Federal Court  Cour fédérale

Date: 20250113

Docket: T-2547-23

Citation: 2025 FC 63

Ottawa, Ontario, January 13, 2025

PRESENT: The Honourable Mr. Justice Duchesne

BETWEEN:

NICOLAS JUZDA

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] The Applicant seeks judicial review of the November 1, 2023 decision [the Decision] of the Official Delegated Head of Compliance and Enforcement of the Employment and Social Development Canada's Labour Program [the Head], pursuant to paragraph 129(1)(b) of the *Canada Labour Code*, RSC 1985, c L-2, [the CLC], in which the Head decided that the Applicant's March 3, 2023 refusal to work pursuant to subsection 128(1) of the CLC was frivolous and did not require further investigation.

[2] For the reasons that follow, the Applicant's application for judicial review is dismissed.

I. Facts and Background

[3] The Applicant began working as a full-time Elections Canada [EC] employee in 2018.

[4] In March of 2020, EC switched all or almost all of its employees, including the Applicant, to full-time telework due to the COVID-19 pandemic. The Applicant resumed working at EC's office location on Victoria Street in Gatineau, Quebec [the Workplace] during a period of the pandemic because of personal preference. He worked there from March 2021 to March 3, 2023.

[5] EC was subject to various COVID-19 protective measures and safety guidelines published by the Treasury Board Secretariat [TBS] that were in place and evolved through the period of March 2020 to March 2023.

[6] On December 15, 2022, the TBS announced a return-to-office policy requiring all employees to work at their office location at least two days per week, with exceptions. The return-to-office policy applied to EC employees including the Applicant.

[7] On January 16, 2023, EC sent a message to all its staff, including the Applicant, providing the first details of EC's alignment with the TBS mandated Common Hybrid Work Model. It set out the parameters of EC employees' return to work to their office locations.

[8] On January 18, 2023, the Applicant sent an e-mail to EC's Occupational Health and Safety contacts with questions regarding the COVID-19 precautions that would be in place at the

Workplace following the Return to Office policy in effect as of March 6, 2023. The Applicant's inquiries related to his and his team's workplace safety in the context of the Return to Office plan. The Applicant did not receive a response to his query.

[9] On January 23, 2023, EC sent a newsletter reminding employees that EC was obliged to report all positive COVID-19 cases to TBS and asked them to report any positive COVID-19 cases to their manager. The newsletter included a hyperlink to a publication titled "What to do: Possible or Confirmed COVID-19 Case" as a source of additional information.

[10] On February 1, 2023, EC sent a newsletter to all its employees, including the Applicant, on EC's implementation plan for the Common Hybrid Work Model. The newsletter set out EC's expectation that, as of March 6, 2023, employees should work onsite at designated workplaces on one fixed day per week as per the onsite day schedule, which would be assigned in consultation with senior management and pending space availability. EC was to monitor the schedule on an ongoing basis to determine if changes were required. EC's newsletter set out that exceptions to onsite work were contemplated and could be granted in accordance with EC's Exception Requests for the Common Work Hybrid Model.

[11] The same newsletter reminded EC employees that EC was continuing to offer a voluntary rapid testing program intended to further prevent the spread of COVID-19 in the workplace. Employees who chose to undergo voluntary testing were required to comply with all required public health measures implemented at the EC work site, regardless of the test results.

[12] On February 22, 2023, EC sent another newsletter to all employees, including the Applicant. EC communicated that Health Canada's Public Service Occupational Health Program had updated its COVID-19 occupational health guidance based on the then latest evidence and then present epidemiological situation. EC informed employees that wearing masks in EC workplaces was no longer mandatory as of March 1, 2023, despite that it remained a mask-friendly environment. EC also informed employees that staff could wear a mask or respirator at any time if they preferred to do so, and that EC would continue to provide masks at masking stations and in large boardrooms. At the same time, EC reminded its employees of COVID prevention best practices as follows:

> "• Staying home when sick:
>
> Employees, clients and visitors who are ill should not enter the workplace. This includes anyone who:
>
> ○ is experiencing symptoms of COVID-19
>
> ○ has tested positive for COVID-19 in the past 5 days (with either a PCR or rapid test)
>
> ○ is in quarantine or isolation
>
> Employees who have had COVID-19 can return to the workplace after 5 days if they are symptom free, with the exception of a residual cough.
>
> • Physical distancing
>
> Employees are encouraged to practice physical distancing when possible as an additional layer of protection.
>
> • Hand hygiene
>
> Employees should frequently use hand sanitizer, available in the common areas of each floor, or wash their hands with soap and water for at least 20 seconds.
>
> • Cleaning

> Employees are encouraged to clean shared work stations and equipment before and after use with antibacterial wipes available at each workstation. Please contact the Business Center for additional wipes.
>
> • Rapid testing
>
> Rapid test kits are available to staff, either through on-site ambassadors or the Occupational Health and Safety team.
>
> • Vaccination
>
> It is recommended that all employees stay up to date with COVID-19 vaccinations.
>
> Over the coming weeks, the signage in all worksites and information on the intranet will be updated. Until March 1, employees are required to adhere to the current measures."

[13] On March 3, 2023, the Applicant communicated his work refusal to EC and delivered his report of the circumstances that led to his refusal to work, pursuant to subsection 128(1) of the CLC [the March 3 Refusal Report]. The March 3 Refusal Report initiated the statutory process for the Applicant's work refusal as set out in sections 128 and 129 of the CLC.

[14] For ease of reference, all sections of the CLC referred to in this judgment are attached in its Schedule.

[15] The salient portions of the March 3 Refusal Report read as follows:

> "Based on the announced COVID precautions (or lack thereof), the COVID situation in the NCR, and the occupancy levels at EC's offices following the RTO [Return to Work], I must exercise my right to refuse work that constitutes a danger, as provided for in s. 128(1) of the *Canada Labour Code* and related sections.
>
> Specifically, I must refuse to:

a) Work at 30 Victoria, or any other EC office location, or any "GC co-working space" which presents a similar situation, effective March 6.

b) Order my team to do the above.

Here is my report of the circumstances of the matter that have led to this refusal:

• COVID-19 is a disease that, in addition to often being extremely unpleasant during the acute period, poses significant risks including:

○ Death;

○ A 30% to 40% chance of experiencing "long COVID", a term for a variety of long-term and possibly permanent persistent effects including fatigue, memory problems, sleep disturbances, shortness of breath, anxiety and depression, general pain and discomfort, difficulty thinking or concentrating, and PTSD; and

○ Increased post-COVID risk of contracting and/or experiencing more severe symptoms and/or dying from a variety of other conditions, ranging from heart failure to fungal infection.

• COVID-19 is highly transmissible, including by individuals who are not symptomatic:

○ COVID-19 can be contagious prior to the onset of symptoms.

○ People experiencing symptomatic COVID are most contagious during the first 5 days after symptoms start, but remain contagious for around 10 days. Most people are no longer contagious after 10 days, but in rare cases they remain so for longer.

