

Federal Court of Appeal



Cour d'appel fédérale

Date: 20191112

Docket: A-257-19

Citation: 2019 FCA 282

**CORUM: RENNIE J.A.
RIVOALEN J.A.
MACTAVISH J.A.**

BETWEEN:

ALEX MARTINEZ

Appellant

and

COMMUNICATIONS SECURITY ESTABLISHMENT

Respondent

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, on November 12, 2019.

REASONS FOR ORDER BY:

RENNIE J.A.

CONCURRED IN BY:

**RIVOALEN J.A.
MACTAVISH J.A.**

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REASONS FOR ORDER

RENNIE J.A.

[1] The respondent moves for an order to quash this appeal pursuant to subsection 52(a) of the *Federal Courts Act*, R.S.C. 1985, c. F-7 and under the inherent jurisdiction of the Federal Court of Appeal to control its own process and prevent abuse of that process, on the grounds that:

- a) The Notice of Appeal fails to disclose a reasonable or specific ground of appeal, and as such, it provides no legal basis for a valid appeal;
- b) The Notice of Appeal seeks relief that is outside the jurisdiction of the Court;
and
- c) It is plain and obvious that the appeal cannot succeed.

[2] The respondent also contends that the manifest lack of merit in the appeal renders it invalid on its face and brings it within the character of a vexatious proceeding or a proceeding that is otherwise an abuse of the process of the Court.

[3] By way of background, in February 2017, the appellant made a request under the *Privacy Act*, R.S.C. 1985, c. P-21, for access to personal information in three information banks. The Communications Security Establishment (CSE), relying on various provisions of the Act which authorize a refusal of disclosure, refused.

[4] In October 2017, the appellant sought judicial review pursuant to section 41 of the *Privacy Act* of CSE's decision.

[5] On judicial review, the Federal Court judge (Roussel, J.) concluded that CSE did not err in its response to the appellant that no personal information relating to him was found in the relevant information banks. By Order rendered on November 23, 2018, Justice Roussel dismissed the application for judicial review filed by the appellant in Court file no. T-1616-17.

[6] On July 5, 2019, the appellant filed a Notice of Appeal to the Federal Court of Appeal, seeking the following relief:

- a) That the decision of the lower court be rescinded and that the documents requested be released;
- b) An order and injunction be issued to stop “all investigation, suppression, observation and monitoring across Canada and internationally;” and
- c) Costs and damages of 15 million dollars.

[7] The Notice of Appeal also includes three “whereas” clauses, which assert “embezzlement”, “misconduct”, and “criminal deviance” on the part of CSE, the purpose of which was to cause bodily harm or death of the appellant. The clauses argue that the purpose of the refusals was to frustrate his “internal investigations” of certain national and municipal police forces. The preambles assert, in a manner that is not clear, that former prime ministers were also engaged in “the case”. Which “case” the appellant is referring to is not clear.

[8] This Court, constituted under section 101 of the *Constitution Act, 1867*, (UK), 30 & 31 Vict, c. 3, s. 91, has all the power and authority inherent to its status as a court. Those powers include the jurisdiction to make all orders necessary to control its processes and functions as a court (*Ontario v. Criminal Lawyers’ Association of Ontario*, 2013 SCC 43, [2013] 3 S.C.R. 3; *Janssen Inc. v. Abbvie Corporation*, 2014 FCA 176; *R. v. Cunningham*, 2010 SCC 10, [2010] 1 S.C.R. 331).

[9] Under this source of jurisdiction, the Federal Court of Appeal may quash or summarily dismiss an appeal where there is such a manifest lack of substance that it is clearly bound to fail, or takes on the character of a vexatious proceeding and constitutes an abuse of process.

[10] Abuse of process is a flexible doctrine, based on the idea that a court has an inherent discretion to terminate litigation at the preliminary stage in order to prevent abusive proceedings that bring the administration of justice into disrepute (*Timm v. Canada*, 2014 FCA 8). In *Sellathurai v. Canada (Public Safety and Emergency Preparedness)*, 2011 FCA 1 at paragraph 7, Justice Mainville echoed the words of the Federal Court of Appeal in *Yukon Conservation Society v. National Energy Board*, [1979] 2 F.C. 14 (F.C.A.), in which Justice Le Dain stated the standard as follows:

Courts of Appeal will exercise the power of quashing or summarily dismissing an appeal where there is such manifest lack of substance in the appeal as to bring it within the character of vexatious proceedings, or where by a change of circumstances the issue between the parties or the ‘substantum of the litigation’ has disappeared, so that a judgment of the court would not serve any practical purpose, except as to costs.

[11] This appeal manifestly lacks substance. The Notice of Appeal does not disclose any argument, fact, or legal basis for appeal. It does not define any clear legal issues or give fair notice to the respondent of the case that has to be met. It violates Rule 337(d) of the *Federal Courts Rules* as it fails to contain a complete and concise statement of grounds. It is also self-evident that the request for damages, a remedy not open to a court sitting in judicial review, cannot be granted by an appellate court (*CBC/Radio-Canada v. Canada (Commissioner of Official Languages)*, 2015 FCA 251, [2016] 3 F.C.R. 55). It makes scandalous and vexatious allegations, none of which have any foundation in the record.

[12] I therefore conclude that this Notice of Appeal is an abuse of the Court's process, is vexatious and doomed to fail, and should be dismissed with costs. The appellant's motion of September 13, 2019 will consequently be dismissed, as the Court had the benefit of reviewing all of the submissions filed by the parties.

“Donald J. Rennie”

J.A.

“I agree
Marianne Rivoalen, J.A.”

“I agree
Anne L. Mactavish, J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:

A-257-19

STYLE OF CAUSE:

ALEX MARTINEZ v.
COMMUNICATIONS SECURITY
ESTABLISHMENT

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF THE PARTIES

REASONS FOR ORDER BY:

RENNIE J.A.

CONCURRED IN BY:

RIVOALEN J.A.
MACTAVISH J.A.

DATED:

NOVEMBER 12, 2019

WRITTEN REPRESENTATIONS BY:

Alex Martinez

ON HIS OWN BEHALF

Marieke Bouchard
Mélyne Félix

FOR THE RESPONDENT,
Communications Security
Establishment

SOLICITORS OF RECORD:

Nathalie G. Drouin
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FOR THE RESPONDENT,
Communications Security
Establishment