Federal Court  Cour fédérale

Date: 20160726

Docket: T-876-16

Citation: 2016 FC 877

Vancouver, British Columbia, July 26, 2016

PRESENT: Prothonotary Roger R. Lafrenière

BETWEEN:

CORY PENNEY

Applicant

and

THE MINISTER OF PUBLIC SAFETY CANADA AND ATTORNEY GENERAL OF CANADA

Respondents

ORDER AND REASONS

[1] The Respondents seek an order pursuant to Rule 383 of the *Federal Courts Rules* (the *Rules*) that the application be specially managed and that all timelines fixed in Part 5 of the *Rules* be suspended pending the appointment of a case management judge. The motion is opposed by the Applicant on the grounds that the proceeding is not complicated and the appointment of case management judge is therefore unnecessary. According to the Applicant, the request for case management is "clearly a delay tactic" on the part of the Respondents.

[2] By way of background, the Applicant filed a Notice of Application on June 2, 2016 seeking to challenge the denial of the Applicant's passport renewal application. The refusal letter dated May 6, 2016 states that a delegated official of the Minister of Public Safety decided pursuant to section 10.1 of the *Canadian Passport Order*, SI/81-86 that a passport would not be issued in the Applicant's name as there were reasonable grounds to believe that the decision was necessary to prevent the commission of a terrorism offence as defined in section 2 of the *Criminal Code* or for the national security of Canada or a foreign state. The Applicant seeks relief in the nature of *quo warranto* to require the Minister to show under what authority he had to deal with the Applicant's renewal application and certiorari to quash all decisions made against the Applicant under the *Canadian Passport Order*.

[3] Rule 383 empowers the Chief Justice of the Federal Court to assign one or more judges to act as a case management judge in a proceeding. However, the *Rules* do not prescribe any criteria to assist in determining when an order under Rule 383 will be appropriate.

[4] The Applicant relies on the decision of Madam Justice Heneghan in *Canada (Attorney General) and Janice Cochrane v Canada (Information Commissioner)*, 2001 CanLII 22120 (FC) ("Cochrane") for the proposition that there must be a substantial reason for special management and to justify departure from the timetables set out in the *Rules*. In *Cochrane*, the Respondent had moved for an order appointing a case management judge to specially manage two proceedings and to hold a dispute resolution conference in accordance with Rules 387 to 389 for the purpose of narrowing the issues in the proceedings. The motion was opposed by both Applicants. Justice Heneghan held that the appointment of a case management judge was not subject to hard and fast rules. She concluded that the allocation of judicial resources for case

management was not warranted as the proceedings were at an early stage and there was “neither confusion nor a need to narrow the issues”.

[5] The Cochrane decision was rendered at the advent of case management in the Federal Court. Although special management is neither routine nor automatically granted on request, this Court is now taking a much more flexible approach in assessing whether case management should be granted. Case management orders will automatically be issued when it appears necessary from the nature of the proceedings, such as class actions, proceedings brought pursuant to the *Patented Medicines (Notice of Compliance) Regulations* and cases involving First Nations band governance). Special management can also be requested informally by letter when it is anticipated that the timelines set out in the *Rules* cannot reasonably be met by the parties, or when the Court’s intervention will be required to issue directions, resolve procedural issues or deal with interlocutory motions. The goal is to ensure that the proceeding is determined in the most just, expeditious and least expensive manner, as set out in Rule 3.

[6] There are ample reasons for appointing a case management judge in the present case. In reaching that conclusion, I have considered the arguments the Applicant has advanced to the contrary.

[7] This application concerns the refusal to issue a passport in the name of the Applicant. The refusal to issue the passport was based on the grounds that it was necessary to prevent the commission of a terrorist offence or for the national security of Canada or a foreign state. Section 6(2) of the *Prevention of Terrorist Travel Act,* SC 2015, c 36, [PTTA] sets out special rules that apply to proceedings relating to refusals or revocations under Canadian Passport Order.

[8] Subsection 6(2)(a) of the PTTA provides that the judge hearing the matter (the "designated judge") must, on request of the Minister of Public Safety, hear submissions on evidence of which the disclosure may be harmful to national security or endanger the safety of an individual. The specific processes by which such submissions are to be made have not yet been established. Subsections 6(2)(b)(c) and (d) also provide that the designated judge must ensure the confidentiality of the evidence and other information provided by the Minister, ensure that the Applicant is provided with a summary of the evidence and other information available to the judge, and provide the Applicant and the Minister with an opportunity to be heard.

[9] The Respondents have stated that they intend to make submissions to the Court pursuant to section 6(2)(a) and will be requesting directions to that effect. Due to the exigencies of the business of the Court, it will take some time before this process can be completed. It follows that information which might be used by the Respondents to justify or explain the decision under review will not be available for inclusion in the certified tribunal record as the deadline for transmittal of the tribunal record in accordance with Rule 318 has expired, and may not be available for inclusion in the Respondents' supporting affidavit within the timeframe prescribed by Rule 307.

[10] Given that the PTTA was recently adopted and that there has been no judicial consideration of the legislation, and in light of the Respondents' stated intention to seek directions from a designated judge and the almost certain need for Court's directions on how this matter should proceed, I conclude that the appointment of a case management judge is both just and necessary to ensure that the matter proceeds in an orderly and expeditious manner.

ORDER

THIS COURT ORDERS that:

1. The application shall continue as a specially managed proceeding.

2. No further steps shall be taken by the parties in this proceeding pending further order or directions of the Court.

3. The matter shall be referred forthwith to the Chief Justice to appoint a case management judge.

4. There shall be no order as to costs of this motion.

"Roger R. Lafrenière"
Prothonotary

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-876-16
STYLE OF CAUSE:	CORY PENNEY v THE MINISTER OF PUBLIC SAFETY CANADA AND ATTORNEY GENERAL OF CANADA

MOTION IN WRITING CONSIDERED AT VANCOUVER, BRITISH COLUMBIA PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES*

ORDER AND REASONS:	LAFRENIÈRE P.
DATED:	JULY 26, 2016

WRITTEN REPRESENTATIONS BY:

Arman Chak	FOR THE APPLICANT
Robert Drummond	FOR THE RESPONDENTS

SOLICITORS OF RECORD:

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