Federal Court  Cour fédérale

Date: 20111108

Docket: T-674-09

Citation: 2011 FC 1278

Ottawa, Ontario, November 8, 2011

PRESENT: The Honourable Mr. Justice O'Keefe

BETWEEN:

PAUL ALEXANDER and
SUPRIYA RAVE

Applicants

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Paul Alexander and Supriya Rave (the applicants) seek judicial review pursuant to section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7 of a decision of the Public Service Staffing Tribunal (the tribunal) dated December 19, 2008. The tribunal dismissed the applicants' complaint of abuse of authority in an internal appointment process.

[2] The applicants request:

1. an order quashing the decision of the tribunal, dated December 19, 2008, and remitting the matter for reconsideration by a different tribunal member and making the following directions:

(a) that the tribunal issue such orders as are required to secure and have produced to the applicants all evidence located at the former workplace of the applicant, Paul Alexander, that is relevant to the complaint;

(b) that the tribunal must consider all evidence presented by the applicants;

(c) that the tribunal must allow the applicants to examine all the witnesses they wish to examine.

2. an order sanctioning the tribunal member who presided over the original hearing of the applicants' complaint and requiring her to formally apologize to the applicants and to attend sensitivity training; and

3. costs of this application.

[3] The respondent requests an order dismissing this application.

Background

[4] On August 4, 2006, a job opportunity advertisement was posted on *Publiservice* to staff the position of manager, Ontario Operations Centre (SG SRE-07) at Health Canada in Scarborough, Ontario. Mr. Jim Daskalopoulos was eventually appointed for this position.

[5] The applicant, Paul Alexander and the applicant, Supriya Rave, both applied for this position but were eliminated at the screening stage of the appointment process because they did not meet the experience criteria.

[6] On November 15 and 22, 2006, Mr. Alexander and Ms. Rave, respectively, contacted the tribunal to complain about the staffing process. The applicants alleged that there was abuse of authority in the staffing process and that racism and nepotism were factors in the appointment of Mr. Daskalopoulos.

[7] Mr. Alexander was on sick leave from his employer from December 22, 2006 to January 17, 2007. After that date, it appears that he was on an unpaid leave of absence which he refers to as a "lockout". At some point thereafter, his employment was terminated.

[8] In March 2007, the applicants' formal complaints under section 77 of the *Public Service Employment Act*, SC 2003, c 22, ss 12, 13 (PSEA) were submitted to the tribunal. Both applicants received the tribunal's standard form letter acknowledging receipt of their complaints. The letters referred the applicants to the tribunal's Procedural Guide, which was developed to assist parties involved in proceedings before the tribunal.

[9] Throughout the complaint process, the applicants sent the tribunal numerous emails. Specifically, in February 2007, Mr. Alexander sent several emails to the tribunal requesting that it order the respondent to disclose information about Mr. Daskalopoulos and about the staffing process. On February 23, 2007, both applicants brought motions to compel this disclosure. Around

the same time, Mr. Alexander asked the tribunal to expand his complaint and to investigate all staffing action in the Ontario region of Health Canada from April 2004 through to the time of the request.

[10] On March 12, 2007, the tribunal ordered the respondent to disclose information about Mr. Daskalopoulos' employment history. The information was disclosed on March 15, 2007. Both applicants responded that the disclosure was incomplete.

[11] In May 2007, the tribunal instructed all parties to stop sending emails on the merits of the complaints since an opportunity to cross-examine witnesses and to submit their arguments and case law would be available at the hearing.

[12] In August 2007, the respondent requested the consolidation of Mr. Alexander's and Ms. Rave's complaints, as well as that of a third complainant, on the basis that they concerned the same appointment process. Both Mr. Alexander and Ms. Rave responded that consolidation would prejudice their complaints. On January 18, 2008, the tribunal ordered consolidation of Mr. Alexander's and Ms. Rave's complaints, but declined to consolidate the third complaint.

[13] In early 2008, Mr. Alexander repeatedly attempted to compel the respondent to produce documents and emails left at his workplace when he was "locked out".

[14] A pre-hearing conference took place on April 25, 2008. On April 29, 2008, the tribunal issued a summary of the pre-hearing conference. It ordered the respondent to provide Mr. Alexander

with specific documents and, if the documents could not be located, to attempt to retrieve them with the assistance of the IT team. The respondent was also ordered to provide Mr. Alexander with emails between Mr. Alexander and three other people dealing with staffing. The tribunal also reproduced the two lists of witnesses to be introduced by the applicants and the respondent.

[15] The applicants repeatedly emailed the tribunal to protest the fact that several witnesses who they wished to call were moved from their witness list to that of the respondent.

[16] On May 15, 2008, the tribunal issued a letter indicating that moving witnesses was a common practice at the tribunal. It further refused to issue summonses to the applicants because the respondent would be calling the witnesses that the applicants sought to summon. The tribunal refused to order further disclosure, noting that it could not order the respondent to produce what it did not have. The tribunal also explained the procedure for introducing documents at the hearing, as the applicants were by that time refusing to cooperate on the pre-hearing exchange of evidence.

[17] The hearing commenced on May 27, 2008. The applicants filed six motions at the beginning of the hearing. Some of these issues had already been addressed by the tribunal through letter decisions. The motions dealt with the three witnesses who had been moved to the respondent's witness list, the summonses that the applicants wanted to have issued and Mr. Alexander's request for his emails and documents left at his workplace.

[18] The tribunal heard submissions by the parties and ruled on the motions, maintaining all its previous decisions rendered in various letter decisions except the issue of moving the

witnesses. The tribunal states that it moved several witnesses (Mr. Sangster, Mr. Charron, Mr. Neil and Ms. Lui) from the respondent's witness list back to the applicants' witness list.

[19] The applicants moved to stay the hearing. The tribunal heard submissions on this motion and was not convinced that there was prejudice to the parties that warranted a stay of proceedings. The tribunal denied the motion and explained to the applicants that they would have the opportunity to apply for judicial review once it reached a final decision. The applicants were not prepared to present evidence and the hearing was adjourned for the day.

[20] Before the hearing recommenced the following day, the applicants informed the tribunal that they would not be attending the hearing because they wished to seek judicial review of what they saw as "procedural inconsistencies." The tribunal attempted to contact the applicants by telephone and email and Mr. Alexander responded to the tribunal's email.

[21] The hearing proceeded absent the applicants on May 28, 2008.

Tribunal's Decision

[22] At no time during the hearing was a court reporter or an official electronic recording device present to record the hearing or the evidence. As such, no transcript of the hearing is available.

[23] The tribunal continued the hearing in the absence of the applicants pursuant to section 29 of *Public Service Staffing Tribunal Regulations*, SOR/2006-6, (the Regulations). The tribunal was

satisfied that the applicants were notified and aware that the hearing would continue in their absence.

[24] As the applicants were not present, they did not present any evidence or call any witnesses. The respondent called two witnesses, Mr. Sangster and Ms. Lui, and made submissions. The Public Service Commission also made submissions.

[25] The tribunal considered two issues: whether the respondent abused its authority by demonstrating personal favouritism toward the successful candidate by improperly screening the applicants out of the appointment process; and whether the respondent abused its authority by discriminating against the applicants.

[26] The tribunal found that the party alleging abuse of authority bears the burden of proof.

[27] The tribunal assessed the evidence presented by the respondent. It considered Mr. Sangster's evidence regarding the steps followed to appoint Mr. Daskalopoulos and Ms. Lui's evidence regarding the steps the assessment board took to assess merit criteria in this advertised position.

[28] The tribunal held that candidates must ensure that they clearly demonstrate on their application that they meet all the essential qualifications for the position. Based on the evidence before it, the tribunal found that the applicants did not meet the experience criteria, which resulted in them being eliminated at the screening stage of the process. The tribunal found that the candidates were assessed only on the information found in their applications. The screening process

was anonymous and the applicants had the opportunity to provide clarifications to the screening board with respect to the experience noted in their curriculum vitae. The tribunal also found that the applicants presented no evidence to support their allegations that they were not appointed due to discrimination as visible minorities.

[29] For these reasons, the tribunal found that there was no evidence that the applicants were improperly screened and concluded that there was no abuse of authority.

Issues

[30] The issues are as follows:

1. What is the appropriate standard of review?
2. Did the tribunal breach procedural fairness by consolidating the complaints?
3. Did the tribunal breach procedural fairness by refusing to order further disclosure?
4. Did the tribunal breach procedural fairness by moving witnesses from the applicants' witness list to the respondent's witness list, or by refusing to issue subpoenas?
4. Did the tribunal exhibit a reasonable apprehension of bias?
5. Was the tribunal's decision not to expand the complaint correct?
6. Was the tribunal's decision reasonable?

Applicants' Written Submissions

[31] The applicants submit that the tribunal breached procedural fairness by consolidating their complaints. The applicants argue that their complaints were substantially different and that they were prejudiced by having to collaborate before the tribunal.

[32] The applicants allege that Mr. Alexander left several files and emails at his workplace when he was "locked out". The applicants claim that the production from the respondent was incomplete and that the tribunal breached procedural fairness when it refused to order further disclosure.

[33] The applicants further submit that the tribunal breached procedural fairness when it removed several witnesses from the applicants' witness list and placed them on that of the respondent's witness list. The applicants argue that the tribunal colluded with Health Canada because it only moved the witnesses after questioning the applicants as to what they intended to ask their witnesses in examination. The applicants argue that the move restricted their ability to examine the witnesses.

[34] The applicants also argue that the tribunal unjustly denied them summonses for the witnesses they sought to examine. The tribunal did not explain its refusal to issue summonses on the renewed request following Health Canada's allegedly incomplete disclosure.

[35] The applicants submit that the tribunal was biased and discriminated against them because of their visible minority status. The applicants allege that the tribunal chairperson acted in a racist manner and was verbally abusive toward them.

[36] The applicants further submit that it was unreasonable for the tribunal to refuse to expand the complaint to consider the issues of racism and discrimination in the workplace.

[37] Finally, the applicants submit that the decision of the tribunal is unreasonable.They argue that before walking out after the first day of the hearing, they had presented considerable evidence to the tribunal and it was therefore unreasonable for the tribunal to find that they had adduced no evidence.

Respondent's Written Submissions

[38] The respondent submits that the tribunal acted reasonably when it continued the hearing in the absence of the applicants pursuant to section 29 of the Regulations. The tribunal contacted the applicants by email to inform them of the consequences of their refusal to attend the second day of the hearing. The applicants acknowledged receipt of this email.

[39] The respondent submits that the threshold to find abuse of authority in the establishment and assessment of essential qualifications is high. The respondent argues that the burden was on the applicants to establish that Mr. Daskalopoulos' appointment was made in bad faith and was influenced by personal favouritism or a similar consideration. The respondent further submits

that an allegation of abuse of authority is a very serious matter and requires more than merely stating a perceived injustice.

[40] Under the PSEA, a deputy head is given considerable discretion on staffing matters and in making an appointment. Section 36 gives the Public Service Commission and its delegate a similar or even wider degree to determine whether a person meets the qualifications of a position.

[41] The respondent submits that the tribunal reasonably concluded that the applicants had failed to discharge their burden of showing that Mr. Daskalopoulos did not meet the merit criteria or that the appointment process was not fair. There was ample and sufficient evidence before the tribunal as to the assessment of the appointee's experience and how that assessment accorded with the qualification standards for the position. The witnesses were found to be credible and the applicants adduced no evidence to contradict them.

Analysis and Decision

[42] **Issue 1**

What is the appropriate standard of review?

Where previous jurisprudence has determined the standard of review applicable to a particular issue, the reviewing court may adopt that standard (see *Dunsmuir v New Brunswick* 2008 SCC 9, [2008] 1 SCR 190 at paragraph 57).

[43] The majority of the issues raised by the applicants involve procedural fairness and are reviewable on a correctness standard (see *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339 at paragraph 43).

[44] The final determination by the tribunal is a question of mixed fact and law, as discussed at length by Mr. Justice Michel Shore in *Lavigne v Canada (Deputy Minister of Justice)*, 2009 FC 684, 352 FTR 269 (Eng). As such, the ultimate conclusions of the tribunal will be reviewed on the reasonableness standard.

[45] **Issue 2**

Did the tribunal breach procedural fairness by consolidating the complaints?

Pursuant to section 109 of the PSEA and section 8 of the Regulations, the tribunal was entitled to consolidate any proceedings to ensure the expeditious resolution of complaints. The consolidation of the applicants' complaints did not breach procedural fairness as they were based on the same internal appointment and factual background and were substantially similar.

[46] **Issue 3**

Did the tribunal breach procedural fairness by refusing to order further disclosure?

