Federal Court of Appeal Cour d'appel fédérale

Date: 20160421

Docket: A-232-15

Citation: 2016 FCA 124

CORAM: **GAUTHIER J.A.**
SCOTT J.A.
DE MONTIGNY J.A.

BETWEEN:

GANDHI JEAN PIERRE

Appellant

and

CANADA BORDER SERVICES AGENCY

Respondent

Heard at Montréal, Quebec, on April 12, 2016.

Judgment delivered at Ottawa, Ontario, on April 21, 2016.

REASONS FOR JUDGMENT BY: SCOTT J.A.

CONCURRED IN BY: GAUTHIER J.A.
DE MONTIGNY J.A.

Federal Court of Appeal

Cour d’appel fédérale

Date: 20160421

Docket: A-232-15

Citation: 2016 FCA 124

CORAM: **GAUTHIER J.A.**
SCOTT J.A.
DE MONTIGNY J.A.

BETWEEN:

GANDHI JEAN PIERRE

Appellant

and

CANADA BORDER SERVICES AGENCY

Respondent

REASONS FOR JUDGMENT

SCOTT J.A.

[1] Gandhi Jean Pierre (the appellant) is appealing from a decision (2015 FC 436) whereby Federal Court Judge Marie-Josée Bédard (the Judge) dismissed his application for judicial review of a decision by the Public Service Staffing Tribunal (the Tribunal) (2013 PSST 28). In that decision, the Tribunal dismissed the complaint filed by the appellant under

paragraph 77(1)*a*) of the *Public Service Employment Act*, S.C. 2003, chapter 22, sections 12 and 13 (the PSEA). The relevant legislative provisions are appended hereto.

I. Background

[2] In his complaint before the Tribunal, the appellant alleged that his elimination from the internal appointment process to staff the position of hearing officer with the Canada Border Services Agency (CBSA) was the result of an abuse of authority on the part of the assessment board.

[3] As explained in the Judge's reasons, the Tribunal has limited jurisdiction when it is called upon to decide a complaint filed under paragraph 77(1)(*a*) of the PSEA. For example, the Tribunal can only examine the merits of a complainant's candidacy insofar as the circumstances of the case show that the complainant's candidacy was rejected because of an abuse of authority. Subsection 2(4) of the PSEA states that "a reference in this Act to abuse of authority shall be construed as including bad faith and personal favouritism".

[4] Before the Tribunal, the appellant submitted that i) the assessment board had chosen the appellant's referees in an inappropriate manner, ii) the references provided by the referees were unreliable, iii) the members of the assessment board were not impartial, iv) the assessment board was required to reassess the appellant, and v) the referees and the assessment board had discriminated against him on the basis of his race, colour and ethnic origin. The Tribunal dismissed all of these allegations, ruling that the board's choices were justified and did not support the conclusion that there had been an abuse of authority.

[5] The Judge confirmed these reasons, responding in detail and articulately to each of the appellant's arguments.

II. Standard of review

[6] The role of this Court, when dealing with an appeal from a decision rendered in an application for judicial review, is to ascertain whether the Judge chose the appropriate standard of review and to determine whether they were applied correctly (*Agraira v. Canada (Public Safety Canada)*, 2013 SCC 36 at paragraphs 45 to 47, [2013] 2 S.C.R. 559 [*Agraira*]). To do so, this Court "steps into the shoes" of the Judge and focuses on the administrative decision (*Agraira* at paragraph 46; *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3 at paragraph 247, [2012] 1 S.C.R. 23).

[7] In his submissions before our Court, the appellant made arguments similar to those presented to the Tribunal and the Federal Court. The appellant's arguments against the Tribunal's decision involve mainly the following: i) the Tribunal's failure to comply with the rules of procedural fairness, ii) the board's failure to comply with the rules of procedural fairness, and iii) errors in the Tribunal's application of the notions of abuse of authority as defined in the PSEA and discrimination as defined under the *Canadian Human Rights Act*, R.S.C., 1985, chapter H-6 (the CHRA), given its assessment of the evidence on record.

