

Federal Court



Cour fédérale

Date: 20190121

Docket: T-1895-17

Citation: 2019 FC 83

Ottawa, Ontario, January 21, 2019

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

MURRAY WILKINSON, JERRY JESSO, CHRISTOPHER ARGUE,  
JAMES BASTARACHE, CATHERINE BLACK, CYNTHIA BURNS,  
LAURA CLARKE, RICHARD CUZZETTO, ANGELO DE RIGGI,  
JEFF DUNK, GEORGE DURSTON, JACQUES FRECHETTE,  
LILY-CLAUDE FORTIN, FRANK GONCALVES, NELSON GUAY,  
CLAUDE HARVEY, MARK HASTIE, MARK HAYES, FANNY HO,  
ALANA HUNTLEY, MARK KAPICZOWSKI, KEVIN KELLY,  
ROSE-ANNE JANG, ALAN JOHNS, ANGELIA JOHNSON,  
CAMERON JUNG, BOB LEDOUX, ROBERT LOHNES, INA MACRAE,  
DEBBIE MAIN, GREGORY MCKENNA, SHANE MCKINNON,  
KAREN MCMAHON, MAUREEN MILLER, MANJIT SINGH MOORE,  
RON NAULT, FIONA NORHTCOTE, HENRY PETERS,  
LINDA ROBERTSON, RALPH SCHOENIG, PATRICK SCOTT,  
DARLENE STAMP, RICHARD STEFANIUK, DOUG TISDALE,  
KEITH WATKINS, HARALD WUIGK

Applicants

and

ATTORNEY GENERAL OF CANADA

Respondent

**JUDGMENT AND REASONS**

I. **Introduction**

[1] The Applicants, employees of the Canada Border Services Agency (CBSA), seek judicial review of a decision by the CBSA President (hereafter Deputy Head) to reject the recommendation of a Classification Grievance Committee to reclassify their positions at a higher level. This is the third application for judicial review stemming from the Deputy Head's decisions regarding the reclassifications at issue. The first two judicial reviews resulted in orders to reconsider the decision. For the reasons that follow, this application is dismissed.

II. **Background**

[2] CBSA was formed by merging several programs previously administered by the Canada Customs and Revenue Agency and the Department of Citizenship and Immigration. The Applicants were all previously employed in supervisory positions under various work descriptions in those departments. In the course of the merger, a new classification standard was created: "FB" (for Frontière-Border). The Applicants' positions were collectively designated as "FBC003, Manager, Regional Programs" (MRP) under a generic work description and classified at the FB-06 level effective February 21, 2007.

[3] Following implementation of the new standard, the Applicants submitted job content and classification grievances under paragraph 208(1)(b) of the *Public Service Labour Relations Act*, SC 2003, c 22 [now the *Federal Public Sector Labour Relations Act* or the *Act*]. The work description grievances were allowed in November 2010. Following that decision, the classification grievances, which had been held in abeyance, went ahead.

[4] A Classification Grievance Committee [the Committee] was convened and met on three occasions from April to June 2012. The committee members examined the elements considered in classifying the MRP position. The Committee found that the generic work description did not accurately reflect the duties and responsibilities of any of the positions occupied by the grievors; segments applied to some but not to others. The job requirements and organization structures in which the positions were located varied significantly from region to region; some positions in smaller regions were responsible for managing two or more programs simultaneously while in other regions, only one. Some of the incumbents were required to be armed in the course of their duties, others not. Most of the work was carried out in offices but some required field operations. The nature of the work varied dramatically between the different programs and the expertise in each case was very specific to the positions' requirements.

[5] The Committee wrote that it would normally conclude its work at that point because the work description does not accurately describe the work being performed. However, as the work description had been the result of a content grievance and had been approved by the then Vice-President of the Operations Branch, the Committee concluded that it must proceed with the evaluation of the description as approved.

[6] Having completed the evaluation, the Committee concluded that all the listed elements should remain at the proposed levels except "Decision Making," which had been classified at Degree 5 on a 7 degree scale. In its report, issued on or about July 18, 2012, the Committee determined the MRP position's decision making was more consistent with Degree 6. The effect

of this determination, if accepted by the Deputy Head, would have been to increase the number of points allocated to the role, thereby classifying it at the FB-07 level.

