Federal Court of Appeal | Cour d'appel fédérale

Date: 20170131

Dockets: A-290-15
A-291-15

Citation: 2017 FCA 20

[ENGLISH TRANSLATION]

CORAM: **GAUTHIER J.A.**
DE MONTIGNY J.A.
GLEASON J.A.

BETWEEN:

FRANK VAILLANCOURT

Appellant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

Heard at Montreal, Quebec, on January 30, 2017.

Judgment delivered at Montreal, Quebec, on January 31, 2017.

REASONS FOR JUDGMENT BY: GLEASON J.A.

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

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REASONS FOR JUDGMENT

GLEASON J.A.

[1] There are two appeals before the Court, one from the judgment of the Federal Court in *Vaillancourt v. The Attorney General of Canada*, 2015 FC 659 and the other from its judgment in *Vaillancourt v. The Attorney General of Canada*, 2015 FC 660, in which the Federal Court dismissed the appellant's applications for judicial review.

[2] The applications for judicial review before the Federal Court dealt with two decisions by designated officers under section 5 of the *Commissioner's Standing Orders* (*Representation*), *1997*, SOR/97-399 (Standing Orders).

[3] In the initial decision dated November 2, 2012, Superintendent Delorme [TRANSLATION] "overturned the decision dated July 24, 2009, by the [Member Representative Directorate (MRD)] refusing to authorize the continuing representation of the appellant in the dispute of the notices of disciplinary hearing" that the appellant had received. Superintendent Delorme added that [translation] "the MRD must continue to represent [the appellant] . . . unless he does not agree to be represented by the MRD, or a refusal is made by the MRD in accordance with the Standing Orders".

[4] In the second decision dated April 14, 2014, Superintendent Michèle Young upheld a second refusal by the MRD to represent the appellant in his dispute of the same notices of disciplinary hearing because of facts that occurred after the date of Superintendent Delorme's decision. Superintendent Young found that there were sufficient grounds after November 2, 2012, to justify refusing to continue to represent the appellant under paragraph 3(*b*) of the Standing Orders (continuing could impair the efficiency, administration or good government of the RCMP). According to Superintendent Young, the appellant's actions and inactions since that date showed a lack of cooperation; the MRD had made considerable efforts to contact him and the appellant did not establish any valid reason for failing to provide the required information in a timely fashion (see paras 37 to 43 of that decision).

[5] The Federal Court upheld the decisions of the two designated officers and determined that there had been no breach of procedural fairness and that those decisions were reasonable.

[6] Before this Court, the appellant failed to file his memorandum of fact and law in Docket A-291-15 even though he had served the respondent with it in April 2016. Normally, such a failure, especially after a directive requiring him to file his memorandum, would prevent the appellant from making oral representations, except by way of reply. However, because the respondent did not object, we allowed the appellant to file his memorandum at the hearing. We read it during a brief adjournment before hearing the appellant's oral representations.

[7] In these appeals, the Court must determine whether the Federal Court correctly identified the appropriate standards of review and whether it applied them properly, as instructed in *Agraira v. Canada* (*Public Safety and Emergency Preparedness*), 2013 SCC 36, [2013] 2 S.C.R. 559, at paragraphs 45 to 47. To do so, this Court will focus on the administrative decisions and put itself in the place of the court of first instance.

[8] I am of the opinion that the Federal Court chose the appropriate standards of review in both appeals, that is, the standard of correctness regarding the allegations of a breach of Superintendent Delorme's duty to act fairly and the standard of reasonableness regarding the other issues raised by the appellant. I am also of the view that the Federal Court applied these standards properly in its two decisions.

[9] More specifically, the Federal Court in its initial judgment correctly found that Superintendent Delorme had not breached his duty to act fairly insofar as he accepted the appellant's argument that he should not consider the MRD's additional representations to justify its refusal under section 3 of the Standing Orders. Having found that that refusal did not contain sufficient reasons, he overturned said refusal and ordered the MRD to represent the appellant, as required by section 1 of the Standing Orders.

[10] Dissatisfied with obtaining the remedy he had sought, the appellant contests the decision, stating that Superintendent Delorme should not have added the following passage, cited in paragraph 3, above: [TRANSLATION] "unless he does not agree to be represented by the MRD, or a refusal is made by the MRD in accordance with the Standing Orders". According to the appellant, the decision-maker erred by specifying the circumstances that could justify a decision by the MRD to cease representing him. He claims that Superintendent Delorme instructed the MRD on how to justify a new refusal.

[11] Before us, in response to a request for clarification of the remedy sought, the appellant indicated that our Court should specify that the passage he contests refers only to [TRANSLATION] "new cases or facts" that occurred after November 2, 2012. However, that is precisely how Superintendent Young and the Federal Court interpreted the passage in question. He therefore suffered no prejudice, and it is clear that Superintendent Delorme did not err or exceed his powers under paragraph 5(2)(*b*) of the Standing Orders.

[12] Regarding Superintendent Young's decision, the appellant maintains that the decision-maker evidently considered events prior to November 2, 2012, despite the fact that she clearly stated the opposite in her reasons. The appellant also claims that if Superintendent Young had really limited her analysis to events that occurred after that date, her finding cannot be justified.

[13] I am not willing to infer that Superintendent Young did not follow the approach that she specifically described in her reasons. This Court cannot simply substitute its own assessment of the evidence and the facts for that of the administrative decision-maker.

[14] Regarding paragraphs 37 to 43 of Superintendent Young's reasons, and given the margin of appreciation that the Court must afford to decision-makers concerning findings of fact under the applicable standard of review, the appellant has not persuaded me that that decision is unreasonable.

[15] Therefore, despite the efforts made by counsel for the appellant, I find that the Federal Court applied the standards of review properly and that there is no need for this Court to intervene. I would dismiss both appeals with costs, which I would establish at $1,000, all inclusive, in both files.

"Mary J.L. Gleason"
J.A.

"I agree.
Johanne Gauthier J.A."

"I agree.
Yves de Montigny J.A."

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKETS:	A-290-15, A-291-15
APPEAL FROM ORDERS BY THE HONOURABLE JUSTICE MARTINEAU OF THE FEDERAL COURT DATED MAY 21, 2015, IN DOCKETS T-1235-14 and T-2180-12	
STYLE OF CAUSE:	FRANK VAILLANCOURT v. THE ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	MONTREAL, QUEBEC
DATE OF HEARING:	JANUARY 30, 2017
REASONS FOR JUDGMENT OF THE COURT BY:	GLEASON J.A.
CONCURRED IN BY:	GAUTHIER J.A. DE MONTIGNY J.A.
DATED:	JANUARY 31, 2017

APPEARANCES:

Jasmine Patry	FOR THE APPELLANT
Marie-Josée Bertrand	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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