Federal Court  Cour fédérale

Date: 20200131

Docket: T-732-19

Citation: 2020 FC 183

Ottawa, Ontario, January 31, 2020

PRESENT: Mr. Justice Gascon

BETWEEN:

CADOSTIN, MACKENZY

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Mr. Mackenzy Cadostin, seeks judicial review of a decision issued in April 2019 [Decision] by the Public Service Commission [Commission], finding that he had committed fraud in an appointment process within the federal public service. Following a thorough investigation undertaken pursuant to section 69 of the *Public Service Employment Act*, SC 2003, c 22 [PSEA], the Commission concluded that Mr. Cadostin had knowingly provided

false references and misrepresented information about his current supervisor during an appointment process for a CO-1 position [CO-1 Appointment Process]. This was the second instance, over a period of about seven months, where the Commission found that Mr. Cadostin committed fraud to obtain a public service position.

[2] Mr. Cadostin submits that the Commission's investigation process was flawed and breached the principles of procedural fairness as well as his rights under the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982,* being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [Charter], and that the Decision and corrective action ordered against him were unreasonable. Mr. Cadostin asks the Court to issue the following orders: that all decisions and corrective action of revoking his CO-1 position be quashed and set aside; that his position be re-established, along with all benefits and salary from the time of the revocation; that the Commission clears his name and his reputation with "everyone they sent their reports" to; and that damages and costs be awarded to him.

[3] The Defendant, the Attorney General of Canada [AGC], responds that Mr. Cadostin's application should be dismissed since the Commission's determination of fraud and the corrective action were reasonable, and the Commission's process was procedurally fair, fell within its jurisdiction and was entirely compliant with the Charter.

[4] Four issues need to be determined by the Court in this application for judicial review: 1) did the Commission's Decision fall within its jurisdiction; 2) were the Commission's Decision

and related corrective action reasonable; 3) was the Commission's process procedurally fair; and 4) did the Commission's Decision violate any of Mr. Cadostin's Charter rights.

[5] For the reasons that follow, I will dismiss Mr. Cadostin's application. In my view, it is clear that the Commission acted within its jurisdiction in undertaking the investigation on the CO-1 Appointment Process. I am also satisfied that the Decision and corrective measures imposed by the Commission were justified and intelligible, and that the ultimate finding of fraud was reasonable in light of the evidence assembled by the investigator and submitted to the Commission. The reasons detailed in the Decision and in the underlying investigation report demonstrate that the Decision is based on an internally coherent and rational chain of analysis and that it is justified in relation to the facts and law that constrain the Commission. Moreover, I conclude that the investigation and decision-making process followed by the Commission was procedurally fair, and that none of Mr. Cadostin's alleged Charter rights were violated. There are therefore no grounds to justify the Court's intervention.

II. Background

A. *Factual context*

[6] In January 2017, Mr. Cadostin applied for a CO-1 position with what is now Crown-Indigenous Relations and Northern Affairs Canada [CIRNAC]. At the time, he was employed by another federal government department, Agriculture and Agri-Food Canada, at the PM-1 level.

[7] Mr. Cadostin successfully completed a written examination and an interview for the contemplated position. In June 2017, he was asked by CIRNAC to provide three references, including his current supervisor. In response, Mr. Cadostin provided four references, but not his supervisor at the time, Mr. Mark De Luca. Mr. Cadostin did not tell CIRNAC that his supervisor was not among the four references he provided. He later explained that this exclusion was attributable to the fact that Mr. De Luca was harassing him at the time of the application. Three of the references provided by Mr. Cadostin were the same ones he used in another application he had made with Public Service and Procurement Canada [PSPC] in February 2017, as part of a different and separate appointment process for a position at the AS-4 level within PSPC [AS-4 Appointment Process].

[8] In August 2017, CIRNAC asked three of Mr. Cadostin's references to fill out a reference template provided by CIRNAC [Templates]. The purpose of this request was to verify some essential qualifications required for the CO-1 position, namely, ability to work in teams, interpersonal skills and reliability. The responses provided by the three references to the verification questions were all positive. As a result, Mr. Cadostin was placed in a pool of qualified candidates, and he was ultimately appointed to the CO-1 position in March 2018.

[9] At the time of his appointment to the CO-1 position, an investigation was already underway at the Commission with respect to the AS-4 Appointment Process [First Investigation] in which Mr. Cadostin had used the same references as in the CO-1 Appointment Process. Further to verifications conducted as part of its own AS-4 Appointment Process, PSPC had raised concerns about the authenticity of the references provided by Mr. Cadostin in that process,

and had referred Mr. Cadostin's file to the Commission. The Commission had started the First Investigation in November 2017. In light of this on-going First Investigation, the Commission therefore decided to initiate a second investigation pursuant to its authority under section 69 of the PSEA, concerning the possibility that Mr. Cadostin had likewise provided false references in the CO-1 Appointment Process [Second Investigation]. In May 2018, after Mr. Cadostin had been awarded the CO-1 position, the Commission informed Mr. Cadostin by mail that it was commencing the Second Investigation with respect to the CO-1 Appointment Process, to determine whether he had committed fraud in that hiring process.

[10] Following the completion of the First Investigation, the Commission concluded in September 2018 that Mr. Cadostin had committed fraud in the AS-4 Appointment Process by knowingly submitting false information regarding his references. Mr. Cadostin brought an application for judicial review of that decision before the Court, which was dismissed by Madam Justice Walker in a judgment dated September 23, 2019 (*Cadostin v Canada (Attorney General)*, 2019 FC 1198 [*Cadostin*]). Mr. Cadostin has now appealed this judgment to the Federal Court of Appeal.

B. *The investigation*

[11] The investigation for the CO-1 Appointment Process was conducted by Ms. Stéphanie Poitras [Investigator], who was also the appointed investigator in the First Investigation regarding the AS-4 Appointment Process. As part of her investigation, the Investigator deemed certain facts from the First Investigation, including witness testimony, to be relevant to her review of the CO-1 Appointment Process. Over the course of these two investigations, she

considered documentary evidence surrounding the references provided by Mr. Cadostin, and she interviewed Mr. Cadostin on two separate occasions. She also interviewed Mr. De Luca as part of the First Investigation, as well as two officials from CIRNAC who participated in the CO-1 Appointment Process [CIRNAC Managers] as part of the Second Investigation.

[12] In October 2018, the Investigator gave Mr. Cadostin a factual report summarizing the relevant facts from her investigation [Factual Report]. She invited Mr. Cadostin to provide comments and submissions on the facts and issues set out in the Factual Report. Mr. Cadostin sent detailed comments in late November 2018. The Investigator considered the comments received from Mr. Cadostin and, in January 2019, she completed her investigation report [Investigation Report]. An amended version of the Investigation Report was prepared in February 2019.

C. *The Investigation Report*

[13] The central findings of the Investigation Report can be summarized as follows.

[14] First, with respect to Mr. Cadostin's references, the Investigator noted the following points.

1) The Templates which were filled out by the three references contacted by CIRNAC in August 2017 contained numerous similarities, lacked crucial information regarding Mr. Cadostin's employment history (such as dates and duration of employment), and failed to provide the references' contact information (i.e., phone number or address).

2) The Investigator sent a Word document to Mr. Cadostin to obtain more information about his references, and she noticed that the document returned by Mr. Cadostin was last modified by the author "Proprio", who happened to be the same author who had last modified the Templates provided by the three references.

3) At his initial interview with the Investigator as part of the First Investigation, which was held in late January 2018, Mr. Cadostin testified that he had never contacted his references after asking them to fill out the Templates. However, after receiving the factual report for the First Investigation from the Investigator, Mr. Cadostin produced numerous email communications between him and his references showing that he had filled out the Templates, allegedly at the request of the references. Mr. Cadostin thus admitted that he had completed the Templates himself. He was however unable to provide the original versions of these email communications from June, July and August 2017, and only provided the forwarded versions. The Investigator therefore could not confirm the authenticity of these emails.

4) All four references used by Mr. Cadostin in the CO-1 Appointment Process provided personal email addresses from free online email providers, including "mail.com". A search on Mr. Cadostin's browsing history of his personal computer showed that he had logged in to "mail.com" on July 12, 2017, the same date one of the references had sent his completed Template using his "mail.com" account.

5) The Investigator attempted to contact each reference in the summer of 2018 to verify their identity, but none of them was willing to assist or effectively cooperated. They

either summarily refused by email, or ignored the Investigator's request. None agreed to speak with the Investigator by phone.

6) The Investigator was unable to link the references to their alleged respective business or employer through independent research.

[15] The Investigator thus determined it improbable that authentic references used for a job application would all fail to provide vital information such as their coordinates or the dates and duration of employment of a candidate, and would all refuse to speak to an investigator. She found Mr. Cadostin's testimony non-credible, contradictory and incoherent, and rejected his explanations regarding the references. She instead concluded that, on a balance of probabilities, the most likely explanation was that Mr. Cadostin had himself completed the Templates and had written all the emails originating from the email addresses of his alleged references. She therefore determined that, on a balance of probabilities and in light of the totality of the evidence, the references given by Mr. Cadostin were false.

[16] Second, the Investigator considered Mr. Cadostin's failure to provide his current supervisor as a reference, despite being specifically asked to provide it. Further to her review of the evidence, the Investigator determined that Mr. Cadostin intentionally excluded Mr. De Luca as a reference to avoid a negative recommendation. The Investigation Report indicates that Mr. De Luca had explained in the First Investigation that he would not have provided a positive reference had Mr. Cadostin asked him for one. The Investigator thus determined that Mr. Cadostin provided false information in the appointment process by omitting to include his current supervisor as reference.

[17] In light of the above, the Investigator concluded that Mr. Cadostin had committed fraud within the meaning of section 69 of the PSEA. She adopted the definition of fraud as set out by the Federal Court of Appeal in *Seck v Canada (Attorney General)*, 2012 FCA 314 [*Seck*]. This definition consists of two essential elements: 1) dishonesty, including the non-disclosure of important facts; and 2) deprivation or risk of deprivation. The Investigator found that Mr. Cadostin had been dishonest regarding both his references and Mr. De Luca, and that his behaviour compromised the integrity of the CO-1 Appointment Process, as CIRNAC had relied on these false references to place Mr. Cadostin in the pool of qualified candidates and to choose him for the CO-1 position.

D. *The Commission's Decision*

[18] In February 2019, the Investigation Report was presented to the Commission in order to receive its approval to consult Mr. Cadostin regarding the report and the proposed corrective action. The Commission granted permission, and the Investigation Report and proposed corrective action were thus provided to Mr. Cadostin for his comments. Mr. Cadostin was informed that his comments would be given to the Commission for consideration prior to its final decision. As for the Factual Report, Mr. Cadostin again submitted extensive comments in response to the Investigation Report.

[19] On April 16, 2019, after evaluating Mr. Cadostin's submissions on the Investigation Report, the Commission accepted the report and issued the Decision. The Commission noted that the investigation concluded that Mr. Cadostin had committed fraud in the advertised external CO-1 Appointment Process, by knowingly submitting false information during the reference

verification. The Commission stated that it had considered all of the comments received but that they did not contain new information warranting a modification in the Investigation Report or in the corrective action used for consultation. The Commission thus ordered the following corrective measures: 1) the revocation of Mr. Cadostin's CO-1 appointment at CIRNAC, following which Mr. Cadostin will cease to be employed in the federal public service; 2) a requirement that, for a period of three years from the signing of the Decision, Mr. Cadostin must obtain the Commission's written approval before applying for any position within the federal public service; and 3) for a period of three years from the signing of the Decision, a letter advising of the fraud committed by Mr. Cadostin would be sent to the Deputy Head of the relevant employer, if Mr. Cadostin obtains work through casual employment within the federal public service without first notifying the Commission.

[20] This is the Decision challenged by Mr. Cadostin in the present application for judicial review.

E. *Relevant statutory framework*

[21] The Commission is responsible for safeguarding the integrity of the appointment process and the principle of merit in the federal public service, as described in the preamble and subsection 30(1) of the PSEA. More specifically, section 69 of the PSEA empowers the Commission to investigate potential fraud in an appointment process and to revoke an appointment and take appropriate corrective action where it is satisfied that fraud has occurred. Section 69 reads as follows:

Fraud	**Fraude**
69. If it has reason to believe that fraud may have occurred in an appointment process, the Commission may investigate the appointment process and, if it is satisfied that fraud has occurred, the Commission may:	**69**. La Commission peut mener une enquête si elle a des motifs de croire qu'il pourrait y avoir eu fraude dans le processus de nomination; si elle est convaincue de l'existence de la fraude, elle peut :
(a) revoke the appointment or not make the appointment, as the case may be; and	a) révoquer la nomination ou ne pas faire la nomination, selon le cas;
(b) take any corrective action that it considers appropriate.	b) prendre les mesures correctives qu'elle estime indiquées.

F. *Standard of review*

[22] The Court has affirmed on numerous occasions that reasonableness is the standard of review applicable to the determination of whether fraud has been committed pursuant to section 69 of the PSEA, as it goes to the core of the Commission's mandate of safeguarding the federal public service appointment process, and the application and interpretation of the provision fall within the Commission's specialized expertise (*Dayfallah v Canada (Attorney General)*, 2018 FC 1120 [*Dayfallah*] at para 34; *MacAdam v Canada (Attorney General)*, 2014 FC 443 at paras 49-50). This was confirmed in the decision rendered by Justice Walker with respect to the AS-4 Appointment Process (*Cadostin* at para 20).

[23] That reasonableness is the appropriate standard has recently been reinforced by the Supreme Court of Canada in *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], where the majority of the Court set out a revised framework for determining the

standard of review with respect to the merits of administrative decisions (*Vavilov* at para 10). The majority of the Court in *Vavilov* articulated a new approach to determining the applicable standard of review, holding that administrative decisions should presumptively be reviewed on the reasonableness standard, unless either legislative intent or the rule of law requires otherwise (*Vavilov* at paras 10, 17). I am satisfied that neither of these two exceptions apply in the present case, and that there is no basis for derogating from the presumption that reasonableness is the applicable standard of review of the Commission's Decision.

[24] The principles emphasized in *Vavilov* were drawn in large measure from prior jurisprudence, particularly *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] and its progeny. Although the present application was argued prior to the release of *Vavilov*, the footing upon which the parties advanced their positions concerning the reasonableness of the Commission's Decision is consistent with the *Vavilov* framework. In these reasons, I have applied that framework in coming to the conclusion that the Commission's Decision is reasonable; however, the result would have been the same under the *Dunsmuir* framework.

[25] A reasonable decision "is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85; *Canada Post Corp. v Canadian Union of Postal Workers*, 2019 SCC 67 [*Canada Post*] at paras 2, 31). *Vavilov*'s revised framework for reasonableness requires the reviewing court to take a "reasons first" approach to judicial review (*Canada Post* at para 26). Where a decision-maker has provided reasons, the reviewing court must begin its inquiry into the reasonableness of the decision "by examining the reasons provided with 'respectful attention'

and seeking to understand the reasoning process followed by the decision maker to arrive at its conclusion" (*Vavilov* at para 84). The reasons must be read in light of the record as a whole and with due sensitivity to the administrative setting in which they were given (*Vavilov* at paras 91-94). However, "it is not enough for the outcome of a decision to be *justifiable* […] the decision must also be *justified*" (*Vavilov* at para 86).

[26] Before a decision can be set aside on the basis that it is unreasonable, the reviewing court must be satisfied that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100).

[27] An assessment of the reasonableness of a decision must be robust, but remain sensitive to and respectful of the administrative decision-maker (*Vavilov* at paras 12-13). Reasonableness review is an approach meant to ensure that the reviewing court only intervenes in administrative matters "where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process" (*Vavilov* at para 13). It is anchored in the principle of judicial restraint and in a respect for the distinct role and specialized knowledge of administrative decision-makers (*Vavilov* at paras 13, 75, 93). In other words, the approach to be followed by the reviewing court is still one of deference, especially with respect to findings of facts and the weighing of evidence. Absent exceptional circumstances, the reviewing court will not interfere with an administrative decision-maker's factual findings (*Vavilov* at para 125).

[28] Turning to the issues of procedural fairness, the approach to be taken has not changed following *Vavilov* (*Vavilov* at para 23). It has typically been held that correctness is the applicable standard of review for determining whether a decision-maker complies with the duty of procedural fairness and the principles of fundamental justice (*Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43).

[29] However, as rightly argued by counsel for the AGC, the Federal Court of Appeal has recently affirmed that questions of procedural fairness are not truly decided according to any particular standard of review. Rather, it is a legal question for the reviewing court, and the court must be satisfied that procedural fairness has been met. When the duty of an administrative decision-maker to act fairly is questioned or a breach of fundamental justice is invoked, it requires the reviewing court to verify whether the procedure was fair having regard to all of the circumstances (*Lipskaia v Canada (Attorney General)*, 2019 FCA 267 at para 14; *Canadian Airport Workers Union v International Association of Machinists and Aerospace Workers*, 2019 FCA 263 at paras 24-25; *Perez v Hull*, 2019 FCA 238 at para 18; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 [*CPR*] at para 54). This assessment includes the five, non-exhaustive contextual factors set out in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 [*Baker*] (*Vavilov* at para 77). It is up to the reviewing court to make that determination and, in conducting this exercise, the court is called upon to ask, “with a sharp focus on the nature of the substantive rights involved and the consequences for an individual, whether a fair and just process was followed” (*CPR* at para 54).

[30] It is well recognized that the requirements of the duty of procedural fairness are "eminently variable", inherently flexible and context-specific (*Vavilov* at para 77; *Dunsmuir* at para 79), and that they "[do] not reside in a set of enacted rules" (*Green v Law Society of Manitoba*, 2017 SCC 20 at para 53). The nature and extent of the duty will fluctuate with the various factual situations dealt with by the administrative decision-maker, as well as the nature of the disputes it must resolve (*Baker* at paras 23-27; *Suresh v Canada (Minister of Citizenship and Immigration*), 2002 SCC 1 at para 115). As the Federal Court of Appeal eloquently expressed it in *CPR*, "[n]o matter how much deference is accorded administrative tribunals in the exercise of their discretion to make procedural choices, the ultimate question remains whether the applicant knew the case to meet and had a full and fair chance to respond" (*CPR* at para 56).

[31] Therefore, the real question raised when procedural fairness and alleged breaches of fundamental justice are the object of an application for judicial review is whether, taking into account the particular context and circumstances at issue, the process followed by the decision-maker was fair and offered the affected parties a right to be heard and the opportunity to know and respond to the case against them (*Huang v Canada (Citizenship and Immigration)*, 2018 FC 940 at paras 51-54).

III. Analysis

[32] As was the case for the AS-4 Appointment Process, Mr. Cadostin is profoundly convinced that he committed no wrongdoing in the provision of his references in the CO-1 Appointment Process. His visceral discontent with the Decision and the entire investigation process is palpable in his submissions. He firmly believes that the Investigator, the Commission

and all persons involved in the First and Second Investigations have lied, bullied him, ignored his evidence, twisted his words and wilfully misrepresented his actions. In essence, he claims to be a victim of unjustified retaliatory measures and of a widespread conspiracy to evict him from the federal public service. His extensive written and oral submissions before the Court contain a chorus of heartfelt accusations voiced in a condemnatory fashion, where he repeatedly uses words such as “lies”, “misrepresentations”, “speculations”, “concealments” and “fabrications” to qualify what, in his view, the Investigator and the Commission have done to him.

[33] Mr. Cadostin’s submissions intermingle the various issues at stake in this judicial review and are at times difficult to decipher. In short, I understand that his arguments essentially boil down to the following. Mr. Cadostin claims that: 1) the Commission lacked jurisdiction to undertake the Second Investigation and issue the Decision; 2) the Decision was unreasonable in all respects; 3) the Commission’s investigation process was procedurally unfair throughout; and 4) the Commission’s investigation and Decision violated his Charter rights and created a double jeopardy situation. Each of these arguments will be dealt in turn.

A. *Preliminary issues*

[34] Some preliminary matters must, however, be addressed before dealing with the four main issues in dispute in Mr. Cadostin’s application. As was the case in the *Cadostin* decision, the admissibility of evidence tendered by Mr. Cadostin in support of his arguments was the focus of discussion at the outset of the hearing of this application before the Court.

[35] The AGC first submits that numerous paragraphs of Mr. Cadostin's affidavit are inadmissible because they contain opinion and legal argument, contrary to Rule 81(1) of the *Federal Court Rules*, SOR/98-106 which stipulates that affidavits shall be confined to facts within the personal knowledge of the deponent. The AGC argues that these paragraphs should be struck or, alternatively, that the Court should exercise its discretion to give them no weight or probative value (*Abi-Mansour v Canada (Attorney General)*, 2015 FC 882 at paras 30-31).

[36] It is well established that the Court may strike all or parts of affidavits where they are abusive or clearly irrelevant, or where they contain opinions, arguments or legal conclusions (*Canada (Attorney General) v Quadrini*, 2010 FCA 47 at para 18). Justice Walker reaffirmed this discretion in the context of the AS-4 Appointment Process (*Cadostin* at para 26). As was the case then, I agree that the paragraphs highlighted by the AGC contain Mr. Cadostin's opinions, arguments and legal conclusions regarding the issues before the Court and that, as such, they are not properly included in his affidavit. For the sake of efficiency, I have opted to exercise my discretion to give them no weight or probative value. However, I pause to observe that, as was the case in *Cadostin*, since Mr. Cadostin ended up repeating his arguments and legal opinions in his written and oral submissions, his position on the various issues at stake has been fully presented to the Court and has been taken into consideration in these reasons.

[37] The AGC also submits that many exhibits attached to Mr. Cadostin's affidavit are inadmissible, irrelevant or both. The AGC points more specifically to exhibits 1, 3, 5-10, 12-14, 16, 17, 21-23, 26-27, 30-31, 34, 35A, 35B, 36-37, 47-48, 48B, 55-58, 62C, 66, 66B, and 67-82 submitted by Mr. Cadostin. In essence, the AGC contends that these exhibits are either irrelevant

as they relate to the AS-4 Appointment Process, or inadmissible because they were not before the Commission when it issued the Decision on the CO-1 Appointment Process. The AGC reminds that the general rule in any application for judicial review is that materials which were not in front of the decision-maker cannot be considered by the reviewing court, except for limited exceptions (*Gittens v Canada (Attorney General)*, 2019 FCA 256 at para 14; *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 [*AUCC*] at paras 19-20). Those limited exceptions extend to materials that: 1) provide general background assisting in understanding the issues; 2) demonstrate procedural defects or a breach of procedural fairness; or 3) highlight a complete absence of evidence before the decision-maker (*AUCC* at paras 19-20; *Nshogoza v Canada (Citizenship and Immigration)*, 2015 FC 1211 at paras 16-18). The AGC claims that the exhibits he singled out do not meet any of these limited exceptions.

[38] I pause to point out that, contrary to what was the situation in the *Cadostin* case before Justice Walker, the AGC does not claim that some of Mr. Cadostin's exhibits should be excluded on the ground that they were not put before the Court by means of an affidavit, as they indeed were filed through Mr. Cadostin's affidavit and the AGC was not prejudiced on his ability to cross-examine in this case (*Cadostin* at para 32).

[39] I agree in part with the AGC's submissions on Mr. Cadostin's exhibits. It is not disputed that the evidence contained in Mr. Cadostin's exhibits, which is properly put before the Court as forming part of the Certified Tribunal Record [CTR] prepared by the Commission, is admissible and can be considered by the Court in these reasons. I also agree that those exhibits which were

not before the Commission and were not included in the CTR are inadmissible and cannot be factored in by the Court in assessing the lawfulness of the Decision in this judicial review, if they do not fit within one of the limited exceptions identified in *AUCC*.

[40] However, to the extent that Mr. Cadostin has brought himself within one of the limited exceptions set out in *AUCC*, his exhibits can be considered by the Court even if they were not before the Commission and are not part of the CTR. In this case, the only *AUCC* exception that could apply is the exception relating to materials potentially bringing evidence on procedural defects or breaches of procedural fairness. In his written and oral submissions, Mr. Cadostin has repeatedly raised issues of procedural fairness in the conduct and management of the CO-1 Appointment Process, and I acknowledge that some exhibits could assist the Court to the extent that they relate to the fairness of the investigation process. I am satisfied that the benefit to the Court in admitting these exhibits, however low, is not outweighed by the prejudice to the AGC and the fact that the evidence was not before the Commission.

[41] I make one additional specific observation with respect to the audiotape containing the recordings by the Investigator of Mr. Cadostin's interviews with her during the investigations on the AS-4 and CO-1 Appointment Processes. These audiotape recordings were attached to Mr. Cadostin's affidavit and to the affidavit of Ms. Marie LaTerreur filed by the AGC with his response. In his written submissions and at the hearing before the Court, Mr. Cadostin relied extensively on these recordings and indeed asked the Court to listen to many extracts during his oral submissions. It is not disputed that the audiotape itself was not in front of the Commission and does not form part of the CTR. However, to the extent that the audiotape recordings of his

interviews were used by Mr. Cadostin to support his assertions of breaches of procedural fairness, they have been considered by the Court in these reasons.

[42] Mr. Cadostin also complains about the fact that the audiotape was only sent to him after the completion of the investigation. I will come back later on this issue in my consideration of Mr. Cadostin's allegations of breaches of procedural fairness in the CO-1 Appointment Process, but I simply mention at this stage that, as was the case in the *Cadostin* decision, Mr. Cadostin was able to use the audiotape to refresh his memory of the interviews to prepare his submissions to the Court, including his submissions that the Investigator distorted his interview statements.

[43] I further note that, in support of his submissions, Mr. Cadostin also relied on the audio recordings of the Investigator's interviews with each of the two CIRNAC Managers. These audio recordings were also not before the Commission but they were attached to the affidavit of Ms. LaTerreur. Again, to the extent that Mr. Cadostin has used them to demonstrate a breach of procedural fairness in the investigation process leading to the Decision, they have been taken into account by the Court in these reasons.

B. *The Decision was within the Commission's jurisdiction*

[44] As a first substantive argument against the Decision, Mr. Cadostin submits that the Commission had to receive a prior complaint or a request from the employer conducting the appointment process (i.e., CIRNAC) before initiating an investigation. He claims that the Commission therefore lacked jurisdiction to start the Second Investigation on the CO-1 Appointment Process since CIRNAC never sought an investigation.

[45] With respect, this argument has no merit.

[46] Section 69 of the PSEA expressly grants the Commission a broad discretionary authority to start an investigation, "[i]f it has reason to believe that fraud may have occurred in an appointment process". No other requirements need to be satisfied. Nowhere does it state, in that provision or elsewhere in the PSEA, that a complaint must have been filed in order for the Commission to undertake a fraud investigation, or that some form of request for an investigation needs to have been made by the employer involved. Indeed, Mr. Cadostin could not point to any authority in support of his position.

[47] In *Seck*, the Federal Court of Appeal affirmed that section 69 of the PSEA is drafted broadly because its purpose is to protect the integrity of the appointment processes. For example, it is not necessary that an appointment result from alleged fraudulent acts in order for there to be fraud within the meaning of section 69 of the PSEA (*Seck* at paras 42-43). Furthermore, as reaffirmed by Justice Walker in the *Cadostin* decision, section 69 is different from other provisions of the PSEA, such as sections 66, 67 and 68, which require an actual or proposed appointment in order for corrective action to be taken (*Cadostin* at paras 44-45, citing *Seck* at paras 45-46).

[48] Nothing in the broad statutory grant of authority provided by section 69 of the PSEA precludes the Commission from investigating without a complaint or a request for an investigation. Indeed, the Commission's publicly available policy on investigations, attached to the affidavit of Ms. LaTerreur, stipulates that the Commission must consider "information

received by any means, including but not limited to audit findings, concerns raised by individuals, internal information, and media reports". In other words, many events or sources can prompt an investigation pursuant to section 69 of the PSEA, as long as these are sufficient to give the Commission "reason to believe that fraud may have occurred". Accordingly, it was entirely appropriate in this case, and well within its jurisdiction, for the Commission to initiate an investigation without a complaint or a request, considering that information received from CIRNAC and from the First Investigation raised legitimate concerns about Mr. Cadostin's conduct in the CO-1 Appointment Process and about the potential reoccurrence of fraudulent references.

C. *The Commission's Decision and corrective action were reasonable*

[49] As a second main argument to support his application for judicial review, Mr. Cadostin claims that the Commission's Decision to accept the Investigation Report and to order corrective action was unreasonable. As a self-represented litigant, Mr. Cadostin provided extensive written submissions, which contained a large spectrum of allegations relating to both the First Investigation and the Second Investigation. In essence, he argues that the Investigator and the Commission ignored evidence showing that his references were not fraudulent, as well as evidence revealing that he was a good employee throughout his career. Mr. Cadostin further asserts that the Decision overlooked evidence demonstrating that he suffered from harassment by his former supervisor, discrimination based on his race and abuse of power throughout the investigation process. He also contends that the Investigator lied and intentionally withheld facts that support his innocence. He adds that the Decision disregarded his request that false

information contained in the Investigation Report be corrected and did not address the detailed submissions he provided in March 2019 following his receipt of the draft report.

[50] I disagree with Mr. Cadostin and instead find that the Decision is reasonable.

[51] Further to a thorough investigation, and two interviews with Mr. Cadostin, the Investigator prepared a detailed Investigation Report setting out the reasons and the evidence upon which she drew her adverse credibility findings and her factual conclusions regarding Mr. Cadostin's fraudulent behaviour in the verification of his references.

[52] More specifically, she correctly assessed her findings against the two-part test for establishing fraud under section 69 of the PSEA, established by the Federal Court of Appeal in *Seck*. In that decision, the Court adopted the criminal law definition of fraud with the proviso that the applicable standard of proof of fraud under section 69 is the balance of probabilities (*Seck* at para 38; *Lemelin* at para 51). For the purpose of section 69 of the PSEA, fraud has two essential elements: dishonesty and deprivation (*Seck* at para 39). Dishonesty is established where "deceit, lies or other fraudulent means are knowingly used in an appointment process" (*Seck* at para 40). This may include the non-disclosure or concealment of important facts or circumstances. Deprivation is established when the appointment process could have been compromised (*Seck* at para 41). There is however no requirement that the Commission demonstrate actual compromise or injury to the process.

[53] The Investigation Report was then placed before the Commission with Mr. Cadostin's comments. The Commission accepted the report without change and concluded that the comments received did not trigger the need to amend the report and that, on a balance of probabilities, Mr. Cadostin had committed fraud within the meaning of section 69 in the course of the CO-1 Appointment Process. As expressly provided for in section 69 of the PSEA, the Commission ordered the revocation of Mr. Cadostin's appointment as well as other corrective action it considered appropriate in the circumstances.

[54] Having reviewed the CTR, the Investigation Report and the Decision, and having carefully listened to the audiotape recordings of Mr. Cadostin's interviews and of the CIRNAC Managers, I am satisfied that the Investigator's determination of dishonesty and deprivation are well founded, and that the Commission's corrective action is both justifiable and justified in its reasons. Neither the Investigation Report nor the Decision contain reviewable errors or any fatal flaws. In my view, the detailed reasons provided by the Investigator and the Commission demonstrate that the Commission's Decision was based on an internally coherent and rational chain of analysis and that it conforms to the relevant legal and factual constraints that bear on the Commission and the issue at hand (*Canada Post* at para 30; *Vavilov* at paras 105-107).

[55] Further to *Vavilov*, the reasons given by the decision-maker are the starting point of the analysis. They are the principal tool allowing the administrative decision-makers "to show affected parties that their arguments have been considered and demonstrate that the decision was made in a fair and lawful manner" (*Vavilov* at para 79). Reasons explain how and why a decision was made and serve to demonstrate justification, transparency and intelligibility. In the case of

Mr. Cadostin, those reasons are found in both the Decision and the Investigation Report accepted by the Commission. I am satisfied that the Investigation Report and the Decision explain the conclusions reached by the Commission in a transparent and intelligible manner (*Vavilov* at paras 81, 136; *Canada Post* at paras 28-29; *Dunsmuir* at para 48), and that the reasons allow me to understand the basis on which the Decision was made. This is true for the findings of dishonesty and deprivation, as well as for the corrective action imposed by the Commission.

(1) Dishonesty

[56] On the element of dishonesty, the Investigator concluded, in light of all the evidence gathered during the two investigations, that Mr. Cadostin was not credible and that he had concealed important facts regarding both his references and his supervisor at the time of the job application.

[57] On the references, the Investigator made a number of factual findings that questioned the authenticity of Mr. Cadostin's references. The Investigator noted that, at his first interview, Mr. Cadostin had stated that he was not involved with filling out the references' Templates in the summer of 2017. However, Mr. Cadostin changed his story once the factual report in the First Investigation revealed that the Templates were drafted on the same computer. In short, Mr. Cadostin admitted to have himself provided the references' responses to the verification questions. The Investigator considered but dismissed Mr. Cadostin's suggestion that he had been asked by his references to complete the Templates on their behalf. She also found that all of the references' Templates contained similar glaring omissions on their coordinates and on Mr. Cadostin's employment details, and were completed by the same author, "Proprio", who could

be connected to Mr. Cadostin's personal home computer. Furthermore, none of the references ended up being willing to speak with the Investigator to confirm their identity or information on the dates and duration of Mr. Cadostin's employment, and the Investigator was unable to connect them to their alleged businesses through independent research. Finally, although Mr. Cadostin provided copies of confirming emails from June, July and August 2017 allegedly coming from the references and suggesting they had approved the references' Templates, he was unable to provide original copies of those emails to the Investigator.

[58] Considering Mr. Cadostin's inconsistent testimony regarding his involvement in the completion of the Templates and the documentary evidence suggesting he was the author of the references provided, the Investigator's finding that Mr. Cadostin acted dishonestly in the verification of his references for the CO-1 Appointment Process was justified and justifiable. I am also satisfied that it was not unreasonable for the Investigator and the Commission to find the behaviour of the references inconsistent with the conduct of willing references.

[59] Regarding Mr. De Luca, Mr. Cadostin's testimony also changed during the course of the investigation. The Investigator considered Mr. Cadostin's harassment allegations but found that his altered explanation for excluding Mr. De Luca as a reference was not credible. As was the case in AS-4 Appointment Process in *Cadostin*, the Investigator concluded that Mr. Cadostin's refusal to include Mr. De Luca as a reference was in fact prompted by fear of a negative reference. The conclusion that Mr. Cadostin gave false information by omitting to include his current supervisor as a reference during the verification process is supported by the evidence.

[60] Mr. Cadostin alleges that the references' confirming emails he provided to the Investigator established his innocence and that the Investigator and the Commission disregarded that evidence. I find that this allegation is not consistent with the Investigation Report and the evidence on record. The emails from the references, and Mr. Cadostin's submissions regarding their importance, were before the Investigator and the Commission. The Investigator referred to these emails in her Investigation Report, including both those sent in the summer of 2017 to Mr. Cadostin with respect to the Templates (attached in annexes 4, 5 and 6 to the report) and those sent later between February 2018 and January 2019 further to the Investigator's verifications (paragraphs 70 to 77 of the report). Likewise, the Commission mentioned the submissions received from Mr. Cadostin in its Decision. However, the documents provided regarding the references' Templates sent in the summer of 2017 were not original emails, and the Investigator was unable to use them to establish the authenticity of the references. Furthermore, in light of the concerns she had about the accuracy of these references, it was open to the Investigator to determine, in her report, that the subsequent emails received from the references between February 2018 and January 2019 were not sufficient to modify her conclusion that, on a balance of probabilities, the references provided by Mr. Cadostin at the verification process were false. Paragraphs 96 to 112 of the Investigation Report contain the detailed assessment of the evidence made by the Investigator, and I find that it was reasonable for her to conclude that, on a balance of probabilities, the references had not approved the Templates.

[61] Mr. Cadostin contends that the Commission ignored or failed to consider the extensive comments he provided after reviewing the Investigation Report and that could have exonerated him. Once again, this is incorrect. As indicated above, the Investigator referred to this evidence

received from Mr. Cadostin and expressly considered it in her report. The Commission also stated in the Decision that it considered all of the comments received, but concluded that the new information did not warrant a change to the Investigation Report. The Investigator and the Commission did not ignore the evidence received from the references; they simply did not accept it. The fact that Mr. Cadostin disagrees with the Investigator's and the Commission's treatment of his evidence does not mean that the Commission disregarded his comments. The decision-maker had all the relevant information but was simply not convinced by Mr. Cadostin's submissions.

[62] In light of these factual findings and her assessment of Mr. Cadostin's lack of credibility, I am not persuaded that it was unreasonable for the Investigator to conclude that the most likely explanation was that Mr. Cadostin fabricated the references, and intentionally omitted Mr. De Luca in order to avoid a negative reference. Knowingly providing false references or concealing relevant facts are enough, on a balance of probabilities, to meet the first branch of the test for fraud, namely dishonesty (*Seck* at para 42; *Nur v Canada (Attorney General)*, 2013 FC 978 at para 29, aff'd 2015 FCA 69).

(2) Deprivation

[63] Regarding the second branch of the test for fraud, namely deprivation or risk of deprivation, the evidence clearly establishes that the CO-1 Appointment Process was compromised by Mr. Cadostin's actions, as Mr. Cadostin was effectively appointed to the CO-1 position based on his false references. I am therefore satisfied that the Investigator's conclusion

on the issue of deprivation was reasonable, as the only requirement under section 69 of the PSEA is to show that the appointment process *could* have been compromised.

(3) Corrective action

[64] Turning to the corrective action taken by the Commission, I am also not persuaded that the measures imposed on Mr. Cadostin are unreasonable. In *Seck*, the Federal Court of Appeal confirmed that such corrective action is an administrative measure designed to ensure the integrity of the appointment process, and not a disciplinary action (*Seck* at paras 48-51). The revocation of an appointment is specifically contemplated by paragraph 69(a) of the PSEA. It is not a disciplinary action because, in cases of fraud, the appointment is void *ab initio*. In addition, paragraph 69(b) grants the Commission the discretion to take any other appropriate corrective measures. In this case, the other measures requiring prior reporting to the Commission before Mr. Cadostin may accept other employment in the federal public service are reasonable measures aligned with the Commission's general mandate to maintain the credibility and transparency of the public service's appointment process (*Cadostin* at para 80; *Dayfallah* at paras 101-105). The Commission's choice of corrective action must receive considerable deference (*Dayfallah* at para 108).

[65] In sum, on all findings made by the Commission and the Investigator, I see no basis on which the Court could intervene.

[66] The standard of reasonableness requires the reviewing court to pay "respectful attention to the decision-makers demonstrated expertise" and specialized knowledge, as reflected in their

reasons (*Vavilov* at para 93). It is anchored in the principle of judicial restraint. The reviewing court must show deference to the decision-maker as it is "grounded in the legislature's choice to give a specialized tribunal responsibility for administering the statutory provisions, and the expertise of the tribunal in so doing" (*Edmonton (City) v Edmonton East (Capilano) Shopping Centres Ltd.*, 2016 SCC 47 at para 33; *Dunsmuir* at paras 48-49). Under a reasonableness review, when a question of mixed fact and law falls squarely within the expertise of a decision-maker, the reviewing court's role is not to impose an approach of its own choosing (*Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2018 SCC 31 at para 57). Of course, a reviewing court should ensure that the decision under review is justified in relation to the relevant facts, but deference to decision-makers includes more specifically deferring to their findings of facts and assessment of the evidence. Reviewing courts should refrain from "reweighing and reassessing the evidence considered by the decision maker" (*Canada Post* at para 61; *Vavilov* at para 125).

[67] It is also well recognized that decision-makers are presumed to have weighed and considered all the evidence presented to them unless the contrary is shown (*Kanagendren v Canada (Citizenship and Immigration)*, 2015 FCA 86 at para 36; *Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 (FCA) at para 1). Even a failure to mention a particular piece of evidence does not mean that it was ignored (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 [*Newfoundland Nurses*] at para 16), and decision-makers are not required to refer to each and every piece of evidence supporting their conclusions.

[68] In this case, the evidence that Mr. Cadostin claims has been ignored was in fact considered by the Investigator and the Commission, but was not accepted and retained in their assessment. In the end, the arguments put forward by Mr. Cadostin express his disagreement with the Commission's assessment of the evidence. Mr. Cadostin essentially asks the Court to reconsider the record, to reweigh the evidence he has presented and to make its own findings of fact and its own determinations of credibility. However, in conducting a reasonableness review of factual findings, it is not the role of the Court to do so or to reassess the relative importance given by a decision-maker to any relevant factor or piece of evidence (*Seck* at para 66). Factual findings, assessing credibility, and drawing reasonable inferences based on the conduct of references all lie at the heart of the Commission's and the Investigator's specific expertise and knowledge in fraud investigations under the PSEA. They deserve deference and are entitled to judicial restraint by the reviewing court.

[69] Mr. Cadostin has not persuaded me that the Investigator's and the Commission's conclusions were not based on the evidence that was actually before them (*Vavilov* at para 126). I do not find that this is a situation where the Investigator or the Commission has fundamentally misapprehended or failed to account for the evidence before them. I acknowledge that it might have been preferable to have more details on the Investigator's assessment and analysis of the evidence received from the references in 2018 and mentioned in the Investigation Report at paragraphs 70 to 77. However, I am satisfied that the Investigator has meaningfully grappled with the key issues and central arguments raised by Mr. Cadostin and was alert and sensitive to the evidence before her.

[70] I should add that the written reasons given by an administrative body must not be assessed against a standard of perfection (*Vavilov* at para 91). Reasons for an administrative decision-maker's decision do not need to be comprehensive or perfect. They only need to be comprehensible and justified. Reasons are to be read as a whole, in conjunction with the record (*Vavilov* at para 85; *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 53; *Construction Labour Relations v Driver Iron Inc*, 2012 SCC 65 at para 3). On judicial review, a reviewing court is not to endeavour into a "line-by-line treasure hunt for error" and must instead approach the reasons and outcome of a tribunal's decision as an "organic whole" (*Vavilov* at para 102; *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 138; *Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd*, 2013 SCC 34 at para 54). The Court should approach the reasons with a view to "understanding, not to puzzling over every possible inconsistency, ambiguity or infelicity of expression" (*Canada (Minister of Citizenship and Immigration) v Ragupathy*, 2006 FCA 151 at para 15). Looking at the Commission's Decision and the Investigation Report as a whole, and not through a piecemeal approach, I am satisfied that the Investigator and the Commission engaged in a thorough and detailed assessment of the evidence, and I can see no reason for intervening.

[71] It bears repeating that, on judicial review, the issue is not whether the Court would have reached the same conclusion as the Commission nor whether the conclusion reached by it is correct (*Vavilov* at paras 24-25). Rather, judicial restraint means that the Commission must be afforded latitude to make decisions in its specialized field of expertise when its reasons are understandable, rational and reach an outcome that could legitimately be reached on the

applicable facts and law. In a reasonableness review, as long as the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility, and the decision is supported by acceptable evidence that can be justified in fact and in law, a reviewing court should not substitute its own view of a preferable outcome, nor can it reweigh the evidence (*Newfoundland Nurses* at paras 16-17).

(4) The alleged malicious treatment

[72] A main theme in Mr. Cadostin's submissions was that the Investigator lied, bullied him and wilfully ignored his evidence. I disagree and find no evidence of bullying, malicious behaviour or concealment of facts by the Investigator, neither in the Investigation Report nor in the materials relating to the investigation process followed by the Commission. I have carefully listened to the audiotape recordings of Mr. Cadostin's interviews and I find a material dissonance between their actual contents and Mr. Cadostin's recollection and interpretation of what was said and done by the Investigator. I do not agree that the Investigator was accusatory or disrespectful towards Mr. Cadostin in those interviews. Quite the contrary, the recordings instead show that the Investigator openly heard Mr. Cadostin's testimony, but that Mr. Cadostin was unable to provide convincing explanations. More specifically, Mr. Cadostin's contention that the Investigator's "goal" was to revoke him is inaccurate, as she simply informed him that a revocation was a "possible" consequence of the investigation.

[73] I also do not agree that the audiotape recordings allow me to unearth lies from the Investigator in her report or can serve to exonerate Mr. Cadostin of any wrongdoing in the appointment process. What Mr. Cadostin qualifies as lies, misrepresentations or speculations on

the part of the Investigator are in fact expressions of his disagreement with the factual findings and conclusions she made.

[74] Moreover, I find that the specific extracts of the audiotape recordings cited by Mr. Cadostin in his materials and played at the hearing before the Court confirm the accuracy of the Investigation Report. Contrary to Mr. Cadostin's assertion, the excerpts relating to Teleglobe/BCE, to the "Proprio" reference and the use of his home computer, or to Mr. De Luca do not support any malicious intent or twisting of the facts by the Investigator. For example, the reference to the good relationship with Mr. De Luca echoes words used by Mr. Cadostin himself. In my view, the audiotape extracts singled out by Mr. Cadostin do not contradict the Investigator's observations but rather confirm that she made proper factual findings, which reasonably allowed her to conclude to Mr. Cadostin's fraudulent conduct in the verification process.

(5) Conclusion

[75] A reviewing court must be satisfied that any alleged shortcomings or flaws relied on by the party challenging a decision are not sufficiently central or significant to render the decision unreasonable (*Vavilov* at paras 96-97, 100). Fundamental flaws would include a failure of rationality internal to the reasoning process or a decision which in some respect would be untenable in light of the relevant factual and legal constraints. Here, I am not persuaded that this is a situation where there is a flawed logical process by which the facts were drawn from the evidence, or where the Commission has fundamentally misapprehended or failed to account of the relevant evidence, or made a finding that was contrary to the overwhelming weight of the

evidence (*Vavilov* at para 126; *Dunsmuir* at para 47). The Investigator and the Commission had all the facts before them and considered all the relevant evidence. Stated otherwise, the errors alleged by Mr. Cadostin do not display a fatal flaw in the overarching rationality or logic and do not lead me to lose confidence in the outcome reached by the Commission (*Vavilov* at para 122; *Canada Post* at paras 52-53).

[76] A reasonable decision "is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85). I am satisfied that this is the case here, and Mr. Cadostin has not persuaded me that there are sufficiently serious shortcomings in the Commission's Decision or in the underlying Investigation Report such that the Decision could be said to lack the requisite degree of justification, intelligibility and transparency.

D. *The Commission's process was procedurally fair*

[77] Mr. Cadostin further argues that the Court should quash and set aside the Commission's Decision because his rights to procedural fairness were repeatedly violated as a result of the investigation undertaken by the Commission with respect to the CO-1 Appointment Process. In this respect, he reiterates many statements he had made in relation to the AS-4 Appointment Process, which were considered and rejected in the *Cadostin* decision.

[78] Mr. Cadostin generally alleges that the Investigator was biased in favour of the employer, repeatedly lied in her Investigation Report, afforded him no respect or consideration, and that the whole investigation process was unfair and grossly mismanaged. He also more specifically

complains that both the Investigator and the Commission refused to provide him information about the investigation, that they notably withheld the audiotape recordings of his interviews until the investigation was completed, that they intentionally concealed facts and that they falsely accused him.

[79] I am not persuaded by Mr. Cadostin's submissions and instead find that, at every stage of the investigation, the process followed by the Investigator and by the Commission was entirely consistent with the applicable principles of procedural fairness.

[80] Whether a decision is procedurally fair must be determined on a case-by-case basis, and the requirements of the duty of procedural fairness are eminently variable. The nature and extent of the duty will fluctuate with the specific context and the various factual situations dealt with by the administrative decision-maker, as well as the nature of the disputes to be resolved. More generally, the process followed by a decision-maker will be fair when it offers the affected parties a right to be heard and a full opportunity to know and to respond to the case against them. It is important to underline that, in any situation, procedural fairness relates to the process followed by the decision-maker (*Baker* at para 26); it does not create substantive rights nor does it entitle a person to a given outcome. In other words, the duty to act fairly is not related to the merits or content of a decision, or to a particular result in the treatment of a matter, and Mr. Cadostin cannot claim to have a right to the Commission or the Investigator agreeing with him.

[81] I acknowledge that, where an individual is being investigated for fraud under the PSEA, the duty of procedural fairness is demanding, as a person's right to continue his or her

employment is at stake (*Seck* at para 57; *Lemelin v Canada (Attorney General)*, 2018 FC 286 [*Lemelin*] at para 43). Therefore, an allegation of fraud in the context of an appointment process like this one requires a fairly high level of procedural fairness (*Lemelin* at para 44, citing *Samatar v Canada (Attorney General)*, 2012 FC 1263 [*Samatar*] at paras 124-125). However, in order to determine whether the Commission's process was procedurally fair, it is sufficient for the Court to be satisfied that Mr. Cadostin was made aware of the "substance" of both the case against him and the evidence obtained by the Investigator (*Lemelin* at para 49; *Dayfallah* at para 48).

[82] In the circumstances, I do not detect any breach of the principles of procedural fairness in the way the investigation process leading to the Decision has been handled and followed by the Commission and the Investigator. Quite the contrary. I am satisfied that Mr. Cadostin was indeed well aware of the substance of the case against him, and that he had multiple opportunities to respond to the substance of the evidence found by the Investigator and to understand the case he had to meet. Mr. Cadostin's contention, that he was not given a proper opportunity to be heard and to address the case against him, does not reflect the actual contents of the Decision or the facts surrounding the treatment of this investigation. In fact, the process followed by the Investigator and the Commission was, at all stages, consistent with the procedural requirements established by the Federal Court of Appeal and this Court for investigations of potential fraud pursuant to section 69 of the PSEA.

[83] Mr. Cadostin was informed by a letter dated May 10, 2018 that an investigation of his conduct in the CO-1 Appointment Process was commenced on the basis of a suspicion that he

had provided false references. He was in possession of the relevant evidence from the outset as he admitted, during the investigation, that he had himself completed the Templates on behalf of the three references, allegedly with their consent. The Commission's letter expressly stated that the investigation would proceed pursuant to section 69 of the PSEA, that the Investigator would contact Mr. Cadostin, and that he had the right to be accompanied through the investigation by a person of his choice. As a result, from the very start, Mr. Cadostin was fully aware of the basis of the investigation.

[84] In addition, Mr. Cadostin was interviewed twice: once at the outset of the First Investigation on January 31, 2018, and again on August 20, 2018 after he had provided comments on the investigation report for the First Investigation. Mr. Cadostin was also given the opportunity to provide comments and submissions on the Factual Report and on the Investigation Report. The Investigator provided her Factual Report on October 17, 2018, and Mr. Cadostin responded fully, with detailed and lengthy submissions, on November 29, 2018. The draft Investigation Report, accompanied by a letter referring to the report and containing the proposed corrective action, was then provided to him on February 19, 2019. Again, Mr. Cadostin availed himself of the opportunity to comment and he provided detailed submissions on March 15, 2019, in an extensive document exceeding 110 pages and responding to virtually every paragraph of the proposed Investigation Report. His comments and submissions were reviewed and considered by the Commission, as expressly stated in the Decision. Throughout the process, Mr. Cadostin was represented by a union representative.

[85] This process followed by the Investigator and the Commission was precisely in line with what was described by the Federal Court of Appeal in *Seck* at paragraphs 60-62, and cited by Justice Walker in *Cadostin* at paragraph 51:

> - An individual must be informed at the outset of the conduct of the investigation and the reasons for it. If the individual is not in possession of the evidence prompting the investigation, the Commission must provide that evidence to the individual;
>
> - The individual must be afforded the opportunity to present his or her version of the events as part of the investigation;
>
> - The individual must be provided with the preliminary factual report and given an opportunity to comment on it and, further, be provided with a copy of the final investigation report and given an opportunity to comment on that report and on the proposed corrective action.

[86] In short, the steps taken by the Investigator and the Commission in the case of Mr. Cadostin mirrored the process repeatedly found to be procedurally fair by the jurisprudence in fraud investigations pursuant to the PSEA. Mr. Cadostin was fully informed of the substance of the evidence obtained by the Investigator and put before the Commission and he was provided multiple opportunities to respond to this evidence and make all relevant representations in relation thereto (*Dayfallah* at para 45). I have no hesitation to conclude that, in light of the foregoing evidence, there was no breach of procedural fairness in the present case.

[87] In his submissions asserting procedural unfairness, Mr. Cadostin takes particular exception with the Investigator's alleged delay in providing him with a copy of the audiotape recordings of his interviews, claiming that this violates the Crown's disclosure obligations established by the Supreme Court for criminal cases in *R v Stinchcombe,* [1991] 3 SCR 326. I do not agree with Mr. Cadostin and find that Mr. Cadostin's recriminations on this front are

baseless. I pause to point out that Mr. Cadostin received the audiotape recording of his first interview on October 17, 2018, following the completion of the First Investigation. On April 25, 2019, he was given the audiotape recordings of his two interviews following the issuance of the Decision.

[88] The evidence before the Court is that, in delaying the provision of the audiotape recordings of Mr. Cadostin's interviews until the completion of the investigations, the Investigator followed the Commission's standard process in this regard. The reason the Commission does not provide recordings of interviews during an on-going investigation is to prevent potential leaks to witnesses who have not yet been interviewed and to safeguard the integrity of the investigation process. I agree with the AGC that it is reasonable for the Commission to act accordingly. This Court has indeed stated that an investigator is not required to provide an individual under investigation with the record of the testimony collected in an investigation, even when asked to do so (*Lemelin* at para 46).

[89] Moreover, Mr. Cadostin was in fact requesting the record of his own testimony. He was present during the two interviews and was of course well aware of the content of his statements to the Investigator. As stated by Justice Walker in *Cadostin*, the fact that the recordings may have assisted Mr. Cadostin's memory is not sufficient to establish procedural unfairness (*Cadostin* at para 55). I further note that, in his extensive comments and submissions on the Investigation Report, made in March 2019 prior to the issuance of the Decision, Mr. Cadostin had the benefit of the audiotape recordings and frequently referred to extracts from them in support of his assertions that the Investigator had lied or misrepresented his statements or

testimony. As stated above in the discussion of the reasonableness of the Decision, I am satisfied that the audiotape recordings confirm the accuracy of the Investigation Report.

[90] In sum, neither the process of giving access to the audiotape recordings nor the contents of the recordings provide any evidence of a breach of procedural fairness.

[91] During the hearing before the Court, and in the context of his arguments on procedural unfairness, Mr. Cadostin also frequently asserted that the Investigator lied in her Investigation Report when she said that she never received "original emails" from his references. He claims that this is false since at least one of his references emailed the Investigator directly.

[92] In my view, Mr. Cadostin is confusing two issues here. True, the Investigator received some emails directly from the references in response to the verifications she had undertaken. In fact, in the Investigation Report, the Investigator specifically referred to some of the direct correspondence she had with the references, and to the responses she had received from them in February, August and September 2018 and January 2019. She did not find this evidence persuasive as it was not retained in her analysis. However, the "original emails" she was referring to were those sent between June and August 2017 in the context of the Templates provided and used in the verification process, and which led CIRNAC to hire Mr. Cadostin for the CO-1 position. In order to verify the authenticity of the emails received from the references *at that point in time*, the Investigator sought to obtain the original emails allegedly sent by the references with the Templates, but she did not get them. The annexes to the Investigation Report contain the references' messages forwarded by Mr. Cadostin to the Investigator, and showing the

correspondence between him and his references at the time of the Templates. The Investigator noted that she was unable to confirm the authenticity of these emails, because Mr. Cadostin could not provide the original versions.

[93] Mr. Cadostin claims that the Investigator wrote in her report that she never received any original communication from his references. This statement is inaccurate, as the Investigation Report and its annexes expressly mention the email exchanges between the alleged references and Mr. Cadostin, as well as those between the Investigator and the references. Rather, the Investigator thoroughly listed and evaluated all of the evidence in front of her to conclude that the identity of these references could not be confirmed, and that it was more likely than not that Mr. Cadostin drafted the Templates-related emails himself. She noted the inconsistencies, then provided Mr. Cadostin an opportunity to address these inconsistencies, but he failed to justify or explain them adequately. Mr. Cadostin may disagree with these conclusions, but his disagreement does not render the finding improper or reveal a breach of procedural fairness.

[94] I mention one last point. In his submissions on procedural fairness issues, Mr. Cadostin referred extensively to the decision of this Court in *Samatar*. He relied more specifically on specific paragraphs where Mr. Justice Martineau noted the severity of the flagrant breach of procedural fairness found in that case (*Samatar* at paras 179, 194-196). Relying on that decision, Mr. Cadostin condemns the Commission's investigation process in light of the facts of *Samatar*, and argues that the investigation on the CO-1 Appointment Process had likewise become a type of "witch-hunt under the guise of legality" (*Samatar* at para 195). He had made similar arguments before Justice Walker with respect to the AS-4 Appointment Process.

[95] I find that the *Samatar* case is of little help to Mr. Cadostin since the facts in that case significantly differ from his situation. It is fair to say that the relevance of a precedent atrophies as the similarity of the factual framework involved decreases; this is precisely the case here. Ms. Samatar never participated in any job competition but acted as a reference for a candidate, Ms. Seck (who was found to have committed fraud and happens to be the appellant in the *Seck* Federal Court of Appeal decision cited above). Even though she was solely a reference, Ms. Samatar was herself accused of fraud and subjected to an investigation pursuant to section 69 of the PSEA. The Commission determined that she was also guilty of fraud, even though Ms. Samatar had simply maintained that she did supervise the candidate, despite not under the title of "supervisor". Ms. Samatar never lied about her title, and she never declared to be the candidate's supervisor. Rather, it is the candidate, Ms. Seck, who had presented Ms. Samatar as her "supervisor" without Ms. Samatar's knowledge, when she provided the list of references to the potential employer.

[96] Nevertheless, the Commission imposed on Ms. Samatar the same sanctions as on the candidate, requiring that, for a period of three years, she must obtain the Commission's written permission before accepting a position within the federal public service. It is also important to note that Ms. Samatar had only been provided a copy of notice of investigation *after* her interview and, as noted by Justice Martineau, there was no indication in the notice that Ms. Samatar could herself be sanctioned (*Samatar* at para 139). Justice Martineau found serious breaches of Ms. Samatar's rights to procedural fairness in the Commission's handling of that investigation. He emphasized that Ms. Samatar was not made aware, at the outset of the investigation, of the nature of the allegations or evidence against her personally. Prior to her

interview, she was only told that it would pertain to Ms. Seck's candidacy. Further, Ms. Samatar was not given an opportunity to comment on new evidence that was provided late in the investigation or on the final report placed before the Commission.

[97] This is a far cry from the situation of Mr. Cadostin. The present case is not one where Mr. Cadostin was never given an adequate notice of investigation, or where he was denied any opportunity to make comments on the Investigation Report. Nor is it a situation where the severity of Mr. Cadostin's actions were so minor or peripheral to the appointment process that they could not reasonably be considered as fraud. On the contrary, his actions were at the very heart of the CO-1 Appointment Process. While the decision in *Samatar* reinforces the importance of procedural fairness in a fraud investigation conducted by the Commission pursuant to section 69 of the PSEA, it eloquently illustrates that the treatment afforded to Mr. Cadostin bears none of the badges of procedural unfairness suffered by Ms. Samatar. Stated otherwise, the Commission's process in Mr. Cadostin's case was not compromised by the serious procedural shortcomings identified by Justice Martineau in *Samatar*. Therefore, to echo the words of Justice Walker in *Cadostin*, the result in that precedent does not change my finding that Mr. Cadostin's right to a procedurally fair investigation was not breached by the Investigator or the Commission in the CO-1 Appointment Process (*Cadostin* at para 59).

E. *Mr. Cadostin's Charter rights were not violated by the Commission's Decision and the investigation process*

[98] Mr. Cadostin finally submits that his Charter rights were violated in the CO-1 Appointment Process. He invokes sections 7, 11(h), 12 and 15 of the Charter, as well as the

principle of double jeopardy in the labour arbitration context. He more specifically claims that he should not have been investigated and disciplined for the same action twice.

[99] I disagree and find that none of Mr. Cadostin's Charter-related arguments has any merit.

[100] Section 7 of the Charter provides that "[e]veryone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice", whereas section 12 states that "[e]veryone has the right not to be subjected to any cruel and unusual treatment or punishment". It is well established that these two provisions are not designed to protect pure economic interests or the ability to work in a particular profession (*Mussani v College of Physicians and Surgeons of Ontario*, 248 DLR (4th) 632, 74 OR (3d) 1 (ON CA) at paras 39-43). In addition, the Federal Court of Appeal has already recognized there is no right to an appointment within the federal public service (*Seck* at para 54). Even though Mr. Cadostin repeatedly referred to these two provisions in his submissions, they simply do not apply to his situation.

[101] Turning to section 15 on equality before the law, I observe that Mr. Cadostin has not alleged a specific ground of discrimination in his submissions, though he claims to be a victim of racism throughout his materials. Mr. Cadostin has not provided any evidence in support of a claim of racial discrimination, and I agree with the AGC that Mr. Cadostin has not discharged his onus of proving a breach of section 15. He has failed to offer any evidence demonstrating how the Commission's Decision made a distinction on the basis of an enumerated or analogous ground of discrimination, or showing how any such distinction created a disadvantage for him by

perpetuating prejudice or stereotyping (*R. v Kapp*, 2008 SCC 41 at para l7). His claim of a potential violation of his section 15 Charter rights is therefore groundless.

[102] Finally, Mr. Cadostin repeatedly invokes the protection against double jeopardy, relying on section 11(h) of the Charter and the principle of double jeopardy in the labour arbitration context to claim that, having been investigated and disciplined in the AS-4 Appointment Process for his false references, these cannot serve to sanction him a second time in the CO-1 Appointment Process. I find this argument to be totally without foundation. First, section 11(h) provides that "[a]ny person charged with an offence has the right […] if finally acquitted of the offence, not to be tried for it again and, if finally found guilty and punished for the offence, not to be tried or punished for it again". The purpose of that provision is to protect against double jeopardy in the criminal context and to prevent double punishment for the same acts. It is plainly obvious that this Charter provision is not engaged in the case of Mr. Cadostin as it is explicitly restricted to criminal matters (*R. v Wigglesworth*, [1987] 2 SCR 541 at para 11). Section 69 of the PSEA is not a criminal provision and Mr. Cadostin was not charged with an offence in the context of the Decision.

[103] Furthermore, the principle of double jeopardy, whether in the criminal context or in the labour arbitration context, is of no assistance to Mr. Cadostin because his situation is anything but one of double jeopardy. Mr. Cadostin was found to have committed fraud in two separate appointment processes conducted by two different federal government departments for two distinct positions, and the fact that he used the same false references and the same stratagem in

both cases does not mean that he can only be held accountable in one instance and be immunized in the other.

[104] Mr. Cadostin's claim that he faces a double jeopardy situation is an affront to common sense as well as to the legal foundations for the protection against double jeopardy. Mr. Cadostin is trying to transform this protection into an immunity for double violation or double fault. This is preposterous. If a person is found to have exceeded the speed limit using a vehicle on a given highway and is sanctioned for it, he or she is certainly not shielded from being sanctioned for similarly exceeding the speed limit using the same vehicle on a country road or on a different highway. To accept Mr. Cadostin's expanded and ill-advised view of double jeopardy would mean importing into the Charter or the rule of law some form of protection for repeat offenders. I am aware of no legal principle or rule standing for that proposition.

IV. Conclusion

[105] For the reasons detailed above, Mr. Cadostin's application is dismissed. In an application for judicial review like this one, the role of the Court is to review the legality of the Commission's Decision and to determine whether it was reasonable and based on a fair process. Having reviewed the Investigation Report and the Decision, I am satisfied that the Commission's conclusions are anchored in an internally coherent and rational chain of analysis and that the Decision is justified in relation to the facts and law that constrain the Commission. The Decision bears the hallmarks of reasonableness – justification, transparency and intelligibility –, and I do not find any serious shortcomings in the Decision causing me to lose confidence in the outcome reached by the Commission. Furthermore, taking into account the particular context and

circumstances of this fraud investigation, I find that the process followed by the Investigator and the Commission was fair and offered Mr. Cadostin a right to be heard and a full opportunity to know and to respond to the case against him. There were no breach of any principle of procedural fairness nor any violation of Mr. Cadostin's Charter rights.

[106] Having regard to all the circumstances of this matter and the parties, and upon consideration of the factors set forth in Rule 400(3), there will be no award of costs.

JUDGMENT in T-732-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No costs are awarded.

"Denis Gascon"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

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