

Federal Court



Cour fédérale

**Date: 20190924**

**Docket: T-582-18**

**Citation: 2019 FC 1215**

**Ottawa, Ontario, September 24, 2019**

**PRESENT: The Honourable Mr. Justice Gleeson**

**BETWEEN:**

**ALEXANDRU-IOAN BURLACU**

**Applicant**

**and**

**THE ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The applicant, Mr. Alexandru-Ioan Burlacu represents himself in this proceeding. He has brought this application pursuant to section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7 and section 51.2 of the *Public Servants Disclosure Protection Act*, SC 2005, c 46 [PSDPA]. He seeks judicial review of the February 22, 2018 decision of the Public Sector Integrity Commissioner

[Commissioner] not to investigate allegations of wrongdoing pursuant to subsection 24(1) of the PSDPA.

[2] Mr. Burlacu submits that by not proceeding with an investigation, the Commissioner incorrectly or unreasonably interpreted sections of the *Citizenship Act*, RSC 1985, c C-29, of the *Citizenship Regulations*, SOR/93-246, and the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. Further, Mr. Burlacu submits that in declining to investigate the allegations of wrongdoing, the Commissioner unreasonably interpreted and applied the PSDPA.

[3] The respondent submits the Commissioner reasonably declined to investigate as the disclosures did not include any wrongdoing as defined under the PSDPA.

[4] Mr. Burlacu has very capably and effectively set out his position before the Court in both written and oral submissions. However, I am unable to conclude that in declining to investigate the Commissioner has committed any error warranting the Court's intervention. The application is dismissed for the reasons that follow.

## II. Background

[5] Mr. Burlacu is a Senior Program Officer in the Case Review Unit, Inland Enforcement Operations and Case Management Division of the Canada Border Services Agency [CBSA]. In the course of his employment, he witnessed what he views to be wrongdoing under section 8 of the PSDPA. He raised his concerns with the CBSA but felt they were not taken seriously.

[6] As a result Mr. Burlacu applied for and was granted funding for legal advice under section 25.1 of the PSDPA. He then made three disclosures to the Commissioner pursuant to subsection 13(1) of the PSDPA. The disclosures were registered as PSIC-2017-D-0334 [Disclosure 334], PSIC-2017-D-0335 [Disclosure 335], and PSIC-2017-D-0336 [Disclosure 336].

[7] Disclosure 334 concerned a decision by the Immigration and Refugee Board [IRB] to detain an individual, identified as Mr. X by Mr. Burlacu to protect the individual's identity. Mr. Burlacu alleged the detention decision constituted wrongdoing under section 8 of the PSDPA as he was of the view that Mr. X was a Canadian citizen whose citizenship had not been revoked and that the detention decision was therefore contrary to the IRPA.

[8] Disclosure 335 concerned a decision to revoke Mr. X's citizenship on the basis that he obtained it by fraud. The applicant alleged that Immigration, Refugees and Citizenship Canada [IRCC] revoked Mr. X's citizenship relying on an analyst's affidavit that stated Mr. X had never been a citizen. The applicant argued that again the revocation constituted wrongdoing.

[9] Disclosure 336 involved a decision by IRCC not to issue travel documents to two permanent residents [the PRs] under subsection 31(3) of the IRPA. Mr. Burlacu submitted the failure to issue the travel documents was a breach of the IRPA as the PRs satisfied the statutory requirements for permanent residence, and it too constituted a wrongdoing under the PSDPA.

[10] By letter dated February 22, 2018, the Commissioner decided not to proceed with an investigation of the disclosures. That decision is the subject of this judicial review.

III. The Public Servants Disclosure Protection Act, SC 2005, c 46

[11] The PSDPA creates a disclosure regime that is intended to advance the public interest and enhance public confidence in the integrity of public servants by establishing effective procedures for the disclosure of wrongdoing, protecting those public servants who disclose wrongdoing and establishing a code of conduct for the public sector (preamble to the PSDPA).

[12] Section 8 of the PSDPA defines wrongdoing. The definition includes a contravention of any Act of Parliament or the legislature of a province, including any regulations made under any such Act and a serious breach of the code of conduct:

**Wrongdoings**

**8** This Act applies in respect of the following wrongdoings in or relating to the public sector:

**(a)** a contravention of any Act of Parliament or of the legislature of a province, or of any regulations made under any such Act, other than a contravention of section 19 of this Act;

**(b)** a misuse of public funds or a public asset;

**(c)** a gross mismanagement in the public sector;

**Actes répréhensibles**

**8** La présente loi s'applique aux actes répréhensibles ci-après commis au sein du secteur public ou le concernant :

**a)** la contravention d'une loi fédérale ou provinciale ou d'un règlement pris sous leur régime, à l'exception de la contravention de l'article 19 de la présente loi;

**b)** l'usage abusif des fonds ou des biens publics;

**c)** les cas graves de mauvaise gestion dans le secteur public;

<b>(d)</b> an act or omission that creates a substantial and specific danger to the life, health or safety of persons, or to the environment, other than a danger that is inherent in the performance of the duties or functions of a public servant;	<b>d)</b> le fait de causer — par action ou omission — un risque grave et précis pour la vie, la santé ou la sécurité humaines ou pour l'environnement, à l'exception du risque inhérent à l'exercice des attributions d'un fonctionnaire;
<b>(e)</b> a serious breach of a code of conduct established under section 5 or 6; and	<b>e)</b> la contravention grave d'un code de conduite établi en vertu des articles 5 ou 6;
<b>(f)</b> knowingly directing or counselling a person to commit a wrongdoing set out in any of paragraphs (a) to (e).	<b>f)</b> le fait de sciemment ordonner ou conseiller à une personne de commettre l'un des actes répréhensibles visés aux alinéas a) à e).
<b>(g)</b> [Repealed, 2006, c. 9, s. 197]	<b>g)</b> [Aborgé, 2006, ch. 9, art. 197]

[13] Section 12 of the PSDPA provides that a public servant may disclose to his or her supervisor or designated senior officer information that the public servant believes could show wrongdoing. Section 13 in turn provides this same information may be disclosed to the Commissioner except where information is subject to cabinet confidence or solicitor-client privilege:

<b>Disclosure to supervisor or senior officer</b>	<b>Divulgence au supérieur hiérarchique ou à l'agent supérieur</b>
<b>12</b> A public servant may disclose to his or her supervisor or to the senior officer designated for the purpose by the chief executive of the portion of the public sector in which the public servant is employed any	<b>12</b> Le fonctionnaire peut faire une divulgation en communiquant à son supérieur hiérarchique ou à l'agent supérieur désigné par l'administrateur général de l'élément du secteur public dont il fait partie tout

information that the public servant believes could show that a wrongdoing has been committed or is about to be committed, or that could show that the public servant has been asked to commit a wrongdoing.

renseignement qui, selon lui, peut démontrer qu'un acte répréhensible a été commis ou est sur le point de l'être, ou qu'il lui a été demandé de commettre un tel acte.

### **Disclosure to the Commissioner**

### **Divulgence au commissaire**

**13(1)** A public servant may disclose information referred to in section 12 to the Commissioner.

**13 (1)** Le fonctionnaire peut faire une divulgation en communiquant au commissaire tout renseignement visé à l'article 12.

### **Exception**

### **Restriction**

**13(2)** Nothing in this Act authorizes a public servant to disclose to the Commissioner a confidence of the Queen's Privy Council for Canada in respect of which subsection 39(1) of the *Canada Evidence Act* applies or any information that is subject to solicitor-client privilege. The Commissioner may not use the confidence or information if it is disclosed.

**13 (2)** La présente loi n'a pas pour effet d'autoriser le fonctionnaire à communiquer au commissaire des renseignements confidentiels du Conseil privé de la Reine pour le Canada visés par le paragraphe 39(1) de la Loi sur la preuve au Canada ou des renseignements protégés par le secret professionnel liant l'avocat à son client. En cas de communication de tels renseignements, le commissaire ne peut pas les utiliser.

[14] Section 22 of the PSDPA sets out the Commissioner's duties which include the receipt and review of wrongdoing disclosures for the purposes of determining if further action is required. Section 23 of the PSDPA provides that the Commissioner shall not deal with a disclosure or commence an investigation if the subject matter of the disclosure is being dealt with pursuant to another Act of Parliament other than as a law enforcement authority. Section 24

of the PSDPA provides that the Commissioner may also refuse to deal with a disclosure or commence an investigation where the Commissioner forms the opinion that one of the prescribed circumstances exist “or, there is a valid reason” for not dealing with the disclosure:

### **Duties**

**22** The duties of the Commissioner under this Act are to

**(a)** provide information and advice regarding the making of disclosures under this Act and the conduct of investigations by the Commissioner;

**(b)** receive, record and review disclosures of wrongdoings in order to establish whether there are sufficient grounds for further action;

**(c)** conduct investigations of disclosures made in accordance with section 13, and investigations referred to in section 33, including to appoint persons to conduct the investigations on his or her behalf;

**(d)** ensure that the right to procedural fairness and natural justice of all persons involved in investigations is respected, including persons making disclosures, witnesses and persons alleged to be responsible for wrongdoings;

**(e)** subject to any other Act of Parliament, protect, to the extent possible in accordance with the law, the identity of

### **Attributions**

**22** Le commissaire exerce aux termes de la présente loi les attributions suivantes :

**a)** fournir des renseignements et des conseils relatifs aux divulgations faites en vertu de la présente loi et à la tenue des enquêtes menées par lui;

**b)** recevoir, consigner et examiner les divulgations afin d'établir s'il existe des motifs suffisants pour y donner suite;

**c)** mener les enquêtes sur les divulgations visées à l'article 13 ou les enquêtes visées à l'article 33, notamment nommer des personnes pour les mener en son nom;

**d)** veiller à ce que les droits, en matière d'équité procédurale et de justice naturelle, des personnes mises en cause par une enquête soient protégés, notamment ceux du divulgateur, des témoins et de l'auteur présumé de l'acte répréhensible;

**e)** sous réserve de toute autre loi fédérale applicable, veiller, dans toute la mesure du possible et en conformité avec

persons involved in the disclosure process, including that of persons making disclosures, witnesses and persons alleged to be responsible for wrongdoings;

**(f)** establish procedures for processing disclosures and ensure the confidentiality of information collected in relation to disclosures and investigations;

**(g)** review the results of investigations into disclosures and those commenced under section 33 and report his or her findings to the persons who made the disclosures and to the appropriate chief executives;

**(h)** make recommendations to chief executives concerning the measures to be taken to correct wrongdoings and review reports on measures taken by chief executives in response to those recommendations; and

**(i)** receive, review, investigate and otherwise deal with complaints made in respect of reprisals.

#### **Restriction — general**

**23 (1)** The Commissioner may not deal with a disclosure under this Act or commence an

les règles de droit en vigueur, à ce que l'identité des personnes mises en cause par une divulgation ou une enquête soit protégée, notamment celle du divulgateur, des témoins et de l'auteur présumé de l'acte répréhensible;

**f)** établir des procédures à suivre pour le traitement des divulgations et assurer la confidentialité des renseignements recueillis relativement aux divulgations et aux enquêtes;

**g)** examiner les résultats des enquêtes menées sur une divulgation ou commencées au titre de l'article 33 et faire rapport de ses conclusions aux divulgateurs et aux administrateurs généraux concernés;

**h)** présenter aux administrateurs généraux concernés des recommandations portant sur les mesures correctives à prendre et examiner les rapports faisant état des mesures correctives prises par les administrateurs généraux à la suite des recommandations;

**i)** recevoir et examiner les plaintes à l'égard des représailles, enquêter sur celles-ci et y donner suite.

#### **Interdiction d'intervenir**

**23 (1)** Le commissaire ne peut donner suite à une divulgation faite en vertu de la présente loi



investigation under section 33 if a person or body acting under another Act of Parliament is dealing with the subject-matter of the disclosure or the investigation other than as a law enforcement authority.

### **Right to refuse**

**24 (1)** The Commissioner may refuse to deal with a disclosure or to commence an investigation — and he or she may cease an investigation — if he or she is of the opinion that

**(a)** the subject-matter of the disclosure or the investigation has been adequately dealt with, or could more appropriately be dealt with, according to a procedure provided for under another Act of Parliament;

**(b)** the subject-matter of the disclosure or the investigation is not sufficiently important;

**(c)** the disclosure was not made in good faith or the information that led to the investigation under section 33 was not provided in good faith;

**(d)** the length of time that has elapsed since the date when the subject-matter of the disclosure or the investigation arose is such that dealing with it would serve no useful purpose;

**(e)** the subject-matter of the disclosure or the investigation relates to a matter that results from a balanced and informed

ou enquêter au titre de l'article 33 si une personne ou un organisme — exception faite d'un organisme chargé de l'application de la loi — est saisi de l'objet de celle-ci au titre d'une autre loi fédérale.

### **Refus d'intervenir**

**24 (1)** Le commissaire peut refuser de donner suite à une divulgation ou de commencer une enquête ou de la poursuivre, s'il estime, selon le cas :

**a)** que l'objet de la divulgation ou de l'enquête a été instruit comme il se doit dans le cadre de la procédure prévue par toute autre loi fédérale ou pourrait l'être avantageusement selon celle-ci;

**b)** que l'objet de la divulgation ou de l'enquête n'est pas suffisamment important;

**c)** que la divulgation ou la communication des renseignements visée à l'article 33 n'est pas faite de bonne foi;

**d)** que cela serait inutile en raison de la période écoulée depuis le moment où les actes visés par la divulgation ou l'enquête ont été commis;

**e)** que les faits visés par la divulgation ou l'enquête résultent de la mise en application d'un processus

decision-making process on a public policy issue; or

décisionnel équilibré et informé;

(f) there is a valid reason for not dealing with the subject-matter of the disclosure or the investigation.

f) que cela est opportun pour tout autre motif justifié.

#### IV. The Decision under Review

[15] The Commissioner's reasons for not proceeding with an investigation into the allegations of wrongdoing were communicated to Mr. Burlacu by letter. The Commissioner's decision letter follows from an analysis of the three disclosures contained in a document entitled "Case Admissibility Analysis". The analysis concludes with a recommendation to the Commissioner that reflects the content of the decision letter.

[16] After summarizing the three disclosures made by Mr. Burlacu the Commissioner noted that in determining whether an investigation was warranted he was first required to assess whether the disclosures involved wrongdoing as defined in section 8 of the PSDPA and was also required to consider the restrictions and discretionary factors set out in sections 23 and 24 of the PSDPA.

[17] The Commissioner then turned to each of the three disclosures. He found he was not authorized to deal with the alleged unlawful detention of Mr. X (Disclosure 334) as this was an administrative decision under subsection 24(2) of the PSDPA. Mr. Burlacu does not take issue with the Commissioner's decision as it relates to Disclosure 334.

[18] In addressing Disclosure 335, the alleged unlawful revocation of citizenship, the Commissioner noted that IRCC and CBSA appeared to have the legislative authority to cancel Mr. X's citizenship certificate and to issue a removal order. The Commissioner noted that while Mr. Burlacu "may have disagreed" with IRCC's interpretation of its legislative authority, it appeared that IRCC's actions "were approved following consultations, which suggests an informed process." Therefore, there did not seem to be any wrongdoing under the PSDPA. The Commissioner also noted that Mr. X had recourse mechanisms available to him. Therefore, he declined to begin an investigation on the basis that there was a valid reason for not doing so (paragraph 24(1)(f) of the PSDPA).

[19] With respect to Disclosure 336, the Commissioner found that Mr. Burlacu's disagreement with the actions taken did not suggest wrongdoing had occurred under the PSDPA. He further noted that the PRs had recourse mechanisms available to them. The Commissioner again declined to investigate relying on paragraph 24(1)(f) of the PSDPA.

#### V. Preliminary Matter

[20] Mr. Burlacu seeks an Order pursuant to Rule 302 of the *Federal Courts Rules*, SOR 98-106 allowing him to challenge the Disclosure 335 and Disclosure 336 decisions in a single application. He submits that the Commissioner dealt with the disclosures together and that the grounds for judicial review in respect of the individual decisions are nearly identical.

[21] This Court has previously held that closely linked decisions, arising under the same statute, reached by the same decision maker and engaging similar legal questions may be treated

as a single decision and considered as part of a single application for judicial review (*Council of the Innu of Ekuanitshit v. Canada (Fisheries and Oceans)*, 2015 FC 1298 at para 49 and *Whitehead v Pelican Lake First Nation*, 2009 FC 1270 at paras 51–52).

[22] The two decisions in issue do engage similar legal issues, were rendered at the same time by the same decision maker under the same statute. In keeping with the principle set out at Rule 3—“[the] Rules shall be interpreted and applied so as to secure the just, most expeditious and least expensive determination of every proceeding on its merits”—Mr. Burlacu’s request that the two decisions be considered in a single application is granted.

## VI. Issues

[23] Mr. Burlacu has taken issue with a number of discreet elements of the Commissioner’s analysis in framing the issues. In my view only one issue arises:

- A. Was the Commissioner’s decision not to investigate Disclosure 335 and Disclosure 336 unreasonable?

## VII. Standard of Review

[24] Mr. Burlacu argues a correctness standard of review is to be applied to the Commissioner’s interpretation of the *Citizenship Act*, the *Immigration and Refugee Protection Act* and the *Citizenship Regulations*. He submits a reasonableness standard of review is to be applied to the Commissioner’s interpretation of the PSDPA and the decision not to investigate.

[25] A reviewing court need not embark upon a standard of review analysis where the standard has been previously settled (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 57 [*Dunsmuir*]). Prior jurisprudence has established that a standard of reasonableness applies when reviewing the decision of the Commissioner not to investigate (*Agnaou v Canada (Attorney General)*, 2014 FC 86 at para 19, affirmed *Agnaou v Canada (Attorney General)*, 2015 FCA 30 at para 35; also see *Detorakis v Canada (Attorney General)*, 2010 FC 39 at para 29).

[26] Mr. Burlacu points to the Commissioner's consideration of the *Citizenship Act* and the IRPA to argue that a correctness standard is to be applied to any conclusions reached in relation to the legislative authority or recourse mechanisms provided for in those regimes. I disagree. The Commissioner's role in this instance was to determine, in furtherance of the purposes and within the framework established by Parliament in the PSDPA, whether sufficient grounds have been disclosed to warrant an investigation.

[27] The exercise of the Commissioner's mandate will invariably arise within the context of an external statutory, regulatory or policy framework. For example in *Agnaou* the question arose within the context of the nature and scope of prosecutorial discretion; in *Detorakis* in the context of the access to information regime; and in *Canada (Attorney General) v Canada (Public Sector Integrity Commissioner)*, 2016 FC 886 in the context of the *Canadian Aviation Regulations*. The context does not change the nature or character of the Commissioner's decision nor does it impact the standard of review.

[28] The Commissioner's decision will be reviewed against the deferential reasonableness standard of review.

## VIII. Analysis

### A. *Applicant's Submissions*

[29] Mr. Burlacu argues that the Commissioner, in addressing Disclosure 335 erred in interpreting relevant sections of the *Citizenship Act* and the *Citizenship Regulations* relating to citizenship revocation. He submits that the Commissioner's decision is incorrect or unreasonable for two reasons. First, the Commissioner failed to consider jurisprudence and submissions to the effect that fraudulently obtained citizenship can only be lost through a decision of Cabinet and not by way of cancellation of a fraudulently obtained citizenship certificate. Second, the Commissioner failed to recognize that unless and until citizenship has been revoked by Cabinet the CBSA lacked the legislative authority to issue a removal order against Mr. X.

[30] In addressing Disclosure 336, he submits the Commissioner implicitly misinterpreted subsection 31(3) of the IRPA in finding IRCC and CBSA had not engaged in "wrongdoing". He submits that the subsection imposes a positive obligation to issue travel documents in the circumstances disclosed, that the language in subsection 31(3) is clear in this regard, that the Commissioner's implicit misinterpretation is contrary to section 11 of the *Interpretation Act*, RSC 1985, c I-21, and that the objectives of the IRPA do not sustain a contrary interpretation.

[31] Mr. Burlacu further argues that the Commissioner has an obligation to investigate disclosures unless the PSDPA requires the Commissioner to refuse to investigate or the Commissioner reasonably concludes one or more of the circumstances set out at paragraphs 24(1)(a) to (f) have been met. He acknowledges that paragraph 24(1)(f) provides the Commissioner with a broad discretion not to investigate where “there is a valid reason for not dealing with the subject matter of the disclosure” but argues, relying on the French version of paragraph 24(1)(f), that subsection (f) must be interpreted more narrowly than a plain reading of the English text would allow. A “valid reason” under paragraph 24(1)(f) must be a reason other than those enumerated in paragraphs (a) to (e). Mr. Burlacu submits that the Commissioner erred in relying on paragraph 24(1)(f) in support of his decision but citing reasons that were more in line with paragraphs 24(1)(a) and 24(1)(e).

[32] Mr. Burlacu also argues that the Commissioner’s failure to provide sufficient analysis to support the findings reached, failure to consider and address evidence relating to the revocation process, and the error in interpreting relevant statutory provisions relating to citizenship revocation and PR rights all render the decision unreasonable.

B. *Was the Decision Reasonable?*

(1) The legal validity of the actions underlying the wrongdoing disclosures

[33] The Commissioner has been charged by Parliament to review disclosures of alleged wrongdoing and to determine “whether there are sufficient grounds for further investigation”. I agree with the respondent’s submissions to the effect that this duty must be interpreted within the

broader context of the scheme and the objects of the PSDPA, which include the provision of a mechanism to bring wrongdoing within the federal public administration to light and to protect those who do so.

[34] In considering this mandate it is important to recognize that Parliament has not mandated the Commissioner to judicially review the decisions of other administrative decision makers, nor has the Commissioner been mandated to judicially interpret legislation. Rather, upon receipt of a disclosure, the Commissioner must determine whether further action is required. In fulfilling this duty the Commissioner considers and interprets the information relevant to the disclosure and, in doing so, may be required to engage in consideration of different statutory, regulatory or policy regimes. This was the case here. As previously noted, decisions of the Commissioner are subject to judicial review against a standard of reasonableness. A reviewing Court will consider whether the reasons are justified, transparent and intelligible and whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir* para 47). Judicial review of the Commissioner's decisions against this standard does not go so far as to engage the Court in reviewing the legal validity of a particular course of action or interpretation of a statute in a separate and distinct process by another official or administrative decision maker.

[35] In *Swarath v Canada (Attorney General)*, 2015 FC 963, the Commissioner declined to investigate a situation in which Health Canada allegedly destroyed the applicants' product without their consent. The Commissioner found there was no evidence that Health Canada destroyed the boxes. In the alternative, the Commissioner noted that if the boxes had been



destroyed, this was done with the permission of UPS, who would have had possession of the boxes at the time, and that this would be sufficient to constitute “consent” under the *Food and Drugs Act*, RSC 1985, c F-27. In addressing the alternative finding and the question of whether the conduct was legal, Justice Alan Diner held the proper recourse was judicial review of the underlying action:

[48] The Commissioner also noted, in the alternative, that if the boxes of Libidus had been destroyed, this was done with the permission of UPS and would be sufficient to constitute “consent” within the meaning of section 27(1) of the *Food and Drugs Act*. Given that there was no jurisprudence cited for legal requirements of obtaining consent under this provision, and that the matter has not been argued before me, this is a legal conclusion which may or may not be valid. To seek the answer to this legal issue, Health Canada’s alleged decision to request destruction of the boxes would need to be judicially reviewed. The judicial review at bar is the improper proceeding in which to review those actions, because this judicial review does not concern the actions of Health Canada, but rather the Commissioner’s decision to decline to investigate the alleged malfeasance. [Emphasis added]

[36] In this case, as in *Swarath*, judicial review of the decisions underlying Mr. Burlacu’s disclosures is the proper forum in which to address the legal validity of the citizenship revocation decision, the removal decision, and the decision to not issue travel documents. It is important to make clear that my finding in this regard does not insulate the Commissioner’s consideration and analysis of the requirements and obligations of the *Citizenship Act* and the IRPA from review. This forms part of the reasonableness review of the decision but it is not premised on the legal validity or invalidity of underlying actions.

