Federal Court of Appeal  Cour d'appel fédérale

**Date: 20191022**

**Docket: A-405-18**

**Citation: 2019 FCA 264**

[ENGLISH TRANSLATION]

**CORAM:** **DE MONTIGNY J.A.**
**RIVOALEN J.A.**
**LOCKE J.A.**

**BETWEEN:**

**YACINE AGNAOU**

**Applicant**

**and**

**THE ATTORNEY GENERAL OF CANADA, BRIAN SAUNDERS, GEORGE DOLHAI, ANDRÉ A. MORIN, DENIS DESHARNAIS, PUBLIC SECTOR INTEGRITY COMMISSIONER**

**Respondents**

Heard at Montréal, Quebec, on October 15, 2019.

Judgment delivered at Ottawa, Ontario, on October 22, 2019.

REASONS FOR JUDGMENT BY: LOCKE J.A.

CONCURRED IN BY: DE MONTIGNY J.A.
RIVOALEN J.A.

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## REASONS FOR JUDGMENT

**LOCKE J.A.**

[1] This is an application for judicial review of a decision that the Honourable Justice Martine St-Louis of the Public Servants Disclosure Protection Tribunal of Canada (the Tribunal) delivered on November 13, 2018 (2018 PSDPT 2). In its decision, the Tribunal dismissed the applicant's motion seeking disclosure by the respondents of documents not listed in their

statements of particulars filed in the context of a reprisal complaint made under the *Public Servants Disclosure Protection Act*, SC 2005, c 46.

[2] The respondents submit, among other arguments, that this application for judicial review should be dismissed because it is premature. They refer to *Canada (Border Services Agency) v. C.B. Powell Limited*, 2010 FCA 61 (*C.B. Powell*), which states at paragraph 30 the principle that, with respect to judicial review, "parties can proceed to the court system only after all adequate remedial recourses in the administrative process have been exhausted." The present application for judicial review was filed before the Tribunal had heard the applicant's complaint. In the meantime, the complaint was heard in a trial that lasted approximately one month, and the parties are awaiting the Tribunal's decision.

[3] This Court, in *C.B. Powell*, at paragraph 31, explained that "absent exceptional circumstances, courts should not interfere with ongoing administrative processes until after they are completed, or until the available, effective remedies are exhausted." Such is the case here. The Court goes on to say, at paragraph 33:

> Courts across Canada have enforced the general principle of non-interference with ongoing administrative processes vigorously. This is shown by the narrowness of the "exceptional circumstances" exception. . . . Concerns about procedural fairness or bias, the presence of an important legal or constitutional issue, or the fact that all parties have consented to early recourse to the courts are not exceptional circumstances allowing parties to bypass an administrative process, as long as that process allows the issues to be raised and an effective remedy to be granted. . . .

[4] In the same paragraph, this Court indicated that the presence of jurisdictional issues is not an exceptional circumstance justifying early recourse to the courts either.

[5] The applicant appears to recognize the need to establish an exceptional circumstance before his application can be granted. His argument is therefore based mainly on the lack of Tribunal case law, in particular with respect to the issue of the obligation to disclose documents. He submits that other complainants before the Tribunal would perhaps not be able to challenge a refusal to comply with the rules regarding disclosure of documents and that direction from the Federal Court of Appeal is necessary to protect such complainants' rights. Should this Court refuse to consider the merits of his application, the applicant submits, it could be years before parties appearing before the Tribunal receive the directions they need.

[6] In my opinion, the importance of the disclosure of documents issue is in fact a good reason not to intervene before the Tribunal has rendered a decision on the merits of the complaint. The issues of the relevance and the importance of the documents sought by the applicant (and even of their existence) will be better addressed in the context of an application for judicial review after a final decision by the Tribunal. This approach seems to me all the more appropriate since the Tribunal has now heard the complaint on the merits and a decision could be rendered at any moment.

[7] For these reasons, I would dismiss this application.

[8] With respect to the costs of $2,250 agreed upon by the parties at the hearing, it is my opinion that $1,000 would be more reasonable under the circumstances.

[9] The parties have agreed to amend the style of cause by substituting the Attorney General of Canada for the respondent Public Prosecution Service of Canada.

"George R. Locke"
J.A.

"I agree.
Yves de Montigny J.A."

"I agree.
Marianne Rivoalen J.A."

Certified true translation
Erich Klein

**FEDERAL COURT OF APPEAL**

**SOLICITORS OF RECORD**

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|---|---|
| **DOCKET:** | A-405-18 |
| **STYLE OF CAUSE:** | YACINE AGNAOU v. THE ATTORNEY GENERAL OF CANADA, BRIAN SAUNDERS, GEORGE DOLHAI, ANDRÉ A. MORIN, DENIS DESHARNAIS, PUBLIC SECTOR INTEGRITY COMMISSIONER |
| **PLACE OF HEARING:** | MONTRÉAL, QUEBEC |
| **DATE OF HEARING:** | OCTOBER 15, 2019 |
| **REASONS FOR JUDGMENT BY:** | LOCKE J.A. |
| **CONCURRED IN BY:** | DE MONTIGNY J.A.<br>RIVOALEN J.A. |
| **DATED:** | OCTOBER 22, 2019 |

**APPEARANCES:**

| | |
|---|---|
| Yacine Agnaou | FOR THE APPLICANT<br>(self-represented) |
| Kétia Calix | FOR THE RESPONDENTS<br>THE ATTORNEY GENERAL OF CANADA, BRIAN SAUNDERS, GEORGE DOLHAI AND DENIS DESHARNAIS |
| Antoine Aylwin<br>Xin Jia Wang | FOR THE RESPONDENT<br>ANDRÉ A. MORIN |
| Mélanie Masse | FOR THE RESPONDENT<br>PUBLIC SECTOR INTEGRITY COMMISSIONER |

**SOLICITORS OF RECORD:**

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| Nathalie G. Drouin<br>Deputy Attorney General of Canada<br>Ottawa, Ontario | FOR THE RESPONDENTS<br>THE ATTORNEY GENERAL OF CANADA, BRIAN SAUNDERS, GEORGE DOLHAI AND DENIS DESHARNAIS |
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| Nathalie G. Drouin<br>Deputy Attorney General of Canada<br>Ottawa, Ontario | FOR THE RESPONDENT<br>PUBLIC SECTOR INTEGRITY COMMISSIONER |