Federal Courts Reports
Recueil des décisions des Cours fédérales



A-7-20

2022 FCA 21

**John Joseph Goodman** (*Appellant*)

*v.*

**Minister of Public Safety and Emergency Preparedness** and **the Minister of Citizenship and Immigration** (*Respondents*)

***INDEXED AS: GOODMAN V. CANADA (PUBLIC SAFETY AND EMERGENCY PREPAREDNESS)***

Federal Court of Appeal, Stratas, Boivin and Laskin JJ.A.—By videoconference; Ottawa, February 7, 2022.

*Citizenship and Immigration — Status in Canada — Permanent Residents – Humanitarian and Compassionate Considerations — Appeal from Federal Court decision decision denying appellant's request for declaration that 2013 amendments to Immigration and Refugee Protection Act, s. 25 be proclaimed inoperable — Question certified as to whether Act, s. 25(1) violating Canadian Bill of Rights, s. 2(e) — Federal Court right in concluding that Bill of Rights, s. 2(e) not guaranteeing foreign national right to discretionary consideration of Humanitarian and Compassionate (H&C) factors — Parliament thus entitled to limit application of H&C grounds under Act, s. 25 for foreign nationals who are inadmissible to Canada pursuant to Act, ss. 34, 35, 37 — Question answered in negative — Appeal dismissed.*

*Bill of Rights — Before Federal Court, appellant sought declaration 2013 amendments to Immigration and Refugee Protection Act, s. 25 inoperable — Question certified as to whether Act, s. 25(1) violating Canadian Bill of Rights, s. 2(e) — Bill of Rights, s. 2(e) not guaranteeing foreign national right to discretionary consideration of Humanitarian and Compassionate (H&C) factors — Question answered in negative.*

*Constitutional Law — Charter of Rights — Life, Liberty and Security — Before Federal Court, appellant sought declaration 2013 amendments to Immigration and Refugee Protection Act, s. 25 inoperable — Question certified as to whether Act, s. 25(1) violating Canadian Bill of Rights, s. 2(e) — Federal Court correctly noting differences between principles of fundamental justice pursuant to Canadian Charter of Rights and Freedoms, s. 7, those pursuant to Bill of Rights, s. 2(e) — Finding that rights under Bill of Rights, s. 2(e) narrower — H&C considerations not principle of fundamental justice for purpose of Bill of Rights, s. 2(e) — Question answered in negative.*

This was an appeal from a Federal Court decision denying the appellant's request for a declaration that the 2013 amendments to section 25 of the *Immigration and Refugee Protection Act* be proclaimed inoperable. Before the Federal Court, the appellant, who is inadmissible to Canada

pursuant to paragraph (34)(1)(f) of the Act, argued that the removal of Humanitarian and Compassionate (H&C) considerations from sections of the Act—including paragraph (34)(1)(f)—conflicts with the fairness obligation imposed by paragraph 2(e) of the *Canadian Bill of Rights* (Bill of Rights). The Federal Court disagreed with the appellant. The Federal Court certified a question as to whether subsection 25(1) of the Act, which bars access to a process for the review of humanitarian and compassionate factors for persons inadmissible under sections 34, 35 and 37, violates paragraph 2(e) of the *Canadian Bill of Rights*.

*Held*: the appeal should be dismissed.

The issues with respect to paragraph 2(e) of the Bill of Rights should not have been considered by the Federal Court since they were barred from judicial review. Issues that were not raised before the administrative decision maker should not be accepted on judicial review. However, even if the said issues were not raised before the administrative decision maker in this case, they had no legal merit for essentially the same reasons given by the Federal Court. The Federal Court concluded that paragraph 2(e) of the Bill of Rights does not guarantee a foreign national the right to discretionary consideration of H&C factors. As such, Parliament was entitled to limit the application of H&C grounds under section 25 of the Act for foreign nationals who are inadmissible to Canada pursuant to sections 34, 35 and 37 of the Act. More particularly, the Federal Court correctly noted the differences that exist between the principles of fundamental justice pursuant to section 7 of the *Canadian Charter of Rights and Freedoms* and those pursuant to paragraph 2(e) of the Bill of Rights. It found that the rights under paragraph 2(e) of the Bill of Rights are narrower than the rights guaranteed under section 7 of the Charter. It followed that H&C considerations are not a principle of fundamental justice for the purpose of paragraph 2(e) of the Bill of Rights.

