

Date: 20091006

Docket: A-209-08

Citation: 2009 FCA 286

**CORAM: SEXTON J.A.  
SHARLOW J.A.  
RYER J.A.**

**BETWEEN:**

**JOHN FREDERICK CARTEN and  
KAREN AUDREY GIBBS**

**Appellants**

**and**

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA,  
JEAN CHRÉTIEN, EDDIE GOLDENBERG, SERGIO MARCHI,  
LLOYD AXWORTHY, PIERRE PETTIGREW, JOHN MANLEY,  
BILL GRAHAM, JIM PETERSON, PAUL MARTIN, DAVID EMERSON,  
TIM MURPHY, HER MAJESTY THE QUEEN IN RIGHT OF BRITISH COLUMBIA,  
MICHAEL HARCOURT, GLEN CLARK, UJJAL DOSANJH,  
GORDON CAMPBELL, ATTORNEY GENERAL FOR CANADA,  
ALLAN ROCK, ANNE McLELLAN, MARTIN CAUCHON, IRWIN COTLER,  
ATTORNEY GENERAL FOR BRITISH COLUMBIA,  
COLIN GABLEMAN, GEOFF PLANT, WALLY OPPAL,  
CANADIAN JUDICIAL COUNCIL, JEANNIE THOMAS, NORMAN SABOURIN,  
ANTONIO LAMER, DECEASED, BEVERLEY McLACHLIN,  
ALLAN McEACHERN, DECEASED, PATRICK DOHM, DONALD BRENNER,  
BRYAN WILLIAMS, JEFFERY OLIPHANT, JOHN MORDEN, JOSEPH DAIGLE,  
THEMIS PROGRAM MANAGEMENT AND CONSULTING LTD.,  
THE LAW SOCIETY OF BRITISH COLUMBIA, THE LAW SOCIETY OF ALBERTA,  
DAVID VICKERS, ROBERT EDWARDS, DECEASED, JOHN BOUCK,  
JAMES SHABBITS, HOWARD SKIPP, CRYIL ROSS LANDER, RALPH HUTCHINSON,  
MICHAEL HALFYARD, HARRY BOYLE, SID CLARK, ALLAN GOULD,  
ROBERT METZGER, BRIAN KLAVER, JOHN MAJOR, JOHN HORN,  
BARBARA ROMAINE, ADELE KENT, SAL LOVECCHIO, DONALD WILKINS,  
ROY VICTOR DEYELL, TIMOTHY LEADEM, WILLIAM PEARCE,  
LISA SHENDROFF, ANN WILSON, RICHARD MEYERS, GILLIAN WALLACE,  
MAUREEN MALONEY, BRENDA EDWARDS, STEPHEN OWEN,**

**DON CHIASSON, CRAIG JONES, JAMES MATTISON,  
McCARTHY TETRAULT LLP, HERMAN VAN OMMEN,  
STEVE KLINE, LANG MICHENER LLP,  
THE CORPORATION OF THE CITY OF VICTORIA,  
JOHN DOE and JANE DOE**

**Respondents**

Heard at Vancouver, British Columbia, on September 28, 2009.

Judgment delivered at Ottawa, Ontario, on October 6, 2009.

REASONS FOR JUDGMENT BY:

THE COURT

Federal Court  
of Appeal



Cour d'appel  
fédérale

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THE CORPORATION OF THE CITY OF VICTORIA,  
JOHN DOE and JANE DOE**

**Respondents**

**REASONS FOR JUDGMENT BY THE COURT**

[1] The appellants have commenced an action in the Federal Court (T-95-08) seeking damages and other relief on the basis of their allegations of government and judicial corruption. In this interlocutory appeal, they challenge an order by Chief Justice Lutfy dated April 28, 2008 designating a prothonotary as case management judge rather than a Federal Court judge.

[2] The designation of a case management judge is a discretionary decision which normally is entitled to deference on appeal. The appellants argue that the order of Chief Justice Lutfy should be set aside because he failed to give reasons, and because the appointment of a prothonotary as case management judge in this case is unreasonable.

[3] The absence of written reasons for a discretionary order is not, by itself, a basis for setting the order aside on appeal. A discretionary order made without written reasons will stand if the record provides a basis for the exercise of discretion consistently with the applicable legal principles and the requirements of justice: *Abbott Laboratories v. Canada (Minister of Health)*, 2007 FCA 140, at paragraphs 55-56).

[4] It is undisputed that a prothonotary has the statutory authority to act as a case management judge in any case in the Federal Court. However, the appellants argue that a prothonotary should not have been designated case management judge in this case because the allegations underlying the applicants' action are so serious and politically sensitive that the government will be motivated to act improperly in ensuring that the allegations are not fairly tried. The appellants argue that a prothonotary will be more vulnerable than a judge to governmental pressure to decide critical issues against the appellants because prothonotaries do not have the same security of tenure as Federal Court judges.

[5] Having carefully reviewed the record and the submission of the appellants, we do not accept that only a judge has sufficient security of tenure to deal impartially with the case management of the appellants' action. We conclude that Chief Justice Lutfy made no error in designating a prothonotary as case management judge in this case.

[6] The appellants have also argued that the unreasonableness of the decision of Chief Justice Lutfy has been demonstrated by subsequent events, in that the prothonotary has delayed dealing with a number of important motions, including a motion by the appellants for summary judgment against the respondent Themis Program Management and Consulting Ltd. In our view, it was reasonable for the prothonotary to defer dealing with these motions until after the disposition of this appeal.

[7] We conclude that Chief Justice Lutfy made no error warranting the intervention of this Court when he designated a prothonotary as case management judge. For that reason, this appeal will be dismissed.

[8] The respondents who appeared in this appeal are Her Majesty the Queen in Right of Canada, Her Majesty the Queen in Right of British Columbia (on behalf of all provincial Crown respondents), and Themis Program Management and Consulting Ltd. All three respondents who appeared have asked for costs. In this Court, costs are normally awarded to the successful party or parties. In this case, however, the only substantive submissions were made by Her Majesty the Queen in Right of Canada. The other respondents simply adopted those submissions. In these circumstances an award of only one set of costs is justified, to be allocated among the respondents as they may agree. Failing agreement, the respondents may apply to this Court for an allocation.

“J. Edgar Sexton”

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J.A.

“K. Sharlow”

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J.A.

“C. Michael Ryer”

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-209-08

**(APPEAL FROM THE ORDER OF THE CHIEF JUSTICE OF FEDERAL COURT  
DATED APRIL 28, 2008, IN COURT FILE NO. T-95-08)**

**STYLE OF CAUSE:** John Frederick Carten and Karen  
Audrey Gibbs v. Her Majesty the  
Queen in Right of Canada et al.

**PLACE OF HEARING:** Vancouver, British Columbia

**DATE OF HEARING:** September 28, 2009

**REASONS FOR JUDGMENT BY THE COURT** SEXTON, SHARLOW, RYER  
JJ.A.

**DATED:** October 6, 2009

**APPEARANCES:**

John Frederick Carten, B.A., L.L.B.  
Karen Audrey Gibbs

THE APPELLANTS on their own  
behalf

Mélanie Chartier

FOR THE RESPONDENTS, Her  
Majesty the Queen in Right of Canada  
and the Attorney General of Canada

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FOR THE RESPONDENTS, Her  
Majesty the Queen in Right of the  
Province of British Columbia

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Majesty the Queen in Right of Canada  
and the Attorney General of Canada

FOR THE RESPONDENTS, Her  
Majesty the Queen in Right of the  
Province of British Columbia and  
Attorney General for British Columbia

FOR THE RESPONDENT, Themis  
Program Management and Consulting  
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