Federal Court of Appeal | Cour d'appel fédérale

**Date: 20250324**

**Docket: A-280-24**

**Citation: 2025 FCA 68**

**Present: LEBLANC J.A.**

**BETWEEN:**

**SHELLEY WHITELAW**

**Appellant**

**and**

**ATTORNEY GENERAL OF CANADA and ROYAL CANADIAN MOUNTED POLICE**

**Respondents**

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on March 24, 2025.

REASONS FOR ORDER BY: LEBLANC J.A.

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## REASONS FOR ORDER

**LEBLANC J.A.**

[1] The appellant seeks an order extending the time to serve and file a motion to determine the contents of the Appeal Book under Rule 343(3) of the *Federal Courts Rules*, S.O.R./98-106 (the Rules). The judgment under appeal is a judgment of the Federal Court dismissing her application for judicial review of a decision of the Canadian Human Rights Commission. In its decision, the Commission dismissed the appellant's retaliation complaint against the Royal

Canadian Mounted Police as it was satisfied that an inquiry into the complaint was not warranted having regard to all the circumstances.

[2] The present motion is being brought in a context where there is already an agreement on file between the parties on the contents of the Appeal Book (the Agreement). The Agreement, which was tendered for filing on December 19, 2024, was accepted for filing by Order of this Court dated January 16, 2025.

[3] However, the appellant claims that the transcript of the hearing before the Federal Court (the Transcript) should have been included in the materials listed in the Agreement. She says that the inclusion of that document was not in issue in her discussions with counsel for the respondents on the contents of the Appeal Book and that, therefore, she presumed it would be part of the listed materials in the Agreement. It was not. She blames the respondents for not having been straightforward in their communications with her and for being responsible, as a result, of this oversight of hers. I note that she also claims that this oversight occurred at a time she was facing some health issues related to the stress of having to meet the deadline for the filing of an agreement on the contents of the Appeal Book.

[4] In sum, the appellant is seeking to vary the content of the Agreement by adding a document – the Transcript – which she thought would be included in the Agreement's listed materials.

[5] The respondents oppose the appellant's motion on three grounds. First, they submit that the motion must fail because the parties have already reached an agreement on the contents of the Appeal Book. Second, they argue that the appellant has failed to satisfy the test for an extension of time. Finally, they contend that it would not be in the interest of justice to grant the appellant's motion. The bulk of the respondents' position revolves around the submission that the Transcript is unnecessary to dispose of the underlying appeal and should not, therefore, be included in the Appeal Book.

[6] In order for her motion to succeed, the appellant needed to show: (i) a continuing intention to pursue the underlying proceeding (here, a motion to determine – or vary – the contents of the Appeal Book); (ii) that this underlying proceeding has some merit; (iii) that no prejudice to the respondent arises from the delay; and (iv) that a reasonable explanation for the delay exists (see *Canada (Attorney General) v. Hennelly*, 1999 CanLII 8190 (FCA) at para. 3). As stated in *Canada (Attorney General) v. Larkman*, 2012 FCA 204 (*Larkman*), the overriding consideration in such matters "is that the interests of justice be served" (*Larkman* at para. 62).

[7] Here, I agree with the respondents that granting the motion will not serve the interests of justice because the Transcript is unnecessary to dispose of the underlying appeal. Rule 343(2) is clear: it requires parties to an appeal before this Court to include in an Appeal Book "only such documents, exhibits and transcripts as are required to dispose of the issues on appeal". Although the Rule 343(2) test is a flexible one, a document should be included in the Appeal Book "only if there is a reasonable basis for concluding that it is required to dispose of an issue on appeal" (*Bojangles' International, LLC v. Bojangles Café Ltd*., 2006 FCA 291, at para. 3).

[8] There is no such basis in the present case. As this Court stated in *Collins v. Canada*, 2010 FCA 128 (*Collins*), the transcript of the hearing before the Federal Court "would disclose only the legal submissions made by the parties and any discussion that might have occurred in the course of the hearing". It has therefore generally been considered irrelevant on appeal "because it cannot assist this Court in determining whether the grounds of appeal are well founded" (*Collins* at para. 3).

[9] The appellant contends that the Transcript is a "foundational document" to her appeal. This cannot be the case for two reasons. First and foremost, this is an appeal of a Federal Court's decision dismissing a judicial review application. Our role on such appeals is to determine whether the Federal Court identified the appropriate standards of review to be applied to the Commission's decision – correctness or reasonableness – and whether it properly applied those standards (*Northern Regional Health Authority v. Horrocks*, 2021 SCC 42 at paras. 10-12; *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at paras. 45-47 (*Agraira*)). This requires this Court to "step into the shoes" of the Federal Court judge and focus on the administrative decision under review, rather than on that of the Federal Court (*Agraira* at para. 46**;** *Jagadeesh v. Canadian Imperial Bank of Commerce*, 2024 FCA 172, at paras. 24-40 (*Jagadeesh*)).

[10] This means that the appellant in this case will get a fresh review of the Commission's decision dismissing her complaint (*Jagadeesh* at para. 40, quoting *Haynes v. Canada (Attorney General)*, 2023 FCA 158 at para. 16, leave to appeal to SCC refused, 41047 (6 June 2024); *Sun v. Canada (Attorney General)*, 2024 FCA 152 at para. 4). More importantly, this means that

any unfairness that might have occurred in the Federal Court would be cured by this Court's review of the Commission's decision (*Jagadeesh* at para. 41). In other words, assuming the hearing before the Federal Court was not as procedurally fair as it should have been, this would not assist the appellant in this judicial review appeal because the decision that matters in such context is the Commission's decision, not the Federal Court's.

[11] Second**,** in *Collins*, this Court identified an exception to the general rule that the transcript or recording of a hearing in the Federal Court is of no assistance to this Court in determining whether the grounds of appeal are well founded or not. That exception will apply when the transcript or recording provides evidence of a breach of procedural fairness committed by the Federal Court.

[12] However, it is important to underscore that *Collins* was not a judicial review matter; in that case, the appeal concerned an order of the Federal Court summarily dismissing an action in damages against the Federal Crown. Therefore, the Federal Court was not sitting in judicial review of an administrative decision-maker's decision, as is the case here; it was the first instance decision maker so that this Court's role in that case was different in the sense that the Court's focus was – and could only be – on the Federal Court's decision and the fairness of the process leading to it.

[13] Be that as it may, assuming this exception applies to appeals of decisions made by the Federal Court on judicial review, I see no basis for its application in the present matter as neither the Notice of Appeal filed by the appellant nor the submissions she made in support of the

present motion point to procedural fairness concerns in the Federal Court. In her Notice of Appeal, the appellant raises five grounds of appeal, which may be summarized as follows:

a) The Federal Court applied the wrong standard of review;

b) It made an extricable error in failing to find a basis in fact and law for its conclusion that the incident that led to her complaint to the Commission – the disclosure of a report to Crown counsel (the RCC) regarding a possible additional charge of personating a peace officer while the appellant was facing trial for disputed traffic violations – was improper;

c) It made palpable and overriding errors of mixed fact and law regarding a number of the Commission's evidentiary findings and regarding the process followed by the Commission, which, according to the appellant, was biased and unfair;

d) It considered the appellant's submissions with a "closed mind"; and

e) It reached a decision which is a "miscarriage of justice" and a "manifest error contrary to the law and the public interest".

[14] The claim that a decision-maker has considered a matter with a "closed mind" is normally associated to a bias allegation. However, in this case, this ground is broken down as follows: the appellant blames the Federal Court for (i) failing to adequately and/or accurately

"represent" her submissions; (ii) misconstruing her arguments and disregarding and misinterpreting material evidence; and (iii) reaching a conclusion "that was without basis in fact and in law, and without logical reasoning".

[15] These are all allegations going to the actual merits of the Federal Court's decision, that is to whether it chose the proper standard-s of review and, if so, whether it applied it properly in reviewing the Commission's decision, not to procedural fairness. The same is true of the appellant's submissions in support of the present motion, where, again, the appellant focusses on the standard of review applied by the Federal Court and on a new argument allegedly made by the respondents at the Federal Court hearing regarding the factual issue of whether the RCC was sent or not to the court seized of the traffic tickets proceedings.

[16] Despite the appellant's characterization of these arguments as going to the "unfairness of the [Judgment] in relation to the Hearing", they simply do not, at law, engage procedural fairness concerns. But again, the main obstacle to the Transcript being included in the Appeal Book is that any unfairness that might have occurred at the Federal Court's hearing would be cured by this Court's review of the Commission's decision because, as mentioned above, on judicial review appeals, the decision that matters for this Court is the Commission's decision, not the Federal Court's.

[17] Finally, the appellant asks the Court for some "leeway" given the circumstances leading to her oversight of the absence of the Transcript in the Agreement's listed materials. As indicated previously, the main thrust of her argument in this respect has to do with the alleged "deceptive"

conduct of the respondents during the discussions on the content of the Appeal Book. Having reviewed the motion's materials filed by both parties, I am satisfied that there was no impropriety in the respondents' conduct as they made it clear throughout these discussions that the evidentiary record in this Court should be limited to the record that was before the Federal Court (which normally consists of the materials that were before the administrative decision-maker: *Association of Universities and Colleges of Canada v. Canadian Copyright Licensing Agency of Canada (Access Copyright)*, 2012 FCA 22, at para. 19).

[18] For all these reasons, the appellant's motion for an extension of time cannot succeed as she failed to establish that the proceeding underlying said motion – a motion to vary the materials listed in the Agreement – has some merit or would serve the interests of justice because the Transcript sought to be added to that list is not required to dispose of the issues on appeal.

[19] The respondents seek their costs in an amount of $1000 considering "the Appellant's conduct and escalating ad-hominem attacks against [their] counsel". In the exercise of my discretion, I will award costs to the respondents but will do so in an amount of $500, all inclusive.

[20] Pursuant to Rule 345, the appellant must now serve and file the Appeal Book containing the materials listed in the Agreement. The appellant shall have 30 days from the date of the Order to be issued simultaneously to these Reasons to do so.

"René LeBlanc"

J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

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| **DOCKET:** | A-280-24 |
| **STYLE OF CAUSE:** | SHELLEY WHITELAW v. ATTORNEY GENERAL OF CANADA AND, ROYAL CANADIAN MOUNTED POLICE |

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

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| **REASONS FOR ORDER BY:** | LEBLANC J.A. |
| **DATED:** | MARCH 24, 2025 |

**WRITTEN REPRESENTATIONS BY :**

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|---|---|
| Shelley Whitelaw | FOR THE APPELLANT ON HER OWN BEHALF |
| Ely-Anna Hidalgo-Simpson<br>Albulena Qorrolli | FOR THE RESPONDENTS |

**SOLICITORS OF RECORD:**

| | |
|---|---|
| Shalene Curtis-Micallef<br>Deputy Attorney General of Canada | FOR THE RESPONDENTS |