

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20100526

Docket: A-459-09

Citation: 2010 FCA 134

**CORAM: LÉTOURNEAU J.A.
LAYDEN-STEVENSON J.A.
STRATAS J.A.**

BETWEEN:

ATTORNEY GENERAL OF CANADA

Appellant

and

FALLAN DAVIS

Respondent

Heard at Ottawa, Ontario, on May 26, 2010.

Judgment delivered from the Bench at Ottawa, Ontario, on May 26, 2010.

REASONS FOR JUDGMENT OF THE COURT BY:

LAYDEN-STEVENSON J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Ottawa, Ontario, on May 26, 2010)

LAYDEN-STEVENSON J.A.

[1] The respondent, Fallan Davis, complained to the Canadian Human Rights Commission (the Commission) concerning an incident involving Canada Border Service Agency (CBSA) agents at

the Canada-United States border crossing at Cornwall Island, Ontario. The Commission decided to refer the complaint to the Canadian Human Rights Tribunal (CHRT) for further inquiry.

[2] The appellant sought judicial review of the Commission's decision. Justice Harrington of the Federal Court (the application judge) dismissed the application. The facts are fully set out in the reasons for judgment of the application judge: 2009 FC 1104. The appellant now appeals to this Court. We are of the view that the appeal should be dismissed.

[3] The role of an appellate court, when hearing an appeal from an application for judicial review, is to determine whether the reviewing court identified the applicable standard of review and applied it correctly: *Prairie Acid Rain Coalition v. Canada (Minister of Fisheries and Oceans)*, [2006] 3 F.C.R. 610 (F.C.A); *Canada Revenue Agency v. Telfer*, 2009 FCA 23, 386 N.R. 212. The application judge, in accordance with the established jurisprudence, properly identified the applicable standard of review regarding the Commission's decision to refer a complaint as reasonableness and the applicable standard of review regarding the issue of procedural fairness as correctness: *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190.

[4] The Record discloses that the Commission had the following documents before it when it considered the respondent's complaint:

- the complaint document;
- a one-page administrative summary of the complaint;
- the investigation report

- the respondent's response to the investigation report;
- the CBSA response to the investigation report;
- the respondent's reply to the CBSA response to the investigation report;
- the CBSA reply to the respondent's response to the investigation report.

[5] This Court has repeatedly stated that the Commission enjoys considerable latitude when performing its screening function on receipt of an investigator's report and that the courts must not intervene lightly in its decisions at this stage. See: *Bastide et al. v. Canada Post Corporation*, 2006 FCA 318, 365 N.R. 136 (citations to supporting authorities omitted), leave to appeal refused, [2006] C.S.C.R. no. 466.

[6] The Commission must act in accordance with natural justice. This requires that the investigation report upon which the Commission relies be neutral and thorough and that the parties be given an opportunity to respond to it: *Sketchley v. Canada (Attorney General)*, [2006] 3 F.C.R. 392 (F.C.A.) applying *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817.

[7] While we do not endorse the entirety of the application judge's reasons for judgment, we are satisfied that he reached the appropriate conclusion based on the record before him. The record discloses a true debate: there is evidence in support of each side's position that is capable of being believed, and if believed, could be determinative of the merits of the complaint.

[8] For these reasons, the appeal will be dismissed.

"Carolyn Layden-Stevenson"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-459-09

STYLE OF CAUSE: A.G.C. v Fallan Davis

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: May 26, 2010

REASONS FOR JUDGMENT OF THE COURT BY: LÉTOURNEAU J.A.
LAYDEN-STEVENSON J.A.
STRATAS J.A.

DELIVERED FROM THE BENCH BY: LAYDEN-STEVENSON J.A.

APPEARANCES:

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Susan Keenan

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Fallan Davis

FOR THE RESPONDENT ON HER
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SOLICITORS OF RECORD:

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