

A-774-96

CORAM: STONE J.A.
DESJARDINS J.A.
McDONALD J.A.

B E T W E E N :

DAIRN OWEN SHANE

Appellant

- and -

HER MAJESTY THE QUEEN

Respondent

HEARD at Vancouver, British Columbia, Friday, October 3, 1997.

Judgment rendered from the Bench at Vancouver, British Columbia, on Friday,
October 3, 1997.

REASONS FOR JUDGMENT OF THE COURT:

STONE J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Vancouver, B.C., Friday, October 3, 1997)

STONE J.A.

This is an appeal from an order of the Trial Division of October 8, 1996, by which the appellant's Statement of Claim was struck pursuant to Rule 419 as disclosing no reasonable cause of action and as being frivolous and vexatious. A ground of appeal is that the appellant was denied natural justice below because he was not given the opportunity of making oral submissions in response to the submissions of the respondent.

In paragraph 10 of her Memorandum of Fact and Law, the respondent concedes:

10. The Respondent therefore submits that this appeal should be allowed without costs, that the Order of the motions judge dated October 8, 1996 should be quashed, and the matter referred back to the Federal Court Trial Division to be reheard by a different judge on the merits.

We agree that the appeal should be allowed but that in the circumstances the appellant should have his out-of-pocket disbursements in a fixed amount. It is evident that disbursements were outlaid by the appellant before the respondent made and communicated the above concession.

The appeal will therefore be allowed, the order of the Trial Division set aside and the motion referred to another judge of the Trial Division for hearing and disposition on the merits. The appellant shall have his out-of-pocket disbursements which are fixed at \$250, payable forthwith.

"A.J. STONE"

J.A.

FEDERAL COURT OF CANADA

Court No. A-774-96

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- and -

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REASONS FOR JUDGMENT