(2) The interpretation and application of section 24(1)(f) of the PSDPA

[37] In concluding that disclosures 335 and 336 did not demonstrate wrongdoing as contemplated by the PSDPA, and that the disclosures would not be dealt with, the Commissioner found:

A. Disclosure 335:

- i. IRCC and CBSA had, he understood, the legislative authority to have cancelled the citizenship certificate and initiated the removal in issue;
- ii. That while Mr. Burlacu disagreed with the interpretation of those authorities the decisions were undertaken after consultation suggesting an informed process; and
- iii. That there were recourse mechanisms available to individuals affected by the decision;

B. Disclosure 336:

- i. Disagreement with the actions or interpretation of the IRPA does not suggest wrongdoing as contemplated by the PSDPA; and
- ii. That there were recourse mechanisms available to affected individuals not satisfied with IRCC or CBSA decisions.

[38] Mr. Burlacu takes issue with the scope and nature of the Commissioner’s analysis. I will first address the issue raised with respect to the interpretation of paragraph 24(1)(f). Paragraph 24(1)(f) states:

**Right to refuse**

**24 (1)** The Commissioner may refuse to deal with a disclosure or to commence an investigation — and he or she may cease an investigation — if he or she is of the opinion that

[...]

**(f)** there is a valid reason for not dealing with the subject-matter of the disclosure or the investigation.

**Refus d’intervenir**

**24 (1)** Le commissaire peut refuser de donner suite à une divulgation ou de commencer une enquête ou de la poursuivre, s’il estime, selon le cas :

[...]

**f)** que cela est opportun pour tout autre motif justifié.

[39] Mr. Burlacu argues that paragraph (f) cannot be read as an all-inclusive basket clause as it would render paragraphs (a) to (e) unnecessary. In support of this view, he notes that the French text uses the word “autre” in describing valid reasons for not dealing with the subject matter of a disclosure. Relying on the shared meaning rule of statutory interpretation, he submits the narrower meaning is to be adopted.

[40] In *Gupta v Canada (Attorney General)*, 2016 FC 1416, Justice Henry Brown addressed the interaction between paragraph 24(1)(f) and the paragraphs preceding it. Justice Brown acknowledged that the Commissioner relied on wording that was consistent with paragraph 24(1)(a) while relying on paragraph 24(1)(f) to not deal with the complaint. Justice Brown held

that a rationale that might be grounded in paragraphs (a) to (e) could also be relied upon to ground a finding in paragraph (f):

[44] Further, while paragraph 24(1)(f) was relied upon, the wording actually used by the Commissioner is drawn from paragraph 24(1)(a) [...] I see no reason in principle why the core rationale expressed in paragraph 24(1)(a), namely the availability of alternative recourse, may not equally ground a finding under paragraph 24(1)(f). As the Applicant argued, subsection 24(1)(f) is a form of “basket clause”.

[41] While the respondent accepts that the narrower meaning should normally prevail as expressing the intent of the legislature when interpreting bilingual legislation, it is argued that this application of the shared meaning rule is not to be preferred where its adoption will run contrary to the intent of the legislation (*Cie immobilière BCN Ltée v R*, [1979] 1 SCR 865 at para 116). I am persuaded by these submissions.

[42] In enacting the PSDPA Parliament’s intent was to establish effective procedures for the disclosure of wrongdoing and the protection of public servants and to balance these objectives against a public servant’s duty of loyalty and freedom of expression rights (PSDPA preamble). In pursuit of this balance Parliament has vested in the Commissioner broad discretionary powers including the ability not to deal with a disclosure that would otherwise satisfy the definition of wrongdoing. The Commissioner may refuse to deal with a disclosure where “there is a valid reason for not doing so”. This discretion has been described in the jurisprudence of this Court as being “extremely wide” and as granting “enormous latitude” to the Commissioner (*Detorakis* at para 106 and *Canada (Attorney General v Canada (Public Sector Information Commissioner)*, 2016 FC 886 at para 129).

[43] To adopt an interpretation of section 24 that failed to recognize the possibility for overlap between the enumerated reasons the Commissioner may refuse to deal with a disclosure at paragraphs 24(1)(a) to (e) and paragraph 24(1)(f) would, in my opinion, be contrary to the intent of the legislation.

(3) The reasonableness of the decision

[44] Mr. Burlacu advances a variety of arguments in support of the view that the decision is unreasonable. It is not my intent to address each individually.

[45] It will be helpful to first summarize some of the principles that a Court is to apply when conducting a reasonableness review:

- A. It is not the role of a reviewing court to reweigh and reassess the evidence considered by the decision maker (*Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 SCR 339 at para 64);
- B. Reasonableness review recognizes the legitimacy of several possible outcomes (*Dunsmuir* at para 47);
- C. Reasons are not to be impugned simply on the basis that they do not address all of the arguments a reviewing judge might prefer had been addressed, and a decision maker need not make an explicit finding on each constituent element leading to a final conclusion (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16 [*Newfoundland Nurses*]);

- D. A decision is to be approached as an organic whole; is the decision when viewed within the context of the record as whole reasonable? (*Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd*, 2013 SCC 34 and *Construction Labour Relations v Driver Iron Inc*, 2012 SCC 65);
- E. Perfection is not the standard for reasons; rather, the Court must consider whether the reasons, when read in light of the evidence before the decision maker and the decision maker's statutory task, adequately explain the bases for the decision (*Newfoundland Nurses* at para 18).

[46] I would further note that the broad discretion the Commissioner has been granted by Parliament suggests the Commissioner is owed a significant degree of deference in respect of the decisions made under sections 8 and 24 of the PSDPA.

[47] Mr. Burlacu takes issue with the lack of structure within the decision and argues that this undermines its intelligibility. Separate inquiries under sections 8 and 24 for example have been blended or at least not clearly delineated in the decision. He also takes issue with the Commissioner's failure to address all of the evidence and complete an analysis in support of the subsection 24(1) findings. For example, evidence indicating other IRCC officials shared Mr. Burlacu's interpretation of the citizenship revocation procedures required by the *Citizenship Act* and his views relating to the obligation to issue travel documents is not explicitly addressed.

[48] In sum, Mr. Burlacu argues that the decision suffers from a number of deficiencies. I agree. The decision is far from perfect. It would have been preferable had the Commissioner

more clearly delineated the analysis being undertaken and explicitly addressed and commented on all of the evidence provided with the disclosures. However, as noted above, perfection is not the standard a decision maker is required to satisfy to avoid intervention on judicial review.

Instead the question is whether the reviewing court can understand why the decision was made and to determine whether that conclusion is within the range of acceptable outcomes

(*Newfoundland Nurses* at paras 16–18).

[49] Having reviewed the reasons as a whole and having considered the record I am satisfied that the conclusions the Commissioner reached with respect to the disclosures (summarized at paragraph 37) were reasonably available to him. The conclusions are linked to the discretionary grounds Parliament has established in providing the Commissioner a broad discretion to refuse to deal with a disclosure.

[50] I understand, and to a degree share, Mr. Burlacu's wish that the Commissioner's decision reflected a more structured and detailed analysis. However the reasons disclose why the Commissioner exercised his discretion as he did and I am satisfied that the decision falls within the range of legally acceptable outcomes. The decision is reasonable.

#### IX. Costs

[51] The respondents seek their costs and have provided a Bill of Costs pursuant to Rule 407 and Tariff B, Column 3.

[52] Mr. Burlacu has not sought costs and asks that costs not be awarded against him. He bases his request on grounds that the interpretation issues he has raised are of importance and that he believes there is a public interest in having the Commissioner's decision reviewed.

[53] Rule 400 provides that the Court has full discretion over costs and identifies a number of factors the Court may consider. I have considered those factors placing particular emphasis on Rule 400(3)(h). In the circumstances I am not prepared to award costs.

X. Conclusion

[54] The motion is dismissed, no costs are awarded.

[55] Although not successful Mr. Burlacu is to be commended for having advanced comprehensive and well-developed submissions.



**JUDGMENT IN T-582-18**

**THIS COURT'S JUDGMENT is that:**

1. The application is dismissed;
2. Costs are not awarded.

\_\_\_\_\_  
"Patrick Gleeson"  
Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-582-18

**STYLE OF CAUSE:** ALEXANDRU-IOAN BURLACU v THE ATTORNEY  
GENERAL OF CANADA

**PLACE OF HEARING:** OTTAWA, ONTARIO

**DATE OF HEARING:** APRIL 10, 2019

**JUDGMENT AND REASONS:** GLEESON J.

**DATED:** SEPTEMBER 24, 2019

**APPEARANCES:**

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FOR THE APPLICANT  
(ON HIS OWN BEHALF)

Emma Skowron  
Helene Robertson

FOR THE RESPONDENT

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