Federal Court  Cour fédérale

Date: 20221201

Docket: T-1993-19

Citation: 2022 FC 1653

[ENGLISH TRANSLATION]

Montréal, Quebec, December 1, 2022

PRESENT: The Honourable Mr. Justice Gascon

BETWEEN:

PAUL LARAMÉE AND ROSE PRATTE

Applicants

and

STÉPHANE BÉNARD

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicants, Paul Laramée and Rose Pratte, are the directors of Transport Far-West Express Inc. [Transport Far-West]. On August 21, 2019, they received payment orders for wages and other amounts allegedly owed by Transport Far-West to the respondent, Stéphane Bénard, under the *Canada Labour Code*, RSC 1985, c L-2 [*Canada Labour Code*].

[2] A week later, on August 29, 2019, Mr. Laramée and Ms. Pratte requested a review of the payment orders issued against them. In a decision issued on November 12, 2019, the Regional Director of Employment and Social Development Canada's (ESDC's) Labour Program, Marie-France Sanschagrin, dismissed the application for review and found it inadmissible on the ground that Mr. Laramée and Ms. Pratte had not met the 15-day deadline and the conditions set out in the *Canada Labour Code* to file such an application [Decision].

[3] Mr. Laramée and Ms. Pratte are now seeking judicial review of the Decision. They allege that ESDC did not comply with the rules of procedural fairness and natural justice and erred in finding that their request to review payment orders was inadmissible. In their view, in the process leading up to the Decision, the administrative decision-maker failed to answer their questions before the deadline to complete their request for review expired. Furthermore, they maintain that ESDC did not consider the possibility, although it is provided for in the *Canada Labour Code*, that they give a form of security rather than simply requiring the deposit of the amount set out in the payment orders in order to finalize their application for review.

[4] For the following reasons, the application for judicial review by Mr. Laramée and Ms. Pratte will be allowed. After reviewing the administrative decision-maker's reasons, the evidence on the record, and the *Canada Labour Code* provisions, I find that the Decision is not reasonable and, furthermore, is not consistent with the procedural fairness standards that governed the process before ESDC.

II. Background

A. *Facts*

[5] On July 11, 2018, Mr. Bénard filed a complaint against Transport Far-West for failure to pay amounts allegedly owed to him under section 251.18 of the *Canada Labour Code*. Transport Far-West refuses to pay the sums requested on the basis that Mr. Bénard was not an employee of the company and was acting as a subcontractor.

[6] As an inspector for ESDC's Labour Program, Franck Philippe was responsible for the investigation of Mr. Bénard's complaint and concluded that there was an employer-employee relationship between Transport Far-West and Mr. Bénard. In addition, he determined that Mr. Laramée and Ms. Pratte are liable as directors of Transport Far-West. On August 21, 2019, Mr. Philippe therefore issued payment orders against Mr. Laramée and Ms. Pratte as directors of Transport Far-West. The payment orders were issued for a total amount of $25,120.38 and mentioned the possibility of requesting a review of the decision within 15 days, provided that the request is accompanied by the total amount set out in the payment orders.

[7] On August 29, 2019, Mr. Laramée and Ms. Pratte submitted a written request for review to Ms. Sanschagrin, as Regional Director of the ESDC Labour Program. They also sent this request by email to Mr. Philippe, who then reiterated the importance of sending the total amount mentioned in the payment orders in order to complete the request for review of his decision.

[8] On September 4, 2019, Mr. Laramée and Ms. Pratte sent a new letter to Ms. Sanschagrin seeking confirmation or reversal of the need to deposit the total amount of $25,120.38 in order to exercise their right to request a review of the decision. They received no answer.

[9] On October 2, 2019, Mr. Laramée and Ms. Pratte received a letter dated September 27, 2019, from Mr. Philippe to Mr. Bénard, in which Mr. Philippe stated that no money had been received and that it was then possible for Mr. Bénard to request the execution of the payment orders. That same day, Mr. Laramée and Ms. Pratte contacted Ms. Sanschagrin again to reiterate their request for information on the obligation to pay the amount set out in the payment orders.

[10] On October 15, 2019, Mr. Laramée and Ms. Pratte received a letter dated October 7, 2019, from Ms. Sanschagrin indicating that their application for review did not comply with legislative requirements because payment for the amount requested had not been received. In the letter, Ms. Sanschagrin stated that the inspector (Mr. Philippe) would proceed with the execution of the payment orders.

[11] That same day, Mr. Laramée and Ms. Pratte replied to Ms. Sanschagrin that they wanted the information in order to make the payment to finalize their request for review. They still did not receive a response. However, on October 28, 2019, they received a call from Mélanie Beaulieu, acting manager for the ESDC-Labour Program, Quebec Region, and Stéphane Boudreault, technical advisor on labour standards, who reiterated that their application for review

would be dismissed because the payment of the amount set out in the payment orders was not made within the prescribed time limits.

[12] On October 30, 2019, Mr. Laramée and Ms. Pratte again contacted Ms. Sanschagrin. They explained that they did not understand the process followed by the ESDC Labour Program and shared their reluctance to provide the amount in dispute. The payment orders indicated that the amount would be given directly to Mr. Bénard in the event that the application for review was dismissed. Since Mr. Laramée and Ms. Pratte claim that Mr. Bénard had made an assignment of his property, they expressed their concerns about this way of proceeding. They also added that they were prepared to deposit the total amount of $25,120.38 if they could receive confirmation that it would not be paid to Mr. Bénard.

[13] ESDC made its Decision on November 12, 2019. On behalf of ESDC, Ms. Sanschagrin stated in it that the application for review was denied because the amounts covered by the payment orders were not submitted with the application within the “strict limit” of 15 days following the service of the payment orders. This Decision is the subject of this application for judicial review.

[14] Along with their application for judicial review before this Court, Mr. Laramée and Ms. Pratte also requested an appeal of the Decision before the Canada Industrial Relations Board [Board]. Among other things, they argued that subsection 251.101(2.1) of the *Canada Labour Code*, which provides that the “Head” may allow the employer to give security rather than the amount indicated in the payment order to be allowed to request a review, was not considered by

ESDC in the Decision. On April 17, 2020, the Board dismissed the appeal on the grounds that it does not have jurisdiction to hear the matter, but acknowledged the difficulties Mr. Laramée and Ms. Pratte faced in the review process of the payment orders.

[15] Prior to the Court hearing, counsel for Mr. Laramée and Ms. Pratte also filed a letter of guarantee dated June 30, 2022, from a financial institution. This letter guarantees, in the amount of $28,000, the payment of any amounts that Mr. Laramée and Ms. Pratte may owe to Mr. Bénard.

B. *Procedural History*

[16] I will pause for a moment to outline the procedural history of this application for judicial review and put it in context because at the hearing before the Court, Mr. Bénard, who was not represented by counsel, claimed that he had not had sufficient opportunity to be heard and to make his submissions. With all due respect, such a statement is inaccurate and has no merit. On the contrary, over the past two years, the Court has —in vain—taken multiple initiatives to provide Mr. Bénard the opportunity to be heard and to make representations in response to Mr. Laramée and Ms. Pratte's application for judicial review. However, time after time, Mr. Bénard simply did not respond.

[17] Filed on December 12, 2019, Mr. Laramée and Ms. Pratte's application for judicial review first dragged on for a little over 15 months due to various delays that are not in any way due to Mr. Bénard. Then, in an order dated April 12, 2021, Associate Justice Steele granted the Minister of Labour's motion to be removed from the case and replaced by Mr. Bénard as

respondent. The Court then granted Mr. Bénard 10 days to serve and file his notice of appearance, as set out in the order and under section 305 of the *Federal Courts Rules*, SOR/98-106 [Rules]. It was not until well after the expiry of this deadline that Mr. Bénard made several attempts, between October 26 and November 1, 2021, to file documents with the Court, including a motion record, a notice of appearance, and various other documents. In a directive issued on November 3, 2021, the Court rejected all of Mr. Bénard's documents on the grounds that they did not comply with the Rules. The directive also stated that Mr. Bénard would have to serve and file a motion to be relieved of his failure to meet the deadlines set out in the order dated April 12, 2021.

[18] Meanwhile, Mr. Laramée and Ms. Pratte completed their file, put it in order, and requested a hearing date. It is important to remember that, under section 18.4 of the *Federal Courts Act*, RSC 1985, c F-7, the Court must hear and process applications for judicial review "without delay and in a summary way."

[19] It was not until March 2022 that Mr. Bénard tried to submit documents again. The Court then issued new directives on March 30, 2022, and on April 25, 2022, in which it refused to consider Mr. Bénard's documents, which were once again irregular. The order dated April 25, 2022, reiterates that Mr. Bénard would have to file and serve a formal request for an extension of time, this time before May 2, 2022, if he were to be allowed to file a notice of appearance. This order prohibited him from filing anything else with the Court.

[20] Despite the irregularities it contains, Mr. Bénard's application for an extension of time to appear was accepted for filing by the Court, as stated in its directive dated May 18, 2022. The Court heard the motion on May 31, 2022. On July 21, 2022, the Court issued a new order accepting the extension of time requested by Mr. Bénard and ordering him to comply with a definitive timetable. This order makes it very clear to Mr. Bénard what is required for his documents to comply with the Rules. The order also informed Mr. Bénard that if he did not submit a file, he would not be able to plead at the hearing on the merits that had been scheduled for October 24, 2022, unless so authorized by the judge assigned to that hearing. However, Mr. Bénard failed to comply with this order and the timeline therein.

[21] On October 21, 2022, with no news from Mr. Bénard since the last order and having learned that Mr. Bénard was incarcerated, the Court, with the consent of Mr. Laramée and Ms. Pratte, ordered the postponement of the hearing for the judicial review application scheduled for October 24, 2022, for a short period of approximately four weeks. The Court then offered Mr. Bénard a final chance to comply with a new definitive schedule under which he was required to file his documents by November 4, 2022, for the hearing scheduled for November 17, 2022. Again, Mr. Bénard did not comply with the requirements set by the Court. It was not until the morning of the postponed hearing (November 17, 2022) that Mr. Bénard contacted the Court and asked to attend the hearing. At the hearing, the Court allowed Mr. Bénard to participate in the hearing and also granted him the right to make certain oral submissions in response to Mr. Laramée and Ms. Pratte's file, despite his repeated failure to submit his file and compliant documents on time.

[22] This judgment therefore considers the oral representations made by Mr. Bénard at the hearing before the Court.

C. *Statutory Provisions*

[23] The relevant legislation is found in section 251.101 of the *Canada Labour Code*. It reads as follows:

Request for review	**Dépôt de la plainte**
251.101 (1) An employer to whom a compliance order has been issued or a person who is affected by a payment order, a notice of unfounded complaint or a notice of voluntary compliance may send a written request with reasons to the Head for a review of the Head's decision	**251.101 (1)** Tout employeur à qui est donné un ordre de conformité ou toute personne concernée par un ordre de paiement, un avis de plainte non fondée ou un avis de conformité volontaire peut demander au chef, par écrit, motifs à l'appui, de réviser sa décision :
(a) subject to paragraph (b), within 15 days after the day on which the order or a copy of the order or the notice is served; or	a) sous réserve de l'alinéa b), dans les quinze jours suivant la signification de l'ordre ou de sa copie, ou de l'avis;
(b) if a compliance order is served with a notice of violation issued under subsection 276(1) for the same contravention, within 30 days after the day on which they are served.	b) dans le cas où un ordre de conformité et un procès-verbal dressé au titre du paragraphe 276(1) sont conjointement signifiés à l'égard de la même contravention, dans les trente jours suivant leur signification.
Payment of amount and administrative fee	**Consignation de la somme visée**
(2) An employer or a director of a corporation is not permitted to request a review of a payment order unless the employer or director pays to the Head the amount indicated	**(2)** L'employeur et l'administrateur d'une personne morale ne peuvent présenter une demande de révision à l'égard d'un ordre de paiement qu'à la condition de

in the payment order and, in the case of an employer, the administrative fee specified in the payment order in accordance with subsection 251.131(1), subject to, in the case of a director, the maximum amount of the director's liability under section 251.18.	remettre au chef la somme fixée par l'ordre — et, dans le cas de l'employeur, les frais administratifs précisés dans l'ordre conformément au paragraphe 251.131(1) —, l'administrateur ne pouvant toutefois être tenu de remettre une somme excédant la somme maximale visée à l'article 251.18.
Security	**Garantie**
(2.1) The Head may allow an employer or a director of a corporation to give security, in a form satisfactory to the Head and on any conditions specified by the Head, for all or part of the amount and fee referred to in subsection (2).	**(2.1)** Le chef peut permettre à l'employeur ou à l'administrateur d'une personne morale de donner une garantie, sous la forme que le chef juge acceptable et selon les modalités qu'il fixe, pour le paiement de tout ou partie des sommes et frais visés au paragraphe (2).

D. *Standard of Review*

[24] With respect to the merit of the Decision, Mr. Laramée and Ms. Pratte alleged that ESDC misapplied its enabling legislation since Ms. Sanschagrin failed to consider subsection 251.101(2.1) of the *Canada Labour Code* before making her Decision on the admissibility of the application for review of the payment orders.

[25] It is now well established that questions regarding the interpretation of an administrative decision-maker's enabling legislation are subject to the reasonableness standard (*Canada (Minister of Citizenship and Immigration*) *v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 68). Similarly, since the power to permit a form of security under subsection 251.101(2.1) of the

Canada Labour Code is discretionary, whether or not to exercise that power must also be reviewed on a reasonableness standard (*Vavilov* at para 116).

[26] The reasonableness standard focuses on the decision made by the administrative decision-maker, which includes both the reasoning process and the outcome (*Vavilov* at paras 83, 87). Where the applicable standard of review is reasonableness, the role of a reviewing court is to examine the reasons given by the administrative decision-maker and determine whether the decision is based on "an internally coherent and rational chain of analysis" and is "justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85). The reviewing court must therefore ask "whether the decision bears the hallmarks of reasonableness —justification, transparency and intelligibility" (*Vavilov* at para 99). However, the reviewing court must not "reassess the evidence considered" by the decision-maker (*Vavilov* at para 125). Rather, the court must adopt a restraint approach and intervene only "where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process" (*Vavilov* at para 13). The burden is on the party challenging the decision to show that it is unreasonable. A decision will not be reversed based on mere superficial or peripheral errors. Rather, it must have a fundamental flaw, such as a failure of rationality internal to the reasoning process (*Vavilov* at paras 100–101).

[27] With respect to procedural fairness issues, the approach has not changed since *Vavilov* (*Vavilov* at para 23). Mr. Laramée and Ms. Pratte submitted that the correctness standard applies to these procedural fairness issues. It has in fact often been recognized that the correctness standard is the standard of review that applies to determine whether an administrative decision-

maker has complied with their duty of procedural fairness and the principles of fundamental justice (*Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43; *Heiltsuk Horizon Maritime Services Ltd v Atlantic Towing Limited*, 2021 FCA 26 at para 107).

[28] However, the Federal Court of Appeal has repeatedly concluded that procedural fairness issues are not truly decided based on a particular standard of review. Rather, it is a question of law that falls within the purview of reviewing courts, which must be satisfied that procedural fairness has been respected (*Canadian Association of Refugee Law Lawyers v Canada* (*Immigration, Refugees and Citizenship*), 2020 FCA 196 at para 35; *Lipskaia v Canada (Attorney General)*, 2019 FCA 267 at para 14; *Canadian Airport Workers Union v International Association of Machinists and Aerospace Workers*, 2019 FCA 263 at paras 24–25; *Perez v Hull*, 2019 FCA 238 at para 18; *Canadian Pacific Railway Company v Canada* (*Attorney General*), 2018 FCA 69 [CPR] at para 54). When the duty of an administrative decision-maker to act fairly is questioned or a breach of fundamental justice is invoked, it requires the reviewing courts to verify whether the procedure was fair having regard to all the circumstances (CPR at para 56; *Huang v Canada (Citizenship and Immigration)*, 2018 FC 940 at paras 51–54). This assessment includes the five non-exhaustive contextual factors set out by the SCC in *Baker v Canada* (*Minister of Citizenship and Immigration*), [1999] 2 SCR 817 [*Baker*] (*Vavilov* at para 77). Those factors are: (1) the nature of the decision being made and the decision-making process followed by the public body in making it; (2) the nature of the statutory scheme and the terms of the statute pursuant to which the public body operates; (3) the importance of the decision to the individual or individuals affected; (4) the legitimate expectations of the person challenging the

decision; and (5) the choices of procedure made by the public body itself, and the nature of the deference accorded to it (*Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v Lafontaine (Village)*, 2004 SCC 48 at para 5; Baker at paras 23–28).

[29] Thus, when an application for judicial review concerns the duty of procedural fairness and allegations of a breach of the principles of fundamental justice, the real issue is not so much whether the decision was "correct." Rather, it is whether, given the particular context and circumstances of the case, the process the administrative decision-maker followed was fair and gave the parties involved the right to be heard and the full and fair opportunity to be informed of and respond to the case to meet. The reviewing court owes no deference to the decision-maker when reviewing questions of procedural fairness.

III. Analysis

[30] I would point out at the outset that the application for judicial review before the Court relates only to the ESDC Decision ordering that the request for review of the payment orders made by Mr. Laramée and Ms. Pratte is inadmissible. It does not involve the merits of the payment orders themselves or the issue of whether Mr. Bénard is entitled to the amounts he is claiming from Transport Far-West for wages and other amounts that are allegedly owed to him.

A. *The Unreasonableness of the Decision*

[31] Mr. Laramée and Ms. Pratte first argued that in the Decision, Ms. Sanschagrin and ESDC erred in characterizing the 15-day period as a strict time limit, as this characterization is not

justified under the *Canada Labour Code* or the case law. Furthermore, Ms. Sanschagrin and ESDC apparently did not consider the possibility of requesting a security in lieu of the deposit of the amount set out in the payment orders, in accordance with subsection 251.101(2.1) of the *Canada Labour Code*. The Decision merely states that the application for review does not meet the admissibility requirements of the *Canada Labour Code*, referring only to subsection 251.101(2) requiring the remittance of the amount set out in the payment orders. These two errors, according to Mr. Laramée and Ms. Pratte, are sufficient to make Ms. Sanschagrin's Decision unreasonable.

[32] I agree with Mr. Laramée and Ms. Pratte. By ignoring a specific provision in the *Canada Labour Code* that allows a director to offer a form of security instead of remitting the amount set out in the payment orders, and by finding the application for review to be inadmissible on the basis of a "strict" time limit, the Decision bears all the hallmarks of an unreasonable decision.

[33] Mr. Laramée and Ms. Pratte were justified in inquiring about the need to deposit the requested amount, as they did have an alternative to depositing the amount indicated in the payment orders. Subsection 251.101(2.1) of the *Canada Labour Code*, which came into force on July 29, 2019, provides that the "Head," as the representative of ESDC, may allow an employer or its directors to "give security, in a form satisfactory to the Head and on any conditions specified by the Head, for all or part" of the amounts indicated in the payment orders. Indeed, subsection 251.101(2.1) of the *Canada Labour Code* did not come into force until July 29, 2019, less than one month before payment orders were issued against Mr. Laramée and Ms. Pratte. However, it was clearly the responsibility of ESDC Labour Program staff to be able to

implement this provision of the *Canada Labour Code.* Mr. Laramée and Ms. Pratte's hesitation to remit the amount was clearly from their correspondence with Ms. Sanschagrin and with ESDC staff. Had it not been for Ms. Sanschagrin's delay in responding and her failure to consider the possibility of giving security, the circumstances and the steps taken by Mr. Laramée and Ms. Pratte imply that their request for review would have been completed within the given time limit.

[34] I acknowledge that, in their correspondence with ESDC staff, Mr. Laramée and Ms. Pratte never specifically raised the possibility of giving security under subsection 251.101(2.1) of the *Canada Labour Code*. It was up to the administrative decision-maker to consider this new legislative provision in their Decision. However, in stating that the application for review did not meet the admissibility requirements of the *Canada Labour Code* based solely on subsection 251.101(2) for the remittance of the amounts set out in the payment orders, Ms. Sanschagrin completely ignored the new statutory option in subsection 251.101(2.1).

[35] This omission is sufficient to render the Decision unreasonable in light of the facts and the applicable law. For approximately one month, at the time of the Decision, there had been two options to honour the obligation to pay amounts owing by payment orders as part of an application for review. In this case, ESDC acted by ignoring one of the alternatives and thereby depriving Mr. Laramée and Ms. Pratte of an option expressly provided for in the *Canada Labour Code.* The lack of information about new subsection 251.101(2.1) of the *Canada Labour Code* is an omission that suggests that the only way for an employer or administrator to apply for a

review of a payment order is to pay the amount indicated in the order. On the face of the *Canada Labour Code*, as it was in force since July 29, 2019, this statement is incorrect.

[36] Oversight by a third party cannot deprive a party of its rights (*Andreoli v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1111 [*Andreoli*] at paras 16–17). Furthermore, I find that Mr. Laramée and Ms. Pratte cannot be blamed for the delays exacerbated by internal communication problems that are due to the failure of ESDC representatives to respond to their questions (*Huseen v Canada (Citizenship and Immigration)*, 2015 FC 845 [*Huseen*] at para 34). ESDC and Ms. Sanschagrin did not provide any explanation for having failed to respond to the multiple requests for information from Mr. Laramée and Ms. Pratte.

[37] In his submissions to the Court, Mr. Bénard noted that Mr. Laramée and Ms. Pratte had had the opportunity, from the receipt of the payment orders in August 2019, to make their case. I do not share this view, as the facts clearly show that at no time did ESDC appear to have considered the existence of the option under subsection 251.101(2.1) of the *Canada Labour Code*, nor did it inform Mr. Laramée and Ms. Pratte of it.

[38] Although a decision-maker's reasons need not necessarily address all the parties' arguments, the decision must still be justified in light of the facts (*Vavilov* at para 128). A decision must also address the important issues raised by the parties. In this case, it is clear that the method of payment of the amount indicated in the payment orders was central to Mr. Laramée and Ms. Pratte's concerns. Therefore, Ms. Sanschagrin and ESDC did not consider

the circumstances of the case in finding that the application for review was inadmissible for the limited reasons set out in the Decision (*Andreoli* at para 16).

[39] When I read the reasons in relation to the file, it is impossible for me to understand Ms. Sanschagrin's and ESDC's reasoning on a central point of the Decision, that is, the alleged failure to pay the amount set out in the payment orders against the statutory provisions of the *Canada Labour Code*. Admittedly, the lack of detail given in a decision does not necessarily make it unreasonable, but the reasons must enable the Court to understand the basis of the impugned decision and to determine whether the conclusion holds water. Here, the Decision contains a gap too large to allow me to conclude that it is based on an internally coherent reasoning (*Vavilov* at paras 102–104). This is not an intelligible decision based on a coherent and rational analysis or which can be described as "justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at paras 83, 85).

[40] This unreasonableness of the Decision is sufficient to allow Mr. Laramée and Ms. Pratte's application for judicial review.

B. *Breach of Procedural Fairness*

[41] Given the unreasonableness of the Decision, there would be no need to address the issue of procedural fairness. However, I also share the view of Mr. Laramée and Ms. Pratte that by acting as they did and failing to answer the questions raised regarding the obligation to remit the amount set out in the payment orders, Ms. Sanschagrin and ESDC failed to meet the standards of procedural fairness in the process leading to the Decision.

[42] The purpose of the duty of procedural fairness is to ensure that administrative decisions are made using a fair and open procedure, appropriate to the decision being made and to the statutory, institutional and social context, and that the decision-maker provide an opportunity for those affected to present their views and evidence, to which the decision-maker shall give due consideration before making a decision (*Baker* at paras 21–22; *Henri v Canada (Attorney General)*, 2016 FCA 38 at para 18). Issues of procedural fairness and the duty to act fairly are not concerned with the merits of the decision but relate to the process followed by the decision-maker. Similarly, procedural fairness does not create substantive rights, nor does it entitle a person to a given outcome in the treatment of a matter.

[43] Having applied the factors in *Baker* to this case, I find that in view of the circumstances of this case, Mr. Laramée and Ms. Pratte were entitled to a certain degree of procedural fairness to finalize their application for review. This was not the case. Although permission to use a security rather than remitting the money was discretionary, the option should have been offered to Mr. Laramée and Ms. Pratte.

[44] Note that the existence of a legitimate expectation as to the procedure to be followed affects the nature of the duty of fairness to persons affected by an administrative decision (*Baker* at para 26). In view of the amendment to the *Canada Labour Code* that added subsection 251.101(2.1), Mr. Laramée and Ms. Pratte could legitimately expect that ESDC and Ms. Sanschagrin would apply this provision and respond to their requests regarding the payment of the amounts indicated in the payment orders. Furthermore, because ESDC took the initiative to inform Mr. Laramée and Ms. Pratte in writing of their remedies reinforces the legitimate

expectation that ESDC would inform them of all the options available under the law and the internal procedure, and not just some of the options to which they were entitled.

[45] I note that Mr. Laramée and Ms. Pratte's written request for review had in fact been filed within the time limit, eight days after the payment orders were sent and well within the statutory 15-day time limit. Only the issue of the deposit of amounts set out in the payment orders remained outstanding. However, the delay in the completion of this prerequisite is largely due to the fact that Ms. Sanschagrin did not respond to Mr. Laramée and Ms. Pratte's requests for information. It is true that Mr. Laramée and Ms. Pratte already had information on the need to remit the amount set out in the payment orders under subsection 215.101(2) of the *Canada Labour Code*. However, Mr. Laramée and Ms. Pratte insisted on having confirmation from Ms. Sanschagrin as to how to pay the amount in question since the payment orders mentioned the possibility that the amount would be remitted to Mr. Bénard should their application for review be dismissed. Mr. Laramée and Ms. Pratte shared with ESDC their concerns about this possibility given the assignment of Mr. Bénard's property. In these particular circumstances, Ms. Sanschagrin's and ESDC's failure to respond to Mr. Laramée and Ms. Pratte's questions and to confirm the procedure to follow is a breach of procedural fairness.

[46] It is entirely possible that there will be a breach of natural justice even if the applicant missed a deadline (*Huseen* at para 31). In the circumstances, the duty of procedural fairness was not met because ESDC failed to provide complete information in a timely manner with respect to the review application process, despite questions from Mr. Laramée and Ms. Pratte regarding the remittance of the amount set out in the payment orders.

C. *Remedy*

[47] In their application for judicial review, Mr. Laramée and Ms. Pratte ask the Court to overturn the Decision finding their application for review inadmissible, to allow them to make an application under subsection 251.101(2.1) of the *Canada Labour Code*, and to find their application for review made on August 29, 2019, admissible.

[48] As I explained at the hearing, it is not up to the Court to make decisions that fall under the jurisdiction of ESDC or to exercise the discretion that is conferred on an administrative decision-maker by its enabling legislation. However, subsection 251.101(2.1) of the *Canada Labour Code* grants the "Head" discretion in the assessment of a security offered by an employer or director based on its form and terms.

[49] In *Vavilov*, the Supreme Court pointed out that a reviewing court has some discretion and latitude as to the remedy to award when it overturns an unreasonable decision of an administrative decision-maker, with the majority warning against the "endless merry-go-round of judicial reviews and subsequent reconsideration" (*Vavilov* at paras 140–142). Thus, it may sometimes be appropriate to refuse to remit a case to an administrative decision-maker "where it becomes evident to the reviewing court, in the course of its review, that a particular outcome is inevitable and that remitting the case would therefore serve no useful purpose" (*Vavilov* at para 142; *Mobil Oil Canada Ltd v Canada–Newfoundland Offshore Petroleum Board*, [1994] 1 SCR 202 at pp 228–30; *Entertainment Software Assoc. v Society Composers*, 2020 FCA 100 [*Society Composers*] at paras 99–100). This can also be the case when correcting

the error would not have changed the existing result and would have no practical significance, and where only one conclusion is actually possible (*MiningWatch Canada v Canada (Fisheries and Oceans)*, 2010 SCC 2 at para 52; *Robbins v Canada (Attorney General)*, 2017 FCA 24 [*Robbins*] at paras 16–22). This discretion to grant or not grant remedies exists in the contexts of both procedural errors and substantive defects (*Society Composers* at para 99).

[50] However, as the Supreme Court clarified, this discretionary power in the matter of remedies must be exercised with restraint because the choice of remedy must, in particular, be "guided by the rationale for applying [the standard of reasonableness] to begin with, including the recognition by the reviewing court that the legislature has entrusted the matter to the administrative decision maker, and not to the court" (*Vavilov* at para 140). Thus, where a decision reviewed on reasonableness standard cannot be upheld, it will most often be appropriate to remit the matter to the administrative decision-maker to have it reconsider the decision, this time with the benefit of the court's reasons (*Vavilov* at para 141; *Society Composers* at para 99; *Robbins* at para 17). In summary, the threshold for opting not to remit the matter to the administrative decision maker when its decision is deemed unreasonable is high (*D'Errico v Canada (Attorney General)*, 2014 FCA 95 at paras 14–17).

[51] Insofar as the standard of reasonableness is marked by deference and respect for the legitimacy and competence of administrative decision makers in their area of expertise, the discretion of the reviewing courts not to return an unreasonable decision to the administrative decision maker for reconsideration must therefore be exercised carefully, with prudence and parsimony, and be limited to the rare cases where the context can only inevitably lead to a single

result and where the outcome leaves no doubt. These situations will more likely be exceptions. The brief remarks made by the Supreme Court in *Vavilov* on the exercise of discretion in remedies do not constitute an opening for reviewing courts to substitute themselves for the administrative decision maker and interfere with the merits of the decision to be rendered, if it is conceivable that the decision maker could arrive at a decision that is both different and reasonable. It would be ironic, to say the least, if the discretionary remedy associated with the standard of reasonableness, a standard anchored in the recognition of and respect for the role of administrative decision makers, were to become the cause for transferring those decision makers' powers to the courts of justice responsible for their supervision (*Dugarte de Lopez v Canada (Citizenship and Immigration)*, 2020 FC 707 at paras 29–35).

[52] I do not consider this to be an exception where, having found that the Decision was unreasonable and that the rules of procedural fairness were not respected, I should nevertheless exercise my discretion to find Mr. Laramée and Ms. Pratte's application for review admissible and the form of security offered acceptable. It is not for me to determine whether the letter of guarantee offered is acceptable in the circumstances or to determine its terms. It is ESDC, not the Court, that is responsible for conducting this assessment. I cannot simply usurp the decision-making authority that the legislator has entrusted to the administrative decision maker on this issue.

[53] By finding Mr. Laramée and Ms. Pratte's application for review inadmissible as it did in the Decision, ESDC effectively deprived them of a part of the review process to which they were

entitled and, in these circumstances, the appropriate remedy is to restore that opportunity to them by returning the matter to the decision-maker for reconsideration.

IV. Conclusion

[54] For the reasons above, Mr. Laramée and Ms. Pratte's application for judicial review is allowed. Under the reasonableness standard, the reasons for the Decision had to demonstrate that ESDC's conclusions were based on an inherently coherent and rational analysis and justified in light of the legal and factual constraints to which the administrative decision maker is subject. This is not the case here. Furthermore, the process followed did not respect the rules of procedural fairness and did not allow Mr. Laramée and Ms. Pratte to be heard.

[55] In view of the many delays to which Mr. Bénard's conduct and his failure to comply with the Court's orders and directives contributed, I am of the view that Mr. Laramée and Ms. Pratte are entitled to costs. Considering all the circumstances of the case and in light of the factors set out in subsection 400(3) of the Rules, I set costs at the lump sum of $500, all inclusive.

JUDGMENT in T-1993-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed.

2. The decision made on November 12, 2019, by Ms. Sanschagrin on behalf of the ESDC Labour Program and finding the applicants' application for review inadmissible is set aside.

3. The applicants' application for review is returned to ESDC for reconsideration by a new decision maker based on these grounds and the applicable provisions of the *Canada Labour Code*, notably taking into account the applicants' letter of guarantee.

4. Costs fixed in the amount of $500, all inclusive, are awarded to the applicants.

"Denis Gascon"
Judge

Certified true translation
Elizabeth Tan

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1993-19
STYLE OF CAUSE:	PAUL LARAMÉE AND ROSE PRATTE v STÉPHANE BÉNARD
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APPEARANCES:

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Stéphane Bénard	FOR THE RESPONDENT (ON HIS OWN BEHALF)

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