

Federal Court



Cour fédérale

**Date: 20240506**

**Docket: T-1841-22**

**Citation: 2024 FC 689**

**Montréal, Quebec, May 6, 2024**

**PRESENT: Mr. Justice Gascon**

**BETWEEN:**

**DEXIAN DONG**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**ORDER AND REASONS**

I. Overview

[1] On December 6, 2023, the Applicant, Dexian Dong, filed a motion in writing pursuant to subsection 369(1) of the *Federal Courts Rules*, SOR/98-106 [Rules], titled “Motion to a Judge of the Federal Court” [Motion]. In their Motion, the Applicant – who is self-represented – seeks to set aside an order issued by Associate Judge Crinson, pursuant to Rule 51, allowing a party to appeal an order of an associate judge to a judge of the Court.

[2] As pointed out by the Respondent, the Attorney General of Canada [AGC], it is unclear from the Applicant's motion materials which order of Associate Judge Crinson they are appealing.

[3] In an order dated July 4, 2023, Associate Judge Crinson dismissed the Applicant's application for judicial review for delay following a status review [Dismissal Order]. In so doing, Associate Judge Crinson rejected the Applicant's submissions that they were unaware of the procedural requirements and noted that the Applicant had failed to propose a timetable to complete the remaining steps in this matter.

[4] In a second order dated November 28, 2023, Associate Judge Crinson dismissed a motion for reconsideration brought by the Applicant against the Dismissal Order, as he found that they failed to establish that the conditions set out in Rule 397 were met [Reconsideration Order].

[5] For the reasons that follow, the Applicant's Motion will be dismissed. No matter whether the Applicant is appealing the Dismissal Order or the Reconsideration Order, I find that Associate Judge Crinson made no palpable and overriding error and applied the law correctly in issuing these two orders. The Applicant has failed to identify any reviewable error in Associate Judge Crinson's factual findings or application of the relevant law in either the Dismissal Order or the Reconsideration Order. The Applicant is simply attempting to relitigate the dismissal of their application for judicial review or the dismissal of their motion for consideration. In applying the standard of review set out in *Hospira Healthcare Corporation v Kennedy Institute of Rheumatology*, 2016 FCA 215 [*Hospira*], I find that there is no basis for this Court to intervene and set aside either of the two Orders.

## II. Factual Background

[6] On September 7, 2022, the Applicant commenced this application for judicial review by filing a Notice of Application. In their application, the Applicant are challenging a decision of the Canada Revenue Agency [CRA] that found them ineligible for the Canada Recovery Benefit and the Canada Worker Lockdown Benefit.

[7] As recognized by the Applicant, after they submitted their application, they did nothing and waited. On May 11, 2023, the Court issued a Notice of Status Review. On May 15, 2023, the Applicant filed representations in response to the status review. In their Representations, the Applicant sought to excuse their delay in moving this matter forward on the basis that they are self-represented and not knowledgeable about the applicable judicial process. However, they did not provide a proposed timetable for the completion of the remaining litigation steps in this matter.

[8] On July 4, 2023, Associate Judge Crinson dismissed the Applicant's application for judicial review in the Dismissal Order, noting that the Applicant had failed to provide a proposed timetable and that the Rules and the Court's website provided instructions detailing the steps necessary to move an application for judicial review forward.

[9] On November 28, 2023, Associate Judge Crinson then dismissed the Applicant's motion for reconsideration in his Reconsideration Order, as he found that the Applicant had not established that the conditions required by Rule 397 for a motion for reconsideration were satisfied.

III. Analysis

[10] It is well established that discretionary orders of associate judges “should only be interfered with when such decisions are incorrect in law or are based on a palpable and overriding error in regard to the facts” (*Hospira* at para 64; *Curtis v Canada (Human Rights Commission)*, 2023 FCA 33 at para 4; *Murphy v Canada (Attorney General)*, 2023 FC 57 at para 10).

[11] Here, I agree with the AGC that the Applicant has failed to identify any reviewable error in Associate Judge Crinson’s Dismissal Order or Reconsideration Order. Moreover, the Applicant is also out of time to appeal the Dismissal Order and they have not sought an extension of time to do so.

[12] In order to avoid having their applications dismissed for delay after a status review, applicants must provide both an explanation for their delay and propose a timetable for the completion of the remaining steps (*Canada v Stoney Band*, 2005 FCA 15 at para 37). There is no doubt that the Applicant had failed to comply with the second requirement at the time of the Dismissal Order. In addition, in his reasons, Associate Judge Crinson rejected their explanation that they were delayed in moving this matter forward because of their lack of knowledge about the judicial process. I see no reviewable error in these findings.

[13] With respect to the Reconsideration Order, the conditions set out in Rule 397 require that the order at issue did not accord with any reasons given for it, or that a matter that should have been dealt with was overlooked or accidentally omitted. In their motion materials, the Applicant failed to identify how either of these conditions applied to the Dismissal Order. They

simply repeated their arguments as to why their application for judicial review should not have been dismissed for delay. Again, I see no reviewable error in Associate Judge Crinson's findings

[14] In their motion materials, the Applicant submit that Associate Judge Crinson is “not a real [j]udge” and seeks to appeal his decision to a “Federal Court judge”. It goes without saying that this argument is totally without merit. Not only are associate judges well recognized as “real” judges of the Court, but Associate Judge Crinson clearly had jurisdiction pursuant to Rule 385 to issue both the Dismissal Order and the Reconsideration Order.

[15] In sum, in dismissing the Applicant's application for judicial review and refusing to reconsider his order doing so, Associate Judge Crinson considered the relevant facts and applied the correct legal tests.

[16] A palpable and overriding error is an error that is both obvious and apparent (*Madison Pacific Properties Inc v Canada*, 2019 FCA 19 at para 26). It is a “highly deferential standard” (*Figuroa v Canada (Public Safety and Emergency Preparedness)*, 2019 FCA 12 at para 3; *1395804 Ontario Ltd (Blacklock's Reporter) v Canada (Attorney General)*, 2017 FCA 185 at para 3; *NOV Downhole Eurasia Limited v TLL Oilfield Consulting Ltd*, 2017 FCA 32 at para 7; *Revcon Oilfield Constructors Incorporated v Canada (National Revenue)*, 2017 FCA 22 at para 2; *Cobalt Pharmaceuticals Company v Bayer Inc*, 2015 FCA 116 at para 53). As Justice Stratas metaphorically stated in *Mahjoub v Canada (Citizenship and Immigration)*, 2017 FCA 157 [Mahjoub] and in *Canada v South Yukon Forest Corporation*, 2012 FCA 165 [South Yukon], in order to meet this standard, “it is not enough to pull at leaves and branches and leave the tree standing. The entire tree must fall” (*Mahjoub* at para 61; *South Yukon* at para 46). This is clearly

not the case here and there are no grounds whatsoever to justify the Court's intervention. Neither the Dismissal Order nor the Reconsideration Order discloses any errors of fact or law.

[17] Accordingly, the Applicant's Motion is dismissed.

[18] In the circumstances of this case, I make no award as to costs.

**ORDER IN T-1841-23**

**THIS COURT ORDERS that:**

1. The Motion to appeal the Associate Judge Crinson's orders dated July 4, 2023, and November 28, 2023, is dismissed.
2. No costs are awarded.

"Denis Gascon"

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Judge

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

**DOCKET:** T-1841-22

**STYLE OF CAUSE:** DEXIAN DONG v ATTORNEY GENERAL OF  
CANADA

**MOTION IN WRITING PURSUANT TO RULE 369 OF THE *FEDERAL COURTS*  
*RULES***

**ORDER AND REASONS:** GASCON J.

**DATED:** MAY 06, 2024

**WRITTEN SUBMISSIONS BY:**

Dexian Dong

FOR THE APPLICANT  
(ON THEIR OWN BEHALF)

Jessica Bishara

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Attorney General of Canada  
Ottawa, Ontario

FOR THE RESPONDENT