

**Date: 20080129**

**Docket: T-298-07**

**Citation: 2008 FC 110**

**Ottawa, Ontario, January 29, 2008**

**Present: The Honourable Mr. Justice Blanchard**

**BETWEEN:**

**NORMAND SANSAÇON**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] The applicant, Normand Sansfaçon, is a member of the Royal Canadian Mounted Police. He submitted a request for intervention regarding the retroactivity of his promotion. The request for intervention was filed under subsections 21(2) and 31(1) of the *Royal Canadian Mounted Police Act*, R.S.C. (2nd suppl.), c. 8 (the RCMP Act). Adjudicator Coleman, appointed following the request for intervention under the provisions of the *Commissioner's Standing Orders (Dispute Resolution Process for Promotions and Job Requirements)* SOR/2000-141 (Commissioner's Standing Orders), issued a decision on December 28, 2006, dismissing the applicant's request for intervention. This is an application for judicial review of that decision.

I. Background

[2] On May 25, 2001, the applicant, who was employed as a constable, applied for the Understudy Program of the Special “I” Section in Montréal, following the publication of Bulletin CMM-492. The purpose of the Bulletin, published on May 15, 2001, was to advertise a “Job Opportunity within the RCMP” for the position of “Regular Member – Special “I” Sections anywhere in Canada, Special “I” Understudy (Cst) – see App. A.”

[3] The applicant’s application was accepted on October 9, 2001; the officer in charge of the Staffing and Personnel Section authorized the applicant’s lateral transfer to the Special “I” Section in Montréal in the Understudy Program. The applicant began his training on October 16, 2001.

[4] On February 6, 2002, the applicant filed a grievance under section 31 of the RCMP Act. He contended that he should have been promoted to the rank of corporal on the date he entered the Special “I” Section Understudy Training Program, i.e., October 16, 2001, in accordance with Job Code 1060 which, the applicant says, was in effect at the time of his transfer. Code 1060 states, according to the special requirements or abilities set out therein, that “the promotion will be effective the date of entry into the Technical Services Branch, Special “I” Understudy Technical Installer Program.” When the applicant entered the training program, Job Code 3014 was also in effect. According to that code, the position of understudy in Special “I” Sections was

designed for the rank of constable. The requirements for this Job Code were still being developed at that time.

[5] On February 12, 2002, the applicant was advised by an e-mail from the Grievance Registrar that he had not used the correct process to enforce his rights. He was told that the new process for dispute resolution regarding promotions, referred to as “a request for intervention”, had been in effect since April 2000. However, the applicant insisted that the grievance continue and be heard by an adjudicator under the former process.

[6] On September 24, 2002, the Level I adjudicator dismissed the applicant’s grievance on the ground that CMM-492 was clear and that the [TRANSLATION] “advertised positions were at the rank of constable and that the selected candidates had to wait until they successfully completed the Understudy Program and passed the promotion process examinations before being promoted to the rank of corporal.”

[7] The applicant presented the same grievance to the level II adjudicator. Once again, the adjudicator dismissed the grievance on March 29, 2004, on the ground that the applicant did not have standing and that the request for intervention process was the appropriate process to remedy the alleged harm.

[8] On May 11, 2004, the applicant presented a request for intervention under the Commissioner's Standing Orders. The entire file regarding the February 6, 2002, grievance was included in the request for intervention file that was submitted to Adjudicator Coleman for determination.

[9] On December 28, 2006, Adjudicator Coleman dismissed the request for intervention on the ground that Bulletin CMM-492 was clearly addressed to constables for positions of constables. Adjudicator Coleman also referred to the applicant's transfer form, which indicates a lateral transfer at the rank of constable.

[10] On February 15, 2007, the applicant filed an application for judicial review of Adjudicator Coleman's decision.

## II. Impugned decision

[11] In his decision of December 28, 2006, Adjudicator Coleman made the following findings:

[TRANSLATION]

(a) Bulletin CMM-492 was intended to apply to constables;

(b) The fact that Code 1060, which is a code that is applied for the rank of corporal, appeared on all the correspondence is immaterial, despite the existence of Code 3014;

- (c) Adjudicator Coleman found that he did not have jurisdiction to determine whether the applicant's tasks were the same as his colleagues who held the rank of corporal;
- (d) The applicant failed to establish that he was aggrieved or prejudiced;
- (e) Consequently, the applicant did not have standing, and the grievance was dismissed.

### III. Relevant legislation

[12] The relevant legislation pertaining to the RCMP grievance procedure is the RCMP Act and the Commissioner's Standing Orders. The relevant provisions can be found in the Appendix to this judgment.

