

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20140922**

**Docket: A-172-14**

**Citation: 2014 FCA 209**

**CORAM: SHARLOW J.A.  
PELLETIER J.A.  
STRATAS J.A.**

**BETWEEN:**

**AIDAN BUTTERFIELD**

**Appellant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

Heard at Vancouver, British Columbia, on September 22, 2014.

Judgment delivered from the Bench at Vancouver, British Columbia, on September 22, 2014.

**REASONS FOR JUDGMENT BY:**

**PELLETIER, J.A.**

Federal Court of Appeal



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BETWEEN:

AIDAN BUTTERFIELD

Appellant

and

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Respondent

**REASONS FOR JUDGMENT OF THE COURT**

(Delivered from the Bench at Vancouver, British Columbia, on September 22, 2014)

**PELLETIER J.A.**

[1] Mr. Butterfield's problems began when he tried to file a notice of motion and affidavit in the Federal Court Registry. He was told that because he was seeking to have a motion determined on written materials pursuant to Rule 369, he would have to file a motion record, which meant that he would have to serve and file his written representations along with his notice of motion and affidavit. Mr. Butterfield asked that the matter be referred to the Court for a determination. The prothonotary directed that Mr. Butterfield's notice of motion and affidavit be

treated as a motion record and accepted for filing. As a result, the time for filing a respondent's motion record began to run against the respondent but Mr. Butterfield had not yet filed his written representations. Everything which followed resulted from that initial determination.

[2] Mr. Butterfield is not incorrect in pointing out that the Rules of Court contemplate that the initiating document for a motion is not a motion record but a notice of motion: see Rule 359. That said the jurisprudence as well as the established practice of the Court are to the effect that in the case of motions pursuant to Rule 369, the initiating document is the motion record. See *Greens at Tam O'Shanter Inc. (The) v. Canada*, [1999] F.C.J. No. 260, 1999 CanLII 7512 (FC), at paragraph 4, and *Aird v. Country Park Village Properties (Mainland) Ltd.*, 2002 FCT 862, [2002] F.C.J. No. 1142, at paragraphs 8 and 10. In order to avoid this requirement, a litigant need only set his motion down to be heard at the next sittings of the Court.

[3] The matter now comes to us on the question of whether the prothonotary properly exercised his discretion in refusing to allow Mr. Butterfield to file written representations "in chief" but allowing him to file a reply representations to the respondent's memorandum.

[4] As the order under appeal is a discretionary order, it can only be set aside if based on a wrong principle. Both the prothonotary and the Federal Court Judge were of the view that the appellant failed to take advantage of the opportunities which were afforded to him to file his written submissions. We see no reason to disagree with that assessment. The appeal will therefore be dismissed with costs.

"J.D. Denis Pelletier"

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-172-14

**(APPEAL FROM AN ORDER OF THE HONOURABLE MADAM JUSTICE STRICKLAND OF THE FEDERAL COURT DATED MARCH 21, 2014, DOCKET NO. T-1518-13.)**

**STYLE OF CAUSE:** AIDAN BUTTERFIELD v.  
ATTORNEY GENERAL OF  
CANADA

**PLACE OF HEARING:** Vancouver, British Columbia

**DATE OF HEARING:** SEPTEMBER 22, 2014

**REASONS FOR JUDGMENT OF THE COURT BY:** SHARLOW J.A.  
PELLETIER J.A.  
STRATAS J.A.

**DELIVERED FROM THE BENCH BY:** PELLETIER J.A.

**APPEARANCES:**

Aidan Butterfield

ON HIS OWN BEHALF

**SOLICITORS OF RECORD:**

William F. Pentney  
Deputy Attorney General of Canada

FOR THE RESPONDENT