

Federal Court



Cour fédérale

Date: 20190723

Docket: T-720-17

Citation: 2019 FC 973

Ottawa, Ontario, July 23, 2019

PRESENT: Mr Justice James W. O'Reilly

BETWEEN:

TIMOTHY E. LEAHY

Applicant

and

THE MINISTER OF JUSTICE

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr Timothy Leahy maintains that he is entitled to practice law in the Federal Court, notwithstanding that he is not a member of any provincial law society. He argues that the *Federal Courts Act* does not require membership in a provincial law society; it simply states that barristers, advocates, attorneys, and solicitors in a province may practice law in the Federal Court and the Federal Court of Appeal (RSC 1985, c F-7, s 11(1),(2)).

[2] Mr Leahy was once entitled to practise law in Ontario. However, the Law Society of Ontario revoked his license to practice in 2014. Nevertheless, Mr Leahy claims that he still holds a certificate issued by the Ontario Court of Appeal authorizing him to appear as a solicitor in Ontario courts. This certificate has never been withdrawn or revoked. Further, he maintains that the *Federal Courts Act* sets out the requirements for appearing in the Federal Courts, and that that statute is paramount over any conflicting provincial legislation, or law society rules or bylaws.

[3] At the root of this application is Mr Leahy's request to quash a decision of the Department of Justice (Canada) to communicate with the Law Society of Ontario regarding his entitlement to appear in the Federal Courts. The upshot of that communication was that the Law Society contacted the Federal Court in 2014 to inform it that Mr Leahy was registered as not currently practicing law, and not carrying the required insurance to do so. The Law Society revoked Mr Leahy's license to practice in 2014.

[4] Mr Leahy seeks:

1. An Order barring the Department of Justice from seeking the interference of the Law Society.
2. An Order requiring the Department of Justice to comply with the *Federal Courts Rules*.
3. A declaration he may appear as counsel in the Federal Courts.

[5] As a result of previous litigation in this Court (July 31, 2017, T-720-12) and in the Federal Court of Appeal (2017 FCA 246), the sole remaining issue is whether this Court has the jurisdiction to grant the declaration Mr Leahy seeks, and if it does, whether it should do so.

II. Does the Federal Court has jurisdiction to grant the declaration Mr Leahy seeks?

[6] In my view, it does not.

[7] According to the *Federal Courts Act*, every person who is a barrister, advocate, attorney, or solicitor in a province may practice in that capacity in the Federal Court of Appeal or the Federal Court (ss 11(1), (2)). In limited circumstances, the Federal Court has granted permission for a person who does not have any of those qualifications to appear before the Court on behalf of a party on an exceptional, one-time basis (*Doret v Canada (Citizenship and Immigration)*, 2009 FC 447 at para 8; *Barreau de Montréal v Byer*, 2004 CANLII 48077 at para 37).

[8] Mr Leahy submits that the *Federal Courts Act* does not require membership in a provincial law society. Accordingly, the fact that the Law Society of Ontario revoked his licence to practice law does not, he says, prevent him from practicing before the Federal Courts. The language of s 11(2) of the *Federal Courts Act*, he submits, is clear and overrides any provincial legislation, regulations, or by-laws to the contrary.

[9] I cannot agree.

[10] Mr Leahy relies on a certificate issued by the Ontario Court of Appeal in 1991 to argue that he continues to be authorized to appear as a solicitor in Ontario courts. That certificate, however, cannot override the clear 2014 ruling of the Law Society of Ontario to the contrary, as has been recognised by the Ontario Superior Court of Justice. That Court has issued a permanent

injunction against Mr Leahy regarding the practice of law: *Law Society of Upper Canada v Timothy Edward Leahy*, (June 7, 2018, FC-18-59119) at 2, 3; *Law Society of Ontario v. Leahy*, 2018 ONSC 4722, affirmed 2018 ONCA 1010.

[11] In addition, this Court has already interpreted the *Federal Courts Act* as leaving it to provincial law societies to determine who is entitled to practice law and, accordingly, to be allowed to appear in the Federal Courts. Absent special circumstances, the Federal Court cannot authorize other persons to do so (*Parmar v Canada (Minister of Citizenship and Immigration)*, (June 23, 2000, IMM-1219-00) at para 5, 7); (see also *Liew v The Privacy Commissioner and The Minister of Justice*, T-2256-16 (FC)). The British Columbia Supreme Court came to the same interpretation of the *Federal Courts Act* in *Law Society (British Columbia) v Bonnar*, 2010 BCSC 969.

[12] Therefore, there is no legal basis, either in statute or in the jurisprudence, for granting the declaration Mr Leahy seeks.

III. If the Court has jurisdiction, should it exercise its discretion to grant the declaration Mr Leahy seeks?

[13] Even if the Court had jurisdiction to grant the Order Mr Leahy seeks, I would decline to exercise it.

[14] Mr Leahy has not presented any compelling or exceptional circumstances that would justify granting such an extraordinary declaration. In addition, any such declaration would run

contrary to the ruling of the Law Society of Ontario and previous decisions of both this Court and the courts of Ontario. I see no reason why this Court should exercise its discretion to contradict those other decisions.

IV. Conclusion and Disposition

[15] There is no legal basis for granting the declaration Mr Leahy seeks, and even if there were, this Court will not exercise its discretion in his favour. Accordingly, this application is dismissed, with costs.

JUDGMENT IN T-720-17

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed
with costs.

"James W. O'Reilly"

Judge

ANNEX

Federal Courts Act, RSC
1985, c F-7, s 11(1),(2)

Loi sur les Cours fédérales,
LRC (1985), ch F-7

Barrister or advocate

Avocats

11 (1) Every person who is a barrister or an advocate in a province may practise as a barrister or an advocate in the Federal Court of Appeal or the Federal Court.

11 (1) Les avocats qui exercent dans une province peuvent agir à titre d'avocats à la Cour d'appel fédérale ou à la Cour fédérale.

Attorney or solicitor

Procureurs

(2) Every person who is an attorney or a solicitor in a superior court of a province may practise as an attorney or a solicitor in the Federal Court of Appeal or the Federal Court.

(2) Les procureurs auprès d'une cour supérieure provinciale peuvent agir à ce titre à la Cour d'appel fédérale ou à la Cour fédérale.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-720-17

STYLE OF CAUSE: TIMOTHY E. LEAHY v THE MINISTER OF JUSTICE

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: FEBRUARY 19, 2019

JUDGMENT AND REASONS: O'REILLY J.

DATED: JULY 23, 2019

APPEARANCES:

Timothy E. Leahy FOR THE APPLICANT – SELF-REPRESENTED

Shain Widdifield FOR THE RESPONDENT

SOLICITORS OF RECORD:

Deputy Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario