Federal Court of Appeal | Cour d'appel fédérale

Date: 20100505

Docket: A-268-09

Citation: 2010 FCA 117

CORAM: **LÉTOURNEAU J.A.**
NADON J.A.
PELLETIER J.A.

BETWEEN:

GILBERT L'ÉCUYER

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Montréal, Quebec, on May 3, 2010.

Judgment delivered at Montréal, Quebec, on May 5, 2010.

REASONS FOR JUDGMENT BY: LÉTOURNEAU J.A.

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

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REASONS FOR JUDGMENT

LÉTOURNEAU J.A.

[1] The appellant, who is not represented by counsel, is appealing a decision of Justice Shore of the Federal Court (judge). In that decision dated May 28, 2009, the judge dismissed an application for judicial review filed by the appellant against a decision of the Royal Canadian Mounted Police (RCMP) Public Complaints Commission (Commission).

[2] Applying the “reasonableness” standard of review, the judge found that the Commission Chair’s decision was reasonable.

[3] In essence, the appellant is asking us to review the findings and inferences of fact made by the Commission and to substitute our assessment of the facts for that of the Commission.

[4] The binding case law that guides us is clear on this aspect of the standard for reviewing questions of fact or inferences of fact: be it on appeal or judicial review, “deference [must be] given [by the reviewing judge] on questions [and inferences] of fact because of the ‘signal advantage’ enjoyed by the primary finder of fact”: see *Dunsmuir v. New Brunswick*, 2008 SCC 9, at paragraph 53; *Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, [1998] 1 S.C.R. 982, at paragraph 37; *Housen v. Nikolaisen*, [2002] 2 S.C.R. 235, at paragraphs 10 to 25.

[5] At paragraph 25 of *Housen*, Justices Iacobucci and Major wrote the following:

> [25] Although the trial judge will always be in a distinctly privileged position when it comes to assessing the credibility of witnesses, this is not the only area where the trial judge has an advantage over appellate judges. Advantages enjoyed by the trial judge with respect to the drawing of factual inferences include the trial judge’s relative expertise with respect to the weighing and assessing of evidence, and the trial judge’s inimitable familiarity with the often vast quantities of evidence. This extensive exposure to the entire factual nexus of a case will be of invaluable assistance when it comes to drawing factual conclusions. In addition, concerns with respect to cost, number and length of appeals apply equally to inferences of fact and findings of fact, and support a deferential approach towards both.

[6] At the hearing, the appellant reiterated his complaint that the RCMP and the Commission had failed to conduct an adequate investigation into the police harassment he had allegedly suffered in countries where he had vacationed, in particular, in Bulgaria, Italy, Spain, France and

Switzerland. He claimed that the cause for this harassment could be traced back to Canada: see Appeal Book, Vol. 1, at page 95.

[7] In support of his complaint to the Commission, he wrote the following in the Appeal Book, Volume 1, page 97, at paragraphs 8 and 9:

> [TRANSLATION]
> 8. I have reason to believe that the file, which may have been compiled initially against an individual with the same name, was manipulated so that the contents could be used against me and maybe other fictitious evidence planted to implicate me in tales that would otherwise have been unlikely. In this respect, consideration should be given to the fact that, from 1993 to 1996, I was harassed at work, and senior Quebec officials tried to ascribe certain acts of misconduct to me that had nothing to do with me. They very likely succeeded, through political machinations, in recording false charges against me in a file and, using their influence with the police, through the RCMP, managed to send it to Interpol; this could be the cause of all my problems in Europe in 2006.
>
> 9. As for the rest, agents of the RCMP and/or CSIS, or persons associated one way or another with one of these agencies, may have also sought to settle accounts after I blew the whistle on some questionable misconduct in the RCMP and in political institutions.

[8] Lastly, still in that context, he submits that the Commission imposed a disproportionate burden of proof on him by requiring that he produce convincing and concrete evidence to support his complaint. He adds that, in response to his request, the RCMP was obligated to help him in his dealings with foreign police forces, in particular Interpol, to determine whether he was being investigated by those police forces.

[9] The Commission considered the appellant's allegations of harassment and found that there was no convincing and concrete evidence to support the allegations. In his final report (see Appeal Book, Vol. 1, at page 37), the Commission Chair wrote the following:

> [TRANSLATION]
> In my opinion, the arguments made by Mr. L'Écuyer to support his theory are illogical. He refers to a range of routine events that occurred during his trip abroad and that, in my opinion, are unrelated to one another. He thought that police forces both in Canada and abroad had a file on him, but in fact no such file exists. He took the necessary steps to determine whether such a file existed by submitting access to information requests to various police agencies, which confirmed to him that no file exists. Mr. L'Écuyer learned that no file exists thanks to Corporal Beaulieu's recommendations. Moreover, I believe that the RCMP had enough information to determine that the complaint was not supported by convincing and concrete evidence. In conducting my own analysis of the evidence submitted by Mr. L'Écuyer, I have reached the same conclusion as the RCMP. It should be noted that the agencies dealing with the access to information requests all categorically stated that there was no file on Mr. L'Écuyer. In conclusion, there is no evidence showing that the police in Canada put together a file against Mr. L'Écuyer or that information about Mr. L'Écuyer was sent to Interpol or foreign police forces.
>
> (Emphasis added)

[10] I need not rule on the obligation, if any, of a Canadian police force to help citizens in any dealings they wish to have with foreign police forces, and I refrain from doing so. That said, with respect, I do not agree that citizens may mobilize Canadian police forces and require them to investigate foreign police forces, on the basis of mere impressions and in the absence of any evidence whatsoever that, objectively, lends at least an air of likeliness or reality to their allegations of harassment at the hands of the foreign police.

[11] After reviewing the issues, the decision of the judge and that of the Commission, as well as the parties' memoranda, I am satisfied that the judge made no reviewable error, either in determining the applicable standard of review or in applying it in the review of the Commission's decision.

[12] The appellant asked to be exempted from payment of costs on the ground that he had raised new questions of general interest and importance. Given the unequivocal findings of the Commission and the judge, I do not agree that there is any reason for departing from the general rule in this regard, which is to grant costs in the appeal.

[13] For these reasons, I would dismiss the appeal with costs.

"Gilles Létourneau"
J.A.

"I agree.
M. Nadon J.A."

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

Certified true translation
Tu-Quynh Trinh

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-268-09
(APPEAL OF A JUDGMENT OF THE FEDERAL COURT DATED MAY 28, 2009, DOCKET NO. T-719-08).	
STYLE OF CAUSE:	GILBERT L'ECUYER v. HER MAJESTY THE QUEEN
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	May 3, 2010
REASONS FOR JUDGMENT BY:	LÉTOURNEAU J.A.
CONCURRED IN BY:	NADON J.A. PELLETIER J.A.
DATED:	May 5, 2010

APPEARANCES:

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