Federal Court of Appeal | Cour d'appel fédérale

Date: 20250120

Docket: A-182-24

Citation: 2025 FCA 15

CORAM: **WOODS J.A.**
LEBLANC J.A.
MONAGHAN J.A.

BETWEEN:

GRIGORE VETRICI

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Vancouver, British Columbia, on January 20, 2025.
Judgment delivered from the Bench at Vancouver, British Columbia, on January 20, 2025.

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

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Vancouver, British Columbia, on January 20, 2025).

LEBLANC J.A.

[1] Before the Court is an appeal of a decision of the Federal Court (*per* Gleeson J.), dated April 19, 2024 (2024 FC 602). In its decision, the Federal Court allowed in part the appellant's application for judicial review of two decisions of the Canada Revenue Agency (the Agency) denying the appellant's applications for the Canada Emergency Recovery Benefit (the CERB) and the Canada Recovery Benefit (the CRB) established, respectively, under the *Canada*

Emergency Response Benefit Act, S.C. 2020, c. 5, s. 8 (the *CERB Act*) and the *Canada Recovery Benefits Act*, S.C. 2020, c. 12, s. 2 (the *CRB Act*). These benefits were part of a number of measures put in place by the government of Canada to financially support employed and self-employed Canadians directly affected by the COVID-19 pandemic.

[2] Both applications were denied by the Agency at stage 1 of the application process on the ground that the appellant had not earned at least $5,000 of employment income or of net self-employment income in the statutory periods preceding the date of his application. The appellant sought a stage 2—or second—review of these decisions and again he was found to be ineligible for both benefits. He then challenged the second review decisions on judicial review, claiming that these decisions were both procedurally unfair and unreasonable. The respondent conceded that this was the case but the appellant asked the Federal Court to direct a specific result, namely to determine that he was eligible for both benefits. The appellant's eligibility claim was based on evidence that the income he earned during the relevant periods was in the form of payments-in-kind for child-care services.

[3] The Federal Court, noting the respondent's concession, set aside the second review decisions but refused to instruct a result as it was not convinced that eligibility was an inevitable outcome in the circumstances of the case. Instead, the Federal Court remitted the matter to the Agency for redetermination, instructing the Agency to consider any relevant evidence and submissions, old and new, the appellant might file on redetermination. It awarded costs to the appellant in the amount of $150 to cover his disbursements.

[4] On appeal before us, the appellant raises three issues. First, he contends that only the Tax Court of Canada could review the determination of income made by the Agency in assessing his eligibility to the CERB and the CRB. We note that this argument was not raised in the Federal Court. In any event, we are all of the view that it has no merit particularly in light of the recent Supreme Court of Canada decision in *Dow Chemical Canada ULC v. Canada*, 2024 SCC 23 (*Dow*). As the Supreme Court reminded us in *Dow*, the Federal Court has exclusive jurisdiction to conduct judicial review of federal administrative action. That jurisdiction can only be ousted in favour of the Tax Court of Canada where, as provided for under section 18.5 of the *Federal Courts Act*, R.S.C., 1985, c. F-7, Parliament has "expressly" provided for an appeal to that Court (*Dow* at paras. 12 and 101). In other words, the Federal Court "retains jurisdiction over ministerial decisions that are not subject to an appeal to the Tax Court" (*Dow* at para. 112).

[5] The Tax Court's appeal jurisdiction is limited to reviewing, through a *de novo* process, the correctness of tax assessments (*Dow* at paras. 6 and 47). Tax assessments are determinations made by the Minister of National Revenue of a taxpayer's tax liability for a particular taxation year (*Dow* at paras. 43–46). As the Supreme Court stated in *Dow*, the Tax Court has never been a "single forum for all tax litigation" and its jurisdiction cannot be "enlarged by necessary implication" (*Dow* at paras. 101,110).

[6] Here, determining eligibility to statutory benefits has nothing to do with assessing a taxpayer's tax liability for a particular taxation year. Those are very different things. The Tax Court has express—exclusive—jurisdiction in relation to the latter, but none in relation to the *CERB Act* or the *CRB Act*. The fact that determining eligibility to the statutory benefits at issue

in this case requires income determination does not confer jurisdiction on the Tax Court. The appellant's contention, as we understand it, is that every time an income determination is to be made by a government official, even in a non-tax liability context, that determination can only be reviewed by the Tax Court. There is no support for such a broad proposition.

[7] Second, the appellant submits that the Federal Court, assuming it had jurisdiction over the decisions at issue, failed to apply the proper standard of review to the Agency's misapprehension of proof of income. We take it to mean that the Federal Court should have applied the correctness standard of review in determining whether directing a specific result was a proper remedy to the appellant's otherwise successful judicial review application.

[8] With respect, this argument denotes a misconception of the applicable legal principles. Determining what remedy is the proper remedy on judicial review is a matter of discretion for the Federal Court (*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, at para. 139 (*Vavilov*); *Canadian Pacific Railway Company v. Sauvé*, 2024 FCA 171 at para. 54 (*Sauvé*)). The only relevant standard of review for such decisions is the one we apply on appeal (*Northern Inter-Tribal Health Authority Inc. v. Yang*, 2023 FCA 47 at para. 47; *Canada v. Long Plain First Nation*, 2015 FCA 177 at paras. 88–89 (*Long Plain First Nation*); *Canada (Citizenship and Immigration) v. Tennant*, 2018 FCA 132 at para. 27). As this Court stated in *Long Plain First Nation* at paragraph 88, those decisions are not about what the administrative decision-maker has decided, a realm where the administrative law standards of review apply, but rather what the Court should do in terms of remedy. Under the appellate standard of review, questions of law are reviewed on a standard of correctness, whereas findings of fact and

questions of mixed fact and law, from which no question of law is extricable, are not reversed absent a palpable and overriding error (*Housen v. Nikolaisen*, 2002 SCC 33).

[9] Here, we see no such errors. The Federal Court correctly directed itself on the law, noting that directing a specific outcome is a discretion that should be exercised in rare cases only. This would be the case, for instance, where a particular outcome is inevitable or where it is necessary to avoid "an endless merry-go-round of judicial reviews and subsequent considerations" (Federal Court's decision at paras. 8–10; see also *Vavilov* at para. 142; *Sauvé* at para. 54). The Federal Court concluded that the outcome sought by the appellant was not inevitable as the evidence before it did not unequivocally establish income. Further, the appellant had identified additional proof of income. According to the Federal Court, the Agency had to be given an opportunity to consider that evidence. The Federal Court concluded as well that there was nothing on record suggesting that the appellant was caught in an endless merry-go-round. These conclusions raise questions of mixed fact and law subject to the highly deferential standard of palpable and overriding error (*Canada v. South Yukon Forest Corporation*, 2012 FCA 145, at para. 46). We see no basis to interfere with them.

[10] Lastly, the appellant claims that the Federal Court's costs order was not sufficient given the considerable effort he devoted to get a remedy. This argument must fail as well. The Federal Court considered the decision of *Richardson v. Canada (Attorney General)*, 2023 FC 548 cited by the appellant in support of his request for a more generous costs order, but found that it was distinguishable. It noted in this regard that contrary to what was the case in *Richardson*, the respondent in the present matter conceded that the impugned decisions were unreasonable. It

noted as well that the only reason why the matter proceeded to a hearing was the appellant's request for a directed result. Rule 400(1) of the *Federal Courts Rules*, S.O.R./98-106, establishes the basic principle that costs are in the complete discretion of the Court as to issues of entitlement, amount and allocation (*Canada (Attorney General) v. Rapiscan Systems Inc*, 2015 FCA 97 at para. 10). Here, we find that it was open to the Federal Court to conclude as it did in the exercise of its broad discretion on costs.

[11] For all these reasons, the appeal will be dismissed, with costs.

"René LeBlanc"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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