Federal Court  Cour fédérale

Date: 20220204

Docket: T-650-21

Citation: 2022 FC 140

Toronto, Ontario, February 4, 2022

PRESENT: Madam Justice Go

BETWEEN:

ROMEO V. LIM

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr. Romeo Lim [Applicant] seeks judicial review of a decision of the Canadian Judicial Council [CJC] to dismiss his complaint against an Alberta Provincial Court judge and three Alberta Court of Appeal judges. The complaint alleged that the judges were biased and made legal errors regarding the Applicant's 2018 criminal convictions, which led to his deportation from Canada. The Interim Executive Director of the CJC [the Executive Director] found that the

Applicant's complaint did not raise issues relating to judicial conduct and therefore did not warrant consideration [the Decision].

[2] The Applicant requests an order requiring the Executive Director to comply with the CJC's statutory mandate, to cease and desist from shielding judges he knows to be incompetent or unethical, to conduct a *bona fide* review of the complaint, and to keep the Applicant abreast of the investigation's progress. The Applicant argues that the appellate judges, the Executive Director, and government counsel knew that he was prosecuted for an offence that had never occurred, falsely branded a pedophile, and deported, because he was not a Caucasian heterosexual.

[3] According to the Respondent, it was reasonable for the Executive Director not to consider the Applicant's complaint on the ground that his complaint relates to judicial decision-making, not judicial conduct.

[4] For the reasons set out below, the application is dismissed.

II. Background

[5] In 2018, the Alberta Provincial Court convicted the Applicant of: (1) communicating with a person under the age of 16 for a sexual purpose contrary to s. 172.1(1)(b) of the *Criminal Code of Canada* [*CCC*] and (2) unlawfully inviting a person under the age of 16 to permit him to touch a part of the body of that person for a sexual purpose, contrary to s. 152 *CCC*. The case turned on the issue of whether the Applicant had been operating a social media account from

which messages were sent to a 13-year-old boy, offering money in exchange for sexual contact. The trial judge found that the Applicant had sent those messages and convicted him of both offences above. The Alberta Court of Appeal upheld these convictions (*R v Lim*, 2019 ABCA 473), and the Supreme Court of Canada denied leave to appeal.

[6] Parts of the Applicant's immigration history are set out in *Lim v Canada (Citizenship and Immigration)*, 2019 FC 871 and *Lim v Canada (Justice)*, 2020 FC 628. The Applicant was found inadmissible under paragraphs 36(1)(a) and 40(1)(a) of the *Immigration and Refugee Protection Act*, and was later deported.

[7] On January 22, 2021, the Applicant filed a complaint with the CJC, alleging that both the trial and appellate judges who heard his case were biased, failed to follow rulings of the Supreme Court of Canada, willfully breached *stare decisis* in order to have him deported, engaged in intentional misrepresentation, and defamed him "in order to deport this lowly gay Asian." The Applicant requested that the CJC do the following: have an impartial person with no links to the Alberta judiciary review his case; have the judges questioned under oath; order the judges to purge his name from all records and issue him a signed letter of apology on court stationary; and require the judges to urge the authorities to pardon him.

[8] In the Decision, dated March 24, 2021, the Executive Director notified the Applicant that his complaint did not warrant consideration because judicial bias, decision-making, or discretion are issues for the courts, not the CJC, whose only role is to review judicial conduct and who has no authority to interfere with judicial proceedings or review judges' decisions.

[9] The Applicant sent three follow up letters to the CJC on March 25, 2021, March 29, 2021 and April 6, 2021, expressing disagreement with the Decision and requesting additional information. The CJC replied on May 25, 2021, reiterating its review process and confirming that the Applicant's complaint was screened out on the basis that it did not raise an issue of judicial conduct. The letter further explained that the Applicant's request to have someone independently review and provide a legal opinion on his complaint does not fall within the CJC's mandate, and that the Applicant's access to information request cannot be granted because CJC is not a federal institution identified in the Access to Information Act or the Privacy Act.

III. Issues and Standard of Review

[10] The Applicant raises a number of issues for consideration:

a) [The Executive Director] breached his statutory duty to investigate judges who have brought the administration of justice into dispute by wrongly convicting me and by upholding a conviction they knew to be unlawful and breached their duty to apply and follow the SCC's controlling ruling in *Legare,* 2009 SCC 56;

b) the CJC contravenes its *raison d'être* when it refuses to investigate credible allegations that a judge's decision evidences bias or reveals incompetence;

c) the CJC should be ordered to pursue my complaint in the manner I seek and;

d) fealty to the Rule of Law mandates an award of significant costs against the respondent because he is actively subverting the rule of law.

[11] The Respondent identifies the following issues:

a) Is the Attorney General of Canada the proper Respondent to this Application?

b) What is the applicable standard of review?

c) Did the Executive Director reasonably determine that the Applicant's complaint did not warrant consideration by the CJC?

[12] The Respondent submits that the standard of review is reasonableness, in accordance with *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. The Applicant cites *Vavilov* as well, although he does not directly address the standard of review. I agree that the applicable standard of review is reasonableness and will apply that standard to my review of the Decision.

[13] A reasonable decision "is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker": *Vavilov*, at para 85. To set aside a decision on this basis, "the reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency": *Vavilov*, at para 100. The Applicant bears the burden of establishing that the decision is unreasonable.

IV. Preliminary Issue

[14] As a preliminary point, pursuant to Rule 303(2) of the *Federal Courts Rules*, SOR/98-106, the appropriate respondent in this case is the Attorney General of Canada. The style of cause will be accordingly amended.

V. Analysis

A. *The Legal Framework Governing CJC and its Complaint Review Process*

[15] Before addressing the parties' arguments, it is necessary to set out the CJC's complaint process and its mandate. An extremely helpful overview of this process was provided by Justice Kane in *Cosentino v Canada (Attorney General),* 2020 FC 884 [*Cosentino*]. For ease of reference, I have copied below the relevant passages from *Cosentino*:

> **53** The objects of the CJC as set out in subsection 60(1) of the *Judges Act* are to promote efficiency and uniformity, and to improve the quality of judicial services in the superior courts. In furtherance of these objects, subsection 60(2) of the *Judges Act* provides that the CJC may, among other things, make inquiries and investigate complaints or allegations concerning judges as described in section 63 of that Act.
>
> **54** The *Judges Act* provides that the CJC "shall" commence an inquiry into a complaint if the Minister of Justice of Canada or the Attorney General of a province so asks (subsection 63(1)).
>
> **55** In other cases, where a person other than the Minister of Justice of Canada or the Attorney General of a province makes the complaint, the CJC "may" investigate a complaint (subsection 63(2)).
>
> **56** The *Judges Act* also provides, in paragraph 61(3)(c), that the CJC may make by-laws respecting the conduct of inquiries and investigations described in section 63. The *By-laws* are binding statutory instruments.
>
> **57** The CJC has also established and published policies and procedures regarding investigations and inquiries, including the *Review Procedures*.
>
> **58** The By-laws and Review Procedures together set out a multi-stage process.
>
> **59** At the first stage, the Executive Director of the CJC reviews the complaint and decides whether the matter warrants consideration. Early screening criteria are set out in the *Review*

> *Procedures*. If the Executive Director determines that a matter warrants consideration, the Executive Director will refer it to the Chairperson (or Vice-Chairperson) of the Judicial Conduct Committee for review. The Chairperson may dismiss the matter, with reference to the same early screening criteria, or seek additional information. Where additional information is sought, including submissions from the judge, the Chairperson will review the information.
>
> **60** If the complaint proceeds, the next stages provide for a Review Panel and possibly an Inquiry Committee. Where an Inquiry Committee is established, it would report to the CJC. The CJC would then make a recommendation to the Minister of Justice.

[16] In other words, the CJC "may" investigate a complaint filed by anyone other than the Minister of Justice or a provincial Attorney General. As such, complaints are screened by the Executive Director to determine if they warrant consideration. As per the Review Procedures, the Applicant's complaint was screened out at this stage because it was found not to concern judicial conduct.

[17] The leading authority that explains the distinction between matters of judicial conduct falling within the mandate of CJC, and matters that involve judicial decision making which should be addressed through the appeal process, is the Supreme Court of Canada's decision in *Moreau-Bérubé v New Brunswick (Judicial Council)*, 2002 SCC 11 [*Moreau-Bérubé*]. At paragraph 55, the Supreme Court of Canada explained:

> 55. While the Canadian Judicial Council and provincial judicial councils receive many complaints against judges, in most cases these are matters properly dealt with through the normal appeal process. There have been very few occasions where the comments of a judge, made while acting in a judicial capacity, could not be adequately dealt with through the appeal process and have necessitated the intervention of a judicial council. […]

[18] The Court continued at paragraph 60:

> 66. Part of the expertise of the Judicial Council lies in its appreciation of the distinction between impugned judicial actions that can be dealt with in the traditional sense, through a normal appeal process, and those that may threaten the integrity of the judiciary as a whole, thus requiring intervention through the disciplinary provisions of the Act. The separation of functions between judicial councils and the courts, even if it could be said that their expertise is virtually identical, serves to insulate the courts, to some extent, from the reactions that may attach to an unpopular council decision. To have disciplinary proceedings conducted by a judge's peers offers the guarantees of expertise and fairness that judicial officers are sensitive to, while avoiding the potential perception of bias or conflict that could arise if judges were to sit in court regularly in judgment of each other. As Gonthier J. made clear in *Therrien*, other judges may be the only people in a position to consider and weigh effectively all the applicable principles, and evaluation by any other group would threaten the perception of an independent judiciary. A council composed primarily of judges, alive to the delicate balance between judicial independence and judicial integrity, must in my view attract in general a high degree of deference.

