Federal Court  Cour fédérale

Date: 20251001

Docket: T-2540-25

Citation: 2025 FC 1620

Ottawa, Ontario, October 1, 2025

PRESENT: The Honourable Madam Justice Aylen

BETWEEN:

KALEY MICHELE HOGAN

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

ORDER AND REASONS

[1] The Respondent has brought a motion, in writing, for an order striking the underlying notice of application for judicial review on the basis that: (a) the application is premature as the Applicant has failed to exhaust the administrative process set out in the *Federal Public Sector Labour Relations Act*, SC 2003, c 22, s 2, and the *Canada Labour Code*, RSC, 1985, c L-2 [*Code*], and no exceptional circumstances exist so as to justify the Court's intervention at this stage; and (b) the application is an abuse of process as the Applicant has already filed a complaint under section 147 of the *Code* before the Federal Public Sector Labour Relations and

Employment Board [Board] relating to the same matter and requesting the same relief, which complaint has not yet been determined.

I. Background

[2] Since June of 2023, the Applicant has been employed on an indeterminate basis with Employment and Social Development Canada [ESDC].

[3] On April 25, 2025, the Applicant submitted a reprisal complaint to the Board under sections 133 and 147 of the *Code*. She alleged retaliation by ESDC following her initiation of a work refusal under section 128 of the *Code* on March 14, 2025. The Applicant alleged that ESDC had improperly suspended her pay and benefits, placed her on sick leave without pay [SLWOP] and sought collection of amounts overpaid to the Applicant from 2020. By way of remedy, the Applicant's complaint included requests for: (a) retroactive payment of wages and restoration of all benefits unlawfully suspended since her work refusal on March 14, 2025; (b) removal of all disciplinary or retaliatory actions, including her SLWOP status and efforts to collect overpayment amounts; and (c) a ruling that ESDC's actions constitute retaliation under section 147 of the *Code*.

[4] On May 21, 2025, the Applicant requested interim relief from the Board (including immediate reinstatement of her wages from March 14 to May 15, 2025) pending a final decision on her reprisal complaint. On June 18, 2025, the Applicant provided the Board with a personal statement and written submissions in support of her request for interim relief.

[5] To date, the Board has not rendered a decision on the Applicant's reprisal complaint.

[6] On July 21, 2025, the Applicant commenced the within application for judicial review challenging the ESDC's decision refusing to "reinstate the Applicant's wages and insurable hours following a protected work refusal filed on March 14, 2025." On the application, the Applicant seeks a writ of *mandamus* compelling ESDC to, among other things, reimburse wages since March 14, 2025, revert the Applicant's SLWOP status to leave with pay and cease further overpayment collection efforts.

II. Analysis

[7] Applications for judicial review are intended to proceed expeditiously and motions to strike or dismiss applications at a preliminary stage have the potential to unduly and unnecessarily delay their determination. That said, this Court has jurisdiction to grant motions to dismiss an application for judicial review on a summary basis in exceptional circumstances where the application is "so clearly improper as to be bereft of any possibility of success" [see *David Bull Laboratories (Canada) Inc v Pharmacia Inc (CA)*, 1994 CanLII 3529 (FCA), [1995] 1 FC 588]. There must be a "show stopper" or a "knockout punch" — an obvious, fatal flaw striking at the root of the Court's power to entertain the application [see *Canada (National Revenue) v JP Morgan Asset Management (Canada) Inc*, 2013 FCA 250 at para 47].

[8] Proceedings that are premature fall within the limited category of exceptional cases. The Federal Court of Appeal and this Court have consistently declined jurisdiction and dismissed applications to judicially review decisions of administrative tribunals where the proceedings

before the administrative tribunals have not yet run their course. As a general rule, parties can proceed to the court system only after all adequate remedial recourses in the administrative process have been exhausted [see *Wilson v Atomic Energy of Canada Limited*, 2015 FCA 17 [*Wilson*]; *Canada (Border Services Agency) v CB Powell Limited*, 2010 FCA 61 [*CB Powell*]].

[9] In *CB Powell*, Justice David Stratas articulated the rationale for this rule as follows:

> [30] The normal rule is that parties can proceed to the court system only after all adequate remedial recourses in the administrative process have been exhausted. The importance of this rule in Canadian administrative law is well-demonstrated by the large number of decisions of the Supreme Court of Canada on point: […].
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> [31] Administrative law judgments and textbooks describe this rule in many ways: the doctrine of exhaustion, the doctrine of adequate alternative remedies, the doctrine against fragmentation or bifurcation of administrative proceedings, the rule against interlocutory judicial reviews and the objection against premature judicial reviews. All of these express the same concept: absent exceptional circumstances, parties cannot proceed to the court system until the administrative process has run its course. This means that, absent exceptional circumstances, those who are dissatisfied with some matter arising in the ongoing administrative process must pursue all effective remedies that are available within that process; only when the administrative process has finished or when the administrative process affords no effective remedy can they proceed to court. Put another way, absent exceptional circumstances, courts should not interfere with ongoing administrative processes until after they are completed, or until the available, effective remedies are exhausted.
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> [32] This prevents fragmentation of the administrative process and piecemeal court proceedings, eliminates the large costs and delays associated with premature forays to court and avoids the waste associated with hearing an interlocutory judicial review when the applicant for judicial review may succeed at the end of the administrative process anyway: […]. Further, only at the end of the administrative process will a reviewing court have all of the administrative decision-maker's findings; these findings may be suffused with expertise, legitimate policy judgments and valuable regulatory experience: […]. Finally, this approach is consistent

> with and supports the concept of judicial respect for administrative decision-makers who, like judges, have decision-making responsibilities to discharge: […].
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> [Citations omitted.]

[10] Canadian courts have vigorously enforced the general principle of non-interference with ongoing administrative processes. The threshold for exceptionality is high (akin to the threshold of prohibition) and very few circumstances qualify as "exceptional", which is "best illustrated by the very few modern cases where courts have granted prohibition or injunction against administrative decision-makers before or during their proceedings" [see *CB Powell*, *supra* at para 33; *Lin v Canada (Minister of Public Safety and Emergency Preparedness)*, 2021 FCA 81 at para 6]. Concerns about procedural fairness, bias, hardship to an applicant, the presence of an important legal, jurisdictional or constitutional issue, or the fact that the parties consent to early recourse to the courts are not exceptional circumstances allowing parties to bypass an administrative process as long as that process allows the issues to be raised and an effective remedy to be granted [see *CB Powell*, *supra* at para 33; *Herbert v Canada (Attorney General)*, 2022 FCA 11 at paras 14–17]. The very rare circumstances that would allow a party to bypass the administrative process "require that the consequences of an interlocutory decision be so 'immediate and radical' that they call into question the rule of law" [see *Dugré v Canada (Attorney General)*, 2021 FCA 8 at para 35, citing *Wilson*, *supra* at paras 31–33].

[11] In this case, the Applicant has availed herself of the administrative process before the Board to pursue her reprisal complaint and that process remains on-going. While the Applicant asserts that her application is not duplicative of her reprisal complaint before the Board, as this application "seeks supervision of a live, mandatory investigation path and protective continuity

during the refusal process itself, which is a different legal wrong, timeframe, and remedy aimed at preventing ongoing harm rather than compensating for it later", I disagree. The two proceedings are substantively similar: both arising from the same work refusal on March 14, 2025, and the ESDC's alleged reprisals arising therefrom, and with the Applicant seeking similar remedies in both proceedings.

[12] The Applicant nonetheless asserts that exceptional circumstances exist so as to warrant immediate recourse to the Court given that the Board proceedings are "obstructed by bias, coercion, and ongoing interference with the evidentiary and financial record". The Applicant asserts that the Board proceeding has not provided an adequate and effective safeguard such that the rule of law is engaged, as: (a) the Board has failed to order ESDC to provide pay-continuity required by subsection 129(6) of the *Code*, which has resulted in ongoing hardship to the Applicant; and (b) the Board has engaged in a "coercive settlement posture".

[13] As detailed above, the threshold for exceptionality is high and I am not satisfied that the Applicant has raised any circumstances before this Court that would justify a departure from the general, important rule that a party cannot seek judicial review until the administrative proceeding has been completed. Leaving aside that the Applicant has not substantiated many of her allegations, the Federal Court of Appeal (as particularized above) has firmly stated that the circumstances relied upon by the Applicant do not constitute exceptional circumstances so as to justify a premature application for judicial review. The proceedings before the Board provide the Applicant with an adequate alternative remedy and the Applicant must exhaust that process before she can access this Court.

[14] Accordingly, I find that the application for judicial review is premature and no exceptional circumstances exist warranting the Court's intervention at this stage of the Board's proceeding. The notice of application shall accordingly be struck.

[15] The Respondent also seeks an order amending the style of cause to name the Attorney General of Canada as the sole respondent. Pursuant to Rule 303 of the *Federal Courts Rules*, SOR/98-106, the Attorney General of Canada is the proper respondent and thus the style of cause shall be amended accordingly.

[16] While the Respondent has sought their costs of the motion, I am satisfied that, in all of the circumstances, an order for costs is not warranted.

ORDER in T-2540-25

THIS COURT ORDERS that:

1. The style of cause is amended to name the Attorney General of Canada as the sole respondent in this application.
2. The notice of application is hereby struck.
3. There shall be no costs of this motion.

"Mandy Aylen"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-2540-25
STYLE OF CAUSE:	KALEY MICHELE HOGAN v THE ATTORNEY GENERAL OF CANADA

MOTION IN WRITING PURSUANT TO RULES 364 AND 369(1) OF THE *FEDERAL COURTS RULES*, SOR/98-106, CONSIDERED AT OTTAWA, ONTARIO

JUDGMENT AND REASONS	AYLEN J.
DATED:	OCTOBER 1, 2025

WRITTEN REPRESENTATIONS BY:

Kaley Michele Hogan	FOR THE APPLICANT ON HER OWN BEHALF
Norman Chung	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada Ottawa, Ontario	FOR THE RESPONDENT