

Date: 20071029

Docket: T-439-07

Citation: 2007 FC 1114

Ottawa, Ontario, October 29, 2007

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

ELIZABETH KRAVCHENKO-ROY

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR ORDER AND ORDER

[1] This is an application for judicial review of a decision rendered on February 5, 2007 by M. Séguin, a recourse officer (the Officer) of the Public Service Commission of Canada (the PSC), wherein it was determined that a complaint filed by the Applicant regarding her treatment in an employment process within the PSC was unfounded.

[2] The Applicant requests that the decision of the Officer be quashed and the matter be referred back to the Officer for consideration in light of any directions made in this regard by the Court. The relevant legislative provisions are reproduced at the end of these reasons.

BACKGROUND

[3] The Applicant, Ms. Kravchenko-Roy, commenced her employment with Health Canada (the Department) on July 9, 2001, as a term employee occupying the position of an Administrative Coordinator (CR-04 classification) at the Department's Healthy Environments and Consumer Safety Branch. The Applicant's term contract was renewed several times for administrative positions with the same classification.

[4] While on one such term contract, the Applicant participated in a public service competition for an indeterminate Executive Assistant position classified at the AS-01 level. The position was at the Population and Public Health Branch (PPHB) of the Department. Although she did not win the competition, the Applicant was informed, by letter dated April 4, 2003, that she was placed second on the eligibility list for that competition (the Eligibility List). The Eligibility List remained valid until March 17, 2004.

[5] On June 17, 2003, the Applicant was deployed into the Health Products and Food Branch (HPFB), Natural Health Products Directorate (NHPD), as a term Administrative Clerk at the CR-04 classification. Although this position was to end on March 31, 2004, the Applicant began an acting assignment as an Administrative Officer (AS-01) within the HPFB on September 2, 2003.

[6] On November 3, 2003, a Staffing Action Request (SAR) was sent by the Applicant's supervisor, Ms. Dolan, to the HPFB's Human Resources (HR) Services requesting the indeterminate appointment of the Applicant to position number HFHNO-00040, a position of Administrative Officer at the AS-01 classification (the Vacant Position). The proposed effective date on the SAR was October 1, 2003.

[7] The appointment to the Vacant Position was to be made from the Eligibility List. Permission to use the Eligibility List was obtained from the manager of the HPFB on November 13, 2003 and the proposed effective date on the SAR was changed to December 2, 2003.

[8] On December 2, 2003, a priority clearance request was sent to the PSC. At that time, the HR Advisor to the Applicant's supervisor noted in her Staffing File Checklist that a draft letter of offer was ready for review and signature.

[9] On December 18, 2003, the Applicant's supervisor, Ms. Dolan, accepted a deployment to another directorate of HPFB. Ms. Dolan was replaced by Ms. Malloy. The same day, the HPFB's Compensation Advisor, Mr. Brandimore, sent an email to the Applicant, which stated, in part, the following:

Please note that I have made the following adjustments to your
Salary:
[...]
Effective 02/12/03 Promotion to AS-01 Indeterminate @ \$40861.00
[...]

[10] The Applicant replied to the email of December 18, 2003 on December 22, 2003, stating that she was very happy to be an indeterminate employee. The next day, priority candidates were referred by the PSC to be evaluated for the Vacant Position. On January 9, 2004, an HR Advisor spoke with these candidates to determine if they were interested in the position. In the meantime, the Applicant had received a HPFB identity card with an expiry date of July 31, 2009.

[11] On February 27, 2004, the HPFB sent a letter to the Applicant indicating that her CR-04 term position with the Department would not be renewed after its expiry date of March 31, 2004, by reason of lack of work. On March 1, 2004, the Applicant wrote an email to department officials requesting a meeting to discuss the possibilities of a deployment. The requested meeting took place on March 2, 2004. Later that same day, an HR Advisor met with the Applicant to assist her in revising her resumé and seeking additional work. The next day, the HR Advisor sent an email to all the HR directors at the Department to inform them the Applicant was looking for work within the Department. This email stated there was an error in the pay and benefits system which mistakenly showed the Applicant's status as indeterminate and that this error was in the process of being corrected. The Applicant was copied on the email.

