

Federal Court



Cour fédérale

Date: 20250411

Docket: T-2506-24

Citation: 2025 FC 676

Ottawa, Ontario, April 11, 2025

PRESENT: The Honourable Madam Justice Blackhawk

BETWEEN:

JEFF EWERT

Applicant

and

**ATTORNEY GENERAL OF CANADA
(Correctional Service of Canada)**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant/Moving Party has filed a motion seeking to appeal an order of Associate Judge Catharine Moore issued on March 3, 2025, striking the Applicant’s application for judicial review, without leave to amend (“Order”).

[2] The Applicant argued that the Associate Judge erroneously concluded that the application did not conform with Rule 301 of the *Federal Courts Rules*, SOR/98-106 [*Rules*], and that the application was not an abuse of process.

[3] The Respondent submitted that the Associate Judge made no error. Further, the Respondent argued that granting the motion and permitting the application to proceed would undermine important principles that underpin the rule against abuse of process. Accordingly, they request that the motion be dismissed with costs.

[4] For the reasons that follow, the motion is dismissed.

II. Background

[5] The Applicant has been incarcerated at the Federal Training Centre (“FTC”) in Laval, Quebec since July 2019.

[6] The FTC includes both a minimum-security facility (“FTC 600”) and a multi-level security facility (“FTC 6099”). FTC 6099 houses both minimum-security and medium-security inmates, in separate sectors.

[7] In October 2019, the Applicant filed a motion for *habeas corpus* with *certiorari* in aid in the Quebec Superior Court. He alleged that his transfer from Archambault Institution, a minimum-security facility, to FTC 6099 was not reasonable and was a deprivation of liberty. He argued that he was subject to more restrictive security standards at FTC 6099, and he did not have access to escorted temporary absences (“ETAs”).

[8] The Quebec Superior Court denied the *habeas corpus* motion. The Applicant appealed to the Quebec Court of Appeal (collectively with Quebec Superior Court, “Quebec Courts”). The Quebec Court of Appeal dismissed the appeal, “concluding that there were no significant differences between detention conditions at the Archambault institution, a minimum-security

institution and the FTC 6099, a multi-level institution” (*Ewert c Lalande*, 2020 QCCA 1141 at para 41).

[9] In April 2023, the Applicant presented Final Group Grievance #V30R00077408 (“Group Grievance”) to the Correctional Service of Canada (“CSC”) that raised issues concerning the detention conditions for minimum-security inmates living in multi-level institutions, and in particular, the availability of ETAs, searches, and participation in certain programs.

[10] On August 16, 2024, the Assistant Commissioner, Policy, denied the Group Grievance (“Decision”), because the CSC has the authority to operate multi-level institutions and the main distinctions had to do with the separation of various security levels.

[11] On September 27, 2024, the Applicant filed the notice of application for judicial review of the Decision. On December 3, 2024, the Respondent served and filed a motion to strike the Applicant’s application. On December 8, 2024, the Applicant served and filed his response to the motion to strike. On December 13, 2024, the Respondent served and filed its reply.

[12] On March 3, 2025, Associate Judge Moore granted the Respondent’s motion and ordered that the application was struck without leave to amend, with costs.

III. Issues and Standard of Review

[13] The sole issue for determination in this motion is: did Associate Judge Moore err in striking out the application without leave to amend?

[14] The standard of review of an appeal of a discretionary order of an associate judge is “a palpable and overriding error” for questions of fact or mixed fact and law. The correctness standard applies to questions of law or questions of mixed fact and law where there is an

extricable legal principle at issue (See *Hospira Healthcare Corporation v Kennedy Institute of Rheumatology*, 2016 FCA 215 at paras 64 and 66, citing *Housen v Nikolaisen*, 2002 SCC 33 [*Housen*] at paras 19–37).

[15] As affirmed by Justice Stratas in *Mahjoub v Canada (Citizenship and Immigration)*, 2017 FCA 157 [*Mahjoub*] at paragraph 72, “exercises of discretion are questions of mixed fact and law.” Further, he noted that per the *Housen* framework, questions of mixed fact and law can be set aside only on the basis of palpable and overriding error, unless there is an error on a question of law (*Mahjoub* at para 74; see also *Murphy v Canada (Attorney General)*, 2023 FC 57 at paras 10–12).

[16] Palpable means an obvious error, while overriding means an error that effects the conclusion. This is a highly deferential standard of review. Conversely, the correctness standard affords no deference (*Haida Tourism Partnership (West Coast Resorts) v Canada (Ship-Source Oil Pollution Fund)*, 2024 FC 439 at para 32).

IV. Analysis

A. *Failure to comply with Rule 301*

[17] The Applicant asserts that the Associate Judge erred in ordering that the application should be struck. The Applicant asserts that the conclusion that the application was not compliant with Rule 301 is an error.

[18] The Applicant notes that the *Rules* do not define “concise” and there are “no degrees of concise.”

[19] The Respondent argues that the Order is consistent with the legal test for striking and the leading jurisprudence (*Canada (National Revenue) v JP Morgan Asset Management (Canada) Inc*, 2013 FCA 250 [*JP Morgan*]).

[20] I agree with the Respondent. A review of the Order confirms that the Associate Judge correctly set out the test for striking an application, noting that the burden on a moving party is high and it must be demonstrated that the application has no reasonable prospect of success.

[21] The Associate Judge found that the application was not compliant with Rule 301 because “bald assertions listed as grounds are insufficient without any factual detail.” In addition, she noted that much of the relief sought by the Applicant was “beyond the jurisdiction of this, or perhaps, any Court.”

[22] Similar to the approach employed by the Court in *Jeff Ewert v Attorney General of Canada* (November 1, 2023), Ottawa, T-1368-23 (FC), the Associate Judge undertook a “holistic reading of the Application” and concluded that it must be struck.

[23] I am not persuaded by the Applicant’s submissions. As noted by the Federal Court of Appeal in *JP Morgan*:

[39] A “complete” statement of grounds means all the legal bases and material facts that, if taken as true, will support granting the relief sought.

[40] A “concise” statement of grounds must include the material facts necessary to show that the Court can and should grant the relief sought. It does not include the evidence by which those facts are to be proved.

...

[42] While the grounds in a notice of application for judicial review are supposed to be “concise,” they should not be bald.

Applicants who have some evidence to support a ground can state the ground with some particularity. Applicants without any evidence, who are just fishing for something, cannot.

[43] Thus, for example, it is not enough to say that an administrative decision-maker “abused her discretion.” The applicant must go further and say what the discretion was and how it was abused. For example, the applicant should plead that “the decision-maker fettered her discretion by blindly following the administrative policy on reconsiderations rather than considering all the circumstances, as section Y of statute X requires her to do.”

[44] The statement of grounds in a notice of application for judicial review is not a list of categories of evidence the applicant hopes to find during the evidentiary stages of the application. Before a party can state a ground, the party must have some evidence to support it.

[45] It is an abuse of process to start proceedings and make entirely unsupported allegations in the hope that something will later turn up. See generally *Merchant Law Group v. Canada Revenue Agency*, 2010 FCA 184 at paragraph 34; *AstraZeneca Canada Inc. v. Novopharm Limited*, 2010 FCA 112 at paragraph 5....

[24] In my review of the Order, it is clear that the Associate Judge properly considered the application and correctly applied the applicable legal tests in determining that the application should be struck because it was bereft of any possibility of success.

[25] The Applicant has not established that Order contains a palpable and overriding error in finding that the application was not compliant with Rule 301.

B. *Abuse of process*

[26] In addition, the Applicant argues that the Order striking the application without leave to amend because it was an abuse of process is an error.

[27] The Respondent argues that the Associate Judge carefully considered the application and the Applicant’s written representations. The Associate Judge correctly found that the Applicant

was attempting to relitigate the same issues addressed by the Quebec Courts in his *habeas corpus* motion.

[28] The Applicant says that the *habeas corpus* motion in the Quebec Courts and the application in this Court are two different cases with entirely different subject matters. With respect, I do not agree.

[29] In support of this motion, the Applicant argues that the Quebec Courts would have reached a different conclusion had the Courts been aware that the testimony from the Respondent's witness was false. I agree with the Associate Judge's finding on these arguments:

[30] I am particularly struck by his statement that:

The evidence that the Applicant will show the Court is that the evidence before the Palais du Justice in Laval and the Quebec Court of Appeal was false.

[31] This confirms that what the Applicant is really seeking to do is overturn the findings of the Quebec Courts and relitigate issues that were determined in another forum. The doctrine of abuse of process is meant to bar the relitigation of issues in order to avoid the risk of inconsistent decisions by different courts, which would undermine the doctrines of finality and respect for the administration of justice: *Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227.

[32] The Applicant does not point to an error of the Associate Judge, rather his submissions point to an attempt to "correct" the earlier *habeas corpus* decision of the Quebec Courts. I agree with the Respondent that if the Applicant disagreed with the decision of the Quebec Courts, he should have sought an appeal at the Supreme Court of Canada. Attempting to "correct" errors or

mistakes from the earlier decisions in via judicial review in a different court is an abuse of process.

[33] The Applicant has not satisfied me that the Associate Judge's Order contained a palpable and overriding error in the conclusion that the application is an abuse of process.

JUDGMENT in T-2506-24

THIS COURT’S JUDGMENT is that:

1. The motion to appeal the Associate Judge’s Order is dismissed.
2. The Respondent shall have its costs for this motion in the amount of \$250.

“Julie Blackhawk”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2506-24

STYLE OF CAUSE: JEFF EWERT v ATTORNEY GENERAL OF
CANADA (CORRECTIONAL SERVICE OF
CANADA)

**MOTION IN WRITING PURSUANT TO RULE 369 OF THE *FEDERAL COURTS*
RULES, SOR/98-106 CONSIDERED AT OTTAWA, ONTARIO.**

JUDGMENT AND REASONS: BLACKHAWK J.

DATED: APRIL 11, 2025

WRITTEN SUBMISSIONS BY:

Jeff Ewert

FOR THE APPLICANT
ON HIS OWN BEHALF

Johannie Dallaire

FOR THE RESPONDENT

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