

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20201013**

**Docket: A-376-19**

**Citation: 2020 FCA 170**

[ENGLISH TRANSLATION]

**CORAM: NADON J.A.  
RIVOALEN J.A.  
LEBLANC J.A.**

**BETWEEN:**

**ATTORNEY GENERAL OF CANADA**

**Appellant**

**and**

**BRUNO SOUCY**

**Respondent**

Online videoconference hearing organized by the Registry, on October 13, 2020.

Judgment delivered from the Bench at Ottawa, Ontario, on October 13, 2020.

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

**LEBLANC J.A.**

Federal Court of Appeal



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**REASONS FOR JUDGMENT OF THE COURT**  
**(Delivered from the Bench at Ottawa, Ontario, on October 13, 2020.)**

**LEBLANC J.A.**

[1] This is an appeal from a judgment of the Federal Court (2019 FC 989), rendered on July 24, 2019. This judgment allowed an application for judicial review of a decision of the Public Service Commission of Canada (the Commission) not to conduct an investigation, as permitted under section 66 of the *Public Service Employment Act*, S.C. 2003, c. 22, sections 12 and 13 (the Act), in relation to an external appointment process, for which the respondent had

applied, undertaken by the Department of National Defence (the Department) to fill the position of Fire Chief at the Canadian Forces Base of Valcartier, in Quebec.

[2] The respondent complained to the Commission that he was not appointed to that position even though he was the most qualified candidate and had even been offered an acting appointment to the said position before being promised a permanent appointment. He attributed this situation to certain irregularities in the appointment process. In particular, he accused the manager having the final word under this process, the new Commanding Officer Operations Services (the Commanding Officer), who had not participated in the initial evaluation of the candidates under the process in question, of selecting another candidate without valid justification. The Commanding Officer explained to the Commission that he had selected the candidate who, among other factors, most closely shared his values.

[3] The Commission concluded that the respondent's complaint did not call for an investigation under section 66 of the Act on the ground that, contrary to the requirements of the said provision, it did not raise any issues related to the application of the Act, the regulations and the Guidelines.

[4] Being of the view that the evaluation carried out by the Commanding Officer based on his "values" appeared to constitute a separate, deeply personal evaluation of the candidates that was added to the merit-based evaluation required by section 30 of the Act, the Federal Court ruled, on a standard of reasonableness, that it failed to understand how the Commission was able to conclude that the respondent's complaint failed to raise any issues related to the application of

the Act, particularly the merit principle intended to govern all appointments to the federal public service. It concluded that from this point of view, the Commission's decision was unintelligible and, consequently, unreasonable.

[5] The appellant faulted the Federal Court for having acted in disregard of its role by substituting its own assessment of the facts for that of the Commission and, in so doing, failing to show necessary deference with respect to the latter's findings, in light of all the circumstances of this case, in exercising discretion under section 66 of the Act. It contends that it misinterpreted the Act in this respect by disregarding the principle that the Act no longer imposes the obligation on managers to appoint the most qualified candidate to a position but rather allows them to choose, from among the qualified candidates, the one who may best meet the specific requirements of the position.

[6] When hearing an appeal from a judicial review decision rendered by the Federal Court, the Court must determine whether the appropriate standard of review was used and whether this standard was applied correctly. In other words, after deciding that the correct standard of review was applied, as is the case here, we must "step into the shoes" of the Federal Court and focus on the administrative decision subject to judicial review (*Agraira v. Canada (Public Safety and Emergency Preparedness)*), 2013 SCC 36, [2013] 2 S.C.R. 559 at paragraphs 45–47).

[7] However, the appellant has not convinced us that our intervention is called for in this case. Indeed, we are all of the opinion that the Federal Court did not err in finding as it did. Having emerged as the most qualified candidate under the selection process initiated by the

Department and having, for all intents and purposes, been offered the position on a permanent basis, the respondent had a right to expect the Commission to explain in a transparent and intelligible manner, which it failed to do, why the decision to ultimately not offer him the said position, a decision essentially founded on the Commanding Officer's preference to work with someone who shares "his values," these values being unknown, did not raise any issues with respect to the application of the Act, notably section 30 thereof, which continues to place the merit principle at the heart of the legal framework governing staffing processes in the federal public service.

[8] Accordingly, we are all of the view that this appeal should be dismissed, with costs to the respondent.

"René LeBlanc"

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J.A.

Certified true translation  
François Brunet, Revisor

**FEDERAL COURT OF APPEAL**

**COUNSEL OF RECORD**

**DOCKET:** A-376-19

**STYLE OF CAUSE:** ATTORNEY GENERAL OF  
CANADA v. BRUNO SOUCY

**PLACE OF HEARING:** BY ONLINE  
VIDEOCONFERENCE

**DATE OF HEARING:** OCTOBER 13, 2020

**REASONS FOR JUDGMENT OF THE COURT  
BY:** NADON J.A.  
RIVOALEN J.A.  
LEBLANC J.A.

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

**APPEARANCES:**

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