The tribunal is empowered, pursuant to paragraph 99(1)(e) of the PSEA, to compel any person to produce documents relevant to the proceeding.

[47] Following the pre-hearing conference of April 25, 2008, the tribunal ordered the respondent to produce the following documents:

- documents/emails exchanged between Ms. Lui and Mr. Alexander;
- documents/emails exchanged between Mr. Sangster and Mr. Nouvet and Mr. Alexander; and
- notes and documents/letters between Mr. Rosenberg and Mr. Alexander.

[48] The tribunal ordered that if the above documents could not be located, the respondent was to attempt to retrieve them with the assistance of the IT team and to provide copies to Mr. Alexander.

[49] Further, the tribunal ordered that the respondent was to attempt to retrieve and provide copies of the emails dealing with staffing between Mr. Alexander and:

- Ms. Harty in early 2006;
- Mr. Charron from July 18, 2005 forward; and
- Mr. Dawes from July 18, 2005 forward.

[50] The respondent notified the tribunal and the applicants through Angela Charlton that the three packages of documents that Mr. Alexander stated were at his desk at work could not be located. The respondent did provide, however, copies of all email correspondence related to staffing between Mr. Alexander and:

- Ms. Harty;
- Mr. Dawes;
- Mr. Charron;
- Ms. Lui;

- Mr. Sangster;
- Mr. Nouvet; and
- Mr. Rosenberg.

[51] The applicants requested further disclosure but the tribunal indicated through a letter decision that it could not order a party to produce documents that no longer exist or that are not in its possession.

[52] The respondent appears to have complied with the order of the tribunal to the best of its ability and there was no breach of procedural fairness in the tribunal's refusal to order further production of documents which it had already ordered produced.

[53] **Issue 4**

Did the tribunal breach procedural fairness by moving witnesses from the applicants' witness list to the respondent's witness list or by refusing to issue subpoenas?

Parliament granted the tribunal extensive authority to govern its own process. This authority is explicitly found in section 27 of the Regulations, which states that "[t]he Tribunal is master of the proceedings and may determine the manner and order of the presentation of evidence and arguments at the hearing." Further, the tribunal has all the powers of a superior court associated with compelling attendance, examining witnesses and ordering the production of documents. These powers are found in section 99 of the PSEA and in the Regulations.

[54] Given the control the tribunal has over its procedures, including that of calling and summoning witnesses, this Court owes deference to the tribunal's procedural decisions. The Supreme Court held in *Council of Canadians with Disabilities v VIA Rail Canada Inc*, 2007 SCC 15, [2007] 1 SCR 650 at paragraph 231, that:

> Considerable deference is owed to procedural rulings made by a tribunal with the authority to control its own process. The determination of the scope and content of a duty to act fairly is circumstance-specific, and may well depend on factors within the expertise and knowledge of the tribunal, including the nature of the statutory scheme and the expectations and practices of the Agency's constituencies. Any assessment of what procedures the duty of fairness requires in a given proceeding should "take into account and respect the choices of procedure made by the agency itself, particularly when the statute leaves to the decision-maker the ability to choose its own procedures, or when the agency has an expertise in determining what procedures are appropriate in the circumstances": *Baker v. Canada (Minister of Citizenship & Immigration)*, [1999] 2 S.C.R. 817 (S.C.C.), at para. 27, citing D. J. M. Brown and J. M. Evans, *Judicial Review of Administrative Action in Canada* (loose-leaf), at pp. 7-66 to 7-70. …

[55] The applicants' submissions contradict the tribunal decision with respect to what occurred with the witness lists at the hearing. The applicants state in their notice of application and in their affidavit that the tribunal removed witnesses from their witness list and placed those witnesses on the witness list of the respondent on the day of the hearing.

[56] However, the removal of the witnesses from the applicants' witness list actually occurred in April 2008 at the pre-hearing conference. The April 29, 2008 letter from the tribunal indicates that the witness lists were set following the pre-hearing conference of April 25, 2008. The letter states that the witnesses, Mr. Charron, Ms. Lui, Mr. Neil and Mr. Sangster would be called by the respondent. The applicants were aware of this move and wrote numerous emails to the

tribunal expressing their concern regarding the fact that the witnesses they wished to call would now be called by the respondent.

