

CANADA / JUDGMENT

Mancabo v. Canada (Attorney General)

2025 FC 341

COURT

Federal Court

DECIDED

20 February 2025

Source: norma.lexum.com · Research copy typeset by Esheria. Not court-issued or certified.

Mancabo v. Canada (Attorney General) Court (s) Database Federal Court Decisions Date 2025-02-20 Neutral citation 2025 FC 341 File numbers T-1190-24 Decision Content Date: 20250220 Docket: T-1190-24 Citation: 2025 FC 341 [ENGLISH TRANSLATION] Ottawa, Ontario, February 20, 2025 PRESENT: The Honourable Madam Justice Saint-Fleur BETWEEN: MATHURIN JEANNOT MANCABO Applicant and ATTORNEY GENERAL OF CANADA Respondent AMENDED JUDGMENT AND REASONS I. Nature of the matter [1] This is an application for judicial review made under section 51.2 of the Public Servants Disclosure Protection Act, SC 2005, c 46 [Act or PSDPA], of a decision dated January 12, 2024 [Decision], signed by the Deputy Commissioner of the Office of the Public Sector Integrity Commissioner [OPSIC], refusing to launch an investigation into the disclosures made by the applicant, Mathurin Jeannot Mancabo. II. Facts [2] The applicant, a federal public servant with Statistics Canada since February 1, 2021, filed a disclosure of wrongdoings with the Office of the Public Sector Integrity Commissioner of Canada on October 18, 2023.

- [3] In this disclosure, the applicant alleged, among other things, that a unit head and a section head at Statistics Canada had committed wrongdoings within the meaning of paragraphs 8(c) and (e) of the Act, namely a gross mismanagement and a serious breach of a code of conduct. The applicant also alleged that some of his managers had been hostile to him, that his recommendations had been ignored, and that he had been discredited. He criticized his senior management for deciding not to provide him with a compliant attestation of probationary period, despite the lack of hard evidence to terminate his employment. Specifically, he indicated that, on February 2, 2023, he received an attestation of probationary period that had been incorrectly filled out, and that his senior management had thereby made a false document, which, in his view, constituted a criminal offence.
- [4] The applicant indicated that he had received a request for a verification of his security clearance and submitted that his year-end evaluation, which had been completed late, contained negative comments, which, in his view, constituted reprisal.
- [5] The applicant explained that he had had to take steps to obtain, in late April 2023, a corrected version of the attestation of probationary period.

- [6] The applicant accused the OPSIC officials and the Deputy Commissioner, who had signed the impugned Decision of January 12, 2024, of being accessories after the fact. III. Decision under review [7] In the Decision of January 12, 2024, the Deputy Commissioner described his role as having to determine whether there are grounds to believe that a wrongdoing has been committed, as defined in section 8 of the Act.
- [8] The Decision reiterates the applicant's main complaint against his senior management and managers, as formulated in the disclosure to the OPSIC, namely that the agreement for his contract of employment had not been respected and that he had been harassed.
- [9] The Decision includes a list of the more specific allegations made by the applicant in support of his harassment claim along with an analysis of the information he provided.
- [10] The Deputy Commissioner noted that matters of a personal nature, including harassment complaints and employment-related grievances, are generally not investigated by the OPSIC because such complaints do not meet the public interest requirement of the PSDPA.
- [11] The Deputy Commissioner found that the applicant's allegations were primarily personal in nature and did not constitute wrongdoings within the meaning of the PSDPA, and that, pursuant to paragraph 24(1)(f) of the PSDPA, there was no need to conduct an investigation .
- [12] The Deputy Commissioner invited the applicant to raise his concerns through the procedures available to address them, such as by making a complaint under the Canada Labour Code, RSC 1985, c L-2, or engaging in the grievance process. IV. Issues [13] There are three issues in this case, the first of which is preliminary in nature: 1.Are the documents filed with the applicant's affidavit admissible? 2.Was the Deputy Commissioner's Decision procedurally fair? 3.Was the Deputy Commissioner's Decision reasonable? V. Standard of review A. Standard of review for procedural fairness [14] The Court reviews alleged breaches of procedural fairness in a manner akin to applying the correctness standard of review (Mohamed v Canada (Citizenship and Immigration), 2023 FC 1297 at para 19).
- [15] The reviewing court must conduct its own analysis to determine whether the process followed by the decision maker was fair having regard to all of the relevant circumstances, including those described in Baker v Canada (Minister of Citizenship and Immigration), 1999 CanLII 699 (SCC), [1999] 2 SCR 817 at paragraphs 21–28 (Canadian Pacific Railway Company v Canada (Attorney General), 2018 FCA 69 at para 54). B. Standard of review for reasonableness [16] Canada (Minister of Citizenship and Immigration) v Vavilov, 2019 SCC 65 [Vavilov] sets out the framework for reviewing an administrative decision on the reasonableness standard. The burden is on the party seeking judicial review to demonstrate that the decision does not bear the hallmarks of reasonableness, that is, justification, transparency and intelligibility, and that justification was assessed in relation to the relevant factual and legal constraints that bore on the decision (Vavilov at paras 99–100). In this exercise, the reviewing court is subject to the principle of judicial restraint and adopts a posture of respect with regard to the decision under review (Vavilov at paras 13–14). VI. Statutory provisions [17] The Commissioner identified the following provisions of the Act in

his reasons: Public Servants Disclosure Protection Act, SC 2005, c 46 Code of Conduct
Obligation to establish – Treasury Board 5 (1) The Treasury Board must establish a code of conduct applicable to the public sector. Other provisions do not apply

- (2) The Treasury Board's obligation under subsection (1) applies despite the provisions of the Financial Administration Act and of any other Act of Parliament that otherwise restrict the powers of the Treasury Board. Consultation with organizations
- (3) Before the code of conduct is established, the President of the Treasury Board must consult with the employee organizations certified as bargaining agents in the public sector. Code to be tabled
- (4) The President of the Treasury Board must cause the code of conduct established by the Treasury Board to be tabled before each House of Parliament at least 30 days before it comes into force. Chief executives shall establish codes of conduct 6 (1) Every chief executive shall establish a code of conduct applicable to the portion of the public sector for which he or she is responsible. Consistency
- (2) The codes of conduct established by chief executives must be consistent with the code of conduct established by the Treasury Board. ... Loi sur la protection des fonctionnaires divulgateurs d'actes répréhensibles, LC 2005, ch 46 Code de conduite Obligation du Conseil du Trésor 5 (1) Le Conseil du Trésor établit un code de conduite applicable au secteur public. Dérogation
- (2) L'obligation du Conseil du Trésor s'exerce par dérogation aux dispositions de la Loi sur la gestion des finances publiques et de toute autre loi fédérale qui limitent ses pouvoirs de toute autre façon. Consultation
- (3) Avant l'établissement du code de conduite, le président du Conseil du Trésor consulte les organisations syndicales accréditées à titre d'agents négociateurs dans le secteur public. Dépôt du code de conduite au Parlement
- (4) Le président du Conseil du Trésor fait déposer le code de conduite que le Conseil du Trésor établit devant chaque chambre du Parlement au moins trente jours avant sa date d'entrée en vigueur. Pouvoir de l'administrateur général 6 (1) L'administrateur général établit un code de conduite applicable à l'élément du secteur public dont il est responsable. Compatibilité
- (2) Le code de conduite établi par l'administrateur général doit être compatible avec celui qui est établi par le Conseil du Trésor. ... 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). ... Disclosure to supervisor or senior officer 12 A public servant may disclose to his or her supervisor or to the senior officer designated for the purpose by the chief executive of the portion of the public sector in which the public servant is employed 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. Divulgation au supérieur hiérarchique ou à l'agent supérieur 12 Le fonctionnaire peut faire une divulgation en communiquant à son supérieur hiérarchique ou à l'agent supérieur désigné par l'administrateur général de l'élément du secteur public dont il fait partie tout renseignement qui, selon lui, peut démontrer qu'un acte répréhensible a été commis ou est sur le point de l'être, ou qu'il lui a été demandé de commettre un tel acte. Disclosure to the Commissioner 13 (1) A public servant may disclose information referred to in section 12 to the Commissioner.
- (2) Nothing in this Act authorizes a public servant to disclose to the Commissioner a confidence of the Queen's Privy Council for Canada in respect of which subsection 39(1) of the Canada Evidence Act applies or any information that is subject to solicitor-client privilege. The Commissioner may not use the confidence or information if it is disclosed. ... Divulgation au commissaire 13 (1) Le fonctionnaire peut faire une divulgation en communiquant au commissaire tout renseignement visé à l'article 12.

- (2) La présente loi n'a pas pour effet d'autoriser le fonctionnaire à communiquer au commissaire des renseignements confidentiels du Conseil privé de la Reine pour le Canada visés par le paragraphe 39(1) de la Loi sur la preuve au Canada ou des renseignements protégés par le secret professionnel liant l'avocat à son client. En cas de communication de tels renseignements, le commissaire ne peut pas les utiliser. ... 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. ... 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. ... 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;
 - (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. 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) 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. VII. Parties' submissions and analysis A. The documents filed with the applicant's affidavit are not admissible [18] The respondent submits that the applicant has filed several documents that are inadmissible under Rule 80(3) of the Federal Courts Rules (SOR/98-106) [Rules].
- [19] The applicant submits the following. In an oral direction on August 29, 2024, Associate Judge Steele accepted for filing the Applicant's Record dated August 28, 2024, despite the respondent's objections. On judicial review, the respondent raises the same objections in his memorandum of fact and law, alleging the following irregularities: (1) the applicant's affidavit makes no mention of exhibits; and (2) if they are exhibits, the documents attached to the affidavit are unsworn (Rules 80(3) and 72(2)(a)). The respondent also argues that the documents were not before the administrative decision maker and are therefore not admissible on judicial review. The respondent asks the Court to disregard the documents attached to the applicant's affidavit and focus on the documents that form part of the certified tribunal record.
- [20] The general rule in this regard is that the evidentiary record for purposes of a judicial review application is restricted to that which was before the decision maker (see *Devadawson v Canada (Citizenship and Immigration)*, 2015 FC 80 at para 31, citing *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 19 [Access Copyright]). The case at bar runs counter to the fundamental nature of judicial review, which is to review the legality of an administrative decision by examining the evidence that was actually considered by the decision maker (*Bernard v Canada (Revenue Agency)*, 2015 FCA 263, 479 NR 189 at para 17 [Bernard], citing *Access Copyright* at paras 17–19).
- [21] Except for the attestation of probationary period that was incorrectly filled out and which the applicant considers to be a false document, and the corrected version of that attestation, which the applicant obtained after taking steps in April 2023, the documents he submits with his affidavit as part of his application for judicial review were not submitted to the OPSIC with the disclosure and are not part of the certified tribunal record. Therefore, they are new evidence.
- [22] This new evidence does not fall within any of the recognized exceptions to the above general rule. It does not fall within the background information exception, as it does not serve to explain to the Court the contents of the existing record (*Bernard* at para 20). It does not fall within the “absence of evidence” exception, which consists of an affidavit confirming the absence of evidence (*Bernard* at para 24). It also does not fall within the procedural fairness or natural justice exception, as the applicant does not submit any evidence or argument to support his claim that the respondent breached procedural fairness (*Bernard* at para 25).

- [23] The documents submitted by the applicant fall outside the exceptions set out in Access Copyright and Bernard. Therefore, the Court cannot accept them. The same is true of the paragraphs of his affidavit that make reference to these documents. B. The Deputy Commissioner's Decision was procedurally fair [24] In the notice of application and paragraph 14 of his memorandum, the applicant alleges that the OPSIC "failed to observe a principle of natural justice [or] procedural fairness". However, the applicant provided no details as to the nature of the breach of procedural fairness and submitted no evidence in this regard.
- [25] Given the Federal Court of Appeal's decision in *Njoroge v Canada (Attorney General)*, 2022 FC 1769 at paragraph 68, simply stating that there has been a breach of procedural fairness is not sufficient. In the absence of any evidence to support the serious allegation of bias or breach of procedural fairness, the applicant cannot establish that his claim that procedural fairness was breached has any merit.
- [26] In light of the above, the Court must reject the allegation. The Deputy Commissioner acted in a procedurally fair manner. C. The Deputy Commissioner's Decision was reasonable [27] The applicant is representing himself in an application for judicial review, and his arguments that the decision was unreasonable are not proper arguments. In his memorandum of fact and law, the applicant claims at paragraph 12 that the Deputy Commissioner made a blatant error in determining that there was no wrongdoing.
- [28] The applicant also argues that the Deputy Commissioner ignored the evidence submitted and criticizes him for refusing to act on his disclosure despite concrete, irrefutable evidence of wrongdoing.
- [29] For his part, the respondent submits that the Decision was reasonable.
- [30] In addition, the respondent raises the issue that the burden is on the applicant to show that there is a shortcoming or flaw that is sufficiently central to render the Decision unreasonable (*Vavilov* at para 100).
- [31] For the reasons that follow, I find that the Decision was reasonable.
- [32] To start, the applicant does not explain what evidence the Deputy Commissioner allegedly ignored. In any event, when the reasonableness standard applies on judicial review, it is not the role of this Court to reweigh the evidence and reach a different outcome (*Vavilov* at para 125).
- [33] Furthermore, I am of the view that the Decision was reasonable overall, as it was sufficiently justified, intelligible and transparent.
- [34] Section 8 of the PSDPA sets out the circumstances in which the Commissioner may investigate allegations of wrongdoing made in a disclosure.

- [35] Moreover, under subsection 24(1) of the PSDPA, the Commissioner has a “broad discretion to refuse to commence an investigation” into a disclosure (*Gordillo v Canada (Attorney General)*, 2022 FCA 23 at para 23). The leading decision confirming this principle is *Detorakis v Canada (Attorney General)*, 2010 FC 39, in which Justice Russell stated at paragraph 30 that the Commissioner’s discretion not to investigate is “wide”. This principle was subsequently cited by the Federal Court of Appeal in several decisions (see *Agnaou v Canada (Attorney General)*, 2015 FCA 30 at para 75; see also *Burlacu v Canada (Attorney General)*, 2022 FCA 10 at paras 52–53).
- [36] Essentially, the Commissioner may refuse to deal with a disclosure if he or she is of the opinion that “there is a valid reason for not dealing with the subject-matter of the disclosure or the investigation”. This discretionary power has been described in the Court’s case law as being “extremely wide” and providing the Commissioner with “enormous latitude” (*Detorakis v Canada (Attorney General)*, 2010 FC 39 at para 106 and *Canada (Attorney General) v Canada (Public Sector Integrity Commissioner)*, 2016 FC 886 at para 129).
- [37] With respect to the applicant’s allegation that the Deputy Commissioner ignored the evidence submitted, I note that the only two documents that the applicant included with his disclosure to support his allegations of wrongdoing are the two versions of the attestation of probationary period, namely, the first form, which had been incorrectly filled out, and the second corrected form.
- [38] The Deputy Commissioner examined and assessed these documents before concluding that the applicant’s allegations in the disclosure were primarily of a personal nature and did not constitute wrongdoings within the meaning of the Act.
- [39] The Deputy Commissioner cited *Canada (Attorney General) v Canada (Public Sector Integrity Commissioner)*, 2016 FC 886, at paragraph 106, to support the fact that the Act is not meant to deal with matters of a personal nature.
- [40] I find that, since the actions that the applicant criticizes his managers for taking do not fall within the definition of wrongdoing set out in section 8 of the Act, the Deputy Commissioner’s decision not to investigate the applicant’s allegations was reasonable. The Deputy Commissioner made proper use of his discretion not to launch an investigation.
- [41] The Deputy Commissioner noted that matters of a personal nature may continue to be dealt with through the procedures available to address those concerns, such as complaints under the Canada Labour Code or through the grievance process. D. Remedies sought by the applicant [42] The respondent submits that the remedies sought by the applicant fall outside the scope of what can be granted on judicial review under subsection 18.1(3) of the Federal Courts Act, RSC 1985, c F-7. The remedies sought by the applicant can be summarized as follows: (1) That a decision be made to the effect that wrongdoings have been committed; (2) That disciplinary action be taken under section 9 of the Act; (3) That a decision be made to the effect that reprisal was taken; (4) That declaratory relief be granted against the OPSIC;

and (5) That a decision be made to allow the applicant to apply to the Public Servants Disclosure Protection Tribunal. (Notice of Application, Applicant's Record at 5.)

- [43] I agree with the respondent. These are not remedies that this Court can grant on judicial review, the essential purpose of which is to determine whether an administrative decision was reasonable and whether the process followed by the decision maker was fair. VIII. Conclusion [44] Given the evidence in the record and the applicable legislation, Mr. Mancabo has not demonstrated that the Deputy Commissioner's Decision was unreasonable or that he breached procedural fairness. The application for judicial review is accordingly dismissed.
- [45] The respondent seeks costs, but I prefer to exercise my discretion in not finding this to be an appropriate case to award costs against Mr. Mancabo, who is self-represented (*Lalonde v Canada (Revenue Agency)*, 2023 FC 41 at para 97; *Hu v Canada (Attorney General)*, 2023 FC 1590 at para 36). JUDGMENT in T-1190-24 THE COURT'S JUDGMENT is as follows: The application for judicial review is dismissed. No costs are awarded. "L. Saint-Fleur" Judge FEDERAL COURT SOLICITORS OF RECORD DOCKET: T-1190-24 STYLE OF CAUSE: MATHURIN JEANNOT MANCABO v ATTORNEY GENERAL OF CANADA PLACE OF HEARING: QUÉBEC, QUEBEC DATE OF HEARING: FEBRUARY 13, 2025 JUDGMENT AND REASONS BY: SAINT-FLEUR J DATED: FEBRUARY 20, 2025 APPEARANCES: Mathurin Jeannot Mancabo For the applicant (SELF-REPRESENTED) Geneviève Lecours For the respondent SOLICITORS OF RECORD: Attorney General of Canada Québec, Quebec For the respondent

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://norma.lexum.com/fc-cf/decisions/en/item/527559/index.do>

CASE PAGE <https://chat.esheria.ai/case-law/canada/mancabo-v-canada-attorney-general-2025>

Prepared on 27 October 2026 · Esheria