COURT OF APPEAL FOR ONTARIO

CITATION: Tuchenhagen v. Mondoux, 2012 ONCA 567
DATE: 20120830
DOCKET: M41619 (C55124)

Goudge, Gillese and Armstrong JJ.A.

BETWEEN

Robert Tuchenhagen

Appellant (Responding Party)

and

Gilles Mondoux

Respondent (Moving Party)

Chantelle J. Bryson, for the responding party

Rene E. Larson and Sergiel P. Ettinger, for the moving party

Heard and released orally: August 21, 2012

On motion to quash the appeal from the order of the Divisional Court (Wilson, Gordon and Lederer JJ.), dated October 26, 2012.

ENDORSEMENT

[1] The respondent elector seeks to quash the appeal of the appellant member who was found to be in conflict of interest by the Superior Court. The Divisional Court, by majority, upheld that decision. Leave was granted to appeal to this court.

[2] The respondent bases his argument on s. 11(2) of the *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M50 (*MCIA*) and the jurisprudence of this court about it. Section 11(2) reads as follows:

> The Divisional Court may give any judgment that ought to have been pronounced, in which case its decision is final, or the Divisional court may grant a new trial for the purpose of taking evidence or additional evidence and may remit the case to the trial judge or another judge and, subject to any directions of the Divisional Court, the case shall be proceeded with as if there had been no appeal.

[3] In *Ruffolo v. Jackson*, 2010 ONCA 472, s. 11(2) was found to provide a complete code for appeals of decisions under the *MCIA*. The recent decision of *Amaral v. Kennedy*, 2012 ONCA 517, [2012] O.J. No. 3572, reiterates that conclusion.

[4] The appellant seeks to argue that s. 11(2) renders final certain decisions, namely those of the Divisional Court that are within jurisdiction and legally correct, but only those decisions. The appellant also argues that the reading proposed by the respondent risks leaving in place an unjust Divisional Court decision.

[5] We do not agree with this approach to s. 11(2). We are bound by the decisions of this court that “final” in s. 11(2) means final, and that no appeal lies to this court from the Divisional Court under s. 11 of the *MCIA*. Indeed, we agree with that position. The legislature has chosen in s. 11(2) to permit a member only an appeal to the Divisional Court, but no further. Therefore, regardless of the

possible merits of the appeal itself we are prevented from hearing it by the legislation itself.

[6] The appeal is therefore quashed. Given the costs order in the Divisional Court and the fact that this issue was not clearly raised on the leave application, costs to the respondent in the amount of $5000, inclusive of disbursements and applicable taxes.

“S.T. Goudge J.A.”
“E.E. Gillese J.A.”
“Robert P. Armstrong J.A.”