### IV. Issue

[13] The only issue is whether Adjudicator Coleman erred in his decision.

### V. Standard of review

[14] In *Shephard v. Canada (Royal Canadian Mounted Police)*, 2003 FC 1296 at paragraphs 35-36 (set aside on other grounds by (2004), 242 D.L.R. (4th) 529 (F.C.A.)), the Court conducted a pragmatic and functional analysis to determine the appropriate standard of review of an adjudicator's decision dismissing a request to intervene. The Court noted the privative clause in section 25 of the Commissioner's Standing Orders, the special expertise of

adjudicators to deal with the issues before them, the broad powers of adjudicators in this regard, and that the issue was a question of fact, not a question of law. Accordingly, the Court found at paragraph 36 that “all of the factors in a pragmatic and functional analysis lead to the conclusion that great deference should be given to the Adjudicator in this matter” and therefore the standard of review is patent unreasonableness (*Smith v. Canada (Attorney General)*, 2005 FC 868 at paragraph 13, and *Gillis v. Canada (Attorney General)*, 2006 FC 568 at paragraph 27).

[15] In this case, the same privative clause applies; the adjudicator, in accordance with the same RCMP policy, must be an officer or senior manager in order to have the expertise pertaining to requirements of positions and the RCMP promotion process; the objectives of the grievance provision and of the RCMP Act are identical; and the issue is essentially a question of fact. Therefore, in this case, I am adopting the pragmatic and functional analysis that was done in *Shephard*, above, and the resultant standard of review is patent unreasonableness.

## VI. Analysis

### *Preliminary issues*

[16] At the hearing, counsel for the respondent asked that the Attorney General of Canada be designated as the respondent since the RCMP is not a legal entity. The applicant did not object and the request was granted.

[17] The respondent submits that certain documents tendered in evidence that were not before Adjudicator Coleman, in particular, a decision of a Level I adjudicator dated February 8, 2007, concerning the date of a certificate, should not have been included in the court record and should not be considered for purposes of this application for judicial review.

[18] Since the decision in question was issued more than a month after Adjudicator Coleman's decision, it could not have been before him for purposes of the decision that he made. Accordingly, this evidence will not be considered on the application for judicial review.

[19] As a preliminary issue, the respondent argues that the 30-day deadline in section 8(1) of the Commissioner's Standing Orders to submit a request for intervention has expired. The respondent submits that the applicant was aware, at the latest by January 8, 2002, of the decision of Sergeant Mario Grégoire to use Job Code 1060, as can be seen on the applicant's request for intervention form dated May 11, 2004. The respondent adds that the applicant knew when the notice of transfer was signed on October 9, 2001, that he had been transferred from a constable position to another constable position. Thus, the request for intervention was filed late and should be dismissed on that ground alone.

[20] The applicant submits that he did comply with the deadlines in this case since he believed that the grievance process was the correct procedure to follow and, therefore, he was not required to request an extension of time. He says that he was ready to discuss the issue of deadlines at any time

and that nobody raised the issue. The applicant notes that Adjudicator Coleman accepted his request for intervention and that he rendered a decision on the substantive issues of the grievance.

Furthermore, Adjudicator Coleman did not question his jurisdiction on the basis of non-compliance with deadlines. On the contrary, he explicitly acknowledged [TRANSLATION] “his authority to determine this request for intervention.”

[21] The documentary evidence indicates that the applicant submitted his request for intervention beyond the 30-day time period prescribed by section 8(1) of the Commissioner’s Standing Orders. Section 27(1) provides that an extension of time may be granted in the circumstances set out therein. The applicant did not submit such a request. Notwithstanding the applicant’s failure to comply with the prescribed time limits, the issue arose at the hearing as to whether Adjudicator Coleman tacitly extended the time periods by accepting and dealing with the request for intervention. Although the issue was not fully discussed before the Court, I am of the view that the argument as to the extension of time can be raised under the circumstances. In any event, I do not have to dispose of this dispute on the basis of non-compliance with the deadlines because, for the following reasons, I am of the view that the applicant has not demonstrated that Adjudicator Coleman erred in his findings on the substantive issues of the grievance.

