Federal Court  Cour fédérale

Date: 20210608

Docket: T-521-19

Citation: 2021 FC 558

Ottawa, Ontario, June 8, 2021

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

ANDREW NICHOLAS HOKHOLD

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] This is an application by Dr. Andrew Hokhold seeking to quash a screening decision made by the Canadian Judicial Council [CJC] on February 12, 2019 by which his complaint of judicial misconduct against Justice Patrice Abrioux of the Supreme Court of British Columbia was found to be an abuse of the complaint process and was dismissed.

[2] Dr. Hokhold's underlying complaint against Justice Abrioux stems from judicial rulings that were made in the context of acrimonious family law litigation. The complaint is one of a

number that Dr. Hokhold has attempted to pursue against other judges who have ruled against him from time to time. All of those matters have been dismissed by the CJC on the same basis — that is to say that they were found to fall outside of the CJC's mandate.

[3] It is unnecessary to describe in detail Dr. Hokhold's litigation conduct beyond noting that he has been declared a vexatious litigant in both the British Columbia Court of Appeal and in the British Columbia Supreme Court. A detailed litigation history is set out in *Hokhold v Gerbrandt*, [2017] BCJ No 1417, 2017 BCSC 1249. That decision clearly establishes a pattern of abusive and reprehensible conduct including a propensity to file massive numbers of documents in support of numerous unmeritorious proceedings. A continuation of that type of conduct can be seen in the Applicant's Record at pp 802-812. All of the above forms the context against which this application must be considered.

I. The Complaint and the Decision Under Review

[4] Dr. Hokhold's complaint to the CJC was not complicated. In simple terms, he was vexed by the way Justice Abrioux dealt with two requisitions — one to re-open a contempt proceeding and one to vary an Order. Dr. Hokhold complained that Justice Abrioux took insufficient time to review the documents he had submitted and had no foundation for ruling that his requisitions were unmeritorious. According to Dr. Hokhold, this alleged lapse in preparation raised "serious and just concerns with regards to Justice Abrioux's credibility and integrity" and undermined the integrity of the judicial system. The CJC did not agree and dismissed the complaint under the screening authority found in Articles 4 and 5 of its complaint procedures. The reasons given by the CJC included the following:

Your complaint concerns your high conflict family litigation. In a judgment dated 19 July 2017, Justice Abrioux found you to be a vexatious litigant. As a result of this decision, you need leave of the court to institute legal proceedings against your former wife or members of her family (2017 BCSC 1249). Similarly, on 9 June 2017 Justice Newbury found you to be a vexatious litigant before the Court of Appeal (2017 BCCA 216). Your complaint concerns a hearing before Justice Abrioux where you presented various requests, such as to reopen the contempt issue and notices of motion to change support, etc. Justice Abrioux dismissed all of your requests.

In a letter dated 28 June 2017, I advised you that the Honourable Alexandra Hoy, Associate Chief Justice of Ontario and Vice-Chairperson of the Judicial Conduct Committee, found that your complaint in file l 7-004l was vexatious, made for an improper purpose and was an abuse of the complaint process.

The mandate of Council in matters of judicial conduct was explained in our earlier correspondence. It is to determine whether a recommendation should be made to the Minister of Justice, after a formal investigation, that a judge be removed from office by Parliament. The reasons for removal are set out in the *Judges Act* and address situations where a judge has become incapacitated or disabled from performing the duties of a judge.

In your complaint, you ask for Justice Abrioux to be removed from your case and for Council to "restrain him from hearing and deciding any and all matters" in your cases. You are of the view that Justice Abrioux made errors and was unfair.

You were advised in our last letter that complaints about findings of facts or law, the exercise of judicial discretion, and judicial decision-making do not involve conduct and fall outside the mandate of Council. Council is not a court and has no authority to review a judicial decision for the purpose of determining its correctness.

In her reasons for judgment of 9 June 2017, Justice Newbury mentioned your submission about one of your complaint[s] to Council. In his judgment of 19 May 2017, Justice Abrioux also mentioned the submission you made about one of your complaint[s] to Council. In our last letter, we informed you that a complaint to Council is not an appeal process and constitutes no basis for interfering with a judicial process. Yet, in the instant complaint you ask Council to interfere with the judicial process by preventing a judge from hearing your requests.

> The Council's *Review Procedures* provide an early screening process of complaints that falls under my responsibility. Having reviewed your complaint, it is my view that it does not warrant consideration by Council and, in the light of your previous complaints, that it is an abuse of the complaint process.

[5] The above decision references Dr. Hokhold's previous interactions with the CJC. Some of that history is contained in a letter written by the Executive Director of the CJC to Dr. Hokhold on July 12, 2018:

> In your letter of 24 June 2018, you ask for detailed reasons for Associate Chief Justice Hoy's decision to dismiss your complaint. The *Review Procedures* provide that I must inform complainants of the disposition of their complaint. In your case, I informed you that your complaint was dismissed, and provided the basis on which it was dismissed. Moreover, my letter, written under instructions from Associate Chief Justice Hoy, outlines the process followed to review your complaint, the principles applied and the reasons for closing the file. In my view, there is nothing additional that is required for you to be aware of the reasons for which your matter was dismissed.
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> In your letter to various addressees, you reiterate your complaint against the Honourable Frank W. Cole of the Supreme Court of British Columbia. After careful review, and considering the reasoned decision of Associate Chief Justice Hoy, I come to the view that the renewed complaint against Justice Cole is an abuse of process. The proper redress to address your concerns about judicial decisions was to proceed by way of appeal. I note that on two occasions the Court of Appeal did not allow you to appeal. I also note that the issues raised in your letter were discussed before the courts in a number of instances. Your bald allegation of "cover up" by Council is simply gratuitous.
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> In the same letter, you raise a new complaint in respect of the Honourable Patrice Abrioux of the Supreme Court of British Columbia. You allege that Justice Abrioux is blocking some of your applications from proceeding and that he is "protecting a fellow judge." I note that on 9 June 2017, Justice Newbury of the Court of Appeal deemed you a vexatious litigant. On 19 July 2017, Justice Abrioux also found you to be a vexatious litigant and ordered special costs against you. Such orders imply that any new proceedings you may wish to file must be authorized by the Court.

> This is a judicial decision, not an issue of conduct. I also note that the instant two letters were sent a short time after Justice Abrioux found you to be in contempt and sentenced you to an imprisonment term. He also issued an extensive order in respect of your obligations. Your obvious disagreement with those orders does not give rise to any judicial conduct issue. Your bald and unsubstantiated allegation of cover up is, in my considered view, an abuse of the complaint process.
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> In the same letter, you express concerns in respect of the Honourable Robert Bauman, Chief Justice of British Columbia, and the Honourable Christopher E. Hinkson. Chief Justice of the Supreme Court of British Columbia. You state they did not answer letters you sent them. To the extent you are suggesting this constitutes judicial misconduct, I must disagree. Judges do not normally answer any correspondence that comes directly from a litigant. Chief Justices retain discretion to address such correspondence or not; however, this is, in of itself, a judicial discretion and not an issue of conduct. I conclude that your allegations in this respect do not warrant consideration.
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> I have noted your comment that Chief Justice Hinkson expressed concerns to the police about the safety and security of Justice Cole. Whether or not this is the case, it is certainly not an issue of judicial conduct. A Chief Justice who has any concern about the security of any judge, staff member of other individual who attends to Court business would be rightly justified to reach out to security officials. In the absence of any evidence of bad faith or improper motive – and you have provided not a shred of evidence in this regard – I find this does not warrant consideration by Council.
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> In keeping with my duties under the *Review Procedures*, and having considered all available information, I come to the conclusion that your various allegations constitute an abuse of process and do not warrant consideration by Council.

[6] It is important to note that despite Dr. Hokhold being told by the CJC that his only recourse from Justice Abrioux's decision was an appeal, he did not appeal. Instead, he launched a complaint to the CJC.

[7] The standard of review that applies to this application is reasonableness. Contrary to Dr. Hokhold's Memorandum of Fact and Law, this is not an appeal. In describing the standard of review, I can do no better than Justice Yvan Roy's decision in *Lajeunesse v Canada (Attorney General)*, 2020 FC 922 at paras 12-13, [2020] FCJ No 935:

> [12] *Vavilov* confirms the "presumption that reasonableness is the applicable standard whenever a court reviews administrative decisions" (para 16). In *Girouard* (2020 FCA), the Court of Appeal agreed with this Court's decision (para 38). The standard of reasonableness is therefore the standard that must prevail.
>
> [13] It follows that it is up to the applicant to show that the decision under review is unreasonable (*Vavilov* at para 100). The reviewing court does not seek to substitute its opinion for that of the decision maker; indeed, "reasonableness review finds its starting point in judicial restraint and respects the distinct role of administrative decision makers" (*Vavilov* at para 75). The reviewing court must ensure that it understands the decision in order to determine whether it is reasonable as a whole. The reviewing court "asks whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision: *Dunsmuir*, at paras. 47 and 74; *Catalyst*, at para. 13" (*Vavilov* at para 99).

Also see *Cosentino v Canada (Attorney General)*, 2020 FC 884 at paras 32-36, [2020] FCJ No 954.

[8] The question I must answer is whether the CJC finding that the basis of Dr. Hokhold's complaint involved the exercise of judicial decision-making and not misconduct was reasonable. In other words, was the CJC finding transparent, intelligible and justified on the facts presented and having due regard to the law.

[9] The degree of deference that is owed by this Court to judicial council decisions was discussed in *Moreau-Bérubé v New Brunswick (Judicial Council)*, 2002 SCC 11 at para 60, [2002] 1 SCR 249:

> 60 Part of the expertise of the Judicial Council lies in its appreciation of the distinction between impugned judicial actions that can be dealt with in the traditional sense, through a normal appeal process, and those that may threaten the integrity of the judiciary as a whole, thus requiring intervention through the disciplinary provisions of the Act. The separation of functions between judicial councils and the courts, even if it could be said that their expertise is virtually identical, serves to insulate the courts, to some extent, from the reactions that may attach to an unpopular council decision. To have disciplinary proceedings conducted by a judge's peers offers the guarantees of expertise and fairness that judicial officers are sensitive to, while avoiding the potential perception of bias or conflict that could arise if judges were to sit in court regularly in judgment of each other. As Gonthier J. made clear in *Therrien*, other judges may be the only people in a position to consider and weigh effectively all the applicable principles, and evaluation by any other group would threaten the perception of an independent judiciary. A council composed primarily of judges, alive to the delicate balance between judicial independence and judicial integrity, must in my view attract in general a high degree of deference.

[10] The burden of proof, of course, rests on Dr. Hokhold to establish that the CJC decision under review was unreasonable.

II. Analysis

[11] Parliament has, in its wisdom, assigned the initial task of reviewing judicial conduct to the CJC. As noted by my colleague, Justice Elizabeth Heneghan in *Singh v Canada (Attorney General)*, 2015 FC 93 at para 51, [2015] FCJ No 47, the CJC's "mandate is limited to reviewing improper judicial conduct that affects the ability of judges to execute his or her duties as a judge.

It does not include broad jurisdictional power to review the decisions and judgments of judges". It goes without saying that this distinction is an important one and the CJC is well placed to understand it.

[12] In *Cosentino*, above, the CJC dismissed a complaint about the conduct of a case management judge. The complainant alleged bias and rude behaviour. The CJC held that the allegation of bias was an appealable issue involving a matter of judicial decision-making. It also found that the judge's impugned conduct fell within his authority to firmly control the judicial process in a highly charged proceeding. In upholding the CJC decision, Justice Catherine Kane said the following:

> [102] In conclusion, the CJC's decision is transparent, justified by the facts on the record and the law and is intelligible. The CJC's decision explains its statutory mandate and role, the nature of Mr. Cosentino's complaints and their context, and the distinction between matters of judicial decision-making and matters of judicial conduct. The CJC considered the complaints and the evidence filed in support and reasonably concluded that the complaints were not related to judicial conduct and, therefore, not within the mandate of the CJC, and that the complaint was an abuse of the CJC's complaint process.

[13] I endorse Justice Kane's views which apply equally to this application.

[14] Dr. Hokhold contends that the CJC decision dismissing his complaint was not responsive to his allegations. He says it is not intelligible, transparent or justified and he does not understand how the decision was reached. I do not accept this asserted difficulty. Any reasonable person reviewing the record before the CJC would easily understand why Dr. Hokhold's complaint was dismissed. It simply did not come close to establishing a case of

judicial misconduct by Justice Abrioux. Justice Abrioux was attempting to manage a belligerent and intolerant litigant with a history of burdening the court with frivolous, repetitious and massive filings.

[15] Justice Abrioux was well aware of what Dr. Hokhold was up to and concluded that it was simply a repetition of his past obstructionist behaviour. The fact that Dr. Hokhold thinks that more time should have been spent looking through his filings does not mean that Justice Abrioux was required to do so. If it were otherwise any time a litigant believed that a frivolous motion did not receive sufficient attention from a judge, a complaint could be made to the CJC.

[16] The decision to dismiss Dr. Hokhold's requisitions was clearly appealable and yet it was not appealed. This failure by Dr. Hokhold supports an inference that he knew full well that those matters were correctly decided by Justice Abrioux and could not be successfully appealed.

[17] I am satisfied that the CJC decision was reasonable. Indeed, no other outcome than the dismissal of Dr. Hokhold's complaint would have been justified on the record before the CJC.

[18] The parties agreed that costs payable to the successful party in the amount of $3,000.00 would be appropriate and that sum is awarded in favour of the Respondent payable forthwith by Dr. Hokhold.

JUDGMENT IN T-521-19

THIS COURT'S JUDGMENT is that this application is dismissed with costs payable forthwith to the Respondent in the amount of $3,000.00.

"R.L. Barnes"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-521-19
STYLE OF CAUSE:	ANDREW NICHOLAS HOKHOLD v ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
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DATED:	JUNE 8, 2021

APPEARANCES:

Dr. Andrew Hokhold	FOR THE APPLICANT (ON HIS OWN BEHALF)
Mr. James Rendell	FOR THE RESPONDENT

SOLICITORS OF RECORD:

N/A	FOR THE APPLICANT
Attorney General of Canada Vancouver, BC	FOR THE RESPONDENT