

Date: 20080916

Docket: A-92-08

Citation: 2008 FCA 270

**CORAM: LÉTOURNEAU J.A.
NOËL J.A.
TRUDEL J.A.**

BETWEEN:

**ANDRÉ JULIEN, CHRISTINE ALMEIDA, BARBARA ATTWATERS,
HILDEGARD BARTER, JEFFREY BECK, BEVERLEY ANNE BLAIR,
KELLY FRANCES CADDICK, DIANE CASSEL, JOAN CLAYTON,
KAREN CSESZNEKI, MAUREEN CUMMINGS, GERALD CUNNINGHAM,
BRIGITTE DAVIAU, MARGUERITE DEAN, LORRAINE DIAPER, RITA DREW,
PEGGI DUGAS, ALBINA FACCHIN, KAREN KRCEL, EVA KUHN, PANSY LAM,
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BARBARA JEAN RAWLINGS, JASMINE ROZELL, LORRIE SEXSMITH,
DAVID THOMSON, PAUL TRUAISCH, CONSTANCE TRUAISCH,
CHRIS WAKEFIELD, DEBORAH ZALITACH, NATHALIE ZANDBERGEN,
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PAULINE BERNARD, CHRISTIANNE BERNIER, GERALD BIBEAULT,
CELINE BIRON, MONIQUE BOITREAU, ANDRE BONNELLY, SYLVAIN BORDUAS,
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MARTINE BOULANGER, MARTIN BOULARD, CHRISTIANE BRIEN,
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JOCELYNE DAIGLE, MAURICE DEMERS, CLAUDE DUFRESNE,
ROGER FERGUSON, SUZANNE FRAPPIER, SYLVAIN GAUDETTE,
VALERIE GINGRAS, JOHANNE GOBEIL, ISABELLE GODIN, MONIQUE GOSSELIN,
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YOLANDE LAFRENIERE, NICOLE LANDRY, CAROLE LATOUCHE,
CAROLLE LAVOIE, MARC ANDRE LAVOIE, MARCEL LAVOIE,**

HELENE LEMIEUX, LOUISE LEMIEUX, LUCIE LEMIEUX, DENISE LEPAGE, DIANE LESIEUR, LARRY LEWIS, KATHLEEN LOWDE, LUCETTE MARCOUILLER, PIERRE MARCOUX, DANIELLE MATTE, LISE MENARD, YOLANDE MINCHILLO, MAURICE MORIN, DORIS MORISSETTE, MARIE MYETTE, LOUISE PHILIPPON, SOPHIE PESANT, LIETTE QUENNEVILLE, DORIS RANCOURT, SYLVIE RANGER, CLAIRE ROY, JEAN-CLAUDE ROAY, LUC ROULEAU, ANDREE SANTERRE, GISELE ARSENAULT, NORMA BRINE, PAULINE GIROUARD, ANDRE LANDRY, JANICE LEBLANC-ROBICHAUD, STELLA LEBLANC, MURIELLE POWERS, CLAUDETTE WARD, CHARLENE WOODWORTH, ARLENE BEST, JOHN CAMPBELL, BARBARA COCHRANE, MARGARET DELANEY, CATHERINE HÉBERT, WILLIAM KEIRSTEAD, MICHÈLE LEAMON, MARJORIE POWER, EMILY REHBERG, CLAIRE STEWART, PAULINE WALKER, PATRICIA BRYANT, SANDRA DODD, PATRICK KIRBY, INGRID GRACE, JANET LACEY, SHARON LEARNING, DAN NOFTALL, GARY STONE, MARLENE WOODLAND

Appellants

and

**ATTORNEY GENERAL OF CANADA
CANADA REVENUE AGENCY**

Respondents

Hearing held at Ottawa, Ontario, on September 16, 2008.

Judgment delivered from the bench at Ottawa, Ontario, on September 16, 2008.

REASONS FOR JUDGMENT OF THE COURT BY:

TRUDEL J.A.

