

Federal Court of Appeal



Cour d'appel fédérale

Date: 20210707

Docket: A-150-21

Citation: 2021 FCA 134

Present: STRATAS J.A.

BETWEEN:

JELISA PHILLIPS

Appellant

and

**CAPITAL ONE (CANADA BRANCH) and
PRIVACY COMMISSIONER OF CANADA**

Respondents

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on July 7, 2021.

REASONS FOR ORDER BY:

STRATAS J.A.

Federal Court of Appeal



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REASONS FOR ORDER

STRATAS J.A.

[1] The Privacy Commissioner of Canada believed he should have been named as a party respondent in this appeal. So he delivered a notice of appearance to the Registry. In doing so, he assumed he can enter into this appeal just like that. He says he can do this under Rule 341 of the *Federal Courts Rules*, S.O.R./98-106.

[2] No he can't. Even where a legislative provision allows some agency or office holder to participate in proceedings, the agency or office holder must bring a motion to be added to the proceedings and to amend the style of cause.

[3] Rule 341 allows respondents, already named as respondents, to file a notice of appearance. But the Privacy Commissioner is not yet a respondent. Nor can he unilaterally make himself a respondent. Nor can he unilaterally amend the style of cause. Only the Court, by order, can make a party a respondent and amend the style of cause.

[4] The Court issues orders in response to motions. The Privacy Commissioner should have brought a motion to be added as a respondent and to amend the style of cause to reflect that addition.

[5] Nevertheless, in the interests of time, the Court will act as if there were a motion before it. The appellant should have named the Privacy Commissioner as a respondent. Rule 338(1) provides that an appellant must name as a respondent "every party in the first instance who is adverse in interest to the appellant in the appeal". The Privacy Commissioner was a respondent to the motion in the Federal Court that is the subject of the appeal in this Court. Therefore, the Court will add the Privacy Commissioner of Canada as a respondent and amend the style of cause.

[6] When the Rules are not followed, there is often a mess that needs to be cleaned up. Here, the parties other than the Privacy Commissioner have filed an agreement on the contents of the

appeal book. The Privacy Commissioner, now a party respondent in this appeal, is entitled to have a say on the contents of the appeal book. Accordingly, the agreement and any appeal book filed in accordance with that agreement shall be removed from the court file, the parties will confer as to whether a revised agreement is required, and the agreement, original or revised as the case may be, shall be filed within thirty days. Time thereafter will run in accordance with the *Federal Courts Rules*.

[7] An order will issue in accordance with the foregoing.

“David Stratas”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-150-21

STYLE OF CAUSE: JELISA PHILLIPS v. CAPITAL ONE (CANADA BRANCH) AND PRIVACY COMMISSIONER OF CANADA

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY: STRATAS J.A.

DATED: JULY 7, 2021

WRITTEN REPRESENTATIONS BY:

Jennifer Seligy
FOR THE RESPONDENT,
PRIVACY COMMISSIONER OF
CANADA

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