

Federal Court of Appeal



Cour d'appel fédérale

Date: 20220915

Docket: A-249-21

Citation: 2022 FCA 156

[ENGLISH TRANSLATION]

**CORAM: BOIVIN J.A.
GLEASON J.A.
LEBLANC J.A.**

BETWEEN:

ALLIANCE NATIONALE DE L'INDUSTRIE MUSICALE

Appellant

and

**CANADIAN RADIO-TELEVISION
AND TELECOMMUNICATIONS COMMISSION**

Respondent

Heard at Montreal, Quebec, on September 15, 2022.

Judgment delivered from the bench at Montreal, Quebec, on September 15, 2022.

REASONS FOR JUDGMENT OF THE COURT BY:

BOIVIN J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the bench at Montreal, Quebec, on September 15, 2022.)

BOIVIN J.A.

[1] This is an appeal by the Alliance nationale de l'industrie musicale (the Alliance) as well as a cross-appeal by the Canadian Radio-television and Telecommunications Commission (the CRTC) against a decision rendered by Justice McHaffie of the Federal Court (the Judge) in

which he ruled on the CRTC's motion to strike three portions of the Notice of Application filed by the Alliance.

[2] The Judge correctly adopted the analytical framework applicable to a motion to strike an originating document as stated in *Canada (National Revenue) v. JP Morgan Asset Management (Canada) Inc.*, 2013 FCA 250 and *David Bull Laboratories (Canada) Inc. v. Pharmacia Inc.*, [1995] 1 F.C. 588 (CA).

[3] We all agree with the following findings of the Judge:

1. In light of *Ernst v. Alberta Energy Regulator*, 2017 SCC 1, the Alliance's claim for damages against the CRTC must be struck considering the CRTC's immunity in exercising its adjudicative functions;
2. It is not plain and obvious that the Federal Court lacks jurisdiction to amend conditions of licence under subsection 77(4) of the *Official Languages Act*, R.S.C. 1985, c. 31 (4th supp.) (the OLA);
3. The CRTC's request to strike certain paragraphs from the Notice of Application was dismissed because, in the Judge's view, they were relevant to the alleged breach of the OLA;
4. The question of costs was left to the Federal Court judge who would rule on the merits of the case.

[4] However, we are also all of the view that given (i) the case law stating that the power to strike should only be exercised in exceptional cases, namely, when it is "plain and obvious" that the motion cannot succeed; (ii) the ambiguity surrounding the Federal Court's jurisdiction to issue injunctive orders under the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c. 11 (the Charter) and the OLA (*Canada (Commissioner of Official Languages) v. Canada (Department of Justice)*, 2001 FCT 239; *DesRochers v. Canada (Industry)*, [2009] 1 S.C.R. 194); and (iii) the principle according to which the term "court of competent jurisdiction" in

subsection 24(1) of the Charter should be construed so as to avoid bifurcating proceedings (*R. v. Conway*, [2010] 1 S.C.R. 765), the judge erred in finding that the Alliance’s request for an order requiring the CRTC to impose conditions of licence must be struck to the extent that it is based on the Charter—more specifically, subsection 24(1) of the Charter. Under the circumstances, we find it preferable to leave it to the trial judge to decide this issue.

[5] The appeal will therefore be allowed in part, and the cross-appeal will be dismissed.

[6] In light of the divided success, each party will bear its own costs before this Court.

“Richard Boivin”

J.A.

Certified true translation
Margarita Gorbounova, Reviser

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-249-21

STYLE OF CAUSE: ALLIANCE NATIONALE DE
L'INDUSTRIE MUSICALE v.
CANADIAN RADIO-
TELEVISION AND
TELECOMMUNICATIONS
COMMISSION

PLACE OF HEARING: MONTREAL, QUEBEC

DATE OF HEARING: SEPTEMBER 15, 2022

**REASONS FOR JUDGMENT OF THE COURT
BY:** BOIVIN J.A.
GLEASON J.A.
LEBLANC J.A.

DELIVERED FROM THE BENCH BY: BOIVIN J.A.

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