

Federal Court



Cour fédérale

Date: 20150814

Docket: T-963-15

Citation: 2015 FC 971

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Montréal, Quebec, August 14, 2015

PRESENT: The Honourable Mr. Justice Locke

BETWEEN:

ETIENNE DEBLOIS

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] There are two motions before the Court in this application for judicial review to terminate the suspension of the applicant's passport as well as other remedies. First, the respondent filed a motion to strike the notice of application. A few days later, the applicant filed a motion for an interlocutory injunction to immediately terminate the suspension of his passport.

[2] For the following reasons, the respondent's motion will be granted and the notice of application will be struck. It follows that there is no longer a need to consider the applicant's motion.

II. Relevant legislation

[3] The relevant legislation for this decision is the *Family Orders and Agreements Enforcement Assistance Act*, RSC 1985, c 4 (FOAEAA). Part III of the FOAEAA is of particular relevance here. Sections 64 to 74 of that part are reproduced in Annex A.

[4] The FOAEAA provides a mechanism for enforcing family orders and agreements by allowing for the possibility of suspending certain schedule licences held by a debtor under certain conditions in the event that the debtor fails to fulfil his or her family obligations.

[5] Section 67 of the FOAEAA states that a provincial enforcement service may apply to have schedule licences (including a passport) held by a debtor suspended where a debtor is in persistent arrears under a support order or a support provision. That application is sent to the Minister of Justice Canada. According to section 68, the Minister of Justice shall inform each appropriate Minister of the application details. For an application to suspend a passport, the appropriate Minister is the Minister of Citizenship and Immigration (MCI).

[6] Subsection 69(2) of the FOAEAA requires the appropriate Minister to suspend the schedule licence.

[7] Section 72 provides a mechanism for terminating action taken under that part of the FOAEAA when the provincial enforcement service is satisfied that the debtor (i) is no longer in arrears; (ii) is complying with a payment plan that the provincial enforcement service considers reasonable; (iii) is unable to pay the amount in arrears. In such case, the provincial enforcement service is required to request the termination of all suspensions of schedule licences. As with the initial application, that request is sent to the Minister of Justice, who must inform the appropriate Minister. Under section 74, the appropriate Minister is required to cancel the suspension of every schedule licence immediately on being informed.

III. Arguments of the applicant

[8] First, the applicant contends that the requirements of the FOAEAA for applying for a suspension of his passport were not met by the provincial enforcement service (Revenu Québec here) before it applied for the said suspension. The applicant also argues that he meets the requirements for the termination of the suspension of his passport (because he is unable to pay the amount in arrears), but that Revenu Québec refuses to consider a request to terminate the said suspension and to put its refusal in writing. The applicant maintains that his only recourse is to obtain an order of this Court requiring the MCI to terminate the suspension of his passport.

[9] Second, the applicant submits that the suspension of his passport violates his rights, as set out in subsection 6(1) of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982, c 11 (Charter)*:

Mobility of citizens

6. (1) Every citizen of Canada has the right to enter, remain in and leave Canada.

Liberté de circulation

6. (1) Tout citoyen canadien a le droit de demeurer au Canada, d'y entrer ou d'en sortir.

IV. Arguments of the respondent

[10] The respondent notes that the MCI has no discretion with respect to the suspension of a schedule licence under the FOAEAA. Thus, the MCI's decision to suspend the applicant's passport cannot be subject to judicial review. The respondent adds that, pursuant to the FOAEAA, only Revenu Québec may request the cancellation of the suspension of the applicant's passport.

[11] The respondent also refers to the decision of the Quebec Superior Court in *F.C. v Canada (Attorney General)*, 2010 QCCS 622 (*F.C.*), in which it was determined that section 67 of the FOAEAA does not violate the Charter. In *F.C.*, the Court found that while the FOAEAA violates subsection 6(1) of the Charter, that violation is justified under section 1 of the Charter.

