Federal Court  Cour fédérale

Date: 20240911

Docket: T-722-24

Citation: 2024 FC 1424

Ottawa, Ontario, September 11, 2024

PRESENT: The Honourable Madam Justice McVeigh

BETWEEN:

DIKLA MIZRACHI, IRIS WEINSTEIN HAGGAI, JACQUELINE VITAL, RACHEL OHNONA and CENTRE FOR ISRAEL AND JEWISH AFFAIRS

Applicants
(Responding Party)

and

THE ATTORNEY GENERAL OF CANADA

Respondent
(Moving Party)

ORDER AND REASONS

I. Overview

[1] The Application concerns a decision by the Minister of Internal Development [the Minister], dated March 8, 2024 [the Decision], which reinstated funding to the United Nations Relief and Works Agency [UNRWA]. The Decision was publicly communicated through a

Global Affairs Canada News Release. The Applicants assert that the Decision is unreasonable in light of the history between UNRWA and the Islamic extremist group Harakat al-Muqawama al-Islamiya [Hamas] and the legal framework discussed below. Hamas is a foreign terrorist organization under section 83.05 of the Criminal Code, RSC 1985, c C-46.

[2] Respondent Attorney General of Canada [the Attorney General] brought this motion to strike [the Motion] the Applicants' Notice of Application for judicial review [the Application] without leave to amend, pursuant to Rule 359 of the *Federal Court Rules*, SOR/98-106. The Respondent also asks that the Application be dismissed pursuant to Rule 4 of the *Federal Courts Rule*s; sections 18.1(1) and 18.4 of the *Federal Courts Act*, RSC 1985, c F-7; and the Court's residual authority. The Notice of Motion requests a suspension of the deadlines pending the resolution of any proceedings mandated by section 38 of the *Canada Evidence Act*, RSC 1985, c C-5, and this Motion.

[3] The four individual Applicants are all Canadian citizens or residents who lost family members on October 7, 2023, during Hamas' attack in Israel [the October 7 Attack]. The Applicant, Centre for Israel and Jewish Affairs [CIJA], is the advocacy agent of the Jewish Federations across Canada and exists to preserve, protect, and promote Jewish life in Canada through advocacy.

[4] In the Application, the Applicants describe devastating details about the October 7 Attack and present several allegations pertaining to UNRWA and the Minister, including:

- 327 UNRWA employees are members of the Hamas military wing;

- 1,650 UNRWA employees are members of a terrorist organization;
- 15 UNRWA employees willingly participated in Hamas' October 7 Attack;
- UNRWA schools are located near terror tunnels, and UNRWA institutions have been used as rocket launch sites;
- Hamas attacks have been funded and aided by UNRWA;
- UNRWA has repeatedly expressed its solidarity with Hamas;
- On January 26, 2024, the Minister temporarily paused UNRWA funding pending two independent United Nations investigations into UNRWA and the October 7 Attack;
- In February of 2024, CIJA sent correspondence to the Minister expressing its concerns about Canada's support of UNRWA and detailing UNRWA's involvement with Hamas; and
- Despite the Minister's awareness of the above allegations and before waiting for the final UN investigation reports, he resumed UNRWA funding on March 8, 2024.

[5] The Respondent submits that it is plain and obvious that the Application is bereft of any possibility of success and comprises obvious fatal flaws that go to the root of the Court's power to entertain it.

[6] For the reasons below, I dismiss this Motion to strike.

II. Motions to Strike

[7] On motions to strike, the question is whether it is "plain and obvious," assuming the underlying facts are true, that the claims pleaded "have no reasonable prospect of success" (*La*

Rose v Canada, 2023 FCA 241 at para 18 [*La Rose*]; *Atlantic Lottery Corp Inc v Babstock*, 2020 SCC 19 at para 14).

[8] When assessing a motion to strike, it is the underlying facts as alleged in the notice of application that are taken as true (*JP Morgan Asset Management (Canada) Inc v Canada (National Revenue)*, 2013 FCA 250 at para 52 [*JP Morgan*]).

[9] A motion to strike an application carries a high threshold (*Hewage v Canada (Prime Minister)*, 2024 FC 901 at para 12). The party seeking to strike must demonstrate a "fatal flaw" going to the root of the matter, a "show-stopper," or some other type of circumstance that shows the proceeding is doomed to fail (*Bernard v Canada (Attorney General)*, 2019 FCA 144 at para 33, leave to appeal to SCC refused 38884 (20 February 2020); *JP Morgan* at para 47).

[10] There are three types of fundamental flaws which can doom an application for judicial review (*JP Morgan* at para 66). In this Motion, the parties have focused on the first of these flaws:

- the notice of application fails to state a cognizable administrative law claim that can be brought before the Federal Court;
- the Court is not able to deal with the administrative law claim by virtue of section 18.5 of the *Federal Courts Act* or some other legal principle; or
- the Court cannot grant the relief sought.

[11] In determining whether an application for judicial review discloses a cause of action, the Court must read the notice of application generously, with "a view to understanding the real essence of the application" (*JP Morgan* at para 49). In order to understand its "essential character," the Court should consider the application "holistically and practically without fastening onto matters of form" (*JP Morgan* at para 50).

[12] In *La Rose,* at paragraph 19, the Federal Court of Appeal recognized that the law develops to address new and emerging situations; "the motions judge must err on the side of permitting novel but arguable claims to proceed to trial" (citing *R v Imperial Tobacco Canada Ltd*, 2011 SCC 42 at para. 21; *Mohr v National Hockey League*, 2022 FCA 145 at para 48, leave to appeal to SCC refused, 40426 (20 April 2023)).

III. Issues

[13] The issue before this Court is whether it is plain and obvious that the Application has no reasonable chance of success. More specifically, the parties dispute whether:

i. the issues raised by the Application are justiciable;

ii. the underlying Decision is reviewable; and

iii. the Decision is subject to constitutional scrutiny by engaging section 7 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [*Charter*].

IV. Arguments

A. *Attorney General*

[14] The Attorney General submits that the Decision is not justiciable or reviewable; rather, it is one purely of discretionary policy and accountable only to Parliament – as set out in the legislation discussed below. More specifically, it argues that government decisions concerning the provision of humanitarian assistance outside of Canada are discretionary policy choices by the executive, which involve careful consideration of political, diplomatic, social, moral and humanitarian concerns. Accordingly, the Attorney General argues that the Minister's Decision falls outside the institutional capacity and legitimacy of the courts.

[15] According to the Attorney General, the first obvious flaw in the Application is that it does not state a cognizable administrative law claim. Since the Minister's Decision to reinstate funding does not affect legal rights, impose legal obligations, or directly cause prejudicial effects, it is not amenable to judicial review (*Air Canada v Toronto Port Authority*, 2011 FCA 347 at paras 28-29 [*Toronto Port Authority*]). The Attorney General argues that the provision of humanitarian assistance is not founded on a legal obligation (it is a voluntary humanitarian effort) and that neither the *Department of Foreign Affairs, Trade and Development Act*, SC 2013, c 33, s 174 [*DFATDA*], nor the *Official Development Assistance Accountability Act*, SC 2008, c 17 [*ODAAA*] [collectively, the *Acts*], create individual rights or obligations.

[16] Second, the Attorney General claims the Application is not justiciable because matters involving public policy are unsuitable for adjudication, such as where the executive branch

considers ideological, political, cultural, social, moral, and historical concerns (see *Highwood Congregation of Jehovah's Witnesses (Judicial Committee) v Wall*, 2018 SCC 26 at para 34 [*Highwood*]). It outlines the factors considered in *Tanudjaja v Canada (Attorney General)*, 2014 ONCA 852 at paras 22, 27, 33-34 [*Tanudjaja*]; *Operation Dismantle v The Queen*, [1985] 1 SCR 441 at 471-472 [*Operation Dismantle*]; and *Canada (Auditor General) v Canada (Minister of Energy, Mines & Resources)*, [1989] 2 SCR 49 at 90. These authorities distinguish decisions with a sufficient legal component for judicial intervention from those that are subject purely to parliamentary scrutiny.

[17] According to the Attorney General, the Decision involves the allocation of public funds and the exercise of the Crown prerogative power with respect to foreign affairs. The allocation of public money is a discretionary political matter, which is not measurable against any legal standard. Further, the exercise of the prerogative for foreign affairs involves weighing different considerations and making policy choices – an exercise not amenable to judicial scrutiny.

