

Federal Court of Appeal



Cour d'appel fédérale

Date: 20191212

Docket: A-432-19

Citation: 2019 FCA 311

Present: STRATAS J.A.

BETWEEN:

ANTHONY HICKS

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on December 12, 2019.

REASONS FOR ORDER BY:

STRATAS J.A.

Federal Court of Appeal



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REASONS FOR ORDER

STRATAS J.A.

[1] The Canadian Human Rights Commission asks that this Court remove the notice of appeal from the file and the file closed under Rule 72. It points to what it says is an incorrect style of cause and insufficient grounds in the notice of appeal (Rule 337(d)).

[2] Rule 72 is restricted to whether documents presented to the Registry should be filed. Rule 72 is not used for documents that have already been filed. See *Rock-St Laurent v. Canada (Citizenship and Immigration)*, 2012 FCA 192, 434 NR 144 at paras. 19-32.

[3] In these circumstances, Rule 74 applies. Rule 74 empowers the Court, among other things, to remove documents that have been filed and that are against the Rules.

[4] Under Rule 74(2) the Court can act under Rule 74 only if the parties have had an opportunity to make submissions on the matter. In this case, the parties have made submissions on the matters of concern to the Court.

[5] The Commission complains that the notice of appeal lacks necessary detail and, thus, fails to comply with Rule 337. Here, the Commission is on firm ground. The appellant alleges a Charter breach on the part of the Commission but the nature of the breach is a mystery. Without this, the notice of appeal is a nullity: *Canada (National Revenue) v. JP Morgan Asset Management (Canada) Inc.*, 2013 FCA 250, [2014] 2 F.C.R. 557.

[6] The Canadian Human Rights Commission also says that the style of cause on the notice of appeal is contrary to the Rules. The notice of appeal names the Attorney General of Canada as the respondent. The Commission says it should be the respondent. The Court disagrees.

[7] I suspect the Commission says it should be the respondent in this Court because it was the named respondent in the Federal Court. But it was improperly named in the Federal Court. See Rule 301. The proper respondent in the Federal Court was the Attorney General of Canada.

[8] In this Federal Court, one detected this error. It is regrettable that counsel for the respondent in the Federal Court did not seek an amendment to the style of cause. It is regrettable that the Registry failed to detect the problem. It is regrettable that the Federal Court itself did not notice the problem and unilaterally amend the style of cause.

[9] In this Court, the notice of appeal names the respondent as the Attorney General of Canada. This is correct: Rule 338(1)(c).

[10] The Commission submits that it should have been named as a respondent in this Court because it is an adverse party under Rule 338(1)(a). It is not an adverse party. An administrative tribunal is obligated to be impartial—even after it has made a decision—because the matter may be remitted to it after the appeal is determined: see *Ontario (Energy Board) v. Ontario Power Generation Inc.*, 2015 SCC 44, [2015] 3 S.C.R. 147. An administrative tribunal should never think of itself as a party adverse to anyone.

[11] It follows that there is nothing wrong with the style of cause in the notice of appeal. If the Commission wishes to participate in this appeal, it should apply under Rule 109 to be added as an intervener.

[12] In this case, this Court will order under Rule 74 that the notice of appeal be removed from the file. The appellant shall file a new, more particularized notice of appeal that complies with Rule 337 within 30 days of the Order. If the appellant does not do so or if either the Registry or the respondent are of the view that the appellant has not remedied this defect, the file shall be returned to me for further disposition. In that circumstance, a panel of this Court may have to be constituted under section 16 of the *Federal Courts Act* to consider the closing of this appeal file and the termination of this appeal.

"David Stratas"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:

A-432-19

STYLE OF CAUSE:

ANTHONY HICKS v. ATTORNEY
GENERAL OF CANADA

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY:

STRATAS J.A.

DATED:

DECEMBER 12, 2019

WRITTEN REPRESENTATIONS BY:

Anthony Hicks

ON HIS OWN BEHALF

Brian Smith

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Nathalie G. Drouin
Deputy Attorney General of Canada

FOR THE RESPONDENT