○ COVID-19 can be asymptomatic, and asymptomatic carriers can still be contagious

• COVID-19 is airborne:

○ COVID-19 is transmissible beyond 2 metres

○ COVID-19 can linger in the air, particularly in indoor environments

○ COVID-19 can circumvent barriers such as cubicle walls

○ Hand-washing and workplace cleaning are of minimal use in limiting the spread of COVID-19 (though they are a good general practice to limit the spread of many other illnesses)

• "One-way" masking reduces the risk of contracting COVID-19, but is of limited effectiveness if not combined with other measures, particularly during prolonged exposure to unmasked infected individuals (such as being nearby in an indoor office for an entire day)

• Vaccination reduces the risks of contracting or experiencing severe outcomes from COVID-19, but:

○ Vaccinated individuals are still at risk of contracting COVID-19

○ Vaccinated individuals are still at risk of experiencing severe outcomes from COVID-19, including long COVID and death

○ Vaccinated individuals who are infected can still spread COVID-19

○ Some variants (such as the so-called "Kraken") are demonstrating the ability to evade vaccines

• COVID-19 remains prevalent in the NCR (as well as beyond)

○ Even between waves, when COVID-19 levels are "stable" rather than rapidly increasing, they remain moderate to very high in the NCR

○ The death rate from COVID-19 in the NCR was higher in 2022 than either 2020 or 2021 and there were fewer "lulls" between waves in 2022

• Following March 6, Elections Canada offices will be occupied by significant numbers of people

• Elections Canada's mandatory precautions against COVID-19 at present appear to consist only of the following:

○ Employees who are experiencing symptoms of COVID-19 or who have tested positive should remain home for 5 days

• All other COVID-19 precautions at Elections Canada have been reduced to non-mandatory recommendations or eliminated entirely

> • Therefore, following the RTO, working at 30 Victoria or other Elections Canada offices would pose a serious threat to the life and health of me and my team (and also other employees)
>
> Obviously, the above is only a brief summary of the risks posed by COVID-19. I would be happy to supply further information or resources, if necessary.
>
> I am aware that Elections Canada's current precautions (or lack thereof) meet the minimum standards set by the Treasury Board Secretariat. However, that is not sufficient to create a safe work environment nor to discharge Elections Canada's obligations under the *Canada Labour Code*.
>
> I would like to clearly state that I am willing to work at 30 Victoria under conditions that are safe for me and my team. I have actually been working at 30 Victoria for the past 23 months, since the end of March 2021. However, this was (relatively) safe either because of the more robust COVID precautions that were previously in place, such as the variety of measure used during the 44th General Election, or more recently because of extremely low occupancy levels in the areas where I worked. Effective March 6, the conditions at 30 Victoria will have changed, with the combination of higher occupancy levels and lack of precautions rendering the office unsafe.
>
> I hope that Elections Canada will, after investigating this issue, take the necessary steps to make its offices safe."

[16] The Applicant did not return to the Workplace.

[17] EC investigated the Applicant's refusal to work and issued an Employer Report dated August 15, 2023 [the Employer Report] as required by subsection 128(7.1) of the CLC. The Employer Report was communicated to the Applicant on the same date. The Applicant met with EC's employer investigator to discuss his report's content. EC's initial investigation as detailed in the Employer Report concluded that no danger had been found to support the Applicant's refusal to return to work at the Workplace.

[18] Without being exhaustive, EC's investigation considered that EC's layered approach to COVID-19 safety met or exceeded the then current safety recommendations, guidance and COVID-19 documents and information available to EC employees, that masks remained available at the EC work premises, that the ventilation systems in all EC buildings were equipped with fine particular filters and were in keeping with indoor air quality standards as required by the National Joint Council Occupational Health and Safety Directives, that the ventilation at the Applicant's EC work site abided by described Public Services and Procurement Canada Standard Building Services, that physical distancing continued to be encouraged as a part of EC's preventative measures and the various newsletter information EC had sent to its employees, including the Applicant.

[19] On August 19, 2023, the Applicant communicated his continued refusal to work notwithstanding EC's investigation and conclusion that no danger existed to support his continued refusal. He delivered his report on the circumstances of his continued refusal to return to work at the Workplace pursuant to subsection 128(9) of the CLC on the same date [the August 19 Report].

[20] EC's Employee Workplace Committee then investigated the Applicant's continued refusal to work as required by subsection 128(10) of the CLC.

[21] The Employee Workplace Committee members conducting the investigation discussed the prior investigation with EC. They further considered whether there was an imminent danger or serious threat *per* the definition of "danger" set out at section 122 of the CLC should the

Applicant return to work at the Workplace, the HVAC systems results for the Workplace, the health and safety communication provided by EC to its to staff, floor access and occupancy levels of the Workplace, and World Health Organization COVID-19 virus status determinations.

[22] On October 11, 2023, the Employee Workplace Committee provided EC with its report pursuant to subsection 128(10.1) of the CLC [the Employee Workplace Committee Report]. The Employee Workplace Committee Report concluded that there was no imminent danger or serious threat as identified by the Applicant that fell within the section 122 CLC definition of "danger".

[23] The Employee Workplace Committee agreed with the findings of the Employer Report in that the Applicant's allegation of a section 122 CLC "danger" at the Workplace was without basis.

[24] On October 18, 2023, the Applicant was provided a copy of the Employee Workplace Committee Report and was requested to inform EC by October 20, 2023, whether he agreed with its findings or would continue his refusal to work. The Applicant maintained his refusal to work on the grounds first set out in his March 3 Refusal Report, at which point the Head was informed of the Applicant's continued refusal to work pursuant to subsection 128(16) of the CLC.

[25] On October 20, 2023, the Head's representative, Mr. Falbo, communicated with the Applicant via email to plan a virtual meeting regarding his continued refusal to work at the Workplace. Mr. Falbo invited the Applicant to send him any document he considered relevant to his case as well as a summary of events relating to his refusal to work at the Workplace.

[26] On October 23, 2023, the Applicant replied with an 8-page email, written in small font, which offered a detailed summary of the events that arose following his March 3 Refusal Report. His submission included summaries of meetings with various EC managers and investigators, as well as a largely repetitive list of the dangers of COVID-19 contained in his March 3 Refusal Report.

[27] Mr. Falbo and another ESDC agent assigned to the matter met virtually with the Applicant and his union representative on October 25, 2023 [the October 25 Meeting] during which the Applicant discussed the events that arose following his March 3 Refusal Report and the concerns that led to his continued refusal to work at the Workplace.

[28] Between October 25 and October 29, 2023, Mr. Falbo and the other ESDC agent continued their investigation in order to formulate a recommendation to the Head as to whether the Applicant's continued refusal to work at the Workplace was trivial, frivolous or vexatious, made in bad faith, or was a matter that could more appropriately be dealt with pursuant to Part I or III of the CLC. In so doing, they consulted with the Employment and Social Development Canada's [ESDC] lead investigator and an ESDC Occupational Health and Safety program counsellor.

[29] On October 30, 2023, Mr. Falbo provided a recommendation report to the Head.

