

Federal Court



Cour fédérale

**Date: 20230206**

**Docket: T-1253-22**

**Citation: 2023 FC 167**

**Ottawa, Ontario, February 6, 2023**

**PRESENT: The Honourable Mr. Justice Roy**

**BETWEEN:**

**ANATOLY KIMAEV**

**Applicant**

**and**

**MINISTER OF NATIONAL REVENUE  
AND MINISTER OF THE MINISTRY OF  
EMPLOYMENT AND SOCIAL DEVELOPMENT**

**Respondents**

**JUDGMENT AND REASONS**

[1] It appears that the genesis of what has become a confused amalgam of documents submitted by the Applicant, Anatoly Kimaev, which have been refused for filing, is an application in which Mr. Kimaev asserts that he is entitled to benefits pursuant to the *Canada Recovery Benefits Act*, SC 2020, c 12, s 2. The said Act was enacted by section 2 of Chapter 12 of the Statutes of Canada, 2020. The Applicant claims originally that the decision to deny him the benefits of the program should be overturned on judicial review.

[2] The application is presented as a judicial review application of a decision made on June 2, 2022, and another one made on September 13, 2021, which resulted in the Applicant not being eligible for the benefits sought. It seems from the Notice of Application that the Applicant contended he received money from the Province of Ontario (identified by him as Ontario Government's Second Career Program offered by the Minister of Advanced Training and Skills Development) which, he claims, could satisfy the requirement for eligibility pursuant to the *Canada Recovery Benefits Act*. Two of the requirements under the statute are that a claimant must show total income from employment of at least an amount over a period of time and that the claimant was not employed or had a reduction of at least 50% in their average weekly employment income. It is not clear how that could be in this case but Mr. Kimaev evidently wanted the matter litigated.

I. Overview

[3] The application for judicial review is dated June 13, 2022, but is date stamped by the Court on June 17, 2022. The Respondents appeared on June 25, 2022 and the notice of appearance is on the Court's file. Mr. Kimaev has indicated in the past his view that he was not properly served. On the face of the record however, the Respondents appeared and, indeed, the litigation that ensued has been on the basis of the Respondents being engaged. The Applicant has attempted to turn his judicial review application into an action, presumably because he believes he can be granted default judgment against the Crown.

[4] Following numerous motions launched by the Applicant between July 18, 2022 and October 6, 2022, the Chief Justice of the Federal Court ordered on October 6, 2022 that

Associate Judge Trent Horne be assigned as the case management judge with respect to file T-1253-22. The appointment of a case management judge came following a request from the Respondents on September 27, 2022. Among other things, the Respondents asserted that seven motions had already been served and that the Court had already directed that certain documents submitted by the Applicant not be received for filing, including a “motion for a default judgment”. The Applicant objected to the appointment of a case management judge in a document dated September 28, but date stamped on September 29. The Applicant wished to appeal an Order refusing to turn his judicial review application into an action. Mr. Kimaev continued to argue that he did not need the transcripts of the reasons for the Order in his motion record for his appeal and that, instead of an appointment of a case management judge, a hearing of his motion for appeal for summary judgment ought to be fixed. As I will try to explain, that appears to have been a particular bone of contention. Mr. Kimaev sought to appeal a decision of Associate Judge Ring on August 24, 2022 without having to follow the procedural steps required by the *Federal Courts Rules*, SOR/98-106. As we shall see, that particular difficulty of following the Rules emerged many times since the application for judicial review in June 2022.

[5] After numerous attempts to get the Applicant to abide by the procedural rules of this Court, the case management judge established on October 25, 2022 a schedule for the application for judicial review to be adjudicated on its merits. The deadlines found in the Order of October 25 were declared to be preemptory. Instead of following the Court’s Order, the Applicant continued to submit various documents in relation to his interest in pursuing an appeal of the Order of August 24, 2022.

[6] According to the schedule found in the October 25 Order, the Applicant had to serve and file supporting affidavits and documentary evidence in his judicial review application by November 18, 2020. He failed to meet that peremptory deadline. As a consequence, the case management judge dismissed the application for delay on November 22, 2022.

[7] The Applicant seeks to appeal the Order dismissing his judicial review application, pursuant to rule 51 of the *Federal Courts Rules*.