[12] The Applicant's term appointment ended as scheduled on March 31, 2004. Between April 22, 2004 and April 26, 2004, a series of emails were exchanged between the Applicant's new supervisor, Ms. Malloy, and HR Services regarding the staffing of the Vacant Position. On April 22, 2004, no assessment had been made with respect to the only remaining priority candidate who had expressed interest. The staffing process for the filling of the Vacant Position was cancelled on April 26, 2004.

[13] On May 21, 2004, the Applicant submitted a complaint to the PSC in accordance with section 7.1 of the *Public Service Employment Act*, R.S.C. 1985, c. P-33, as amended (the PSEA), asking the PSC to investigate the matter of her indeterminate appointment for a position of AS-01 alleged to have been made in December 2003.

[14] On October 4, 2004, the PSC declined to conduct an investigation on the ground that the Applicant had not received an official letter of offer, which the PSC regarded as the only document that could constitute an “instrument of appointment” under section 22 of the PSEA.

[15] On June 22, 2005, upon an application for judicial review of this refusal, considering that nothing in the PSEA indicates an instrument of appointment must be a letter of offer and cannot be an email, and upon consent of the parties and their joint submissions, this Court ordered that the Applicant’s complaint be sent back to the PSC for reconsideration.

[16] The Officer convened a fact-finding meeting on January 31, 2006. In a decision rendered on February 5, 2007 (the impugned decision), the Officer concluded that the actions and steps taken by the Department did not amount to the appointment of the Applicant to the Vacant Position. Accordingly, it was determined the complaint was unfounded.

GROUND OF ATTACK

[17] The Applicant challenges the Officer’s findings on two grounds. First, the Applicant submits that the Officer erred when, in spite of rejecting nearly all of the Department’s arguments,

he accepted the argument that the Compensation Advisor's email of December 18, 2003 was sent in error by an individual who was not the delegated authority. The Applicant asserts that the Officer erred in finding that "the actions and steps taken by the department did not amount to an appointment." Secondly, the Applicant states that the Officer erred by failing to consider the appointment process as a whole and in a manner that is consistent with the broad residual powers of section 7.1 of the PSEA. More specifically, the Applicant alleges that the Officer interpreted his jurisdiction too narrowly by failing to consider the Applicant's legitimate expectation and the unfair treatment of the Applicant in the context of the selection and appointment process.

[18] The Respondent submits that the Officer did not err when he determined that no binding offer of employment was made by a person with a delegated authority. It is unfortunate that the email of December 18, 2003 was sent to the Applicant. Nonetheless, the Officer noted in his decision that the evidence of ongoing steps in the competition process from December 2, 2003 to January 9, 2004, including the clearance request and the referral of priority candidates from the PSC, showed that the competition and appointment process for the Vacant Position was not over. Further, the Respondent states that the doctrine of legitimate expectation does not apply to any promises made outside the authority of the PSEA. In answer to some of the Applicant's submissions made at the hearing, counsel for the Respondent points out that the Officer was not asked to examine the "fairness" of the treatment received by the Applicant once she had been advised in February 2004 that her employment would not be renewed after March 31, 2004. In sum, the Respondent asserts the Officer's decision was reasonable in the particular circumstances of this case.

STANDARD OF REVIEW

[19] My colleague Justice Mosley conducted a pragmatic and functional analysis in *Orijii v. Canada (Attorney General)*, 2004 FC 666, [2004] F.C.J. No. 815 (QL). He determined that the appropriate standard of review of a recourse officer's decision regarding whether or not there has been a valid appointment is reasonableness *simpliciter*.

[20] At paragraph 19 of the former decision, he writes as follows:

I find that the standard of review in relation to the issues of whether the investigator erred in making her three findings; that is, that there had been no offer of employment, that a priority appointment had not been made and that Ms. Dumouchel was nonetheless appropriately appointed on an acting basis and therefore, any error in characterization of her appointment did not have an impact on the applicant's situation, to be subject to an overall standard of reasonableness *simpliciter*. I note, though, that where particular questions of law can be extricated from the investigator's factual findings, having regard to the nature of the question and the expertise of this Court in analysing the law relative to the investigator, I will apply the standard of correctness.