[30] Mr. Falbo's report reflected that he had reviewed and considered the prior Employer Report, Employee Workplace Committee Report, their accompanying schedules, the Applicant's

summary of events and the Applicant's emails in coming to his recommendation. Mr. Falbo recommended that no further investigation was required because the Applicant's refusal to work at the Workplace was frivolous in the sense that it had either no legal basis, no reasonable chance of success, was not serious, was without reasonable object, or was not based in fact.

[31] The Head accepted Mr. Falbo's recommendation. On November 1, 2023, the Head determined that the Applicant's refusal to work was frivolous and issued the Decision. The Decision's salient content is as follows:

> Please be advised that pursuant to paragraph 129(1)(b) of the *Canada Labour Code*, Part II, (Code), it is my decision that:
>
> ○ the matter is frivolous
>
> "frivolous" means lacking a legal basis or legal merit; a matter that has little prospect of success; not serious, not reasonably purposeful.
>
> The worker who made the work refusal had been regularly working from the office located at 30 Victoria in Gatineau (QC), from March 2021 to March 2023.
>
> On December 15, 2022, Treasury Board announced a two-day-a-week return-to-office policy for all federal employees.
>
> On March 3, 2023, the worker sent a refusal to work, by email to several people except for Occupation Health and Safety who later received it on March 17.
>
> The worker's concerns are that when Elections Canada will implement the return to office plan on March 6, 2023, the higher occupancy levels and lack of preventive measures related to Covid-19, will render the office space unsafe and therefore increase the risks of contracting the virus.
>
> The worker has no known medical conditions and confirms that he has been vaccinated in accordance with the recommendations of both, the Public Health of Canada and Quebec.
>
> His concerns of imminent danger to his health are not based on facts, they are speculative and hypothetical. The hazard expressed

> by the worker appears to be a summary analysis of the current situation in the sense that it considers only the elements determining the risk, and not the control measures in place.
>
> For its part, the employer is currently following the Covid-19 safety guidelines of Public Services and Procurement Canada (PSPC), Treasury Board Secretariat (TBS) and the Public Health Agency of Canada (PHAC). Security measures are frequently assessed and communicated to all staff. Also, there are no known cases of Covid-19 infected employees at the above-mentioned office location.

[32] The Applicant continued to refuse to work at the Workplace and commenced this proceeding.

II. **Issues and Standard of Review**

[33] There are two issues for determination:

I. Was the Decision reasonable?

II. Was the Applicant denied procedural fairness?

[34] The parties agree that the standard of review for the Head's decision is reasonableness whereas the standard of review for procedural fairness is correctness. I agree with the parties on these points.

Issue I: Was the Head's decision reasonable?

[35] In *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, a decision released at the same time as time as the Supreme Court of Canada's decision in Canada *(Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], the Supreme Court of

Canada explained what is required for a reasonable decision, and what is required of a court reviewing a decision on the reasonableness standard:

> [31] A reasonable decision is "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov*, at para. 85). Accordingly, when conducting reasonableness review "[a] reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with 'respectful attention' and seeking to understand the reasoning process followed by the decision maker to arrive at [the] conclusion" (*Vavilov*, at para. 84, quoting *Dunsmuir*, at para. 48). The reasons should be read holistically and contextually in order to understand "the basis on which a decision was made" (*Vavilov*, at para. 97, citing *Newfoundland Nurses*).
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> [32] A reviewing court should consider whether the decision as a whole is reasonable: "what is reasonable in a given situation will always depend on the constraints imposed by the legal and factual context of the particular decision under review" (*Vavilov*, at para. 90). The reviewing court must ask "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, citing *Dunsmuir*, at paras. 47 and 74, and *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5, at para. 13).
>
> [33] Under reasonableness review, "[t]he burden is on the party challenging the decision to show that it is unreasonable" (*Vavilov*, at para. 100). The challenging party must satisfy the court "that any shortcomings or flaws relied on ... are sufficiently central or significant to render the decision unreasonable" (*Vavilov*, at para. 100).

[36] In *Vavilov*, at para 86, the Supreme Court of Canada states that "it is not enough for the outcome of a decision to be justifiable. Where reasons for a decision are required, the decision must also be justified, by way of those reasons, by the decision-maker to those to whom the decision applies." *Vavilov* further provides that a reviewing court must decide based on the record before it:

> [126] That being said, a reasonable decision is one that is justified in light of the facts: *Dunsmuir*, para. 47. The decision maker must take the evidentiary record and the general factual matrix that bears on its decision into account, and its decision must be reasonable in light of them: see *Southam*, at para. 56. The reasonableness of a decision may be jeopardized where the decision maker has fundamentally misapprehended or failed to account for the evidence before it. In *Baker*, for example, the decision maker had relied on irrelevant stereotypes and failed to consider relevant evidence, which led to a conclusion that there was a reasonable apprehension of bias: para. 48. Moreover, the decision maker's approach would also have supported a finding that the decision was unreasonable on the basis that the decision maker showed that his conclusions were not based on the evidence that was actually before him: para. 48.

[37] *Vavilov* stresses at paragraph 125 that the role of this Court is not to reweigh and reassess the evidence unless there are "exceptional circumstances". The Federal Court of Appeal likewise held in *Doyle v Canada (Attorney General)*, 2021 FCA 237 that the role of this Court is not to reweigh and reassess the evidence unless there is a fundamental error in fact-finding that undermines the acceptability of the decision under review.

[38] *Vavilov* requires the reviewing court to assess whether the decision subject to judicial review meaningfully grapples with the key issues raised by party seeking review:

> [127] The principles of justification and transparency require that an administrative decision maker's reasons meaningfully account for the central issues and concerns raised by the parties. The principle that the individual or individuals affected by a decision should have the opportunity to present their case fully and fairly underlies the duty of procedural fairness and is rooted in the right to be heard: *Baker*, at para. 28. The concept of responsive reasons is inherently bound up with this principle, because reasons are the primary mechanism by which decision makers demonstrate that they have actually listened to the parties.
>
> [128] Reviewing courts cannot expect administrative decision makers to "respond to every argument or line of possible analysis" (*Newfoundland Nurses*, at para. 25), or to "make an explicit

> finding on each constituent element, however subordinate, leading to its final conclusion" (para 16). To impose such expectations would have a paralyzing effect on the proper functioning of administrative bodies and would needlessly compromise important values such as efficiency and access to justice. However, a decision maker's failure to meaningfully grapple with key issues or central arguments raised by the parties may call into question whether the decision maker was actually alert and sensitive to the matter before it. In addition to assuring parties that their concerns have been heard, the process of drafting reasons with care and attention can alert the decision maker to inadvertent gaps and other flaws in its reasoning: *Baker*, at para. 39. [Emphasis added]

[39] The Supreme Court of Canada also reminds us in *Vavilov* that judicial review of an administrative decision must be sensitive to the administrative setting in which the decision is made:

