

Federal Court of Appeal



Cour d'appel fédérale

Date: 20220207

Docket: A-7-20

Citation: 2022 FCA 21

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

BETWEEN:

JOHN JOSEPH GOODMAN

Appellant

and

**MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
and
THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

Respondents

Heard by online video conference hosted by the registry
on February 7, 2022.

Judgment delivered from the Bench at Ottawa, Ontario, on February 7, 2022.

REASONS FOR JUDGMENT OF THE COURT BY:

BOIVIN J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Ottawa, Ontario, on February 7, 2022).

BOIVIN J.A.

[1] This is an appeal from a judgment rendered by the Federal Court (*per* Barnes J.) dated December 9, 2019 (2019 FC 1569). Before the Federal Court, the appellant, who acknowledges that he is inadmissible to Canada pursuant to paragraph (34)(1)(f) of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 (IRPA), notably sought a declaration that the 2013

amendments to section 25 of the IRPA be proclaimed inoperable. The appellant argued that the removal of Humanitarian and Compassionate (H&C) considerations from sections of the IRPA - including paragraph (34)(1)(f) - conflicts with the fairness obligation imposed by subsection 2(e) of the *Canadian Bill of Rights*, S.C. 1960, c. 44 (Bill of Rights). The Federal Court disagreed with the appellant and denied his request.

[2] This appeal comes to this Court by way of a certified question. The Federal Court certified the question as follows:

Does subsection 25(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, which bars access to a process for the review of humanitarian and compassionate factors for persons inadmissible under ss. 34, 35 and 37, violate section 2(e) of the *Canadian Bill of Rights*, S.C. 1960, c. 44?

[3] Overall, we agree with the analysis and conclusions of the Federal Court.

[4] The issues with respect to section 2(e) of the Bill of Rights should not have been considered by the Federal Court as they were barred from judicial review. Indeed, *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61, [2011] 3 S.C.R. 654, counsels us against accepting issues on judicial review that were not raised before the administrative decision-maker. Therefore, the section 2(e) issues had to be raised before the administrative decision-maker (*Okwuobi v. Lester B. Pearson School Board*; *Casimir v. Quebec (Attorney General)*; *Zorrilla v. Quebec (Attorney General)*, 2005 SCC 16, [2005] 1 S.C.R. 257; *Landau v. Canada (Attorney General)*, 2022 FCA 12) who is the merits-decider under this legislative regime. However, even if the said issues were not raised before the administrative

decision-maker, we are all of the view that they had no legal merit for essentially the same reasons given by the Federal Court. The intervention of this Court is therefore not warranted.

[5] In a thorough and detailed analysis, the Federal Court concluded that subsection 2(e) of the Bill of Rights does not guarantee a foreign national the right to discretionary consideration of H&C factors. As such, Parliament was entitled, without invoking the notwithstanding clause in the Bill of Rights, to limit the application of H&C grounds under section 25 of the IRPA for foreign nationals who are inadmissible to Canada pursuant to sections 34 (Security), 35 (Human or international rights violations) and 37 (Organized criminality) of the IRPA.

[6] More particularly, in its decision, the Federal Court correctly noted the differences that exist between the principles of fundamental justice pursuant to section 7 of the *Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (U.K.), 1982, c. 11 (Charter)* and those pursuant to subsection 2(e) of the Bill of Rights. It reviewed the relevant jurisprudence and determined that subsection 2(e) of the Bill of Rights only encompasses the principles of fundamental justice tied to a fair hearing whereas section 7 of the Charter encompasses both substantive and procedural fairness principles tied to “life, liberty and security of the person”. The Federal Court consequently found that the rights under section 2(e) of the Bill of Rights are narrower than the rights guaranteed under section 7 of the Charter. It follows that H&C considerations are not a principle of fundamental justice for the purpose of section 2(e) of the Bill of Rights (*Federal Court’s Reasons* at paras. 18-21, 34; citing *Duke v. The Queen*, [1972] S.C.R. 917, 28 D.L.R. (3d) 129; *Bell Canada v. Canadian Telephone Employees Association*, 2003 SCC 36, [2003] 1 S.C.R. 884; *Re B.C. Motor Vehicle Act*, [1985] 2

S.C.R. 486, [1985] S.C.J. No. 73 (QL); *Canada (Minister of Employment and Immigration) v. Chiarelli*, [1992] 1 S.C.R. 711, 135 N.R. 161; and *Singh v. Minister of Employment and Immigration*, [1985] 1 S.C.R. 177, [1985] S.C.J. No. 11 (QL). Based on binding jurisprudence, the Federal Court also held that the appellant was using the Bill of Rights to claim a right, when it is restricted in this context, to a privilege (memorandum of the respondents at para. 25-28). These cases from the Supreme Court on which these principles are based bind us and, despite the appellant's invitation to us to depart from them, we consider that any departure from them be done by the Supreme Court.

[7] We shall answer the certified question as follows:

Question: Does subsection 25(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, which bars access to a process for the review of humanitarian and compassionate (H&C) factors for persons inadmissible under ss. 34, 35 and 37, violate section 2(e) of the *Canadian Bill of Rights*, S.C. 1960, c. 44?

Answer: No.

[8] Despite the able submissions of Mr. Liston, the appeal will be dismissed.

"Richard Boivin"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-7-20

STYLE OF CAUSE: JOHN JOSEPH GOODMAN v.
MINISTER OF PUBLIC SAFETY
AND EMERGENCY
PREPAREDNESS

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

DELIVERED FROM THE BENCH BY: BOIVIN J.A.

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