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Our File No. 15-1992

January 12, 2016

Roger Bilodeau, Q.C.  
Registrar  
Supreme Court of Canada  
301 Wellington Street  
Ottawa, ON K1A 0J1

Dear Registrar:

**Re: Mounted Police Association of Ontario v. Canada (Attorney General)**  
**Court File No: 34948**

We write on behalf of the Appellant/Respondent, the B.C. Mounted Police Professional Association (BCMPPA), now known by the name the Mounted Police Professional Association of Canada (MPPAC), in response to the sur-reply motion brought by the Mounted Police Association of Ontario (MPAO) for permission to file a supplementary affidavit of Peter Merrifield, sworn January 7, 2015 (the "Merrifield Supplementary Affidavit"), and in response to the sur-reply submissions/response of the Intervener, the Mounted Police Members' Legal Fund ("MPMLF"), filed on January 5 and January 8, 2016.

With respect to the MPAO's sur-reply motion and supplementary affidavit, it is the position of the BCMPPA/MPPAC that the motion should be refused on the basis that the affidavit is not proper sur-reply and thus should not be considered by this Court. As explained by the Federal Court:

Sur-reply evidence cannot merely contradict the conclusion of the reply evidence. Rather, it must contradict, qualify or directly impeach specific analysis or argument made in the reply affidavit. The party seeking to introduce the affidavits must identify with clarity and precision the exact statements, or paragraphs of the reply to which it responds.

*Canada (Attorney General) v. United States Steel Corporation*, 2011 FC 742 (CanLII) at para 17, citing *Eli Lilly Canada Inc v Apotex Inc*, 2006 FC 953 (CanLII) at para 10

The Merrifield Supplementary Affidavit fails to meet the requirements of proper sur-reply evidence. Other than broad general assertions about concerns with the Affidavit of Stephane Drouin, sworn December 24, 2015 and filed by the Respondent, the Attorney General of Canada, the Merrifield Supplementary Affidavit fails to identify with precision the statements or paragraphs of the reply to which he is responding.

As well, it is improper because it does not include any new evidence but rather merely restates and expands upon evidence already included in the affidavit of Mr. Merrifield, sworn December

17, 2015 (the “Merrifield December Affidavit”) (see for example paragraphs 4-8 of the Supplementary Affidavit and paragraphs 7-21 of the December Affidavit). It also includes improper opinion evidence (see for example paragraphs 6, 12-13).

With respect to the merits of the sur-reply evidence, should this Court allow the MPAO motion, the BCMPPA/MPPAC relies upon paragraphs 28, 30 and 49-54 of its memorandum of argument on the extension motion, regarding the need to prevent the continuation of the SRRP or any other employer-initiated labour relations program and notes with concern the multiple and potentially conflicting roles fulfilled by the affiant, Peter Merrifield. As set out in paragraphs 1-2 of the Merrifield December Affidavit, Mr. Merrifield is currently a Policy Advisor to the MPAO Board of Directors, but is also at the same time a Staff Relations Representative (SRR) in the SRRP that was found to be unconstitutional by this Court. Mr. Merrifield is also currently “a member of the Board of Directors of the...MPMLF.” In the substantive hearing before this Court in this case, the MPMLF put in submissions supporting the continuation of the SRRP and directly opposed to the right for RCMP members to be represented by an independent association of their own choosing (See MPMLF Factum on Appeal, paras. 3-6). As Mr. Merrifield also notes at para. 5 of his December Affidavit, “[m]any members of the MPAO have served as SRR’s or Sub-Representatives.”

As set out in the BCMPPA/MPPAC’s response to the extension motion, and at para. 29 of the affidavit of Rae Banwarie, the BCMPPA/MPPAC is opposed to any continuing role for the SRRP in representing RCMP members given that the SRRP is an unconstitutional program and that it is not independent of RCMP senior management. The overlapping roles and relationships between representatives of the MPAO, the SRRP and the MPMLF, only serve to heighten the BCMPPA/MPPAC’s concerns in this regard.

In response to paragraph 9 of the Merrifield Supplementary Affidavit, BCMPPA/MPPAC submits that s. 47.1 of the *RCMP Act* allows for member representation in the interim period prior to the introduction of the new legislative regime. BCMPPA/MPPAC has been using this provision to successfully represent its members (Paras. 2, 4, 5, 16, Banwarie Affidavit), as could the MPAO should they so choose.

With respect to the sur-reply submissions/response of the Intervener, the Mounted Police Members’ Legal Fund (“MPMLF”), filed on January 5 and January 8, 2016, the BCMPPA/MPPAC submits that in their role as an intervener they have no standing to make submissions. As set out in Brown, *Supreme Court of Canada Practice, 2016* at p. 367: “An intervener has only those rights conferred in the order, namely, to file a factum and if applicable, to appear on the appeal...interveners are generally not involved in...interlocutory proceedings.”

As a result, the BCMPPA/MPPAC submits that no consideration should be given to the MPMLF submissions, or to the Merrifield Supplementary Affidavit filed by the MPAO.

Sincerely,

  
Peter Engelmann

c.c. All parties (*see attached*)

**APPENDIX A: SERVICE LIST**

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