Federal Court of Appeal  Cour d'appel fédérale

Date: 20210226

Docket: A-39-20

Citation: 2021 FCA 37

CORAM: **GAUTHIER J.A.**
LASKIN J.A.
RIVOALEN J.A.

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

ASSOCIATION OF JUSTICE COUNSEL

Respondent

Heard by online video conference hosted by the Registry on February 25, 2021.

Judgment delivered at Ottawa, Ontario, on February 26, 2021.

REASONS FOR JUDGMENT BY: LASKIN J.A.

CONCURRED IN BY: GAUTHIER J.A.
RIVOALEN J.A.

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REASONS FOR JUDGMENT

LASKIN J.A.

[1] The Attorney General of Canada seeks judicial review of a decision of the Federal Public Sector Labour Relations and Employment Board (2020 FPSLREB 3). In this decision, a one-person panel of the Board dismissed an application by the employer, the Treasury Board, for an order declaring three positions within the Law Practitioner bargaining unit to be managerial or confidential positions.

[2] The employer based its application on paragraphs 59(1)(c) and (h) of the *Federal Public Sector Labour Relations Act*, S.C. 2003, c. 22, s. 2. Paragraph 59(1)(c) authorizes the Board to make an order declaring that a position is a managerial or confidential position (and thus outside the bargaining unit) where "the occupant of the position provides advice on labour relations, staffing or classification." Paragraph 59(1)(h) authorizes an order to the same effect where "the occupant of the position has, in relation to labour relations matters, duties and responsibilities confidential to the occupant of a position described in" certain other paragraphs in subsection 59(1).

[3] The central issue in the application was the meaning of the term "labour relations" in paragraphs 59(1)(c) and (h). This term is not defined in the Act.

[4] In approaching this question, the Board directed itself in accordance with the decision of the Supreme Court of Canada in *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42. *Bell ExpressVu* is one of the decisions in which the Court has confirmed that in interpreting a statute, "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament" (*Bell ExpressVu* at para. 26).

[5] The Board proceeded to consider the ordinary meaning of "labour relations"; the use of the term elsewhere in the Act; the fact that section 59 is found in Part I of the Act, which is headed "Labour Relations" and focuses on the rules governing the labour-management relationship; the French counterpart of the term "labour relations"; the use of the French

counterpart in the Act; the purpose of section 59; and the purpose of the Act. It also considered certain presumptions as discussed in a leading text on statutory interpretation. The Board expressed its conclusion as follows at paragraph 47 of its reasons:

> Accordingly, I find that to be considered a labour relations matter under ss. 59(1)(c) or (h), the advice or related duties and responsibilities at issue must be related to a matter that falls within the scope of Part 1 of the Act. As stated, I find that this interpretation of "labour relations" for the purposes of ss. 59(1)(c) and (h) follows its ordinary meaning, the context of s. 59(1), and the scheme and object of the Act.

[6] Applying this meaning, the Board found that the occupants of the three positions in issue did not come within either paragraph 59(1)(c) or paragraph 59(1)(h): they did not provide labour relations advice and did not, in relation to labour relations matters, have confidential duties or responsibilities as required. The Board therefore dismissed the application.

[7] In seeking judicial review, the Attorney General recognizes that, consistent with the judicial review framework set out by the Supreme Court in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, the applicable standard of review is reasonableness. A reasonable decision, *Vavilov* instructs, 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." A reviewing court must defer to a decision with these qualities (*Vavilov* at para. 85).

[8] Under the *Vavilov* framework, "[t]he burden is on the party challenging the decision to show that it is unreasonable" (*Vavilov* at para. 100). Moreover, "[w]here reasonableness is the applicable standard on a question of statutory interpretation, the reviewing court does not

undertake a de novo analysis of the question or ‘ask itself what the correct decision would have been’” (*Vavilov* at para. 116).

[9] In line with the *Vavilov* framework, the parties focused their submissions before us on whether the Board’s decision produces absurdities, or should otherwise be considered unreasonable. Having carefully considered the written and oral submissions, I am not persuaded that the decision contains any defects that rise to that level. While this may not be a case in which there is only one reasonable interpretation of the statutory language, I see the interpretation adopted by the Board as a reasonable interpretation, and, therefore, as one entitled to deference.

[10] During the hearing, counsel advised the panel that the decision of the Board in this case is inconsistent with two other recent decisions of the Board. We were told that these two decisions were rendered while the Board’s decision in this case was under reserve, and that one of the two is also the subject of an application for judicial review. Counsel could not recall whether these decisions were brought to the attention of the Board here while its decision was pending. The existence of these two decisions does not expand our role on judicial review. As the Supreme Court pointed out in *Vavilov* (at paras. 129-130), administrative agencies like the Board have or can develop mechanisms to address inconsistencies of this kind. Indeed, we understand from counsel for the Attorney General that the very issue considered in this case will shortly be before the Board in two further applications.

[11] I would dismiss the application with costs, fixed in the agreed-upon amount of $2,500, all inclusive.

"J.B. Laskin"

J.A.

"I agree.
Johanne Gauthier J.A."

"I agree.
Marianne Rivoalen J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-39-20
STYLE OF CAUSE:	ATTORNEY GENERAL OF CANADA v. ASSOCIATION OF JUSTICE COUNSEL
PLACE OF HEARING:	HEARD BY ONLINE VIDEO CONFERENCE HOSTED BY THE REGISTRY
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REASONS FOR JUDGMENT BY:	LASKIN J.A.
CONCURRED IN BY:	GAUTHIER JA. RIVOALEN J.A.
DATED:	FEBRUARY 26, 2021

APPEARANCES:

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