

Federal Court of Appeal



Cour d'appel fédérale

[ENGLISH TRANSLATION]

Date: 20161026

Docket: A-23-16

Citation: 2016 FCA 263

**CORAM: NADON J.A.
TRUDEL J.A.
SCOTT J.A.**

BETWEEN:

RICHARD TIMM

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Montréal, Quebec, on October 26, 2016.

Judgment delivered from the Bench at Montréal, Quebec, on October 26, 2016.

**REASONS FOR JUDGMENT OF THE
COURT BY:**

NADON J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Montréal, Quebec, on October 26, 2016)

NADON J.A.

[1] This is an appeal from a decision by the Federal Court dated December 16, 2015 (2015 FC 1391), granting a motion for summary judgment to dismiss the appellant's action for damages against the federal Crown.

[2] The issue raised in this appeal is whether the Federal Court judge erred in concluding that there was no genuine issue for trial.

[3] The judge concluded that there was no such issue primarily on the grounds that the decision of Deputy Commissioner Kelley constituted the basis of the appellant's action. In particular, the judge stated that the Deputy Commissioner's decision in no way supported the appellant's allegations of fault. The judge stated further that she was satisfied that the appellant had not suffered any damage in connection with the alleged facts.

[4] In our opinion, the judge erred in allowing the motion for summary judgment.

[5] Given that the appellant's allegations and submissions go well beyond the conclusions drawn by the Deputy Commissioner, the judge erred in limiting her analysis to the appellant's allegations and representations to the effect that the Deputy Commissioner's decision was sufficient to establish the civil fault of the federal Crown. This error is a reviewable error (*Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235).

[6] The issue before the Federal Court was not whether the appellant had sufficient or convincing evidence to establish fault; rather, it was whether a genuine issue for trial existed. After reviewing the amended statement and the evidence on file, we are of the opinion that there is no doubt as to the existence of a genuine issue for trial, *i.e.* whether the alleged words and conduct of certain members of the correctional service constitute a civil fault giving rise to the liability of the federal Crown.

[7] In our opinion, this case is not so dubious that it should not be heard on the merits.

[8] For these reasons, the appeal is allowed with costs, the judgment of the Federal Court is reversed and, delivering the judgment that the Federal Court should have delivered, the motion for summary judgment is dismissed with costs.

“M. Nadon”

J.A.

Certified true translation François Brunet, Revisor
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FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET: A-23-16

**(APPEAL FROM A FEDERAL COURT JUDGMENT DATED DECEMBER 16, 2015,
DOCKET NO. T-1445-13.)**

STYLE OF CAUSE: RICHARD TIMM v. HER
MAJESTY THE QUEEN

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: OCTOBER 26, 2016

REASONS FOR JUDGMENT OF THE COURT BY: NADON J.A.
TRUDEL J.A.
SCOTT J.A.

DELIVERED FROM THE BENCH BY: NADON J.A.

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