

NOVA SCOTIA COURT OF APPEAL

Citation: Canadian Broadcasting Corporation v. Canada (Attorney General),
2010 NSCA 99

Date: 20101209

Docket: CA 323826

Registry: Halifax

Between:

Canadian Broadcasting Corporation

Appellant

v.

The Attorney General of Canada

Respondent

Judges: MacDonald, C.J.N.S., Saunders and Bryson, J.J.A.

Appeal Heard: December 6, 2010, in Halifax, Nova Scotia

Held: Appeal is dismissed with costs to the respondent in the amount of \$1,000, per reasons for judgment of Bryson, J.A.; MacDonald, C.J.N.S. and Saunders, J.A. concurring.

Counsel: David Coles, Q.C. and Lydia Billingsley, for the appellant
James C. Martin and W. Dean Smith, for the respondent

Reasons for judgment:

[1] The CBC appeals the dismissal of its application for disclosure of audio and video statements made by Penny Boudreau while she was under investigation in connection with the death of her daughter, Karissa. Ms. Boudreau subsequently pleaded guilty to second degree murder. She entered into an Agreed Statement of Facts with the Crown on which the Court relied when she was sentenced. The audio and video statements were not entered as exhibits and never became evidence.

[2] No application was made to the sentencing judge for access to the Boudreau statements. But subsequently the CBC sought access from the RCMP under the *Federal Access to Information Act*, R.S.C. 1985, c. A-1. The RCMP denied that request. CBC's administrative appeal under the *Act* was unsuccessful. Section 41 of the *Act* permits judicial review of a refusal of access to information. Rather than pursuing judicial review, CBC commenced an application in the Supreme Court of Nova Scotia against the Attorney General of Canada, arguing that s. 2(b) of the *Charter of Rights and Freedoms* entitled it to access to the Boudreau statements. The application was resisted by the Attorney General of Canada who brought a motion to strike for want of jurisdiction under *Civil Procedure Rule 5.10*, which provides:

- 5.10**
- (1) A respondent who maintains that the court does not have jurisdiction over the subject of an application, or over the respondent, may make a motion to dismiss the application for want of jurisdiction.
 - (2) A respondent does not submit to the jurisdiction of the court only by moving to dismiss the application for want of jurisdiction.
 - (3) A judge who dismisses a motion for an order dismissing an application for want of jurisdiction must set a deadline by which the respondent may file a notice of contest.

[3] By decision dated December 31, 2009, the Honourable Justice Arthur J. LeBlanc dismissed the CBC's application (2009 NSSC 400). He held that section 18 of the *Federal Court Act*, R.S.C. 1985, c. F-7 gave the Federal Court exclusive original jurisdiction to review the refusal of access to the Boudreau statements in the possession of the RCMP.

[4] Having considered all the evidence, facts, and arguments of counsel, I am satisfied that the chambers judge did not err in allowing the Attorney General's motion to strike. As framed, the Supreme Court had no jurisdiction to entertain CBC's application. I would dismiss the appeal with costs to the Attorney General of Canada of \$1,000.

Bryson, J.A.

Concurred in:

MacDonald, C.J.N.S.

Saunders, J.A.