

Federal Court  
of Appeal



Cour d'appel  
fédérale

**Date: 20100421**

**Docket: A-371-09**

**Citation: 2010 FCA 109**

**CORAM: PELLETIER J.A.  
DAWSON J.A.  
STRATAS J.A.**

**BETWEEN:**

**PROFESSIONAL INSTITUTE OF THE  
PUBLIC SERVICE OF CANADA**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

Heard at Ottawa, Ontario, on April 21, 2010.

Order delivered from the Bench at Ottawa, Ontario, on April 21, 2010.

REASONS FOR ORDER OF THE COURT BY:

PELLETIER J.A.

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**REASONS FOR ORDER OF THE COURT**

**(Delivered from the Bench at Ottawa, Ontario, on April 21, 2010.)**

**PELLETIER J.A.**

[1] At the start of the hearing, we advised counsel that we were of the view that the privative clause found at section 51 of the *Public Service Labour Relations Act*, S.C. 2003, c. 22, s.2, may have had a bearing on the issues which they had raised before us, and that we found it unfortunate that neither of them had seen fit to raise it. Rather than requesting further submissions, we decided to hear the case on the basis upon which the parties had prepared their memoranda.

[2] The issue before the Public Service Labour Relations Board (the Board) was whether the employer had failed to bargain in good faith by tabling a final offer, followed one hour later by a press release announcing the terms of the final offer to the public. The following day, the government, in the Speech from the Throne, indicated an intention to introduce legislation to limit wage increases in the public sector.

[3] The Board held that the employer had not failed to bargain in good faith. In coming to that conclusion, the Board identified the applicable principles from the Supreme Court of Canada's decision in *Royal Oak Mines Inc v. Canada (Canada Labour Relations Board)*, [1996] 1 S.C.R 369, and applied them to the evidence before it.

[4] The appellant's submissions were largely an attack on the Board's characterization of certain elements of that evidence, an area in which our ability to intervene is limited.

[5] In our view, the Board's conclusions, which fell squarely within its particular expertise, were reasonable and met the test of transparency and intelligibility.

[6] We would therefore dismiss the application for judicial review with costs.

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"J.D. Denis Pelletier"

J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-371-09

**STYLE OF CAUSE:** PROFESSIONAL INSTITUTE OF  
THE PUBLIC SERVICE OF  
CANADA and ATTORNEY  
GENERAL OF CANADA

**PLACE OF HEARING:** OTTAWA, ONTARIO

**DATE OF HEARING:** APRIL 21, 2010

**REASONS FOR ORDER OF THE COURT BY:** PELLETIER J.A.  
DAWSON J.A.  
STRATAS J.A.

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

**APPEARANCES:**

DOUGALD E. BROWN FOR THE APPLICANT

RICHARD FADER FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

NELLIGAN O'BRIEN PAYNE LLP FOR THE APPLICANT  
OTTAWA, ONTARIO

MYLES J. KIRVAN FOR THE RESPONDENT  
DEPUTY ATTORNEY GENERAL OF CANADA