

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20211206**

**Docket: A-109-19**

**Citation: 2021 FCA 237**

**CORAM: STRATAS J.A.  
RIVOALEN J.A.  
MACTAVISH J.A.**

**BETWEEN:**

**BRIAN DOYLE**

**Appellant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

Heard by online video conference hosted by the Registry on December 6, 2021.  
Judgment delivered from the Bench at Ottawa, Ontario, on December 6, 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 Ottawa, Ontario, on December 6, 2021).**

**STRATAS J.A.**

[1] The appellant appeals from the judgment of the Federal Court (*per* Strickland J.): 2019 FC 168. The Federal Court dismissed the appellant's application for judicial review of the decision of the Director of Investigations in the Public Service Commission of Canada. In the decision, the Director dismissed the appellant's allegation that someone had altered his answers in a written examination. The written examination was part of an advertised appointment

process. The Director dismissed other allegations about the inadequacy of the appointment process.

[2] In careful and thorough reasons, the Federal Court found that the Director's decision was reasonable, based as it was on the available evidence and permissible inferences drawn therefrom. The Federal Court, acting under the reasonableness standard, refused to reweigh the evidence before the Director or to second-guess the Director's assessments of that evidence.

[3] In doing that, the Federal Court was quite right. Under this legislative scheme, the administrative decision-maker, here the Director, alone considers the evidence, decides on issues of admissibility and weight, assesses whether inferences should be drawn, and makes a decision. In conducting reasonableness review of the Director's decision, the reviewing court, here the Federal Court, can interfere only where the Director has committed fundamental errors in fact-finding that undermine the acceptability of the decision. Reweighing and second-guessing the evidence is no part of its role. Sticking to its role, the Federal Court did not find any fundamental errors.

[4] On appeal, in essence, the appellant invites us in his written and oral submissions to reweigh and second-guess the evidence. We decline the invitation.

[5] An appellate court stands in the shoes of the reviewing court and is subject to the same restrictions as the reviewing court. Accordingly, reweighing and second-guessing the evidence is also no part of our role. Like the Federal Court, we see no fundamental errors in the Director's

fact-finding that undermine the acceptability of the Director's decision. There was evidence upon which the Director could have decided either way. But it cannot be said that the Director's decision to dismiss the appellant's allegations was unsupported or was otherwise vitiated by a fundamental error and, thus, was unreasonable.

[6] We categorically reject certain other grounds the appellant raises. We do not consider the Director to have been biased. We see no basis upon which the Director's decision can be said to have been the product of a fettered discretion. And in no way was the Federal Court biased.

[7] The appellant challenges the Federal Court's award of costs on the basis that the Attorney General did not ask for costs. This is incorrect: the Attorney General asked for costs in his memorandum of fact and law.

[8] It follows that we must dismiss this appeal with costs. We will do so substantially for the reasons of the Federal Court.

[9] The style of cause in this appeal originally named two respondents. Under Rule 338, the only proper respondent is the Attorney General of Canada. Accordingly, we will amend the style of cause. This irregularity has no bearing on the outcome of this appeal.

“David Stratas”

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-109-19

**APPEAL FROM A JUDGMENT OF THE HONOURABLE MADAM JUSTICE  
STRICKLAND DATED FEBRUARY 8, 2019, DOCKET NO. T-322-18**

**STYLE OF CAUSE:** BRIAN DOYLE v. ATTORNEY  
GENERAL OF CANADA

**PLACE OF HEARING:** HEARD BY ONLINE VIDEO  
CONFERENCE HOSTED BY  
THE REGISTRY

**DATE OF HEARING:** DECEMBER 6, 2021

**REASONS FOR JUDGMENT OF THE COURT  
BY:** STRATAS J.A.  
RIVOALEN J.A.  
MACTAVISH J.A.

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

**APPEARANCES:**

Brian Doyle ON HIS OWN BEHALF

Raymond Lee FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

A. François Daigle FOR THE RESPONDENT  
Deputy Attorney General of Canada