

Federal Court



Cour fédérale

Date: 20191011

Docket: T-314-19

Citation: 2019 FC 1290

Ottawa, Ontario, October 11, 2019

PRESENT: The Honourable Mr. Justice Lafrenière

BETWEEN:

**SATINDER DHILLON AND EMMET PIERCE
IN HIS CAPACITY AS CHIEF AGENT**

Applicants

and

**THE CHIEF ELECTORAL OFFICER,
MAXIME BERNIER, CHRISTIAN ROY IN
HIS CAPACITY AS CHIEF AGENT, AND
THE PEOPLE'S PARTY OF CANADA**

Respondents

ORDER AND REASONS

[1] On February 15, 2019, the Applicants commenced the underlying application for judicial review of the decision made by the Chief Electoral Officer [the CEO] dated January 17, 2019 to register the People's Party of Canada, under leader Maxime Bernier, as a Registered Party under section 390 of the *Canada Elections Act*, SC 2000, c 9 [CEA].

[2] In the Notice of Application, the Applicants allege that the CEO did not fulfill his statutory duties under the CEA in relation to the Applicants by failing to ensure “the accuracy in the application for registration as made by Bernier’s Party” (section 385) or, alternatively, by failing “to reassess the eligibility of Bernier’s Party with consideration of Applicant’s intellectual property” (subparagraph 387(a)(i)).

[3] The CEO has moved for an order striking the Notice of Application on the grounds that the Applicants lack standing to bring the application or, alternatively, that the proceeding is time-barred. Mr. Bernier, Christian Roy in his capacity as Chief Agent, and the People’s Party of Canada [jointly, the PPC] followed suit with a similar motion.

[4] For the following reasons, I conclude that the proceeding should be dismissed.

I. Background

[5] On October 4, 2018, the CEO received an application from Mr. Bernier for registration of a political party to be named the “People’s Party of Canada” and “Parti populaire du Canada.”

[6] On November 13, 2018, the Elections Canada Political Financing Directorate advised the CEO that Mr. Bernier’s application included all the elements required by the CEA. They also advised the CEO that the proposed party’s name, short-form name and logo would likely not be confused with another registered or eligible party, in accordance with subparagraph 387(a)(i) of the CEA.

[7] On November 14, 2018, Elections Canada advised Mr. Bernier that the CEO had determined the People's Party of Canada was eligible to be registered pursuant to section 387 of the CEA. Elections Canada also advised that the People's Party of Canada would be registered as a party if it had a candidate whose nomination was confirmed for an election pursuant to subsection 390(1) of the CEA.

[8] On November 15, 2018, the People's Party of Canada's eligibility was communicated to the Applicants, who had previously applied for the registration of a political party with the same name.

[9] On January 17, 2019, Elections Canada confirmed the nomination of the People's Party of Canada's candidate in Burnaby South (for a by-election). The CEO registered the People's Party of Canada as a political party that same day.

II. Procedural History

[10] As noted earlier, the Applicants commenced the underlying proceeding by filing a Notice of Application on February 15, 2019. The CEO transmitted a certified copy of the tribunal record pursuant to Rule 318 of the *Federal Courts Rules*, SOR/98-106 on March 12, 2018, objecting at the same time that the Applicants' request was overly broad and lacked specificity.

[11] After serving an affidavit in response to the application, the CEO brought the present motion on May 13, 2019, made returnable at a special sitting to be fixed by the Court. The PPC filed a separate motion on July 4, 2019.

[12] On July 15, 2019, Prothonotary Mandy Aylen ordered that the proceeding be specially managed and that the motions to dismiss be determined by the case management judge. She also ordered the Applicants to provide the Court and the Respondents with a status update on their efforts to retain counsel by July 19, 2019.

[13] On July 18, 2019, I was assigned to case manage the proceeding. On July 24, 2019, the Applicants were directed to serve and file a Notice of Appointment of Solicitor no later than August 8, 2019 or otherwise provide a proposed deadline in August for service and filing of their responding motion records. The Applicants did not comply with the Court's directions.

[14] On August 9, 2019, I ordered that the Respondents' motions be referred immediately to the Court for disposition in writing in the event the Applicants failed to file responding material by August 12, 2019.

[15] On August 11, 2019, the Applicant, Emmet Pierce, submitted a letter requesting an extension of time to respond to the Respondents' motions to strike. Mr. Pierce advised that the Applicants had retained counsel, Rahma Saidi, and that Ms. Saidi would be taking conduct of the matter.

[16] The Registry subsequently learned from Ms. Saidi that she had not been retained to act on behalf of the Applicants in this particular matter. The Respondents' motions were accordingly referred to the Court for disposition in writing.

[17] Before the motions could be determined, Ms. Saidi filed a Notice of Appointment of Solicitor. As a result, a case management conference was scheduled for this matter and two related matters involving the same parties.

[18] After hearing counsel for the parties on September 9, 2019, I granted the Applicants one last extension of time to September 16, 2019 to serve and file their responding motion material.

[19] On September 16, 2019, the Applicants tendered a two-page document entitled “Reply”. The document was accepted for filing, to be treated as the Applicants’ response to the Respondents’ motions.

[20] On September 18, 2019, the CEO made an informal request for leave to amend his Notice of Motion to seek costs in the amount of \$2,000.00. In the absence of any objection on the part of the Applicants, leave to amend is granted.

A. *The Respondents’ Motions and the Applicant’s Reply*

[21] The CEO submits that the Applicants lack standing to challenge the decision under review dated January 17, 2019 because they are not directly affected by it. Moreover, they have not put forward any basis for a grant of public interest standing. The CEO argues, in the alternative, that the decision which affected the Applicants’ rights was the decision of the CEO which determined Mr. Bernier’s party was eligible to be registered and was communicated to the Applicants by letter dated November 15, 2018. The CEO submits that judicial review of the earlier decision was not sought within the 30-day time limit provided by subsection 18.1(2) of

the *Federal Courts Act*, RSC 1985, c F-7 and that the Applicants' ability to challenge the decision is therefore time-barred.

[22] The PPC joins the CEO in his request to dismiss the application on the grounds the Applicants lack standing and the matter is time-barred. The PPC reiterates the CEO's arguments that the Applicants had no procedural rights because the CEA did not require the CEO to consult the Applicants or consider their asserted intellectual property rights when assessing Mr. Bernier's application. Even if intellectual property rights provide some standing, the PPC adds that the Applicants' asserted intellectual property rights are untenable as determined by this Court in *Dhillon v Bernier*, 2019 FC 573.

[23] In their brief response, the Applicants submit that they "believe they have standing to proceed with the matter", that "there is a probability for success in their application based on the current status of their trade mark application" and that "the admissibility the Respondent party's registration must be challenged". They do not address in a substantive manner the issues of the justiciability of the impugned decision, their standing to bring the application or the timeliness of the application.

III. Analysis

[24] The Court has jurisdiction to strike a Notice of Application by virtue of its plenary jurisdiction to restrain the misuse or abuse of court's processes: *Canada (National Revenue) v JP Morgan Asset Management (Canada) Inc*, 2013 FCA 250 at paras 47-48. However, the threshold for striking a Notice of Application is high; it must be so clearly improper as to be bereft of any

possibility of success. In other words, it must contain “an obvious, fatal flaw striking at the root of the Court’s power to entertain the application”.

[25] Generally, a plea of limitation is not a basis for striking an application and should appropriately be raised in defence and argued at the hearing of the application. That said, this Court has struck out applications commenced in excess of the limitation period where there were no arguable issues concerning the timing of the decision or its communication to the applicant. Such is the case here.

[26] The evidence before me clearly establishes that the eligibility decision that affected the Applicants’ rights was communicated to the Applicants in a letter from the CEO dated November 15, 2018. The Applicants did not seek judicial review of this decision.

[27] Subsection 390(1) of the CEA provides that: “An eligible party becomes a registered party if it has at least one candidate whose nomination has been confirmed for an election and its application to become registered was made at least 60 days before the issue of the writ [...]”. The alleged “decision” rendered on January 17, 2019 to register the People’s Party of Canada as a Registered Party was nothing more than a mechanical application of the law.

[28] By this application, the Applicants are essentially seeking judicial review of the CEO’s decision dated November 14, 2018. The time for doing so has passed and no extension of time has been requested. In the circumstances, I see no reason to allow this application to proceed to hearing, given that it is bereft of any possibility of success.

[29] In light of my conclusion above, it is not necessary to address the Respondents' other arguments.

IV. Costs

[30] The Respondents seek their costs. In my view, there is nothing in the circumstances which would cause a deviation from the normal rule that costs should follow the event.

ORDER IN T-314-19

THIS COURT ORDERS that:

1. The Respondent, the Chief Electoral Officer, is granted leave to amend his Notice of Motion to request costs.
2. The application for judicial review is dismissed.
3. The Respondent, the Chief Electoral Officer, is granted costs of his motion and the proceeding, hereby fixed in the amount of \$2,000.00, inclusive of disbursements and taxes, to be paid forthwith by the Applicants.
4. The Respondents, Maxime Bernier, Christian Roy in his capacity as Chief Agent, and the People's Party of Canada, are granted costs of their motion and the proceeding, hereby fixed in the amount of \$2,000.00, inclusive of disbursements and taxes, to be paid forthwith by the Applicants.

"Roger R. Lafrenière"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-314-19

STYLE OF CAUSE: SATINDER DHILLON AND EMMET PIERCE IN HIS
CAPACITY AS CHIEF AGENT v THE CHIEF
ELECTORAL OFFICER, MAXIME BERNIER,
CHRISTIAN ROY IN HIS CAPACITY AS CHIEF
AGENT, AND THE PEOPLE'S PARTY OF CANADA

MOTIONS IN WRITING CONSIDERED AT OTTAWA, ONTARIO

ORDER AND REASONS: LAFRENIÈRE J.

DATED: OCTOBER 11, 2019

WRITTEN REPRESENTATIONS BY:

Rahma Saidi FOR THE APPLICANTS

Erin Collins FOR THE RESPONDENT
James Plotkin CHIEF ELECTORAL OFFICER

Camille Aubin FOR THE RESPONDENTS
Catherine Thall Dubé MAXIME BERNIER
CHRISTIAN ROY IN HIS CAPACITY AS CHIEF
AGENT, AND THE PEOPLE'S PARTY OF CANADA

SOLICITORS OF RECORD:

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Ottawa, Ontario CHIEF ELECTORAL OFFICER

ROBIC, S.E.N.C.R.L.
Montréal (Québec)

FOR THE RESPONDENTS
MAXIME BERNIER
CHRISTIAN ROY IN HIS CAPACITY AS CHIEF
AGENT, AND THE PEOPLE'S PARTY OF CANADA