Federal Court  Cour fédérale

Date: 20140521

Docket: T-1235-14

Citation: 2015 FC 660

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, May 21, 2015

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

FRANK VAILLANCOURT

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] The applicant is challenging the lawfulness of a decision dated April 17, 2014, in which Superintendent Michelle Young (the designated officer) upheld the decision dated June 12, 2013, of the Member Representative Directorate (MRD) of the Royal Canadian Mounted Police (RCMP) to refuse to represent the applicant in his challenge of disciplinary notices pursuant to paragraph 3(*b*) of the *Commissioner's Standing Orders (Representation), 1997*, SOR/97-399

(Standing Orders) [repealed and replaced since November 28, 2014, by the *Commissioner's Standing Orders (General Administration)*, SOR/2014-293]. This application for judicial review was heard concurrently with a similar application for judicial review in docket T-2180-12, in which the applicant challenges an earlier decision dated November 2, 2012, by another designated officer regarding his representation by the MRD: *Vaillancourt v Canada (Attorney General)*, 2015 FC 659.

[2] On November 2, 2012, Superintendent Luc Delorme rendered a decision in which he ordered the MRD to represent the applicant in his challenge of disciplinary notices. In any event, counsel for the applicant in this application for judicial review, Jasmine Patry, approached the MRD to ask whether they intended to continue representing the applicant. On November 26, 2012, Superintendent Art Pittman, Director of the MRD, responded to Ms. Patry's letter by fax, indicating that he was not sure whether the MRD would be able to help the applicant, but confirming that Corporal Dominique Denis was assigned to the file and that she would soon be contacting the applicant to determine whether she could establish a working relationship with him.

[3] The Superintendent asked in his letter to Ms. Patry to be provided with the applicant's email address and telephone number, at the same time providing Corporal Denis's coordinates. That letter went unanswered. On December 14, 2012, Corporal Denis faxed a letter to Ms. Patry asking to be provided with the applicant's email address and telephone number. That letter also went unanswered. On January 9, 2013, Corporal Denis sent a third letter to Ms. Patry, asking her once again to provide the applicant's coordinates and also to acknowledge receipt of the letters

of November 26, 2012; December 14, 2012; and January 9, 2013. That letter also went unanswered.

[4] On April 11, 2013, Superintendent Pittman sent a letter to the applicant by regular mail. That letter indicated that the three letters sent to Ms. Patry seeking the applicant's coordinates had remained unanswered and that no information had been received from Ms. Patry or the applicant. Superintendent Pittman asked the applicant to acknowledge receipt of the letter and to confirm his intentions as soon as possible, no later than April 30, 2013. According to the post office receipt, this letter was received by the applicant on April 15, 2013.

[5] On April 30, 2013, the applicant responded by letter to Superintendent Pittman. In that letter, the applicant stated that it was obvious that his employer had his coordinates and that he did not understand why he was receiving such requests. The letter included neither the applicant's telephone number nor his email address. The applicant also expressed surprise at the fact that Superintendent Pittman was asking whether he wished to be represented by the MRD. The applicant stated that he had attempted to reach Corporal Denis several times at her work and at her cellphone numbers, leaving her several messages that included his coordinates, but that his calls had never been returned.

[6] On June 12, 2013, Superintendent Pittman decided to refuse to authorize the applicant's continued representation and sent him a notice to that effect. According to the notice, the primary reasons for this refusal were the applicant's refusal to collaborate and a lack of the confidence necessary to establish a solicitor-client relationship. This notice states that the MRD made

several attempts to communicate with the applicant and Ms. Patry, including the letters mentioned above and telephone messages left by Corporal Denis to Ms. Patry. Moreover, Superintendent Pittman noted that, based on his verification, no message or telephone call had been received from the applicant. As Corporal Denis had never given him her cellphone number, the applicant could not have contacted her at that number, contrary to his allegations in the letter dated April 30, 2013. Superintendent Pittman also notes that the applicant never did provide either his telephone number or his email address, despite the renewed requests. Superintendent Pittman concludes that the refusal is based on paragraph 3(*b*) of the Standing Orders, which provides that representation will not be authorized if it could impair the efficiency, administration or good government of the RCMP.

[7] The applicant submitted the decision of June 12, 2013, for review by a designated officer. On April 17, 2014, the designated officer upheld the decision of June 12, 2013. In doing so, the designated officer relied solely on the events arising after the decision of Superintendent Delorme on November 2, 2012. The designated officer concluded that it was clear that the MRD had made considerable efforts to establish contact with the applicant and Ms. Patry, and that the latter individuals had provided no valid reason for their failure to respond. The designated officer also noted that the telephone records filed by the applicant did not support his claim that he had left voice mail messages to the MRD and that his claim to the effect that he had tried to reach Corporal Denis on her cellphone was unsupported by the evidence. The designated officer also stated that he did not understand why the applicant had not followed up with a letter or email if his calls were going unanswered. According to the designated officer, there is no indication in the record that the MRD was indeed in possession of the applicant's coordinates. Accordingly,

the designated officer observed that the time and effort spent by the MRD since November 2012 were sufficient to conclude that the applicant's representation would cause additional delays to other RCMP members, which would impair the efficiency, administration and good government of the RCMP. The designated officer upheld the MRD's decision pursuant to paragraph 3(*b*) of the Standing Orders.

[8] All of the grounds invoked by the applicant relate to the merits of the designated officer's decision. The applicable standard of review in such cases is reasonableness: *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*]; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12; *Vaillancourt v Canada (Attorney General)*, 2012 FC 70 at paras 27-33. This application for judicial review must be dismissed.

[9] In his memorandum, the applicant alleges that the designated officer erred in taking into account only the facts that arose after the decision of Superintendent Delorme on November 2, 2012. According to the respondent, this argument is surprising, since the applicant had made the opposite argument to the designated officer, namely, that the MRD's decision should be based solely on the facts arising after the decision of November 2, 2012. During the hearing before this Court, counsel for the applicant nevertheless agreed that the designated officer did not need to consider events prior to November 2, 2012, so it will not be necessary to address that argument.

[10] The applicant also alleges that the designated officer erred in her assessment of the evidence filed by the parties in concluding that the applicant had failed to act in a spirit of cooperation. The applicant also challenges the designated officer's conclusion, alleging that it is

not the applicant's representation that is likely to impair the efficiency, administration and good government of the RCMP, but rather the MRD's stubborn refusal to provide such representation. According to the applicant, it was impossible to justify a refusal to represent the applicant on the sole basis of the events that occurred after November 2, 2012. The applicant's telephone records show that he had tried several times to communicate with Corporal Denis and that she had never returned his calls. Moreover, the RCMP, as the applicant's employer, already has his telephone number and email address, which means that the MRD could easily have obtained this information. The MRD was also well aware that the applicant's counsel for his Federal Court cases was not representing him in the context of his disciplinary notices; otherwise, the applicant would not have needed representation by the MRD.

[11] According to the respondent, the applicant has in no way indicated which evidence the designated officer failed to assess properly or to consider, and has therefore not demonstrated how the designated officer may have erred in her assessment of the evidence. The respondent alleges that the decision is based on the evidence, including all of the letters sent to the applicant's counsel, as well as the applicant's telephone records and Corporal Denis's statement to the effect that she had never received any voice messages from the applicant. The designated officer pointed out the contradiction between the applicant's allegation that he had called Corporal Denis several times on her cellphone and the fact that the number did not appear in the telephone records, a contradiction that undermines the applicant's credibility.

[12] I fully agree with the respondent's arguments in favour of dismissal. When the Court is reviewing the lawfulness of a decision on the standard of reasonableness, its role is not to

reweigh the evidence or substitute its own decision for that of the decision-maker. Rather, the Court must determine whether the decision and its justification are reasonable, reasonableness being concerned mostly with "the existence of justification, transparency and intelligibility within the decision-making process", as well as "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, above, at para 47). It is evident that the designated officer considered all of the evidence, including that submitted by the applicant such as the telephone records, but also that filed by the MRD, including the letters sent to the applicant or his counsel, and Corporal Denis's response to the applicant's allegations, explaining that she had not provided the applicant with her cellphone number and had received no telephone messages from him at her work number. General allegations aside, the applicant has in no way demonstrated how the designated officer may have erred in her assessment of the evidence. Given all of the evidence in the record, the designated officer's conclusion falls within the range of possible outcomes. I therefore consider the impugned decision to be reasonable.

[13] The application for judicial review is dismissed. In light of the result, the respondent will be entitled to costs.

JUDGMENT

THIS COURT'S JUDGMENT is that the applicant's application for judicial review is dismissed with costs.

"Luc Martineau"

Judge

Certified true translation
Francie Gow, BCL, LLB

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1235-14
STYLE OF CAUSE:	FRANK VAILLANCOURT v ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	MAY 11, 2015
JUDGMENT AND REASONS:	MARTINEAU J.
DATED:	MAY 21, 2015

APPEARANCES:

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

SOLICITORS OF RECORD:

Jasmine Patry Barrister and Solicitor Montréal, Quebec	FOR THE APPLICANT
William F. Pentney Deputy Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT