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PRACTICE

PLEADINGS

Motion to Strike

Related Subject: Public Service; Injunctions

Motion by applicants (Antonio Utano and Cameron Macdonald) for interim or interlocutory relief under *Federal Courts Rules*, SOR/98-106, r. 373 — In underlying application for judicial review, applicants sought judicial review of Preliminary Statement of Facts (PSFs) filed by Canada Border Services Agency (their previous employer) — Applicants' motion sought, *inter alia*, interlocutory injunction suspending PSFs, dissemination thereof, until underlying application heard — Respondent bringing own motion to strike applicants' Notice of Application — While at CBSA, applicants responsible for initial execution, technical delivery of ArriveCAN travel application — CBSA receiving complaint from Botler AI, external Montreal-based company, alleging serious misconduct by applicants — In response to Botler AI's complaint, CBSA initiated internal investigation of applicants — PSFs, produced in course of CBSA investigation, released to applicants' current employers — Shortly thereafter, applicants had their security clearances revoked and they were placed on unpaid suspension from their respective roles — At issue was (a) whether applicants' motion for interlocutory relief should be granted; and (b) whether respondent's motion to strike should be granted — Respondent submitted that applicants' underlying application for judicial review should be struck because premature — Raised two key submissions: (1) PSFs were "preliminary" in nature, not final; (2) applicants failed to exhaust available alternative remedies before pursuing judicial review — Court herein agreed with respondent — Respondent had not made any final decisions on allegations contained within PSFs, investigation had yet to run its course — Application for judicial review was therefore premature, could only be heard if there was no available recourse elsewhere or if there were exceptional circumstances — Here, applicants had initiated grievances regarding suspensions and clearances — Also filed complaints with Public Sector Integrity Commissioner, which were under investigation — By operation of *Federal Public Sector Labour Relations Act*, S.C. 2003, c. 22, s. 2, ss. 208, 236, applicants had to exhaust grievance mechanisms before coming to Federal Court — As to exceptional circumstances justifying intervention at this stage, there were none — Issues of procedural fairness not amounting to exceptional circumstances — Similar grounds of bias, damage to reputation, procedural fairness previously dismissed by Federal Court of Appeal — In any event, insufficient evidence on record to establish such breaches occurred — Respondent's motion allowed and application for judicial review struck, without leave to amend; applicants' motion dismissed.

UTANO V. CANADA (PUBLIC SAFETY) (T-311-24, 2024 FC 805 Zinn J., reasons for order dated May 28, 2024, 29 pp.)