Federal Court Cour fédérale

Date: 20240110

Docket: T-1242-23

Citation: 2024 FC 37

2024 FC 37 (CanLII)

Toronto, Ontario, January 10, 2024

PRESENT: Mr. Justice Gascon

BETWEEN:

ROSHANAK ORAND

Applicant

and

**MINISTER OF PUBLIC SAFETY
MINISTER OF JUSTICE AND ATTORNEY GENERAL**

Respondents

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Ms. Roshanak Orand, requests writs of *mandamus* and prohibition directing: (1) the Minister of Public Safety to remove equipment and automated weapons from her apartment and work office; (2) the Minister of Public Safety to take preventive measures against members of the Mossad, the national intelligence agency of the state of Israel; and, (3)

the Minister of Justice and Attorney General to institute criminal proceedings against various individuals she alleges were involved in her torture [Application].

[2] Ms. Orand, a citizen of Iran who lives in Canada, submits that she is owed a public duty to have the alleged weapons removed from her premises, and for preventive measures and proceedings to be taken against her alleged assailants.

2024 FC 37 (CanLII)

[3] For the reasons that follow, Ms. Orand's Application will be dismissed. First, the reliefs sought by Ms. Orand fall outside the jurisdiction of this Court. Absent very specific circumstances, none of which are present in this case, the Court cannot compel government agencies or ministers to launch criminal proceedings or direct them to undertake the actions listed by Ms. Orand. Furthermore, this Court does not have jurisdiction to interfere with the Crown prerogative over foreign affairs absent evidence of unconstitutional behaviour, which is neither alleged nor demonstrated in this Application. Moreover, and in any event, Ms. Orand has not met the test for the issuance of a writ of *mandamus*.

II. Factual Background

[4] Ms. Orand alleges that the Mossad is following her, that she has been threatened with cerebral paralysis, that psionic weapons have been installed in her home and work places that bring on headaches via radio waves, and that she is in imminent danger. Ms. Orand has also named various individuals in her submissions, some of whom appear to have a personal connection to her, and claims they are spies working for either the Canadian Security

Intelligence Service [CSIS] or foreign spy agencies. These include her neighbours, co-workers, and individuals with whom she has interacted.

[5] In relation to her allegations, Ms. Orand has contacted and arranged meetings with various police agencies, news agencies, community organizations, and government departments such as the Department of Justice, the Department of Public Safety, and the Ontario Ministry of Attorney General — also named as a respondent in her Application. She has also submitted complaints to the Human Rights Tribunal of Ontario, the Canadian Human Rights Commission, and the Law Society of Ontario, which have all been dismissed.

[6] Ms. Orand has received several responses from the various agencies with whom she has been in contact.

[7] Ms. Orand first solicited the intervention of the municipal police of Montreal, known as the “Service de Police de la Ville de Montréal” [SPVM]. The SPVM detective assigned to Ms. Orand’s case indicated that other individuals taking photos near her in public places is not a crime. In May 2020, Ms. Orand’s file with the SPVM was closed without an investigation.

[8] Ms. Orand then contacted the Royal Canadian Mounted Police [RCMP] later in May 2020. The RCMP agent told Ms. Orand that the RCMP is responsible for investigating crimes against Canada, not against individuals.

[9] Ms. Orand subsequently returned to the SPVM two more times and was referred to a private detective.

2024 FC 37 (CanLII)

[10] In August 2021, Ms. Orand contacted CSIS. The CSIS agent told Ms. Orand that they did not know what she was talking about. Over the course of the following months, she continued to contact CSIS and was ultimately referred to the RCMP.

2024 FC 37 (CanLII)

[11] She then sent numerous emails to the RCMP outlining how, allegedly, she was being tortured. The emails went unanswered. Ms. Orand accused the RCMP of discrimination. Her complaint was later closed, as she had not provided enough information. Thereafter, Ms. Orand sent more communications to CSIS through their website.

