

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20100716

Docket: A-454-08

Citation: 2010 FCA 189

**CORAM : EVANS J.A.
PELLETIER J.A.
TRUDEL J.A.**

BETWEEN:

ATTORNEY GENERAL OF CANADA

Appellant

and

JEAN PELLETIER

Respondent

and

**THE HONOURABLE JOHN H. GOMERY,
IN HIS QUALITY AS EX-COMMISSIONER
OF THE COMMISSION OF INQUIRY INTO THE
SPONSORSHIP PROGRAM AND
ADVERTISING ACTIVITIES**

Third Party

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on July 16, 2010.

REASONS FOR ORDER BY:

PELLETIER J.A.

CONCURRED IN BY:

EVANS J.A.
TRUDEL J.A.

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REASONS FOR ORDER

PELLETIER J.A.

[1] On September 26, 2008, the Attorney General of Canada appealed from the decision of the Federal Court holding that the conduct of the Honourable John Gomery, in his quality as Commissioner of the Commission of Inquiry into the Sponsorship Program and Advertising Activities (“the Gomery Commission”), raised a reasonable apprehension of bias against

Mr. Jean Pelletier. On October 6, 2008, counsel filed a notice of appearance on behalf of Mr. Pelletier.

[2] On January 10, 2009, Mr. Pelletier died.

[3] The parties were then heard on the conduct of the appeal, and on February 19, 2009, they submitted to the Court a draft order setting the parameters for the appeal. Counsel for Mr. Pelletier signed that draft consent order. Before endorsing the draft order that had been submitted to it, the Court made a direction dated March 3, 2009, in which it noted the death of Jean Pelletier, acknowledged that he could not bring legal proceedings and asked the parties to advise the Court in writing of the basis on which the appellant would carry on his appeal against the deceased. The Court also asked who had authorized counsel for Mr. Pelletier to agree to the draft order.

[4] In accordance with this direction, counsel for Mr. Pelletier filed in Court a motion to dismiss the appeal on the basis that the extra-patrimonial rights of Mr. Pelletier at issue in the decision under appeal could not be transmitted under Rule 117 of the *Federal Courts Rules*.

[5] On June 23, 2009, the Federal Court of Appeal made the following order:

[TRANSLATION]

Whereas Rules 116 and 117 of the *Federal Courts Rules* state that a proceeding is not terminated only by reason that a party to a proceeding dies and provide for a transmission of interest;

And whereas the succession of the deceased has not carried on the proceeding and consequently does not have the legal capacity to seek its dismissal;

Now therefore, it is so ordered:

The motion to dismiss the appeal is dismissed with costs.

[6] On September 18, 2009, the Court made, on its own initiative, a direction asking the parties, in accordance with the direction dated March 3, 2009, and the order dated June 23, 2009, to make their submissions to the Court regarding the conduct of the appeal.

[7] Counsel for Mr. Pelletier responded to the direction on September 24, 2009, stating that the succession of Jean Pelletier proposed to carry on the proceeding as provided for under Rule 117 of the *Federal Courts Rules* and refiled the motion to dismiss the appeal, for the same reasons as those set out in the original motion.

[8] In light of the intention of the succession of Mr. Pelletier to carry on the proceeding, the Attorney General of Canada wrote to the Court on October 15, 2009, to ask that Mr. Pelletier's appeal, as well as that of Mr. Jean Chrétien (A-46-08), be stayed until a decision was rendered in the appeal of Mr. Gagliano (A-9-08), given that these three cases arose from the same events that took place in the course of the Gomery Commission's proceedings.

[9] Counsel for Mr. Chrétien conveyed to the Court his client's intention to carry on with his appeal independently of the appeals of Mr. Pelletier and Mr. Gagliano.

[10] On December 8, 2009, this Court held that Mr. Chrétien's appeal (A-46-08) should proceed independently of those of Mr. Pelletier (A-454-08) and Mr. Gagliano (A-9-08).

[11] Neither party took any action whatsoever in this case after December 8, 2009. On June 18, 2010, the Court issued a notice of status review asking the appellant to state the reasons why the appeal should not be dismissed for delay.

[12] In reply to the notice of status review, the Attorney General of Canada asked that this appeal be stayed pending judgment in the appeal of Mr. Chrétien (A-46-08). However, since the succession of Jean Pelletier had not carried on the proceeding, it would have to proceed *ex parte*.

[13] Counsel for Mr. Pelletier then wrote to the Court to ask that the appeal be dismissed for delay.

[14] Although the appeal's progress was stalled by the death of Mr. Pelletier and the inaction of his succession, the fact remains that the responsibility for moving the case forward lies on the appellant, the Attorney General of Canada. When asked to explain his failure to proceed with the appeal, the Attorney General merely proposed a solution which this Court had already rejected. He did not explain his failure to conduct his appeal, nor did he propose a schedule for the next steps. In *Netupsky v. Canada*, 2004 FCA 239, [2004] F.C.J. No. 1073, this Court gave its opinion on the obligations of a party in receipt of a notice of status review:

[11] According to the jurisprudence of this Court, a party in receipt of a notice of status review is required to address two questions. (1) Is there a justification for the failure to

move the case forward? (2) What measures does the party propose to take to move the case forward? (See *Baroud v. Canada (Minister of Citizenship & Immigration)* (1998), 160 F.T.R. 91 (T.D.), *Manson Estate v. Canada (Minister of National Revenue)*, [2003] 1 C.T.C. 13 (F.C.A.), leave to appeal refused, [2002] S.C.C.A. No. 542.)

[15] Since the Attorney General did not fulfil his obligations, I would dismiss the appeal for delay, with costs.

“J.D. Denis Pelletier”

J.A.

“I agree.

John M. Evans J.A.”

“I agree.

Johanne Trudel J.A.”

Certified true translation
Michael Palles

FEDERAL COURT OF APPEAL

FEDERAL COURT SOLICITORS OF RECORD

DOCKET: A-454-08

STYLE OF CAUSE: Attorney General of Canada v. The Honourable John H. Gomery, in his quality as Ex-Commissioner of the Commission of Inquiry into the Sponsorship Program and Advertising Activities

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY: PELLETIER J.A.

CONCURRED IN BY: EVANS J.A.
TRUDEL J.A.

DATE OF REASONS: July 16, 2010

WRITTEN REPRESENTATIONS BY:

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