[57] The tribunal decision noted that the applicants raised this issue again in a preliminary motion on the day of the hearing. The decision states that, given that the applicants were adamant that the witnesses testify on their behalf, the tribunal would consider Mr. Charron, Ms. Lui, Mr. Neil and Mr. Sangster to be the applicants' witnesses. The tribunal notes that it explained to the applicants the difference between examination-in-chief and cross-examination and what types of questions the applicants would be able to ask the witnesses.

[58] I prefer the version of the events set out in the tribunal decision, as the applicants' statements of events in the notice of application and affidavit contradict the April 29, 2008 letter that the applicants received and their subsequent emails opposing that letter.

[59] If any procedural unfairness resulted from the initial removal of the witnesses from the applicants' witness list, it was largely cured by the re-instatement of the witnesses to the applicants' witness list on the day of the hearing. In addition, any determination from this Court about how this moving of witnesses affected the applicants' ability to present their case or be heard would be speculative given that the applicants chose not to participate in the hearing. Further, the applicants have not made any submissions about how the moving of witnesses actually rendered the proceeding unfair.

[60] The tribunal did not address the issue raised by the applicants concerning summonses at the hearing. However, this issue was clearly addressed in the letter decision dated May 15, 2008 where the tribunal indicated that the summons for Mr. Charron or Mr. Sangster were not necessary because these witnesses were to be called by the respondent.

[61] In summary, the applicants have failed to demonstrate a breach of procedural fairness in the tribunal's handling of the witnesses or requests for summonses.

[62] **Issue 5**

Did the tribunal exhibit a reasonable apprehension of bias?

It is an established principle that administrative tribunals must be and appear to be unbiased in conducting hearings and rendering their decisions (see for example *Newfoundland Telephone Co v Newfoundland (Board of Commissioners of Public Utilities)*, [1992] 1 SCR 623 at page 636).

[63] The applicants submit on numerous occasions that the tribunal member was "racist", "humiliating", "aggressive", "prejudicial" and "discriminatory", among other similarly serious allegations.

[64] The Supreme Court held in *Committee for Justice & Liberty v Canada (National Energy Board) (1976)*, [1978] 1 SCR 369 at page 394, that the test for whether there is a reasonable apprehension of bias is "what would an informed person, viewing the matter realistically and practically — and having thought the matter through — conclude". The Supreme Court

continued to note in that case that "[t]he grounds for this apprehension must, however, be substantial…" (see *Committee for Justice* above, at pages 394 and 395).

[65] The onus of showing a reasonable apprehension of bias lies with the person alleging it and depends entirely on the facts (see *R v S (RDS)*, [1997] 3 SCR 484, [1997] SCJ No. 84 (QL) at paragraph 114).

[66] There is no evidence before this Court of any behaviour of the tribunal member that would meet the established threshold for demonstrating bias.

[67] **Issue 6**

Was the tribunal's decision not to expand the complaint correct?

The applicants submit that the tribunal unreasonably ignored the issues of systemic racism and discrimination within the Ontario region at Health Canada.

[68] The applicants submitted a complaint pursuant to section 77 of the PSEA. Section 77 deals with internal appointments and any review pursuant to this section is confined to issues about the fairness of the specific appointment process. The tribunal is empowered to interpret and apply the *Canadian Human Rights Act*, RS 1985, c H-6, in complaints brought under section 77. This includes issues of discrimination based on race or ethnic origin. However, such consideration is confined to the tribunal's authority to consider specific appointment processes pursuant to section 77 and does not include the broad examination sought by the applicants. As

such, the tribunal considered the issue of whether the respondent discriminated against the applicants in the specific appointment of Mr. Daskalopoulos.

[69] In the course of preparing for the tribunal hearing, the applicants sought to enlarge their complaint and have the tribunal examine all staffing appointments in the Ontario region of Health Canada from April 2004 to the date of the hearing. The tribunal did not allow the applicants to expand their complaint to include these issues of systemic racism and discrimination. This decision was correct as these issues are beyond the tribunal's mandate.

[70] The applicants also submitted that the respondent improperly gave acting positions to the successful candidate on previous occasions. The applicants particularly referred to paragraph 43 of the decision. I would note that the propriety of these acting positions are not properly the subject matter of this application for judicial review.

[71] There was no error is confining the complaint to an examination of the individual appointment process for the position of manager, Ontario Operations Centre at Health Canada in Scarborough, Ontario.

[72] **Issue 7**

Was the tribunal's decision reasonable?

The applicants made no submissions, presented no evidence and called no witnesses before the tribunal, despite bearing the burden of proving their complaint. Although the applicants sent the

tribunal over one hundred emails prior to the date of the hearing, these emails were never formally entered into the record and can therefore not be considered evidence.

[73] The tribunal based its decision on the evidence before it, which was entirely presented by the respondent. The tribunal decision assessed the procedure in creating the essential qualifications for the position as well as the decision to eliminate the applicants' candidacy at the screening stage.

[74] Given that the respondent's evidence was not contradicted, the tribunal's decision was reasonable.

[75] I would therefore dismiss the application for judicial review and there shall be no order for costs.

JUDGMENT

IT IS ORDERED that the application for judicial review is dismissed and there shall be no order as to costs.

"John A. O'Keefe"

Judge

ANNEX

Relevant Statutory Legislation

Federal Courts Act (RSC 1985, c F-7)

18.1 (1) An application for judicial review may be made by the Attorney General of Canada or by anyone directly affected by the matter in respect of which relief is sought.	18.1 (1) Une demande de contrôle judiciaire peut être présentée par le procureur général du Canada ou par quiconque est directement touché par l'objet de la demande.

Public Service Employment Act (SC 2003, c 22, ss 12, 13)

77. (1) When the Commission has made or proposed an appointment in an internal appointment process, a person in the area of recourse referred to in subsection (2) may — in the manner and within the period provided by the Tribunal's regulations — make a complaint to the Tribunal that he or she was not appointed or proposed for appointment by reason of	77. (1) Lorsque la Commission a fait une proposition de nomination ou une nomination dans le cadre d'un processus de nomination interne, la personne qui est dans la zone de recours visée au paragraphe (2) peut, selon les modalités et dans le délai fixés par règlement du Tribunal, présenter à celui-ci une plainte selon laquelle elle n'a pas été nommée ou fait l'objet d'une proposition de nomination pour l'une ou l'autre des raisons suivantes :
(a) an abuse of authority by the Commission or the deputy head in the exercise of its or his or her authority under subsection 30(2);	a) abus de pouvoir de la part de la Commission ou de l'administrateur général dans l'exercice de leurs attributions respectives au titre du paragraphe 30(2);
(b) an abuse of authority by the Commission in choosing between an advertised and a non-advertised internal appointment process; or	b) abus de pouvoir de la part de la Commission du fait qu'elle a choisi un processus de nomination interne annoncé ou non annoncé, selon le cas;
(c) the failure of the Commission to assess the complainant in the official language of his or her choice as required by subsection 37(1).	c) omission de la part de la Commission d'évaluer le plaignant dans la langue officielle de son choix, en contravention du paragraphe 37(1).
(2) For the purposes of subsection (1), a person is in the area of recourse if the person is	(2) Pour l'application du paragraphe (1), une personne est dans la zone de recours si :
(a) an unsuccessful candidate in the area of selection determined under section 34, in the	a) dans le cas d'un processus de nomination interne annoncé, elle est un candidat non reçu

case of an advertised internal appointment process; and

et est dans la zone de sélection définie en vertu de l'article 34;

(b) any person in the area of selection determined under section 34, in the case of a non-advertised internal appointment process.

b) dans le cas d'un processus de nomination interne non annoncé, elle est dans la zone de sélection définie en vertu de l'article 34.

(3) The Tribunal may not consider an allegation that fraud occurred in an appointment process or that an appointment or proposed appointment was not free from political influence.

(3) Le Tribunal ne peut entendre les allégations portant qu'il y a eu fraude dans le processus de nomination ou que la nomination ou la proposition de nomination a résulté de l'exercice d'une influence politique.

78. Where a complaint raises an issue involving the interpretation or application of the *Canadian Human Rights Act*, the complainant shall, in accordance with the regulations of the Tribunal, notify the Canadian Human Rights Commission of the issue.

78. Le plaignant qui soulève une question liée à l'interprétation ou à l'application de la *Loi canadienne sur les droits de la personne* en donne avis à la Commission canadienne des droits de la personne conformément aux règlements du Tribunal.

80. In considering whether a complaint under section 77 is substantiated, the Tribunal may interpret and apply the *Canadian Human Rights Act*, other than its provisions relating to the right to equal pay for work of equal value.

80. Lorsqu'il décide si la plainte est fondée, le Tribunal peut interpréter et appliquer la *Loi canadienne sur les droits de la personne*, sauf les dispositions.

99. (1) The Tribunal has, in relation to a complaint, the power to

99. (1) Le Tribunal peut, pour l'instruction d'une plainte :

(a) summon and enforce the attendance of witnesses and compel them to give oral or written evidence on oath in the same manner and to the same extent as a superior court of record;

a) de la même façon et dans la même mesure qu'une cour supérieure d'archives, convoquer des témoins et les contraindre à comparaître et à faire sous serment des dépositions orales ou écrites;

(b) order that a hearing be conducted using any means of telecommunication that permits all persons participating to communicate adequately with each other;

b) ordonner l'utilisation de tout moyen de communication permettant à tous les participants à une audience de communiquer adéquatement entre eux;

(c) administer oaths and solemn affirmations;

c) faire prêter serment et recevoir les affirmations solennelles;

(d) accept any evidence, whether admissible

d) accepter des éléments de preuve, qu'ils

in a court of law or not;

soient admissibles ou non en justice;

(e) compel, at any stage of a proceeding, any person to produce any documents and things that may be relevant; and

e) obliger, en tout état de cause, toute personne à produire les documents ou pièces qui peuvent être liés à toute question dont il est saisi;

(f) subject to any limitations that the Governor in Council may establish in the interests of defence or security, enter any premises of an employer where work is being or has been done by employees, inspect and view any work, material, machinery, appliances or articles in the premises and require any person in the premises to answer all proper questions relating to the complaint.

f) sous réserve des restrictions que le gouverneur en conseil peut imposer en matière de défense ou de sécurité, pénétrer dans des locaux ou sur des terrains de l'employeur où des fonctionnaires exécutent ou ont exécuté un travail, procéder à l'examen de tout ouvrage, matériau, outillage, appareil ou objet s'y trouvant, ainsi qu'à celui du travail effectué dans ces lieux, et obliger quiconque à répondre aux questions qu'il estime utile de lui poser relativement à la plainte.

109. The Tribunal may make regulations respecting

109. Le Tribunal peut, par règlement, régir :

(a) the manner in which and the time within which a complaint may be made under subsection 65(1) or section 74, 77 or 83;

a) les modalités et le délai de présentation des plaintes présentées en vertu du paragraphe 65(1) ou des articles 74, 77 ou 83;

(b) the procedure for the hearing of complaints by the Tribunal;

b) la procédure à suivre pour l'audition des plaintes;

(c) the time within which, and the persons to whom, notices and other documents must be given in relation to complaints and when the notices are deemed to have been sent, given or received;

c) le délai d'envoi des avis et autres documents au titre des plaintes, ainsi que leurs destinataires et la date où ces avis sont réputés avoir été donnés et reçus;

(d) the manner of giving notice of an issue to the Canadian Human Rights Commission under subsection 65(5) or section 78; and

d) les modalités applicables aux avis donnés à la Commission canadienne des droits de la personne en application du paragraphe 65(5) ou de l'article 78;

(e) the disclosure of information obtained in the course of an appointment process or a complaint proceeding under this Act.

e) la communication de renseignements obtenus dans le cadre de la présente loi au cours d'un processus de nomination ou de l'instruction de plaintes.

Public Service Staffing Tribunal Regulations (SOR/2006-6)