[18] The Attorney General argues that neither the *DFATDA* nor the *ODAAA* impose judicially enforceable substantive restrictions on the Minister. It points to the judicial interpretation of the word "ensure," which is found in both *Acts* and, with respect to the *ODAAA*, notes that "official development assistance" is democratic and parliamentary (citing *Friends of the Earth v Canada (Governor in Council)*, 2008 FC 1183 at paras 34, 42-44 [*Friends of the Earth*], aff'd 2009 FCA 297). The Attorney General also points to the *ODAAA*'s biennial consultations, contending this weighs against the matter being justiciable (*ODAAA*, s 4(2)).

[19] Moreover, the *ODAAA*'s list of potentially relevant considerations like "Canadian values" are loosely defined and "and more consistent with the exercise of political and democratic discussion." In this way, it distinguishes *La Rose* where the policy choices in that case were crystallized into legislation, creating a sufficient legal anchor. In short, the Attorney General argues that there is no similar objective legal standard in the *DFATDA* and *ODAAA* to measure the Minister's Decision against.

[20] On the Applicants' *Charter* arguments, the Attorney General acknowledges that *Charter* claims can make a case justiciable; however, the Applicants have not challenged the constitutionality of a particular law, are not seeking *Charter* remedies, and have not alleged direct infringement of any individual *Charter* rights. Although the Applicants refer to section 7 of the *Charter*, the Attorney claims they have not drawn a causal relationship between the Minister's funding decision and any potential adverse impacts on their rights. Even if theoretically justiciable, the Attorney General states the constitutional claims should be struck, as section 7 is not pleaded with specificity.

B. *Applicants*

[21] The Applicants assert that, while policy or political issues are not themselves justiciable, once those issues become law or state action, they are subject to judicial scrutiny (*Canada (Attorney General) v PHS Community Services Society*, 2011 SCC 44 at para 105). While a decision to provide international assistance toward one cause or another may be political or non-justiciable, once a decision is made, it must be within the confines of the *ODAAA*, the *DFATDA*,

and the *Charter*. Accordingly, the Applicants state the matter is justiciable since it relates directly to the application of statutes and the *Charter*.

[22] The Applicants argue that since discretionary decisions are still subject to legal limits, they are not merely asking the Court to "second guess the wisdom of a policy decision." Rather, they are seeking judicial review to ensure that the Minister's discretion to reinstate funding was exercised within the constraints of the Minister's jurisdiction. Although the Minister did not have to provide reasons for his Decision, the Applicants note there are still statutory obligations imposed on him. In particular, the word "ensuring," as set out in the legislation, does not merely describe the Minister's sphere of decision-making responsibility. Rather, when the Minister makes a decision on the allocation of public funds, there is an expectation that he will do so in accordance with the law. Moreover, the Applicants note that the Court will interpret domestic legislation in a manner consistent with Canada's international obligations, particularly when the enabling statute incorporates "international human rights standards" as a pre-condition to government action. They claim that the standards articulated in *Nevsun Resources Ltd v Araya*, 2020 SCC 5 bind the government.

[23] Finally, while they concede that there was no direct breach of section 7, the Minister failed to ensure Canadian values, including *Charter* values, were respected. The Applicants assert there is extensive evidence showing the crimes Hamas committed on October 7, 2023, and those crimes were carried out with the support of UNRWA. The Applicants state these acts, which included the murder and kidnapping of civilians, are contrary to Canadian values and the rights enshrined in section 7 of the *Charter*. The Applicants indicate they are asking the Court to

determine that acts of terror and the funding of an organization that supported these activities are not Canadian values. “Canadian values” is a term contained in both *Acts* and which, they contended at the Motion hearing, raises the novel question of whether its consideration engages the *Charter*, particularly section 7.

V. Analysis

[24] The parties’ written submissions are detailed and, at times, delve into the merits of the underlying Application. Despite the lengthy submissions, the parties overwhelmingly focused on the legal interpretation of several provisions in the *Acts*. Other preliminary issues were left unaddressed and will need to be considered at the Judicial Review.

[25] Based on the materials and submissions I have considered, this Application has a number of problems. But, on a motion to strike, that is not the standard.

[26] For the purpose of this Motion, I find it sufficient to conclude that the Applicants’ global argument, that the Decision was unreasonable in light of the statutory language of the *ODAAA* and *DFATDA*. That global argument was that “because on or before March 8, 2024, the Minister had information which confirmed UNRWA’s history of involvement with Hamas and, how the use of funds by UNRWA did not respect or reflect Canadian values” is not “so clearly” non-justiciable or not amenable to judicial review “to be bereft any possibility of success” (*JP Morgan* at para 47).

A. *Justiciability*

[27] When determining whether an issue is justiciable, "[t]he court should ask whether it has the institutional capacity and legitimacy to adjudicate the matter" (*La Rose* at para 24, quoting *Highwood* at para 34, citing Lorne M. Sossin, *Boundaries of Judicial Review: The Law of Justiciability in Canada*, 2nd Ed (Toronto: Carswell, 2012) at 7 and 294)).

[28] The question of institutional capacity is concerned with what the court can do, whereas legitimacy asks what the court should do (*La Rose* at para 24). A court should not adjudicate on a matter if it goes beyond either of these capacities.

[29] At paragraph 25 of *La Rose*, the Federal Court of Appeal recognized that constitutional and pragmatic considerations underline this analysis. The former is concerned with the judiciary's role in the separation of powers, including whether a court should decide an issue or defer to another branch of government; the latter "arises from the limitations on a court's ability to fashion and implement remedies" (*La Rose* at paras 26-27).

[30] It is not always apparent whether a matter is justiciable. The *La Rose* Court noted that it "often distills to a single question as to whether the claim has a sufficient legal component upon which a court can adjudicate" (*La Rose* at para 28). However, this question can itself be obscured by the moral, social, or political dimensions of the case (*La Rose* at para 28, citing the contrasting conclusions in *Tanudjaja* at para 33, and *Operation Dismantle* at 472; *Reference Re*

Canada Assistance Plan (BC), [1991] 2 SCR 525 at 545-546 [*Canada Assistance Plan Reference*]).

[31] If a matter raises complex or controversial issues, it will not necessarily be non-justiciable (*La Rose* at para 29). Policy considerations underlie all government action (*La Rose* at para 36). Therefore, in determining whether a matter is justiciable, the question is whether the court can adjudicate the issues against an objective legal standard (*La Rose* at para 36; *Operation Dismantle* at 472; *Canada Assistance Plan Reference* at 545-546).

[32] The Applicants claim the Minister was required to comply with the *ODAAA* and the *DFATDA* in providing official development assistance. The question is whether the statutes contemplate judicial review. This is a matter of statutory interpretation that is aimed at identifying Parliamentary intent (see *Friends of the Earth* at para 31). It involves considering the context of the entire statutory text, and assessing each relevant and admissible indicator of legislative meaning (*Friends of the Earth* at para 22).

[33] The legislative web of statutes governing this matter has not yet been before a court to determine whether it is justiciable or not. On their face, the legislative sections involved have some pre-conditions, as well as permissive language in others. The true meaning of these sections is not clearly identifiable. As introduced above, the Federal Court of Appeal in *La Rose* explained that motions to strike must not be used to prevent the law from addressing new and emerging situations; “a motions judge must err on the side of permitting novel but arguable claims to proceed to trial” (*La Rose* at para 19). It would seem this is precisely that kind of case.

[34] For example, section 14 of the *DFATDA* indicates the Minister will achieve "sustainable international development and poverty reduction," in part, by "ensuring Canada's contributions to international development and humanitarian assistance are in line with Canadian values and priorities" (*DFATDA*, s 14(c) [emphasis added]). Similarly, subsection 2(1) of the *ODAAA* uses the word "ensure" to describe the distribution of aid:

> The purpose of this Act is to ensure that all Canadian official development assistance abroad is provided with a central focus on poverty reduction and in a manner that is consistent with Canadian values, Canadian foreign policy, the principles of the Paris Declaration on Aid Effectiveness of March 2, 2005, sustainable development and democracy promotion and that promotes international human rights standards. [emphasis added]

