

**Date: 20070712**

**Docket: T-289-07**

**Citation: 2007 FC 744**

[ENGLISH TRANSLATION]

**Montréal, Quebec, July 12, 2007**

**PRESENT: Richard Morneau, Esq., Prothonotary**

**BETWEEN:**

**CLAUDE PLANTE**

**Applicant**

**and**

**LES ENTREPRISES RÉAL CARON LTÉE**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] This is a motion by the respondent seeking the dismissal of the application for judicial review (the application) filed by the applicant — who is representing himself — on the grounds that the application is, upon review, frivolous, abusive, and a delaying tactic.

[2] At the same time, the respondent is seeking the dismissal of exhibits and appendices that the applicant included with his affidavit under Rule 306 of the *Federal Court Rules* (the Rules), as those

documents were allegedly not, as such, filed as evidence before the adjudicator whose decision dated January 15, 2007, is the subject of the application. Those documents, however, were apparently mentioned in the applicant's oral arguments before that adjudicator and were apparently marked by that adjudicator.

[3] Here, the respondent is essentially asking that, at the interlocutory stage, we somewhat literally hear the position that it plans to argue on merit against the application by inviting the Court to retain the standard of judicial review that it feels applies to this case and, based on the law and the comprehensiveness of the decision under review, assess the weakness of the position developed thus far by the applicant in his notice of application and the affidavit that he filed under Rule 306.

[4] Although it was not filed under that head, it seems to me that the motion under review must be addressed under the inherent jurisdiction of this court, as applied by Strayer J. in *Bull (David) Laboratories (Canada) Inc. v. Pharmacia Inc. et al.* (1994), 176 N.R. 48, at pages 53 to 55.

[5] I feel that the exercise that the respondent is asking us to carry out in this motion exceeds here the type of exercise that *Pharmacia* sets forth for an application for judicial review.

[6] Any application to strike as part of an application for judicial review must be exceptional, in order to promote one of the main objectives of such an application, that of hearing the application on merit as soon as possible.

[7] As indicated by Strayer J. in *Pharmacia*, at page 53:

... [T]he focus in judicial review is on moving the application along to the hearing stage as quickly as possible. This ensures that objections to the originating notice can be dealt with promptly in the context of consideration of the merits of the case.

(See also *Merck Frosst Canada Inc. et al. v. Minister of National Health and Welfare et al.* (1994), 58 C.P.R. (3d) 245, at page 248, and *Glaxo Wellcome Inc. et al. v. Minister of National Health and Welfare et al.*, unreported judgment by this Court, September 6, 1996, docket T-793-96.)

[8] Under the circumstances, I do not feel that it is appropriate to embark on an evaluation that must be conducted on merit.

[9] I feel that the respondent should and must argue what it sought to argue here in its affidavit(s) under Rule 307 and its Respondent Record under Rule 310. The same is true for the documents that it seeks to strike from the applicant's affidavit, as it is quite able to identify the circumstances surrounding those documents and that position can be well brought to the judge's attention on time at the stage of Rule 310.

[10] For these reasons, the respondent's motion to dismiss shall be dismissed.

**ORDER**

This motion to dismiss is dismissed, with costs in the cause.

The subsequent timeline to be followed shall be:

1. The applicant shall serve and file his Applicant's Record under Rule 309 on or before July 25, 2007;
2. Thereafter, the normal timelines for Rule 310 *et seq.* shall apply. The Court reminds the applicant here that he must be particularly vigilant in respecting the timeline under paragraph 1 above and the timeline set out in Rule 314.

**“Richard Morneau”**

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Prothonotary

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

**DOCKET:** T-289-07

**STYLE OF CAUSE:** CLAUDE PLANTE  
Applicant  
and  
LES ENTREPRISES RÉAL CARON LTÉE  
Respondent

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** July 9, 2007

**REASONS FOR ORDER:** PROTHONOTARY MORNEAU

**DATED:** July 12, 2007

**APPEARANCES:**

(on his own behalf)

Guy Sirois

FOR THE APPLICANT

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Guy Sirois

FOR THE APPLICANT

FOR THE RESPONDENT