## II. The issue

[8] This imbroglio stems originally from the attempt by the Applicant to obtain a “default judgment” against the Respondents. The Applicant seems to believe the Respondents did not appear properly to defend against his judicial review application, despite the record showing an appearance on behalf of the Respondents on June 25, 2022. Thus, a notice of motion for default judgment was received by the Court on July 25, 2022 and it was referred to a judge to determine if it should be accepted for filing. It was not. An oral Direction was issued on August 10. It was stated that the record did not comply with the *Federal Courts Rules* and that, at any rate, there is no such default judgment concerning an application for judicial review. The applicable rules invoked by the Applicant apply to actions, not applications.

[9] Mr. Kimaev then tried to have his application for judicial review turned into an action. He presented a motion for a direction to have his judicial review application treated as an action: the motion is date stamped on August 15, 2022. Reading the motion record, it is very much unclear what the basis is for the motion. The Respondents had a memorandum of fact and law,

dated August 18, 2022. The Respondents argued that the factors to be considered to convert an application for judicial review into an action were not demonstrated and, therefore, the motion ought to be dismissed with costs.

[10] Associate Judge Ring agreed with the Respondents and dismissed the motion, with costs fixed at \$500, to be paid in any event of the cause. The Order is dated August 24, 2022. It appears that the reasons for the Order were given orally the day before.

[11] The Applicant sought to appeal the Order of Associate Judge Ring. The attempt to appeal the Order of Associate Judge Ring was launched by the Applicant, using a document bearing the title “Notice of Motion for Appeal for summary judgment”, dated August 31, 2022. The Applicant wanted for his appeal to be heard on September 20, 2022. He was asking as part of his “appeal” that the Order issued by the Associate Judge be set aside so that his application be turned into an action. The Applicant was in effect asking much more than the Order of August 24 be set aside. He also sought that the notice of appearance of the Respondents on the judicial review application (June 25, 2022) be removed from the record (the notice of appearance presumably made the “default judgment” less likely to be obtained if the Respondents actually appeared). Mr. Kimaev sought from the Court, on an appeal from an Order of an associate judge, to “order to proceed summarily to my motion for default judgment”, together with “summarily grant my motion for default judgment on all issues raised in the motion”.

III. The appeal from Associate Judge Ring's Order of August 24, 2022

[12] As can be seen, Mr. Kimaev was in effect turning an appeal of a decision to deny his attempt to turn a judicial review application into an action into a decision from this Court that not only his application be turned into an action, but that action be disposed of summarily by, among other things, removing from the record the appearance of the Respondents in the case.

[13] His memorandum of fact and law concerning his appeal runs for 14 pages and consists of various statements. More fundamentally, the motion record did not have the reasons of Associate Judge Ring, the very decision the Applicant sought to appeal. Thus, the Respondents opposed formally in a letter dated September 13, 2022, and this Court agreed in the following terms in a Direction on September 13:

The Applicant's Motion will not be heard on September 20, 2022.

As noted by the Respondent, the Applicant has not provided a copy of the transcript of Associate Judge Ring's Reasons for Order which were given orally at the August 23, 2022 hearing.

[14] A further "Notice of Motion for Directions" of September 15, 2022 submitted by the Applicant was not received for filing, as Associate Judge Horne issued the following Direction that same day: "Without written representations, the motion record may not be received for filing, and may not be added to the September 27, 2022 general sittings list". The same day, September 15, 2022, another Direction was issued, the purpose of which was ostensibly to put the appeal of the decision of Associate Judge Ring on a more proper footing:

Further to my direction issued on September 13, 2022 – given that the Applicant is self-represented, the reasons for decision were provided orally, and the cost for the application fee has previously

been waived for this Applicant, I am directing that the Court prepare a transcript of the Associate Judge Ring's reasons for decision that were provided orally on August 23, 2022 and provide it to the parties.

Once the transcript is received by the Applicant, the Applicant must serve and file an amended/supplementary motion record including the decision (the Order of Associate Judge Ring) and the transcript of reasons for decision given at the August 23, 2022 hearing, along with a letter providing availability for a general sitting date to have the appeal heard.

[My emphasis.]

The Direction to have an amended motion record including the transcript of the reasons for the Order of August 24 ordered by the Court was never complied with by the Applicant.

[15] Thus, the Direction of September 22, 2022 does not appear to have served the intended purpose. In effect, Mr. Kimaev was arguing that he did not need the transcript of the reasons for the decision he sought to appeal. That much is argued in the "Notice of Motion for Directions" of the Applicant of September 16, 2022 (which was not received for filing either). In what is presented as "submission" the Applicant says that he does not "intend to place transcription of oral reasons by prothonotary Kathlene [sic] on the Court record, according to the Federal Courts Rules Rule 364(2)(d)". It would appear that the Applicant was relying on the portion of rule 364(2)(d) which speaks of the motion record containing "the portions of any transcripts on which the moving party intends to rely". As he put it himself, Mr. Kimaev did not intend to rely on the transcript of the reasons for the Order under appeal. The record does not suggest how the Applicant would argue that the Order ought to be set aside without the reasons for the Order. The following Direction on September 22 seems to me to speak for itself:

The Court is in receipt of two further sets of materials from the Applicant:

1. “Notice of Motion for Directions” filed by the Applicant on September 16, 2022; and
2. A letter from the Applicant dated September 20

The Applicant seeks to set aside the previous directions issued in this matter. The jurisprudence of this Court is well settled. No appeal lies from a direction: *Peak Innovations v. Simpson Strong-Tie Company, Inc.*, 2011 FCA 81 at para 2. In any event, the Court sees no basis to set aside or amend these directions.

Given the Applicant has yet to serve and file a motion record that complies with the direction of Prothonotary Ring, and given the relief sought by the Applicant is not available to him, the Applicant’s request that his motion be set down for a hearing on September 27, 2022 is denied.

[16] Another Direction was issued on September 28 following yet another “Notice of Motion” submitted by the Applicant requesting a hearing on October 4, 2022. The Direction simply notes that “The applicant has not complied with the Court’s previous direction. This matter will not be added to the general sittings list for October 4, 2022”.

#### IV. The case management judge

[17] As already indicated, the Respondents asked for the appointment of a case management judge on September 27 and Associate Judge Horne granted the request on September 28. The Court ordered:

**THIS COURT ORDERS that:**

1. This application shall continue as a specially managed proceeding and shall be referred to the Office of the Chief Justice for the appointment of a case management judge.



2. Within ten (10) days of the date of the appointment of a case management judge, the parties shall provide the Court with a proposed timetable for next steps, and dates and times of mutual availability for a case management teleconference should the Court consider that one should be convened.

Associate Judge Horne was appointed as the case management judge on October 6, 2022.

[18] In an Order dated October 25, 2022, the Case Management Judge, Associate Judge Horne, sought to bring order to what had been rather chaotic. As Associate Judge Horne noted, the Applicant “has doggedly pursued motions and appeals, most of which were not accepted for filing because of non-compliance with the Federal Courts Rules” (Order, para 1).

[19] The Associate Judge proceeded to set out the background of these proceedings. He remarked that a judicial review application is meant to be a timely and summary proceeding. Had the Applicant followed the rules, the application would be ready to be heard by then; however, none of the steps were taken, Mr. Kimaev insisting instead on “attempting to file, numerous motions and appeals” (Order, para 3).

[20] The Case Management Judge having reviewed a number of incidents, he ordered next steps to bring the matter to a decision on the merits. He wrote at paragraph 23:

[23] Particularly by directing that the Court prepare a transcript of associate judge Ring’s reasons for decision that were provided orally on August 23, 2022, the Court has taken every possible step to ensure that the applicant had full ability and opportunity to appeal that decision. But the applicant has steadfastly refused to serve and file a properly constituted motion record for that appeal. His insistence that the Court schedule and hear an appeal on his terms has abused the resources of the Court. The cycle of the Court issuing directions, and the applicant refusing to accept those

directions, must stop. Now. The applicant is out of time and out of chances to appeal the decision of associate judge Ring. A schedule must be set for the orderly completion of the steps in this proceeding. That schedule will not include an appeal of associate judge Ring's decision.

[My emphasis.]

