

Federal Court



Cour fédérale

Date: 20180628

Docket: T-1643-15

Citation: 2018 FC 662

Ottawa, Ontario, June 28, 2018

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

JOY THEAKER

Applicant

and

**MINISTER OF JUSTICE AND ATTORNEY
GENERAL OF CANADA**

Respondents

ORDER AND REASONS

[1] This Order with Reasons addresses two motions brought by the Applicant, Ms. Theaker. The Applicant's motion filed on November 15, 2017, seeks an Order from this Court to direct an investigation into her claims of ongoing criminal interference through cyber hacking by a named person (who is referred to herein as JT) against her and others. It also seeks a stay of proceedings of her underlying Application for Judicial Review pending the determination of the motion and the investigation she seeks.

[2] The Applicant's motion filed on February 16, 2018, seeks leave to file her Third Amended Motion Record and to file an addendum to her Reply Submissions with respect to her November 15, 2017 motion.

[3] The Court directed that both motions be heard together.

[4] The Respondent subsequently consented to the filing of the Applicant's Third Amended Motion Record, leaving the November 15, 2017 motion and the Applicant's request to file an Addendum to her Reply Submissions to be determined.

[5] For the reasons which follow, both motions are dismissed.

I. Background; the Underlying Application for Judicial Review

[6] Some additional background is provided for context, but is not intended to reflect the full or detailed chronology of the proceedings before this Court. The Recorded Entries in the Court's Records Management System provide a better indication of the extensive interaction between the Applicant and the Court.

[7] The underlying proceeding is the Applicant's Application for Judicial Review of a decision of the Canadian Human Rights Commission [CHRC] dated August 19, 2015, made pursuant to subsection 41(1) of the *Canadian Human Rights Act*, RSC, 1985, c H-6 [CHRA], respecting a complaint she made to the CHRC. The CHRC allowed the Applicant's complaint to proceed in part but limited it "to deal only with the [Applicant]'s allegations dating from

November 2008 to August 2010". The Applicant seeks to set aside that decision and to require the CHRC to consider all her allegations and her response to the CHRC's Investigation Report, which the Applicant submits was not provided to the CHRC.

[8] By Order dated April 13, 2016, the hearing of the Application for Judicial Review was scheduled for June 16, 2016 at Edmonton, Alberta. A few days before the scheduled hearing, the Applicant requested an adjournment due to her ill health. By Order dated June 14, 2016, the Court adjourned the hearing *sine die*. The June 14, 2016 Order also stated that the Application for Judicial Review would continue as a specially managed proceeding and that the hearing of the Application would not be scheduled until after a Case Management Judge had been appointed and had held the necessary Case Management Conferences [CMCs], and after the Applicant indicated that she was ready to proceed.

[9] In correspondence with the Court, including letters dated June 20 and July 19, 2016, the Applicant expressed her desire that the hearing of the Application be promptly rescheduled. She questioned the need for case management.

[10] By Order of Chief Justice Paul Crampton dated July 27, 2016, a Case Management Judge was appointed pursuant to Rule 383 of the *Federal Courts Rules*.

[11] In the interim, on June 28, 2016, the Applicant brought a motion for leave to file additional affidavit evidence for the purpose of her Application for Judicial Review.

[12] By Order dated July 25, 2016, Prothonotary Lafreniere, as he then was, allowed the Applicant's motion in part. In summary, the Prothonotary granted the Applicant leave to serve a Supplementary Affidavit limited to identifying the documents identified as Exhibits "A" and "D" and to attach these documents as exhibits to her Supplementary Affidavit. The Prothonotary also set out the time limits for service of and cross-examination on the Supplementary Affidavit and for filing a Supplementary Applicant's Record and Respondent's Record.

[13] The Applicant appealed the Order of the Prothonotary to this Court. The Applicant also brought a motion to extend the time for filing her Motion Record with respect to the appeal. A series of Directions were issued regarding the exchange of documents and the timelines and whether the motion would be heard in writing or in person.

[14] By Order dated April 6, 2017, the Court dismissed the Applicant's Appeal of Prothonotary Lafrenière's Order. Detailed Reasons were provided in *Theaker v AGC*, 2017 FC 347.

[15] The Applicant then appealed the Court's Order dated April 6, 2017 to the Federal Court of Appeal. On May 16, 2017, the Court of Appeal dismissed the Applicant's appeal. On June 22, 2016, the Court of Appeal also dismissed the Applicant's motion seeking reconsideration of its decision.

[16] As a result, the Order of the Prothonotary, which permitted the Applicant to file a Supplementary Affidavit for the Application for Judicial Review limited to identifying Exhibits

“A” and “D” and attaching Exhibits “A” and “D” as exhibits, remains and governs the contents of the Applicant’s Supplementary Affidavit for the purpose of her Application for Judicial Review.

[17] Given that the timetable for the service and filing of documents had passed, the Court issued a new timetable. The Court’s Direction, dated July 11, 2017, required that: the Applicant’s Supplementary Affidavit be served and proof of service filed no later than August 18, 2017; any cross-examination be conducted within 30 days from proof of service; and, the other aspects of the timetable for the submission of documents and the applicable page limits would be addressed at a CMC to be held on September 25, 2017 or October 2, 2017.

[18] The CMC was scheduled for October 2, 2017, however, the Applicant did not attend. As a result, the Court issued a Direction asking the parties for their availability to reschedule the CMC and noting that if the Applicant failed to respond, the Court would set the timetable without her input. Based on the Applicant’s response, the CMC was rescheduled for October 11, 2017. The Applicant again failed to attend, advising the Court Registry that she was required to appear before another Court on the same date. This was not supported by any documents nor was notice of her unavailability provided to the Court in a timely manner.

[19] At the October 11, 2017 CMC, the Respondent advised that they did not intend to cross-examine the Applicant on her Supplementary Affidavit. Further, while the Respondent is of the view that the Supplementary Affidavit exceeded the scope of the Prothonotary’s Order, the

Respondent indicated that it would address this issue at the hearing of the Application for Judicial Review.

[20] By Direction dated October 11, 2017, the Court set the timetable to be observed for the filing of documents, requiring that: the Applicant serve and file her Supplementary Applicant's Record (including the Supplementary Affidavit and Supplementary Memorandum of Fact and Law) within 30 days, and limiting the Supplementary Memorandum of Fact and Law to 30 pages; the Respondent serve and file a Supplementary Respondent's Record, if any, within 20 days following the service and filing of the Applicant's Supplementary Record, and limiting the Respondent's Supplementary Memorandum of Fact and Law, if any, to 30 pages; and, the Applicant request a hearing in accordance with Rule 314 within 10 days of the service and filing of the Respondent's Supplementary Record.

[21] The Applicant then brought the November 15, 2017 motion seeking an investigation into cyber hacking and also sought a stay of proceedings of her underlying Application for Judicial Review.

II. Background to the Current Motion

[22] In the Notice of Motion, initially filed on November 15, 2017, the Applicant seeks an Order "directing the investigation into my [the Applicant's] claims of ongoing criminal interference through hacking by [JT] through illegal access since at least 2006 to sophisticated military grade technology owned by the United States Government, that I have made known throughout these proceedings over the past two years and which I requested through letters dated

October 27, 2017 and November 8, 2017 and a stay of proceedings per Direction dated October 12, 2017, until the outcome of this Motion” and her Costs.

[23] The Applicant states the grounds for her motion as: “ongoing acts of sabotage by JT against the Canadian Federal Government and myself for his own personal gain by bribing the United States Government since 2011”; applicable laws governing cybercrime in Canada; rules of procedural fairness for self-represented persons; and natural justice.

[24] The Applicant subsequently filed an Amended Motion Record on November 22, 2017 and a Second Amended Motion Record on November 23, 2017. Given the correspondence from the Applicant and the need to determine the November 15, 2017 motion to permit the Application for Judicial Review to proceed, the Court issued a Direction on December 8, 2017 stating that no further material could be filed until the CMC scheduled for December 19, 2017 had taken place. This Direction precluded the Applicant from filing her Third Amended Motion Record, dated December 7, 2017, which she presented for filing at the Court’s Registry on December 8, 2017.

[25] On February 16, 2018, the Applicant brought another motion seeking leave to file her Third Amended Motion Record and leave to file an Addendum to her Reply Submissions, which had been limited to five pages and had been filed on January 11, 2018.

[26] The Applicant also sent further correspondence to the Court, which appeared to provide the material also included in the Third Amended Motion Record which had not yet been accepted for filing. Other correspondence appeared to include the additional pages that the Applicant sought to

include in her Reply Submissions. Several unsuccessful CMCs were scheduled, which were intended to determine a date for the hearing of the November 15, 2017 motion, and to address other issues to permit the hearing of the Application for Judicial Review to be scheduled.

[27] By Direction dated March 21, 2018, the Court stated, among other things, that the Applicant's two motions (the motion requesting leave to file her Third Amended Motion Record and to file an Addendum to her Reply Submissions and the November 15, 2017 motion) would be heard together on April 18, 2018 at 1:00 PM (Mountain Time) by videoconference from Edmonton and Ottawa, which reflected the Applicant's preference for the date and time. Several Directions were subsequently issued confirming that the hearing would proceed by videoconference on April 18, 2018.

[28] On April 12, 2018, the Respondent advised the Court and the Applicant that in the interests of expediency, the Respondent would consent to the filing of the Applicant's Third Amended Motion Record.

[29] As a result of the Respondent's consent for the Applicant to file her Third Amended Motion Record, as of mid-April, 2018, the issues to be determined were the Applicant's Motion to file an addendum to her January 11, 2017 Reply Submissions and to determine the motion dated November 15, 2017, with the Third Amended Motion Record, dated December 7, 2017, in support.

III. The Determination of the Two Motions

[30] The hearing commenced on April 18, 2018. The Applicant advised the Court at the outset of the hearing and at other times throughout the hearing that she was not prepared to make her submissions, noting that she had submitted a Doctor's note which indicated that she was not able to attend court "until further notice". The Applicant also submitted a three page letter to the Court via the Court's Registry on April 18, 2018 at the commencement of the hearing, which among other things, commented on previous Directions of the Court and on issues related to the motions to be determined.

[31] Although the Applicant expressed her opposition to proceeding with the hearing of her motions, indicating that she was not prepared, she made some submissions, recounted several of the allegations of cyber hacking, and expressed her concerns about alleged on-going cyber hacking directed against her and against other institutions. For example, the Applicant alleged that court documents may have been "magically" manipulated by the alleged cyber hacker as the Court appeared to have documents that had not been filed. She also expressed concern that her motion be determined without delay due to its importance, but would not provide a date on which she would attend for the continuation of the hearing of the motion.

[32] At the hearing, the Court asked the Applicant to focus her submissions on the jurisdiction of the Court to order the investigation she seeks.

[33] The April 18, 2018 hearing lasted approximately one and a half hours. The Court acknowledged the Applicant's concerns that she felt she was being pressured to proceed and ultimately adjourned the hearing, noting that it would resume on a date to be determined and noting the Applicant's repeated requests that her motions be determined expeditiously. The Court's Registry made several attempts to contact the Applicant to determine a suitable date to schedule the continuation of the hearing, without success.

[34] On May 2, 2018, the Court issued a Direction stating that the hearing of the Applicant's motions which began on April 18, 2018 would continue on June 5, 2018 at 1:00 PM Mountain Time for a duration of no more than 2 hours and would be held by videoconference at Edmonton and Ottawa. The Direction noted that: all the material for the Court to determine the motions had been filed; no further material would be permitted to be filed with respect to these motions; and, in the event that the Applicant did not attend the hearing on June 5, 2018, the Court could determine the motions based on the written material and submissions and the oral submissions heard to date.

[35] The Direction dated May 2, 2018 provided several means of advising the Applicant of the date for the continuation of the hearing of the motions, including by priority post, regular mail and oral communication from the Court's Registry, in the event the Applicant attended at the Registry, all of which would constitute notice to the Applicant. The Applicant was apparently made aware of the June 5, 2018 hearing by the Court's Registry. The Applicant submitted a letter on June 4, 2018 criticising the Court for not responding to her previous correspondence and enclosing additional articles, the relevance of which is not at all apparent.

