

Federal Court



Cour fédérale

**Date: 20240214**

**Docket: T-183-22**

**Citation: 2024 FC 247**

**Ottawa, Ontario, February 14, 2024**

**PRESENT: Madam Justice Pallotta**

**BETWEEN:**

**THOMAS B WINKLER**

**Applicant**

**and**

**MINISTER OF PUBLIC SAFETY AND  
EMERGENCY PREPAREDNESS**

**Respondent**

**JUDGMENT AND REASONS**

[1] The applicant, Thomas Winkler, seeks judicial review of two decisions made by the Minister of Public Safety and Emergency Preparedness (Minister) under the *Customs Act*, RSC 1985, c 1 (2nd Supp) [*Customs Act*].

[2] On September 7, 2020, a vehicle was observed driving through the primary inspection line at the Fraser Port-of-Entry (POE) between Alaska and British Columbia. The Royal

Canadian Mounted Police intercepted the vehicle and escorted it back to the POE. A CBSA officer found that Mr. Winkler had contravened the *Customs Act* by “running the border” into Canada without presenting himself to border officials. Mr. Winkler’s vehicle was seized and he was required to pay \$1,000 for his vehicle to be released.

[3] Mr. Winkler requested ministerial review under section 129 of the *Customs Act*. Pursuant to sections 131 and 133 of the *Customs Act*, the Minister was authorized to decide whether a contravention had occurred, and if so, whether to refund any portion of the money Mr. Winkler had paid for the return of his seized vehicle. In decisions communicated by way of a letter dated November 1, 2021, the Minister confirmed that Mr. Winkler had contravened section 11 of the *Customs Act* by failing to report to a CBSA officer (Contravention Decision) and found there were extenuating circumstances that warranted a \$500 refund of the payment for releasing his vehicle (Release Decision). Mr. Winkler seeks to challenge these decisions.

[4] Mr. Winkler’s notice of application named the Attorney General of Canada as respondent. I agree with the Minister that the sole respondent on this application should be the Minister of Public Safety and Emergency Preparedness. The style of cause will be amended accordingly.

[5] The Minister raises a preliminary issue with Mr. Winkler’s supporting affidavit, asking that parts of it be struck out as inadmissible argument. Since the arguments in Mr. Winkler’s affidavit largely repeat arguments that were made to the Minister or that are in Mr. Winkler’s

memorandum of fact and law in this proceeding, I see no prejudice to the Minister. In my view, no purpose would be served by striking out parts of Mr. Winkler's affidavit.

[6] During the oral hearing the Court raised another preliminary issue, concerning the record on judicial review. The parties had assumed that the full Certified Tribunal Record (CTR) was before the Court even though it was not in the applicant's or the respondent's records. I granted an informal motion on consent to accept the full CTR as part of the record on this application.

[7] Mr. Winkler submits the Minister's decisions are unreasonable. He submits the charge against him should be dismissed and the full amount of the fine should be returned to him. Mr. Winkler states the Minister's decisions were not based on evidence in the record. He argues the decisions are vague and it is unclear what evidence the Minister considered and relied on.

[8] Mr. Winkler states he was exploring the area near the Fraser POE in his vehicle and was driving toward Alaska, but he maintains he never left Canada. He states the Alaska border is some distance past the POE station and he did not cross the border into Alaska before he turned around. Mr. Winkler states he was found to have contravened the *Customs Act* for driving past the POE station into Canada when there was no evidence to show that he had ever left the country. Furthermore, Mr. Winkler states he stopped and waited at the POE, but there was no CBSA officer guarding the border. He states the POE looked like a construction site and it was not clear there was an officer on duty or where he was required to stop.

[9] The Minister asks that this application for judicial review be dismissed. A person crossing into Canada has an obligation to present himself or herself at the border, and strict liability applies if there is a failure to do so.

[10] The Minister submits this Court should not consider Mr. Winkler's challenge to the Contravention Decision. That decision, which was made under section 131 of the *Customs Act*, must be appealed by way of an action. With respect to the Release Decision, the Minister submits he reasonably exercised discretion to reduce the amount of Mr. Winkler's penalty and the decision articulates reasons that are transparent, intelligible and justified based on the evidentiary record.

[11] I find Mr. Winkler has not established that this Court should interfere with either of the Minister's decisions.

[12] I agree with the Minister that contravention and penalty decisions under the *Customs Act* are distinct decisions that must be challenged separately: *Chen v Canada (Public Safety and Emergency Preparedness)*, 2019 FCA 170 at para 9. Subsection 131(3) of the *Customs Act* provides that decisions made under section 131 may be appealed only as provided in subsection 135(1), which states the decision must be appealed by way of an action in the Federal Court: *Célestin v Canada (Public Safety and Emergency Preparedness)*, 2021 FC 223 at para 19; *Hamod v Canada (Public Safety and Emergency Preparedness)*, 2015 FC 937 at para 16. The Minister's conclusion that Mr. Winkler contravened the *Customs Act* cannot be challenged on this application for judicial review.

[13] After finding that Mr. Winkler had contravened the *Customs Act*, the Minister considered whether the terms of release should be varied pursuant to section 133. The applicable standard for reviewing the Release Decision is reasonableness. The reasonableness standard of review is a deferential but robust form of review that considers whether the decision, including the reasoning process and the outcome, is transparent, intelligible, and justified: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 13, 99.

[14] The Minister's letter shows that he reviewed the evidence. The Minister found that while Mr. Winkler did not present himself to a United States Customs and Border Protection official, the office is several kilometres inland from the US border and the location where Mr. Winkler indicated he had turned around was across the US border. The Minister noted that information gathered from CBSA officers indicated Mr. Winkler had stopped approximately 50 feet back from the port due to a construction vehicle blocking the path; however, when he arrived at the CBSA office he drove past without stopping. The Minister noted that the examining CBSA officer gave Mr. Winkler an opportunity to demonstrate that he had exercised due diligence, which would have allowed the officer to issue a warning instead of seizing Mr. Winkler's vehicle. Mr. Winkler told the officer he had dash-cam footage showing he had stopped as required, but he did not show the footage to the officer and he did not provide a copy to the Minister for review. Consequently, the Minister did not accept that Mr. Winkler had waited at the POE for a length of time. Nonetheless, the Minister decided to reduce the fine because the ongoing construction at the POE may have impacted Mr. Winkler's ability to present himself to CBSA officers. The Release Decision sets out the Minister's rationale with reasons that are intelligible and transparent, and that justify the Minister's decision.

[15] In conclusion, the Contravention Decision cannot be challenged by way of this application for judicial review and Mr. Winkler has not established that the Release Decision is unreasonable. As there is no basis to interfere with the Minister's decisions, this application is dismissed.

[16] In the exercise of my discretion, no costs are awarded.

**JUDGMENT in T-183-22**

**THIS COURT'S JUDGMENT is that:**

1. This application for judicial review is dismissed.
2. The style of cause is amended to substitute the Minister of Public Safety and Emergency Preparedness as the sole respondent, with immediate effect.

"Christine M. Pallotta"

Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-183-22

**STYLE OF CAUSE:** THOMAS B WINKLER v ATTORNEY GENERAL OF CANADA

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** AUGUST 2, 2023

**JUDGMENT AND REASONS:** PALLOTTA J.

**DATED:** FEBRUARY 14, 2024

**APPEARANCES:**

Thomas Winkler

FOR THE APPLICANT  
(ON HIS OWN BEHALF)

Erica Louie

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Attorney General of Canada  
Vancouver, British Columbia

FOR THE RESPONDENT