

Federal Court of Appeal



Cour d'appel fédérale

Date: 20230914

Docket: A-102-22

Citation: 2023 FCA 188

**CORAM: DE MONTIGNY J.A.
GLEASON J.A.
HECKMAN J.A.**

BETWEEN:

**MARIA REISDORF, MAYA MITALIPOVA
and CANADIANS IN SUPPORT OF
REFUGEES IN DIRE NEED (CSRDN)**

Appellants

and

**THE ATTORNEY GENERAL OF CANADA
and CANADA (BORDER SERVICES
AGENCY)**

Respondents

and

UYGHUR RIGHTS ADVOCACY PROJECT

Intervener

Heard at Ottawa, Ontario, on September 14, 2023.
Judgment delivered from the Bench at Ottawa, Ontario, on September 14, 2023.

REASONS FOR JUDGMENT OF THE COURT BY:

GLEASON J.A.

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**REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Ottawa, Ontario, on September 14, 2023).**

GLEASON J.A.

[1] We have before us an appeal from the judgment of the Federal Court in *Kilgour v. Canada (Attorney General)*, 2022 FC 472 (*per* Gagné, A.C.J.) in which the Federal Court dismissed the appellants’ judicial review application. In their application, the appellants sought to set aside what they claimed was a decision of an official at the Canada Border Services Agency (CBSA). According to the appellants, that “decision” had the effect of rejecting their request to prohibit the importation of goods produced in Xinjiang, China, in all circumstances except where there was clear and convincing evidence that the goods had not been produced with forced labour.

[2] The alleged decision in this case is an email, written by a CBSA official to the appellants, in response to an email that the appellants sent to the CBSA. This email requested that the CBSA prohibit the importation of goods produced in Xinjiang, China, because, absent clear and convincing evidence to the contrary, those goods should be found to have been produced wholly or in part by forced labour. CBSA’s email merely set out the CBSA’s views on how the *Customs Tariff*, S.C. 1997, c. 36 operates and how CBSA investigates companies that are suspected of using forced labour to produce goods that they seek to import into Canada.

[3] Notably, nowhere in its email does the CBSA make any determination in respect of the importation of any specific goods from Xinjiang, China.

[4] In the decision under appeal, the Federal Court dismissed the appellants' judicial review application for three reasons. First, the Court held that the email was not a matter amenable to judicial review under the *Federal Courts Act*, R.S.C. 1985, c. F-7. Second, the Court held that the appellants lacked standing as private litigants and did not meet the criteria for granting public interest standing. Finally, the Federal Court held that, if the matter were justiciable and the applicants were afforded standing, the CBSA's interpretation of the *Customs Tariff* and related legislation and regulations was reasonable.

[5] We do not endorse the Federal Court's reasons. That said, we see no reason to interfere with its decision because we agree that the CBSA email in question is not a matter that is amenable to judicial review.

[6] Under the *Federal Courts Act*, judicial review is available in respect of a wide range of matters, including orders and decisions issued by federal decision makers. However, the case law recognizes that such matters do not include situations where the conduct at issue in the judicial review application fails to affect legal rights, impose legal obligations, or cause prejudicial effects: *Air Canada v. Toronto Port Authority*, 2011 FCA 347, [2013] 3 F.C.R. 605 at paras. 24, 29; *Democracy Watch v. Conflict of Interest and Ethics Commissioner*, 2009 FCA 15, 175 A.C.W.S. (3d) 303 at paras. 9-13, leave to appeal to SCC refused, 33086 (11 June 2009) [*Democracy Watch*].

[7] As was the case with the appellants in *Democracy Watch*, the appellants in the present appeal have no right to request or obtain a ruling from CBSA on their request. The right to

request an advance ruling under section 43.1 of the *Customs Act*, R.S.C. 1985, c. 1 (2nd Supp.) is limited to specific goods and may be made only by designated members of a prescribed class, as set out in the regulations, which do not include the appellants (see *Tariff Classification Advance Rulings Regulations*, SOR/2005-256, s. 2.).

[8] Perhaps more importantly, the CBSA email in question does not decide anything at all in respect of the importation of goods from Xinjiang, China. Rather, the email is merely a courtesy reply, thanking the appellants for their inquiry and setting out CBSA's views on how the relevant legislation and investigative processes work.

[9] We therefore determine that the CBSA email cannot be the subject of a judicial review application. For that reason, this appeal will be dismissed, without costs.

"Mary J.L. Gleason"

J.A.

"I agree
Yves de Montigny J.A."

"I agree
Gerald Heckman J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-102-22

STYLE OF CAUSE: MARIA REISDORF, MAYA MITALIPOVA and CANADIANS IN SUPPORT OF REFUGEES IN DIRE NEED (CSRDN) v. THE ATTORNEY GENERAL OF CANADA and CANADA (BORDER SERVICES AGENCY) AND UYGHUR RIGHTS ADVOCACY PROJECT

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: SEPTEMBER 14, 2023

REASONS FOR JUDGMENT OF THE COURT BY: DE MONTIGNY J.A.
GLEASON J.A.
HECKMAN J.A.

DELIVERED FROM THE BENCH BY: GLEASON J.A.

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