Federal Court  Cour fédérale

Date: 20131104

Docket: T-676-13

Citation: 2013 FC 1116

Ottawa, Ontario, November 4, 2013

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

EVA NOTBURGA MARITA SYDEL

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant seeks an Order for mandamus to compel the Attorney General of Canada or Minister of Justice (the "Minister") to issue a direction to the Registrar of the Supreme Court of Canada (the "Registrar"). Specifically the applicant requests that the Registrar be ordered to put her motion for reconsideration of an application for leave to appeal to the Supreme Court of Canada (the "SCC"), from a decision of the British Columbia Court of Appeal, before a judge of the SCC.

[2] The application is dismissed for the reasons that follow.

[3] The following background information provides the context for the present application and for the reasons to refuse the relief sought.

Background

[4] In 2007, the applicant was convicted in the Provincial Court of British Columbia for tax evasion. She was sentenced to 18 months in prison and fined $244,447.

[5] The applicant appealed her conviction to the Supreme Court of British Columbia but later abandoned the appeal. Her application to reopen the appeal was refused. She then brought a civil action in the Supreme Court of British Columbia seeking a declaration that the *Income Tax Act* was invalid as were her convictions under that Act.

[6] The applicant sought $300 million in damages for breach of her right to a fair trial pursuant to paragraph 11(d) of the *Canadian Charter of Rights and Freedoms*, based on allegations that her criminal trial was unfair because the Judge was biased and because the Judge and the Canada Revenue Agency investigator had communicated during the trial with non-verbal signals, including those used by Freemasons. In addition, allegations were made that the Judge was likely a Freemason because he refused to indicate whether he was a Freemason, and that judicial independence has been subverted because Freemasons have infiltrated the judiciary and have placed their Freemason oath above their judicial oath.

[7] These same allegations have been made with respect to the other Judges who have dealt with the applicant's various legal proceedings and complaints have been made to the Canadian Judicial Council, all of which have been found to have absolutely no merit.

[8] On August 3, 2011, the applicant applied to the SCC for leave to appeal the Order of the British Columbia Court of Appeal which dismissed her appeal and upheld the decision of the British Columbia Supreme Court which dismissed her civil action.

[9] The applicant submitted all materials on the application for leave to the SCC by November 21, 2011.

[10] In addition, by motion to the SCC dated November 29, 2011, the applicant sought Orders that the Attorney General of Canada, the Canadian Judicial Council and the Attorney General of British Columbia be directed to investigate whether named Judges of the British Columbia Supreme Court and Court of Appeal, the Provincial Court Judge who convicted the applicant, as well as a named employee of the Canada Revenue Agency, were Freemasons. By Order dated December 15, 2011, the Registrar dismissed this motion.

[11] On December 22, 2011, a three member panel of the SCC dismissed the application for leave to appeal the decision of the British Columbia Court of Appeal.

[12] On January 31, 2012, the applicant brought a motion seeking reconsideration of the application for leave to appeal. By letter dated June 19, 2012, the Registrar advised the applicant

that her motion was refused as it did not reveal exceedingly rare circumstances to warrant reconsideration as required by Rule 73 of the *Rules of the Supreme Court of Canada* (the "*Supreme Court Rules*")

[13] Counsel for the applicant then wrote to the Minister on September 24, 2012, requesting the Minister to "direct the Registrar to put my client's materials before the court according to the Rules of Court". The Minister did not act as requested.

[14] This brings us to the present application for judicial review of the Minister's decision to take no action. The applicant now seeks mandamus and asks this Court to compel the Attorney General of Canada or the Minister, to order the Registrar to put the motions for disclosure and the motion for reconsideration of the refusal to grant leave to appeal, before a judge of the SCC. The applicant did not make submissions with respect to the motion for disclosure and limited her application for mandamus with respect to the motion for reconsideration.

[15] This relief cannot and should not be granted.

The Applicant's Grounds to Seek Mandamus

[16] The applicant's primary argument is that the Registrar made a decision that should have been decided by a judge of the SCC. The applicant submits that the Registrar acted without authority in refusing her motion for reconsideration. Therefore, the Minister, who is responsible to superintend the administration of justice pursuant to section 4 of the *Department of Justice Act*, should direct the Registrar to put this motion before a judge of the SCC.

[17] The applicant submits that her motion should have been considered by a judge of the SCC in accordance with the *Supreme Court Act* and the *Supreme Court Rules*. She claims she was denied the benefit of having a judge, who is judicially independent, consider the issue of whether her motion for reconsideration raised exceedingly rare circumstances.

[18] The applicant submits that the Registrar is part of the Executive Branch of the Government and is not judicially independent.

[19] The applicant disputes that she is undermining the finality of the determination by the SCC, and argues that she seeks finality but that finality can only result from a decision of a judge of the SCC on her motion for reconsideration of leave to appeal. The applicant also disputes that this judicial review is a collateral attack on the SCC and submits that it is only an attack on the person that refused her motion, namely, the Registrar.

[20] The applicant further submits that she has satisfied all the elements of the test for mandamus as established by the Federal Court of Appeal in *Apotex Inc v Canada (Attorney General)*, [1993] FCJ No 1098 at para 45, [1994] 1 FC 742, affd [1994] 3 SCR 1100, [1994] SCJ No 113 [*Apotex*].

The Respondent's Position

[21] The respondent submits that the principle of judicial independence does not permit this Court to order mandamus to compel the Minister to direct the Registrar to put the applicant's motion for reconsideration before a judge of the SCC.

[22] The Minister or any other Minister of the Crown or member of the Executive Branch of the Government can not interfere with the decision-making process of any court.

[23] The respondent submits that the criteria for mandamus need not be considered because the Minister must refrain from acting, just as he did, in order to fulfill his duties under the *Department of Justice Act* and to comply with the rule of law.

[24] The respondent further submits that the relief is in fact a collateral attack on the SCC decision to dismiss her application for leave as it seeks to undo the decision of the Court.

[25] The respondent also notes that the Registrar is part of the SCC and can not be characterized as part of the Executive Branch of the Government.

The Issue

[26] The key issue is whether this Court has jurisdiction to order the Minister or the Attorney General of Canada to direct the Registrar to put the applicant's motions for disclosure and reconsideration of leave to appeal before a judge of the SCC.

[27] If the Court has such jurisdiction, then the issue of whether the test for mandamus has been met would be considered.

This Court does not have jurisdiction to order mandamus against the Registrar

[28] The relief sought by the applicant offends the principles of judicial independence, the hierarchy of our Court structure and the supremacy of the SCC.

[29] In addition, the applicant's argument that the Registrar had no authority to make the decision refusing her motion for reconsideration is without merit.

[30] I agree with the respondent that by seeking mandamus against the Minister, the applicant seeks indirectly what she can not achieve directly. Regardless of how the applicant has packaged her request, she is indeed asking that the Minister interfere with the SCC.

[31] As noted by the respondent, the Minister's role in ensuring the proper administration of justice or superintendence of the administration of justice, in accordance with section 4 of the *Department of Justice Act*, requires that the Minister ensure judicial independence. This, in turn, requires that the Minister not act as the applicant has requested.

The Registrar's Authority

[32] The applicant repeatedly argued that the Registrar acted without authority in refusing her motion for reconsideration of her leave application because it did not raise exceedingly rare circumstances in accordance with Rule 73 of the *Supreme Court Rules*. The argument has no merit.

[33] The *Supreme Court Act* provides as follows:

18. The Registrar has such authority to exercise the	**18.** Le registraire exerce la juridiction d'un juge en

jurisdiction of a judge sitting in chambers as may be conferred on the Registrar by general rules or orders made under this Act.	chambre selon les pouvoirs qui lui sont conférés par les ordonnances ou règles générales édictées en vertu de la présente loi.

[34] The relevant *Supreme Court Rules* provide:

12. Subject to Rule 78, every order made by the Registrar shall be binding on all parties concerned as if the order had been made by a judge.	**12.** Sous réserve de la règle 78, l'ordonnance du registraire lie toutes les parties intéressées comme si elle émanait d'un juge.
13. The Registrar may refer any matter before him or her to a judge.	**13.** Le registraire peut renvoyer à un juge toute affaire qui lui est soumise.
[…]	[…]
73. (1) There shall be no reconsideration of an application for leave to appeal unless there are exceedingly rare circumstances in the case that warrant consideration by the Court.	**73.** (1) Aucune demande d'autorisation d'appel ne peut faire l'objet d'un réexamen sauf si des circonstances extrêmement rares le justifient.
[…]	[…]
78. (1) Within 20 days after the Registrar makes an order, any party affected by the order may make a motion to a judge to review the order.	**78.** (1) Toute partie visée par une ordonnance du registraire peut, dans les vingt jours suivant le prononcé de celle-ci, en demander la révision à un juge par requête.
(2) The affidavit in support of the motion shall set out the reasons for the objection to the order.	(2) L'affidavit à l'appui de la requête en expose les motifs.
(Emphasis added)	[Je souligne]

