Federal Court Cour fédérale

Date: 20240819

Docket: T-1757-24

Citation: 2024 FC 1283

[ENGLISH TRANSLATION]

Ottawa, Ontario, August 19, 2024

PRESENT: Associate Judge Benoit M. Duchesne

BETWEEN:

JULIE COUTURE

Applicant

and

CANADA REVENUE AGENCY

Respondent

REASONS AND JUDGMENT

[1] On motion in writing under Rule 369 of the *Federal Courts Rules* (the "Rules"), the respondent is asking the Court to dismiss the applicant's notice of application for the following reasons:

(a) the notice of application fails to raise a cognizable administrative law claim that can be brought in the Federal Court;

(b) the notice of application contains no allegations explaining the content of the decisions that must be revised, nor any reasons showing that they are unreasonable; and

(c) the applicant is asking the Court to reconsider her application in light of new elements in the record that were not before the administrative decision-maker during the second review and that arose after the decision that is the subject of the notice of application.

[2] Although she was served with this motion on July 26, 2024, as illustrated by the certificate of service in the Court record, the applicant neither served nor filed a reply record to this motion, and she also did not apply for an extension of time to do so. The motion will therefore be determined without representations from the applicant.

[3] For the following reasons, the respondent's motion is granted, the notice of application is struck without leave to amend, and the applicant's application is dismissed.

I. THE APPLICABLE LAW – MOTIONS TO STRIKE NOTICES OF APPLICATION

[4] Justice Pentney provides a good summary of the law applicable to motions to strike notices of application for judicial review at paragraphs 52 to 54 of *Regroupement des pêcheurs professionnels du sud de la Gaspésie v Listuguj Mi'gmaq First Nations*, 2023 FC 1206 (CanLII):

> [52] The leading decision on the test for motions to strike notices of application for judicial review in this Court is *JP Morgan Asset Management (Canada) Inc v Canada (National Revenue)*, 2013 FCA 250 [*JP Morgan*], where the Court of Appeal described the approach in the following way:
>
> > [47] The Court will strike a notice of application for judicial review only where it is "so clearly improper

> as to be bereft of any possibility of success" [footnote omitted]: *David Bull Laboratories (Canada) Inc. v. Pharmacia Inc.*, 1994 CanLII 3529 (FCA), [1995] 1 F.C. 588 (C.A.), at page 600. There must be a "show stopper" or a "knockout punch"—an obvious, fatal flaw striking at the root of this Court's power to entertain the application: *Rahman v. Public Service Labour Relations Board*, 2013 FCA 117, at paragraph 7; *Donaldson v. Western Grain Storage By-Products*, 2012 FCA 286, at paragraph 6; *Hunt v. Carey Canada Inc.*, 1990 CanLII 90 (SCC), [1990] 2 S.C.R. 959.
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> [48] There are two justifications for such a high threshold. First, the Federal Courts' jurisdiction to strike a notice of application is founded not in the rules but in the Courts' plenary jurisdiction to restrain the misuse or abuse of courts' processes: *David Bull*, above, at page 600; *Canada (National Revenue) v. RBC Life Insurance Company*, 2013 FCA 50, 18 C.C.L.I. (5th) 263. Second, applications for judicial review must be brought quickly and must proceed "without delay" and "in a summary way": *Federal Courts Act*, above, subsection 18.1(2) and section 18.4. An unmeritorious motion—one that raises matters that should be advanced at the hearing on the merits—frustrates that objective.

[53] In examining the notice of application for judicial review, the Court "must gain 'a realistic appreciation' of the application's 'essential character' by reading it holistically and practically without fastening onto matters of form…" (*JP Morgan* at para 50, citations omitted. See also: *Wenham v Canada (Attorney General)*, 2018 FCA 199 at paras 33-34; *Bernard v Canada (Attorney General)*, 2019 FCA 144 at para 33).

[54] Affidavits are generally not admissible in support of motions to strike applications for judicial review, in large part because the flaw in the notice of application must be obvious and fatal. "A flaw that can be shown only with the assistance of an affidavit is not obvious" (*JP Morgan* at para 52). The facts alleged in a notice of application are taken to be true, assuming they are capable of proof in a court of law (*Turp v Canada (Foreign Affairs)*, 2018 FC 12 at para 20). Because an applicant is required to state the

> complete grounds in its notice of application, no affidavit is required to supplement its side of the matter. One exception to the bar on affidavits is that either side may file an affidavit which provides background information that is referred to and incorporated by reference in a notice of application (*JP Morgan* at para 54).

[5] At paragraph 33 of its decision in *Wenham v Canada (Attorney General)*, 2018 FCA 199 ("*Wenham*"), the Federal Court of Appeal also confirms that the applicable threshold, without regard to the words used to describe it, requires that it be plain and obvious that the notice of application is doomed to fail.

[6] At paragraph 36 of *Wenham*, the Federal Court of Appeal recalls that an application for judicial review can be doomed to fail at any of the three stages of the application:

> [36] An application can be doomed to fail at any of the three stages:
>
> > I. *Preliminary objections*. An application not authorized under the *Federal Courts Act*, R.S.C., 1985, c. F-7 or not aimed at public law matters may be quashed at the outset: *JP Morgan* at para. 68; *Highwood Congregation of Jehovah's Witnesses (Judicial Committee) v. Wall*, 2018 SCC 26; *Air Canada v. Toronto Port Authority*, 2011 FCA 347, [2013] 3 F.C.R. 605. Applications not brought on a timely basis may be barred: section 18.1(2) of the *Federal Courts Act*. Judicial reviews that are not justiciable may also be barred: *Hupacasath First Nation v. Canada (Foreign Affairs and International Trade Canada)*, 2015 FCA 4, 379 D.L.R. (4th) 737. Other possible bars include res judicata, issue estoppel and abuse of process (*Danyluk v. Ainsworth Technologies Inc.*, 2001 SCC 44, [2001] 2 S.C.R. 460; *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63, [2003] 3 S.C.R. 77), the existence of another available and adequate forum for relief (prematurity) (*Canada (Border Services Agency) v. C.B. Powell Limited*, 2010 FCA 61, [2011] 2 F.C.R.

