

Federal Court of  
Appeal



CANADA

Cour d'appel  
fédérale

**Date: 20091027**

**Dockets: A-26-09**

**A-27-09**

**A-28-09**

**A-29-09**

**Citation: 2009 FCA 313**

**CORAM: BLAIS C.J.  
NADON J.A.  
EVANS J.A.**

**Docket: A-26-09**

**BETWEEN:**

**PHILLIP ARKINSTALL**

**Applicant**

**and**

**THE ATTORNEY GENERAL OF CANADA**

**Respondent**

**Docket: A-27-09**

**BETWEEN:**

**ANDREA DORAIS**

**Applicant**

**and**

**THE ATTORNEY GENERAL OF CANADA**

**Respondent**

**Docket: A-28-09**

**BETWEEN:**

**KEVIN WILLS**

**Applicant**

**and**

**THE ATTORNEY GENERAL OF CANADA**

**Respondent**

**Docket: A-29-09**

**BETWEEN:**

**SARAH HUMMEL**

**Applicant**

**and**

**THE ATTORNEY GENERAL OF CANADA**

**Respondent**

Heard at Vancouver, British Columbia, on October 27, 2009.

Judgment delivered from the Bench at Vancouver, British Columbia, on October 27, 2009.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**NADON J.A.**

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**REASONS FOR JUDGMENT OF THE COURT**

**(Delivered from the Bench at Vancouver, British Columbia, on October 27, 2009)**

**NADON J.A.**

[1] Before us are applications for judicial review in Court files A-26-09, A-27-09, A-28-09 and A-29-09. These Reasons will dispose of the four applications and a copy of the Reasons will be placed in each Court file.

[2] These applications seek to set aside decisions made by Umpire Guy Goulard on November 14, 2008 (in files A-26-09 and A-28-09) and November 26, 2008 (in files A-27-09 and A-29-09).

[3] The applicants are all teachers employed in British Columbia by School District No. 73 on a term certain basis. However, during the period of September 12, 2006 to January 31, 2007, the applicant Dorais (in file A-27-09) was a teacher on call.

[4] The applicants applied for Employment Insurance benefits effective July 1, 2007, for various non-teaching periods. The Employment Insurance Commission (the “Commission”) denied their claims on the basis that they were teachers and, hence, not entitled to benefits during non-teaching periods.

[5] Appeals were taken to the Board of Referees (the “Board”), which concluded that although the applicants’ contracts of employment had not terminated, they were nonetheless entitled to insurance benefits because they were “casual” or “substitute” teachers within the meaning of subsection 33(2)(b) of the *Employment Regulations*, SOR/96-332 (the “Regulations”).

[6] The Commission appealed the Board’s decisions to the Umpire. Umpire Goulard, who heard the four appeals, set aside the Board’s decisions, concluding that the applicants were not entitled to insurance benefits during non-teaching periods because they were, at all times, “employed in a continuous and pre-determined way which could not be considered casual or substitute teaching.”

[7] We are all agreed that in concluding as he did, the Umpire made no reviewable error. In our view, when read as a whole, our decisions in *Dupuis-Johnson v. Canada (Employment and Insurance Commission)*, 1996 FCJ No. 816 (Q.L.), *Canada (Attorney General) v. Blanchet*, 2007 FCA 377, *Stephens v. Canada (Minister of Human Resources and Development)*, 2003 FCA 477, *Stone v. Canada (Attorney General)*, 2006 FCA 27, *Bazinet v. Canada (Attorney General)*, 2006 FCA 174, and *Oliver v. Canada (Attorney General)*, 2003 FCA 98, provide a complete answer to the issues raised in these applications.

[8] On the basis of the principles enunciated in those cases, we are satisfied that the applicants, whose contracts had not terminated, were not “casual” or “substitute” teachers within the meaning of subsection 33(2)(b) of the Regulations.

[9] Accordingly, the applications for judicial review will be dismissed. The respondent shall be entitled to its disbursements in each file, but to only one set of costs.

"M. Nadon"

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-26-09  
A-27-09  
A-28-09  
A-29-09

**STYLE OF CAUSE:** Phillip Arkinstall v. AGC  
Andrea Dorais v. AGC  
Kevin Wills v. AGC  
Sarah Hummel v. AGC

**PLACE OF HEARING:** Vancouver, British Columbia

**DATE OF HEARING:** October 27, 2009

**REASONS FOR JUDGMENT OF THE COURT BY:** (BLAIS C.J., NADON, EVANS  
JJ.A.)

**DELIVERED FROM THE BENCH BY:** NADON J.A.

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