Federal Court  Cour fédérale

Date: 20170321

Docket: T-255-16

Reference: 2017 FC 291

Ottawa (Ontario), March 21, 2017

PRESENT: The Honourable Madam Justice St-Louis

BETWEEN:

AUDREY CHÉDOR

Applicant

and

THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP CANADA

Respondent

ORDER AND REASONS

I. INTRODUCTION

[1] Ms. Audrey Chédor, the applicant, filed a Motion under Rule 467 of the *Federal Courts Rules*, SOR/98-106, to seek a show cause Order against the Minister of Immigration, Refugees and Citizenship Canada (the Minister of Citizenship and Immigration as per section 4 of the *Immigration and Refugee Protection Act*, SC 2001, c 27) [the Minister] on the basis that he is in

contempt of court. The Court directed Ms. Chédor to serve the Motion to the Minister and allowed him to respond.

[2] On October 31, 2016, Justice Martineau rendered a Judgment and Reasons (*Chédor v Canada (Minister of Citizenship and Immigration)*, 2016 FC 1205 [*Chédor*]). By his Judgment, Justice Martineau homologated the settlement the parties had reached on February 2, 2016 [Settlement], and made it an order of the Court [Order]. Justice Martineau's Judgment and the Settlement it refers to are reproduced in Annex.

[3] Ms. Chédor contends that the Minister breached the Settlement, and is therefore in contempt of Justice Martineau's Order.

[4] Ms. Chédor asks the Court for 10 remedies, although of importance for the show cause proceedings under Rule 467 are her allegations that the Minister breached Justice Martineau's Order by (1) failing to provide evidence of an effective review of all their department policies, application forms, along with the corresponding guides, in order to remove the additional requirement that applicants seeking a change of sex designation on the citizenship certificate provide evidence that they have undergone sex reassignment surgery (partial or full); and (2) failing to develop, consistent with Justice Martineau's Judgment, alternative types of acceptable evidence for applicants who are unable to provide documentary evidence originating from a Canadian province or territory, and therefore, pushing or motivating applicants to submit proof of surgery.

[5] In her motion, Ms. Chédor points to specific allegations of failure to, among others, provide evidence that section 6 "Sex / Change of Sex or Gender Reassignment" of the "Citizenship Policy Manual CP 3 – Establishing Applicant's Identity" has been effectively modified in compliance with the Judgment, or abrogated, and to remove the requirement "proof of full or partial sex reassignment surgery" from the Instruction Guides for applicants CIT 0001 and CIT 0002.

[6] Ms. Chédor contends first that the Settlement did not express the full intent of the parties, which was to eliminate all and any requirement for applicants to provide a proof of sex reassignment surgery, which was not respected by the Minister, and second, that even if the Settlement is to be taken at face value, the Minister has failed to respect it.

[7] As it is the Court's conclusion that the applicant has not met the burden of proof of establishing *prima facie* contempt, the motion will be dismissed.

II. FACTUAL CONTEXT

[8] The factual background is set forth in Justice Martineau's Reasons. As a preliminary observation, this Court also wishes to acknowledge the delicate and private character of the proceedings and will thus outline only the necessary facts. Hence, suffice to say that in 2012, Ms. Chédor filed a complaint with the Canadian Human Rights Commission after having sought the issuance of a revised certificate of Canadian citizenship reflecting her sex as female. The parties settled their dispute and signed the 7 paragraphs Settlement, itself approved by the Canadian Human Rights Commission on March 4, 2015.

[9] Justice Martineau allowed in part the Application Ms. Chédor presented pursuant to subsection 48(3) of the *Canadian Human Rights Act*, RSC 1985, c H-6 and Rule 300 b) of the *Federal Courts Rules*. As stated already, Justice Martineau homologated the Settlement, and for the purpose of enforcement, made it an Order of the Federal Court.

