

Federal Court of Appeal



Cour d'appel fédérale

Date: 20260330

Docket: A-66-25

Citation: 2026 FCA 67

**CORAM: ROUSSEL J.A.
HECKMAN J.A.
PAMEL J.A.**

BETWEEN:

NATHAN KIRK DEMPSEY

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Halifax, Nova Scotia, on March 24, 2026.

Judgment delivered at Ottawa, Ontario, on March 30, 2026.

REASONS FOR JUDGMENT BY:

HECKMAN J.A.

CONCURRED IN BY:

**ROUSSEL J.A.
PAMEL J.A.**

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REASONS FOR JUDGMENT

HECKMAN J.A.

[1] The appellant appeals from the judgment of the Federal Court in *Dempsey v. Canada (Attorney General)*, 2025 FC 245 dismissing his application for judicial review of a decision (the Decision) of the Public Sector Integrity Commissioner of Canada (the Commissioner) not to investigate his disclosure of wrongdoing made pursuant to the *Public Servants Disclosure Protection Act*, S.C. 2005, c. 46 (the Act).

[2] In a disclosure filed with the Commissioner, the appellant, who is not a public servant, claimed that after engaging in litigation in the context of a shareholder dispute against the CEO of “a private sector company that supplies government agencies” (the civil litigation), he began experiencing “widespread disruptions” in his life, including harassment, break-ins, threats, and loss of employment opportunities. He alleged that these disruptions could be traced to “state-sponsored criminal actors” operating as part of a government program using “Fourth Industrial Revolution technologies” either in “a clandestine trial” or to “facilitate a retaliatory hate crime following a shareholder dispute.” He filed his disclosure to expose this “scandal” and “to prevent the impact to other victims which are expected to be affected.”

[3] The appellant claimed that many organizations with which he had had dealings since the civil litigation and in the context of that litigation were complicit in the scandal and had committed wrongdoing as defined in the Act. These included federal organizations and public bodies, courts and municipal police forces.

[4] The appellant had originally submitted a disclosure form in which he had asked the Commissioner to review the contents of his personal website. When the Commissioner’s case admissibility analyst informed him that the Commissioner would not review his website to try to ascertain what his allegations of wrongdoing were and asked him to submit a clearer and more precise account of these allegations, the appellant provided the analyst a lengthy email.

[5] In a detailed three-page decision, the Commissioner decided not to investigate the appellant’s allegations.

[6] The Commissioner first noted that the Act applies to wrongdoing in or relating to the “public sector,” defined as departments, organizations and public bodies named in schedules to the *Financial Administration Act*, R.S.C. 1985, c. F-11 and the Act itself. She held that of all the entities alleged by the appellant to have committed wrongdoing, only the Canada Revenue Agency (CRA) and the Royal Canadian Mounted Police (RCMP) fell within the “public sector” and therefore under the Commissioner’s jurisdiction. Accordingly, she decided that she had no jurisdiction to commence an investigation in relation to allegations of wrongdoing involving organizations other than the CRA and RCMP.

[7] The Commissioner also observed that where information is provided by a person who is not a public servant, subsection 33(1) of the Act provides that, subject to restrictions and discretionary factors set out in sections 23 and 24, she may commence an investigation into alleged wrongdoing if she has reason to believe that wrongdoing, as defined under section 8, has been committed and if she believes on reasonable grounds that the public interest requires an investigation. The Commissioner observed that the purpose of the Act is to address wrongdoing “of an order of magnitude that could shake public confidence if not reported and corrected” and that poses a “serious threat to the integrity of the public service” (*Canada (Attorney General) v. Canada (Public Sector Integrity Commissioner)*, 2016 FC 886 at para. 106). The Commissioner decided that the appellant’s allegations against the CRA and RCMP arose from the appellant’s personal situation pertaining to what appeared to be a private civil litigation and thus did not involve wrongdoing under the Act as defined in the jurisprudence. Noting that these matters “should continue to be addressed through procedures available to deal with such concerns,” the Commissioner exercised her discretion not to investigate the appellant’s allegations.

[8] The appellant sought judicial review of the Decision, arguing that it was unreasonable and procedurally unfair. The Federal Court dismissed the application. It held that the Commissioner's decision that she could not consider organizations named by the appellant in his disclosure that fell outside the federal public sector was reasonable, as was her decision that the appellant's allegations regarding the CRA and RCMP, which were public sector entities under the Act, arose from a private and personal matter and that an investigation would not be in the public interest.

[9] The Federal Court held that the Commissioner's decision not to consider all the material on the appellant's personal website did not breach procedural fairness or render the decision unreasonable. In its view, the Commissioner did not have a responsibility to discern and assess the alleged wrongdoing from a large volume of materials on the website; rather, the appellant had the evidentiary burden to set out a clear and cogent narrative in his disclosure.

[10] On an appeal from the decision of the Federal Court on judicial review of the Commissioner's decision, the question before this Court is whether the Federal Court chose the correct standard of review and applied it properly. This Court effectively steps into the shoes of the Federal Court and reviews afresh the Commissioner's decision (*Gordillo v. Canada (Attorney General)*, 2022 FCA 23 at para. 58 [*Gordillo*], citing *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at paras. 45–47; *Northern Regional Health Authority v. Horrocks*, 2021 SCC 42 at para. 10).

[11] Where the Federal Court acts as decision maker of first instance, such as when it fixes a costs award, this Court applies the appellate standards of review: determinations of law are reviewed for correctness, while findings of fact and mixed fact and law (absent an extricable question of law) are subject to review on the deferential standard of palpable and overriding error (*Gordillo* at para. 59, citing *Housen v. Nikolaisen*, 2002 SCC 33).

[12] I am of the view that the Federal Court was correct in reviewing the merits of the Decision on the reasonableness standard (*Gordillo* at para. 60) and, with regards to the appellant's claim of procedural unfairness, in considering whether the appellant was given a right to be heard and the opportunity to know the case against him (*Canadian Pacific Railway Company v. Canada (Attorney General)*, 2018 FCA 69 at para. 56).

[13] The appellant has not in my view established that the process followed by the Commissioner was procedurally unfair. The Commissioner's analyst clearly informed him that the Commissioner would not review the entirety of his personal website in an attempt to define the wrongdoings that he was alleging. She directed him to submit clearer and more precise allegations and, as conceded by the appellant at the hearing of this appeal, specified no page limit. In response, the appellant submitted a lengthy email. The appellant was afforded the right to be heard and exercised this right by providing an email submission.

[14] In assessing the reasonableness of the Decision, this Court must take a "reasons first" approach that evaluates the Commissioner's justification for her decision. An administrative decision is reasonable if it is based on an internally coherent and rational chain of analysis and

justified in relation to the facts and law that constrain the decision maker (*Mason v. Canada (Citizenship and Immigration)*, 2023 SCC 21 at para. 8, citing *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at paras. 84–85 [*Vavilov*]). The appellant bears the burden of satisfying this Court that there are shortcomings or flaws in the Decision that are sufficiently central or significant to the merits such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency; minor missteps in reasoning or flaws or shortcomings that are merely superficial or peripheral to the merits of the Decision do not render it unreasonable (*Vavilov* at para. 100).

[15] At the hearing before this Court, the appellant clarified that he did not take issue with the Commissioner’s decision regarding the scope of her authority over the entities mentioned in his disclosure. His submissions regarding the reasonableness of the Decision focused exclusively on persuading this Court that there was a public interest in investigating the RCMP’s conduct in failing to formally investigate his allegations of criminal activities and that it was unreasonable for the Commission to characterize his allegation of wrongdoing against the RCMP as arising from his personal situation pertaining to the civil litigation. While insisting that the alleged criminal conduct and the civil litigation were distinct, the appellant acknowledged at the hearing before this Court that they were “related.”

[16] Before this Court, the appellant sought to introduce various documents at the hearing, including AI-generated responses to queries regarding the use of “neurotechnologies” to “target” individuals, various pages from the appellant’s website and collages created by the appellant of online material alleged to illustrate instances of “cybertorture.” These documents do not assist

the Court to determine whether the Commissioner, based on the record before her, delivered a decision that was procedurally fair or based on an internally coherent and rational chain of analysis and justified in relation to the facts and law. In my view, these documents should therefore be accorded no weight in this Court's review of the Decision.

[17] Subsection 33(1) of the Act provides that, where the Commissioner has reason to believe that a wrongdoing has been committed, she “may... commence an investigation into the wrongdoing if... she believes on reasonable grounds that the public interest requires an investigation” (underlining added). This decision involves an exercise of discretion and is factually suffused. As such, it deserves considerable deference (*Canada (Attorney General) v. Ennis*, 2021 FCA 95 at para. 56). This Court must refrain from reweighing and reassessing the evidence considered by the Commissioner (*Vavilov* at para. 125). It will not interfere with the Commissioner's factual findings unless the appellant establishes that she fundamentally misapprehended or failed to account for the evidence before her (*Vavilov* at para. 126).

[18] The appellant has not satisfied this burden. In my view, based on the record before her and given the legal and factual constraints governing the exercise of her discretion, it was open to the Commissioner to characterize the appellant's allegations of wrongdoing involving the CRA and RCMP as “arising from his personal situation” pertaining to the civil litigation. In doing so, the Commissioner cannot be taken to have conflated the civil litigation with the criminal activities reported by the appellant, particularly when her reasons are read holistically and in light of the record (*Vavilov* at para. 103). It was also open to the Commissioner to decide that, given the applicable jurisprudence, the appellant's allegations did not reveal wrongdoing of

a sufficiently serious nature such that the public interest required an investigation. The Commissioner's decision not to investigate was reasonable.

[19] The appellant also appeals the Federal Court's decision to award costs to the respondent under the mid-range of Column III of Tariff B of the *Federal Courts Rules*, SOR/98-106. He argues that the Federal Court erred in failing to give effect to the parties' agreement that the successful party would be awarded costs in the amount of \$1000. The respondent submits that it would claim only \$990 in respect of costs and disbursements under the mid-point of column III in Tariff B – \$10 less than the \$1000 agreed to by the parties.

[20] Awards of costs are quintessentially discretionary and command deference so that an appellate court will only intervene if they are vitiated by palpable and overriding error (*Haynes v. Canada (Attorney General)*, 2023 FCA 244 at para. 13). I am not convinced that there is any reason to interfere with the Federal Court's costs award.

[21] For the foregoing reasons, I would dismiss the appeal, with costs.

“Gerald Heckman”

J.A.

“I agree.
Sylvie E. Roussel J.A.”

“I agree.
Peter G. Pamel J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-66-25

STYLE OF CAUSE: NATHAN KIRK DEMPSEY v.
ATTORNEY GENERAL OF
CANADA

PLACE OF HEARING: HALIFAX, NOVA SCOTIA

DATE OF HEARING: MARCH 24, 2026

REASONS FOR JUDGMENT BY: HECKMAN J.A.

CONCURRED IN BY: ROUSSEL J.A.
PAMEL J.A.

DATED: MARCH 30, 2026

APPEARANCES:

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ON HIS OWN BEHALF

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