

Federal Court



Cour fédérale

Date: 20150917

Docket: T-243-15

Citation: 2015 FC 1089

Ottawa, Ontario, September 17, 2015

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

SERGE BOURDEAU

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision dated January 14, 2015 by Linda Brouillette, Director General, Human Resources, Transport Canada rendered in her capacity as the Deputy Head's Nominee for Classification Grievances (the Nominee). The decision approved the recommendation made on January 8, 2015 by a Classification Grievance Committee (the Committee) which recommended the applicant's position as Building Services Planning and Coordination Officer in the Department of Transport Canada, in Ottawa remain classified at the AS-01 Group and Level.

[2] As Transport Canada is a department within the federal public service it falls within the *Financial Administration Act* pursuant to which, in this case, Treasury Board is the employer.

[3] For the reasons which follow this application for judicial review is allowed, in part.

I. **BACKGROUND**

[4] On February 12, 2014 the applicant grieved that his position of Building Services Planning and Coordination Officer was not properly classified in accordance with his duties and responsibilities.

[5] The grievance followed upon an update and review of the applicant's position in the course of the reorganization and review of the Facilities Management Branch which update and review determined through the Organization and Classification Committee that the position would stay at the AS-01 group and level effective January 4, 2013.

[6] The applicant's grievance was subject to the Treasury Board *Classification Grievances Policy* and *Classification Grievance Procedure* under which a Classification Grievance Committee composed of three people who are appointed based upon certain stipulated criteria convene to determine the grievance.

[7] In keeping with the procedure a committee of three persons was struck. The chairperson, Robin Gilmore, was a Senior Human Resources Consultant – Classification. The other committee members were a Classification Grievance Analyst from Treasury Board and a Manager, Lease Administration and Real Estate from Public Works and Government services Canada.

[8] Pursuant to the Mandate section of the grievance procedure the Committee “is responsible for establishing the appropriate classification and evaluating the grieved position based on the duties assigned by management and performed by the employee and the additional information provided by management and by the grievor and/or his or her representative”. In addition the Mandate specifies that “The classification recommended to the deputy head or nominee must be fair, equitable and consistent with the classification principles.”

[9] The procedure states it is critical that the grievance decision be based on an accurate Work Description performed by the employee and signed by management. It recommends that an on-site review of the work with the employee concerned and the supervisor should be conducted. In this case an on-site review was done on September 3, 2013 and the conclusion was “there is coincidence with the work described and the work performed.”

[10] The parties agree that the appropriate classification group in this case is Administrative Services (AS). The group definition, found in the definition and inclusions of the Program and Administrative Services Group, states:

The Program and Administrative Services Group comprises positions that are primarily involved in the planning, development, delivery or management of administrative and federal government policies, programs, services or other activities directed to the public or to the Public Service.

[11] Within the Classification Standard there are four factors and nine elements or sub-factors used in the point rating plan which is employed to evaluate jobs in the Administrative Services Group. Marked by bold face type in the table below are the ones in dispute in this case:

Knowledge	Education Experience Continuing Study
Decision Making	Scope of Decisions

	Impact of Decisions
Responsibility for Contacts	Nature of Contacts Persons Contacted
Supervision	Numbers Supervised Level of Employees Supervised

[12] There are six steps involved in determining the classification of a position which steps include examining the position being rated to positions above and below it in the organization, studying the position description to ensure an understanding of it as a whole and comparing the description of the factor in each of the bench-mark positions to the factor in the position being rated as well as to bench-mark positions above and below it. Ultimately, the position being rated is compared as a whole to positions with similar total point values in the organization as a validity check on the total rating.

[13] As is readily apparent from a review of the policy, procedure and classification standard documents, as well as the Work Description and bench-mark positions, the task of performing the job evaluation and determining the position classification requires attention to detail, a significant degree of expertise and an understanding of the overall work environment of the position being evaluated. In this case, the decision of the Committee was unanimous. It is not to be interfered with lightly.

II. **THE DECISION UNDER REVIEW**

[14] While the decision under review is that of the Nominee, the Nominee approved the unanimous recommendation of the Committee. Therefore, the reasons under review are those of the Committee. The Nominee did not provide any additional reasons or justification for the decision.

[15] The Committee received both a written presentation from the applicant's representative as well as a verbal one. On occasion the Committee asked the representative clarifying questions which were answered. The applicant also answered questions from the Committee. The applicant's supervisor was contacted by the Committee to provide information as a management representative.

[16] The applicant grieved the rating assigned to three factors: Knowledge - Experience; Scope of Decision Making; and Responsibility for Contacts. The Committee accepted the applicant's position on Knowledge - Experience but rejected Scope of Decision Making and Responsibility for Contacts. After adjusting the points for Knowledge - Experience the rating of the grieved position was still AS - 01 therefore the applicant filed for judicial review of the decision.

[17] The application before me dealt only with Scope of Decision Making and Responsibility for Contacts.

A. *The Applicant's Submissions*

[18] The applicant's position is that the decision of the Nominee was plainly unreasonable because the Committee misapplied the definitions in the AS classification standard and modified the duties in the Work Description. The applicant contends that in reaching their conclusions with respect to the three factors being reviewed in this grievance the Committee reached a conclusion which "flew in the face of the record before it".

[19] In addition, the applicant submits the Committee did not follow the process prescribed in the *Classification Grievance Procedure* and did not assess the duties and activities in light of the definitions set out in the Classification Standard.

[20] It is submitted that the Committee “read out” or otherwise ignored parts of the Work Description when dealing with the rating scale for Decision Making by ignoring the plain wording of the Work Description, in particular the word “develops” which, of the thirteen Key Activities listed in the Work Description, appears in six of them. This is said to be important because the word “develops” implies change or modification and the difference between a degree A and degree B factor in the AS Classification Standard is the difference between decisions which require some judgment and selection of a course of action indicated by established methods versus requiring a moderate degree of judgment by selection of courses of action that may require some modification of established methods. (My emphasis)

[21] Similarly the applicant submits that when dealing with Responsibility for Contacts the Committee in arriving at its conclusion ignored the word “negotiates” and altered the definition of the word “Associates”.

[22] The word “negotiates” is said to be important because in degree B for the sub-factor Nature of Contacts the description is to persuade and obtain assistance or agreement of others which the applicant says of necessity involves negotiating. The degree A description is somewhat more passive saying the nature is “[t]o give, obtain and exchange information requiring discussion, explanation and cooperation.”

[23] The word “Associates” is important with respect to the degree of persons contacted. The applicant contends that he has contact with Associates both by definition of the word Associates in the Classification Standard and the description in degree 2 which refers to contact with Associates in private organizations.

[24] “Associates” is defined in the Classification Standard as:

persons with whom contacts are customarily established over long periods of time and in circumstances that develop an awareness of each other’s requirements.

[25] In response to a question from the Committee the applicant provided as examples of external service providers with whom he is in regular contact moving companies, landlords, Public Works Government Services Canada, (PWGSC), suppliers and locksmiths. It was submitted that these external service providers constitute Associates.

B. *The Respondent’s Submissions*

[26] The respondent submits no reviewable error was made by the Nominee in approving the recommendation made by the Committee as it clearly and properly explained its analysis and it evaluated and considered the duties in the Work Description within the organizational context while properly applying the definitions in the AS Classification Standard.

[27] The respondent states that as there are six steps in the AS Classification Standard it demonstrates that the classification process is more than simply a word match between words in the Work Description and words in the factor degree definition in the AS Classification Standard.

[28] Specifically with respect to Scope of Decision Making the Respondent relies upon the Committee's finding that the Applicant's decision-making is limited by the role of his supervisor because the role of the supervisor includes developing, implementing and monitoring policies. The Committee also found the applicant acted as the voice of the client while PWGSC was responsible for the delivery of services and so the Applicant's freedom to make decisions was limited.

[29] The Respondent disputes the Applicant's allegation that the Committee either disregarded or "read out" portions of the applicant's Work Description. It states the Committee provided clear reasons and analysis for its decision and as such made no reviewable error.

