

Federal Court



Cour fédérale

Date: 20200826

Docket: T-508-20

Citation: 2020 FC 854

Ottawa, Ontario, August 26, 2020

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

GUIDO AMSEL

Applicant

and

**THE ATTORNEY GENERAL OF CANADA
and
THE ATTORNEY GENERAL OF MANITOBA**

Respondents

JUDGMENT AND REASONS

[1] The Attorney General of Canada seeks an order from this Court to strike the Notice of Application of Mr. Guido Amsel, filed with the Court in Winnipeg, Manitoba, on April 27, 2020. For the following reasons, the motion to strike must succeed.

[2] Mr. Amsel is an inmate held at the Stony Mountain Institution in Manitoba. He is not represented by counsel.

[3] In his Notice of Application in the Federal Court, he challenges a refusal to be given access to information pursuant to the *Freedom of Information and Protection of Privacy Act* [FIPPA]. This is a provincial statute of the Province of Manitoba. The refusal was communicated to Mr. Amsel on March 18, 2020 by an official of the Winnipeg Police Service. The request made was for access to records stemming from a particular police incident. According to the reply of March 18, 2020, the applicant was not involved in that incident and, therefore, his request was denied because it would constitute an unreasonable invasion of a third party's privacy.

[4] The judicial review application alleges errors in the reasoning leading to the conclusion by the Winnipeg Police Service that information sought is third party's personal information. The applicant contends that his request is for records related to his case, which presumably could alter the decision of the Winnipeg Police Service.

[5] The Attorney General of Canada claims that this Court does not have jurisdiction to entertain a judicial review application of a "decision" made by a provincial entity under a provincial law, the FIPPA. A judicial review application before the Federal Court can only be with respect to a decision made by a federal board, commission or tribunal. As such, it is plain and obvious that the judicial review application has no possibility of success.

[6] The applicant's response takes the form of his own motion to strike the Crown's motion to strike. I have taken the applicant's motion to strike a motion to strike as the respondent's record in accordance with Rule 369(2) and (3) of the *Federal Courts Rules*, SOR/98-106.

[7] In essence, Mr. Amsel disagrees that a decision by a provincial entity made pursuant to provincial legislation cannot provide the Federal Court with any jurisdiction. He claims that the Winnipeg Police Service was wrong in denying access to records relating to an incident in which he was not involved because of a prohibition in FIPPA from disclosing third party information.

[8] According to Mr. Amsel, the fact that FIPPA does give jurisdiction to the Manitoba Court of Queen's Bench does not prevent the Federal Court from having jurisdiction over the matter as he is not prevented from seeking a remedy from a court of his choosing.

[9] The Federal Court does not have jurisdiction to entertain this judicial review application. It can certainly consider judicial review applications, but only where the relief sought is against a federal board, commission or tribunal (subsection 18(1) of the *Federal Courts Act*, RSC, 1985, c F-7). "Federal board, commission or other tribunal" is defined at section 2 of the *Federal Courts Act* which requires that it be a "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 ...". The Winnipeg Police Service acting pursuant to provincial legislation is not a federal board, commission or other tribunal.

[10] In order for a motion to strike to be successful, it must be "plain and obvious that the action is certain to fail because it contains some such radical defect ..." (*Hunt v Carey Canada Inc.*, [1990] 2 SCR 959, at p. 975). Conversely, if there is a chance of success, the matter should be allowed to proceed. The same test applies to judicial review applications. In *Canada*

(National Revenue) v JP Morgan Asset Management (Canada) Inc., 2013 FCA 250; [2014] 2 FCR 557 [*JP Morgan Asset Management*], the Court wrote:

[47] The Court will strike a notice of application for judicial review only where it is “so clearly improper as to be bereft of any possibility of success”: *David Bull Laboratories (Canada) Inc. v. Pharmacia Inc.*, [1995] 1 F.C. 588 at page 600 (C.A.). There must be a “show stopper” or a “knockout punch” – an obvious, fatal flaw striking at the root of this Court’s power to entertain the application: *Rahman v. Public Service Labour Relations Board*, 2013 FCA 117 at paragraph 7; *Donaldson v. Western Grain Storage By-Products*, 2012 FCA 286 at paragraph 6; cf. *Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959.

[11] It may be preferable in most cases for a party to appear on the merits of a judicial review application and argue the issue at the outset of the hearing (*David Bull Laboratories (Canada) Inc. v Pharmacia Inc.*, [1995] 1 F.C. 588 at page 597). However, in a case like this one, where it is so clear that this Court lacks jurisdiction, the fatal flaw is obvious and plain. As the Court of Appeal found in *JP Morgan Asset Management*, “(i)f a notice of application seeks only remedies that cannot be granted, it must be struck” (para 92). That is evidently the case here. It follows that the motion for striking the Notice of Application must be granted. The flaw identified in this Notice of Application – the lack of jurisdiction of this Court - is such that it cannot be remedied through an amendment.

[12] The attorney General seeks its costs on the motion to strike which he situates at \$374 (without seeking reimbursement for disbursements). In my view, given the circumstances of the applicant, although there is a need to impose costs, they should be limited to \$100, inclusive of taxes.

JUDGMENT in T-508-20

THIS COURT'S JUDGMENT is that:

1. The motion to strike the Notice of Application for a judicial review is granted,
without leave to amend;
2. Costs in an amount of \$100, inclusive of taxes, are awarded.

“Yvan Roy”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-508-20

STYLE OF CAUSE: GUIDO AMSEL v THE ATTORNEY GENERAL OF CANADA and THE ATTORNEY GENERAL OF MANITOBA

PLACE OF HEARING: MOTION IN WRITING CONSIDERED AT OTTAWA (ONTARIO) PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES*

JUDGMENT AND REASONS: ROY J.

DATED: AUGUST 26, 2020

WRITTEN REPRESENTATIONS BY:

Guido Amsel FOR THE APPLICANT
(SELF-REPRESENTED)

Cynthia Lau FOR THE RESPONDENT
THE ATTORNEY GENERAL OF CANADA

SOLICITORS OF RECORD:

Attorney General of Canada FOR THE RESPONDENT
Winnipeg, Manitoba THE ATTORNEY GENERAL OF CANADA