

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20110520

Docket: A-90-10

Citation: 2011 FCA 171

**Present: SEXTON J.A.
STRATAS J.A.
MAINVILLE J.A.**

BETWEEN:

R. MAXINE COLLINS

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on May 20, 2011.

REASONS FOR ORDER BY:

MAINVILLE J.A.

CONCURRED IN BY:

**SEXTON J.A.
STRATAS J.A.**

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REASONS FOR ORDER

MAINVILLE J.A.

[1] The appellant has made a motion seeking the following:

- a. an order pursuant to paragraph 399(2)(a) of the *Federal Courts Rules*, SOR/98-106 (the "Rules") to set aside the order of Evans J.A., Dawson J.A. and Trudel J.A. dated March 30, 2011 dismissing the appellant's three motions for recusal, and to consequently declare invalid the judgment dated April 18, 2011 rendered by that panel and which dismissed the appellant's appeal on its merits;

- b. a consequential order directing a new hearing on the merits of the appellant's appeal by a panel of judges who have not previously rendered decisions in any of the matters arising on the appeal or the related appeal as to costs;
- c. alternatively, in the event the above orders are not issued, an order pursuant to paragraph 397(1)(b) of the Rules granting the appeal on its merits with costs throughout upon reconsideration of the terms of the judgment dated April 18, 2011 which dismissed the appellant's appeal on its merits.

[2] For the reasons set out below, I would dismiss that part of the appellant's motion seeking to set aside the order dated March 30, 2011 dismissing the appellant's three recusal motions, and I would refer the motion to reconsider the judgment dated April 18, 2011 back to the panel of this Court that rendered that judgment.

Background

[3] On June 22, 2009, the appellant commenced an action by way of Statement of Claim in the Federal Court alleging various wrongful acts in the administration of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) and the *Privacy Act*, R.S.C. 1985, c. P-21, as well as the violation of rights pursuant to the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982, being schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11. By amended Notice of Motion dated October 22, 2009, the Crown sought to strike out that Statement of Claim as amended.

[4] In a judgment dated March 5, 2010 and bearing citation 2010 FC 254, Justice Heneghan of the Federal Court granted the Crown's motion to strike, and consequently struck the appellant's Amended Statement of Claim with costs in favour of the Crown. The appellant appealed this judgment to this Court.

[5] In a letter dated March 10, 2011, the appellant wrote to the Chief Justice of this Court requesting that seven judges of this Court recuse themselves from sitting on the panel which would hear the merits of her appeal. Each of these judges had rendered various orders or directions in the course of managing the appeal which the appellant deemed to be unsatisfactory or improper. Consequently, the appellant held the belief that none of these judges would render a fair and unbiased decision on the merits of her appeal.

[6] The Chief Justice rendered a direction on March 17, 2011 scheduling the hearing on the merits of the appeal on March 30, 2011, and adding that any party who wished to raise a motion for recusal based on a reasonable apprehension of bias could do so on that date and before that panel of judges. The appellant thus served and filed a motion for recusal against each of the members of the concerned panel, namely Evans J.A., Dawson J.A. and Trudel J.A., which motions were heard before the concerned panel of this Court on March 30, 2011. These motions requested that all the judges on the panel recuse themselves, principally on the grounds that they had each at different times made interlocutory orders in connection with the appeal or a related appeal and denied the appellant the relief she had sought, or had drafted reasons in a related appeal which were deemed unsatisfactory by the appellant.

[7] In reasons delivered from the bench on March 30, 2011 and cited as 2011 FCA 123, the concerned panel of this Court ordered the dismissal of these motions to recuse principally on the basis that a judge cannot be disqualified for bias solely on the ground that she or he rendered an interlocutory decision adverse to a litigant in the same or related proceedings, or has written reasons for deciding an appeal in a related matter.

[8] The concerned panel of this Court thus proceeded to hear the merits of the appellant's appeal, and on April 18, 2011 issued a judgment and reasons for judgment cited as 2011 FCA 140 dismissing the appeal with costs, but also specified that the appellant was given leave to re-amend her Statement of Claim to allege the tort of misfeasance in public office.

The motion to set aside the Order of March 30, 2011

[9] Paragraph 399(2)(b) of the Rules provide that an order may be set aside or varied by reason of a matter that arose or was discovered subsequent to the making of the order.

[10] The appellant asserts that the judgment dated April 18, 2011 dismissing her appeal was a matter which arose subsequent to the order of March 30, 2011 and is evidence of "the continued impugned conduct constitu[ting] a determined influence on the decisions of the Justices not to recuse themselves from sitting on the appeal": Motion at paragraph 2c. The thrust of the appellant's argument is that the subsequent judgment dismissing her appeal proves that the judges hearing her appeal were biased.

[11] The simple fact that judges render a judgment which is unfavourable to a party cannot in itself result in a conclusion of bias. Were it otherwise, no judgment could ever be issued. A reasonable apprehension of bias must be shown to exist either in the judgment itself, in the comportment of the judge or by some other means. I have closely reviewed the judgment of April 18, 2011 and I am convinced that there is absolutely no merit to the appellant's contentions. The reasons for this judgment are considered, balanced and sound, and no bias whatsoever can be found in them.

[12] In this case, the appellant has utterly failed to demonstrate the existence of any matter subsequent to the Order of March 30, 2011 which could justify the setting aside of that Order. Paragraph 399(2)(a) of the Rules cannot be used as a vehicle for revisiting judgments every time a litigant is unsatisfied with a judgment. The general principle is that judicial decisions are final, and consequently the setting aside of such a decision under paragraph 399(2)(a) of the Rules must be based on exceptionally serious and compelling grounds. This is necessary to ensure certainty in the judicial process as well as to preserve the integrity of that process.

The motion for reconsideration of the April 18, 2011 judgment

[13] Pursuant to paragraph 397(1)(b) of the Rules, a motion to request a reconsideration of the terms of an order or judgment may be made on the ground that a matter that should have been dealt with has been overlooked or accidentally omitted. However, that Rule clearly provides that such a motion must be submitted to and decided by the panel of the Court constituted at the time the concerned order or judgment was made.

[14] Consequently, I would refer that portion of the appellant's motion concerning the reconsideration of the April 18, 2011 judgment to the panel of this Court which rendered that judgment.

Conclusions

[15] I would dismiss with costs the appellant's motion pursuant to paragraph 399(2)(a) of the Rules to set aside the Order dated March 10, 2011 dismissing the appellant's recusal motions, and would refer the appellant's motion for reconsideration of the April 18, 2011 judgment to the panel of this Court which rendered that judgment.

"Robert M. Mainville"

J.A.

"I agree.
J. Edgar Sexton J.A."

"I agree.
David Stratas J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-90-10

STYLE OF CAUSE: R. MAXINE COLLINS v. HER
MAJESTY THE QUEEN

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY: MAINVILLE J.A.

CONCURRED IN BY: SEXTON J.A.
STRATAS J.A.

DATED: May 20, 2011

WRITTEN REPRESENTATIONS BY:

R. MAXINE COLLINS
(SELF REPRESENTED)

FOR THE APPELLANT

SOLICITORS OF RECORD:

R. MAXINE COLLINS
(SELF REPRESENTED)

FOR THE APPELLANT

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FOR THE RESPONDENT