[8] The Judge correctly identified the standard of review applicable to the first two categories of questions. Any conclusion by an administrative decision-maker relating to an allegation of breach of procedural fairness requires the application of the standard of correctness (*Mission*

Institution v. Khela, 2014 SCC 24 at paragraph 79, [2014] 1 S.C.R. 502 [*Khela*]; *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12 at paragraph 43, [2009] 1 S.C.R. 339). This standard also applies to the Judge's conclusions relating to the allegation of breach of procedural fairness by the Tribunal.

[9] The Judge was also not mistaken in identifying the standard of review applicable to the third category of questions. The mixed questions of fact and law stemming from the Tribunal's interpretation and application of the PSEA are assessed according to the standard of reasonableness (*Dunsmuir v. New Brunswick*, 2008 SCC 9 at paragraph 53, [2008] 1 S.C.R. 190 [*Dunsmuir*]; *Agnaou v. Canada (Attorney General)*, 2014 FC 850 at paragraphs 40 to 41, [2014] F.C.J. no. 1321 (QL), affirmed by *Agnaou v. Canada (Attorney General)*, 2015 FCA 294, [2015] F.C.J. no. 1482 (QL) (application for leave for appeal submitted on February 16, 2016) [*Agnaou*]).

[10] The standard applicable to the Tribunal's dismissal of the appellant's allegations of discrimination is that of reasonableness, because the latter is only calling into question the Tribunal's application of well settled legal principles, which raises mixed questions of fact and law.

III. Analysis

[11] The appellant has presented us with very detailed written arguments and cites numerous statutory provisions and judicial or administrative cases. As noted, the Judge took care to address each of the appellant's allegations and dismissed all of them after an in-depth analysis.

[12] I do not believe that it is necessary to repeat that process here, and I will therefore limit myself to the appellant's arguments that I deem most convincing, on the understanding that I am persuaded that the other allegations in no way justify the intervention of our Court.

A. *Did the Judge correctly conclude that the Tribunal had not breached its duty of procedural fairness?*

[13] The appellant submits that the Tribunal's dismissal of exhibits FC-32 and FC-53 prevented him from supporting his allegations of bias against Ms. Clément, in the context of the reprisals he suffered. Exhibit FC-32 refers to email exchanges concerning a mediation meeting. It also confirms the destruction of notes for the preparation of the appellant's case in another staffing process. This exhibit also contains the complaint settlement agreement, signed on December 11, 2009, following this mediation. Exhibit FC-53 contains a written announcement of Dianne Clément's appointment to the position of Director, Pre-Removal Risk Assessment (PRRA) and Customer Service, as well as an email dated July 27, 2012, in which Ms. Clément announces her retirement. While acknowledging the fairness of the Judge's analysis contained in paragraphs 48 to 60 of her decision, I would nevertheless like to clarify one point.

[14] The appellant alleges that the Judge could not conclude that the Tribunal was justified in refusing the submission of the exhibit FC-53, because the technical rules of evidence do not apply to administrative tribunals. I am of the opinion that the choice to admit, or not to admit, evidence constitutes a procedural option on the part of the Tribunal. The Judge was therefore justified in exercising "some deference" in relation to the assessment of that choice (*Khela* at paragraph 89; *Forest Ethics Advocacy Association v. Canada (National Energy Board)*, 2014

FCA 245 at paragraph 70, [2014] 4 F.C.R. 75; *Re:Sound v. Fitness Industry Council of Canada*, 2014 FCA 48 at paragraphs 37 to 44, [2015] 2 F.C.R. 170; *Commission scolaire de Laval v. Syndicat de l'enseignement de la région de Laval*, 2016 SCC 8, [2016] F.C.J. no. 8 (QL) at paragraphs 30 and 31).

[15] Also, for the reasons stated by the Judge, the refusal to admit these documents was inconsequential because these documents could not in any way prove the allegation of Ms. Clément's bias against the appellant. Therefore, this refusal does not tarnish the fairness of the process before the Tribunal (*Agnaou* at paragraph 110; *Syndicat des employés professionnels de l'Université du Québec à Trois-Rivières v. Université du Québec à Trois-Rivières*, [1993] 1 S.C.R. 471 at paragraph 47, 1993 CanLII 162 (SCC)).

