

Date: 20080313

Docket: A-82-07

Citation: 2008 FCA 101

**CORAM: LÉTOURNEAU J.A.
NADON J.A.
SHARLOW J.A.**

BETWEEN:

ATTORNEY GENERAL OF CANADA

Appellant

and

FIONA JOHNSTONE

Respondent

Heard at Toronto, Ontario, on March 13, 2008.

Judgment delivered from the Bench at Toronto, Ontario, on March 13, 2008.

REASONS FOR JUDGMENT OF THE COURT BY:

SHARLOW J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Toronto, Ontario, on March 13, 2008)

SHARLOW J.A.

[1] This is an appeal from the decision of Justice Barnes allowing an application for judicial review of a decision of the Canadian Human Rights Commission made under paragraph 44(3)(b) of the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6, screening out Ms. Johnstone's complaint (2007 FC 36). We are all of the view that this appeal should be dismissed.

[2] The reasons given by the Commission for screening out the complaint indicate that the Commission adopted a legal test for *prima facie* discrimination that is apparently consistent with

Health Sciences Association of British Columbia v. Campbell River & North Island Transition Society, 2004 BCCA 260, but inconsistent with the subsequent decision of the Canadian Human Rights Tribunal in *Hoyt v. C.N.R.*, [2006] C.H.R.D. No. 33. We express no opinion on what the correct legal test is. We say only that the Commission's reasons raise a serious question as to what legal test the Commission actually applied in deciding as it did. In our view that is a valid basis for finding the decision of the Commission to be unreasonable, and justifies the order of Justice Barnes referring the matter back to the Commission for reconsideration.

[3] The appeal will be dismissed with costs.

“K. Sharlow”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-82-07

(AN APPEAL OF THE JUDGMENT OF THE HONOURABLE MR. JUSTICE BARNES, OF THE FEDERAL COURT, DATED JANUARY 16, 2007, IN FEDERAL COURT FILE NO. T-1523-05)

STYLE OF CAUSE: ATTORNEY GENERAL OF CANADA v. FIONA JOHNSTONE

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: March 13, 2008

REASONS FOR JUDGMENT OF THE COURT BY: (LÉTOURNEAU, NADON & SHARLOW JJ.A.)

DELIVERED FROM THE BENCH BY: SHARLOW J.A.

APPEARANCES:

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ANDREW RAVEN
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