Federal Court of Appeal | Cour d'appel fédérale

Date: 20230201

Docket: A-211-21

Citation: 2023 FCA 22

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

BETWEEN:

KRISTIN ERNEST HUTTON

Appellant

and

RIA SAYAT, LYNN DUHAIME also known as STEPHANIE DUHAIME the former Canadian Charge d'affaires for the Republic of Iraq, THE ATTORNEY GENERAL OF CANADA (on behalf of THE DEPARTMENT OF NATIONAL DEFENCE, CANADIAN SECURITY INTELLIGENCE SERVICE and COMMUNICATION SECURITY ESTABLISHMENT), HIS MAJESTY THE KING

Respondents

Heard at Ottawa, Ontario, on January 31, 2023.

Judgment delivered at Ottawa, Ontario, on February 1, 2023.

REASONS FOR JUDGMENT BY: DE MONTIGNY J.A.

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

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REASONS FOR JUDGMENT

DE MONTIGNY J.A.

[1] The appellant, Mr. Hutton, appeals the decision of the Federal Court (*per* Justice Fothergill) dated August 5, 2021, whereby Court Files Nos. T-268-17, T-1143-19 and T-868-21

were temporarily stayed pending: (a) the completion of the Law Society of Ontario (LSO)'s examination of Mr. Hutton's capacity to practice law, and any appeals or reviews related thereto; or (b) Mr. Hutton's appointment of legal counsel to represent him in those proceedings. As is made clear in the Federal Court's Reasons and Order, the stay may be revisited following the final resolution of the LSO examination of Mr. Hutton's capacity to practice law: *Hutton v. Canada (Attorney General)*, 2021 FC 815 (Reasons). It will also be automatically lifted upon Mr. Hutton's appointment of counsel in all of the proceedings.

[2] Mr. Hutton has filed a number of claims and applications before the Federal Courts. They are all predicated on his belief that people in his life (two former romantic partners, his father, friends, colleagues and previous employers) are agents of the Canadian "security apparatus" bent on spying on him. He submits that these people in his life are establishing and maintaining cover stories related to intelligence work, obtaining information about him for the "security apparatus" and even trying to recruit him. Some of Mr. Hutton's claims have already been struck in their entirety without leave to amend in a previous decision of Justice Fothergill: *Hutton v. Canada (Attorney General)*, 2021 FC 75. An application for judicial review concerning a decision of the Office of the Privacy Commissioner in respect of a complaint under the *Privacy Act*, R.S.C. 1985, c. P-21, was also discontinued by Mr. Hutton.

[3] In the three remaining proceedings that have been stayed and are the subject of this appeal, Mr. Hutton seeks various relief. In T-268-17, he claims damages in the amount of 5.5 million dollars for the violation of his rights and harm caused by the actions of two of his former romantic partners who were allegedly (or have been) undisclosed intelligence agents. He also

seeks an order for the destruction or return of digital property which he believes was taken from him, and declarations that section 18.2 of the *Canadian Security Intelligence Service Act*, R.S.C. 1985, c. C-23, is unconstitutional. In T-1143-19, he applies for judicial review of a decision by the former Office of the Communications Security Establishment Commissioner dismissing his complaint that the Communications Security Establishment (CSE) had intercepted or manipulated his electronic communications; alternatively, he seeks an order that the application proceed as an action including a claim for damages against the Attorney General and the CSE in the amount of two million dollars. Finally, in T-868-21, Mr. Hutton again challenges the constitutional validity and applicability of section 18.2 of the *Canadian Security Intelligence Service Act*, essentially on the basis that it permits employees of the Canadian Security Intelligence Service (CSIS) to lie under oath or tender fake affidavits to protect the covert identity of CSIS employees.

[4] After having carefully reviewed the files and considered the parties' submissions, I am of the view that the appeal must be dismissed.

[5] It is by now well established that a decision made by a case management judge to stay proceedings is interlocutory and discretionary in nature, and attracts a high degree of deference. In the absence of an obvious, serious error of law or legal principle, an appellate court will not interfere unless it can be demonstrated that the decision rests on a misapprehension of the evidence that rises to the level of a palpable and overriding error. This is a high standard, and it is very rarely met: see *Hospira Healthcare Corporation v. Kennedy Institute of Rheumatology*, 2016 FCA 215, [2017] 1 F.C.R. 331 at paras. 79, 83-84; *Turmel v. R.*, 2016 FCA 9, 481 N.R. 139

at paras. 9-12; *Contrevenant no. 10 v. Canada (Attorney General)*, 2016 FCA 42, 488 N.R. 226 at para. 6.

[6] Subsection 50(1) of the *Federal Courts Act*, R.S.C. 1985, c. F-7, grants this Court and the Federal Court the authority to stay a proceeding when a claim is being proceeded with in another court, or where it is in the interest of justice that the procedure be stayed. As noted by Justice Fothergill, the interest of justice has been interpreted broadly, and is not limited to the interests of the party but rather includes a consideration of the integrity of the judicial process: *Canada (Minister of Citizenship and Immigration) v. Tobiass*, 1997 CanLII 322 (SCC), [1997] 3 S.C.R. 391 at paras. 88-90; *Pearson v. Canada*, 1999 CanLII 8631 (FC) at paras. 20-23.

[7] Apart from the powers that derive from subsection 50(1) of the *Federal Courts Act*, this Court and the Federal Court are also vested with the plenary authority to regulate their proceedings and control the integrity of their own processes. Indeed, as stated on numerous occasions both by the Supreme Court and this Court, the Federal Courts must have the powers necessary to manage their own proceedings just like the provincial superior courts: see, for example, *Canada (Human Rights Commission) v. Canadian Liberty Net*, 1998 CanLII 818 (SCC), [1988] 1 S.C.R. 626 at paras. 35-36; *R v. Cunningham*, 2010 SCC 10, [2010] 1 S.C.R. 331 at para. 19; *Windsor (City) v. Canadian Transit Co.*, 2016 SCC 54, [2016] 2 S.C.R. 617 at para. 33 (footonote 1); *Lee v. Canada (Correctional Service)*, 2017 FCA 228, [2017] F.C.J. No. 1131 (QL) at paras. 7-9; *Dugré v. Canada (Attorney General)*, 2021 FCA 8, [2021] F.C.J. No. 50 (QL) at para. 20 [*Dugré*]; *Coote v. Canada (Human Rights Commission)*, 2021 FCA 150 at para. 16; *Fabrikant v. Canada*, 2018 FCA 171 at para. 3. This entails the power to stay a proceeding

when it is necessary to deal with problematic litigation conduct: *ViiV Healthcare Company v. Gilead Sciences Canada, Inc.*, 2021 FCA 122 at para. 24; *Dugré* at para. 38; *Coote v. Lawyers' Professional Indemnity Company*, 2013 FCA 143, 229 A.C.W.S. (3d) 935 at para. 4 [*Coote*].

[8] Applying these principles, Justice Fothergill found that a temporary stay was necessary to ensure that the administration of justice is not brought into disrepute and to allow the Court to control its own process. He came to that conclusion on the basis of his assessment that Mr. Hutton's claims against the two individual respondents "are a form of harassment", that his claims "have no apparent basis in reality, and appear to be predicated on delusions", and that Mr. Hutton has repeatedly conducted proceedings "in a manner that is abusive and vexatious with evident disregard for judicial resources and those of the parties" (Reasons at para. 42).

[9] On appeal, Mr. Hutton agrees that this Court (and presumably the Federal Court) has plenary powers enabling it to control its own process (appellant's memorandum of fact and law at para. 32), but attempts to challenge the Federal Court's findings that he is "delusional" and that his claims have no apparent basis in reality. In support of his argument, Mr. Hutton essentially relies on the same version of the "facts" and indicia he presented to the Federal Court to show that his case has merit and that he is the victim of a conspiracy by the "security apparatus". He also tries to explain away his predicament by stating that he was prevented from fully making his case as a result of interlocutory decisions with respect to the production of documents that were upheld on appeal.

[10] As previously mentioned, a discretionary order attracts a high degree of deference and an appellate court will be loathe to intervene if it cannot be demonstrated that the order is legally flawed. In the case at bar, Mr. Hutton's arguments are all directed to the Federal Court's assessment of the evidence and I have not been persuaded that a palpable and overriding error has been made out. In fact, Justice Fothergill's appraisement is consistent with a prior decision of his colleague Justice Mosley, who noted in the first paragraph of his reasons dealing with an interlocutory order for the production of documents that the underlying action (T-268-17) is an "extraordinary farrago of claims" that amount to a "form of harassment": *Hutton v. Sayat*, 2020 FC 1183 at para. 1 [*Hutton 2020*]. In *obiter*, Justice Mosley went even further. Noting that the six actions and applications for judicial review before the Court had already consumed considerable judicial resources and public funds – as of December 2020, there were already 313 entries in T-268-17 alone – he stated that nothing in his fifteen years of experience with national security "suggests that there is any merit to the Plaintiff's claims": *Hutton 2020* at para. 52.

[11] Justice Fothergill is clearly familiar with Mr. Hutton's files, having himself been involved in previous motions pertaining to these files, and he took great pains to summarize them all in the background portion of his reasons. He took into account the vexatious and abusive character of these proceedings, Mr. Hutton's disregard for judicial resources and those of the parties, the LSO's order that Mr. Hutton undergo a psychiatric evaluation, and the fact that heightened cost awards and strong admonitions have not had their desired effects of dissuading him, before concluding that a temporary stay was the only way for the Court to control its own process and maintain confidence in the administration of justice. Mr. Hutton may disagree with

the Judge's assessment, but more is required for this Court to intervene. None of the deficiencies alleged by the appellant meet the high threshold of palpable and overriding errors.

[12] Mr. Hutton also states that he does not wish to incur the expense of hiring a lawyer who does not know the facts of his claims as well as he does. While this is certainly a factor to take into consideration, I wish to stress that the stay of proceedings is temporary and may be revisited once the LSO has completed its examination of Mr. Hutton's capacity to practice law. Mr. Hutton therefore has an alternative if he chooses not to retain counsel.

[13] More importantly, the additional expenses that Mr. Hutton may have to incur if he decides to be represented have to be balanced with the overall interest of justice and the need to safeguard scarce judicial resources. Mr. Hutton's erratic behaviour and the burden he has imposed on the judicial system have already stretched its limited resources, and the Federal Court could legitimately regulate its proceedings, in keeping with the fundamental objectives of ensuring access to justice for all and "the just, most expeditious and least expensive determination of every proceeding on its merits": *Coote* at para. 12.

[14] Finally, Mr. Hutton submits that he has a right to be heard and to present his own case, and that he should not be restrained by the imposition of the financial and procedural burden of having to retain counsel. He adds that there is no expert medical evidence that he is or ever was delusional and therefore incapable of representing himself.

[15] There is no doubt that Mr. Hutton has the right to be heard, and he has availed himself of this right to its full extent since 2017. This principle of natural justice is not absolute, however, and must always be exercised with a view to maintaining the integrity of the judicial system. It certainly does not allow a litigant to flood the courts with vexatious and redundant procedures, to harass defendants, to bring futile and unmeritorious claims, and ultimately to derail the judicial system. The Federal Court can determine that Mr. Hutton's litigation conduct was sufficiently vexatious, unruly or otherwise problematic, and order a temporary stay without any medical evidence. I hasten to add that Mr. Hutton's right to be heard and to bring his case to court is not completely curtailed; the stay order is temporary, since it may be revisited once the LSO has completed its examination of Mr. Hutton's capacity to practice law, and it is partial, since he may choose to be represented if he wishes to proceed with his claims and applications without delay. In my view, the stay order strikes a carefully balanced reconciliation between Mr. Hutton's common law right to bring his case to the courts and the need to protect the integrity of the judicial system and to prevent the wasteful use of judicial resources.

[16] For all of the above reasons, I would dismiss the appeal, with costs.

"Yves de Montigny"
J.A.

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

"I agree.
René LeBlanc J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-211-21
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PLACE OF HEARING:	OTTAWA, ONTARIO
DATE OF HEARING:	JANUARY 31, 2023
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CONCURRED IN BY:	LASKIN J.A. LEBLANC J.A.
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