

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20120625

Docket: A-374-11

Citation: 2012 FCA 187

**CORAM: DAWSON J.A.
GAUTHIER J.A.
STRATAS J.A.**

BETWEEN:

**JONATHON DAVID HOLLAND (AKA JONATHAN DAVID HOLLAND)
BY HIS LITIGATION GUARDIAN, ZSUZSANNA HOLLAND
AND THE SAID ZSUZSANNA HOLLAND**

Applicants

and

CANADIAN HUMAN RIGHTS COMMISSION

Respondent

Heard at Vancouver, British Columbia, on June 18, 2012.

Judgment delivered at Ottawa, Ontario, on June 25, 2012.

REASONS FOR JUDGMENT BY:

STRATAS J.A.

CONCURRED IN BY:

DAWSON, GAUTHIER J.J.A.

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REASONS FOR JUDGMENT

STRATAS J.A.

[1] The appellant, Ms. Holland, appeals from the order of the Federal Court (*per* Justice Beaudry): 2011 FC 1135. The Federal Court dismissed Ms. Holland's motion for an order appointing her as the litigation representative of her son in an application for judicial review or, alternatively, an order that the Government of Canada pay for a lawyer to act as her son's representative.

[2] In its reasons for decision, the Federal Court observed that, in a related matter, the British Columbia Court of Appeal did not accept that her son had a disability sufficient to warrant the appointment of a litigation representative: *Holland (Guardian ad litem of) v. Marshall*, 2009 BCCA 311. Based on evidence similar to that filed before the British Columbia Court of Appeal, the Federal Court reached the same conclusion as that Court and dismissed Ms. Holland's motion.

[3] Ms. Holland appeals to this Court.

[4] Before the hearing of this appeal, Ms. Holland attempted to file fresh evidence in an appeal book but this was denied. She attempted to file a reply memorandum. This was denied. She later attempted to get around that ruling by improperly setting out her reply in a "notice of constitutional deprivation." She asked to make her submissions at the hearing by way of teleconference but that was denied. She asked for that again on the business day before the hearing and attempted to get around the earlier ruling by faxing to the Court a document outlining her oral submissions, along with attachments that included some of the fresh evidence previously ruled to be inadmissible. Court was convened at the scheduled time in case Ms. Holland, contrary to expectation, did appear in person, and to give counsel for the respondent Commission the opportunity to respond in writing to Ms. Holland's fax. Ms. Holland did not appear, and Commission counsel declined the opportunity to respond. The Court then announced that it would determine the appeal on the basis of the material filed previously by the parties, and ended the hearing.

[5] I have reviewed the submissions contained in Ms. Holland's fax. They are irrelevant to the issues before us.

[6] In her memorandum of fact and law in this Court, Ms. Holland seeks the same relief she sought in the Federal Court.

[7] In order to succeed in her appeal to this Court, Ms. Holland must demonstrate an error of law on the part of the Federal Court, or palpable and overriding error in the Federal Court's fact-finding or its application of the law to the evidence before it.

[8] In my view, Ms. Holland has not demonstrated this. It was open to the Federal Court to reach the conclusion it did based on the evidence filed before it and the earlier decision of the British Columbia Court of Appeal made on substantially the same evidence.

[9] Accordingly, I would dismiss the appeal. As costs were not sought, none shall be awarded

"David Stratas"

J.A.

"I agree.
Eleanor R. Dawson J.A."

"I agree
Johanne Gauthier J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-374-11

APPEAL FROM A JUDGMENT OF THE HONOURABLE MR. JUSTICE BEAUDRY OF THE FEDERAL COURT OF CANADA, DATED SEPTEMBER 30, 2011, DOCKET NUMBER T-1332-10 (2011 FC 1125)

STYLE OF CAUSE: Jonathon David Holland et al. v.
Canadian Human Rights
Commission

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: June 18, 2012

REASONS FOR JUDGMENT BY: STRATAS J.A.

CONCURRED IN BY: DAWSON, GAUTHIER JJ.A.

DATED: June 25, 2012

APPEARANCES:

Samar Musallam

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Samar Musallam
Legal Services, Canadian Human Rights Commission
Ottawa, Ontario

FOR THE RESPONDENT