III. ANALYSIS

A. Standard of Review

[30] The parties agree that the standard of review in this case is reasonableness.

[31] I accept this is the standard. Caselaw of this court has determined that "Classification Grievance Committees perform highly specialized functions and possess expertise in matters of classification; decisions made by the Committee are to be afforded a high degree of deference. The appropriate standard of review is reasonableness." *McEvoy v. Canada (Attorney General)*, 2013 FC 685 at para. 39.

B. Guiding Principles

[32] Counsel also agreed that certain guiding principles arising from *Dunsmuir v. New Brunswick*, 2008 SCC 9 and cases decided thereafter govern the way in which I am to review a decision on the reasonableness standard. Briefly the principles are:

- courts must show “respect for the decision-making process of adjudicative bodies with regard to both the facts and law”;
- reasons should be looked at in the context of the entire record including the evidence, party submissions and the process etc.;
- reasons do not have to be perfect nor do they have to be comprehensive;
- reasons must be read together with the outcome and serve the purpose of showing whether the result falls within a range of possible outcomes that are defensible on both the facts and the law;
- adequacy of the decision’s reasons is not a stand-alone basis for quashing a decision;
- it is not the role the court to re-weigh the evidence or to substitute its preferred outcome; and
- reasons may not include all the arguments, statutory provisions, jurisprudence or other details a reviewing judge might have preferred but that does not impugn the validity of either the reasons or the result under a reasonableness analysis.

See for example: *Newfoundland and Labrador Nurses Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62; *McEvoy v. Canada (Attorney General)*, 2013 FC 685 and *Peck v. Parks Canada*, 2009 FC 686 . Other citations are omitted as the principles are well known and undisputed.

[33] In this case as with many others perhaps the most important guiding principle is:

- A decision-maker is not required to make an explicit finding on each constituent element, however subordinate, leading to its final conclusion. If the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the *Dunsmuir* criteria are met. *Bergeron v. Canada (Attorney General)*, 2015 FCA 160 at para. 58.

C. The Classification Documents

(1) The Organization and Classification Committee Report

[34] In early 2013 the Facility Management Branch was reorganized and all work descriptions were reviewed/updated. As a result of those changes the applicant's position was assigned supervision of another position. His revised job was proposed by his supervisor (who was then titled Chief, Facility Management), to be reclassified to Group and Level AS-02. The supervisor's position was rated as Group and Level AS-04.

[35] On November 28, 2013 the Organization and Classification Committee of the Classification Centre of Excellence met and received a presentation from the applicant's supervisor to explain the background and context of the reorganization and "the evolution of the responsibilities and workload that led to the request to reclassify the position". After comparing the applicant's work to both a higher and a lower bench-mark position in each of the four factors the consensus of the Committee was that the rating should remain as AS-01.

[36] Under the heading "Internal and External Relativity" the Committee noted as follows:

This position is unique in the department. A request to get relativity has been sent to three departments, and only one of them answered back. However, the analysis of the relativity sent by this department showed too many differences between both positions to use this relativity.

[37] During submissions the respondent stressed the importance of reviewing the applicant's position as a whole and within the organizational context. Given that there is no comparable position anywhere within the organization, this step must have been limited to reviewing positions above and below the applicant's. Therefore the analysis of those positions by the Committee becomes all the more important since the important "sixth step" of comparing the

position being rated to positions to which similar total point values have been assigned as a “check on the validity of the total rating” could not be performed.

(2) The Classification Grievance Procedure

[38] The importance of Committee deliberations and the expression of them in the written report are clearly set forth in the Classification Grievance Procedure Annex 1 (Classification Grievance Committee Report) section 7 which states:

Committee deliberations

7. This section is the heart of the report and must clearly indicate how the committee arrived at its recommendation. It should analyse the grievor’s work in relation to the classification standard(s), the arguments made by or on behalf of the grievor and management’s information, and provide a detailed explanation for the committee’s evaluation. It should state why the committee evaluated the position in the specific category and occupational group and level, what, if any, other categories or groups were considered and the reasons why these were considered inappropriate. If the existing category, group, level and rating are being confirmed, a complete rationale must, nevertheless, be developed. Statements such as “No change to present rating” are not acceptable.

[39] Indeed the importance of having a comprehensive report from the Committee including a justification for the Committee’s recommendation is so important that the classification grievance procedure contains extensive guidelines for preparing the report. In this case the Committee has properly followed the guidelines and there is no dispute with respect to the format of the report. The dispute is with respect to the analysis within the report and the sufficiency of the reasons.

(3) The On-Site Review

[40] As previously stated, the On-Site Review report is an important document which helps to fulfill the required classification Mandate that what is to be reviewed and classified are the duties assigned by management and performed by the employee. The on-site review includes a comment from the applicant that “the role and responsibilities of the position have changed and he now has a bigger impact on the decisions taken and can be challenged on the quality of the information he is providing to management”. As this comment appears directly above the conclusion that “there is coincidence with the work described and the work performed” it appears to have been accepted by the on-site reviewer as a true statement and in accordance with the guiding principles I accept it was taken into account by the Committee in their deliberations.

D. The Sub-Factors and Degrees being Examined

[41] Each of the three sub-factors being challenged were analyzed by the parties and by the Committee against the Rating Scale found in the Classification’s Standard. The Committee’s analysis included reviewing bench-mark positions above and equivalent to the applicant’s position.

(1) Scope of Decision Making

[42] The applicant proposed this factor be rated degree B rather than degree A primarily because the applicant’s work “may require some modification of established methods” which is part of the description of the degree B impact. It was asserted that it was self-evident that in order to develop new or modify existing policies established methods had to be modified.

[43] In comparing the applicant’s position to the bench-mark position Administrator, Post Abroad (The Hague) which is at degree A the Committee noted decisions and recommendations

made by the person in that position were in accordance with directives, processes and established practices whereas when comparing it to bench-mark position Administrator, Post Abroad, Tokyo which is a degree B most decisions were made by reference to established practice however some modifications were required in the letting of contracts arranging for housing and dealing with locally engaged staff.

[44] The Committee requested examples of situations that required the applicant to modify established methods. Two such examples were provided by the applicant to the Committee. One involved changes resulting from the creation of Shared Services Canada which eliminated the in-house IT team for building related services. The other arose as a result of an internal audit which recommended stricter tracking mechanisms for which the applicant developed a portion of the new data tracking system as well as the process to capture and track that data.

[45] The applicant's supervisor whom the Committee had contacted confirmed the applicant's role in developing tracking systems and in performing expenditure tracking. She also confirmed the distinction between the applicant and the other positions in the work unit and confirmed the distinction between the applicant's role and the role of the Facilities Management team as a whole. The applicant's role in reviewing plans was confirmed by the supervisor.

Analysis

[46] It is not within my purview to second-guess why the Committee found that degree A for Scope of Decision Making was the correct one rather than degree B. My role is to determine whether "the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes"

whereupon the *Dunsmuir* criteria are met. *Bergeron v. Canada (Attorney General)*, 2015 FCA 160 at para. 58.

[47] In reviewing the rating of this factor the Committee paid special attention to the portions of the Work Description highlighted by the applicant's representative as well as comments of the applicant. The Committee found that the applicant's decision-making responsibility was limited by the role of his supervisor and that although the applicant was responsible for acting as the voice of the client on occasion it was PWGSC that was responsible for the delivery of the services. Therefore the applicant's freedom to make decisions was limited.

[48] The Committee also carefully compared the applicant's position to the bench-mark positions above and equal to it and articulated why it chose one as being equivalent rather than the other.

[49] Although the applicant is able to point to many instances where the word "develops" is used in the applicant's Work Description and submitted that a modification of established methods in and of itself would lead to the "obvious conclusion" which they say was ignored by the Committee a careful reading of the reasons of the Committee indicates that it took into consideration the limited nature of any modifications made by the Applicant, the fact that his supervisor's Work Description included developing and refining policies and practices and that decisions are also limited by the role of PWGSC.

