

Federal Court of Appeal



Cour d'appel fédérale

Date: 20161207

Docket: A-76-16

Citation: 2016 FCA 312

**CORAM: NOËL C.J.
NEAR J.A.
RENNIE J.A.**

BETWEEN:

**COMMITTEE FOR MONETARY AND
ECONOMIC REFORM ("COMER"),
WILLIAM KREHM, AND ANN EMMETT**

Appellants

and

**HER MAJESTY THE QUEEN, THE
MINISTER OF FINANCE, THE MINISTER OF
NATIONAL REVENUE, THE BANK OF
CANADA, THE ATTORNEY GENERAL OF
CANADA**

Respondents

Heard at Toronto, Ontario, on December 7, 2016.
Judgment delivered from the Bench at Toronto, Ontario, on December 7, 2016.

REASONS FOR JUDGMENT OF THE COURT BY:

RENNIE J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on December 7, 2016)

RENNIE J.A.

[1] This is an appeal brought by the Committee for Monetary and Economic Reform, William Krehm, and Ann Emmet (the appellants) from an order issued pursuant to Rule 221 of

the *Federal Court Rules* (SOR/98-106) by Russell J. (the Federal Court judge) striking out the appellants' amended statement of claim without leave to amend (2016 FC 147).

[2] The appellants commenced an action challenging the way Parliament handles economic and monetary issues in Canada and initially sought declarations of violations of the *Bank of Canada Act*, R.C.S. 1985, c. B-2 [*Bank of Canada Act*]; the *Constitution Act, 1867*, (U.K.), 30 & 31 Vict., c. 3, reprinted in R.S.C. 1985, App. II, No. 5; sections 7 and 15 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B of the *Canada Act 1982* (U.K.), 1982, c. 11 [*Charter*]; and of tortious conduct of conspiracy and misfeasance in public office.

[3] The respondents brought a motion to strike, and on August 9, 2013, Prothonotary Aalto struck out the appellants' original statement of claim in its entirety without leave to amend on the basis that it did not disclose a reasonable cause of action (2013 FC 855).

[4] By decision rendered on April 24, 2014, the Federal Court judge sitting in appeal from the Prothonotary's decision, reconsidered the matter *de novo*. Applying the test for striking out set out by the Supreme Court in *R v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42, he too held that the statement of claim did not reveal a cause of action, but was of the view that the possibility that the appellants could come up with a proper pleading with respect to specified issues could not be excluded. He therefore granted the appellants leave to amend (2014 FC 380). On the appeal and cross-appeal which followed, this Court disposed of the matter from the bench, dismissing both (2015 FCA 20).

[5] On March 26, 2015, the appellants filed an amended statement of claim wherein they abandoned prior claims made pursuant to sections 7 and 15 of the *Charter* and substituted therefor claims pursuant to section 3 of the *Charter*, asserting a right to “no taxation without representation”.

[6] The respondents again moved to have the statement of claim struck on the basis that the appellants’ amended statement of claim failed to rectify any of the previous deficiencies and therefore disclosed no reasonable cause of action.

[7] By decision rendered on February 8, 2016, the Federal Court judge again struck the amended statement of claim in its entirety, this time however without leave to further amend.

[8] This is the decision now under appeal.

[9] The essence of the Federal Court judge’s reasoning for striking the amended statement of claim is summed up at paragraph 144 of his reasons:

It seems to me, then, that the latest Amended Claim discloses no reasonable cause of action and has no prospect of success at trial. It also seems to me that the Plaintiffs are still asking the Court for an advisory opinion in the form of declarations that their view of the way the *Bank Act* and the Constitution should be read is correct. It also seems to me that they have failed to show a statutory grant of jurisdiction by Parliament that this Court can entertain and rule on their claim as presently constituted, or that they have any specific rights under the legislation which they invoke, or a legal framework for any such rights. As the Supreme Court of Canada pointed out in *Operation Dismantle*, above, the preventive function of a declaratory judgment must be more than hypothetical and

requires “a cognizable threat to a legal interest before the Court will entertain the use of its process as a preventative measure” (para 33). The Court is not here to declare the law generally or to give an advisory opinion. The Court is here to decide and declare contested legal rights.

[10] The appellants assert that the opinion so expressed is wrong in law. In support of this proposition, they essentially reiterate the arguments which they urged upon the Federal Court judge and ask that we come to a different conclusion. Counsel for the appellants focused his argument during the hearing on the issue of standing and the right to seek declarations of constitutionality. It remains however that, as the Federal Court judge found, the right to a remedy is conditional on the existence of a justiciable issue.

[11] Reviewing the matter on the least deferential and most favourable standard from the appellant’s perspective (*i.e.*: correctness), we are unable to detect any error which would warrant our intervention.

[12] The arguments raised by the appellants have been given full consideration and there is nothing that we could usefully add to the judgment below to explain why the Federal Court judge correctly held that the appellants’ claims, as set out in their amended statement of claim, are bound to fail.

[13] As to the denial of leave to amend, after having granted leave once, the Federal Court judge held that leave ought not to be granted a second time. Keeping in mind that this aspect of

the decision embodies a discretionary element, we can detect no error in the conclusion reached by the Federal Court judge as expressed at paragraph 147 of his reasons.

[14] The appeal will be dismissed with costs.

“Donald J. Rennie”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

**APPEAL FROM A JUDGMENT OF THE FEDERAL COURT DATED
FEBRUARY 8, 2016, DOCKET NO. T-2010-11 (2016 FC 147)**

STYLE OF CAUSE: COMMITTEE FOR MONETARY
AND ECONOMIC REFORM
("COMER"), ET AL v. HER
MAJESTY THE QUEEN ET AL

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: DECEMBER 7, 2016

REASONS FOR JUDGMENT OF THE COURT BY: NOËL C.J.
NEAR J.A.
RENNIE J.A.

DELIVERED FROM THE BENCH BY: RENNIE J.A.

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