

Federal Court



Cour fédérale

Date: 20120323

Docket: T-250-11

Citation: 2012 FC 353

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, March 23, 2012

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

**MAURICE ARIAL (veteran – deceased)
MADELEINE ARIAL (surviving spouse)**

Applicants

and

THE ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR ORDER AND ORDER

I. INTRODUCTION

[1] First, the Court must point out that the present motion is a further stage in a long legal saga between the respondent, Madeleine Arial, the widow of veteran Maurice Arial, and Veterans Affairs Canada (VAC). Sonia Arial, the couple's daughter, who is not a lawyer, has represented her parents since 1999.

[2] It is also important to understand that the entire judicial system is bound by the legislative scheme.

II. LEGAL PROCEEDINGS

[3] Sonia Arial is filing a motion after judgment of the Federal Court pursuant to Rules 359 and 369 of the *Federal Courts Rules (Rules)* seeking the Court's directions within the meaning of Rule 54 of the *Rules*.

III. FACTS

[4] The Court refers to the facts in *Arial v Canada (Attorney General)*, 2011 FC 848 (*Arial*), rendered on July 8, 2011, in which the case was referred back to a differently constituted review panel for reconsideration.

[5] On November 1, 2011, a new hearing was held before the Veterans Review and Appeals Board (Board).

[6] The applicant received the Board's decision on January 4, 2012.

IV. ANALYSIS

[7] Rule 54 of the *Rules* cited by Ms. Arial does not grant this Court jurisdiction to make a final determination on the matter. In fact, Rule 54 does not address the issues raised here, but is rather,

simply a means of obtaining directions concerning the procedure to be followed (*Nash v Sanjel Cementers Ltd.*, [1999] FCJ No 1580).

[8] Given that a new hearing was held following the judgment rendered by this same Court on July 8, 2011, it should be noted that the appropriate remedy, if any, would be judicial review and not a motion after judgment.

[9] The Board's decision presents fundamentally different reasons than those on which this Court based the exercise of its power of judicial review on July 8, 2011.

[10] Consequently, the Court dismissed the present motion after judgment.

[11] Given the exceptional circumstances of this case, and keeping in mind, as was explained in *Arial*, that the respondent in this case was not acting with any intention of abusing the justice system, the Court will make no order as to costs.

ORDER

THE COURT ORDERS the dismissal of the motion, without costs.

“Michel M.J. Shore”

Judge

Certified true translation
Sebastian Desbarats, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-250-11

STYLE OF CAUSE: MAURICE ARIAL (veteran – deceased)
MADELEINE ARIAL (surviving spouse)

and

THE ATTORNEY GENERAL OF CANADA

**MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO, PURSUANT TO
RULE 369**

**REASONS FOR ORDER
AND ORDER:**

Shore J.

DATED: March 23, 2012

WRITTEN REPRESENTATIONS BY:

Sonia Arial FOR THE APPLICANTS

Marieke Bouchard FOR THE RESPONDENT

SOLICITORS OF RECORD:

SONIA ARIAL FOR THE APPLICANTS
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