

Federal Court



Cour fédérale

**Date: 20180818**

**Docket: T-81-17**

**Citation: 2017 FC 778**

**Ottawa, Ontario, August 18, 2017**

**PRESENT: The Honourable Mr. Justice Annis**

**BETWEEN:**

**ELIZABETH BERNARD**

**Applicant**

**and**

**MINISTER OF NATIONAL REVENUE**

**Respondent**

**JUDGMENT AND REASONS**

[1] This is a motion by the Respondent to strike the underlying judicial review application on the grounds that it has been rendered moot due to legislative amendments. The Respondent argues that there is no remaining *lis* between the parties, while no practical purpose would be served by the Court rendering a decision in the matter.

[2] The Applicant is contesting a decision of the Minister relieving labour organizations and labour trusts from having to file an information return for fiscal periods starting in 2017 pursuant

to the previous section 149.01 of the *Income Tax Act*, RSC, 1985, c 1 (5<sup>th</sup> Supp) [ITA]. Failure to comply with the reporting requirements was at the time an offence punishable by section 239(2.31) of the ITA. Both sections 149.01 and 239(2.31) of the ITA were repealed as of June 18, 2017.

[3] The Minister had applied her discretion to waive the reporting requirements applicable to labour organizations and labour trusts under section 149.01 of the ITA for their financial period starting 2017.

[4] The Minister maintains the discretion conferred by express statutory authority to waive the obligation to file any form or return mandated under section 220 (2.1) of the ITA.

[5] A motion to strike an application for judicial review should only succeed if the application is so clearly improper as to have no chance of success (*Canada (National Revenue) v JP Morgan Asset Management (Canada) Inc.*, 2013 FCA 250 at para 47).

[6] Two requirements are required to be met to strike an appeal for mootness (*Borowski v Canada (Attorney General)*, [1989] 1 SCR 342 at p 353 [*Borowski*]). First, the Court must determine whether there is a live controversy. Second, the Court may exercise its discretion to address the issue in consideration of the following relevant factors:

(a) the Court's competence to resolve legal disputes rooted in the adversary system;

(b) the concern for judicial economy; and

(c) the need for the Court to demonstrate a measure of awareness of its proper law-making function.

[7] I agree that there is a lack of live controversy. There is no filing requirement that the Minister could enforce for the fiscal periods, while the labour organizations or labour trusts cannot be punished if no offence is committed. Even if information returns were filed, the Canada Revenue Agency is prohibited from publishing information returns on its website now that the exception to subsection 241(1) contained in section 149.01 is repealed. Accordingly, setting aside the waiver cannot possibly serve any practical purposes.

[8] The Applicant argues that the issues in the application involve the consideration of the parameters of the discretion conferred by the Minister by subsection 220(2.1), which reads as follows:

(2.1) Where any provision of this Act or a regulation requires a person to file a prescribed form, receipt or other document, or to provide prescribed information, the Minister may waive the requirement, but the person shall provide the document or information at the Minister's request.

[9] She claims that the exercise of discretion to waive the requirement to keep books and records is an issue that transcends the repealed provisions. I do not agree.

[10] The existence of a controversy is not sufficient in the context of the first step of the test for mootness. The resolution of the controversy must have a practical effect as summarized in *Borowski* at page 353 as follows:

“The general principle applies when the decision of the court will not have the effect of resolving some controversy which affects or may affect the rights of the parties. The decision of the court will have no practical effect on such rates, the court will decline to decide the case.”

[11] The Applicant further contends that even if there is no live controversy, the Court should exercise its discretion to allow the judicial review of the Minister’s decision to proceed. She first argues that a live controversy continues to exist because of the lack of original foundation to invoke the provisions in question. However, the application will not resolve a live controversy affecting the rights of the parties or any related issue inasmuch as labour organizations and labour trust no longer have any obligation to file information returns and nor can the provisions be enforced.

[12] Additionally, the concerns for judicial economy favour declining the exercise of discretion to address these issues, while pronouncing judgment in the absence of a dispute might be viewed as an intrusion in the role of the legislative branch (*Borowski*, supra pp 362, 365).

[13] Finally, it is noted that the Applicant no longer claims a private interest in this matter. Accordingly, she cannot buttress her application and claim new grounds for genuine interests that were not initially alleged in her application, such that she likely lacks public standing.

[14] For all of the reasons described above, the motion to strike is allowed with costs. If the parties are unable to agree on a reasonable cost figure, they should be assessed on the basis of Tariff B, under Column III of the *Federal Courts Rules*, SOR/98-106 [the Rules].

[15] In addition, an interim order is also granted to the Respondent providing an extension of time for compliance with all further steps in the litigation, including the compliance with rules 317 and 318 of the Rules until this motion has been finally decided.

**JUDGMENT in T-81-17**

**THIS COURT'S JUDGMENT is that** the application for judicial review be struck with costs to the Respondent and an interim order for an extension of time is granted for compliance with all further steps in this litigation until this motion has been finally decided.

"Peter Annis"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-81-17

**STYLE OF CAUSE:** ELIZABETH BERNARD v MINISTER OF NATIONAL  
REVENUE

MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO PURSUANT TO RULE  
369 OF THE *FEDERAL COURTS RULES*

**JUDGMENT AND REASONS:** ANNIS J.

**DATED:** AUGUST 18, 2017

**WRITTEN REPRESENTATIONS BY:**

Elizabeth Bernard

FOR THE APPLICANT  
(ON HER OWN BEHALF)

Charles Camirand

FOR THE RESPONDENT

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FOR THE RESPONDENT