

Federal Court



Cour fédérale

**Date: 20210812**

**Docket: T-1513-20**

**Citation: 2021 FC 839**

**Ottawa, Ontario, August 12, 2021**

**PRESENT: The Associate Chief Justice Gagné**

**BETWEEN:**

**PETER WILLIAM MUDIE**

**Applicant**

**and**

**THE ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] Mr. Peter William Mudie applied for an Old Age Security pension on September 17, 2018. His request was originally denied on the basis that he did not meet the residency requirement. However, his application was sent to the International Operations Office for further review to determine whether he would meet the residency conditions under Canada's Social Security Agreement with the United States.

[2] As a result, he received confirmation that he was entitled to a pension but that based on his residency, he had the option to receive a pension as soon as he qualifies, or to delay it for an increased pension amount.

[3] Mr. Mudie disagreed with the residency determination and all of the choices given to him and made a request for reconsideration. Since he did not receive a reconsideration decision from Service Canada, Mr. Mudie applied to the General Division of the Social Security Tribunal [General Division] for a writ of *mandamus*. The General Division informed him that his application could not be accepted in the absence of a reconsideration decision and closed the file. Mr. Mudie then filed an appeal before the Appeal Division of Social Security Tribunal [Appeal Division].

[4] The Appeal Division first noted that since the decision of the General Division was not a summary dismissal found in section 53(1) of the *Department of Employment and Social Development Act* and section 22 of the *Social Security Tribunal Regulations*, leave to appeal was required. The Appeal Division then noted that unless the appeal has no reasonable chance of success, leave must be granted.

[5] On the merits of the appeal, the Appeal Division found that when Service Canada refuses to issue a reconsideration decision, such refusal is in itself a reconsideration decision that grants the General Division jurisdiction over the matter. Consequently, the Appeal Division found that there was at least an arguable case that the General Division made an error of jurisdiction by failing to consider Mr. Mudie's application, and granted leave to appeal.

[6] In spite of the fact that the appeal might have been rendered moot when Service Canada did issue its reconsideration decision, the Appeal Division considered the extensive delays to date and decided that the appeal would proceed.

[7] Still unsatisfied, Mr. Mudie filed for judicial review of the decision of the Appeal Division.

[8] By way a motion to strike the application, the Attorney General of Canada [AGC] submits that the application is immaterial, redundant, moot and, “its furtherance in light of the multiple other simultaneous proceedings constitutes an abuse of this Court’s process.” The AGC also requests that the style of cause be amended to leave him as the sole defendant to this application.

[9] Mr. Mudie takes the position that the AGC motion should be dismissed. He argues that the motion is defective on its face and that the facts of this case do not justify a summary dismissal of his application. He argues that:

The AGC suggests that the abuse has arisen because this Application has been subsumed into the more recent Notice of Application for Judicial review of the final decision of the Appeal Division of the Social Security Tribunal filed before the Federal Court of Appeal on April 12, 2021;

The AGC’s motion relies on affidavit evidence, which is generally not admissible in support of a motion to strike;

His Application for judicial review is not a pleading as contemplated by Rule 221 of the *Federal Courts Rules*;

The AGC’s motion is premature because on March 27, 2021, Mr. Mudie filed a Notice of Appeal to the General Division of the of the Social Security Tribunal; Absent exceptional circumstances,

parties cannot proceed to the Federal Court until all adequate remedial recourses in the administrative process have been exhausted;

The Application for judicial review is not moot; the remedy sought by this Application is a re-examination of the Appeal Division's dismissal of Mr. Mudie's Petition filed on April 28, 2020.

Mr. Mudie states that there is a matter pending before the General Division but not before the Appeal Division; Mr. Mudie states that the dispute underlying this Application is the grant of a full pension, which is still a live issue;

The Application for judicial review raises matters of public interest preventing it from being struck out.

## II. Analysis

[10] The Federal Court's jurisdiction to strike a notice of application flows from its plenary jurisdiction to restrain the misuse or abuse of Courts' process (*Canada (National Revenue) v RBC Life Insurance Company*, 2013 FCA 50; *Canada (National Revenue) v JP Morgan Asset Management (Canada) Inc.*, 2013 FCA 50 at para 48).

[11] The test to strike out a pleading is whether it is plain and obvious on the facts pleaded that the claim has no reasonable prospect of success. The power to strike out an application is a "valuable housekeeping measure essential to effective and fair litigation" (*R v Imperial Tobacco Canada Ltd*, 2011 SCC 42, at paras 17 and 19).

[12] In order to assess whether the Court should exercise its jurisdiction to strike the application for judicial review for mootness, it needs to consider the following decisions that were rendered and proceedings that were filed since the decision under review was issued on November 18, 2020:

On December 11, 2020, Service Canada issued its reconsideration decision;

On March 10, 2021, the Appeal Division issued its decision on the question as to whether a reconsideration decision was required to grant the General Division jurisdiction over the matter; The Appeal Division found that the Appeal was rendered moot by the issuance of Service Canada reconsideration decision, and that there was no reason to exercise its discretion to address a moot issue; The Appeal Division finally reminded Mr. Mudie that the deadline to appeal the December 11, 2020 decision at the General Division was “approaching very soon”;

On April 12, 2021, Mr. Mudie filed a Notice of Application for judicial review of the March 10, 2021 Appeal Division’s decision before the Federal Court of Appeal (file A-105-21).

[13] Mr. Mudie is fundamentally asking the Court to quash an interlocutory decision granting him leave to proceed with his appeal because it did not address all the grounds that he raised in his appeal, including granting him the benefit of a full pension.

[14] Mr. Mudie did obtain the requested remedy, his leave to appeal was granted and Service Canada did issue a reconsideration decision. If he did not agree with that reconsideration decision, his recourse would be to seek relief before the General Division.

[15] On the one hand, rendering a decision on the present application for judicial review would have no practical effect on Mr. Mudie’s rights and would result in a duplication of proceedings. On the other hand, striking this application for judicial review would not make issues raised by Mr. Mudie evasive of review. These issues are currently before the Federal Court of Appeal, which will review the decision rendered by the Appeal Division on the merits of Mr. Mudie’s appeal.

[16] The Court is of the view that allowing this application to proceed would violate principles such as judicial economy, consistency, finality and the integrity of the administration of justice.

[17] As a consequence, this application will be struck out in its entirety without leave to amend.

**THIS COURT'S JUDGMENT is that:**

1. The Respondent's motion is granted;
2. The style of cause is amended to add the Attorney General of Canada as the sole Respondent;
3. The Applicant's application for judicial review is struck out in its entirety, without leave to amend;
4. No costs are granted.

"Jocelyne Gagné"  
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Associate Chief Justice

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

**DOCKET:** T-1513-20

**STYLE OF CAUSE:** PETER WILLIAM MUDIE v THE ATTORNEY  
GENERAL OF CANADA

**MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO PURSUANT TO  
RULE 369 OF THE *FEDERAL COURTS RULES***

**JUDGMENT AND REASONS:** GAGNÉ ACJ

**DATED:** AUGUST 12, 2021

**WRITTEN REPRESENTATIONS BY:**

Peter William Mudie

FOR THE APPLICANT

Hilary Perry

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Attorney General of Canada  
Gatineau, QC

FOR THE RESPONDENT