Federal Court Cour fédérale

Date: 20170818

Docket: T-935-17

Citation: 2017 FC 776

[ENGLISH TRANSLATION]

Ottawa, Ontario, August 18, 2017

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

JEAN-FRANÇOIS ST-LAURENT
9105-2829 QUÉBEC INC.
9105-2761 QUÉBEC INC.

Applicants

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The applicant, Jean-François St-Laurent, is a Canadian citizen. He alleges that he has been charged before the Spanish court Juzgado Central de Instrucción No. 5 Audiencia Nacional [Spanish court] of having committed, personally and through the applicant corporations,

9105-2829 Québec Inc. and 9105-2761 Québec Inc., money laundering offences from within Canada. The trial is scheduled to begin on September 17, 2017.

[2] According to Mr. St-Laurent, the charges against him in Spain are based on inaccurate information that was illegally disclosed and transmitted by Canadian authorities to both the Spanish court and the Spanish Department of Justice.

[3] He is seeking, on his own behalf and as sole director and shareholder of the two (2) applicant corporations, an order in the nature of *mandamus* to have the inaccurate information corrected and have the corrections sent to the Spanish authorities. He is also asking the Court to declare the disclosure and transmission of certain documents to various Canadian and Spanish authorities illegal.

[4] The Attorney General of Canada [AGC] submits that the application for judicial review must be dismissed for three (3) reasons. First, the doctrine of estoppel applies to certain issues that the Court has already addressed in a decision rendered on November 30, 2016, in docket T-1918-16. Second, the conditions established for obtaining a *mandamus* have not been demonstrated. Third, the applicants have not demonstrated how the disclosure of information and the exchanges of letters were done [TRANSLATION] “illegally.”

[5] For the reasons that follow, the Court finds that this application for judicial review must be dismissed.

II. Background

[6] The evidence submitted in the Court record is deficient, which makes it difficult to establish with any certainty all of the relevant facts in this case. However, there is no doubt that the events took place over a number of years and involve multiple stakeholders in both Canada and Spain. They also include a tax component and a criminal investigation component.

Tax component

[7] Following a tax audit of Mr. St-Laurent, the corporation 9105-2829 Québec Inc. and seven (7) other individuals and corporations, the Minister of National Revenue of Canada issued notices of reassessment in January 2008. The reassessments of Mr. St-Laurent and the two (2) applicant corporations concerned the 2004, 2005 and 2006 taxation years. The tax audit was based in part on information received from the Agencia Tributaria, Oficina Nacional de Investigación del Fraude Equipo Central de Información [Agencia Tributaria]. The applicants objected to the notices of reassessment and appealed them before the Tax Court of Canada (Dockets 2010-1955(IT)G, 2010-1958(IT) and 2010-1961(IT)G).

[8] On February 1, 2008, the Minister of National Revenue of Canada filed notices of motion for authorization to proceed forthwith pursuant to subsections 225.1(1) and 225.2(2) of the *Income Tax Act*, RSC 1985, c 1 (5th Supp.) to seize the property, among other things, of Mr. St-Laurent and of the corporation 9105-2829 Québec Inc. (Dockets T-190-08 and T-194-08). The motions relied in particular on the affidavits of two (2) individuals, including that of Éric

Fortin, a Canada Revenue Agency employee, dated January 29, 2008. The *ex parte* motions were granted on February 4, 2008, by Justice Michel M.J. Shore of this Court.

[9] On November 2, 2009, Daniel Beauchamp, counsel for the Department of Justice Canada, who represented the Minister of National Revenue of Canada in the applicants' tax cases, wrote to Judge Baltasar Garzón Real. According to the applicants, Judge Real oversaw the investigation into suspected illegal activities that were allegedly carried out by the Spanish corporation Fórum Filatélico. In his letter, Mr. Beauchamp provided the Spanish judge with certain information on the steps taken by the Canada Revenue Agency and the status of the tax cases in Canada. In particular, he informed him that the respondents in the tax cases raised a defence that reportedly stemmed from two (2) judgments that were rendered by the Spanish judge as part of his investigation. Mr. Beauchamp asked him for information about a request to appear that was reportedly submitted to the Spanish judge by one of the Canadian corporations targeted by the tax audit. Mr. Beauchamp also asked him to confirm whether the Agencia Tributaria and another person were working for and with him as part of that investigation. Finally, Mr. Beauchamp also mentioned in his letter to the Spanish judge that one of the respondent corporations in the tax cases had reportedly received a sum of $68 million from dubious sources over a period of three (3) and a half years.

