

Federal Court  
of Appeal



Cour d'appel  
fédérale

**Date: 20101110**

**Docket: A-21-10**

**Citation: 2010 FCA 305**

**CORAM: DAWSON J.A.  
LAYDEN-STEVENSON J.A.  
STRATAS J.A.**

**BETWEEN:**

**PUBLIC SERVICE ALLIANCE OF CANADA**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA and  
HALIFAX CITADEL REGIMENTAL ASSOCIATION**

**Respondents**

Heard at Halifax, Nova Scotia, on November 10, 2010.

Judgment delivered from the Bench at Halifax, Nova Scotia, on November 10, 2010.

REASONS FOR JUDGMENT OF THE COURT BY:

DAWSON J.A.

Federal Court  
of Appeal



Cour d'appel  
fédérale

**Date: 20101110**

**Docket: A-21-10**

**Citation: 2010 FCA 305**

**CORAM: DAWSON J.A.  
LAYDEN-STEVENSON J.A.  
STRATAS J.A.**

**BETWEEN:**

**PUBLIC SERVICE ALLIANCE OF CANADA**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA and  
HALIFAX CITADEL REGIMENTAL ASSOCIATION**

**Respondents**

**REASONS FOR JUDGMENT OF THE COURT**

**(Delivered from the Bench at Halifax, Nova Scotia, on November 10, 2010)**

**DAWSON J.A.**

[1] The Public Service Alliance of Canada (PSAC) is the bargaining agent for all employees of the Parks Canada Agency (Parks Canada). PSAC applied to the Public Service Labour Relations Board (Board) under section 58 of the *Public Service Labour Relations Act*, S.C. 2003, c. 22, s. 2 for an order that all “[f]ull-time and seasonal employees working at the Halifax Citadel National

Historic Site that are paid through the Halifax Citadel Regimental Association” (HCRA) be included in PSAC's bargaining unit with Parks Canada.

[2] Parks Canada and the HCRA objected on a preliminary basis to the application. They argued that the Board was without jurisdiction to hear the application because the individuals in question were not employed in the public service.

[3] The Board decided the jurisdictional question would be decided on the basis of the written submissions of the parties. The Board allowed the preliminary objection and dismissed PSAC’s application. The Board reasoned that unless the employees had been appointed to Parks Canada in accordance with the statutory formalities found in the *Parks Canada Agency Act*, S.C. 1998, c. 31 (Parks Canada Act) it was without jurisdiction to consider the application.

[4] On this application for judicial review of that decision PSAC argues that:

1. The Board erred in concluding that it lacked jurisdiction.
2. The Board breached the duty of procedural fairness by disposing of the preliminary issue on the basis of written submissions, thus denying PSAC the opportunity to adduce evidence.

[5] The parties agree that the standard of review to be applied to the Board’s conclusion that it lacked jurisdiction is correctness. Assuming this to be the correct standard of review, in our view the Board was correct when it found it was without jurisdiction. The Board correctly concluded that

the decision of the Supreme Court of Canada in *Canada (Attorney General) v. Public Service Alliance of Canada*, [1991] 1 S.C.R. 614 applied, and it made no error in its consideration of subsections 2(1) and 13(1) of the *Parks Canada Act*.

[6] The word “appoint” in subsection 13(1) of the *Parks Canada Act* must be examined in relation to the use of that word elsewhere in the *Parks Canada Act* and in other federal legislation referred to by counsel for the Attorney General of Canada. This examination shows us that it is not possible for an employee of HCRA to become a *de facto* employee of Parks Canada on the basis of the common law tests that apply in other contexts.

[7] We are also satisfied that PSAC was not denied procedural fairness. The question before the Board was one of law, involving the proper interpretation of the *Parks Canada Act*. PSAC argued that there were no statutory prerequisites or formalities in the *Parks Canada Act* to displace the application of the common law. No evidence was required to determine this question. Moreover, as set out in its counsel’s letter of January 29, 2009, to the Board, PSAC sought to adduce evidence of “the actual workplace employment relationship [among] the employees, Parks [Canada] and the HCRA.” PSAC argued that the “Board must consider evidence of factors including control, employee selection, integration, hiring, scheduling, hours of work and discipline.” The evidence that PSAC sought to adduce was not material to the jurisdictional question before the Board.

[8] For these reasons the appeal will be dismissed with costs.

“Eleanor R. Dawson”

---

J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-21-10

**STYLE OF CAUSE:** PUBLIC SERVICE ALLIANCE OF  
CANADA V. ATTORNEY GENERAL OF  
CANADA and HALIFAX CITADEL  
REGIMENTAL ASSOCIATION

**PLACE OF HEARING:** Halifax, Nova Scotia

**DATE OF HEARING:** November 10, 2010

**REASONS FOR JUDGMENT OF THE COURT BY:** DAWSON J.A.

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

**APPEARANCES:**

Andrew Raven	FOR THE APPLICANT
Caroline Engmann	FOR THE RESPONDENT (Attorney General of Canada)
Noella Martin	FOR THE RESPONDENT (Halifax Citadel Regimental Association)

**SOLICITORS OF RECORD:**

Raven, Cameron, Ballantyne & Yazbeck Barristers & Solicitors Ottawa, Ontario	FOR THE APPLICANT
Myles J. Kirvan Deputy Attorney General of Canada	FOR THE RESPONDENT (Attorney General of Canada)
Wickwire Holm Barristers & Solicitors Halifax, Nova Scotia	FOR THE RESPONDENT (Halifax Citadel Regimental Association)