[12] In January 2022, Ms. Orand approached the Ontario Ministry of Attorney General, who responded indicating that they do not have the jurisdiction to investigate allegations of criminal activity.

[13] In November 2022, two RCMP officers came to Ms. Orand's residence, asked her a few questions, and concluded they could not assist her. A few months later, after a phone call with the RCMP where Ms. Orand was asked a few questions, an RCMP officer allegedly told her to go to the hospital. As of May 2023, correspondence from the RCMP indicates that a police investigation remains open at the RCMP regarding Ms. Orand's allegations.

[14] In June 14, 2023, Ms. Orand turned to this Court and filed her Application. In support of her Application, she submitted an affidavit of her own as well as dozens of written exchanges between her and the various governmental agencies and entities mentioned above, spanning over a two-year period from December 2021 to June 2023.

III. Analysis

[15] Ms. Orand submits that she is owed a public duty from various governmental agencies and entities to have her case investigated, and seeks the Court's assistance to force them to undertake the investigations they have so far refused to commence. Ultimately, Ms. Orand claims that these agencies and entities should remove the alleged weapons from her apartment and undertake preventive measures and proceedings against her alleged assailants.

[16] The Attorney General of Canada [AGC], acting on behalf of two of the named respondents, the Minister of Public Safety and the Minister of Justice and Attorney General, first submits that the only relief actually being sought by Ms. Orand in her Application is in the order of a writ of *mandamus*, not a writ of prohibition. Second, the AGC argues that this Court does not have the jurisdiction to issue the various reliefs sought by Ms. Orand. Finally, the AGC maintains that, in any event, the test for the granting of a writ of *mandamus* is not satisfied in the present case.

[17] I agree with the AGC on all fronts.

A. *The Application only refers to a writ of* mandamus

[18] As a preliminary issue, while the Application in the present matter indicates that relief is sought by way of writ of *mandamus* and prohibition, all of the requested orders listed by Ms. Orand in her materials are in the nature of *mandamus*. Consequently, there is no relief in terms of a writ of prohibition to be considered by the Court.

2024 FC 37 (CanLII)

B. *The Court does not have the jurisdiction to provide the reliefs sought*

[19] All the reliefs sought by Ms. Orand fall outside the jurisdiction of this Court.

[20] With respect to Ms. Orand's requests to have criminal proceedings launched against individuals she believes are harming her, or to remove equipment and weapons from her apartment and work office, this Court cannot provide the reliefs requested. As the AGC correctly notes, the decision to bring or not to bring criminal proceedings is at the core of prosecutorial discretion and should not be interfered with by the courts, barring cases where there has been an abuse of process (*SNC-Lavalin Group Inc v Canada (Public Prosecution Service)*, 2019 FC 282 at paras 72–76 [*SNC-Lavalin*]). Indeed, in *SNC-Lavalin*, Justice Kane reifies the state of the law on this issue, indicating that the "jurisprudence firmly establishes that the independence of the Attorney General is essential and fundamental to the criminal justice system and that the decisions made by and on behalf of the Attorney General in the exercise of prosecutorial discretion are not subject to judicial review" (*SNC-Lavalin* at para 72). Ms. Orand has not provided any argument nor any authority to the contrary.

[21] In sum, it is not the role of this Court to interfere with the Attorney General's prosecutorial discretion. As was noted by the Supreme Court, "[d]ecisions to prosecute (or to not prosecute) can have broad social repercussions, and regard for those repercussions properly informs prosecutorial discretion… <u>It is not open to a court to scrutinize this exercise of discretion</u>, or to question a prosecutor's particular conception of the public interest" [emphasis added] (*R v Cawthorne*, 2016 SCC 32 at para 28). Consequently, this Court cannot provide the form of relief sought by Ms. Orand.

