

Date: 20080225

**Dockets: A-495-07
A-509-07
A-549-07
A-550-07**

Citation: 2008 FCA 73

Present: SHARLOW J.A.

BETWEEN:

RON CROWE

Appellant

and

THE HONOURABLE CHIEF JUSTICE OF CANADA BEVERLY McLACHLIN, THE HONOURABLE JUSTICE CHARRON, THE HONOURABLE JUSTICE ROTHSTEIN OF THE SUPREME COURT OF CANADA, THE HONOURABLE CHIEF JUSTICE OF ONTARIO ROY McMURTRY, THE HONOURABLE JUSTICE FELDMAN, THE HONOURABLE JUSTICE LANG OF THE COURT OF APPEAL FOR ONTARIO, THE HONOURABLE MADAM JUSTICE JANET WILSON OF THE ONTARIO SUPERIOR COURT OF JUSTICE, THE HONOURABLE RICHARD SCOTT, CHIEF JUSTICE OF MANITOBA AND CHAIRPERSON OF THE JUDICIAL CONDUCT COMMITTEE OF THE CANADIAN JUDICIAL COUNCIL (in their judicial and private capacities), THE CANADIAN JUDICIAL COUNCIL, THE ATTORNEY GENERAL OF CANADA, THE MARITIME LIFE ASSURANCE COMPANY now known as THE MANUFACTURERS LIFE INSURANCE COMPANY, MANULIFE FINANCIAL, DOMINIC D’ALESSANDRO, ARTHUR P. SAWCHUK, JOHN CASSADAY, LINO J. CELESTE, GAIL COOK-BENNETT, THOMAS P. D’AQUINO, RICHARD B. DE WOLFE, ROBERT E. DINEEN JR., PIERRE Y. DUCROS, ALLISTER P. GRAHAM, THOMAS E. KIERANS, LORNA R. MARSDEN, HUGH W. SLOAN JR., GORDON G. THIESSEN (in their corporate and private capacities), PAULO GRECO

Respondents

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on February 25, 2008.

REASONS FOR ORDER BY:

SHARLOW J.A.

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Respondents

REASONS FOR ORDER

SHARLOW J.A.

[1] Before me are a number of motions, including a motion to consolidate four appeals, a motion for an order that there will be a single consolidated appeal book, and a motion to determine

the contents of the consolidated appeal book. To understand those motions, it is necessary to understand the background to the appeals.

[2] Mr. Crowe sued the Manufacturers Life Assurance Company (ManuLife) in the Ontario Superior Court of Justice in connection with a disability insurance policy. That proceeding resulted in “minutes of settlement” that Mr. Crowe refused to sign. He dismissed his solicitor, Paolo Greco, and has been representing himself since that time.

[3] ManuLife moved to enforce the minutes of settlement. Justice Wilson of the Ontario Superior Court of Justice ordered a summary trial to determine whether Mr. Crowe was bound by the minutes of settlement. That order required the consent of Mr. Crowe. Mr. Crowe sought to appeal the order of Justice Wilson to the Ontario Court of Appeal on the basis that his consent was not valid because it was induced by fraud. Leave to appeal was denied. Leave to appeal to the Supreme Court of Canada was also denied.

[4] Mr. Crowe also submitted a complaint to the Canadian Judicial Council about Justice Wilson but the Chair of the Judicial Conduct Committee refused to entertain the complaint.

[5] On August 17, 2007, Mr. Crowe commenced an action in the Federal Court (T-1526-07) against Mr. Greco, ManuLife and its officers and directors, the Attorney General of Canada on behalf of the federal Crown, Justice Wilson, the judges of the Ontario Court of Appeal and the

Supreme Court of Canada who dismissed his applications for leave to appeal, the Canadian Judicial Council, and the Chair of its Judicial Conduct Committee.

[6] In three separate orders dated October 4, 2007, Justice Harrington dismissed the claims against Mr. Greco, ManuLife and its officers and directors, and the Attorney General of Canada. The reasons for those orders are cited as 2007 FC 1020.

[7] On November 5, 2007, Mr. Crowe filed a notice of appeal seeking to appeal all three orders. On December 21, 2007, Justice Décary gave Mr. Crowe leave to file a single notice of appeal for all of the orders of Justice Harrington issued October 4, 2007. That appeal is A-495-07. At the same time, Justice Décary directed that the agreement as to the contents of the appeal book was to be filed by January 21, 2008.

[8] In an interlocutory order dated October 15, 2007, Justice Harrington on his own motion required Mr. Crowe to show cause why his claims against the other defendants should not be dismissed. Mr. Crowe has appealed that order (A-509-07). Subsequently the remaining defendants served and filed motions for summary dismissal, which were heard in a single hearing on November 6, 2007.

[9] Justice Harrington issued three interlocutory orders dated November 7, 2007: an order dismissing the motion of Mr. Crowe to make an audio recording of the hearing, an order dismissing Mr. Crowe's motion for default judgment, and an order abridging the time for filing the motion of

the judges of the Supreme Court of Canada for summary dismissal. Mr. Crowe has not appealed any of those orders.

[10] Justice Harrington issued two orders dated November 19, 2007. One dismisses Mr. Crowe's claims against the judges of the Ontario Courts, the Canadian Judicial Council and the Chair of the Judicial Conduct Committee. The other dismisses Mr. Crowe's claims against the judges of the Supreme Court of Canada. The reasons for those orders are cited as 2007 FC 1209.

[11] On November 30, 2007, Mr. Crowe filed two notices of appeal. One appeals the order dismissing his claims against the judges of the Supreme Court of Canada (A-549-07). The other appeals the order dismissing his claims against the judges of the Ontario Courts, the Canadian Judicial Council, and the Chair of the Judicial Conduct Committee (A-550-07).

[12] It is noted that in several instances Mr. Crowe has referred to orders of Justice Harrington as having been made on a day preceding the date of the written order. It is not necessary at this stage (indeed it may never be necessary) to determine whether there is any substantive dispute on the timing of the orders. For convenience, I will continue to refer to the orders by reference to the dates on which the written orders were issued.

[13] On December 17, 2007, Mr. Crowe filed a motion for an order determining the contents of the appeal book in A-495-07. On January 15, 2008, he filed a motion for an order consolidating all four of his appeals, an order for a consolidated appeal book and an order determining the contents of

the consolidated appeal book. The motion for consolidation is unopposed and will be granted. The December 17, 2007 motion will be dismissed as moot.

[14] The consolidation order means that all of the following appeals will be dealt with as a single proceeding in this Court:

- (a) Appeal No. A-495-07 from the orders of Justice Harrington dated October 4, 2007 dismissing the claims against Mr. Crowe's former solicitor, dismissing the claims against ManuLife, and its officers and directors, and dismissing the claims against the Attorney General of Canada.
- (b) Appeal No. A-509-07 from the order of Justice Harrington dated October 15, 2007 requiring Mr. Crowe to show cause why his claims against the remaining defendants should not be dismissed.
- (c) Appeal No. A-549-07 from the order of Justice Harrington dated November 19, 2007 dismissing the claims against the judges of the Supreme Court of Canada.
- (d) Appeal No. A-550-07 from the order of Justice Harrington dated November 19, 2007 dismissing the claims against the judges of the Ontario Courts, the Canadian Judicial Council, and the Chair of the Judicial Conduct Committee of the Canadian Judicial Council.

[15] Mr. Crowe has suggested that there should be a consolidated appeal book. According to the material filed in Mr. Crowe's motion record, all parties agree with this. I agree as well.

[16] According to Mr. Crowe's material, the only dispute in relation to the contents of the appeal book relates to the books of authorities submitted in the Federal Court with the various motions that led to the orders under appeal. The normal practice in this Court is not to include authorities such as statutes and case law in the appeal book. That is the case even if those authorities were before the judge in the court below. This Court will presume that the judge referred to the cases that were brought to his attention. If an appellant or respondent in an appeal believes that the judge in the court below failed to consider a case that was brought to his attention, or misunderstood a case or was referred to the wrong version of a reported case, it is sufficient to make a submission to that effect in the memorandum of fact and law (see Rule 346), and include the correct version of the case in the joint book of authorities (see Rule 348). Therefore, it is not necessary for the appeal books to include copies of any authorities.

[17] In this case, it is Mr. Crowe who has proposed that the books of authorities submitted in the court below be included in the appeal book, and it is he who must initially bear the costs of preparing the appeal books. According to the material in Mr. Crowe's motion record, all of the respondents have agreed to the inclusion of the books of authorities in the appeal books, although counsel for the Ontario judicial parties and the Canadian Judicial Council (supported by counsel for the Attorney General of Canada) has suggested that including the books of authorities in the appeal books may be unnecessarily duplicative.

[18] In these circumstances, I will make an order permitting (but not requiring) the appellant to include the books of authorities in the appeal books.

[19] Mr. Crowe has also asked for the costs of the motion for determining the contents of the consolidated appeal book.

[20] Mr. Greco has filed a responding motion record opposing the costs award. Mr. Crowe objects to that motion record being considered because of what he claims are irregularities in the service of that motion record. The Attorney General of Canada and the ManuLife respondents have also filed responding records opposing Mr. Crowe's request for costs, but outside the permitted time limits.

[21] Under the Court's usual practice, costs on a motion to determine the contents of an appeal book are costs in the cause. Mr. Crowe has provided no basis for departing from that usual practice. Therefore, even without considering any of the respondents' motion records, I have no reason to grant Mr. Crowe's request for costs on his motion. Based only on Mr. Crowe's motion record, I will order that the costs of his motion will be costs in the cause.

"K. Sharlow"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKETS: A-495-07, A-509-07, A-5490-07,
A-550-07

STYLE OF CAUSE: Ron Crowe v. The Honourable Chief
Justice of Canada Beverly McLachlin
et al

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY: SHARLOW J.A.

DATED: February 25, 2008

WRITTEN REPRESENTATIONS BY:

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On his own behalf

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The Honourable Chief Justice of
Canada Beverly McLachlin et al

Michael C. Birley FOR THE RESPONDENT
Maritime Life Assurance Company
et al

Martin W. Mason FOR THE RESPONDENT
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