

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20100921

**Dockets: A-193-09
A-189-09
A-190-09
A-191-09
A-194-09
A-195-09**

Citation: 2010 FCA 237

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

Docket: A-193-09

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

PHILIPPE GAGNÉ

Respondent

BETWEEN:

Docket: A-189-09

ATTORNEY GENERAL OF CANADA

Applicant

and

STEEVE CASTONGUAY

Respondent

BETWEEN:

ATTORNEY GENERAL OF CANADA

and

DAVID DROUIN

Docket: A-190-09

Applicant

Respondent

BETWEEN:

ATTORNEY GENERAL OF CANADA

and

SAMUEL GIRARD

Docket: A-191-09

Applicant

Respondent

BETWEEN:

ATTORNEY GENERAL OF CANADA

and

YAN TREMBLAY

Docket: A-194-09

Applicant

Respondent

BETWEEN:

Docket: A-195-09

ATTORNEY GENERAL OF CANADA

Applicant

and

RICHARD GUILLEMETTE

Respondent

Hearing held at Québec, Quebec, on September 21, 2010.

Judgment delivered from the Bench at Québec, Quebec, on September 21, 2010.

REASONS OF JUDGMENT OF THE COURT BY:

NOËL J.A.

Federal Court
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ATTORNEY GENERAL OF CANADA

Applicant

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RICHARD GUILLEMETTE

Respondent

REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Québec, Quebec, on September 21, 2010)

NOËL J.A.

[1] In accordance with an order made by this Court on July 30, 2009, the reasons below in Philippe Gagné's file (A-193-09) apply *mutatis mutandis* and dispose of the five other files. A copy will therefore be placed in each of the other files to stand as reasons in those cases.

[2] The Board of Referees determined first that Philippe Gagné had not lost his employment because of his own misconduct. The Umpire refused to interfere in that decision for the following reason:

. . . [T]he Board reviewed the evidence and concluded that the claimants involved could not suspect that their behaviour would jeopardize their employment, given that this behaviour had long been tolerated, even by the supervisors, and that these actions had been committed in plain sight and with the knowledge of the supervisors without penalty, at least as far as the claimants knew. The Board could therefore conclude based on this evidence that the claimants' actions did not constitute misconduct within the meaning of the *Employment Insurance Act*.
(Reasons, page 5)

[3] There is no error in that statement as regards the applicable principle in matters of misconduct. The only question which arises is whether the Umpire could make this finding based on the evidence, and it is this Court's opinion that he could.

[4] The application for judicial review will therefore be dismissed with costs in file A-193-09 only.

“Marc Noël”

J.A.

Certified true translation
Tu-Quynh Trinh

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKETS: A-193-09, A-189-09, A-190-09, A-191-09, A-194-09 and A-195-09

STYLE OF CAUSE: Attorney General of Canada v.
Philippe Gagné, Steeve Castonguay,
David Drouin, Samuel Girard, Yan
Tremblay, Richard Guillemette

PLACE OF HEARING: Québec, Quebec

DATE OF HEARING: September 21, 2010

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

DELIVERED FROM THE BENCH BY: NOËL J.A.

APPEARANCES:

Antoine Lippé FOR THE APPLICANT

Jean Mailloux FOR THE RESPONDENTS

SOLICITORS OF RECORD:

Myles J. Kirvan FOR THE APPLICANT
Deputy Attorney General of Canada
Montréal, Quebec

Pépin et Roy FOR THE RESPONDENTS
Québec, Quebec