Federal Court of Appeal  Cour d'appel fédérale

Date: 20171213

Docket: A-231-17

Citation: 2017 FCA 246

CORAM: **DAWSON J.A.**
STRATAS J.A.
RENNIE J.A.

BETWEEN:

TIMOTHY E. LEAHY

Appellant

and

THE MINISTER OF JUSTICE

Respondent

Heard at Toronto, Ontario, on December 12, 2017.

Judgment delivered at Toronto, Ontario, on December 13, 2017.

REASONS FOR JUDGMENT BY: DAWSON J.A.

CONCURRED IN BY: STRATAS J.A.
RENNIE J.A.

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REASONS FOR JUDGMENT

DAWSON J.A.

[1] The appellant filed a notice of application in the Federal Court which sought:

> 1. an order in the nature of a writ of prohibition against the Department of Justice, barring its agents from seeking the interference of the Law Society of Upper Canada in pending litigation;
>
> 2. an order requiring the respondent's agents, who seek to prevent Mr. Leahy from appearing in the Federal Courts, to comply with the *Federal Courts Rules* and file a motion, *not* fax a directive to complicit jurists, who dutifully do their bidding;

> 3. an order in the nature of a declaration, declaring that Timothy E. Leahy, by virtue s-s. 11(2) of the *Federal Courts Act* and the authorization the Ontario Court of Appeal issued him on 22 March 1991 to appear in counsel in Ontario courts, may appear as counsel in the Federal Court and the Federal Court of Appeal;
>
> 4. an order of costs to the applicant in an amount of no less than $25,000 and
>
> 5. any additional relief this Honourable Court should consider appropriate and just.

[2] The respondent then moved for an order striking the notice of application and dismissing the application on the grounds that the Federal Court lacked jurisdiction to grant the requested relief and that the application was an abuse of process.

[3] By order dated July 31, 2017, the Federal Court struck the application without leave to amend (Court File T-720-17). The appellant now appeals from the order of the Federal Court.

[4] I agree with the appellant that the Federal Court's order cannot be upheld on the basis of the reasons articulated by the Federal Court. For example, the relief sought was forward-looking and so was not a collateral attack on directions previously issued in other Court files. Nor am I able to discern how Rule 302 of the *Federal Courts Rules* precluded "the request for a plurality of orders in respect of the relief sought." Further, the Federal Court failed to expressly consider the request for declaratory relief.

[5] Rule 119 of the *Federal Courts Rules* permits an individual to represent himself or herself in the Federal Courts or to be represented by a solicitor. Rules 120 and 121 generally require entities such as corporations or parties under legal disability to be represented by a

solicitor. “Solicitor” is defined in Rule 2 to be a person referred to in subsection 11(3) of the *Federal Courts Act*, namely a person who may practice as a barrister, advocate, attorney or solicitor in the Federal Court or the Federal Court of Appeal. The appellant asserts that he is authorized to appear on behalf of others in the Federal Court and the Federal Court of Appeal. The respondent has not shown how the Federal Court lacked jurisdiction to determine whether the appellant is a person referred to in subsection 11(3) of the *Federal Courts Act* or how it is an abuse of process for the appellant to assert this right.

[6] Declaratory relief is available where a party establishes that:

- The Court has jurisdiction over the issue.
- The question before the Court is real and not theoretical.
- The party has a genuine interest in raising the question.

(*Canada (Prime Minister) v. Khadr*, 2010 SCC 3, [2010] 1 S.C.R. 44, at paragraph 46, *Canada (Indian Affairs) v. Daniels*, 2014 FCA 101, [2014] 4 F.C.R. 97, at paragraphs 62-79).

[7] The Federal Court has previously directed that proceedings be held in abeyance until the applicants advised that either they intended to act in person or that they were represented by a solicitor and not the appellant. Given this factual background I am satisfied that the appellant’s right to appear in the Federal Court is a real, not theoretical question and that the appellant has a real interest in raising it. In so finding, I express no opinion on the merits of the appellant’s argument. The only issue before this Court is whether the appellant’s application should have been struck out.

[8] This said, I agree with the result reached by the Federal Court with respect to the claim for prohibition and what amounts to a claim for mandatory injunction.

[9] With respect to the writ of prohibition sought barring members of the Department of Justice "from seeking the interference of the Law Society of Upper Canada in pending litigation", Rules 119 to 121 reflect the undoubted right of the Federal Court to control who may appear before it as counsel. No litigant can lawfully be deprived of the right to ascertain facts from a governing body of lawyers so as to be able to formulate a submission to the Court on the potential applicability of Rules 119 to 121.

[10] Similarly, this Court cannot prohibit litigants, or a class of litigants, from seeking directions as permitted by the Rules in lieu of filing a motion record. It is in every case for the judicial officer who receives such a request for directions to consider the propriety of the request.

[11] Finally, while the appellant has asserted bias on the part of the Federal Court, this assertion was wholly unsubstantiated. The Supreme Court has cautioned that alleging bias is "a serious step that should not be undertaken lightly" (*R. v. S. (R.D.*), [1997] 3 S.C.R. 484, 151 D.L.R. (4th) 193, at paragraph 113). Unsubstantiated allegations of bias cause harm to the administration of justice and carry the risk of overshadowing meritorious arguments. Hopefully, the appellant will refrain from making such allegations in the future.

[12] It follows that I would allow the appeal in part and set aside the order of the Federal Court, substituting in its stead an order striking only the first and second heads of relief sought,

and allowing the request for declaratory relief to proceed. For the purpose of Rule 306 time should run from the date of this Court's judgment. As the appellant was successful in setting aside the order striking his application in its entirety I would award the appellant costs here and below fixed in the amount of $500, inclusive of all disbursements and taxes.

[13] As the Privacy Commissioner has advised that there are no new records of communications between the Department of Justice and the Law Society of Upper Canada, there is no need to deal with the appellant's request for additional disclosure of documents.

"Eleanor R. Dawson"
J.A.

"I agree.
David Stratas J.A."

"I agree.
Donald J. Rennie J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-231-17
STYLE OF CAUSE:	TIMOTHY E. LEAHY v. THE MINISTER OF JUSTICE
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	DECEMBER 12, 2017
REASONS FOR JUDGMENT BY:	DAWSON J.A.
CONCURRED IN BY:	STRATAS J.A. RENNIE J.A.
DATED:	DECEMBER 13, 2017

APPEARANCES:

Timothy E. Leahy	FOR THE APPELLANT
Shain Widdifield	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Nathalie G. Drouin Deputy Attorney General of Canada	FOR THE RESPONDENT