[21] I adopt this reasoning. That being said, regarding a recourse officer's particular findings of fact, I would also add that same deserves considerable deference and should be reviewed on the standard of patent unreasonableness: *Vogan v. Canada (Public Service Commission)*, 2005 FC 525, [2005] F.C.J. No. 644 (QL).

APPOINTMENT TO THE VACANT POSITION

[22] The dominant objective of the PSEA is to ensure that selection and appointment to the Public Service of Canada takes place according to merit: see *Bambrough v. Public Service*

Commission Appeal Board, [1976] 2 F.C. 109 (C.A.) at 115 and *Buttar v. Canada (Attorney General)*, [2000] F.C.J. No. 437 (C.A.) (QL).

[23] Section 7.1 of the PSEA vest in the PSC residual authority to investigate any matter within its jurisdiction. The circumstances and timing of an appointment to a position in the Public Service and the treatment of individuals in the context of that appointment and promotional process are matters that fit squarely within the jurisdiction of the PSC (*Winstanley v. Canada (Attorney General)*, 2005 FC 307, [2005] F.C.J. No. 387 (QL) at paras. 29 and 30).

[24] The purpose of an investigation conducted pursuant to section 7.1 of the PSEA is to provide a recommendation to the PSC so that the PSC may take any corrective action that it considers appropriate (see section 7.5 of the PSEA). The power to provide such recommendation is discretionary, rather than mandatory (*Orijji*, above at para. 21).

[25] Section 10 of the PSEA provides that selection must be made according to merit, usually as determined by competition. Candidates who are found to be qualified are placed on an eligibility list and ranked in accordance to their relative merit. Higher rank candidates are appointed in order to the relevant positions. In some cases, an established eligibility list can be used for other similar positions. Under the PSEA and the new *Public Service Employment Act*, S.C. 2003, c. 22, which came into force on December 31, 2005, no public servant can be appointed by someone without delegated authority.

[26] In the present case, there is little dispute over the facts. There was a valid eligibility list and the Applicant was qualified for the position. A key function of the investigation by the Officer was to determine whether the Applicant was given an offer of employment, and whether, as a result, considering all the other relevant elements on record, an enforceable appointment of the Applicant to the AS-01 Administrative Officer position for indeterminate tenure had been made in December 2003, as alleged by the Applicant.

[27] At the fact-finding meeting on January 31, 2006, the Applicant advanced the argument that there was an enforceable appointment to the Vacant Position. The Applicant submitted to the Officer that the following facts were sufficient to constitute an appointment:

- A position was identified;
- The financial approval to staff the Applicant in the AS-01 position was requested through the SAR;
- The Applicant's supervisor approached her for the position and obtained permission to use the Eligibility List;
- The Applicant received an identity card valid until 2009; and,
- The Applicant received an email from the Compensation Advisor confirming her indeterminate status.

[28] The Department, for its part, did not deny its intent to appoint the Applicant to the Vacant Position. However, despite these intentions, the Respondent submitted at the fact-finding meeting that no offer of employment was actually made to the Applicant or could legally be made in December 2003 for the following reasons:

- It would have been illegal to appoint the Applicant from the Eligibility List given the lack of similarity between the AS-01 Executive Assistant Position and the AS-01 Administrative Assistant position; the inconsistent area of selection; management's assessment that the Applicant did not possess the requisite knowledge and abilities to be successful in the Vacant Position; and the absence of priority clearance; and,
- There was no clear written or verbal offer made by a delegated authority to the Applicant and accepted by her with agreement regarding the effective date of appointment.

[29] The Officer found that the Department was in a position to appoint the Applicant to the Vacant Position, and originally intended to do so. The Officer found as a fact that the Executive Assistant Position and the Administrative Officer positions are similar positions. Likewise, the Officer was of the view that it was appropriate for the Applicant's supervisor to request permission to use the Eligibility List in staffing the Vacant Position. Further, the Officer determined the Department's argument that the Applicant did not possess the knowledge and ability to occupy the Vacant Position was without merit. However, based on the evidence before him, the Officer found as a fact that the Department did not follow through on its intention and that further specific steps were required prior the appointment of the Applicant to the Vacant Position. While the process was not completed, the Department decided in February 2004 not to renew the Applicant's term contract by reason of lack of work.

[30] At paragraphs 42 and 43, the Officer clearly stated why, in his opinion, the email of December 18, 2003 from the Compensation Advisor (wherein it was stated the Applicant was promoted to an “AS-01 Indeterminate”) did not constitute a binding offer of employment.

Even though the email has the characteristics of a letter offer (effective date, salary, tenure), it is clear that the Compensation Advisor did not have the delegated authority to make such an offer. It is unfortunate that this had an impact on the legitimate expectations of the complainant. However, some specific steps have to be done to conclude to an appointment. In fact, the request to the PSC for a clearance number on December 2, 2003, is more an indication that the appointment process was not yet completed. Moreover, after receiving names of priority persons by the PSC on December 23, 2003, one person was assessed on January 9, 2004. These facts seem to corroborate that the appointment process was not complete before the e-mail sent by Mr. Brandimore [the Compensation Advisor] and the issuance of the new identity card to the complainant.

[31] The Applicant admits that the Compensation Advisor was not a delegated authority empowered under the PSEA to make an enforceable offer of employment to her. Nevertheless, the Applicant states the Compensation Advisor’s email was based on documents or instructions delivered by the Applicant’s supervisor (an individual empowered to make enforceable appointments) and accordingly, constitutes a valid offer of employment. To this extent, the Applicant argues that it is a “perversely narrow interpretation of the *Act* [PSEA] for the Recourse Officer to now find that there was no appointment simply because the offer was technically communicated by someone without the delegated authority to make appointments.”

[32] The Officer had the special expertise to make findings of fact with respect to the appointment process and correctly applied the law governing indeterminate appointments in the Public Service, as prescribed by subsections 6(1), 6(5) and 10(1) of the PSEA and the applicable instruments of delegation. The Officer accepted as a fact that the email was sent in error. The

Officer also found that the appointment process was not complete. These findings of fact are not patently unreasonable and are based on the evidence on record. It is apparent from a reading of the impugned decision that the Officer considered the totality of the evidence submitted by the parties. Indeed, the Officer had before him evidence to the effect that on December 2, 2003, Ms. Vincent, the Staffing Assistant, submitted a request to the PSC for priority clearance, a necessary step in proceeding with the request to appoint the Applicant. While waiting to hear back from the PSC, Ms. Vincent entered the preliminary information for the Applicant into HR Advantage and drafted the necessary documents (i.e. letter of offer). This is a standard procedure to allow for a faster turnaround once priority clearance is obtained. On December 23, 2003, the PSC referred three priority candidates to the Department for consideration. On January 9, 2004, the Staffing Assistant noted on the Staffing Checklist that she spoke with the three priority candidates.

[33] The Department submitted to the Officer that the email of December 18, 2003 was based on erroneous information and provided the following explanations:

Normally, when an appointment is finalized (i.e. an offer is made by a delegated manager, accepted by the employee, and an effective date is agreed to), the Staffing Assistant will send a Record of Staffing Transaction (ROST) to Pay and Benefits via HR Advantage. However, in this case, it is believed that the draft ROST prepared by Ms. Vincent, including the alleged effective date of December 12, 2003, was sent to Pay and Benefits in error. Note that the Department has been unable to determine the significance of the December 12, 2003 date. None of the supporting documentation mentions this date (i.e. the SAR) and neither Human Resources nor management can recall this date from their discussions. The draft December 12, 2003 ROST was then deleted and replaced with another draft ROST. This draft ROST had an effective date of December 2, 2003. Although it is not clear why, it is likely that this occurred as a result of confusion regarding Ms. Kravchenko-Roy's continued acting in the same position for which the indeterminate appointment has been proposed – position number HFNHO-00040. The draft

December 2, 2003 ROST was never sent to Pay and Benefits as it would indicate “sent to pay” in section called “Pay Notified” [reference omitted]. Health Canada is unable to locate the draft December 12, 2003 ROST as when a ROST is deleted it is no longer accessible.

Mr. Michael Brandimore, Compensation Advisor responsible for NHPD then used information that was automatically downloaded to his pay log screen (PLOG) from the first, incorrect ROST to update the pay system and Ms. Kravchenko-Roy’s pay card. Ms. Kravchenko-Roy telephoned Mr. Brandimore asking him if she was an indeterminate employee. He thought that this seemed peculiar as this type of inquiry would normally be addressed to the employee’s manager or someone in staffing. Mr. Brandimore asked Ms. Kravchenko-Roy if she had signed a letter of offer to confirm her indeterminate appointment and she responded that she couldn’t remember but may have. Doing his best to help Ms. Kravchenko-Roy, he told her that the system indicated that she was an indeterminate employee. Then, at her request, Mr. Brandimore wrote Ms. Kravchenko-Roy an email on December 18, 2003 confirming that she had been promoted to indeterminate effective December 12, 2003, not realizing that he was passing on incorrect information [reference omitted].

[Emphasis in the original]

[34] Since the appointment process was not complete when the Compensation Advisor sent the email of December 18, 2003 to the Applicant, the Compensation Advisor could not have been acting on behalf of a delegated authority (*Panagopoulos v. Canada*, [1990] F.C.J. No. 234 (T.D.) at para. 40 (QL)). As such, the Compensation Advisor was acting both in excess of his own authority and without the instructions of a delegated authority.

[35] Overall, reading the impugned decision as a whole, as promises of employment made in excess of delegated authority do not contractually bind the PSC, the Officer’s findings that there was no enforceable appointment is supported by the evidence on record and can stand up to a probing examination.

LEGITIMATE EXPECTATIONS OF THE APPLICANT

[36] The Applicant further alleges the Officer failed to consider the appointment process as a whole and in a manner that is consistent with the broad residual powers of section 7.1 of the PSEA. Given the broad residual powers, the Applicant submits the Officer interpreted his jurisdiction too narrowly by failing to consider the Applicant's legitimate expectations.

[37] As explained by the Department in its presentation to the Officer, the mistakes in HR Advantage and the pay system, along with the Compensation Advisor's December 18, 2003 email, lead to a series of subsequent errors with regards to the Applicant's employment tenure. These included the following:

- An email on January 8, 2004, from Ms. Debbie Reid, HR Coordinator for NHPD at that time, to Ms. Shireen Khan, HPFB Security Coordinator indicating that "this employee is now indeterminate". Ms. Reid sent this email based on the erroneous information provided to the Applicant in the earlier email from the Compensation Advisor rather than confirming that a letter of offer had been released and signed by all parties;
- The Applicant was then provided with a Department building access/security badge that would normally be provided to an indeterminate employee based on the information provided by Ms. Khan;
- The ILAM (Interactive Leave and Attendance Module) is uploaded from HR Advantage and may have taken some time to reflect corrections made in the system.

Therefore, her tenure would have been misrepresented for a period of time following the mistake;

- As mentioned earlier, the Applicant's pay card was revised by the Compensation Advisor to erroneously reflect a change in tenure from term to indeterminate effective December 12, 2003. As per standard procedure, the Compensation Advisor later crossed out this entry once he realized that this had been a mistake. There is no "unknown hand" involved as the Compensation Advisor was solely responsible for the Applicant's pay card.

[38] In the present case, the email from the Compensation Advisor of December 18, 2004 was found by the Officer to have "had an impact on the legitimate expectations of the complainant." The same may be said of the fact that the Applicant was given a security pass that was valid until 2009. At paragraph 2 of the impugned decision, the Officer notes that all submissions and information provided by the parties, although not necessarily reproduced in the decision, were given consideration in leading to the analysis and conclusions found within the same.

[39] There is no evidence before me to suggest the Officer failed to consider the legitimate expectations of the Applicant. Having carefully read the Officer's decision, I am of the view that the Officer thoroughly considered the impact of the email from the Compensation Officer on the legitimate expectations of the Applicant. While the Officer found the email to be "unfortunate" it was not, in his opinion, determinative (as the Applicant alleges) of her legitimate expectations regarding her appointment to the Vacant Position.

[40] I also note this Court in *Panagopoulos*, above, stated at paragraph 12: “For this doctrine [of legitimate expectation] to apply, the promise [of an offer of employment] in question would have had not to be contrary to the provisions of the Act [the PSEA].” As I have already stated, the Compensation Officer was not a delegated authority who is empowered to make an offer of employment. As such, even if I were of the opinion that the Compensation Officer’s email of December 18, 2003 created a legitimate expectation on the part of the Applicant that she had been appointed to the Vacant Position, this appointment would have been contrary to the provisions of the PSEA, thus the doctrine of legitimate expectation does not apply to the case at bar.

[41] At the hearing of this application, the Applicant’s counsel also stressed that the Department’s treatment of the Applicant was unfair in the circumstances. In this regard, the late notification that an administrative error had been committed had the effect of diminishing the Applicant’s chances to obtain a term or an indeterminate appointment as a CR-04 elsewhere within the Department.

[42] I am satisfied that the issues of unfair treatment raised by the Applicant are not determinative and have no bearing on the decision made by the Officer to dismiss the complaint. The evidence on record is not persuasive and would not justify this Court to set aside the impugned decision and return the matter to the PSC for reconsideration.

[43] On February 27, 2004, the Applicant received a letter from the Director-General indicating that her current CR-04 term appointment would not be renewed beyond its expiry date of March 31, 2004. No grievance was made to challenge the legality of this termination.

[44] On March 1, 2004, the Applicant wrote an email to department officials requesting a meeting (the Meeting) with the Director-General. The relevant parts of the email read as follows:

[...] I am wondering if both of you would be able to meet with Megan [the Applicant's Supervisor], Philip Waddington [the Director-General] and myself tomorrow at 2:00 pm? I sent the following e-mail to Philip this afternoon and would like to discuss the possibilities of a Deployment. I don't find it necessary to discuss the "reasons" behind why there is a "lack of work" in DGO. I am more interested to discuss the possibilities of being Deployed within the Directorate.

[45] That same day, the Applicant sent an email to an HR Advisor thanking her for helping the Applicant search for suitable employment. At the Meeting, the Applicant did not take the position she had already been appointed to the Vacant Position. Instead she raised the possibility of other deployments.

[46] Further on March 2, 2004, the Applicant met with the HR Advisor to hone her resumé and discuss seeking additional work. The next day, the Applicant was copied on the email sent to all the HR directors at the Department which indicated an error had been made in the pay and benefits systems which mistakenly showed the Applicant's status as indeterminate.

[47] By mid-March, although the Applicant again met with the Director-General, she did not raise any issues regarding the termination of her contract nor did she raise any concerns that she

had already been appointed to the Vacant Position. Finally, while her term position ended on March 31, 2004, the Applicant did not submit a complaint to the PSC for almost two months.

[48] In the present case, the Officer made the finding that the legal steps necessary to complete the AS-01 competition and appoint the Applicant indeterminately had not been taken, and therefore no appointment existed in law. If these steps were to have been found to create an enforceable appointment, an intention to hire someone could be imputed by a candidate to be a commitment at any point halfway through a competitive process, especially in situations where it is known that the managers hoped to hire him or her. This would undermine the selection process mandated by the PSEA, including the legal entitlement of priority candidates already in the Public Service waiting for appointment. In view of the evidence on record and the principles of the law, the allegations of unfair treatment made by the Applicant have no merit.

CONCLUSION

[49] For the above reasons, this application for judicial review shall be dismissed.

[50] In the ordinary course of litigation in this Court, costs follow the result, that is to say costs are payable by the unsuccessful party to the successful party.

[51] I have specifically considered the fact that in the impugned decision, the Officer found that it was unfortunate that the email of December 18, 2003 had an impact on the legitimate expectations of the Applicant. I am of the view having regard to my discretionary authority and the factors set out in Rule 400 of the *Federal Courts Rules*, SOR/98-106, that although the

Applicant is not successful in this application, the conduct of the Department, while not outside the law, nonetheless was poorly managed. With this in mind, I decline to award costs in favour of the Respondent.

ORDER

THIS COURT ORDERS that this application for judicial review be dismissed. Parties to bear their own costs.

“Luc Martineau”

Judge

APPENDIX “A”

The relevant sections of the *Public Service Employment Act*, R.S.C. 1985, c. P-33, as amended and effective as at December 30, 2005, are as follows:

<p>Delegation to deputy head</p> <p>6. (1) The Commission may authorize a deputy head to exercise and perform, in such manner and subject to such terms and conditions as the Commission directs, any of the powers, functions and duties of the Commission under this Act, other than the powers, functions and duties of the Commission under sections 7.1, 21, 34, 34.4 and 34.5. [...]</p>	<p>Délégation à un administrateur général</p> <p>6. (1) La Commission peut autoriser un administrateur général à exercer, selon les modalités qu'elle fixe, tous pouvoirs et fonctions que lui attribue la présente loi, sauf en ce qui concerne ceux prévus aux articles 7.1, 21, 34, 34.4 et 34.5. [...]</p>
<p>Delegation by deputy head</p> <p>(5) Subject to subsection (6), a deputy head may authorize one or more persons under the jurisdiction of the deputy head or any other person to exercise and perform any of the powers, functions or duties of the deputy head under this Act including, subject to the approval of the Commission and in accordance with the authority granted by it under this section, any of the powers, functions and duties that the Commission has authorized the deputy head to exercise and perform. [...]</p>	<p>Délégation par l'administrateur général</p> <p>(5) Sous réserve du paragraphe (6), un administrateur général peut autoriser des subordonnés ou toute autre personne à exercer l'un des pouvoirs et fonctions que lui confère la présente loi, y compris, mais avec l'approbation de la Commission et conformément à la délégation de pouvoirs accordée par celle-ci en vertu du présent article, l'un de ceux que la Commission l'a autorisé à exercer. [...]</p>

Investigations and audits

7.1 The Commission may conduct investigations and audits on any matter within its jurisdiction.

[...]

Corrective action

7.5 Subject to section 34.5, the Commission may, on the basis of any investigation, report or audit under this Act, take, or order a deputy head to take, such corrective action as the Commission considers appropriate.

[...]

Appointments to be based on merit

10. (1) Appointments to or from within the public service shall be based on selection according to merit, as determined by the Commission, and shall be made by the Commission, at the request of the deputy head concerned, by competition or by such other process of personnel selection designed to establish the merit of candidates as the Commission considers is in the best interests of the public service.

Idem

(2) For the purposes of subsection (1), selection according to merit may, in the

Enquêtes et vérifications

7.1 La Commission peut effectuer les enquêtes et vérifications qu'elle juge indiquées sur toute question relevant de sa compétence.

[...]

Mesures de redressement

7.5 Sous réserve de l'article 34.5, la Commission peut, selon les résultats des enquêtes, rapports ou vérifications effectués sous le régime de la présente loi, prendre ou ordonner à un administrateur général de prendre les mesures de redressement qu'elle juge indiquées.

[...]

Nominations au mérite

10. (1) Les nominations internes ou externes à des postes de la fonction publique se font sur la base d'une sélection fondée sur le mérite, selon ce que détermine la Commission, et à la demande de l'administrateur général intéressé, soit par concours, soit par tout autre mode de sélection du personnel fondé sur le mérite des candidats que la Commission estime le mieux adapté aux intérêts de la fonction publique.

Idem

(2) Pour l'application du paragraphe (1), la sélection au mérite peut, dans les circonstances déterminées par

circumstances prescribed by the regulations of the Commission, be based on the competence of a person being considered for appointment as measured by such standard of competence as the Commission may establish, rather than as measured against the competence of other persons.
[...]

règlement de la Commission, être fondée sur des normes de compétence fixées par celle-ci plutôt que sur un examen comparatif des candidats.

[...]

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-439-07

STYLE OF CAUSE: Elizabeth Kravchenko-Roy v. Attorney General of
Canada

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REASONS FOR ORDER: MARTINEAU J.

DATED: October 29, 2007

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