> 332; *JP Morgan* at paras. 81-90) and mootness (*Borowski v. Canada (Attorney General)*, 1989 CanLII 123 (SCC), [1989] 1 S.C.R. 342).
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> II. *The merits of the review.* Administrative decisions may suffer from substantive defects, procedural defects or both. Substantive defects are evaluated using the methodology in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190; procedural defects are evaluated largely by applying the factors in *Baker v. Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 S.C.R. 817, 174 D.L.R. (4th) 193. In certain circumstances, the application is doomed to fail at this stage right at the outset. For example, an application based on procedural defects that have been waived has no chance of success: *Irving Shipbuilding Inc. v. Canada (Attorney General)*, 2009 FCA 116 (CanLII), [2010] 2 F.C.R. 488, 314 D.L.R. (4th) 340.
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> III. *Relief.* In some cases, the relief sought is not available in law (*JP Morgan* at paras. 92-94) and so the application can be quashed in whole or in part on that basis.

[7] This motion raises an objection at the third stage within the meaning of *Wenham*, and it also raises an objection with respect to basic procedure in that no material facts essential to the viability of the matter were argued.

II. **THE NOTICE OF APPLICATION**

[8] The applicant is seeking judicial review of a Canada Revenue Agency (“CRA”) decision stemming from its second review of the applicant’s file as regards her eligibility for the Canada Recovery Benefit (the “CRB”). The notice of application contains no other description or date with respect to the decision in question.

[9] The applicant does not state how or for what reasons the CRA erred in its decision, and she has submitted no arguments in this respect. In short, she does not call into question the decision or decisions of the CRA, and although she is applying for judicial review, her application does not ask the Court to revise the CRA's administrative decision or decisions regarding her case.

[10] Rather, the applicant asserts that she has found new evidence pertaining to her work-related expenses (and the related book depreciation), evidence that she had not submitted to the CRA for consideration as part of her CRB application. Therefore, she is asking the Court to reopen her file so she can submit this new evidence.

III. **THE ARGUMENT**

[11] The respondent argues that the notice of application sets out no facts or grounds tending to show that the CRA's decision is unreasonable, as it provides no material information on the content of the decision that should be reviewed.

[12] The respondent also submits that, contrary to Rules 301(d) and (e) of the Rules, the applicant failed to provide a statement of the relief sought or a complete and concise statement of the grounds intended to be argued. As a result, she did not meet pleadings requirements. A failure to adequately plead allegations that, if proven, could lead a court to exercise its discretion on judicial review is fatal to an application for judicial review (*Canada (National Revenue) v JP Morgan Asset Management (Canada)*, 2013 FCA 250 at paras 38–46; *Soprema Inc v Canada (Attorney General)*, 2021 FC 732 (CanLII) at paras 37–39, affirmed 2022 FCA 103 (CanLII); *Blair v Canada (Attorney General)*, 2022 FC 957 (CanLII) at para 10).

[13] The Court agrees with the respondent. The notice of application does not contain the essential or minimum elements for the application to have a chance of success.

[14] The respondent also argues that the application, at its core, is an application to reopen the CRA file because information and documents that were not before the CRA when it rendered its decision were discovered. Although it is accepted in the case law that new evidence may be admitted to the record on judicial review, the inclusion of new evidence that was not before the administrative decision-maker when he or she rendered the decision is permitted only on an exceptional basis to assist the reviewing court in understanding the issues, the procedural defects or breaches of procedural fairness, or the complete absence of evidence that could justify the decision under review. The case law does not allow for the submission of documents that were discovered late and that could have had an impact on the merits, but that were not filed with the administrative decision-maker (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 (CanLII) at paras 19 and 20).

[15] The Court agrees with the respondent. The relief the applicant is seeking in her notice of application—namely, the reopening of her file before the CRA—cannot be granted in this case in light of the allegations in the notice of application.

[16] Having read the applicant's notice of application broadly and liberally to ensure a proper understanding and appreciation of the relief sought and the facts pled, I find that the applicant's application for judicial review is so clearly improper as to be bereft of any possibility of success, for the above-mentioned reasons.

[17] As the very result sought through the application is improper and cannot be granted by the Court on judicial review, the applicant should not be granted leave to amend her notice of application.

THIS COURT ORDERS that:

1. The respondent's motion is granted.
2. The applicant's notice of application is struck in its entirety, without leave to amend.
3. The applicant's application is dismissed under Rule 168 of the Rules.
4. The applicant shall pay the respondent costs of this motion, which are fixed in the amount of $250.00, all-inclusive.

"Benoit M. Duchesne"
Associate Judge

Certified true translation
Melissa Paquette, Senior Jurilinguist

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1757-24
STYLE OF CAUSE:	JULIE COUTURE v CANADA REVENUE AGENCY
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APPEARANCES:

xxxxxxxxxxxx	FOR THE APPLICANT
xxxxxxxxxx	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Julie Couture Ascot Corner, Quebec	FOR THE APPLICANT
Arianne Gauthier Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT