

Federal Court of Appeal



Cour d'appel fédérale

Date: 20210420

Docket: A-476-19

Citation: 2021 FCA 80

**CORAM: STRATAS J.A.
LASKIN J.A.
MACTAVISH J.A.**

BETWEEN:

JASON ZAK

Appellant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

and

NATIONAL POLICE FEDERATION

Intervener

Heard by online video conference hosted by the Registry on April 20, 2021.
Judgment delivered from the Bench at Ottawa, Ontario, on April 20, 2021.

REASONS FOR JUDGMENT OF THE COURT BY:

STRATAS J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Ottawa, Ontario, on April 20, 2021).

STRATAS J.A.

[1] The appellant appeals from the judgment of the Federal Court (*per* Campbell J.): 2019 FC 1503. The Federal Court dismissed the appellant's application for judicial review of a

decision of a Level II adjudicator acting under the R.C.M.P. *Commissioner's Standing Orders (Grievances and Appeals)*, S.O.R./2014-289.

[2] On issues of law, including the standard of review, we are bound by this Court's decision in *Smith v. Canada (Attorney General)*, 2021 FCA 73 concerning appeals from judicial reviews under a substantially similar legislative regime. Like the Federal Court in the present case and for many of the reasons it offered, we consider the standard of review to be reasonableness. None of the exceptions to reasonableness set out in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, 441 D.L.R. (4th) 1 apply. As well, substantially for the reasons offered by the Federal Court, we consider the Level II adjudicator's decision to be reasonable. In fact, if anything, the adjudicator was generous to the appellant in the sense that the adjudicator reviewed the first level adjudication in a less deferential manner than appears to be warranted under this legislative regime.

[3] The appellant alleges certain shortcomings in his treatment by the R.C.M.P. and challenges whether the R.C.M.P. gave the appellant an adequate opportunity to demonstrate his suitability and remedy any deficiencies. However, at the end of the day the outcome reached by the Level II adjudicator was supported by the evidentiary record and the adjudicator gave reasoned explanations on key points, especially when the reasons are viewed in light of the record.

[4] The intervener submitted that this Court should not apply the *Standing Orders*. The appellant also suggested that the operation of the *Standing Orders* has the effect of improperly

immunizing an area of decision-making in this context. Both smack of an attack on the *vires* of the *Standing Orders*. However, we cannot consider that issue. The *Standing Orders* are the law on the books—we are bound by them and have to apply them—and the appellant has not challenged their validity. As for the intervener, as it acknowledges, it must take the issues the parties have raised. It cannot add new issues to the appeal: *Tsleil-Waututh Nation v. Canada (Attorney General)*, 2017 FCA 174, 414 D.L.R. (4th) 373 at para. 55.

[5] The intervener also asked us to provide more concrete guidance on the standard of review to be applied by Level II adjudicators to Level I adjudicators under the *Standing Orders*. This issue should be determined in a future case when it is necessary to do so.

[6] Therefore, despite the able argument of Mr. Phillips, we will dismiss the appeal with costs fixed in the agreed amount of \$2,500 payable by the appellant.

“David Stratas”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-476-19

**APPEAL FROM A JUDGMENT OF THE HONOURABLE MR. JUSTICE CAMPBELL
DATED NOVEMBER 25, 2019, DOCKET NO. T-1802-18**

STYLE OF CAUSE: JASON ZAK v. THE ATTORNEY
GENERAL OF CANADA AND P

PLACE OF HEARING: HEARD BY ONLINE VIDEO
CONFERENCE HOSTED BY
THE REGISTRY

DATE OF HEARING: APRIL 20, 2021

**REASONS FOR JUDGMENT OF THE COURT
BY:** STRATAS J.A.
LASKIN J.A.
MACTAVISH J.A.

DELIVERED FROM THE BENCH BY: STRATAS J.A.

APPEARANCES:

John Kingman Phillips FOR THE APPELLANT

Barry Benkendorf FOR THE RESPONDENT

Christopher Rootham FOR THE INTERVENER

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FOR THE INTERVENER