Federal Court Cour fédérale

Date: 20250708

Docket: T-1707-24

Citation: 2025 FC 1205

Ottawa, Ontario, July 8, 2025

PRESENT: The Honourable Mr. Justice Duchesne

BETWEEN:

RUI GE

Applicant

and

THE MINISTER OF NATIONAL REVENUE AND COMMISSIONERS OF THE CANADA REVENUE AGENCY

Respondents

ORDER AND REASONS

[1] The Applicant has brought a motion in writing pursuant to Rules 51 and 369 of the *Federal Courts Rules*, SOR/98-106 [the *Rules*] by which he appeals from and seeks to set aside Associate Judge Trent Horne's Order dated May 5, 2025. Associate Judge Horne's Order dismissed the Applicant's proceeding for delay on a status review pursuant to Rule 382.1 of the *Rules*.

[2] The Applicant also seeks an Order extending the time for him to serve and file this appeal. No Order extending the time is necessary in this case due to Madam Justice Phuong Ngo's direction dated May 22, 2025, that permitted the Applicant to serve and file his Notice of Motion for this appeal by May 30, 2025. The Applicant served and filed his Notice of Motion and his entire motion record on May 26, 2025, well within the extended time directed by Justice Ngo.

[3] For the reasons that follow, I conclude that the Applicant has failed to demonstrate any reviewable error on the part of the Associate Judge in dismissing his proceeding. The Applicant's appeal is therefore dismissed.

I. **The Order Appealed From**

[4] Associate Judge Horne was seized of, a) the Applicant's motion for an extension of time to serve his submissions in response to a Notice of Status Review, and, b) the status review of the Applicant's proceeding. Both events followed the issue of a Notice of Status Review by the Court on March 5, 2025.

[5] In his Order Associate Judge Horne summarized the history and sequence of events in this proceeding particularly as it relates to the status review. The Associate Judge noted that the Applicant appeared to have attempted to serve and file submissions in response to the Notice of Status Review, but that the Applicant's filed documentation failed to demonstrate that his submissions in response to the Notice of Status Review were served and filed within the time

provided in the Notice of Status Review. The Applicant's submissions were therefore refused and were not received for filing.

[6] On April 17, 2025, the Applicant filed a motion for an extension of time to respond to the Notice of Status Review. The Respondent opposed the sought extension of time and filed a responding record.

[7] The Associate Judge cited the well known test that guides the Court's exercise of its discretion on a motion for an extension of time (*Canada v Hogervorst*, 2007 FCA 41 at paras 32-33; *Canada (Attorney General) v Hennelly* [1999] FCJ No. 846 at para 3 [*Hennelly*]; *Canada (Attorney General) v Larkman*, 2012 FCA 204 at para 61), and summarized the manner in which test is to be applied.

[8] The Associate Judge acknowledged that the Applicant's motion for an extension of time included a proposed response to the Notice of Status Review. The Applicant sought to justify his delay in moving his application forward by arguing that the Respondent had failed to serve supporting affidavits and documentary exhibits, and file proof of service thereof as required by Rule 307 of the *Rules*. He also argued that the Respondent's unreasonable withholding of his tax refund has been a major source of mental and financial pressure. The Applicant also proposed a timetable for the remaining steps in his own proceeding that consisted of an offer to settle and, if the offer was not accepted, to "please continue to process the application".

[9] After having summarized the principles applicable to a status review when the applicant is a self-represented litigant (*Suncor Energy Inc v Canada-Newfoundland and Labrador Offshore Petroleum Board*, 2019 FC 927 at para 10; *Roots v HMCS Annapolis (Ship)*, 2015 FC 1339 at para 28; *Hicks v Royal Canadian Mounted Police*, 2021 FC 1183 at para 9; *Cotirta v Missinippi Airways*, 2012 FC 1262 at paras 14-15; and, *Soderstrom v Canada (Attorney General)*, 2011 FC 575 at paras 19-24), Associate Judge Horne reasoned as follows:

> [18] This proposed timetable does not set out any of the procedural steps required to advance this matter to a hearing. I am not satisfied that this proposed response demonstrates that the applicant has taken any steps to determine what needs to be done to advance an application for judicial review in the Federal Court.
>
> [19] In the absence of any "concrete and positive steps" or a plan to move forward (*Importations Alimentaires Stella Inc v National Cheese Co*, 2000 CanLII 16563), I cannot conclude that the applicant is in a position to advance the case in an expeditious manner.
>
> [20] Having not demonstrated merit for the proposed submissions in response to the status review, the motion for an extension of time must be dismissed. Even if I was to grant the extension of time, the absence of any "concrete and positive steps" or a plan to move forward means that the matter cannot continue. In either event, the application must be dismissed for delay.
>
> [21] The respondent submits that the parties should bear their own costs of the motion and the proceeding. This is reasonable. There is no order as to costs.

II. **The Alleged Error**

[10] The sole error alleged by the Applicant in his main written representations is that the Associate Judge exceeded his jurisdiction by making a final decision that disposed of an application for judicial review. The Applicant relies on *Canada v Aqua-Gem Investments Ltd.*, [1993] 2 FC 425 (CA) in support of his argument.

[11] The Applicant nevertheless raises in his written representations in reply, for the first time, that Associate Judge Horne erred because:

a) the Applicant's delay in moving his proceeding forward was a result of the Registry's refusal to file his Applicant's Record, and the Associate Judge did not address the Registry's role in the matter not moving forward;

b) the Court should have granted him leniency because he is a self-represented litigant;

c) considering the *Hennelly* factors, an extension of time should have been granted to the Applicant to file his submissions on status review; and,

d) the settlement proposal as a plan going forward in the litigation was improperly critiqued by the Associate Judge.

[12] The Respondent has not sought leave to respond to the Applicant's new arguments raised for the first time in his written representations in reply.

III. **The Operative Rule to Dispose of a Status Review**

[13] Rule 382.1 of the *Rules*, the applicable Rule in connection with the disposition of a status review, provides as follows:

Review to be in writing	***Examen sur pièces***
382.1 (1) Unless the Court directs otherwise, a status review of a proceeding commenced in the Federal Court shall be conducted on the basis of the written representations of the parties.	**382.1 (1)** Sauf directives contraires de la Cour, l'examen de l'état de l'instance devant la Cour fédérale se fait uniquement sur la base des prétentions écrites des parties.
Review by the Court	***Examen de la Cour***

(2) A judge or prothonotary shall conduct a status review and may	**(2)** Un juge ou un protonotaire procède à l'examen de l'état de l'instance et peut :
(a) if he or she is not satisfied that the proceeding should continue, dismiss the proceeding; or	a) s'il n'est pas convaincu que l'instance doit se poursuivre, la rejeter;
(b) if he or she is satisfied that the proceeding should continue, order that it continue as a specially managed proceeding and may make an order under rule 385.	b) s'il est convaincu que l'instance doit se poursuivre, ordonner qu'elle se poursuive à titre d'instance à gestion spéciale et rendre toute ordonnance prévue à la règle 385.

[14] As appears from both Rules 382.1(2) and its use of the word "may" in connection with the judge or associate judge's decision-making power on a status review, an order dismissing a proceeding for delay on a status review is an order that is permitted by the *Rules.* It is therefore a discretionary rather than a required or mandatory order (*Interpretation Act*, RSC 1985, c I-21, at section 11).

IV. **The Standard of Review**

[15] The Federal Court of Appeal clarified in *Hospira Healthcare Corporation v. Kennedy Institute of Rheumatology*, 2016 FCA 215 [*Hospira*], at para 64, that discretionary orders of associate judges (referred to as "prothonotary" or "prothonotaries" prior to September 23, 2022, and the official name change to "associate judge" and "associate judges" effected pursuant to section 371 of the *Budget Implementation Act, 2022, No. 1*, SC 2022, c 10) 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. This flows from the application of the standard of review

applicable to appeals set out in *Housen v Nikolaisen*, 2002 SCC 33 [*Housen*] which the Federal Court of Appeal held in *Hospira* applies to appeals from orders made by associate judges.