[50] The Classification Standard indicates that Scope of Decision Making refers to the freedom to make decisions and is measured in terms of "the judgment, initiative and discretion required to identify and resolve problems". I agree with the respondent that the analysis and

classification, is not as simple as doing a “word match”. It is necessary to read the words in context and look at the whole of the work involved, which the committee did in this case.

[51] It is clear that the Committee’s analysis of this factor falls well within the range of acceptable outcomes. It was aware of the applicant’s arguments about established methods, it provided its rationale for not accepting the applicant’s submissions and as such, given the guiding principles, I am satisfied the Committee’s decision with respect to Scope of Decision Making did consider the job as a whole particularly when compared to the descriptions of the bench-mark positions. In my opinion, this finding should not be set aside.

(2) Responsibility for Contacts

[52] The focus of submissions with respect to Responsibility for Contacts centred on each of the two sub-factors of the rating scale.

(a) *Nature of Contacts*

[53] With respect to Nature of Contacts the issue was whether the applicant’s position was the more passive one of “give and obtain information” or the more active “persuade and obtain assistance or agreement”.

[54] The Committee reviewed the Work Description wording where, with respect to external service providers, the applicant’s position includes “gather information and negotiate the handling of issues and time frames for the receipt/delivery of products and services.” Included within this was that with respect to contract movers the applicant “negotiates the priorities, costs and schedules and supervises contract movers in conjunction with the Junior Building Coordinator”.

[55] The applicant says these tasks very clearly require persuasion because they include negotiation which therefore involves “persuading and obtaining assistance or agreement” rather than the mere delivery or receipt of information.

[56] The respondent states the Committee did not minimize nor disregard the duties and activities in the applicant’s Work Description as evidenced by its discussion of the applicant’s answers to the Committee when he was asked to provide details about the nature of his interaction with the landlord, his interaction with the private sector and his role with contracted services.

Analysis

[57] The Committee found and stated in its reasons that while the applicant may be required to discuss and obtain *cooperation*, the requirement to persuade and obtain *agreement* occurred at the time of negotiation of the contract or in discussions between the landlord and the lessee. These were found to be the responsibility of either departmental contracting staff or PWGSC and not the applicant. This is consistent with the work descriptions which were before the Committee.

[58] The Committee considered the answers to the clarifying questions it had asked the applicant with respect to external service providers and the sort of issues with which the applicant is involved. It considered the examples provided by the applicant of situations which required him to modify established methods and his project management role.

[59] After examining the two bench-mark positions the Committee determined the applicant's position was equivalent to bench-mark 3 rather than bench-mark 4 and therefore the position should be assigned a rating of degree A rather than degree B.

[60] Counsel for the applicant compared the Committee's reasoning in this respect as being more similar to the decision in *Allard v Canadian Food Inspection Agency*, 2012 FC 979 as opposed to the decision in *Beauchemin v Canadian Food Inspection Agency*, 2008 FC 186. I am urged to find that *Allard*, in which it was found that the Classification Grievance Committee decision had to be set aside because it "did not merely modify the applicants' responsibilities to include the context in which these responsibilities are carried out, but that they have, in many respects, called into question the very nature of the activities listed in the work description" is more on point with the case before me than is the *Beauchemin* case in which a committee's decision was upheld. Both cases were decided by Justice de Montigny when he was a member of this Court.

[61] Having reviewed both cases, I find neither of them particularly persuasive as they are each quite fact specific as is the case before me. But, if forced to choose between them, I believe this case is more similar to *Beauchemin* than it is to *Allard*. In *Allard*, which involved classification of a veterinarian position, the core issue was that there was no actual consensus as to the work description and the duties performed even though it had resulted from an agreement made in the context of a content grievance. Justice de Montigny found that "the disagreement was not about mere terms but on essential aspects of the work description." and "the Committee exceeded its jurisdiction by modifying the content of the applicants' work description without giving them the opportunity of being heard by an arbitrator".

[62] In this case there is no dispute as to the work description. The Committee appropriately sought clarification of the duties performed by the applicant and the context in which they were performed. In *Beauchemin*, which reviewed an administrative services position classification, the committee there concluded that some aspects of the work performed were not a permanent requirement and it also considered the client base served by the position. It was held that “While the applicant’s disappointment is understandable, that cannot constitute sufficient reason to set aside a structured and reasoned decision made at the conclusion of the hearing during which her representative was able to put forth all the reasons and file all the evidence in support of her grievance.” Or, to use a phrase found in *Allard*, it could be said that in *Beauchemin*, as in this case, the Committee looked at “the applicants’ responsibilities to include the context in which these responsibilities are carried out”.

[63] For these and the same reasons as previously stated under Scope of Decision Making, I find the Committee’s reasons clearly show the decision is well within the range of acceptable outcomes. This is particularly so given the nature of the answers by the applicant to the questions posed by the Committee which answers indicated that his function in many cases was largely to speak on behalf of his departmental clients and to check invoices and oversee expenditures.

(b) *Persons Contacted*

[64] With respect to the factor Persons Contacted, the critical element distinguishing a degree 1 and degree 2 sub-factor as put forward by the applicant was the word “Associates”.

[65] The applicant submitted that the Committee’s finding that the contacts the applicant had with external service providers (which included private landlords, moving company workers,

locksmiths and suppliers of furniture and audio-visual equipment) did not qualify as “Associates” within the meaning of the Classification Standard was unintelligible and based on a consideration which was irrelevant to the question of whether the applicant had contact with Associates. In doing so the applicant submitted that the Committee made its decision on a basis which was outside the factors of the classification standard or, if it was not, the Committee’s reasons failed to reasonably articulate the grounds upon which the decision was made.

[66] The respondent’s position was that the Committee found that it was often the same service providers due to contracting requirements and not because the contacts were customarily established over long periods of time.

E. Analysis

[67] The definition of Associates in the Classification Standard is clear. It refers “to persons with whom contacts are customarily established over long periods of time and in circumstances that develop an awareness of each other’s requirements”. This definition is contrasted with “Officials” who are administrators or other persons “with some degree of executive authority who are not associates” and with “Colleagues” who are employees in the federal public service.

[68] Here the persons with whom the applicant comes in contact are not limited to employees in the federal public service and they are therefore not Colleagues.

[69] It would appear that the persons such as landlords and movers also do not have executive authority and so are probably not Officials.

[70] Whether or not these persons are Associates is a critical question which must be answered by reference to the Work Description, the actual job performed and the Classification Standard.

[71] In addition to defining the word “Associates” the Classification Standard requires that only contacts that are “an integral part of the work and that result from the duties assigned or sanctioned by management are to be considered.” It is therefore not every person with whom an employee comes in contact who would qualify as being a “contact” within the classification factor.

[72] The problem with the Committee’s decision with respect to this sub-factor is that on a plain reading, given all the information before the Committee both verbal and documented, I do not understand their reasoning. As a result, even when affording deference and considering the wealth of information before the Committee I am unable to conclude whether this part of the Committee’s decision is within the range of acceptable outcomes.

[73] The relevant analysis of this sub-factor provided by the Committee was:

The committee discussed the Persons Contacted component of the Responsibility for Contacts factor and examined the BM 4, Administrative Officer, Research Station, assigned a rating of degree 2 because it has contacts with administrative officers representing the University in its landlord relationship, which are considered associates. The committee noted that the AS Classification Standard indicates that Associates “refers to persons with whom contacts are customarily established over long periods of time and in circumstances that develop an awareness of each other’s requirements.” The committee further considered that the notes to raters for this factor of the AS Classification Standard indicate that only those contacts that are integral to the work and resulting from duties assigned or sanctioned by management are to be considered. The committee found that while the GP does have contact with external service providers (e.g. contracted movers),

that these tend to be the same service providers is due to the particularities of the service contracts and standing offers negotiated by the departmental contracting and procurement staff. The committee therefore determined that such contacts do not constitute associates per the AS Classification Standard. The committee therefore assigned a rating of degree 1 for Persons contacted. (My emphasis)

