Federal Court of Appeal  Cour d'appel fédérale

Date: 20160113

Dockets: A-342-14

Citation: 2016 FCA 9

CORAM: **PELLETIER J.A.**
STRATAS J.A.
GLEASON J.A.

BETWEEN:

JOHN C. TURMEL

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Toronto, Ontario, on January 11, 2016.

Judgment delivered at Toronto, Ontario, on January 13, 2016.

REASONS FOR JUDGMENT BY: STRATAS J.A.

CONCURRED IN BY: PELLETIER J.A.
GLEASON J.A.

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REASONS FOR JUDGMENT

STRATAS J.A.

[1] Before the Court are 26 appeals. Four appellants appeal an order dated June 4, 2014 and another 22 appellants appeal an amended order dated July 9, 2014. All orders were made by the Federal Court (*per* Phelan J.): 2014 FC 537.

[2] This Court has ordered that the appeals be consolidated. These are the reasons in the consolidated appeals. A copy of these reasons shall be placed in each appeal file.

A. The pending challenges against marihuana regulations

[3] The appellants in this Court, self-represented litigants, acting along with other self-represented litigants, have challenged the constitutionality of the *Marihuana Medical Access Regulations*, SOR/2001-227 (MMAR) and the *Marihuana for Medical Purposes Regulations*, SOR/2013-119 (MMPR) in the Federal Court. In all, there are roughly 300 virtually identical challenges.

[4] The constitutionality of the MMPR is also in issue before the Federal Court in *Allard et al. v. Her Majesty the Queen*, file no. T-2013-13.

B. Interlocutory proceedings

[5] On May 7, 2014, in response to a motion brought by the respondent, the Federal Court exercised its discretion in favour of staying the challenges brought by all of the self-represented litigants on the ground that the *Allard* challenge was "much further advanced" and had significant potential to "reduce the issues in play, clarify those remaining [,] potentially simplify the litigation for the lay litigants" and "save judicial resources": 2014 FC 435 at paragraphs 12, 22 and 24. In granting the stay, the Federal Court noted the "unprecedented situation of hundreds

of lay litigants" whose claims were difficult to "realistically coordinate" (at paragraphs 12 and 22). The May 7, 2014 order was not appealed.

[6] The large number of matters brought by the self-represented litigants in the Federal Court arises because the lead litigant, Mr. Turmel, created templates for litigation documents and made them available on the internet. In the case of the motions that led to the June 4, 2014 order now under appeal, the appellants made use of one of these templates to prepare their affidavits in support of their motions. The template was limited. It allowed them to state their medical condition without any other supporting detail or evidence. It also allowed them to insert the number of their Authorization to Possess certificate, a certificate granted on the basis of a medical condition sometime in the past.

[7] In the June 4, 2014 order under appeal, the Federal Court exercised its discretion to dismiss motions by the appellants for interim constitutional exemptions from the *Controlled Drugs and Substances Act* pending trial of the challenges. In the July 9, 2014 amended order, the Federal Court clarified that the May 7, 2014 stay would remain in place until all appeals in the *Allard* challenge had been exhausted.

C. The specific issues in these appeals

[8] Despite this procedural complexity, there are only two issues raised by these appeals. We must decide whether the Federal Court committed reviewable error in:

- staying the challenges until the final disposition of the *Allard* challenge; and

- dismissing the motions for an interim constitutional exemption from the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19.

D. The standard of review

[9] The Federal Court judge who determined these matters did so as a case management judge. The order made is an interlocutory, discretionary one, based on applying legal standards to factual findings based on the evidence before him.

[10] If such an order is prompted by an error of law or legal principle, an appellate court must intervene: see, *e.g.*, *Soulos v. Korkontzilas*, [1997] 2 S.C.R. 217, at paragraph 54. Short of that sort of error, an appellate court must defer to a motions judge's assessment. This is especially so when the order is a case management order: see, *e.g.*, *Sawridge Band v. Canada*, 2001 FCA 338, [2002] 2 F.C. 346 at paragraph 11.

[11] Over the years, this Court and the Supreme Court have used different words to describe the level of deference that must be shown—or, put another way, the point at which a court can intervene in the absence of an error of law or legal principle. The cases speak of "clear error," "misapprehension of facts where an injustice would result," "sufficient weight to all relevant considerations," "so clearly wrong that it resulted in an injustice," "palpable and overriding error," and so on. The cases are unanimous that appellate courts cannot reweigh the evidence,

come up with their own conclusions, and then replace those of the first instance court. See, *e.g.*, *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87 at paragraph 83, *Penner v. Niagara (Regional Police Services Board)*, 2013 SCC 19, [2013] 2 S.C.R. 125 at paragraph 27; *Canadian Imperial Bank of Commerce v. Green*, 2015 SCC 60; *David Bull Laboratories (Canada) Inc. v. Pharmacia Inc.*, [1995] 1 F.C. 588 at page 594, 58 C.P.R. (3d) 209 at page 213 (C.A.); *Imperial Manufacturing Group Inc. v. Decor Grates Incorporated*, 2015 FCA 100, 472 N.R. 109 citing *v. Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235. In *Imperial Manufacturing*, in the interests of unity and simplicity, I sought to equate interlocutory discretionary orders with those described in *Housen* that fall in the category of questions of mixed fact and law, though I acknowledge that some take the view that such orders have some features different from those said to be based on questions of mixed fact and law.

[12] Putting aside these subtleties, what is common to all of these verbal formulations is that in the absence of an error of law or legal principle an appellate court cannot interfere with a discretionary order unless there is an obvious, serious error that undercuts its integrity and viability. This is a high test, one that the case law shows is rarely met. This deferential standard of review has applied in the past to discretionary orders appealed to this Court and it is the test we shall apply to the interlocutory discretionary order made by the Federal Court that is before us in these appeals.

E. Analysis

[13] Bearing in mind this standard of review, in my view the Federal Court did not commit reviewable error when it made its June 4, 2014 and July 9, 2014 orders.

(1) The stay decision

[14] On this issue, the Federal Court applied settled legal principles; the appellants have not demonstrated any error of law on the part of the Federal Court.

[15] Further, the decision to stay the self-represented litigants' challenges until the final disposition of the *Allard* challenge is supportable on the evidentiary record before the judge. It is also supported by the Federal Court's earlier findings that gave rise to its May 7, 2014 order, an order that has not been appealed.

[16] Before the Federal Court was evidence suggesting that there was significant overlap between the challenges brought by the self-represented litigants and the *Allard* challenge and the Federal Court so found (at paragraph 5). The appellants urge us to reweigh the evidence and find that there is not significant overlap. Given the standard of review, we cannot engage in that reweighing. There was evidence before the Federal Court supporting its finding that there was significant overlap.

[17] The Federal Court also took into account issues of judicial resources, efficiency and the orderly conduct of multiple proceedings before the Court (at paragraph 24). The Court found the *Allard* challenge, one conducted by "experienced counsel," was significantly advanced and would assist the disposition of the self-represented litigants' challenges (at paragraphs 5, 22 and 24). In addition, the judge noted that other superior courts had temporarily stayed similar claims pending the determination of the *Allard* challenge (at paragraph 10). Here again, on all these points, the evidence before the Federal Court was capable of supporting its reasons and findings.

(2) The decision on interim relief

[18] On this issue, again the appellants have not demonstrated any error in legal principle on the part of the Federal Court.

[19] The decision to dismiss the motions for an interim constitutional exemption from the *Controlled Drugs and Substances Act* until final determination of the *Allard* challenge is similarly supportable on the evidentiary record before the judge.

[20] In argument before us, the appellants encouraged this Court to reweigh the evidence and find differently. As I have explained, as an appellate court that must apply the appellate standard of review, this we cannot do.

[21] In dismissing the appellants' motions for an interim constitutional exemption, the Federal Court relied on the following matters:

- Similar relief had been requested in the *Allard* challenge but had been refused as overly broad and "inappropriate." In this case, the Federal Court found that the requested relief was "essentially unlimited" and "not tailored to remedying an alleged Charter violation" (at paragraphs 21-22).

