In the Court of Appeal of Alberta

Citation: Pickle v University of Lethbridge, 2025 ABCA 318

Date: 20250923
Docket: 2401-0333AC
Registry: Calgary

Between:

Jonah Pickle and Frances Widdowson

Appellants

- and -

The University of Lethbridge and
The Governors of the University of Lethbridge

Respondents

The Court:

The Honourable Justice Jolaine Antonio
The Honourable Justice Kevin Feehan
The Honourable Justice April Grosse

Memorandum of Judgment

Appeal from the Order by
The Honourable Justice C.J. Feasby
Dated the 7th day of November, 2024
Filed the 25th day of November, 2024
(Docket: 2301 09854)

Memorandum of Judgment

The Court:

I. Overview

[1] Jonah Pickle and Frances Widdowson appeal an order of a chambers judge denying a *fiat* to permit the filing of a second amendment to an Originating Application for Judicial Review, and dismissing an application to amend that originating application to request an order pursuant to s 52 of the *Constitution Act, 1982*, being Schedule B to the Canada Act 1982 (UK), 1982, c 11, striking down certain provisions of the *Occupational Health and Safety Act*, SA 2020, c O- 2.2, ss 1(n), (rr), 2(a), and 3(1)(c).

[2] This appeal turns on whether the chambers judge's exercise of discretion in refusing the *fiat* and amendment application constituted an error of law or principle, or was wholly unreasonable when he determined that the proposed amendment would change "the fundamental nature of this proceeding, mak[ing] it bigger, more complicated and unnecessarily so", in attempting to attack the constitutionality of the *Occupational Health and Safety Act*, legislation not "really engaged" in the dispute between the parties.

[3] For the reasons below, the appeal is dismissed.

II. Background

[4] In January 2023, the University of Lethbridge and the Governors of the University of Lethbridge cancelled a guest lecture by Dr Widdowson, to be attended by Mr Pickle, entitled "How Does Woke-ism Threaten Academic Freedom?"

[5] Dr Widdowson is a political scientist, and a former associate professor in the department of Economics, Justice and Policy Studies at Mount Royal University from 2008-2021. Dr Widdowson had been invited to speak by a professor of philosophy at the University.

[6] Dr Widdowson proposed in her lecture to challenge the political ideology of "woke-ness" which she says is "when identity politics becomes totalitarian", leading to "increased frequency and intensity of censorship", particularly "enabl[ing] advocacy-oriented identity politics programs (black studies, women's studies, indigenous studies, queer studies and disability studies) to gain a foothold in universities". She intended to say that woke ideology is hostile to free speech, open inquiry and dissent, leading to ostracization and censorship. She was to say that the purpose of an academic university is to promote rational disputation, even where that is "uncomfortable or politically incorrect". She intended to say that woke-ness directly challenges the rational disputation model of a university, creates a chilling effect on campuses with accusations of racism, colonialism, sexism, transphobia and other forms of bigotry, and supresses "open debate and free

expression". She would say that particularly "holds true in the area of research into indigenous issues".

[7] Knowledge of the scheduled lecture brought immediate and overwhelming reaction from faculty and students at the University, including the University's Education Navigator: Siksika, its Vice-Provost of Equity, Diversity and Inclusion, and groups including the Department of Indigenous Studies and the University of Lethbridge Students Union.

[8] The protestors said Dr Widdowson was a "well-known residential school denialist" whose views cause damage to the "BIPOC, LBGTQIA2S+ and especially Indigenous" communities. They accused Dr Widdowson of being a white supremacist and racist. The protestors indicated they would be organizing a counter-demonstration to the lecture, and were promoting an alternative lecture by an historian and Indigenous studies scholar from the University of Manitoba entitled "Truth Before Reconciliation: How to Identify and Confront Residential Schools Denialism".

[9] After investigation and debate, the University cancelled the proposed lecture, stating that "assertions that seek to minimize the significant and detrimental impact of Canada's residential schools system are harmful" and noting the need "to be attentive to the safety of [the University's] diverse community". The University also stated that the harm associated with the presentation would be an impediment to "meaningful reconciliation".

[10] Dr Widdowson did present her lecture, online.

[11] On November 6, 2024, Mr Pickle and Dr Widdowson filed an Amended Originating Application for Judicial Review seeking a declaration that the University had breached their freedom of thought, belief, opinion, and expression guaranteed under s 2(b) of the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, and their freedom of peaceful assembly guaranteed under s 2(c) of the *Charter*. They also sought an injunction requiring the University to permit the lecture of Dr Widdowson to proceed on campus without conditions "at a reasonable future date, time and location".

[12] In the course of the proceedings, the University filed a brief of law on August 27, 2024. It indicated that given the physical and psychological safety of the University's students, employees, and others was raised in feedback from protestors, the University was required to consider the application of the *Occupational Health and Safety Act*, which "obligated the University to ensure that the event and its impacts on employees and others in its vicinity was safe". It said the *Act* militated in favour of a University decision cancelling the event to ensure that students, staff, and others were "psychologically safe" from "psychosocial hazards" that might "pose a risk to mental health or well-being", all of which could implicate the provisions of the *Occupational Health and Safety Act*, as one factor in its decision. In oral argument before the chambers judge, counsel for the University explained its position was the provisions of the *Act* were "a 'legal constraint' that applied to the decision maker at the time the decision [was] made", requiring it "as far as it is

reasonably practicable" to protect the "health, safety and welfare" of its students, staff, and other materially-affected persons.

[13] In response, Mr Pickle and Dr Widdowson applied to challenge the constitutionality of certain words or phrases in the *Occupational Health and Safety Act*: the definition of "harassment" in s 1(n), the word "psychological" in the definition of "violence" in s 1(rr), the words "psychological and social" in s 2(a), and the word "harassment" in s 3(1)(c). They said if those provisions "obligated" the University to cancel the lecture, then the provisions of the *Act* violated their freedom of expression and freedom of peaceful assembly, and are unconstitutional. They sought the striking or reading down of those provisions of the *Act*.

III. Decision of the Chambers Judge

[14] The chambers judge gave brief reasons in morning chambers. He implicitly determined he would not merely sign the requested *fiat* without a full review of the proposed amendment. He was entitled to do so.

[15] The chambers judge said he did not see "the constitutionality of the OH & S legislation is really engaged here", and obligations under the *Act* "to consider employee health and welfare" would be difficult to find unconstitutional. He said the issue here was the University's "decision making and whether or not it was reasonable and whether or not they appropriately took into account or justified appropriately *Charter* rights and values in that analysis". The chambers judge said if Mr Pickle and Dr Widdowson had interpretive arguments to make on the legislation, they were free to do so. He said what "appears to me to be in issue [in] this case is the University of Lethbridge's decision making, including its decision making around what the OH & S legislation required them to do and it will be open to [Mr Pickle and Dr Widdowson] to make arguments about how constitutional rights and values should have played out in that decision making process".

[16] The chambers judge concluded that addition to this judicial review of a constitutional challenge to provisions of the *Occupational Health and Safety Act* "changes the fundamental nature of this proceeding, makes it bigger, more complicated and unnecessarily so".

IV. Grounds of Appeal

[17] Mr Pickle and Dr Widdowson say the chambers judge erred in nine ways:

1. failing to apply the rule that pleadings in an application for judicial review do not close until the hearing;
2. misconstruing and misapplying administrative law principles to employers under the *Occupational Health and Safety Act*;
3. misapplying rules of statutory interpretation;

4. misconstruing ***R v Oakes***, [1986] 1 SCR 103, 26 DLR (4th) 200 as substantially equivalent to ***Doré c Barreau du Québec***, 2012 SCC 12, [2012] 1 SCR 395;
5. misconstruing the rule of law as operating independent of the constitution;
6. misconstruing the concept of a pleading's "merit";
7. failing to consider or apply the rule that the discretion to determine the proper scope of the judicial review is to be exercised by the judge conducting that review, not a judge entertaining an amendment application;
8. failing to consider and apply the rule against a multiplicity of proceedings and concluding a multiplicity of proceedings was a viable procedural alternative; and
9. failing to consider and apply the rule that discretion to amend ought to be exercised generously.

[18] The University disagrees with those stated grounds of appeal and restates the issue: Did the chambers justice unreasonably refuse to grant the appellants' application to amend the Originating Application for Judicial Review (either by way of *fiat* or order) to add a challenge to the constitutional validity of the *Occupational Health and Safety Act*? We are satisfied the University's framing of the issue encompasses all the more detailed grounds raised by the appellants.

V. Standard of Review

[19] Absent an error of law, the decision to allow an amendment to pleadings is discretionary and entitled to deference on appeal: ***RPC Limited Partnership v SNC-Lavalin ATP Inc***, 2018 ABCA 423, para 20.

[20] Such discretion will only be interfered with on appeal if it is based on an error in law or principle, or is wholly unreasonable: ***Doe v Canada***, 2001 ABCA 216, para 23, (*sub nom* ***Residential Schools (Re)***) 204 DLR (4th) 80; ***Burtch v Barnes Estate*** (2006), 80 OR (3d) 365, para 22, 27 CPC (6th) 199 (CA); ***Bodnar v 36743 Alberta Ltd***, 2008 BCCA 192, para 10; ***Nunavut Tunngavik Inc v Canada (Attorney General)***, 2009 NUCA 2, para 23, 457 AR 320; ***Al-Ghamdi v College and Association of Registered Nurses of Alberta***, 2020 ABCA 81, para 11.

VI. Analysis

[21] As indicated, when information about the proposed lecture by Dr Widdowson became known, there was significant controversy over the health and safety of students, staff, and others in the University environment, particularly Indigenous students, faculty, staff. Protestors said their safety was at issue, "at even high risk", and the very holding of the event would "retraumatize members of our community" creating "psychological and emotional harm" and a "psychologically unsafe environment".

[22] Some protestors brought to the attention of the University the requirements of the *Occupational Health and Safety Act*, which include its obligation to "ensure, as far as it is

reasonably practicable" the "health, safety and welfare" of its employees and "other persons at or in the vicinity" and to prevent these persons from being subjected to "harassment or violence", s 3(1)(a), (c).

[23] The University says the *Occupational Health and Safety Act* does not specify how an employer must accomplish these requirements. It says the *Act* did not mandate or require the event be cancelled, but only that the statutory requirement to ensure the health and welfare of the students, staff, and others, as far as "reasonably practicable" to do so, was one of the legal constraints that applied to its decision-making at the time the decision was made.

[24] The University says what is at issue is the reasonableness of its decision, having regard to all the legal and factual constraints bearing on it, including its responsibility to protect the health and safety of others. It says reasonableness is to be measured as at the time of the decision in question, on the principles set out in ***Canada (Minister of Citizenship and Immigration) v Vavilov*** 2019 SCC 65, paras 23, 83-86, 101-105, 125, 126, [2019] 4 SCR 653; ***Doré***, paras 55-58; and ***Commission scolaire francophone des Territoires du Nord-Ouest v Northwest Territories (Education, Culture and Employment)***, 2023 SCC 31, paras 60, 61, 66-68, 70-72, 487 DLR (4th) 631.

[25] As indicated, the chambers judge's exercise of discretion is entitled to deference unless it was based on an error in law or principle or was wholly unreasonable, which it was not. Mr Pickle and Dr Widdowson can make the substance of their constitutional submissions in the existing judicial review and the chambers judge made no error in that finding. It is available to them to argue it was unreasonable for the University to interpret the application of the *Occupational Health and Safety Act* as it did, because such interpretation would be unconstitutional. The judicial review judge can consider these submissions if advanced. There was no reviewable error in the chambers judge's conclusion that to allow the amendment would be tangential and unnecessary to this ability and would unnecessarily enlarge and expand the proceedings. Refusing the amendment causes no prejudice to Mr Pickle and Dr Widdowson, who can advance their constitutional arguments on the application for judicial review, but permitting the amendment would have been prejudicial to the University.

[26] There is therefore no basis to interfere with the chambers judge's exercise of discretion in refusing to permit an amendment of the pleading as proposed in this judicial review, focused on the reasonableness of the discrete decision made by the University, to a broad and only marginally connected constitutional challenge. The chambers judge properly identified the applicable test. There is no error in law or principle, nor is the determination of the chambers judge wholly unreasonable.

[27] Additionally, the principle of judicial restraint requires that courts "not decide issues of law that are not necessary to a resolution" of the parties' dispute, which is "particularly true with respect to constitutional issues" ***R v McGregor***, 2023 SCC 4, para 24, 478 DLR (4th) 193, quoting ***Phillips v Nova Scotia (Commission of Inquiry into the Westray Mine Tragedy)***, [1995] 2 SCR

97, 111, 124 DLR (4th) 129; ***Law Society of Upper Canada v Skapinker***, [1984] 1 SCR 357, 381-82, 9 DLR (4th) 161; ***Commission scolaire***, para 108.

VII. Conclusion

[28] The appeal is dismissed.

Appeal heard on September 8, 2025

Memorandum filed at Edmonton, Alberta
this 23rd day of September, 2025

Authorized to sign for: Antonio J.A.

Feehan J.A.

Grosse J.A.

Appearances:

G.C. Blackett
for the Appellants

M.A. Woodley
for the Respondents