Federal Court Cour fédérale

Date: 20140127

Docket: T-1428-12

Citation: 2014 FC 88

Ottawa, Ontario, January 27, 2014

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

MICHAL HALLEN

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] After a long career in the federal public service, Mr Michal Hallen moved to the private sector in 2000, taking a position with Loba Limited. He directed that his public service pension benefits be transferred to the Loba pension plan under a Reciprocal Transfer Agreement (RTA).

[2] In 2003, the Canada Revenue Agency revoked the Loba pension plan retroactively to April 2000. That decision was upheld by the Federal Court of Appeal, 2004 FCA 342.

[3] The Treasury Board advised Mr Hallen in July 2005 that, in the circumstances, he could either accept a reduced annual allowance or receive a deferred annuity when he turned 60. If he did not reply, he would be presumed to have elected the latter option. Mr Hallen did not reply.

[4] In due course, Mr Hallen learned that his deferred annuity would become payable on April 21, 2007, his 60th birthday. He was asked to confirm his address and SIN number. Again, he did not reply.

[5] In 2010, the administrator of the Loba plan contacted the Treasury Board to inquire about Mr Hallen's transfer request. Treasury Board wrote to Mr Hallen and confirmed the options that had been described in its 2005 letter to him.

[6] Mr Hallen began receiving pension cheques in 2011, but has not cashed any. In 2012, his lawyer asked Treasury Board to review Mr Hallen's situation. In response, a Treasury Board representative sent a letter dated June 26, 2012, simply confirming the information that had been provided to Mr Hallen in 2005.

[7] Mr Hallen argues that the refusal to transfer his pension benefits was unreasonable and asks me to declare his entitlement to a transfer. The respondent submits that Mr Hallen's application for

judicial review is out of time, the refusal was not unreasonable, and Mr Hallen is not entitled to a declaration given his delay in seeking redress in this Court.

[8] I agree that Mr Hallen's application is out of time. Therefore, I need not deal with the other issues.

II. Can Mr Hallen bring an application for judicial review of the transfer refusal?

[9] Mr Hallen argues that the letter he received in 2005 did not set out a "decision". Rather, it set out Treasury Board's ongoing overall policy with respect to transfers under RTAs. While a "decision" is subject to a 30-day limitation period for applications for judicial review under s 18.1(2) of the *Federal Courts Act*, RSC 1985, c F-7, other matters, including ongoing policy decisions, can be challenged at any time.

[10] In my view, Mr Hallen is challenging a decision of Treasury Board and is bound by the 30-day time limit for launching an application for judicial review.

[11] Mr Hallen relies on a number of cases in which conduct by the respondent was characterized as a "matter" or policy or course of conduct, rather than a "decision". He cites *Krause v Canada*, [1999] 2 FC 476 at para 24; *Airth v Minister of National Revenue*, 2006 FC 1442 at para 10; *Apotex Inc v Canada (Minister of Health)*, 2010 FC 1310; *May v CBC/Radio Canada*, 2011 FCA 130 at para 11.

[12] In my view, these cases are distinguishable.

[13] *Krause* dealt with a challenge brought in 1997 by a group of contributors to and beneficiaries of a government pension plan. They disputed a general policy decision taken by the Government of Canada in 1989-90. That decision was implemented by way of actions taken each fiscal year beginning in 1993-94. The Federal Court of Appeal found that the applicants were not contesting the original policy decision; rather, they were challenging the actions taken each year to implement that policy. Accordingly, the application for judicial review was directed at those acts, not a particular decision or order, and the 30-day time limitation did not apply.

[14] In *Airth*, on a motion to strike, Justice Michael Phelan concluded that the applicants were challenging an entire course of conduct carried out by a range of persons and entities, not just the particular requests for information with which they had been served. Therefore, the application for judicial review did not relate to a singular decision or order; rather, it was directed at a broader "matter", and the 30-day time limitation, therefore, did not apply (at para 5). (Justice Phelan noted that it was open to the judge hearing the merits to conclude otherwise, at para 13).

[15] Similarly, in *Apotex*, on a motion to strike, Justice Yvon Pinard found that the applicants appeared to be challenging a series of decisions and actions taken by the Minister of Health, allegedly motivated by bias, rather than a single decision. Therefore, the 30-day time limitation did not apply. However, he, too, left the issue to be decided definitively by the judge hearing the merits at para 14). Justice Robert Barnes ultimately concluded that the applicant was actually challenging "three discrete administrative decisions" and was bound by the 30-day time limitation (2011 FC 1308, at para 18).

[16] Finally, *May* involved a 2011 challenge to an ongoing policy of the Canadian Radio-television and Telecommunications Commission (CRTC) relating to election broadcasts. The CRTC had been applying the policy since 1995, and had published it in Guidelines that same year. Justice Marc Nadon, writing for the Court, found that the applicant could have challenged that "matter" at any time and did not have to wait until the CRTC issued a bulletin relating specifically to the 2011 election (at para 11). Accordingly, he concluded that the issue was not "really urgent" and denied the applicant's request for an expedited hearing in advance of that election.

[17] In Mr Hallen's case, it is clear to me that he is challenging a singular decision – the CRA's revocation of the Loba pension plan. The consequences of that decision in respect of Mr Hallen's pension – the refusal to transfer his pension benefits – was communicated to him by way of the July 2005 letter. He is not challenging a general policy position, a course of conduct, or a series of decisions and acts.

[18] Regarding the letter sent by Treasury Board in June 2012, this did not set out a decision and, therefore, does not provide a basis for judicial review. It was merely a courtesy letter (as in *Batkai v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 514 at para 13; *Hughes v Canada (Customs and Revenue Agency)*, 2004 FC 1055 at para 6; and *Phillips v Canada (Librarian and Archivist)*, 2006 FC 1378 at para 2).

[19] In my view, Mr Hallen could have launched his application for judicial review in 2005 when Treasury Board informed him of the consequences of the de-registration of the Loba pension plan.

Alternatively, when those consequences materialized in the form of his receipt of pension cheques in 2011, he could have commenced an application for judicial review at that point. In either case, his application for judicial review is now clearly out of time.

IV. Conclusion and Disposition

[20] I must dismiss this application for judicial review with costs, because it was brought out of time.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed, with costs.

"James W. O'Reilly"

Judge

Annex

***Federal Courts Act*, RSC 1985, c F-7**

Application for judicial review

Time limitation

18.1(2) An application for judicial review in respect of a decision or an order of a federal board, commission or other tribunal shall be made within 30 days after the time the decision or order was first communicated by the federal board, commission or other tribunal to the office of the Deputy Attorney General of Canada or to the party directly affected by it, or within any further time that a judge of the Federal Court may fix or allow before or after the end of those 30 days.

***Loi sur les Cours fédérales,* LRC (1985), ch F-7**

Demande de contrôle judiciaire

Délai de présentation

18.1(2) Les demandes de contrôle judiciaire sont à présenter dans les trente jours qui suivent la première communication, par l'office fédéral, de sa décision ou de son ordonnance au bureau du sous-procureur général du Canada ou à la partie concernée, ou dans le délai supplémentaire qu'un juge de la Cour fédérale peut, avant ou après l'expiration de ces trente jours, fixer ou accorder.

FEDERAL COURT

SOLICITORS OF RECORD

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