

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20120329

Docket: A-420-11

Citation: 2012 FCA 104

Present: NOËL J.A.

BETWEEN:

SAMEH BOSHRA

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on March 29, 2012.

REASONS FOR ORDER BY:

NOËL J.A.

Federal Court
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REASONS FOR ORDER

NOËL J.A.

[1] The appellant has brought an appeal from a decision of the Federal Court dismissing his judicial review application from a decision of the Canadian Human Rights Commission (the Commission) not to investigate his complaints.

[2] In conjunction with this appeal, the appellant moves for leave to file new evidence pursuant to Rule 351 of the *Federal Courts Rules*, S.O.R./98-106 (the Rules), an order requiring the Commission to disclose documents pursuant to Rule 225, and leave to amend his notice of appeal to include a new ground, pursuant to Rules 75 and 76.

[3] The new evidence sought to be produced by the appellant consists of documents obtained through an Access to Information and Privacy request (ATIP) directed at information under the control of the Commission. The documents in question bear numerous redactions which the appellant proposes to address by the further order which he seeks pursuant to Rule 225. According to the appellant, the documents which he obtained support his contention that he did not get a fair hearing.

[4] Leave to file new evidence on appeal is only granted in exceptional circumstances. In order to succeed, the appellant had to show that the proposed evidence would not have been discoverable, with due diligence, prior to the hearing before the Federal Court, and that this evidence is “material” in the sense that it could reasonably be expected to affect the outcome of his judicial review application before that Court (*BC Tel v. Seabird Island Indian Band (C.A.)*, 2002 FCA 288, [2003] 1 F.C. 475).

[5] Addressing the first branch of this test, the appellant initiated his ATIP request on November 21, 2011, that is after his judicial review application was dismissed. He has not explained why he did not seek this information earlier on, other than to say that he did not expect that his judicial review application would be dismissed. This falls substantially short of showing that the proposed new evidence was not discoverable with due diligence.

[6] By the second order which he seeks, the appellant, in effect, asks that the Commission be ordered to produce all documents in its possession relevant to the assessment and investigation

procedures. In this respect, I simply note that Rule 225 on which the appellant relies has no application in the context of an appeal.

[7] If the appellant was of the view that the record produced by the Commission before the Federal Court was incomplete or had doubts about its adequacy, it was incumbent upon him to take the appropriate measures, and seek an adjournment if necessary, prior to the hearing on the merits before the Federal Court. It is too late now for the appellant to recast his case on appeal in the manner that he proposes.

[8] Finally, the appellant by his motion to amend the notice of appeal merely seeks to allege that the Federal Court judge did not apply the appropriate standard of review. The appellant does not need to amend his notice of appeal in order to argue this point in support of his appeal.

[9] The motion brought by the appellant is accordingly dismissed, but without costs given that the appellant is self-represented and that his motion was brought in good faith.

“Marc Noël”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-420-11

STYLE OF CAUSE: Sameh Boshra and Attorney General
of Canada

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY: Noël J.A.

DATED: March 29, 2012

WRITTEN REPRESENTATIONS BY:

Sameh Boshra

FOR THE APPELLANT
(self-represented)

Korinda McLaine

FOR THE RESPONDENT

SOLICITORS OF RECORD:

N/A

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(self-represented)

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FOR THE RESPONDENT