

Federal Court



Cour fédérale

Date: 20201209

Docket: T-1849-17

Citation: 2020 FC 1131

[ENGLISH TRANSLATION]

Ottawa, Ontario, December 9, 2020

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

SÉBASTIEN RACICOT

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Background

[1] The applicant, Sébastien Racicot, has been a police officer with the Royal Canadian Mounted Police [RCMP] since 1997.

[2] On August 14, 2014, an altercation occurred between Mr. Racicot and his ex-spouse at the family residence. The couple's daughter witnessed the events. In the days following the altercation, Mr. Racicot's ex-spouse filed an assault complaint against him with the municipal police department. On August 20, 2014, Mr. Racicot was arrested and released on a promise to appear. He in turn filed a complaint against his ex-spouse for assault.

[3] Following his arrest, Mr. Racicot notified his supervisor of the proceedings initiated by the municipal police department. A week later, the RCMP notified Mr. Racicot that an ethics investigation would be launched into the events of August 14, 2014, under Part IV of the *Royal Canadian Mounted Police Act*, RSC 1985, c R-10 [RCMP Act]. At the time, the terms of reference for the investigation contained only one allegation. The allegation stated, among other things, that Mr. Racicot had failed to behave in a manner that is not likely to discredit the RCMP in contravention of section 7.1 of the Code of Conduct.

[4] On November 11, 2014, the Director Criminal and Penal Prosecutions announced that there was insufficient evidence to bring criminal charges against Mr. Racicot and his former spouse.

[5] As a result of information uncovered during the investigation, the RCMP launched a second investigation mandate in February 2015. Four new allegations were added. These included allegations that Mr. Racicot used a cellular telephone provided by the RCMP to communicate with his daughter for inappropriate or unauthorized personal purposes, and that on or about October 16, 2014, he discussed the incidents of August 14, 2014, with her and

attempted to influence her. The RCMP once again criticized Mr. Racicot for failing to behave in a manner that is not likely to discredit the RCMP in contravention of section 7.1 of the Code of Conduct.

[6] On May 25, 2015, Mr. Racicot received the investigation report from the Professional Standards Unit of “C” Division dated May 21, 2015, regarding the five allegations.

[7] On July 20, 2015, the conduct authority signed a notice of conduct meeting in which it set out the five allegations against Mr. Racicot. The conduct authority also notified Mr. Racicot that it had determined that there was sufficient evidence in respect of four of these allegations to allow it to make a *prima facie* finding that his conduct had been contrary to the Code of Conduct. It advised Mr. Racicot of his right to make written submissions prior to a conduct meeting. That meeting took place on September 10, 2015.

[8] On September 23, 2015, the conduct authority rendered its decision. It found that three of the five allegations were established and that Mr. Racicot had contravened sections 4.6 and 7.1 of the Code of Conduct.

[9] With respect to the allegation arising from the altercation on August 14, 2014 (Allegation 1), the conduct authority found that the versions provided by Mr. Racicot and his ex-spouse were contradictory, and it instead accepted the version presented by their daughter, which corroborated in part the ex-spouse’s account. The conduct authority rejected Mr. Racicot’s argument that his daughter had been the victim of parental alienation on the part of her mother.

The conduct authority added that, as a police officer, Mr. Racicot had a duty to avoid physical confrontation when other options were available. Given the tense situation in which he found himself, Mr. Racicot should have taken the necessary steps to reduce the level of tension, not aggravate it. He also had an obligation to respect the rights of others, including those of his former spouse. The conduct authority concluded that a reasonable person, knowing all the relevant circumstances, including the realities of policing in general and in the RCMP in particular, would be of the opinion that Mr. Racicot failed to behave in a manner that was not likely to discredit the RCMP in contravention of section 7.1 of the Code of Conduct.

[10] With respect to the use of government-provided property and equipment for unauthorized purposes (Allegation 3), the conduct authority noted Mr. Racicot's admission and explanation that he had not been aware of the prohibition and had never been advised by a supervisor not to use the office cellular telephone for personal use. However, the conduct authority noted that the investigation had revealed that between May 27 and August 18, 2014, some 2,847 text messages were sent and/or received between Mr. Racicot's office cellular telephone number and his former spouse's number at all hours of the day or night, regardless of the day of the week. In addition, between May 26 and October 17, 2014, another 534 text messages were sent and/or received between Mr. Racicot's office cellular telephone number and his daughter's cellular telephone number. The conduct authority found that a reasonable person with knowledge of all the relevant circumstances, including the realities of policing in general and in the RCMP, would be of the opinion that Mr. Racicot had not made reasonable use of the office cellular telephone. Rather, he had used it on numerous occasions for inappropriate and unauthorized personal use to

communicate with his daughter and former spouse, in contravention of section 4.6 of the Code of Conduct.

[11] Finally, with respect to the allegation that Mr. Racicot had communications with his daughter with the intent to influence her version of events (Allegation 4), the conduct authority rejected Mr. Racicot's explanation that he had a right to speak to his daughter and correct the facts because her version of events did not represent what had happened. The conduct authority noted in particular that the investigation revealed the transmission of 90 text messages between Mr. Racicot and his daughter in a 24-hour period between October 16 and 17, 2014. Based on some of these exchanges, the conduct authority concluded that Mr. Racicot had put undue pressure on his daughter to influence her testimony and change her version of events while a criminal and ethics investigation under Part IV of the RCMP Act was under way.

[12] The conduct authority imposed the following measures:

- (a) Allegation 1: Requirement to attend counselling sessions or complete a rehabilitation program addressing domestic violence before June 1, 2016, and a financial penalty equivalent to 16 hours' pay;
- (b) Allegation 3: A warning; and
- (c) Allegation 4: Requirement to attend counselling sessions or complete a rehabilitation program addressing his anger management issues by June 1, 2016, and a financial penalty equivalent to 8 hours' pay.

[13] Mr. Racicot appealed that decision. He raised two grounds of appeal.

[14] First, he argued that the conduct authority made a palpable and overriding error by failing to consider all the evidence essential to determining Allegation 1. In particular, he alleged that the conduct authority failed to consider the case law on witness credibility and parental alienation that he submitted. He further alleged that the conduct authority failed to consider the following: (1) all of his statements, which were identical and consistent with each other, unlike those of his ex-spouse; (2) the polygraph report showing that he had been truthful; (3) the scene of the altercation reconstructed during the conduct meeting; (4) his right to self-defence during the August 14, 2014, altercation; and (5) the statement of a neighbour. In general, Mr. Racicot felt that the conduct authority failed to properly assess the credibility of the witnesses and disregarded some of the evidence.

[15] With respect to allegations 3 and 4, Mr. Racicot alleged that the conduct authority erred in its interpretation of the applicable standards of conduct. He first alleged that a reasonable person would not have concluded that the use of his work phone was abusive, unreasonable or inappropriate. He also argued that the conduct authority should have considered his role as a father interacting with his daughter when it applied the reasonable person test.

[16] His appeal was referred to the RCMP External Review Committee [ERC] for review pursuant to subsection 45.15(1) of the RCMP Act. In its report of April 18, 2017, the ERC recommended that the adjudicator dismiss the appeal and confirm the decision of the conduct authority.

[17] On October 23, 2017, the appeal adjudicator accepted the ERC's recommendations, dismissed the appeal and confirmed the decision of the conduct authority. In his decision, the adjudicator reviewed the investigation report, the statements of Mr. Racicot, his former spouse and their daughter, Mr. Racicot's written submissions to the conduct authority, the conduct meeting and the decision of the conduct authority, Mr. Racicot's written submissions on appeal, and the ERC report. With respect to the first ground of appeal, the adjudicator rejected the arguments raised by Mr. Racicot that the conduct authority failed consider some of the evidence, such as the results of his polygraph test or his claim of self-defence. The adjudicator noted that the polygraph test was part of the record considered by the conduct authority and that the conduct authority was not required to deal explicitly with every piece of evidence or argument raised by Mr. Racicot. The adjudicator was also of the view that the conduct authority had not erred in its assessment of the credibility of the witnesses. Recalling first that a high degree of deference must be accorded on this issue, the adjudicator found that the conduct authority had properly described the statements, explained the rejection of Mr. Racicot's statements conflicting with those of his former spouse, and provided reasons for the weight given to their daughter's version of events. The adjudicator also agreed with the conduct authority that there was no evidence that Mr. Racicot's daughter had been influenced by her mother in her testimony or that parental alienation had occurred.

[18] With respect to the second ground of appeal, the adjudicator found that the conduct authority had made no palpable and overriding error in its interpretation and application of the standard of conduct. First, with respect to Allegation 3, the adjudicator stated that he was not satisfied that the conduct authority made a decision that was patently unreasonable given the

number of messages sent and received during the relevant period and given Mr. Racicot's admission. Moreover, for Allegation 4, the adjudicator found that in light of his daughter's statement and the text messages he had sent to her, Mr. Racicot had not behaved as a reasonable parent trying to reason with his daughter. Like the conduct authority and the ERC, the adjudicator found that a reasonable person, knowing that criminal and ethical investigations were under way, would not have acted as Mr. Racicot did. He should have [TRANSLATION] "refrained from incessantly inciting [his daughter] to opt for his version of events when it was so decisive in relation to his own".

[19] Mr. Racicot is asking this Court to overturn the decision rendered by the adjudicator and to order the reimbursement of the 24 hours without pay imposed on him as well as the costs incurred for the polygraph tests.

[20] With respect to Allegation 1, Mr. Racicot criticizes the adjudicator for unduly dwelling on the issue of the credibility of the witnesses and for failing to [TRANSLATION] "mention the principle of defence under section 34 of the *Criminal Code*", RSC 1985, c C-46. He further argues that the failure to consider the results of the polygraph test which confirmed that he was telling the truth was [TRANSLATION] "also a palpable and overriding error".

[21] With respect to allegations 3 and 4, Mr. Racicot argues that the adjudicator's decision was unreasonable because he failed to consider all of the evidence. In particular, he criticizes the adjudicator for not accepting his explanation that the text messages had, for the most part, been initiated by his ex-spouse and that these exchanges had taken place in the context of divorce

proceedings. As for the messages sent to his daughter, he reiterates that he sincerely believed that parental alienation had occurred, which should minimize the weight given to the use of the telephone to communicate with her. In this regard, he adds that the messages clearly demonstrate that they were not intended to force his daughter to change her statement, but rather to ensure that she did not lose respect for him. Finally, Mr. Racicot argues that the jurisdiction to rule on the presence of parental alienation rests with the Superior Court of Quebec and that his fear on this subject was objective if one takes into account the statements that demonstrate serious animosity towards him on the part of his ex-spouse.

II. Analysis

[22] The Court cannot agree with Mr. Racicot's position that his argument regarding self-defence is subject to the correctness standard since it is a question of law.

[23] Since *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], the presumptive standard of review is reasonableness. This presumption can be rebutted in two types of situations: (1) where Parliament has explicitly prescribed the applicable standard of review or provided a statutory appeal mechanism; or (2) where the rule of law requires that the standard of correctness be applied. The rule of law exception covers constitutional questions, general questions of law of central importance to the legal system as a whole and questions related to the jurisdictional boundaries between two or more administrative bodies (*Vavilov* at paras 10, 16–17).

[24] The issue of self-defence raised by Mr. Racicot can be considered, at most, as a question of mixed fact and law. Since none of the exceptions apply in this case, the Court intends to review the decision on a standard of reasonableness.

[25] Where the reasonableness standard applies, the starting point is judicial restraint and respect for the distinct role of administrative decision makers (*Vavilov at para 75*). The Court is interested in “the decision actually made by the decision maker, including both the decision maker’s reasoning process and the outcome” (*Vavilov at para 83*). It must consider whether “the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision” (*Vavilov at para 99*). It does not ask “what decision it would have made in place of that of the administrative decision maker, attempt to ascertain the ‘range’ of possible conclusions that would have been open to the decision maker, conduct a de novo analysis or seek to determine the ‘correct’ solution to the problem” (*Vavilov at para 83*). The “burden is on the party challenging the decision to show that it is unreasonable” (*Vavilov at para 100*).

[26] After examining the record, the Court finds that there is no reason to intervene.

Mr. Racicot failed to demonstrate how the adjudicator’s decision was unreasonable.

[27] With respect to Mr. Racicot’s contention that he was defending himself against an assault by his ex-spouse during the August 14, 2014 altercation, the adjudicator considered Mr. Racicot’s argument at paragraph 49 of his decision but dismissed it at paragraphs 90 to 95.

He was of the view that the conduct authority had not committed any palpable and overriding error in its assessment of the credibility of the witnesses.

[28] Mr. Racicot acknowledges that his statement of facts and that of his ex-spouse are contradictory. Since the conduct authority found his daughter's statement to be credible, the adjudicator could only reasonably overturn the decision on a matter of credibility if the conduct authority had made a palpable and overriding error (*Kalkat v Canada (Attorney General)*, 2017 FC 794 at para 77; *Elhatton v Canada (Attorney General)*, 2013 FC 71 at paras 45–47). Since the conduct authority and the adjudicator had accepted his daughter's version of events, Mr. Racicot could not reasonably claim a right to self-defence.

[29] The adjudicator further considered Mr. Racicot's argument that the conduct authority failed to take his polygraph results into account. However, he found it to be ill founded. Recalling the Supreme Court of Canada's decision in *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, the adjudicator noted that the conduct authority was not required to comment in its reasons on all of the arguments and evidence presented by Mr. Racicot. Nevertheless, he was of the view that it was clear from the decision that the conduct authority had considered and correctly described Mr. Racicot's version of the incident that occurred on August 14, 2014, and provided detailed reasons in support of its decision. In this regard, he pointed out that the conduct authority had noted that it had based its conclusion on all of the information obtained during the investigation. The polygraph report was part of that information.

[30] With respect to the inappropriate and unauthorized use of the cellular telephone provided by the RCMP, the adjudicator considered all of Mr. Racicot's arguments on this issue, including the fact that it was a good faith error, that the number of messages sent and received was reasonable in the circumstances, that no additional charges had been billed to the RCMP, that the use had not affected his work, and that he had stopped using it as soon as he was informed that personal use was prohibited.

[31] The adjudicator found, however, that the use of the telephone had been unreasonable because of its frequent use for unauthorized personal purposes. Considering the hundreds of personal text messages sent by Mr. Racicot to his daughter and their contents, as well as the profane nature of several messages sent to his ex-spouse, the Court finds that it was entirely reasonable for the adjudicator, and for the conduct authority, to have concluded that this behaviour contravened the Code of Conduct and that the use of the cellular telephone had been inappropriate.

[32] Moreover, both the adjudicator and the conduct authority determined that there was insufficient evidence to conclude that Racicot's daughter had been a victim of parental alienation by his ex-spouse. Rather, they found that it was Mr. Racicot who had attempted to influence his daughter. The adjudicator was of the view that regardless of Mr. Racicot's claims about his intentions in communicating with his daughter about the altercation on August 14, 2014, it was apparent from his daughter's testimony and the text messages in evidence that Mr. Racicot had not behaved as a reasonable parent trying to reason with his daughter. It was reasonably open to the adjudicator to have concluded as much in light of the evidence before him.

[33] As to the argument that the conduct authority and the adjudicator lacked jurisdiction to determine the issue of parental alienation, the Court cannot agree. Mr. Racicot referred this issue to the conduct authority and the adjudicator. They determined that there was insufficient evidence to conclude that Mr. Racicot's daughter had been a victim of parental alienation by her mother. Mr. Racicot cannot now claim that they lacked jurisdiction to rule on an argument that he himself raised.

[34] In closing, the Court finds that Mr. Racicot has not shown that the adjudicator's decision was unreasonable. He proffered the same arguments that he had raised before the adjudicator. He again attempted to show that he had only been acting in self-defence during the altercation and persisted in asserting that his intention had not been to influence his daughter. These arguments were considered by the conduct authority, the ERC and the adjudicator and were rejected at every stage. Like the decisions of the conduct authority and the ERC, the adjudicator's decision was justified, intelligible and transparent (*Vavilov* at para 99). Mr. Racicot is essentially asking this Court to re-evaluate the evidence in order to reach a different conclusion. It is well recognized in the case law that this is not the role of this Court (*Vavilov* at para 125; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59).

[35] For these reasons, the application for judicial review is dismissed with costs in the amount of \$2,500.00 in favour of the Attorney General of Canada.

JUDGMENT in T-1849-17

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.
2. Costs in the amount of \$2,500.00 are awarded in favour of the Attorney General of Canada.

“Sylvie E. Roussel”

Judge

Certified true translation
Michael Palles, Reviser

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1849-17

STYLE OF CAUSE: SÉBASTIEN RACICOT v ATTORNEY GENERAL
OF CANADA

PLACE OF HEARING: HELD BY VIDEOCONFERENCE BETWEEN
OTTAWA, ONTARIO, AND MONTRÉAL, QUEBEC

DATE OF HEARING: DECEMBER 1, 2020

JUDGMENT AND REASONS: ROUSSEL J.

DATED: DECEMBER 9, 2020

APPEARANCES:

Constantin Kyritsis FOR THE APPLICANT

Luc Vaillancourt FOR THE RESPONDENT

SOLICITORS OF RECORD:

Rose Kyritsis Phaneuf FOR THE APPLICANT
Attorneys
Montréal, Quebec

Attorney General of Canada FOR THE RESPONDENT
Ottawa, Ontario