

T-1527-93

IN THE MATTER of a reference pursuant to section 18.3(2) of the *Federal Court Act*, R.S.C. 1985, C. F-7, of questions or issues of the constitutional validity, applicability or operability of an Act of Parliament that have arisen in connection with a complaint before the Canadian Human Rights Tribunal appointed in accordance with section 49 of the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6.

Between:

LAURENCE MAGEE,

Complainant,

- and -

CANADIAN HUMAN RIGHTS COMMISSION,
and
DEPARTMENT OF NATIONAL DEFENCE
AND TREASURY BOARD,

Respondent.

REASONS FOR ORDER

CAMPBELL J.

Let the attached transcript of my Reasons for Order delivered orally from the bench at Ottawa, Ontario, on September 10, 1997, now edited, be filed to comply with section 51 of the *Federal Court Act*.

Douglas R. Campbell
Judge

OTTAWA
October 16, 1997

The Attorney-General of Canada has brought a reference. The Attorney-General of Canada now wishes to withdraw that Reference. The Rules related to references are silent on this point. The Human Rights Commission objects to the withdrawal saying that this is analogous to a judicial review about which there is a statement in the rules and which effectively requires leave.

On the other hand there is also references to discontinuance of actions in Rule 406 which effectively, says in subsection (3) that the question becomes truly one of costs and, of course, what's fair and just in that respect.

The Commission is not asking for costs here. The Commission just wants to be able to make the argument on the Reference.

I find that a party that starts an action, reference or not, has the right to withdraw. This is not a judicial review.

The only question is, on what penalty. In this case I would be prepared to grant costs but fairly the Commission is saying "we don't want costs, we just want to proceed."

So on the basis of no request for costs, I see no impediment to the withdrawal on any condition. And I so direct that the Attorney-General has the right, without leave, to withdraw.

So yet again, Mr. Saunders, do you apply to withdraw?

MR. SAUNDERS: Yes, I do, My Lord.

And I don't have to grant your right. You've got it, but as a matter of record, you've said it and I just accept it as a point in the usual course of business. So this action is withdrawn. This reference is withdrawn.

MR. SAUNDERS: My Lord, that leaves one motion outstanding before you and that's the motion on the judicial review application for direction for the future conduct of that. And as I stated at the outset Mr. Duval and I will sit down and submit a timetable for the future conduct without, of course, the date of the hearing, but for exchange of any additional memoranda. Because when we filed our memorandum it was before the Supreme Court of Canada decision in Cooper?

THE COURT: Yes, I can do a couple of things here. I can just yet again adjourn that file sine die pending your application on a consent motion in writing.

MR. SAUNDERS: That would be agreeable.

THE COURT: Okay, adjourned sine die.

Thank you for your arguments today.

MR. SAUNDERS: Thank you.

THE BAILIFF: Order.

--- Upon adjourning at 11:13 a.m.

CERTIFIED CORRECT

Per:

Amelia van Galder
Verbatim Court Reporter