

Federal Court



Cour fédérale

Date: 20160401

Docket: T-1513-14

Citation: 2016 FC 371

Ottawa, Ontario, April 1, 2016

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

SAFWAN ALBATAL

Applicant

and

**THE COMMISSIONER OF THE ROYAL
CANADIAN MOUNTED POLICE**

Respondent

JUDGMENT AND REASONS

[1] The applicant seeks judicial review of a decision by the Commissioner of the Royal Canadian Mounted Police [RCMP] not to investigate the applicant's complaint alleging corruption in the Canadian Embassy in Berlin, Germany. The applicant seeks an order in the nature of *mandamus* compelling the RCMP to initiate an investigation into the complaint.

[2] For the reasons that follow, the application is dismissed, the applicant having failed to demonstrate that the RCMP has a duty to investigate the complaint.

I. Background

[3] The applicant, Safwan Albatal, is a self-represented litigant who was born in Damascus, Syria on March 23, 1971 and is currently a resident of the City of Ottawa, Ontario.

[4] In the evidence filed in support of this application, Mr. Albatal recounts that he was in the process of applying to immigrate to Canada through the Canadian Embassy in Berlin, Germany [the Embassy] while residing in Germany. In November of 2002, Citizenship and Immigration Canada [CIC] waived the need for an immigration interview. However, in December of 2003, CIC contacted Mr. Albatal for an interview [the Interview].

[5] Mr. Albatal attended the Embassy for the Interview in March of 2004 where he was caught in the Embassy elevator for approximately a half hour, an event he believes was intentional. Once leaving the elevator Mr. Albatal attended the Interview which he describes as a security interview not the skilled-worker interview he anticipated.

[6] Based on the questioning Mr. Albatal formed the belief that the Interview was intended to place him in grave danger should he ever visit his country of birth in the future. Mr. Albatal further believes that an unidentified corrupt Canadian official provided fabricated information about him to the Embassy in order to trigger the Interview. He identifies either bribery and/or “vicious favouritism” as the motive for this alleged corrupt official’s actions. Mr. Albatal further

alleges that the corrupt Canadian official was contacted by an influential German opponent who unsuccessfully tried to prevent Mr. Albatal from earning his PhD while in Germany. Mr. Albatal alleges this influential German opponent contacted the corrupt Canadian official who then caused Mr. Albatal to be subjected to the security-type immigration interview.

[7] Notwithstanding these events, CIC approved Mr. Albatal's immigration application and he landed in Canada in 2005.

A. *Access to Information Request*

[8] In December of 2012, Mr. Albatal submitted an access to information request to CIC pursuant to the *Access to Information Act*, RSC 1985, c A-1 [ATIA]. Mr. Albatal then filed two complaints with the Office of the Information Commissioner [OIC]. The OIC recorded both complaints as resolved after CIC disclosed all of the information on Mr. Albatal's immigration process within CIC's control to him in April of 2013.

[9] Dissatisfied with the information he received from CIC, and with the OIC's response, Mr. Albatal filed an application for judicial review with this Court. The application was dismissed as moot by my colleague Justice Elizabeth Heneghan on the basis that CIC had disclosed all the records in their control relating to Mr. Albatal and thus there was no longer a basis for the application for judicial review. In dismissing the application Justice Heneghan notes that CIC had no control over information in the possession and control of provincial authorities and if Mr. Albatal was seeking such information his remedy was to make a request to provincial

authorities in accordance with relevant provincial legislation (*Albatal v Canada (Minister of Citizenship of Immigration and Immigration Canada)*, 2014 FC 1026 at para 29).

[10] Mr. Albatal's appeal to the Federal Court of Appeal was dismissed in January of this year on the basis that Justice Heneghan did not err in concluding that "Mr. Albatal's suspicions about the existence of other records was not a ground to order the Minister to do anything more" (*Albatal v Canada (Minister of Citizenship and Immigration Canada)*, 2016 FCA 32 at para 2).

B. *Complaint to the RCMP*

[11] In May of 2014, Mr. Albatal contacted the RCMP to report possible corruption in the Embassy and was advised by email that the RCMP would not investigate the complaint, which the RCMP viewed as an immigration matter that should be directed to CIC.

[12] Mr. Albatal initiated a complaint with the Commission for Public Complaints Against the Royal Canadian Mounted Police. The complaint led to a follow-up request from the RCMP for further documentation from Mr. Albatal, which was provided.

[13] Mr. Albatal's allegations, including the evidence he provided, was reviewed. After contact with CIC officials, the RCMP determined that the matter should be referred to the Department of Foreign Affairs, Trade and Development Canada [DFATD]. This information was communicated to Mr. Albatal in a letter from Sergeant Roach dated June 3, 2014. In that letter, Mr. Albatal was advised that the matter does not fall within the RCMP mandate, Mr. Albatal's information package was returned to him and it was suggested that Mr. Albatal address

his concern to DFATD. Mr. Albatel was further advised that should he have additional information or documents justifying a reassessment of the RCMP position, that information would be received. It is this letter that is subject to review in this judicial review application.

II. Issues

[14] The sole issues arising out of this application is whether or not Mr. Albatel has satisfied the test for an order in the nature of *mandamus* from this Court compelling the RCMP to investigate his complaint.

III. Analysis

[15] The test for obtaining an order in the nature of *mandamus* is well known and set out in full in *Apotex Inc v Canada (Attorney General)*, [1993] FCJ No 1098 at para 55, 18 Admin LR (2d) 122 (CA) [*Apotex*]. For the purpose of this application, Mr. Albatel must demonstrate that the respondent: (1) has a legal duty to act; and (2) the duty is owed to Mr. Albatel. In addition, *mandamus* will not be used to compel the exercise of an unfettered discretion or to compel the exercise of a fettered discretion in a particular way. These principles are reflected in Justice Matlow's decision in *Holmes v White*, 2014 ONSC 5809 at paras 14-15, 329 OAC 81 (Div Ct) [*Holmes*], where, relying on *Apotex*, he states:

[14] *Mandamus* is a particular form of judicial relief. While courts regularly quash decisions made by government officials that are found to violate their statutory or regulatory powers, requiring a government official to do a specified positive act is a more nuanced venture. A court requiring a government official to act can raise questions of judicial authority, legitimacy, and the balance of powers as between the executive and the judiciary. Accordingly, tests have been developed to ensure that the court exercises its

undoubted power of compulsion only in appropriate cases. Ramsay J. set out the correct test as accepted by the Supreme Court of Canada in *Apotex Inc. v. Canada (Attorney General)*, [1994] 1 F.C. 742 (Fed. C.A.) at para. 45, aff'd [1994] SCJ No. 113.

[15] Among the many elements of the multi-pronged *Apotex* test for *mandamus* are requirements that: (a) the respondents must have a legal duty to act; (b) the duty must be owed to the applicant; and (c) *mandamus* will not be available to compel the exercise of an unfettered discretion or to compel the exercise of a fettered discretion in a particular way. The applicant's proceeding runs afoul of each of these elements of the test. Ramsay J. made no error of law or palpable and overriding error of fact in concluding that it is plain and obvious that the applicant cannot succeed. This is not a novel case or a close call. It is a case in which binding authority and all of the relevant persuasive authorities on point stand directly opposed to the applicant's request.

[16] Justice Matlow then proceeds to address the question of whether or not the police have a public or private law duty to investigate, concluding that no such duty exists but rather the police exercise a discretion in determining whether or not to initiate an investigation into a complaint:

[16] It has been held many times that the police do not owe either a public law or a private law duty to any individual to investigate crime.

[...]

[18] The English cases concluded that while the court can require the police to exercise their discretion to decide whether to investigate, the court should not dictate to the police the outcome of that discretionary decision. Yet in this case, the applicant seeks to have this Court do precisely that [emphasis added]. All three police departments represented by the respondents have already exercised their discretion and decided not to investigate the allegations being made by the applicant. The applicant asks the Court to compel the police to investigate his allegations against the CN Police Service. This is the very thing that the English courts, on which the applicant relies, have said that they cannot and must not do.

[19] The same result is reached under the third prong of the test in *Apotex* as recited above. The Court cannot issue

mandamus to require a particular result. If the discretion of the police is unfettered, then it is not amenable to mandamus at all. But even if the police have only a fettered or limited discretion, the Court may be entitled to require a recalcitrant office holder to make a decision, but the Court cannot dictate the outcome of the discretionary decision [emphasis added]. The applicant asks the Court to do that which the Supreme Court of Canada has said it cannot do.

[20] The applicant falls back on statements made by the Supreme Court of Canada and the Federal Court of Appeal to the effect that in certain flagrant and extraordinary cases, the courts can review abusive exercises of prosecutorial discretion. (See: *R. v. Beaudry*, 2007 SCC 5, *Ochapowace Indian Band v. Canada (Attorney General)*, 2009 FCA 124 and *Baker v. Canada (Minister of Citizenship & Immigration)*, [1999] S.C.J. No. 39. He submits that, taken together, these cases provide that every alleged victim of a crime has a right to have the court compel the police to either investigate his or her allegations or to require the police to establish in court that they have objectively and subjectively reasonable grounds to decline to investigate. Just stating the proposition is to reject it. **None of the cases relied upon by the applicant deal with *Apotex* or suggest that a court can order mandamus to compel a police force to investigate a particular criminal offence at the behest of an alleged victim of crime** [emphasis added].

[17] In this case it is clear that the RCMP considered Mr. Albatal's complaint, concluded that the evidence provided does not disclose a basis to believe that there was any corruption involved on the part of any federal government agency or ministry in respect of Mr. Albatal's immigration application and have exercised their discretion not to initiate an investigation.

[18] As was the case in *Holmes*, Mr. Albatal fails on all three elements required to succeed in an application for an order in the nature of *mandamus* (also see *Ochapowace First Nation (Indian Band No 71) v Canada (Attorney General)*, 2007 FC 920 at paras 40-41, 78 WCB (2d)

352 and *Goodwin v British Columbia (Superintendent of Motor Vehicles)*, [2015] 3 SCR 250 at para 28).

[19] Mr. Albatl's suspicions that CIC is in possession of undisclosed documentation relevant to his allegations, documentation that Mr. Albatl believes an RCMP investigation could compel CIC to produce, does not change the character of this application. Mr. Albatl has exercised his right to access CIC held information and pursued his remedies before the OIC and the Courts. It has been judicially determined that CIC has disclosed to Mr. Albatl all the records in their control relating to him (*Albatl v Canada (Minister of Citizenship of Immigration and Immigration Canada)*, 2014 FC 1026 at paras 29, 31).

[20] Mr. Albatl argues that the RCMP misunderstood their jurisdiction, I disagree. The RCMP reviewed the information provided with Mr. Albatl's complaint and concluded that the information did not disclose a basis to believe an offence had been committed. The RCMP owes no duty to Mr. Albatl to investigate. The RCMP has considered Mr. Albatl's complaint and exercised their discretion to not investigate. This Court cannot dictate the outcome of that discretionary decision. Mr. Albatl's application for *mandamus* must fail.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed. Costs on the application to the respondent.

"Patrick Gleeson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1513-14

STYLE OF CAUSE: SAFWAN ALBATAL v THE COMMISSIONER OF THE
ROYAL CANADIAN MOUNTED POLICE

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: JANUARY 18, 2016

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