

CANADA / JUDGMENT

R. v. Carpenter Fishing

2002 BCSC 324

COURT

Supreme Court of British Columbia

DECIDED

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Vancouver

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

CARPENTER FISHING CORPORATION,
KAARINA ETHERIDGE, WHITE HOPE HOLDINGS LTD.,
SIMPSON FISHING CO. LTD., NORMAN JOHNSON AND
TITAN FISHING LTD.
PETITIONERS

AND:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA
RESPONDENT

REASONS FOR JUDGMENT

OF THE

HONOURABLE MADAM JUSTICE STROMBERG-STEIN

Counsel for the Petitioners: M. L. Smith

and T. Martin

Counsel for the Respondent: R. S. Whittaker

Dates and Place of Hearing: February 11-13, 2002

Vancouver, B.C.

Introduction

[1] The petitioners seek the following declarations:

1. Sections 5(6) and 7(1) of the Federal Court Act, R.S.C. 1985 c. F-7, violate ss. 6(2)(a), 7 and 15 of the Canadian Charter of Rights and Freedoms, being Part I of the Constitution Act, 1982 and s. 2(e) of the Canadian Bill of Rights, R.S.C. 1970, App. III, and are null and void.
2. The composition of the Federal Court of Appeal on December 23, 1997, in an appeal involving the petitioners, was unconstitutional.
- [2] Section 5(6) of the Federal Court Act requires that at least 10 of the 31 judicial appointments to the Federal Court be from Quebec. Section 7(1) requires that a Federal Court judge reside within 40 kilometres of the National Capital District. A practice has developed that one third of the remaining judicial appointments to the Federal Court come from Ontario and the balance come from the rest of Canada.
- [3] The essence of the petitioners' argument is that ss. 5(6) and 7(1) of the Federal Court Act are unconstitutional and discriminatory because their effect is a court lacking regional representation. The petitioners maintain that there are very few appointments to the Federal Court from British Columbia because of the residency requirement and this results in a court with a central Canadian bias.
- [4] The petitioners submit that in order for the Federal Court to function as an effective and impartial adjudicator of inter-governmental disputes, it is important that all regions of Canada have equal access to appointments to the Federal Court. The petitioners argue that while the social, political, historical and legal fabric of Quebec society is represented, there is no such protection for residents of British Columbia and the other Western provinces, resulting in Western alienation. Further, the petitioners submit that when judges trained in the civil law adjudicate disputes from common law jurisdictions, they tend to vest policymaking in the legislature, resulting in a disadvantage for litigants from common law jurisdictions.

Issues

[5] The petitioners define the issues as follows:

- (a) Do ss. 5(6) and 7 of Federal Court Act violate s. 15 of the Charter?
- (b) Do ss. 5(6) and 7 of Federal Court Act violate s. 7 of the Charter and the principles of fundamental justice?
- (c) Does s. 5(6) of the Federal Court Act violate s. 2(e) of the Canadian Bill of Rights?
- (d) Do ss. 5(6) and 7 of Federal Court Act violate s. 6 of the Charter?
- (e) If unconstitutional, are these sections saved by s. 1 of the Charter?

(f) What remedies are available?

[6] The respondent identifies three preliminary issues that must be addressed:

(a) Do the petitioners lack standing to seek declaratory relief?

(b) Is this petition barred by the collateral attack doctrine?

(c) Is this petition barred by the doctrine of res judicata?

The respondent also argues that there is no evidentiary foundation to support the assertions in the petition.

Background

[7] In 1991 the petitioners commenced two actions in Federal Court challenging the lawfulness of the Minister of Fisheries and Oceans 1990 quota allocation formula for halibut licence holders. The trial judge was Mr. Justice Campbell, the only British Columbia appointee on the Federal Court at that time. He determined the issue of liability in favour of the petitioners, found the Minister's actions unlawful, and reserved the issue of damages to a future date. Before damages could be addressed, the Crown appealed the decision. The Pacific Coast Fishing Vessel Owners Guild, a British Columbia society representing various halibut licence holders in British Columbia, intervened in the appeal supporting the Crown.

[8] On December 23, 1997 the Federal Court of Appeal, composed of Decary J.A. and Pratt J.A., both members of the Quebec bar prior to their appointments to the Federal Court, and Linden J.A., a former member of the Ontario bar, granted the Crown appeal and dismissed the petitioners' action in its entirety.

[9] The petitioners' position in argument was it would be futile to pursue the balance of their claims once the Minister's actions were found to be lawful. The petitioners have never sought to have the Federal Court of Appeal revisit that aspect of the decision.

[10] On February 16, 1998 the petitioners sought leave to appeal to the Supreme Court of Canada. They were denied leave on August 20, 1998. On September 18, 1998 the petitioners requested that the Supreme Court of Canada reconsider their leave application. This was refused on November 19, 1998.

[11] On December 4, 1998 the petitioners filed a motion in Federal Court to continue the trial. The trial judge issued a Direction on January 27, 1999, notifying counsel that he was functus officio since the Federal Court of Appeal had conclusively dismissed the actions. The petitioners appealed to the Federal Court of Appeal. On March 12, 1999 the Federal Court of Appeal issued a Direction that there was no appeal from a Direction of the Trial Division.

- [12] On May 6, 1999 the petitioners sought leave to appeal to the Supreme Court of Canada. For the first time the petitioners raised constitutional challenges to ss. 5(6) and 7(1) of the Federal Court Act and complained that the Federal Court of Appeal had improperly dismissed unlitigated claims in their 1997 decision. On October 14, 1999, the Supreme Court of Canada refused leave to appeal for a third time.
- [13] The petitioners rely on this history of litigation in Federal Court to establish the factual matrix to support their argument that the composition of the Federal Court of Appeal does not ensure that Western regional considerations are taken into account, particularly when common law judges do not form the majority of an appeal panel in cases originating from a common law jurisdiction. The petitioners complain that in their litigation none of the appeal judges had practiced law in British Columbia; yet they overturned the decision of a trial judge appointed from British Columbia. The point the petitioners raise is that the decision of the Federal Court of Appeal resulted from distinctly different decision making methodology between judges trained in the civil and the common law.

Analysis

- [14] I can do little to improve on the reasoning and argument of Mr. Whittaker, counsel for the respondent. I agree with the respondent's assessment that the petitioners are disgruntled litigants who are unhappy with the December 23, 1997 decision of the Federal Court of Appeal as it relates to their halibut quotas for 1990. They lack standing to bring their petition, which is no more than a feebly disguised collateral attack on the correctness or validity of the appeal decision. On any one of the preliminary grounds advanced by the respondent, this petition fails.

Standing

- [15] The petitioners assert both a private interest standing and a public interest standing. For the reasons set out below I find that the petitioners lack standing to seek any declaratory relief. Further, the petitioner cannot satisfy the criteria for public interest standing.

Private Interest Standing

- [16] There are three branches to the petitioners' claim for private interest standing: (i) as former litigants in Federal Court, they have been affected by that Court and their experience provides a factual backdrop to highlight how the impugned legislation affects litigants from British Columbia; (ii) their livelihood depends on fishing and they may be obliged in the future to challenge the administrative conduct of the Department of Fisheries and Oceans in Federal Court; and (iii) as citizens of Canada they ought to be permitted to challenge the constitutionality of federal legislation affecting all citizens.
- [17] In *Operation Dismantle Inc. v. The Queen*, [1985] 1 S.C.R. 441, Wilson J. stated at pp. 485-486:

... in order to have standing to bring such an action a plaintiff must, as noted from Borchard, *supra*, be able to show that he or she will suffer injury to a right or legally protected interest from the conduct of such officials. The same point is made in *de Smith*, Constitutional and Administrative Law (4th Ed.), at p. 604.

