

Federal Court of Appeal



Cour d'appel fédérale

Date: 20130201

Docket: A-330-11

Citation: 2013 FCA 19

**CORAM: PELLETIER J.A.
GAUTHIER J.A.
MAINVILLE J.A.**

BETWEEN:

NICOLE (NORA) HÉROLD

Appellant

and

**HER MAJESTY IN RIGHT OF CANADA ET AL
CANADA REVENUE AGENCY (CRA) AND
THE PARTIES TO THE OFFENCES: EMPLOYMENT INSURANCE (EI),
HUMAN RESOURCES AND SOCIAL DEVELOPMENT CANADA (HRSDC)
SUDBURY TAXATION CENTRE**

Respondents

Heard at Toronto, Ontario, on January 30, 2013.

Judgment delivered at Ottawa, Ontario, on February 1, 2013.

REASONS FOR JUDGMENT OF THE COURT BY:

**PELLETIER J.A.
GAUTHIER J.A.
MAINVILLE J.A.**

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REASONS FOR JUDGMENT OF THE COURT

[1] Ms. Hérold is appealing the decision by Justice Scott of the Federal Court (the judge) in which he dismissed her action in damages against the respondents and allowed the counterclaim for recovery of the balance of the student loans (\$9,509.28 with interest) granted to the appellant under the *Canada Student Loans Act*, R.S.C. 1985, c. S-23 (the Act).

[2] Before us, the appellant analyzed certain pieces of the evidence in the record that, in her view, support her position that she has repaid in full all of the student loans granted to her. She submits that the judge made a palpable and overriding error by knowingly ignoring this evidence and Ms. Kennedy's lack of credibility.

[3] She also argues that the judge erred in fact and in law in concluding that the counterclaim was not statute-barred in light of the Act's special provisions regarding the limitation period. She explained why she had written the various letters that the judge analyzed in detail in his reasons. It should be noted here that this issue is distinct from the issue of whether set-off applies to a statute-barred debt, since subsections 19.1(2) and 19.2(4) of the Act deal specifically with this question.

[4] In addition, the appellant maintains that the judge erred in law by misinterpreting the applicable statutory provisions, particularly section 155 of the *Financial Administration Act*, R.S.C. 1985, c. F-11. The appellant submits that it was simply not open to the judge to conclude that the respondents had not acted unlawfully by resorting to set-off in this case.

[5] At the hearing, the appellant insisted, among other things, that her pension was not a seizable asset [TRANSLATION] "in the absence of a writ of seizure for financial support". In this regard, it should be pointed out that this Court has previously dealt with a similar issue in cases involving the application of section 224.1 of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (*Mintzer v. Canada*, [1996] 2 F.C. 146 (C.A.), *Bouchard v. Canada (Attorney General)*, 2009 FCA 321). It is clear that statutory set-off is a concept distinct from seizure.

[6] After having closely reviewed all of the parties' arguments (filed memorandums and Ms. Hérold's outline of oral submissions), the evidence in the appeal record (including the transcript), the judge's reasons, and the applicable statutory provisions, the Court is not satisfied that the judge committed an error warranting our intervention. In the circumstances, it serves no purpose to elaborate further.

[7] Regarding the issue raised by the appellant in her notice of constitutional question, the Court concludes that the objection raised by the respondents should be allowed, given that this question was not submitted to the judge and they did not have the opportunity to file the evidence they would have submitted if they had been served with such a notice before the hearing. This Court has on many occasions ruled that it will not examine arguments based on the *Canadian Charter of Rights and Freedoms* in such a context (*Little Red River Cree Nation #447 v. Laboucan*, 2011 FCA 87; *Somodi v. Canada (Citizenship and Immigration)*, 2009 FCA 268; *Pardhan v. Coca-Cola Ltd.*, 2003 FCA 11; *Bekker v. Canada*, 2004 FCA 186).

[8] The appeal is dismissed with costs.

“J.D. Denis Pelletier”

J.A.

“Johanne Gauthier”

J.A.

“Robert M. Mainville”

J.A.

Certified true translation
Erich Klein

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET: A-330-11

**(APPEAL FROM A JUDGMENT OF THE HONOURABLE JUSTICE SCOTT,
DATED AUGUST 18, 2011, IN DOCKET NO. T-68-09.)**

STYLE OF CAUSE: NICOLE (NORA) HÉROLD v.
HER MAJESTY IN RIGHT OF CANADA ET AL
CANADA REVENUE AGENCY (CRA)
AND THE PARTIES TO THE OFFENCES:
EMPLOYMENT INSURANCE (EI), HUMAN
RESOURCES AND SOCIAL DEVELOPMENT
CANADA (HRSDC), SUDBURY TAXATION
CENTRE

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: January 30, 2013

**REASONS FOR JUDGMENT
OF THE COURT BY:** (PELLETIER J.A., GAUTHIER J.A.,
MAINVILLE J.A.)

DATED: February 1, 2013

APPEARANCES:

Nicole (Nora) Hérold FOR THE APPELLANT
(self-represented)

Derek Edwards FOR THE RESPONDENTS

SOLICITORS OF RECORD:

N/A FOR THE APPELLANT

William F. Pentney FOR THE RESPONDENTS
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