Federal Court of Appeal | Cour d'appel fédérale

Date: 20260317

Docket: A-121-25

Citation: 2026 FCA 54

CORAM: **GLEASON J.A.**
MONAGHAN J.A.
GOYETTE J.A.

BETWEEN:

AZIZA ASHUROVA

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Toronto, Ontario, on March 10, 2026.

Judgment delivered at Ottawa, Ontario, on March 17, 2026.

REASONS FOR JUDGMENT BY: GLEASON J.A.

CONCURRED IN BY: MONAGHAN J.A.
GOYETTE J.A.

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REASONS FOR JUDGMENT

GLEASON J.A.

[1] The appellant appeals from the judgment of the Federal Court (*per* Blackhawk J.) in *Ashurova v. Canada (Attorney General)*, 2025 FC 428, dismissing her judicial review application. In that application, the appellant sought to set aside the November 20, 2023 decision of a Canada Revenue Agency (CRA) officer that found that the appellant was ineligible for the Canada Recovery Caregiving Benefit (the CRCB).

[2] The appellant also seeks to file a 73-page Notice of Constitutional Question that she recently forwarded to the Court. The respondent objects to its filing because the Notice was not served in a timely fashion on all provincial and territorial attorneys general, in violation of subsection 57(1) of the *Federal Courts Act*, R.S.C. 1985, c. F-7 (the *FCA*). The respondent adds that the Notice of Constitutional Question is deficient because it fails to adequately set out the grounds alleged in support of the claimed constitutional inoperability and invalidity of the provision in issue in this appeal. The respondent further asserts that this Court should not allow the Notice to be filed on appeal when it was not considered by the Federal Court.

[3] I will deal first with the issue of whether the appellant should be allowed to file the Notice of Constitutional Question before discussing the appeal. I conclude that the Notice should not be filed or considered by this Court for several reasons.

[4] First, it was not properly served in accordance with the requirements of subsection 57(1) of the *FCA* because service by mail on several of the provincial and territorial attorneys general was not effective before this appeal was heard on its scheduled hearing date. On this point, I underscore that, contrary to what the appellant asserts, she was not in any way misled or unfairly treated by counsel for the respondent regarding the requirements for service when she sought to file a similar Notice in the Federal Court. Counsel outlined for the appellant how to serve the Attorney General of Canada in response to the question her representative posed. Counsel went on to remind the appellant of the requirements of subsection 57(1) of the *FCA*. Counsel further directed the appellant to places where she could get more information about service requirements

for Notices of Constitutional Question and addresses for service for the provincial and territorial attorneys general. In my view, the response from counsel for the respondent was exemplary.

[5] Second, the appellant's proposed Notice of Constitutional Question is inadequate as it is unclear why the appellant asserts that section 17 of the *Canada Recovery Benefits Act*, S.C. 2020, c. 12, s. 2 (the *CRBA*) is *ultra vires* Parliament or is not consistent with the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c. 11 (the Charter). This provides a sufficient basis for striking a Notice of Constitutional Question, even after it has been properly served and filed: *Doug Kimoto v. Canada (Attorney General)*, 2011 FCA 291 at paras. 19–20; *Ewert v. Canada*, 2021 FC 1132 at para. 25.

[6] Third, the appellant's Notice should not be considered when it was not considered by the Federal Court. Absent exceptional circumstances, appellate courts will not consider constitutional arguments that are raised the first time on appeal: *Guindon v. Canada*, 2015 SCC 41, [2015] 3 SCR 3 at paras. 21–23; *Lukács v. Canada (Citizenship and Immigration)*, 2023 FCA 36 at para. 73; *O'Byrne v. Canada*, 2015 FCA 239 at para. 15. Here, there are no exceptional circumstances that warrant consideration of the Notice of Constitutional Question, especially since it is inadequate for the reasons already discussed.

[7] Moreover, the Federal Court did not make a reviewable error in declining to consider the Notice of Constitutional Question that the appellant sought to file in the Federal Court. While the Federal Court did err in saying that an affidavit of service in respect of the Notice had not been

filed, the affidavit of service that was filed establishes that the Notice of Constitutional Question was served only on the Attorney General of Canada, and not on any of the provincial and territorial attorneys general as required by subsection 57(1) of the *FCA*. Thus, while the Federal Court gave the wrong reason for declining to consider the Notice of Constitutional Question, it did not err in declining to consider the Notice because the Notice was not properly served.

[8] Thus, for these reasons, I would not allow the Notice of Constitutional Question to be filed before this Court and would not consider it.

[9] Turning to the appeal, different standards of review apply to different issues decided by the Federal Court. Its determinations on the evidentiary issues and on the Notice of Constitutional Question are reviewable under the normal appellate standards of review: correctness for questions of law and palpable and overriding error for questions of fact or mixed fact and law that do not contain an extricable legal issue: *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235 at para. 36; *Yeager v. Canada (Attorney General)*, 2020 FCA 176 at para. 24.

[10] However, in reviewing the Federal Court's dismissal of the judicial review application, this Court is required to determine whether the Federal Court selected the appropriate standard of review and whether it applied the selected standard correctly. Accordingly, for these issues, we essentially step into the shoes of the Federal Court and re-conduct the requisite analysis: *Northern Regional Health Authority v. Horrocks*, 2021 SCC 42, [2021] 3 S.C.R. 107 at paras. 10–12; *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2

S.C.R. 559 at paras. 45–47. That said, this Court does not ignore the reasons given by the Federal Court and, where they adequately address an appellant's arguments, the appellant bears a strong tactical burden on appeal: *Bank of Montreal v. Canada (Attorney General)*, 2021 FCA 189 at para. 4; *Sun v. Canada (Attorney General)*, 2024 FCA 152 at para. 4.

[11] The Federal Court was correct in finding that the November 20, 2023 decision of the CRA officer is reviewable under the reasonableness standard of review and that alleged breaches of procedural fairness are reviewable on a basis akin to correctness: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653 at paras. 10, 23; *Ebada v. Canada (Attorney General)*, 2026 FCA 47 at paras. 3–4; *Canadian Pacific Railway Company v. Canada (Attorney General)*, 2018 FCA 69 at paras. 44–56.

[12] I turn next to apply these standards to this appeal.

[13] On the evidentiary issues, the Federal Court did not err in declining to consider evidence that was not before the CRA officer. The general rule is that evidence that was not before an administrative decision-maker is not admissible in an application for judicial review: *Association of Universities and Colleges of Canada v. Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22, [2019] 1 FCR 121 at paras. 19–20. While there are limited exceptions to this general rule, none of them applies here. The evidence that the Federal Court refused to consider was all directed to the merits of the CRA officer's decision: it is inappropriate for such evidence to be considered in an application for judicial review, which is not a *de novo* review: *Bekker v. Canada*, 2004 FCA 186 at para. 11.

[14] On the Notice of Constitutional Question, for the reasons already given, the Federal Court did not commit a reviewable error in declining to consider it.

[15] As concerns the review of the CRA officer's decision finding the appellant ineligible for the CRCB, many of the appellant's arguments before this Court are irrelevant as they focus on the earlier decisions of the CRA that are not the subject of her judicial review application. As explained to the appellant during the hearing before this Court, the doctrine of *functus officio* does not apply to limit the CRA from providing reasons in its November 20, 2023 decision that were different from those it provided in earlier decisions. Section 30 of the *CRBA* provides the Minister of Employment and Social Development (in effect, in this case, the CRA) with authority to conduct a *de novo* review of a first-level decision at the request of a claimant. The appellant requested such a review. An additional review was conducted thereafter by agreement following the settlement of a previous judicial review application the appellant brought. That review led to the November 20, 2023 decision (which was the final CRA decision) and was a *de novo* review. This final CRA review cured any breaches of procedural fairness that might have previously occurred: *Higgins v. Canada (Attorney General)*, 2018 FCA 49 at para. 17; *McBride v. Canada (National Defence)*, 2012 FCA 181 at paras. 41–45.

[16] Likewise, any alleged denial of procedural fairness by the Federal Court is irrelevant in respect of the judicial review application as this Court conducts a *de novo* review: *Universal Ostrich Farms Inc. v. Canada (Food Inspection Agency)*, 2025 FCA 147 at para. 39 leave to appeal to SCC refused, 41922 (6 November 2025); *Haynes v. Canada (Attorney General)*, 2023 FCA 158 at paras. 14–16, leave to appeal to SCC refused, 41047 (6 June 2024). In any event, the

appellant has not established that the Federal Court violated her procedural fairness rights. The appellant has not proven that the Federal Court copied wording from the respondent's memorandum of fact and law. Further, even if it had, this would not necessarily give rise to a procedural fairness violation: *Cojocaru v. British Columbia Women's Hospital and Health Centre*, 2013 SCC 30, [2013] 2 S.C.R. 357 at paras. 36, 42–49.

[17] On the procedural fairness issues raised by the appellant that might be relevant, I find there was no violation of procedural fairness by the CRA in the process that led to the November 20, 2023 decision, largely for the reasons given by the Federal Court. The appellant knew the case she had to meet, which was discussed with her lawyer, and was provided with the opportunity to make submissions.

[18] The appellant also says that the CRA violated her procedural fairness rights when it questioned the appellant during a telephone call without an interpreter. This submission is without merit as it was the appellant's lawyer and not the CRA who had agreed to arrange for an interpreter, and, when one was not found, the appellant and her lawyer agreed to proceed with the telephone interview with the CRA officer without an interpreter. The CRA cannot be faulted for proceeding to question the appellant without an interpreter when she and her lawyer agreed to this occurring, without objection.

[19] Nor can the CRA be reproached for any alleged failure to accommodate any disability that might be suffered by the appellant as it had no idea of any intellectual deficits that the appellant might face. This information was never provided to the CRA.

[20] I accordingly find that there was no violation of the appellant's rights to procedural fairness.

[21] As concerns the reasonableness of the CRA's decision, once again, largely for the reasons given by the Federal Court, the decision was reasonable. In short, by her own admission to the CRA, the appellant was not working as either an employee or on a self-employed basis immediately before she decided she needed to stay home to care for her newborn. Under subparagraph 17(1)(f)(i) of the *CRBA*, to be entitled to the CRCB, a claimant must have lost work or self-employed hours to care for a child. This was not the appellant's case: the evidence before the CRA showed that she was not working or engaged in a self-employed endeavour when her child was born. It was therefore reasonable for the CRA officer to have found that she was not entitled to the CRCB.

[22] Finally, the appellant's written submissions raise arguments about alleged misfeasance in public office, which are without merit. Likewise, her allegations in those submissions of a breach of the Charter fail as they are vague and lack an adequate factual foundation, which must exist to support an alleged breach of the Charter: *Mackay v. Manitoba*, 1989 CanLII 26 (SCC), [1989] 2 S.C.R. 357 at p. 361.

[23] I would therefore dismiss this appeal, with costs, which should be awarded to the respondent given the entirely unmeritorious arguments raised by the appellant before this Court.

"Mary J.L. Gleason"
J.A.

"I agree.
K.A. Siobhan Monaghan J.A."

"I agree.
Nathalie Goyette J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-121-25
STYLE OF CAUSE:	AZIZA ASHUROVA v. ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	TORONTO, ONTARIO
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CONCURRED IN BY:	MONAGHAN J.A. GOYETTE J.A.
DATED:	MARCH 17, 2026

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