V. Analysis

[12] As for the second argument, concerning the validity of the FOAEAA, I see no reason to not follow the decision in *F.C.* That Court's analysis is detailed and seems to apply to the present facts. The applicant submits that the result of an analysis of his situation, pursuant to section 1 of the Charter, might be different than the one in *F.C.* In my opinion, that is unlikely because the Court's analysis in *F.C.* with respect to section 1 of the Charter applies generally and is not

related to a particular case. The applicant does not propose any reason for concluding that a new issue is raised or that there is a significant change in the circumstances or evidence of the same type as that stated in the decision of the Supreme Court of Canada in *Canada (Attorney General of Canada) v Bedford*, 2013 SCC 72, at para 44, which would allow a court to arrive at a result different from that in *F.C.* Thus, I find that the FOAEAA does not violate the Charter.

[13] Regarding the first argument, I am of the opinion that the appropriate procedure for the applicant, under the FOAEAA, would be to communicate with Revenu Québec to try to convince it that the suspension of his passport must be cancelled. In the event that Revenu Québec does not respond or that the applicant is not satisfied with Revenu Québec's response, the applicant would have to commence judicial review proceedings against Revenu Québec before the Quebec Superior Court.

[14] It would be inappropriate in this application for judicial review for this Court to grant remedies that are not set out in the FOAEAA and that the MCI could not have granted, which is the case in the notice of application.

[15] The respondent cites a number of authorities in which the provincial courts considered issues similar to those raised by the applicant. I find that the Quebec Superior Court would be a more appropriate forum for this application.

[16] Another reason why it would be preferable for those questions to be considered by the Superior Court is that the applicant's former spouse, for whom the suspension of the applicant's passport is perhaps very relevant, could be represented, which is not the case before this Court.

[17] Consequently, this application will be struck. As previously stated, the applicant's motion need not be considered.

[18] At the respondent's request, the respondent's identity in the style of cause will be changed to the Attorney General of Canada.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The motion to strike the notice of application is granted, and the notice of application is struck.
2. The name of the respondent is changed to the Attorney General of Canada.
3. The applicant pays the respondent's costs in the amount of \$200.

“George R. Locke”

Judge

Certified true translation
Janine Anderson, Translator

ANNEX A
(SECTIONS 64-74 OF THE FOAEAA)

Purpose of Part

64. The purpose of this Part is to help provincial enforcement services enforce support orders and support provisions by providing for the denial of certain licences to debtors who are in persistent arrears.

Application of Part

65. This Part applies notwithstanding the provisions of any other Act of Parliament, of any regulation or order made under any other Act of Parliament or of any order made pursuant to a prerogative of the Crown respecting the issuance, renewal or suspension of licences.

Royal prerogative

66. Nothing in this Part in any manner limits or affects Her Majesty's royal prerogative with respect to passports.

Licence Denial Application***Application***

67. (1) Where a debtor is in persistent arrears under a support order or a support provision, a provincial enforcement service may apply to the Minister that the following actions be taken against the debtor:

Objet

64. La présente partie prévoit, en vue d'aider les autorités provinciales à exécuter les ordonnances alimentaires et les dispositions alimentaires, des mesures en matière de refus d'autorisation visant les débiteurs qui sont en défaut de façon répétée.

Application

65. Les dispositions de la présente partie l'emportent sur celles de tout texte législatif fédéral — loi, décret et règlement, et décret pris en vertu de la prérogative royale — en matière de délivrance, de renouvellement ou de suspension d'autorisation.

Prérogative royale

66. La présente partie n'a pas pour effet de limiter, de quelque manière, la prérogative royale en matière de passeport ou d'y porter atteinte.

Demandes de refus d'autorisation***Demande***

67. (1) L'autorité provinciale peut demander au ministre que les mesures suivantes soient prises contre un débiteur qui est en défaut de façon répétée :

(a) that no new schedule licences be issued to the debtor;

(b) that all schedule licences held by the debtor be suspended; and

(c) that schedule licences held by the debtor not be renewed.

Contents of application

(2) An application must be in the prescribed form and must contain the prescribed information concerning

(a) the identity of the debtor; and

(b) the support order or support provision.

Contents of supporting affidavit

(3) An application must be accompanied by an affidavit in the prescribed form. The affidavit must be submitted by an officer of the provincial enforcement service and must contain the following statements:

(a) that the provincial enforcement service is satisfied that the debtor is in persistent arrears under the support order or the support provision;

(b) that the provincial enforcement service has made reasonable attempts to enforce the support order or the support provision before making the licence denial application; and

a) le refus de délivrer de nouvelles autorisations visées;

b) la suspension des autorisations visées;

c) le non-renouvellement des autorisations visées.

Contenu de la demande

(2) La demande doit être présentée en la forme réglementaire et comporter :

a) les renseignements réglementaires sur l'identité du débiteur;

b) les renseignements réglementaires sur l'ordonnance alimentaire ou la disposition alimentaire.

Contenu de l'affidavit

(3) La demande doit être accompagnée d'un affidavit en la forme réglementaire, présenté par un fonctionnaire de l'autorité provinciale et déclarant que :

a) l'autorité provinciale est convaincue que le débiteur est en défaut de façon répétée;

b) l'autorité provinciale a pris, avant de présenter une demande de refus d'autorisation, des mesures raisonnables en vue d'exécuter l'ordonnance alimentaire ou la disposition alimentaire;

(c) that the provincial enforcement service has sent a notice to the debtor, at the debtor's last known address,

(i) stating that the provincial enforcement service has reasonable grounds to believe that the debtor is in persistent arrears under the support order or support provision,

(ii) stating that the provincial enforcement service intends to make a licence denial application in relation to the debtor,

(iii) informing the debtor of the consequences to the debtor of a licence denial application, and

(iv) advising the debtor that a licence denial application will not be made if the debtor enters into a payment plan that is acceptable to the provincial enforcement service or satisfies the provincial enforcement service that the debtor is unable to pay the amount in arrears and that the making of the application is not reasonable in the circumstances.

Time for making application

(4) An application may be made only after thirty days have expired after the notice referred to in subsection (3) was received by the debtor.

Deemed receipt

(5) A notice referred to in subsection (3) is deemed to have been received by a debtor ten days after it is sent to the debtor.

c) l'autorité provinciale a envoyé au débiteur, à sa dernière adresse connue, un avis :

(i) énonçant qu'elle avait des motifs raisonnables de croire qu'il était en défaut de façon répétée,

(ii) énonçant qu'elle avait l'intention de présenter une demande de refus d'autorisation le visant,

(iii) l'informant des conséquences découlant d'une telle demande,

(iv) l'informant qu'une telle demande ne sera pas présentée s'il conclut un accord en matière de paiement qu'elle juge acceptable ou s'il la convainc qu'il ne peut acquitter les arriérés et qu'il n'est pas raisonnable de présenter une telle demande en l'espèce.

Délai

(4) La demande ne peut être présentée que trente jours après la réception de l'avis par le débiteur.

Présomption

(5) Le débiteur est présumé avoir reçu l'avis dix jours après son envoi.

Processing of Licence Denial Applications

Informing appropriate Ministers

68. Immediately on the receipt of a licence denial application and the affidavit referred to in subsection 67(3), the Minister shall inform each appropriate Minister of the receipt of the application, and shall provide the appropriate Minister with such information as may be necessary to help the appropriate Minister determine whether the debtor to whom the application relates is the holder of a schedule licence.

Obligations of Appropriate Ministers

Determination — does debtor hold schedule licence

69. (1) On being informed of a licence denial application in respect of a debtor, an appropriate Minister shall immediately determine whether the debtor is the holder of a schedule licence issued by the appropriate Minister.

Suspension and non-renewal of schedule licences

(2) If an appropriate Minister determines that a debtor is the holder of a schedule licence, the appropriate Minister shall suspend the schedule licence and, where applicable, refuse to renew the schedule licence.

Demandes de refus d'autorisation

Avis à chaque ministre compétent

68. Dès qu'il reçoit une demande de refus d'autorisation et l'affidavit visé au paragraphe 67(3), le ministre en donne avis à chaque ministre compétent et lui transmet l'information nécessaire pour lui permettre de vérifier si le débiteur en cause est titulaire d'autorisations visées.

Devoirs du ministre compétent

Vérification

69. (1) Dès qu'il est informé de la demande de refus d'autorisation, le ministre compétent vérifie si le débiteur est titulaire d'autorisations visées.

