

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20240618**

**Docket: A-195-23**

**Citation: 2024 FCA 111**

**CORAM: DE MONTIGNY C.J.  
LEBLANC J.A.  
WALKER J.A.**

**BETWEEN:**

**DAWIT TUQUABO**

**Appellant**

**and**

**THE ATTORNEY GENERAL OF CANADA**

**Respondent**

Dealt with in writing without appearance of parties.

Judgment delivered at Ottawa, on June 18, 2024.

**REASONS FOR JUDGMENT BY:**

**DE MONTIGNY C.J.**

**CONCURRED IN BY:**

**LEBLANC J.A.  
WALKER J.A.**

**Federal Court of Appeal**



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**REASONS FOR JUDGMENT**

**DE MONTIGNY C.J.**

[1] This is an appeal from an Order of Turley J. of the Federal Court (the Motion Judge), dated July 20, 2023 (T-1076-23), striking out the appellant's application for judicial review on the ground that the Federal Court lacks jurisdiction.

[2] The parties have agreed that the appeal be dealt with in writing, and it is accordingly decided on the basis of the written materials.

[3] In my view, the Motion Judge made no error in striking the appellant's Notice of Application. In his application, the appellant sought judicial review of two letters from the Canada Revenue Agency (CRA). In the first, dated July 31, 2017, the CRA requested additional information in respect of the appellant's Notice of Objection for the 2014 taxation year. In the second, dated May 9, 2023, the CRA replied to correspondence about the appellant's income tax matters and his appeal to the Tax Court of Canada. The appellant also sought judicial review of a Notice of Confirmation, dated January 17, 2018, disallowing his objection and confirming his income tax assessment for the 2014 taxation year.

[4] The Motion Judge found that the application is clearly bereft of any chance of success, as it is for all intent and purposes a challenge to the validity of the Minister's assessment. As such, she determined that the Tax Court has exclusive jurisdiction on such matters pursuant to the *Income Tax Act*, R.S.C. 1985, c. 1 (5<sup>th</sup> Supp.) (the ITA), and therefore, that it was not properly before the Federal Court. As for the letters, the Motion Judge found that they were not reviewable decisions or matters within the meaning of section 18.1 of the *Federal Courts Act*, R.S.C. 1985, c. F-7 (the Act), because they do not affect legal rights, impose legal obligations or cause prejudicial effects: *Democracy Watch v. Canada (Attorney General)*, 2021 FCA 133 at para. 23, citing *Air Canada v. Toronto Port Authority et al.*, 2011 FCA 347 at para. 29 and *Democracy Watch v. Conflict of Interest and Ethics Commissioner*, 2009 FCA 15 at para. 10.

[5] Having carefully considered the record, I have not been convinced by the appellant that the Motion Judge made any reviewable errors. As is well established, a decision to strike a pleading is discretionary and can only be set aside if the motion judge committed a palpable and overriding error or an error of law: *Michaels of Canada, ULC v. Canada (Attorney General)*, 2023 FCA 243 at paras. 2–5; *Sagos v. Canada (Public Safety and Emergency Preparedness)*, 2019 FCA 47 at paras. 2–4. The Motion Judge stated the correct legal test on a motion to strike and properly relied on *JP Morgan Asset Management (Canada) Inc.*, according to which a moving party must demonstrate that the application is “so clearly improper as to be bereft of any possibility of success”, such that there must be “an obvious, fatal flaw striking at the root of this Court’s power to entertain the application”: *JP Morgan Asset Management (Canada) Inc. v. Canada (National Revenue)*, 2013 FCA 250 at para. 47.

[6] Nor did the Motion Judge make any palpable and overriding error in applying the legal test to the facts of this case. At its root, the appellant disagrees with the Minister’s income tax assessment for the year 2014. While the Minister determined that the severance pay he received from his employer must be included as taxable income, the appellant contends that it is rather a lump sum payment in the settlement of a human rights violation and that it is therefore non-taxable income. Such a disagreement with respect to an income tax assessment clearly falls within the exclusive jurisdiction of the Tax Court of Canada, pursuant to section 18.5 of the Act, section 12 of the *Tax Court of Canada Act*, R.S.C. 1985, c. T-2, and section 169 of the ITA.

[7] As for the two letters, they are clearly not reviewable decisions as they did not affect the appellant’s legal rights, imposed no legal obligation, and caused no prejudicial effects. The July

31, 2017 letter simply requested further documents from the appellant to support his position, whereas the May 9, 2023 letter from the Assistant Commissioner of the CRA's appeal branch is a courtesy letter providing the appellant with information about his ongoing appeal, as held by the Motion Judge.

[8] Finally, I can find no reviewable error in the decision of the Motion Judge to admit into evidence certain paragraphs of the affidavit (with three exhibits appended to it) of a litigation officer in the Appeals Division of the CRA's Tax Law Services Office. Such a decision is subject to the standard of correctness, to the extent that the alleged error relates to the applicable legal test and principles: *Sweet Productions Inc. v. Licensing LP International S.À.R.L.*, 2022 FCA 111 at para. 22. The appellant does not submit that the Motion Judge erred in identifying the correct legal principles, nor has he raised any palpable and overriding error in applying them. Some of the paragraphs admitted merely serve to append as exhibits the letters referenced by the appellant in his Notice of Application, while others provide uncontroversial background information.

[9] As for the Charter arguments raised by the appellant, they cannot be entertained before this Court as they were not pursued before the Motion Judge. Moreover, there is no evidentiary record to support them, and, in any event, it is too late to substantiate them on appeal.

[10] For the foregoing reasons, I would dismiss the appeal, with costs in the amount of \$2,000 all inclusive.

“Yves de Montigny”

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Chief Justice

“I agree.

René LeBlanc J.A.”

“I agree.

Elizabeth Walker J.A.”

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-195-23

**STYLE OF CAUSE:** DAWIT TUQUABO v. THE  
ATTORNEY GENERAL OF  
CANADA

**DEALT IN WRITING WITHOUT APPEARANCE OF PARTIES**

**REASONS FOR JUDGMENT BY:** DE MONTIGNY C.J.

**CONCURRED IN BY:** LEBLANC J.A.  
WALKER J.A.

**DATED:** JUNE 18, 2024

**WRITTEN REPRESENTATIONS BY:**

Dawit Tuquabo

FOR THE APPELLANT  
(ON HIS OWN BEHALF)

Jason Stober  
Helli Raptis

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Shalene Curtis-Micallef  
Deputy Attorney General of Canada

FOR THE RESPONDENT