

Federal Court



Cour fédérale

Date: 20240222

Docket: T-1378-22

Citation: 2024 FC 290

Ottawa, Ontario, February 22, 2024

PRESENT: Mr. Justice McHaffie

BETWEEN:

RAZIBUL HAQUE

Applicant

and

**CANADA REVENUE AGENCY (CRA),
MINISTER OF NATIONAL REVENUE,
MINISTER OF JUSTICE AND
ATTORNEY GENERAL OF CANADA**

Respondents

ORDER AND REASONS

I. Overview

[1] The applicant, Razibul Haque, brings this motion (i) challenging the status of counsel for the Attorney General of Canada, and in particular the role of the Canada Revenue Agency [CRA] as a respondent able to appoint counsel; and (ii) seeking leave to file additional evidence under Rule 312 of the *Federal Courts Rules*, SOR/98-106. The Attorney General opposes both requests for relief.

[2] As explained in further detail below, Mr. Haque's first request is without merit. It appears to be based on a misunderstanding of the role of the Attorney General and lawyers with the Department of Justice. Although that misunderstanding was perhaps exacerbated by an error in correspondence sent by counsel for the Attorney General, that error has since been corrected and clarified. Mr. Haque's contention that the Attorney General's current counsel is ineligible to appear is therefore entirely unfounded.

[3] Mr. Haque's second request seeks to file additional evidence that was not before the original decision maker who assessed his eligibility for the Canada Recovery Benefit [CRB]. Such new evidence is not admissible on an application for judicial review. It would therefore be inappropriate to grant leave to file it. The other evidence Mr. Haque puts forward consists of documents already in his application record, which need not be refiled, and correspondence between himself and counsel for the Attorney General regarding issues raised on this motion, which is irrelevant to the underlying application. Leave will not be granted to file such evidence.

[4] The motion is therefore dismissed.

II. Issues

[5] Mr. Haque's motion raises two primary issues:

- A. Should the Court declare that the CRA is not a respondent, and that counsel for the Attorney General is not eligible to appear on behalf of the CRA?
- B. Should the Court grant leave to Mr. Haque to file a supplementary affidavit?

III. Analysis

A. *The role of the CRA, the Attorney General, and counsel*

(1) Rule 303 and respondents on judicial review in the Federal Court

[6] Rule 303 of the *Federal Courts Rules* governs the proper parties on an application for judicial review in this Court. Rule 303(1) states that the applicant shall name as a respondent every person directly affected by the order sought in the application *other than* a tribunal in respect of which the application is brought, as well as every person that the relevant statute requires to be named. Rule 303(2) then provides that in an application for judicial review, if there is no-one who can be named under Rule 303(1), the applicant is to name the Attorney General of Canada as a respondent.

[7] The result of this rule is that where an applicant seeks judicial review of a government decision that only affects them, the sole respondent should be the Attorney General of Canada: see, e.g., *Cob Roller Farms Ltd v 9072-3636 Québec Inc (Écocert Canada)*, 2022 FC 1487 at paras 11–13. This approach to applications for judicial review in the Federal Court, which differs from that in some provinces, recognizes both the need to have counsel defend the validity of administrative decisions in an adversarial litigation system, and the limitations on having an administrative decision maker defending their own decisions: *Ontario (Energy Board) v Ontario Power Generation Inc*, 2015 SCC 44 at paras 41–72; *Northwestern Utilities Ltd et al v Edmonton*, 1978 CanLII 17 (SCC), [1979] 1 SCR 684 at p 709; *Douglas v Canada (Attorney General)*, 2013 FC 451 at paras 59–70.

[8] The Attorney General's role in responding to applications for judicial review is to uphold the rule of law and act as guardian of the public interest in the administration of justice: *Kinghorne v Canada (Attorney General)*, 2018 FC 1060 at para 33; *Douglas* at para 67; *Cosgrove v Canadian Judicial Council*, 2007 FCA 103 at para 51, lv to appeal dismissed, 2007 CanLII 66738 (SCC); *Cob Roller* at para 12. This will often entail defending the legality, fairness, and reasonableness of an administrative decision, although the Attorney General may take positions different from that of an administrative decision maker: *Kinghorne v Canada (Attorney General)*, 2017 FC 1012 at paras 8–9; *Douglas* at paras 59, 66–67; *Cob Roller* at para 12. Where the Attorney General takes the position that an administrative decision ought to be upheld, they present that position in judicial review litigation. This may include, in some circumstances, communicating with the decision maker, tendering evidence from relevant government departments including the decision maker, and presenting arguments that support the decision.

[9] Mr. Haque appears to misunderstand this role. Contrary to Mr. Haque's submissions, the fact that the Attorney General may support the validity of an administrative decision does not render the Attorney General "partisan" or interfere with the role or responsibilities of the Attorney General. It is an inherent part of the task of the Attorney General in upholding the rule of law and in acting as the respondent to applications for judicial review pursuant to Rule 303.

[10] The Attorney General of Canada is charged with the regulation and conduct of all litigation for or against the Crown or any department, in respect of any subject within the authority or jurisdiction of Canada: *Department of Justice Act*, RSC 1985, c J-2, s 5(d). The

Attorney General is usually represented in such proceedings by the Deputy Attorney General of Canada, through lawyers with the federal Department of Justice: *Njoroge v Canada (Attorney General)*, 2022 FC 1769 at para 72. The particular Department of Justice lawyer or lawyers with carriage of a file will typically identify themselves in Court documents in accordance with Rule 66(2)(c). However, this Court has confirmed that the Attorney General need not file a notice of change of solicitor every time a new lawyer at the Department of Justice takes carriage of a file: *Njoroge* at paras 72–73.

(2) Background to the issue arising in this case

[11] In this application, Mr. Haque seeks judicial review of a decision of the CRA, on behalf of the Minister of Employment and Social Development, finding that he was ineligible for CRB benefits: *Canada Recovery Benefits Act*, SC 2020, c 12, s 2, at ss 2 (“Minister”), 3. When he commenced the application, Mr. Haque named as respondents (1) the CRA; (2) the Minister of National Revenue; and (3) the Minister of Justice and Attorney General of Canada.

[12] Naming these parties as respondents did not comply with Rule 303 of the *Federal Courts Rules*. As the administrative decision maker, the CRA is the “tribunal in respect of which the application is brought” and should not be named as a respondent: *Federal Courts Rules*, Rule 303(1). Neither the Minister of National Revenue nor the Minister of Justice are directly affected by the order, and they should similarly not have been named: *Federal Courts Rules*, Rule 303(1). As a result, there is no party falling within the categories described in Rule 303(1), and the applicant should have named only the Attorney General of Canada: *Aryan v Canada (Attorney General)*, 2022 FC 139 at paras 2, 13.

[13] Mr. Haque is far from the first applicant in this Court, self-represented or represented by counsel, to have named improper parties under Rule 303: see, *e.g.*, *Cob Roller* at paras 11–13; *Aryan* at para 13. Typically, the matter is dealt with as a minor procedural irregularity. The Attorney General, quite appropriately, appears as a respondent and seeks to correct the style of cause in the proceedings, usually on consent: see, *e.g.*, *Aryan* at para 14, citing *Hasselsjo v Canada (Attorney General)*, 2021 CanLII 89551 (FC) at para 2.

[14] In the present case, the Attorney General was named as a respondent, and filed a Notice of Appearance in accordance with Rule 305. As is typically the case, the Notice of Appearance identifies the Attorney General of Canada as the respondent and the Department of Justice as their counsel. In particular, Me. Félix Desbiens Gravel acted as the responsible counsel at the Department of Justice at the time. He is identified on the Notice of Appearance and had initial carriage of the matter. Since neither the CRA nor the Minister of National Revenue was a properly named respondent, the Department of Justice appropriately did not file notices of appearance on their behalf.

[15] Mr. Haque’s motion appears to have been triggered by correspondence dated July 17, 2023, when a new lawyer with the Department of Justice, Me Anne-Élizabeth Morin, took carriage of the matter. That letter, in which Me. Morin informed Mr. Haque that she was replacing Me. Desbiens Gravel, mistakenly stated that she had been “appointed by the Canada Revenue Agency to represent it” [emphasis added]. At the same time, while the letter referred to being appointed by the CRA, it was also clear that Me. Morin was replacing Me. Desbiens Gravel, who had appeared on behalf of the Attorney General and had been acting

for the Attorney General. The letter was also signed by Me. Morin on behalf of the Attorney General of Canada.

[16] Mr. Haque appears to have seized on this reference to appointment by the CRA as a sign of impropriety. He complains that the CRA has not filed a Notice of Appearance in the matter, and is therefore not entitled to appoint a lawyer to represent it. He also appears to suggest that since Me. Morin works with the “National Litigation Sector” of the Department of Justice, she is not working in the office of the Attorney General. He filed the within motion on December 8, 2023, seeking declarations regarding the CRA’s ability to appoint counsel to appear in the matter.

[17] In apparent response to Mr. Haque’s motion, Me. Morin sent a letter dated December 11, 2023, clarifying that she was “appointed by the Attorney General of Canada” [emphasis in original] to represent them in the matter, in replacement of Me. Desbiens Gravel.

(3) The motion is without merit

[18] It is clear to the Court from the materials filed on this motion that the Attorney General of Canada, who is the proper responding party in accordance with Rule 303, is represented by Me. Morin, a lawyer with the Department of Justice. While the reference in the letter of July 17, 2023, to being appointed by the CRA may have caused some confusion or uncertainty, this error was one of form rather than substance. The letter indicated that Me. Morin was taking over for Me. Desbiens Gravel, who was clearly acting for the respondent Attorney General since

the outset of the matter. In any event, any such confusion or uncertainty was clarified in Me. Morin's correspondence of December 11, 2023.

[19] The Court is therefore fully satisfied that Me. Morin is representing the Attorney General of Canada, who is a proper respondent to this application, and who filed a Notice of Appearance in the matter and is entitled and mandated to respond to Mr. Haque's application for judicial review. Contrary to Mr. Haque's submissions, the fact the Attorney General takes the position that the CRA's decision with respect to Mr. Haque's CRB application was reasonable and fair in no way suggests that either the Attorney General or Me. Morin is acting in conflict of interest or in a partisan or biased manner. There is no basis whatsoever for Mr. Haque's assertion that all submissions made by Me. Morin should be considered null and void.

[20] I note that Mr. Haque also contends that the Attorney General was late in serving and filing the respondent's record in the application. The record does not support this assertion. The Attorney General sent the respondent's record to Mr. Haque's email address on October 25, 2023. In accordance with paragraph 22A of the Court's *Update #9 and Consolidated COVID-19 Practice Direction (October 24, 2022)*, then in force and now incorporated into paragraph 29 of the Court's *Amended Consolidated General Practice Guidelines*, parties are deemed to have consented to electronic service by email to an electronic address provided on a document filed in Court. Mr. Haque provided his email address on his applicant's record. The Attorney General therefore validly served the respondent's record by electronic service on October 25, 2023.

[21] Mr. Haque asserts that he advised the Attorney General on September 25, 2023, that he “could not send (or receive) big files with one email attachments.” This misstates the nature of his correspondence. On September 25, 2023, in serving his own record, Mr. Haque simply stated that since the scanned file of his record was very big, he was sending two files separately in two emails. He said nothing about his ability to receive large email attachments, and did not object to electronic service.

[22] Further, on October 25, 2023, Mr. Haque wrote to Me. Morin, confirming that he had in fact received the electronic file of the respondent’s record, but that since it was large, he could not print it. He therefore asked for a printed copy, which the Attorney General appropriately agreed to provide. There was apparently subsequently some difficulty in a courier delivery to Mr. Haque, but he ultimately received the respondent’s record on November 7, 2023. There is simply no merit to Mr. Haque’s contention that service of the respondent’s record was not effected until he received the additional printed copy that he requested and that the Attorney General agreed to provide.

[23] The first aspect of Mr. Haque’s motion will therefore be dismissed.

B. *Additional affidavits*

(1) Principles on a motion under Rule 312

[24] Rule 312(a) of the *Federal Courts Rules* provides that with leave of the Court, a party may file affidavits in addition to those provided for in Rules 306 and 307. To obtain an order

under Rule 312, an applicant must satisfy two preliminary requirements, namely (1) the evidence must be admissible on the application; and (2) the evidence must be relevant to an issue properly before the Court: *Forest Ethics Advocacy Association v National Energy Board*, 2014 FCA 88 at para 4.

[25] In the context of an application for judicial review, the admissibility requirement is governed in part by the scope of admissible evidence on judicial review. As a general rule, the record before a reviewing court on judicial review is limited to the material that was before the decision maker: *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 19; *Forest Ethics* at para 4. While there are some exceptions to this, they do not permit an applicant to file on judicial review additional evidence going to the merits of the matter that was not before the decision maker: *Access Copyright* at paras 19–20.

[26] If the two preliminary requirements are met, the applicant must convince the Court that it should exercise its discretion in favour of granting leave. This discretion will be guided by questions such as whether the evidence was available, or could have been with the exercise of due diligence, when the party filed its original affidavits; whether the evidence will assist the Court; and whether the evidence would cause substantial or serious prejudice to the other party: *Forest Ethics* at para 6, citing *Holy Alpha and Omega Church of Toronto v Canada (Attorney General)*, 2009 FCA 101 at para 2.

(2) The additional evidence Mr. Haque seeks to file

[27] Mr. Haque's submissions are far from clear as to the additional evidence he seeks to file. His submissions are largely given over to argument regarding the underlying merits. As the Attorney General points out, many of the documents Mr. Haque refers to are already found in his original affidavit and record.

[28] Mr. Haque does attach two letters from individuals who state they have purchased products from him since 2019. These letters are dated January 22 and 23, 2024. They were clearly not before the CRA decision maker when the decision on Mr. Haque's CRB application was made. This evidence is not admissible. An application for judicial review of a CRB decision is not an opportunity for an applicant to file additional evidence that was not sent to the CRA: see, e.g., *Khalid v Canada (Attorney General)*, 2023 FC 1356 at paras 7–9; *Desautels v Canada (Attorney General)*, 2022 FC 1774 at paras 27–40; *Access Copyright* at paras 19–20. Leave will not be granted to file this evidence through an additional affidavit.

[29] Mr. Haque also refers to the need to contact other clients to collect declarations and affidavits to submit. Any such further new declarations and affidavits would, like the two letters that have been provided, not have been before the decision maker and would be equally inadmissible. Leave will not be granted to file such evidence through an additional affidavit.

[30] The remaining documents appear to be exchanges of emails between Mr. Haque and Me. Morin with respect to procedural matters, including the issues raised in this motion

regarding representation and service. These documents were not before the decision maker and are irrelevant to the merits of the matter. Mr. Haque has also not established why or how they might be relevant to any issues on the application for judicial review that have not been dealt with on this motion. These documents are therefore inadmissible and leave will not be granted to file this evidence through an additional affidavit.

[31] The second aspect of Mr. Haque's motion is therefore dismissed.

(3) Requisition for hearing

[32] Mr. Haque notes that after the Court's determination on the foregoing two aspects of his motion, an extension of time is needed to submit a requisition for hearing pursuant to Rule 314. He requests an additional 15 days in which to do so. The Attorney General opposes this request, noting that Mr. Haque did not include written representations with respect to this issue and, in particular, to justify a request for an additional 15 days, when the original 10-day period for filing a requisition for hearing expired in December 2023.

[33] Having reviewed the matter, the context of the motion, Mr. Haque's status as a self-represented applicant, and the general principle in Rule 3, I conclude that Mr. Haque should be given a further 15 days from the date of this Order in which to file a requisition for hearing.

IV. Conclusion and Costs

[34] Mr. Haque's motion for (a) declarations pertaining to Me. Morin's representation of the Attorney General of Canada; and (b) leave to file additional affidavits, is therefore dismissed.

Mr. Haque is to file a requisition for hearing within 15 days.

[35] The Attorney General seeks costs of this motion. In the circumstances, I conclude an award of costs is appropriate. Mr. Haque has leveled serious allegations against Me. Morin, and persisted in those allegations despite the clarification regarding her role provided in December 2023.

[36] I conclude that in light of the factors in Rule 400(3), an award of costs in the sum of \$300.00, payable to the Attorney General in the cause, is just and appropriate. For clarity, this means that if Mr. Haque is successful on his application for judicial review, no costs of the motion will be payable. If the Attorney General is successful on the application for judicial review, costs of \$300.00 will be payable by Mr. Haque to the Attorney General in respect of the motion, in addition to any award of costs that may be made with respect to the application.

ORDER IN T-1378-22

THIS COURT ORDERS that

1. The motion is dismissed.
2. The applicant shall file a requisition for hearing within 15 days of the date of this Order.
3. Costs of \$300.00 are payable to the respondent, the Attorney General of Canada, in the cause.

“Nicholas McHaffie”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1378-22

STYLE OF CAUSE: RAZIBUL HAQUE v CANADA REVENUE AGENCY
ET AL

**MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO PURSUANT TO
RULE 369 OF THE *FEDERAL COURTS RULES***

ORDER AND REASONS: MCHAFFIE J.

DATED: FEBRUARY 22, 2024

WRITTEN REPRESENTATIONS BY:

Razibul Haque ON HIS OWN BEHALF

Anne-Élizabeth Morin FOR THE RESPONDENTS

SOLICITORS OF RECORD:

Attorney General of Canada FOR THE RESPONDENTS
Montreal (Quebec)