Federal Court of Appeal | Cour d'appel fédérale

Date: 20190501

Docket: A-203-18

Citation: 2019 FCA 105

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

BETWEEN:

KARL WALTHER KELLER

Appellant

and

THE MINISTER OF FOREIGN AFFAIRS

Respondent

Heard at Vancouver, British Columbia, on May 1, 2019.
Judgment delivered from the Bench at Vancouver, British Columbia, on May 1, 2019.

REASONS FOR JUDGMENT OF THE COURT BY: RENNIE J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Vancouver, British Columbia, on May 1, 2019.

RENNIE J.A.

[1] The appellant, Karl Walther Keller, appeals from a judgment of the Federal Court (2018 FC 598, *per* O'Reilly J.) dismissing his application for judicial review of a decision by the Minister of Foreign Affairs to deny his request for a certificate under subsection 10(1) [since amended] of the *Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism*, SOR/2001-360 (Regulations). Certificates issued under this subsection serve as

confirmation that the holder is not a person listed in the schedule to the Regulations. The schedule, in turn, lists persons, entities or organizations who or which the Governor in Council is satisfied that there are reasonable grounds to believe has carried out or participated in terrorist activity (Regulations, s. 2(1)). The consequence of being listed on the schedule includes freezing of financial assets and limitations on travel.

[2] The appellant submitted his application for a certificate on April 17, 2015. Three weeks later, the appellant was informed by the Department of Foreign Affairs' Economic Law Division that he did not appear eligible for a certificate as there was no evidence that he had been or may be mistaken for a listed person, or that any of his assets had been frozen as a result of being so mistaken. Nevertheless, the appellant was invited to submit further information, including an indication of the listed person for whom the appellant was at risk of being mistaken.

[3] The appellant sought judicial review. His application was dismissed by the Federal Court (2016 FC 903 *per* Martineau J.) for prematurity since no final decision had been rendered on the appellant's request for a certificate.

[4] On August 29, 2016, the appellant wrote to the Minister reiterating his assertion that he was not a listed person and was thus eligible for a certificate. In reply, the Minister confirmed that in the absence of evidence demonstrating that he had been affected by the Regulations, the appellant did not qualify for a certificate under section 10. The Minister noted that "[t]he purpose of section 10 is to provide redress for situations where an individual has been or may be mistaken for a listed person under the [Regulations]."

[5] The appellant again sought judicial review. The application was dismissed by the Federal Court (2018 FC 598 *per* O'Reilly J.), who concluded that the Minister's decision was consistent with the overarching purpose of the Regulations "to limit the ability of persons believed to be involved in terrorist activities from pursuing their aims, by constraining their ability to finance those activities, acquire necessary goods, and obtain the assistance of others" and that the purpose of section 10 was "to ensure that persons who are not on the [schedule] do not encounter those kinds of difficulties" (para. 19). The Minister's request for evidence to substantiate the appellant's claim of mistaken identity was therefore reasonable.

[6] The judge also found that subsection 10(2), which sets a 15-day period during which the Minister must issue a certificate when it is established that an applicant is not a listed person, does not prescribe the time limit for completing the initial assessment of whether or not a person is in fact eligible for a certificate. The fact that the Minister rendered his decision over a year after the appellant submitted his application was of thus no moment.

[7] The judge appropriately identified the standard of review of the Minister's decision as reasonableness. The question on appeal is then whether the judge applied it correctly: *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para. 45-47, [2013] 2 S.C.R. 559.

[8] Section 10 of the Regulations, as it stood at the time, provided:

(1) A person claiming not to be a listed person may apply to the Minister for a certificate stating that the person is not a listed person.	(1) Toute personne qui affirme ne pas être une personne inscrite peut demander au ministre de lui délivrer une attestation à cet effet.

(2) The Minister shall, within 15 days after receiving the application, issue a certificate if it is established that the applicant is not a listed person.	(2) S'il est établi que le demander n'est pas une personne inscrite, le ministre lui délivre l'attestation dans les quinze jour suivant la réception de la demande.