8. To ensure the expeditious resolution of complaints, the Tribunal may direct that proceedings be consolidated and may issue directions in respect of the conduct of the consolidated proceedings.	8. Pour assurer la résolution rapide des plaintes, le Tribunal peut ordonner la jonction d'instances présentées devant lui et donner des directives quant au déroulement de la nouvelle instance.
20. (1) If the complainant raises an issue involving the interpretation or application of the Canadian Human Rights Act in a complaint made under subsection 65(1) or 77(1) of the Act, the notice that the complainant is required by subsection 65(5) or section 78 of the Act to give to the Canadian Human Rights Commission must be in writing and must include	20. (1) Si le plaignant soulève une question liée à l'interprétation ou à l'application de la Loi canadienne sur les droits de la personne dans une plainte présentée en vertu des paragraphes 65(1) ou 77(1) de la Loi, l'avis prévu au paragraphe 65(5) ou à l'article 78, selon le cas, est transmis par écrit à la Commission canadienne des droits de la personne et comporte les éléments suivants :
(a) a copy of the complaint;	a) une copie de la plainte;
(b) the complainant's name and the mailing address or electronic mail address that is to be used for sending documents to the complainant;	b) le nom du plaignant et l'adresse postale ou électronique à laquelle les documents doivent être transmis;
(c) the name, address, telephone number, fax number and electronic mail address of the complainant's authorized representative, if any;	c) le cas échéant, les nom, adresse, numéros de téléphone et de télécopieur et adresse électronique du représentant du plaignant;
(d) a description of the issue involving the interpretation or the application of the *Canadian Human Rights Act* and of the alleged discriminatory practice or policy;	d) une description de la question liée à l'interprétation ou à l'application de la *Loi canadienne sur les droits de la personne* et de la pratique ou politique discriminatoire alléguée;
(e) the prohibited ground of discrimination involved;	e) le motif de distinction illicite visé;
(f) the corrective action sought;	f) les mesures correctives à prendre;
(g) the signature of the complainant or the complainant's authorized representative; and	g) la signature du plaignant ou de son représentant;
(h) the date of the notice.	h) la date de l'avis.

23. (1) The Tribunal may, on request, permit the complainant to amend an allegation or provide a new allegation if the amendment or new allegation results from information obtained that could not reasonably have been obtained before the complainant submitted his or her original allegations.

23. (1) Le Tribunal peut, sur demande, autoriser le plaignant à modifier une allégation ou à en présenter une nouvelle allégation, si la modification ou la nouvelle allégation résulte d'une information qui n'aurait pas pu être raisonnablement obtenue avant que le plaignant ne présente ses allégations.

(2) The request must be in writing and must include

(2) La demande est présentée par écrit et comporte les éléments suivants :

(a) the name, address, telephone number, fax number and electronic mail address of the complainant;

a) les nom, adresse, numéros de téléphone et de télécopieur et adresse électronique du plaignant;

(b) the name, address, telephone number, fax number and electronic mail address of the complainant's authorized representative, if any;

b) le cas échéant, les nom, adresse, numéros de téléphone et de télécopieur et adresse électronique du représentant du plaignant;

(c) the Tribunal's file number for the complaint;

c) le numéro de dossier que le Tribunal a attribué à la plainte faisant l'objet de la demande;

(d) a detailed explanation as to why the complainant did not include the allegation with his or her original allegations or as to why the complainant needs to amend his or her allegations, as the case may be;

d) un énoncé détaillé des raisons pour lesquelles le plaignant n'a pas, au départ, inclus l'allégation ou pour lesquelles il a besoin de modifier ses allégations, selon le cas;

(e) the new or amended allegation;

e) l'allégation nouvelle ou modifiée;

(f) the signature of the complainant or the complainant's authorized representative; and

f) la signature du plaignant ou de son représentant;

(g) the date of the request.

g) la date de la demande.

27. The Tribunal is master of the proceedings and may determine the manner and order of the presentation of evidence and arguments at the hearing.

27. Le Tribunal est maître de la procédure. Il peut décider de l'ordre et de la manière dont la preuve et les plaidoiries seront présentées.

29. If a party, an intervenor or the Canadian Human Rights Commission, if it is a participant, does not appear at the hearing of a

29. Si une partie, un intervenant ou la Commission canadienne des droits de la personne, si celle-ci a le statut de participant,

complaint or at any continuance of the hearing and the Tribunal is satisfied that notice of the hearing was sent to that party, intervenor or participant, the Tribunal may proceed with the hearing and dispose of the complaint without further notice.

omet de comparaître à l'audience ou à toute continuation de celle-ci, le Tribunal peut, s'il est convaincu que l'avis d'audition a bien été donné, tenir l'audience et statuer sur la plainte sans autre avis.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-674-09
STYLE OF CAUSE:	PAUL ALEXANDER and SUPRIYA RAVE - and - ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	May 10, 2011
REASONS FOR JUDGMENT AND JUDGMENT OF:	O'KEEFE J.
DATED:	November 8, 2011

APPEARANCES:

Paul Alexander	FOR THE APPLICANT (ON HIS OWN BEHALF)
Supriya Rave	FOR THE APPLICANT (ON HER OWN BEHALF)
Pierre Marc Champagne	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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Myles J. Kirvan Deputy Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT