Date: 20060913

Docket: T-1258-06

Citation: 2006 FC 1094

[ENGLISH TRANSLATION]

Montréal, Quebec, September 13, 2006

PRESENT: Richard Morneau, Esq., Prothonotary

BETWEEN:

AIR CANADA

Applicant

and

THE MINISTER OF TRANSPORTATION

and

THE TRANSPORTATION APPEAL TRIBUNAL OF CANADA

Respondent

Motion by the Respondent, the Minister of Transportation, to amend the Respondent's name and have the Applicant's affidavit struck, with costs.

REASONS FOR ORDER AND ORDER

[1] The application for a hearing made by the applicant under Rule 369(2) of the *Federal Courts Rules* (the Rules) regarding this motion by the respondent is dismissed because the Court considers that it can dispose of it based on the written records filed by the parties.

[2] As for the application to amend the style of cause so that the current respondent is replaced by the Attorney General of Canada, this application is dismissed because under Rule 303(1)(a), it is valid to consider that the Minister is effectively the other person directly affected by the order sought. Here, the Minister appears to be the one who was opposed, whose interests were in opposition to the applicant before the tribunal.

[3] As for the application to strike in full the affidavit sworn by the applicant in support of the merit of its application for judicial review, this application to strike is also dismissed for the following reasons.

[4] First, the respondent himself indicates that the first fifteen (15) paragraphs of that affidavit contain facts. We therefore cannot consider striking that affidavit in full on the grounds that the other paragraphs contain opinions and arguments.

[5] Second, the presence of paragraphs that contain opinions and arguments must be assessed in terms of striking under the inherent jurisdiction of this Court, as applied by Strayer J. in Bull (David) Laboratories (Canada) Inc. v. *Pharmacia Inc. et al.* (1994), 176 N.R. 48, at pages 54-5 (*Pharmacia*). I think that the teachings arising from this decision apply to our review, even if here the applicant is only seeking a partial striking of the applicant's record, and not the full striking of the application for review. I would even say that *Pharmacia* applies here especially, since only the striking of an affidavit is sought.

[6] In *Pharmacia*, Strayer J. only allowed for striking in judicial reviews to be sought in exceptional cases. Here is what the Court wrote about this matter at pages 54-5:

> This is not to say that there is no jurisdiction in this court either inherent or through rule 5 by analogy to other rules, to dismiss in summary manner a notice of motion which is so clearly improper as to be bereft of any possibility of success. (See e.g. *Cyanamid Agricultural de Puerto Rico Inc. v. Commissioner of Patents* (1983), 74 C.P.R. (2d) 133 (F.C.T.D.); and the discussion in *Vancouver Island Peace Society et al. v. Canada (Minister of National Defence) et al.*, [1994] 1 F.C. 102; 64 F.T.R. 127, at 120-121 F.C. (T.D.)). Such cases must be very exceptional and cannot include cases such as the present where there is simply a debatable issue as to the adequacy of the allegation in the notice of motion.
>
> (Emphasis added.)

[7] This is the same reasoning that Nadon J. from this Court followed in a decision dated August 13, 1996 (*Tom Pac Inc. v. Kem-A-Trix (Lubricants) Inc.*, docket T-1238-96, at page 5).

[8] In the case at hand, the aspects that the respondent seeks to correct through his motion do not represent under the circumstances aspects that can be seen as incorrect or unacceptable to the point of intervening in the process of an application for judicial review (see Strayer J.'s comments in *Pharmacia*, *above*, at pages 54-5). All applications for striking as part of an application for judicial review must be exceptional in order to promote one of the main objectives of such an application, i.e. giving merit to this application as soon as possible.

[9] This is what Strayer J. mentioned in *Pharmacia*:

> ... [T]he focus in judicial review is on moving the application along to the hearing stage as quickly as possible. This ensures that objections to the originating notice can be dealt with promptly in the context of consideration of the merits of the case.

(See also *Merck Frosst Canada Inc. et al. v. Minister of National Health and Welfare et al.* (1994), 58 C.P.R. (3d) 245, at page 248, et *Glaxo Wellcome Inc. et al. v. Minister of National*

Health and Welfare et al., unreported decision of this Court, September 6, 1996, docket T-793-96.)

[10] I believe that the respondent must settle for supporting the points raised by his motion in his factum in relation to Rule 309(2).

[11] For these reasons, the respondent’s motion will be dismissed, with costs in the cause.

ORDER

THE COURT ORDERS that the application for a hearing made by the applicant under Rule 369(2) of the *Federal Courts Rules* regarding this motion by the respondent be dismissed.

The respondent's motion to amend the respondent's name and to have the applicant's affidavit is dismissed, with costs in the cause.

The time set out in Rule 308 is extended to October 3, 2006.

"Richard Morneau"
Prothonotary

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1258-06
STYLE OF CAUSE:	AIR CANADA and THE MINISTER OF TRANSPORTATION and THE TRANSPORTATION APPEAL TRIBUNAL OF CANADA

WRITTEN MOTION REVIEWED AT MONTRÉAL WITHOUT APPEARANCE OF THE PARTIES

REASONS FOR ORDER BY:	PROTHONOTARY MORNEAU
DATED:	September 13, 2006

WRITTEN SUBMISSIONS BY:

Marc-André Fabien Jean-François Peyronnard	FOR THE APPLICANT
Pierre Lecavalier	FOR THE RESPONDENT

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