[9] The appellant submits that the plain text of this provision makes clear that the only criterion for certificate eligibility is that an applicant establishes that they are not a listed person. Evidence of real or potential mistaken identity with a listed person, or of adverse effects to an applicant's assets, is not required. The appellant submits that this is the subject of section 10.1. Furthermore, the time period under subsection 10(2) is triggered upon receipt of an application. The Minister therefore had 15 days to comply with the appellant's request, which he failed to do.

[10] The appellant advises that he no longer requires a certificate because of recent developments. While the appeal is arguably moot, we will nevertheless deal with the appellant's submissions on their merits.

[11] The appellant's submissions are essentially the same as those advanced in the Federal Court and we reject them essentially for the same reasons given by the Federal Court. The appellant's interpretation is based on a strict reading of the text but is divorced from the legislative context and purpose in which it must be situated: *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, 154 D.L.R. (4th) 193.

[12] Precise and unequivocal text necessarily constrains the meaning that can be given to a particular provision. Text can be dominant in the interpretative process: *Placer Dome Canada Ltd. v. Ontario (Minister of Finance)*, 2006 SCC 20 at para. 20, [2006] 1 SCR 715; see also

TELUS Communications Inc. v. Wellman, 2019 SCC 19. However, where the words seem clear and unequivocal, they must still be considered in light of their context and legislative purpose: *ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)*, 2006 SCC 4 at para. 48. As noted in *Hillier v. (Canada) Attorney General*, 2019 FCA 44, at para. 24, this is to ensure that we are not mistaken in our understanding of the text, to which we would add that conclusions which may appear obvious as a matter of pure textual interpretation may be less so following consideration of context and purpose.

[13] The appellant would have the Court stop its analysis after considering the text alone. This we cannot do.

[14] The phrase "a person *claiming* not to be a listed person" (emphasis added) under subsection 10(1) can be interpreted as requiring that an applicant establish mistake or confusion with a person who is in fact, listed. Certificates are to be issued to those persons who are or may likely be confused for a person listed in the schedule because they share the same or similar name. Additionally, should we accept the appellant's interpretation virtually all Canadians would be eligible for a certificate under the Regulations. It is a well-established principle of statutory interpretation that the legislature does not intend to produce absurd consequences: *Tran v. Canada (Public Safety and Emergency Preparedness)*, 2017 SCC 50 at para. 31, [2017] 2 S.C.R. 289 citing *Rizzo* at para. 27.

[15] To conclude, the Minister interpreted the purpose of section 10 as providing a means of redress where an individual has been or may be mistaken for a listed person. The judge accepted

this as a reasonable interpretation and concluded that imposing a requirement on applicants to provide some evidence to demonstrate the need for such redress was consistent with that interpretation. We agree. Having failed to provide any evidence of mistake or confusion, it was open to the Minister to deny the appellant's request.

[16] The question remains whether subsection 10(2) contemplates the Minister reaching a conclusion on eligibility within 15 days of receiving an application.

[17] The qualifying language of subsection 10(2) provides that "*if* it is established that the applicant is not a listed person" (emphasis added), a certificate is to be issued. This is a clear indication that the time period does not commence until the Minister is satisfied that the applicant is not, in fact, a listed person. No time period is prescribed for making this determination. This strikes us as a reasonable interpretation of the subsection given the significance of a certificate and the effort that may be required for the Government to safely conclude that one should issue in respect of a given applicant.

[18] We would therefore dismiss the appeal with costs fixed at $1,000.00, all-inclusive.

"Donald J. Rennie"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-203-18
(APPEAL FROM AN ORDER OF THE HONOURABLE MR. JUSTICE JAMES O'REILLY OF THE FEDERAL COURT, DATED JUNE 11, 2018, NO. T-1713-16)	
STYLE OF CAUSE:	KARL WALTHER KELLER v. THE MINISTER OF FOREIGN AFFAIRS
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
DATE OF HEARING:	MAY 1, 2019
REASONS FOR JUDGMENT OF THE COURT BY:	STRATAS J.A. RENNIE J.A. LASKIN J.A.
DELIVERED FROM THE BENCH BY:	RENNIE J.A.

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