*Is Adjudicator Coleman’s decision patently unreasonable?*

[22] Bulletin CMM-492 dated May 15, 2001, stated that the Staffing and Personnel Section, Central Region, Ottawa, was seeking candidates for the Special “I” Understudy position. The



following details about the position are found in Appendix A of the Bulletin:

...	[...]
3. Position No. and Rank/Level: <u>Constable</u>	3. Numéro et grade ou niveau de poste: <u>Constable</u>
5. Job Requirements:	5. Exigences du poste:
a. Open to: All qualified <u>constables</u> .	a. Employés admissibles: <u>Tous les constables</u> compétents.
NOTES:	NOTA:
1. <u>Promotion to the Corporal rank will be contingent</u> upon successful completion of the two years Understudy Program, meeting the prescribed selection criteria and successful completion of the current promotion system. (emphasis added)	1. <u>La promotion au grade de caporal sera accordée sous réserve</u> de réussite du Programme de stage, de la satisfaction des critères de sélection établis ainsi que de la réussite des examens du processus d'avancement en vigueur. (emphase ajoutée)

[23] The applicant admits that he applied for the position after reading Bulletin CMM-492 but argues that, notwithstanding the procedure described in Bulletin CMM-492, Job Code 1060 was used in all the correspondence in his case and therefore should prevail. The applicant quotes the following passage from Job Code 1060 in support of his submissions:

- c. Special Requirements/Abilities:
1. Promotion will be effective the date of entry into the Technical Services Branch, Special "T" Understudy Technical Installer Program.
  2. A continuing tour of duty in Special "T" is contingent upon successful completion of the Technical Services Branch, Special "T" Understudy Installer Program (maximum two years) as determined by the policy centre. [Emphasis added.]

Thus, the applicant submits that his promotion to the rank of corporal should have been effective on the date he entered the program. Furthermore, he maintains that Job Code 3014 for the position of understudy in Special "T" Sections already existed, that it was designed for the rank of constable and

that this code has appeared in the Career Management Manual since May 24, 2001. The applicant also argues that the procedure set out in Bulletin CMM-492 could not have applied to him because one of the special requirements, set out in section 5.(e)(1) of the Bulletin requires that “Candidates will be required to successfully complete the Special “I” Understudy Orientation Program with a recommendation acknowledging suitability for performing Special “I” duties.” According to the applicant, he never took the Special “I” Understudy Orientation Program and never received a recommendation acknowledging his suitability.

[24] Last, in support of his submissions, the applicant refers to a decision of Adjudicator Tranquilla, rendered October 29, 2006, following a grievance filed by the applicant about a refusal to pay him acting pay. Adjudicator Tranquilla determined that the Job Code that was in effect when the applicant entered the Understudy Training Program, i.e., Code 1060, was the one that should be applied in this matter.

[25] The respondent contends that Adjudicator Coleman’s decision is supported by the evidence in the record, in particular:

- (a) The applicant applied for the Understudy Program under Bulletin CMM-492.
- (b) Bulletin CMM-492 was addressed to members at the constable level and stated that a promotion would be granted upon successful completion of the program.
- (c) The authorization of transfer form indicates a lateral transfer from constable to constable.
- (d) The publication of Bulletin CMM-492 nullified the selection criteria in Job Code 1060 because, in particular, it would be illogical to grant

- promotions to members at the beginning of the program and then remove them if the members failed the training.
- (e) All the constables enrolled in the program were transferred under Job Code 1060 and they were corrected (*sic*) for Job Code 3014. That the job code was intended to be a mere formality and not a job offer.
  - (f) The promotion to the rank of corporal is not retroactive.

[26] At first glance, with respect to the applicant's submissions about Adjudicator Tranquilla's decision of October 29, 2006, I am of the view that this decision has no impact on this litigation. That decision dealt with a different remedy, a different dispute and different relief sought by the applicant.

[27] After reviewing the evidence in the record, I am of the view that Adjudicator Coleman did not err in finding that the intention of Bulletin CMM-492 was clear and that this process was directed to constables for constable positions. The memorandum dated June 19, 2002, from Inspector Guay to the officer in charge of the Staffing and Personnel Section, Central Region, explained the use of Job Code 1060 at the time of the transfer. He wrote: [TRANSLATION] "With respect to Job Code 1060, which was used at the time of the transfers, this is explained by the fact that Job Code 3014 was not known at that time. On that point, I would like to point out that all the constables in the program who were transferred under Job Code 1060 were corrected by Job Code 3014." This explanation is completely logical considering the circumstances. At the time of the transfer, although Job Code 3014 existed, the requirements pertaining to this Job Code were in

the process of being developed. I am satisfied that, in this case, the use of Job Code 1060 was intended to be a formality and not a job offer.

[28] I am also satisfied that Adjudicator Coleman's decision, interpreted as a whole, was based on the evidence. The decision was not made in a perverse or capricious manner or without regard for the material before him. I cannot find that his decision was patently unreasonable.

