Federal Court of Appeal

Cour d'appel fédérale

Date: 20220330

Docket: A-76-20

Citation: 2022 FCA 56

CORAM: STRATAS J.A.
DE MONTIGNY J.A.
LOCKE J.A.

BETWEEN:

BRIAN DOYLE

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Calgary, Alberta, on March 30, 2022.
Judgment delivered from the Bench at Calgary, Alberta, on March 30, 2022.

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

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Calgary, Alberta, on March 30, 2022).

STRATAS J.A.

[1] The appellant, an employee with the National Energy Board, complained about workplace violence. He requested an investigation under the *Canada Occupational Health and Safety Regulations*, S.O.R./86-304. The Board's Occupational Health & Safety Coordinator appointed an investigator, known as a "Competent Person" under this regime. But the

investigator acted without procedural fairness. In the Federal Court, all parties agreed on that and agreed that the Federal Court should set aside the investigator's report.

[2] However, the appellant asked the Federal Court to go further. He asked for it to find facts and make a mandatory order in his favour concerning his complaint.

[3] The Federal Court refused to go that far. It set aside the investigator's report and sent the matter back to a different investigator for further investigation: 2020 FC 259 (*per* Elliott J.). The appellant now appeals to this Court seeking a mandatory order.

[4] As courts of law, the Federal Courts are constrained by certain binding legal principles. We have to work within the boundaries of those legal principles and act in accordance with them. In this case, certain legal principles apply and limit what this Court can do.

[5] Mandatory orders, or what the *Federal Courts Act*, R.S.C. 1985, c. F-7 calls mandamus, are not freely available. They are available in two narrow circumstances.

[6] First, courts can grant mandatory orders or mandamus where the "evidence can lead only to one result": *D'Errico v. Canada (Attorney General)*, 2014 FCA 95, 459 N.R. 167 at para. 16; *Canada (Public Safety and Emergency Preparedness) v. LeBon*, 2013 FCA 55, 444 N.R. 93 at para. 14. The Federal Court noted this principle (at para. 39) and found that it could not make a mandatory order in this case (at para. 40). It found (at paras. 40-44) that an investigator will need to uncover "additional evidence either to reconcile conflicting positions or add missing

evidence" in order to get at the merits of the appellant's complaint. That remedial finding "depend[ed] upon the factual appreciation and discretion of the court" and so, absent palpable and overriding error—and there is none here—we must defer to that finding: *Canada (Attorney General) v. Long Plain First Nation*, 2015 FCA 177, 388 D.L.R. (4th) 209 at paras. 88-90.

[7] Second, courts can grant mandatory orders or mandamus in circumstances of extreme maladministration. A very high threshold must be met before relief can be granted: see *D'Errico* and *LeBon*, above. That threshold has not been met here.

[8] Under this legislative scheme, it is for the administrative actor, here the investigator, to examine the evidence, find facts and offer views on the merits of the appellant's complaint. Absent the rare circumstances where mandamus is available, reviewing courts, such as the Federal Courts, do not do those things. They are restricted to two tasks: reviewing what the administrative actor has done and, if there has been a material procedural flaw or a substantive defect overcoming any deference that may be owed, sending the matter back to the administrative actor. See, most recently, *Safe Food Matters Inc. v. Canada (Attorney General)*, 2022 FCA 19 at para. 37 and authorities cited therein.

[9] The appellant submits that the standard of review of the investigator's decision is correctness. To the extent that substantive issues arise, in the absence of legal error the standard of review is the deferential standard of palpable and overriding error: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, 441 D.L.R. (4th) 1.

[10] As well, there are no grounds for finding that the Federal Court was biased or appeared to be so. During argument, courts will often put adverse positions to parties to test their submissions. But, without more, this is not bias.

[11] The appellant also asks this Court to reverse an amendment the Federal Court made to the style of cause. The Federal Court removed the Board as a respondent, relying upon Rule 303 of the *Federal Courts Rules*, S.O.R./98-106. In doing this, the Federal Court acted properly. We assure the appellant that this technical amendment did not affect the merits of his case in the Federal Court. It also does not affect the merits of his case in this Court.

[12] Therefore, we will dismiss the appeal with costs. The Court invited submissions on the issue of costs. In the circumstances, we will award costs to the respondent in the fixed amount of $500 all inclusive.

"David Stratas"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-76-20

APPEAL FROM A JUDGMENT OF THE HONOURABLE MADAM JUSTICE ELLIOTT DATED FEBRUARY 17, 2020, DOCKET NO. T-10-19

STYLE OF CAUSE:	BRIAN DOYLE v. ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	Calgary, Alberta
DATE OF HEARING:	MARCH 30, 2022
REASONS FOR JUDGMENT OF THE COURT BY:	STRATAS J.A. DE MONTIGNY J.A. LOCKE 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:

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