... Lord Wilberforce said: '...there is no support for the proposition that declaratory relief can be granted unless the plaintiff, in proper proceedings, in which there is a dispute between the plaintiff and defendant concerning their respective legal rights and liabilities, either asserts a legal right which is denied or threatened, or claims immunity from some claim of the defendant against him, or claims that the defendant is infringing or threatens to infringe some public right so as to inflict the special damage on the plaintiff.'

[18] *Solosky v. The Queen*, [1980] 1 S.C.R. 821, considered the issue of jurisdiction to grant declarations. Dickson J. said at p. 830:

Declaratory relief is a remedy neither constrained by form nor bounded by substantive content, which avails persons sharing a legal relationship, in respect of which a 'real issue' concerning the relative interests of each has been raised and falls to be determined.

The principles which guide the court in exercising jurisdiction to grant declarations have been stated time and time again. In the early case of *Russian Commercial and Industrial Bank v. British Bank for Foreign Trade Ltd.*, [1921] 2 A.C. 438, in which parties to a contract sought assistance in construing it, the Court affirmed that declarations can be granted where real, rather than fictitious or academic, issues are raised. Lord Dunedin set out this test (at p. 448):

The question must be a real and not a theoretical question, the person raising it must have a real interest to raise it, he must be able to secure a proper contradictor, that is to say, someone presently existing who has a true interest to oppose the declaration sought.

[19] In *Fraser v. Houston* [1996] B.C.J. No. 2096 (S.C.) at para. 28, Hood J. noted with approval the comments of Lasar Sarna from *The Law of Declaratory Judgments*, 2d ed. (1988) at p. 20 that purely academic, hypothetical, obscure questions or questions of no real relevance to the parties cannot form a suitable basis for an application for relief.

[20] Hood J. held that a declaration would not be granted when the dispute is over and has become academic. This is clearly applicable to the case at bar. The petitioners, former litigants in the Federal Court, are not litigants in Federal Court at this time and no longer have a direct legal interest in the Federal Court Act. Because there is no threat of any violation of their rights, the petitioners have no standing to seek declaratory relief.

Charter Standing

[21] The petitioners argue that any citizen of Canada has the right to challenge federal legislation if such legislation does not conform with the constitutional standards enshrined in the Charter.

[22] "Every individual" has equality rights conferred by s. 15 of the Charter. The "personal nature" of s. 15 rights was emphasized by the British Columbia Court of Appeal in *Stinson Estate v. British Columbia* (1999), 70 B.C.L.R. (3d) 233. In that case, Finch J.A. (as he then was) refused standing to an estate with respect to a s. 15 claim for a deceased individual. While the Court in *Stinson* dealt with the issue of an estate, the reasoning of Finch J.A. is relevant to the matter at bar. Finch J.A. referred, at para. 14, to the Supreme Court of Canada's reasoning in *Irwin Toy Ltd. v. Quebec (Procureur General)*, [1989] 1 S.C.R. 927, with respect to s. 7 of the Charter:

"[E]veryone" then, must be read in light of the rest of the section and defined to exclude corporations and other artificial entities incapable of enjoying life, liberty or security of the person, and include only human beings.

[23] Finch J.A. held that the rights affirmed for "everyone" by s. 7 and "every individual" by s. 15, are personal in nature and those rights belong only to human beings.

[24] The corporate petitioners have no rights under s. 7 and s. 15 of the Charter: *Stinson Estate v. British Columbia* at para. 15; *Irwin Toy Ltd. v. Québec (A.G.)* at para. 96. Rights under s. 6(2) (a) of the Charter are only available to individuals or natural persons: *Canadian Egg Marketing Agency v. Richardson*, [1998] 3 S.C.R. 157.

[25] Therefore, unless the corporate petitioners are able to establish public interest standing, they have no standing to invoke the Charter.

Public Interest Standing

[26] The petitioners must satisfy the necessary criteria described in *Canadian Council of Churches v. Canada*, [1992] 1 S.C.R. 236 at p. 253-256 to establish public interest standing:

- (a) There is a serious issue as to the validity of the Federal Court Act.
- (b) The petitioners are directly affected by the Federal Court Act or that they have a genuine interest in its validity.
- (c) There is no other reasonable or effective way in which to place the validity of the Federal Court Act before the Court.

[27] The petitioners claim they have an interest in the constitutionality of the Federal Court of Canada for three reasons. First, they argue that based on their experience as litigants in the *Carpenter Fishing* action, they have been affected by the Federal Court personally. Second, they argue that they are intimately connected to the fishery on the West coast of British Columbia as they rely on fishing for their livelihood and way of life. Finally, they argue that because they are citizens of Canada that alone ought to permit them to challenge the constitutionality of federal legislation affecting all citizens.

- [28] Even if the petitioners were able to establish that there is a serious issue, I would decline to exercise my discretion in favour of granting public interest standing here because the petitioners are not directly affected by the Federal Court Act and they do not have any genuine interest in its validity with respect to the appointment of judges to the Federal Court, aside from their unsuccessful litigation in that Court.
- [29] The rationale for granting public interest standing is to ensure that legislation is not immunized from challenge. This case is unlike *Thorson v. Attorney General of Canada*, [1975] 1 S.C.R. 138, relied upon by the petitioners, where the impugned statute would have been immunized from challenge if that petitioner was not granted standing. Here, as in *Canadian Council of Churches*, no such immunization exists since those most directly affected-litigants, affected judges or potential judges of the Federal Court-may challenge the impugned legislation. Hence, the rationale for public interest standing disappears as there are other reasonable and effective means by which the validity of the Federal Court Act can be challenged: *Hy and Zel's Inc. v. Ontario (A.G.)*, [1993] 3 S.C.R. 675.
- [30] The absence of a proper factual foundation in which to consider the issues raised in this case, particularly when it is apparent that other litigants could supply such a foundation, is another basis for the finding that no standing should be granted to the petitioners: *Hy and Zel's Inc.*; *R. v. Danson* (1990), 73 D.L.R. (4th) 686 (S.C.C.).

Conclusion on Standing

- [31] Sections 5(6) and 7(1) of the Federal Court Act affect Federal Court judges. Challenges to ss. 5(6) and 7(1) of the Federal Court Act should be advanced by those directly affected - prospective judicial candidates or current Judges of the Federal Court. As a general rule, a provision of the Charter may only be invoked by those who enjoy its protection: *Canadian Egg Marketing Agency v. Richardson* at para. 36.
- [32] It should be emphasized that there is absolutely no evidence before this Court that any current or prospective judge of the Federal Court has had his or her Charter rights infringed by ss. 5(6) or 7(1) of the Federal Court Act. The petitioners cannot establish any reason why they should be permitted to advance arguments in their petition on behalf of current or prospective judges. They, as former litigants, are neither exceptionally prejudiced nor directly affected by provisions relating to current or prospective judges.
- [33] The petitioners lack private or public interest standing to bring this claim and for this reason alone this petition must be dismissed. However, I will comment briefly on the other preliminary objections raised by the respondent regarding the jurisdiction to hear this petition.

Collateral Attack

[34] The respondent submits that this petition is nothing more than a collateral attack on the decision of the Federal Court of Appeal. The doctrine of collateral attack arises from judicial policy favouring finality in litigation. The rule provides that a judicial order pronounced by a court of competent jurisdiction should not be brought into question in subsequent proceedings, except subsequent proceedings provided by law for the express purpose of attacking the order: *Wilson v. The Queen*, [1983] 2 S.C.R. 594. In *Wilson*, McIntyre J. defines a collateral attack as "an attack made in proceedings other than those whose specific object is reversal, variation or nullification of the order or judgment."

[35] The true purpose of this petition is illustrated in the affidavit of Robert Carpenter, sworn April 27, 2001 in support of the petition, seeking to declare unconstitutional the panel that heard the appeal in 1997. Further evidence is found in the material filed in the Supreme Court of Canada on the third leave application, where it is stated at para. 18:

If the Applicants are found to have been denied their rights under the Charter to equality and fundamental justice by virtue of no judges on the Federal Court of Appeal being from British Columbia then the only effective remedy is for the Supreme Court of Canada to reconsider the appeal from the strong trial judgment in favour of the Applicants. A very strong judgment in favour of the Applicants at trial before a judge from British Columbia was overturned on appeal to a court with no judges from British Columbia. Only the Supreme Court can provide an effective remedy.

I agree with the respondent that this petition is nothing more than the petitioners' attempt to question the correctness of the decision of the Federal Court of Appeal. This is barred as a collateral attack.

[36] Breach of individual constitutional rights is no exception to the collateral attack doctrine. The collateral attack doctrine and the importance of finality trumps constitutional rights and/or arguments. Thus, in the case at bar, the collateral attack doctrine would preclude an attack on the appeal decision on the basis of alleged Charter violations: *Reference Re Manitoba Language Rights* (1985), 19 D.L.R. (4th) 1 (S.C.C.); *R. v. Sarson*, [1996] 2 S.C.R. 223. A declaration that a court that heard an appeal was unconstitutional would call into question the original judgment and would constitute a collateral attack on that decision. I agree with the respondent that the appeal decision is immune from collateral attack and for this reason this petition should be dismissed as an abuse of process.

Res Judicata

[37] The respondent submits that despite the petitioners' assertion regarding the impropriety of the Federal Court of Appeal dismissing their claim in its entirety, the petitioners never raised a constitutional challenge to ss. 5(6) and 7(1) of the Federal Court Act prior to their third leave application to the Supreme Court of Canada; yet they could have done so. The respondent argues that on these facts, pursuant to the doctrine of res judicata, the petitioners cannot raise these Charter arguments now in their petition.

[38] The respondent's res judicata argument is based on the branch of res judicata referred to as cause of action estoppel. This principle was articulated by the British Columbia Court of Appeal in *Lim v. Lim* (1999), 180 D.L.R. (4th) 87, where the Court quoted at para. 8 from *Henderson v. Henderson*, [1843] 67 E.R. 313 at 319:

... the court requires the parties ... to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of a matter which might have been brought forward as part of the subject in contest, but which was not brought forward only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in a special case, not only to points upon which the court was actually required by the parties to form an opinion or pronounce a judgment, but to every point which properly belonged to the subject of litigation and which parties, exercising reasonable diligence, might have brought forward at the time.

[39] In *Lim*, the Court quoted with approval *Hoque v. Montreal Trust Co. of Canada*, [1997] N.S.J. No. 430(QL), a decision of the Nova Scotia Court of Appeal, at para. 9:

Res judicata is mainly concerned with two principles. First, there is a principle that "... prevents the contradiction of that which was determined in the previous litigation, by prohibiting the re-litigation of issues already actually addressed.": see Sopinka, Lederman and Bryant, *The Law of Evidence in Canada* (1991), at p. 997. The second principle is that parties must bring forward all of the claims and defences with respect to the cause of action at issue in the first proceeding and that, if they fail to do so, they will be barred from asserting them in a subsequent action. This "... prevents fragmentation of litigation by prohibiting the litigation of matters that were never actually addressed in the previous litigation, but which properly belonged to it.": *ibid.* at 998. Cause of action estoppel is usually concerned with the application of this second principle because its operation bars all of the issues properly belonging to the earlier litigation.

[40] The parties to this petition are the same as those in the Federal Court of Appeal and on the leave applications to the Supreme Court of Canada. The issue of the constitutionality of ss. 5(6) and 7(1) of the Federal Court Act could and should have been raised at the trial level or, at the very least, in the Federal Court of Appeal or in the first two of three leave applications to the Supreme Court of Canada. These issues properly belong to the earlier litigation. There are no special circumstances here that would justify an exception to the res judicata doctrine, such as fraud or fresh evidence, that would be conclusive and could not have been discovered with reasonable diligence.

[41] Undelivered Charter arguments are not a special circumstance justifying an exception to the *res judicata* doctrine. As noted by McKenzie J. (as he then was) in *Re MacDonald and Marriott et al.* (1984), 7 D.L.R. (4th) 697 (B.C.S.C.) at p. 8:

There are no special circumstances which would justify a second hearing. If an undelivered Charter argument was to be regarded as a special circumstance justifying a second hearing, in theory, there could be successive hearings based on different sections of the Charter. I do not believe our court system can tolerate such an elongation of process.

[42] Also relevant to this issue is *Chapman et al v. Canada* (2001), 89 B.C.L.R. (3d) 124 (S.C.). Based on the principles of *res judicata* and collateral attack, Melnick J. struck certain paragraphs of the Statement of Claim attacking the validity of leases held by the Musqueam Band. Litigation in the Federal Court Trial Division, the Federal Court of Appeal and the Supreme Court of Canada considered the issue of appropriate rents payable under the leases. The leaseholders had never suggested that the leases were invalid or void. Justice Melnick commented at para. 78:

On the other hand, these allegations contained at paras. 27 to 31 and 35 to 39 of the amended statement of claim are, in my view, clearly *res judicata* and thus an abuse of process. The essence of these claims is an attack on the validity of the leases themselves, either because they were assigned without authority or because the Minister has allowed them to be managed by the Band rather than the Crown. These are issues that could have, and should have, been brought forward in the context of the litigation to determine the rents. By these claims, the plaintiffs seek to do an end run around that process which was lengthy, presumably costly, and went all the way to the Supreme Court of Canada on the clear understanding, at each level of court, that there were in place valid leases that were entered into in circumstances in which "both parties were well represented, received good advice [and] neither were disadvantaged".

And at para. 81:

In my view, to allow these claims to stand would be an affront to the Federal Court Trial Division, the Federal Court of Appeal and the Supreme Court of Canada. It would be tantamount to the leaseholders saying, "Well, we put you to a lot of time and effort in settling the rent issues from our leases but, even though we proceeded on the basis of the leases being valid, because no specific declaration was made as to their validity, it is now open for us to argue that all the work you did was for nothing because the leases aren't valid anyway". The issues touching on the validity of the leases were issues which could have been raised in the context of the rental litigation. They were not and now they cannot be raised. To do so would be an abuse of process.

[43] *Chapman* stands for the proposition that a party is barred by the doctrine of *res judicata* from proceeding with litigation on the basis of certain assumptions and, when unsuccessful, commencing fresh litigation attacking the validity of the assumptions in the earlier proceedings. Applied to this case, on appeal and in two leave applications to the Supreme Court of Canada in respect of the appeal, the petitioners made no suggestion that the Federal Court Act provisions violated their Charter rights. The petitioners proceeded in

Federal Court on the basis that the Court was constitutional. Having lost, they cannot now assert that the Court was unconstitutional.

- [44] In all of the circumstances, the raising of Charter arguments is barred by the doctrine of *res judicata*. The Charter arguments could and should have been properly raised in the Federal Court proceedings. They were not. Thus, this petition is barred by the doctrine of *res judicata*.

Unsupported Factual Assertions

- [45] I also agree with counsel for the respondent that the petition is flawed because there are a number of assertions made by the petitioner for which there is no evidence. For example, there is no evidence that the effect of section 7(1) of the Federal Court Act is that there is a concentration of judges appointed to the Federal Court from central Canada. There is no evidence to support the assertion that residents of Quebec are given preferential treatment on the basis of ethnic origin. There is no support for the statement that there is a preference given to citizens of Quebec resulting in Western alienation. I agree with the respondent that any person not legally trained is likely completely unaware of the provisions of the Federal Court Act generally, let alone s. 5(6) in particular. Even counsel for the petitioners concedes that he was unaware of s. 5(6) until after the first two leave applications. Finally, there is no evidence that residents of British Columbia have less opportunity to be appointed to the Federal Court.

Charter Claims

- [46] The petitioners argue that ss. 5(6) and 7 of the Federal Court Act are unconstitutional because they deny British Columbians equality before the law in the Federal Court. They claim that a litigant from British Columbia has less a chance to be heard by a judge who understands the political, social and historic climate of the province of British Columbia than does a litigant from Quebec. They argue the requirement that one third of the Court be members of the Quebec bar favors litigants from Quebec and discriminates on the basis of residence. They argue this is analogous to discrimination on the basis of national and ethnic origin, as enumerated in s.15 of the Charter.
- [47] The petitioners argue that the denial of an equal opportunity to participate in the institutions of Canadian government constitutes a violation of human dignity and thus, violates both s. 7 of the Charter and s. 2(e) of the Canadian Bill of Rights. They argue that the central Canada focus of the Federal Court means that a well-informed litigant, viewing the matter reasonably, would have a reasonable apprehension that he may not receive a fair hearing before the Court in matters where British Columbia's regional interests collide with those of central Canada. This, they argue, is unfair.

- [48] To succeed in their s.15 Charter challenge, the petitioner must establish first, that judges from one region of Canada would decide cases differently from judges from other regions; and second, that such difference would be a disadvantage to the petitioners. The petitioner cannot establish either. There is absolutely no evidence to support the assertion that because the judges on the petitioners' appeal were from Quebec and Ontario, this had some impact on the result. This suggestion is pure speculation, is unsupported by any evidence and is an insult to the judges of the appeal court.
- [49] While this petition fails on each preliminary ground raised by the respondent, even on the merits, I agree with the respondent that the petition is doomed to fail for the following reasons:
- (a) Section 15 of Charter is not engaged because:
 - i) The challenged sections of the Federal Court Act do not make any distinction vis-à-vis litigants;
 - ii) The challenged sections of the Federal Court Act do not impose any burdens or disadvantages on the petitioners;
 - iii) In the alternative, any distinction is not discriminatory within the meaning of s. 15; that is, there is no discrimination on the basis of an enumerated or analogous ground.
 - (b) Section 7 of the Charter is not engaged because the petitioners are not deprived of life, liberty or security, and the principles of fundamental justice do not include the proposition that a court must be regionally representative.
 - (c) Section 6(2)(a) of the Charter is not engaged because the petitioners mobility rights are not affected by the impugned legislation, which deals only with judges.
 - (d) The Canadian Bill of Rights is not engaged by ss. 5(6) and 7(1) of the Federal Court Act because neither the petitioners nor any litigant is deprived of a fair hearing in violation of the principles of fundamental justice.
 - (e) The petitioners, particularly the corporate petitioners, have no standing to claim the Charter rights.
- [50] In any event, any Charter violations would be justified under s. 1 of the Charter as a reasonable legislative response to ensure the bijural nature of Canada's legal system and to ensure coherence and collegiality in the Federal Court.
- [51] In light of my conclusion that this petition must be dismissed on the basis of the preliminary objections noted above, it is unnecessary to elaborate further. There is ample support in law for my conclusions as advanced in the respondent's argument. In addition, as I have already indicated, claims for Charter relief were not advanced at trial or on appeal and there is no evidence to support most, if not all, of the petitioners claims for Charter relief.

Conclusion

[52] I would dismiss this petition for the following reasons:

- (a) The petitioners lack standing to seek declaratory relief because they are not litigants in the Federal Court and have no direct legal interest in the Federal Court Act; they cannot satisfy the criteria for public interest standing because they lack any genuine interest in the matter and there are other reasonable and effective means of getting the issues raised in the petition before a court.
- (b) This petition is a collateral attack on the 1997 decision of the Federal Court of Appeal.
- (c) The issues raised in the petition are barred by the doctrine of res judicata or cause of action estoppel.

[53] I adopt the comments of counsel for the Crown, Mr. Whittaker, in argument, to the effect that the concerns raised in the petition are not those the Charter was designed to protect and advancing such claims trivializes the Charter.

[54] The petition is dismissed. The respondent is entitled to costs. If counsel cannot agree on costs, written submissions may be made within 45 days from the date of release of this judgment.

"S.S. Stromberg-Stein, J."

The Honourable Madam Justice S.S. Stromberg-Stein

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