

Federal Court



Cour fédérale

Date: 20150723

Docket: T-970-15

Citation: 2015 FC 893

Ottawa, Ontario, July 23, 2015

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

ADE OLUMIDE

Applicant

and

CONSERVATIVE PARTY OF CANADA

Respondent

AMENDED TRANSCRIPT OF ORDER AND REASONS

Let the attached pages 69 to 73 of the transcript of my Order and Reasons delivered orally from the bench at Ottawa, Ontario, on Friday, June 19, 2015, be filed to comply with section 51 of the *Federal Courts Act*, RSC, 1985, c F-7.

ORDER

THIS COURT ORDERS that this motion as well as the underlying application are dismissed and the issue of costs is reserved.

"R.L. Barnes"

Judge

[TRANSCRIPT OF PROCEEDINGS HEARD BEFORE THE HONOURABLE JUSTICE BARNES, Federal Court, Courtroom No. 701, 90 Sparks Street, Ottawa, Ontario, on Friday, June 19, 2015 at 2:03 p.m., pages 69 to 73.]

JUSTICE BARNES: Please be seated.

ORAL RULING ON THE MOTION FROM THE BENCH:

JUSTICE BARNES: The Applicant, Ade Olumide, has brought this motion before the Court seeking an order enjoining the Conservative Party of Canada from conducting its proposed candidate nomination meeting for the federal riding of Kanata-Carleton. That meeting is scheduled for Sunday, June 21st, 2015.

Mr. Olumide's underlying grievance concerns a decision by the Respondent, the Conservative Party of Canada, and in particular its national council upholding a decision made by the national candidate selection committee disqualifying Mr. Olumide as a candidate for nomination to run under the Conservative Party banner in Kanata-Carleton.

Mr. Olumide's underlying proceeding is an application for judicial review challenging the lawfulness of the Respondent's decisions on the grounds of bias and procedural fairness.

The determinative issue on this motion is one of jurisdiction. The authority of the Federal Court to hear and decide a matter must be conferred by federal statute and, in a proceeding such as this one, it must be grounded in section 18 of the Federal Courts Act.

This Court's jurisdiction to grant prerogative relief of the sort sought by Mr. Olumide is accordingly limited to decisions made by a federal board, commission or other tribunal. A federal board, commission or other tribunal is defined in the Federal Courts Act at section 2. That provision states:

"A federal board, commission or other tribunal means any body, person or persons having, exercising or purporting to exercise jurisdiction or powers conferred by or under an act of Parliament or by one under an order made pursuant to a prerogative of the Crown other than the Tax Court of Canada or any of its judges, any such body constituted or established by or under law of a province or any such person or persons appointed under or in accordance with a

law of a province or under section 96 of the Constitution Act, 1867.”

The Conservative Party of Canada is a private unincorporated association of members across Canada who have voluntarily agreed to act as members. Mr. Olumide is one such member. The party is decidedly not a legal entity that exercises powers by or under an act of Parliament. The decisions that Mr. Olumide seeks to challenge are private matters that do not constitute decisions of a federal board, commission or other tribunal.

The legal nature of Canadian political parties has been the subject of previous jurisprudence. In *Knox v. Conservative Party of Canada*, 2007 ABCA 295, the Alberta Court of Appeal had this to say about this issue at paragraph 26, and I quote:

“Neither constituency associations nor political parties are given any public powers under the Canada Elections Act. They are essentially private organizations. It is true that their financial affairs are regulated, they may only give tax receipts in certain circumstances and they may only spend the money they raise in certain ways. However, merely because an organization is subject to public regulation does make it a public body subject to judicial review. The fact that the organization may require or may hold a licence or permit of some kind is also not sufficient nor is the fact that the organization may receive public money.

"Many organizations are subject to public regulation. For example, all charities must be registered in order to issue charitable receipts but that does not mean that they are exercising public functions and therefore are subject to judicial review.

"It is argued that the democratic process, elections and the activities of political parties are of great public importance. That is undoubtedly true, but public importance is not the test for whether a tribunal is subject to judicial review.

"When arranging for the nomination of their candidate in Calgary West, the party and the association were essentially engaged in private activities and their actions in this case are not subject to judicial review. They are, however, subject to private law remedies that may be engaged. Like many private organizations, the appellants in this case have constitutions, bylaws and rules. Members are entitled to have those documents enforced in accordance with their terms and the proper interpretation of those terms. The remedies available

are, however, private law remedies.”

Of course, what that suggests is there may be judicial recourse in such cases but it doesn't lie in the Federal Court. It would have to lie in one of the superior courts of the provinces. So Mr. Olumide is not necessarily without remedy, but he doesn't have it in this Court.

In the case of *Galati v. McGuinty*, 88 All-Canada Weekly Summaries (3d) 1165, the Ontario Superior Court of Justice dealt with the status of political parties in the context of a complaint similar to that advanced in this case. There, the Court held:

“The absence of government action is a radical defect in the plaintiff's claim. The Ontario Liberal Party is not a government actor. It is a private unincorporated association. Its objects may be political in nature, but that is insufficient to drape it with the cloak of government authority.

"As La Forest noted in *McKinney*, many institutions in our society perform functions that are undeniably of an important public nature but are undoubtedly not part of the government.”

So the law is very clear that political parties that are formed as voluntary associations are not creatures of statute, nor are they part of the legal machinery of government.

So on that basis, Mr. Olumide's motion is dismissed.

The Respondent has asked, in its material, that the underlying application be dismissed and I will grant that request for relief as well on the same basis. Not only does the Court lack jurisdiction to grant the interim relief that was requested, but it lacks jurisdiction to deal with the underlying application for judicial review.

So an order will issue dismissing the motion and the underlying application for lack of jurisdiction.

Now the only other issue is that of costs. I think the Respondent was seeking costs, if I read their factum. I take that to be the case.

MR. D'ANGELO: Yes.

JUSTICE BARNES: Do you have a number in mind or a proposal to

make?

SUBMISSIONS ON COSTS BY MR. D'ANGELO:

MR. D'ANGELO: I don't have a number in mind, your honour. Two very quick points: one, when Mr. Olumide asked on Tuesday about going to the provincial court, I responded by e-mail and I wrote Mr. Olumide:

"I take it that you recognize that the Federal Court is not the proper court to make the determination in this matter. Accordingly, the party advises that if you agree by 4:00 p.m. today..."

Which was Tuesday:

"...to dismiss the Federal Court matter, the party will not seek costs from you regarding the Federal Court proceeding."

There was no response and obviously we are here today. So there was that olive branch set out after we

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-970-15

STYLE OF CAUSE: ADE OLUMIDE
v
CONSERVATIVE PARTY OF CANADA

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: JUNE 19, 2015

JUDGMENT AND REASONS: BARNES J.

DATED: JULY 22, 2015

AMENDED: JULY 23, 2015

APPEARANCES:

Mr. Ade Olumide

FOR THE APPLICANT
(ON HIS OWN BEHALF)

Mr. Paul D'Angelo

FOR THE RESPONDENT

SOLICITORS OF RECORD:

N/A

FOR THE APPLICANT

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FOR THE RESPONDENT