B. *Did the Tribunal correctly conclude that the assessment board had not breached its duty of procedural fairness?*

[16] Faced with contradictory references from Cathie Giroux (unfavourable assessment) and Sophie Kobrynsky (favourable assessment), both of whom had been identified by the appellant on the appropriate form, the assessment board decided to contact a third referee, Dianne Clément, Ms. Giroux's supervisor and the manager of the PRRA division where the appellant worked at the time.

[17] The appellant submits that if the board did not consider Ms. Kobrynsky to be an appropriate referee, it should have allowed him to provide another referee before contacting a third person on its own initiative. In my opinion, this argument cannot be accepted. The problem

facing the board did not stem from Ms. Kobrynsky's qualifications as an "appropriate referee," but rather from the need to determine whether the unfavourable references from Ms. Giroux were the result of a personal conflict with the appellant. There is no evidence that the board ignored or discredited the references given by Ms. Kobrynsky.

[18] The appellant submits that the assessment board's decision to contact a third reference without providing him the opportunity to comment on this initiative or refute this referee's claims violated his right to be heard and to present evidence to contradict her, which negatively impacted the transparency of the assessment process.

[19] Recognizing that it would have been preferable for the board to inform the appellant that it was choosing Ms. Clément as a referee in order for him to inform the assessment board of his concerns regarding her impartiality, the Tribunal concluded that the appellant's right to make his case was nonetheless respected at the informal discussion stage. That step is provided for under section 47 of the PSEA, which states that "[w]here a person is informed by the Commission, at any stage of an internal appointment process, that the person has been eliminated from consideration for appointment, the Commission may, at that person's request, informally discuss its decision with that person."

[20] The appellant submits that this discussion does not allow candidates to truly participate in the decision, because it is held after the decision has been taken and merely seeks to explain the decision to candidates who were eliminated. The Tribunal ruled that the discussion had taken place before the stage of appointing a candidate, since the assessment board can, under

subsection 48(3) of the PSEA, [TRANSLATION] “change its mind regarding the appointment of a candidate” before the official appointment announcement. I am of the opinion that the legislation confirms the Tribunal’s explanation, and that the appellant’s concerns regarding Ms. Clément could therefore have been expressed before the end of the appointment process.

[21] In this case, this conclusion is also confirmed by the email sent by Mr. Meniaï on March 15, 2012 (Exhibit FC-74, Appeal Book, Vol. 2 at page 611). In this email, Mr. Meniaï confirmed that the informal discussion with the appellant had already taken place, but that the appointment of the successful candidate was still to come following the expiration of the waiting period referred to in subsection 48(2) of the PSEA.

[22] The appellant also submits that the board failed to meet its duty to communicate the reasons for its decision by not responding to his request for reconsideration. According to the appellant, that lack of transparency constitutes a violation of the rules of procedural fairness. I note that the [TRANSLATION] “request for reconsideration” to which the appellant is referring is a document entitled [TRANSLATION] “Corrective measures following my elimination from the selection process . . . ” sent by the appellant to the assessment board on March 7, 2012, after the informal discussion held on February 28, 2012.

[23] The appellant submits that the Tribunal’s conclusion that he received explanations from the assessment board regarding the refusal to reassess his qualifications is contradicted by the evidence. The document to which the appellant is referring is an email dated March 15, 2012, that Mr. Meniaï sent him, which simply acknowledges receipt of the [TRANSLATION] “Corrective

measures . . .” document (Exhibit FC-74, Appeal Book, Vol. 2 at page 611). In fact, the Tribunal’s conclusions are rather based on the explanations provided to the appellant during the informal discussion in response to his request to replace the references of Ms. Giroux and Ms. Clément with other, more favourable performance assessments, and not the document entitled [TRANSLATION] “Corrective measures . . .”.

[24] I conclude that the appellant’s right to a reasoned decision was not infringed upon in this case. The appellant had an opportunity to bring forward all of his concerns during the informal discussion, and the Tribunal’s conclusion to the effect that these concerns were considered by Mr. Meniaï during the meeting was based on testimonial evidence provided by Mr. Meniaï.

[25] Moreover, I must point out that the appellant’s position regarding his [TRANSLATION] “Corrective measures . . .” document has no basis in the PSEA, and that any expectations that he had in this regard therefore could not result in an obligation of procedural fairness for the board (*Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, 1999 CanLII 699).

