

Federal Court of Appeal



Cour d'appel fédérale

Date: 20210127

Docket: A-313-20

Citation: 2021 FCA 14

**CORAM: NADON J.A.
BOIVIN J.A.
LOCKE J.A.**

BETWEEN:

AHMAD AZIZ

Appellant

and

**CANADIAN HUMAN RIGHTS
COMMISSION and
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondents

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on January 27, 2021.

REASONS FOR ORDER BY:

LOCKE J.A.

CONCURRED IN BY:

**NADON J.A.
BOIVIN J.A.**

Federal Court of Appeal



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REASONS FOR ORDER

LOCKE J.A.

[1] The respondent the Minister of Citizenship and Immigration (the Minister) moves to strike the notice appeal without leave to amend. On December 22, 2020, the Federal Court (per Pallotta J.) granted a motion by the Minister to strike the appellant's (Ahmad Aziz's) notice of

application, and dismissed a motion by the appellant to convert his application into an action.

The application in question sought judicial review of an email from the Canadian Human Rights Commission (the Commission) indicating that it could not accept his complaint since the Commission's jurisdiction is limited to cases where the complainant is lawfully present in Canada or is entitled to return to Canada. The email indicated that the appellant satisfied neither of these requirements.

[2] The appellant's application before the Federal Court, and his proposed complaint to the Commission, concerned his treatment by authorities in his birth country of Malta, and efforts by those authorities to get assistance from Canadian authorities in obtaining information concerning the appellant. The appellant asserted that Maltese authorities have acted improperly, and he urged Canadian authorities not to provide the requested assistance.

[3] The Federal Court struck the notice of application on the basis that it was bereft of any possibility of success. The Federal Court agreed with the following submissions by the Minister:

- A. The email from the Commission was informational only. It did not constitute a decision, and was therefore not subject to judicial review.
- B. The appellant failed to establish any discriminatory practice falling within the Commission's jurisdiction. The Crux of the appellant's complaint concerns alleged practices of Maltese authorities, and Canadian authorities assisting a foreign country to verify documents is not contrary to the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6 (CHRA).
- C. The appellant also failed to provide evidence that he was able to enter Canada.

[4] The appellant's motion to convert sought a declaration that he and his children are Canadian citizens, and that his wife is entitled to permanent residence in Canada. The Federal Court assumed that this request was made to address the problem of the Commission's lack of jurisdiction to accept the appellant's complaint. The Federal Court discussed several reasons for dismissing the motion to convert:

- A. The motion sought findings and declarations concerning actions of foreign authorities taken outside Canada, but the appellant cited no authority that the involvement of Canadian authorities in responding to the requests from Maltese authorities could result in a breach of any international treaties, the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11 (the Charter), the *Citizenship Act*, R.S.C. 1985, c. H-6, or the CHRA.
- B. There was no evidence that either of the respondents, the Commission or the Minister, would be the Canadian authority tasked to respond to the requests from Maltese authorities.
- C. The scope of what was sought in the motion to convert went well beyond any issue relevant to the application, which concerned judicial review of the Commission's alleged decision not to accept the appellant's complaint.
- D. It is not for the Court to decide the appellant's citizenship. If the appellant wishes to establish his citizenship in order to have his complaint accepted by the Commission, he must submit the necessary proof to the Commission for its consideration. Since it appears that the appellant has no proof of citizenship, he could seek it by applying to Immigration, Refugees and Citizenship Canada (IRCC) for a certificate of citizenship. If the appellant were dissatisfied with the results of such approaches to the Commission and/or IRCC, he could seek judicial review then, but such an application at this stage is premature. In any case, there is insufficient information to decide the appellant's citizenship.

[5] The appellant's notice of appeal seeks not just to set aside the dismissal of his motion to convert, but it also seeks a series of declarations similar to those sought before the Federal Court.

[6] As indicated above, the Minister moves to strike the notice appeal without leave to amend. He argues that the appeal is doomed to fail much as the original application was. The

Minister makes substantially the same arguments as described above in the context of the Federal Court's December 22, 2020 decisions.

[7] The appellant submitted a response to the Minister's motion to strike the notice of appeal, but it was not accepted for filing because (i) it lacked proof of service thereof, and (ii) it contained several irregularities. The Registry seeks direction concerning the filing of the appellant's response. In my view, the appellant's response should be accepted for filing. I note that the Minister has acknowledged receipt thereof, and has not objected to its filing. Moreover, I see no prejudice to the Minister in accepting the appellant's response for filing, and I would like to avoid any unnecessary delay that could result from refusing filing.

[8] The appellant's response to the Minister's motion to strike does not address the shortcomings noted by the Federal Court and described above. Instead, the appellant substantially repeats his submissions before the Federal Court. These submissions are heavy on alleged injustices suffered by the appellant at the hands of Maltese authorities, but offer little to justify any of the relief sought either in the present appeal or before the Federal Court. The appellant argues that acts and/or future acts of Canadian authorities in response to requests from Maltese authorities would violate many Canadian laws, as well as many provisions of the Charter, but he has not tied these arguments to any of the relief sought in the present appeal.

[9] The standard of review on the appeal is as set out in *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235. The standard of correctness applies to questions of law (see para. 8), but findings of fact or of mixed fact and law are reviewable only where the Federal Court has made a palpable and overriding error (see paras. 10 and 36).

[10] On this standard, I agree with the Minister that the present appeal is doomed to fail and should be struck without leave to amend.

[11] A number of other documents have been submitted to the Court by the appellant but not filed due to various irregularities. These include (i) a replacement page in the notice of appeal, (ii) an appeal book (submitted twice), (iii) an affidavit of service of the appeal book (submitted twice), (iv) a memorandum of fact and law (submitted twice), and (v) a motion to determine the content of the appeal book (submitted several times). In view of the outcome of the motion to strike, it is not important to decide whether these documents should be filed despite the irregularities. The documents in question shall not be filed.

[12] No costs were sought before the Federal Court and none were awarded. Before this Court, the Minister seeks costs citing repeated emails and submission of irregular documents and/or motions “putting the Respondent, who should not have even been named in the first place, to the cost of responding to this meritless proceeding.” I agree. I would award costs in the amount of \$500, all inclusive.

“George R. Locke”

J.A.

“I agree.
M. Nadon J.A.”

“I agree.
Richard Boivin J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-313-20

STYLE OF CAUSE: AHMAD AZIZ v. CANADIAN
HUMAN RIGHTS COMMISSION
and THE MINISTER OF
CITIZENSHIP AND
IMMIGRATION

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY: LOCKE J.A.

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

DATED: JANUARY 27, 2021

WRITTEN REPRESENTATIONS BY:

Ahmad Aziz FOR THE APPELLANT
(on his own behalf)

Angela Marinos FOR THE RESPONDENTS

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