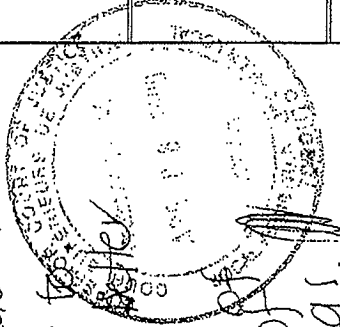


DIANE M. LACALAMITA
Plaintiff

MCCARTHY TETRAULT LLP
and
Defendant

Court File No: 08-CV-352778 PD1

April 23/09. M. MacKillop for moving party, plaintiff
T. O'Sullivan for responding party, defendant.



The plaintiff brings this motion for an Order to
compel the defendant to deliver a further and
Affidavit of documents.

The test for disclosure and production of
a document is whether it has a semblance of
relevance to the issues raised in the pleadings.

Documents Related to the CATALYST REPORT

In October 2004 the defendant engaged Catalyst Inc. to examine
the firm's environment for women lawyers. Catalyst prepared a
report dated December 16/05 which examined the human resources
of the firm for the period 1999-2003.

The plaintiff has pleaded and relied upon findings in the
Catalyst report to support her allegation that she was a victim
of gender discrimination that formed part of a culture of
gender discrimination at the firm. The defendant at paragraphs
17 and 38 of the statement of defence specifically denies
any culture of discrimination or any systemic gender-based
discrimination within the firm. Certainly based on the
pleadings, the requested documents are relevant and producible.
The defendant relies on Wilkinson v Wilkinson saying

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

MOTION RECORD
OF THE MOVING PLAINTIFF

Shields O'Donnell MacKillop LLP
65 Queen Street West, 18th Floor
Toronto, Ontario Canada M5H 2M5
Malcolm MacKillop LSUC#: 290870
Tel: 416-304-6417
Fax: 416-304-6406

Law Office of Mary Eberts
P.O. Box 19047
Station Walmer
Toronto, Ontario Canada M5S 1X1

Mary Eberts LSUC# 14197F
Tel: 416-966-0404
Fax: 416-966-2999

Lawyers for the Plaintiff

that because both parties agree with the statistical findings of the catalyst report, there is no need to go behind the report to obtain additional information or documentation. In my view, whether the parties agree or not with the statistical analysis and findings, it is clear that because both parties will rely on the report, the reliability of the report's findings is a critical issue in this action. It is therefore necessary to go behind the report to obtain the background documents, the ^{Six (6)} drafts of the catalyst report, the internal ^{old} communications leading to the report including the firm's instructions to ~~the~~ catalyst.

II Documents related to the plaintiff's recruitment by the defendant

The plaintiff was allegedly recruited in 2001 and again in 2003. She was ~~allegedly~~ ^{ALLEGEDLY} provided with an initial employment offer dated FEB. 3/03 and a revised employment offer dated FEB. 5/03 - the first one detailing an 'equity partnership in 2004' while the second offered an 'income partnership'. There has been a paucity of disclosure around this issue. The defendant, which delivered an Affidavit of Litigation Control's associate states that the defendant has delivered all relevant, producible documents relating to this issue. The plaintiff notes some emails (hard copies) have been produced but the question whether McCarthy's has conducted an e-discovery. In an effort to permit full disclosure on this issue, Mr. Richardson, Mr. Reddor and Ms. Choun's emails for the period FEB. 3-5/03 shall be reviewed and any relevant information in regards to the plaintiff shall be produced.

III - Recruitment of Senior lateral lawyers

The plaintiff alleges that the defendant made certain representations to her about joining the firm as an income and/or equity partner which she has since learned were not true. The plaintiff alleges, for example, that contrary to the representations, the defendant did take in lateral hires as income or equity partners. The defendant has

SUPERIOR COURT OF JUSTICE

FILE DIRECTION/ORDER

Master's Endorsement Continued

admitted at paragraph 11 of the Statement of Defense that laterals have been admitted to the partnership. Based on the pleadings then, the documentation requested with respect to laterals is relevant. However, the demand for every document relating to every senior lateral recruited lawyer is excessive and overbroad. Accordingly I narrow the request and order production of the documentation in relation to 8+ year lateral hires in IP² for the period from 2003 to 2006. The documentation shall be redacted so that names or other identifiable information is not present.

- (iv) Documents setting out statistics for the defendants' lawyers ^{and IP litigation} in the Toronto office.
- (v) Documents related to performance review
- (vi) " " " compensation
- (vii) billing rates
- (viii) lawyers admitted to equity partnerships

With respect to these categories and offer learning submission from Plaintiff's counsel and partial submissions from defence counsel, the ~~plaintiff's~~ solicitors have agreed to meet to attempt to resolve these issues.

The balance of the ~~within~~ motion shall be heard for one half day on July 13 at 2:30 p.m.

In the event that the parties reach impasse where I would be of assistance, they are welcome to request a case conference either in person or by phone so their issues can be addressed and perhaps resolved short of further motion activity.

In the spirit of Rule 1.04, the action will be managed by me (but not formally moved into CH) with a view to having issues addressed in a just, economical and expeditious fashion.