

Federal Court



Cour fédérale

Date: 20171124

Docket: T-1419-16

Citation: 2017 FC 1068

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, November 24, 2017

Present: The Honourable Mr. Justice Locke

BETWEEN:

EVEDA NOSISTEL

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

ORDER AND REASONS

[1] This is a motion by the applicant to appeal a decision by Prothonotary Richard Morneau dated October 11, 2017. Prothonotary Morneau dismissed the applicant's motion:

...essentially pursuant to rule 58 of the *Federal Courts Rules* [the Rules] so that the Court can sanction, according to the applicant's views, irregularities and misconduct [collectively irregularities] that the respondent allegedly committed in the context of this case.

[2] The applicant is also seeking:

- To declare the existence of said irregularities, including the breach of rules 58, 307, and 317, breach of section 8 of the *Privacy Act*, RSC 1985, c. P-21 [the PA], and non-compliance with Public Works and Government Services Canada's directives on the handling of protected information (Directives) relating to the transfer and filing of the certified tribunal record in this case, as well as to an alleged fraudulent representation before the Canadian Human Rights Commission (CHRC);
- To order the withdrawal of various documents from the Court record for reasons of confidentiality;
- To set aside the costs of \$200 awarded to the respondent by Prothonotary Morneau;
- To authorize the filing of an additional affidavit that refers to the alleged irregularities;
- Alternatively, that this application for judicial review be heard simultaneously with the application for judicial review in docket No. T-536-17; and
- To extend the deadline to serve and file this motion.

[3] The standard of review applicable to a decision made by a prothonotary is set out in *Hospira Healthcare Corporation v Kennedy Institute of Rheumatology*, 2016 FCA 215. A question of fact or a question of mixed fact and law is reviewable on the palpable and overriding error standard of review: *Housen v Nikolaisen*, 2002 SCC 33 at para 37.

I. Case history

[4] The applicant commenced this case by filing a notice of application on August 25, 2016, regarding certain alleged incidents in the context of her employment with the Correctional Service of Canada (CSC), and other related events.

[5] The respondent filed the first of two motions to dismiss this application on November 10, 2016. This first motion was dismissed by Justice Yvan Roy on January 31, 2017, who found that the decisions in question were subject to judicial review.

[6] This decision was followed by a second motion by the respondent to dismiss this application, filed on March 8, 2017. The second motion was similarly dismissed for the same reasons raised in the context of the first attempt to strike the application, this time by Justice René LeBlanc, on April 11, 2017. This second decision included an award of costs of \$750 in favour of the applicant.

[7] On August 25, 2017, the applicant filed the motion that led to the decision by Prothonotary Morneau on October 11, 2017. This motion referred to several of the remedies that are the subject of this motion. The Prothonotary found:

- That there was no breach of rules 58, 307, or 318, or of the PA or the Directives, by transferring the certified tribunal record in this case;
- That CSC did not seek to mislead the CHRC;

- That in the name of legal clarity and administration of justice in general, the documents identified by the applicant should not be removed from the Court record;
- That costs of \$750 awarded against the respondent were not payable immediately.

[8] Prothonotary Morneau dismissed the applicant's motion, including the right to file an additional affidavit, with costs of \$200.

II. Preliminary comment

[9] The applicant notes that she is representing herself and seeks the indulgence of the Court because of her uncertainty regarding proper process. The Court is aware of the situation. Nevertheless, the burden of proof in this motion remains squarely on the applicant.

III. Issue: Extension of time limit

[10] Since the requested extension is minimal, and the respondent does not object, I grant this extension.

IV. Issue: Irregularities

[11] The applicant objects that the documents disclosed under rule 318 include personal information. She submits that these documents were already in her possession and that they are irrelevant to this case because they relate to a harassment complaint against four CSC employees, while the subject of the application for judicial review is to challenge the process followed in the final investigation report.

[12] The applicant also objects to the fact that CSC interfered and misled the CHRC by stating that this Court had ordered the applicant's grievances to be addressed.

[13] The Prothonotary explained why he did not see any irregularities, and I am not satisfied that he committed a palpable and overriding error in arriving at this conclusion.

[14] With respect to the respondent's contrivances regarding the filing of both motions to dismiss this application, the consequences were already addressed in the decisions made by Roy J. and Leblanc J. Roy J. decided not to award costs, while Leblanc J. awarded costs of \$750 to the applicant.

[15] With respect to the respondent's motion filed in docket T-536-17 around May 2017, the consequences, if any, should have been addressed in the decision on the motion.

V. Issue: Removal of documents

[16] As with the allegations of irregularities, the applicant failed to convince me that the Prothonotary committed a palpable and overriding error by finding that the documents in question should not be removed from the Court record. The fact that the respondent did not object to this removal is not conclusive.

VI. Issue: Costs

[17] In light of the above reasons, there is no reason to set aside the \$200 in costs awarded against the applicant in the context of Prothonotary Morneau's decision.

VII. Issue: Additional affidavit

[18] The applicant provided few details regarding the content of the additional affidavit that she would like to file. It appears to me that this affidavit would relate in part to the respondent's actions before this Court that occurred after the applicant's evidence had been filed and that would have been prejudicial to her.

[19] The Prothonotary's finding was that the applicant has in no way substantiated a situation that meets the conditions of rule 312 to obtain permission to file an additional affidavit. In light of the above reasons, I find that the Prothonotary did not commit any error in this respect. There is no reason to change his finding.

VIII. Issue: Hearing in this case at the same time as T-536-17

[20] Despite the applicant's request that the hearing in this case take place simultaneously with that in docket T-536-17, and despite no objection in this regard by the respondent, I find that, unless the respondent gives explicit consent, I should not allow this application. This application is ready for the hearing, with a requisition for hearing having been filed on July 18, 2017. However, docket T-536-17 is far from being ready for a hearing. Furthermore, I am not satisfied that there is a significant lack of effectiveness if these two hearings take place separately.

IX. Conclusion

[21] This motion should be dismissed with costs of \$550 awarded to the respondent.

ORDER

THE COURT ORDERS **that:**

1. The application for extension of time is allowed.
2. The applicant's motion is dismissed with costs of \$550 awarded to the respondent.

"George R. Locke"

Judge

Certified true translation
This 12th day of August, 2019

Lionbridge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1419-16

STYLE OF CAUSE: EVEDA NOSISTEL v ATTORNEY GENERAL OF
CANADA

**MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO, PURSUANT TO
RULE 369 OF THE *FEDERAL COURTS RULES***

ORDER AND REASONS: LOCKE J.

DATED: NOVEMBER 24, 2017

APPEARANCES:

Eveda Nosistel

FOR THE APPLICANT
(ON HER OWN BEHALF)

Geneviève Ruel
Cristina St-Amant-Roy

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada
Ottawa, Ontario

FOR THE RESPONDENT