

Federal Court



Cour fédérale

Date: 20251027

**Dockets: T-2497-24
T-2562-24**

Citation: 2025 FC 1729

Toronto, Ontario, October 27, 2025

PRESENT: Madam Justice Whyte Nowak

BETWEEN:

CORMAG JAIME ALAINN

Applicant

and

**THE ATTORNEY GENERAL OF CANADA
(THE MINISTER OF PUBLIC SAFETY)**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is a motion in writing brought by the Applicant, Cormag Jaime Alainn [Applicant] for judicial review of what he characterizes as two decisions of the Canada Border Services Agency [CBSA] relating to a complaint [Complaint], he made regarding the conduct of Border Service Officers [BSOs] when the Applicant attempted to enter Canada from the United States

on March 3, 2024. The Complaint alleges that BSOs verbally abused and physically assaulted him, mistreated his wife and his pets and damaged his property. The CBSA's investigation included a call with the Applicant's lawyer memorialized in a "Record of Phone Call to Complainant" [the Phone Call Record], and when this informal attempt to resolve the Complaint did not succeed, the CBSA issued a final disposition letter [Final Disposition Letter] dismissing the Applicant's Complaint. The Applicant has judicially reviewed both the Phone Call Record and the Final Disposition Letter, the applications for which have been consolidated by Order of the Federal Court.

[2] For the reasons that follow, I am dismissing this application. The Phone Call Record is not susceptible to judicial review and the Applicant has not satisfied his burden of showing that the Final Disposition Letter is unreasonable or that the process by which it was arrived at was procedurally unfair.

II. Facts

A. *The Applicant's attempt to enter Canada on March 3, 2024*

[3] The Applicant and his wife tried to enter Canada on March 3, 2024, at a land crossing port of entry in New Brunswick. At primary inspection, the Applicant (a United States citizen) declared that he was staying in Canada for two months and his pregnant wife (a Canadian citizen) advised that she had been outside Canada for the past five months. The couple were referred to secondary inspection.

[4] At secondary inspection, the Applicant advised that he was newly married and intended to return to Maine to stay with friends after the birth of their first child. The Applicant advised that he was unemployed and had no United States residence or significant family ties in the United States.

[5] The couple's truck was inspected and when a slide lock cable for firearms was found inside a box in the truck, the officers became concerned about the possibility that the Applicant may have a firearm, which led to pat-down searches of the Applicant and his wife by BSOs.

[6] The Applicant was questioned by BSOs regarding the content of the couple's truck which included what the BSOs considered to be "Nazi memorabilia" as well as animal skins with spray painted symbols which the BSOs believed were rooted in European paganism. Based on a Google search conducted by a BSO, the BSOs confronted the Applicant regarding his association with the Asatru Folk Assembly, which the BSO believed to be a recognized hate group who advocate for white supremacy. According to a BSO, the Applicant claimed that the items had no special meaning and he was simply interested in Nordic culture.

[7] The BSO issued a report under subsection 44(1) [Section 44 Report] of the *Immigration and Refugee Protection Act*, SC 2001, c 27, which denied the Applicant entry to Canada based on a finding that he was unlikely to depart Canada, and his circumstances were not indicative of a temporary stay. The Minister's Delegate concurred with the Section 44 Report and allowed the Applicant to withdraw his application to enter Canada and leave by signing an Allowed to Leave Canada form [ATL], which he did.

B. *The Applicant's Complaint and its processing*

[8] The Applicant submitted the Complaint two and a half months later after he was refused entry to Canada when he tried to visit his wife in May 2024. The Applicant states in the Complaint that the reason given by the CBSA for his previous refusal was that he is the leader of a white nationalist group, which the Applicant states is both untrue and not the reason that he was denied entry on March 3, 2024.

[9] In the Complaint, the Applicant alleges that the officers: verbally abused him; physically assaulted him in conducting the pat-down search; denied him and his wife food and water for six hours; refused to allow the couple to care for their special needs dog and cat; and damaged his belongings in carrying out their search of his truck.

[10] The Complaint was subject to the CBSA's Public Complaints Mechanism [PCM] and was assigned to the Atlantic Region with Annika Barron as the Superintendent, Atlantic Land Border Operations [Superintendent], designated as lead.

[11] An investigation into the Complaint pursuant to the PCM was conducted by Chief V. Horne who obtained written narrative reports from the BSOs involved in the events of March 3, 2024 (BSOs Chamberlain, Cameron, Boudreau, Madsen and E. Barron) [collectively, the BSO Narrative Reports].

[12] Three sets of CBSA video footage of the interactions between the BSOs and the Applicant and his wife were also obtained and reviewed [collectively, the Videos].

C. *The phone call between the Superintendent and the Applicant's lawyer*

[13] The Superintendent conducted a phone call with the Applicant's lawyer on June 6, 2024, in order to make "first contact" with the Applicant and to attempt to resolve the matter informally as required by the procedure provided for in the PCM. The Phone Call Record states that the Superintendent advised the Applicant's lawyer of her findings on each of the allegations and at the end of her call, asked whether the Applicant's lawyer considered the matter to be resolved. The Applicant's lawyer did not consider the Complaint to be resolved given the "drastic" differences in accounts of the BSOs and the Applicant.

[14] The Superintendent subsequently provided the Applicant's lawyer with a summary of the call by way of the Phone Call Record and the Complaint proceeded through the formal investigation process of the PCM.

D. *The Final Disposition Letter*

[15] Dominic Mallette as the Acting Regional Director General [ARDG] for the Atlantic Region issued a Final Disposition Letter dated June 14, 2024, in which she concluded that the Complaint was unfounded based on her review of the Complaint, the BSO Narrative Reports and Videos. The ARDG addressed each of the Applicant's allegations and found as follows:

- *alleged improper force* – a review of the Videos shows that the pat-downs were conducted in accordance with CBSA policy

and BSOs did not have their hands on their guns during the pat-downs of the Applicant and his wife and the pat-downs, nor did the BSOs yell or demonstrate aggressive behaviour.

- *lack of professionalism* - based on the Videos and witness reports, there was no finding of aggressive behaviour on the part of the BSOs during the search of the Applicant's vehicle.
- *property damage* – the vehicle was packed full, and items could have been damaged at any point in the Applicant's travels and the Applicant did not raise any concern when the vehicle and goods were returned to him.
- *improper treatment of the Applicant and his wife* – the Applicant did not advise the BSOs that he is diabetic and he had access to water in the lobby and provisions in his truck when he was able to access his truck again; his wife was given food and water.
- *improper treatment of the Applicant's pets* - based on the BSO Narrative Reports, the Applicant was free to care for his animals and the Applicant never raised any concern regarding his pets.
- *no basis for refusing the Applicant entry* – there was a sufficient basis for the BSOs to find that the Applicant's circumstances were not consistent with a temporary stay, which conclusion was also reached on appeal to the Minister's Delegate.
- *no basis for saying the Applicant was promised a "clean record"* - The Applicant voluntarily opted to withdraw his application to enter Canada by signing an ATL, with no assurance that the ATL would not affect any future attempts to enter Canada.

[16] The Applicant commenced judicial review applications of both the Phone Call Record and the Final Disposition Report which the Applicant refers to as the "initial report decision" and the "second report decision" respectively.

III. Preliminary Issues

[17] The Respondent has raised two preliminary issues.

[18] First, the Respondent submits that the Phone Call Record is not a “decision” susceptible to judicial review as it was merely an interlocutory step in the PCM process that was superseded by the Final Disposition Letter. The Respondent also points out that under the PCM and by virtue of the Regional Director General’s authority, it is the Final Disposition Letter that carries legal consequences, making it alone amenable to judicial review (citing *Dow v Canadian Nuclear Safety Commission*, 2020 FC 376 at para 9 [*Dow*]).

[19] I agree that the phone call was an interlocutory step in the PCM process that did not involve a decision or deny the Applicant an effective remedy at that point in the complaints process (*C.B. Powell Limited v Canada (Border Services Agency)*, 2010 FCA 61 at paras 31-32). As the Final Disposition Letter is the only decision which affected the Applicant’s legal rights, it shall be the sole subject of judicial review by this Court (*Dow* at para 9).

[20] Second, in support of his application for judicial review, the Applicant has provided a sworn affidavit [Affidavit] which addresses the alleged errors and omissions in the unsworn Narrative Reports of the various BSOs. It also provides comments on the Videos, largely by questioning the absence of certain footage the Applicant would have expected the CBSA to have. By way of example, one such paragraph of the Affidavit reads:

There should be footage of boxes of my belongings being brought inside to be investigated. Where is the footage? Any evidence of

my belongings would easily disprove most of Z. Cameron's claims.

[21] The Respondent seeks to strike the Affidavit on the basis that it is not based on personal knowledge and merely contains argument and opinion contrary to Rule 81(1) of the *Federal Courts Rules*, SOR/98-106. I consider this to be a fair characterization of paragraphs 7-28 of the Affidavit, which paragraphs shall therefore be struck (*Abi-Mansour v Canada (Attorney General)*, 2015 FC 882 at para 30).

IV. Issues and Standard of Review

[22] The issues raised by the Applicant can be summarized as follows:

- A. Is the Final Disposition Letter unreasonable for relying on unsworn and untested evidence of the events of March 3, 2024, in the face of the Applicant's sworn and contradictory evidence?
- B. Did the BSO show bias and therefore breach the rules of natural justice?