[10] The objections to the notices of assessment were settled out of court on October 26, 2012.

Criminal investigation component

[11] In 2009, the Royal Canadian Mounted Police [RCMP] received a communication from the Financial Transactions and Reports Analysis Centre of Canada [FINTRAC] that included, among other things, information sheets (Exhibit P-9). FINTRAC is an autonomous and independent organization established under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17 [Act] that collects, analyzes and discloses relevant information in order to assist in the detection, prevention and deterrence of money laundering and of the financing of terrorist activities (Act, sections 40–41). In particular, it receives reports, statements or information from financial institutions and intermediaries sent to it in accordance with the Act. When FINTRAC has reasonable grounds to suspect that the information would be relevant to investigating or prosecuting a money laundering offence or a terrorist activity financing offence, it shares certain designated information with the appropriate police force (Act, subsection 54(1) and paragraph 55(3)(*a*)).

[12] A report on the investigation conducted by Corporal Jean Harrisson of the RCMP's Integrated Proceeds of Crime Unit was prepared and sent to an RCMP liaison officer who was based in Madrid, Spain, at that time. The investigation report was accompanied by information sheets from FINTRAC, tables, organizational charts and incorporation documents. The investigation report is undated.

[13] On March 31, 2010, Sacha Palladino, counsel at the Department of Justice Canada's International Assistance Group, sent a letter to the Spanish Department of Justice in which she

indicated that she had enclosed a number of documents associated with an investigation led by the RCMP into Mr. St-Laurent's suspicious financial activities. She sent a copy of the letter to Spanish Judge Baltasar Garzón Real.

[14] That communication was part of a request for assistance submitted in 2007 by the Spanish Department of Justice under the *Treaty Between Canada and the Kingdom of Spain on Mutual Assistance in Criminal Matters*, E101633 – CTS 1995 No. 47 regarding the allegations against the Spanish corporation Fórum Filatélico.

[15] The Spanish judicial authorities indicted Mr. St-Laurent. In June 2012, they provided him with copies of Corporal Harrisson's report and of the tables and information sheets.

[16] On July 23, 2012, Mr. St-Laurent gave formal notice to the RCMP to correct the contents of Corporal Harrisson's report and of the accompanying documents. On October 25, 2012, the RCMP informed counsel for Mr. St-Laurent that, after making the required checks, it was maintaining the contents of the report, except for two (2) amendments to paragraphs 3 and 8 of the report. The RCMP also noted that it considered the information associated with FINTRAC to be relevant and reliable given its nature and source.

[17] On December 7, 2015, Daniel Duchesne, Executive Director, Performance and Customer Experience at the Caisse Desjardins in downtown Quebec City [Caisse], confirmed in writing to counsel for Mr. St-Laurent that the latter had never been a holder or signatory of bank accounts that were attributed to him in the tables attached to Corporal Harrisson's report. That letter was

received as part of an out-of-court settlement in a case between the applicants and the Caisse in the Superior Court, bearing number 200-05-020095-159. On February 9, 2016, Mr. Duchesne amended his letter from December 2015 to make a correction.

[18] On November 10, 2016, the applicants filed an application for judicial review (T-1918-16) with the Registry of this Court to obtain an interlocutory injunction and an order in the nature of *mandamus* to order FINTRAC to correct the inaccurate and prejudicial information contained in the information sheets and to advise the RCMP and Spanish court of those corrections. The applicants filed an urgent motion for those same purposes six (6) days later.