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LESIEUR, LARRY LEWIS, KATHLEEN LOWDE, LUCETTE MARCOUILLER, PIERRE
MARCOUX, DANIELLE MATTE, LISE MENARD, YOLANDE MINCHILLO, MAURICE
MORIN, DORIS MORISSETTE, MARIE MYETTE, LOUISE PHILIPPON, SOPHIE
PESANT, LIETTE QUENNEVILLE, DORIS RANCOURT, SYLVIE RANGER, CLAIRE**

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Appellants

and

**ATTORNEY GENERAL OF CANADA
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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the bench at Ottawa, Ontario, on September 16, 2008)

TRUDEL J.A.

[1] This appeal relates to a Federal Court ruling (2008 FC 115) by which Justice Shore dismissed the appellants' application for judicial review of a decision rendered by the Assistant Commissioner responsible for classification grievances in the Canada Revenue Agency. Basing her conclusions on the report of the Classification Grievance Committee (the Committee), the Assistant Commissioner refused the reclassification of the position of collection officer from level PM-01 to PM-02.

[2] The appellants are challenging the procedural fairness of that decision and submit that the Committee did not grant them a right of reply in respect of [TRANSLATION] “new and contradictory information” filed by the employer, specifically as regards the management of complex cases (Appellants’ Memorandum of Fact and Law, paragraphs 22 and following) and that this new information carried too much weight in the recommendation and decision that followed.

[3] The appellants believe, *inter alia*, that the Committee was influenced by certain responses given by the employer regarding the management of complex cases—responses that reflected a virtual structure that was not yet in place and did not provide the appellants with such supervision as could be inferred.

[4] More precisely, the debate focuses on what appears to be a misunderstanding regarding the grounds the Committee used to justify its recommendation.

[5] According to the appellants, the Committee concluded that the appellants were not responsible for complex collection cases and that such cases were automatically transferred.

[6] However, a careful review of the Committee’s report reveals rather that the Committee was of the opinion that advice was available to collection officers for complex cases and that such cases could be submitted to senior employees to obtain advice on how to proceed.

[7] The concept of procedural fairness is eminently variable and its content is to be decided in the specific context of each case (*Dunsmuir v. New Brunswick*, 2008 SCC 9, paragraph 79; see also *Knight v. Indian Head School Division No. 19*, [1990] 1 S.C.R. 653, page 682; *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, paragraph 21; *Moreau-Bérubé v. New Brunswick (Judicial Council)*, 2002 SCC 11, paragraphs 74-75).

[8] In the case at bar, the Committee's power of recommendation is circumscribed by the *Organizational and Classification Policy*, (Appellants' Book of Authorities, Tab 4) which applies to "all organization and classification activities across the Agency," and stipulates at paragraph 2(b)(iv) that:

iv. The committee will review all material presented by the grievor and/or the representative, as well as clarifications provided by management responsible for the work under question. The committee will review and analyze all information presented in an unbiased and gender-neutral way. The committee's final deliberations and decision occur "in camera". If significant new information is presented to the committee by management, the grievor and/or the representative will be provided with the information and have 10 working days to respond. The response received from the grievor and/or the representative, will be presented to the grievance committee for consideration.

[9] In the specific context of this case, the appellants failed to persuade us that the Committee did not comply with this policy and therefore infringed upon the appellants' right to a fair hearing.

[10] There is no basis for this Court to intervene and reverse Justice Shore's findings of fact and law on this issue (paragraphs 47 and 48 of his reasons).

[11] The appeal will be dismissed with costs.

“Johanne Trudel”

J.A.

Certified true translation
Sarah Burns

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET: A-92-08

APPEAL FROM A DECISION OF THE FEDERAL COURT (2008 CF 115, SHORE J.)

STYLE OF CAUSE: André Julien et al. v. Attorney
General of Canada and Canada
Revenue Agency

PLACE OF HEARING: Ottawa

DATE OF HEARING: September 16, 2008

REASONS FOR JUDGMENT OF THE COURT BY: LÉTOURNEAU J.A.
NOËL J.A.
TRUDEL J.A.

DELIVERED FROM THE BENCH BY: TRUDEL J.A.

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