> [91] A reviewing court must bear in mind that the written reasons given by an administrative body must not be assessed against a standard of perfection. That the reasons given for a decision do "not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred" is not on its own a basis to set the decision aside: *Newfoundland Nurses*, at para. 16. The review of an administrative decision can be divorced neither from the institutional context in which the decision was made nor from the history of the proceedings.
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> [92] Administrative decision makers cannot always be expected to deploy the same array of legal techniques that might be expected of a lawyer or judge — nor will it always be necessary or even useful for them to do so. Instead, the concepts and language employed by administrative decision makers will often be highly specific to their fields of experience and expertise, and this may impact both the form and content of their reasons. These differences are not necessarily a sign of an unreasonable decision — indeed, they may be indicative of a decision maker's strength within its particular and specialized domain. "Administrative justice" will not always look like "judicial justice", and reviewing courts must remain acutely aware of that fact.
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> [93] An administrative decision maker may demonstrate through its reasons that a given decision was made by bringing that institutional expertise and experience to bear: see *Dunsmuir*, at

> para. 49. In conducting reasonableness review, judges should be attentive to the application by decision makers of specialized knowledge, as demonstrated by their reasons. Respectful attention to a decision maker's demonstrated expertise may reveal to a reviewing court that an outcome that might be puzzling or counterintuitive on its face nevertheless accords with the purposes and practical realities of the relevant administrative regime and represents a reasonable approach given the consequences and the operational impact of the decision. This demonstrated experience and expertise may also explain why a given issue is treated in less detail.
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> [94] The reviewing court must also read the decision maker's reasons in light of the history and context of the proceedings in which they were rendered. For example, the reviewing court might consider the evidence before the decision maker, the submissions of the parties, publicly available policies or guidelines that informed the decision maker's work, and past decisions of the relevant administrative body. This may explain an aspect of the decision maker's reasoning process that is not apparent from the reasons themselves, or may reveal that an apparent shortcoming in the reasons is not, in fact, a failure of justification, intelligibility or transparency. Opposing parties may have made concessions that had obviated the need for the decision maker to adjudicate on a particular issue; the decision maker may have followed a well-established line of administrative case law that no party had challenged during the proceedings; or an individual decision maker may have adopted an interpretation set out in a public interpretive policy of the administrative body of which he or she is a member.
>
> [95] That being said, reviewing courts must keep in mind the principle that the exercise of public power must be justified, intelligible and transparent, not in the abstract, but to the individuals subject to it. It would therefore be unacceptable for an administrative decision maker to provide an affected party formal reasons that fail to justify its decision, but nevertheless expect that its decision would be upheld on the basis of internal records that were not available to that party. [Emphasis added]

a) The Applicant's arguments

[40] The Applicant argues that the Decision is unreasonable because it lacks transparency and intelligibility, relies on incoherent reasoning, and lacks justification in light of various legal and factual constraints bearing upon the matter.

[41] The Applicant alleges that the Head failed to meaningfully address the central concerns outlined in his March 3 Refusal Report and other supporting submissions, including various links later provided in the August 19 Report, regarding the existence, prevalence, transmission and spread of COVID-19 in Ottawa and at Workplace. The Applicant also alleges that the Decision did not respond to his central concerns that non-mandatory precautions against COVID-19 at the Workplace are insufficient to prevent COVID-19 transmission and infection, and that there is therefore a danger within the meaning of section 122 of the CLC at the Workplace.

[42] The Applicant also alleges that the Head's decision was unreasonable in light of its potential impact on Applicant's livelihood and continued employment at EC.

[43] Finally, the Applicant argues that the Head's delegate investigator, Mr. Falbo, was biased against him and that the Head's decision is unreasonable because it relies in some manner on Mr. Falbo's investigation and recommendation.

b) The Respondent's arguments

[44] The Respondent argues that reasonableness review should take into account the history and context of the proceedings at hand. In the Respondent's view, the Head enjoyed broad statutory discretion in making her decision and issuing the Decision. He argues that the Decision was made in consideration of the underlying record related to the Applicant's work refusal including the Employer Report and Workplace Committee Report.

[45] The Respondent suggests that the Head reasonably exercised her discretion and that the Head's reasons, which need not be extensive, sufficiently justified the outcome that the Applicant's work refusal was frivolous. In particular, the Respondent notes the Head's reasoning that the Applicant's concerns were hypothetical and speculative, and that the Applicant considered alleged threats caused by COVID-19 summarily without accounting for existing control measures at EC.

c) Analysis and Disposition

[46] I disagree with the Applicant that the Decision lacked transparency, intelligibility, and justification, relies on incoherent reasoning or lacks justification. I also disagree that the Decision fails to grapple with the Applicant's central concerns regarding precautions relating to COVID-19 and Workplace safety. It follows that I find that the Applicant has not met his burden of demonstrating that the Decision is unreasonable.

[47] The Head's function was to determine whether the Applicant's continued refusal to return to work at the Workplace in or after March 2023, August 2023, or October 2023, on the basis of the risk of infection with the COVID-19 virus, should be investigated or whether it fell within paragraphs (a) to (c) of subsection 129(1) of the CLC. The Decision itself functioned to communicate the Head's determination of that limited issue and to explain the basis for her determination in an intelligible manner. I note that in doing so the Head cannot have been expected to deploy the same array of legal techniques and language used by lawyers or judges (*Vavilov* at para 92).

[48] In the Decision, the Head acknowledges the Applicant's key issue with respect to his refusal to return to work at the Workplace. The Decision explicitly recognizes that "[t]he worker's concerns are that when Elections Canada will implement the return to office plan on March 6, 2023, the higher occupancy levels and lack of preventative measures related to Covid-19, will render the office space unsafe and therefore increase the risks of contracting the virus". The Decision reflects that the Head knew the Applicant's main concerns.

[49] The Applicant's concern about an unsafe Workplace was based on his assessment that a significant number of people would return to the Workplace under the return to work model, that any of these people may have contracted COVID-19, and that the non-mandatory recommendations and precautions relating to COVID-19 in the Workplace fell short of what he believes would be a safe work environment sufficient to discharge EC's CLC obligations despite the availability and uptake of COVID-19 vaccination. As the Applicant made clear through his statements at the hearing of this matter, he considers the mere possibility of contracting COVID-19 at the Workplace as constituting a danger within the meaning of section 122 of the CLC that justifies his continued refusal to work there.

[50] The Decision does not answer the Applicant's concern and conclusion that the Workplace he will be returning to, in compliance with the Common Hybrid Work Model, will or will not be unsafe due to COVID-19 transmission risks as directly or in as complete a manner as the Applicant might have hoped. Indeed, as the Applicant stated at the hearing of this matter, he expected that the Decision would be fulsome and address each or nearly each point regarding COVID-19 he had included in his March 3 Refusal Report. The Decision takes into account the

Applicant's lengthy written representations and comments as well as the institutional context, the history of the Applicant's refusal to work, and the CLC, and responds to his central concerns in a manner that is sufficiently transparent and intelligible.

[51] The Decision is written more in point form than in a discursive manner. It sets out the Head's reasons, the basis of her decision in connection with the Applicant's concerns, and a clear direction in reasoning without "connecting the dots" of her reasoning in the manner the Applicant might have wanted. This manner of addressing the Applicant's concerns does not make the Decision unreasonable. A reviewing Court must read the decision maker's reasons holistically and contextually for the very purpose of understanding the basis on which a decision was made. In doing so, the Court is entitled to "connect the dots" in a decision maker's reasoning when the direction they are headed may be readily drawn (*Vavilov* at para 97). This is part of the requirement to read and consider the Decision holistically and contextually for the purpose of understanding it.

[52] The Decision addresses the Applicant's concern with respect to the lack of meaningful precautions against COVID-19 in the Workplace by setting out that EC was following the Public Service and Procurement (PSPC), TBS, and Public Health Agency of Canada (PHAC) COVID-19 safety guidelines. It does not identify what measures should be implemented under those guidelines, which specific guidelines are being followed, their anticipated effect or impact, or how they may act as precautions against an unsafe workplace. That being said, however, the record shows that the substance of the policies and guidelines in effect at the time had been communicated to the Applicant through EC's newsletters to staff in late 2022 and early 2023 and

were known to the Applicant, despite that the Applicant did not consider them sufficient to mitigate against what he perceived as a section 122 CLC “danger”.

[53] I am satisfied that the Head found and communicated her opinion that the existing safety measures and precautions were sufficient to mitigate against any “danger” within the meaning of section 122 of the CLC from COVID-19 in the Workplace. The Head indicates this finding by mentioning the guidelines in place and that the security measures are frequently assessed and communicated to all staff. The Head was entitled to come to this opinion despite the Applicant’s argument to the contrary based his personal assessments. The Head reached her conclusion logically in light of the record before her, including the Employer Report and the Employee Workplace Safety Committee Report, both of which concluded that the there was no “danger” in the Workplace as alleged by the Applicant.

[54] The Decision further considers that the Applicant has no known medical conditions that might make him more susceptible to either contracting COVID-19 or being visited by its more serious symptoms and effects in the event that he did contract COVID-19, and, that he received all vaccinations recommended by Public Health Canada and Quebec. This consideration, in context and in light of the record, shows the Head’s appreciation of the facts of the matter and her common sense that the “danger” complained of by the Applicant was mitigated against by his own actions in complying with public health recommendations regarding vaccinations.

[55] The conclusion that follows the Head’s reasoning is that the Applicant’s continued refusal to work at the Workplace in light of the facts and the record was, as per the Interpretation,

Policy and Guideline relating to the rejection of complaints bearing no. IPG-082 considered by the Head in formulating her opinion [IPG-082], "frivolous" in that it was "not serious in content, is of little weight or importance, lacks merit, and has no sound basis in law". His continued refusal to work was determined to be frivolous based on the Head's assessment and weighing of the evidence before her. It is not this Court's role on judicial review to reweigh or re-assess the evidence considered by the Head in coming to her Decision where there is no fundamental error in its appreciation. I see no fundamental error in the Head's appreciation of the evidence and record before her.

[56] The Applicant's March 3 Refusal Report and the additional submissions made in support of his continued refusals to work contained extensive arguments and representations regarding the existence, prevalence, transmissibility, spread and effects of COVID-19 generally and in the National Capital Region. A number of internet links to supporting documents were included in the Applicant's submissions justifying his continued refusal to work.

[57] These submissions and arguments are subordinate to the Appellant's contention that there was a "danger" at his Workplace and that it was unsafe for him to attend to work there. Indeed, whether the Head agreed or disagreed with the content and conclusions of any of the Applicant's COVID-19 summaries and linked internet documents is irrelevant to the determination of whether an investigation into his continued refusal to work was warranted. It bears repetition that, as *Vavilov* instructs at paragraph 128:

> "Reviewing courts cannot expect administrative decision makers to "respond to every argument or line of possible analysis" or to "make an explicit finding on each constituent element, however subordinate, leading to its final conclusion". To impose such

> expectations would have a paralyzing effect on the proper functioning of administrative bodies and would needlessly compromise important values such as efficiency and access to justice".

[58] It is unreasonable to expect the Head to respond to each of the Applicant's arguments regarding public health and differing sources of information regarding COVID-19, its prevalence, its effects etc. in a municipal area and during particular timeframes as referred to in the Applicant's March 3 Refusal Report. The absence of any statement on those issues in the Decision does not make the Decision unreasonable. The determination to be made by the Head pursuant to subsection 129(1) of the CLC was whether the Applicant's refusal to work was frivolous or meriting further investigation in light of the record and the facts, not whether Applicant's COVID-19 information was accurate or should be considered in the same subjective manner as he had.

[59] The Applicant has not demonstrated how the Decision is unreasonable in light of its potential impact on his livelihood and continued employment at EC. The Decision reflects that the Head understood that the Applicant continued to be employed by EC at the time it was made and that his basis to refuse to work at the Workplace was without merit. The Decision is not unreasonable in this regard.

[60] In conclusion, I find that the Decision, in both its rationale and outcome, is transparent, intelligible and justified. It is based on an internally coherent and rational chain of analysis that is justified in relation to the facts and the law. It is reasonable, and the Applicant has not

demonstrated that any flaws or shortcomings it has are anything more than superficial or peripheral to its merits.

Issue 2: Was the Applicant denied procedural fairness

[61] Procedural fairness is to be reviewed on the correctness standard (*Mission Institution v Khela*, 2014 SCC 24 at para 79*; Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 37-56 [*Canadian Pacific Railway*]; *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35). The Court is required to ask whether the procedure was fair having regard to all of the circumstances, including the factors set out in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817. The Court must ask whether a fair and just process was followed. The ultimate question remains whether the applicant knew the case to meet and had a full and fair chance to respond (*Canadian Pacific Railway* at paras 54 and 56). The burden of establishing procedural unfairness lies on the challenging party.

a) The Applicant's argument

[62] The Applicant alleges that the Decision not to investigate his work refusal pursuant to paragraph 129(1)(b) of the CLC was not rendered in a procedurally fair manner. He argues that the Decision attracts a relatively high degree of procedural fairness because it affected his livelihood and employment at EC or, in the alternative, that the Decision breached even a lower degree of procedural fairness. In particular, the Applicant claims that he did not have a fair opportunity to submit information and documentation before the Head, including recordings of

prior meetings with EC representatives, and that a reasonable apprehension of bias on the part of Mr. Falbo was made evident during the October 25 Meeting.

b) The Respondent's argument

[63] The Respondent replies upon the Court's decisions in *Burlacu v Canada (Attorney General)*, 2022 FC 1223 [*Burlacu*] and *Gupta v Canada (Attorney General)*, 2017 FCA 211 [*Gupta*] for the proposition that administrative decisions about whether to investigate a work refusal under the CLC attract a low level of procedural fairness limited to a right to submit information and supporting documentation.

[64] The Respondent also argues that this standard was met when Mr. Falbo invited the Applicant to provide submissions and documentation related to his case and when he informed the Applicant, during the October 25 Meeting, that that stage of the investigation may consider whether his refusal was frivolous.