[19] On November 30, 2016, Justice Luc Martineau dismissed the applicants' motion. In particular, he considered that: (1) it is not up to FINTRAC, but rather to the reporting entities, to amend previous statements if they contain any errors; (2) the information sheets are consistent with the statements received by FINTRAC, as they had not been amended by the reporting entities; (3) Mr. Duchesne's letter dated December 7, 2015, did not constitute an amendment to the previous statements made by the Caisse under the Act, as the AGC and FINTRAC were not parties to the proceedings initiated by the applicants in the Superior Court of Quebec against the Caisse, nor to the settlement reached between the parties; (4) the motion for interlocutory injunction was equivalent to a final settlement of the *mandamus* application and, in the absence of a public legal duty to the applicants to amend the information sheets, the remedy was bound to fail, so there was a lack of a serious issue; (5) it is open to Mr. St-Laurent to demonstrate to the Spanish court the inaccuracy and/or unreliability of the information sheets and of Corporal Harrisson's report, and debating this before the Spanish court does not constitute irreparable

harm; and (6) the balance of convenience favours the status quo because the applicants have been aware of FINTRAC's decision to disclose the information sheets since 2012, and it would be contrary to the spirit of the Act and the public interest to order the correction without the intervention of the reporting entities. The applicants did not appeal that decision and filed a notice of discontinuance in the Court record on June 2, 2017.

Current proceedings

[20] On May 4, 2017, the applicants gave formal notice to the Department of Justice Canada and the RCMP to correct the erroneous information that was disclosed to the Spanish judicial authorities in Mr. Beauchamp's letter dated November 2, 2009, Ms. Palladino's letter dated March 31, 2010, as well as in Corporal Harrisson's report and the accompanying tables and information sheets. The applicants place particular emphasis on the out-of-court settlements reached with the Canada Revenue Agency in which it issued notices of reassessment for the 2004, 2005 and 2006 taxation years, reducing the amounts owed by the applicants. The applicants argue that the issuance of notices of reassessment following the out-of-court settlements confirms that the allegations that the applicants engaged in and benefitted from illicit misappropriation of money are unfounded.

[21] On May 31, 2017, the Department of Justice Canada reminded the applicants that they had known about Mr. Beauchamp's letter since at least July 2010 and about the information conveyed in Ms. Palladino's letter since at least June 2012. The Department of Justice Canada

also informed the applicants that Mr. St-Laurent will be able to file into evidence himself the documents that he considers relevant for the purposes of the proceedings in Spain.

[22] On June 27, 2017, the applicants filed this application for judicial review and, the following day, a motion to obtain an interlocutory injunction, an order in the nature of *mandamus* and an order in the nature of *certiorari*.

[23] In their notice of application, the applicants request an order requiring the Department of Justice Canada and the RCMP to amend the inaccurate information concerning Mr. St-Laurent and the two (2) applicant corporations contained in the following six (6) documents:

a) Mr. Beauchamp's letter dated November 2, 2009;

b) Ms. Palladino's letter dated March 31, 2010;

c) The undated investigation report by Corporal Harrisson of the RCMP;

d) The tables prepared by Corporal Harrisson of the RCMP;

e) The tables prepared by Mr. Fortin of the Canada Revenue Agency;

f) The information sheets issued by FINTRAC.

[24] The applicants are asking the Court to order that the Department of Justice Canada send the corrections of that inaccurate information to the Spanish court and the Spanish Department of Justice as soon as possible.

[25] Finally, the applicants are also seeking an order to declare illegal:

a) The transmission of the information sheets prepared by FINTRAC to Corporal Harrisson;

b) The disclosure of Corporal Harrisson's report and its appendices to the Department of Justice Canada;

c) The transmission of the letters from Mr. Beauchamp and Ms. Palladino to the Spanish court and the Spanish Department of Justice; and

d) The transmission of Corporal Harrisson's investigation report, its appendices, the tables prepared by Mr. Fortin and the FINTRAC information sheets to the Spanish Department of Justice and to the Spanish court.

