

A-546-96  
(T-901-96)

CORAM: MARCEAU J.A.  
DESJARDINS J.A.  
McDONALD J.A.

IN THE MATTER OF an application of Appeal from the Trial Division  
of the Federal Court of Canada, pursuant to s. 27 of  
the **FEDERAL COURT ACT, R.S.C., 1985.**

AND IN THE MATTER of the FINAL JUDGMENT rendered on  
June 10, 1996 for the F.C.T.D. FILE: T-901-96.

BETWEEN:

**NANDU PATEL**

Appellant  
(Plaintiff)

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA  
AS REPRESENTED BY THE CANADIAN HUMAN RIGHTS  
COMMISSION AND MR. MAXWELL YALDEN,  
MR. GERALD SAVARD, MR. CHARLES THÉROUX,  
MS. MICHELLE BOUGIE, MS. SUZANNE HÉBERT,  
MS. SHERI HELGASON et al.**

Respondents  
(Defendants)

**REASONS FOR JUDGMENT OF THE COURT**

(Delivered from the Bench at Ottawa, Ontario,  
on Tuesday, September 2, 1997)

**MARCEAU J.A.**

We are all of the view that this appeal cannot succeed.

It is clear to us that the subject matter of the action filed by the appellant on April 19, 1996 is the same as that of her previous action commenced on October 31, 1994 and struck out on June 8, 1995 because it failed to disclose a reasonable cause of action within the jurisdiction of this Court. Both actions are, in effect, aimed at pursuing an alleged right to recover damages said to have been sustained by the appellant as a result of the dismissal of her complaint of discrimination against Statistics Canada, a dismissal that was due to a failure by the Canadian Human Rights Commission and some of its agents to perform their legal duties. Both are actions in negligence against the Crown despite the fact that the agents mentioned are not exactly the same in both and the negligence alleged is more precisely described in the second as compared to the first action. As the first action has been disposed of by final judgment, the second could not be allowed to stand: it was clearly a case of cause of action estoppel, or res judicata.

In addition, it had already been finally decided in the judicial review proceeding of January 30, 1996 that there had been nothing reprehensible in the manner in which the Commission or its agents had fulfilled their legal duties with respect to the appellant's complaint. That decision may not, in itself, give rise to a cause of action estoppel since the nature of a judicial review proceeding is different from that of an action in damages. However, as the judicial review proceeding had definitively disposed of the central allegation in the action for damages, namely that, as a result of wrong doings on the part of the Commission and its agents, the complaint had been badly investigated and treated, it gives an obvious basis for an issue estoppel that makes the actions all the more unrecievable.

The judgment appealed against is therefore well-founded and will not be disturbed. This is not a case for costs.

"Louis Marceau"

J.A.

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Heard at Ottawa, Ontario, on Tuesday, September 2, 1997.

Judgement rendered from the Bench on Tuesday, September 2, 1997.

**REASONS FOR JUDGMENT OF THE COURT BY: MARCEAU J.A.**

**IN THE FEDERAL COURT OF APPEAL**

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