Date: 20080922

Docket: T-268-08

Citation: 2008 FC 1064

Ottawa, Ontario, September 22, 2008

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

MARTHA COADY

Applicant

And

**THE DIRECTOR OF PUBLIC PROSECUTIONS,
THE ROYAL CANADIAN MOUNTED POLICE AS
REPRESENTED BY THE DEPUTY COMMISSIONER OF THE
RCMP AND THE ATTORNEY GENERAL FOR ONTARIO**

Respondents

REASONS FOR ORDER AND ORDER

[1] The applicant is a lawyer who was called to the Ontario Bar on April 13, 1981, and who is representing herself in this proceeding. She is the subject of a series of complaints filed with the Law Society of Upper Canada (the Law Society) between 1995 and 1998.

[2] On March 3, 2008, a Law Society Hearing Panel started to hear those complaints; however, to date, the complaints have not been finally determined.

[3] At issue in the herein proceeding purportedly brought under sections 37 and 38 of the *Canada Evidence Act*, R.S.C., 1985, c. C-5 (the CEA), is the applicant's right to have access to a certain investigation file in possession of the Royal Canadian Mounted Police (RCMP) which has been referred to as "Project Anecdote".

[4] By this motion made pursuant to rule 377(1) of the *Federal Courts Rules*, SOR/98-106, (the Rules), the applicant now seeks an interlocutory order:

i. requiring the RCMP to file with this Court a certified true copy of the complete investigation file for "Project Anecdote" and for the release of those parts of its contents not subject to solicitor-client privilege; and

ii. directing the Department of Justice to provide a written inventory of the contents of said investigation file, and directing that Justice specifically identify portions of the file that might be subject to solicitor-client privilege, if any.

[5] The applicant alleges that "Project Anecdote" focused on the syndication of moneys for real estate development by a group of Ottawa lawyers, apparently implicated in proceeds of crime offences. If one is to accept the applicant's statements, the applicant's former husband, an Ottawa lawyer named Brian Boyle, was a central figure in that investigation, as was an Ottawa judge named James Chadwick, who had ceased on December 31, 2003 to be a member of the Ontario Superior Court of Justice.

[6] According to the applicant, the requested file may contain exculpatory evidence with respect to allegations of professional misconduct that were made against her by members of the Boyle's investment group between 1995 and 1998, and which the applicant wishes to produce to the Law Society Hearing Panel. The information contained in the RCMP file may also assist the applicant in a proposed application for judicial review of the negative decision of the Canadian Judicial Council apparently rendered sometime in 2004, dismissing her complaint against Justice Chadwick after his resignation.

[7] The respondents oppose the motion.

[8] The purpose of an interlocutory order rendered under rule 377(1) of the Rules, commonly known as an *Anton Piller* order, is to preserve property, including relevant material evidence in possession of the other party, and to ensure that the latter may not circumvent the Courts' process by making same disappear. An applicant must satisfy the Court of the following:

- the applicant has an extremely strong *prima facie* case;
- damage, potential or actual, is very serious;
- the other party has in their possession incriminating documents;
- there is a real possibility that such material may be destroyed; and
- the seizure or conservation by a named guardian of such material during the proceeding will cause no real harm to the other party.

The respondents submit that these conditions are not met in this case, while the applicant submits that they are.

[9] The applicant's motion must be dismissed.

[10] Having considered the evidence on file and having heard the parties, I am not satisfied of the existence of "an extremely strong *prima facie*" case. My colleague, Justice Beaudry, in dismissing a similar albeit not identical motion by the applicant presented in February 2008, has already ruled that section 37 of the CEA is not triggered in the proceeding, and that the Court has no jurisdiction to require the RCMP to provide evidence in relation to proceedings before either the Ontario Court of Appeal or a Law Society Hearing Panel (Order of Beaudry J. dated February 26, 2008, Court Record). In addition, the conditions for the triggering of section 38 of the CEA, which is also invoked by the applicant are no met in this case.

[11] The applicant also submits that the Department of Justice has taken the position that an application for access to information is a necessary precondition to her obtaining the information she seeks. She points out that such an application would however require signed consent from the targets of the RCMP's investigation, a consent which the applicant does not believe would be forthcoming. An *Anton Piller* order (or a Norwich order) cannot be used to defeat the express provisions of the *Access to Information Act*, R.S.C., 1985, c. A-1.

[12] Likewise, the applicant submits that this Court has jurisdiction over issues arising out of judicial misconduct investigated by the Canadian Judicial Council. Logically, the Federal Court of Canada would, as a result, be the appropriate court in which to seek the release of evidence,

pursuant to section 37 of the CEA, if this evidence is likely to provide evidence of misconduct under the *Judges Act*, R.S.C., 1985, c. J-1. Even if I accept that this Court is competent to hear an application for judicial review of the negative decision rendered by the Canadian Judicial Council dismissing the applicant's complaint against former Justice Chadwick, such an application has never been served and filed. The applicant is now out of time to do so and will need a judge's authorization to serve and file same.

[13] The applicant alternatively seeks a "Norwich order", a third party pre-action discovery mechanism by which a third party is compelled to provide an applicant with information, in a situation where the applicant believes he or she has been wronged and needs the third party's assistance to determine the circumstances of the wrongdoing in order to pursue legal remedies (*Isofoton S.A. v. Toronto Dominion Bank (c.o.b. TD Canada Trust)*, [2007] C.C.S. No.12739, [2007] O.J. No. 1701).

[14] To obtain a Norwich order the following criteria must be met:

i. There must be evidence of a valid, *bona fide*, reasonable claim. The standard required is that of a claim that is not frivolous or vexatious.

ii. The applicant must establish that the third party from whom the information is sought is somehow involved in the wrongful act, even if innocently.

iii. The third party must be the only practical source of the information. The victim is not required to approach the alleged wrongdoer for the information.

iv. The victim is required to indemnify the third party for any costs associated with complying with the order.

v. The Court will consider all the respective interests, and weigh the benefits of revealing the information against the interest in maintaining confidentiality.

[15] The applicant submits that she is currently in a position of danger, having being the subject of false allegations, and now likely to be convicted of disciplinary offences, while the respondents submit that there is no *bona fide* claim for a Norwich order. I agree with the respondents.

[16] On June 10, 2008, the Law Society Hearing Panel ruled that the applicant is estopped from raising issues related to, *inter alia*, the RCMP investigation: *Law Society of Upper Canada v. Coady*, [2008] L.S.D.D. No.56, 2008 ONLSHP 64 at para. 116 (f) (*Law Society of Upper Canada v. Coady)*. The Law Society Hearing Panel also precluded the applicant from calling current and former members of the RCMP and witnesses with regard to any investigations of the applicant's former husband or former Justice Chadwick absent a motion to the Law Society Hearing Panel to establish the relevance to the proceeding: *Law Society of Upper Canada v. Coady* at para. 116(q).

[17] In addition, on July 7, 2008, the Ontario Court of Appeal refused the applicant's leave to appeal the decision of the Ontario Superior Court dismissing the applicant's motion to introduce fresh evidence (*Law Society of Upper Canada v. Coady*, 2008 ONLSHP 64, leave to appeal to C.A. refused, M35786 (July 7, 2008). While the Law Society Hearing Panel has yet to issue its final decision, all of the evidentiary portions of the hearing before the Panel were concluded on July 7, 2008.

[18] In these circumstances, the applicant has simply failed to satisfy this Court that there is both a strong *prima facie* case for an *Anton Piller* order or a *bona fide* claim for a Norwich order. Accordingly, it is not necessary to examine the other requisite criteria governing the issuance of same.

[19] Finally, the applicant's request for an order directing the Department of Justice to provide a written inventory of the sought file is also improper on an interim or interlocutory motion, as the applicant would be entitled to this relief only if she is successful on the merits of her application under sections 37 and 38 of the CEA.

[20] In conclusion, the applicant's motion must be dismissed.

ORDER

THIS COURT ORDERS that the applicant's motion be dismissed.

"Luc Martineau"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

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Ms. Tatiana Sandler	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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