[26] On July 7, 2017, Justice Yvan Roy ordered that the application for judicial review be heard on July 27, 2017, given that Mr. St-Laurent's trial is scheduled to begin in September 2017.

III. Analysis

A. *Preliminary questions*

[27] At the start of the hearing, the applicants submitted an application for leave to file, by no later than August 15, 2017, a counter expert report in response to the expert report submitted by the AGC in his reply record. In particular, this would concern the possibility for Mr. St-Laurent to challenge the accuracy, probative value or reliability of the Canadian documents before the Spanish court as part of his trial in Spain. The AGC opposed the application on the grounds that

the applicants had been aware since November 30, 2016, that proof of Spanish law must be submitted by a competent expert, which Justice Martineau noted in his decision.

[28] The Court informed counsel for the applicants of its concerns about the impact of such an application on the conduct of the proceedings. Filing such a counter report would require additional submissions from the parties and would result in separating the hearing of the application for judicial review into two (2) sessions. Furthermore, the AGC might seek to cross-examine the affiant about the report, thereby resulting in an additional delay in deciding the application for judicial review. The Court reminded the applicants that they have the burden to prove their allegations and that, in fact, they have been aware since November 2016 that the Spanish law had to be proven. The Court nevertheless gave the applicants the opportunity to reach an agreement with the AGC to postpone the hearing. In the absence of an application for postponement by the applicants, and for the reasons that were indicated to them, the Court dismissed the applicants' application. Moreover, the Court finds that the order issued by Justice Roy on July 7, 2017, required the full record to be submitted to the Court by July 21, 2017, at the latest. When the applicants received the expert report filed by the AGC on July 14, 2017, in accordance with the deadline, they could have filed a motion for directions to have the schedule amended and request leave to file a counter expert report. However, they did not take advantage of that procedure.

[29] The applicants are also seeking to submit a statement by Michelyne Chénard St-Laurent, the spouse of counsel for Mr. St-Laurent, sworn in on the morning of the hearing. In her statement, she reports on her spouse's health as well as her own since 2012 to justify the delay in

initiating these proceedings. The AGC opposed the filing of the sworn statement on the grounds that it was filed out of time. In reply, the applicants explained that the late filing of the statement was attributable to mere forgetfulness on counsel's part.

[30] The Court examined the sworn statement and finds that it would be contrary to the interests of justice and to those of the AGC, who was not expecting it, to allow the applicants to file the sworn statement at this stage of the proceedings without a satisfactory explanation. For these reasons, the Court finds that the sworn statement dated July 27, 2017, is inadmissible.

B. *Application for an order of mandamus*

[31] The conditions that must be met for an order of *mandamus* to be granted are set out by the Federal Court of Appeal in *Apotex Inc v Canada (Attorney General)*, [1994] 1 FC 742 (FCA) (QL) at paragraph 45, affirmed by [1994] 3 SCR 1100 (QL) [*Apotex*]. All of those conditions must be met for the Court to grant this extraordinary remedy (*Coderre v Canada (Office of the Information Commissioner)*, 2015 FC 776, at paragraph 27; *Rocky Mountain Ecosystem Coalition v Canada (National Energy Board)*, (1999) FCJ No. 1223, at paragraph 30). In particular, there must be a public legal duty to act with respect to the applicant, and the applicant must have a clear right to performance of that duty. In addition, no other remedy must be available to the applicant, and the order sought must be of some practical effect.

[32] The Court finds that these conditions have not been met.

[33] First, the applicants have not established that there is a legal duty owed to them, as they have not identified the basis of the obligation for the Department of Justice Canada and the RCMP to correct the information that they allege to be inaccurate and to send those corrections to the Spanish authorities.