[16] Pursuant to *Housen*, at para 8, "[o]n a pure question of law, the basic rule with respect to the review of a trial judge's findings is that an appellate court is free to replace the opinion of the trial judge with its own. Thus, the standard of review on a question of law is that of correctness." A palpable and overriding error, however, is an error that is both obvious and apparent, "the effect of which is to vitiate the integrity of the reasons" (*Maximova v Canada (Attorney General)*, 2017 FCA 230 at para 5). The "palpable and overriding error" standard of review is highly deferential (*Collins v Canada (Attorney General)*, 2023 FC 863 at para 17).

V. **Analysis**

[17] The Applicant's sole admissible argument is that the Associate Judge made an error of law by exceeding his jurisdiction and making a final decision that disposed of his application for judicial review.

[18] The Court disagrees.

[19] The Applicant's reliance on *Canada v Aqua-Gem Investments Ltd.* (C.A.), 1993 CanLII 2939 (FCA) [*Aqua*-Gem] is misplaced in this case. The *Aqua-Gem* decision is factually and legally distinguishable from the facts and the law applicable on this appeal. Its holding is not applicable to this case.

[20] The scope of an associate judge's jurisdiction is a question of law and an error with respect to that issue is to be assessed on the standard of correctness (*Hopira* at paras 64-66, citing *Housen* at paras 19-37). While the Court agrees with the Applicant that associate judges are not empowered to make a judgment disposing of an application for judicial review on its merits pursuant to section 18.1(3) of the *Federal Courts Act*, RSC 1985, c. F-7 [the *Act*], associate judges are empowered by section 12(3) of the *Act* and by the *Rules* to make any order that falls within their jurisdiction pursuant to the *Rules*.

[21] As appears from Rule 382.1(2)(a), an associate judge is specifically provided with the jurisdiction and empowered to dismiss a proceeding including an application for judicial review on a status review (see Rule 2 and the definition of *"application",* Rule 63(1)(f) and Rule 300(a) of the *Rules*).

[22] Associate Judge Horne made no error in determining that he had the jurisdiction to dismiss the Applicant's application for delay. Associate Judge Horne had the jurisdiction to make the order he did. The Applicant's argument that the Associate Judge exceeded his jurisdiction in dismissing his application for judicial review for delay has no merit and must be rejected.

VI. **The Applicant's Reply Submissions and the Inadmissible Reply Arguments**

[23] As noted above, the Applicant served and filed written representations in reply that raise new arguments. The new arguments are not replying to any argument asserted by the Respondent

in his responding record. The Applicant's new arguments include arguments that were not raised before Associate Judge Horne.

[24] Reply submissions and written representations in reply are commonly abused. They frequently consist of a re-argument of the main points that have been argued. Proper reply should be limited to rebutting fresh points raised by the respondent (Michelle Fuerst, Anne Sanderson, Stephen Firestone, *Ontario Courtroom Procedure*, 5th Ed., LexisNexis Canada Inc., online Part 1, Chapter 5A).

[25] Madam Justice Mactavish, as she then was, aptly described the role of oral representations in reply at para 121 of *Deegan v. Canada (Attorney General)*, 2019 FC 960 as follows:

> [121] It is a well-established principle that new arguments are not the proper subject of Reply. The purpose of a Reply is to respond to matters raised by the opposing party, not to produce new arguments or new evidence that should have been raised in first instance. Proper Reply is limited to issues that a party had no opportunity to deal with, or which could not reasonably have been anticipated. […].

[26] The principle has new arguments are not the proper subject of reply submissions or representations has been applied repeatedly by this Court in rejecting new arguments raised in reply, whether in the form of oral submissions in reply or in the form of written representations in reply (*Mousavimianji v Canada (Citizenship and Immigration)*, 2024 FC 726 at para 4; *Khodayarinezhad v Canada (Citizenship and Immigration*), 2024 FC 818 at paras 21 and 22; *Murphy v Canada (Attorney General)*, 2023 FC 57 at para 39; *Johnson v Canadian Tennis Association*, 2023 FC 1605 at para 38, aff'd 2025 FCA 127).