[10] Paragraph 2 of the Settlement dictates the action that must be taken by the Minister and is at the heart of Ms. Chédor's Motion for a show cause in these proceedings. It thus appears necessary to reproduce it:

> The Respondent will revise their departmental policies to remove the current requirement that applicants seeking a change of sex designation on their citizenship certificate provide evidence that they have undergone sex reassignment surgery **in addition** to providing provincial and territorial documentation reflecting a change of sex or gender. This revision will take place within one calendar year of the signing of this agreement. Application forms for a citizenship certificate for adults and minors (proof of citizenship), along with the corresponding guides to applicants, will be update to reflect the new requirements under this policy.
>
> (Our emphasis)

[11] Under the terms of paragraph 2, it seems clear that individuals who seek a change of sex designation on their citizenship certificate no longer need to provide evidence that they have undergone sex reassignment surgery in addition to provide provincial or territorial documentation reflecting a change of sex or gender. It also states that the related application forms and guides will be updated to reflect the new requirements.

[12] It appears from the record that the new application forms, instructions and guides now contain a note confirming that applicants who seek a change of sex designation on their

citizenship certificate no longer require proof of a sex reassignment surgery when they provide provincial or territorial documentation reflecting a change of sex or gender.

[13] The Court noted Ms. Chédor's reference to her exhibits C-28, specifically page 142 of the applicant's record; C-58, specifically at page 172; and J-5 at page 249.

[14] Page 142 is part of the most recent instructions to the applicants for the *Application for a citizenship certificate*; page 172 is part of the most recent instructions to the applicants for the *Application for citizenship*; and page 249 is part of the guide *Identity management: Sex designation on IRCC documents and in IRCC systems*.

[15] The information on page 249 generally states: "In addition to the documentary evidence listed below, the applicant must still provide any documents requested as part of the application instruction guide and document checklist to establish identity". It also confirms the list of the three acceptable documents that can be submitted in order to request a change of sex designation on Immigration, Refugees and Citizenship Canada [IRCC] documents. At the bottom of the page it specifically states IRCC does not require proof of any sex reassignment surgery in order to amend the sex designation.

[16] The information on page 142, part of the application instruction guide, lists the documentary evidence, when such originates from Canada, that must be submitted to request a change of sex designation and the Court notes that (1) the proof of full or partial sex reassignment surgery is one of the four non-cumulative acceptable options, and (2) an applicant

unable to obtain any of the 4 listed documents as an additional option must submit a statutory declaration and a letter from a physician or psychologist.

III. POSITION OF THE PARTIES

A. *Ms. Chédor*

[17] Ms. Chédor contends that the Minister breached the Settlement and is in contempt of Justice Martineau's Order as (1) all mention of evidence of a sex reassignment surgery has not been eliminated from the application forms and/or guides/policy requirement; and (2) alternatively, as the general statement that appears at the top of page 249 provides IRCC with the option to require *any* document, thus including a proof of sex reassignment surgery.

[18] On the first argument, Ms. Chédor submits that the wording of paragraph 2 of the Settlement does not actually reflect the intention of the parties, which would have been to eliminate all and any requirement to submit a document pertaining to proof of sex reassignment surgery.

[19] Ms. Chédor refers to paragraph 7 of the Settlement that confirms the transaction is one under section 2631 of the *Civil Code of Québec*, CQLR, c CCQ-1991 to support the proposition that the Court must seek the intention of the parties, and not stick to the letter of paragraph 2, and that the contempt procedure must be examined through the lens of the Civil Code of Québec.

[20] During the hearing, the Court signaled to Ms. Chédor the very particular nature of the contempt proceeding, and the necessity that the conduct of the parties be clearly outlined and not be in dispute. In response to this concern, Ms. Chédor argued alternatively that the Minister was in contempt even of the actual wording of paragraph 2 given that the statement at the top of page 249 of the guide provides authority for IRCC to require any document listed in the application package, and to ignore its own guidance regarding the acceptable documents.

