

SUPREME COURT OF NOVA SCOTIA

Citation: Cummings v. Belfast Mini-Mills Ltd., 2010 NSSC 459

Date: 20101109

Docket: Hfx No. 333144

Registry: Halifax

Between:

Wanda Cummings and Gillian Leigh

Applicants

v.

Belfast Mini-Mills Ltd. and International Spinners Ltd.

Respondents

Judge: The Honourable Justice C. Richard Coughlan

Heard: November 3 and 9, 2010 (in Chambers), in Halifax, Nova Scotia

Decision: November 9, 2010 (Orally)

Written Release of Decision: December 29, 2010

Counsel: Wanda Cummings and Gillian Leigh, self-represented Applicants
Robert K. Dickson, Q.C. and Ian D. Brown, for the Respondents

Coughlan, J.: (Orally)

[1] Wanda Cummings and Gillian Leigh move for an injunction prohibiting Belfast Mini-Mills Ltd. (Belfast) and International Spinners Ltd. (Spinners) from introducing documents from cases: Hfx No. 326861, 326871, 326867, 327449A and 327460.

[2] No information concerning the particular documents for which the injunction is being sought is before me, other than the general submission that the injunction should apply to any documents contained in files: Hfx No. 326861, 326871, 326867, 327449A and 327460.

[3] The files in question are:

- 1) Hfx No. 326861 - Cummings and Leigh v. Minister of Community Services - a judicial review.
- 2) Hfx No. 326871 - Cummings and Leigh v. Department of Justice - a proceeding pursuant to the *Freedom of Information and Protection of Privacy Act*, S.N.S. 1993, c.5.
- 3) Hfx No. 326867 - Cummings and Leigh v. Attorney General of Nova Scotia and Capital District Health Authority - a proceeding pursuant to the *Freedom of Information and Protection of Privacy Act*.
- 4) Hfx No. 327449A - Cummings and Leigh v. Royal Canadian Mounted Police - a proceeding pursuant to the *Freedom of Information and Protection of Privacy Act*.
- 5) Hfx No. 327460 - Cummings and Leigh v. Department of Community Services - a proceeding pursuant to the *Freedom of Information and Protection of Privacy Act*.

[4] I asked the parties whether the material in question from the files with regards to the FOIPOP matters were documents for which disclosure by the Government was sought or material filed in support of the applications. Ms. Cummings and Leigh stated, partly both, and I did not get a clear answer from counsel for Belfast and Spinners.

[5] Not having particulars of the specific documents for which the injunction is sought, I am not able to determine if some type of order to prevent the use of the documents is appropriate, and for that reason the motion must fail.

[6] It appears, however, that any material which was copied from the files was not material for which a FOIPOP order was sought, but rather material filed in support of the application. From the court files, the following appears:

- 1) Hfx No. 326867 - Cummings and Leigh v. Attorney General of Nova Scotia and Capital District Health Authority. A motion for directions was held May 11, 2010. The sealed material of which protection was sought was never filed with the Court. A consent dismissal order was issued July 29, 2010. Any material copied therefore would have been material filed in support of the application.
- 2) Hfx No. 327449 - Cummings and Leigh v. Royal Canadian Mounted Police. No sealed documents were received in this matter. Any material copied therefore would be material filed in support of the application.
- 3) Hfx No. 327460 - Cummings and Leigh v. Department of Community Services. Sealed documents were not filed by the Department of Community Services and the appeal was discontinued.
- 4) Hfx No. 326871 - Cummings and Leigh v. Department of Justice. Sealed documents were received from the Department of Justice. During an appearance on July 22, 2010, a joint request was made for an adjournment of this appeal as the matter was close to resolution. The material filed by the Department was returned to the Department approximately October 12, 2010. There is no evidence before me that the material from the Department was copied.
- 5) Hfx No. 326861 - Cummings and Leigh v. Minister of Community Services. This application was abandoned.

[7] Section 4(1) and (2)(a) and (b) of the *Freedom of Information and Protection of Privacy Act* provides:

Application of Act

- 4 (1) This Act applies to all records in the custody or under the control of a public body, including court administration records.
- (2) Notwithstanding subsection (1), this Act does not apply to
- (a) published material or material that is available for purchase by the public;
 - (b) material that is a matter of public record.

[8] Absent a confidentiality order, items in court files are available to the public and may be copied by any member of the public upon the payment of a fee. Material in a court file, absent a confidentiality order, is within the public domain.

[9] Although Ms. Cummings and Ms. Leigh applied for confidentiality orders, they did not carry through with the motions for the orders. The following e-mail exchange took place between Ms. Cummings and the Prothonotary, Annette Boucher, Q.C.:

Wanda Cummings ... com. 2010-04-07 20:57

Hello, Ms. Boucher;

I was in the Court House today to pick up the filed documents for file numbers 326861, 326867, and 326871. They are two Section 41 appeals under the FOIPOP Act, as well as a judicial review.

Could I please ask you to hold those documents for a few more days until I have time to prepare the brief for the motion? I do appreciate your assistance in this matter thus far and I look forward to hearing from you.

Kind regards,

Wanda Cummings

[10] Then there is a message from Annette Boucher to Wanda Cummings dated Thursday, April 8, 2010, 1:48 p.m.:

Subject: Re: Confidentiality Order / Publication Ban

Ms. Cummings,

I have carefully read your e-mail below.

I understand that on each of the three court files, you will be bringing a motion pursuant to Civil Procedure Rule 85 seeking an order for confidentiality.

I also understand that preparing the documents will take you some time.

I am prepared to hold the court files in my office pending you filing the documents required to bring the motions on the three files. HOWEVER, I am only prepared to hold the files until the end of the day Tuesday, April 13th. This means that at 4:30 p.m. on April 13th if the motions have not been filed, the court files will be returned to the court filing vault and will be accessible to the public.

While the files are in my office they are not accessible to the public.

Annette M. Boucher, Q.C.

Prothonotary

Supreme Court - Halifax

[11] Then there is an e-mail from Wanda Cummings to Annette Boucher dated Thursday, 08 April 2010 2:04 p.m.:

Subject: Re: Confidentiality Order / Publication Ban

That's perfect, Ms. Boucher. I appreciate that a great deal, and anticipate that I will be there before the 13th.

Kind Regards,

Wanda Cummings

[12] The required motions were not filed by April 13, 2010.

[13] Robertson, J. did order the sealing of a full brief and redacted brief in Halifax files: Hfx No. 327449, 326871, 326867, 326861 and 327460. There was no evidence before me that the briefs sealed by Robertson, J. were copied. Of course, if material which was ordered sealed was copied accidentally, it could not be used in other proceedings.

[14] Ms. Cummings and Ms. Leigh also sought an order:

... seek return of all redacted phone bills which were provided to Mr. Dickson by Ian Dunbar of McInnes Cooper on the plaintiff's behalf in December 2007 for his perusal only, and for the purposes of determining that no other calls had been made to his clients by the plaintiffs in Case No. 272748. The phone bills were provided with the express provision that Mr. Dickson would not disclose the documents to any one other than himself, and not his clients, and then promptly return the documents to the plaintiffs.

[15] Ms. Cummings and Ms. Leigh abandoned that motion and Belfast and Spinners consented to the abandonment.

[16] Ms. Cummings and Ms. Leigh also seek an order Mr. Dickson file an affidavit:

... as to how he obtained the documents prior to the proposed 3 Novembre (sic) 2010 injunction hearing date stating how, for what reason, and from whom the applicants' FOIPOP documents were obtained, and why these, as well as sealed documents were filed in affidavit evidence in an unrelated matter.

[17] There is no basis for such an order

[18] The motions are dismissed.

[19] I order the applicants pay costs in the amount of \$1,000.00, payable in any event of the cause.

Coughlan, J.