

Federal Court of Appeal



Cour d'appel fédérale

Date: 20241204

Docket: A-302-24

Citation: 2024 FCA 209

Present: MONAGHAN J.A.

BETWEEN:

THE ATTORNEY GENERAL OF CANADA

Appellant

and

**ONEX CORPORATION, ONEX
CARESTREAM FINANCE LP,
1727655 ONTARIO INC.**

Respondents

Dealt with in writing without the appearance of parties.

Order delivered at Ottawa, Ontario, on December 4, 2024.

REASONS FOR ORDER BY:

MONAGHAN J.A.

Federal Court of Appeal



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REASONS FOR ORDER

MONAGHAN J.A.

[1] The appellant, the Attorney General of Canada, has appealed a decision of the Federal Court (2024 FC 1247, *per* Régimbald J.) granting the judicial review of two decisions of the Minister of National Revenue. In those decisions, the Minister denied the respondents' requests for relief.

[2] The Federal Court determined that the Minister's decisions were unreasonable, set them aside, and remitted the matter back to the Minister for redetermination with the benefit of the Federal Court's reasons: reasons at paras. 145-148. The Attorney General filed a notice of appeal on September 27, 2024.

[3] On October 18, 2024, the respondents brought a motion to quash the appellant's notice of appeal and summarily dismiss the appeal. That motion is the subject of these reasons.

[4] The respondents' position is that the notice of appeal is "brief and imprecise", "devoid of any explanation of the legal bases and material facts supporting the conclusions alleged by the [a]ppellant", "bereft of any chance of success", and "manifestly doomed to fail": Respondents' Written Representations at paras. 29-31, 47. They submit that this Court has the power to quash the notice of appeal on that basis, and that it should do so and summarily dismiss the appeal.

[5] In further support of their motion, the respondents assert that an appeal's lack of substance may be "demonstrated by the absence of any argument, fact, or legal basis in [the] notice of appeal", such that "the respondent is not given fair notice of the case that has to be met": Respondents' Written Representations at para. 37, citing *Martinez v. Canada (Communications Security Establishment)*, 2019 FCA 282, leave to appeal to SCC refused, 39061 (30 April 2020) [*Martinez*]. This, the respondents assert, results in an abuse of process.

[6] While not disputing that this Court has the power to quash an appeal, the appellant submits that its notice of appeal is neither flawed nor devoid of merit, and the respondents'

motion should be dismissed. The appellant submits that if this Court determines the notice of appeal is lacking sufficient detail, it should nonetheless dismiss the motion and grant the appellant leave to file an amended notice of appeal.

[7] For the reasons that follow, the respondents' motion is dismissed.

[8] On an appeal of a Federal Court decision in an application for judicial review, this Court's role is to determine whether the Federal Court correctly identified and applied the standard of review: *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at paras. 45-47; *Northern Regional Health Authority v. Horrocks*, 2021 SCC 42 at para. 12 [*Horrocks*]. In doing so, we apply a correctness standard and accord no deference to the Federal Court; we effectively "step into the shoes" of the Federal Court and perform a *de novo* review of the administrative decision: *Horrocks* at para. 10. For this reason, this Court has described appeals from judicial reviews in the Federal Court as essentially being "do-overs": *Sun v. Canada (Attorney General)*, 2024 FCA 152 at para. 4.

[9] I do not agree with the respondents' description of the appellant's notice of appeal. I do not consider it remotely comparable to the one described in *Martinez*. There, the notice of appeal sought relief and contained preambles, but "[did] not disclose *any* argument, fact or legal basis for appeal" nor "define *any* clear legal issues *or give fair notice to the respondent* of the case that [had] to be met"; it also "[made] scandalous and vexatious allegations, none of which [had] any foundation in the record": *Martinez* at paras. 6, 7, and 11 (emphasis added). As I will explain, the appellant's notice of appeal is of an entirely different nature.

[10] It is clear from the Federal Court’s decision that the Minister interpreted subsections 220(2.1) and (3) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), as not permitting her to grant the respondents particular relief they sought. Among the reasons the Minister provided for that conclusion was that that relief was provided in the *Economic Action Plan 2014 Act, No. 2*, S.C. 2014, c. 39, not the *Income Tax Act*.

[11] On a judicial review of that decision, the Federal Court concluded that the Minister failed to consider “a remedial interpretation” that “may be plausible” and “provide reasons as to why [she] chose a more restrictive interpretation” of subsections 220(2.1) and (3): reasons at para. 75. It also said that the Minister “must reconsider [her] decisions and take into account [their] remedial nature” because it “allows for an alternative plausible interpretation”: reasons at para. 49.

[12] The notice of appeal states that the Minister’s decisions are reasonable because the impugned *Income Tax Act* provisions did not give the Minister authority to grant the respondents the relief they sought. It further states that the Federal Court erred both by “crafting [its] own alternative interpretation” — one the appellant says “was not plausible” — “and then measuring the Minister’s decisions against it”: Appellant’s Notice of Appeal at para. 3. The respondents describe this as the first ground of appeal: Respondents’ Written Representations at para. 39.

[13] The notice of appeal states that the appellant will rely on section 220 of the *Income Tax Act*, as well as subsection 21(15) of the *Economic Action Plan 2014 Act, No. 2*. The latter provision sets out the coming-into-force rules for amendments to the *Income Tax Act* and the

conditions under which taxpayers could elect to have the amendments apply as of an earlier date: reasons at para. 2. The Minister's decision to refuse the respondents permission to file that election after the stated deadline was one of the decisions under judicial review: reasons at para. 6.

[14] Rule 337 of the *Federal Courts Rules*, SOR/98-106, describes the content of a notice of appeal. Relevant here is the requirement in paragraph (d) that it contain "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".

[15] Read in the context of the Federal Court's reasons, and bearing in mind the applicable standard of review on an appeal of a judicial review, in my view the appellant's notice of appeal meets this requirement. It articulates a concise statement of the first ground the appellant intends to argue and refers to the statutory provisions relied on in support of that ground.

[16] The notice of appeal also sets out a second ground of appeal. That is, even if the Minister had the authority to grant the respondents an extension of time to file the election, her refusal to do so is reasonable and the Federal Court erred by failing to properly consider the Minister's reasons for doing so. While one may view the second ground as lacking some detail, it does not warrant quashing the notice of appeal. Rather, read in light of the Federal Court's reasons and the notice of appeal as a whole, I consider it adequately stated. The purpose of the appellant's memorandum of fact and law is to elaborate on the grounds of appeal.

[17] Finally, I reject the respondents' assertion that they do not have notice of the case they have to meet. It is evident they do because their written representations on this motion are almost entirely devoted to defending the Federal Court's decision and explaining why the first ground of appeal is "baseless".

[18] Undoubtedly, the respondents disagree that the Minister's decisions are reasonable and that the Federal Court erred. The respondents may be right—the appeal may fail. However, I agree with the appellant that, in bringing this motion, the respondents effectively seek to argue the merits of the appeal solely based on the Federal Court's reasons. That they cannot do.

[19] Here, the respondents brought their motion before the deadline for the parties to file the agreement regarding the content of the appeal book. Neither the administrative decisions, nor the material before the decision-maker when she rendered the decisions, are in the Court record for this motion.

[20] As described above, this Court's role on appeal is to determine whether the Minister's decisions were reasonable. In fulfilling that role, of course this Court will consider the Federal Court's reasons for concluding that they were not. However, it must also *review* the underlying administrative decisions and the reasons for those decisions and consider the record before the decision-maker. In this case, we cannot rely only on the Federal Court's "concise overview of the...[d]ecisions" as the respondents invite us to do: Respondents' Written Representations at para. 33.

[21] For the foregoing reasons, the respondents' motion must be dismissed.

[22] In light of the motion, the time for filing the agreement regarding the content of the appeal book has expired. The parties acknowledge this and seek an extension of time until 30 days after the Court's decision, given that a successful motion would dispose of the appeal. I agree that an extension of time is appropriate in the circumstances.

[23] Both parties seek costs of the motion. I see no reason to depart from the usual rule that the successful party should have their costs. Moreover, I consider it appropriate that the costs be made payable forthwith. While this Court should not be seen as discouraging motions to quash in appropriate circumstances, in my view, the respondents' motion should not have been brought in the present circumstances.

[24] Accordingly, the respondents' motion is dismissed with costs to the appellant, in any event of the cause, in the all-inclusive amount of \$3,000, payable forthwith. Given the seasonal recess, the parties shall have until January 21, 2025 to file the agreement regarding the content of the appeal book.

“K.A. Siobhan Monaghan”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:

A-302-24

STYLE OF CAUSE:

THE ATTORNEY GENERAL OF
CANADA v. ONEX
CORPORATION, ONEX
CARESTREAM FINANCE LP,
1727655 ONTARIO INC.

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

REASONS FOR ORDER BY:

MONAGHAN J.A.

DATED:

DECEMBER 4, 2024

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