Federal Court  Cour fédérale

Date: 20211001

Docket: T-1023-21

Citation: 2021 FC 1022

Ottawa, Ontario, October 1, 2021

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

ORLANDO CANJURA

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

ORDER AND REASONS

I. Overview

[1] This is an appeal, brought pursuant to Rules 369 and 51 of the *Federal Courts Rules*, SOR/98-106 [Rules], of an Order of Prothonotary Kathleen Ring dated August 30, 2021 [August Order] striking the Applicant's Notice of Application and dismissing the application for judicial review on the basis that it was premature.

[2] Mr. Canjura, who represents himself on this motion, seeks an order varying or setting aside the August Order. He submits the Order was based on a misunderstanding of the facts and evidence. He further submits the Prothonotary exercised her discretion in a manner contrary to Rule 400 in awarding costs against him in the amount of $500.

[3] The Respondent argues that no reviewable error has been identified and that Mr. Canjura's disagreement with the outcome is insufficient to ground this appeal.

[4] I agree with the Respondent. The motion is dismissed for the reasons that follow.

II. Background

[5] In January 2021, Mr. Canjura requested that the Royal Canadian Mounted Police [RCMP] provide him access to specific information pursuant to section 12 of the *Privacy Act*, RSC 1985, c P-21 [*Privacy Act*]. The RCMP's Access to Information and Privacy [ATIP] office acknowledged receipt of the request and advised that an extension of time was required to respond. Communications between the ATIP office and Mr. Canjura continued during February and March 2021 but a response to Mr. Canjura's request was not provided.

[6] On March 31, 2021, Mr. Canjura commenced a complaint with the Office of the Privacy Commissioner of Canada [OPC]. The ATIP office received notice of the complaint from the OPC in April 2021. The complaint alleged the RCMP had contravened section 14 of the *Privacy Act* in delaying a response to the Applicant's request [the Complaint].

[7] On June 29, 2021, Mr, Canjura commenced a judicial review application pursuant to section 41 of the *Privacy Act* seeking an Order that itemized categories of information be disclosed to him. The OPC had not completed nor reported on its investigation into the Complaint.

III. The *Privacy Act*

[8] A brief overview of the legislative scheme will be helpful.

[9] The *Privacy Act* imposes time limits upon government institutions for responding to requests for information under the Act (sections 14 and 15). A government institution's non-compliance with the prescribed time limits shall be deemed as a refusal to give access (subsection 16(3)). Where access is refused, an individual may initiate a complaint, which the Privacy Commissioner shall receive and investigate (paragraph 29(1)(b)).

[10] Section 41 of the *Privacy Act* provides that an individual may apply to the Federal Court for review of a refusal to grant access where (1) a complaint has been made to the Privacy Commissioner; and (2) the results of the Privacy Commissioner's investigation have been reported to the individual:

Review by Federal Court where access refused	**Révision par la Cour fédérale dans les cas de refus de communication**
41 Any individual who has been refused access to personal information requested under subsection 12(1) may, if a complaint has been made to the Privacy Commissioner in	**41** L'individu qui s'est vu refuser communication de renseignements personnels demandés en vertu du paragraphe 12(1) et qui a déposé ou fait déposer une

respect of the refusal, apply to the Court for a review of the matter within forty-five days after the time the results of an investigation of the complaint by the Privacy Commissioner are reported to the complainant under subsection 35(2) or within such further time as the Court may, either before or after the expiration of those forty-five days, fix or allow.	plainte à ce sujet devant le Commissaire à la protection de la vie privée peut, dans un délai de quarante-cinq jours suivant le compte rendu du Commissaire prévu au paragraphe 35(2), exercer un recours en révision de la décision de refus devant la Cour. La Cour peut, avant ou après l'expiration du délai, le proroger ou en autoriser la prorogation.

IV. Preliminary Issue

[11] The Respondent submits the Applicant's September 3, 2021 Affidavit, included at Tab 2 of the Applicant's Motion Record, is information that was not before the Prothonotary, is therefore improperly before the Court on this appeal, and should not be given any weight.

[12] As a general rule, appeals from Prothonotary orders are to be decided on the material that was before the Prothonotary (*Onischuk v Canada (Revenue Agency)*, 2021 FC 486 at para 9, citing *Shaw v Canada*, 2010 FC 577 at para 8 and *Papequash v Brass*, 2018 FC 325 at para 10). New evidence may be exceptionally admitted where: (1) it could not have been made available earlier; (2) its admission will serve the interests of justice; (3) the evidence will assist the Court; and (4) its admission will not severely prejudice the other side (*David Suzuki Foundation v Canada (Health)*, 2018 FC 379 at para 37).

[13] The September 3, 2021 Affidavit attaches a copy of the August Order that is the subject of the appeal and information relating to financial support payments. The copy of the August

Order is unnecessary as it is reproduced separately in the Applicant's Motion Record. The information relating to financial support payments may be of some relevance in respect of the argument advanced on costs, however the evidence falls well short of satisfying the circumstances detailed above for the exceptional admission of new evidence. For these reasons, I have given no weight to Mr. Canjura's September 3, 2021 Affidavit.

V. The Prothonotary's Order

[14] In considering the motion to strike, the Prothonotary first identified the test to be applied – a court will only strike out a notice of application where it is so clearly improper as to be bereft of any possibility of success (*David Bull Laboratories (Canada) Inc v Pharmacia Inc*, [1995] 1 FC 588 at page 600 (CA) and *Canada (National Revenue) v JP Morgan Asset Management (Canada) Inc*, 2013 FCA 250 at paras 47 and 48 [*JP Morgan*]).

[15] The Prothonotary then canvassed the jurisprudence recognizing the general rule that, absent exceptional circumstances, a party can proceed to court only after all adequate remedial recourses in the administrative process have been exhausted (*Canada (Border Services Agency) v C.B. Powell Limited*, 2010 FCA 61 at paras 30 and 31 and *JP Morgan* at paras 66 and 84).

[16] Applying the jurisprudence to the circumstance before her, the Prothonotary found that the undisputed evidence established that the Privacy Commissioner had not yet issued a report on the findings of its investigation into the Complaint and that the section 41 pre-condition for commencing the application had not been satisfied. She concluded the application was premature

because the Applicant had not exhausted the administrative process and failed to demonstrate either unusual or exceptional circumstances as recognized in the jurisprudence.

VI. Issues and Standard of Review

[17] Mr. Canjura raises following three issues:

A. The Prothonotary erred in finding that administrative recourses had not been exhausted;

B. The Prothonotary misunderstood and/or ignored the facts and evidence; and

C. Costs should not have been awarded against him.

[18] A Prothonotary's order is to be reviewed against a standard of palpable and overriding error where the issues raised involve questions of fact or mixed fact and law. Correctness is the standard to be applied to extricable questions of law (*Hospira Healthcare Corporation v Kennedy Institute of Rheumatology*, 2016 FCA 215 at paras 27 and 66). The palpable and overriding error standard is highly deferential (*Cobalt Pharmaceuticals Company v Bayer Inc*, 2015 FCA 116 at para 53).

VII. Analysis

[19] Mr Canjura argues that the Prothonotary erred in failing to recognize that the delay and non-responsiveness of the OPC in processing his complaint, coupled with the RCMP's violation of the time limits imposed by the *Privacy Act*, demonstrate that the adequate remedial recourses provided for in the administrative process have been exhausted. I disagree.

[20] The Prothonotary correctly identified the applicable jurisprudence. In applying the jurisprudence, she concluded that statutorily mandated processes had not been exhausted and exceptional circumstance had not been demonstrated. These conclusions are not inconsistent with the evidence, nor do they reflect that the Prothonotary ignored or misunderstood the evidence relevant to the issue before her – was the application was premature?

[21] Mr. Canjura also submits that the delays involved in the administrative process raised issues of fairness that the Prothonotary failed to address. Again, I disagree. The Prothonotary was well aware of the sequence of events relating to Mr. Canjura's request for information and the argument that procedural flaws should not obstruct access to the Court. These arguments were addressed in the context of whether exceptional circumstances had been demonstrated. The finding that exceptional circumstances had not been demonstrated does not disclose any palpable or overriding error of fact, mixed fact and law or any error in law.

[22] Mr. Canjura's argument amounts to disagreement with the Prothonotary's conclusions. This is not a basis for intervention on appeal.

[23] Similarly, I find no merit to the argument that the Prothonotary erred in awarding costs to the Respondent.

[24] Rule 400(1) of the Rules, provides that the Court has "full discretionary power over the amount and allocation of costs." Costs are quintessentially discretionary (*Alani v Canada (Prime Minister),* 2017 FCA 120 at para 11, citing *Nolan v Kerry (Canada) Inc*, 2009 SCC 39 at para

126). Again, Mr. Canjura's disagreement with the costs award does not provide a basis to intervene on appeal.

VIII. Conclusion

[25] Mr. Canjura's motion is dismissed.

[26] The Respondent seeks costs in the amount of $500. The Respondent submits this amount is reasonable, is well within column III of Tariff B of the Rules, and that the award of costs is also justified as this motion was unnecessary.

[27] Mr. Canjura does not directly address the issue of a costs award against him on this motion. However, in arguing that the costs award below was in error, he relies on his financial circumstances and the fact that he is self-represented. Neither of these circumstances shield a litigant from a costs award (*Martinez v Canada*, 2020 FCA 150 at paras 11 – 15).

[28] The Respondent, as the successful party, shall have his costs in the fixed amount of $500 inclusive of disbursements and taxes.

ORDER IN T-1023-21

THIS COURT ORDERS that:

1. The motion is dismissed;

2. Costs to the Respondent in the fixed amount of $500 inclusive of all disbursements and taxes.

"Patrick Gleeson"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1023-21
STYLE OF CAUSE:	ORLANDO CANJURA v THE ATTORNEY GENERAL OF CANADA

MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES*

ORDER AND REASONS:	GLEESON J.
DATED:	OCTOBER 1, 2021

WRITTEN REPRESENTATIONS BY:

Orlando Canjura	FOR THE APPLICANT (ON HIS OWN BEHALF)
Keelan Sinnott	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada Edmonton, Alberta	FOR THE RESPONDENT