

Federal Court of Appeal



Cour d'appel fédérale

Date: 20230208

Docket: A-242-21

Citation: 2023 FCA 31

**CORAM: STRATAS J.A.
WEBB J.A.
MONAGHAN J.A.**

BETWEEN:

**ALLIANCE FOR EQUALITY OF BLIND
CANADIANS**

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

and

**FIRST NATIONS CHILD AND FAMILY
CARING SOCIETY OF CANADA**

Intervener

Heard at Ottawa, Ontario, on February 8, 2023.
Judgment delivered from the Bench at Ottawa, Ontario, on February 8, 2023.

REASONS FOR JUDGMENT OF THE COURT BY:

MONAGHAN J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Ottawa, Ontario, on February 8, 2023).

MONAGHAN J.A.

[1] Alliance for Equality of Blind Canadians (Alliance) appeals a decision of the Federal Court (2021 FC 860 *per* Justice Little) dismissing a judicial review application brought by Alliance. That application sought to set aside a July 8, 2020 decision of the Canadian Human Rights Commission (the Commission) not to deal with a complaint against Employment and Social Development Canada (ESDC). The complaint concerned ESDC’s inaccessible grant process, and in particular ESDC’s inaccessible website used for funding applications.

[2] Under section 41 of the *Canadian Human Rights Act*, R.S.C., 1985, c. H-6, the Commission is mandated to deal with any complaint unless “it appears to the Commission” that one of paragraphs 41(1)(a) to (e) applies. Paragraph 41(1)(c) concerns a complaint beyond the jurisdiction of the Commission.

[3] Here, the Commission expressly recognized the seriousness of the human rights issues raised by the complaint and the strong public interest in ensuring that services and programs provided by the Government are accessible, particularly where their target is support of persons with disabilities. However, the Commission characterized the complaint as one made by Alliance, not by an individual. Because the *Canadian Human Rights Act* protects individuals, not corporations, the Commission determined the complaint was beyond its jurisdiction.

[4] The Federal Court dismissed Alliance’s application for judicial review of that decision because it determined the Commission’s decision was reasonable under the principles set out in

Canada (Minister of Citizenship and Immigration) v. Vavilov, 2019 SCC 65, [2019] 4 S.C.R. 653. Alliance now appeals to this Court. First Nations Child and Family Caring Society of Canada was granted intervener status.

[5] On appeal from a judicial review from the Federal Court, this Court must decide whether the Federal Court identified and then properly applied the correct standard of review: *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 S.C.R. 559 at para. 45. Effectively, this Court “steps into the shoes” of the Federal Court and focuses on the administrative decision.

[6] Here, with that focus, and having assessed the matter anew in light of the arguments made by Alliance and the intervener, both in writing and orally, we conclude that the Federal Court correctly identified and properly applied the standard of review.

[7] The Federal Court said “the characterization of the complaint was...a factually-suffused task that involved the expertise of the Commission” and was owed considerable deference (at para. 51). We agree. We also agree, for the reasons given by the Federal Court, that the Commission made no reviewable error in characterizing the complaint as it did or in determining that Alliance did not have standing to file the complaint.

[8] The intervener argues that the Commission’s decision conflicts with precedents in which the Commission has considered complaints made by organizations, most notably the

Commission's 2016 decision regarding a complaint the intervener brought alleging Canada discriminated against First Nations children and families.

[9] The Commission's decision in this case is not premised on a conclusion that any discrimination complaint made by an organization is beyond its jurisdiction. Rather, the report of the human rights officer, with which the Commission agreed, expressly acknowledged that an organization may make a complaint of discrimination on behalf of an individual when the alleged discrimination is against the individual. However, the Commission characterized the complaint in this case as one made on behalf of Alliance, not an individual. As already stated, we agree with the Federal Court that that characterization of the complaint was reasonable.

[10] In oral argument, Alliance repeatedly emphasized that the Commission ignored portions of the complaint. We disagree. The Commission considered the whole of the complaint including portions that might have supported Alliance's characterization of the complaint but characterized the complaint as being that of Alliance, an entity that is not an "individual" under the *Act*. As the Federal Court found, this was a factually suffused characterization that cannot be said to be unreasonable.

[11] Accordingly, the appeal will be dismissed. As the respondent seeks no costs, none will be awarded.

"K.A. Siobhan Monaghan"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

**APPEAL FROM AN ORDER OF THE HONOURABLE JUSTICE LITTLE DATED
AUGUST 23, 2021, DOCKET NO. T-938-20**

DOCKET: A-242-21

STYLE OF CAUSE: ALLIANCE FOR EQUALITY OF
BLIND CANADIANS v.
ATTORNEY GENERAL OF
CANADA AND FIRST NATIONS
CHILD AND FAMILY CARING
SOCIETY OF CANADA

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: FEBRUARY 8, 2023

**REASONS FOR JUDGMENT OF THE COURT
BY:** STRATAS J.A.
WEBB J.A.
MONAGHAN J.A.

DELIVERED FROM THE BENCH BY: MONAGHAN J.A.

APPEARANCES:

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