

Federal Court of Appeal



Cour d'appel fédérale

Date: 20110520

Docket: A-125-11

Citation : 2011 FCA 173

[ENGLISH TRANSLATION]

Present: MAINVILLE J.A.

BETWEEN:

SALOMON DAOUD

Appellant

and

**ATTORNEY GENERAL OF CANADA
(MINISTER OF HUMAN RESOURCES
AND SKILLS DEVELOPMENT
OF CANADA)**

Respondent

Written motion decided without appearance of parties.

Order delivered at Ottawa, Ontario, on May 20, 2011.

REASONS FOR ORDER BY:

MAINVILLE J.A.

Federal Court of Appeal



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REASONS FOR ORDER

MAINVILLE J.A.

[1] The appellant is appealing a Federal Court order dismissing his motion for additional time to submit an application for judicial review of a decision made by a panel of the Review Tribunal, Canada Pension Plan – Old Age Security, established by section 82 of the *Canada Pension Plan*, R.S.C. 1985, c. C-8 (the “Review Tribunal”).

[2] The parties agree on the content of the appeal book except for the inclusion of the entire Review Tribunal record therein. The appellant therefore brings a motion under subsection 343(2) of the *Federal Courts Rules* asking the Court to determine the content of the appeal book to include this element therein.

[3] It is agreed the Federal Court judge who made the order did not have before him the entire Review Tribunal record. The appellant argues that it is necessary to include this element so that he can show how the Federal Court's order is incorrect and show the seriousness of his application for judicial review. He also argues that the entire Review Tribunal record is mentioned multiple times in the reasons submitted to the Federal Court in support of his initial motion. The respondent argues that since the entire Review Tribunal record was not before the Federal Court and therefore cannot be a relevant appeal book under paragraph 344(1)(g) of the *Federal Courts Rules* and would constitute new evidence.

[4] The *Federal Courts Rules* do not provide that an application for judicial review must be deemed based on the tribunal record in question, and a fortiori in the case of an order of appeal dismissing a motion for an extension of time to submit such an application. This is because in most cases, the tribunal record contains numerous documents that are not needed to deal with the issues raised, and it would therefore not be helpful, and indeed it would be inefficient and wasteful, to require or permit the entire tribunal record to be placed before the Court in every case: *Canada (Attorney General) v. Canadian North Inc.*, 2007 FCA 42; [2007] F.C.J. No. 52 (QL) at para. 12.

[5] Moreover, the general rule is that in an appeal, the Court only considers the records that were before the tribunal, in which the decision is appealed: *Athabasca Chipewyan First Nation v. British Columbia Hydro and Power Authority*, 2001 FCA 20; 267 N.R. 133 at para. 3; *Paquette v. Canada (Attorney General)*, 2002 FCA 441; [2002] F.C.J. No. 1552 (QL) at para. 4. And so, if the entire Review Tribunal record was not before the Federal Court, it is difficult to see how that entire record could be useful to dispose of a matter in issue in the appeal: *West Vancouver v. British Columbia*, 2005 FCA 281; [2005] F.C.J. No. 1428 (QL) at para. 5; *Sawridge Band v. Canada*, 2006 FCA 52, [2006] F.C.J. No. 165 (QL) at para. 13.

[6] Therefore, the appeal book will not contain the entire Review Tribunal record, and an order determining the content of the appeal book will be issued accordingly.

“Robert M. Mainville”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-125-11

STYLE OF CAUSE: SALOMON DAUD v. ATTORNEY
GENERAL OF CANADA (MINISTER
OF HUMAN RESOURCES AND
SKILLS DEVELOPMENT CANADA)

WRITTEN MOTION DECIDED WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY: MAINVILLE J.A.

DATED: May 20, 2011

WRITTEN REPRESENTATIONS BY:

André Legault FOR THE APPELLANT

Carmelle Salomon-Labbé FOR THE RESPONDENT

SOLICITORS OF RECORD:

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