

Federal Court



Cour fédérale

Date: 20191216

Docket: T-522-19

Citation: 2019 FC 1609

Vancouver British Columbia, December 16, 2019

PRESENT: The Honourable Mr. Justice Lafrenière

BETWEEN:

KONSTANTINOS XANTHOPOULOS

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

ORDER AND REASONS

[1] These reasons relate to three motions in writing brought by the parties pursuant to Rule 369 of the *Federal Courts Rules*, SOR 98-106 (FCR) shortly before the hearing of the application scheduled to proceed on December 11 and 12, 2019.

I. Overview

[2] The underlying proceeding is an application for judicial review by the self-represented Applicant, Konstantinos Xanthopoulos, against the Respondents, the Attorney General of Canada, the Minister of Public Safety and Emergency Preparedness [Minister], on behalf of the

Royal Canadian Mounted Police [RCMP], and the Commissioner of the RCMP [Commissioner]. On consent of the parties, the style of cause is amended by removing the Minister and the Commissioner as parties to the proceeding as the only proper respondent is the Attorney General of Canada [Respondent].

[3] The Applicant seeks an order setting aside the decision of the RCMP Conduct Board [Conduct Board] dated March 21, 2019, directing the Applicant to resign from the police force, and in default of resigning within fourteen days after being directed to do so, recommending the Applicant be dismissed pursuant to paragraph 45(4)(b) of the *Royal Canadian Mounted Police Act*, RSC 1985, c R-10 [RCMPA].

[4] After service of the Applicant's Record, the Respondent filed a memorandum of fact and law on July 26, 2019. A preliminary objection raised by the Respondent is that the application should be dismissed as premature given that the Applicant had not exhausted the adequate alternative remedy of a statutory appeal under the RCMPA and its regulations.

[5] On September 5, 2019, an Order was issued fixing the hearing date of the application.

II. Interlocutory Motions Brought by the Parties

[6] The Respondent brought a motion on November 19, 2019 seeking an order striking out the Notice of Application, without leave to amend, and dismissing the application for judicial review on the grounds that it is premature. Instead of serving and filing a responding motion record, the Applicant tendered a separate motion on December 3, 2019 requesting disclosure of

records that he claims are required to respond to the Respondents' motion. The motion was received by the Registry, but not filed, pending directions of the Court.

[7] On December 9, 2019, the Applicant submitted a second motion seeking leave to be represented at the hearing by a non-lawyer, Corporal Ryan Letnes. The motion was accepted for filing by the Registry without any directions being sought by the Court.

[8] At the hearing on December 11, 2019, after some back and forth between the Applicant and counsel for the Respondent, it was agreed to proceed as follows.

[9] First, the Applicant's motion for disclosure of documents would be accepted for filing.

[10] Second, the identity of the woman with whom the Applicant is alleged to have been engaged in discreditable conduct (Allegation #2 in the decision of the Conduct Board) should be kept confidential in any decision rendered by this Court.

[11] Third, the Applicant's motion for leave to be represented by an RCMP member should be heard first, followed by the Applicant's motion for disclosure and then the Respondent's motion to strike.

A. *Applicant's Motion for Representation*

[12] The Applicant seeks an order pursuant to Rule 3 of the FCR allowing him to be represented by Corporal Letnes at the hearing. The motion is opposed by the Respondent.

[13] In support of his motion, the Applicant submitted a personal affidavit setting out three impediments to acting on his own behalf.

[14] The first reason is his medical incapacity. The Applicant states that he was diagnosed in May 2018 with severe adjustment disorder with anxiety as well as stress-induced gastritis. According to the Applicant, he is unable to cope with daily problems or stress. He was advised by his care physician to avoid all major stressors, “especially those related to the RCMP”. Attached to his affidavit is a copy of a letter from Dr. Sean Petrovic dated May 31, 2018 to that effect.

[15] The second reason is his impecuniosity. The Applicant states that he cannot afford to retain a lawyer because he “was removed from pay.”

[16] The third reason is his poor English language skills. The Applicant states his native language is Greek and this is the only language he speaks fluently. He claims that given his thick Greek accent, he struggles to fully articulate policy or legal positions concisely in English.

[17] The Applicant also relies on the affidavit of Corporal Letnes, his proposed representative. Corporal Letnes states that he has been a member of the RCMP since October 2, 2000, and he is currently on medical leave. According to Corporal Letnes, he assisted the Applicant in navigating the judicial review process. He claims to have attained significant experience in judicial settings, including conducting trials, questioning witnesses and offering oral submissions in proceeding involving provincial statute enforcement. He also claims to be a subject member expert in internal conduct investigations.

[18] The general rule is that a party appearing in the Federal Courts must be self-represented or represented by a lawyer: Rule 119 of the FCR. The Federal Court of Appeal in *Erdmann v Canada*, 2001 FCA 138, and *Scheuneman v Canada (Attorney General)*, 2003 FCA 439, left open the possibility that the Court may have an inherent discretion to permit lay representatives when the interests of justice so require. It remains that there must be unusual or exceptional circumstances to engage any residual discretion of this Court. I find no such circumstances in the present case.

[19] While I accept that the Applicant may have been suffering from stress-induced psychological and physical illness back in May 2018 which prevented him from reporting to his workplace on a daily basis, there is no current medical evidence that the Applicant is unable to make representations on his own behalf at a hearing before this Court.

[20] In any event, even if the Applicant was in fact incapable of representing himself for medical reasons, he has failed to establish why the default position is retaining a layperson to represent him. The Applicant baldly asserts that he cannot afford a lawyer because he was “removed from pay”. However, he provides no information about his financial circumstances, such as assets, liabilities, or other sources of income, or regarding his ability to secure financial assistance by way of loan or voluntary assistance from family or friends.

[21] Moreover, there is simply no merit to the Applicant’s claim that he cannot express himself clearly in English. It strains credulity that a member of the RCMP, who was presumably trained over a number of years to become a member, would be unable to express himself in one

of the two official languages of this country. I note that he had no difficulty expressing himself in English at the hearing.

[22] Further, the interests of justice do not militate in the Applicant's favour given the late timing of the motion. No explanation is provided as to why he waited until a few days before the hearing before raising the matter of representation.

[23] Finally, I have also considered whether this would be an appropriate case to grant Corporal Letnes leave to represent the Applicant even though he is not a lawyer. In my view, it is not.

[24] While Corporal Letnes may be well versed in criminal matters and internal conduct investigations, his experience appears to be derived entirely from his own disciplinary and judicial review proceedings (Court Files T-343-19 and T-642-19), which are separate and distinct from the Applicant's case and involve different workplace matters and issues within the RCMP.

[25] I further question whether Corporal Letnes' personal circumstances may have coloured his ability to act impartially and in the Applicant's best interests. There is a valid concern that Corporal Letnes may be using the Applicant's case as a surrogate to advance his own case.

[26] Moreover, I am not satisfied that Corporal Letnes appreciates the nature of judicial review or the procedure that ought to be followed. Corporal Letnes states in his affidavit that he assisted the Applicant in navigating the judicial review process. Presumably, he was involved in

drafting the Notice of Application that, on its face, fails to recognize the limited jurisdiction of this Court to grant relief on judicial review.

[27] In his prayer for relief, the Applicant seeks an order declaring the Conduct Board's direction unlawful. However, rather than seeking an order setting aside the decision and referring the matter back for reconsideration, the Applicant requests an order directing the RCMP to reinstate him as a member. Such relief is generally not available on judicial review.

[28] Moreover, one of the grounds for the application in the Notice of Application is that the appeal process available to the Applicant under the *Commissioner's Standing Orders (Grievance and Appeals)*, SOR/2014-289 is not an adequate alternative remedy to the judicial review proceedings. However, no evidence whatsoever has been presented by the Applicant regarding the inadequacy of the Applicant's statutory appeal to the Commissioner.

[29] Corporal Letnes is not a lawyer, and therefore is not authorized to make representations before superior courts of this country in any capacity. As stated by Madam Justice Jocelyne Gagné (as she then was) in *Bautista v Canada (Citizenship and Immigration)*, 2018 FC 669 at para 11, this Court should refrain from encouraging the illegal practice of law.

[30] For the above reasons, I conclude that the participation of Corporal Letnes as a representative of the Applicant probably would not assist the Court in dealing with the issues raised in his application, and may very well work to the Applicant's prejudice. The Applicant's motion for representation is therefore dismissed. The Applicant must either take over the proceedings himself, or retain counsel.

B. *Applicant's Motion for Document Disclosure and Respondent's Motion to Strike*

[31] The Applicant submits that he is unable to respond properly to the Respondent's motion to strike without the evidence requested through his motion for document disclosure. He also submits that the same evidence is required to address the Respondent's argument that the application for judicial review is premature.

[32] In her letter dated December 3, 2019, counsel for the Respondent indicated that the Respondent would not oppose an adjournment of the judicial review application hearing so that the Applicant may obtain legal representation in this matter. At the hearing, counsel stated the Respondent was not prepared to proceed with the motion for document disclosure as it was served late and had only been received by the Court, and not filed.

[33] The parties ultimately agreed that the hearing of the application for judicial review should be adjourned pending disposition of the two outstanding interlocutory motions.

ORDER in T-1282-19

THIS COURT ORDERS that:

1. The Applicant's motion for leave to be represented by Corporal Letnes is dismissed.
2. The style of cause is amended with immediate effect to remove the Minister of Public Safety, on behalf of the Royal Canadian Mounted Police, and the Commissioner of the Royal Canadian Mounted Police as respondents.
3. The Applicant's motion for disclosure of records shall be accepted for filing. The time for service and filing of a responding motion record shall commence to run from December 11, 2019. The motion shall be referred to a judge for disposition immediately following the expiration of the deadlines fixed in Rule 369.
4. The Applicant shall serve and file a motion record in response to the Respondent's motion to strike no later than 14 days from the date of receipt of any records ordered to be disclosed by the Court or the dismissal of the Applicant's motion for disclosure. The undersigned remains seized with the Respondent's motion to strike.
5. The hearing of the application for judicial review is adjourned to a date to be fixed by the Court, if necessary, following disposition of the Applicant's motion for disclosure and the Respondent's motion to strike.
6. Costs of the Applicant's motion for representation shall be addressed following disposition of the Respondent's motion to strike.

"Roger R. Lafrenière"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-522-19

STYLE OF CAUSE: KONSTANTINOS XANTHOPOULOS v ATTORNEY
GENERAL OF CANADA

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: DECEMBER 11, 2019

ORDER AND REASONS: LAFRENIÈRE J.

DATED: DECEMBER 16, 2019

APPEARANCES:

Konstantinos Xanthopoulos

THE APPLICANT ON HIS OWN BEHALF

Suzanne Pereira
Courtenay Landsiedel

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada
Vancouver, British Columbia

FOR THE RESPONDENT