Federal Court of Appeal  Cour d'appel fédérale

Date: 20190308

Docket: A-278-18

Citation: 2019 FCA 47

CORAM: **DE MONTIGNY J.A.**
WOODS J.A.
LASKIN J.A.

BETWEEN:

PETER SAGOS

Appellant

and

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS, THE HONOURABLE RALPH GOODALE

Respondent

Heard at Ottawa, Ontario, on March 7, 2019.

Judgment delivered at Ottawa, Ontario, on March 8, 2019.

REASONS FOR JUDGMENT BY: DE MONTIGNY J.A.

CONCURRED IN BY: WOODS J.A.
LASKIN J.A.

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REASONS FOR JUDGMENT

DE MONTIGNY J.A.

[1] Mr. Sagos appeals from the Order of the Federal Court (*per* Grammond J.) striking his Notice of Application. Having carefully reviewed the record and the parties' written and oral submissions, I am of the view that the appeal should be dismissed.

[2] Discretionary decisions of judges are subject to the *Housen v Nikolaisen* (2002 SCC 33) standard of review. As such, intervention by this Court is warranted only in cases of palpable and overriding error, absent error on a question of law or an extricable legal principle: see *Hospira Healthcare Corporation v Kennedy Institute of Rheumatology*, 2016 FCA 215. In the case at bar, no such error has been made out.

[3] The Motion judge did not err in concluding that he had the jurisdiction to summarily dismiss an application for judicial review. It is no doubt true that Rule 221of the *Federal Courts Rules*, SOR/98-106 (the *Rules*), pursuant to which the Federal Court is explicitly granted the power to strike out a pleading, is found in Part 4 of the *Rules* and therefore only applies to actions. That being said, it has been recognized on a number of occasions that the court's inherent jurisdiction to control its own process under Rule 5 similarly allows it to dismiss in a summary manner applications for judicial review which are "so clearly improper as to be bereft of any possibility of success": see, for ex., *David Bull Laboratories (Canada) Inc. v Pharmacia Inc.*, [1995] 1 F.C. 588, at p. 600 (FCA); *Canada (National Revenue) v JP Morgan Asset Management (Canada) Inc.*, 2013 FCA 250, at paras 47-48; *Forner v Professional Institute of the Public Service of Canada*, 2016 FCA 35, at paras 9-11.

[4] The Motion judge could find that such is the case here, and that the Applicant's application for judicial review had no chance of success. The Motion judge came to that conclusion on three bases: the application does not clearly identify the decision challenged, does not set out the legal grounds for challenging any decision, and does not seek an intelligible

remedy. On the basis of the record that was before him, he could come to that conclusion, and the appellant has not convinced me that he made any palpable and overriding error in doing so.

[5] The Notice of Application, even when read in conjunction with the affidavit, does not allow the respondent to know the case to be met. First of all, it is not clear what decision is being challenged. Indeed, the Notice of Application refers both to an undated letter sent from the director of investigation at the Office of the Information of Canada and to a letter from the Privacy Commissioner dated May 8, 2018. The supporting "Affidavit of Documents", which the appellant seems to confuse with an affidavit pursuant to Rule 306 of the *Rules*, does not include any of these letters. In his submissions and affidavit before the Motion Judge, the appellant confuses the matter further: while indicating that the application for judicial review was with respect to the letter sent to him by the Privacy Commissioner on May 8, 2018, the appended exhibit that he referenced as a "true copy of the letter receive from the Privacy Commissioner" is an email from the Access to Information and Privacy Branch of the Royal Canadian Mounted Police.

[6] The grounds for review are similarly unclear. Neither the Notice of Application nor the appellant's submissions on the motion to strike articulate any grounds upon which the decision (whichever it may be) might be challenged. All we are left with is a list of provisions in an unnamed piece of legislation to which the appellant refers as the grounds for the application, without any hint as to how they have allegedly been infringed.

[7] Finally, the relief sought was clearly outside the scope of what is available on judicial review. The appellant requests that the Minister of Public Safety and Emergency Preparedness send a certified copy of "all information housed and stored with the Office of the Information Commissioner of Canada" to the appellant and to the registry. The Federal Court does not have that power. Pursuant to the *Access to Information Act*, R.S.C. 1985, c. A-1, a complaint must first be investigated by the Information Commissioner. A complainant may only apply to the Federal Court for judicial review if the Information Commissioner finds that the complaint is well-founded and if the head of a government institution thereafter refuses to give access to the requested record.

[8] In light of the foregoing, I am of the view that the Motion judge did not err in striking the application. His reasons for coming to that conclusion may be short, but they are intelligible and sufficient to allow for a meaningful appellate review. When read in the context of the record, they also provide the appellant with the information he needs to understand why his application was summarily dismissed.

[9] For these reasons, I would dismiss this appeal, with costs.

"Yves de Montigny"

J.A.

"I agree
Judith Woods J.A."

"I agree
J.B. Laskin J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-278-18
STYLE OF CAUSE:	PETER SAGOS v. MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS, THE HONOURABLE RALPH GOODALE
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REASONS FOR JUDGMENT BY:	DE MONTIGNY J.A.
CONCURRED IN BY:	WOODS J.A. LASKIN J.A.
DATED:	MARCH 8, 2019

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