[35] As I interpret those provisions, the Registrar's authority to refuse the motion for reconsideration is the same as that of a judge in Chambers as that authority has been conferred by Rule 12. The Order made by the Registrar is binding.

[36] The decision of the Registrar clearly indicated that section 78 was not applicable:

> I have reviewed your motion for reconsideration and your affidavit in support. I regret to inform you that, in my opinion, your motion does not reveal the exceedingly rare circumstances which would warrant reconsideration by this Court. Furthermore, please note that Rule 78 of the *Rules of the Supreme Court of Canada* is not applicable to this matter.

[37] The applicant is not entitled to have her motion for reconsideration heard by a judge of the SCC as her motion has been validly considered and determined by the Registrar. Therefore, the applicant's theory that the Minister is duty-bound to intervene to ensure that the Registrar acts within his authority is baseless.

Judicial independence requires no interference by the Executive Branch of the Government

[38] Judicial independence means and requires that the judiciary is separate and independent from all other participants in the justice system, including the Government

.

[39] The SCC has addressed the importance and hallmarks of judicial independence on many occasions and the principles are clear.

[40] In *Beauregard v Canada*, [1986] 2 SCR 56, [1986] SCJ No 50 [*Beauregard*], the SCC traced the origins of judicial independence, noting at para 21:

> Historically, the generally accepted core of the principle of judicial independence has been the complete liberty of individual judges to hear and decide the cases that come before them: no outsider--be it government, pressure group, individual or even another judge--should interfere in fact, or attempt to interfere, with the way in which a judge conducts his or her case and makes his or her decision. This core continues to be central to the principle of judicial independence. Nevertheless, it is not the entire content of the principle.

[41] And at paras 30-31:

> […] Canadian constitutional history and current Canadian constitutional law establish clearly the deep roots and contemporary vitality and vibrancy of the principle of judicial independence in Canada. The role of the courts as resolver of disputes, interpreter of the law and defender of the Constitution requires that they be completely separate in authority and function from *all* other participants in the justice system.
>
> I emphasize the word 'all' in the previous sentence because, although judicial independence is usually considered and discussed in terms of the relationship between the judiciary and the executive branch, in this appeal the relevant relationship is between the judiciary and Parliament. Nothing turns on this contextual difference. Although particular care must be taken to preserve the independence of the judiciary from the executive branch (because the executive is so often a litigant before the courts), the principle of judicial independence must also be maintained against all other potential intrusions, including any from the legislative branch.

[42] In *R v Valente*, [1985] SCJ No. 77, [1985] 2 SCR 673, the SCC considered the relationship between impartiality and independence, at 685:

> Although there is obviously a close relationship between independence and impartiality, they are nevertheless separate and distinct values or requirements. Impartiality refers to a state of mind or attitude of the tribunal in relation to the issues and the parties in a particular case. The word "impartial"... connotes absence of bias, actual or perceived. The word "independent" in s. 11(*d*) reflects or embodies the traditional constitutional value of judicial independence. As such, it connotes not merely a state of mind or attitude in the actual exercise of judicial functions, but a status or

> relationship to others, particularly to the executive branch of government, that rests on objective conditions or guarantees.

[43] In *R v Lippé*, [1990] SCJ No 128, [1991] 2 SCR 114, the SCC noted at 138:

> The content of the principle of judicial independence is to be determined with reference to our constitutional tradition and is therefore limited to independence from the government. Although the language in *Beauregard, supra*, may seem to have expanded the concept, it is to be remembered that the *ratio* of the case extended the requirement beyond the executive to the legislative branch of government. […]
>
> I do not intend, however, to limit this concept of "government" to simply the executive or legislative branches. By "government", in this context, I am referring to <u>any person or body, which can exert pressure on the judiciary through authority under the state</u>. [Emphasis in original.]

[44] In the present case, the applicant's request for mandamus is contrary to the separation of powers between the executive and the judiciary and undermines the judicial independence of the SCC. The applicant is really asking the Minister to ensure that her motion for reconsideration is considered for a second time and by a judge of the SCC. This would put the Minister in the role of supervising or interfering with Canada's top court. This clearly infringes the principle of judicial independence.

[45] If the Minister could be compelled to direct the Registrar to put a motion for reconsideration of a leave application – or any other motion – before a judge of the SCC, which basically compels that Judge to consider the motion, what prevents the Minister from directing the Registrar to put a motion to a judge of the SCC to consider or reconsider a matter that any Minister of the Crown is a party to? There is no doubt that this would violate judicial independence and the rule of law. The relief requested by the applicant of the Minister is no different.

[46] In *Legere v Canada*, 2003 FC 869, [2003] FCJ No 1766 [*Legere*], this Court addressed the principles of judicial independence in circumstances similar to the present case. Mr Legere brought an action in the Federal Court against Her Majesty the Queen, as the Federal Crown, alleging that it had supervisory jurisdiction over the judges and masters of the British Columbia Supreme Court, where he had been unsuccessful in a family law matter.

[47] Prothonotary Hargrave referred to the passages cited above from *Beauregard* and noted that the Federal Crown has no supervisory role over the judiciary, at para 15 of *Legere*:

> The judiciary hold office during good behaviour. While judges and masters are appointed by the Crown they are not Crown servants: they cannot be either controlled by or given directions by the Crown, or by the Crown's ministers, or by Parliament, or by any government department. The members of the judiciary are independent and enjoy total immunity from court action based on anything done or said in the exercise of their judicial functions. There can therefore be no vicarious liability on the part of the Crown.

[48] The same principles are applicable in the present case. Judges of the SCC are not Crown servants; they cannot be controlled by or be given directions by the Crown or by the Crown's ministers. To hold otherwise would undermine the separation of powers between the executive and the judiciary.

[49] In *Legere*, Prothonotary Hargrave also noted that permitting the application to continue would constitute an impermissible collateral attack on the British Columbia Supreme Court. The rule against collateral attack prevents an order made by a decision-maker of competent jurisdiction

from being attacked in proceedings other than those whose specific object is the reversal, variation, or nullification of the order.

[50] Although the application in the present case is brought against the Minister, the doctrine of collateral attack nonetheless applies because the effect of the relief sought by the applicant is to challenge a valid and binding decision of the Registrar in an attempt to undo a decision made by a three member panel of the SCC.

[51] In oral submissions, counsel for the applicant indicated that he agreed with the decision of Prothonotary Hargrave in *Legere* and that "no player in the Executive should ever have any contact with the judiciary or court". However, the applicant holds the view that the Registrar is not part of the Court or judiciary, and that, therefore, this principle is not applicable.

[52] The applicant does not seem to appreciate the effect of what she seeks. Compelling the Minister to direct the Registrar to put the motion for reconsideration before a judge of the SCC is the same as bypassing the Registrar altogether and directing the Minister to demand that a SCC judge consider the applicant's motion for reconsideration of leave to appeal.

The hierarchy of the Court must be respected

[53] In addition to violating the principles of separation of powers and judicial independence, the relief sought by the applicant ignores the hierarchy of Canada's court system. Finality would never be achieved if the Minister could be compelled to direct the Registrar to put motions before judges of the SCC.

[54] In *Scheuneman v Canada (Attorney General)*, 2003 FCA 194, [2003] FCJ No 686 [*Scheuneman*], the Federal Court of Appeal noted the importance of finality and the hierarchy of our courts which places the SCC at the top.

[55] Mr Scheuneman sought judicial review of the SCC's decision to dismiss his application for leave to appeal and motion for reconsideration, arguing that the SCC fell within the definition of "federal board, commission, or other tribunal" in subsection 2(1) of the *Federal Court Act*, thereby giving the Federal Court jurisdiction to judicially review the SCC's decision regarding his leave application.

[56] The Federal Court of Appeal strongly rejected this argument, noting at paras 10 and 11:

> [10] We are all satisfied that this argument must fail. In our view, it would be so absurd to interpret "federal board, commission or other tribunal" as including the Supreme Court of Canada that Parliament did not think it necessary specifically to exclude the Judges of that Court from the definition. The court system in Canada, and elsewhere, is hierarchical in nature. In Canada, the Supreme Court of Canada sits at the apex of our judicial system. Subject to a residual discretion to reconsider its own decisions (*R. v. Hinse*, [1997] 1 S.C.R. 3), the Supreme Court's judgments (including decisions not to reconsider a leave application) are final and conclusive: *Supreme Court of Canada Act*, section 52. They are not subject to appeal. To interpret "federal board, commission or other tribunal" as including the Supreme Court of Canada, and as thus permitting the Federal Court to review judgments of the Supreme Court of Canada, would undermine the finality of the Supreme Court's decisions and subvert the judicial hierarchy.
>
> [11] If, as Mr. Scheuneman maintains, the Federal Court could review a decision or order of the Supreme Court of Canada, the decision of the Federal Court would itself be subject to appeal to the Supreme Court of Canada. Moreover, if the Supreme Court refused leave to appeal, that refusal could itself potentially be the subject of a

> further application for judicial review to the Federal Court. It would be absurd to construe the *Federal Court Act* as conferring on the Court jurisdiction to review the decision of a body when the result of the review could then be appealed to the very body that made the decision under review. There would be no finality to litigation.

[57] The principles set out in *Scheuneman* are applicable to the application before me. The applicant seeks an Order of this Court against the Minister. If granted, a decision of the Registrar, which is as binding as a decision of a SCC judge in Chambers, notwithstanding that the SCC is the court of final appeal, would be subject to or undermined by the authority of this Court.

[58] If the SCC considered the motion for reconsideration for a second time as a result of the order by the Minister via the Registrar, and refused the motion for a second time, would the applicant suggest that the Minister could continue to demand reconsideration? Although the applicant's position is that there is no finality until a judge, and not the Registrar, decides the motion for reconsideration, the very relief sought from the Minister of Justice would invite requests for reconsideration over and again, with no finality and no respect for the hierarchy of the SCC.

The test for mandamus cannot be met

[59] The applicant argued that she met the test for mandamus, as established in *Apotex* because: the Minister owed a duty to her to act to prevent the Registrar from exceeding his authority; she had satisfied all the conditions precedent by requesting the Minister to act; there was no other remedy available to her; the order would have practical value because it would place her affidavit outlining the exceedingly rare circumstances before a judge and bring about the finality she seeks; and, the balance of convenience favoured her as she was entitled to have her motion considered by a judge, or at minimum, it would not cause inconvenience or confusion in the SCC.

[60] The applicant has not met any of the elements of the test for mandamus for the reasons set out above. Most importantly, the Minister is not under any duty to act, and is, in fact, under a duty to refrain from acting in order to ensure judicial independence and the separation of powers.

Conclusion

[61] The relief sought by the applicant offends the principles of judicial independence, the hierarchy of our Court structure and the supremacy of the SCC.

[62] I would also note that the applicant cannot assert that she was denied the opportunity to place her affidavit alleging that exceedingly rare circumstances exist to warrant reconsideration before a judge given that her affidavit was considered by the Registrar, who has the same authority as a judge of the SCC in Chambers. Moreover, the exceedingly rare circumstances, i.e., her allegations that Freemasons have infiltrated the justice system and that Freemasons may be a criminal organisation and, as a result, have subverted judicial independence and the rule of law, are the very same allegations set out in her Statement of Claim which was dismissed and for which leave to appeal was denied by a three member panel of the SCC.

[63] The applicant claims that she wants finality and that she will only have finality when her motion is considered by a judge of the SCC. In fact, the applicant has had finality. She has relentlessly pursued all possible legal remedies over several years. Her leave to appeal to the SCC has been denied, as has her motion to reconsider her leave to appeal. These Orders are final and binding. As a result, the decision of the British Columbia Court of Appeal is final in upholding the

dismissal of her cause of action. The applicant must come to terms with that final decision and with the fact that her legal recourse has reached its end.

[64] As noted by the Federal Court of Appeal in *Scheuneman, supra* at para 12:

> […] No one has a right to consume scarce public resources indefinitely in the endless pursuit of a dispute, no matter how important the issues may seem to the individual concerned. Finality is an indispensable aspect of any system of justice.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review and mandamus is dismissed; and

2. Costs are awarded to the respondent at the middle of Column 3 in Tariff B.

"Catherine M. Kane"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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