Federal Court of Appeal | Cour d'appel fédérale

Date: 20250211

Docket: A-98-24

Citation: 2025 FCA 31

Present: STRATAS J.A.

BETWEEN:

NORTHBACK HOLDINGS CORPORATION

Appellant

and

THE MINISTER OF ENVIRONMENT AND CLIMATE CHANGE AND THE ATTORNEY GENERAL OF CANADA

Respondents

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on February 11, 2025.

REASONS FOR ORDER BY: STRATAS J.A.

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REASONS FOR ORDER

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A. Introduction

[1] Northback Holdings Corporation appeals from the judgment of the Federal Court (*per* Southcott J.): *Benga Mining Limited v. Canada (Environment and Climate Change)*, 2024 FC

231. The Respondent Minister and the Attorney General (collectively “Canada”) move for an order dismissing the appeal.

[2] Canada submits the appeal should be dismissed for two reasons:

- Canada says that Northback’s appeal is moot. It says the Federal Court gave Northback everything it wanted in its application for judicial review. Therefore, Northback’s appeal serves no useful purpose.

- Canada says that Northback’s appeal attacks the Federal Court’s reasons, not its judgment. Canada submits that appeals lie only from judgments, not reasons.

[3] Strong and clear authorities support Canada’s submissions. If an appeal will have no real, practical effect on the parties, the Court will dismiss the appeal as moot unless there is a public interest in hearing it: *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342, 57 D.L.R. (4th) 231. And where an appellant challenges the reasons for judgment of the first-instance court but seeks no change in the judgment of the first-instance court, the appeal will be dismissed: *Federal Courts Act*, R.S.C. 1985, c. F-7, s. 27(1); *Ratiopharm Inc. v. Pfizer Canada Inc.*, 2007 FCA 261, 60 C.P.R. (4th) 165 at para. 6; *Fournier v. Canada (Attorney General)*, 2019 FCA 265 at para. 28.

[4] In the circumstances of this motion, these two grounds for dismissing this appeal stand or fall together. On the facts of this case both grounds fail. Canada’s motion will be dismissed.

B. The circumstances of this motion

[5] This Court must examine the nature of Northback's appeal, with particular regard to the facts of the case, the notice of application in the Federal Court, the judgment of the Federal Court, and the notice of appeal in this Court.

[6] Northback proposes to construct and operate the Grassy Mountain Steelmaking Coal Project. The Project must first go through a multi-step, federal-provincial environmental assessment. The *Canadian Environmental Assessment Act, 2012*, S.C. 2012, c. 19, s. 52 governs the federal assessment.

[7] In this case, a joint review panel conducted the federal assessment. The joint review panel then issued a report criticizing the Project. The Minister agreed with the report and decided that the Project would have significant adverse effects. As required by subsection 52(2) of the *Canadian Environmental Assessment Act, 2012*, the Minister then referred the Project to the Governor in Council. The Governor in Council decided under paragraph 52(4)(*b*) of the *Canadian Environmental Assessment Act, 2012* that the significant adverse effects were not justified in the circumstances.

[8] Three applications for judicial review in the Federal Court challenged the Minister's referral and the Governor in Council's decision: two by First Nations and one by Northback. Among other things, the First Nations' applications raised procedural fairness. Northback's application challenged the sufficiency of the joint review panel's report, alleging that it was so

deficient that it was not a "report" within the meaning of the *Canadian Environmental Assessment Act, 2012*. If that were true, a necessary pre-requisite under the *Canadian Environmental Assessment Act, 2012* for the Minister's referral of the Project to the Governor in Council and the Governor in Council's later decision would not be present. As a result, both the Minister's referral and the Governor in Council's decision would have to be quashed.

[9] The Federal Court found that procedural fairness was not present. So it granted the First Nations' applications for judicial review. In its judgment, it sent the matter back to the Minister for redetermination "in accordance with the Court's [r]easons".

[10] But the Federal Court also found that the joint review panel's report was not so defective that it did not qualify as a "report" under the *Canadian Environmental Assessment Act, 2012*. In its view, it was a "report" and so the Minister could make the referral to the Governor in Council that he did. On that basis, the Federal Court dismissed Northback's application for judicial review.

[11] Northback now appeals to this Court. In its notice of appeal, Northback seeks an order quashing the Minister's referral of the Project to the Governor in Council, again on the ground that the report of the joint review panel was grossly deficient and, thus, not a "report" under the *Canadian Environmental Assessment Act, 2012*. If that order is granted, then the decision of the Governor in Council must also be quashed. Northback asks for that relief as well.

[12] Northback adds that if the report is so deficient that it is not a "report" under the *Canadian Environmental Assessment Act, 2012*, it is entitled to consequential relief: an order that the joint review panel consult with Northback to gather the information necessary to cure the deficiencies in the report and to cure those deficiencies before submitting a revised report to the Minister.

[13] Canada says that this consequential relief cannot be had. It says that Northback is improperly seeking a mandatory order or *mandamus* remedy from this Court that it did not seek in the Federal Court.

C. Analysis

[14] The Court must read pleadings, like the notice of appeal here, "holistically and practically" and "without fastening onto matters of form" to understand "the real essence" of the appeal and gain "'a realistic appreciation' of [its] 'essential character'": *JP Morgan Asset Management (Canada) Inc. v. Canada (National Revenue)*, 2013 FCA 250, [2014] 2 F.C.R. 557 at paras. 49-50; *Canadian National Railway Company v. Canada (Transportation Agency)*, 2023 FCA 245 at para. 14; *Mahjoub v. Canada (Citizenship and Immigration)*, 2017 FCA 157 at para. 51; *Canada (Attorney General) v. Benjamin Moore & Co.*, 2023 FCA 168 at para. 34.

[15] Part of reading the pleadings "holistically and practically" and "without fastening onto matters of form" is to understand that they are part of a larger litigation process. In the case of notices of appeal, there may be other documents in the appeal process that can shed light on

them. For example, while an appellant's memorandum of fact and law cannot go beyond the ambit of the notice of appeal, it may nevertheless be useful in interpreting the meaning of the words in the notice of appeal. And since notices of appeal drive off of the judgment and reasons of the first-instance court, the notice of appeal must be read in light of those documents, and also any memoranda of fact and law that led to them. See *Bell Canada v. British Columbia Broadband Association*, 2020 FCA 140, [2021] 3 F.C.R. 206 at para. 51; *Canadian National Railway Company v. Emerson Milling Inc.*, 2017 FCA 79, [2018] 2 F.C.R. 573 at paras. 29-30. This is especially so here, where the Federal Court's judgment expressly remits the matter back for "redetermination in accordance with the Court's [r]easons".

[16] The appellant's notice of appeal must supply a "complete...statement of the grounds intended to be argued": Rule 337 of the *Federal Courts Rules*, S.O.R./98-106. When interpreting the notice of appeal, the Court must not read into the grounds something that, on any fair interpretation, is not really there.

[17] In this case, Canada says that Northback is appealing from a Federal Court judgment that gave them everything they wanted—remittal back for redetermination.

[18] That is true only if one interprets Northback's notice of appeal in a formal, literal sense and with tunnel vision. A wider, context-sensitive, holistic and practical approach leads to a different conclusion. Northback didn't want remittal back on any old issue. It wanted remittal back for redetermination on the issue it cared about—whether the report was so defective that it was not a "report" under the *Canadian Environmental Assessment Act, 2012*. And that issue is

arguable given the authorities of this Court: see, *e.g.*, *Tsleil-Waututh Nation v. Canada (Attorney General)*, 2018 FCA 153, [2019] 2 F.C.R. 3 at paras. 769-770.

[19] The Federal Court's reasons show that it ordered redetermination only on the procedural fairness issue raised by the First Nations, not on the issue of the allegedly defective report. Properly interpreted in its proper context, the judgment of the Federal Court says that the report qualified as a "report" under the *Canadian Environmental Assessment Act, 2012* and so the issue of the allegedly defective report will not be part of the redetermination.

[20] There is nothing moot about this issue. It is live and affects Northback's legal and practical interests: Northback wants the approvals necessary to build its Project.

[21] This is not a case where a party takes issue with disparaging or allegedly inaccurate words written into reasons but does not take issue with the terms of the judgment.

[22] If Northback persuades this Court that the report is so defective that it was not a "report" under the *Canadian Environmental Assessment Act, 2012*, then the further relief it seeks—the addressing of the defects in the report—would be in play. That relief is purely consequential upon a finding that the report is impermissibly defective. It is not right to characterize it as separate *mandamus* relief raised for the first time on appeal.

[23] Nothing in these reasons should be taken as a comment on the merits of any issues in the appeal. The panel hearing the appeal has an entirely free hand to deal with them.

D. Disposition

[24] Therefore, the motion will be dismissed. Given the one-sidedness of the merits of this motion, costs of the motion will be to Northback in any event of the cause.

"David Stratas"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-98-24
STYLE OF CAUSE:	NORTHBACK HOLDINGS CORPORATION v. THE MINISTER OF ENVIRONMENT AND CLIMATE CHANGE AND THE ATTORNEY GENERAL OF CANADA

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY:	STRATAS J.A.
DATED:	FEBRUARY 11, 2025

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