[65] The Respondent denies that any evidence before the Court supports the Applicant's allegations of bias on behalf of Mr. Falbo or the Head.

c) Analysis and Disposition

[66] The degree of procedural fairness owed to individuals subject to a decision not to investigate a work refusal under subsection 129(1) of the CLC is at the low end of the spectrum because the process to be followed as prescribed by the CLC is neither judicial in nature nor adversarial (*Burlacu* at paras 17 to 25; *Duiker v Canada (Attorney General)*, 2023 FC 701 at

para 53, citing *Gupta* at para 31; aff'd *Duiker v Canada (Attorney General)*, 2024 FCA 195 at paras 12 and 13). This same jurisprudence instructs that the content of the duty of procedural fairness owed to the Applicant here was limited to the opportunity to submit information and supporting documentation prior to the Head issuing her decision.

[67] In this case, the Applicant was provided with the opportunity to submit information in writing and in a meeting with the Head's delegated investigators. He provided the Head's delegated investigators with a lengthy summary of his work refusal on October 23, 2023, and met remotely with the Head's delegated investigators prior to the recommendation being made to the Head and indeed prior to the Head's decision being made. The record establishes that the Applicant knew, on October 23, 2023, and in advance of meeting with the Head's delegates on October 25, that the meeting was for the purpose of gathering information and evaluating if the ESDC Labour Program would proceed to investigate his refusal to work or not in light of the record, the facts and the law. The Applicant knew the case to meet and had a full chance to submit arguments and supporting documentation.

[68] The Applicant's argument that he was denied procedural fairness because he did not have a fair opportunity to submit information and documentation, including recordings of prior meetings with EC representatives to the Head, is contradicted by the evidence in the record and by his October 23, 2023, email submission to Mr. Falbo. The documents he submitted to Mr. Falbo were considered in his investigation and in his recommendation to the Head.

[69] The Applicant has not established that there was a breach of his right of procedural fairness to submit information and supporting documentation, or to know the case to meet.

[70] With regard to the Applicant's allegation of reasonable apprehension of bias in Mr. Falbo's investigation that amounts to a denial of procedural fairness tainting the Decision made by the Head, it is the Applicant's onus to demonstrate that that an informed person, viewing a matter realistically and practically, and having thought it through, would find it more likely than not that Mr. Falbo would not decide or make his recommendation fairly (*Baker* at para 46, citing *Committee for Justice and Liberty v National Energy Board*, 1976 CanLII 2 (SCC) at 394). This is a high threshold for the Applicant to meet and he has not met it.

[71] Assessing whether there is a reasonable apprehension of bias is an inherently contextual and fact-specific inquiry.

[72] The evidence in the record does not contain any direct statement from Mr. Falbo that suggests that his investigation into whether the Applicant's continued refusal merited further investigation or fell within one of paragraphs (a) to (c) of subsection 129(1) of the CLC would not be fair, or that his recommendations to the Head would not be fairly made in light of the information collected and considered.

[73] Mr. Falbo's "Rapport de sommaire de cas" included in the record reflects that Mr. Falbo consulted with other persons within the ESDC Occupational Health and Safety apparatus and with the principal ESDC investigator in addition to conferring with his co-investigator prior to

formulating any recommendations to the Head for her consideration. Those other consulted persons provided their own views of the Applicant's refusal to work after considering documents in the record assembled by Mr. Falbo, including the Applicant's representations, and opined that the Applicant's refusal to work was frivolous within the meaning of IPG-082. This course of conduct does not suggest any bias on Mr. Falbo's part. Rather, it suggests that there was a consensus among those consulted by Mr. Falbo.

[74] In addition to his own affidavit, the Applicant has produced an affidavit that contains hearsay evidence of what Mr. Falbo is alleged to have said during the October 25 Meeting. No contemporaneous notes are attached to either affidavit. The affidavits themselves were sworn several months after the October 25 Meeting. The Applicant argues that these hearsay reports of Mr. Falbo's statements with respect to COVID-19, the continued existence of the pandemic, TBS guidelines and the scope of his ability to investigate and make recommendations that may be against TBS guidelines establish a reasonable apprehension of bias on his part.

[75] I disagree.

[76] Assuming without determining that Mr. Falbo might have made some or even all of the statements attributed to him by the Applicant during the October 25 Meeting, I cannot conclude that there is any reasonable apprehension of bias that is made out. The evidence in the record remains that Mr. Falbo had not come to any conclusion on a recommendation regarding whether the Applicant's continued refusal to work was frivolous until after he consulted with others

within ESDC and received their opinions in light of the record and information compiled after the October 25 Meeting.

[77] The evidence in the record does not establish that an informed person, viewing the matter realistically and practically, and having thought it through, would find that Mr. Falbo was consciously or unconsciously biased in his investigation of the Applicant's continued refusal to work. Further, the evidence in the record does not suggest or establish that the Head was biased against the Applicant in making the Decision at all.

[78] The Applicant has not met his burden of establishing that the Decision was tainted by any reasonable apprehension of bias or breach of procedural fairness that requires this Court to quash it.

III. **Conclusion**

[79] The Applicant has not established that the Decision was either unreasonable or made in breach of his rights of procedural fairness. His application for judicial review is therefore dismissed.

JUDGMENT in File T-2547-23:

1. The Applicant's application for judicial review is dismissed.

2. Pursuant to the joint representation of the parties as to costs, the Applicant shall pay the Respondent his costs in a lump sum which I hereby fix pursuant to Rule 400 of the *Federal Courts Rules* in the amount of $ 2,000.00.

"Benoit M. Duchesne"
Judge

Schedule Of Cited Legislation

Canada Labour Code	**Code Canadien du Travail**
PART II	**PARTIE II**
Occupational Health and Safety Interpretation	**Santé et sécurité au travail** **Définitions et interprétation**
Definitions	**Définitions**
122 (1) In this Part,	122 (1) Les définitions qui suivent s'appliquent à la présente partie.
[…]	[…]
danger means any hazard, condition or activity that could reasonably be expected to be an imminent or serious threat to the life or health of a person exposed to it before the hazard or condition can be corrected or the activity altered; (danger)	danger Situation, tâche ou risque qui pourrait vraisemblablement présenter une menace imminente ou sérieuse pour la vie ou pour la santé de la personne qui y est exposée avant que, selon le cas, la situation soit corrigée, la tâche modifiée ou le risque écarté. (danger)
Refusal to work if danger	**Refus de travailler en cas de danger**
128 (1) Subject to this section, an employee may refuse to use or operate a machine or thing, to work in a place or to perform an activity, if the employee while at work has reasonable cause to believe that	128 (1) Sous réserve des autres dispositions du présent article, l'employé au travail peut refuser d'utiliser ou de faire fonctionner une machine ou une chose, de travailler dans un lieu ou d'accomplir une tâche s'il a des motifs raisonnables de croire que, selon le cas :
(a) the use or operation of the machine or thing constitutes a	a) l'utilisation ou le fonctionnement de la machine ou de la chose constitue un

danger to the employee or to another employee;

(b) a condition exists in the place that constitutes a danger to the employee; or

(c) the performance of the activity constitutes a danger to the employee or to another employee.

No refusal permitted in certain dangerous circumstances

(2) An employee may not, under this section, refuse to use or operate a machine or thing, to work in a place or to perform an activity if

(a) the refusal puts the life, health or safety of another person directly in danger; or

(b) the danger referred to in subsection (1) is a normal condition of employment.

