Federal Court  Cour fédérale

Date: 20200616

Docket: T-1450-15

Citation: 2020 FC 699

Ottawa, Ontario, June 16, 2020

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

RADU HOCIUNG

Plaintiff

and

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Defendant

ORDER AND REASONS

I. Introduction

[1] In repeated communications with the Court, the self-represented Plaintiff, Mr. Hociung, has advanced the view that my actions in relation to this matter demonstrate bias.

[2] Mr. Hociung has declined to pursue a motion for recusal, taking the position that the Canadian Judicial Council's *Ethical Principles for Judges* requires that I recuse myself on my

own initiative. He has nonetheless provided written submissions in the form of a letter and the Defendant has responded in kind. I will treat that correspondence as a motion for recusal (*Exeter v. Canada (Attorney General)*, 2015 FCA 238 at para. 1; *Exeter v. Canada (Attorney General)*, 2015 FCA 260 at para. 4).

II. The Basis for Recusal

[3] This matter is before me as the result of a prior decision on a motion to amend and a motion for summary judgment (2018 FC 298) that was partially overturned on appeal (2018 FCA 214 and 2018 FCA 215).

[4] Although Mr. Hociung implies that there are additional grounds for recusal, he identifies three. First, he submits that my requirement that he bring a motion for recusal indicates bias. Second, he submits that my prior decision indicates bias. Third, he submits that an Order I issued holding redetermination in abeyance pending final disposition of an Application for Leave to Appeal the decisions of the Federal Court of Appeal to the Supreme Court of Canada reflects an abuse of the *Federal Courts Rules*, SOR/98-106 [*Rules*] and, in turn, bias.

III. The Law

[5] There is a presumption that judges are not biased. A party seeking to displace this presumption must present cogent evidence (*Cojocaru v British Columbia Women's Hospital and Health Centre*, 2013 SCC 30 at para. 18). That party must demonstrate that an informed person—viewing the matter realistically and practically, and having thought the matter

through—would conclude that it is more likely than not that the judge would not decide the matter fairly (*Yukon Francophone School Board, Education Area #23 v. Yukon (Attorney General)*, 2015 SCC 25 at para. 20). A judge who is, or appears to be, biased must recuse himself (*Fabrikant v. Canada*, 2018 FCA 224 at para. 14).

IV. Analysis

[6] Mr. Hociung submits that the purpose of a motion is to allow the Court to take actions that may prejudice a party. By requiring a motion for recusal, he submits that I have revealed my bias by implying that my absence would prejudice the Defendant.

[7] Mr. Hociung somewhat mischaracterizes the purpose of a motion. Although the positions of the parties in a proceeding may be impacted as the result of the outcome of a motion, prejudice to one party is not required for the Court to make an order on a motion. A motion simply allows a party to make a specific request relating to the conduct of a matter. Where seeking an order, proceeding by way of motion is advantageous because Part 7 of the *Rules* provides certainty to the parties in respect of the steps that should be taken before any order is made. The purpose of a notice of motion is "to provide the recipient with adequate notice of the order sought and the grounds for seeking the order" and "to tell the Court with exactitude what is being sought and why" (*Rahman v. Public Service Labour Relations Board*, 2013 FCA 117 at para. 4).

[8] Where seeking an order, in this case for recusal, a request from the Court that a motion be brought setting out the grounds and the evidentiary basis to be relied upon with a degree of exactitude does not imply bias.

[9] The Court of Appeal has previously dismissed the suggestion that my prior decision reflects bias. It noted that a reviewable error is "in no way evidence of bias." If it were, "all decisions reversed in appeal or quashed on an application for judicial review based on an error of law or any other reviewable error would raise such an apprehension" (2019 FCA 214 at para. 54). The Court of Appeal also dismissed Mr. Hociung's suggestion that reliance on legislative provisions not specifically argued in interpreting the legislation in issue reflects bias (2019 FCA 214 at para. 55).

[10] Finally, Mr. Hociung's submission relating to the Order holding redetermination in abeyance pending disposition of his Application for Leave to Appeal to the Supreme Court of Canada is, in effect, a disagreement with the scope of the Court's plenary jurisdiction and the relevant jurisprudence. A party's disagreement with a judge's interpretation and application of the law does not form the basis for an allegation of bias (*Sir v. Canada*, 2019 FCA 101 at paras. 6 and 8).

V. Conclusion on Bias

[11] Mr. Hociung has not demonstrated a reasonable apprehension of bias. The circumstances complained of reflect Mr. Hociung's disagreements with my interpretation and application of the

law. Such disagreements would not lead a reasonable, fully informed person to conclude that I will not proceed with an open mind. They do not demonstrate bias.

VI. Final Comment

[12] Mr. Hociung's allegations of bias appear rooted in a misunderstanding of this Court's role. He is reminded that the Court of Appeal's decisions are binding on the Federal Court. As the Court of Appeal noted, such misunderstandings by self-represented litigants occur with some frequency (2019 FCA 214 at para. 53). When they do, a judge is to give self-represented litigants latitude to the extent that it is necessary to ensure that they have the opportunity to advance their case. However, self-represented litigants are not granted any additional rights or special dispensation (*Sauve v. Canada*, 2014 FC 119 at para. 19; *Scheuneman v. Her Majesty the Queen*, 2003 FCT 37 at para. 4).

[13] In this regard, I note that Mr. Hociung's unnecessary and inflammatory rhetoric has not been limited to the issues he has raised on this motion. Early on, Mr. Hociung alleged that the case management judge was incompetent. After the Court of Appeal's decisions, in submissions to this Court, he expressed disagreement with the Court of Appeal's analysis using unnecessarily disparaging language. Most recently, on top of the allegations of bias, Mr. Hociung has suggested that my handling of this matter has "crossed into criminal territory."

[14] As noted in the passage from *Ethical Principles for Judges* cited by Mr. Hociung, "judges are obliged to ensure proceedings are conducted in an orderly and efficient manner and that the court's process is not abused" (pg. 33). Mr. Hociung's conduct may be abusive of the Court's

process. I remind Mr. Hociung that his right to aggressively pursue his legal position does not include a right to engage in abusive conduct.

ORDER IN T-1450-15

THIS COURT ORDERS that:

1. The motion is dismissed.

2. No order as to costs.

"Patrick Gleeson"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1450-15
STYLE OF CAUSE:	RADU HOCIUNG v MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES*

ORDER AND REASONS:	GLEESON J.
DATED:	JUNE 16, 2020

WRITTEN REPRESENTATIONS BY:

Radu Hociung	FOR THE PLAINTIFF (SELF-REPRESENTED)
Eric O. Peterson	FOR THE DEFENDANT

SOLICITORS OF RECORD:

Attorney General of Canada Ottawa, Ontario	FOR THE DEFENDANT