

Federal Court of Appeal



Cour d'appel fédérale

Date: 20161024

Docket: A-464-15

Citation: 2016 FCA 261

**CORAM: DAWSON J.A.
GLEASON J.A.
WOODS J.A.**

BETWEEN:

BALRAJ SHOAN

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Toronto, Ontario, on October 24, 2016.

Judgment delivered from the Bench at Toronto, Ontario, on October 24, 2016.

REASONS FOR JUDGMENT OF THE COURT BY:

DAWSON J.A.

Federal Court of Appeal



Cour d'appel fédérale

Date: 20161024

Docket: A-464-15

Citation: 2016 FCA 261

**CORAM: DAWSON J.A.
GLEASON J.A.
WOODS J.A.**

BETWEEN:

BALRAJ SHOAN

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Toronto, Ontario, on October 24, 2016).

DAWSON J.A.

[1] The applicant challenges three decisions made by the Chairperson of the Canadian Radio-television and Telecommunications Commission on September 23, 2015. In the impugned decisions the Chairperson established two panels to hear matters under the *Telecommunications*

Act, S.C. 1993, c. 38 and one panel to hear an application under the *Broadcasting Act*, S.C. 1991,

c. 11. The applicant asserts that:

- i. these decisions raise true questions of jurisdiction and so are reviewable on the standard of correctness; and,
- ii. the Chairperson does not have the authority to establish panels to hear these matters.

[2] We disagree.

[3] As noted by the Supreme Court of Canada in *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61, [2011] 3 S.C.R. 654 at paragraph 34, in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, the Supreme Court departed from an extended definition of jurisdiction because, in a sense, anything a tribunal does that involves the interpretation of its home statute involves the determination of whether it has the authority or jurisdiction to do what is being challenged on judicial review.

[4] Thus, this Court has held that the Commission is presumed to have the required expertise to resolve questions such as whether it is authorized to promulgate a Code with retrospective effect (*Bell Canada v. Amtelecom Limited Partnership*, 2015 FCA 126, [2016] 1 F.C.R. 29, at paragraph 38).

[5] In our view, this principle applies equally to decisions of the Chairperson of the Commission. Thus, the decisions at issue are reviewable on the standard of reasonableness.

[6] With respect to the Chairperson's authority to establish panels, subsection 6(2) of the *Canadian Radio-television and Telecommunications Commission Act*, R.S.C. 1985, c. C-22 (CRTC Act) states that the Chairperson "is the chief executive officer of the Commission, has supervision over and direction of the work and staff of the Commission and shall preside at meetings of the Commission". Implicit in such a power is the "authority to assign cases and members to cases (particularly, but not exclusively, where the statute refers to the Chair as the Chief Executive Officer or as having the general management of the agency." (Robert Macaulay & James Sprague, *Practice and Procedure Before Administrative Tribunals* (Toronto: Thomas Reuters, 1988) (loose-leaf 2009-Rel. 7), ch. 4A at 51).

[7] This implicit authority is explicitly recognized in By-laws No. 9 and 26 of the Commission.

[8] By-law No. 9, authorized by section 12 of the CRTC Act, provides in article c that:

(c) the Telecommunications Committee is delegated the authority:

...

(iv) to dispose of all procedural matters to be dealt with by the Commission under the *Rules of Procedure* and to make all procedural determinations in relations to matters under the *Telecommunications Act* **except** those otherwise reserved to another standing committee or **a panel named by the Chair**.

...

(xviii) to dispose of all applications for the costs of an incidental to any proceeding before the Commission made pursuant to section 56 of the *Telecommunication Act* and sections 60 or 65 of the *Rules of Procedure* **except in cases where a panel has been appointed**.

(emphasis added)

[9] By-law No. 26, authorized by section 11 of the CRTC Act, provides in article c that:

(c) The Broadcasting Committee is delegated the authority to:

...

(vii) make all procedural determinations under the *Rules of Procedure* and pursuant to the *Broadcasting Act* except those otherwise reserved to another standing committee or a **panel named by the Chair**.

(emphasis added)

[10] It follows that the Chairperson was fully authorized to establish the three panels at issue so that this application will be dismissed with costs.

[11] The respondent seeks an award of costs on a substantial indemnity basis. We are not satisfied that an award of costs approaching an award on a solicitor client basis is warranted as such awards are generally confined to cases where a party's conduct may be said to be reprehensible or scandalous. In our view, the applicant's conduct does not rise to that level. This said, in our view this application is sufficiently lacking in merit to warrant an increased award of costs, which we fix in the amount of \$5,000 inclusive of all taxes and disbursements.

“Eleanor R. Dawson”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-464-15

STYLE OF CAUSE: BALRAJ SHOAN v.
ATTORNEY GENERAL OF
CANADA

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: OCTOBER 24, 2016

REASONS FOR JUDGMENT OF THE COURT BY: DAWSON J.A.
GLEASON J.A.
WOODS J.A.

DELIVERED FROM THE BENCH BY: DAWSON J.A.

APPEARANCES:

Craig Stehr FOR THE APPLICANT

Kathryn Hucal FOR THE RESPONDENT

SOLICITORS OF RECORD:

Nelligan O'Brien Payne LLP FOR THE APPLICANT
Barristers and Solicitors
Ottawa, Ontario

William F. Pentney FOR THE RESPONDENT
Deputy Attorney General of Canada
Toronto, Ontario