

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20130307**

**Docket: A-3-13**

**Citation: 2013 FCA 71**

**Present: SHARLOW J.A.**

**BETWEEN:**

**ATTORNEY GENERAL OF CANADA**

**Applicant**

**and**

**DENISE PICARD**

**Respondent**

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on March 7, 2013.

**REASONS FOR ORDER BY:**

**SHARLOW J.A.**

Federal Court of Appeal



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**REASONS FOR ORDER**

**SHARLOW J.A.**

[1] The applicant the Attorney General of Canada (the Crown) has moved for an order to correct certain procedural errors in this matter. For the following reasons, I will dismiss the motion but permit the Crown to submit, within a stipulated deadline, a new motion to correct not only the procedural errors that the Crown has identified, but also the further deficiency described below.

[2] This proceeding began on January 4, 2013 when the Crown filed an application for judicial review of the decision of an Umpire under the *Employment Insurance Act*, S.C. 1996, c. 23 (CUB

80185) dated November 6, 2012. The application was served personally on the respondent Denise Picard on January 9, 2013 (affidavit of Dennis Duclos sworn January 10, 2013).

[3] The Crown is seeking an order extending the time for filing proof of service of the application for judicial review, and also extending the time within which Ms. Picard may comply with Rule 307 of the *Federal Courts Rules*, SOR/98-106, which permits her to serve the Crown with an affidavit in response to the Crown's affidavit if she files proof of service within 30 days after being served with the Crown's affidavit.

[4] The first part of the Crown's motion was made necessary when, due to an oversight, the Crown failed to comply with Rule 304(3), which stipulates that proof of service of the notice of application to be filed within 10 days after it is served.

[5] As to the second part of the Crown's motion, it appears the Crown's affidavit was sent to Ms. Picard's address by overnight courier on February 8, 2013. Service by courier is permitted for documents that are not required to be served personally (Rule 138 and Rule 140(1)(c)). However, the effective date of service by courier is the date of receipt as indicated by the courier receipt (Rule 141(2)). In this case, no courier receipt was included in the record to establish the effective date of service. Therefore, the Crown has not established the starting date for the period stipulated for compliance with Rule 307. In the absence of any acknowledgement by Ms. Picard as to whether and when she was served with the Crown's affidavit, there is no factual foundation for an order extending the time within which Ms. Picard must comply with Rule 307.

[6] But there is a more serious problem with the Crown's motion. The problem is that the application for judicial review does not comply with Rule 301, which states the required contents of an application for judicial review. In particular, it does not comply with Rule 301(e), which reads in relevant part as follows:

**301.** An application shall be commenced by a notice of application in Form 301, setting out

[...]

(e) a complete and concise statement of the grounds intended to be argued, including a reference to any statutory provision or rule to be relied on [...]

**301.** La demande est introduite par un avis de demande, établi selon la formule 301, qui contient les renseignements suivants :

[...]

e) un énoncé complet et concis des motifs invoqués, avec mention de toute disposition législative ou règle applicable [...].

[7] The application for judicial review does not contain “a complete and concise statement of the grounds intended to be argued”, nor does it refer to any statutory provision or rule that the Crown intends to rely upon. On the contrary, it merely paraphrases subsection 18.1(4) of the *Federal Courts Act*, R.S.C. 1985, c. F-7, which lists all of the grounds upon which the Federal Court may grant relief in an application for judicial review.

[8] Specifically, the Crown has done no more than allege, with no particulars, that the Umpire (a) acted without or beyond his jurisdiction, or refused to exercise his jurisdiction, (b) failed to observe a principle of natural justice, procedural fairness or other procedure that he was required to observe, (c) erred in law, whether or not the error appears on the face of the record, (d) based his decision on an erroneous finding of fact made in a perverse or capricious manner or without regard

to the material before him, and (e) acted contrary to law. In a final redundancy, the final ground is said to be “such further and other grounds as counsel may advise and the Court may permit”.

[9] The deficiency in the application for judicial review is a failure on the part of the Crown to observe the *Federal Courts Rules*. It may also indicate a more fundamental failure on the part of the Crown in determining whether it actually has a basis for challenging the Umpire’s decision. But most importantly, it may be unfairly prejudicial to Ms. Picard because she cannot know the case she must meet in order to defend the Umpire’s decision. Until the deficiency in the application for judicial review is corrected, I see no point in correcting the other errors that are the subject of the Crown’s motion. For that reason, the Crown’s motion will be dismissed.

[10] I am aware that the boilerplate form of application for judicial review used in this case has become common practice for the Crown in certain relatively routine proceedings. It may be that in some cases the respondent is sufficiently aware of the issues that no prejudice arises. Nevertheless, the practice is wrong in principle and in this case I am not prepared to tolerate it.

[11] I will make an order requiring the Crown to submit a motion for leave to amend the application for judicial review within a stipulated deadline to cure the deficiency identified above, failing which this application for judicial review may be dismissed without further notice.

“K. Sharlow”

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-3-13

**STYLE OF CAUSE:** ATTORNEY GENERAL OF  
CANADA v. DENISE PICARD

**MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES**

**REASONS FOR ORDER BY:** SHARLOW J.A.

**DATED:** March 7, 2013

**WRITTEN REPRESENTATIONS BY:**

Michael J. Sims

FOR THE APPLICANT

**SOLICITORS OF RECORD:**

William F. Pentney  
Deputy Attorney General of Canada

FOR THE APPLICANT