



T-1088-97

B E T W E E N:

MICHAEL O'MALLEY,

Applicant

- and -

HER MAJESTY THE QUEEN, THE ATTORNEY GENERAL OF CANADA,
HUMAN RESOURCES DEVELOPMENT CANADA,
THE COURT OF QUEEN'S BENCH OF ALBERTA,
THE PROVINCIAL COURT OF ALBERTA,
THE HONOURABLE W. P. SULLIVAN in his capacity as
JUSTICE OF THE COURT OF QUEEN'S BENCH OF ALBERTA,
KENNETH McLEOD in his capacity as
SENIOR PROSECUTOR FOR DEPARTMENT OF JUSTICE CANADA,
KIRK N. LAMBRECHT in his capacity as
CIVIL SECTION COUNSEL FOR DEPARTMENT OF JUSTICE CANADA, and
WILLIAM DAGG in his capacity as
INVESTIGATION AND CONTROL OFFICER
FOR HUMAN RESOURCES DEVELOPMENT CANADA,

Respondents

REASONS FOR ORDER

CAMPBELL J.

Let the attached transcript of my Reasons for Order delivered orally from the bench at Calgary, Alberta, on August 19, 1997, now edited, be filed to comply with section 51 of the *Federal Court Act*.

Judge

OTTAWA
September 30, 1997

It is quite evident on the material that Mr. O'Malley has brought this application against these named individuals on this judicial review to, effectively, have stopped or have discontinued a criminal proceeding against him under the *Unemployment Insurance Act*

Having heard the arguments and having read the material, I find that what Mr. O'Malley is attempting to do is not possible. I think the proper way to coin this application, and I don't want to appear to be critical of his efforts, because he is unrepresented and is trying to do his best, is to say that it is frivolous and vexatious. In my view, it has absolutely no chance of success. There is absolutely no point in allowing this matter to proceed to a judicial review.

In the first place, I have already made an order that The Provincial Court of Alberta, the Court of Queen's Bench of Alberta, and the Honourable Justice Sullivan be struck from this application because they are outside the jurisdiction of this Court.

As well, s.18.1 of the *Federal Court Act* requires that a single "decision" of a Federal board, commission or tribunal be attacked. I find that the three named individual respondents, Kirk Lambrecht, Kenneth McLeod and William Dagg, are also outside the jurisdiction of this Court on this application under s.18.1 because neither of these three individuals has made a "decision" as required. On this basis, I find that the application in relation to these three individuals must be struck.

As to the question of attempting to attack a prosecution in this manner, I refer to the case of *Winn v. Canada (Attorney General)* [1994] F.C.J., Number 1280. In that case, Mr. Justice Joyal cites Madame Justice L'Heureux-Dube in the Supreme Court of Canada for the proposition that the Attorney General exercises a broad discretion in deciding to prosecute or not to prosecute and that such decision is particularly ill-suited to judicial review.

Therefore, I find that this question about whether the prosecution's decision should have been made or should not have been made is not the subject of judicial review under s.18.1.

Further, I find that I do not have jurisdiction to grant a stay of the prosecution in the Provincial Court matter, and I also decline to exercise any jurisdiction I might have to interfere with that prosecution.

As to Mr. O'Malley's argument that there is a condition precedent to bringing the prosecution against him which has not been complied with, he can raise this as a preliminary issue at the time of trial. I do not believe that a proper case has been made out for me to exercise my discretion on the application for an order of mandamus. Under the technical rules of mandamus it is necessary that a formal demand and a refusal be made before any court action should be taken. Neither of these requirements have been met.

Therefore, I find that Her Majesty the Queen, the Attorney General of Canada, and Human Resources Development Canada are not proper subjects of this application, and for all the reasons given here, I strike this originating notice of motion in its entirety. It no longer exists.

I make no order as to costs in this case.