B. *The Minister*

[21] In essence, the Minister submits there is no basis for the applicant's motion, that the application forms and guides were amended, that IRCC no longer requires proof of sex reassignment surgery in addition to provincial documents, and even provides an applicant with additional options if none of the documentary evidence is available.

IV. DISCUSSION

[22] Upon a motion seeking an order of this Court pursuant to Rule 467 of the *Federal Courts Rules*, an applicant must establish "a prima facie case of willful and contumacious conduct on the part of the contemnor" (*Chaudhry v Canada*, 2008 FCA 173 au para 6). Such motion more precisely requires proof of:

- A Court Order or other Court process;
- The respondent's knowledge of the order or process; and

- A deliberate flouting of the Court Order or process (*Mennes v Warkworth Institution*, 2001 FCT 571 at para 5; *Canadian Private Copying Collective v Fuzion Technology Corp*, 2009 FC 800 at para 60-62).

[23] It is worth noting that "[a] motion for a show cause order is not the time or place to argue the merits of the contempt proceeding or what may be valid defences", except "where it is clear from the record that the alleged violation is such that it does not deserve to be punished" (*Direct Source Special Products Inc v Sony Music Canada Inc*, 2005 FC 1362 at para 4).

[24] Even at this stage, the intent must be shown on the part of the respondent (*Orr v Fort Mckay First Nation*, 2012 FC 1436 at para 15).

[25] Important to these proceedings, and as demonstrated by the following case law, the Court Order must be clear and not ambiguous.

[26] In *Rameau v Canada (Attorney General)*, 2012 FC 1286, the Court observed that a difference in interpretation was raised and that it was not clear what the parties had to do to comply with the order. Justice Boivin concluded that, in these circumstances, the applicant had "not discharged her burden of making a prima facie case" (at para 21).

[27] This reasoning was echoed by Justice Snider in *Felix Sr v Sturgeon Lake First Nation*, 2013 FC 310 (unpublished) at paragraph 10 when she stated: "Further, the individual alleging contempt of a court order must demonstrate that the order was clear concerning what actions

were required for compliance (Rameau v Canada (Attorney General), 2012 FC 1286 at para 19, [2012] FCJ No 1641)". Justice Snider dismissed the motion seeking an Order of this Court pursuant to Rule 467.

[28] In *Canada (National Revenue) v CD²I Coopérative de Services en Développement International*, 2009 FC 820, Justice Beaudry had to decide if the respondent was guilty of contempt of court. This hearing took place after Justice Lemieux ordered the respondent to appear before a judge of this Court to show cause why he was not in contempt of Court under Rule 466, finding "that the Order dated October 9, 2007 was clear, that there is prima facie evidence that the Respondent has had actual knowledge of the order and that there is prima facie evidence of a willful and contumacious conduct on the part of [the respondent]" (at para 10, emphasis added).

[29] In the same vein, in *Abbvie Corporation v Janssen Inc*, 2014 FC 863 (unpublished), Justice Brown found that *prima facie* "an unambiguous Order of this Court was disobeyed" (emphasis added) and issued an order pursuant to Rule 467.

[30] In the case at hand, Ms. Chédor's first argument must be dismissed, as it would require the Court to accept the proposition that the Order should be interpreted by seeking the intention of the parties, meaning that the Order is not clear in itself. The case law shows that no finding of contempt can be made from implied terms of an order, but that the interpretation of the order must rather be discernible from its face (see also *Gurtins v Panton-Goyert*, 2008 BCCA 196 at para 16; *Jackson v Jackson*, 2016 ONSC 3466 at para 51). Therefore, the argument that the

Order is not clear, hence that it does not unambiguously state what the Minister had to execute, cannot support a show of cause Motion under Rule 467.

[31] Ms. Chédor's alternative argument, that the Minister breached paragraph 2 by allowing IRCC to require "any documents", is not supported by the evidence. To the contrary, the documents submitted by Ms. Chédor indicate that the terms of paragraph 2 of the Settlement were clearly integrated in the guides and instruction documents destined to persons applying for a Citizenship certificate. The Court is satisfied it is not *prima facie* evidence of the Minister's breach of the Order.

