

Date: 20080115

Docket: T-1917-06

Citation: 2008 FC 50

Toronto, Ontario, January 15, 2008

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

LORI AKLADYOUS

Applicant

and

CANADIAN JUDICIAL COUNCIL

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Lori Akladyous seeks judicial review of the decision of the Chairperson of the Judicial Conduct Committee of the Canadian Judicial Council dismissing her complaint regarding the conduct of a federally appointed judge and of the Executive Director and General Counsel of the Council.

[2] For the reasons that follow, Ms. Akladyous has not persuaded me that the decision under review should be set aside, and, accordingly, her application for judicial review will be dismissed.

[3] Before turning to the merits of the application, however, I will first address the matter of Ms. Akladyous' failure to appear for the hearing.

Ms. Akladyous' Failure to Appear for the Hearing

[4] Ms. Akladyous' application for judicial review was scheduled to be heard on January 9, 2007. This date had been fixed for several months. Two days before the hearing, the Court received a letter from an individual from outside of Canada, purporting to act on Ms. Akladyous' behalf. This individual was seeking the adjournment of the hearing.

[5] The following day, the Chief Justice of the Federal Court issued an order directing that the hearing proceed as scheduled.

[6] It is apparent from a review of the Court record that Ms. Akladyous was made aware of the Court's order, and was advised by the Court Registry that the hearing would be going ahead. This is further confirmed by correspondence received from Ms. Akladyous after the hearing.

[7] Shortly after the Chief Justice rendered his decision denying the adjournment request, someone purporting to be calling on Ms. Akladyous's behalf contacted the Registry, and advised that Ms. Akladyous would not be attending the hearing.

[8] When Ms. Akladyous did not appear at the time set for the hearing, the Court adjourned for fifteen minutes, in case she had had a change of heart, but had been delayed. When Ms. Akladyous still had not appeared after fifteen minutes, the hearing began.

[9] Counsel for the respondent then advised the Court that he was content to rely upon the submissions contained in his memorandum of fact and law. Thus this decision has been based entirely upon the record and the submissions of the parties.

Background

[10] Some years ago, Ms. Akladyous was the subject of disciplinary proceedings before the Discipline Committee and Council of the Manitoba Pharmaceutical Association. After the Association decided to suspend her licence, Ms. Akladyous sought judicial review of the Association's decision in the Manitoba Court of Queen's Bench.

[11] On June 24, 2003, at the conclusion of the judicial review hearing, the presiding judge rendered an oral decision dismissing Ms. Akladyous' application for judicial review. The judge also ordered that Ms. Akladyous pay the Association's costs in the amount of \$1,930.

[12] The presiding judge then asked the counsel for the Association to prepare a draft judgment for the Court's consideration.

[13] By letter dated October 15, 2003, counsel for the Association wrote to the Court of Queen's Bench Registry, enclosing a draft judgment. Counsel's letter also stated "Would you please arrange to deliver the letter and Judgment to his Lordship, along with a copy of the pocket, if his Lordship so desires".

[14] A formal Judgment was signed by the presiding judge on November 6, 2003. There is no indication in the record that any appeal was taken from this judgment by Ms. Akladyous.

[15] In September of 2005, Ms. Akladyous filed a complaint with the Canadian Judicial Council [the "first complaint"], in which she complained that the presiding judge had not let her speak at the hearing.

[16] This first complaint was subsequently reviewed by Justice Robert Pidgeon, the Associate Chief Justice of the Quebec Superior Court and Vice-Chairperson of the Judicial Conduct Committee.

[17] At the direction of Associate Chief Justice Pidgeon, the Executive Director and General Counsel of the Council wrote to Ms. Akladyous on March 14, 2006 advising that "[her] complaint did not fall within the mandate of the Council, as it does not relate to judicial misconduct as contemplated by the *Judges Act*." As a result, Ms. Akladyous was advised that the file relating to her complaint would be closed.

[18] On May 9, 2006, Ms. Akladyous wrote to Chief Justice Bowman of the Tax Court of Canada, alleging that both the judge who had presided over her judicial review hearing and the Executive Director and General Counsel of the Judicial Council had accepted bribes, and that the Executive Director had misled Associate Chief Justice Pidgeon in dealing with her first complaint. Ms. Akladyous also alleged that other individuals had committed fraud, to her detriment, and that the justice system was corrupt.

[19] Chief Justice Bowman then referred this letter to the Canadian Judicial Council.

[20] By letter dated June 26, 2006, the Executive Director and General Counsel of the Judicial Council wrote to Ms. Akladyous, noting that she had provided no evidence to support the grave allegations in her second complaint. The letter further stated that:

I have reviewed your allegations, as well as the information already on file regarding your complaint. Given the nature of these allegations, and in light of the fact that your earlier complaint was thoroughly reviewed, and given the mandate of the Council has been carefully explained to you, I come to the conclusion that your most recent correspondence constitutes an abuse of the complaints process. Accordingly, I will not be opening a complaint file in regard to your most recent allegations.

[21] Ms. Akladyous then wrote to the Chief Justice of the Supreme Court of Canada with respect to her concerns regarding both the judge who had presided over her judicial review hearing and the Executive Director and General Counsel of the Judicial Council.

[22] Amongst other things, Ms. Akladyous' letters alleged that the presiding judge had accepted a bribe from counsel for the Manitoba Pharmaceutical Association. In this regard, Ms. Akladyous alleged that the reference to "the pocket" in counsel's October 15, 2003 letter to the Court Registry was really a cryptic reference to a cheque to be given to the judge.

[23] Ms. Akladyous' correspondence also alleged that Executive Director and General Counsel of the Judicial Council had been involved in a fraud.

[24] Ms. Akladyous' letters to the Chief Justice were forwarded to the Canadian Judicial Council by the Chief Justice's Executive Legal Officer.

[25] These letters appear to have been treated as a third, fresh complaint by the Judicial Council. Ms. Akladyous's third complaint was then reviewed by Chief Justice Richard Scott, in his capacity as Chairperson of the Council's Judicial Conduct Committee.

[26] On October 13, 2006, Chief Justice Scott wrote to Ms. Akladyous, advising her that he had reviewed her complaint, and that he had also asked the Judicial Council's outside counsel to review the matter. Based upon both reviews, he had "found no basis for the very serious allegations that you have made".

[27] The operative portion of Chief Justice Scott's letter states that:

There has been no wrongdoing. Rather it appears that you have entirely misunderstood communications between [counsel for the

Association] and the court. [Counsel's] reference to "a copy of the pocket" is a reference to the file folder in which court papers are held in court offices. It does not refer to a payment of any kind. [Counsel] drafted a formal judgment. The practice of the successful party drafting the formal judgment is well established and the normal course of proceeding in our courts. It is without foundation to suggest any impropriety in connection with the drafting of the formal judgment. The oral reasons delivered by [the presiding judge] on June 24, 2003 and later transcribed reflect [the presiding judge's] decision. It is commonplace for judges to deliver reasons in this manner.

As you are aware, the Canadian Judicial Council is not a forum in which correctness of a judicial decision is reviewed.

[28] Chief Justice Scott then advised Ms. Akladyous that "no complaint file will be opened and this matter is now closed".

[29] It is this decision that forms the subject matter of Ms. Akladyous' application for judicial review in this Court.

Issues

[30] As I understand Ms. Akladyous' memorandum of fact and law, she takes issue with certain of Chief Justice Scott's findings of fact.

[31] Ms. Akladyous also takes issue with the fact that Chief Justice Scott was involved in this matter, as, according to Ms. Akladyous, "Judicial Council law" dictates that members of the Canadian Judicial Council are not to be involved in decisions regarding judges in their own province.

[32] Ms. Akladyous further alleges that Chief Justice Scott decided as he did, either in an effort to “cover” for his fellow Manitoban judge, or because he himself may have accepted a bribe.

[33] The respondent also raises an issue with respect to the identity of the appropriate respondent. This will be addressed first.

The Identity of the Appropriate Respondent

[34] Ms. Akladyous has named the Canadian Judicial Council as the respondent in this case.

[35] Rule 303(1)(a) of the *Federal Courts Rules* provides that an applicant shall name as a respondent “every person directly affected by the order sought in the application, other than a tribunal in respect of which the application is brought”.

[36] Rule 303(2) provides that “Where in an application for judicial review there are no persons that can be named under subsection (1), the applicant shall name the Attorney General of Canada as a respondent”.

[37] Given that the Canadian Judicial Council is the tribunal in respect of which the application is brought, I am of the view that it is improperly named as a respondent, and that the Attorney General of Canada should be substituted as the respondent in this case.

[38] Turning next to the issues raised by Ms. Akladyous, the first matter for determination is the appropriate standard of review to be applied to the decision of Chief Justice Scott.

Standard of Review

[39] Insofar as Ms. Akladyous' application for judicial review involves the review of findings of fact made by Chief Justice Scott, it is necessary to identify the appropriate standard of review to be applied with respect to those findings.

[40] I carried out a pragmatic and functional analysis in *Cosgrove v. Canadian Judicial Council*, 2005 FC 1454, in order to determine the appropriate standard of review to be applied in relation to findings of fact made by an Inquiry Committee established by the Canadian Judicial Council.

[41] I concluded that the factual findings of the Inquiry Committee should be reviewed against the standard of patent unreasonableness. My conclusion in this regard was subsequently confirmed by the Federal Court of Appeal: see *Cosgrove v. Canadian Judicial Council* 2007 FCA 103, application for leave dismissed, [2007] S.C.C.A. No. 242.

[42] While this case involves a decision made by the Chairperson of the Judicial Conduct Committee of the Canadian Judicial Council, rather than by an Inquiry Committee established by the Council, I am of the view that the analysis that I carried out in *Cosgrove* is equally applicable in this case, and that the factual findings in issue here should also be reviewed against the standard of patent unreasonableness.

[43] Ms. Akladyous' allegation that Chief Justice Scott should not have been involved in a matter involving a judge from his own province arguably raises a legal or jurisdictional question. It is not necessary to determine the standard of review applicable to this issue, as I am satisfied that there is no merit in this argument, whatever standard of review is applied.

[44] Finally, Ms. Akladyous' allegation of corruption and bias on the part of Chief Justice Scott raises a question of procedural fairness – that is, whether she received a fair hearing from an unbiased decision-maker.

[45] It is not necessary to go through a pragmatic and functional analysis in relation to questions of procedural fairness – it is for the Court to determine whether the procedure that was followed in a given case was fair or not, having regard to all of the relevant circumstances: *Sketchley v. Canada (Attorney General)*, [2005] F.C.J. No. 2056, 2005 FCA 404, at ¶ 52-53.

The Complaints Process

[46] In order to put the issues raised by this application into context, it is helpful to have an understanding of the complaints process involving federally appointed judges.

[47] The Canadian Judicial Council complaints process was described by the Federal Court of Appeal in *Cosgrove*, previously cited, at paragraphs 69-73. The Federal Court of Appeal noted that a complaint brought by anyone other than a federal or provincial Attorney General, is subject to a multi-level process. This process is described in the *Procedures for Dealing with Complaints made*

to the Canadian Judicial Council about Federally Appointed Judges (the “Complaints Procedures”).

[48] The first level of this process involves the complaint being reviewed by the Executive Director of the Council to determine whether it warrants the opening of a file. No file is opened if the complaint is clearly irrational or an obvious abuse of the complaints process. If a file is opened, the complaint progresses to the second level.

[49] At the second level, the complaint is referred to the Chairperson or Vice-Chairperson of the Canadian Judicial Council’s Judicial Conduct Committee. Either of these individuals may dispose of a complaint summarily if it is outside the mandate of the Council, where, for example, a complaint seeks a review of a judge's decision rather than a judge's conduct. A complaint may also be summarily dismissed if it is trivial, vexatious, made for an improper purpose, manifestly without substance, or does not warrant further consideration.

[50] Chief Justice Scott’s decision was made at this second level.

[51] Where a complaint is not dismissed summarily, the Chairperson may seek additional information from the complainant, the judge or the judge's chief justice. The complaint may then be dismissed, may be resolved on the basis of remedial measures, or may be referred to a panel of three or five judges for further review.

[52] If the panel considers the complaint serious enough to warrant an inquiry, the panel may recommend to the Canadian Judicial Council that an Inquiry Committee be established. If the Council is of the view that an inquiry is warranted, an Inquiry Committee will be struck to examine the complaint.

[53] With this understanding of the complaints process, I turn now to consider Ms. Akladyous' arguments.

Chief Justice Scott's Findings of Fact

[54] Ms. Akladyous takes issue with Chief Justice Scott's finding that it is common practice for counsel to prepare a draft judgment for the Court. As I understand her submissions in this regard, this finding is patently unreasonable as it is the judge, and not the lawyer for a party, who has to make the decision.

[55] I do not accept Ms. Akladyous' argument.

[56] I agree with Chief Justice Scott that Ms. Akladyous has misunderstood the process. The decision dismissing her application for judicial review in the Manitoba Court of Queen's bench was made by the judge presiding over that judicial review hearing. The judge's reasons for that decision were delivered orally by the judge at the conclusion of the hearing - months before counsel for the Association wrote the letter enclosing the draft judgment.

