

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20211004**

**Docket: A-244-20**

**Citation: 2021 FCA 193**

**CORAM: STRATAS J.A.  
RENNIE J.A.  
LASKIN J.A.**

**BETWEEN:**

**SAM COSENTINO**

**Appellant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**and**

**THE HONOURABLE JUSTICE PETER DALEY**

**Intervener**

Heard at Toronto, Ontario, on October 4, 2021.  
Judgment delivered from the Bench at Toronto, Ontario, on October 4, 2021.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**STRATAS J.A.**

Federal Court of Appeal



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**REASONS FOR JUDGMENT OF THE COURT**  
**(Delivered from the Bench at Toronto, Ontario, on October 4, 2021).**

**STRATAS J.A.**

[1] The appellant seeks to quash the judgment of the Federal Court that dismissed his application for judicial review: 2020 FC 884 (*per* Kane J.). The appellant's application for

judicial review in the Federal Court sought to set aside the Canadian Judicial Council's decision dated April 23, 2019 and sought declaratory relief. The Council dismissed the appellant's complaint against a judge of the Ontario Superior Court of Justice.

[2] The appeal will be dismissed. We substantially agree with the reasons of the Federal Court. Like the Federal Court, and for many of the reasons it gave, we see no ground to interfere with Council's decision.

[3] The appellant submits that the Federal Court erred in failing to include 3,000 pages of additional material in the record before the Court. In our view, even if that material were considered, it would not substantially change the analysis of the Federal Court. Council's decision was reasonable substantially for the reasons given by the Federal Court.

[4] The appellant submits that the Council did not deal with his complaint that the judge acted rudely and offensively. He submits that the Federal Court was wrong when (at paras. 26 and 90) it said otherwise.

[5] In our view, Council and the Federal Court both dealt with this aspect of the complaint: it was an issue going to the procedural fairness of the proceedings before the judge, an issue that, if it had merit, could have been redressed by an appellate court through the normal appeal process. Many other aspects of the appellant's complaint, such as bias and procedural unfairness, could have been pursued through the normal appellate process. An unbroken line of jurisprudence

suggests that matters that can be appealed are not the proper subject of a judicial conduct complaint.

[6] One aspect of the appellant's complaint was that the judge lied. We agree with the Federal Court's reasoning at paras. 85-89.

[7] Although the order of this Court granting the intervener leave to intervene preserved his ability to seek costs in this appeal, he does not seek costs. The respondent will have his costs.

"David Stratas"

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-244-20

**APPEAL FROM A JUDGMENT OF THE HONOURABLE MADAM JUSTICE KANE  
DATED SEPTEMBER 8, 2020, DOCKET NO. T-877-19.**

**STYLE OF CAUSE:** SAM COSENTINO v.  
ATTORNEY GENERAL OF  
CANADA AND THE  
HONOURABLE JUSTICE PETER  
DALEY

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** OCTOBER 4, 2021

**REASONS FOR JUDGMENT OF THE COURT  
BY:** STRATAS J.A.  
RENNIE J.A.  
LASKIN J.A.

**DELIVERED FROM THE BENCH BY:** STRATAS J.A.

**APPEARANCES:**

Sam Cosentino FOR THE APPELLANT

Eric Peterson FOR THE RESPONDENT

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