[36] The hearing of the Applicant's motions resumed on June 5, 2018. The Applicant did not attend.

[37] The Respondent submits that the Court should determine the motion based on the written submissions of the Applicant and Respondent. The Respondent notes that they had reviewed the Applicant's Third Amended Motion Record, which did not appear to contain any significant differences from previous Motion Records. Accordingly, the Respondent indicated that they would not make additional submissions, and would rely on their Memorandum of Fact and Law filed on December 20, 2017.

[38] The Court has reviewed the Applicant's Third Amended Motion Record, including the various annotations made by the Applicant. The content of the Third Amended Motion Record, which includes some additional allegations of cyber hacking and refers to additional articles, is not different in any material way from the original or First or Second Motion Record. The Court has considered the Applicant's Third Amended Motion Record, which includes five affidavits and many articles from unidentified sources on the internet and in newspapers, as well as the parties Memoranda. The Court has also considered the oral submissions made on April 18, 2018. The Court has determined the motions on the basis of this material as the Court stated it would in its Direction dated May 2, 2018.

[39] The Court notes that the Applicant's original Notice of Motion, dated November 7, 2017 and the Notice of Motion included in the Third Amended Motion Record, dated December 7,

2017, cite Rule 369 and seek to bring the Motion in writing. Therefore, there is ample justification to determine the motions in writing.

[40] In the Applicant's five affidavits included in the Third Amended Motion Record, she makes a wide range of allegations. She asserts that she has been the victim of cyber hacking since 2006. Among other allegations, she submits that the alleged cyber hacking is connected to the conduct which underlies her complaint to the CHRC. This includes allegations that cyber hacking is responsible for notices being provided to her regarding her employment status that would not otherwise have been issued.

[41] The Applicant points to the named person [JT], who she met online in 2006, as responsible for cyber attacks against her and against the Canadian government and other Canadian and international institutions. She alleges, among other things, that JT is an "on line sexual predator and cyber terrorist" who uses "military grade technology" and "electromagnetic weapons" to wreak havoc on her and on other persons, including this Court, and government and society in general.

[42] For example, the Applicant claims that JT intercepted mail deliveries to her home, tampered with her email and bank records and those of others, tampered with public computers she had used at the University of Alberta, and tampered with affidavits she filed in these proceedings, which necessitated the need for amendments. In addition, the Applicant alleges that JT's use of radio frequency and electromagnetic weapons directed to the police has resulted in the Applicant receiving a large number of traffic tickets.

[43] The Applicant also claims that JT has tampered with Court records, including by manipulating their content and orchestrating that Court Orders are not sent to her, and that JT's criminal interference and mind control goes so far as to render the Court incapable of understanding her allegations and making incorrect decisions.

[44] The Applicant's allegations of the results of JT's cyber activity also extend to catastrophes, such as the 2016 wild fires in Fort McMurray, Alberta, illnesses to friends and strangers, and the Phoenix pay debacle. By her own admission, the allegations are "far fetched".

[45] While the Applicant may believe that she and others have been affected by cyber hacking, this is not the issue for this Court to determine. The Applicant seeks an Order to direct an investigation into these allegations, but she has not addressed the fundamental legal issue whether this Court has the jurisdiction to order an investigation.

[46] The Applicant's Memorandum of Fact and Law reiterates her allegations and makes additional allegations that JT has interfered in her other legal disputes. She also makes submissions which appear to pertain to the underlying Application for Judicial Review, which remains to be determined. However, the Applicant does not point to anything to suggest that this Court has the jurisdiction to grant her motion.

[47] The Court's jurisdiction is set out in the *Federal Courts Act*, RSC 1985, c F7 at sections 17 and 18. The Applicant has not referred to the Act at all.

[48] As the Respondent notes, the role of the Court is to resolve disputes, interpret the law and to defend the Constitution. This role requires that the Courts be “completely separate in authority and function from all other participants in the justice system” (*Beauregard v Canada*, [1986] 2 SCR 56 at para 30, 1986 CanLII 24).

