Federal Court Cour fédérale

Date: 20171114

Docket: T-1357-17

Citation: 2017 FC 1037

Vancouver, British Columbia, November 14, 2017

PRESENT: The Honourable Mr. Justice Lafrenière

BETWEEN:

JOSE LUIS FIGUEROA

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS AND THE ATTORNEY GENERAL OF CANADA

Respondents

JUDGMENT AND REASONS

UPON MOTION in writing dated October 11, 2017, on behalf of the Respondent, the Minister of Public Safety and Emergency Preparedness [the Minister], pursuant to Rule 369 of the *Federal Courts Rules*, for an order seeking to dismiss the Applicant's application for judicial review dated September 1, 2017 [the application for judicial review];

AND UPON reading the motion records filed on behalf of the Respondents, and by the Applicant;

[1] The pertinent facts underlying this motion are not in dispute. The Applicant submitted an application to the Respondent Minister for a certificate pursuant to section 83.07 of the *Criminal Code*, RSC, 1985, c C-46 [Criminal Code] by letter dated July 26, 2017.

[2] Section 83.07 provides as follows:

83.07 (1) An entity claiming not to be a listed entity may apply to the Minister of Public Safety and Emergency Preparedness for a certificate stating that it is not a listed entity.	83.07 (1) L'entité qui prétend ne pas être une entité inscrite peut demander au ministre de la Sécurité publique et de la Protection civile de lui délivrer un certificat à cet effet.
(2) The Minister shall, within 15 days after receiving the application, issue a certificate if he or she is satisfied that the applicant is not a listed entity.	(2) S'il est convaincu que le demandeur n'est pas une entité inscrite, le ministre délivre le certificat dans les quinze jours suivant la réception de la demande.

[3] As the Minister did not issue a certificate within 15 days of the Applicant's request, the Applicant commenced an application for judicial review on September 1, 2017. The specific relief requested in the Notice of Application is an order "for a writ of mandamus to compel the Minister to process the application that was requested under Section 83.07 of the Criminal Code" and costs of the proceeding.

[4] The Minister responded to the Applicant on September 13, 2017 by way of letter declining to reopen his previous application for a certificate made in 2015 (which is the subject

of ongoing litigation before this Court and the Federal Court of Appeal). The Minister stated in his letter that the Applicant had failed to indicate how his name might be confused with any name on the list or that there is a name on the list that in any way resembles his name. The Minister also stated that the Applicant had not shown any circumstances that have changed since his previous requests for a certificate in 2013 and 2015.

[5] On October 5, 2017, counsel for the Respondent wrote to the Applicant to request that he discontinue the application for judicial review as it was now moot given that the Minister had responded to his request for a section 83.07 certificate. The Applicant declined counsel's invitation. As a result, the Minister has brought the present motion seeking an order dismissing the Applicant's application for judicial review on the basis of mootness.

[6] The Applicant submits that the issue to be determined on this motion is whether the September 13, 2017 letter signed by the Minister can be construed as being a decision refusing to issue the certificate requested by the Applicant on July 26, 2017. I disagree. The only issue to be determined is whether the Applicant's application should be dismissed for mootness.

[7] The two-part test for mootness, as set out in *Borowski v Canada*, [1989] 1 SCR 342 at para 16, requires the Court to first determine whether the required tangible and concrete dispute has disappeared and the issues have become academic, and second, if the first question is answered in the affirmative, whether it is necessary to decide if the court should exercise its discretion to hear the case.

[8] With respect to the first test, the Applicant brought an application for a writ of *mandamus* to compel the Minister to render a decision with respect to his section 83.07 application. This has now been done. The Applicant may take issue with the reasons provided by the Minister in declining to issue a certificate. It remains, however, that the Applicant's application has been "processed", as requested in the Notice of Application. Accordingly, there is no longer any outstanding application under section 83.07 of the Criminal Code upon which an order for *mandamus* could be granted. As the controversy giving rise to the application – the Minister's alleged failure to comply with subsection. 83.07(2) – is no longer in existence, the relief sought by the Applicant is clearly rendered moot. *Mandamus* in this case would serve no purpose since the Applicant has now received a decision with respect to his section 83.07 application.

[9] As for the second test, the relevant factors for determining whether the Court should exercise its discretion to hear a matter that has been rendered moot are the persistence of an adversarial context; concern for judicial economy; and concern for the Court's proper law-making function.

[10] Although there may now exist an adversarial context between the parties based on the Minister's refusal to reconsider the Applicant's previous section 83.07 application, there is no longer any controversy between the parties in the present proceeding. Specifically, the basis for the Applicant's claim for *mandamus* has ceased and the relief sought is no longer required or necessary as a decision has been rendered with respect to his section 83.07 application. If the Applicant wishes to challenge the legality, adequacy or sufficiency of the Minister's decision dated September 13, 2017, he is free to bring a fresh application for judicial review. However, it

is not open to him to challenge the Minister's refusal decision which post-dates his application for *mandamus*.

[11] The second factor the Court will consider in determining whether it should exercise its discretion to hear a moot matter is judicial economy. This factor recognizes the need to ration scarce judicial resources among competing claimants. The Court will only exercise its discretion to hear moot cases if the special circumstances of the case make it worthwhile to apply scarce judicial resources to resolve it. The Court will determine if special circumstances exist by looking at: (i) the practical effect on the parties; (ii) whether the matter is likely to recur and is evasive of review; and (iii) the importance of the issues.

[12] In the case at hand, a decision from this Court would not have any practical effect on the rights of the parties. Given the recent decision of the Minister in relation to the Applicant's section. 83.07 application, there is nothing that the Court could order be done as the relief requested has, in essence, been satisfied. Moreover, this is not a situation in which the only means by which the Court will be able to determine the issue raised in the underlying proceeding will be to hear the Applicant's moot application. Finally, while the application may raise an important issue of statutory interpretation, I am not persuaded that the issue is one of broad social importance to the public at large. I conclude that the Applicant is seeking a remedy applicable only to himself and that remedy has already been granted. There is no compelling public interest reason for the Court to hear this application at this time. Rather, the issues raised should be determined in a genuine adversarial context which is entirely lacking here.

[13] For the above reasons, I conclude that the application for judicial review is moot. Further, I agree with the Minister that this is not a proper case for the Court to exercise its discretion to hear a moot matter. Accordingly, the application for judicial review shall be dismissed.

[14] As for costs of the motion, the Minister is the successful party and costs would normally follow the event. However, given that the Minister's alleged failure to comply with subsection 83.07(2) gave rise to the application at first instance and that the application likely prompted the Minister to respond more quickly to the Applicant's request for a certificate, I conclude that each party should bear their own costs.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. Each party shall bear their own costs of the proceeding.

"Roger R. Lafrenière"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1357-17
STYLE OF CAUSE:	JOSE LUIS FIGUEROA v THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS AND THE ATTORNEY GENERAL OF CANADA

MOTION IN WRITING CONSIDERED AT VANCOUVER, BRITISH COLUMBIA PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES*

JUDGMENT AND REASONS:	LAFRENIÈRE J.
DATED:	NOVEMBER 14, 2017

WRITTEN REPRESENTATIONS BY:

Jose Luis Figueroa	FOR THE APPLICANT (ON HIS OWN BEHALF)
Brett J. Nash	FOR THE RESPONDENTS

SOLICITORS OF RECORD:

Attorney General of Canada Vancouver, British Columbia	FOR THE RESPONDENTS