

Federal Court



Cour fédérale

Date: 20220602

Docket: T-1810-21

Citation: 2022 FC 792

[ENGLISH TRANSLATION]

Ottawa, Ontario, June 2, 2022

PRESENT: The Honourable Mr. Justice Bell

BETWEEN:

PIERRETTE BOUDREAU

Applicant

and

CANADA REVENUE AGENCY (CRA)

Respondent

ORDER AND REASONS

I. Nature of the matter

[1] The applicant, Ms. Boudreau, has brought a motion in writing in this Court pursuant to section 369 of the *Federal Courts Rules*, SOR/98-106 (Rules) for

- (a) the respondent to provide transcripts and notes of telephone calls, and information (names and titles) associated with certain employee codes;

- (b) certain Canada Revenue Agency (CRA) employees to appear at the application hearing;
- (c) certain material to be treated as confidential;
- (d) leave to present her case to the Court in the absence of the respondent and its counsel; and
- (e) all [TRANSLATION] “confidential” material to be returned once the application for judicial review has been decided.

[2] For the reasons that follow, I am dismissing the motion. Ms. Boudreau is not entitled to any of the remedies sought.

II. Facts

[3] Ms. Boudreau is representing herself.

[4] Ms. Boudreau is self-employed. She describes herself as a [TRANSLATION] “wellness consultant”.

[5] Ms. Boudreau applied for and received the Canada Recovery Benefit (CRB) for the period from September 27, 2020, to June 5, 2021. She then reapplied for benefits for the period from June 6, 2021, to September 25, 2021.

[6] On March 19, 2021, her application was selected for an initial CRB eligibility review. On September 1, 2021, a compliance officer concluded that Ms. Boudreau was ineligible for the

CRB because she had failed to earn at least \$5,000 in employment income or net self-employment income in 2019, 2020, or the 12 months before the date of her first application.

[7] Ms. Boudreau requested a second eligibility review, which was conducted by a different compliance officer. This compliance officer determined that Ms. Boudreau was ineligible for the CRB because (1) she had not earned at least \$5,000 in employment income or net self-employment income in 2019, 2020, or the 12 months before she applied; and (2) she was able to work but was not seeking work (the Decision).

[8] On November 30, 2021, Ms. Boudreau filed an application for judicial review of the Decision.

[9] Ms. Boudreau and the respondent served affidavits on January 20, 2022, and February 16, 2022, respectively. Ms. Boudreau conducted a cross-examination on affidavit by serving written questions on March 10, 2022, to which the respondent responded on March 25, 2022.

[10] The respondent filed a motion record in response to this motion. The respondent opposes this motion, arguing that Ms. Boudreau is not entitled to any of the remedies sought.

III. Analysis

A. *Transcripts and notes of telephone calls, and information (names and titles) associated with certain employee codes*

[11] Subsection 317(1) of the Rules reads as follows:

Material from Tribunal

317 (1) A party may request material relevant to an application that is in the possession of a tribunal whose order is the subject of the application and not in the possession of the party by serving on the tribunal and filing a written request, identifying the material requested.

Matériel en la possession de l'office fédéral

317 (1) Toute partie peut demander la transmission des documents ou des éléments matériels pertinents quant à la demande, qu'elle n'a pas mais qui sont en la possession de l'office fédéral dont l'ordonnance fait l'objet de la demande, en signifiant à l'office une requête à cet effet puis en la déposant. La requête précise les documents ou les éléments matériels demandés.

[12] Ms. Boudreau wishes to obtain from the respondent [TRANSLATION] “the transcripts requested on cross-examination and the missing call notes”, as well as the names and titles of some of the respondent’s employees, who are identified by codes.

[13] I note at the outset that most of the information that appears to be requested in this case was provided by the respondent, through one of its employees, in its response to the written cross-examination initiated by Ms. Boudreau. The respondent’s employee listed the names and titles of the employees identified by codes (see responses to questions 1, 3, 9, 11 and 12), noted that the requested call notes were attached to an affidavit previously filed by the respondent (see

responses to questions 2 and 13), and stated that she was unaware of any transcripts of telephone calls between Ms. Boudreau and CRA employees. I note that it is unclear from the record whether any such transcripts exist.

[14] Ms. Boudreau clarifies in her written representations that she is seeking [TRANSLATION] “the transcript of the first five minutes of the call for the second review, by Mélanie Lajoie [on October 27, 2021, at 5:30 p.m. Eastern Time], and the transcript of the call on August 23, 2021, from Jennifer Morris” (i.e., [TRANSLATION] “the transcripts requested”). However, Ms. Boudreau does not identify the employees whose information she is seeking or the [TRANSLATION] “call notes” that are missing.

[15] Ms. Boudreau’s written representations in support of her motion allege that [TRANSLATION] “the relationship of trust with the CRA” was breached and that certain information she provided during calls with the respondent’s employees was disregarded or misinterpreted.

[16] This part of the motion must be dismissed. Although I believe there are a number of reasons to dismiss it, the most important one relates to the relevance of the material or information sought. The applicant has simply failed to establish how the material or information she is seeking (assuming that it exists and has not already been provided by the respondent) is relevant to her application for judicial review. The relevance of the material requested under section 317 of the Rules is a determinative factor. For the purposes of section 317 of the Rules, a document is relevant to an application for judicial review if it may affect the decision that the Court will make on the application (*Douze v Canada (Citizenship and Immigration)*, 2010 FC

1086 at para 19). An applicant may not request the transmission of any document which could be relevant in the hopes of later establishing relevance; the applicant has the burden of advancing the evidence justifying the request (*Canadian National Railway Company v Louis Dreyfus Commodities Ltd*, 2016 FC 101 at para 40).

[17] The decision that is the subject of the underlying application for judicial review is a determination that Ms. Boudreau is ineligible for the CRB because she (1) failed to earn at least \$5,000 in employment income or net self-employment income in 2019, 2020, or the 12 months before she applied; and (2) was able to work but was not seeking employment. In her notice of application, Ms. Boudreau states that the grounds for her application are (1) that the Decision contains errors of law and/or is patently unreasonable; and (2) that it is based on erroneous findings of fact because certain evidence was not admitted. In her motion record, Ms. Boudreau fails to establish how the documents and information she is seeking are relevant to the resolution of her application for judicial review. Therefore, she has failed to meet her burden.

B. *Appearance of certain Canada Revenue Agency (CRA) employees at the hearing*

[18] If her motion pursuant to section 317 of the Rules is not granted, Ms. Boudreau requests that the Court order Jennifer Morris, Cynthia Carruba and Jean-François Gélinas, three CRA employees, to appear as witnesses at the hearing.

[19] As a general rule, witnesses do not appear at hearings on applications for judicial review. However, section 316 of the Rules provides that, on motion, the Court may in special

circumstances authorize a witness to testify in court in relation to an issue of fact raised in an application.

[20] Ms. Boudreau's notice of motion, her affidavit and her written representations are silent on the need to have Ms. Morris, Ms. Carruba and Mr. Gélinas appear in court. Consequently, Ms. Boudreau has failed to establish any special circumstances warranting an order pursuant to section 316 of the Rules.

C. *Order of confidentiality*

[21] Ms. Boudreau seeks an order of confidentiality under section 151 of the Rules for the following material:

- [TRANSLATION] "all documents and annexes issued in the records of the applicant and [the respondent]";
- the written cross-examination and the respondent's response; and
- the requested transcripts; or, in the alternative,
- the content of the testimonies of Ms. Morris, Ms. Carruba and Mr. Gélinas.

[22] Ms. Boudreau states that this material contains confidential information. She [TRANSLATION] "refuses" to have them disclosed to the public. She claims that she [TRANSLATION] "would be seriously harmed if the motion for an order of confidentiality is denied". She submits that [TRANSLATION] "the [CRA's] comments are humiliating and degrading" and that the disclosure of the material in question would be harmful to her and her

[TRANSLATION] “business”. She also states that a person used her social insurance number to make a fraudulent employment insurance claim in June 2021.

[23] Section 151 of the Rules reads as follows:

Motion for order of confidentiality

151 (1) On motion, the Court may order that material to be filed shall be treated as confidential.

Demonstrated need for confidentiality

(2) Before making an order under subsection (1), the Court must be satisfied that the material should be treated as confidential, notwithstanding the public interest in open and accessible court proceedings.

Requête en confidentialité

151 (1) La Cour peut, sur requête, ordonner que des documents ou éléments matériels qui seront déposés soient considérés comme confidentiels.

Circonstances justifiant la confidentialité

(2) Avant de rendre une ordonnance en application du paragraphe (1), la Cour doit être convaincue de la nécessité de considérer les documents ou éléments matériels comme confidentiels, étant donné l'intérêt du public à la publicité des débats judiciaires.

[24] Ms. Boudreau is seeking an order that runs counter to the presumption that court proceedings should be open to the public. As Justice Norris stated in *Canada (Attorney General) v Ortis*, 2021 FC 737 at para 36:

The general rule is that justice should be carried out in courts that are open to the public and not in secret. Doing so helps to ensure the integrity of court proceedings, enhances the legitimacy of decisions, fosters public confidence in the court system, and promotes public understanding of the administration of justice. Open courts are a fundamental component of the rule of law. They

are also essential to the proper functioning of democratic forms of government. As well, because the news media often act as the eyes and ears of the public, the open court principle has an important constitutional dimension, engaging the rights guaranteed by section 2(b) of the *Charter*. These weighty considerations have given rise to a strong presumption that court proceedings and court records should be open to the public

[25] To obtain an order limiting the openness of court proceedings, a person must establish that

1. court openness poses a serious risk to an important public interest;
2. the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and,
3. as a matter of proportionality, the benefits of the order outweigh its negative effects.

(*Sherman Estate v Donovan*, 2021 SCC 25, 458 DLR (4th) 361 at para 38)

[26] Ms. Boudreau has not established how the material covered by the order sought, if the material were made [TRANSLATION] “public”, would pose a serious risk to an important public interest. The harm claimed is purely personal and speculative. Ms. Boudreau has therefore failed to meet the second step of the test. She has also failed to establish how the benefits of the order would outweigh its negative effects. The Court will not grant the order sought by Ms. Boudreau. [TRANSLATION] “Any person who brings a dispute before the courts, whether in family, commercial, administrative, tax or other matters, must expect that large parts of that person’s private life will become available to the public” (*Rémillard v Canada (National Revenue)*, 2022 FCA 63 at para 70). This is a simple reality that Ms. Boudreau must deal with in this case.

D. *Leave to present her case to the Court in the absence of the respondent and its counsel*

[27] Ms. Boudreau is asking the Court for leave to present her arguments at the hearing in the absence of the respondent.

[28] In support of obtaining such an order, Ms. Boudreau states that she [TRANSLATION] “needs reassurance”. In her affidavit, she further states:

[TRANSLATION]

I want to be able to relax and talk to the Court in private, away from the CRA and its representative, Dominique Gallant, who “vehemently defends the CRA’s interests”, answering all the questions that the Court would like to ask me in confidence.

[29] Neither the Rules nor New Brunswick provincial law provides for a party to present its case in the absence of the opposing party in an administrative matter. Ms. Boudreau has not invoked any legal principle or precedent that would justify the Court’s granting the order she seeks. This is a judicial review where the parties will debate the reasonableness of an administrative decision or the fairness of the process that led to it. This is not a criminal trial where, for example, the victim of a sexual offence must testify in the same room as the accused. While I appreciate the stress that Ms. Boudreau is experiencing, I do not see any special circumstances that would warrant the order sought.

E. *Return of material once the application for judicial review has been decided*

[30] Ms. Boudreau seeks an order [TRANSLATION] “that the affidavits and confidential documents be returned to the applicant and [the respondent] immediately once the application for judicial review has been decided”.

[31] The Rules provide as follows with regard to retaining and returning exhibits and documents filed in a case:

Court file

23 (1) For each proceeding of the Court, the Administrator shall keep a file that is composed of the following documents, each marked with its date and time of filing, and that is organized by order of filing:

(a) every document filed under these Rules, an order of the Court or an Act of Parliament, other than affidavits or other material filed in support of a motion or as evidence at trial;

(b) all correspondence between a party and the Registry;

(c) all orders;

Dossier de la cour

23 (1) Pour chaque instance devant la Cour, l’administrateur tient un dossier dans lequel sont classés, selon la date et l’heure du dépôt qu’ils portent, les documents suivants :

a) tous les documents déposés en application des présentes règles, d’une ordonnance de la Cour ou d’une loi fédérale, à l’exception des affidavits et autres documents et éléments matériels déposés à l’appui d’une requête ou à titre d’éléments de preuve à l’instruction;

b) toute la correspondance échangée entre une partie et le greffe;

c) toutes les ordonnances;

(d) copies of all writs issued in the proceeding; and

d) des copies de tous les brefs délivrés dans le cadre de l'instance;

(e) such other documents relating to the proceeding as the Court may direct.

e) tout autre document relatif à l'instance que la Cour ordonne de conserver.

Annexes

Annexe

(2) The Administrator shall keep an annex to each Court file that is comprised of

(2) L'administrateur tient une annexe à chaque dossier de la Cour dans laquelle sont versés les éléments suivants :

(a) all affidavits;

a) tous les affidavits;

(b) all exhibits; and

b) toutes les pièces;

(c) all other documents and material in the possession of the Court or the Registry that are not required by these Rules to be kept in the Court file.

c) tous les autres documents et éléments matériels en la possession de la Cour ou du greffe dont les présentes règles n'exigent pas la conservation au dossier de la Cour.

(2) Before making an order under subsection (1), the Court must be satisfied that the material should be treated as confidential, notwithstanding the public interest in open and accessible court proceedings

Retention period

Période de conservation

23.1 The Administrator shall retain all files, annexes — other than the exhibits — and records that are required by these Rules to be kept for the period of time specified in the retention schedule established by the Court.

23.1 L'administrateur conserve pendant la période prévue dans le calendrier de conservation de la Cour les registres, les dossiers et les annexes, sauf les pièces, dont les présentes règles exigent la conservation.

Removal or deletion of documents

26(2) Nothing shall be removed or deleted from a Court file or annex except

(a) under an order of the Court;

(b) by an officer of the Registry acting in the course of his or her duties; or

(c) in accordance with rule 26.1.

Removal of exhibits from file

26.1(2) Subject to subsection (4), exhibits put into evidence shall remain part of the annex to the Court file either

(a) until the time for an appeal has expired, if no appeal has been taken, or

(b) until the appeal is disposed of, if an appeal has been taken.

Return of exhibits

(3) On the expiry of the time for appeal or on the disposition of the appeal, the Administrator shall return the exhibits to the respective solicitors or the parties who put the exhibits in evidence.

Retrait ou suppression de documents

26(2) Rien ne peut être retiré ou supprimé d'un dossier de la Cour ou de ses annexes sauf :

a) sur ordonnance de la Cour;

b) par un fonctionnaire du greffe dans l'exercice de ses fonctions;

c) en conformité avec la Règle 26.1.

Retrait des pièces

26.1(2) Sous réserve du paragraphe (4), les pièces mises en preuve demeurent à l'annexe du dossier de la Cour, selon le cas :

a) jusqu'à l'expiration du délai d'appel, si l'ordonnance n'est pas portée en appel;

b) jusqu'à ce que le jugement qui dispose de l'appel soit rendu, si l'ordonnance est portée en appel.

Remise des pièces

(3) À l'expiration du délai d'appel ou lorsque le jugement qui dispose de l'appel est rendu, selon le cas, l'administrateur rend les pièces aux avocats des parties ou aux parties qui les ont mises en preuve.

Return on consent

(4) At any time following judgment, on requisition by the solicitor or party who put an exhibit in evidence or the person who produced it and on the filing of the consent of all parties, the Administrator shall return the exhibit to the person making the requisition.

Remise sur consentement

(4) Après que jugement a été rendu, l'administrateur, sur demande écrite de la partie ou de l'avocat qui a mis des pièces en preuve ou de la personne qui les a produites et sur dépôt du consentement écrit de toutes les parties, rend les pièces à la personne qui a fait la demande.

[32] The affidavits and [TRANSLATION] “confidential documents” referred to by Ms. Boudreau are covered by paragraphs 23(1)(a) and 23(2)(a) of the Rules, respectively. They are not “exhibits” within the meaning of paragraph 23(2)(b) and therefore do not fall under the exception in section 23.1 or under section 26.1. Therefore, section 23.1 of the Rules applies.

[33] The retention schedule referred to in section 23.1 of the Rules was recently amended in the “Notice to the Parties and the Profession: Document Retention Schedule pursuant to Rule 23.1 of the *Federal Courts Rules*”, September 20, 2021 (“Notice”). The Notice states that the affidavits and [TRANSLATION] “confidential documents” referred to by Ms. Boudreau must be retained for at least seven years. The applicant has not established a proprietary interest or advanced any other valid reason to justify the removal of these documents before the time limit expires (*McCleery v Canada (Royal Canadian Mounted Police)*, [1974] 2 FC 361; *Chic Optic Inc v Fuji Optical Co* (1999), 180 FTR 6). Consequently, I will not grant the order sought by Ms. Boudreau.

F. *Costs*

[34] The respondent has requested costs, the amount of which it has not specified.

[35] Subsection 401(1) of the Rules provides that the Court may award costs of a motion in an amount fixed by the Court. Subsection 400(3) provides a non-exhaustive list of factors that the Court may consider in deciding whether to award costs to any party. I do not consider it necessary to reproduce them here. Given Ms. Boudreau's precarious financial situation, I do not consider that awarding costs to the respondent is appropriate in this case.

IV. Conclusion

[36] For these reasons, this Court will dismiss Ms. Boudreau's motion and make no order as to costs.

ORDER in T-1810-21

THIS COURT ORDERS as follows:

1. This motion is dismissed.
2. Without costs.

“B. Richard Bell”

Judge

Certified true translation
Michael Palles

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1810-21

STYLE OF CAUSE: PIERRETTE BOUDREAU v CANADA REVENUE
AGENCY (CRA)

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

ORDER AND REASONS: BELL J

DATED: JUNE 2, 2022

WRITTEN REPRESENTATIONS BY:

Pierrette Boudreau

ON HER OWN BEHALF

Dominique Gallant
Caitlin Ward

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada
Halifax, Nova Scotia

FOR THE RESPONDENT