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FEDERAL COURT JURISDICTION

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Appeal from decision of Associate Judge of Federal Court refusing to strike out application for judicial review filed by applicant — Application directed against decision of Canada Council for the Arts (Council) rejecting applicant's grant application — Applicant, professional French-language theatre, had applied to Council for grant under *Artistic Catalysts* component of *Engage and Sustain* program for 2020–2024 cycle — Council informed applicant application not accepted — Applicant filed application for judicial review — Defendant filed motion to strike out notice of application, arguing application for judicial review improper because (1) Council not meeting definition of “federal board, commission or other tribunal” of *Federal Courts Act*, R.S.C., 1985, c. F-7 (Act), s. 2(1), consequently, Court having no jurisdiction to hear application; (2) application filed after deadline — Associate Judge concluded issue raised by applicant debatable, striking out notice of application not justified by circumstances, justice better served by allowing judge hearing judicial review application to deal with issue — Issue whether Court erred in law by dismissing defendant's motion to strike out application for judicial review — Regarding Associate Judge's alleged error on whether Council “federal board”, defendant argued Associate Judge did not cite case law dealing directly with question, that should have been followed, i.e., *Toronto Independent Dance Enterprise v. Canada Council for the Arts*, [1989] 3 F.C. 516 (T.D.) (*Toronto Dance*) — Defendant also argued Court erred in not applying principles set out in case law to determine whether decision regarding public nature of Council subject to judicial review — Also argued Associate Judge bound to follow conclusion in *Toronto Dance* indicating Council not “federal board” — Court's conclusion in *Toronto Dance* as to Court's jurisdiction over Council not definitive — Could not be concluded that Associate Judge erred in not following case law — Regarding Court's possible jurisdiction to review Council's decision in present case, nuanced, detailed examination required of particular jurisdiction or power exercised and source of this jurisdiction or power — On this point, longstanding acceptance that particular entity can be amenable to judicial review in respect of certain actions or decisions, while other actions or decisions of that entity not amenable to such review — Accordingly, Associate Judge did not err, let alone commit palpable, overriding error in deciding that issue of whether Council “federal board, commission or tribunal” for purposes of present case better left to judge deciding merits of application for judicial review — Associate Judge did not err in her examination of motion to strike — Determining whether particular decision made by particular decision maker possibly subject to judicial review under Act, s. 18 complex task — First, case law recognizing that definition of “federal board, commission or other tribunal” in Act, s. 2(1) covers wide range of entities — Second, also necessary to determine whether decision at issue involves matters of public nature within meaning of administrative law — Associate Judge did not err in discussion of legal principles applicable to motions to strike — Also did not err in applying principles relating to motions to strike, in considering whether Council's decision subject to judicial review in Federal Court — Case of discretionary decision-making power involving weighing number of competing factors, no reason to overturn Associate Judge's decision to refer matter to Judge to hear case on its merits — Appeal dismissed

THÉÂTRE DU RIDEAU VERT V. CANADA (ATTORNEY GENERAL) (T-1547-20, 2024 FC 171, Pentney J., reasons for judgment dated February 29, 2024, 16 pp.)