

Federal Court of Appeal



Cour d'appel fédérale

Date: 20230323

Docket: A-303-21

Citation: 2023 FCA 69

**CORAM: BOIVIN J.A.
ROUSSEL J.A.
GOYETTE J.A.**

BETWEEN:

EVERETT RODGER STUCKLESS

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Halifax, Nova Scotia, on March 22, 2023.

Judgment delivered at Ottawa, Ontario, on March 23, 2023.

REASONS FOR JUDGMENT BY:

ROUSSEL J.A.

CONCURRED IN BY:

**BOIVIN J.A.
GOYETTE J.A.**

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REASONS FOR JUDGMENT

ROUSSEL J.A.

[1] Mr. Stuckless appeals from a judgment of the Federal Court (2021 FC 1062) dated October 12, 2021, dismissing his application for judicial review of a decision of the Acting Director General, Controlled Substances and Cannabis Branch, Health Canada. The Acting Director General refused to grant Mr. Stuckless a security clearance under subsection 67(1) of the *Cannabis Act*, S.C. 2018, c. 16 and section 53 of the *Cannabis Regulations*, SOR/2018-144,

after finding that he posed an unacceptable risk to public health or public safety, including the risk of cannabis being diverted to an illicit market or activity.

[2] Mr. Stuckless alleges that the Federal Court erred in finding that the required level of procedural fairness owed to him was at the lower end of the spectrum and in concluding that his procedural rights were not breached.

[3] The parties agree that since the judgment under appeal disposes of an application for judicial review, the role of this Court is to step into the shoes of the Federal Court and determine whether the Federal Court identified the correct standard of review and applied it properly. The Court's focus here is on the decision of the Acting Director General (*Northern Regional Health Authority v. Horrocks*, 2021 SCC 42 at paras. 10-12; *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at paras. 45-47). As the sole issue raised on appeal pertains to procedural fairness, the Court must determine whether the procedure was fair having regard to all of the circumstances (*Canadian Pacific Railway Company v. Canada (Attorney General)*, 2018 FCA 69 at paras. 54-56).

[4] I have carefully considered Mr. Stuckless' written and oral submissions. I am not convinced that the Federal Court committed a reviewable error by referring to the decisions in *Wojcik v. Canada (Attorney General)*, 2020 FC 958; *Lum v. Canada (Attorney General)*, 2020 FC 797; and *Henri v. Canada (Attorney General)*, 2014 FC 1141, to find that the degree of procedural fairness owed to Mr. Stuckless in this case was low. The statutory scheme and its

purpose, the discretionary nature of the decision and the impact of the decision on Mr. Stuckless all support the Federal Court's finding.

[5] Moreover, I am of the view, for the reasons given by the Federal Court, that the duty of procedural fairness owed to Mr. Stuckless was met. He was provided a long list of specific incidents that were being considered, received an explanation of the factors that were the most relevant to the Acting Director General's opinion that he posed an unacceptable risk to public health or public safety, and was given the opportunity and a reasonable delay to respond. The Acting Director General considered the representations made by Mr. Stuckless but ultimately found that he had not provided any evidence to support his statements.

[6] Likewise, there is no merit to the argument that the Acting Director General fettered her discretion by relying on the information contained in the Law Enforcement Record Check (LERC) report. Contrary to what Mr. Stuckless contends, she did not adopt the report blindly. She found, based on Mr. Stuckless' representations, that two of the factors listed in the LERC report no longer applied. I also agree with the Federal Court that she was not required to investigate Mr. Stuckless' theory of why the charges against him were abandoned, or to perform various investigative tasks. The onus was on Mr. Stuckless to put his best foot forward in responding to the notice of intention to refuse and the requests for additional information.

[7] While Mr. Stuckless may feel that he was treated unfairly, I am not persuaded that he was denied procedural fairness in the circumstances of this case.

[8] The appeal will accordingly be dismissed. As the respondent seeks no costs, I would award none.

"Sylvie E. Roussel"

J.A.

"I agree.
Richard Boivin J.A."

"I agree.
Nathalie Goyette J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-303-21

STYLE OF CAUSE: EVERETT RODGER
STUCKLESS v. ATTORNEY
GENERAL OF CANADA

PLACE OF HEARING: HALIFAX, NOVA SCOTIA

DATE OF HEARING: MARCH 22, 2023

REASONS FOR JUDGMENT BY: ROUSSEL J.A.

CONCURRED IN BY: BOIVIN J.A.
GOYETTE J.A.

DATED: MARCH 23, 2023

APPEARANCES:

Everett Rodger Stuckless FOR THE APPELLANT
(Self-represented)

Jan Jensen FOR THE RESPONDENT

SOLICITORS OF RECORD:

Shalene Curtis-Micallef FOR THE RESPONDENT
Deputy Attorney General of Canada