SUPREME COURT OF YUKON

Citation: *Schaer v. Yukon (Government of)* 2018 YKSC 17

Date: 20180329
S.C. No.: 17-AP014
Registry: Whitehorse

BETWEEN:

ANDREW SCHAER

PETITIONER

AND

JUSTIN FERBEY, DEPUTY MINISTER DEPARTMENT OF ECONOMIC DEVELOPMENT, GOVERNMENT OF YUKON

RESPONDENT

S.C. No.: 17-A0183

BETWEEN:

GOVERNMENT OF YUKON

PETITIONER

AND

ANDREW SCHAER

RESPONDENT

Before: Mr. Justice L.F. Gower

Appearances:

I.H. Fraser — Counsel for the Government of Yukon
Andrew Schaer — Appearing on his own behalf

RULING
(On applications for interim restraining order and interim jurisdiction)

INTRODUCTION

[1] The Government of Yukon (variously referred to here also as "YG") makes two applications for interlocutory relief, one in each of two proceedings. The proceeding filed first in time is *Andrew Schaer v. Justin Ferbey, Deputy Minister Department of Economic Development, Government of Yukon*, S.C. No. 17- AP014 (*Schaer v. Yukon*), and the second is *Government of Yukon v. Andrew Schaer*, S.C. No. 17- A0183 (*Yukon v. Schaer*).

[2] In *Schaer v. Yukon*, Mr. Schaer seeks judicial review of a decision to terminate his employment with YG on November 8, 2017. He alleges that his termination was in retaliation for his "blowing the whistle" on the actions of certain co-workers and a supervisor, which he claims constitute discrimination, bullying and abuse. In this case, YG's interlocutory application is for an interim restraining order prohibiting Mr. Schaer from having any contact with Denise Monkman, a former co-worker, until after the final disposition of that proceeding.

[3] In *Yukon v. Schaer*, YG seeks a permanent injunction preventing Mr. Schaer from publishing details of secret recordings of conversations with co-workers that he made while still employed. In some of these conversations Mr. Schaer himself was involved as a participant, however in others, it appears that he was not. Here, YG's interlocutory application is for an interim injunction prohibiting Mr. Schaer from making public any data or information that came to his knowledge by reason of his employment with YG, unless that disclosure is authorized in advance by this Court or YG.

[4] The Government also seeks court costs in each of the applications.

[5] Deputy Justice Aston, of this Court, presided over a case management conference on *Schaer v. Yukon* on February 27, 2018. After hearing submissions from the parties, he made the following orders:

1) The judicial review was set for a hearing on May 24, 2018;
2) There is to be no further material filed or amendments to the material, without the consent of the other side, or an order of this Court;
3) Each side is permitted to cross-examine on the material filed, but any cross-examination of Denise Monkman is to be done by counsel on Mr. Schaer's behalf, or by written interrogatories. The cross-examinations, or written interrogatories, are to be completed by April 15, 2018; and
4) When the matter proceeds on May 24, 2018, the applicant and respondent will each be limited to two hours for oral argument.

[6] I presided at a case management conference on March 20, 2018 on *Yukon v. Schaer*. At that time, I was made aware by counsel that YG intended to bring its interlocutory applications in each of the two actions, and was content that they be heard together. Counsel further indicated that he had no objection to Mr. Schaer's proposal that his application for judicial review and YG's petition for a permanent injunction be heard together on May 24, 2018. Because the two interlocutory applications are related and arise out of the same factual context, and because it would be a more efficient use of judicial resources, I directed that both be heard together on March 22, 2018. They were, and these are my reasons.

[7] Although I have not yet been asked to rule on whether the judicial review should be heard at the same time as the application for a permanent injunction, for the same reasons, it makes sense to do so, and I so direct.

[8] Because I will be the presiding judge on May 24, 2018, I instruct myself to be cautious on these interim applications, as I do not wish to appear to prejudge any matters which may require subsequent findings of fact or conclusions of law. Having said that, much of the factual context is uncontroversial, and I will set it out next.

FACTUAL BACKGROUND

[9] On May 10, 2017, Mr. Schaer commenced his employment with YG's Department of Economic Development as a Senior Business Development Advisor. In doing so, he executed the following "Solemn Affirmation of Office":

> I do solemnly and sincerely affirm that I will truly and faithfully and to the best of my skill and knowledge execute and perform the duties that devolve upon me by reason of my appointment or employment in the Public Service, including the duty not to disclose or make known, without due authority in that behalf, any matter that comes to my knowledge by reason of such appointment or employment. (my emphasis)

[10] Mr. Schaer was subject to a period of probation of six months, which was set to expire November 9, 2017. On November 3, 2017, this period of probation was extended a further six months to May 9, 2018 (The letter extending the probation is actually dated October 26, 2017, however, it was not delivered to Mr. Schaer until November 3, 2017).

[11] There is a dispute between the parties about whether Mr. Schaer's job performance was appropriately evaluated, as required by s. 17.11 of the *Collective Agreement* between YG and the Public Service Alliance of Canada. Mr. Schaer effectively argues that he only had one such evaluation meeting with his supervisor,

Eddie Rideout, on June 20, 2017, and received no indication that his performance was unsatisfactory prior to the decision to extend his probation. YG's representative, Deputy Minister Justin Ferbey ("DM Ferbey"), has deposed that there were multiple meetings and communications regarding Mr. Schaer's performance:

1) June 20, 2017 - meeting between Mr. Schaer and Mr. Rideout;
2) July 18, 2017 - meeting between Mr. Schaer and Mr. Rideout;
3) July 19, 2017 - follow-up email from Mr. Rideout to Mr. Schaer regarding their meeting the previous day;
4) August 3, 2017 - meeting between Mr. Schaer and Mr. Rideout; and
5) October 20, 2017 - meeting between Mr. Schaer and DM Ferbey.

[12] As stated, the meeting to extend Mr. Schaer's probation was held on November 3, 2017. Mr. Schaer met with Mr. Rideout and Assistant Deputy Minister, Stephen Rose ("ADM Rose"). According to ADM Rose's notes of that meeting, Mr. Rideout initially indicated to Mr. Schaer that the extension was not punitive, but was intended to address issues such as Mr. Schaer's ability to listen, his "taking over" of meetings, and getting to understand the needs and interests of the Departments' clients. Mr. Rideout indicated that Mr. Schaer's communication style was being perceived by others as "aggressive".

[13] Immediately after that meeting, Mr. Schaer requested a follow-up meeting with ADM Rose, alone, and attempted to persuade him to rescind the letter extending his probation. During the meeting, Mr. Schaer showed ADM Rose a list of quotes that he had on his cell phone, which I understand were presumably quotes of statements made by his supervisor or other co-workers. ADM Rose described Mr. Schaer as being "clearly agitated" during the meeting and it was his impression that Mr. Schaer showed

him the quotes on his cell phone to try to threaten him into taking back the extension letter and passing him through probation, in order to avoid publication of the quotes.

[14] Later that day, at 2:56 p.m., Mr. Schaer sent an email to DM Ferbey, ADM Rose and the Minister of Economic Development, Ranj Pillai. In the email, Mr. Schaer admits that, since commencing his employment, he has been both documenting and digitally sound recording his conversations and meetings "with all internal and external stakeholders". He again complained that his job performance had not been properly assessed pursuant to s.17.11 of the *Collective Agreement*. Mr. Schaer also went on to relay, by my count, 23 allegations about statements and conduct of Mr. Rideout, and other co-workers, which he implied were inappropriate and were examples of his employer's "heavy-handed tactics". Once again, he asked the recipients to rescind the letter extending his probation:

> … failing which, I shall forthwith avail myself of both civil remedies (including litigation) and those afforded me pursuant to the Collective Agreement.

[15] On November 4, 2017, Mr. Schaer alleges that he was examined at the Whitehorse General Hospital for severe chest pain and shortness of breath. He claims to have been diagnosed with Precordial Catch Syndrome ("PCS"), which he describes as a stress-related, painful medical condition which further triggers severe anxiety. He believes that the PCS is the direct result of the stress he experienced as a result of the discrimination and workplace wrongdoings, as well as Mr. Rideout's interference with his employment.

[16] Further, after Mr. Schaer was given the letter extending his probation period on November 3, 2017, he was invited to meet with his supervisors to discuss how to

address the performance issues that required his attention. He responded by email on November 6, 2017, to Mr. Rideout and ADM Rose, as follows:

> On the advice of counsel, I must respectfully decline to engage in any further discussion relating either directly or indirectly to either our meeting of November 3, 2017 or the Deputy Minister's letter [extending the probation, which was dated October 26, 2017].

[17] On November 8, 2017, DM Ferbey met with Mr. Schaer and provided him with a letter of the same date "releasing" him on probation, pursuant to s. 104 of the *Public Service Act*, effective immediately. In the letter, DM Ferbey said that Mr. Schaer's digital recording of meetings and conversations without consent was "highly inappropriate" and had "irreparably damaged the Government of Yukon's trust and confidence in [him] as an employee". DM Ferbey further stated that Mr. Schaer had the right to appeal that decision by written notice to himself within 10 days.

[18] Later on November 8, 2017, Mr. Schaer met with a representative of the Yukon Employees Union ("YEU"), Dan Robinson, to discuss his release on probation. According to Mr. Schaer, Mr. Robinson stated that, because he had not apprised the YEU of the alleged workplace discrimination and wrongdoings when they first occurred, the union could not represent him in a grievance of same. Mr. Robinson further advised Mr. Schaer that the employer had the right to reject an employee on probation. Mr. Schaer unsuccessfully appealed that decision to Ms. Robyn Benson, the National President of the Public Service Alliance of Canada, and currently takes the position that the YEU has breached its "duty of fair representation" in failing to take on his grievance.

[19] Mr. Schaer appealed the release on probation to DM Ferbey and attended a hearing with him on December 12, 2017. On December 27, 2017, DM Ferbey provided Mr. Schaer with his written decision not to reinstate his employment.

[20] It is uncontested by Mr. Schaer that beginning on November 30, 2017, and continuing through to and including March 8, 2018, he has been publishing information from his secret recordings of his supervisor and co-workers via a Twitter account, a website and his email address. By my count, there were approximately 28 such separate publications. I understand that in some of these communications Mr. Schaer has posted links to the actual recordings, the transcripts of those recordings, and to a copy of the affidavit he filed in support of his petition in *Schaer v. Yukon.* Mr. Schaer alleges that various statements made by his supervisor and co-workers constitute racial discrimination against Aboriginal persons, linguistic discrimination against Francophones, and religious discrimination against Christians.

[21] The allegations regarding religious and Francophone discrimination were included in Mr. Schaer's email to DM Ferbey, ADM Rose and Minister Pillai dated November 3, 2017. However, the allegation regarding racial discrimination was not. Mr. Schaer maintains the position that the Government has not investigated any of these allegations of workplace misconduct. On the other hand, DM Ferbey has deposed that he directed Mr. Schaer's allegations to be "fully investigated" and that he is advised by his Director of Human Resources, Charmaine Cheung, that this was done. He further deposed that he is familiar with the outcomes of those investigations and is satisfied that "appropriate corrective measures were taken wherever [those] were required". It is unclear whether these investigations included the allegation of racial discrimination.

LAW

1. The interim injunction

[22] The law applicable to each of these interim applications is not controversial.

[23] To obtain an interim injunction, the applicant must demonstrate on a balance of probabilities that:

1) There is a serious question to be tried, in the sense that the application is neither frivolous nor vexatious. Whether this test has been satisfied should be determined by the court on the basis of "common sense and an extremely limited review of the case on the merits";
2) The applicant will suffer irreparable harm if the interim relief is not granted; and
3) On an assessment of the balance of convenience, the applicant would suffer greater harm from the refusal of the interim injunction, pending a decision on the merits, than the respondent would, if one were granted.

RJR – MacDonald Inc. v. Canada (Attorney General), [1994] 1 S.C.R. 31, ("*RJR*") at paras. 78 through 80.

[24] As I understood him, and I confess that it was not always easy to do so, Mr. Schaer's submissions on this three-part test focused principally on the issue of whether there is a serious question to be tried. In particular, Mr. Schaer repeatedly submitted that YG's application for a permanent and an interim injunction against him "discloses no reasonable claim; is unnecessary, scandalous, frivolous, or vexatious and/or is an abuse of process and therefore should be dismissed pursuant to Rule 20(26)(a), (b) and (d)", of the *Rules of Court*. At the case management conference on March 20, 2018, I reminded Mr. Schaer that in order to have a proceeding struck on any of these bases,

he would have to bring an application, which he has not done. Nevertheless, I can take into account whether the legal question to be litigated on May 24, 2018 is a serious one, and that in turn requires a consideration of whether YG's case on the merits is "frivolous or vexatious". I am also to use my common sense here and not engage in a detailed examination of the merits.

[25] Almost all of Mr. Schaer's submissions in this regard turn on the "whistleblower" exception to the "duty of loyalty" owed by a public servant who is critical of the government he or she serves. The leading case in this regard is *Fraser v. Canada (Public Service Staff Relations Board)*, [1985] 2 S.C.R. 455 ("*Fraser*"), which summarized the law in this area as follows:

> 41 ... As a general rule, federal public servants should be loyal to their employer, the Government of Canada. The loyalty owed is to the Government of Canada, not the political party in power at any one time. A public servant need not vote for the governing party. Nor need he or she publicly espouse its policies. And indeed, in some circumstances a public servant may actively and publicly express opposition to the policies of a government. This would be appropriate if, for example, the Government were engaged in illegal acts, or if its policies jeopardized the life, health or safety of the public servant or others, or if the public servant's criticism had no impact on his or her ability to perform effectively the duties of a public servant or on the public perception of that ability. But, having stated these qualifications (and there may be others), it is my view that a public servant must not engage, as the appellant did in the present case, in sustained and highly visible attacks on major Government policies. In conducting himself in this way the appellant, in my view, displayed a lack of loyalty to the Government that was inconsistent with his duties as an employee of the Government. (my emphasis)

[26] In *Read v. Canada (Attorney General)*, 2006 FCA 283 ("*Read*"), the Federal Court of Appeal recognized that *Fraser* continues to be good law. Even though it was a

pre-*Charter* case, the Court recognized that the common law duty of loyalty, as enunciated in that case, constitutes a reasonable limit under s. 1 of the *Charter of Rights and Freedoms,* to the freedom of expression under s. 2 (para. 109). The Court also commented as follows:

> …
>
> While the freedom of public servants and, in the present case, members of the RCMP, to speak out is protected in common law and by the Charter, the "whistleblower" defence must be used responsibly. It is not a license for disgruntled employees to breach their common law duty of loyalty or their oath of secrecy. In this case, the confidential documents disclosed by the applicant … do not disclose either an illegal act by the RCMP or a practice or policy which endangers the life, health or safety of the public … (emphasis already added) (para. 52)

[27] The Federal Court of Appeal in *Read* also commented on the purpose of the *Fraser* exceptions to the common law duty of loyalty as follows:

> 119 … It is important to remind ourselves that the purpose of the exceptions formulated in *Fraser*, is not to encourage or allow public servants to debate issues as if they were ordinary members of the public, unencumbered by responsibilities to their employer. Rather, the purpose of the exceptions, as I understand them, is to allow public servants to expose, **in exceptional circumstances**, government wrongdoing. It appears to me that the exceptions are sufficiently broad to allow public servants to speak out when circumstances arise where disclosure must take precedence over the duty of loyalty. (my emphasis)

2. The interim restraining order

[28] YG submitted that this court, as a superior court, has inherent jurisdiction to impose an interim restraining order prohibiting Mr. Schaer from having contact with Ms. Monkman until the judicial review proceeding is finally disposed of. I did not understand Mr. Schaer to take any issue with that proposition. Indeed, his written submission made

no reference whatsoever to the interim restraining order. In *R. v. Caron,* 2011 SCC 5, the Supreme Court defined the inherent jurisdiction of a superior court as follows:

> 24 The inherent jurisdiction of the provincial superior courts, is broadly defined as "a residual source of powers, which the court may draw upon as necessary whenever it is just or equitable to do so": I. H. Jacob, "The Inherent Jurisdiction of the [page 94] Court" (1970), 23 *Curr. Legal Probs.* 23, at p. 51. These powers are derived "not from any statute or rule of law, but from the very nature of the court as a superior court of law" (Jacob, at p. 27) to enable "the judiciary to uphold, to protect and to fulfil the judicial function of administering justice according to law in a regular, orderly and effective manner" (p. 28). In equally broad language Lamer C.J., citing the Jacob analysis with approval (*MacMillan Bloedel Ltd. v. Simpson*, [1995] 4 S.C.R. 725, at paras. 29-30), referred to "those powers which are essential to the administration of justice and the maintenance of the rule of law", at para. 38. See also *R. v. Cunningham*, 2010 SCC 10, [2010] 1 S.C.R. 331, at para. 18, *per* Rothstein J., relying on the Jacob analysis, and *Canada (Human Rights Commission) v. Canadian Liberty Net*, [1998] 1 S.C.R. 626, at paras. 29-32.

ANALYSIS

1. The interim injunction

[29] As stated, almost all of Mr. Schaer's submissions on this point turned on whether there is a "serious question" to be litigated on May 24, 2018. He says that YG's application for a permanent injunction preventing him from publishing any further data or information obtained during his employment is a frivolous and vexatious one, primarily because he falls within the whistleblower exception to the duty of loyalty. I reject that argument at this interim stage for four reasons.

[30] First, it must be remembered that this issue is yet to be fully argued on May 24th. For present purposes, I perceive my role as deciding whether the Government raises a

fairly arguable issue, and not to decide finally the outcome of that issue now. Second, the whistleblower exception or defence is not absolute. Rather, it requires a balancing of interests. For example, as in *Read*, cited above, if a purported "whistleblower" has used the threat of going public with allegations of misconduct to protect himself from discipline or termination, then the defence is unlikely to succeed (para. 86). Third, it must also be remembered that YG is not seeking to undo what has already been done by Mr. Schaer in making public his various allegations. Rather, it is to prevent him from making further disclosures of confidential information acquired during his employment. In this regard, there is absolutely no evidence in the record that any further disclosures which Mr. Schaer might seek to make would meet the *Fraser* test, cited above, established by the Supreme Court of Canada to justify same. Finally, I am not persuaded on a balance of probabilities that Mr. Schaer can argue on May 24th that he was terminated because of his threat to publish the allegations in his email to the DM, ADM and Minister of November 3, 2018. A close reading of that email does not disclose any such threat.

[31] I pause here to deal briefly with an argument Mr. Schaer raised regarding his health issue. Once again, I am not sure I understand his argument. Mr. Schaer pointed to the passage I quoted above from *Fraser* which talks about the whistleblower exception potentially being engaged where policies of the Government have "jeopardized the life, health or safety of the public servant or others". Mr. Schaer seemed to suggest that, because he had been diagnosed at the Whitehorse General Hospital with PCS on November 4, 2017, this somehow supports the legitimacy of his whistleblower argument. However, I must reject this submission as well. First, there is

absolutely no evidence that any "policies" of YG were threatening Mr. Schaer's health. Without prejudging anything, it would seem that Mr. Schaer was reacting to the stress of his probation being extended. At that point, his employment had not yet been terminated. Second, to the extent that Mr. Schaer alleged, in his email of November 3, 2017, that his supervisor and co-workers performed various illegal or discriminatory acts, there is no evidence that these acts adversely affected his health in any way at the time they allegedly occurred. Third, Mr. Schaer cannot argue that his health was jeopardized by YG's reaction to his threat to go public with these allegations, because he had not yet made any such threat.

[32] With respect to irreparable harm, I agree with YG's counsel that a public authority generally has a lighter onus than a private applicant. In *RJR*, cited above, the Supreme Court said as much:

> In the case of a public authority, the onus of demonstrating irreparable harm to the public interest is less than that of a private applicant. This is partly a function of the nature of the public authority and partly a function of the action sought to be enjoined. The test will nearly always be satisfied simply upon proof that the Authority is charged with the duty of promoting or protecting the public interest and upon some indication that the impugned legislation, regulation, or activity was undertaken pursuant to that responsibility. Once these minimal requirements have been met, the court should in most cases assume that irreparable harm to the public interest would result from the restraint of that action. (p. 346)

[33] Further, when dealing with a breach of confidentiality, irreparable harm is effectively presumed. As YG's counsel submitted, the loss of confidentiality is itself a detriment, even if the information disclosed has no commercial value, or causes no monetary loss: *Cadbury Schweppes Inc. v. FBI Foods Ltd.*, [1999] 1 S.C.R. 142, at p. 176.

[34] Finally, in addressing the balance of convenience, it seems abundantly clear to me that if an interim injunction is not granted, by the time this Court hears the main application for the permanent injunction, the issue may well be moot, because Mr. Schaer may have disclosed all the remaining confidential information that he has, leaving nothing for the permanent injunction to protect. By that stage, the potential damage to YG will be done. On the other hand, if an interim injunction is granted, then Mr. Schaer will simply be restrained for a relatively brief period of time from disclosing further confidential information, without prejudice to his right to argue that his termination of employment was unjust, when the judicial review is fully argued.

[35] To the extent that Mr. Schaer feels it is necessary to disclose further confidential information in order to make his case on the judicial review, or to respond to the Government's application for a permanent injunction, then I grant him leave to file further supplementary affidavit material, but I direct that it immediately be sealed upon filing. Of course, Mr. Schaer will have to comply with the case management order of Deputy Justice Aston of February 27, 2018, that no further material shall be filed without the consent of the other side or an order of the court. If necessary, Mr. Schaer can make the application to the Court by way of a requisition, however I fully expect that in the circumstances, YG's counsel would consent to the filing of supplementary materials which are relevant.

2. The interim restraining order

[36] Only one legitimate issue was raised on this question. YG's counsel acknowledged at the hearing on March 22, 2018, that he had included in affidavit #3 of DM Ferbey (filed March 19, 2018) two emails he received from Mr. Schaer, both dated

March 2, 2018, which were marked “Without Prejudice”. In the first of those emails, Mr. Schaer included the following remarks regarding Ms. Monkman:

> Ms. Monkman shall either recant the allegations contained in her Affidavit or I shall have her charged with perjury and contempt of Court; commence a civil action against Ms. Monkman in Defamation; file a written complaint with the Law Society, and make public the enclosed date and time-stamped screenshots [of text messages he exchanged with his fiancée] and referenced digital audio recordings evincing Ms. Monkman’s referenced statements where Ms. Monkman, your client and yourself shall be judged in the court of public opinion for your collective malfeasance and lies to the Honourable Court.

In the second email, Mr. Schaer makes a submission that his oath of confidentiality and non-disclosure had been vitiated by the “violations of law” committed by the various co-workers he secretly recorded, and presumably by the failure of the Government to take action in response.

[37] Because both emails have been marked “Without Prejudice”, YG’s counsel acknowledges that the issue of settlement privilege arises. This was dealt with by me in *Ross River Dena Council v. The Attorney General of Canada*, 2009 YKSC 4, where I stated:

> 34 The three criteria for settlement privilege are set out by Sopinka et al. in *The Law of Evidence in Canada*, 2nd ed. (Markham: Butterworths, 1999), at p. 810:
>
> "(a) a litigious dispute must be in existence or within contemplation;
> (b) the communication must have been made with the express or implied intention that it would not be disclosed to the court in the event that the negotiations failed; and,
>
> (c) the purpose of the communication must be to attempt to effect a settlement"

All three conditions must be met for the privilege to apply. In that case, I also cited case law noting that the focus of settlement privilege is in the public interest in encouraging settlements and that the protection afforded settlement communications is less stringent than that afforded to solicitor-client privilege (paras. 25 and 36).

[38] In the case at bar, there is no question that when Mr. Schaer drafted and sent the emails, litigation was already in existence, as he filed his petition on January 12, 2018.

[39] However, it is less clear whether Mr. Schaer intended that those communications would not be disclosed to this Court. I say that for two reasons. First, the nature of their content, which Mr. Schaer would presumably argue supports his position on both proceedings. Second, because Mr. Schaer himself appended to his affidavit in support of the petition the email he sent to the DM, ADM, and Minister on November 3, 2017 (referenced above), and it was similarly marked “Without Prejudice”.

[40] With respect to the third condition precedent for settlement privilege to apply, I do not think that it can reasonably be argued that anything in either email can be construed as an attempt to effect a settlement.

[41] Accordingly, the three conditions to invoke settlement privilege have not all been met. I will therefore take the emails into consideration in resolving the question of the interim restraining order.

[42] I note that Deputy Justice Aston previously touched on this issue at the case management conference on February 27, 2018. At that time, he had regard to the submissions of YG’s counsel, based on Ms. Monkman’s affidavit, that she has suffered some adverse emotional reactions from conversations and confrontations with Mr. Schaer in the workplace. She deposed that on October 19, 2017, she could not bring

herself to go into work. On October 24th, she went back to the office, but was permitted by her supervisor, Mr. Rideout, to work from home. However, before Ms. Monkman left the office that day she had another interaction with Mr. Schaer which made her realize that she needed additional time away from him "and the environment of paranoia he created". She therefore went off on leave again. Ms. Monkman then deposed that she returned to work on November 6 or 7, 2017, but that she does not believe she could ever work happily or productively again in an office with Mr. Schaer.

[43] Deputy Justice Aston was satisfied by these submissions and that evidence that it was appropriate to make the order that Mr. Schaer not cross-examine Ms. Monkman in person, but rather through retaining counsel or by written interrogatories. Deputy Justice Aston said that his direction struck the proper balance between Mr. Schaer's ability to test the evidence and Ms. Monkman's apparent need to be protected from further confrontation with Mr. Schaer.

[44] There is no reason to suppose that Ms. Monkman's attitude towards Mr. Schaer has changed in the meantime. Therefore, any further contact by him between now and the final disposition of the judicial review will, in all likelihood, continue to cause her emotional distress.

[45] Indeed, it seems even more likely that would be the case now, given the tone of his email of March 2, 2018, which was cc'd to Ms. Monkman, and which can reasonably be described as bullying and threatening and an attempt to get her to change her evidence.

[46] Finally, on this issue, there is little or no prejudice to Mr. Schaer by being prohibited from having contact with Ms. Monkman, directly or indirectly, between now and the final resolution of the judicial review application.

CONCLUSION

[47] For the above reasons, I grant the interim injunction sought in YG's notice of application filed March 21, 2018. I further grant the interim restraining order in their notice of application filed March 19, 2018. The government will have its costs on both applications, which pursuant to Rule 60(14)(a), I fix at $500 per application, inclusive of disbursements.

[48] As I indicated at the hearing on March 22nd, there is still an outstanding issue about YG's objection under Rule 54(23), filed January 18, 2018, that Mr. Schaer's request in his petition under Rule 54(20) for material from the decision-maker is improper. YG objected because Mr. Schaer referenced two decisions in his petition, the initial decision to terminate his employment on November 8, 2017, and the subsequent decision by DM Ferbey to dismiss Mr. Schaer's appeal of that termination, pursuant to his letter of December 27, 2017. YG points out that Rule 54(4) limits an application for judicial review "to a single decision". That is strictly speaking correct, however the two decisions are really different parts of the one decision to terminate Mr. Schaer's employment. The original announcement was made on November 8, 2017, and the confirmation of that decision, on the appeal, was made on December 27, 2017. Accordingly, there is a connection and a continuum between the two. Thus, I expect the evidence and the legal arguments relating to each will be related. Accordingly, I will allow both to be reviewed within Mr. Schaer's judicial review application, bearing in mind

that it is the decision to terminate his employment which he is seeking to quash. I further direct that YG provide all the materials in its possession relating to DM Ferbey's decision to terminate Mr. Schaer's employment on November 8, 2017 and his decision to reject Mr Schaer's appeal on December 27, 2017. This material is to be filed with the court in a supplementary affidavit from DM Ferbey, and delivered to Mr. Schaer no later than 4 p.m. on Wednesday, April 5, 2018. I rely upon the following decisions for proceeding in this fashion: *Truehope Nutritional Support Ltd. v. Canada (Attorney General)*, 2004 FC 658, at paras. 6 through 9; *D'or v. St. Germain*, 2013 FC 223, at paras. 10 and 11.

[49] YG's counsel will prepare the order resulting from this ruling. I waive the requirement for Mr. Schaer's signature approving the form of the order, but I direct that the draft order come to me for review before it is issued.

_____

GOWER J.