[49] Clearly this Court does not have any jurisdiction to investigate alleged criminal activity or to order that an investigation be conducted. It is generally known that where a person has been the victim or witness of an alleged crime, the person should report the incident(s) to the police or lay an information before the responsible police service. The responsible police service will assess the information and determine whether it supports the need for an investigation. Although the Applicant states in one of her affidavits that she filed a report in 2006 with the Edmonton Police Service regarding a particular statement made by JT online, she does not indicate the outcome. Although she alleges that she has been the victim of cyber hacking continually since 2006, she does not explain whether she has reported to the police the extensive allegations she now makes.

[50] In conclusion, the Applicant’s motion seeking an Order directing an investigation into the claims of ongoing criminal interference through cyber hacking is dismissed. It is not the role of the Court to direct criminal investigations.

[51] The Applicant’s motion seeking leave to file an addendum to her Reply submissions is also dismissed. The Court had sufficient material from the Applicant to determine her motion without the additional pages of articles.

[52] As a result of the Court's determinations of the motions, the underlying Application for Judicial Review should proceed as soon as possible. It is pointless to suggest that the timetable for the service and filing of documents to permit the Application for Judicial Review to be scheduled could be determined at a future CMC because of the uncertainty whether the Applicant would attend. Therefore, the Court has established the new timetable.

[53] The references in these Reasons to "unsuccessful" CMCs relates to the Court's attempts to convene several CMCs in order to reschedule the hearing and determination of the Application for Judicial Review, originally scheduled to be heard in June 2016. The Applicant has questioned the need for case management, has not attended most CMCs, and in addition to bringing additional motions, has submitted many letters requesting that the Court provide information and advice about how to proceed. Many Directions have been issued, including stating that the Court does not provide advice, does not accept evidence by way of letters, and generally does not respond to letters from litigants on substantive issues. Rather the Court determines motions, applications and actions.

[54] Given the Court's previous Direction that the timetable for the service and filing of the materials for the Application for Judicial Review would be established without the Applicant's input given her lack of participation at CMCs, the Court has set the following timetable :

1. Noting that the Applicant's Supplementary Affidavit has already been served on the Respondent, the Applicant shall file proof of service (if not already filed) with the Court no later than July 16, 2018.

2. Noting that the Respondent has advised that they do not intend to cross-examine the Applicant on her Supplementary Affidavit, therefore no time period is identified for this to occur.
3. The Applicant may serve and file a Supplementary Applicant's Record containing her Supplementary Affidavit and a Supplementary Memorandum of Fact and Law, if any, no later than 30 days from the date of this Order.
4. The Applicant's Supplementary Memorandum of Fact and Law shall not exceed 30 pages.
5. The Respondent may serve and file a Supplementary Respondents' Record, including a Supplementary Memorandum of Fact and Law, no later than 20 days following the service and filing of the Applicant's Supplementary Record.
6. The Respondent's Supplementary Memorandum of Fact and Law shall not exceed 30 pages.
7. The Applicant shall request a hearing of the Application for Judicial Review in accordance with Rule 314 within 10 days of the service and filing of the Respondent's Supplementary Record. In the event that the Respondent does not file a Supplementary Record, the Applicant shall request a hearing of the Application for Judicial Review no later than 30 days from the date of service and filing of the Applicant's Supplementary Record.

ORDER in T-1643-15

THIS COURT ORDERS that:

1. The Applicant's motion dated February 16, 2018, which seeks, in part, leave to file an Addendum to the Applicant's Reply submissions is dismissed.
2. The Applicant's motion dated November 15, 2017 which seeks an Order directing an investigation into her claims of ongoing criminal interference through cyber hacking by a named person is dismissed.
3. The timetable for the service and filing of documents for the Application for Judicial Review, as set out above, shall be complied with.
4. No Costs are ordered.

"Catherine M. Kane"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1643-15

STYLE OF CAUSE: JOY THEAKER v MINISTER OF JUSTICE AND
ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: APRIL 18, 2018
JUNE 5, 2018

**REASONS FOR ORDER AND
ORDER:** KANE J.

DATED: JUNE 28, 2018

APPEARANCES:

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