[34] Although in their notice of application for judicial review the applicants rely on sections 1, 7 and 8 and subsection 24(1) of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c 11 [the Charter], section 4 of the *Charter of Human Rights and Freedoms*, RSQ, c C-12, sections 35 and 36 of the *Crown Liability and Proceedings Act*, RSC 1985, c C-50, articles 37 *et seq.* of the *Civil Code of Québec*, as well as subsection 373(1) of the *Federal Courts Rules*, SOR/98-106, the applicants' submissions are limited to asserting at paragraph 12 of their notice of motion that it [TRANSLATION] "is in the interests of justice and of the protection of the fundamental rights" of Mr. St-Laurent that the information be corrected. In addition, at paragraphs 54, 56 and 97 of their memorandum of fact and law, they submit that [TRANSLATION] "the fundamental rights and freedoms" of Mr. St-Laurent were violated or that [TRANSLATION] "the rights of the applicants under the [Charter] were not respected."

[35] A general allegation of the violation of a constitutional right is insufficient to establish the existence of a legal duty. As they have not demonstrated the legal basis of the alleged duty, the applicants have not satisfied the first condition set out in *Apotex*.

[36] Moreover, even if the applicants had established the existence of a public legal duty to act on the part of the Department of Justice Canada and the RCMP, the Court is of the opinion that the applicants have not established that they have a clear right to performance of that duty.

[37] As mentioned at the outset, the evidence submitted by the applicants is deficient and does not allow the Court to conclude that the applicants have a clear right to having the information corrected that they allege to be erroneous.

[38] For example, the applicants submit that Ms. Palladino's letter erroneously indicates that Mr. St-Laurent is the director of two (2) specified corporations. Although Ms. Palladino's letter does not mention the date on which Mr. St-Laurent was reportedly registered as the director of the corporations, the applicants filed only the initial declaration of each of the two (2) corporations dating back to 2003 (Exhibit P-16) and to 2005 (Exhibit P-15), which were filed with the Quebec Enterprise Register, to demonstrate that Mr. St-Laurent was never the director of said corporations. Without the declarations subsequent to the initial declarations, the Court cannot draw any conclusions about the history of the directors or shareholders of the two (2) corporations.

[39] Ms. Palladino also states in her letter that she enclosed a number of documents from the RCMP investigation, without specifying which ones. Since we cannot confirm with certainty which documents were enclosed with the letter dated March 31, 2010, the Court cannot reasonably find that the information sent to the Spanish Department of Justice is inaccurate.

[40] The applicants allege that the documents enclosed with Ms. Palladino's letter consisted of Corporal Harrisson's investigation report, tables of [TRANSLATION] "transaction records" prepared by Corporal Harrisson, information sheets issued by FINTRAC and tables prepared by Mr. Fortin of the Canada Revenue Agency (Applicants' memorandum, at paragraph 29). However, the tables prepared by Mr. Fortin are not included in the Court record. The Court therefore cannot find that those tables contain inaccurate or erroneous information. With regard to the other documents that were reportedly enclosed with Ms. Palladino's letter, some comments are necessary.

[41] Regarding Corporal Harrisson's report, the Court notes that it states that [TRANSLATION] "the information sheet, the organizational charts and the incorporation documents for the companies are enclosed to facilitate understanding of the connections between the various companies." However, neither the organizational charts nor the incorporation documents have been filed in the Court record. Without the documents enclosed with the report, the Court cannot know which corporations are involved, the connections between them or the role and involvement of Mr. St-Laurent and the applicant corporations. The Court also notes that the two (2) corporations identified in Ms. Palladino's letter are not mentioned in Corporal Harrisson's report.

[42] Corporal Harrisson's report also refers to the information received from FINTRAC. The author reports that [TRANSLATION] "FINTRAC recorded the transactions associated with the accounts opened by [Mr. St-Laurent], which are in EXCEL format. Those relating to transfers to

or from Spain are: 9a, 12, 14a, 16, 17a, and 17c.” The applicants were unable to establish the connection between those numbers and the tables filed in the Court record.

[43] The applicants maintain that Corporal Harrisson’s report erroneously indicates that Mr. St-Laurent created a website that refers to the use of tax havens. They argue that Mr. St-Laurent could not have created it because he was neither the director nor shareholder of the corporation that owns the web domain. However, no evidence was submitted to demonstrate that it is necessary to be an executive, shareholder or director of a corporation in order to create a website for that corporation. In support of their submissions, the applicants filed a document (Exhibit P-27) taken from the website “whois.cira.ca”, which indicates that the website in question was reportedly created in 2002 by another corporation that has no connection with Mr. St-Laurent. However, the Court cannot give that document any weight, given that its source and completeness have not been established.

[44] The applicants also accuse Corporal Harrisson of insinuating in his report that Mr. St-Laurent gave an address in Switzerland while he was living in Quebec. The Court does not read the same intention in the report. The Court also notes that Corporal Harrisson indicates the following in his report: [TRANSLATION] “N.B. We have not identified any crimes in Canada.”

[45] With regard to the tables that were filed by the applicants as Exhibit P-8, the parties do not agree on their origin. The applicants argue that the tables were prepared by Corporal Harrisson directly from the FINTRAC information sheets (Exhibit P-9), whereas the AGC maintains that the tables were issued by FINTRAC.

[46] The AGC argues that the doctrine of issue estoppel applies in this case because the issue of the accuracy of Corporal Harrisson's report, the tables and the FINTRAC information sheets was already decided by Justice Martineau in 2016. Justice Martineau ruled that the information sheets were consistent with the statements received by FINTRAC, that those statements had not been amended by the reporting entities and that Mr. Duchesne's letter did not constitute an amendment to the Caisse's previous statements made under the Act. According to the AGC, there is no justification for the applicants to be permitted to reiterate the same arguments by directing their application against the Department of Justice Canada and the RCMP instead of FINTRAC.

[47] Since the Court is of the opinion that the applicants have not demonstrated that they meet the criteria for obtaining an order of *mandamus*, it does not consider it necessary to rule on the application of the principles set out in *Danyluk v Ainsworth Technologies Inc.*, 2001 SCC 44.

[48] Another example of the deficient nature of the evidence on record concerns Mr. Beauchamp's letter to the Spanish judge dated November 2, 2009. In their memorandum, the applicants allege that the motions granted by Justice Shore on February 4, 2008, relied on a sworn statement by Mr. Fortin, dated January 29, 2008 (Applicants' memorandum, at paragraph 5). However, that statement does not appear in the Court record, and the Court therefore cannot assess the content of the evidence that led to Justice Shore's orders, nor determine whether that evidence supported the information contained in the letter, including the assertion that one of the respondent corporations in the tax cases allegedly received the sum of $68 million from dubious sources over a period of three (3) and a half years.

[49] In particular, the applicants accuse Mr. Beauchamp of implying that Mr. St-Laurent [TRANSLATION] "allegedly participated, through that corporation, in money laundering activities totalling $68 million" (Applicants' memorandum, at paragraph 14). The Court cannot agree with that argument. The letter clearly indicates that the tax audit conducted by the Canada Revenue Agency targeted nine (9) individuals and corporations, including the corporation in question. The letter also states that at least six (6) of the nine (9) individuals and corporations mentioned were subject to the orders issued on February 4, 2008.

[50] The Court also notes that Mr. Beauchamp states in his letter that he wanted to clarify certain information stemming from one of the grounds raised by the respondents in their objection to the orders of February 4, 2008. Relying on two (2) judgments rendered by the Spanish judge on October 22, 2008, and January 26, 2009, the respondents in the tax cases alleged that the information received by the Agencia Tributaria should be rejected by the Federal Court because no charges had been brought against any of the corporations or their executives as part of the criminal case in Spain. In that context, Mr. Beauchamp wrote to the Spanish judge to obtain information about an application to intervene in the Spanish case from another corporation targeted by the tax audit. Those judgments, which might help in better understanding the context of the Spanish case, do not appear in the Court record.

[51] In light of the foregoing, the Court finds that the applicants have not demonstrated that the third condition for obtaining an order of *mandamus* is satisfied, namely the existence of a clear right to performance of the alleged duty. While this is sufficient to dismiss the applicants' application for a *mandamus* order, the Court also intends to make a few remarks on two (2) other

conditions that the applicants must satisfy for such an order to be issued, namely the absence of any other remedy and the practical effect of the order sought.