[26] Indeed, the PSEA offers no remedy for re-examination or reconsideration of an appointment. Section 49 provides that any decision by the Commission “to appoint a person or to propose a person for appointment is final and is not subject to appeal or review except in accordance with this Act” but no other provision provides a right of this kind. The appellant was therefore not actually entitled to present a request for reconsideration, and the board’s only duty related to the response that it needed to provide to the appellant’s concerns raised during the

informal discussion. I am, of the opinion that the concerns raised by the appellant in his document sought to support—if not repeat—the considerations that he brought forward during the informal discussion, and that they did not raise the need for a distinct justification.

[27] Lastly, I agree with the Judge's reasons at paragraph 121 of her decision regarding the allegations of the assessment board's bias. The fact that the board did not respond to the appellant's "insistent" concerns regarding the impartiality of Ms. Giroux and Ms. Clément does not mean that the assessment board refused to address them or showed bias itself.

C. *Could the Tribunal reasonably dismiss the allegation of abuse of authority by the assessment board?*

[28] The appellant submits that the Tribunal's decision is unreasonable for numerous reasons that he described before us several times as [TRANSLATION] "the whole endeavour". In my opinion, his main argument challenges the Tribunal's finding of fact under the pretext that it ignored certain pieces of conclusive evidence or overemphasized certain evidence that did not warrant as much attention.

[29] Before dealing with the main arguments raised by the appellant, and as the Judge did in paragraphs 69 and 70 of her decision, I must note that the standard of reasonableness does not allow this Court to re-examine the evidence presented by the appellant by re-weighing its probative value (*Dunsmuir* at paragraph 47).

[30] Thus, the fact that another member of the Tribunal could have, in a case similar to ours, come to a different conclusion than the one reached by the Tribunal in this case does not necessarily make the decision before us unreasonable. The appellant referred us to *Gabon v. Deputy Minister of Environment Canada* (2012 PSST 29) where the Public Service Staffing Tribunal upheld a complaint of abuse of authority. However, that case differs from the present appeal because in that case, the Tribunal allowed the complaint mainly because the appointment process was vitiated by several errors: i) the guidelines provided to candidates with regard to referees lacked clarity; and ii) the reference check guide was directed at supervisors and managers, but the referees were not required to have held such positions. The assessment board had accepted the unfavorable assessment of a supervisor without taking the necessary precautions under the circumstances. However, in the present case, the assessment board took precautions regarding the unfavorable assessment from Ms. Giroux, one of the appellant's referees.

[31] Moreover, it is not for this Court, any more than it is for the Tribunal, to reassess the merit of the appellant's candidacy for the hearing officer position. The Tribunal is only tasked to determine whether the appellant had shown that the assessment board had committed an abuse of authority in the appointment process in question. The appellant does not challenge the manner in which the Tribunal identified the legal principles applicable to the notion of abuse of authority, and I am of the opinion that the criteria set out by the Tribunal to decide on the appellant's complaint were founded in law.

(1) Adequacy of the Tribunal's reasons

[32] The appellant submits that the Tribunal failed to consider some of the evidence (such as his decisions as a PRRA officer, the evidence presented to the Public Service Commission, or the evidence submitted to support the context of reprisals that the appellant said he suffered) or failed to address certain arguments or legal precedents. I conclude that these objections relate to the adequacy of the Tribunal's reasons.

[33] On this subject, the Supreme Court stated in *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 [2011] 3 S.C.R. 708, that:

> [16] Reasons may not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred, but that does not impugn the validity of either the reasons or the result under a reasonableness analysis. A decision-maker is not required to make an explicit finding on each constituent element, however subordinate, leading to its final conclusion (*Service Employees' International Union, Local no. 333 v. Nipawin District Staff Nurses Assn.*, 1973 CanLII 191 (SCC), [1975] 1 S.C.R. 382, page 391).

[34] Thus, I am of the opinion that the Tribunal's reasons meet the criteria set out in *Dunsmuir* insofar as this Court is able to understand the basis for its decision and to determine that its conclusions are among the possible, acceptable outcomes. I conclude that the [TRANSLATION] "flaws" identified by the appellant do not call into question the reasonableness of the Tribunal's decision.

