

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20140704**

**Docket: A-151-14**

**Citation: 2014 FCA 178**

**Present: SHARLOW J.A.**

**BETWEEN:**

**RACHEL EXETER**

**Appellant**

**and**

**ATTORNEY GENERAL OF CANADA  
(DEPUTY HEAD, STATISTICS CANADA)**

**Respondent**

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on July 4, 2014.

**REASONS FOR ORDER BY:**

**SHARLOW J.A.**

**Federal Court of Appeal**



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**REASONS FOR ORDER**

**SHARLOW J.A.**

[1] The respondent (the Crown) seeks summary dismissal of this appeal on the basis that it cannot possibly succeed, it has no factual foundation and it is an abuse of process, vexatious and frivolous. The appellant Rachel Exeter opposes the motion. For the following reasons, the Crown's motion will be dismissed.

[2] The proceeding below is an application for judicial review. Ms. Exeter filed an interlocutory motion in that proceeding for an order granting a further opportunity to cross-examine a certain Crown affiant, and for other relief. The motion was heard by a prothonotary on May 15, 2013. The prothonotary dismissed the motion except that Ms. Exeter was permitted a further opportunity to cross-examine the affiant. Ms. Exeter has appealed that order to a judge of the Federal Court pursuant to Rule 51. That appeal has not yet been heard.

[3] It appears that in support of her Rule 51 appeal, Ms. Exeter intends to adduce a copy of the audio recording of the May 15, 2013 hearing. The purpose of adducing the recording is not entirely clear from the material before me, but I am prepared to assume for present purposes that Ms. Exeter intends to allege a breach of procedural fairness.

[4] Shortly after the May 15, 2013 hearing, Ms. Exeter requested a copy of the audio recording. Upon the direction of the prothonotary, the Registry provided the recording to Ms. Exeter in the form of a memory stick. Ms. Exeter claims that the audio recording is incomplete in that negative comments made by the prothonotary at the hearing were not recorded. She alleges that the recording was altered by someone in the Registry.

[5] Ms. Exeter brought another interlocutory motion for an order “requesting the services of a forensic audio expert”, apparently in an effort to obtain proof that the recording had been altered. Ms. Exeter supported her motion by her own affidavit sworn January 27, 2014, to which is appended the affidavit of Claudette Williams sworn June 20, 2013. Ms. Williams claims to have attended the May 15, 2013 hearing and to have heard the negative remarks that Ms. Exeter alleges were made by the prothonotary. Ms. Exeter’s motion was dismissed by an order of a

judge of the Federal Court, and Ms. Exeter appealed that order. Now before me is an interlocutory motion in Ms. Exeter's appeal.

[6] The judge did not issue separate reasons for his order, but it appears from the order itself that he reached the following conclusions: (1) Ms. Exeter is challenging the authenticity of the audio recording provided to her; (2) there is no convincing evidence in support of her allegation that it was altered by Registry staff; (3) even if that allegation were proved, Ms. Exeter is not prejudiced by the alteration; and (4) in light of those conclusions, there is no need to address Ms. Exeter's constitutional arguments.

[7] Ms. Exeter has a statutory right to appeal a judgment or order of the Federal Court. She is not required to obtain leave to appeal. There is no provision in any statute or in the *Federal Courts Rules*, SOR/98-106, that expressly permits this Court to dismiss an appeal without a hearing on any of the grounds stated by the Crown. There is no reported case in which this Court has dismissed an appeal without an oral hearing on any of the grounds asserted by the Crown in this motion, meaning necessarily that the only guiding jurisprudence must be applied by analogy.

[8] I accept that this Court has the inherent jurisdiction to control abuses of its process, and may exercise that jurisdiction by dismissing a proceeding without an oral hearing. That jurisdiction is occasionally exercised in this Court when an appellant has delayed unreasonably in taking the steps required to have an appeal made ready for hearing, or has repeatedly failed to abide by the Rules or orders of the Court. Also, an appeal may be dismissed summarily where it is clear on the face of the notice of appeal that this Court has no jurisdiction to hear the appeal (see, for example, *Rock-St. Laurent v. Canada (Citizenship and Immigration)*, 2012 FCA 192). I accept that in theory, summary dismissal of an appeal may be warranted by analogy to cases in

which pleadings are struck. However, the power to dismiss an appeal summarily on that basis must be exercised sparingly, and only where it is clear that the appeal cannot succeed.

[9] The power to summarily dismiss any proceeding is given to the Court to control its own process and to avoid the waste of scarce judicial resources. An oral hearing consumes substantial resources but it serves the critical purpose of enabling the parties to provide clarity and focus to the legal and factual issues raised in the notice of appeal and the memoranda of fact and law. The Court attempts to aid that purpose at an oral hearing by listening to the parties and by engaging the parties in a conversation in which their arguments are discussed and challenged. An oral hearing also serves the important function of permitting the appellant, who invariably believes that an injustice has occurred, to be heard by an impartial court.

[10] In this case, the Crown is seeking to have an appeal dismissed summarily for want of merit, adding allegations of improper conduct on the part of Ms. Exeter in order to add weight to its argument. I express no opinion on the validity of those allegations but even if they are well founded, they do not demonstrate the kind of ungovernability described in paragraph 8 above.

[11] The question, then, is whether it is clear that the appeal cannot succeed. Ms. Exeter has stated a number of grounds of appeal. For example, she says that the judge misconstrued her motion, decided a question that was not put to him, failed to give adequate reasons, and failed to understand that her objective was directly related to her Rule 51 appeal (see paragraph 3 above). I express no opinion on the merits of any of these grounds of appeal. They may or may not succeed, but they are typical of those determined by this Court after an oral hearing. Implicit in many of these grounds is a challenge to the judge's finding that there is no evidence to support

her main factual allegations. I am unable to conclude that the appeal is so unworthy of the attention of this Court that Ms. Exeter should be denied an oral hearing.

[12] For these reasons, the Crown's motion will be dismissed with costs to Ms. Exeter in any event of the cause.

“K. Sharlow”

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-151-14

**STYLE OF CAUSE:** RACHEL EXETER v. ATTORNEY  
GENERAL OF CANADA  
(DEPUTY HEAD, STATISTICS  
CANADA)

**MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES**

**REASONS FOR ORDER BY:** SHARLOW J.A.

**DATED:** JULY 4, 2014

**WRITTEN REPRESENTATIONS BY:**

Rachel Exeter  
Self-represented

FOR THE APPELLANT

Lea Bou Karam

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

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