[52] The applicants argue that the erroneous facts contained in the letters of Mr. Beauchamp and Ms. Palladino, as well as in the documents that were transmitted to the Spanish authorities, demonstrate their veracity and contents in the Spanish judicial system. To support their argument, they refer the Court to a statement to that effect made by counsel representing Mr. St-Laurent before the Spanish court, and which was sworn in on May 23, 2017. They also argue that, without the Court's intervention, Mr. St-Laurent [TRANSLATION] "is very likely to be convicted by a Spanish court on the sole basis of false information issued by the Department of Justice Canada, the Royal Canadian Mounted Police, Mr. Fortin and FINTRAC" (Applicants' memorandum, at paragraph 80).

[53] On the contrary, the AGC argues that the applicants have another remedy that is more appropriate than a *mandamus* order. The applicants could challenge the accuracy, probative value or reliability of the documents before the Spanish court during the trial for money laundering. In that regard, the AGC filed as an expert report the affidavit of Jacobo Rios Rodriguez to demonstrate that Spanish criminal law permits the accused to contradict the evidence filed by the prosecution by filing their own evidence to the contrary.

[54] According to Mr. Rodriguez, Spanish criminal procedure consists of three (3) stages: (1) the investigation (instrucción), led by the Prosecutor, with the objective of gathering evidence of crime against an individual, and in which an investigating judge participates; (2) the

intermediary period, during which the parties successively prepare their statements of prosecution and defence, in which they propose the evidence that they intend to use during the trial and where the prosecutor fully discloses the relevant evidence; and (3) the oral phase of the judgment, before a judge other than the investigating judge, during which the proposed evidence is presented before the judge and the parties may amend or maintain their conclusions. He argues that the fact that evidence comes from employees or agencies of a foreign State does not mean that an accused does not have the right to contradict its contents. An accused has a very broad right to submit evidence and to contradict the evidence presented by the prosecution, regardless of whether they are public or private documents, provided that the evidence is presented at the same time as the statement of defence during the intermediary period. If the judge does not accept the evidence proposed in the statement of defence, the accused has the right to appeal once the oral phase of the judgment is complete. During the oral phase, the accused may also argue that a fact is not proven and ask the judge to use his or her power to require evidence ex officio.

[55] As for the effect of the order sought, the AGC argues that the applicants have not demonstrated that the *mandamus* order would have an effect on Mr. St-Laurent's chances of being convicted. At minimum, they had to prove the theory of the Spanish prosecution's case and the evidence that it proposed against Mr. St-Laurent and establish how the alleged errors in the documents are decisive to the outcome of the trial.

[56] Although the applicants allege that they did not have confirmation that the Department of Justice Canada was responsible for transmitting the documents until October 20, 2016, the Court

notes that the Spanish counsel for the applicants became aware of Corporal Harrisson's report and the enclosed documents in June 2012 during the investigation stage of the Spanish case. Although the Court has very little information about the criminal proceedings in Spain, there is every indication that the applicants have had the opportunity since 2012 to submit all evidence to contradict the evidence available to the prosecution in Spain. In the event that the applicants are correct about the possibility of contradicting the contents of evidence produced by a foreign authority, the Court is of the opinion, like Justice Martineau in 2016, that the applicants had the obligation to provide proof of the Spanish law from a competent authority. Apart from paragraph 7 of the sworn statement by Spanish counsel dated May 23, 2017, which asserts that [TRANSLATION] "such documents, originating from official organizations in Canada, are proof, in the Spanish legal system, of the veracity of their contents", the sole evidence of Spanish law in this case is that submitted by the AGC.

[57] The Court also agrees with the AGC's argument that there is no evidence of the effect of the order sought on the trial in Spain. In fact, the applicants have not proven the [TRANSLATION] "theory of the case" of the Spanish authorities. The applicants' evidence is limited to an assertion by counsel for Mr. St-Laurent in Spain that the charges against Mr. St-Laurent are based on the documents challenged in this case. Furthermore, the Court notes that the applicants did not submit the indictment against Mr. St-Laurent. The only document that is currently before the Court was filed by the applicants during the proceedings before Justice Martineau in 2016, and it was filed in support of the AGC's affidavits. It consists of a document of four (4) pages written in Spanish that appears to be an excerpt of an indictment against a number of individuals, including Mr. St-Laurent. No translation of that document has been provided. It would have been

appropriate for the applicants to file a translation of the document to demonstrate the nature of the charges brought against Mr. St-Laurent.

[58] For the reasons set out above, the Court finds that the applicants have not demonstrated that the conditions for issuing a *mandamus* have been satisfied.

C. *Application for order in the nature of a declaratory judgment*

[59] In their memorandum, the applicants are seeking an order in the nature of a "*certiorari*" to declare illegal: (1) the transmission from FINTRAC to the RCMP; (2) Mr. Fortin's disclosure to Corporal Harrisson of tables that he had prepared for tax purposes; (3) the disclosure by an RCMP officer of his report and its appendices to the Department of Justice Canada; (4) the disclosure by the Department of Justice Canada to the Department of Justice of a foreign country and a foreign court of inaccurate information from the RCMP and from the Department of Justice Canada itself. The applicants are also requesting that the Court reserve all remedies, including monetary remedies.

[60] Although the applicants describe their remedy as a *certiorari*, the Court considers the order they are seeking to be rather a declaratory judgment. Regardless of how the order sought is qualified, the Court is of the opinion that it should not be granted because the applicants have not articulated the legal basis of their allegations of illegality, except with regard to the transmission by FINTRAC to the RCMP, where they refer to section 55 of the Act. Although the applicants cite multiple sections of acts and of the Charter in their notice of application and allege in their memorandum that [TRANSLATION] "the rights of the applicants under the [Charter] were not

respected," the burden was on them to make arguments in fact and in law with supporting jurisprudence to substantiate their allegations that the disclosure of information and transmission of documents were illegal. In the absence of clear arguments on the illegality and the alleged violations, and without the demonstration of a causal link between the actions taken by the Department of Justice Canada and the RCMP and the violation of the applicants' rights, the Court cannot rule on the declarations the applicants are seeking.

IV. Conclusion

[61] To conclude, the Court understands that the applicants are making every attempt to prevent Mr. St-Laurent from being convicted in Spain on the basis of inaccurate or erroneous information from Canadian authorities. Unfortunately, the record submitted by the applicants does not allow the Court to arrive at the conclusions they are seeking. Consequently, the application for judicial review must be dismissed, with costs in favour of the Attorney General of Canada. If the parties cannot agree on the amount of the costs, the Attorney General of Canada must serve and file a bill of costs with supporting documents and written submissions not to exceed three (3) pages within ten (10) days of this decision. The applicants must serve and file their written submissions within five (5) days after receiving the Attorney General of Canada's submissions.

JUDGMENT in T-935-17

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed, with costs in favour of the Attorney General of Canada. If the parties cannot agree on the amount of the costs, the Attorney General of Canada must serve and file a bill of costs with supporting documents and written submissions not to exceed three (3) pages within ten (10) days of this decision. The applicants must serve and file their written submissions within five (5) days after receiving the Attorney General of Canada's submissions.

"Sylvie E. Roussel"
Judge

Certified true translation
This 17th day of April 2020

Lionbridge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-935-17
STYLE OF CAUSE:	JEAN-FRANÇOIS ST-LAURENT, 9105-2829 QUÉBEC INC., 9105-2761 QUÉBEC INC. v THE ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	OTTAWA, ONTARIO
DATE OF HEARING:	JULY 27, 2017
JUDGMENT AND REASONS:	ROUSSEL J.
DATED:	AUGUST 18, 2017

APPEARANCES:

Gilles St-Laurent	FOR THE APPLICANTS
Lindy Rouillard-Labbé	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Avocats St-Laurent Chénard Inc. Quebec City, Quebec	FOR THE APPLICANTS
Attorney General of Canada Ottawa, Ontario	FOR THE RESPONDENT