[29] For these reasons, the intervention of the Court is not warranted. The application for judicial review will therefore be dismissed.

[30] The applicant requested that costs not be ordered against him. He explained that he always acted in good faith under the circumstances and that he was only seeking to enforce his rights in filing this application with the Court. Although I can accept that the applicant always acted in good faith, that is not a sufficient reason to grant his request. The respondent will have his costs under the circumstances.

**JUDGMENT**

**THE COURT ORDERS THAT**

1. The application for judicial review is dismissed with costs.
  
2. The name of the respondent, Royal Canadian Mounted Police, in the style of cause is replaced by the Attorney General of Canada.

\_\_\_\_\_  
“Edmond P. Blanchard”

Certified true translation  
Mary Jo Egan, LLB

## Appendix

*Royal Canadian Mounted Police Act* (R.S.C. 1985, c. R-10 ): sections 21 and 31.

**21.** (1) The Governor in Council may make regulations

(a) respecting the administrative discharge of members;

(b) for the organization, training, conduct, performance of duties, discipline, efficiency, administration or good government of the Force; and

(c) generally, for carrying the purposes and provisions of this Act into effect.

(2) Subject to this Act and the regulations, the Commissioner may make rules

(a) respecting the administrative discharge of members; and

(b) for the organization, training, conduct, performance of duties, discipline, efficiency, administration or good government of the Force.

**31.** (1) Subject to subsections (2) and (3), where any member is aggrieved by any decision, act or omission in the administration of the affairs of the Force in respect of which no other process for redress is provided by this Act, the regulations or the Commissioner's standing orders, the member is entitled to present the grievance in writing at each of the levels, up to and including the final level, in the grievance process provided for by this Part.

(2) A grievance under this Part must be presented

(a) at the initial level in the grievance

**21.** (1) Le gouverneur en conseil peut prendre des règlements:

a) concernant le renvoi, par mesure administrative, des membres;

b) sur l'organisation, la formation, la conduite, l'exercice des fonctions, la discipline, l'efficacité et la bonne administration de la Constablerie;

c) de façon générale, sur la mise en oeuvre de la présente loi.

(2) Sous réserve des autres dispositions de la présente loi et de ses règlements, le commissaire peut établir des règles:

a) concernant le renvoi, par mesure administrative, des membres;

b) sur l'organisation, la formation, la conduite, l'exercice des fonctions, la discipline, l'efficacité et la bonne administration de la Constablerie.

**31.** (1) Sous réserve des paragraphes (2) et (3), un membre à qui une décision, un acte ou une omission liés à la gestion des affaires de la Constablerie causent un préjudice peut présenter son grief par écrit à chacun des niveaux que prévoit la procédure applicable aux griefs prévue à la présente partie dans le cas où la présente loi, ses règlements ou les Commissioner's Standing Orders ne prévoient aucune autre procédure pour corriger ce préjudice.

(2) Un grief visé à la présente partie doit être présenté:

a) au premier niveau de la procédure

process, within thirty days after the day on which the aggrieved member knew or reasonably ought to have known of the decision, act or omission giving rise to the grievance; and

(b) at the second and any succeeding level in the grievance process, within fourteen days after the day the aggrieved member is served with the decision of the immediately preceding level in respect of the grievance.

(3) No appointment by the Commissioner to a position prescribed pursuant to subsection (7) may be the subject of a grievance under this Part.

(4) Subject to any limitations prescribed pursuant to paragraph 36(b), any member presenting a grievance shall be granted access to such written or documentary information under the control of the Force and relevant to the grievance as the member reasonably requires to properly present it.

(5) No member shall be disciplined or otherwise penalized in relation to employment or any term of employment in the Force for exercising the right under this Part to present a grievance.

(6) As soon as possible after the presentation and consideration of a grievance at any level in the grievance process, the member constituting the level shall render a decision in writing as to the disposition of the grievance, including reasons for the decision, and serve the member presenting the grievance and, if the grievance has been referred to the Committee pursuant to section 33, the Committee Chairman with a copy of the decision.

(7) The Governor in Council may make regulations prescribing for the purposes of subsection (3) any position in the Force that reports to the Commissioner either directly or through one other person.

applicable aux griefs, dans les trente jours suivant celui où le membre qui a subi un préjudice a connu ou aurait normalement dû connaître la décision, l'acte ou l'omission donnant lieu au grief;

b) à tous les autres niveaux de la procédure applicable aux griefs, dans les quatorze jours suivant la signification au membre de la décision relative au grief rendue par le niveau inférieur immédiat.

(3) Ne peut faire l'objet d'un grief en vertu de la présente partie une nomination faite par le commissaire à un poste visé au paragraphe (7).

(4) Sous réserve des restrictions prescrites conformément à l'alinéa 36b), le membre qui présente un grief peut consulter la documentation pertinente placée sous la responsabilité de la Constablerie et dont il a besoin pour bien présenter son grief.

(5) Le fait qu'un membre présente un grief en vertu de la présente partie ne doit entraîner aucune peine disciplinaire ni aucune autre sanction relativement à son emploi ou à la durée de son emploi dans la Constablerie.

(6) Le membre qui constitue un niveau de la procédure applicable aux griefs rend une décision écrite et motivée dans les meilleurs délais possible après la présentation et l'étude du grief, et en signifie copie au membre intéressé, ainsi qu'au président du Comité en cas de renvoi devant le Comité en vertu de l'article 33.

(7) Le gouverneur en conseil peut, par règlement, déterminer, pour l'application du paragraphe (3), les postes dont le titulaire relève du commissaire, directement ou par l'intermédiaire d'une autre personne.

*Commissioner's Standing Orders (Dispute Resolution Process for Promotions and Job*

*Requirements*): Sections 8, 25 and 27.

**8.** (1) A member who is aggrieved by any decision, act or omission made in the course of a selection process for the member's promotion may submit a request for the intervention of an the adjudicator, to the office for the coordination of grievances in the region where the member is posted, within 30 days after the day on which the member knew or ought to have known of the decision, act or omission.

(2) A member who is aggrieved by any decision, act or omission made in the course of the establishment of the job requirements for a position may submit a request for the intervention of an the adjudicator, to the office for the coordination of grievances in the region where the member is posted, within 30 days after the day on which the job requirements were first published.

(3) The office for the coordination of grievances shall, on receipt of the request for intervention, provide a copy of the request to the person identified as the respondent in the request.

**25.** The decision of the adjudicator that disposes of a request for intervention is not subject to appeal or further review.

**27.** (1) The adjudicator may, on request for an extension of time, in justifiable situations, order that the time for complying with subsection 8(1) or (2) or 12(1) begins to run only when the situation in question is no longer in effect.

(2) The justifiable situations for an order extending time are the following:

(a) when the member is on sick leave; or

**8.** (1) Le membre à qui une décision, un acte ou une omission lié au processus de sélection en vue de sa promotion cause un préjudice peut présenter une request for intervention d'un the adjudicator au bureau de coordination des griefs dans sa région d'affectation, dans les trente jours suivant celui où le membre a connu ou aurait dû connaître la décision, l'acte ou l'omission.

(2) Le membre à qui une décision, un acte ou une omission relatif aux exigences d'un poste cause un préjudice peut présenter une request for intervention d'un the adjudicator au bureau de coordination des griefs dans sa région d'affectation, dans les trente jours suivant celui où les exigences du poste ont été publiées pour la première fois.

(3) Sur réception d'une request for intervention, le bureau de coordination des griefs en transmet une copie à la personne qui y est identifiée comme le défendeur.

**25.** La décision que l'the adjudicator rend à la suite d'une request for intervention n'est pas susceptible d'appel ou de révision ultérieure.

**27.** (1) L'the adjudicator peut, sur présentation d'une demande à cet effet et si les circonstances le justifient, ordonner que le délai prévu aux paragraphes 8(1), (2) ou 12(1) pour poser l'acte qui y est décrit ne commence à courir qu'à compter de la cessation de ces circonstances.

(2) Les circonstances qui justifient une prorogation sont les suivantes:



*(b)* when the member is assigned to an operation within the Force that prevents the member from presenting their case in a complete manner.

(3) The request for an extension of time under this section must be made before the expiry of the original time for compliance under subsection 8(1) or (2) or 12(1), as applicable.

*a)* le membre est en congé de maladie;

*b)* il ne peut, en raison de contraintes opérationnelles, faire valoir sa position de façon pleine et entière.

(3) La demande de prorogation présentée aux termes du présent article doit l'être dans le délai fixé aux paragraphes 8(1), (2) ou 12(1), selon le cas.

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** T-298-07

**STYLE OF CAUSE:** NORMAND SANSTFAÇON v. ATTORNEY GENERAL  
OF CANADA

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** January 17, 2008

**REASONS BY:** The Honourable Mr. Justice Blanchard

**DATED:** January 29, 2008

**APPEARANCES:**

Normand Sansfaçon FOR THE APPLICANT

Nadine Perron FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Normand Sansfaçon FOR THE APPLICANT

John H. Sims, Q.C. FOR THE RESPONDENT  
Deputy Attorney General of Canada