

Federal Court of Appeal



Cour d'appel fédérale

Date: 20241029

Docket: A-286-23

Citation: 2024 FCA 177

[ENGLISH TRANSLATION]

**CORAM: BOIVIN J.A.
LEBLANC J.A.
HECKMAN J.A.**

BETWEEN:

**TRANSPORT CAR-FRÉ LTÉE and
GESTION TRANSPORT CAR-FRÉ LTÉE**

Appellants

and

**HIS MAJESTY THE KING and THE
ATTORNEY GENERAL OF CANADA,
representing the Minister of Employment and
Social Development Canada**

Respondents

Heard at Québec, Quebec, on October 29, 2024.
Judgment delivered from the Bench at Québec, Quebec, on October 29, 2024.

REASONS FOR JUDGMENT OF THE COURT BY:

LEBLANC J.A.

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**REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Québec, Quebec, on October 29, 2024).**

LEBLANC J.A.

[1] This is an appeal from a judgment rendered by the Federal Court on September 22, 2023 (2023 FC 1275). In its judgment, the Federal Court dismissed the appellants' action seeking compensation for damages they believe they incurred as a result of the respondents negligently instituting proceedings against them under the penal provisions of the *Canada Labour Code*,

R.S.C. 1985, c. L-2 (the Code), in relation to a work accident in Alberta that resulted in the death of one of their employees. In June 2017, an Alberta court declared a stay of the proceedings against the appellants (2017 ABPC 157), being of the view that this accident, which occurred in May 2013, falls within provincial jurisdiction over occupational health and safety. The issue, for both the investigators and the court, was whether the accident occurred as part of work associated with the business operations of the appellants, interprovincial transportation companies subject to federal jurisdiction, or as part of work performed for the personal benefit of a senior manager for the appellants.

[2] Because the accident occurred outside Quebec, the action is grounded in the common law tort of negligent investigation. The Federal Court first dismissed the appellants' argument that, based on issue estoppel, it is bound by the judgment of the Alberta court, because the issue it had to decide was not the same as the one decided by the Alberta court. It subsequently concluded that the investigation that led to the institution of proceedings had not been negligent, in light of both the evidence predating the institution of proceedings and that presented by the parties at trial. Finally, the Federal Court determined that, in any event, there was no causal connection between the alleged fault and the purported harm.

[3] The appellants essentially presented the same arguments on appeal. To succeed, they had to convince us that the Federal Court, in concluding as it did, erred on a pure question of law or made a palpable and overriding error on a question of fact or mixed fact and law (*Housen v. Nikolaisen*, 2002 SCC 33 (*Housen*)). We are of the opinion that this burden has not been met.

[4] As for issue estoppel, the Federal Court correctly identified the applicable test, and its conclusion that the issue it had to decide was not the same as that of the Alberta court is, in our view, unassailable. Even if it concluded that the work accident at issue fell under provincial jurisdiction, the Alberta court was not required to decide whether the investigation that led to the institution of proceedings was negligent. Additionally, and as the Federal Court rightly noted, the Alberta court conducted its analysis based on evidence that was different from the evidence before the federal—and provincial—investigators in May 2013, and different from that adduced in this trial. Furthermore, the fact that the federal prosecutor did not appeal from the Alberta court’s judgment cannot, in our view, reasonably be interpreted, without more, as an admission that its investigation was negligent, since this decision might well have been influenced by the burden that the prosecutor had to meet on appeal.

[5] The Federal Court also correctly identified the test that applies to a negligent investigation tort. After analyzing the specifics of the evidence before it, it concluded that it was reasonable for the federal investigators to determine that the accident at issue was subject to federal jurisdiction and, as a result, justified the institution of proceedings under the Code (Federal Court Judgment, at para. 88). In doing so, it assessed the credibility of the testimony it heard on the central issue of the private or commercial nature of the facilities that the appellants were building at the time when the fatal accident took place.

[6] The appellants essentially criticize the Federal Court for misapprehending the conflicting evidence presented to it on this issue. Because this is a question of fact, the standard of review—whether regarding the findings of fact or the inferences drawn therefrom by the Federal Court—

is, as this Court pointed out in *Canada v. South Yukon Forest Corporation*, 2012 FCA 165 at paragraph 46, highly deferential. As court of fact, the Federal Court was in a privileged position to assess the credibility of witnesses, and it is not our role, as Court of Appeal and in the absence of palpable and overriding error, to second-guess the weight that the Federal Court assigned to the various items of evidence, including the various testimonies that it heard (*Housen* at paras. 24 and 25). In short, the appellants hoped for a different result. However, this could not justify intervention on our part.

[7] Having concluded that the Federal Court did not err in finding that the appellants had not shown that the investigation that led to the penal charges laid against them had been negligent, we do not need to address the issue of the causal connection between the alleged fault and the purported harm.

[8] Despite the able submissions of counsel for the appellants, the appeal will be dismissed with costs to the respondents.

"René LeBlanc"

J.A.

Certified true translation
Melissa Paquette, Senior Jurilinguist

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-286-23

STYLE OF CAUSE: TRANSPORT CAR-FRÉ LTÉE
and GESTION TRANSPORT
CAR-FRÉ LTÉE v. HIS MAJESTY
THE KING and THE ATTORNEY
GENERAL OF CANADA,
representing the Minister of
Employment and Social
Development Canada

PLACE OF HEARING: QUÉBEC, QUEBEC

DATE OF HEARING: OCTOBER 29, 2024

**REASONS FOR JUDGMENT OF THE COURT
BY:** BOIVIN J.A.
LEBLANC J.A.
HECKMAN J.A.

DELIVERED FROM THE BENCH BY: LEBLANC J.A.

APPEARANCES:

Elodie Drolet-French
Anne-Sophie Ayoub
FOR THE APPELLANTS

Martin Lamoureux
FOR THE RESPONDENTS

SOLICITORS OF RECORD:

Jean-François Bertrand Avocats Inc.
Québec, Quebec
FOR THE APPELLANTS

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