(2) Selection and reliability of referees

[35] The appellant submits that it was unreasonable for the Tribunal to conclude that the assessment board did not behave in an abusive manner in contacting Ms. Clément and taking into account her references [TRANSLATION] "without the appellant's knowledge or approval".

[36] He also argues that the information provided by Ms. Clément was protected under the *Privacy Act*, R.S.C. (1985), chapter P-21 (the PA), and that she was not authorized to disclose it to the CBSA without his consent. The appellant submits that the Tribunal's conclusion that this disclosure was justified under paragraph 8(2)(*a*) of the PA runs counter to the principle that exceptions found in the PA must be interpreted narrowly. I am of the opinion that paragraph 34 of the Tribunal's reasons deals reasonably with the appellant's argument. The knowledge of the appellant's performance gained by Ms. Clément while supervising him constituted information that was [TRANSLATION] "collected" for the purpose of his performance assessment. Use of this information in an appointment process for which the appellant himself applied constitutes, logically, a use consistent with the purposes of the performance assessment. Moreover, contrary to what the appellant submits, paragraph 8(2)(*a*) does not limit communication within a single institution—quite the opposite.

[37] Moreover, the Tribunal clarified, in paragraph 44 of its reasons, that an abuse of authority within the meaning of paragraph 77(1)(*a*) would be shown if it were clear that the information provided to the assessment board by the referees was unreliable, whether because of a clear bias on their part or for any other reason. The bias of a referee in itself does not necessarily show that

an assessment board abused its authority; the board in question must be witness to an element that calls into question the reliability of the information provided by a referee.

[38] The appellant argues that the references provided by Ms. Giroux and Ms. Clément were unreliable for several reasons, and that the assessment board abused its authority by placing more emphasis on them. As a corollary, the appellant contends that the assessment board's decision not to [TRANSLATION] "retain" the references provided by Ms. Kobrynsky was the result of several errors, and that it was unreasonable for the Tribunal not to address this.

[39] The appellant argues that Ms. Giroux's and Ms. Clément's references could not be reliable because of those two referees' bias against him. He alleges that this bias is substantiated in particular by i) his personal conflict with Ms. Giroux; ii) the absence of evidence to support the statements from Ms. Giroux and Ms. Clément; and iii) the affidavit from Darin Jacques, contradicting Ms. Giroux's and Ms. Clément's assessment of the appellant's work. According to the appellant, the Tribunal should have concluded that the assessment board had abused its authority when it took into account the references from Ms. Giroux and Ms. Clément, despite their bias. He submits that the Tribunal's opposite conclusion is attributable to its failure to place the necessary weight on the evidence provided by the appellant.

[40] While it is true that some of Ms. Giroux's statements, recorded in the interview notes collected by Ms. Raymond, may suggest personal differences with the appellant (mentions of [TRANSLATION] "macho" and [TRANSLATION] "problems with women in authority"), otherwise, nothing supports the appellant's allegations. Ms. Raymond explained in her testimony before the

Tribunal that she had not expressed herself adequately in her email dated December 16, 2011, when she wrote that Ms. Giroux had [TRANSLATION] "indeed had some personal problems with the candidate on a day-to-day basis". Ms. Giroux also stated in her testimony that she did not have any personal problems with the complainant. In addition, the appellant himself stated in his "Summary" of the informal discussion that Ms. Giroux's [TRANSLATION] "macho" and [TRANSLATION] "problems with women in authority" references were [TRANSLATION] "not considered in the assessment of his candidacy" (Exhibit FC-78, Appeal Book, Vol. 3, p. 764). I also want to emphasize that if the appellant had any concerns regarding Ms. Giroux's ability to provide an impartial reference about him, there was nothing preventing him from expressing this apprehension from the outset when filling out the appropriate form. The appellant did not do so, which could reasonably confirm the board's assessment. Thus, despite the statements in the interview notes and the email dated December 16, 2011, it was reasonable for the Tribunal to conclude that the assessment board had adequately assessed the situation. This conclusion is supported by evidence and cannot be considered unreasonable under the circumstances.

[41] The appellant submits that the statements made by Ms. Giroux and Ms. Clément were not supported (or were even contradicted) by specific and precise factual examples. However, it is not accurate to claim that there was no evidence supporting the two referees' statements. The performance assessments carried out by Ms. Giroux before the competition and to which the appellant refers, while encouraging, clearly indicate shortcomings requiring improvement (Exhibits FC-28 and FC-29). As well, the Tribunal confirmed that the board had taken into account the examples provided by the two referees, which were more numerous and detailed

than those provided by Ms. Kobrynsky. A careful review of the other evidence referred to by the appellant does not allow me to conclude that it proves his allegations of bias.

[42] The appellant also submits that Ms. Clément had insufficient knowledge of his performance, and that her statements about him constituted hearsay in that they did not derive from personal observations, but rather from observations reported by the appellant's "coaches". The appellant believes that the Tribunal, failing to dismiss this evidence as hearsay, should have given it little probative value. This, however, is a misunderstanding of the role of the Tribunal. It was the board's responsibility to weigh the references provided by each of the referees based on the integrity of their respective statements. The fact that the assessment board gave greater weight to Ms. Giroux's and Ms. Clément's versions did not constitute an abuse of authority, and the Tribunal dealt with the issue reasonably by refraining from reassessing the evidence available to the board. That being said, in paragraph 41 of its reasons, the Tribunal also noted why, in its estimation, Ms. Clément could reasonably act as a referee. This conclusion is based on evidence available to the Tribunal and is therefore reasonable.

[43] Overall, I conclude that the Tribunal's decision pertaining to the board's assessment of the reliability of the references from Ms. Giroux and Ms. Clément is reasonable.

[44] The appellant also submits that the references from Ms. Kobrynsky were discredited by the board to the extent of her being *de facto* disqualified as a referee. In my opinion, as the Judge explains in paragraphs 73 to 81 of her reasons, the board's conclusion weighing this reference

against the other references from Ms. Giroux and Ms. Clément stems from an intelligible exercise. The Tribunal's analysis in this regard is also reasonable.

[45] The appellant submits that the Tribunal's conclusion that Ms. Raymond had no favourable bias toward Ms. Giroux runs counter to the evidence.

[46] The appellant stated before us that Ms. Raymond's bias led to the striking out of some of her statements in response to an access to information request that he had filed. The appellant submits that this information was concealed in order to undermine his ability to meet his burden of proof, and that the alleged violation of the *Access to Information Act*, R.S.C. (1985), chapter A-1 [the AIA] constitutes a violation of public order and interest.

[47] Like the Judge, I conclude that the evidence referred to by the appellant is clearly insufficient to substantiate his allegations of bias. I therefore agree with the Judge's statements in paragraphs 122 to 128 of her reasons. In any event, the links that the appellant is trying to establish between Ms. Raymond's alleged bias and how his access to information request was treated are purely speculative.

(3) Allegations of discrimination made by the appellant

[48] The appellant believes that the Tribunal correctly identified the principles of law applicable to *prima facie* evidence of discrimination. However, he challenges the Tribunal's application of these principles and submits that the Tribunal imposed a heavier burden of proof on him than necessary. According to the appellant, having shown i) that he possessed three

characteristics likely to provide prohibited grounds of discrimination (race, colour and ethnic background); ii) that Ms. Giroux, his immediate superior, and Ms. Clément, his director, had refused to extend his employment as a PRRA officer; and iii) that they had given favourable references to seven other PRRA officers who otherwise had none of the appellant's inherent characteristics; is sufficient to demonstrate *prima facie* evidence of discrimination. Moreover, according to the appellant, it is not reasonable to attribute the insufficient evidence of systemic discrimination to him when the respondent was in the best position to provide him with this evidence.

[49] However, I am of the opinion that such is not the case. With all due respect for the concern expressed by the appellant regarding the increased stigmatization and ostracism experienced by racialized persons (visible minorities) following the rejection of allegations of discrimination similar to those he made, I want to emphasize that the Tribunal needed to decide the appellant's complaint on the basis of the available and relevant evidence offered to it.

[50] In this regard, I agree with the Judge's reasoning, which is found in paragraphs 144 to 157 of her reasons. Contrary to what the appellant claims, the Tribunal did not fail to take any relevant and determining evidence into account. As well, the burden to produce sufficient evidence of discrimination was incumbent upon the appellant, and any insufficiency of evidence must be attributed to him.

