Federal Court  Cour fédérale

Date: 20230515

Docket: T-1189-22

Citation: 2023 FC 686

Ottawa, Ontario, May 15, 2023

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

TIMOTHY E. LEAHY

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The Applicant seeks judicial review of a decision of the Canadian Judicial Council (the "CJC") refusing to investigate a complaint made by the Applicant, alleging judicial misconduct and bias against various judges of the Superior Court of Justice of Ontario, the Ontario Court of Appeal and the Supreme Court of Canada (the "Complaint"). The CJC found that the Complaint did not warrant consideration, as the Applicant's allegations of judicial misconduct with respect

to judicial decisions was a legal issue that did not fall within the meaning of misconduct under subsection 65(2) of the *Judges Act*, RSC 1985, c J-1 (the "Act").

[2] The Applicant also challenges the constitutionality of section 63 of the Act.

II. Background

[3] The Applicant, Timothy E. Leahy, is a former lawyer whose license to practice law in Ontario was revoked by the Law Society of Ontario (the "LSO") on the basis that he was unwilling to be governed by the LSO (see *Law Society of Upper Canada v Leahy*, 2015 ONLSTH 53).

[4] In spite of the license revocation, the Applicant continued holding himself out as entitled to practice law. This led the LSO to initiate a series of proceedings to enjoin the Applicant from doing so.

[5] On March 7, 2018, Justice Chiapetta of the Ontario Superior Court of Justice enjoined the Applicant and business entities controlled by him from advertising or holding the Applicant out as a person who may practice law or provide legal services in Ontario.

[6] The LSO then sought a statutory injunction under section 26.3 of the *Law Society Act*, RSO 1990, C L8 to restrain the Applicant from practicing law or providing legal services without a licence. This application for an injunction went a step further than the previous order, as it sought to restrict the Applicant from legal practice as opposed to simply advertising. The

Applicant raised several arguments in his defence, including that the LSO had no authority over the practice of immigration law in the Federal Court.

[7] In a judgment dated August 3, 2018, Justice Morgan rejected these arguments and granted a permanent injunction restraining the Applicant from practicing law and providing legal services in Ontario (see *Law Society of Ontario v Leahy*, 2018 ONSC 4722).

[8] The Applicant then appealed this decision. On December 10, 2018, the Ontario Court of Appeal dismissed the appeal, finding that Justice Morgan had not erred in rejecting the Applicant's arguments that the LSO did not have jurisdiction over the practice of immigration law in the Federal Court (*Law Society of Ontario v Leahy,* 2018 ONCA 1010 at para 7 [*Leahy ONCA*]). The panel also rejected the Applicant's arguments that there had been unfairness or abuse of process in the previous proceedings (*Leahy ONCA* at para 4). The panel also observed that the Applicant in previous proceedings had admitted to practicing law following the revocation of his license and had claimed that he had a right to do so (*Leahy ONCA* at para 5).

[9] The Applicant's application for leave to appeal to the Supreme Court of Canada was dismissed on May 23, 2019 (see *Timothy Edward Leahy v Law Society of Ontario*, 2019 CanLII 45272 (SCC)).

[10] The Applicant filed a complaint to the CJC, dated February 17, 2022 pursuant to subsection 63(2) of the Act. The Complaint leveled allegations against the nine judges involved

in the above-described proceedings, at each court (three judges of the Ontario Superior Court, the panel of the Ontario Court of Appeal, and three judges of the Supreme Court of Canada).

[11] The Applicant made several arguments as to how the judges had engaged in misconduct, many of which allege legal errors, including several constitutional errors, in the judges' rulings. Additionally, the Applicant alleged that the judges were biased in favour of the law society and conspired against him.

III. Decision under Review

[12] In a decision dated May 17, 2022, the CJC declined to investigate the Complaint. The CJC found that the Complaint did not warrant consideration, as the Complaint alleged legal errors in judicial decisions that fall within a judge's decision-making discretion and not within the mandate of the CJC.

[13] The CJC noted that the Applicant produced no evidence of bias or impartiality on the part of the judges and that the Applicant's personal views or disagreement with the judicial determinations did not constitute such evidence. Moreover, the CJC observed bias, similar to the Applicant's other arguments, is a legal issue to be addressed by courts and not the CJC.

[14] In reaching its conclusion, the CJC referenced the early screening process provided in its *Procedures for the Review of Complaints or Allegations about Federally Appointed Judges* document.

IV. Issues

A. Did the CJC err by refusing to investigate the Complaint?

B. Does subsection 63(1) or, more correctly subsection 63(2) of the Act violate section 15 of the Charter of Rights and Freedoms?

V. Analysis

A. *Did the CJC err by refusing to investigate the Complaint?*

[15] The standard of review applicable to the CJC's decision to refuse to investigate the Applicant's complaint is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [*Vavilov*]).

[16] Part II of the Act establishes the CJC. The Act empowers the CJC to investigate and inquire into allegations of misconduct against federally appointed judges and report its findings to the Minister of Justice. The relevant provisions are subsection 63(2) and section 65.

[17] Subsection 63(2) provides:

63 (2) The Council may investigate any complaint or allegation made in respect of a judge of a superior court.	63 (2) Le Conseil peut en outre enquêter sur toute plainte ou accusation relative à un juge d'une juridiction supérieure.

[18] The language of subsection 63(2) is permissive in that it states the CJC "may" investigate complaints. It is not compelled to investigate every complaint. As such, the CJC has established an internal process for screening complaints made pursuant to the Act through provisions of the *Procedures for the Review of Complaints or Allegations about Federally Appointed Judges* (the "Review Procedures") and the *Canadian Judicial Council Inquiries and Bylaws*, 2015.

[19] Section 4 of the Review Procedures requires that all correspondence intending to make a complaint be reviewed to determine whether it warrants consideration. Section 5 provides the following categories of complaints that do not warrant further consideration:

A. Complaints that are trivial, vexatious, made for an improper purpose, are manifestly without substance or constitute an abuse of the complaint process;

B. Complaints that do not involve conduct; and

C. Any other complaints that are not in the public interest and the due administration of justice.

[20] Complaints that fall within the above categories do not progress to higher levels of review or investigation.

[21] If complaints warrant an investigation, the CJC may recommend to the Minister of Justice that a judge be removed from office following that investigation under the grounds set out pursuant to section 65 of the Act. Section 65 provides:

65 (1) After an inquiry or investigation under section 63 has been completed, the Council shall report its conclusions and submit the record of the inquiry or investigation to the Minister.	65 (1) À l'issue de l'enquête, le Conseil présente au ministre un rapport sur ses conclusions et lui communique le dossier.
(2) Where, in the opinion of the Council, the judge in respect of whom an inquiry or investigation has been made has become incapacitated or disabled from the due execution of the office of judge by reason of	(2) Le Conseil peut, dans son rapport, recommander la révocation s'il est d'avis que le juge en cause est inapte à remplir utilement ses fonctions pour l'un ou l'autre des motifs suivants :
(a) age or infirmity,	a) âge ou invalidité;
(b) having been guilty of misconduct,	b) manquement à l'honneur et à la dignité;
(c) having failed in the due execution of that office, or	c) manquement aux devoirs de sa charge;
(d) having been placed, by his or her conduct or otherwise, in a position incompatible with the due execution of that office,	d) situation d'incompatibilité, qu'elle soit imputable au juge ou à toute autre cause.
the Council, in its report to the Minister under subsection (1), may recommend that the judge be removed from office.	

[22] In his submissions, the Applicant does not engage with the reasonableness of the CJC's decision in a manner consistent with the Supreme Court's holding in *Vavilov*. Rather, the Applicant simply reiterates many of his concerns about "biased judges," initially raised in the Complaint. Interpreted generously, the Applicant's argument is that judicial rulings constitute judicial conduct (or misconduct) within the meaning of section 65 of the Act and thus the CJC

unreasonably erred by refusing to investigate the Complaint. The Applicant does not contest the CJC's finding that the Complaint was made in respect of judicial decision-making; rather, he simply believes that judicial decision-making is conduct reviewable by the CJC.

[23] The Applicant's argument is without merit. The CJC's decision, pursuant to its interpretation of complaints that warrant investigation provided in the Review Procedures, is reasonable. The CJC is not an appellate court; it is settled law that the CJC has no obligation, nor does it have the mandate under the Act, to investigate the soundness of judicial rulings.

[24] As Justice Kane plainly stated in *Lochner v Canada (Attorney General)*, 2021 FC 692 at paragraph 103, "The CJC does not have a mandate to address matters of judicial decision-making …"

[25] In *Moreau-Bérubé v New Brunswick (Judicial Council)*, 2002 SCC 11, the Supreme Court observed that judicial councils have unique expertise to distinguish between matters that are to be addressed through the appeal process:

> [60] 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 (Re)*, 2001 SCC 35] 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.
>
> (at para 60)

[26] The CJC's decision was transparent and intelligible. The CJC responded to the issues raised in the Applicant's complaint, characterized them as issues relating to judicial rulings, not judicial conduct, and reasonably determined they did not warrant investigation, as they concerned legal issues that are within the purview of courts and not the CJC. The CJC's decision is consistent with the relevant case law and reasonable in the circumstances.

B. *Does subsection 63(1) or, more correctly subsection 63(2) of the Act violate section 15 of the Charter of Rights and Freedoms?*

[27] The Applicant argues that section 63 of the Act violates section 15 of the Charter of Rights and Freedoms because section 63 "makes mandatory pursuing complaints the Crown lodges while not requiring [the CJC] to pursue meritorious complaints a member of the public makes."

[28] The Applicant is referring to the distinction between subsection 63(1) and 63(2); subsection 63(1) uses the imperative word "shall" whereas subsection 63(2) uses the permissive word "may":

63 (1) The Council shall, at the request of the Minister or the attorney general of a province, commence an inquiry as to whether a judge of a superior court should be removed from office for any of the reasons set out in paragraphs 65(2)(a) to (d).	63 (1) Le Conseil mène les enquêtes que lui confie le ministre ou le procureur général d'une province sur les cas de révocation au sein d'une juridiction supérieure pour tout motif énoncé aux alinéas 65(2)a) à d).
(2) The Council may investigate any complaint or allegation made in respect of a judge of a superior court.	(2) Le Conseil peut en outre enquêter sur toute plainte ou accusation relative à un juge d'une juridiction.

[29] Subsection 63(1) applies to requests for an inquiry made by the Minister of Justice or the attorney general of a province whereas subsection 63(2) governs when a member of the public makes a complaint. According to the Applicant, this distinction in mandatory and permissive language violates equality rights under section 15 of the Charter.

[30] The Applicant's argument on this front fails as well; section 63 of the Act does not violate section 15 of the Charter.

[31] To prove a *prima facie* infringement under subsection 15(1) of the Charter, the Applicant must establish: (1) that an impugned law, either on its face in its effect, creates a distinction based on an enumerated or analogous ground; and (2) the law imposes a burden or denies a benefit in a manner that reinforces, perpetuates or exacerbates disadvantage (*Ontario (Attorney General) v G*, 2020 SCC 38 at paras 40-42).

[32] The Applicant's argument fails at the first step. The enumerated grounds of subsection 15(1) are race, national or ethnic origin, colour, religion, sex, age or mental or physical disability. Analogous grounds cover other personal characteristic that are immutable or "constructively immutable" in that they are changeable only at unacceptable cost to personal identity (*Corbiere v Canada (Minister of Indian and Northern Affairs)*, [1999] 2 SCR 203 at para 13).

[33] Section 63 distinguishes the Minister of Justice and attorneys general of the provinces from members of the public. This is not an analogous ground to those provided in subsection 15(1) of the Charter. Holding relevant public office is not an immutable or constructively immutable characteristic.

[34] Moreover, the constitutionality of the distinct procedures in section 63 of the Act has been considered in a different context in *Cosgrove v Canadian Judicial Council*, 2007 FCA 103 [*Cosgrove*]. In *Cosgrove*, the Federal Court of Appeal considered an argument from a judge that subsection 63(1) of the Act was unconstitutional as it violated the principle of judicial independence for including no early screening procedure as subsection 63(2) does.

[35] The Court of Appeal held that subsection 63(1) was constitutional, finding that "the differences between the two complaint procedures are relatively minor" and that there were numerous procedural safeguards that constrained the ability for the Minister of Justice or an attorney general from requesting an inquiry (*Cosgrove* at para 82). One such constraint is that the Minister of Justice or attorney general is entitled to request an inquiry "only in relation to judicial

conduct that is sufficiently serious to warrant the removal of the judge from office for one of the reasons specified in paragraphs 65(2)(a) to (d)" (*Cosgrove* at para 52).

[36] Consequently, even if subsection 63(2) of the Act was imperative as subsection 63(1) is, which it is not, the Applicant's Complaint would still not warrant consideration as the CJC determined the within allegations did not fall within the grounds specified in paragraphs 65(2)(a) to (d) of the Act.

VI. Conclusion

[37] The application is dismissed. The Applicant's application is without any merit. Costs to the Respondent in the amount of $2,881.50.

JUDGMENT in T-1189-22

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.

2. Costs to the Respondent in the amount of $2,881.50.

"Michael D. Manson"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

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