

Federal Court of Appeal



Cour d'appel fédérale

Date: 20161005

Docket: A-375-15

Citation: 2016 FCA 245

**CORAM: TRUDEL J.A.
NEAR J.A.
DE MONTIGNY J.A.**

BETWEEN:

OURANIA GEORGOULAS

Appellant

and

**ATTORNEY GENERAL OF CANADA (AGC)
TRANSPORT CANADA (TC)
CANADA ASSOCIATION OF PROFESSIONAL EMPLOYEES (CAPE)**

Respondents

Heard at Ottawa, Ontario, on October 5, 2016.

Judgment delivered at Ottawa, Ontario, on October 5, 2016.

REASONS FOR JUDGMENT BY:

NEAR J.A.

CONCURRED IN BY:

**TRUDEL J.A.
DE MONTIGNY J.A.**

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REASONS FOR JUDGMENT

NEAR J.A.

[1] On May 22, 2015, the Federal Court issued a Notice of Status Review with respect to the appellant's application for judicial review of a decision of the Canadian Human Rights Commission (the Commission). On June 29, 2015, after conducting the Status Review, the Judge determined that the appellant's application should be continued as a specially managed

proceeding and ordered timelines for the appellant to bring both a motion for further disclosure from the Commission and to serve and file her application record (the Status Review Order). The Judge stated that the ordered timelines may be varied by the Case Management Judge that would be assigned to the appellant's proceeding. The appellant did not appeal the Status Review Order.

[2] Instead, the appellant brought a motion for reconsideration of the Status Review Order. On August 21, 2015, the Judge dismissed the appellant's motion on the basis that there was "no valid reason to reconsider any of the terms" in his original Status Review Order. The appellant appeals from the Judge's order dismissing her motion for reconsideration (the Reconsideration Order).

[3] This Court issued a direction, dated October 3, 2016, requesting that the parties make submissions at the hearing as to whether this appeal is moot. The appellant did not present herself for the hearing of her appeal although she had been notified that the Court would be sitting at the Supreme Court Building in order to accommodate her needs. As a result, the Court did not hear from the respondents and decided to take the matter under reserve on the basis of the parties' written submissions.

Having considered the issue of mootness and the parties' material filed for this appeal, it is my view that this appeal cannot succeed. I conclude that this appeal is indeed moot.

[4] In *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342 at para. 16, 57 D.L.R. (4th) 231, the Supreme Court of Canada established a two-step analysis for assessing mootness:

First it is necessary to determine whether the required tangible and concrete dispute has disappeared and the issues have become academic. Second, if the response to the first question is affirmative, it is necessary to decide if the court should exercise its discretion to hear the case.

[5] In my view, the Order of the Case Management Judge, dated December 21, 2015, makes this appeal moot. The appellant, in large measure, seeks to challenge the Status Review Order and Reconsideration Order on the basis that the Judge refused to accommodate her and grant timelines in accordance with her personal needs. The Case Management Judge has subsequently recognized the appellant's personal circumstances and her need for accommodation as a result of her disability. The Case Management Judge has also replaced the timelines that the Judge originally ordered following the Status Review and then declined to reconsider. Consequently, no "live controversy" remains for this Court to resolve.

[6] There is no basis on which this Court could exercise its discretion to hear the appeal despite its mootness. There is no sufficient adversarial context because the substance of the Status Review Order is not properly under appeal and the Case Management Judge has already addressed the appellant's requested relief. Further, there are no special circumstances that warrant an expenditure of judicial resources to resolve the otherwise moot appeal.

[7] In any event, even if the appeal was not moot, I am of the view that the Judge did not err in law or make any palpable and overriding error in dismissing the appellant's motion for reconsideration of the Status Review Order (*Hospira Healthcare Corporation v. Kennedy Institute of Rheumatology*, 2016 FCA 215).

[8] The Judge correctly stated that reconsideration is only available in a limited set of circumstances. This Court has held that a motion for reconsideration is not an opportunity for a party to reargue merits or for the court to change its mind (*Bell Helicopter Textron Canada Limitée v. Eurocopter*), 2013 FCA 261 at para. 15, 116 C.P.R. (4th) 161). Rule 397 of the *Federal Courts Rules* sets out the grounds for reconsideration. The appellant’s submissions on the motion for reconsideration alleged, in part, that the original order contained an “error” where it stated that the “Attorney General delivered a supplementary record”. The appellant also alleged that the Judge “overlooked” her submissions in response to the Notice of Status Review. The Reconsideration Order addressed both of these possible grounds for reconsideration, as captured in Rule 397(2) concerning “clerical mistakes, errors, or omissions” and Rule 397(1)(b) concerning matters “overlooked or accidentally omitted”. The Judge identified the error as a “clerical mistake”, noting that the Status Review Order should have indicated that it was the Commission that delivered a supplementary record. The Judge stated, however, that this clerical mistake did not affect the validity of the Status Review Order. The Judge also stated that he did not overlook or accidentally omit any matter because he had all of the parties’ submissions before him when conducting the Status Review. As such, there is no basis for interfering with the Reconsideration Order.

[9] I would dismiss the appeal with costs.

"David G. Near"

J.A.

“I agree.

Johanne Trudel J.A.”

“I agree.

Yves de Montigny J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

**AN APPEAL FROM AN ORDER OF THE HONOURABLE JUSTICE MARTINEAU
DATED AUGUST 21, 2015, IN FILE NO. T-2148-14.**

DOCKET: A-375-15

STYLE OF CAUSE: OURANIA GEORGOULAS v.
ATTORNEY GENERAL OF
CANADA, TRANSPORT
CANADA (TC), CANADA
ASSOCIATION OF
PROFESSIONAL EMPLOYEES
(CAPE)

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: OCTOBER 5, 2016

REASONS FOR JUDGMENT BY: NEAR J.A.

CONCURRED IN BY: TRUDEL J.A.
DE MONTIGNY J.A.

DATED: OCTOBER 5, 2016

APPEARANCES:

Mathew Johnson FOR THE RESPONDENTS
ATTORNEY GENERAL OF
CANADA AND
TRANSPORT CANADA (TC)

Peter Engelmann FOR THE RESPONDENT
CANADA ASSOCIATION OF
PROFESSIONAL EMPLOYEES
(CAPE)

SOLICITORS OF RECORD:

William F. Pentney
Deputy Attorney General of Canada

Goldblatt Partners LLP
Ottawa, Ontario

FOR THE RESPONDENTS
ATTORNEY GENERAL OF
CANADA AND
TRANSPORT CANADA (TC)

FOR THE RESPONDENT
CANADA ASSOCIATION OF
PROFESSIONAL EMPLOYEES
(CAPE)