IV. Conclusion

[51] Because the standards of review were correctly applied by the Judge, and because there are no errors in the Tribunal's decision justifying our intervention, I propose that this appeal be dismissed with costs set at $1,500.00, including taxes and disbursements.

"A.F. Scott"
J.A.

"I agree.
Johanne Gauthier J.A."

"I agree.
Yves de Montigny, J.A."

TRANSLATION

APPENDIX I

Applicable Legislation

Public Service Employment Act, S.C. 2003, c. 22, ss. 12, 13	***Loi sur l'emploi dans la fonction publique***, L.C. 2003, ch. 22, art. 12 et 13
2(4) For greater certainty, a reference in this Act to abuse of authority shall be construed as including bad faith and personal favouritism.	**2(4)** Il est entendu que, pour l'application de la présente loi, on entend notamment par abus de pouvoir la mauvaise foi et le favoritisme personnel.
. . .	[…]
47 Where a person is informed by the Commission, at any stage of an internal appointment process, that the person has been eliminated from consideration for appointment, the Commission may, at that person's request, informally discuss its decision with that person.	**47** À toute étape du processus de nomination interne, la Commission peut, sur demande, discuter de façon informelle de sa décision avec les personnes qui sont informées que leur candidature n'a pas été retenue.
48(1) After the assessment of candidates is completed in an internal appointment process, the Commission shall, in any manner that it determines, inform the following persons of the name of the person being considered for each appointment:	**48(1)** La Commission, une fois l'évaluation des candidats terminée dans le cadre d'un processus de nomination interne, informe, selon les modalités qu'elle fixe, les personnes suivantes du nom de la personne retenue pour chaque nomination :
(***a***) in the case of an advertised internal appointment process, the persons in the area of selection determined under section 34 who participated in that process; and	***a***) dans le cas d'un processus de nomination interne annoncé, les personnes qui sont dans la zone de sélection définie en vertu de l'article 34 et qui ont participé au processus;
(***b***) in the case of a non-advertised internal appointment process, the persons in the area of selection determined under section 34.	***b***) dans le cas d'un processus de nomination interne non annoncé, les personnes qui sont dans la zone de sélection définie en vertu de l'article 34.
48(2) For the purposes of internal appointment processes, the	**48(2)** La Commission peut, pour les processus de nomination internes,

Commission shall fix a period, beginning when the persons are informed under subsection (1), during which appointments or proposals for appointment may not be made.

fixer la période, commençant au moment où les personnes sont informées en vertu du paragraphe (1), au cours de laquelle elle ne peut ni faire ni proposer une nomination.

48(3) Following the period referred to in subsection (2), the Commission may appoint a person or propose a person for appointment, whether or not that person is the one previously considered, and the Commission shall so inform the persons who were advised under subsection (1).

48(3) À l'expiration de la période visée au paragraphe (2), la Commission peut proposer la nomination d'une personne ou la nommer, que ce soit ou non la personne dont la candidature avait été retenue et, le cas échéant, en informe les personnes informées aux termes du paragraphe (1).

49 The Commission's decision to appoint a person or to propose a person for appointment is final and is not subject to appeal or review except in accordance with this Act.

49 Toute décision de la Commission portant nomination ou proposition de nomination est définitive et ne peut faire l'objet d'un appel ou d'une révision que conformément à la présente loi.

. . .

[…]

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 Board's regulations — make a complaint to the Board 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 de la Commission des relations de travail et de l'emploi , présenter à celle-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);

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET:	A-232-15
STYLE OF CAUSE:	GANDHI JEAN PIERRE v. CANADA BORDER SERVICES AGENCY
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	APRIL 12, 2016
REASONS FOR JUDGMENT:	SCOTT J.A.
CONCURRED IN BY:	GAUTHIER J.A. DE MONTIGNY J.A.
DATED:	APRIL 21, 2016

APPEARANCES:

Gandhi Jean Pierre	FOR THE APPELLANT (Representing himself)
Léa Bou Karam	FOR THE RESPONDENT CANADA BORDER SERVICES AGENCY

SOLICITORS OF RECORD:

William F. Pentney Deputy Attorney General of Canada Ottawa, Ontario	FOR THE RESPONDENT CANADA BORDER SERVICES AGENCY