Federal Court  Cour fédérale

Date: 20240619

Docket: T-1086-23

Citation: 2024 FC 948

Ottawa, Ontario, June 19, 2024

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

JAMES McNAIR & PARTAP DUA

Applicants

and

CHIEF ELECTORAL OFFICER OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants, James McNair and Partap Dua, are the asserted co-leader and leader respectively of the Direct Democracy Party of Canada [DDPC or Party]. They seek to challenge the May 15, 2023 decision of the Chief Electoral Officer of Canada to deregister the Party [Decision], alleging unreasonableness and procedural unfairness in connection with the triennial

review exercise under subsection 407(2) of the *Canada Elections Act*, SC 2000, c 9 [*CEA*]. See Annex "A" for relevant legislative provisions.

[2] I also refer to this Court's decision in *McNair v Canada (Chief Electoral Officer)*, 2023 FC 888 [*McNair*] at paras 5-15, discussed further below, for a concise summary of the applicable background to this matter.

[3] Having considered the parties' written records, their oral submissions, post-hearing written submissions and relevant jurisprudence, the Applicants have not persuaded me that the Decision was either procedurally unfair or unreasonable. The Applicants' judicial review application therefore will be dismissed for the reasons that follow.

II. Analysis

A. *Preliminary Issue*

[4] As a preliminary issue, I note the Applicants argued in their written and oral submissions that the party membership verification process that forms part of the triennial review exercise is unconstitutional and should be declared *ultra vires*. The Court cannot entertain this ground here for at least two reasons. First, it is not contained in the Notice of Application. Second, the Applicants did not comply with section 57 of the *Federal Courts Act*, RSC 1985, c F-7.

[5] I deal next with the issues of procedural fairness and reasonableness in turn.

B. *The Applicants Have Not Established Procedural Unfairness*

[6] The Applicants argue, without supporting jurisprudence, that the Court's earlier dismissal of their request to stay the Decision in *McNair* has no bearing on the procedural fairness issue in the context of the merits of their judicial review application. While it may be so in some cases, I find however that this is not one of those cases. In short, I disagree.

[7] Applying the well-known three-part test for granting an injunction, Justice Furlanetto opined that the Applicants' request, by motion, to stay the effect of the Decision pending the determination of their application cannot be granted: *McNair*, above at para 4, citing *RJR-MacDonald Inc v Canada (Attorney General)*, 1994 CanLII 117 (SCC), [1994] 1 SCR 311. In addition to dismissing the request for a stay, which the Applicants did not appeal, Justice Furlanetto also ordered that the matter continue as a specially managed proceeding.

[8] Regarding the serious issue component of the test, Justice Furlanetto thoroughly considered whether procedural fairness was breached based on the parties' motion records and a preliminary assessment of the merits of the application. She concluded, on the record before her, that the Applicants have not made out a serious issue as it relates to a denial of procedural fairness: *McNair*, at paras 23-34.

[9] Although Justice Furlanetto considered the serious issue question on the less onerous frivolous and vexatious standard, I note that, in addition to the thoroughness with which she nonetheless addressed the issue, the Applicants' record before me on this application is

substantially the same as their motion record. The supporting evidence, namely, the affidavit of Partap Dua, is identical and accounts for the majority of both records. The application record contains no other affidavit evidence.

[10] Where the Applicants' motion and application records differ materially is in the written submissions. That said, I find that the Applicants' submissions on the application, both written and oral, represent an effort to reargue Justice Furlanetto's procedural fairness determinations.

[11] The very arguments the Applicants raised before Justice Furlanetto and summarized in *McNair* were raised again in their submissions on the application. In considering the Applicants' procedural fairness arguments, Justice Furlanetto had the applicable review standard in mind, that is, whether the process was fair in the specific context: *McNair*, above at para 23, citing *Taseko Mines Limited v Canada (Environment)*, 2019 FCA 320 at para 31.

[12] The Applicants argued on their motion and in this application that the procedure applied in the triennial review exercise was not only impractical but also onerous, especially for smaller parties like the DDPC, and that they were not provided with sufficient information by the Chief Electoral Officer of Canada [CEOC], or a fair opportunity, including enough time, for rectifying perceived deficiencies in their efforts to comply with subsection 407(2) of the *CEA*.

[13] Regarding these arguments, Justice Furlanetto held that "[t]he assertions of onerousness and impracticality with the process are merely expressions of disagreement with the statutory requirements of subsection 407(2), rather than issues of procedural unfairness as to how the

process was implemented." Further, "[t]he motion materials demonstrate that the Applicants had repeated notice of the triennial review process, the steps CEOC proposed to follow at each step of the process and their consequences, and were given an opportunity to actively participate and respond": *McNair*, above at paras 25–26.

[14] This is but one example, if not the most critical one, of the arguments advanced by the Applicants on their motion and again in their application. I add that the Applicants also attempted to reargue before me why the process under section 410 of the *CEA* was not followed, instead of the subsection 415(1) process. Regarding such argument, Justice Furlanetto found that "[it] was not made before the CEOC and is not properly before the Court" and that, in any event, it applies to a separate proceeding involving compliance with subsection 395(1) or 402, as opposed to the triennial review process under subsection 407(2): *McNair*, above at paras 31-32.

[15] Leaving aside the issues of comity, the rule against collateral attacks, and abuse of process, I cannot conclude any differently than Justice Furlanetto, in the circumstances, that the Applicants have failed to show a breach of procedural fairness, for the same reasons articulated by my colleague on substantially the same record: *Paszkowski v Canada*, 2001 CanLII 22070 (FC) at para 6.

C. *The Applicants Have Not Established Unreasonableness*

[16] Judicial review of an administrative decision according to the reasonableness standard is concerned with whether the impugned decision, including the decision maker's justification or reasons for the outcome, are intelligible, transparent and justified, thus warranting the Court's

deference, rather than its interference: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 10, 25, 99; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at paras 7-8. I am not persuaded that the Applicants have met their burden of showing that the Decision is unreasonable: *Vavilov*, at para 100.

[17] The Applicants' written submissions are restricted to the procedural fairness issue, although the reasonableness of the Decision was raised as a possible alternative issue in their Notice of Application. The Respondent provided written arguments about the reasonableness of the Decision and indicated at the hearing of the application that they would rely on those submissions. That said, both parties touched briefly on the issue in their oral submissions.

[18] I find that the Applicants' submissions on this issue in essence invite the Court to reconsider and reweigh the evidence that was before the CEOC. This is not the role of the Court on judicial review, however: *Vavilov*, above at para 125.

[19] Further, the Applicants attempted to introduce evidence, disguised as arguments, unsupported by an affidavit. For example, the Applicants alleged that Canada Post or its subcontractors "dumped" mail, as opposed to mailing it, or that Elections Canada staff working at home mailed material from their homes, as a reason why the CEOC should have permitted them more time to remail material to DDPC members to confirm their membership in connection with the triennial review.

[20] In the end, I find that the Decision provides an internally coherent and rational chain of analysis that permits the Court to understand the CEOC's reasons for deregistering the Party and that is justified in relation to the applicable constraining facts and law: *Vavilov*, above at para 85.

III. Conclusion

[21] For the above reasons, I conclude that the Applicant has failed to establish the Decision is procedurally unfair and unreasonable.

[22] The Respondent has not sought costs. There thus is no costs award.

JUDGMENT in T-1086-23

THIS COURT'S JUDGMENT is that:

1. The Applicants' judicial review application is dismissed.

2. There is no costs award.

"Janet M. Fuhrer"
Judge

Annex "A": Relevant Provisions

***Federal Courts Act*, RSC 1985, c F-7**
***Loi sur les cours fédérales*, LRC 1985, c F-7**

Constitutional questions **57 (1)** If the constitutional validity, applicability or operability of an Act of Parliament or of the legislature of a province, or of regulations made under such an Act, is in question before the Federal Court of Appeal or the Federal Court or a federal board, commission or other tribunal, other than a court martial and an officer conducting a summary hearing, as defined in subsection 2(1) of the National Defence Act, the Act or regulation shall not be judged to be invalid, inapplicable or inoperable unless notice has been served on the Attorney General of Canada and the attorney general of each province in accordance with subsection (2).	**Questions constitutionnelles** **57 (1)** Les lois fédérales ou provinciales ou leurs textes d'application, dont la validité, l'applicabilité ou l'effet, sur le plan constitutionnel, est en cause devant la Cour d'appel fédérale ou la Cour fédérale ou un office fédéral, sauf s'il s'agit d'une cour martiale ou d'un officier tenant une audience sommaire au sens du paragraphe 2(1) de la Loi sur la défense nationale, ne peuvent être déclarés invalides, inapplicables ou sans effet, à moins que le procureur général du Canada et ceux des provinces n'aient été avisés conformément au paragraphe (2).

***Canada Elections Act*, SC 2000, c 9**
***Loi électorale du Canada*, LC 2000, c 9**

Minimum number of officers **395 (1)** Subject to subsection (3), a registered party and an eligible party shall have at least three officers in addition to the leader of the party.	**Nombre minimal de dirigeants** **395 (1)** Sous réserve du paragraphe (3), les partis enregistrés et les partis admissibles doivent avoir au moins trois dirigeants, en plus du chef du parti.
Minimum number of members **402** A registered party and an eligible party shall have at least 250 members who are electors.	**Nombre de membres minimal** **402** Les partis enregistrés et les partis admissibles doivent compter au moins deux cent cinquante membres qui sont des électeurs.
Confirmation of members **407 (2)** On or before June 30 of every third year, beginning in 2016, a registered party and an eligible party shall provide the Chief Electoral Officer with the names and addresses of 250 electors and their	**Liste de membres** **407 (2)** Au plus tard le 30 juin, en 2016 et tous les trois ans par la suite, les partis enregistrés et les partis admissibles produisent auprès du directeur général des élections les nom et adresse de deux cent

declarations in the prescribed form that they are members of the party.	cinquante électeurs et la déclaration de ceux-ci, établie selon le formulaire prescrit, attestant qu'ils sont membres du parti.
Deregistration — officers or members **410 (1)** If the Chief Electoral Officer is not satisfied that a registered party is in compliance with subsection 395(1) or section 402, he or she shall, in writing, notify the party that it is required to **(a)** show its compliance with subsection 395(1) within 60 days after the day on which the party receives the notice; or **(b)** show its compliance with section 402 within 90 days after the day on which the party receives the notice.	**Radiation : dirigeants et membres** **410 (1)** S'il n'est pas convaincu qu'un parti enregistré se conforme aux obligations prévues au paragraphe 395(1) ou à l'article 402, le directeur général des élections lui enjoint, par avis écrit, de lui démontrer dans les délais ci-après qu'il se conforme à ces obligations : **a)** soixante jours après réception de l'avis, dans le cas d'une omission de se conformer au paragraphe 395(1); **b)** quatre-vingt-dix jours après réception de l'avis, dans le cas d'une omission de se conformer à l'article 402.
Procedure for non-voluntary deregistration **415 (1)** If the Chief Electoral Officer believes on reasonable grounds that a registered party, its leader, its chief agent or one of its other officers has omitted to perform any obligation referred to in section 412 or 413, the Chief Electoral Officer shall, in writing, notify the party and any of its officers who are named in the registry of political parties that the party or officer must **(a)** rectify the omission by the discharge of that obligation, **(i)** within 5 days after receipt of the notice, in the case of a failure to comply with subsection 406(1), or **(ii)** within 30 days after receipt of the notice, in any other case; or **(b)** satisfy the Chief Electoral Officer that the omission was not the result of negligence or a lack of good faith.	**Procédure de radiation non volontaire** **415 (1)** S'il a des motifs raisonnables de croire que le manquement à une des obligations visées aux articles 412 ou 413 est imputable à un parti enregistré, à son chef, à son agent principal ou à un de ses dirigeants, le directeur général des élections notifie par écrit au parti et à ceux de ses dirigeants qui sont inscrits dans le registre des partis politiques : **a)** soit d'assumer leurs obligations dans les délais ci-après, après réception de la notification : **(i)** cinq jours, dans le cas d'une omission de se conformer au paragraphe 406(1), **(ii)** trente jours, dans les autres cas; **b)** soit de le convaincre que le manquement n'est pas causé par la négligence ou un manque de bonne foi.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1086-23
STYLE OF CAUSE:	JAMES McNAIR & PARTAP DUA v CHIEF ELECTORAL OFFICER OF CANADA
PLACE OF HEARING:	TORONTO, ONTARIO
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