

Federal Court of Appeal



Cour d'appel fédérale

Date: 20190225

Docket: A-137-18

Citation: 2019 FCA 37

**CORAM: GAUTHIER J.A.
STRATAS J.A.
RENNIE J.A.**

BETWEEN:

ELENA MAXIMOVA

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Toronto, Ontario, on February 25, 2019.
Judgment delivered from the Bench at Toronto, Ontario, on February 25, 2019.

REASONS FOR JUDGMENT OF THE COURT BY:

STRATAS J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on February 25, 2019).

STRATAS J.A.

[1] Ms. Maximova appeals from the judgment dated April 9, 2018 of the Federal Court (*per* Grammond J.): 2018 FC 376. The Federal Court dismissed her application for judicial review of a decision of the Canadian Human Rights Commission.

[2] The Commission dismissed a complaint Ms. Maximova made against the Canada Revenue Agency under the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6. She complained that the Agency discriminated against her on the ground of marital status. The Agency found that she was married, not separated, and so she had to repay certain benefits and credits she had earlier received. Relying on paragraph 41(1)(b) of the Act, the Commission decided not to deal with Ms. Maximova's complaint on the ground that it could be more appropriately dealt with by the Tax Court of Canada under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.).

[3] We see no grounds to interfere with the judgment of the Federal Court. We agree with its conclusion that the Commission's decision not to accept the complaint under paragraph 41(1)(b) of the *Canadian Human Rights Act* is reasonable within the meaning of *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at para. 47. We also agree with its conclusion that the Commission did not breach any obligations of procedural fairness. We substantially agree with its reasoning on these points.

[4] The Federal Court went on to agree (at paras. 23-32) with certain observations by the Commission's investigator that there was no discrimination. But the Commission did not rule on the merits of the discrimination complaint. So this issue was not before the Federal Court on judicial review. Under this statutory framework, the Commission and the Tribunal are the merits-deciders on issues of discrimination, not the reviewing court: *Association of Universities and Colleges of Canada v. Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22, 428 N.R. 297 at paras. 17-20. The Federal Court should not have discussed the merits of the discrimination complaint.

[5] We suspect that the Federal Court went into the merits of the discrimination issue in order to encourage Ms. Maximova not to pursue fruitless litigation. We certainly share that sentiment. Courts and tribunals cannot always address conduct that causes injury, distress and upset. They can only do what the law permits. Here, the Commission relied on a proper legal basis, paragraph 41(1)(b) of the *Canadian Human Rights Act*, to dismiss Ms. Maximova's complaint. Under the law that binds us, we cannot interfere with that decision.

[6] The Federal Court declined to award costs owing to Ms. Maximova's circumstances. In this Court, Mr. Edwards for the respondent fairly does not insist upon them. We shall exercise our costs discretion in the same way as the Federal Court.

[7] Ms. Maximova has been put through an upsetting, multi-year, administrative run-around at the hands of the Canada Revenue Agency over benefits her family needed and to which, in the end, she was entitled. Although this appeal and the underlying judicial review do not concern the Agency's conduct, we wish to observe that on this record it appears clear that there has been a marked departure from standards of administrative acceptability.

[8] We will dismiss the appeal. We will make no costs order.

"David Stratas"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-137-18

**APPEAL FROM A JUDGMENT OF THE HONOURABLE MR. JUSTICE GRAMMOND
DATED APRIL 9, 2018, DOCKET NO. T-309-16**

STYLE OF CAUSE: ELENA MAXIMOVA v.
ATTORNEY GENERAL OF
CANADA

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: FEBRUARY 25, 2019

REASONS FOR JUDGMENT OF THE COURT BY: GAUTHIER J.A.
STRATAS J.A.
RENNIE J.A.

DELIVERED FROM THE BENCH BY: STRATAS J.A.

APPEARANCES:

Elena Maximova ON HER OWN BEHALF

Derek Edwards FOR THE RESPONDENT

SOLICITORS OF RECORD:

Nathalie G. Drouin FOR THE RESPONDENT
Deputy Attorney General of Canada