

Federal Court  
of Appeal



CANADA

Cour d'appel  
fédérale

**Date: 20100202**

**Docket: A-226-09**

**Citation: 2010 FCA 34**

**CORAM: NOËL J.A.  
PELLETIER J.A.  
LAYDEN-STEVENSON J.A.**

**BETWEEN:**

**ELLIOTT MOGLICA**

**Appellant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

Heard at Toronto, Ontario, on January 27, 2010.

Judgment delivered at Ottawa, Ontario, on February 2, 2010.

REASONS FOR JUDGMENT BY:

PELLETIER J.A.

CONCURRED IN BY:

NOËL J.A.  
LAYDEN-STEVENSON J.A.

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**ATTORNEY GENERAL OF CANADA**

**Respondent**

**REASONS FOR JUDGMENT**

**PELLETIER J.A.**

[1] Mr. Moglica appeals from Mr. Justice Michael Phelan's decision dismissing his application for judicial review of the decision of the Director of the Investigations Branch of the Public Service Commission (the Director). The Director dismissed Mr. Moglica's request for an investigation into the circumstances of the Canada Border Service Agency's (the Agency) rejection of his candidacy for a position as an Inland Enforcement Officer.

[2] In order to obtain the position which he desired, Mr. Moglica was required to pass a “knowledge” exam and to undergo an interview. The knowledge exam was divided into two parts, and a candidate was required to obtain a passing mark in each part. Mr. Moglica obtained a mark of 7/18 on the first part of the exam, when he required a mark of 9/18 in order to pass. Since he did not pass the first part of the exam, the Agency’s officials did not bother to mark the second part of the exam, and no interview was held. His application was simply rejected.

[3] Mr. Moglica asked the Director to undertake an investigation, alleging procedural irregularities as well as discrimination on the basis of his Albanian national origin. The Director advised him that the complaint with respect to discrimination would have to be made to the Canadian Human Rights Commission. As for the alleged procedural irregularities, the Director found that none of them were justified or gave rise to any remedy.

[4] Mr. Moglica brought an application for judicial review to the Federal Court. Justice Phelan identified the standard of review as reasonableness and dismissed the application in brief reasons reported as *Moglica v. A.G. Canada*, 2009 FC 452, [2009] F.C.J. No. 578. The learned judge agreed that to the extent that Mr. Moglica was complaining about discrimination, the proper forum for that complaint was the Canadian Human Rights Commission. He then went on to examine four specific concerns raised by Mr. Moglica and concluded in each case that it was not unreasonable for the Director to decline to intervene.

[5] Mr. Moglica now appeals to this Court, alleging numerous violations of his rights. This Court's task is to determine if the application judge properly identified and applied the applicable standard of review: *Dr. Q v. British Columbia College of Physicians and Surgeons*, 2003 SCC 19, [2003] 1 S.C.R. 226 at paragraph 43. I am satisfied that the learned applications judge correctly identified the standard of review and applied it appropriately. As a result, I can see no basis on which this Court could intervene.

[6] I would dismiss the appeal with costs.

"J.D. Denis Pelletier"

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J.A.

"I agree.  
Marc Noël J.A."

"I agree.  
Carolyn Layden-Stevenson J.A."

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-226-09

**(AN APPEAL FROM THE ORDER OF THE HONOURABLE MR. JUSTICE PHELAN OF THE FEDERAL COURT DATED MAY 5, 2009, DOCKET NO. T-528-08.)**

**STYLE OF CAUSE:** ELLIOTT MOGLICA v. THE ATTORNEY  
GENERAL OF CANADA

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JANUARY 27, 2010

**REASONS FOR JUDGMENT BY:** PELLETIER J.A.

**CONCURRED IN BY:** NOËL J.A.  
LAYDEN-STEVENSON J.A.

**DATED:** FEBRUARY 2, 2010

**APPEARANCES:**

ELLIOTT MOGLICA FOR THE APPELLANT, on his own behalf

GILIAN A. PATTERSON FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

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