

Federal Court



Cour fédérale

Date: 20250415

Docket: T-1437-21

Citation: 2025 FC 695

Ottawa, Ontario, April 15, 2025

PRESENT: Mr. Justice Pentney

BETWEEN:

BRIAN BUSBY

and

BRUCE BUCHARDT

Applicants

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] The Applicants, Brian Busby and Bruce Buchardt, seek judicial review of a decision of the Public Sector Integrity Commissioner (“PSIC” or “Commissioner”) not to investigate their disclosures, which alleged that members of senior management of the Canada Revenue Agency (“CRA”) abused travel funds and created a toxic work environment.

[2] The Applicants allege that PSIC's decision not to investigate these allegations is unreasonable because the Commissioner misinterpreted section 24(1) of the *Public Servants Disclosure Protection Act*, SC 2005, c 46 [the Act] and made a decision that lacked clear and coherent reasons. The Respondent submit that this decision was reasonable.

[3] For the reasons that follow, I find that the Commissioner's interpretation of his enabling statute is reasonable, and the reasons explain the basis for the decision in light of the evidence gathered and the legal framework that applies. That is all that is required for a reasonable decision. Therefore, this application for judicial review will be dismissed.

I. Background

[4] The Applicants are employees of the CRA. In January 2020, they each made disclosures of wrongdoing to PSIC, alleging wrongdoing by management personnel in CRA's Competent Authority Services Division (CASD) which is part of the International and Large Business Directorate (ILBD). The disclosures also alleged misconduct on the part of some other CRA senior managers. In March and early April 2020, the Applicants made further submissions which updated and expanded upon their previous allegations.

[5] On April 7, 2020, PSIC sent the Applicants letters asking them for a summary of the alleged wrongdoing together with a few examples of each instance, because the volume of material they had provided was not necessary for the initial screening stage of the process. The Applicants complied, submitting a final disclosure form on April 27, 2020.

[6] In their disclosures, the Applicants alleged that Ms. Donna O'Connor, a Director in CASD, Ms. Alexandra Maclean, Director General, ILBD, and Mr. Ted Gallivan, Assistant Commissioner, all at the Compliance Programs Branch of the CRA, committed wrongdoing pursuant to paragraphs 8(a), (b), (c), (d), (e), and (f) of the *Act* by:

- Creating a toxic work environment;
- Pushing out and removing CASD employees;
- Contravening several government acts, regulations and policies;
- Misusing public funds; and
- Putting employees' safety at risk by breaching COVID-19 protocols.

[7] On July 21, 2020, PSIC informed the applicants that they would investigate the allegation that Ms. O'Connor abused travel funds and that senior management, including Mr. Gallivan, was involved in approving these expenditures, as well as the allegation that Ms. O'Connor had created a toxic work environment within the division. PSIC stated that the investigation was warranted under paragraphs 8(b), (c) and (e) of the *Act*.

[8] On August 19, 2021, an investigator from the PSIC office issued an investigation report which recommended that PSIC cease the investigation into the above allegations pursuant to paragraph 24(1)(f) of the *Act*. The Investigation Report summarized the allegations under investigation, and then detailed the information that had been received from the CRA, including steps taken to address internal complaints that had been made and were investigated by the CRA's Internal Affairs and Fraud Control Division (IAFCD).

[9] With respect to the allegation of travel-related misuse of public funds, the Investigator noted that the PSIC is not intended to replace or duplicate other existing mechanisms and that the

allegations had already been investigated by the IAFCD. Because of this, the investigator recommended that PSIC should cease the investigation into the alleged misuse of public funds.

[10] With respect to the allegations of a toxic work environment, the Investigator indicated that similar complaints that had been filed internally with the CRA, noting that an official from the IAFCD was assigned to these files. The Investigator reviewed the steps taken to address these allegations, including a report commissioned from a third party, Y2 Consulting Psychologist Inc. Ultimately, the Investigator concluded that the allegations “have already been, or continue to be, the subject of [other] procedures.” As the wrongdoings had already been brought to the attention of management, the Investigator explained that “continuing with the investigation would not fulfill the purpose of an investigation as set out in the Act” and recommended that the Commissioner cease the investigation.

[11] The Commissioner followed this recommendation and issued identical letters to each Applicant to this effect (hereafter referred to as: “the letter”). With respect to the allegation of travel-related misuse of funds, the letter explained that this allegation had already been dealt with by the IAFCD, and that following a preliminary analysis, a decision was made not to investigate these allegations. The Commissioner noted that paragraph 24(1)(f) of the *Act* states that the PSIC may cease an investigation if there is a valid reason for doing so. In this case, the Commissioner indicated that the “valid reason” was that the subject matter of the allegation has already been dealt with.

[12] With respect to the allegation of a toxic work environment, the Commissioner stated that this matter had been or was the subject of procedures including an investigation by the IAFCD and a workplace assessment. The Commissioner indicated that this allegation is therefore being dealt with by the CRA, pointing to subsection 26(1) of the *Act*, which provides that investigations into disclosures are for the purpose of bringing the existence of wrongdoings to the attention of chief executives and making recommendations concerning corrective measures to be taken by them. The Commissioner noted that the allegations about a toxic workplace had already been raised with CRA senior management and therefore continuing with the process would not fulfill the purpose of an investigation as set out in the *Act*. The Commissioner concluded that the PSIC was ceasing the investigation into the toxic workplace allegation pursuant to paragraph 24(1)(f) of the *Act* because the CRA continues to deal with this allegation.

[13] The Applicants seek judicial review of these decisions.

II. Issues and Standard of Review

[14] The issue in this case is whether the decision to cease investigating the disclosures is reasonable. This question is assessed under the framework for reasonableness review set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov], and confirmed in *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 [Mason]. This standard applies to judicial review of decisions by the Commissioner not to investigate: *Burlacu v Canada (Attorney General)*, 2022 FCA 10 at paras 16-17 [Burlacu].

[15] In summary, under the *Vavilov* framework, a reviewing court is to review the reasons given by the administrative decision maker and determine whether the decision is based on an internally coherent chain of reasoning and is justified in light of the relevant legal and factual constraints (*Vavilov* at para 85). The onus is on the Applicants to demonstrate that “any shortcomings or flaws ... are sufficiently central or significant to render the decision unreasonable” (*Vavilov* at para 100). Absent exceptional circumstances, reviewing courts must not interfere with the decision-maker’s factual findings and cannot reweigh and reassess evidence considered by the decision-maker (*Vavilov* at para 125).

[16] I note here that the Respondent also raised an objection to a portion of one of the Applicant’s affidavits filed in this matter, but the point was conceded in oral argument and I have not had regard to that portion of the affidavit.

III. Analysis

A. *The legal framework*

[17] The purpose of the *Act* has been described as being “to denounce and punish wrongdoings in the public sector and, ultimately, build public confidence in the integrity of federal public servants” (*Agnaou v Canada (Attorney General)*, 2015 FCA 29 [*Agnaou # 2*] at para 60). As noted in *Canada (Attorney General) v. Canada (Public Sector Integrity Commissioner)*, 2016 FC 886 [*AG v PSIC*] at para 80:

[80] The preamble speaks of the federal public administration as being “part of the essential framework of Canadian parliamentary democracy”. It also states that “confidence in public institutions can be enhanced by establishing effective procedures

for the disclosure of wrongdoings”. To protect these values public access to findings of wrongdoing, whether resulting from an internal process or from an investigation by the Commissioner, is mandatory.

[18] One key element in the scheme under the *Act* is the process for dealing with disclosures of wrongdoing. Section 8 describes the type of conduct covered by the *Act*:

Wrongdoings

8. This Act applies in respect of the following wrongdoings in or relating to the public sector:

(a) a contravention of any Act of Parliament or of the legislature of a province, or of any regulations made under any such Act, other than a contravention of section 19 of this Act;

(b) a misuse of public funds or a public asset;

(c) a gross mismanagement in the public sector;

(d) an act or omission that creates a substantial and specific danger to the life, health or safety of persons, or to the environment, other than a danger that is inherent in the performance of the duties or functions of a public servant;

(e) a serious breach of a code of conduct established under section 5 or 6; and

(f) knowingly directing or counselling a person to commit a wrongdoing set out in any of paragraphs (a) to (e).

Actes répréhensibles

8. La présente loi s'applique aux actes répréhensibles ci-après commis au sein du secteur public ou le concernant:

a) la contravention d'une loi fédérale ou provinciale ou d'un règlement pris sous leur régime, à l'exception de la contravention de l'article 19 de la présente loi;

b) l'usage abusif des fonds ou des biens publics;

c) les cas graves de mauvaise gestion dans le secteur public;

d) le fait de causer — par action ou omission — un risque grave et précis pour la vie, la santé ou la sécurité humaines ou pour l'environnement, à l'exception du risque inhérent à l'exercice des attributions d'un fonctionnaire;

e) la contravention grave d'un code de conduite établi en vertu des articles 5 ou 6;

f) le fait de sciemment ordonner ou conseiller à une personne de commettre l'un des actes répréhensibles visés aux alinéas a) à e).

[19] The *Act* requires heads of departments and agencies to establish internal procedures to manage disclosures by public servants (s. 10) and provides that public servants may disclose to a supervisor or senior official “any information that the public servant believes could show that a wrongdoing has been committed or is about to be committed or that could show that the public servant has been asked to commit a wrongdoing.” (s. 12). Such disclosures can also be made to the PSIC (s. 13).

[20] The *Act* provides a number of grounds on which the PSIC may refuse to deal with a disclosure or commence an investigation. The following provisions are relevant to this case:

Restriction — general

23 (1) The Commissioner may not deal with a disclosure under this *Act* or commence an investigation under section 33 if a person or body acting under another Act of Parliament is dealing with the subject-matter of the disclosure or the investigation other than as a law enforcement authority.

Right to refuse

24 (1) The Commissioner may refuse to deal with a disclosure or to commence an investigation — and he or she may cease an investigation — if he or she is of the opinion that

(a) the subject-matter of the disclosure or the investigation has been adequately dealt with, or could more appropriately be dealt with, according to a procedure provided for under another Act of Parliament;

(b) the subject-matter of the disclosure or the investigation is not sufficiently important;

Interdiction d’intervenir

23 (1) Le commissaire ne peut donner suite à une divulgation faite en vertu de la présente loi ou enquêter au titre de l’article 33 si une personne ou un organisme — exception faite d’un organisme chargé de l’application de la loi — est saisi de l’objet de celle-ci au titre d’une autre loi fédérale.

Refus d’intervenir

24 (1) Le commissaire peut refuser de donner suite à une divulgation ou de commencer une enquête ou de la poursuivre, s’il estime, selon le cas :

a) que l’objet de la divulgation ou de l’enquête a été instruit comme il se doit dans le cadre de la procédure prévue par toute autre loi fédérale ou pourrait l’être avantageusement selon celle-ci;

b) que l’objet de la divulgation ou de l’enquête n’est pas suffisamment important;

(c) the disclosure was not made in good faith or the information that led to the investigation under section 33 was not provided in good faith;

(d) the length of time that has elapsed since the date when the subject-matter of the disclosure or the investigation arose is such that dealing with it would serve no useful purpose;

(e) the subject-matter of the disclosure or the investigation relates to a matter that results from a balanced and informed decision-making process on a public policy issue; or

(f) there is a valid reason for not dealing with the subject-matter of the disclosure or the investigation.

c) que la divulgation ou la communication des renseignements visée à l'article 33 n'est pas faite de bonne foi;

d) que cela serait inutile en raison de la période écoulée depuis le moment où les actes visés par la divulgation ou l'enquête ont été commis;

e) que les faits visés par la divulgation ou l'enquête résultent de la mise en application d'un processus décisionnel équilibré et informé;

f) que cela est opportun pour tout autre motif justifié.

[21] The legislative framework sets the context for a discussion of the key questions raised by the Applicants.

B. *The interpretation of paragraph 24(1)(f) of the Act*

(1) The parties' positions

[22] The Applicants submit that the Commissioner's finding that there was a "valid reason" to cease investigating is based on an unreasonable interpretation of paragraph 24(1)(f) of the *Act*. They argue that the Commissioner's approach renders paragraph 24(1)(a) redundant and undermines the purpose of the law. Their position hinges on the fact that the PSIC decision essentially found that the internal investigations and processes that had been conducted or were underway provided a valid reason to cease the investigation.

[23] On this point, the Applicants argue that the Commissioner's decision that he had a "valid reason" to stop investigating the disclosures is unreasonable because it rests on a faulty interpretation of paragraph 24(1)(f) of the *Act*. They argue that the Commissioner was required to interpret the section as a whole, and that in exercising his discretion under paragraph (f) he should have taken account of the specific language in paragraph 24(1)(a) of the *Act*, which deals with situations where the Commissioner decides not to investigate because the subject-matter of a disclosure "has been adequately dealt with, or could more appropriately be dealt with, according to a procedure provided for under another Act of Parliament." (emphasis added). This language reflects Parliament's specific intention to limit the scope of the Commissioner's discretion to refuse to deal with a matter because it was being dealt with elsewhere.

[24] The Applicants submit that the Commissioner was required to assess the adequacy and appropriateness of CRA's internal investigation and processes before concluding that there was a "valid reason" to cease investigating their disclosures. They point to the legislative history of the provision in support of their position. When the Bill that eventually became the *Act* was tabled in the House of Commons, paragraph 24(1)(a) provided an extremely wide discretion to refuse to deal with a disclosure where "the public servant has failed to exhaust other procedures otherwise reasonably available." Following a debate about the provision at the House of Commons Committee studying the Bill, the version that was eventually passed had tightened up the wording to narrow the scope of discretion to refuse to deal with a complaint. The final version provided that the Commissioner may refuse to deal with a complaint where they were of the opinion that the subject-matter of the disclosure "is one that could more appropriately be dealt

with, initially or completely, according to a procedure provided under another Act of Parliament.” The Applicants note that in 2006 the Act was further amended to its current form.

[25] The Applicants claim that this legislative history makes it clear that while Parliament was concerned about duplication of efforts in dealing with wrongdoing, it recognized that recourse for whistleblowers cannot be contingent on exhausting internal processes. Such a requirement would undermine the purposes of the Act by cutting off the opportunity to obtain an independent investigation of disclosures of wrongdoing.

[26] The crux of the Applicants’ argument is that the Commissioner was required to interpret subsection 24(1) as a whole. They say that in exercising his discretion under paragraph 24(1)(f), in circumstances where the “valid reason” being invoked was that the subject-matter of the disclosures had already been dealt with through internal processes, the Commissioner was required to have regard to the limiting words in paragraph 24(1)(a). The Applicants contend that this approach is supported by the principles of statutory interpretation and the case-law on these provisions.

[27] The Applicants submit that the Commissioner’s interpretation of paragraph 24(1)(f) ignored the standards set out in paragraph 24(1)(a), and in doing so contravened the basic principle of statutory interpretation that the legislator does not speak in vain. Under this rule, decision-makers must not adopt an interpretation that renders certain words redundant or meaningless or be inconsistent with the scheme of a statute (*British Columbia v Philip Morris International, Inc.*, 2018 SCC 36 at para 29).

[28] The Applicants say the case-law supports their approach. The potential for an overlap between paragraph 24(1)(f), which is a form of “basket clause,” and the other grounds set out in the other paragraphs of subsection 24(1) was acknowledged in *Gupta v Canada (Attorney General)*, 2016 FC 1416 at para 44, aff’d 2017 FCA 211. In *Detorakis v Canada (Attorney General)*, 2010 FC 39 at para 106, Justice Russell found that the “apparent objective” of subsection 24(1) was to allow the PSIC to decide “whether the matter could be better dealt with under another Act.” This confirms the qualitative nature of the assessment that the PSIC is required to undertake. The Applicants argue that the Commissioner failed to conduct such an analysis here, and thus his decision is unreasonable.

[29] In addition, the Applicants contend that the Commissioner’s interpretation of paragraph 24(1)(f) undermines the purpose of the *Act* which is to build public confidence in the integrity of the public service by denouncing and punishing wrongdoing: *Agnaou #2* at para 60. In light of this purpose, according to the Applicants, it is inconceivable that paragraph 24(1)(f) could be invoked to cease an investigation with no regard to whether the other procedure adequately addressed the subject-matter of the disclosure. By granting too wide a latitude to CRA’s internal procedures as a basis to cease an external and independent review, the Commissioner effectively allowed CRA to become the judge of its own wrongdoing. The Applicants submit that this is unreasonable.

[30] The Respondent submits that the scheme of the *Act* makes clear that an investigation into wrongdoing by the PSIC was not meant to displace other recourses available to public servants, noting that Parliament granted the Commissioner a very broad discretion to decide not to deal

with a disclosure or to cease an investigation. In the instant case, the Commissioner found that the steps already taken or underway within the CRA provided a “valid reason” to cease the investigation. Implicit in that determination is a value judgment about whether the CRA processes were an adequate response to the subject-matter of the disclosure.

[31] According to the Respondent, the requirements of paragraph 24(1)(a) cannot be grafted on to paragraph 24(1)(f). The “valid reason” set out in paragraph 24(1)(f) is not defined in the *Act*, and that provision has been interpreted as a basket clause that may, to some extent, overlap with the reasons set out in the other paragraphs of subsection 24(1). The Respondent points out that paragraph 24(1)(f) does not state that there must be “another” valid reason, which is an indication that while there may be some degree of overlap, the reasons set out in the paragraphs must be viewed as stand-alone grounds to refuse to investigate a disclosure. The Respondent also notes that paragraph 24(1)(a) has no application in this case, because the CRA internal processes were not set out in another Act of Parliament. Because of this, the Commissioner could not rely on that provision and made no error in invoking paragraph 24(1)(f).

[32] The Respondent submits that the Commissioner assessed the CRA processes that had been undertaken in regard to the subject-matter of the disclosures, and decided that they provided a valid reason to cease the investigation. That is a reasonable determination in light of the record, including the evidence gathered by the investigator about the steps the CRA had taken.

(2) Discussion

[33] I am unable to accept the Applicants’ argument that the Commissioner’s interpretation of paragraph 24(1)(f) is unreasonable. It is important to underline at the outset that on judicial

review, it is not the reviewing court's role to engage in its own interpretive exercise, sometimes described as a court creating its own yardstick and then using it to measure what the administrator did. (*Vavilov* at para 83). Instead, the question is whether the Commissioner's interpretation is reasonable.

[34] Useful guidance on the proper approach to judicial review of an administrative decision-maker's interpretation of its statute is set out in *Mason*. Two points from that decision are particularly relevant here. First, the reasonableness of an interpretation will depend, to some extent, on the nature of the discretion set out in the law. As stated in *Mason* at para 67: "[n]arrower and more precise language imposes a greater constraint on the decision maker, while 'broad, open-ended or highly qualitative language' affords greater flexibility ([*Vavilov*] para. 110)."

[35] Second, statutory interpretation by administrative decision-makers does not need to mirror the techniques used by judges. The point was expressed in the following way in *Mason*:

[69] Although an administrative decision maker need not "engage in a formalistic statutory interpretation exercise in every case" (para. 119), its decision must be consistent with the "modern principle" of statutory interpretation, which focusses on the text, context, and purpose of the statutory provision. The decision maker must demonstrate in its reasons that it was alive to those essential elements (para. 120). ...And even if a decision does not explicitly consider the meaning of a relevant provision, the court may be able to discern the interpretation adopted from the record and evaluate whether it is reasonable (para. 123). [citing *Vavilov*]

[36] Applying this guidance to the present case does not favour the Applicants' position in two principal respects. First, the case-law confirms that the scope of the Commissioner's

discretion to refuse to deal with – or to cease investigating – a disclosure is extremely broad. In *AG v PSIC* at para 129, the Court stated with reference to paragraph 24(1)(f): “[b]y adding this ‘catch-all’ Parliament has provided the Commissioner with enormous latitude.”

[37] In *Burlacu*, the Federal Court of Appeal summarized and affirmed the case-law on the scope of the Commissioner’s discretion under subsection 24(1):

[47] As this Court recognized in *Gupta v. Canada (Attorney General)*, 2017 FCA 211, 2017 CarswellNat 5703 (WL Can) (*Gupta*), the Commissioner was given, by virtue of subsection 24(1) of the Act, the right to refuse to commence an investigation into a disclosure “for certain reasons specified in the provisions and (as provided in paragraph 24(1)(f)), for any reason that the Commissioner considers a ‘valid reason’” (*Gupta* at para. 8) (emphasis added).

[48] In *Agnaou*, this Court emphasized the “very broad discretion enjoyed by the Commissioner under section 24 of the Act in deciding whether or not to investigate a disclosure” (*Agnaou* at para. 70; see also *Gupta* at para. 9). In making that observation, the Court dismissed the view that the exercise of that discretion was constrained by the requirement that the refusal to investigate, as is the case in matters governed by the Canadian Human Rights Act, R.S.C. 1985, c. H-6, be limited to “plain and obvious” instances (*Agnaou* at paras. 67-69).

[49] As pointed out by Gleeson J., up to now, paragraph 24(1)(f) of the Act has been interpreted as recognizing “the possibility for overlap between the enumerated reasons the Commissioner may refuse to deal with a disclosure at paragraphs 24(1)(a) to (e) and paragraph 24(1)(f)” (Federal Court Decision at para. 43). This is probably why paragraph 24(1)(f) has been so far referred to in the case law as a “basket clause” (Federal Court Decision at para. 40, quoting *Gupta v. Canada (Attorney General)*, 2016 FC 1416, 2016 CarswellNat 11517 (WL Can) at para. 44).

[38] I pause here to note that in *Burlacu*, the Court of Appeal rejected an argument that “paragraph 24(1)(f) cannot be read as an all-inclusive basket clause as this would allow the Commissioner to sidestep paragraphs 24(1)(a) to (e)” (para 50). The Court found that the case-

law had properly accepted the possibility for overlap between the reasons the Commissioner may refuse to deal with a disclosure in paragraphs 24(1)(a) to (e) and paragraph 24(1)(f). The following passage is particularly relevant to the present case:

[53] That position appears wholly consistent with what was described in the parliamentary debates, when paragraph 24(1)(f) was discussed, as a “general discretionary authority” or a “general discretion” vested in the Commissioner to not deal with a disclosure if there is a valid reason not to do so, irrespective of the “guidance” found in the preceding provisions of subsection 24(1) (House of Commons, Standing Committee on Government Operations and Estimates, *Evidence*, 38-1, No. 50 (June 28, 2005) at 1215 (Ralph Heintzman)).

[54] At any rate, the Commissioner can hardly be faulted for having resorted to paragraph 24(1)(f) of the Act in a manner that has been, so far, permitted by the Federal Court case law. As the Supreme Court pointed out in *Vavilov*, “precedents on the issue before the administrative decision maker or on a similar issue will act as a constraint on what the decision maker can reasonably decide”, emphasizing that it would be unreasonable for the decision maker to interpret and apply a legislative provision without regard to a binding precedent (*Vavilov* at para. 112).

[39] Based on this jurisprudence, I cannot accept the Applicants’ argument that the Commissioner’s interpretation of paragraph 24(1)(f) would render paragraph 24(1)(a) meaningless. As the Respondent pointed out, paragraph 24(1)(a) deals with a situation where the subject-matter of the disclosure has been or could be dealt with under a procedure provided for under another Act of Parliament. That is not the situation here, and there is no basis for reading into paragraph 24(1)(f) the express limiting words Parliament chose to insert into paragraph 24(1)(a).

[40] A second reason for rejecting the Applicants’ argument is that while I accept that other interpretations of the scope of paragraph 24(1)(f) are possible, that in itself does not make the

Commissioner's approach unreasonable. A careful review of the process indicates that the Commissioner did not simply accept the CRA's word that it was reviewing the allegations forming the subject-matter of the disclosures here. Instead, the Investigation Report indicates that there was a form of qualitative analysis of the nature and scope of CRA's internal processes, which resulted in the determination that they provided a "valid" reason to cease investigating the Applicants' disclosures. While this is not specifically discussed either in the Investigation Report or the Commissioner's decision, a review of the record confirms that the assessment involved more than a cursory examination of the steps taken by the CRA.

[41] For example, in regard to the disclosure alleging a misuse of travel funds, the Investigation Report includes a detailed chart comparing the relevant allegations made by the Applicants and the IAFCD process. The information obtained from CRA indicated that IAFCD determined that it could not second-guess management decisions about which employees should have attended international meetings. The Report also notes that "international travels by CRA employees need to go through a rigorous internal review process which would have involved CRA senior management..." On the claim that Ms. O'Connor padded her international itineraries to extend her travel for personal reasons, the Investigation Report cites the IAFCD response which states that an investigation of Ms. O'Connor's email and travel claims determined that there was no evidence that the agendas were padded or the trips were not necessary.

[42] The Investigation Report deals with the disclosure about the toxic work environment in detail. The Investigator observed that CRA provided evidence of numerous internal complaints

that had been filed about Ms. O'Connor's behaviour and the work environment, and that some of the complaints were still under investigation while another had resulted in findings against Ms. O'Connor that led to a disciplinary hearing and the imposition of discipline. The Investigation Report also discusses the workplace assessment that was launched by CRA, which found a negative workplace situation in CASD, including "concerns relating to favouritism, harassment, bullying, unfair staffing processes, senior management's failure to address the toxic work environment, and the consequences of the negative work environment (ex: high staff turnover)." The Investigation Report stated that the workplace assessment final report was shared with the Commissioner of the CRA, noting that CRA was implementing an action plan to address the key findings and recommendations. In light of this the Investigator recommended that the Commissioner cease the investigation into this allegation based on paragraph 24(1)(f).

[43] The Commissioner's decision letter summarized the Investigation Report findings on these disclosures, and based the decision to cease the investigation on these findings. Implicit in this is a determination by the Commissioner that these processes were sufficiently robust to constitute a "valid" reason to cease the investigation of the subject-matter of the disclosures.

[44] In light of the case-law on the scope of paragraph 24(1)(f) and the detailed and qualitative examination of the nature, scope and (where appropriate) results of the internal processes launched by CRA to deal with complaints that covered much of the same ground as the Applicants' disclosures, I can find no basis to question the Commissioner's interpretation of paragraph 24(1)(f). By acting as he did, I am not persuaded that the Commissioner has given paragraph 24(1)(f) an unduly broad scope contrary to the purpose of the *Act*. I am also not

persuaded that the Commissioner's approach renders paragraph 24(1)(a) unnecessary. The two provisions serve similar, but somewhat different, roles as screening devices. The Commissioner's interpretation of paragraph 24(1)(f) does not negate or render nugatory the other provision. It goes without saying that nothing in this decision should be interpreted as sanctioning an unduly broad scope for either provision.

[45] Thus, if in a future case the Commissioner ceased an investigation under paragraph 24(1)(f) without any examination of the nature and scope of an internal investigation process, that decision might well be found to be unreasonable. Similarly, if the Commissioner decided not to deal with a disclosure under paragraph 24(1)(a) without explaining the basis for the conclusion that the other statutory process had "adequately" dealt with, or "could more appropriately...deal with" the subject-matter of a disclosure, such a decision might well be found to be unreasonable. Those hypothetical situations do not arise in the present case.

[46] For all of these reasons, I am not persuaded that the Commissioner's interpretation of paragraph 24(1)(f) is unreasonable.

C. *Is the Commissioner's decision reasonable on its merits?*

(1) The parties' positions

[47] The Applicants submit that the Commissioner's decision is unreasonable because it is not intelligible and the conclusion is not justified. They base this argument on three points: the Commissioner failed to analyze the adequacy of the IAFCD's procedures; the Commissioner's analysis falls short because it relies on bald assertions by the CRA that the complaints were

addressed; and the Commissioner failed to give due consideration to the importance of bringing allegations of wrongdoing to light, contrary to the jurisprudence.

[48] I have discussed the Applicants' argument that the Commissioner did not assess the adequacy of the IAFCD process above and will not repeat that analysis. One additional point made by the Applicants on this question relates to the fact that the IAFCD investigation into the abuse of travel claims did not cover five of the instances included in their disclosures. They say that this is an indication that the Commissioner's process was inadequate because it did not grapple with the totality of their disclosures. The Applicants also submit that the Commissioner's process fell short because it only examined the summary of their disclosure rather than their original documentation. In doing so, the Applicants submit that the Commissioner unreasonably cut short the investigation and failed to grapple with the totality of their allegations of wrongdoing.

[49] Next, the Applicants submit that the Commissioner accepted the bald assertions by the CRA that the toxic workplace allegations had been dealt with. In doing so, the Commissioner missed key points, by failing to consider that the serious findings made against Ms. O'Connor did not appear to affect her career progression, and by overlooking the fact that the workplace assessment was only launched after the Applicants made their disclosures.

[50] Finally, the Applicants contend that by deciding to discontinue the investigation into the toxic workplace allegation because the workplace assessment report had been provided to the CRA Commissioner, the Commissioner failed to give due weight to the importance of public

disclosure of wrongdoing, contrary to the jurisprudence. They point out that in *AG v PSIC* at para 116, this Court rejected an argument by the RCMP that a private report could displace the Commissioner's work. Simply bringing the wrongdoing to the CRA Commissioner's attention was not sufficient, and public exposure is required when wrongdoing is uncovered. The Applicants submit that the Commissioner failed to explain how the public interest element was considered in this case.

[51] The Respondent submits that the Commissioner's reasons must be examined in light of the record and the administrative context in which PSIC operates. When viewed in this light, the decision shows that the Commissioner duly considered the existence, progress and outcomes of the CRA's internal processes, including from a public interest perspective.

[52] The Respondent rejects the Applicants' claim that the Commissioner's investigation was inadequate because it did not examine each instance of alleged wrongdoing. Under the *Act*, the Commissioner is required to examine the subject-matter of the disclosure; the Investigation Report and letter indicates that both the alleged misuse of the travel claim policy and the claims about a toxic workplace were dealt with. The Commissioner is not required to investigate every single instance of alleged wrongdoing set out in a disclosure, as long as the process shows that the "substance" of the claim was considered. The Respondent asserts that the record in this case demonstrates that the Commissioner engaged with the substance of both aspects of the disclosure.

[53] In response to the Applicants' claim that the Commissioner unreasonably cut short his investigation based only on the summary of their disclosures, the Respondent submits that this amounts to a disguised procedural fairness argument. Noting that the case-law has confirmed that individuals who make disclosures under the *Act* are owed a very low duty of procedural fairness, the Respondent says that the Applicants' argument on this point cannot succeed.

[54] In addition, the Respondent argues that the Commissioner's reasons are sufficient to allow the Applicants and this Court to understand his decision. The Commissioner sets out the basis for his conclusion that no further investigation is required in a clear and coherent manner, and the decision was not required to deal with every argument put forward by the Applicants. In the context of the statutory framework, and the administrative context of the Commissioner's work, the decision is reasonable.

(2) Discussion

[55] At the outset, it is important to remember that absent exceptional circumstances (which are not present here) a reviewing Court is not to re-weigh the evidence or to question a decision-maker's choices about which elements of the record to mention in their reasons for the decision. As stated in *Vavilov* at para 85, "a reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker." Such a decision deserves deference from a reviewing Court.

[56] In this case, I am satisfied that the Commissioner grappled with the evidence, engaged with the Applicants' disclosures, and explained his reasoning process in sufficient detail.

[57] The Applicants complain that the Commissioner's decision to discontinue his investigation was based only on the summary of their disclosures rather than an examination of the hundreds of pages of material they had originally submitted. They also claim that the Commissioner erred in accepting that the IAFCD investigation of the travel claims was sufficient despite the fact that it did not address five of the specific instances set out in their disclosure. They say that this indicates that the Commissioner ended his investigation prematurely.

[58] I do not agree. The Commissioner was entitled to decide how much information was needed at the initial stage of the disclosure investigation process, and the Applicants filed the summaries of their disclosures as requested. Once that was done, the Commissioner was required to engage with the substance of their claims to decide whether they met the threshold for "wrongdoings" set out in s. 8 of the *Act* and whether a complete investigation was appropriate, considering the criteria set out in s. 24(1). The Investigation Report and decision letter did not gloss over any important aspect of the Applicants' disclosures.

[59] I accept that the IAFCD process did not deal with all of the instances of alleged misuse of travel authority set out in the Applicants' disclosures. However, that does not mean that the Commissioner acted unreasonably in finding that the substance of their allegations was addressed. The IAFCD process described in the Investigation Report involved an examination of the process by which international travel claims were justified and approved. The Applicants have not alleged that the five additional trips included in their disclosures were somehow treated differently by CRA, and there is no basis to support such an inference. The Commissioner acted reasonably in examining the nature and scope of the IAFCD investigation into travel claims, and

I can find no basis to disturb that aspect of the decision. It is not my role to re-weigh the evidence.

[60] As for the Applicants' arguments about the adequacy of the Commissioner's examination of the CRA's treatment of the toxic workplace allegations, I find that this argument is, in essence, asking me to re-weigh the evidence and to come to my own conclusion. It is clear that the CRA had launched several internal investigations into the state of the workplace. The Investigation Report recounts the results of one of the investigations, detailing the disciplinary actions which followed the negative findings. The Report also discusses the workplace assessment process, the findings that flowed from it, and the CRA's response. Although the Applicants may have questions about the adequacy or ultimate impact of the CRA's response, it was not unreasonable for the Commissioner to find that sufficient action had been taken or was underway, such that the public interest did not require a complete PSIC investigation. That is a discretion that Parliament has left to the Commissioner, and in this case I find that the Commissioner's reasons for deciding to discontinue the investigation are clearly explained based on the record. That is all that reasonableness requires.

[61] Finally, I do not accept that the Commissioner lost sight of the public interest in disclosure of wrongdoing. It is true that the jurisprudence has emphasized that private processes cannot displace the Commissioner's investigation, and simply bringing allegations to the attention of the head of a department or agency is only one aspect of the purpose of a PSIC investigation: *AG v PSIC* at paras 105 and 116. However, that does not mean that every allegation of wrongdoing must result in a full investigation and public report by the PSIC. The

statute clearly supports the view that the Commissioner is obliged to consider a variety of factors in deciding whether to continue with an investigation.

[62] The first clue in the statute lies in the definition of “wrongdoings” in s. 8. The references to “gross mismanagement”, acts or omissions that create “a substantial and specific danger” to life, health or safety, and a “serious breach of a code of conduct” indicate that the Commissioner is to focus only on the most serious types of misconduct. This approach is bolstered by the discretion to refuse to continue with investigations for the reasons set out in s. 24(1). The discussion of the s. 24(1) factors set out earlier will not be repeated. The jurisprudence is consistent with this understanding of the legislative framework, recognizing that the Commissioner has a broad discretion to discontinue an investigation.

[63] In all of this, it is clear that the Commissioner must be cognizant of the wider public interest in disclosure of serious instances of wrongdoing. Private investigations or internal processes cannot automatically foreclose a PSIC investigation. The *Act* and the jurisprudence recognize the importance of disclosing wrongdoing, as one means of bolstering public confidence in the integrity of the public service. Weighing the importance of public disclosure is one element of the Commissioner’s discretion, as is a consideration of the nature of the alleged wrongdoing, as well as an assessment of any internal processes that have addressed the claimed misconduct. There is no formula for the Commissioner to apply in making this assessment; each case will depend on its particular facts and circumstances.

[64] In this case, I am satisfied that the Commissioner appropriately considered the range of factors that he was required to assess, including the nature and scope of the CRA processes, the nature of the alleged wrongdoing, and the actions taken by the CRA in response to findings of wrongdoing. The Commissioner, having weighed these factors, decided that there was a “valid reason” to discontinue the investigation. That was a reasonable conclusion, based on the record. The rationale for the Commissioner’s decision is clearly set out in the decision letter, which in turn is supported by the detailed and thorough Investigation Report.

[65] Examining the decision in light of the record, and considering the legal and administrative context, I find that the Commissioner’s decision is justified, transparent and intelligible. That is what is required for a reasonable decision under the *Vavilov* framework, and I find that the Commissioner’s decision in this instance meets that standard.

IV. Conclusion

[66] Based on the analysis set out above, the application for judicial review is dismissed.

[67] The parties made a joint submission that the successful party should be awarded costs in the amount of \$4,000. I am satisfied that this is an appropriate costs award, in exercise of my discretion and considering the factors set out in Rule 400. The Applicants shall pay to the Respondent all-inclusive costs in the amount of \$4,000.

[68] Finally, I want to acknowledge and thank counsel for both parties for their excellent written and oral submissions. This is not a clear-cut or easy case, and the quality of their submissions were of great assistance to the Court.

JUDGMENT in T-1437-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. The Applicants shall pay to the Respondent costs in the all-inclusive amount of \$4,000.

"William F. Pentney"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1437-21

STYLE OF CAUSE: BRIAN BUSBY and BRUCE BUCHARDT v
ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: APRIL 30, 2024

JUDGMENT AND REASONS: PENTNEY J.

DATED: APRIL 15 2025

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