2024 FC 37 (CanLII)

[22] With respect to the requested relief directing action against a foreign government entity, namely, the Mossad, such a request falls within the Crown's prerogative over foreign affairs. This prerogative power is "the 'residue of discretionary or arbitrary authority, which at any given time is legally left in the hands of the Crown'… It is a limited source of non-statutory administrative power accorded by the common law to the Crown" (*Canada (Prime Minister) v Khadr*, 2010 SCC 3 at para 34 [*Khadr*], citing *Reference as to the Effect of the Exercise of the Royal Prerogative of Mercy Upon Deportation Proceedings*, [1933] SCR 269 at p 272). The Crown maintains such a prerogative over foreign affairs (*Khadr* at para 35). Furthermore, the Supreme Court has noted that the courts possess "a narrow power to review and intervene on matters of foreign affairs" and that this power is limited to "ensur[ing] the constitutionality of executive action" (*Khadr* at para 38).

[23] In the case at bar, the relief sought by Ms. Orand would require the intervention of the Court beyond the scope of ensuring the constitutionality of executive action concerning foreign affairs. The relief therefore falls well outside the scope of judicial review by this Court. Such a conclusion is justified by the jurisprudence. Indeed, "the limited power of the courts to review exercises of the prerogative power for constitutionality reflects the fact that in a constitutional democracy, all government power must be exercised in accordance with the Constitution (…) The government must have flexibility in deciding how its duties under the power are to be discharged" (*Khadr* at para 37, citing *Reference re Secession of Quebec*, [1998] 2 SCR 217 at paras 101–102). Again, Ms. Orand has not provided any argument nor any authority to the contrary.

2024 FC 37 (CanLII)

[24] It is not the role of this Court to disturb the Crown's flexibility with respect to foreign affairs in this case, as no evidence supports any unconstitutional behaviour, and no unconstitutional behaviour is even alleged by Ms. Orand in her Application. As such, this Court cannot grant relief in this respect.

C. *The test for granting a writ of* mandamus *is not satisfied*

[25] In any event, even if the Court had jurisdiction over the matters for which Ms. Orand seeks relief, Ms. Orand does not meet the test for the issuance of a writ of *mandamus*.

[26] An order of *mandamus* is an extraordinary remedy under which the Court "can compel the performance of a clear affirmative legal duty by a public authority" (*Ahousaht First Nation v Canada (Fisheries, Oceans and Coast Guard)*, 2019 FC 1116 at para 73). An order of *mandamus* is "the Court's response to a public decision-maker that fails to carry out a duty, on successful application by an applicant to whom the duty is owed and who is currently entitled to the performance of it" (*Wasylynuk v Canada (Royal Mounted Police)*, 2020 FC 962 [*Wasylynuk*] at para 76). As summarized by Justice Little in *Wasylynuk*, the test for *mandamus* thus "requires careful consideration of the statutory, regulatory or other public obligation at issue, to determine whether the decision-maker has an obligation to act in a particular manner as proposed by an applicant and whether the factual circumstances have triggered performance of the obligation in favour of the applicant" (*Wasylynuk* at para 76).

[27] The test for determining whether the Court should exercise its discretion to issue a writ of *mandamus* is set out in *Apotex Inc v Canada (Attorney General)*, [1994] 1 FC 742 (FCA)

2024 FC 37 (CanLII)

[*Apotex*], aff'd [1994] 3 SCR 110 (*Hong v Canada (Attorney General)*, 2019 FCA 241 at para 10; *Canada (Health) v The Winning Combination Inc*, 2017 FCA 101 at para 60; *Lukacs v Canada (Transportation Agency)*, 2016 FCA 202 at para 29). The test requires that the following conditions be met: (1) there must be a public legal duty to act; (2) the duty must be owed to the applicant; (3) there must be a clear right to performance of the duty; (4) no other adequate remedy must be available; (5) the order must have some practical value or effect; (6) there shall be no equitable bar to relief; and (7) the balance of convenience must favour issuing the order (*Apotex* at pp 766–769).

[28] In the case at bar, Ms. Orand has failed to demonstrate how any of the elements of the test are satisfied. More particularly, Ms. Orand's Application stumbles on the very first element of the test, namely, the existence of a public legal duty to act. Indeed, despite the reports and complaints she has made to various police and intelligence agencies and other governmental entities, there is no duty for any public official — police or otherwise — to do anything that Ms. Orand is requesting in this Application. For a *mandamus* to be enforceable, the pertinent legislation must create a public duty (*La Rose v Canada*, 2023 FCA 241 at paras 41–42). Here, there is simply no such duty owed to Ms. Orand in terms of taking preventive measures against the Mossad or instituting criminal proceedings against various individuals, and Ms. Orand has been unable to identify any in her Application or submissions to the Court.

[29] Similarly, Ms. Orand has not established that there is any public legal duty to perform the removal of equipment and automated weapons she is requesting. It may be that Ms. Orand believes she is being targeted in some way but, apart from her own unsubstantiated assertions,

2024 FC 37 (CanLII)

she has not presented any reliable or convincing evidence showing she in fact faces danger justifying judicial intervention.

[30] Since there is no public legal duty to act, Ms. Orand is not entitled to any order of *mandamus*. Furthermore, as correctly noted by the AGC, to the extent Ms. Orand is referring to police agencies other than the RCMP, the AGC is not responsible in law for those police agencies. As a result, there is no basis for this Court to issue any form of *mandamus* in this case.

2024 FC 37 (CanLII)

D. *Additional comment*

[31] The Court wishes to make the following additional remark.

[32] Whether in her written or oral submissions, Ms. Orand was unable to present any rational argument, based upon evidence or law, in support of her claims and requests for relief. Regrettably, Ms. Orand's Application bears many hallmarks of a vexatious and frivolous proceeding. Her materials filed before the Court boil down to a litany of bald assertions punctuated by questionable language and denigrating accusations against public officials, for which there is not a scintilla of evidence save for Ms. Orand's own firmly-held belief and perception.

[33] As mentioned above, and as I indicated to Ms. Orand at the hearing before this Court, this falls well short of the legal and evidentiary basis needed to convince the Court to issue the extraordinary remedy that she has applied for in this matter. As far as facts are concerned, courts can act only on evidence, matters of judicial notice, and statutory deeming provisions. The rule of law requires nothing less. When submissions and requests for relief are untethered to proven

facts and settled doctrine or legal precedents, as is the case here, the courts cannot give benediction to one's personal beliefs, no matter how strongly a person believes that a wrong has occurred.

IV. Conclusion

[34] For the above reasons, Ms. Orand's Application is denied. Ms. Orand has not demonstrated that the measures she seeks meet the criteria for the granting of a writ of *mandamus*. Moreover, the reliefs sought fall outside the jurisdiction of this Court.

[35] The AGC is entitled to his costs. As counsel for the AGC mentioned at the hearing, the parties have agreed that costs should be fixed at the all-inclusive amount of $500.

[36] The style of cause is amended to remove, with immediate effect, the "Ministry of Attorney General" as a respondent, as it is a provincial entity which is not represented by the AGC or subject to this Court's jurisdiction.

2024 FC 37 (CanLII)

JUDGMENT in T-1242-23

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. Costs in the all-inclusive, lump-sum amount of $500 are awarded to the respondents.

3. The style of cause is amended to remove, with immediate effect, the "Ministry of Attorney General" as respondent.

"Denis Gascon"

Judge

2024 FC 37 (CanLII)

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1242-23
STYLE OF CAUSE:	ROSHANAK ORAND v MINISTER OF PUBLIC SAFETY AND THE MINISTER OF JUSTICE AND ATTORNEY GENERAL
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	JANUARY 9, 2024
JUDGMENT AND REASONS:	GASCON J.
DATED:	JANUARY 10, 2024

2024 FC 37 (CanLII)

APPEARANCES:

Roshanak Orand	FOR THE APPLICANT (ON HER OWN BEHALF)
Ryan Deshpande	FOR THE RESPONDENTS

SOLICITORS OF RECORD:

Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENTS