

Federal Court



Cour fédérale

**Date: 20240829**

**Docket: T-2445-23**

**Citation: 2024 FC 1349**

**Ottawa, Ontario, August 29, 2024**

**PRESENT: The Honourable Mr. Justice Manson**

**BETWEEN:**

**MASOOD MASJOODY**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

I. Background

[1] The Applicant seeks judicial review of a decision of the Canadian Judicial Council (the “CJC”), dismissing his complaint against three judges of the Court of Appeal for British Columbia.

[2] A chronology of the underlying litigation that resulted in the Applicant's complaint is aptly set out in paragraph 3 of the Respondent's memorandum of fact and law:

- A. April 30, 2020: Applicant filed a notice of civil claim in *Masjoody v Trotignon* (Supreme Court of British Columbia File No. VLC-S-S-204587).
- B. August 3, 2021: Fitzpatrick J. issued her judgment in *Masjoody v Trotignon*, 2021 BCSC 1502, striking the amended notice of civil claim and dismissing the action, on the basis that the Court had no jurisdiction to resolve the issues raised in the action.
- C. April 8, 2022: Court of Appeal dismissed the Applicant's appeal from Fitzpatrick J.'s judgment, agreeing that the Supreme Court of British Columbia did not have jurisdiction over the dispute, given that the dispute fell within the dispute-resolution process under a collective agreement.
- D. August 9, 2022: Applicant filed his first CJC complaint, concerning Fitzpatrick J. (CJC File 22-0316).
- E. October 7, 2022: The CJC issued its decision in the first CJC complaint (CJC File 22-0316).
- F. February 8, 2023: Applicant filed a letter with the Court of Appeal requesting a re-opening of appeal CA47689.

- G. February 16, 2023: Court of Appeal responded to the Applicant reporting that the division in CA47689 declined to re-open the appeal.
  
- H. March 8, 2023: Applicant filed a Notice of Appeal (CA48922), along with a Notice of Application for an extension of time. This would be a second appeal of the order from 2021 BCSC 1502.
  
- I. May 30, 2023: Court of Appeal (Newbury, Fenlon, and Voith JJ.A.) dismissed the Applicant's second appeal, via a summary determination under section 21(1) of the *Court of Appeal Act*, SBC 2021, c 6, because of cause of action estoppel and mootness.

[3] On June 16, 2023, the Applicant made a complaint to the CJC against Justices Newbury, Fenlon, and Voith, alleging issues of misconduct, including:

- (i) A lack of integrity, diligence and honesty in performing their judicial duties;
  
- (ii) Failure to read appeal materials;
  
- (iii) Fabricating facts;
  
- (iv) Failure to provide an opportunity for a fair hearing;
  
- (v) Intentional and repeated lies in the face of facts;

- (vi) Lack of impartiality;
- (vii) Engagement in a “conspiracy”; and
- (viii) Egregious misconduct obstructing justice.

[4] The Acting Director of the CJC dismissed the complaint by letter dated October 23, 2023, holding that the complaint was “trivial, vexatious, made for an improper purpose and manifestly without substance”. Accordingly, the complaint did not warrant consideration by the CJC.

## II. Issues

A. There are two preliminary issues:

- (1) Whether portions of the Applicant’s affidavit are improper, including paragraphs 6 through 13 and Exhibits F through M as (1) introducing material not before the decision maker, and (2) failing to comply with Rule 81 of the *Federal Courts Rules*, SOR/98-106, as alleging facts or statements not affirmed or sworn to be within the Applicant’s personal knowledge or even made on belief; and
- (2) Whether paragraphs 1-3, 6, 8-11, 19, 20, 37, 51-53 and 61-68 of the Applicant’s memorandum of fact and law should be struck or otherwise disregarded.

B. Was the decision of the CJC reasonable?

C. Was the process procedurally fair?

### III. Standard of Review

[5] The standard of review is reasonableness for all issues other than with respect to procedural fairness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65).

[6] Procedural fairness is reviewed on the standard of correctness or a standard with the same import (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 34-35, citing *Mission Institution v Khela*, 2014 SCC 24 at para 79).

### IV. Analysis

#### A. *Preliminary Issues*

##### (1) The Applicant's Affidavit

[7] The Respondent objects to certain portions of the Applicant's affidavit as being improper for: (a) not being material before the decision maker (paragraphs 6 through 13 and Exhibits F through M), and (b) failing to comply with Rule 81 of the *Federal Courts Rules*, for alleging facts or statements not affirmed or sworn to be within the Applicant's personal knowledge or being made on information and belief.

[8] While there are three recognized exceptions to the general proposition with respect to it being improper to introduce evidence not before the decision maker, none of these exceptions apply here. These three exceptions are:

- a. Material that provides general background where it is helpful to understand the issues relevant to the judicial review;
- b. To identify procedural defects that would not be apparent on the evidentiary record of the administrative decision-maker; or
- c. To highlight a complete absence of evidence on a finding made by the administrative decision-maker.

*Tseil-Waututh Nation v Canada (Attorney General)*, 2017 FCA 128 at para 98

[9] None of the material in Exhibits F through M or the allegations made in paragraphs 6 through 13 of the Applicant's affidavit introduce material before the decision maker, nor do they comply with Rule 81 of the *Federal Courts Rules*, and are hereby struck.