Employees on ships and aircraft

(3) If an employee on a ship or an aircraft that is in operation has reasonable cause to believe that

(a) the use or operation of a machine or thing on the ship

danger pour lui-même ou un autre employé;

b) il est dangereux pour lui de travailler dans le lieu;

c) l'accomplissement de la tâche constitue un danger pour lui-même ou un autre employé.

Exception

(2) L'employé ne peut invoquer le présent article pour refuser d'utiliser ou de faire fonctionner une machine ou une chose, de travailler dans un lieu ou d'accomplir une tâche lorsque, selon le cas:

a) son refus met directement en danger la vie, la santé ou la sécurité d'une autre personne;

b) le danger visé au paragraphe (1) constitue une condition normale de son emploi.

Navires et aéronefs

(3) L'employé se trouvant à bord d'un navire ou d'un aéronef en service avise sans délai le responsable du moyen de transport du danger en cause s'il a des motifs raisonnables de croire :

a) soit que l'utilisation ou le fonctionnement d'une

or aircraft constitutes a danger to the employee or to another employee,

machine ou d'une chose à bord constitue un danger pour lui-même ou un autre employé;

(b) a condition exists in a place on the ship or aircraft that constitutes a danger to the employee, or

b) soit qu'il est dangereux pour lui de travailler à bord;

(c) the performance of an activity on the ship or aircraft by the employee constitutes a danger to the employee or to another employee,

c) soit que l'accomplissement d'une tâche à bord constitue un danger pour lui-même ou un autre employé.

the employee shall immediately notify the person in charge of the ship or aircraft of the circumstances of the danger and the person in charge shall, as soon as is practicable after having been so notified, having regard to the safe operation of the ship or aircraft, decide whether the employee may discontinue the use or operation of the machine or thing or cease working in that place or performing that activity and shall inform the employee accordingly.

Le responsable doit aussitôt que possible, sans toutefois compromettre le fonctionnement du navire ou de l'aéronef, décider si l'employé peut cesser d'utiliser ou de faire fonctionner la machine ou la chose en question, de travailler dans ce lieu ou d'accomplir la tâche, et informer l'employé de sa décision.

No refusal permitted in certain cases

Interdiction du refus

(4) An employee who, under subsection (3), is informed that the employee may not discontinue the use or operation of a machine or thing or cease to work in a place or perform an activity shall not, while the ship or aircraft on which the employee is employed is in

(4) L'employé qui, en application du paragraphe (3), est informé qu'il ne peut cesser d'utiliser ou de faire fonctionner la machine ou la chose, de travailler dans le lieu ou d'accomplir la tâche, ne peut, pendant que le navire ou l'aéronef où il travaille est en service, se prévaloir du

operation, refuse under this section to use or operate the machine or thing, work in that place or perform that activity.

droit de refus prévu au présent article.

When ship or aircraft in operation

(5) For the purposes of subsections (3) and (4),

Définition de en service

(5) Pour l'application des paragraphes (3) et (4), un navire ou un aéronef sont en service, respectivement :

(a) a ship is in operation from the time it casts off from a wharf in a Canadian or foreign port until it is next secured alongside a wharf in Canada; and

a) entre le démarrage du quai d'un port canadien ou étranger et l'amarrage subséquent à un quai canadien;

(b) an aircraft is in operation from the time it first moves under its own power for the purpose of taking off from a Canadian or foreign place of departure until it comes to rest at the end of its flight to its first destination in Canada.

b) entre le moment où il se déplace par ses propres moyens en vue de décoller d'un point donné, au Canada ou à l'étranger, et celui où il s'immobilise une fois arrivé à sa première destination canadienne.

Report to employer

(6) An employee who refuses to use or operate a machine or thing, work in a place or perform an activity under subsection (1), or who is prevented from acting in accordance with that subsection by subsection (4), shall report the circumstances of the matter to the employer without delay

Rapport à l'employeur

(6) L'employé qui se prévaut des dispositions du paragraphe (1) ou qui en est empêché en vertu du paragraphe (4) fait sans délai rapport sur la question à son employeur.

Select a remedy

(7) Where an employee makes a report under subsection (6), the employee,

Option de l'employé

(7) L'employé informe alors l'employeur, selon les modalités — de temps et

if there is a collective agreement in place that provides for a redress mechanism in circumstances described in this section, shall inform the employer, in the prescribed manner and time if any is prescribed, whether the employee intends to exercise recourse under the agreement or this section. The selection of recourse is irrevocable unless the employer and employee agree otherwise.

autres — éventuellement prévues par règlement, de son intention de se prévaloir du présent article ou des dispositions d'une convention collective traitant du refus de travailler en cas de danger. Le choix de l'employé est, sauf accord à l'effet contraire avec l'employeur, irrévocable.

Investigation by employer

(7.1) The employer shall, immediately after being informed of a refusal under subsection (6), investigate the matter in the presence of the employee who reported it. Immediately after concluding the investigation, the employer shall prepare a written report setting out the results of the investigation.

Enquête par l'employeur

(7.1) Saisi du rapport fait en application du paragraphe (6), l'employeur fait enquête sans délai en présence de l'employé. Dès qu'il l'a terminée, il rédige un rapport dans lequel figurent les résultats de son enquête.

Employer to take immediate action

(8) If, following its investigation, the employer agrees that a danger exists, the employer shall take immediate action to protect employees from the danger. The employer shall inform the work place committee or the health and safety representative of the matter and the action taken to resolve it.

Mesures à prendre par l'employeur

(8) Si, à la suite de son enquête, l'employeur reconnaît l'existence du danger, il prend sans délai les mesures qui s'imposent pour protéger les employés; il informe le comité local ou le représentant de la situation et des mesures prises.

Continued refusal

Maintien du refus

(9) If the matter is not resolved under subsection (8), the employee may, if otherwise entitled to under this section, continue the refusal and the employee shall without delay report the circumstances of the matter to the employer and to the work place committee or the health and safety representative.

(9) En l'absence de règlement de la situation au titre du paragraphe (8), l'employé, s'il y est fondé aux termes du présent article, peut maintenir son refus; il présente sans délai à l'employeur et au comité local ou au représentant un rapport circonstancié à cet effet.

Investigation of continued refusal

(10) If the work place committee receives a report under subsection (9), it shall designate, to investigate the matter immediately in the presence of the employee who reported it, two members of the committee, namely, one employee member from those chosen under paragraph 135.1(1)(b) and one employer member who is not from those chosen under that paragraph. If the health and safety representative receives a report under subsection (9), they shall immediately investigate the matter in the presence of the employee who reported it and a person who is designated by the employer.

Enquête sur le maintien du refus

(10) Si le rapport prévu au paragraphe (9) est présenté au comité local, ce dernier désigne deux de ses membres — l'un, parmi ceux choisis au titre de l'alinéa 135.1(1)b), représentant les employés, l'autre, parmi ceux n'ayant pas été ainsi choisis, représentant l'employeur — pour faire enquête à ce sujet sans délai et en présence de l'employé; si ce rapport est présenté au représentant, celui-ci fait enquête sans délai en présence de l'employé et d'une personne désignée par l'employeur.

Report

(10.1) Immediately after concluding the investigation, the members of the work place committee designated under subsection (10) or the health and safety representative shall provide a

Rapport

(10.1) Une fois que leur enquête est terminée, les membres du comité local désignés en vertu du paragraphe (10) ou le représentant présentent sans délai un rapport écrit à

written report to the employer that sets out the results of the investigation and their recommendations, if any.

Additional information

(10.2) After receiving a report under subsection (10.1) or under this subsection, the employer may provide the members of the work place committee or the health and safety representative with additional information and request that they reconsider their report taking into consideration that additional information. If the work place committee members or the health and safety representative considers it appropriate, they may provide a revised report to the employer.

If more than one report

(11) If more than one employee has made a report of a similar nature, those employees may designate one employee from among themselves to be present at the investigation.

Absence of employee

(12) The employer, the members of a work place committee or the health and safety representative may proceed with their investigation in the absence of the employee who reported the matter if that employee or

l'employeur dans lequel figurent les résultats de leur enquête et, s'il y a lieu, leurs recommandations.

Renseignements complémentaires

(10.2) Après avoir reçu un rapport au titre du paragraphe (10.1) ou du présent paragraphe, l'employeur peut fournir à son auteur des renseignements complémentaires et lui demander de réviser son rapport en les prenant en considération. Si l'auteur du rapport l'estime approprié, il peut alors lui présenter un rapport révisé à la lumière de ces renseignements.

Rapports multiples

(11) Lorsque plusieurs employés ont présenté à leur employeur des rapports au même effet, ils peuvent désigner l'un d'entre eux pour agir en leur nom dans le cadre de l'enquête.

Absence de l'employé

(12) L'employeur, les membres du comité local ou le représentant peuvent poursuivre leur enquête en l'absence de l'employé lorsque ce dernier ou celui qui a été désigné au titre du

a person designated under subsection (11) chooses not to be present.

paragraphe (11) décide de ne pas y assister.

Decision of employer

(13) After receiving a report under subsection (10.1) or (10.2) and taking into account any recommendations in it, the employer, if it does not intend to provide additional information under subsection (10.2), shall make one of the following decisions:

Décision de l'employeur

(13) Après avoir reçu un rapport au titre des paragraphes (10.1) ou (10.2) et tenu compte des recommandations, l'employeur, s'il n'a pas l'intention de fournir des renseignements complémentaires en vertu du paragraphe (10.2), prend l'une ou l'autre des décisions suivantes :

(a) agree that a danger exists;

a) il reconnaît l'existence du danger;

(b) agree that a danger exists but consider that the circumstances provided for in paragraph (2)(a) or (b) apply;

b) il reconnaît l'existence du danger mais considère que les circonstances prévues aux alinéas (2)a) ou b) sont applicables;

(c) determine that a danger does not exist.

c) il conclut à l'absence de danger.

Decision — paragraph (13)(a)

Décision — alinéa (13)a)

(14) If the employer agrees that a danger exists under paragraph (13)(a), the employer shall take immediate action to protect employees from the danger. The employer shall inform the work place committee or the health and safety representative of the matter and the action taken to resolve it.

(14) S'il reconnaît l'existence du danger en vertu de l'alinéa (13)a), l'employeur prend sans délai les mesures qui s'imposent pour protéger les employés; il informe le comité local ou le représentant de la situation et des mesures prises.

Décision — alinéas (13)b) ou c)

Decision — paragraph (13)(b) or (c)

(15) If the employer makes a decision under paragraph (13)(b) or (c), the employer shall notify the employee in writing. If the employee disagrees with the employer's decision, the employee is entitled to continue the refusal, subject to subsections 129(1.2), (1.3), (6) and (7).

Information to Head

(16) If the employee continues the refusal under subsection (15), the employer shall immediately inform the Head and the work place committee or the health and safety representative of its decision and the continued refusal. The employer shall also provide a copy of the report on the matter prepared under subsection (7.1) to the Head along with a copy of any report referred to in subsection (10.1) or (10.2).

Head's investigation

129 (1) If the Head is informed of the employer's decision and the continued refusal under subsection 128(16), the Head shall investigate the matter unless the Head is of the opinion that

(a) the matter is one that could more appropriately be dealt with, initially or completely, by means of a procedure provided for under

(15) S'il prend la décision visée aux alinéas (13)b) ou c), l'employeur en informe l'employé par écrit. L'employé qui est en désaccord avec cette décision peut maintenir son refus, sous réserve des paragraphes 129(1.2), (1.3), (6) et (7).

Information au chef

(16) Si l'employé maintient son refus en vertu du paragraphe (15), l'employeur informe immédiatement le chef et le comité local ou le représentant de sa décision et du maintien du refus. Il fait également parvenir au chef une copie du rapport qu'il a rédigé en application du paragraphe (7.1) ainsi que de tout rapport visé aux paragraphes (10.1) ou (10.2).

Enquête du chef

129 (1) Le chef, s'il est informé de la décision de l'employeur et du maintien du refus en application du paragraphe 128(16), effectue une enquête sur la question sauf s'il est d'avis :

a) soit que l'affaire pourrait avantageusement être traitée, dans un premier temps ou à toutes les étapes, dans le cadre de procédures prévues

Part I or III or under another Act of Parliament;

(b) the matter is trivial, frivolous or vexatious; or

(c) the continued refusal by the employee under 128(15) is in bad faith.

Notices of decision not to investigate

(1.1) If the Head does not proceed with an investigation, the Head shall inform the employer and the employee in writing, as soon as feasible, of that decision. The employer shall then inform in writing, as the case may be, the members of the work place committee who were designated under subsection 128(10) or the health and safety representative and the person who is designated by the employer under that subsection of the Head's decision.

Return to work

(1.2) On being informed of the Head's decision not to proceed with an investigation, the employee is no longer entitled to continue their refusal under subsection 128(15).

aux parties I ou III ou sous le régime d'une autre loi fédérale;

b) soit que l'affaire est futile, frivole ou vexatoire;

c) soit que le maintien du refus de l'employé en vertu du paragraphe 128(15) est entaché de mauvaise foi.

Avis de décision de ne pas enquêter

(1.1) Si le chef ne procède pas à une enquête, il en informe l'employeur et l'employé, par écrit, aussitôt que possible. L'employeur en informe alors par écrit, selon le cas, les membres du comité local désignés en application du paragraphe 128(10) ou le représentant et la personne désignée par l'employeur en application de ce paragraphe.

Retour au travail

(1.2) Une fois qu'il est informé de la décision du chef de ne pas effectuer une enquête, l'employé n'est plus fondé à maintenir son refus en vertu du paragraphe 128(15).

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-2547-23
STYLE OF CAUSE:	NICOLAS JUZDA v THE ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	OTTAWA, ONTARIO
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APPEARANCES:

Nicolas Juzda	FOR THE APPLICANT SELF REPRESENTED
David Perron	FOR THE RESPONDENT

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