[19] In other words, for a complaint to proceed, it must involve judicial actions that "may threaten the integrity of the judiciary as a whole, thus requiring intervention through the disciplinary provisions of the Act."

[20] Put it in yet another way, "the [CJC's] mandate is limited to reviewing improper judicial conduct that affects the ability of judges to execute his or her duties as a judge. It does not include broad jurisdictional power to review the decisions and judgments of judges": *Singh v Canada (Attorney General)*, 2015 FC 93 at para 51.

[21] Based on the binding authority from the Supreme Court of Canada, this Court has confirmed that "judicial councils have the expertise to make the distinction between matters that

constitute judicial decision-making — that can be addressed by an appeal — and matters that threaten 'the integrity of the judiciary as a whole'— that cannot be addressed by an appeal. Deference is owed to the decisions of judicial councils, including the CJC": *Lochner v Canada (Attorney General)*, 2021 FC 692 [*Lochner*] at para 100, citing *Moreau-Bérubé*.

B. *Was the Decision Reasonable?*

[22] The Applicant made a number of arguments which can be summarized as follows:

A. "Knowingly rendering and upholding a wrongful conviction": The Applicant argues that the trial judge found him guilty without expressly holding that the owner of a social media account is guilty of an unlawful act in which the account is involved, and that the trial judge did so in order to brand him a pedophile and to help "Make Canada White Again." The Applicant submits that the Supreme Court of Canada has found that conviction is lawful only if the Crown has proven beyond a reasonable doubt that (a) the accused used an electronic device (b) to "facilitate" commission of an unlawful sexual act with (c) a person believed to be a minor (*R v Legare*, 2009 SCC 56 [*Legare*]). The Applicant requests a declaration from the Federal Court that he was convicted of an offence that never occurred.

B. "Adverse inference": The Applicant submits that the appellate judges, the Executive Director, and Department of Justice counsel all knew that he had been convicted of an offence that never occurred. The Applicant relies on the doctrine that "when evidence is available, or could be made available but not produced, or when a person can testify, is given the opportunity to testify, but does not testify, then an adverse inference can be drawn": *Ma v Canada (Minister of Citizenship and Immigration)*, 2010 FC 509 at para 2.

C. "Refusal to treat judicial decision making as judicial conduct": The Applicant alleges that the CJC used a boilerplate excuse to shield justices who bring the administration of justice into disrepute. According to the Applicant, the Executive Director has revealed that he knows the Applicant was convicted of an offence that never occurred, but denied

the Applicant's request in order to shield a group of judges who he knows to be incompetent, biased, and/or unethical. The Applicant argues that convicting a person for a crime that never occurred and refusing to follow Supreme Court precedent falls squarely within the ground of judicial misconduct, which the CJC has an obligation to review. He asks this Court to declare that the CJC shall review judicial decisions in order to review whether the judge is fit to hold office.

D. "Mandamus": The Applicant requests this Court to order the Executive Director to give his 453-page complaint, containing the pleadings and the Crown's disclosure, to a legal expert with no ties to the Alberta judiciary. If this legal expert determines that the Applicant did not contravene the *Criminal Code*, the Applicant requests the following from the Executive Director: "a) to provide me with a copy of that report, (b) to forward my complaint to the Chairperson, (c) who shall ask the judges on the record the questions I posited without having disclosed them in advance, (d) shall provide me with transcripts of the questions and answers and, if the judges are found to have engaged in misconduct (e) shall order the judges to make the amends I requested or be cashiered."

E. "Costs": The Applicant requests "significant costs in a fixed amount" to be paid personally by the Executive Director rather than Canadian taxpayers.

[23] In support of his application, the Applicant has submitted an affidavit from a friend, Mr. Timothy Leahy, which sets out in detail the criminal trial which led to the Applicant's conviction, and the legal issues that Mr. Leahy believes have arisen from the trial. The affidavit also quoted from several Supreme Court of Canada's decisions with respect to the applicable criminal law principles. In addition, the Applicant has filed a copy of the Supreme Court of Canada's decision in *Legare* dealing with the interpretation of the charge of "luring of a child" under subsection 172.1(1)(c) *CCC*.

[24] In my view, all of these materials, together with the Applicant's arguments, confirm that the Applicant's complaint to the CJC was in essence, a complaint about the decisions made by the Alberta Provincial Court judge and three Alberta Court of Appeal judges. The Applicant's allegations about the "unlawful conviction" made by the judge, and their alleged refusal to follow the Supreme Court of Canada precedent, etc. all point to the Applicants' disagreement with the decisions made by the judges in question.

[25] I acknowledge that from the Applicant's point of view, the decisions made by the judges have resulted in great impact on him and his complaint is about judicial conduct, and not about the judges' decision making. The Applicant's position, however, is not supported by the case law.

[26] In the Decision, the Executive Director acknowledged the serious allegations of bias made by the Applicant about the judges and his contention that the decision made by these judges runs contrary to prior rulings of the Supreme Court of Canada. The Executive Director noted:

> The person who alleges bias must be in a position to demonstrate the real or apparent lack of impartiality of the judges. Your personal opinion or your disagreement with the Court's decision are not evidence of bias. In any event, alleged bias is a legal issue to be addressed before the Courts. Absent unusual circumstances, an allegation of real or apparent bias is not an issue of judicial conduct.
>
> I also wish to point out that Council has no supervisory role as regard[s] judgments issued by judges. In other words, it is not the role of Council to review issues related to judicial decision-making and the exercise of judicial discretion. Council is not a court, nor an appeal body. Council has no authority to interfere with a judicial proceedings [*sic*], nor to review the judge's decision. It follows that, given its mandate, Council has no authority to review your concerns about the decision of the Court of Appeal of Alberta…

[27] In view of the CJC's mandate under the *Judges Act*, bearing in mind the Supreme Court of Canada's decision in *Moreau-Bérubé*, and applying the *Vavilov* reasonableness standard, I find the reasons provided by the Executive Director are consistent with "an internally coherent and rational chain of analysis" and are "justified in relation to the facts and law that constrain the decision maker". As such, I see no basis to interfere with the Decision.

[28] With respect to the Applicant's claims that the Executive Director knew the Applicant was convicted of an offence that never occurred, but denied the Applicant's request in order to shield a group of judges who he knows to be incompetent, biased, and/or unethical, I find nothing in the record – other than the Applicant's assertion – to support this claim.

[29] The Respondent submits that the CJC applied the relevant provisions of the *Judges Act* and the Review Procedures, and that the decision is justified by the facts and the law. Citing *Lochner*, at paras 107 and 116, where the complainant had alleged that the judge was oblivious to the facts, ignored his submissions, lacked impartiality, erred in the exercise of discretion, and denied him justice, and where the Court found that the CJC had reasonably determined that the complaints related to judicial decision-making and did not warrant further consideration, the Respondent asks this Court to reach the same conclusion in this case.

[30] As Justice Kane noted in *Lochner*:

> [105] As explained in the jurisprudence (e.g. *Moreau-Bérubé*, *Girouard v Canada (Attorney General)*, 2019 FC 1282), the complaints process of the CJC respects the distinction between judicial independence, which recognises the need for judges to fulfill their role and make judicial decisions without fear of reprisals, and the oversight role of the CJC to address complaints of judicial

> misconduct that go to the integrity of the judiciary as a whole. In the present case, the distinction is clear, given the nature of the matters complained of by Mr. Lochner.
>
> [106] The record that Mr. Lochner placed before this Court fully supports the CJC's determination that the complaints are about judicial decision-making. Mr. Lochner's complaints are about rulings and decisions made by the four justices that arise from their consideration of the facts before them and their application of the relevant law to the facts and to their control of the proceedings, i.e., judicial decisions.

[31] The same conclusion, in my view, must be drawn here.

[32] The Respondent requests that the application for judicial review be dismissed with costs.

[33] In my view, this is not an appropriate case for costs. There is no doubt that the criminal conviction has had a profoundly negative impact on the Applicant. Because of the conviction, the Applicant was found inadmissible and was eventually deported from Canada. In his latest request to the Court for a written hearing, the Applicant revealed that he does not have the means to participate in a Zoom meeting, and had to pawn his mobile in order to buy food. In view of these circumstances, I will not order costs.

VI. Conclusion

[34] The application for judicial review is dismissed.

[35] There is no order as to costs.

JUDGMENT in T-650-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. They Style of Cause will be amended to reflect the Attorney General of Canada as the Respondent.
3. There is no order as to costs.

"Avvy Yao-Yao Go"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-650-21
STYLE OF CAUSE:	ROMEO V. LIM v THE ATTORNEY GENERAL OF CANADA

APPLICATION IN WRITING ON THE BASIS OF THE WRITTEN REPRESENTATIONS AND OTHER MATERIALS FILED BY PARTIES CONSIDERED AT TORONTO, ONTARIO

JUDGMENT AND REASONS:	GO J.
DATED:	FEBRUARY 4, 2022

WRITTEN REPRESENTATIONS BY:

Romeo V. Lim	FOR THE APPLICANT (ON HIS OWN BEHALF)
Melissa Gratta	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT