Federal Court Cour fédérale

Date: 20160518

Docket: T-289-16

Citation: 2016 FC 558

Ottawa, Ontario, May 18, 2016

PRESENT: The Honourable Mr. Justice LeBlanc

BETWEEN:

ADE OLUMIDE

Applicant

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

Respondent

ORDER AND REASONS

[1] The Court is seized of two motions in this matter: one from the Respondent seeking an Order striking out the Notice of Application on the basis that it is bereft of any chance of success and is an abuse of the Court's process; the second is by the Applicant seeking amendments to his Notice of Application. The Respondent also seeks to have the Applicant's affidavit filed in support of his Notice of Application struck out on the basis that it is replete with personal views and opinions.

Background

[2] The Applicant claims to have been actively involved in politics for the last 10 years. In 2015, he brought a judicial review application before this Court challenging his disqualification by the Conservative Party of Canada (CPC) as a candidate for the CPC in the 2015 general election in the federal riding of Kanata-Carleton. On July 23, 2015, the Court dismissed the application on the basis that it lacked jurisdiction to hear and decide the matter since the CPC is not a "legal entity that exercises powers by or under an act of Parliament" and since "[t]he decisions that Mr. Olumide seeks to challenge are private matters that do not constitute decisions of a federal board, commission or tribunal" pursuant to section 18 of the *Federal Courts Act* (*Olumide v Conservative Party of Canada,* 2015 FC 893 [*Olumide* FC]).

[3] The Court's decision was unanimously upheld by the Federal Court of Appeal which noted that the Applicant had "commenced in the Ontario Superior Court an action in damages against the Conservative Party of Canada and other defendants seeking 4.8 million dollars under various heads of damages" (*Olumide v Conservative Party of Canada*, 2015 FCA 218 [*Olumide* FCA]).

[4] Following these two decisions, the Applicant filed the present Notice of Application seeking a declaration that sections 457(1), 476 and 504 of the *Canada Elections Act*, SC 2000, c 9 are unconstitutional on the ground that they prevent individuals who have been denied a party nomination, like him, to bring a civil action against political parties such as the CPC. He

contends that the constitutionality of these provisions – mainly of section 504 – should be reviewed on the following grounds:

i. Vested, Inalienable and Natural Justice Rights Compensation Common Law;

ii. Rule of Law Compensation Common Law;

iii. S 504 Canada Elections Act / Unincorporated Association Common Law;

iv. Conflicting Provincial and Federal Statutes;

v. Alter Ego Assets / Employees / Corporation Control Compensation Common Law;

vi. Abuse / Breach of Tangible and Intangible Contract Rights /Tort /Compensation Common Law;

vii. Prospective Employment / Independent Contractor Compensation Common Law; and

viii. Human Rights Compensation Common Law.

[5] The Applicant appears to be asking the Court to provide relief by reading into section 504 of the Act language that would allow him to bring a civil action against the CPC. He has opted to bring this matter before the Court under the form of a judicial review proceeding contemplated by section 18.1 of the *Federal Courts Act*, RSC (1985), c F-7 (the Act) and Part 5 of the *Federal Courts Rules*, SOR/98-106 (the Rules).

<u>The Motion to Strike</u>

[6] The Respondent claims that the Notice of Application should be struck on the basis that the Applicant:

a) Lacks standing under the Act to bring this Application;

b) Fails to state a cognizable administrative law claim that can be brought before the Court;

c) Fails to identify a decision, order or other administrative action of a "federal board, commission or tribunal" that could actually be subject to review; and

d) Seeks to re-argue an issue that this Court, and the Federal Court of Appeal, have previously addressed in previous proceedings involving the Applicant.

[7] It is open for this Court to strike a notice of application where it is "so clearly improper as to be bereft of any possibility of success" (*Canada (National Revenue) v JP Morgan Asset Management (Canada) Inc*, 2013 FCA 250, at paras 47-48, 367 DLR (4th) 525). Here, I find it to be the case for the following reasons.

[8] First, the Applicant's decision to proceed by way of a judicial review application is irremediably defective. This Court's jurisdiction, so far as it is grounded in section 18.1 of the Act, grants the Court the authority to grant declaratory relief, "against any federal board, commission or other tribunal." As the Respondent points out, this authority allows the Court to review not only decisions, but also orders, acts and proceedings of such board, commission or tribunal.

[9] Here, the Applicant basically seeks to have the Court "read in changes" to "remedy" section 504 of the *Canada Elections Act*. However, the Applicant has failed, through his Notice of Application, to identify an impugned decision, order or administrative action of a "federal board, commission or tribunal" that could be subject to judicial review by this Court. Such

identification is, in my view, a prerequisite to any constitutional challenge an applicant wishes to bring under the summary proceeding of a judicial review application initiated under section 18.1 of the Act. In other words, such a challenge, in order to be properly before the Court, must be brought in connection with some form of administrative action being contested so as to trigger this Court's jurisdiction. As the Federal Court of Appeal observed in *Air Canada v Toronto Port Authority*, 2011 FCA 347 [*Air Canada*], there has to be some actual conduct that triggers the right of an applicant to bring a judicial review application (*Air Canada*, at paras 26-28). It is only then that an applicant can, on judicial review, question whether the actual conduct is constitutionally compliant or whether the legislative authority from which the "federal board, commission or tribunal" derives its authority is constitutionally defective.

[10] The Applicant seeks constitutional relief in the absence of any federal administrative action on the sole basis that the Government of Canada is responsible for that Act. Section 2 of the *Federal Courts Act* defines a "federal board, commission or other tribunal" as follows:

> […] any body, person or persons having, exercising or purporting to exercise jurisdiction or powers conferred by or under an Act of Parliament or by or under an order made pursuant to a prerogative of the Crown, other than the Tax Court of Canada or any of its judges, any such body constituted or established by or under a law of a province or any such person or persons appointed under or in accordance with a law of a province or under section 96 of the *Constitution Act, 1867*.

[11] The Government of Canada, in the generic form used by the Applicant, is not a "federal board, commission or other tribunal" within the meaning of the Act, and neither is Her Majesty the Queen in Right of Canada (*Harris v Canada,* [1999] 2 FC 392, at para 11, 161 FTR 288; *Minister of National Revenue v Creative Shoes Ltd*, [1972] FC 993, at para 14, 29 DLR (3d) 89).

[12] The Applicant further claims that government policy is subject to judicial review under section 18.1 of the Act and that legislation is such policy. Although legislation is introduced by government, it ultimately emanates from Parliament which, being a separate branch of our system of government, is not, and was never intended to be, a “federal board, commission or tribunal” within the meaning of the Act.

[13] The Applicant has therefore failed to identify not only an entity that could come within this definition but also some actual conduct triggering his right to bring a judicial review application. In sum, he has failed to identify a “matter” for the Court to review pursuant to section 18.1 of the Act.

[14] Furthermore, I am bound by the Federal Court of Appeal’s decision in *Olumide* FCA, above, which held that the Court’s lack of jurisdiction to entertain the Applicant’s judicial review application in that case extended to “the constitutional question raised by the appellant in his recently revised Notice of Constitutional Question (dated September 22, 2015)” (*Olumide* FCA, at para 8). This revised Notice of Constitutional Question raised, as is the case here, concerns regarding the constitutional validity of the rules preventing unsuccessful prospective party candidates to an election from suing the party. The Applicant did refer, in this respect, to section 504 of the *Canada Elections Act*. Here are the relevant extracts of this document:

> Pursuant to s57, 18.1(1)(4,b,c,d,f) Federal Courts Act, 220, 337, 3, 64, 69 Federal Court Rules, Interpretation Act 8.1, 8.2, Appellant intends to question constitutional effect of rule of common law that an unincorporated political party can refuse appellant or prospective candidate or candidate, receive payment for contract to a Corporation under its control, execute contract with incorporated riding association but appellant cannot sue party and corporations under its control for declaratory relief / damages referencing 16.1, 16.2, 16.3, 81, 67(4)(c), 457(1), s504, s501 Canada Elections Act. Correctness of Guergis v Novak means s67(4)(c) cannot breach s91 Canada Elections Act, s298 s299 Criminal Code, Canadian Human Rights Act:
>
> […]
>
> Declaratory relief that s504 Canada Elections Act does not with "irresistible clearness" state no action for damages or declaratory relief shall be brought against a party and corporation used to execute a nomination contract, the only constitutional interpretation of 67(4)(c), 457(1), s504, s501 is that the test for standing to be sued includes the fundamental values enshrined in the constitution; Colorado Article 30, Unincorporated Nonprofit Association Act rule of law that tangible / intangible contract and statutory rights not be destroyed without compensation, rule of law subject to subject and person to person equality in common law.
>
> […]
>
> Abusing 67(4)(c), 457(1), s504 Canada Elections Act to prevent appellant from suing unincorporated party / corporation under its control used to execute a nomination contract breaches "fundamental values enshrined in the constitution"
>
> […]
>
> Did Parliament intend that s67(4)(c), 457(1), s504 deprive appellant of right to sue CPC /CFC / KCC re fundamental values in constitution?

[15] I take this finding of the Federal Court of Appeal to mean that a litigant cannot bring a "stand-alone" constitutional challenge by way of a judicial review application absent any type of connection with some actual conduct triggering his or her right to bring a judicial review

application and engaging, as a result, the Court's jurisdiction to consider the matter. Here, the Applicant appears to have opted to name a different respondent in the hope of bringing his case within the ambit of the Court's authority under section 18.1 of the Act. For the reasons outlined above, the Applicant still falls short of achieving this as he has not met the conditions required to pursue his case by way of a judicial review application. This is not a mere irregularity. It goes to the fundamental nature of judicial review.

[16] Second, I find that the Applicant lacks standing to bring this Application. As explained above, the Applicant has not demonstrated that he is directly affected by any "matter" falling within the jurisdiction of the Federal Court. He alleges in this regard that his Application is based on the fact that he is a "taxpayer who contested a party nomination in 2005 who has over 10 year involvement in subject matter." While this may very well be the case, he has not identified any federal administrative action to trigger the Court's jurisdiction to hear the Application.

[17] I also find that the Applicant has failed to meet the test for public interest standing. As stated by the Supreme Court of Canada in *Canada (Attorney General) v Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45, [2012] 2 SCR 524 [*Downtown Eastside Sex Workers*], "the root of the law of standing is the need to strike a balance "between ensuring access to the courts and preserving judicial resources"" (at para 23). Thus, in determining whether to grant standing, courts should "balance the underlying rationale for restricting standing with the important role of the courts in assessing the legality of government action" (*Downtown Eastside Sex Workers,* at para 23).

[18] The three factors to consider when determining whether to grant public interest standing are whether: (i) there is a serious justiciable issue raised; (ii)the plaintiff has a real stake or a genuine interest in it; and (iii) in all the circumstances, the proposed suit is a reasonable and effective way to bring the issue before the courts *(Canada (Attorney General) v Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45, at para 37, [2012] 2 SCR 524).

[19] The Applicant essentially claims in this regard that, in addition to being an immigrant, a visible minority and a taxpayer who has been involved in politics for the last 10 years, not providing the relief sought would diminish the rights of Canadians to be represented in government. In my view, this does not satisfy the test for public interest standing. On the one hand, I am not satisfied that the Applicant has a real stake or a genuine interest in the present proceedings. As is well-established, traditionally, concerns such as "properly allocating scarce judicial resources" and "screening out the mere busybody;" justify limitations on standing (*Downtown Eastside Sex Workers*, at para 25). As indicated by the Supreme Court, the "concern about screening out "mere busybodies" relates not only to the issue of a possible multiplicity of actions but, in addition, to the consideration that plaintiffs with a personal stake in the outcome of a case should get priority in the allocation of judicial resources" (at para 27). As appears from the list provided by the Respondent at paragraph 11 of its main written submissions, the Applicant has instituted over 10 proceedings before various courts in the past 2 years and has already litigated a similar matter before the Court in *Olumide FC and Olumide FCA* where the Federal Court of Appeal confirmed the Federal Court's decision to dismiss the Applicant's application for judicial review for a want of jurisdiction.

[20] On the other hand, and most importantly, the Applicant has not demonstrated that the present case is a reasonable and effective way to bring the issue of the constitutional validity of section 504 of the *Canada Elections Act* before the courts as this issue is more properly raised in the context of the civil claim the Applicant has launched against the CPC in the Ontario Superior Court (*Olumide* FCA, at para 11). As the Respondent correctly points out, allowing public interest standing in such context would allow the Applicant, and potentially others, to bring challenges to the constitutionality of federal legislation in the absence of any federal administrative action anywhere at any time and of any proper factual matrix, thereby "pre-empting those who might later have a direct and vital interest in the matter" (*Forest Ethics Advocacy Association v National Energy Board*, 2014 FCA 245, at para 36; *Downtown Eastside Sex Workers,* at para 25).

[21] Given my conclusion that the Notice of Application ought to be struck, there is no need to determine whether the Applicant's affidavit in support of his Notice of Application meets the requirements of the Rules.

Motion to Amend the Notice of Application

[22] Would the amendments sought by the Applicant cure this problem? I find that they would not.

[23] The Applicant seeks to amend his Notice of Application in order to introduce a new ground of relief, namely, "Arbitrary / Overbroad / Not Rationally Connected / Grossly Disproportionate To Election" where he argues that section 504 of the *Canada Elections Act* is

arbitrary because preventing non-Canada Elections Act judicial proceedings against a political party for actions taken by or against the governing council for the political party is not rationally connected with the goal of electing members to the House of Commons. The Applicant also argues that section 504 is overbroad, if rationally connected, "it should not affect "non-election" proceedings" and that "if the problem is preventing judicial proceedings, it should not apply to group decisions taken on behalf of all members of a governing council." The Applicant also argues that section 504 is disproportionate "because it cannot be justified in comparison to the destruction of vested, inalienable and natural justice rights without a remedy from the person that breached the rights."

[24] Amendments for pleadings should be allowed at any stage of an action for the "purpose of determining the real question in controversy between the parties" (*Varco Canada Limited v Pason Systems Corp,* 2009 FC 555, at para 25 [*Varco Canada*]). However, amendments will be denied, and pleadings will be struck, when it is plain and obvious that the underlying claim discloses no reasonable cause of action (*Varco Canada,* at para 26; *Cardinal v R* (1993), 72 FTR 309, 46 ACWS (3d) 377). In this case, the Applicant's amendments just build on his theory of the case. They do not remedy the fact that he does not challenge the conduct of some "federal board, commission or other tribunal" so as to trigger his right to bring a judicial review application and the Court's authority to entertain it.

[25] The motion to Amend the Notice of Application is therefore denied. Costs on the Motion to Strike are awarded to the Respondent in a fixed amount of $500.00. There will be no costs on the motion to Amend the Notice of Application.

ORDER

THIS COURT ORDERS that:

1. The motion to strike the Notice of Application is granted with costs to the Respondent in the amount of $500.00;

2. The motion to amend the Notice of Application is dismissed, without costs;

3. The Notice of Application is struck out without leave to amend.

"René LeBlanc"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-289-16
STYLE OF CAUSE:	ADE OLUMIDE v HER MAJESTY THE QUEEN IN RIGHT OF CANADA
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