[32] In conclusion, and again "without deciding whether a finding of contempt may be made against the Crown" (*Chédor* at para 79), it is the Court's decision that Ms. Chédor has not established *prima facie* that the Minister is in contempt of Justice Martineau's Order.

[33] Given this finding on contempt, the Court deems unnecessary to address the other remedies sought by Ms. Chédor.

ORDER

THIS COURT'S ORDER is that:

1. The Motion is dismissed.

2. Costs of $850 are granted in favor of the respondent.

"Martine St-Louis"

Judge

ANNEX

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The style of cause is modified as follows:
   The Minister of Immigration, Refugees and Citizenship Canada is substituted to The Minister of Citizenship and Immigration Canada, as respondent in this proceeding;
2. The application made by the applicant for the homologation and enforcement of the settlement signed by the parties on February 7, 2015 [Settlement] and approved by the Canadian Human Rights Commission on March 4, 2015, is allowed in part;
3. The Settlement attached to the present judgment (being Exhibit "N" referred to in the affidavit of Audrey Chédor dated February 29, 2016) is homologated, and for the purpose of enforcement, is made an Order of the Federal Court; and
4. The applicant is entitled to costs in the amount of $1,200 inclusive of all disbursements and taxable fees.

"Luc Martineau"
Judge

Schedule 1
Document N-1

Federal Court File No.: T-255-16

AS A FINAL SETTLEMENT OF CLAIM BETWEEN THEM BEFORE THE CANADIAN HUMAN RIGHTS TRIBUNAL IN CASE NUMBER T2061/6214, THE PARTIES AGREE THE FOLLOWING:

1- The Respondent will issue the Complainant a revised Certificate of Canadian citizenship, reflecting the Complainant's sex as female, within 14 calendar days of signing this agreement.

2- The Respondent will revise their departmental policies to remove the current requirement that applicants seeking a change of sex designation on their citizenship certificate provide evidence that they have undergone sex reassignment surgery in addition to providing provincial and territorial documentation reflecting a change of sex or gender. This revision will take place within one calendar year of the signing of this agreement. Application forms for a citizenship certificate for adults and minors (proof of citizenship), along with the corresponding guides to applicants, will be updated to reflect the new requirements under this policy.

3- Within 2 working days of signature of this agreement, the Complainant and the Respondent will provide a copy of this agreement to the Canadian Human Rights Commission for approval of the terms of this settlement.

4- The Complainant will file a notice of discontinuance of her complaint upon the Tribunal within five (5) days of the approval of the Transaction by the Canadian Human Rights Commission.

5- The Complainant will not seek any damages from the Respondent as it pertains to this specific case.

6- The terms of this Transaction are confidential and, subject to all provision of laws requiring public disclosure of such information, will not be shared by the Parties to anybody unless they be formally authorized by both Parties or by the *Privacy Act*;

7- The present Transaction consitute a transaction under section 2631 of the Civil code of Quebec where the Parties have freely consented without any promise, representation or intimidation of any kind and is made for the sole purpose of reaching a settlement, without any admission of the Parties.

Schedule 1
Document N-2

Federal Court File No.: T-255-16

IN WITNESS WHEREOF, THE PARTIES HAVE SIGNED:

Montreal, 07 February 2015

Audrey Crédor

Montreal, 07 February 2015

Himmat Shinhat, duly authorized representative

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-255-16
STYLE OF CAUSE:	AUDREY CHÉDOR AND THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP CANADA
PLACE OF HEARING:	MONTRÉAL (QUÉBEC)
DATE OF HEARING:	FEBRUARY 21, 2017
ORDER AND REASONS:	ST-LOUIS J.
DATED:	MARCH 21, 2017

APPEARANCES:

Audrey Chédor	SELF REPRESENTED
Me Daniel Latulippe	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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