[27] Mr. Justice Little of this Court explained the rationale of the principle in *Hughes v Canada (Human Rights Commission),* 2020 FC 986 at para 46, as follows:

> [46] A new argument made first in reply that does not respond to an argument by the respondent and should have been raised in the applicant's first submission is not permitted because a responding party has no opportunity to answer it in written submissions. It is a matter not only of fairness but also of sensible process. Without limits on the scope of reply and a firm end to legal arguments at the reply stage, some litigating parties would continue to exchange written representations like ping-pong. That would cause delays, waste time, drive up legal costs and generally serve no one well.

[28] There is no reason in the evidence before the Court as to why the Applicant could not have and did not advance the arguments he included in his written submissions in reply in his submissions in the main or in his Notice of Motion.

[29] Relying on the jurisprudence cited above, I must reject the Applicant's arguments raised in his written representations in reply as they are inadmissible arguments raised for the first time in reply.

[30] I would nevertheless reject the Applicant's improper arguments in reply if the principle cited above did not apply.

[31] The Applicant remained at all times responsible to ensure that whatever documents he presented for filing were compliant with the *Rules* and were validly presented for filing and accepted for filing in a timely manner. The Registry's refusal to accept a non-compliant document presented for filing by a litigant, whether self-represented or represented, does not absolve a litigant from their failure to file in a complete and timely manner. Rule 122 addresses

this issue by providing that a party who is not represented by a solicitor shall do everything required, and may do anything permitted, to be done by a solicitor under the *Rules*. The jurisprudence of this Court, as correctly cited by Associate Judge Horne, is consistent with Rule 122 (*Cotirta v Missinippi Airways*, 2012 FC 1262 at paras 14-15; *Soderstrom v Canada (Attorney General)*, 2011 FC 575 at paras 19-24). While some leniency for drafting errors may be afforded to a self-represented litigant, they remain responsible to inform and educate themselves and to comply with the *Rules* (*Gaskin v Canada*, 2024 CanLII 28268 at para 15; *Turmel v Canada*, 2021 FC 1095 at para 25; *Theriault v Canada (Attorney General)*, 2022 FC 722 at para 17; *Koehne v Canada (Citizenship and Immigration)*, 2016 FC 1083 at para 14).

[32] Associate Judge Horne correctly considered the *Hennelly* factors and determined that the Applicant's motion to extend the time to file proposed submissions in response to the status review must be dismissed because there was no merit in the proposed submissions. Merit is one of the key factors to consider when determining whether a request for an extension of time should be granted because it would not serve the interests of justice to have the parties and the Court expend time and resources to prepare and argue over something that has no potential for a meritorious outcome (*Abikan v Canada (Citizenship and Immigration)*, 2023 FC 149 at para 34).

[33] Finally, Associate Judge Horne made no error in noting that the Applicant's settlement offer/timetable did not set out any plan on how and when to continue the litigation and that such failure was sufficient grounds to find that the application cannot continue. He applied the governing jurisprudence that he had properly identified as applicable (*Importations Alimentaires Stella Inc v National Cheese Co*, 2000 CanLII 16563).

VII. **Conclusion**

[34] The Applicant has not demonstrated that the Associate Judge erred in dismissing this proceeding for delay. There is no basis for this Court to intervene on appeal or to disturb Associate Judge Horne's Order. The Applicant's appeal is therefore dismissed.

[35] The Respondent seeks its costs of this appeal. Pursuant to my discretion as set out in Rule 400(1) and considering the factors set out in Rule 400(3), I hereby fix the Respondent's costs in accordance with Rule 407 of the *Rules* in accordance with column III of Tariff B in the amount of $ 900.00, all-inclusive. These costs shall be paid by the Applicant to the Respondent.

ORDER in T-1707-24

THIS COURT ORDERS that:

1. The Applicant's appeal is dismissed.

2. The Applicant shall pay the Respondent his costs of this motion which are hereby fixed at $ 900.00.

"Benoit M. Duchesne"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1707-24
STYLE OF CAUSE:	RUI GE v. MINISTER OF NATIONAL REVENUE
ORDER AND REASONS:	DUCHESNE, J.
DATED:	JULY 8, 2025

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

WRITTEN SUBMISSIONS BY:

Rui Ge	FOR THE APPLICANT (SELF-REPRESENTED)
Laurent Bartleman Lucy Yao	FOR THE RESPONDENTS

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