NOVA SCOTIA COURT OF APPEAL

Citation: *Abridean International Inc. v. Bidgood*, 2017 NSCA 25

Date: 20170324
Docket: CA 456387
Registry: Halifax

Between:

Abridean International Inc. and/or Sagecrowd Inc.
and/or Ogden Pond Technology Group

Appellants

v.

Peter Bidgood; Director of Labour Standards;
Nova Scotia Labour Board (Susan Ashley, Q.C. Vice Chair,
Marinus Van de Sande, and Larry Wark);
and Attorney General of Nova Scotia

Respondents

Judge:	Peter M.S. Bryson, J.A.
Motion Heard:	March 23, 2017, in Halifax, Nova Scotia in Chambers
Held:	Motion dismissed
Counsel:	Jane O'Neill, Q.C., for the appellants (respondents on the motion) David A. Cameron, for the respondent Peter Bidgood (applicant on the motion) Andrew D. Taillon for the respondent Director of Labour Standards (watching brief only) Edward A. Gores, Q.C. for the respondent Attorney General of Nova Scotia (watching brief only)

Decision:

[1] Mr. Bidgood has brought a motion to enforce an alleged settlement agreement with the appellants. The Labour Board awarded Mr. Bidgood a substantial sum following termination of his employment with the appellants. They appealed, arguing that the Labour Board lacked jurisdiction to afford him the relief awarded.

[2] In the fall of 2016, negotiations occurred between the parties. The Court was informed in chambers that an agreement in principle had been reached. Unfortunately, the parties ultimately disagreed on whether they had a binding agreement. Mr. Bidgood says a deal was made. The appellants claim not.

[3] Mr. Bidgood brought a motion in chambers to enforce the alleged settlement agreement. The Court raised the question of its jurisdiction to resolve the matter and the parties addressed this during oral submissions.

[4] Mr. Bidgood relies upon *Rule* 10.04 which allows a party to bring a motion to give effect to a settlement agreement. Mr. Bidgood argues that *Rule* 90.02(1) allows the Court of Appeal to apply other rules of court "not inconsistent with *Rule* 90".

[5] Generally speaking, the powers of the Court of Appeal are exercised by a full panel of the Court. The authority of judges sitting in chambers is confined to what the *Rules* or statute explicitly permits them to do: *Future Inns Canada Inc. v. Nova Scotia (Labour Relations Board)*, 154 N.S.R. (2d) 358 per Hallett J.A. in chambers; *R.B. v. Children's Aid Society of Nova Scotia*, 2002 NSCA 108 per Cromwell J.A. in chambers.

[6] The powers of a single judge in chambers are largely procedural and interlocutory, (90.37; 90.40). They may tangentially touch the merits where other matters are raised, i.e. on a motion to dismiss for noncompliance with the *Rules* or the granting of a stay.

[7] The parties have suggested the motion may be referred to a full panel of the Court. That cannot avail Mr. Bidgood. The jurisdictional challenge goes beyond the capacity of a single judge of the Court. The Nova Scotia Court of Appeal is not a court of first instance. Its jurisdiction is set out in ss. 38-40 of the *Judicature Act*. Those sections describe appeal, not original jurisdiction.

[8] Nor is this a case where resort to the Court's inherent jurisdiction can overcome a want of explicit authority in the *Judicature Act* or *Rule* 90.

[9] Mr. Bidgood's position that an enforceable contract was entered into between the parties describes a new cause of action, justiciable in the Supreme Court. Perhaps anticipating this problem, counsel informed me during the hearing that an action has been brought by Mr. Bidgood for, amongst other things, enforcement of the alleged settlement agreement.

[10] Mr. Bidgood commendably seeks a swift and cost-effective means for resolution of the discrete issue dividing the parties. Unfortunately, neither a judge in chambers nor a panel of this Court is that means. A special chambers hearing in the Supreme Court may well be.

[11] There is no point in referring to a full panel of this Court that which it is jurisdictionally unable to decide.

[12] Mr. Bidgood's motion is dismissed. As the motion has been decided on a point not originally raised by the parties, there will be no costs.

Bryson, J.A.