Federal Court Cour fédérale

**Date: 20251106**

**Docket: T-3257-24**

**Citation: 2025 FC 1783**



**Ottawa, Ontario, November 6, 2025**

**PRESENT: The Honourable Madam Justice Saint-Fleur**

**BETWEEN:**

**XIUJUAN QI**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

# JUDGMENT AND REASONS

## I. Overview

[1] The Applicant seeks judicial review pursuant to section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7 of a final level grievance decision made by the Assistant Commissioner of the Human Resources Branch and Chief Human Resources Officer [decision maker] at the Canada Revenue Agency [CRA] dated on September 18, 2024.

[2] The decision maker rejected the grievance of Xiu Juan QI [Applicant] which was filed on October 5, 2022.

[3] For the reasons outlined below, the application for judicial review is allowed.

## II. Background Facts

[4] The Applicant was hired by the CRA on April 10, 2017, to work as a determinate CS-01 IT Developer. A year later she was promoted to a CS-02 IT Analyst/Developer position. Between 2021 and 2024, she worked in various departments including the Innovation & Emerging Technologies, Strategic Engineering and Technology Integration (SETI), Solutions Architecture and Integration Directorate (SAID), and the Information Technology Branch .

[5] The allegations that gave rise to the grievance involve a period between March and July 2021 while the Applicant worked at SETI.

[6] On November 9, 2021, the Applicant filed two notices of occurrence of workplace harassment against her former team leader (Responding Party 1) and her former mentor (Responding Party 2) [together "the Responding Parties"].

[7] The notices were submitted in accordance with the requirements of the *Work Place Harassment and Violence Prevention Regulations,* SOR/2020-130 [*Regulations*] under the *Canada Labour Code,* R.S.C., 1985, c. L-2 [the Code].

[8] The notices referred to four major allegations of harassment, including:

i. Inconsistent evaluations, unduly harsh criticism, and degrading comments that led to a negative performance review;
ii. Misconduct from the Responding Parties in the form of improper and offensive comments in workplace settings, including during team meetings;
iii. A poisonous work environment created by the Responding Parties within which the Applicant was being set up for failure; and
iv. Improper use of Performance Improvement Plan by the Responding Parties to threaten and intimidate her.

[9] More specifically, the Applicant refers to incidents where Responding Party 1 allegedly said the Applicant "was not a qualified CS-02", management set her up for failure by assigning her work that was inherently flawed with no support, and management misattributed errors to her. The Applicant also alleges that the Responding Parties threatened to fire or demote her.

[10] On March 15, 2022, the CRA appointed an investigator to investigate the allegations. The investigation began on March 15, 2022, and was completed on July 14, 2022. The investigator interviewed the Applicant, the two Responding Parties, and one witness. The investigator did not interview the Applicant's union representative. The Applicant was interviewed on April 26, 2022.

[11] During the interview the Applicant provided the investigator with a detailed Excel spreadsheet that canvassed specific occurrences. She discussed the background of her notices with the investigator and emphasized their importance. After the interview, on the same day, the Applicant sent an email reiterating her comments from the interview.

[12] The investigator subsequently interviewed the other parties. The Applicant was never given an opportunity to review or reply to the statements the other parties made to the

investigator. The Applicant also was never given a copy of any of the preliminary reports that were shown to the other parties before the final investigation report was drafted.

[13] On June 17, 2022, the harassment and violence resolution officer, sent an email to the Applicant to inform her that the investigation was complete. On June 20, 2022, the Applicant responded and asked if there were any facts in dispute. The Applicant also said she had additional written materials she could provide to the investigator if he needed them. The investigator was included in this email. No one responded.

[14] On July 12, 2022, the Applicant emailed the harassment and violence resolution officer and asked if she would receive a preliminary report. He responded by saying she would receive a copy of the final report. On July 13, 2022, the Applicant emailed him again explaining that she had expected to be interviewed more than once. She also expressed a concern that there were facts in dispute that needed to be clarified before the final report could be completed.

[15] The Applicant reiterated these comments via email on July 22, 2022. She included the harassment and violence resolution officer and the investigator in the email. She also directly indicated she wanted to be interviewed again if there were facts in dispute. No one responded.

[16] On August 23, 2022, the investigator issued the final report and found that only the allegation of a poisoned work environment was substantiated. The final report only included an analysis on why the allegation of the poisoned work environment was substantiated. None of the analysis explains why the other three allegations are not substantiated.

[17] On September 7, 2022, the Acting Director of the Corporate, Productivity solutions Division sent the final report to the Applicant and informed her that the CRA had accepted its findings. The Applicant responded with the following: “Apparently the serious and critical occurrences were not addressed. There are so many non-factual points they responded.”

[18] On September 8, 2022, the Applicant elaborated further via email and said many of the issues she included in the excel spreadsheet she shared with the investigator were ignored. She sent an email to the investigator that said she was never given an opportunity to rebut the statements given by the other parties and was never given the opportunity to comment on the preliminary reports that were circulated.

[19] The final report also included recommendations to prevent future occurrences of workplace harassment and violence. On September 1, 2022, the CRA put a Preventive Measures Implementation Plan [PMIP] in place with a completion date of November 1, 2022. However, the PMIP also showed that certain aspects of the plan could not be completed until January 2023. The recommendations and the PMIP focused on the additional training of CRA employees through various courses, such as a course on how to manage difficult conversations in the workplace.

[20] Following the release of the investigator’s final report, on October 5, 2022, the Applicant filed an individual grievance under subsection 208(1) of the *Federal Public Sector Labour Relations Act*, SC 2003, c 22, s 2 [*FPSLRA*], grieving the investigation and the final report. On November 7, 2022, at the employer’s request, the grievance was placed in abeyance to allow the CRA to review the file. On July 9, 2024, the grievance was denied at the second level and

escalated to the final level. The grievance moved to the final level on July 30, 2024, and the decision maker released their final decision on September 18, 2024.

## III. Decision Under Review

[21] On September 18, 2024, the CRA rejected the Applicant's grievance. The decision maker rejected the grievance on the grounds that the recommendation regarding preventative measures outlined in the investigation report were implemented, meaning the investigation had been completed, and the appropriate administrative process for redress was an application for judicial review of the investigation.

[22] More specifically, the decision-maker denied the grievance because they held that in these circumstances section 208(2) of the *FPSLRA* precludes a grievance by establishing that an employee may not present an individual grievance in respect of which an administrative procedure for redress is provided under any Act of Parliament.

[23] The decision maker also relied on the *Labour Program Workplace Harassment and Violence Prevention Interpretations Policies and Guidelines* and section 30 of the *Regulations* and concluded that:

> "The workplace harassment and violence process is preventative, and no personal remedies are awarded through this process. I note that Management implemented the Investigator's recommendation for preventative measures outlines in the Investigation Report. As such, the resolution process has been completed and the appropriate "administrative procedure for redress" to address your concerns was an application for judicial review before the Federal Court."

[24] The decision maker held that it was not necessary for the Applicant to be given a chance to review a preliminary report and provide input when there were facts in dispute. Thus, the decision maker concluded that "… I am satisfied with the conclusions from the Investigation Report and the Management Representative decision to accept the Investigation Report. I am also satisfied that the investigation process and the Investigation Report respect the principles of procedural fairness."



## IV. Issues and Standard of Review

[25] The relevant issues are as follows:

1. Was the decision to reject the Applicant's grievance reasonable?
2. What is the appropriate remedy for the breach of the Applicant's right to procedural fairness?

[26] The merits of the Decision are to be reviewed on the standard of reasonableness *(Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16-17, 23-25, 85, 99, 101-4, 115-26 [*Vavilov*]). A reasonable 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 paras 85-86; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at paras 2, 31). A decision will be reasonable if when read as a whole and taking into account the administrative setting, it bears the hallmarks of justification, transparency, and intelligibility (*Vavilov* at paras 91-95, 99-100).

[27] The procedural fairness arguments are to be reviewed on a standard of correctness or akin to correctness (*Canadian Pacific Railway Company v Canada (Transportation Agency)*, 2021

FCA 69 at paras 46-47 [*Canadian Pacific*]; see also *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35), for which "the ultimate question remains whether the applicant knew the case to meet and had a full and fair chance to respond" (*Canadian Pacific* at para 56).



## V. Relevant Legislative Provisions

[28] Employers in the federally regulated sector must comply with the *Regulations* which are enacted pursuant to paragraph 125(1)(z.16) of the *Code*:

> Specific duties of employer
>
> **125 (1)** Without restricting the generality of section 124, every employer shall, in respect of every workplace controlled by the employer and, in respect of every work activity carried out by an employee in a workplace that is not controlled by the employer, to the extent that the employer controls the activity,
>
> **(z.16)** take the prescribed measures to prevent and protect against harassment and violence in the workplace, respond to occurrences of harassment and violence in the workplace and offer support to employees affected by harassment and violence in the workplace;

[29] The relevant prescribed measures in the *Regulations* are:

> Investigator's report
>
> 30 (1) An investigator's report regarding an occurrence must set out the following information
>
> (a) a general description of the occurrence;
>
> (b) their conclusions, including those related to the circumstances in the workplace that contributed to the occurrence; and
>
> (c) their recommendations to eliminate or minimize the risk of a similar occurrence.
>
> Completion of process

> 32 The resolution process for an occurrence is completed when
>
> (a) if a workplace assessment is required under subsection 6(1), the review and, if necessary, update of the assessment are carried out;
>
> (b) the occurrence is resolved under subsection 19(2) or under section 23 or 24;
>
> (c) if an investigator has provided a report in accordance with subsection 30(1), the employer implements the recommendations referred to in subsection 31(2).



[30] Section 208 of the *FPSLRA* addresses the right of employees to present individual grievances and subsection 208(2) sets out the following limitation thereto:

> Individual Grievances
>
> Presentation
>
> Right of employee
>
> 208 (1) Subject to subsections (2) to (7), an employee is entitled to present an individual grievance if he or she feels aggrieved
>
> (a) by the interpretation or application, in respect of the employee, of
>
> (i) a provision of a statute or regulation, or of a direction or other instrument made or issued by the employer, that deals with terms and conditions of employment, or
>
> (ii) a provision of a collective agreement or an arbitral award; or
>
> (b) as a result of any occurrence or matter affecting his or her terms and conditions of employment.
>
> Limitation
>
> (2) An employee may not present an individual grievance in respect of which an administrative procedure for redress is provided under any Act of Parliament, other than the Canadian Human Rights Act.

## VI. Analysis

### A. *Reasonableness*

[31] The Applicant submits several arguments in her application for judicial review. She argues that the CRA's decision to adopt the investigation report released on August 23, 2022, was unreasonable because the investigator ignored or misinterpreted key incidents, failed to interview key witnesses, and failed to make findings with respect to certain allegations and their impact on the Applicant.

[32] The Applicant also argues that the remedies available under the harassment investigation that occurred under the *Regulation*s of the *Code* and the CRA's *Work Place Harassment and Violence Prevention and Regulation Procedures* do not provide real, individual redress. Thus, it was unreasonable for the decision maker to find that the Regulations constitute an administrative procedure for redress under any Act of Parliament within the meaning of section 208(2) of the *FPSLRA*.

[33] The Respondent has not made submissions on this issue.

[34] Considering that the Respondent concedes that the Applicant's right to procedural fairness has been breached, the issue of the proper interpretation of subsection 208(2) of the *FPSLRA* and whether the remedies under the *Regulations* constitute an administrative procedure for redress under any Act of Parliament does not need to be addressed. I agree with the Respondent it is unnecessary to consider the reasonableness of the decision because both parties agree that procedural fairness was breached, as outlined below.

B. *Procedural Fairness*

[35] The Applicant submits that her right to procedural fairness was breached during the investigation. She was never given the opportunity to review or comment on the statements of the witness or Responding Parties. She never saw the evidence the other parties provided to the investigator. The Applicant also was never provided with a copy of the preliminary reports before they were finalized into the final report.

[36] The Applicant submits that the decision to deny her grievance ought to be quashed as well as the report generated by the investigator on August 23, 2022. She argues that the matter should be remitted for redetermination and a new investigation, with a new investigator should occur.

[37] The Respondent has conceded that the Applicant's right to procedural fairness has been breached, recognizing that she was never given the opportunity to respond to witness statements or to comment on the investigator's draft report before it was finalized.

[38] However, the Respondent submits the breach can be corrected by re-opening the investigation to allow the Applicant to respond to what the witness and Responding Parties said. The Applicant can also be given the opportunity to respond to the conclusions in the final investigation report. This would preserve the work that has already been done, prevent needless duplication, and result in the creation of a new report.

[39] Since both parties agree that the Applicant's right to procedural fairness has been breached, I will order the decision-makers and the employer's decision, be set aside.

[40] The main source of tension is determining the proper remedy. Thus, my analysis primarily revolves around four cases, *Cardinal v Director of Kent Institution*, 1985 CanLII 23 (SCC), [1985] 2 SCR 643 [*Cardinal*], *Pronovost v Canada (Revenue Agency)*, 2017 FC 1077 [*Pronovost*], *Marentette v Canada (Attorney General)*, 2024 FC 676 [*Marentette*] and *Brown v Canada (Attorney General)*, 2024 FC 823 [*Brown*].

[41] The Applicant relies upon *Cardinal*, *Pronovost*, and *Marentette* and distinguishes their case from *Brown*. The Respondent relies upon *Brown*.

[42] For the reasons that follow, I agree with the Applicant.

[43] In both *Pronovost* and *Marentette* the Court held that procedural fairness was breached when an investigator failed to give the Applicant access to the preliminary reports and an opportunity to respond to statements other parties made to the investigator (*Provonost* at paras 13-16 and *Marentette* at paras 15 and 51).

[44] The *Pronovost* decision involved an older version of the *Regulations*. However, in *Marentette* the Court followed the *Pronovost* decision and held that it was still relevant in the context of harassment investigations (*Marentette* at para 43). In *Marentette*, the Court granted judicial review and set aside a procedurally unfair decision and held that the proper remedy was to remit the matter back for redetermination for a new investigation.

[45] In *Brown* the Court held that the matter ought to be remitted up until the point of when the breaches of procedural fairness took place (*Brown* at paras 42-45). The investigation was re-opened, the work that the investigator had already done was preserved, and the Applicant was given an opportunity to respond to the statements made by the other parties. The Court found that in the circumstances of the case this was the most efficient way to avoid undue delay and unnecessary duplicative work.

[46] This approach was appropriate in *Brown*. The Applicant in that case was very concerned about delay in the process and the judge asked the parties about this approach and there were no objections.

[47] The case at bar can be distinguished from *Brown.* In *Brown* the investigation was much larger and required more time and resources to complete. The investigator had interviewed approximately twenty people and produced seven reports. The scale of the investigation and the Applicant's complaints of delay in getting his grievance redetermined explains the Court's approach to the remedy.

[48] Here, I find that there are no such reasons to depart from the approach in *Pronovost* and *Marentette*. The investigator only interviewed three people besides the Applicant and only produced two preliminary reports and a final one. The investigation in *Brown* dwarfs the investigation in the Applicant's case.

[49] In *Cardinal* the Supreme Court of Canada held that breaches in procedural fairness typically render a decision invalid and the remedy is to order a new hearing altogether (*Cardinal* at para 23).

[50] For these reasons, the application for judicial review is allowed. The decision to reject the Applicant's grievance is set aside. Also, I am referring the matter back to the CRA for redetermination after a new investigation is conducted by the same or a different investigator. The Applicant must have the opportunity to see and make submissions on evidence gathered in her absence and comment on the investigator's preliminary report before it is sent to her employer.

## VII. Conclusion

[51] For the foregoing reasons, judicial review is granted.

## VIII. Costs

[52] The Applicant sought the costs of her application. The Applicant having succeeded and after considering the parties submissions, the Court will order the Respondent to pay the Applicant $1,200.00 as her all-inclusive costs.

**JUDGMENT in T-3257-24**

**THIS COURT'S JUDGMENT is that**:

1. The application for judicial review is granted.
2. The CRA's decision dated September 18, 2024, rejecting the Applicant's grievance is set aside.
3. This matter is remanded back to the CRA for redetermination after a new investigation is conducted by the same or a different investigator and after the Applicant has had the opportunity to see and make submissions on evidence gathered in her absence and comment on the investigator's preliminary report before it is sent to the CRA.
4. The Respondent shall pay the Applicant $1,200.00 as her all-inclusive costs.

"L. Saint-Fleur"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | T-3257-24 |
| **STYLE OF CAUSE:** | XIUJUAN QI v ATTORNEY GENERAL OF CANADA |
| **PLACE OF HEARING:** | OTTAWA (ONTARIO) |
| **DATE OF HEARING:** | NOVEMBER 3, 2025 |
| **JUDGMENT AND REASONS:** | SAINT-FLEUR J. |
| **DATED:** | NOVEMBER 6, 2025 |

**APPEARANCES:**

| | |
|---|---|
| Xiujuan Qi | FOR THE APPLICANT (ON HER OWN BEHALF) |
| Virginie Gagnon-Dubreuil | FOR THE RESPONDENT |

**SOLICITOR OF RECORD:**

| | |
|---|---|
| Attorney General of Canada<br>Ottawa (Ontario) | FOR THE RESPONDENT |