



PRACTICE

PLEADINGS

Amendments

Motion requesting order to remove “mutual mistake” or “common mistake” by amending agreed statement of facts (ASF), paragraph 76¹ — Applicant seeking to replace “a requisite initial step for appointment” with “a step in the appointment process” — Proceeding herein rooted in Canadian Human Rights Tribunal decision (2014 CHRT 19) holding that Transport Canada discriminated against applicant on basis of disability in staffing process — Tribunal ordering Transport Canada to instate applicant, “subject to the required security clearance” — Applicant later filing notice of motion for contempt of Tribunal’s order — Parties filing ASF for use at hearing of contempt motion — That motion dismissed — Applicant appealing to Court pursuant to *Federal Courts Rules*, SOR/98-106 (Rules), r. 51 — Commencing present motion while Court considering r. 51 appeal — Applicant stating not having noticed error in ASF when decision for contempt motion rendered — Misreading paragraph 76, understanding it to mean, “a security clearance had to be submitted at some point, not that it had to be done first” — Respondent submitting that applicant agreed to ASF in 2019, cannot now resile from it — Whether ASF should be amended — Rules, r. 75 permitting party to amend a “document” under certain conditions— Frequent, varied use of “document” in Rules suggesting broad meaning — Question whether ASF filed with Court by parties in proceeding a “document” that may be amended under r. 75— ASF is such document — ASF sufficiently akin to, performs important functions like documents expressly contemplated or required to be filed by Rules, such as pleadings — Anomalous if Court could not address proposed amendments to ASF filed with it — ASF inherently quite different from commercial agreement entered into by parties in course of doing business, prior to litigation — R. 75 enabling Court to permit “a party” (singular) to amend document filed with it — Given nature of issues raised herein relating to mistake, use of “a” party in r. 75 not insurmountable barrier to present motion — R. 75 by its own terms or by analogy through r. 4, enabling Court to resolve current motion to amend ASF — Court’s decision in *Janssen Inc. v. AbbVie Corporation*, 2014 FCA 242 providing guidance on factors to consider in allowing amendment of document — Here, not in interests of justice to permit proposed amendment to ASF — Considerable time having passed since parties filed their ASF — Since its filing, both parties, Court having relied upon ASF generally, specifically upon paragraph 76 — Proposed amendment to ASF would cause prejudice to responding party, have apparent impact on Court’s decisions, process — Not possible to fashion terms under r. 75(1) that will protect respondent’s rights — Circumstances, evidence not supporting applicant’s submissions in substance concerning mistake relating to paragraph 76 — Applicant providing no basis to permit amendment to paragraph 76 based on a mistake — Motion dismissed.

HUGHES V. CANADA (HUMAN RIGHTS COMMISSION) (T-1315-18, 2020 FC 1096, Little J., reasons for order dated November 30, 2020, 26 pp.)

¹ As of the date of these Agreed Statement of Facts, Transport Canada has not received completed security forms from Mr. Hughes, a requisite initial step for appointment to the Marine Intelligence Analyst position.