Federal Court of Appeal | Cour d'appel fédérale

Date: 20241106

Docket: A-170-22
A-171-22

Citation: 2024 FCA 181

CORAM: **GLEASON J.A.**
GOYETTE J.A.
BIRINGER J.A.

BETWEEN:

NAVARATNAM KANDASAMY

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Toronto, Ontario, on October 31, 2024.

Judgment delivered at Ottawa, Ontario, on November 06, 2024.

REASONS FOR JUDGMENT BY: GOYETTE J.A.

CONCURRED IN BY: GLEASON J.A.
BIRINGER J.A.

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REASONS FOR JUDGMENT

GOYETTE J.A.

[1] Mr. Navaratnam Kandasamy appeals two judgments of the Federal Court (*per* Kane J.): 2022 FC 1100 and 2022 FC 1110. The judgments dismissed his applications for judicial review of decisions by government institutions responding to his requests for personal information.

[2] More precisely, Mr. Kandasamy made requests to the Minister of Public Safety (Public Safety) and the Canadian Security Intelligence Service (CSIS) for personal information concerning him included in these institutions' personal information banks.

[3] Public Safety responded to Mr. Kandasamy's request in two parts. First, it disclosed some records. Second, and pursuant to section 16 of the *Privacy Act*, R.S.C. 1985, c. P-21, Public Safety neither confirmed nor denied that some of the records requested exist. It added that, if they exist, such records could reasonably be exempt from disclosure under section 21 of the *Privacy Act* as they relate to Canada's efforts against subversive or hostile activities.

[4] CSIS responded to Mr. Kandasamy's request in three parts. First, it wrote that one of the personal information banks identified by Mr. Kandasamy did not exist. Second, it advised that it found no personal information concerning Mr. Kandasamy in some of the banks in respect of which he had made requests. Third, as for the remaining banks, CSIS neither confirmed nor denied that some of the requested records exist. It added that, if they exist, such records either would be exempt or could reasonably be exempt from disclosure under sections 18, 21 and/or 22 of the *Privacy Act.* These provisions concern personal information banks designated as exempt by the Governor-in-Council, banks that relate to Canada's efforts against subversive or hostile activities, and banks that relate to certain types of investigations.

[5] Unsatisfied with these responses, Mr. Kandasamy filed complaints with the Office of the Privacy Commissioner. The Office found the complaints ill-founded. Mr. Kandasamy then applied to the Federal Court for judicial review of the decisions of Public Safety and CSIS.

[6] The Federal Court noted that Mr. Kandasamy had not raised any specific errors regarding the decisions of Public Safety and CSIS. Nevertheless, the Federal Court performed a comprehensive analysis of the decisions to determine (1) whether Public Safety and CSIS had reasonably applied the statutory provisions on which they relied; and (2) whether they had reasonably exercised their discretion not to disclose the information sought. Taking into consideration the nature of the information sought, the wording of the *Privacy Act*'s provisions relied upon by Public Safety and CSIS, and the relevant jurisprudence, the Federal Court concluded that these institutions had reasonably applied the provisions on which they relied. The Federal Court further concluded that it was reasonable, and in respect of certain records legally required, for Public Safety and CSIS to neither confirm nor deny that some records exist.

[7] On appeal from decisions of the Federal Court sitting in judicial review, this Court must step into the shoes of the Federal Court and determine whether the correct standard of review was identified and properly applied: *Agraira v. Canada (Public Safety and Emergency Preparedness*), 2013 SCC 36 at para. 46; *Northern Regional Health Authority v. Horrocks*, 2021 SCC 42 at para. 12. However, where, as is the case here, the Federal Court performed a thorough analysis and appears to have addressed all the arguments advanced by an appellant, the latter bears a strong burden to convince this Court that its intervention is warranted: *Bank of Montreal v. Canada (Attorney General)*, 2021 FCA 189 at para. 4. For the following reasons, I cannot find any basis for this Court's intervention.

[8] The Federal Court correctly identified the applicable standard as that of reasonableness: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65. The Federal Court applied that standard properly.

[9] Before this Court, Mr. Kandasamy raises no arguments as to the unreasonableness of the decisions of Public Safety and CSIS. He even agrees that it makes sense for government institutions to neither confirm nor deny if some information exists when the nature of the information sought relates to Canada's efforts against subversive or hostile activities. Similarly, he does not point to any error in the Federal Court's judgments. Rather, his submissions focus on three elements: (1) his belief that he is under constant surveillance and subject to torture; (2) the need for legislative reform in the areas of access to information and privacy; and (3) a concern with the Federal Court's orders that some materials filed by the Attorney General be kept confidential, sealed, and not accessible by him.

[10] As explained by the Federal Court in its judgments and by our Court during the hearing of these appeals, the role of both courts in the present matter is to determine the reasonableness of the decisions of Public Safety and CSIS. It is not to determine whether Mr. Kandasamy is under surveillance or subject to torture. Similarly, this Court's role is not to amend legislation.

[11] With respect to the Federal Court's orders that some materials be kept confidential and sealed, I understand that as a self-represented litigant, Mr. Kandasamy may be concerned that he did not have access to these materials. To alleviate his concerns, I offer the following brief explanation. It is common for the Federal Court to make confidentiality orders as it did in the

present matter: *Ruby v. Canada (Solicitor General)*, 2002 SCC 75 at paras. 41, 60; *Dzevad Cemerlic MD v. Canada (Solicitor General)*, 2003 FCT 133 at para. 6; *Westerhaug v. Canadian Security Intelligence Service*, 2009 FC 321 at para. 8; *Braunschweig v. Canada (Public Safety)*, 2014 FC 218 at paras. 5–6; *Russell v. Canada (Attorney General)*, 2019 FC 1137 at paras. 31–32; *V.B. v. Canada (Attorney General)*, 2018 FC 394 at paras. 10–12; and *Chin v. Canada (Attorney General)*, 2022 FC 464 at paras. 24–25. This is so because subsection 46(1) of the *Privacy Act* requires the Federal Court to take every reasonable precaution to avoid disclosure of (a) information that a government institution is authorized to refuse to disclose; and of (b) confirmation as to whether such information exists. By ordering that information be designated and treated as confidential, the Federal Court complies with its statutory obligation of precaution. The orders also allow the Federal Court to determine whether or not information exists, whether or not the exemptions being claimed by the government institution are applicable and, if necessary, to review the exercise of the government institution's discretion not to disclose the information. In other words, these confidentiality orders assist the Federal Court, and on appeal this Court, in determining whether the government institution complied with the law.

[12] In light of the above, I would dismiss the appeals with costs to the respondent in the all-inclusive amount of $500.00 ($250.00 *per* appeal).

"Nathalie Goyette"
J.A.

"I agree.
Mary J.L. Gleason J.A."

"I agree.
Monica Biringer J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-170-22 and A-171-22
STYLE OF CAUSE:	NAVARATNAM KANDASAMY v. ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	OCTOBER 31, 2024
REASONS FOR JUDGMENT BY:	GOYETTE J.A.
CONCURRED IN BY:	GLEASON J.A. BIRINGER J.A.
DATED:	NOVEMBER 6, 2024

APPEARANCES:

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