Due to the failure of the parties to submit a timetable as requested (Order of September 28), the Case Management Judge, relying on rule 53, provided the timetable leading eventually to the requisition for a hearing of the judicial review application, the deadlines being peremptory, “meaning that they will not be extended further. If the applicant fails to meet any deadline in this Order, the proceeding will be dismissed for delay without further notice” (Order, para 25). The next steps were to be the following:

**THIS COURT ORDERS that:**

1. The following timetable shall apply to the next steps in this proceeding:
  - (a) The applicant shall serve supporting affidavits and documentary evidence, and file proof of service, by November 18, 2022.
  - (b) The respondent shall serve any supporting affidavits and documentary evidence, and file proof of service, by December 19, 2022.
  - (c) The parties shall complete cross-examinations by January 20, 2023.
  - (d) The applicant shall serve and file an applicant's record by February 17, 2023.
  - (e) The respondent shall serve and file a respondent's record by March 9, 2023.
  - (f) The applicant shall serve and file a requisition for hearing by March 20, 2023.

2. All deadlines that apply to the applicant are peremptory. If the applicant fails to meet any deadline in this order, the proceeding will be dismissed for delay without further notice.

V. More attempts at filing documents

[21] Subsequent to October 25, there were more Directions issued as the Applicant continued to present motions for filing. However, none of them were related to the timetable set in the Order of October 25.

[22] Thus, on November 8, 2022, Associate Judge Molgat issued a Direction concerning a document entitled “Motion to Appeal” which the Applicant submitted on November 4, 2022. It is said that the document barely differs from another one submitted on November 2 and refused for filing by Associate Judge Steele. The two documents are presented as an appeal of the October 25 Order. The decision sought is to quash the Order of October 25, but also “to appoint hearing of my Motion to Appeal for Summary Judgment filed by me on August 31, 2022”. The “Motion” is one page long. There are no submissions. The only ground for the motion is said to be subsection 385(1): it confers powers to the case management judge. The two documents did not comply with rules 360, 362 and 364. They were rejected for filing.

[23] Two days later, on November 10, 2022, Associate Judge Molgat issued another Direction refusing the filing of a motion record, this time because the record had not been served and filed within 10 days after the day on which the Order under appeal was made.

[24] The Applicant sought to appeal the oral Directions of Associate Judge Molgat of November 8 and 10 last. His “Notice of Motion” was met on November 18 by a new refusal to file. This time, Associate Judge Duchesne found that there was no affidavit appended such that the material was devoid of admissible evidence. Furthermore grounds in support of the motion were not argued. The record does not comply with rule 359. The Associate Judge also noted that there are no appeals of oral directions according to rule 51. The relief sought is not available. I reproduce in its entirety this last Direction:

The Appellant and Moving Party Mr. Kimaev seeks to file a Motion Record by which he seek to appeal from oral directives made by Associate Judge Molgat of this Court on November 8 and on November 10, 2022. The Motion Record sought to be filed contains no affidavit and is therefore devoid of admissible evidence. The Notice of Motion does not argue grounds in support of the motion, only a reference to Rules 51(1) and 72(1)(b) of the Federal Courts Rules. The Motion Record fails to comply with Rule 359 of the Rules and ought to be rejected for filing.

More significantly, however, the Appellant and Moving Party’s motion is doomed to fail even if it were accepted for filing because oral directions of an Associate Judge are not subject to appeal pursuant to the Rules. The Rule 51 right of appeal is limited to an “order”. Oral directions provided by the Court or any member thereof are not an “order” within the definition an “order” pursuant to the Rules. The relief sought by Mr. Kimaev is not available.

I hereby direct pursuant to Rule 72(2)(a) of the Rules that Mr. Kimaev’s Motion Record and Notice of Motion are refused for filing. It follows that any affidavit of service files purportedly in support of the Motion Record and Notice of Motion is also refused for filing as having no object.

## VI. Analysis

[25] That takes us to the matter before the Court. Associate Judge Steele issued a Direction on November 25, 2022, whereby she addressed a new motion purporting to appeal an Order of

Associate Judge Horne, dated November 22, 2022. It is noted that the record is “irregular” as it “does not strictly comply with Rules 359 and 364”. Indeed, it is said that the notice of application and the submissions “are sparse to say the least”. The only ground is that the Associate Judge acted beyond his jurisdiction, without an articulation for that general submission.

[26] Nevertheless, Associate Judge Steele allowed the motion record for filing, subject however to objections of the Respondents and “under reserve of any objection of the Court and for any further order of (sic) direction of the presiding judge”. The matter was set for hearing on December 8, but was postponed to January 12, 2023. It came before me on January 12, 2023.

[27] The Order under appeal, as indicated earlier, is that of November 22. There is nothing else before the Court. That Order was issued by Associate Judge Horne in his role as the case management judge appointed by the Chief Justice of this Court on October 6, 2022. An Associate Judge can be assigned to assist in the management of a proceeding (rule 383(c)). Rule 385 addresses the powers of the case management judge which include making “any orders that are necessary for the just, most expeditious and least expensive determination of the proceedings on its merits” (rule 385(1)(a)). The power to “fix the period for completion of subsequent steps for the proceeding” (rule 385(1)(b)) is for the express purpose of allowing the process to reach its conclusion.

[28] The Order of November 22 follows in the footsteps of the Order of October 25. It repeats in its first paragraph that “the applicant has shown little regard for the procedural rules governing applications and appeals”.

[29] The Case Management Judge reviewed precisely the various Directions issued in November:

- November 2: a one-page document titled “Motion” was refused for filing on November 3 by Associate Judge Steele, because it was “irregular” as not complying with the *Federal Courts Rules*;
- November 8: Associate Judge Molgat rejected for filing a “motion to appeal”, which barely differed from the “motion” document presented on November 2 and rejected for filing on November 3;
- November 10: this time a motion record presented on November 9 is rejected for filing because it was out of date.

Associate Judge Horne then referred to the other motion record refused for filing by Associate Judge Duchesne on November 18. Is reproduced at paragraph 6 of the Order under appeal the same three paragraphs found at paragraph 19 of these reasons for judgment.

[30] The point of the matter seems to be that Mr. Kimaev, instead of seeking to abide by the Order of October 25, 2022 which identifies the steps to reach a hearing on the merits of the judicial review application and fixes peremptory deadlines for each step, sought to file various documents which continued to be rejected for filing because they did not follow the requirements

of the *Federal Courts Rules*. Indeed, even his appeal of the latest decision of the Case Management Judge is irregular and could have been rejected.

[31] The schedule of October 25, which provided that Mr. Kimaev had to serve his supporting affidavits and documentary evidence by November 18, 2022, had not been followed by November 22, 2022. Accordingly, the Case Management Judge concluded: “The consequences of missing this peremptory deadline were set out in the Order: the proceeding would be dismissed for delay without further notice” (Order, para 8). The application for judicial review was dismissed for delay. That is the appeal of the November 22 Order that is presently before the Court.

[32] Given the particular circumstances of the case, I chose to hear the matter despite the motion record being irregular and the submissions being “sparse to say the least”.

[33] In fact, the hearing of this appeal did not bring more to the argument that the Case Management Judge did not have jurisdiction to dismiss the application for delay. There is no articulation of an argument, let alone authorities in support of the proposition that a case management judge does not have the authority to manage the proceedings by determining a schedule and enforcing the Order which fixes dates that must be followed peremptorily.

[34] The Respondents observe that Mr. Kimaev, between July 18 and October 6 (date on which the Case Management Judge was appointed), presented at least seven motions for filing. Between October 25 (date on which the Case Management Judge set a schedule to bring the

matter to a hearing of the application for judicial review on the merits) and November 18 (date on which the Applicant's motion record about the judicial review application was peremptorily due according to the Order of October 25), Mr. Kimaev brought four more motions which were all defective as being non compliant with the *Federal Courts Rules*. These motions were not about moving the matter towards a hearing on the merits of the judicial review application. None of these "motions" had anything to do with the matter at hand: the merits of a judicial review application.

[35] For the Respondents, the Applicant has failed to show any error of law or any palpable and overriding error. That is the standard applicable in appeals of decisions made by an associate judge since *Hospira Healthcare Corporation v Kennedy Institute of Rheumatology*, 2016 FCA 215, [2017] 1 FCR 331.

[36] Referring to rule 385, which provides for the powers of a case management judge, the Respondents note that there is the power to make orders necessary for the just, most expeditious and least expensive outcome of the proceeding. Rule 53 is also relevant as it provides specifically that in making an order, the Court may impose conditions and give such directions as it considers just. The authority exercised in this case derives from these rules.

[37] Turning to the case law, we are referred to *Exeter v Canada (Attorney General)*, 2014 FCA 178 where Stratas J.A. accepted that the Court of Appeal has jurisdiction to control abuses of process. That jurisdiction can be exercised where there is unreasonable delay in taking steps



required to move a matter or where there are repeated failures to abide by the Rules or orders of the Court.

[38] The power is equally present in the Federal Court. That is confirmed, says the Respondents, in *Sagos v Canada (Public Safety and Emergency Preparedness)*, 2019 FCA 47:

[3] The Motion judge did not err in concluding that he had the jurisdiction to summarily dismiss an application for judicial review. It is no doubt true that Rule 221 of the *Federal Courts Rules*, SOR/98-106 (the *Rules*), pursuant to which the Federal Court is explicitly granted the power to strike out a pleading, is found in Part 4 of the *Rules* and therefore only applies to actions. That being said, it has been recognized on a number of occasions that the court's inherent jurisdiction to control its own process under Rule 5 similarly allows it to dismiss in a summary manner applications for judicial review which are "so clearly improper as to be bereft of any possibility of success": see, for ex., *David Bull Laboratories (Canada) Inc. v Pharmacia Inc.*, [1995] 1 F.C. 588, at p. 600 (FCA); *Canada (National Revenue) v JP Morgan Asset Management (Canada) Inc.*, 2013 FCA 250, at paras 47-48; *Forner v Professional Institute of the Public Service of Canada*, 2016 FCA 35, at paras 9-11.

[39] Having disregarded repeatedly the Rule and Orders of this Court, the Case Management Judge exercised the authority granted to him by the Rules: he did not act outside of his jurisdiction.

[40] The Applicant brought to the registry in Quebec City on the day of the hearing of his appeal a two-page document which bears the title "Submission". It had not been shared with the Respondents beforehand. It was obviously not in conformity with the *Federal Courts Rules*, not being included as part of an appropriate motion record. I nevertheless allowed the Applicant to use the document as his speaking notes in order to present fully his point of view. There was

nothing new in the speaking notes and I concluded that procedural fairness would not be violated by allowing Mr. Kimaev to offer his observations.

[41] Fundamentally, Mr. Kimaev does not accept the appointment of a case management judge. He continues to argue that he wants to appeal the Order of Associate Judge Ring who declined to turn his judicial review application into an action. As I understand it, Mr. Kimaev seems to believe he is entitled to a default judgment as he does not acknowledge the appearance of the Respondents on June 24 last. As such, he seems to believe that he should be able to get a judgment without addressing the merits of his case. If he cannot have access to rules 216 et al of the *Federal Courts Rules* because an application is not an action, all that needs to be done is to turn his application into an action. Associate Judge Ring found against Mr. Kimaev.

[42] The Applicant did not follow the Order of the Case Management Judge because he continued to pursue his “appeal for summary judgment”. His various motions in that respect have never been filed. In fact, his appeal of Associate Judge Ring was never set for the reason that his documentation was irregular as not abiding by the Rules. It is not so much that his attempts at appealing the Orders have been dismissed on their merits, but rather that the various documents presented for filing were defective in a major way. Neither the Order of August 24 nor the Order of October 25 were appealed because the documents presented by the Applicant lacked the most basic requirements.

[43] The Applicant’s focus has been on obtaining a “default judgment”, not on arguing his case on the merits of his judicial review application. In fact, the Applicant’s speaking notes

focus, again, on his “appeal for summary judgment”, addressing once again the need to have the transcript of the reasons for the Order of Associate Judge Ring instead of the matter at hand which is the Order appealed from, that of November 22, 2022, not the Order of October 25. For a reason that escapes me, the Applicant seems to believe that the need for the transcripts of the reasons of Associate Judge Ring was not required in spite of the Directions which make it clear that the requirement remains. Indeed, the Court fails to see how it could be otherwise.

[44] With their focus on his “appeal for summary judgment”, the speaking notes do not address why the Case Management Judge lacked jurisdiction to make the Order now before the Court. The Applicant’s record was devoid of arguments. So are the speaking notes.

[45] The Applicant failed his burden to show that the Case Management Judge acted outside of his jurisdiction. A case management judge is assigned to assist in the management of a proceeding. In the case at hand, the Applicant refused systematically to abide by the rules that govern proceedings. The grounds on which the decision to dismiss the application for delay are said by the Applicant to be defective: but they are not articulated in the Applicant’s record or in his supplementary speaking notes. While the Order of October 25, 2022 provides for a path to reach the merits of the application, the Applicant spends the time needed to file the material required by the Order on issues that have nothing to do with the task at hand: he submits motions that are refused repeatedly for not following the *Federal Courts Rules*. The result is that the peremptory deadline comes and goes, as if it had not been set by the Case Management Judge.

[46] Mr. Kimaev appears to have operated under two possible misapprehensions. One is that the Respondents did not appear validly on June 25, 2022, shortly after he filed his judicial review application. He seems to believe that he can therefore be the beneficiary of a default judgment without even addressing the merits of his case. The second misapprehension stems from the fact that default proceedings are available under the Rules in cases of actions, not applications. Thus, he tries to turn his application into an action, but without even attempting to satisfy basic conditions. That leads to a decision of Associate Judge Ring of August 24, 2022, finding against Mr. Kimaev. But then, the Applicant seems to believe he can appeal the Order dismissing his attempt to turn a judicial review application into an action without having the reasons for the decision. As a matter of fact, the Motion for Appeal for Summary Judgment of August 31 did not limit itself to an appeal of the Order of August 24, but also sought conclusions relative to the notice of appearance of the Respondents (June 25), as well for the Court to summarily grant the motion for default judgment. That is evidently inappropriate. At any rate, the documents were not accepted for filing and are not before the Court.

[47] The Case Management Judge did not have much of a choice but to enforce his Order of October 25 after the Applicant failed to perform his duty in accordance with the Order. Instead of producing his requested record for his judicial review application, he chased something else. Mr. Kimaev has not shown how the Case Management Judge was wrong. Whether the standard of review is correctness or palpable and overriding error, the Applicant has not satisfied his basic burden to offer submissions that address why he should prevail in his appeal from the Order of November 22, 2020, which he appealed on November 24, and was allowed by Associate Judge Steele to proceed by accepting for filing his motion record.

[48] In his motion record of November 24, 2022, Mr. Kimaev says that he seeks to quash the Order of November 22, 2022. He also says that his motion is “to hear my motion filed by me to the local Federal Court Registry on November 11, 2022”. There is no such record before the Court as the Direction of Associate Judge Duchesne of November 18, 2022 refused the filing for the reasons I reproduced at paragraph 19 of my reasons for judgment. Indeed, at the hearing of January 12, 2023, the matter was not even addressed.

## VII. Conclusion

[49] The Court must therefore conclude that the appeal from the Order of Associate Judge Horne must be dismissed in view of the complete lack of articulation of reasons why the Order ought to be quashed.

[50] The Respondents sought costs. I note that Associate Judge Ring ordered costs in the amount of \$500, inclusive of disbursements and taxes, in her Order of August 31, 2022 dismissing the Applicant’s motion to allow his application for judicial review to be treated as an action. Given the circumstances of Mr. Kimaev, I believe that the same order as to costs should be made. Accordingly, costs fixed in an amount of \$500, inclusive of disbursements and taxes, are ordered in favour of the Respondents.

**JUDGMENT in T-1253-22**

**THIS COURT'S JUDGMENT is:**

1. The appeal of the Order of the Case Management Judge of November 22, 2022, is dismissed.
2. Costs in the amount of \$500, inclusive of disbursements and taxes, in any event of the cause are ordered against the Applicant in favour of the Respondents.

"Yvan Roy"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-1253-22

**STYLE OF CAUSE:** ANATOLY KIMAEV v MINISTER OF NATIONAL  
REVENUE AND MINISTER OF THE MINISTRY OF  
EMPLOYMENT AND SOCIAL DEVELOPMENT

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** JANUARY 12, 2023

**JUDGMENT AND REASONS:** ROY J.

**DATED:** FEBRUARY 6, 2023

**APPEARANCES:**

Anatoly Kimaev

FOR THE APPLICANT  
(ON HIS OWN BEHALF)

Mike Chen

FOR THE RESPONDENTS

**SOLICITORS OF RECORD:**

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FOR THE RESPONDENTS