Federal Court of Appeal | Cour d'appel fédérale

Date: 20250630

Docket: A-211-24

Citation: 2025 FCA 128

CORAM: **LOCKE J.A.**
LEBLANC J.A.
GOYETTE J.A.

BETWEEN:

CHRISTOPHER PRIEST

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Toronto, Ontario, on June 25, 2025.

Judgment delivered at Ottawa, Ontario, on June 30, 2025.

REASONS FOR JUDGMENT BY: LEBLANC J.A.

CONCURRED IN BY: LOCKE J.A.
GOYETTE J.A.

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REASONS FOR JUDGMENT

LEBLANC J.A.

[1] The appellant, Mr. Priest, was employed by the Canada Revenue Agency (the Agency) as a Research Technology Advisor (a CO-2 position) in the Agency's Scientific Research and Experimental Development group, from the time he was hired, in 2009, until he retired in 2022, at age 71. In the fall of 2020, Mr. Priest applied for a position of Research and Technology Manager (a CO-3 position) within the same group but was screened out of the staffing process on

the basis that he did not meet the minimum education requirement as he had neither: (i) a postgraduate degree from a recognized postsecondary institution with an acceptable specialization in the field of science or engineering relevant to the group's work; nor (ii) a bachelor's degree in engineering or computer science with an acceptable combination of education, training, and/or experience (the Education Requirement).

[2] The Education Requirement was implemented in 2019 and applied to both CO-2 and CO-3 positions. I note that when the Education Requirement was implemented, Mr. Priest no longer met the minimum education requirements for his (CO-2) position. However, to remedy the situation, he was granted "acquired rights" by virtue of which he was deemed to meet the new requirement. These "acquired rights" would apply only, though, to his group and level.

[3] Resorting to the recourse mechanism available to him pursuant to the Agency's Staffing Program adopted under the authority of section 54 of the *Canada Revenue Agency Act*, S.C. 1999, c. 17 (the CRA Act), Mr. Priest challenged the decision to screen him out of the staffing process through an individual feedback procedure held before the manager responsible for the staffing process (the Manager). Mr. Priest claimed that he had been treated arbitrarily by the Agency on the basis that the Education Requirement discriminated against him based on his age.

[4] Mr. Priest's challenge was dismissed by the Manager (the First IF Decision). However, that decision was set aside on judicial review (*Priest v. Canada (Attorney General)*, 2022 FC 1598 (*Priest 2022*)) on the ground that the Manager had failed to examine the most important aspect of Mr. Priest's request for feedback, namely the question of whether he experienced

adverse effect discrimination based on his age when he was screened out of the CO-3 staffing process for failing to meet the Education Requirement.

[5] The matter was therefore remitted to the Agency for reconsideration but, again, the individual feedback did not go in Mr. Priest's favour (the Second IF Decision). In a judgment dated May 22, 2024 (*Priest v. Canada (Attorney General)*, 2024 FC 773) (*Priest 2024*), the Federal Court (*per* Pallota J.) (the Application Judge), dismissed Mr. Priest's judicial review application regarding the Second IF Decision, being of the view that the decision was both reasonable and procedurally fair.

[6] Mr. Priest now appeals that judgment before this Court. He essentially claims that the Manager failed to consider all the evidence and case law he submitted on the issues of ageism and adverse impact discrimination, including statistical data showing that people from his age group do not hold computer science bachelor's degrees, the reason being, according to him, that no such university degrees existed at the time he graduated from university. He claims, as well, that when the First IF Decision was set aside, the matter should have been remitted to the Agency's Commissioner or deputy commissioners because of the lack of expertise of hiring managers on discrimination issues. Finally, Mr. Priest insists that in reconsidering the matter, the Manager was bound to conduct an analysis under section 15 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c. 11 (the Charter) and contends that this issue is to be reviewed by this Court on a standard of correctness.

[7] It is well-settled that when this Court hears an appeal from a decision of the Federal Court on judicial review, its role is to determine whether the Federal Court selected the appropriate standard of review and, if so, whether that standard was applied properly. When determining whether the appropriate standard was applied properly, this Court must "[perform] a *de novo* review of the administrative decision" (*Northern Regional Health Authority v. Horrocks*, 2021 SCC 42 at para. 10 (*Horrocks*); *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at paras. 45-47 (*Agraira)*).

[8] Here, the Application Judge applied the standard of reasonableness when it reviewed the substance of the Second IF Decision and a standard akin to the standard of correctness when it examined the procedural fairness issues raised by Mr. Priest. I see no error there. I see no error, as well, in the way these standards were applied by the Application Judge.

[9] Dealing first with Mr. Priest's contention that the matter ought not to have been remitted to the Manager, when the First IF Decision was set aside, I agree with the Application Judge that the Federal Court, in *Priest 2022*, did not state that the individual feedback process was inappropriate or unfair in the circumstances or that it required someone other than the Manager to address the matter on reconsideration. For these types of staffing decisions, the individual feedback process is the recourse available to complainants under the Agency's statutorily based staffing policy and it was not for the Application Judge – and it is not for this Court - to direct the Agency to consider Mr. Priest's complaint through another process. The rules of procedural fairness are not meant to guarantee one's preferred choice of procedure (*Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 at paras. 26-27; *John Howard*

Society of Saskatchewan v. Saskatchewan (Attorney General), 2025 SCC 6 at para. 280; *Canada (Citizenship and Immigration) v. Harkat*, 2014 SCC 37 at paras. 43 and 69; *Grewal v. Canada (Minister of Employment and Immigration)*, 1991 CanLII 8291 (FCA), [1992] 1 FC 581 at p. 590).

[10] Here, Mr. Priest can hardly contend that he did not know the case to meet – he is the one who requested individual feedback on the basis that he was discriminated against based on his age – or that he was denied a full opportunity to be heard. He has also not established that the procedure followed by the Manager on reconsideration was otherwise procedurally unfair (*Canadian Pacific Railway Company v. Canada (Attorney General)*, 2018 FCA 69 at paras. 54 and 56). On this point, Mr. Priest, when he claims that the Second IF Decision was unfair because the bulk of his submissions on adverse impact discrimination were ignored by the Manager, conflates procedural fairness concerns with reasonableness issues.

[11] This leads me to Mr. Priest's argument that the Manager did not consider all his evidence and arguments regarding his adverse impact discrimination claim. This issue goes to the substance of the Second IF Decision and engages, therefore, the reasonableness standard of review (*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 (*Vavilov*)).

[12] It is important to underscore at this point that the reasonableness standard of review is a deferential standard. It requires reviewing courts to avoid "'undue interference' with the administrative decision maker's discharge of its functions" (*Vavilov* at para. 30). In practical terms, this means that reviewing courts must refrain from deciding themselves the issues that

were before the administrative decision maker. In other words, a reviewing court "does not ask what decision it would have made in place of that of the administrative decision maker, attempt to ascertain the 'range' of possible conclusions that would have been open to the decision maker, conduct a de novo analysis or seek to determine the 'correct' solution to the problem" (*Vavilov* at para. 83).

[13] Therefore, our role, here, is to focus on the decision "actually made" by the Manager by examining his reasons with "respectful attention" to ensure that they reflect an "internally coherent and rational chain of analysis", and that the decision's outcome is "justified in relation to the facts and law that constrain the decision maker". Most importantly perhaps, the Second IF Decision need not be assessed "against a standard of perfection", keeping in mind that administrative decision makers "cannot always be expected to deploy the same array of legal techniques that might be expected of a lawyer or judge" (*Vavilov* at paras. 83-85, 91 and 92). As correctly pointed out in *Priest 2022* at paragraph 75, quoted by the Application Judge at paragraph 57 of her Reasons, the "lack of formalistic legal analysis on the finer points" of adverse impact discrimination does not, in the context of matters resulting from individual feedback requests, make a decision unreasonable.

[14] To intervene, this Court must be satisfied that the Second IF Decision exhibits flaws or shortcomings that are "sufficiently central or significant to render the [impugned] decision unreasonable." This will be the case where the flaw or shortcoming is such "that [the decision] cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para. 100).

[15] In my view, contrary to Mr. Priest's submissions, the Second IF Decision does possess the attributes of a reasonable decision. In other words, although it is not as detailed and legally formalistic as Mr. Priest would have hoped or liked, it is responsive to the main aspect of his complaint, being that he was the victim of adverse impact discrimination when he was screened out of the CO-3 staffing process due to the Education Requirement.

[16] The Application Judge aptly summarized the Second IF Decision as follows:

> [59] Unlike the [First IF Decision,], the Manager squarely identified the core issue on reconsideration, being Mr. Priest's allegation that the education requirement, even where applied equally to all, discriminated based on age and resulted in adverse treatment. The Manager's reconsideration Decision also provides fuller reasons that explain the result. The Manager's key points were:
>
> - the minimum education standard for the posted job was established under the authority of the *CRA Act*;
>
> - the [Agency]'s Staffing Procedures require managers to appoint based on merit, meaning candidates must meet the minimum staffing requirements including education; the minimum education standards are relevant to the nature of the work and the business requirements;
>
> - if minimum education standards change, acquired rights may apply to deem employees to meet the new standard; for CO positions, the [agency]'s Staffing Procedures provide that acquired rights do not apply to deem candidates eligible for CO-03 level jobs;
>
> - the Research and Technology Manager position involves direct technical oversight and review of work by a multidisciplinary team of scientists and engineers; it requires a thorough understanding of scientific principles and research techniques, and a level of knowledge that can be obtained through a Master's degree in a field of science relevant to the [Scientific Research and Experimental Development] program or an engineering or computer science program combined with the equivalent level of research experience that would normally be undertaken in a master's degree;
>
> - the CO education standards in the Staffing Procedures recognize a broad range of science degrees that are relevant to the [Scientific Research and Experimental Development] program; all current and previously issued

graduate degrees in all fields of physical and applied sciences are recognized, and the policy also supports equivalency verification of an education credential through a recognized credential assessment service;

- with respect to the CS standard, Mr. Priest has never occupied a CS position and was never granted acquired rights to CS positions;

- [Agency] programs provide financial support and educational leave to individuals who may be unable to advance in their career due to insufficient education;

- the CO education standard states that the minimum requirement is a graduate degree in a field of physical sciences or computer science or engineering and not a more restricted standard of a computer science degree; it includes all current and past physical sciences master's degrees regardless of when obtained and its application does not create an intentional or unintentional distinction based on age;

- none of the applicants to the staffing process and none of the current Research and Technology Managers have a computer science degree; four of the twenty five applicants who passed screening are about the same age as Mr. Priest and attended their graduate programs in the 1970s and four others undertook their undergraduate studies in the early to mid 1980s and subsequently completed graduate level degrees;

- Mr. Priest and one other applicant with a bachelor's degree from 2017 were both screened out for the same reason; both were screened out because they did not meet the minimum education standard, uninfluenced by age or when the degree was issued;

- a CO-03 position would constitute a promotion from a CO-02 group and level position; the cases Mr. Priest provided do not support a request to accommodate minimum education standards beyond the CO-02 level role;

- Mr. Priest was not treated arbitrarily in the assessment of the education credentials and the application of the CO education standards did not discriminate based on age; in any event, a reasonable explanation exists for the need for the education standard applied in light of business requirements for the job.

[17] I agree with the Application Judge that the Second IF Decision explains "the need for the minimum education requirement for the CO-3 job, why it was wrong to focus solely on the computer science degree part of the education requirement, and why the Manager believed that the requirement as a whole did not have the effect of excluding candidates based on their age" (*Priest 2024* at para. 60). I therefore see no reason to interfere with that decision.

[18] At the hearing of this appeal, it became clear that Mr. Priest questions the wisdom of the Education Requirement. He feels that he was perfectly suited for a Research and Technology Manager position, and that requiring a master's degree is wholly unjustified in order for the incumbent to be able to perform that job. He says that he is being penalized for his life choice of not pursuing a master's degree. However, this line of arguments is well beyond what this Court is called upon, and authorized, to review in this appeal.

[19] Finally, Mr. Priest challenges the absence of any analysis by the Manager of his arguments under section 15 of the Charter. This contention must fail. As stated above, the fact that there is no explicit reference to the Charter in the Second IF Decision does not necessarily render the decision unreasonable. Here, the Manager clearly and meaningfully grappled with the essence of Mr. Priest's adverse impact discrimination claim. Again, reasons for decision in the administrative law context are not irreversibly problematic simply because they do "not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred" (*Vavilov* at para. 91).

[20] Further, reviewing courts must read reasons for decision in the administrative law context "in light of the history and context of the proceedings in which they were rendered" (*Vavilov* at para. 94). In the present case, as noted in *Priest 2022*, Mr. Priest did not raise the Charter when he made his request for individual feedback (*Priest 2022* at para. 35; Appeal Book at p. 1457).

[21] Be that as it may, it is implicit in the Second IF Decision that the Manager was alert and sensitive to Charter values, when he reconsidered Mr. Priest's request for individual feedback. In order to establish a claim under section 15 of the Charter, a claimant must, *inter alia*, demonstrate that the impugned law or state action imposes a burden or denies a benefit in a manner that has the effect of reinforcing, perpetuating, or exacerbating a disadvantage (*R. v. Sharma*, 2022 SCC 39 at para. 28 (*Sharma*)). However, that impact must be "disproportionate" to engage section 15 (*Sharma* at para. 40; *Power Workers' Union v. Canada (Attorney General*), 2024 FCA 182 at para. 159, leave to appeal to SCC refused [2025] S.C.C.A. No. 41628).

[22] Again, the Manager inquired as to whether the Education Requirement had the adverse effect of excluding candidates to the CO-3 staffing process based on their age. In so doing, he implicitly inquired on whether that requirement had a disproportionate impact on Mr. Priest and the other members of his age group. The Manager concluded that the Education Requirement had no adverse effect or impact on Mr. Priest and people of his age group. As stated, this finding was within his reach based on the record before him. Therefore, any formalistic Charter analysis would have ended there.

[23] For these reasons, I would dismiss Mr. Priest's appeal, with costs in the all-inclusive amount of $750.

"René LeBlanc"
J.A.

"I agree.
George R. Locke J.A."

"I agree.
Nathalie Goyette J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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CONCURRED IN BY:	LOCKE J.A. GOYETTE J.A.
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