Federal Court  Cour fédérale

Date: 20240201

Docket: T-551-23

Citation: 2024 FC 157

Ottawa, Ontario, February 1, 2024

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

JOHN GREGORY, MARCIA CUNNINGHAM

Applicants

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants, John Gregory and Marcia Cunningham, are spouses who together in partnership operate a consulting business, Cunningham Gregory & Company Educational Communications [Partnership]. For themselves personally and on behalf of the Partnership, they have sought waivers of penalties and interest imposed by the Canada Revenue Agency [CRA],

particularly in respect of ten years of penalties and interest following an audit conducted in 2010 regarding their returns for the 2000 tax year (that were filed in 2010).

[2] On November 27, 2018, following a second review, the CRA refused the Applicants' relief applications. The Applicants subsequently brought a judicial review in Court File T-105-19. On July 31, 2019, the parties executed Minutes of Settlement resulting in the discontinuance of this earlier judicial review on the basis that reconsideration would be undertaken.

[3] The July 22, 2021 decisions of the CRA [Decisions] were the result of the reconsideration and are the subject of the current judicial review.

[4] The Applicants seek judicial review of the Decisions rejecting the Applicants' waiver requests following a third-level reconsideration, challenging the reasonableness of the Decisions, questioning procedural fairness, and asserting a violation of the Applicant's rights under section 12 of the *Canadian Charter of Rights and Freedoms* [*Charter*].

[5] The Respondent raises several preliminary issues regarding the identification of the proper Respondent in the style of cause, the admissibility of the Applicants' new evidence, and the permissibility of the *Charter* argument that was not raised before the CRA.

[6] See Annex "A" for relevant provisions.

[7] A reasonable decision is one that exhibits the hallmarks of justification, transparency and intelligibility, and is justified in the context of the applicable factual and legal constraints: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 99. The party challenging an administrative decision has the burden of showing that it is unreasonable: *Vavilov*, above at para 100.

[8] Questions of procedural fairness attract a correctness-like standard of review: *Benchery v Canada (Citizenship and Immigration)*, 2020 FC 217 at paras 8-9; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54; *Vavilov*, above at para 77. The focus of the reviewing court is whether the process was fair in the circumstances: *Chaudhry v Canada (Citizenship and Immigration)*, 2019 FC 520 at para 24.

[9] The role of the Applicants in their woes with the CRA, spanning about 24 years, is undeniable. For example, filing their returns for the 2000 tax year almost a decade late, instead of when due in 2001, resulted in ten years of penalties and interest following an eventual audit. In fact, although some returns were filed on time, the Applicants have a history of filing late returns, including their individual returns for the 2001, 2004-2009, and 2012-2015 tax years. The Applicants admitted “their compliance foibles” in their written submissions, and they admitted that “compliance has been an issue on these accounts” in their submissions before the CRA in 2019. The financial circumstances in which they presently find themselves nonetheless are difficult. It is evident to the Court that this situation has taken a toll on them personally and professionally.

[10] I explained to the Applicants at the oral hearing, however, that judicial review involves considering whether the challenged Decisions are reasonable or correct, depending on the issue or issues raised, with a possible result that the Decisions could be set aside and the matter returned to the CRA for redetermination. I added that judicial review is not an appeal; in other words, the Court cannot step into the shoes of the CRA and order the relief from penalties and interest owed. As this Court previously has noted, it "does not have the jurisdiction to order the Minister to waive taxes, penalties, and arrears interest[; its jurisdiction] is limited to ordering the Minister to substantively reconsider his decisions": *Kapil v Canada (Revenue Agency)*, 2011 FC 1373 at para 20.

[11] Having considered the parties' records, including their written submissions and their oral arguments, I am not persuaded that the Applicants have met their onus of establishing that the Decisions are unreasonable. Nor am I persuaded that the Decisions are procedurally unfair. For the reasons below, this judicial review application therefore is dismissed.

II. Analysis

A. *Preliminary issue regarding the style of case*

[12] As a preliminary matter, the Respondent raised the issue of the proper Respondent, noting the Applicants had named the Canada Revenue Agency as such in their application for judicial review. Counsel submitted that the Respondent should be the Attorney General of Canada. I agreed, having regard to subrule 303(2) of the *Federal Courts Rules*, SOR/98-106 [*Rules*], which I explained to the Applicants at the hearing before me. Accordingly, the style of

cause is amended immediately to replace “Canada Revenue Agency” with “Attorney General of Canada” as the Respondent.

B. *Preliminary issue regarding the admissibility of the Applicants’ additional evidence*

[13] I agree with the Respondent that the Applicants’ new evidence is not admissible, and hence, I have not taken it into account in these Reasons.

[14] The Applicants submitted the following documentary evidence that was not part of their record before the CRA for the third review:

- December 2, 2021 and February 28, 2022 post-Decision correspondence between the Applicants and the CRA;
- TD Canada Trust mortgage statements from various points between 2006 and 2018;
- Letters from TD Bank Financial Group to the Applicants;
- 2015 notice from Pro-Check Home Services;
- Statement of Business Activities (T2124(E));
- CBC article entitled “How CRA treats you depends on where you live, auditor reports” from November 20, 2018;
- Statement of claim between The Toronto-Dominion Bank, Plaintiff, and the Applicants, Defendants, from 2008;
- CTV News article entitled “CRA does not consistently apply auditing rules to all taxpayers: AG” from November 20, 2018;
- Garnishee notice from Alterna Savings to John Gregory dated December 13, 2016; and
- Request for relief sent by the Applicants to the CRA in 2009.

[15] The new evidence seeks to corroborate the Applicants' claims and narrative spanning back to 2004. On August 27, 2004, the Applicants made a $340,000 payment to the CRA, eliminating their tax arrears at that time. After suffering financial issues in 2005 and 2006, however, they were unable to maintain subsequent payment arrangements with CRA. These financial issues arose from events in 2004-2006, including their mothers' illnesses, Ms. Cunningham's hip replacement, and difficulty carrying two mortgages for a six-month period that resulted in long-term issues with their credit and finances. In 2011, the CRA audited the Applicants' 2000 tax year (following the filing of the returns for that year in 2010, after the CRA assessed them in 2008 without the returns) and disallowed several claimed expenses, resulting in ten years of retroactive interest and penalties.

[16] Notwithstanding the Applicants' oral submissions, I am not persuaded that the above documents are admissible. The events of 2004-2006 were squarely before the CRA for consideration on the third review. No reasons have been provided detailing why they could not have been submitted for the third review, given the Applicants' burden to put their best foot forward and numbered paragraph 6 of the Minutes of Settlement, which states that the CRA "will consider all relevant facts, documents, circumstances and legal arguments that the Applicants present."

[17] I agree with the Respondent that none of the exceptions that otherwise would permit the Court to accept new evidence, as described in *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 [*Access Copyright*] at para 20, apply to these documents.

[18] Further, the Applicants, in my view, have misconstrued the exception relating to the decision maker having made a decision in the absence of evidence: *Access Copyright*, above at para 20(c). That exception essentially applies to instances where the decision maker makes a finding on a lark, contrary to evidence submitted (i.e. the absence of evidence is considered in the context of the evidence actually submitted); it does not apply to situations where an applicant could have but did not submit evidence before the tribunal that the applicant later seeks to have admitted before the Court. This Court previously has held that new affidavit evidence is inadmissible where it is submitted to substantiate an applicant's position, it was not before the decision maker, and goes to the merits of the decision under review: *Ramos v Canada (Public Safety and Emergency Preparedness)*, 2021 FC 667 at para 20.

[19] I disagree with the Applicants' contention that filling out the required forms leaving nothing out, writing letters when suggested, and responding to the CRA's request for additional information meant that this was all the information the third reviewer needed. This contention, in my view, impermissibly attempts to shift the evidentiary burden from the Applicants to the third reviewer.

[20] Most of the new documents submitted by the Applicants relate to their precarious financial situation which was at issue before the third reviewer when assessing the fairness request. The mortgage statements, garnishee notice, and legal action by TD Bank against the Applicants should have been brought to the third reviewer's attention. It is not the Court's role on judicial review to reassess the facts.

[21] In addition, the CBC and CTV articles in my view are speculative, general and do not relate specifically to the matter before the Court. These articles thus also are not admissible.

[22] Although the 2009 letter to the CRA and the post-Decisions correspondence might be considered background information in their most favourable light, in my view they do not add anything new. The 2009 request for relief is not before the Court, and thus, the 2009 letter is irrelevant to the Decision. The post-Decisions correspondence attempts to re-argue the merits of the request, but with the matter having been decided and not re-opened, I find that this correspondence is not relevant to the current judicial review.

C. *Preliminary issues regarding the Applicants' Charter argument*

[23] I agree with the Respondent that the Applicants' section 12 *Charter* allegation, raised for the first time in connection with their judicial review application, is not timely in the circumstances, and thus, for this reason and others explained below, I decline to consider it.

[24] The Applicants essentially assert that the penalties and interest levied by the CRA over a period of approximately 24 years are "grossly disproportionate" to the amount of taxes owing, and thus, they constitute cruel and unusual treatment or punishment: *R v Boudreault*, 2018 SCC 58 [*Boudreault*].

[25] First, the *Charter* issue could and should have been raised with the CRA because it relates to the penalties and interest already imposed. In other words, the *Charter* violation asserted by the Applicants is not one that arises from the Decisions themselves (given that the

Applicants were seeking fairness or relief from imposed penalties and interest), which otherwise possibly could have been amenable to consideration at first instance by the Court: *McCarthy v Whitefish Lake First Nation #128*, 2023 FC 220 at para 57.

[26] Second, the evidentiary record, together with the Applicants' brief assertions, are insufficient in my view to establish cruel and unusual punishment. In addition, I find that the *Boudreault* case is distinguishable because of its criminal law context. As well, the Applicants did not argue the test for punishment described in paragraph 39 of *Boudreault* at the oral hearing, nor the test for whether a punishment is grossly disproportionate.

[27] Third, and more to the point, the Federal Court of Appeal guides that an income tax assessment, and I infer by analogy an excise tax assessment, "does not place the assessed person under state control in a manner that could possibly be considered treatment or punishment within the meaning of section 12 of the *Charter*": *Gratl v Canada*, 2012 FCA 88 [*Gratl*] at para 8. This jurisprudence binds the Federal Court.

[28] I add that, as noted by the Respondent, the Applicants did not file a notice of constitutional question pursuant to section 57 of the *Federal Courts Act*, RSC 1985, c F-7 [*Act*] and rule 69 of the *Rules*. To the extent the Applicants take issue with the constitutionality of the underlying legislative scheme or CRA policies, which in my view is not clear from their written and oral submissions, they did not comply with subsection 57(4) of the *Act* and thus cannot raise these issues on judicial review. This Court previously has held that a challenge to the "constitutional validity, applicability or operability" of any Act of Parliament, regulation or

related policy would require proper notice under section 57: *Husband v Canadian Wheat Board*, 2006 FC 1390 at para 12, aff'd 2007 FCA 325.

[29] Rather, the Applicants' judicial review is more aptly characterized, in my view, as challenging the Decisions themselves (i.e. to refuse to provide the requested relief from penalties and interest), as opposed to the legislation, on the basis that the applicable "legislation does not authorize the decision-maker to make a decision that infringes a constitutional right," which challenge does not require section 57 notice: *Mikisew Cree First Nation v Canada (Minister of Canadian. Heritage)*, 2004 FCA 66 at paras 76-78, rev'd on other grounds 2005 SCC 69. As noted above, however, the *Gratl* decision precludes the Court's consideration of an alleged infringement of section 12 of the *Charter* in the Applicants' circumstances.

[30] In any event, for the above enumerated reasons, although the first one in itself is sufficient, I decline to consider the Applicant's *Charter* argument regarding section 12.

[31] All that said, the Supreme Court of Canada instructs that reasonableness demands "responsive justification" where the stakes for an applicant are high, including where an applicant's dignity and livelihood are implicated: *Vavilov*, above at paras 133-135. I touch on this issue below in my analysis of the reasonableness of the Decisions.

D. *The Decisions were not procedurally unfair*

[32] Although the Applicants similarly failed to raise the issue of procedural fairness in their Notice of Application and only raised it for the first time in their written submissions, I am not

persuaded that the third review was procedurally unfair in so far as it relates to the Applicants' allegations of confirmation bias, delay and deficient record.

[33] The Applicants' allegation of "confirmation bias" (i.e. that the third reviewer was biased by her personal experiences against the Applicants, "cherry-picked" information that confirmed her existing beliefs, and thus, in effect, did not approach the review with an open mind) is speculative. While some facts possibly relating to the issue came to light further to the cross-examination in writing on the Respondent's affidavit, the Applicants did not amend their Notice of Application as prescribed by the *Rules*. This is reason enough, in my view, to decline to consider the issue because it puts the Respondent in the position of not being able to know and to respond substantively to the allegation: *Aronson v Canada (Attorney General)*, 2021 FC 1451 at para 28.

[34] Regarding the Applicants' oral argument that the third review mimicked the first two reviews and was grounded in groupthink where CRA colleagues support each other, in my view these submissions are speculative and not supported by the evidence. Further, as recently observed by the Federal Court of Appeal, "a losing streak may be justified by the facts and the law of the individual cases" (citations omitted): *Collins v Canada (Attorney General)*, 2024 FCA 5 at para 19.

[35] The Applicants' complaint of delay regarding the approximately two years from the start of the third review until its completion is not warranted, especially in the face of their own delay of about two years in filing their judicial review application.

[36] The Applicants have not provided any authority to support their contention that a CRA officer must receive a copy of related court documents when conducting an independent review. The Minutes of Settlement state that the Taxpayer Relief Applications would be referred back to a CRA officer and the Applicants would be able to make submissions, but it does not refer, which the Applicants confirmed at the oral hearing, to the material before the Court in T-105-19.

[37] Further, the judicial review in T-105-19 was discontinued on July 31, 2019 before it was heard on the merits; the Court did not make any substantive ruling or provide any direction to the CRA. The Respondent cites *Building Products of Canada Corp v Canada (Attorney General)*, 2020 FC 784 for the proposition that "it [is] the Applicant's responsibility to put its best foot forward when applying for the discretionary relief of waiving or cancelling penalties and interest" (para 33). I agree.

[38] Finally, the Applicants recognized that the Officer may not have had the Court record. In their letter dated October 25, 2019, in which they attached several documents, the Applicants write: "We are not certain whether or not you have in your file all the evidence and arguments filed as part of our judicial review. As a result, we will attempt here to clarify matters from our perspective." In the end, I find that the CRA was not under a duty to place the Applicants' record in Court File T-105-19 before the Officer.

E. *The Decisions were not unreasonable*

[39] I find that the Applicants essentially request the Court to reweigh and reassess the evidence considered by the third reviewer. As the Supreme Court of Canada guides, this is not the role of the reviewing court on judicial review: *Vavilov*, above at para 125.

[40] Further, the fact that the CRA could have come to a different conclusion based on the facts and the evidence before it does not mean in itself that the Decisions are unreasonable: *Krishnapillai v Canada (Citizenship and Immigration)*, 2007 FC 563 at para 11; *National Bank of Canada v Lavoie*, 2013 FC 642 at para 30.

