

Date: 20090312

Docket: A-332-08

Citation: 2009 FCA 82

**CORAM: LÉTOURNEAU J.A.
NADON J.A.
TRUDEL J.A.**

BETWEEN:

WASYL ODYNSKY

Appellant

and

LEAGUE FOR HUMAN RIGHTS OF B'NAI BRITH CANADA

and THE ATTORNEY GENERAL OF CANADA

Respondents

Heard at Toronto, Ontario, on March 12, 2009.

Judgment delivered from the Bench at Toronto, Ontario, on March 12, 2009.

REASONS FOR JUDGMENT OF THE COURT BY:

LÉTOURNEAU J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Toronto, Ontario, on March 12, 2009)

LÉTOURNEAU J.A.

[1] This is an appeal against a decision of Dawson J. of the Federal Court (judge) allowing an appeal from a decision of a prothonotary who granted a motion to strike the application for judicial review filed by the League for Human Rights of B’Nai Brith Canada (League).

[2] The prothonotary had found it plain and obvious that the application could not succeed because the League lacked standing. In his view, the League was neither directly affected by the decision at issue, nor did it have public interest standing because it had not raised a serious issue of law.

[3] The judge found that the League's claim to direct standing was not fairly arguable. However, she came to the conclusion that, with respect to the public interest standing, there was a serious question to be determined.

[4] She also ruled that it was not plain and obvious that a judge would conclude that the League did not have a genuine interest in the interpretation of section 10 of the *Citizenship Act*, R.S.C. 1985, c. C-29 and that "another reasonable and effective way exists to bring the issue of the scope of the Governor in Council's discretion before the Court": see paragraph 65 of her reasons for judgment. Hence the dismissal of the motion to strike and the appeal by Mr. Wasyl Odynsky.

[5] In the case of *David Bull Laboratories (Canada) Inc. v. Pharmacia Inc. (C.A.)*, [1995] 1 F.C. 588, this Court ruled that motions to strike an application for judicial review should be resorted to only in the most exceptional circumstances, i.e. when the application is bereft of any possibility of success.

[6] The rationale for this ruling was that judicial review proceedings are designed to proceed expeditiously and motions to strike have the potential to unduly and unnecessarily delay their

determination. In other words, as per the *Bull* case, justice is better served by allowing the application judge to deal with all of the issues raised by the judicial review application.

[7] This appeal illustrates the soundness and wisdom of the earlier ruling of this Court in the above-mentioned case.

[8] We are asked today, Thursday, March 12, 2009, to decide an appeal on a dismissal of a motion to strike when the very merit of the application for judicial review is due to be heard in four days, a fact we were unaware of until we reached the stage of the submissions by counsel for the League.

[9] The hearing on the merit is scheduled for two days starting next Monday. In fairness to all parties, this short time-frame leaves us very little time to adequately consider the contentious issues raised by the motion to strike.

[10] In these circumstances, we believe the best approach to take is to let the application for judicial review proceed on the merit where all the issues raised in this appeal will be dealt with, knowing very well that an appeal will come back to us irrespective of the outcome in the Federal Court.

[11] In our respectful view, this solution although not ideal creates no prejudice to any of the parties while a precipitated decision on our part could and would leave the parties with an appeal to the Supreme Court of Canada as their only recourse.

[12] For these reasons, the appeal will be dismissed without costs in the circumstances.

“Gilles Létourneau”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-332-08

STYLE OF CAUSE: WASYL ODYNSKY v. LEAGUE FOR HUMAN RIGHTS OF B'NAI BRITH CANADA and THE ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: March 12, 2009

REASONS FOR JUDGMENT OF THE COURT BY: LÉTOURNEAU J.A.
NADON J.A.
TRUDEL J.A.

DELIVERED FROM THE BENCH BY: LÉTOURNEAU J.A.

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| David Gates | FOR THE RESPONDENT (A.G. OF CANADA) |

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