[23] In reviewing the Final Disposition Letter for reasonableness, this Court is tasked with reviewing the written reasons holistically through a lens of judicial restraint that considers the legal context and the evidentiary record which constrained the decision maker (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at paras 75, 84, 89 - 90, 97 and 99). Due sensitivity must be given to the administrative regime and the specialized knowledge of its decision makers (*Vavilov* at para 93). This Court must determine whether the Final Disposition Letter is justified, intelligible and transparent and must refrain from re-deciding the case or reweighing the evidence (*Vavilov* at paras 15 and 125).

[24] Issues of procedural fairness, on the other hand, are reviewed on a standard akin to correctness with no deference owed to the decision maker (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 34, 54-55, citing *Mission Institution v Khela*, 2014 SCC 24 at para 79).

V. Analysis

A. *The Applicant has not shown that the Final Disposition Letter is unreasonable*

[25] The Applicant submits that a decision is unreasonable where it is based entirely on unsworn and untested evidence and where there is evidence that undermines that evidence (citing *Nanda v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 646 at para 27). In this case, the Applicant submits that he has provided a sworn Affidavit which entitles him to the presumption of truthfulness. Absent a reason to doubt him, the Applicant argues that this Court must prefer his evidence over the unsworn BSO Narrative Reports (citing *MalDonado v Minister of Employment and Immigration*, [1980] 2 FC 302 (FCA) at 305).

[26] There is no merit to the Applicant's argument. Even if this Court had not struck the bulk of the Affidavit, it has no bearing on this Court's assessment of the reasonableness of the Final Disposition Letter as it was not before the ARDG when she issued her decision. The Applicant's submission amounts to an attempt to have this Court re-decide the Complaint *de novo* based on new evidence. This is not the role of the Court on judicial review (*Vavilov* at paras 83, 96 and 116 and *Canada (Attorney General) v Select Brand Distributors Inc*, 2010 FCA 3 at para 44).

[27] Instead, the question for this Court is whether the Final Disposition Letter is intelligible and justified based on the facts and the law that constrained the ARDG. I find that it is. The PCM procedure does not require sworn evidence from BSOs or witnesses (referring instead to reports and copies of notebook entries) and the ARDG was tasked with finding facts based on unsworn statements on both sides. Moreover, the ARDG based her Final Disposition Letter on other evidence (or lack thereof) including her review of the Videos. The ARDG is entitled to deference in its fact-finding task (*Vavilov* at para 125).

B. *There was no breach of natural justice based on bias*

[28] The Applicant has not argued that there are any indicia of actual bias on the part of the Superintendent; rather, the Applicant's argument is based solely on perceived bias based on the Superintendent's conflicting role as a witness, complaint lead and "initial decision maker." The Applicant contends that the Final Disposition Letter is therefore tainted with bias and meets the test for a reasonable apprehension of bias in *Committee for Justice and Liberty et al v National Energy Board et al*, [1978] 1 SCR 369 at 391 [*Committee for Justice*].

[29] Allegations of bias are subject to a high threshold of proof (*R v RDS*, [1997] 3 SCR 484 at para 113), which I do not consider the Applicant has met for two reasons.

[30] First, the Superintendent was not a "decision maker"; rather, in conducting the phone call and drafting the Phone Call Record, she was engaged in a preliminary step in the CBSA complaints process which did not entail a decision affecting the Applicant.

[31] Second, this Court is entitled to look to the entirety of the complaints procedure in considering whether the requirements of procedural fairness have been satisfied (*Weldesebet v Canada (Citizenship and Immigration)*, 2022 FC 1174 at para 23). Any unfairness associated with the Superintendent's multiple roles in the complaints process is cured or remedied by the Final Disposition Letter which was determined by a different decision maker (*Lee v Canada (Citizenship and Immigration)*, 2024 FC 913 at para 11). As the disposition authority under the PCM, the ARDG was tasked with ensuring each allegation is properly investigated and it is the ARDG who provides the CBSA's official position for each allegation.

[32] I do not find that a reasonable and informed person, viewing the matter realistically and practically—and having thought the matter through—would conclude that the Applicant was denied resolution of his Complaint by an unbiased decision maker (*Committee for Justice* at 394-395).

VI. Conclusion

[33] The Applicant has not met his onus of demonstrating that the Final Disposition Letter is unreasonable or that it was arrived at in a manner that was procedurally unfair to him. Accordingly, this application is dismissed.

JUDGMENT in T-2497-24 and T-2562-24

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.

"Allyson Whyte Nowak"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2497-24
T-2562-24

STYLE OF CAUSE: CORMAG JAIME ALAINN v THE ATTORNEY
GENERAL OF CANADA (THE MINISTER OF PUBLIC
SAFETY)

ADJUDICATED BASED ON WRITTEN SUBMISSIONS

JUDGMENT AND REASONS: WHYTE NOWAK J.

DATED: OCTOBER 27, 2025

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