[57] The taking out of the formal judgment is a separate procedural step, which involves reducing the operative portions of the judge's decision to a formal written judgment. It is not uncommon for a judge to ask one of the lawyers to draft a judgment that reflects the decision that the judge has already made. At the end of the day, however, it is the judge - not the lawyers - who decides on the precise wording of the judgment, in order that the judgment best reflects the decision that the judge has made.

[58] Ms. Akladyous also takes issue with Chief Justice Scott's finding that the reference to "the pocket" in the letter from counsel for the Association was a reference to the file folder in which court papers are held in court offices. In this regard, Ms. Akladyous asserts that "The copy of the pocket is the copy of the cheque". Ms. Akladyous provided no evidence, however, to support her allegation, and has not persuaded me that Chief Justice Scott's finding in this regard was patently unreasonable.

[59] Ms. Akladyous further takes issue with Chief Justice Scott's finding that the oral reasons delivered by the presiding judge on June 24, 2003, as they were later transcribed, reflect the presiding judge's decision. As I understand Ms. Akladyous' position in this regard, she is alleging that the transcript of the hearing has been tampered with, as the transcript does not include the arguments advanced by counsel during the course of the hearing.

[60] Once again, however, Ms. Akladyous has provided no evidence to support this allegation. Nor does she suggest that the decision reflected in the transcribed portion of the hearing was not an accurate recording of the decision actually rendered by the presiding judge.

Chief Justice Scott's Involvement in a Case Involving a Manitoba Judge

[61] I will deal next with Ms. Akladyous' contention that as a sitting Manitoba judge, Chief Justice Scott should not have been involved in a complaint with respect to a judge from his own province, and that his involvement in this case was contrary to "Judicial Council law".

[62] Ms. Akladyous has not explained what she means by "Judicial Council law". However, I note that subsection 3.2 of the Council's "Complaints Procedures" provides that:

The Executive Director shall refer a file to either the Chairperson or a Vice-Chairperson of the Judicial Conduct Committee in accordance with the directions of the Chairperson of the Committee. **The Chairperson or a Vice-Chairperson shall not deal with a file involving a judge of his or her court.** [emphasis added]

[63] Ms. Akladyous' objection is based on the fact that Chief Justice Scott and the judge whose conduct is in issue are from the same province. She has, however, provided no evidence that Chief Justice Scott is a member of the same court as the judge who is the subject matter of Ms. Akladyous' complaint – namely the Manitoba Court of Queen's Bench.

[64] Indeed, if I were to take judicial notice of the matter, I would find that Chief Justice Scott is the Chief Justice of the Manitoba Court of Appeal.

The Allegations of Bias and Corruption on the Part of Chief Justice Scott

[65] This then leaves Ms. Akladyous' allegation that Chief Justice Scott decided as he did, either in an effort to "cover" for his fellow Manitoba judge, or because he himself had accepted a bribe.

[66] A claim that a judicial officer has accepted a bribe is an extraordinarily serious allegation. In this regard, I would simply say that Ms. Akladyous has provided not a single shred of evidence to support her claim that Chief Justice Scott may have taken a bribe.

[67] Nor has she provided any evidence whatsoever to show that Chief Justice Scott was attempting to cover up for a colleague.

[68] Contrary to what Ms. Akladyous seems to believe, the fact that a judge may not accept her arguments is not, by itself, evidence of either bias or of corruption on the part of the judge.

Conclusion

[69] For these reasons, the application for judicial review is dismissed.

Costs

[70] The respondent seeks costs against Ms. Akladyous. I see no reason why costs should not follow the event.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. This application for judicial review is dismissed, with costs; and
2. The style of cause is amended to substitute the Attorney General of Canada as the respondent in place of the Canadian Judicial Council.

“Anne Mactavish”

Judge

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: T-1917-06

STYLE OF CAUSE: LORI AKLADYOUS v.
CANADIAN JUDICIAL COUNCIL

PLACE OF HEARING: Edmonton, Alberta

DATE OF HEARING: January 9, 2008

**REASONS FOR JUDGMENT
AND JUDGMENT:** Mactavish, J.

DATED: January 15, 2008

APPEARANCES:

No one appearing FOR THE APPLICANT

Mr. Bruce Hughson FOR THE RESPONDENT

SOLICITORS OF RECORD:

None FOR THE APPLICANT

JOHN H. SIMS, Q.C. FOR THE RESPONDENT
Deputy Attorney General of Canada