(2) Applicant's Memorandum of Fact and Law

[10] There are also many statements made in the Applicant's memorandum of fact and law that rely on material in the aforesaid affidavit that are improper for the reasons given above, introduce hearsay (paragraphs 10, 19, 20, 52 and 53) and make assertions without any valid basis

on the evidence and amount to scandalous and vexatious statements, as found in paragraphs 6, 8, 9-11 and 37. These statements are disregarded.

B. *Was the decision of the CJC reasonable?*

[11] The Acting Executive Director rendered the decision based on the applicable grounds found in the relevant statute and policy, namely the *Judges Act*, RSC 1985, c J-1 (the “*Judges Act*”) and the *Canadian Judicial Council Procedures for the Review of Complaints or Allegations about Federally Appointed Judges*, effective 23 June 2023 (the “2023 Procedures”).

[12] While reference may have been made to an earlier version of the review procedures document, the grounds relied upon for the decision are the same as in the *Judges Act* and the 2023 Procedures.

[13] Section 90(1) of the *Judges Act* provides that a screening officer may dismiss complaints for the reasons set out in that section:

**90 (1)** Subject to subsection (2), a screening officer may dismiss a complaint if they are of the opinion that it

(a) is frivolous, vexatious or made for an improper purpose or is an abuse of process;

(b) was not made for a reason referred to in paragraphs 80(a) to (d); or

(c) does not meet the other screening criteria specified by the Council.

[14] It is not the role of the CJC to review issues related to judicial decision-making and the exercise of judicial discretion. This reflects screening criteria established under section 90(1)(c) of the *Judges Act* and listed at section 6.7(2) of the 2023 Procedures. Section 6.7(2)(b) of the 2023 Procedures provides that a complaint may be dismissed if:

it relates to the substance of judicial decision-making such as, but not limited to, the exercise of judicial discretion, findings of fact, findings of law, orders, directions, decisions, assessment of evidence, rejection of arguments, release of transcripts, decorum in the courtroom and such other similar matters...

[15] The Acting Executive Director found that most of the points raised in the complaint were:

unsupported by any evidence and are frivolous or vexatious. You make bald, far-reaching statements that impugn the integrity and professionalism of these three judges, but provide no information that would lend credence to your allegations.

[16] A complaint may be dismissed if it is “frivolous, vexatious or made for an improper purpose or is an abuse of process”. Further, section 6.7(2)(a) of the 2023 Procedures says that a complaint may be dismissed if “the matter is trivial, manifestly unsupported or without substance”.

[17] The Acting Executive Director properly found that the Applicant’s allegations were “unsubstantiated, vexatious or unrelated to judicial conduct”, noting as well that section 6.7(2)(c) of the 2023 Procedures supports the position that a complaint may be dismissed if it does not involve judicial conduct.



[18] Having reviewed in detail all the materials submitted by the parties, I find that the Decision addresses each of the thirteen categories of alleged misconduct. While the Applicant argues that the Decision fails to address the allegation of bias, that matter was addressed in a previous letter of the CJC in response to the Applicant's previous complaint. It was again properly addressed by advising the Applicant that an allegation of bias and impartiality must be supported by cogent evidence, and that there is a weighty presumption that a judge has acted in good faith and with due and proper consideration of the issues before him or her. That cogent evidence was not present here, nor was there any viable argument that the adequacy of the reasons provided was in any way deficient. The evidentiary record, the submissions made, the understanding of the Acting Executive Director based on previous correspondence and decisions taken, were all properly considered.

[19] The function of a screening officer is not to make an assessment on the merits of the complaint, but rather it is to establish whether that complaint is even within the scope of the CJC's mandate in relation to removal of judges (*Turner-Lienaux v Canada (Attorney General)*, 2021 FC 1483).

[20] The Applicant's argument is without merit – the CJC has no obligation, nor does it have a mandate, to investigate the soundness of judicial rulings – the Applicant improperly conflates a complaint about judicial decision making with one regarding conduct (*Lochner v Canada (Attorney General)*, 2021 FC 692; *Timothy Leahy v Canada (Attorney General)*, 2023 FC 686 at para 23).

C. *Was the process procedurally fair?*

[21] The Applicant alleges that the CJC failed to consider the complaint, ignored supporting documents and has a “closed mind”.

[22] There is simply no evidence to support the allegations. While the Applicant also reiterates his argument of bias and a “closed mind”, he essentially disputes the correctness of the decision and states that to have come to that decision, the CJC must have had a closed mind or was biased. There is no evidence to support a finding of bias or a reasonable apprehension of bias.

[23] The process was procedurally fair.

**JUDGMENT in T-2445-23**

**THIS COURT'S JUDGMENT is that:**

1. The application is dismissed.
2. Costs to the Respondent in line with the Respondent's Bill of Costs at the middle of Column III of Tariff B.

"Michael D. Manson"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-2445-23

**STYLE OF CAUSE:** MASOOD MASJOODY v ATTORNEY GENERAL OF CANADA

**PLACE OF HEARING:** VANCOUVER, BRITISH COLUMBIA

**DATE OF HEARING:** AUGUST 21, 2024

**JUDGMENT AND REASONS:** MANSON J.

**DATED:** AUGUST 29, 2024

**APPEARANCES:**

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FOR THE APPLICANT  
ON HIS OWN BEHALF

Sancho McCann

FOR THE RESPONDENT

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