Federal Court  Cour fédérale

Date: 20240410

Docket: T-1056-23

Citation: 2024 FC 566

Ottawa, Ontario, April 10, 2024

PRESENT: The Honourable Madam Justice McVeigh

BETWEEN:

BAHAA M. IZZ

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] Pursuant to Rules 51(1) and 369 of the *Federal Courts Rules*, SOR/98-106 (the "*Rules*"), the Applicant, Bahaa M. Izz, seeks to appeal the order of Associate Judge Coughlan (the "Order"), dated February 26, 2024. The Order dismissed the underlying application for judicial review based on delay, after issuance of a Notice of Status Review (the "Notice") on January 29, 2024.

[2] For the reasons that follow, I would dismiss the appeal.

II. Background

[3] On April 5, 2022, the Applicant made a request to the Respondent, the Royal Canadian Mounted Police (the "RCMP"), for access to personal information.

[4] On May 16, 2023, the Applicant filed a notice of application for judicial review, pursuant to section 41 of the *Privacy Act*, RSC 1985, c P-21 (the "*Act*"), since the Respondent had not yet provided the information.

[5] On June 12, 2023, the RCMP's Access to Information and Privacy Branch responded to the Applicant's disclosure request and provided him with a package. However, some of the information was exempted pursuant to section 22(1)(a)(ii) of the *Act*. A letter stated that the Applicant could submit any complaints to the Privacy Commissioner and provided him with further contact information.

[6] On June 14, 2023, counsel for the Respondent asked the Applicant to discontinue his application, given the Applicant received the disclosure.

[7] The Applicant did not file a notice of discontinuance.

[8] On June 20, 2023, the Applicant received a mail package, which included a computer disk from the Respondent.

[9] On January 29, 2024, Associate Judge Coughlan issued the Notice, requiring the Applicant to explain why the application should not be dismissed for delay. The Notice also asked the Applicant to provide a proposed timeline on the steps necessary to advance the proceeding in an expeditious manner.

III. Decision Subject to Appeal

[10] On February 26, 2024, after considering the representations from the parties, Associate Judge Coughlan dismissed the underlying application.

[11] On status review, Associate Judge Coughlan noted that a party in default is required to address two questions: 1) is there a justification for the failure to move the case forward, and 2) what measure does the party propose to take to move the case forward: *Liu v Matrikon Inc*, 2010 FCA 329 at para 2 [*Liu*], citing *Baroud v Canada (Minister of Citizenship & Immigration)* (1988), 160 FTR 91 (TD) [*Baroud*].

[12] In response to the Notice, the Applicant filed extensive submissions, including an affidavit. Associate Judge Coughlan recognized that affidavits are generally not acceptable on status review, nor would it be an appropriate time for a party to argue the merits of their position. However, she found that the Applicant did exactly that.

[13] In justifying the delay, the Applicant asserted that the Respondent was responsible. The Applicant claimed that the Respondent failed to meet their disclosure obligations by providing him with a corrupted disk.

[14] Associate Judge Coughlan found that the Applicant failed to justify the entire period of delay, which was over seven months, as the Applicant did not explain why he failed to serve his Rule 306 affidavits or take any steps to move the application to a hearing. She determined that the corrupted disc argument was without merit, since the Applicant "completely ignore[d] his responsibility to move his Application forward." Accordingly, she held that the Applicant failed to meet the first part of the test.

[15] Moreover, Associate Judge Coughlan found that the Applicant's proposed steps did not accord with Part 5 of the *Rules*. The Applicant's timeline stated that he would provide an application record within 30 days of an order, receive a response within 30 days from the date of service of the application record, and provide a reply within 10 days from the date of service of the response. Associate Judge Coughlan noted that the Applicant did not mention either Rule 306 or 307 in his timetable. Additionally, the Applicant sought leave to adduce fresh evidence, along with an order for costs. He indicated that he intended to file a summary judgment motion.

[16] Associate Judge Coughlan recognized that the Applicant was self-represented, noting that she did not require "slavish adherence to the *Rules*." However, she determined that "fairness, nevertheless demands some rigor be imposed." Associate Judge Coughlan found that the Applicant failed to articulate measures that would move the application forward in an expeditious manner. She noted that the Applicant did not appear to have reviewed the information available to self-represented litigants on the Court's website. On this point, she referred to his comments about the availability of summary judgment in an application.

