

Federal Court of Appeal



Cour d'appel fédérale

Date: 20130605

Docket: A-139-13

Citation: 2013 FCA 147

**CORAM: PELLETIER J.A.
TRUDEL J.A.
MAINVILLE J.A.**

BETWEEN:

DAVID LESSARD-GAUVIN

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Motion in writing disposed of without the appearance of the parties.

Judgment delivered at Ottawa, Ontario, on June 5, 2013.

REASONS FOR JUDGMENT BY:

MAINVILLE J.A.

CONCURRED IN BY:

**PELLETIER J.A.
TRUDEL J.A.**

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REASONS FOR JUDGMENT

MAINVILLE J.A.

[1] The respondent is seeking the preliminary dismissal of the appeal. The appeal concerns an order dated April 12, 2013, in Federal Court file No. T-142-13, whereby Justice Boivin dismissed the appellant's motion for a show cause order for contempt of court and various incidental orders, including an injunction, in the context of an application for judicial review.

[2] The application for judicial review at issue concerns a decision by the Public Sector Integrity Commissioner dated December 27, 2012. The Commissioner refused to investigate alleged wrongdoing disclosed by the appellant on October 26, 2012, under the *Public Servants*

Disclosure Protection Act, S.C. 2005, c. 46. In the context of the application for judicial review, and in response to a verbal request by the appellant, Prothonotary Morneau issued the following direction on January 18, 2013:

[TRANSLATION]

The applicant's notice of application may be filed in confidence and served on the Attorney General of Canada with this reservation regarding confidentiality and a copy of this direction. Within thirty (30) days of such service, the parties shall agree on appropriate long-term confidentiality measures for this file based on the applicable law.

[3] As the parties were unable to agree on confidentiality measures, the appellant filed a motion for a confidentiality order with the Federal Court on February 19, 2013. This motion was dismissed by Justice Boivin on April 11, 2013, and that decision is the subject of a separate appeal in this Court's file No. A-135-13.

[4] In the context of this motion for a confidentiality order, counsel for the respondent served her reply record on the appellant with copies to her assistant, her articling student, counsel for the client department and the client department representative. The appellant saw this as a violation of Prothonotary Morneau's direction and asked that contempt of court proceedings be initiated against counsel for the respondent. The appellant also sought various remedial orders, including an injunction. Justice Boivin ruled against contempt proceedings as well as the other remedial orders.

[5] The respondent submits that the appeal has no reasonable chance of success. The principal grounds put forward by the respondent are the following: (a) on its very face, the Prothonotary's direction applied to the notice of application for judicial review, not subsequent

proceedings; (b) the direction at issue is neither an order nor a judgment and cannot therefore give rise to a contempt of court charge; and (c) the communications at issue by counsel to her assistants and clients cannot constitute contempt of court, but are in fact perfectly normal, indeed commonplace, acts of litigation file management. As for the various remedial orders and the injunction, they would serve no purpose, in the respondent's view, as the communications at issue did not violate the Prothonotary's direction.

[6] The appellant submits that counsel for the respondent was in contempt of court in acting as she did; that she should not have communicated with anybody outside the confines of the Department of the Attorney General of Canada; and that, by so doing, she not only placed herself in contempt, but also violated the *Privacy Act*, R.S.C. 1985, c. P-21. The appellant also maintains that the remedial orders sought, including the injunction, are essential to ensure compliance with the Prothonotary's direction. The appellant submits that the respondent has failed to establish that his appeal has no chance of success.

[7] The appellant asks that the respondent's motion for dismissal of the appeal be heard orally by this Court. The respondent is vigorously opposed to this, citing in that regard the provisions of Rule 369 of the *Federal Courts Rules*, SOR/98-106. When the moving party (the respondent in this case) invokes Rule 369, the Court may render a final judgment without an oral hearing: *Olson v. Canada*, [1993] 1 F.C. 32. The party targeted by a motion filed pursuant to Rule 369 (the appellant in this case) may request an oral hearing on the motion, but this request will only be granted if serious grounds justifying such a hearing are established. In this case, apart from his desire to be heard for several hours by this Court in a hearing that would be held

in Québec or by teleconference, the appellant has not submitted any serious grounds justifying such a hearing. I note that the appellant has filed a very comprehensive written record of more than 100 pages to contest the motion. A hearing would add nothing to the debate.

[8] The standard for a preliminary dismissal of an appeal is high. This Court will only summarily dismiss an appeal if it is obvious that the basis of the appeal is such that the appeal has no reasonable chance of success and is clearly bound to fail: *Sellathurai v. Canada (Public Safety and Emergency Preparedness)*, 2011 FCA 1, 414 N.R. 278, 98 Imm. L. R. (3d) 165 at paras. 7-8; *Yukon Conservation Society v. National Energy Board*, [1979] 2 F.C. 14 (F.C.A.) at p. 18; *Arif v. Canada (Minister of Citizenship and Immigration)*, 2010 FCA 157, 405 N.R. 381, 321 D.L.R. (4th) 760 at para. 9.

[9] In this case, after reviewing the whole of the parties' motion records, it is obvious that the basis of the appeal is such that the appeal has no reasonable chance of success and is bound to fail.

[10] It is indeed plain and obvious on the very face of the prothonotary's direction that it applied only to the appellant's notice of application. The communications at issue by counsel for the respondent therefore clearly do not give rise to contempt of court proceedings on the basis that they violated that direction. Accordingly, the other remedial orders sought by the appellant, including the injunction, have no basis either.

[11] I would therefore allow the respondent's motion and dismiss the appeal, with costs.

“Robert M. Mainville”

J.A.

“I agree.

J.D. Denis Pelletier J.A.”

“I agree.

Johanne Trudel J.A.”

Certified true translation

Erich Klein

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET: A-135-13

STYLE OF CAUSE: David Lessard-Gauvin v. Attorney
General of Canada

**MOTION IN WRITING DISPOSED OF WITHOUT THE APPEARANCE OF THE
PARTIES**

REASONS FOR JUDGMENT BY: MAINVILLE J.A.

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

DATED: June 5, 2013

WRITTEN SUBMISSIONS:

David Lessard-Gauvin

ON HIS OWN BEHALF

Bernard Letarte

FOR THE RESPONDENT

SOLICITORS OF RECORD:

William F. Pentney
Deputy Attorney General of Canada
Ottawa, Ontario

FOR THE RESPONDENT