Federal Court of Appeal | Cour d'appel fédérale

Date: 20030618

Docket: A-551-01

Citation: 2003 FCA 276

CORAM: **DESJARDINS J.A.**
NADON J.A.
PELLETIER J.A.

BETWEEN:

JAY BASSILA

Applicant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Montréal, Quebec, on June 18, 2003.

Judgment delivered from the Bench at Montréal, Quebec, on June 18, 2003.

REASONS FOR JUDGMENT BY: PELLETIER J.A.

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REASONS FOR JUDGMENT
(Delivered from the Bench at Montréal, Quebec,
on June 18, 2003)

PELLETIER J.A.

[1] This is an application for judicial review of the decision of Judge Lamarre of the Tax Court of Canada dated August 24, 2001 in which she dismissed the applicant's appeals from the Minister's reassessment for the taxation years 1990 to 1993. The issue in the appeal is the deductibility of charitable donations claimed by the applicant with respect to payments to the Ordre Antonien Libanais des Maronites (the Order).

[2] The application is based upon two grounds. The applicant says that the trial Judge erred in accepting hearsay evidence to establish that the Order was involved in a fraudulent scheme with respect to the issuance of tax receipts for charitable donations. He also alleges that the trial Judge created a reasonable apprehension of bias by making certain comments and, as a result, the rules of natural justice require that a new trial be ordered.

[3] The trial Judge was governed by subsection 18.15(4) of the *Tax Court of Canada Act*, R.S.C 1985 c. T-2, which provides that, in informal proceedings before the Court, the technical rules of evidence do not apply. Notwithstanding this, the record indicates that the trial Judge was careful to indicate that certain statements to which objection was taken would not be considered as proof of the truth of the contents of the statements.

[4] Furthermore, the applicant sought and obtained an adjournment to review the material upon which the respondent intended to rely in order to establish the fraudulent scheme operated by the Order. When the trial of the matter resumed, he could have cross-examined the respondent's investigators as to their methods and conclusions but did not do so. Had he done so, any weaknesses in the evidence may well have been exposed and their effect attenuated.

[5] We find no error in the trial Judge's treatment of hearsay evidence.

[6] The applicant's second ground is based upon comments by the trial Judge to the effect

that “Je suis obligée de réécouter toute la preuve” and “Je vais accepter la preuve de la fraude” both of which are said to demonstrate that the trial Judge had a preconception as to the outcome. The applicant alleges that this raises a reasonable apprehension of bias.

[7] As to the first comment, when one reads it in context, it is clear that the trial Judge is referring to the respondent’s proposal that the evidence in chief of its witnesses go in by way of written report. When the applicant’s counsel objected, the trial Judge agreed to hear the evidence from the mouths of the witnesses. We do not take her comment to mean anything more than that the trial Judge acknowledged the applicant’s right to have the witnesses testify in person.

[8] As for the passage in which the trial Judge says that she “accepts” the proof of fraud, we believe that the words which follow immediately after the words relied upon by the applicant make her state of mind clear “Je vais accepter d’écouter la preuve sur la fraude”, which is exactly what she did.

[9] We are all agreed that there is nothing in the Record which would lead a reasonable bystander, fully informed of the circumstances, to conclude that there were reasonable grounds to believe that the trial Judge was biased.

[10] In any event, the law is clear that bias must be raised at the first opportunity. A party who believes that the presiding judge has created a reasonable apprehension of bias must make

that position known at the first opportunity. One cannot secretly nurse a reasonable apprehension of bias for the purpose of raising it in the event of an adverse result. On this point see *In re the jurisdiction of a Human rights tribunal*, [1986] 1 F.C. 103 (F.C.A.), where the following appears:

> However, even apart from this express waiver, AECL's whole course - of conduct before the Tribunal constituted an implied waiver of any assertion of a reasonable apprehension of bias on the part of the Tribunal. The only reasonable course of conduct for a party reasonably apprehensive of bias would be to allege a violation of natural justice at the earliest practicable opportunity. Here, AECL called witnesses, cross-examined the witnesses called by the Commission, made many submissions to the Tribunal, and took proceedings before both the Trial Division and this Court, all without challenge to the independence of the Commission. In short, it participated fully in the hearing, and must therefore be taken impliedly to have waived its right to object.

[11] For these reasons, the application for judicial review will be dismissed with costs.

J.D. Denis Pelletier

J.A.

FEDERAL COURT OF CANADA
APPEAL DIVISION

SOLICITORS OF RECORD

DOCKET: A-551-01

STYLE OF CAUSE: JAY BASSILA

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Respondent

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: June 18, 2003

REASONS FOR JUDGMENT OF THE COURT (DESJARDINS, NADON, PELLETIER, JJ.A.)

DELIVERED BY: PELLETIER J.A.

DATED: June 18, 2003

APPEARANCES:

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