[17] As a result, Associate Judge Coughlan was not satisfied that the Court should exercise its discretion to allow the application to proceed. She found that her decision was further supported by the mootness of the application, as the Respondent correctly acknowledged that the Court has a narrow jurisdiction under section 41 of the *Act*. Notably, once the requested information has been provided, "there is no other remedy for the Court to provide": *Cumming v Canada (Royal Mounted Police)*, 2020 FC 271 at para 25 [*Cumming*] and *Galipeau v Canada (Attorney General)*, 2003 FCA 223 at para 5. Finally, she indicated that the Applicant could pursue any complaints with the Office of the Privacy Commissioner regarding his concerns with the adequacy of disclosure or the exemptions applied under the *Act*, as these issues were not raised in his notice of application.

IV. Style of Cause

[18] The Applicant named the Respondent as the "Royal Canadian Mounted Police." Based on Rule 303 of the *Rules*, the correct style of cause is the "Attorney General of Canada" (see also *Ménard v Canada (Attorney General)*, 2018 FC 1260 at para 41). The style of cause will be amended.

V. Issue

[19] The only issue before this Court is whether Associate Judge Coughlan erred in dismissing the application for judicial review.

VI. Standard of Review

[20] The standard of review for the appeal of a discretionary decision of an Associate Judge is correctness for questions of law, and palpable and overriding error for questions of fact and questions of mixed fact and law, absent an extricable error of law or legal principle: *Housen v Nikolaisen*, 2002 SCC 33 at paras 19–37; *Hospira Healthcare Corporation v Kennedy Institute of Rheumatology*, 2016 FCA 215 at paras 66 and 79 [*Hospira*].

[21] A palpable and overriding error is "one that is obvious and substantial enough to potentially change the result of the case": *Hospira Healthcare Corporation v Kennedy Trust for Rheumatology Research*, 2020 FCA 177 at para 7 citing *Maximova v Canada (Attorney General)*, 2017 FCA 230 at para 5 and *Rodney Brass v Papequash*, 2019 FCA 245 at para 11. The "palpable and overriding error" standard is highly deferential and imposes a heavy burden on the applicant (see *Lessard-Gauvin v Canada (Attorney General)*, 2020 FC 730 at para 43).

VII. Applicant's Submissions

[22] The Applicant raises five arguments to justify an appeal of the Order. Namely, he contends that: 1) this application is not moot, 2) it is legally invalid for him to complain to the Privacy Commissioner about the corrupted disk, 3) the referenced case law is not applicable to his situation, 4) it is reasonable to proceed with this case in writing, and 5) Associate Judge Coughlan may have overlooked significant details which justify continuing this application.

[23] The Applicant seeks an order allowing the application to proceed. He also asks this Court to consider a summary judgment after narrowing the scope of the application.

[24] In his reply, the Applicant predominantly raises concerns with the motives of the Respondent. He argues that the Respondent is trying to prevent him from continuing his application and accessing his records. Additionally, the Applicant claims that the Respondent's position may involve a "potential legal default," as a result of providing him with an inaccessible computer disk during a federal proceeding. The Applicant contends that the actions of the Respondent have harmed his rights. Finally, in the event that the application is dismissed, the Applicant requests a judicial investigation over the actions of the Respondent, along with the power to make further inquiries.

VIII. Analysis

[25] I am not persuaded that Associate Judge Coughlan made any errors in dismissing the underlying application for judicial review.

[26] In her decision, Associate Judge Coughlan applied the correct legal framework from *Liu*. That is, a party faced with a status review must address two questions: 1) is there a justification for the failure to move the case forward, and 2) what measures does the party propose to take to move the case forward: *Liu* at para 2. An applicant has the burden of moving the case forward: *St. Hilaire v Canada (Attorney General)*, 2020 FCA 87 at para 5 [*St. Hilaire*].

[27] Similar to *St. Hilaire*, the Applicant responded to the status review, but he did not provide a satisfactory explanation for the delay. Instead, he blamed the Respondent. On appeal, the Applicant *continued* to argue that the Respondent was responsible. He claimed that the Respondent sent a corrupt disk, and refrained from "responding further or providing a

clarification to the Applicant who notified in writing and with evidence that the computer disk was inaccessible." As stated by Associate Judge Coughlan, by pointing at the Respondent, the Applicant "completely ignore[d] his responsibility to move his Application forward."