Therefore the certified question was answered in the negative.

STATUTES AND REGULATIONS CITED

*Canadian Bill of Rights*, S.C. 1960, c. 44 [R.S.C., 1985, Appendix III], s. 2(e).

*Canadian Charter of Rights and Freedoms*, being Part I of the *Constitution Act, 1982*, Schedule B, *Canada Act 1982*, 1982, c. 11 (U.K.) [R.S.C., 1985, Appendix II, No. 44], s. 7.

*Immigration and Refugee Protection Act*, S.C. 2001, c. 27, ss. 25, 34, 35, 37.

CASES CITED

CONSIDERED:

*Alberta (Information and Privacy Commissioner) c. Alberta Teachers' Association*, 2011 CSC 61, [2011] 3 R.C.S. 654.

REFERRED TO:

*Okwuobi c. Commission scolaire Lester-B.-Pearson; Casimir c. Québec (Procureur général); Zorrilla c. Québec (Procureur général)*, 2005 CSC 16, [2005] 1 R.C.S. 257; *Landau c. Canada (Procureur général)*, 2022 CAF 12; *Duke v. The Queen*, [1972] S.C.R. 917, (1972), 28 D.L.R. (3d) 129; *Bell Canada v. Canadian Telephone Employees Association*, 2003 SCC 36, [2003] 1 S.C.R. 884; *Re B.C. Motor Vehicle Act*, [1985] 2 S.C.R. 486, [1985] S.C.J. No. 73 (QL); *Canada (Minister of Employment and Immigration) v. Chiarelli*, [1992] 1 S.C.R. 711, 135 N.R. 161; *Singh v. Minister of Employment and Immigration*, [1985] 1 S.C.R. 177, [1985] S.C.J. No. 11 (QL).

APPEAL from a Federal Court decision (2019 CF 1569, [2020] 3 F.C.R. 143) denying the appellant's request for a declaration that the 2013 amendments to section 25 of the *Immigration and Refugee Protection Act* be proclaimed inoperable. Appeal dismissed.

APPEARANCES

*Benjamin Liston* and *Alyssa Manning* for appellant.

*John Loncar* and *Nicholas Dodokin* for respondents.

SOLICITORS OF RECORD

*Legal Aid Ontario Refugee Law Office*, Toronto, for appellant.

*Deputy Attorney General of Canada* for respondents.

*The following are the reasons for judgment of the Court rendered in English by*

[1] BOIVIN J.A.: This is an appeal from a judgment rendered by the Federal Court (*per* Barnes J.) dated December 9, 2019 (2019 FC 1569, [2020] 3 F.C.R. 143). Before the Federal Court, the appellant, who acknowledges that he is inadmissible to Canada pursuant to paragraph (34)(1)(f) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA), notably sought a declaration that the 2013 amendments to section 25 of the IRPA be proclaimed inoperable. The appellant argued that the removal of Humanitarian and Compassionate (H&C) considerations from sections of the IRPA—including paragraph (34)(1)(f)—conflicts with the fairness obligation imposed by paragraph 2(e) of the *Canadian Bill of Rights*, S.C. 1960, c. 44 (Bill of Rights). The Federal Court disagreed with the appellant and denied his request.

[2] This appeal comes to this Court by way of a certified question. The Federal Court certified the question as follows:

1. Does subsection 25(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, which bars access to a process for the review of humanitarian and compassionate factors for persons inadmissible under sections 34, 35 and 37, violate paragraph 2(e) of the *Canadian Bill of Rights*, S.C. 1960, c. 44?

[3] Overall, we agree with the analysis and conclusions of the Federal Court.

[4] The issues with respect to paragraph 2(e) of the Bill of Rights should not have been considered by the Federal Court as they were barred from judicial review. Indeed, *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61, [2011] 3 S.C.R. 654, counsels us against accepting issues on judicial review that were not raised before the administrative decision maker. Therefore, the paragraph 2(e) issues had to be raised before the administrative decision maker (*Okwuobi v. Lester B. Pearson School Board; Casimir v. Quebec (Attorney General); Zorrilla v. Quebec (Attorney General)*, 2005 SCC 16, [2005] 1 S.C.R. 257; *Landau v. Canada (Attorney General)*, 2022 FCA 12, 466 D.L.R. (4th) 550) who is the merits-decider under this legislative regime. However, even if the said issues were not raised before the administrative decision maker, we are all of the view that they had no legal merit for essentially the same reasons given by the Federal Court. The intervention of this Court is therefore not warranted.

[5] In a thorough and detailed analysis, the Federal Court concluded that paragraph 2(e) of the Bill of Rights does not guarantee a foreign national the right to discretionary consideration of H&C factors. As such, Parliament was entitled, without invoking the notwithstanding clause in the Bill of Rights, to limit the application of H&C grounds

under section 25 of the IRPA for foreign nationals who are inadmissible to Canada pursuant to sections 34 (Security), 35 (Human or international rights violations) and 37 (Organized criminality) of the IRPA.

[6] More particularly, in its decision, the Federal Court correctly noted the differences that exist between the principles of fundamental justice pursuant to section 7 of the *Canadian Charter of Rights and Freedoms*, being Part I of the *Constitution Act, 1982*, Schedule B, *Canada Act 1982*, 1982, c. 11 (U.K.) [R.S.C., 1985, Appendix II, No. 44] (Charter) and those pursuant to paragraph 2(e) of the Bill of Rights. It reviewed the relevant jurisprudence and determined that paragraph 2(e) of the Bill of Rights only encompasses the principles of fundamental justice tied to a fair hearing whereas section 7 of the Charter encompasses both substantive and procedural fairness principles tied to "life, liberty and security of the person". The Federal Court consequently found that the rights under paragraph 2(e) of the Bill of Rights are narrower than the rights guaranteed under section 7 of the Charter. It follows that H&C considerations are not a principle of fundamental justice for the purpose of paragraph 2(e) of the Bill of Rights (Federal Court's reasons, at paragraphs 18–21, 34; citing *Duke v. The Queen*, [1972] S.C.R. 917, (1972), 28 D.L.R. (3d) 129; *Bell Canada v. Canadian Telephone Employees Association*, 2003 SCC 36, [2003] 1 S.C.R. 884; *Re B.C. Motor Vehicle Act*, [1985] 2 S.C.R. 486, [1985] S.C.J. No. 73 (QL); *Canada (Minister of Employment and Immigration) v. Chiarelli*, [1992] 1 S.C.R. 711, 135 N.R. 161; and *Singh v. Minister of Employment and Immigration*, [1985] 1 S.C.R. 177, [1985] S.C.J. No. 11 (QL)). Based on binding jurisprudence, the Federal Court also held that the appellant was using the Bill of Rights to claim a right, when it is restricted in this context, to a privilege (memorandum of the respondents, at paragraphs 25–28). These cases from the Supreme Court on which these principles are based bind us and, despite the appellant's invitation to us to depart from them, we consider that any departure from them be done by the Supreme Court.

[7] We shall answer the certified question as follows:

> **Question**: Does subsection 25(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, which bars access to a process for the review of humanitarian and compassionate (H&C) factors for persons inadmissible under sections 34, 35 and 37, violate paragraph 2(e) of the *Canadian Bill of Rights*, S.C. 1960, c. 44?
>
> **Answer**: No.

[8] Despite the able submissions of Mr. Liston, the appeal will be dismissed.