

Federal Court of Appeal



CANADA

Cour d'appel fédérale

Date: 20110112

Docket: A-165-10

Citation: 2011 FCA 11

**CORAM: NOËL J.A.
PELLETIER J.A.
TRUDEL J.A.**

BETWEEN:

R. MAXINE COLLINS

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Toronto, Ontario, on January 10, 2011.

Judgment delivered at Toronto, Ontario, on January 12, 2011.

REASONS FOR JUDGMENT BY:

TRUDEL J.A.

CONCURRED IN BY:

NOËL J.A.
PELLETIER J.A.

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REASONS FOR JUDGMENT

TRUDEL J.A.

[1] On March 5, 2010, Heneghan J. (the Judge) made an order striking the appellant's Statement of Claim with costs to the respondent (see 2010 FC 254, appeal pending A-90-10). In her order, the Judge invited the parties to make submissions on costs, which lead to a subsequent order of April 15, 2010, whereby costs were fixed in favour of the respondent, inclusive of GST and disbursements in the amount of \$1,750 [see T-997-09]. The within appeal (Appeal 165-10) concerns this last order.

[2] For the reasons that follow, I propose to dismiss the appeal.

[3] At paragraph 26 of her memorandum of facts and law, the appellant raises four issues. At the hearing of this appeal, she made oral representations on the first two issues, relying on her written representations for the rest.

[4] The first issue concerns the jurisdiction of the Judge to deal with costs after the appellant had initiated her appeal relating to the original order dealing with the respondent's Motion to Strike. It is the appellant's position that the Judge "did not have jurisdiction to entertain submissions on costs as jurisdiction had passed [to the Federal Court of Appeal] before either party made submissions" (see appellant's memorandum of facts and law at paragraph 40). The appellant rests this argument on subsection 28(3) of the *Federal Courts Act*, R.S.C. 1985, c. F-7 [the Act].

[5] The appellant's reliance on subsection 28(3) of the Act, which, incidentally, she erroneously cites from an earlier version of the Rules, which has since been amended, (see paragraph 27 of her memorandum of facts and law), is misplaced. Section 28 of the Act provides the Federal Court of Appeal with an exclusive and original judicial review jurisdiction over the federal tribunals listed therein. Rather, it is section 27 that applies here, as this is an appeal from a decision of the Federal Court, and not an application for judicial review of a decision by a designated federal tribunal.

[6] In any event, in her order of March 5, the Judge had not set the quantum of costs. The appeal could evidently not bear on that question and did not have the effect of vacating the Judge's jurisdiction whose role it was to fix the quantum of costs in first instance.

[7] The appellant's second ground of appeal has to do with the Judge's exercise of discretion in assessing costs under the *Federal Courts Rules*, SOR/98-106. Contrary to the appellant's allegations, the Judge did assess the costs in accordance with Column III of Tariff B. There is no reason to intervene as the appellant has failed to demonstrate that the Judge misdirected herself as to the applicable law or made a palpable and overriding error in her appreciation of the relevant facts and factors (*British Columbia (Min. of Forests) v. Okanagan Indian Band*, 2003 SCC 71 at paragraphs 42-43).

[8] The appellant's third ground of appeal is about an order by our colleague Evans J.A. with respect to the content of the appeal book in the present appeal. Evans J.A. excluded document #4, a letter by the appellant to the Registrar of March 10, 2010, because it was not before the Judge and not relevant to the disposition of the appeal. However, he permitted the inclusion of document #8, a letter by the appellant to counsel for the respondent of October 26, 2009, and document #9, the appellant's sworn affidavit of September 8, 2009 with appended exhibits, subject to a final decision to be made by this panel.

[9] These documents attest to exchanges between the appellant and counsel for the respondent. They do not constitute new evidence in the sense of Rule 351 and, in any event, are not relevant to the disposition of the within appeal.

[10] Finally, the appellant's fourth issue is not so much a ground of appeal as a plea to this Court, taking into consideration her special circumstances, not to award an amount of costs beyond straight

disbursements (see her memorandum at paragraph 76). These special circumstances are as follows:

(1) she is self-represented, not legally trained, has been treated unfairly and does not have the resources to deal with the situation and, (2) through her appeal, she has raised an important issue for consideration with respect to the correct interpretation of subsection 28(3) of the Act (see her memorandum at paragraphs 82-83).

[11] In view of the above reasons and proposed conclusion, there is no need to consider these allegations and to by-pass the general rule that costs should follow the event.

[12] Consequently, I propose to dismiss this appeal with costs to be assessed.

"Johanne Trudel"

J.A.

"I agree
Marc Noël J.A."

"I agree
J.D. Denis Pelletier J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-165-10

(AN APPEAL FROM THE ORDER OF THE HONOURABLE MADAM JUSTICE HENEGHAN OF THE FEDERAL COURT DATED APRIL 15, 2010, IN DOCKET NO.: T-997-09.)

STYLE OF CAUSE: R. MAXINE COLLINS v.
HER MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: January 10, 2011

REASONS FOR JUDGMENT BY: TRUDEL J.A.

CONCURRED IN BY: NOËL J.A.
PELLETIER J.A.

DATED: January 12, 2011

APPEARANCES:

R. Maxine Collins ON HIS OWN BEHALF

P. Tamara Sugunasiri FOR THE RESPONDENT

SOLICITORS OF RECORD:

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