[35] Further, subsection 4(1) of the *ODAAA* uses permissive language –"may" – to describe the Minister's responsibilities, the satisfaction of which introduces a number of procedural obligations in the rest of the *Act* (see e.g., *ODAAA*, s 4(3)). Subsection 4(1) is as follows:

> **4.** (1) Official development assistance may be provided only if the competent minister is of the opinion that it
> (*a*) contributes to poverty reduction;
> (*b*) takes into account the perspectives of the poor; and
> (*c*) is consistent with international human rights standards.
>
> [emphasis added]

[36] However, I find that the subsequent language – "only if" – could also be interpreted as a mandatory condition to satisfy the clause (*a*)-(*c*) factors before any humanitarian assistance is provided. Whether the Decision could be classified as un-"official" development assistance and thus evade the requirements of subsection 4(1) is unclear based on the record (although I note the opinion of one academic concluding that the Minister may have some flexibility: Derek McKee, *"The Official Development Assistance Accountability Act: Global Justice and Managerialism in*

Canadian Law" (2015) 48:2 UBC L Rev 447 at 481-482). Regardless, the parties have not indicated that the provision of humanitarian assistance at the core of the Decision is anything other than "official development assistance."

[37] An exception to this precondition is provided for in subsection 4(1.1): "official development assistance may be provided" in the event of an emergency or disaster taking place outside of Canada, regardless of whether the criteria in subsection 4(1) are established. However, again, I find that it is not a motion court's role to determine the nature of this exception and the applicability to the facts of this case, particularly since the parties did not meaningfully address it.

[38] Without delving further into these and other arguments surrounding the specific alleged grounds of unreasonableness and whether there are *Charter* implications, it has become clear that this Application is not suitable to strike for lack of justiciability at this preliminary stage. The "category of non-justiciable cases is very small" (*Hupacasath First Nation v Canada (Foreign Affairs and International Trade Canada)*, 2015 FCA 4 at para 67 [*Hupacasath*]). The parties raise intricate and novel legal arguments that should be explored with a complete record.

[39] Nonetheless, following *La Rose*, I briefly acknowledge the issue of remedies; the "pragmatic consideration" noted by that Court (*La Rose* at paras 25, 27, 47).

[40] The Applicants request a declaration of unreasonableness and an order granting *certiorari*. At this stage, I merely note that this Court is theoretically capable of granting the

Applicants' remedies. As Justice Rennie wrote in *La Rose*, "remedies, at least at the outset of litigation, are not necessarily determinative of justiciability" (*La Rose* at para 48. See also *Mathur v Ontario*, 2020 ONSC 6918 at paras 155-159). I also note that the parties did not raise this issue in their written submissions. Accordingly, I leave it for the Application judge to address remedies, if necessary.

[41] Finally, as there is some overlap in the issues as argued, I discuss whether the issues in the Application actually infringes the individual rights of the Applicants below – an analysis more closely related to whether the Decision is amenable to judicial review.

B. *Amenability to Judicial Review*

[42] While the Application's amenability to judicial review was raised in addition to justiciability in the Attorney General's submissions, neither party has clearly distinguished between these two preliminary issues. For instance, in its memorandum, the Attorney General submits that the Decision "is neither founded on a legal obligation nor subject to legal constraints" and is "therefore not justiciable" [emphasis added]. It also states, "[a]mong the issues appropriate to be determined on a motion to strike are determinations that a matter is not justiciable or reviewable" (citing *Wenham v Canada (Attorney General)*, 2018 FCA 199 at para 36), and, "a non-justiciable case is not cognizable."

[43] At the hearing, the parties focused their submissions on whether the *Acts* create an objective legal standard – or "anchor" – to enable this Court to assess the Decision for reasonableness. As outlined above, that determination is at least arguable.

[44] In my view, reviewability is a subset of the justiciability analysis, at least in this case. For the Decision to be amenable to judicial review and for the underlying issues to be justiciable, the Applicants' legal rights must be affected. This is the distinguishing factor that could bar an "officious inter-meddler" from challenging otherwise justiciable issues (*Moresby Explorers Ltd v Canada (Attorney General)*, 2006 FCA 144 at para 17; *Dow v Canadian Nuclear Safety Commission*, 2020 FC 376 at paras 8-9 [*Dow*]).

[45] Subsection 18.1(1) of the *Federal Courts Act*, states that "[a]n application for judicial review may be made by the Attorney General of Canada or by anyone directly affected by the matter in respect of which relief is sought."

[46] The Federal Court of Appeal in *Toronto Port Authority* at paras 28-29 established the test for whether an application states a cognizable law claim: a right to judicial review will not arise if "the conduct attacked in an application for judicial review fails to affect legal rights, impose legal obligations, or cause prejudicial effects."

[47] Put simply, if a person applies to court for judicial review of administrative action but such administrative action does not affect the applicant's rights or carry legal consequences, then it is not amenable to judicial review (*Democracy Watch v Conflict of Interest and Ethics Commissioner*, 2009 FCA 15 at para 10 [*Democracy Watch 2009*]; *Toronto Port Authority* at paras 26, 32; *Air Passenger Rights v Canada (Attorney General)*, 2024 FCA 128 at para 16). The reviewability question in this case is effectively whether the Applicants have standing (*Dow* at paras 8-11; *Kurgan v Canada (Attorney General)*, 2021 FC 1084 at para 37 [*Kurgan*]).

[48] The question of standing permits some flexibility since "[j]udicial review is one of the bulwarks against abusive or arbitrary exercises of state authority" (*Kurgan* at para 43. See also *Laurentian Pilotage Authority v Corporation des Pilotes de Saint-Laurent Central Inc*, 2019 FCA 83 at para 32). Generally, "a court should strike an application for judicial review for lack of standing on a preliminary motion to strike 'only in very clear cases'" (*General Motors of Canada Limited v Canada (National Revenue)*, 2013 FC 1219 at paras 48-51 [citation omitted]. See also *Friends of the Canadian Wheat Board v Canada (Attorney General)*, 2011 FCA 101 at paras 26-27). At the same time, the Applicants must point to evidence that shows "more than [their] mere interest in [the] matter" (*Canadian Frontline Nurses v Canada (Attorney General)*, 2024 FC 42 at para 159. See also *League for Human Rights of B'nai Brith Canada v Canada*, 2010 FCA 307 at para 58; *George v Heiltsuk First Nation*, 2023 FC 1705 at para 36).

[49] I note that the Applicants have not argued public interest standing, despite their framing of this Application as a public interest matter. Therefore, they must be "directly affected" by the Decision to succeed on judicial review. The Applicants' legal rights are not explicitly engaged by the Decision. They claim that the issues raised "directly relate to the rights and legitimate expectations of the applicants who rely on the federal government to act in accordance with statutes passed by Parliament, including the *Charter*."

[50] In my view, the issue of individual legal rights can only be resolved in the context of complete submissions and a full record. For instance, the question of individual rights circulates back to the question of justiciability and demands a deeper review of statutory interpretation and *Charter* principles than I am prepared to embark on at this preliminary motion stage.

[51] I note Justice de Montigny's (as he then was) warning against a motion court deciding the merits of each issue in a judicial proceeding. Justice de Montigny instructed that: "justiciability only pertains to the appropriateness of a court deciding a particular issue… the Court is not called upon to assess the substance of an argument, but rather if the argument can be made at all in a judicial proceeding" (*Black v Advisory Council for the Order of Canada*, 2012 FC 1234 at para 65 [*Black*]).

[52] I do not wish to bind the judge hearing the merits of this judicial review. Reviewability will likely be a key question for the Application judge. I find it sufficient for the purposes of this Motion that the Applicants assert some evidentiary basis for their claims that the Decision caused them prejudice and violated their legitimate expectations.

[53] For instance, at the hearing, counsel for the Applicants pointed to the prejudice suffered by the individual Applicants as family members of the victims lost in the October 7 Attack. Indeed, their record is fundamentally based on the interests and expectations of the Canadian Applicants, claiming to be uniquely affected by Hamas' ongoing actions in Israel. The Attorney General does not rebut this aspect of the Application.

[54] Nor does the Attorney General address the issue of whether the Applicants have a legitimate expectation that the Minister will follow the decision-making procedures outlined in the *Acts*. On this point, one of the Applicants, the CIJA, sent letters to the Minister explaining their concerns about UNRWA's involvement with Hamas and "outlining alternative means of providing relief to Palestinians in Gaza."

[55] In this way, the issue of justiciability overlaps with the Attorney General's submissions regarding whether the *Acts* create a legal basis to attract the Applicants' individual rights. In other words, whether the Applicant's rights and concerns are significant enough to pierce through the political context of this case.

[56] This is not to say that the question of legal rights, obligations, or prejudice equates to the determination of whether this matter has an objective legal basis. However, the parties did not clearly articulate their submissions on this issue. The jointly submitted authorities indicate an otherwise "prerogative" decision constrained by substantive or procedural statutory requirements may create legal rights that are able to anchor an application for judicial review (*Black* at paras 48-62; *Canadian Frontline Nurses v Canada (Attorney General)*, 2024 FC 42 at paras 207-211). Of course, this leaves the question of whether the Applicants' legal rights were affected distinct from the rest of the public. This issue might be difficult to overcome, but I cannot say it dooms the Application at this stage.

C. *Charter*

[57] Regarding section 7 of the *Charter*, the Applicants clarified at the hearing that they rely on the *Charter* values framework from *Doré v Barreau du Québec*, 2012 SCC 12, *Loyola High School v Québec (Attorney General*, 2015 SCC 12, and *Commission scolaire francophone des Territoires du Nord-Ouest v Northwest Territories (Education, Culture and Employment)*, 2023 SCC 31 [*Commission scolaire*].

[58] The Attorney General maintains that the Applicants have not established a causal link between the Minister's Decision and any potential engagement of a *Charter* right or value. The Attorney General notes the Applicants have not satisfied the basic rules of pleading a *Charter* claim.

[59] On the materials before me, I tend to agree with the Attorney General and question whether the Applicants have properly pleaded their *Charter* argument. At paragraph 126 of *La Rose*, the Federal Court of Appeal noted that, "Charter claimants must plead an existing law or government conduct that is unconstitutional. A challenge to a particular law, an application of the law, or government conduct is indeed an archetypal feature of *Charter* jurisprudence."

[60] In their Notice of Application, the Applicants do not refer to any legislation or government conduct, nor do they draw a causal connection between the action or law and the prejudice they have suffered (*Canada (Attorney General) v Bedford*, 2013 SCC 72 at para 75). Instead, they merely state that "Canadian values at a minimum, include the constitutionally protected values of life, liberty and security of the person." This is insufficient for the purposes of a *Charter* claim (*La Rose* at paras 22).

[61] Under section 7 of the *Charter*, "[e]veryone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice." In order to establish a breach, the claimant must demonstrate that the "law interferes with, or deprives them of, their life, liberty or security of the person" and this deprivation "is not in accordance with the principles of fundamental justice" (*La Rose* at para 89

citing *Carter v Canada (Attorney General)*, 2015 SCC 5 at para 55; *Chaoulli v Quebec (Attorney General)*, 2005 SCC 35 at para 109).

[62] Concerning *Charter* values, in *Commission scolaire* at paragraph 64, the Supreme Court of Canada noted that "it has consistently been held that the *Doré* framework applies not only where an administrative decision directly infringes *Charter* rights but also in cases where it simply engages a value underlying one or more *Charter* rights, without limiting these rights."

[63] The Supreme Court of Canada further stated that:

> An administrative decision maker must consider the *relevant* values embodied in the *Charter*, which act as constraints on the exercise of the powers delegated to the decision maker…. A decision cannot be unreasonable because the decision maker failed to consider a *Charter* value that was not relevant for the purposes of its decision. However, if the decision maker takes a relevant value into account in its decision while opting to prioritize another objective, it must be concluded that the decision engages the *Charter*.
>
> (*Commission scolaire* at para 66)

[64] The Attorney General argues that the Applicants have not pleaded a causal relationship between the Decision to reinstate UNRWA funding and the potential adverse impacts on their section 7 rights. However, as clarified at the hearing, the Applicants are not necessarily claiming a direct infringement of their rights, requiring them to show a corresponding deprivation. Rather, as in *Commission scolaire*, they raise *Charter* values, which every discretionary decision should necessarily take into account. Nonetheless, I agree that the Applicants have not clearly pleaded a nexus between the *Acts* or the Decision and a corresponding limit on a *Charter* value (*Commission scolaire* at paras 66-67).

[65] As I have outlined above, the Applicants' success in this Motion does not hinge on the existence of its *Charter* argument. Further, a deficiency in pleadings may be amended (*La Rose* at paras 20, 91). Therefore, I do not necessarily agree with the Attorney General that the claim should be struck on this basis.

[66] Finally, the Attorney General argues that merely invoking the *Charter* will not broaden the jurisdiction of the courts, as the claim may still be non-justiciable if it involves "second-guessing policy priorities." For this proposition, it points to *Tanudjaja*, which found that, in part, due to the lack of a "judicially discoverable and manageable standard," the application was not suitable for *Charter* scrutiny (*Tanudjaja* at para 33). In that case, the Ontario Court of Appeal determined an assessment of housing policy could not be resolved using the law, as it was a question engaging the accountability of the legislature.

[67] I agree with the Attorney General that the matter engages a number of policy choices. I am sympathetic to the concern that Applicants may attempt to reroute purely political questions through the courts with creative phrasing that superficially engages the *Charter* (*Democracy Watch 2009* at para 15). However, as I have outlined above, the *Acts* do not clearly preclude the capacity of the courts to contemplate the arguable "legal anchors" governing the provision of official development assistance (*La Rose* at para 118).

VI. Conclusion

[68] The Attorney General's assertion that "[n]o one is legally entitled to receive humanitarian assistance" is true. However, on the requisite standard to strike, the Attorney General fails to link

the Crown prerogative principles it relies on to the context of the present case where the *Acts* arguably constrain the Minister's powers over "official development assistance."

[69] Many of the cases the parties presented are helpful but ultimately insufficient for me to decide this matter on a preliminary motion. The jurisprudence is not analogous enough to strike the Applicants' claim (see e.g., *Tanudjaja* at paras 27-30, emphasizing the importance of a statutory component of a decision in determining justiciability). Indeed, most of the cases deal with full judicial review applications, not preliminary motions to strike (see e.g., *Hupacasath* at paras 28-30). In this respect, the difference in the standard of proof is substantial.

[70] The substantive arguments raised by the Applicants present several challenges. There may well be an insufficient objective legal basis to challenge the Decision, and it might not ultimately be amenable to judicial review. However, It cannot be said that the Attorney General's arguments clearly render the type of "show stopper" or "knockout punch" necessary to strike the Application at this stage (*JP Morgan* at para 47). The statutory provisions I have identified are not merely peripheral; they are central to the appropriateness of litigation in this case and, assuming this matter is justiciable, could ground the Applicants' substantive arguments. I am not persuaded that the nature of the *Acts* and the Decision clearly bar judicial intervention such that striking the Application is warranted. Given the reasons provided above, nor is it appropriate to grant the alternative relief that the matter be dismissed pursuant to Rule 4 of the *Federal Courts Rules*; sections 18.1(1) and 18.4 of the *Federal Courts Act;* and the Court's residual authority.

VII. Case Management

[71] The Respondent asks this Court to suspend the timelines for the Application. I will not grant this relief because I find that the matter should be case managed. A case management judge can address any issues regarding section 38 of the *Canada Evidence Act* and assist the parties in setting timelines to proceed to a full hearing. Accordingly, I order this matter to be a specially managed proceeding with a case manager pursuant to the *Federal Courts Rules* 383 and 384.

VIII. Costs

[72] The parties reached an agreement that neither would seek costs. Given the wisdom of this agreement, I will grant that each party bear their own costs.

ORDER in T-722-24

THIS COURT ORDERS that:

1. The Motion is dismissed;

2. That the matter be case managed;

3. No costs are awarded.

"Glennys L. McVeigh"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-722-24
STYLE OF CAUSE:	DIKLA MIZRACHI, IRIS WEINSTEIN HAGGAI, JACQUELINE VITAL, RACHEL OHNONA AND CENTRE FOR ISRAEL AND JEWISH AFFAIRS v THE ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	OTTAWA, ONTARIO
DATE OF HEARING:	AUGUST 21, 2024
ORDER AND REASONS:	MCVEIGH J.
DATED:	SEPTEMBER 11, 2024

APPEARANCES:

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