

Federal Court of Appeal



Cour d'appel fédérale

Date: 20230123

Docket: A-355-21

Citation: 2023 FCA 15

**CORAM: STRATAS J.A.
LOCKE J.A.
GOYETTE J.A.**

BETWEEN:

RYAN LEWIS

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Ottawa, Ontario, on January 23, 2023.
Judgment delivered from the Bench at Ottawa, Ontario, on January 23, 2023.

REASONS FOR JUDGMENT OF THE COURT BY:

STRATAS J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Ottawa, Ontario, on January 23, 2023).

STRATAS J.A.

[1] Mr. Lewis appeals from the judgment dated December 9, 2021 of the Federal Court (*per* Pentney J.): 2021 FC 1385. The Federal Court dismissed Mr. Lewis' application for judicial review of a decision dated February 18, 2020 by the R.C.M.P. Conduct Appeal Adjudicator.

[2] This matter arose from an incident on February 14, 2018. Mr. Lewis' commanding officer found that Mr. Lewis' conduct during the incident was harassment. The commanding officer imposed certain conduct measures.

[3] The Conduct Appeal Adjudicator confirmed the commanding officer's finding of harassment. The Adjudicator did so on the grounds that the decision was not "clearly unreasonable" under subsection 33(1) of the *Commissioner's Standing Orders (Grievances and Appeals)*, S.O.R./2014-289. The Adjudicator found that the commanding officer considered Mr. Lewis' conduct objectively and considered it severe enough to constitute harassment and this was not "clearly unreasonable", which was the legislative standard to be applied. The Adjudicator rescinded the conduct measures imposed by the commanding officer due to a limitation period contained in subsection 42(2) of the *Royal Canadian Mounted Police Act*, R.S.C., 1985, c. R-10.

[4] The question before us is whether the Adjudicator's decision was reasonable within the meaning of *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653. On this, we substantially agree with the reasons of the Federal Court. The Adjudicator interpreted and applied the R.C.M.P.'s Harassment Policy and the *Commissioner's Standing Orders (Grievances and Appeals)* in an acceptable and defensible way. The basis for the Adjudicator's decision is evident from both the Adjudicator's reasons and the evidentiary record. We cannot re-weigh the evidence and substitute our findings of fact for those of the Adjudicator when conducting reasonableness review.

[5] Mr. Lewis alleges that the finding of harassment has severe consequences for him. In response, we agree with the Federal Court's comments on this at paragraphs 88-90 of its reasons. Nevertheless, in applying the reasonableness standard, we have taken note of *Vavilov* at paras. 133-135 and jurisprudence of this Court, such as *Walchuk v. Canada (Justice)*, 2015 FCA 85, 469 N.R. 360 at para. 33, *Canada (Attorney General) v. Boogaard*, 2015 FCA 150, 87 Admin. L.R. (5th) 175 at para. 49 and *Canada (Minister of Transport, Infrastructure and Communities) v. Farwaha*, 2014 FCA 56, [2015] 2 F.C.R. 1006 at paras. 90-92, to the effect that the reasonableness standard must be applied in a rigorous way where the impact of the administrative decision on an individual is high. In finding that the Adjudicator's decision was reasonable, we have done so.

[6] We would like to draw attention to the Federal Court's words at paragraph 89 and express our wish that care be taken in the future before visiting further consequences upon Mr. Lewis, said by the respondent to be "a dedicated, hard working and respected officer", arising from this one-off circumstance.

[7] The Federal Court found that the Adjudicator's decision on the limitation period was unreasonable. We are all of the view, substantially for the reasons of the Federal Court, that the limitation period applies only to conduct measures, not to findings, which we have here. The Adjudicator rescinded the conduct measures against Mr. Lewis, leaving in place mere findings. Thus, it is unnecessary for us to say more in this case about the limitation period issue.

[8] The Federal Court did find that the Adjudicator unreasonably concluded that the limitation period under subsection 42(2) had expired for the taking of “conduct measures” against Mr. Lewis. We need not determine this, as subsection 42(2) does not apply to “findings” and only findings were made against Mr. Lewis.

[9] Therefore, we will dismiss the appeal with costs fixed in the agreed, all-inclusive amount of \$1,500.

“David Stratas”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-355-21

**APPEAL FROM A JUDGMENT OF THE HONOURABLE MR. JUSTICE PENTNEY
DATED DECEMBER 9, 2021, DOCKET NO. T-767-20**

DOCKET: A-355-21

STYLE OF CAUSE: RYAN LEWIS v. ATTORNEY
GENERAL OF CANADA

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: JANUARY 23, 2023

**REASONS FOR JUDGMENT OF THE COURT
BY:** STRATAS J.A.
LOCKE J.A.
GOYETTE J.A.

DELIVERED FROM THE BENCH BY: STRATAS J.A.

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