[41] In conducting a reasonableness review, the Court must examine the Decisions to determine if they bear the hallmarks of justification, intelligibility and transparency. The Court asks itself whether there is a logical chain of analysis and internally coherent reasons in the context of the applicable factual and legal constraints: *Vavilov*, above at paras 85, 90. In other words, do the reasons permit the Court to "to connect the dots on the page where the lines, and the direction they are headed, may be readily drawn"?: *Vavilov*, above at para 97, citing *Komolafe v Canada (Minister of Citizenship and Immigration)*, 2013 FC 431 at para 11.

[42] Having considered the Decisions and underlying Third-level Taxpayer Relief Fact Sheets [Fact Sheets] carefully, I conclude that they do not disclose a reviewable error warranting the Court's intervention. Further, they provide "responsive justification" reflective of the stakes for these Applicants: *Vavilov*, above at paras 133-135.

[43] I disagree with the Applicants' argument that the third reviewer did not look at their situation holistically, noting the inter-relatedness of the relationships between and among the Applicants personally and their Partnership, as stipulated in numbered paragraph 4 of the Minutes of Settlement regarding their previous judicial review application.

[44] Numbered paragraph 4 of the Minutes of Settlement regarding Court File T-105-19, which are in the certified tribunal record and the Applicants' record, states that "in conducting the Independent Review, the Agency will consider any interdependent relationships between the Applicants that are asserted by the Applicants."

[45] In considering the Decisions, and the Fact Sheet for each Applicant from which the Decisions were prepared, I find the Applicants' contention in this regard is untenable. The fact that the CRA issued three separate Decisions in itself is not indicative that paragraph 4 of the Minutes of Settlement was not followed. In fact, the last paragraph on the first page of each Decision acknowledges the relationships and the Applicants' reasons why they are interdependent. The CRA specifically recognizes that their home is their place of business and that their livelihood is at stake.

[46] Further, the Fact Sheets demonstrate that the CRA examined the combined assets and liabilities of the individual Applicants and Partnership when assessing their ability to pay in the context of the debt as a whole. In my view, this reflects numbered paragraph 5 of the Minutes of Settlement, that the CRA would consider the cumulative debt.

[47] The Applicants contend that the imposition of ten years of retroactive penalties and interest following the audit of the return for the 2000 tax return has made it essentially impossible for them to address the principal taxes owing. Further, say the Applicants, the penalties and interest are grossly disproportionate because they are four times the amount of taxes actually owed, impliedly representing about 80% of the overall debt.

[48] The Applicants point to the confluence of personal illnesses and financial challenges in carrying two mortgages for six months, among the events that the family endured in 2004-2006, as contributing to their inability to pay. In my view, however, they have not explained how the third reviewer erred in reaching the conclusion that these conditions were not such an extraordinary circumstance that prevented them from filing a tax return or paying an owed amount on time. As noted earlier, the 2000 tax return, that the Applicants assert resulted in their financial predicament and in respect of which they seek relief, was due by June 15, 2001 but not filed by them until almost a decade later, without any explanation for the first few years' of delay before the above events occurred.

[49] I find that the Officer's assessment, that the equity in the house and incomplete disclosure weighed against the difficulty in paying the mortgage and tax debt, is owed deference that cannot be displaced absent exceptional circumstances.

[50] In addition to recognizing the Applicants' submissions regarding carrying two mortgages for six months, the Decisions refer to the Applicants' assertion that they were behind on their mortgage payments by 12 weeks at the time of the request for relief. The Decisions also refer,

however, to the Applicants' lack of full disclosure, including a possible cottage, which, I note, they have not disputed. The Fact Sheets further describe CPP income and dividends that were not included in the income information the Applicants presented.

[51] While the Applicants take issue with the CRA's characterization that their lifestyle is beyond their means, the characterization does not detract in my view from the reasonable factual findings based on the evidence that the Applicants are paying other creditors before the CRA and undertaking an amount of discretionary spending. This is an example of the Applicants asking the Court to reweigh the relevant evidence and come to a different conclusion.