[28] I also note that the Applicant attempted to justify the delay by claiming that he was making other disclosure requests. The Applicant stated that he tried to obtain details from the Respondent about an immigration holding. He argued that this disclosure may have provided relevant information to the judicial proceeding. However, while the Applicant sought access to different information, the grounds of this judicial application were limited to the request made on April 5, 2022. Moreover, his other requests did not prevent him from taking procedural steps to continue the underlying application. Therefore, the Applicant has not demonstrated any reviewable error.

[29] Moving to the second question, I find that the Applicant failed to provide the necessary measures to advance the proceeding in an expeditious manner. Associate Judge Coughlan properly noted that the Applicant did not refer to Rules 306 or 307, and his proposed timetable did not accord with Part 5 of the *Rules*. In his appeal submissions, the Applicant argued that Rule 306 affidavits were not necessary based on the circumstances. In particular, the Applicant claimed that there was no valuable information to include in the affidavit, noting that the Respondent intended to provide the disclosure before the end of 30 days, which was the timeline for serving the Rule 306 affidavit. However, it does not appear that the Applicant provided this explanation to Associate Judge Coughlan. The Applicant provided the Associate Judge with very limited information on his next steps. Again, I find no reviewable error.

[30] Finally, I agree with Associate Judge Coughlan that the application is likely moot. Contrary to the Applicant's assertions, the *Cumming* decision is applicable to this matter. In *Cumming*, Justice Gleeson recognized that the Court has a narrow authority when considering a section 41 application, which is limited to making a disclosure order (*Cumming* at para 25). In that decision, as disclosure previously occurred, the Court could not grant additional relief.

[31] Similarly, in the present circumstances, the Respondent provided the requested disclosure to the Applicant. Associate Judge Coughlan correctly noted that once this information was given, "there [was] no other remedy for the Court to provide" (*Cumming* at para 25). The Applicant's concerns with the adequacy of the disclosure, notably the corrupted disk, are best addressed through the Privacy Commissioner. As Associate Judge Coughlan rightly found, this is particularly the case since these issues were not raised in the Applicant's Notice of Application.

[32] In any event, in relation to the adequacy of the information, it is likely premature for the Applicant to seek relief from the Court. It does not appear that the Applicant submitted a complaint with the Privacy Commissioner regarding this issue. However, this is a condition to a section 41 application (see *Cumming* at para 33 citing *HJ Heinz Co of Canada Ltd v Canada (Attorney General)*, 2006 SCC 13 at para 79). As the Applicant has not raised this concern with the Privacy Commissioner, nor had an investigation conducted, it is premature for him to seek relief from the Court in respect of the information's adequacy (see *Cumming* at para 33).

[33] As a result, I do not find that Associate Judge Coughlan committed any errors in dismissing the application for judicial review.

IX. Conclusions

[34] For the reasons above, I would dismiss this appeal.

X. Costs

[35] The Respondent seeks costs for this motion. While the Respondent has been successful, their handling of the Applicant's complaint is relevant when assessing costs. In this case, the Respondent failed to provide the Applicant with an update or explanation regarding the delay in disclosure (see *Cummings* at para 36). The Applicant waited for over a year, without any further details provided. For these reasons, I will decline to award costs to either party.

JUDGMENT in T-1056-23

THIS COURT'S JUDGMENT is that:

1. The style of cause will be amended by removing the Royal Canadian Mounted Police as the Respondent and identifying the Attorney General of Canada as the Respondent.

2. This motion is dismissed.

3. No costs are awarded.

"Glennys L. McVeigh"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1056-23
STYLE OF CAUSE:	BAHAA IZZ v ATTORNEY GENERAL OF CANADA
MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES*	
JUDGMENT AND REASONS:	MCVEIGH J.
DATED:	APRIL 10, 2024

WRITTEN REPRESENTATIONS BY:

BAHAA M. IZZ	FOR THE APPLICANT (ON HIS OWN BEHALF)
ALEXANDRA SCOTT	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada Vancouver, British Columbia	FOR THE RESPONDENT