[74] The definition of Associates requires the contact to be customarily established over long periods of time. By necessity therefore these will be the same service providers. In determining how to measure the difficulty and the importance of the contact for classification purposes it is not *how* such contact came to be a service provider (assuming they otherwise fall within the definition of Associates by being “established over long periods of time”, which is the case here) but rather *whether the contact is an integral part of the work* resulting from the duties assigned. By considering the “how” and then drawing the conclusions it did the committee appears to have ignored or misapprehended the definition in the Classification Standard.

[75] The Notes to Raters for Person’s Contacted confirm that an officer of a private organization or industry may be an associate or an official depending on the circumstances. This may also apply to a contact from a department or another level of government. If the duties of the position include contacts with more than one combination of persons the points for each degree are to be determined and the highest point value used.

[76] In this case the applicant had ongoing relationships with landlords such as SNC-Lavalin, another department - PWGSC, the Owner of the private moving companies and various suppliers. On the face of it the first three types of contacts would all be at least Associates and, in the case of PWGSC, might well be Officials. Having recognized it as a requirement, there is no analysis by the Committee as to whether these contacts are an integral part of the work of the

applicant. Had it been so determined, that would have led to consideration of whether in fact they were Colleagues or Associates or Officials and then it would have determined how many points each such type of contact would drive. This analysis is missing because the Committee determined that there were no Associates and, by implication, no Officials.

[77] Unfortunately, I am left with no appreciation whatsoever as to the significance of the Committee's observation "that these tend to be the same service providers is due to the particularities of the service contracts and standing offers". It appears to be an important part of their reasoning but I see it as a non sequitur.

[78] It may be the Committee can better explain what it means but it does not fall to me to cooper up an outcome that the Committee, if it had properly instructed itself, might have arrived at after pursuing the balance of the analysis. *Bergeron v. Canada (Attorney General)*, 2015 FCA 160 at para. 59.

[79] As I cannot understand this part of the Committee's decision I have no way of determining whether it falls within a range of possible outcomes. The analysis is incomplete. I cannot understand the basis on which the decision was made therefore I cannot conclude whether or not it falls within the range of acceptable outcomes (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 and I grant the application with respect to setting aside the decision of the Nominee as it concerns the rating of the factor Responsibility for Contacts with respect to the sub-factor Persons Contacted.

[80] I realize this may be a pyrrhic victory for the applicant as, even if he succeeds on a reconsideration of the matter in having Persons Contacted moved to degree 2, since I have

determined there was no error with respect to the classification of Nature of Contacts it is still degree A and the additional 12 points which would be gained would not be sufficient to move the overall classification from an AS-01 to an AS-02 group and level.

[81] As I have made a finding that the reasons given were insufficient I do not view this as a matter which needs to be determined by another committee. The original committee should reconsider its reasons in light of my findings.

[82] Success in this matter was divided therefore there will be no costs to either party.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed in part and the decision of the Director General Human Resources being the Deputy Head's Nominee for Classification Grievances with respect to the portion of the decision which determined there would be no change to the rating for Responsibility for Contacts – Persons Contacted and thereby dismissing the applicant's grievance in that regard, is set aside.
2. No costs are awarded.

“E. Susan Elliott”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-243-15

STYLE OF CAUSE: SERGE BOURDEAU v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: SEPTEMBER 2, 2015

JUDGMENT AND REASONS: ELLIOTT J.

DATED: SEPTEMBER 17, 2015

APPEARANCES:

Ms. Amanda Montague-Reinholdt

FOR THE APPLICANT

Ms. Ketia Calix

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Raven, Cameron, Ballantyne &
Yazbeck LLP/s.r.l.
Barrister and Solicitor
Ottawa, Ontario

FOR THE APPLICANT

William F. Pentney
Deputy Attorney General
of Canada
Ottawa, Ontario

FOR THE RESPONDENT