[52] The Applicants also take issue with the CRA's conclusion that they have sufficient equity in their home to address their debt to the CRA without causing financial hardship. The CRA's conclusion is reasonably based, in my view, on information that the home's value exceeded $2 million as of December 2018, while their mortgage balance in December 2020 was $550,000, which findings the Applicants also have not disputed. The combined tax debt of Applicants is just under $1.3 million. The Applicants point to the state of their credit and their inability to access the equity in their home without selling it. This is another example, however, of the Applicants asking the Court to reweigh the relevant evidence and come to a different conclusion.

[53] The CRA determines in the end that, despite the Applicants' personal circumstances, all taxpayers must report and pay tax, including partnerships. I find that the Applicants have not explained why this is unreasonable, aside from their disagreement with the determination.

III. Conclusion

[54] While I recognize the difficult financial straits in which the Applicants find themselves, I am satisfied that the Decisions are logical and coherent, and that the Applicants have not demonstrated a reviewable error. For the above reasons, I therefore dismiss their application for judicial review.

[55] The Respondent seeks costs. Having regard to all the circumstances of this matter, and to the Court's discretion pursuant to rule 400, I decline to award costs.

JUDGMENT in T-551-23

THIS COURT'S JUDGMENT is that:

1. The Applicants' judicial review application is dismissed.

2. No costs are awarded.

3. The style of cause is amended immediately to replace "Canada Revenue Agency" with "Attorney General of Canada" as the Respondent.

"Janet M. Fuhrer"
Judge

Annex "A": Relevant Provisions

Income Tax Act, RSC 1985, c 1 (5th Supp).
Loi de l'impôt sur le revenu, LRC 1985, ch 1 (5e suppl).

Waiver of penalty or interest	**Renonciation aux pénalités et aux intérêts**
220 (3.1) The Minister may, on or before the day that is ten calendar years after the end of a taxation year of a taxpayer (or in the case of a partnership, a fiscal period of the partnership) or on application by the taxpayer or partnership on or before that day, waive or cancel all or any portion of any penalty or interest otherwise payable under this Act by the taxpayer or partnership in respect of that taxation year or fiscal period, and notwithstanding subsections 152(4) to (5), any assessment of the interest and penalties payable by the taxpayer or partnership shall be made that is necessary to take into account the cancellation of the penalty or interest.	**220 (3.1)** Le ministre peut, au plus tard le jour qui suit de dix années civiles la fin de l'année d'imposition d'un contribuable ou de l'exercice d'une société de personnes ou sur demande du contribuable ou de la société de personnes faite au plus tard ce jour-là, renoncer à tout ou partie d'un montant de pénalité ou d'intérêts payable par ailleurs par le contribuable ou la société de personnes en application de la présente loi pour cette année d'imposition ou cet exercice, ou l'annuler en tout ou en partie. Malgré les paragraphes 152(4) à (5), le ministre établit les cotisations voulues concernant les intérêts et pénalités payables par le contribuable ou la société de personnes pour tenir compte de pareille annulation.

Excise Tax Act, RSC 1985, c E-15.
Loi sur la taxe d'accise, LRC 1985, ch E-15.

Waiving or cancelling interest	**Renonciation ou annulation — intérêts**
281.1 (1) The Minister may, on or before the day that is 10 calendar years after the end of a reporting period of a person, or on application by the person on or before that day, waive or cancel interest payable by the person under section 280 on an amount that is required to be remitted or paid by the person under this Part in respect of the reporting period.	**281.1 (1)** Le ministre peut, au plus tard le jour qui suit de dix années civiles la fin d'une période de déclaration d'une personne ou sur demande de la personne présentée au plus tard ce jour-là, annuler les intérêts payables par la personne en application de l'article 280 sur tout montant qu'elle est tenue de verser ou de payer en vertu de la présente partie relativement à la période de déclaration, ou y renoncer.

Federal Courts Act, RSC 1985, c F-7.
Loi sur les Cours fédérales, LRC 1985, ch F-7.

Constitutional questions	**Questions constitutionnelles**
57 (1) If the constitutional validity, applicability or operability of an Act of Parliament or of the legislature of a province, or of regulations made under such an Act, is in question before the Federal Court of Appeal or the Federal Court or a federal board, commission or other tribunal, other than a court martial and an officer conducting a summary hearing, as defined in subsection 2(1) of the National Defence Act, the Act or regulation shall not be judged to be invalid, inapplicable or inoperable unless notice has been served on the Attorney General of Canada and the attorney general of each province in accordance with subsection (2).	**57 (1)** Les lois fédérales ou provinciales ou leurs textes d'application, dont la validité, l'applicabilité ou l'effet, sur le plan constitutionnel, est en cause devant la Cour d'appel fédérale ou la Cour fédérale ou un office fédéral, sauf s'il s'agit d'une cour martiale ou d'un officier tenant une audience sommaire au sens du paragraphe 2(1) de la Loi sur la défense nationale, ne peuvent être déclarés invalides, inapplicables ou sans effet, à moins que le procureur général du Canada et ceux des provinces n'aient été avisés conformément au paragraphe (2).
…	…
Right to be heard	**Droit des procureurs généraux d'être entendus**
(4) The Attorney General of Canada and the attorney general of each province are entitled to adduce evidence and make submissions to the Federal Court of Appeal or the Federal Court or the federal board, commission or other tribunal, as the case may be, in respect of the constitutional question.	**(4)** Le procureur général à qui un avis visé aux paragraphes (1) ou (3) est signifié peut présenter une preuve et des observations à la Cour d'appel fédérale ou à la Cour fédérale et à l'office fédéral en cause, à l'égard de la question constitutionnelle en litige.

Federal Courts Rules, SOR/98-106.
Règles des Cours fédérales, DORS/98-106.

Notice of constitutional question	**Avis d'une question constitutionnelle**
69 A notice of a constitutional question referred to in section 57 of the Act shall be in Form 69.	**69** L'avis d'une question constitutionnelle visé à l'article 57 de la Loi est rédigé selon la formule 69.

Application for judicial review **303 (2)** Where in an application for judicial review there are no persons that can be named under subsection (1), the applicant shall name the Attorney General of Canada as a respondent.	**Défendeurs — demande de contrôle judiciaire** **303 (2)** Dans une demande de contrôle judiciaire, si aucun défendeur n'est désigné en application du paragraphe (1), le demandeur désigne le procureur général du Canada à ce titre.
Discretionary powers of Court **400 (1)** The Court shall have full discretionary power over the amount and allocation of costs and the determination of by whom they are to be paid.	**Pouvoir discrétionnaire de la Cour** **400 (1)** La Cour a le pouvoir discrétionnaire de déterminer le montant des dépens, de les répartir et de désigner les personnes qui doivent les payer.

Canadian Charter of Rights and Freedoms Part I of the Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11.
Charte canadienne des droits et libertés, partie I de la *Loi constitutionnelle de 1982*, constituant l'annexe B de la *Loi de 1982 sur le Canada* (R-U), 1982, c 11.

Treatment or punishment **12** Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.	**Cruauté** **12** Chacun a droit à la protection contre tous traitements ou peines cruels et inusités.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-551-23
STYLE OF CAUSE:	JOHN GREGORY, MARCIA CUNNINGHAM v ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	JANUARY 16, 2024
JUDGMENT AND REASONS:	FUHRER J.
DATED:	FEBRUARY 1, 2024

APPEARANCES:

John Gregory Marcia Cunningham	FOR THE APPLICANTS (ON THEIR OWN BEHALF)
Lalitha Ramachandran	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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