Federal Court of Appeal | Cour d'appel fédérale

Date: 20160909

Docket: A-498-15

Citation: 2016 FCA 226

CORAM: **STRATAS J.A.**
BOIVIN J.A.
DE MONTIGNY J.A.

BETWEEN:

SAHAR JAFFAL

Appellant

and

PAUL DAVIDSON and UNIVERSITIES CANADA

Respondents

Heard at Ottawa, Ontario, on September 7, 2016.

Judgment delivered at Ottawa, Ontario, on September 9, 2016.

REASONS FOR JUDGMENT BY: STRATAS J.A.

CONCURRED IN BY: BOIVIN J.A.
DE MONTIGNY J.A.

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REASONS FOR JUDGMENT

STRATAS J.A.

[1] In this appeal, the appellant asks this Court to set aside the Federal Court's order dated October 19, 2015 (*per* Roussel J.).

[2] The Federal Court ordered that the appellant's application for judicial review be struck out. It made its order in response to an interlocutory motion brought by the respondents. Its jurisdiction to strike out an application for judicial review on an interlocutory basis is founded

upon its plenary powers to regulate fundamental aspects of its practices and procedures: see *David Bull Laboratories (Canada) Inc. v. Pharmacia Inc. et al.*, [1995] 1 F.C. 588, 58 C.P.R. (3d) 209, as later explained and expounded upon in *Canada (National Revenue) v. J.P. Morgan Asset Management (Canada) Inc.*, 2013 FCA 250, [2014] 2 F.C.R. 557.

[3] In striking out the application for judicial review, the Federal Court found, among other things, that there was no reviewable "decision" within the meaning of the *Federal Courts Act*, R.S.C. 1985, c. F-7 affecting the appellant's legal or practical interests (see, *e.g.*, *Air Canada v. Toronto Port Authority*, 2011 FCA 347, [2013] 3 F.C.R. 605), the remedies sought in this particular application were not within the power of the Court to grant, and it was plain and obvious that the application could not succeed.

[4] I substantially agree with the analysis of the Federal Court on these points. Accordingly, I conclude that there is no ground to interfere with the order of the Federal Court.

[5] For completeness, I note that the Federal Court also found that the respondent Universities Canada was not a "federal board, commission or other tribunal" within the meaning of section 2 of the *Federal Courts Act*, R.S.C. 1985, c. F-7. I agree with this insofar as the acts of Universities Canada impugned by the appellant in this particular case were not performed by or under an Act of Parliament or under an order of the prerogative. The Federal Court's holding should not be taken as a blanket statement that Universities Canada can never be a "federal board, commission or other tribunal."

[6] The appellant alleges bias on the part of the Federal Court. There is nothing in the record capable of supporting this allegation.

[7] The respondents seek enhanced costs calculated in accordance with column V of Tariff B of the *Federal Courts Rules*, SOR/98-106, as amended. Enhanced costs are sometimes awarded when a party alleges judicial bias with no evidence in support. Indeed, alleging bias is "a serious step that should not be undertaken lightly": *R. v. S. (R.D.)*, [1997] 3 S.C.R. 484, 151 D.L.R. (4th) 193 at para. 113. But in these particular circumstances, I am not persuaded that the appellant's conduct warrants the sanction of enhanced costs. Therefore, I would award the respondents costs on the usual scale (column III).

[8] Before concluding, I wish to address one irregularity. An order of the Chief Justice dated June 30, 2016 set the time, location and duration of the appeal hearing and this was sent to the appellant. But the appellant did not attend the hearing. The Court waited for one-half hour after the scheduled start of the hearing in case the appellant was late. The Court then opened the hearing and asked the usher to verify that the appellant was not waiting outside the courtroom. The usher reported that the appellant was indeed nowhere to be found. The Court then informed the respondents that it was inclined to decide the appeal solely on the basis of the written materials filed by the parties, with one small exception. The exception is that the Court invited the respondents to make submissions concerning the request in their memorandum of fact and law for enhanced costs. Following very brief submissions by the respondents on that one issue, the Court announced it would be reserving its judgment.

[9] The Court wishes to inform the parties that in deciding this appeal, the Court considered most carefully the submissions made in their memoranda of fact and law, the evidence in the appeal book, and the authorities they submitted to the Court.

[10] For the foregoing reasons, I would dismiss the appeal with costs.

"David Stratas"

J.A.

"I agree
Richard Boivin J.A."

"I agree
Yves de Montigny J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKETS:	A-498-15
APPEAL FROM THE ORDER DATED OCTOBER 19, 2015 OF THE HONOURABLE JUSTICE ROUSSEL, FILE T-909-15	
STYLE OF CAUSE:	SAHAR JAFFAL v. PAUL DAVIDSON AND UNIVERSITIES CANADA
PLACE OF HEARING:	OTTAWA, ONTARIO
DATE OF HEARING:	SEPTEMBER 7, 2016
REASONS FOR JUDGMENT BY:	STRATAS J.A.
CONCURRED IN BY:	BOIVIN J.A. DE MONTIGNY J.A.
DATED:	SEPTEMBER 9, 2016

APPEARANCES:

R. Aaron Rubinoff Brett Hodgins	FOR THE RESPONDENTS

SOLICITORS OF RECORD:

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