Suspension et non-renouvellement des autorisations visées

(2) Si le débiteur est titulaire d'autorisations visées, le ministre compétent les suspend ou, le cas échéant, refuse de les renouveler.

Notice to debtor

(3) An appropriate Minister who takes any action under subsection (2) against a debtor shall send the debtor a notice in writing informing the debtor that the action has been taken.

Refusal to issue schedule licence

70. An appropriate Minister who is informed of a licence denial application in respect of a debtor shall refuse to issue a schedule licence to the debtor.

No Appeal

71. Notwithstanding the provisions of any other Act of Parliament, of any regulation or order made under any other Act of Parliament or of any order made pursuant to a prerogative of the Crown, no appeal lies from any action taken under this Part.

Request to Terminate Application of Part

Request to terminate application of Part

72. (1) A provincial enforcement service shall immediately request that all actions taken under this Part in respect of a debtor be terminated where

(a) the provincial enforcement service is satisfied that the debtor

(i) is no longer in arrears under all support orders and support provisions against the debtor that have been enforced by a licence denial application,

Avis au débiteur

(3) Le ministre compétent envoie au débiteur un avis l'informant des mesures prises en application du paragraphe (2).

Non-délivrance d'autorisations visées

70. Le ministre compétent qui est informé de la demande de refus d'autorisation refuse de délivrer toute autorisation visée au débiteur en cause.

Aucun appel

71. Malgré tout autre texte législatif fédéral — loi, décret et règlement, et décret pris en vertu de la prérogative royale —, les mesures prises au titre de la présente partie ne sont pas susceptibles d'appel.

Cessation d'effet des mesures

Demande de cessation d'effet des mesures

72. (1) L'autorité provinciale demande sans délai qu'il soit mis fin aux mesures prises au titre de la présente partie si, selon le cas :

a) elle est convaincue :

(i) soit que le débiteur n'est plus en défaut en ce qui concerne toutes les ordonnances alimentaires et les dispositions alimentaires

visées par toute demande de refus d'autorisation le touchant,

(ii) is complying, in respect of all support orders and support provisions against the debtor that have been enforced by a licence denial application, with a payment plan that the provincial enforcement service considers reasonable, or

(ii) soit que le débiteur se conforme, à l'égard de ces ordonnances et ces dispositions, à l'accord en matière de paiement qu'elle juge acceptable,

(iii) is unable to pay the amount in arrears and that the application of this Part against the debtor is not reasonable in the circumstances; or

(iii) soit que le débiteur ne peut acquitter les arriérés et qu'il n'est pas raisonnable de mettre en application la présente partie;

(b) the provincial enforcement service ceases to enforce all support orders and support provisions against the debtor that have been enforced by a licence denial application.

b) elle n'exécute plus ces ordonnances et ces dispositions contre le débiteur.

Prescribed manner

Manière réglementaire

(2) A request under subsection (1) must be made to the Minister in the prescribed manner.

(2) La demande doit être présentée au ministre de la manière réglementaire.

Informing appropriate Ministers

Avis aux ministres compétents

73. Where the Minister receives a request under section 72, the Minister shall immediately inform each appropriate Minister of the receipt of the request.

73. Dès qu'il reçoit la demande visée à l'article 72, le ministre en donne avis à chaque ministre compétent.

Obligation of appropriate Ministers

Devoirs du ministre compétent

74. Immediately on being informed under section 73, each appropriate Minister shall

74. Dès qu'il est informé de la demande en application de l'article 73, le ministre compétent :

(a) cancel the suspension of every schedule licence suspended by that appropriate Minister and inform the licence holder that the suspension has been cancelled;

(b) stop refusing to renew schedule licences of the debtor solely on the basis of this Part; and

(c) stop refusing to issue schedule licences to the debtor solely on the basis of this Part.

a) annule la suspension de toute autorisation visée et en avise le titulaire;

b) ne peut plus, en se fondant sur la présente partie, refuser de renouveler une autorisation visée;

c) ne peut plus, en se fondant sur la présente partie, refuser de délivrer une autorisation visée.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-963-15

STYLE OF CAUSE: ETIENNE DEBLOIS v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: MONTRÉAL, QUEBEC

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DATED: AUGUST 14, 2015

APPEARANCES:

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