Federal Court Cour fédérale

Date: 20110819

Docket: T-268-08

Citation: 2011 FC 1009

Ottawa, Ontario, August 19, 2011

PRESENT: The Honourable Mr. Justice Lemieux

BETWEEN:

MARTHA COADY

Applicant

and

THE DIRECTOR OF PUBLIC PROSECUTIONS, THE ROYAL CANADIAN MOUNTED POLICE AS REPRESENTED BY THE DEPUTY COMMISSIONER OF THE RCMP AND THE ATTORNEY GENERAL FOR ONTARIO

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] On Friday July 29, 2011, I heard an application by the applicant for the issuance of a "Wagg Order". After hearing submissions from the applicant, I found it unnecessary to call upon counsel for the respondents. I refused the applicant's request for a short adjournment which would have allowed her to file with this Court an underlying proceeding to which the Wagg Order could be

attached. In the light of the previous orders made by Justices Beaudry and Martineau, I dismissed the applicant's judicial review application filed on February 18, 2008. These are my reasons for doing so.

II. Background

[2] The applicant is a self-represented litigant. She is a lawyer currently subject to disciplinary proceedings before the Law Society of Upper Canada (LSUC).

[3] On the 18th of February, 2008 she filed a notice of application in this Court for the following orders:

a. An order pursuant to section 38.04(2)(c) of the *Canada Evidence Act* (R.S.C., 1985, c. C-5) (the CEA) permitting certain individuals to provide *viva voce* testimony about two Royal Canadian Mounted Police (RCMP) investigation files.

b. An order pursuant to section 38.04(2) of the CEA permitting any other investigators or RCMP personnel identified from a review of the two investigations files to provide *viva voce* evidence with respect to them.

c. A production order or an order in the nature of an equitable bill of discovery or an order pursuant to section 37(4.1) or 37(5) of the CEA granting the applicant access to the two complete investigation files.

d. An order pursuant to section 37(4.1) or 37(5) of the CEA directing the disclosure by the RCMP to the applicant of all information held within the RCMP files on her ex-husband and persons associated with him.

e. An order in the nature of a Norwich Order directing the Attorney General for Ontario to provide to this Court a certified copy of two sealed files of the evidence held in the Superior Court of Justice at Ottawa.

[4] The applicant states that between 1987 and 2008 she became the victim of a series of indictable offences, that she discovered the RCMP had been investigating certain holding companies held by her ex-husband and a few years later had discovered the RCMP has launched a parallel investigation into offences against the administration of justice and federal money-laundering legislation by a group of Ottawa lawyers.

[5] In her pleadings, she asserts the information uncovered by the RCMP is needed by her to put a stop to the on-going offences (criminal harassment offences) which have caused her to suffer financial and personal losses.

[6] On February 26, 2008 Justice Beaudry dismissed the orders sought by the applicant under section 37 of the CEA. He as of the view that section 37 of the CEA had not been triggered and that the Court had no jurisdiction to compel RCMP members to provide evidence in relation to proceedings before either the Ontario Court of Appeal or the LSUC. His Order was not appealed.

[7] On September 22, 2008 Justice Martineau dismissed the applicant's application for an order pursuant to section 377(1) of the Federal Courts Rules (SOR/98-106) namely an interlocutory order requiring the RCMP to file in this Court a certified copy of the complete investigation file for Project Anecdote subject to any solicitor-client privilege.

[8] Project Anecdote is said to be by the applicant the RCMP's investigation focused on money laundering relevant in her disciplinary hearings and to a negative decision of the Canadian Judicial Council (CJC) rendered in 2004.

[9] As noted by Justice Martineau, the applicant's Rule 377(1) is for an order for a preservation of material evidence. He dismissed the application. He was not satisfied of the existence of a strong *prima facie* case. He referred to Justice Beaudry's order and found that the conditions for triggering section 38 of the CEA which was invoked by the applicant were not met in the case before him.

[10] During argument before him, Justice Martineau noted the applicant had mentioned the Department of Justice had taken the position that an application for access for information was a necessary precondition to her obtaining the information she was seeking and had argued such application would require the consent of the targets of the RCMP investigation which would not be forthcoming. Justice Martineau ruled that "An Anton Piller Order (or Norwhich order) cannot be used to defeat the express provisions of the *Access to Information Act* (R.S.C., 1985, c. A-1) (ATIP)."

[11] The applicant also had argued this Court has jurisdiction over issues arising out of the CJC's investigation. Justice Martineau pointed out that no application for judicial review had been filed by the applicant challenging any CJC decision.

[12] Finally, Justice Martineau tackled the applicant's request for a Norwich Order, a third party pre-action discovery mechanism by which a third party is compelled to provide an applicant with information if the applicant needs to have it to pursue legal remedies. Justice Martineau was not satisfied the applicant had made out a strong *bona fide* claim for a Norwich Order and held it was not necessary for him to examine the other criteria governing the issuance of such an Order.

[13] The Federal Court of Appeal in *Coady v Canada (Public Prosecutions)* 2009 FCA 360 dismissed the applicant's appeal from Justice Martineau's decision.

III. The Proceedings before this Court

[14] May 2, 2011 was the date fixed by the Judicial Administrator for the hearing of this matter. In her responding record filed on July 5, 2010, counsel for the Federal respondents argued that the applicant's complaints had been fully dealt with by Justices Beaudry and Martineau and that there were no remaining live issues. Her application was subject to issue estoppel.

[15] At the hearing, the applicant sought an adjournment in order to enable her to investigate an event recently discovered – the fact that the RCMP had recently transferred to the Library and Archives Canada (LAC) the two investigation files she was seeking. She also mentioned to the

Court that LAC had a more open policy with respect to the release of archival material. She expressed the view that this new development might resolve the judicial review.

[16] I granted the adjournment to enable both counsel to investigate the matter. On May 24, 2011, the Court received a letter from counsel for the Federal respondents indicating that after investigation she could not agree with the applicant's interpretation of the "new" LAC disclosure policy. In any event, she said the applicant had to apply to LAC for disclosure pursuant to section 6 of the ATIP.

[17] The applicant responded on June 4, 2011. She advised the Court that sometime ago an ATIP request had been made to the RCMP for access to the investigation files, but the request was refused on this basis of section 16 of ATIP, a decision which had recently been confirmed by the Information Commissioner but no formal letter had been received by the applicant from the Commissioner's Office.

[18] After hearing the parties on a telephone conference call, I rescheduled the hearing of the judicial review application for July 29, 2011 and permitted supplementary representations to be made.

[19] On July 18, 2011 the Court received supplementary submissions from the Federal respondents to the effect that the Federal Court had no jurisdiction to order a common law screening procedure which was what a Wagg Order is about citing the Ontario Divisional Court's decision in

P.D. v Wagg 61 OR (3d) 746 sustained by the Ontario Court of Appeal P*.D. v Wagg* 71 OR (3d) 229.

[20] In any event, counsel for the Federal respondents argued that a Wagg Order being a production order cannot in and of itself be a free standing order. Counsel argued there must be an underlying action and the parties must have exchanged affidavits of documents to trigger a Wagg motion before even getting to the screening procedure developed in Wagg.

[21] I agreed with that submission as did the applicant. She sought an adjournment to enable her to file an underlying proceeding which I understood her to mean an appeal from the Commissioner's recent decision confirming the 2008/2009 ATIP refusal. I was of the view I could not grant the applicant's adjournment request because ATIP specifically provided for a review procedure to this Court which had to be followed. There being no purpose to the judicial review application, I dismissed it.

[22] Notwithstanding the applicant's request that the dismissal of the judicial review application be without costs, I fail to see why the usual cost award to the Federal respondents should not be made.

JUDGMENT

THIS COURT ORDERS that this judicial review application be dismissed with costs.

"François Lemieux"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-268-08
STYLE OF CAUSE:	MARTHA COADY v THE DIRECTOR OF PUBLIC PROSECUTIONS, THE ROYAL CANADIAN MOUNTED POLICE AS REPRESENTED BY THE DEPUTY COMMISSIONER OF THE RCMP AND THE ATTORNEY GENERAL FOR ONTARIO
PLACE OF HEARING:	Ottawa
DATE OF HEARING:	July 29, 2011
REASONS FOR JUDGMENT AND JUDGMENT:	LEMIEUX J.
DATED:	August 19, 2011

APPEARANCES:

Martha Coady	FOR THE APPLICANT
Tatiana Sandler	FOR THE RESPONDENT

SOLICITORS OF RECORD:

-	FOR THE APPLICANT
Myles J. Kirvan, Deputy Attorney General of Canada Ottawa, Ontario	FOR THE RESPONDENT