

Federal Court of Appeal



Cour d'appel fédérale

Date: 20230630

Docket: A-172-22

Citation: 2023 FCA 153

**CORAM: DE MONTIGNY J.A.
ROUSSEL J.A.
GOYETTE J.A.**

BETWEEN:

ATTORNEY GENERAL OF CANADA

Appellant

and

BRUCE SCOTT

Respondent

Heard at Ottawa, Ontario, on June 28, 2023.

Judgment delivered at Ottawa, Ontario, on June 30, 2023.

REASONS FOR JUDGMENT BY:

ROUSSEL J.A.

CONCURRED IN BY:

**DE MONTIGNY J.A.
GOYETTE J.A.**

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REASONS FOR JUDGMENT

ROUSSEL J.A.

[1] The Attorney General of Canada (AGC) appeals from a judgment of the Federal Court (2022 FC 832) dated June 6, 2022, allowing Mr. Scott's application for judicial review of a decision of the Minister of Labour's delegate (Minister's Delegate). The Minister's Delegate found that she had no jurisdiction to investigate Mr. Scott's complaint relating to work place violence.

[2] Mr. Scott was employed as an officer with the Canada Border Services Agency (CBSA) at the Rainbow Bridge port of entry. On September 18, 2019, Mr. Scott filed a complaint with his employer, alleging an incident of work place violence that occurred at his place of employment, while he was off-duty. A few weeks later, he received a letter from his employer stating that the CBSA would not be taking any further steps with respect to the complaint as it was the CBSA's position that it was plain and obvious that the allegations fell outside the definition of work place violence.

[3] Dissatisfied, Mr. Scott filed a complaint to the Minister of Labour, through the Labour Program, based on the CBSA's refusal to appoint a competent person pursuant to subsection 20.9 [since repealed, SOR/2020-130, s. 41] of the *Canada Occupational Health and Safety Regulations*, SOR/86-304. On November 13, 2019, the Minister's Delegate "determined that the Labour Program [did] not have jurisdiction to investigate [the] complaint, as the subject matter of the complaint [fell] within the mandate of the Canadian Human Rights Commission" (Appeal Book at 119).

[4] The Federal Court concluded that the decision of the Minister's Delegate was unreasonable after determining that the Minister did not have discretion under section 127.1 of the *Canada Labour Code*, R.S.C. 1985, c. L-2 to decline to investigate the complaint on the basis that it fell within another decision-maker's jurisdiction. The Federal Court set aside the decision and referred it back to the Minister's Delegate for redetermination.

[5] The AGC submits that the Federal Court improperly allowed the application for judicial review by conflating the Minister's Delegate's role to investigate under subsection 127.1(9) of the Code with the competent person's role to investigate a work place violence complaint under section 20.9 of the *Regulations*. The AGC also claims that the Federal Court failed to follow the decision of this Court in *Canada (Attorney General) v. Public Service Alliance of Canada*, 2015 FCA 273, which established that the employer is not required to appoint a competent person where it is plain and obvious that the allegations do not relate to work place violence.

[6] The parties agree that since the judgment under appeal disposes of an application for judicial review, the role of this Court is to step into the shoes of the Federal Court and determine whether the Federal Court identified the correct standard of review and applied it properly. The Court's focus here is on the decision of the Minister's Delegate (*Northern Regional Health Authority v. Horrocks*, 2021 SCC 42 at paras. 10-12; *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at paras. 45-47).

[7] I would dismiss the appeal and allow the application for judicial review, but for reasons different from those of the Federal Court.

[8] The determinative issue in this appeal is whether the decision of the Minister's Delegate meets the requirements of a reasonable decision as set out in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65.

[9] In my view, it does not.

[10] Extensive or perfect reasons are not required for an administrative decision to be reasonable. However, the decision must be “based on an internally coherent and rational chain of analysis” (*Vavilov* at para. 85). It must also bear “the hallmarks of reasonableness – justification, transparency and intelligibility” and must be “justified in relation to the relevant factual and legal constraints that bear on the decision” (*Vavilov* at para. 99). The burden of demonstrating that the decision is unreasonable lies with the party challenging the decision (*Vavilov* at para. 100).

[11] In this case, the decision of the Minister’s Delegate lacks the requisite degree of justification, intelligibility and transparency.

[12] To begin with, the referral to the Canadian Human Rights Commission is incomprehensible as the complaint did not raise any discrimination issues.

[13] Furthermore, when Mr. Scott wrote to the Minister’s Delegate seeking clarification on her reference to the Canadian Human Rights Commission, she then indicated that he was “considered to be a traveller at the time of the event and not an employee” and that based on this information, the Labour Program could not take further action (Appeal Book at 122). There is no explanation as to why Mr. Scott would lose his status as an employee while off-duty.

[14] The AGC invited the Court to look to the activity log and assignment narrative report for further justification. While I acknowledge that reasons are to be “read holistically and contextually” and “in light of the record and with due sensitivity to the administrative regime in

which they were given” (*Vavilov* at paras. 97, 103), I consider the excerpts upon which the AGC relies to be conclusionary statements, devoid of further justification.

[15] In sum, the decision contains no analysis as to why the Minister’s Delegate did not have jurisdiction and the explanations that were provided were not sufficiently justified, intelligible and transparent for Mr. Scott, the complainant, to understand the reasoning behind the Minister’s Delegate’s refusal to investigate the complaint (*Vavilov* at para. 95). This is particularly troublesome given that the notion of “work place harassment” is very much driven by the context of each case.

[16] At the hearing, there was much discussion on the process that led to the Minister’s jurisdiction to consider the complaint. More particularly, the Court sought clarification on whether the complaint was proceeding under the process set out in section 127.1 of the Code or under section 20.9 of the *Regulations*, as they both existed at the time of the complaint. The Court questioned whether the different stages in the legislation had been followed in order for the Minister’s Delegate to have jurisdiction to consider the complaint. As this issue was not raised by the parties and the legislation has since been amended, I will not speculate as to whether or not the Minister’s Delegate was properly seized of the complaint.

[17] Despite the able submissions of counsel for the AGC, I have not been persuaded that the Minister’s Delegate’s decision meets the requirements of justification, intelligibility and transparency set out in *Vavilov*.

[18] Accordingly, I would dismiss the appeal as I agree with the Federal Court, although for different reasons, that the decision of the Minister's Delegate is unreasonable and must be set aside and the matter returned for redetermination. The redetermination shall be in accordance with these reasons and should engage with the issue of the Minister's Delegate's jurisdiction to consider the complaint. Mr. Scott shall be entitled to costs in the amount of \$4,500 all inclusive.

“Sylvie E. Roussel”

J.A.

“I agree.

Yves de Montigny J.A.”

“I agree.

Nathalie Goyette J.A. J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-172-22

STYLE OF CAUSE: ATTORNEY GENERAL OF
CANADA v. BRUCE SCOTT

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: JUNE 28, 2023

REASONS FOR JUDGMENT BY: ROUSSEL J.A.

CONCURRED IN BY: DE MONTIGNY J.A.
GOYETTE J.A.

DATED: JUNE 30, 2023

APPEARANCES:

Jena Montgomery
Alexandre Toso
FOR THE APPELLANT

Morgan Rowe
Emily McBain-Ashfield
FOR THE RESPONDENT

SOLICITORS OF RECORD:

Shalene Curtis-Micallef
Deputy Attorney General of Canada
FOR THE APPELLANT

RavenLaw LLP
Ottawa, Ontario
FOR THE RESPONDENT