- While the appellants' challenges were stayed, many would benefit from an earlier injunction the Federal Court granted in *Allard* (2014 FC 280, substantially upheld on appeal, 2014 FCA 298) (at paragraphs 15 and 20).

- In its reasons in support of the May 7, 2014 order (at paragraph 26), the Federal Court stated that it would remain prepared to consider motions for interim relief supported by adequate evidence brought by those who did not have the benefit of the earlier injunction and said that this "reduces, if not eliminates" the potential for prejudice to them.

- Mr. Turmel, the appellant in the lead file in these consolidated appeals, sought access to marihuana not to treat a recognized medical condition but to prevent illness. The Federal Court held that on the evidence it was not satisfied that marihuana's utility in preventing illness had been demonstrated (at paragraph 23).

- The appellants failed to establish that the medical exemption provided by the MMAR or MMPR violates their Charter rights in a way that would be remedied by the constitutional exemption they seek (at paragraph 23).

- A constitutional exemption was granted in *R. v. Parker* (2000), 49 O.R. (3d) 481, 188 D.L.R. (4th) 385 (C.A.). However, the Federal Court considered that *Parker* was distinguishable on the facts (at paragraphs 24-26). In *Parker*, the relief arose from a finding of unconstitutionality and the granting of a temporary suspension of certain provisions of the *Controlled Drugs and Substances Act*—something that is not present in these cases. Further, the Federal Court observed that after *Parker* the Supreme Court has significantly limited the availability of constitutional exemptions (at paragraphs 27-28, citing *R. v. Ferguson*, 2008 SCC 6, [2008] 1 S.C.R. 96).

- The appellants had failed to supply sufficient evidence concerning their personal medical circumstances to warrant any interim relief (paragraph 28). The only evidence before the Federal Court was the limited information supplied by way of the online template, but no supporting documentary evidence of their current medical condition.

[22] Together, these matters, all supported by the evidence in the record, supplied the Federal Court with a basis to decide as it did and we cannot interfere.

[23] Before us, Mr. Turmel on behalf of the appellants stressed that the selection of a material date for granting relief to some but not others in the injunction granted in *Allard* is irrational. The distinction was based not on medical need but rather on a non-medical criterion, namely the viability of the MMPR scheme. Mr. Turmel submitted that the Federal Court erred in its June 4,

2014 order by continuing this same erroneous approach. He asked this Court to remedy this by granting an exemption to all who satisfy the criterion of medical need.

[24] The difficulty with this is the same discussed above: the Federal Court found that the appellants offered insufficient evidence of medical need. In its view, the assertions in the template affidavits were not enough. Again, this is an assessment of the sufficiency or weight of evidence, a matter on which we must defer.

[25] I add that in its May 7, 2014 order, the Federal Court left the door open for those who could establish, by further and better proof than that found in the template affidavits, that they had a medically verifiable need for medical marihuana. In their filings that led to the June 4, 2014 order, none of the appellants took the Federal Court up on its offer.

F. Costs

[26] The parties agree that costs in the amount of $3,350, all inclusive, collectively for all of the appeals are appropriate, and Mr. Turmel has undertaken on behalf of the appellants to pay them.

G. Proposed disposition

[27] Therefore, I would dismiss Mr. Turmel's appeal with costs in the amount of $3,350, all inclusive. I would dismiss all of the other appeals without costs.

"David Stratas"

J.A.

"I agree
J.D. Denis Pelletier J.A."

"I agree
Mary J.L. Gleason J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-342-14
APPEAL FROM AN ORDER OF THE HONOURABLE MR. JUSTICE PHELAN DATED JUNE 4, 2014 AND AN AMENDED ORDER DATED JULY 9, 2014	
STYLE OF CAUSE:	JOHN C. TURMEL v. HER MAJESTY THE QUEEN
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	JANUARY 11, 2016
REASONS FOR JUDGMENT BY:	STRATAS J.A.
CONCURRED IN BY:	PELLETIER J.A. GLEASON J.A.
DATED:	JANUARY 13, 2016

APPEARANCES:

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SOLICITORS OF RECORD:

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