

Date: 20111019

Docket: A-343-10

Citation: 2011 FCA 289

**CORAM: NADON J.A.
SHARLOW J.A.
DAWSON 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 OF CANADA, ALLAN ROCK, ANNE McLELLAN, MARTIN CAUCHON, IRWIN COTLER, ATTORNEY GENERAL OF BRITISH COLUMBIA, COLIN GABLEMAN, GEOFF PLANT, WALLY OPPAL, CANADIAN JUDICIAL COUNCIL, JEANNIE THOMAS, NORMAN SABOURIN, ANTONIO LAMER (deceased), BEVERLEY McLACHLIN, ALLAN McEACHERN, 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 (deceased), ROBERT EDWARDS (deceased), JOHN BOUCK (deceased), JAMES SHABBITS, HOWARD SKIPP, CYRIL ROSS LANDER, RALPH HUTCHINSON (deceased), MICHAEL HALFYARD, HARRY BOYLE, SID CLARK (deceased), 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 L.L.P., HERMAN VAN OMMEN, STEVE KLINE, LANG MICHENER L.L.P., THE CORPORATION OF THE CITY OF VICTORIA, JOHN DOE AND JANE DOE

Respondents

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on October 19, 2011.

REASONS FOR ORDER BY:

NADON J.A.

CONCURRED IN BY:

SHARLOW J.A.

DAWSON J.A.

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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 OF CANADA, ALLAN ROCK, ANNE
McLELLAN, MARTIN CAUCHON, IRWIN COTLER, ATTORNEY GENERAL OF
BRITISH COLUMBIA, COLIN GABLEMAN, GEOFF PLANT, WALLY OPPAL,
CANADIAN JUDICIAL COUNCIL, JEANNIE THOMAS, NORMAN SABOURIN,
ANTONIO LAMER (deceased), BEVERLEY McLACHLIN, ALLAN McEACHERN,
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 (deceased), ROBERT EDWARDS (deceased,
JOHN BOUCK (deceased), JAMES SHABBITS, HOWARD SKIPP, CYRIL ROSS
LANDER, RALPH HUTCHINSON (deceased), MICHAEL HALFYARD, HARRY BOYLE,
SID CLARK (deceased), 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 L.L.P., HERMAN VAN OMMEN, STEVE KLINE, LANG MICHENER L.L.P., THE CORPORATION OF THE CITY OF VICTORIA, JOHN DOE AND JANE DOE

Respondents

REASONS FOR ORDER

NADON J.A.

[1] The appellants commenced an action in the Federal Court on January 21, 2008, seeking compensatory and punitive damages against Her Majesty the Queen in Right of Canada and against a number of other defendants alleged to be officers, employees, agents or sub-agents of the Federal Crown.

[2] Their action was dismissed by Prothonotary Lafrenière on December 1, 2010. The Prothonotary concluded that their action should be dismissed because the Statement of Claim did not disclose a reasonable cause of action, that the Federal Court did not have jurisdiction over the defendants, except for the Federal Crown defendants, that the allegations made by the appellants were scandalous, frivolous and vexatious, and that the pleadings constituted an abuse of process.

[3] The appellants appealed the Prothonotary's Order and on August 27, 2010, Gauthier J. of the Federal Court dismissed the appeal.

[4] On September 27, 2010, the appellants filed a Notice of Appeal from the Judgment of Gauthier J. Other than filing the Appeal Book in February 2011, the appellants have taken no steps whatsoever to advance their appeal towards a hearing.

[5] On February 8, 2011, Layden-Stevenson J.A. ordered the appellants to provide security for costs to the respondents in the amount of \$10,000, the amount being payable within six months of the date of her Order. That amount remains unpaid.

[6] On August 23, 2011, Sexton J.A. issued a Notice of Status Review requiring the appellants to serve and file representations stating the reasons why their appeal should not be dismissed for delay, justifying the delay and proposing a timetable for the completion of the steps necessary to advance their appeal in an expeditious manner.

[7] On September 16, 2011, the appellants filed their Written Representations in response to the Notice of Status Review. These representations do not, in my respectful opinion, offer any acceptable justification for the delay in pursuing the appeal, nor do they set out a proposed timetable for the completion of the steps necessary to advance the appeal expeditiously. Consequently, the appellants' Written Representations are not in compliance with the Notice of Status Review.

[8] That, in itself, would be sufficient for us to dismiss the appeal. However, after reviewing the Court file in its entirety, I must say that I am in complete agreement with my colleague Layden-

Stevenson J.A. who, in her Reasons for granting five motions by the respondents for orders for security for costs, indicated that the appellants' appeal had no reasonable prospect of success and that it was frivolous and vexatious.

[9] Thus, I see no basis nor justification for allowing the appellants to continue with this appeal and, therefore, in all of the circumstances, this appeal shall be dismissed with costs.

“M. Nadon”

J.A.

“I agree.

K. Sharlow J.A.”

“I agree.

Eleanor R. Dawson J.A.”

FEDERAL COURT OF APPEAL
NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-343-10

STYLE OF CAUSE: JOHN FREDERICK CARTEN et al v. HMQ et al

REASONS FOR ORDER BY: NADON J.A.

CONCURRED IN BY: SHARLOW J.A.
DAWSON J.A.

DATED: October 19, 2011

WRITTEN REPRESENTATIONS BY:

John Frederick Carten
Karen Audrey Gibbs
THE APPELLANTS ON THEIR OWN BEHALF

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VAN OMMEN

SOLICITORS OF RECORD:

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Deputy Attorney General of Canada
FOR THE RESPONDENT HER MAJESTY THE
QUEEN IN RIGHT OF CANADA AND OTHER
FEDERAL RESPONDENTS

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