stand for the proposition that only in rare and exceptional circumstances should a court intervene in a professional regulatory body's disciplinary functions before the internal processes of the regulatory body have concluded. This includes the determination of alleged procedural unfairness. On this basis alone I find that Mr. Sturt's complaints regarding procedural unfairness are not a serious issue to be tried in the matters before this court.

[30] If I am wrong on the threshold point, I will deal with the merits of Mr. Sturt's procedural unfairness grounds. Mr. Sturt argues the investigation report is limited in scope and does not fully investigate the explanations or corroborating evidence suggested by him that would lead to his

exoneration. These objections are set out in detail at para 55 (a-f) of Mr. Sturt's July 20, 2021 affidavit. He argues that owing to these alleged weaknesses in the investigation report, his rights to "procedural fairness and natural justice" have been breached.

[31] The legal starting point to this ground is the applicable standard of procedure fairness expected of CPA Alberta at the *investigative* stages of the discipline proceeding. That standard of procedural fairness is low as compared to the standard at the adjudicative stage of the proceedings: *Rebel News Network v The Election Commissioner of Alberta*, 2021 ABCA 376, at para 11, and like authorities. What's more, alleged unfairness at the investigation stage of a proceeding may be remedied at the adjudicative stage of the hearing.

[32] Mr. Sturt relies on the decision in *Park v Institute of Chartered Accountants of Canada*, 2002 ABQB 880. However, the procedural fairness issues on the facts of *Park* are entirely different and distinguishable from what Mr. Sturt alleges. *Park* is distinguishable too in that the procedural unfairness found in that case arose mostly, if not entirely, at the *hearing* stage of the discipline process.

[33] The factual starting point of the procedural fairness ground is CPA Alberta's receipt of the Deloitte LLP complaint and the initial review of it by the secretary of the Complaints Inquiry Committee under s 69 of the *Act*. The secretary has powers to investigate the complaint, and on completing the review the secretary "must refer the complaint" to the CIC chair under s. 69(5). The CIC chair upon receipt of the referral was required to exercise discretion under s 76(1) of the *Act*. That discretion was exercised in favour of the appointment of an investigator under s 76(1)(b) to investigate the matter. In due course the investigator reported the results of his investigation to the CIC. In turn the CIC pursuant to s 80 of the *Act* referred the allegations of unprofessional conduct against Mr. Sturt to a discipline tribunal.

[34] With regard to the investigation report, the broad powers of the investigator are set out in detail at s 78 of the *Act*. These details provisions aside, I was referred to no authority commenting further on the manner in which the investigator must conduct his investigation and report on it.

[35] On January 5, 2021 the CPA's Complaint's Inquiry Committee advised that it had considered the investigator's report and was of the opinion that "there is sufficient evidence...to warrant a hearing before the discipline tribunal". I have been offered no reason to doubt that this was a conclusion the CIC was entitled to reach, having reviewed the investigation report, and having regard for its obligations at the investigation stage of the CPA Alberta procedure.

[36] Mr. Sturt takes issue as well with the involvement of the CIC Secretary. On a review of the record in that regard, and the submissions of Mr. Sturt through counsel, I find nothing more than speculation that the CIC Secretary misapprehended the evidentiary value of "pleadings" as distinct from proven facts, as alleged; or that as alleged, her review of pleadings "showed prejudice, [was] unfair, and [was] not impartial" (para 112, Mr. Sturt's Brief). There is no merit either to the argument that procedural unfairness resulted from the lack of a specific inquiry into Deloitte LLP's motive to make the CPA Alberta complaint; even if such evidence of improper motive existed – and it does not – there is no evidence that any such improper motive influenced the investigation that followed. There is no merit to the argument, without more, that the passage of time of some two years between the alleged misappropriation and the Deloitte complaint gives rise to an inference of procedural unfairness. There is no merit to the argument that bias, prejudice and impartiality existed in the investigation because CPA Alberta or the author of the investigative

report failed allegedly to consider and weigh Mr. Sturt's evidence with a view to his complete exoneration.

[37] In all, there is nothing in the record of CPA Alberta's conduct of its investigative procedure that can reasonably give Mr. Sturt any cause for complaint, particularly given the standard of procedural fairness to which he is entitled at the investigative stage of the CPA Alberta process. As such, there is no serious issue to be tried regarding Mr. Sturt's complaints of a lack of procedural fairness.

Would the applicant for the injunction suffer irreparable harm if the injunction were not granted?

[38] This is of course the second part of the tripartite test for a stay or interlocutory injunction. Mr. Sturt says he would face irreparable harm by the prohibitive and unrecoverable cost of a discipline hearing, and the vaguely-stated health impact of participating in such a hearing. I agree however with CPA Alberta that having voluntarily entered into and enjoyed the benefits of the regulated profession of accounting, Mr. Sturt cannot now avoid the obligation of participating in a disciplinary hearing which is required under the *Act*. As such, the potential of a large financial commitment by Mr. Sturt, and of health impacts such as they are, are not irreparable harm for the purposes of the *RJR-MacDonald* analysis.

Is the balance of convenience in favour of granting the interlocutory injunction or denying it?

[39] With regard to this third part of the tripartite test, I agree with CPA Alberta that the public interest of allowing its investigation and adjudication processes to unfold in a timely manner far outweighs the unmeritorious grounds Mr. Sturt has advanced to stay or abeyance the discipline proceedings on an interlocutory basis.

Permanent injunction

[40] In the alternative, Mr. Sturt argues for a permanent injunction. Briefly put, while subject to a test different and more stringent from that for an interlocutory injunction or stay, Mr. Sturt asserts essentially the same factual foundation reviewed above for the sought-after permanent injunction. It is thus straightforward to conclude that in my view of the record, no foundation exists for a permanent injunction. Citing *Muslim Counsel of Calgary v Mourra*, 2018 ABQB 118, Mr. Sturt himself notes (at para 131 of his Brief), that:

There also must be sufficient evidence before the court to support a permanent injunction, because "the permanent injunction will determine the application and the underlying action on a final basis.

Again, in my view the record on this application as reviewed earlier in these reasons fails even to come close to that sufficient level of evidence.

New investigation

[41] In the further alternative, Mr. Sturt argues, at para 152 of his Brief, that:

...at a minimum, CPA Alberta should be compelled by this Honourable Court to undertake a new investigation that is fair, unbiased, extensive and reasonable such that a proper decision can be made as to whether a hearing is warranted in the circumstances.

[42] In that, I have already found no fault as alleged with the CPA Alberta investigation, this alternative form of relief cannot be granted.

Law Society of Saskatchewan v Abrametz

[43] The decision in *Law Society of Saskatchewan v Abrametz*, 2022 SCC 29 was released after the close of argument in this application. The parties had originally argued the *Abrametz* decision from the Saskatchewan Court of Appeal. Each now says the ultimate decision in the case supports their position.

[44] I agree with CPA Alberta's submission that *Abrametz* is further support for its cause, for each of the five reasons it identifies in its supplemental submissions:

- a) that *Abrametz* finds that excessive delay in administrative proceedings – such as is proposed by Mr. Sturt in his application – undermines the public's interest in expeditious and efficient decision-making by delegated bodies;
- b) that *Abrametz* articulates a broad view of the purpose of disciplinary bodies such as CPA Alberta, "to protect the public, to regulate the profession, and to preserve public confidence in the profession" (at para 53) – a broad view that is contrary to the narrow role Mr. Sturt would have CPA Alberta adopt in his case, which again is that the public interest would be served by his promise not to practice accountancy, even in the absence of both a discipline hearing and an admission of serious professional misconduct;
- c) that in the interest of public protection, *Abrametz* confirms a necessarily high threshold for a stay of proceedings – to be ordered only in the clearest of cases and where the seriousness of the alleged abuse of process against the person in Mr. Sturt's circumstances is high – and on the record on his application there is no credible evidence of an abuse of process as alleged (which is that CPA Alberta allowed their knowledge of Mr. Sturt's financial circumstances to influence its position);
- d) that absent exceptional circumstances, as a general rule parties should exhaust the administrative tribunal's process before turning to the courts – in Mr. Sturt's case, this factor being relevant to his concerns for procedural unfairness, and to the absence in his case of exceptional circumstances; and
- e) that granted, exceptional circumstances may include a stay based on the presence of related criminal proceedings. Such proceedings may indeed justify a stay, and a lengthy one. But as noted elsewhere in these reasons, this *Abrametz* exception to the general rule does not assist Mr. Sturt as he does not face criminal proceedings, nor is there is evidence that such proceedings are on the horizon.

Conclusion

[45] For the reasons stated, the application is dismissed.

[46] If they cannot agree, the parties may of course speak to costs.

Heard February 16, 2022.

Further written submissions September 6 and 8, 2022

Dated at the City of Edmonton, Alberta this 30th day of November, 2022

Peter Michalyshyn
J.C.K.B.A.

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