[7] The Deputy Head did not accept the Committee's recommendation. In a letter dated February 25, 2013, the Deputy Head's delegate took issue with the Committee's assessment of the decision making factor and focused on the intention behind the MRP classification. The delegate concluded that the Deputy Head could not support "that there is a correlation between the work performed and degree 6 of the Decision Making factor." As a result, the Deputy Head determined that the Applicants' positions would remain classified at the FB-06 level.

[8] The Applicants sought judicial review of the February 25, 2013 decision. On July 24, 2014, Justice Roy allowed the application and sent the matter back to the Deputy Head to be redetermined in a manner consistent with the Court's reasons: *Wilkinson v Canada (Attorney General)*, 2014 FC 741 [*Wilkinson #1*]. Justice Roy found that the decision conflated the Committee's analysis on whether decision making should be rated at Degree 5, 6, or 7. In essence, the Court held, the delegate used language acknowledging that the decision making required of the positions did not reach degree 7 as instead implying decision making did not reach degree 6: *Wilkinson #1*, above at para 32.

[9] Justice Roy also found that the delegate's letter did not provide an adequate explanation to justify his assertion that the Committee did not consider the organizational context in making their recommendation: *Wilkinson #1*, above at para 36. As the Deputy Head's delegate did not justify why he believed the MRP's decision making role was best classified at Degree 5, the

Court found this decision to be capricious and lacking justification, transparency, and intelligibility: *Wilkinson #1*, above at paras 38, 40.

[10] On February 16, 2015, CBSA wrote to the Applicants with preliminary reasons outlining the employer's intention to reject the Committee's recommendation for a second time. The letter stated CBSA's position that the Committee had failed to consider all of the relevant Examples of Work Activities (EWAs). In the employer's view, a complete review of the EWAs would have led the Committee to the conclusion that the MRP role does not meet the criteria for Degree 6 decision making. The letter also compared the MRP role to other CBSA roles with Degree 6 decision making to differentiate them. CBSA gave the Applicants an opportunity to make further written submissions by March 13, 2015.

[11] The Applicants delivered further written submissions on March 12, 2015. The Applicants stated that CBSA's preliminary reasons repeated some of the errors the Court identified in *Wilkinson #1*. Specifically, the Applicants asserted CBSA had failed to consider the MRP work description in its entirety, treated EWAs as essential requirements, and imported irrelevant considerations by considering the MRP's level of supervision and management.

[12] On May 19, 2015, the Deputy Head rejected the Committee's recommendation for a second time. He disagreed with the Committee's assessment of the decision making degree based on his understanding of the guidance provided to, and the degree of scrutiny over, the MRP position by regional management. This understanding reflected, in part, the CBSA organizational charts provided with the February 16, 2015 letter.

[13] The Applicants sought judicial review of the second decision. On September 20, 2016, Justice Zinn allowed the application and sent the matter back to the Deputy Head to be redetermined in a manner consistent with the Court's judgment and considering the MRP's entire work description: *Wilkinson v Canada (Attorney General)*, 2016 FC 1062 [*Wilkinson #2*].

[14] Justice Zinn found that one of the documents relied on by the Deputy Head, a chart prepared by CBSA excerpting portions of the MRP work description and juxtaposing them with the classification standard and EWAs, was significantly deficient as it ignored relevant MRP work description aspects corresponding to Degree 6 decision making. It was reasonable, Justice Zinn wrote, to infer that the Deputy Head had not considered the entire work description. At paragraph 13, he wrote:

In a classification exercise, the work description must be evaluated against the appropriate classification standard, and it is an error to modify the work description or refuse to consider the duties and activities in the work description.

[15] In preparing for the second redetermination, CBSA engaged the services of a consultant who had previously worked with the Treasury Board to develop the FB classification.

[16] On May 8, 2017, CBSA sent the Applicants an update advising that the process was complete and inviting the Applicants to comment on the package prepared for the Deputy Head's consideration.

[17] The recommendation package noted that the consultant, whose report was attached, recommended the MRP role be classified at Degree 5 decision making, thereby rejecting the

Committee's recommendation. The report first described the FB standard and the MRP role's background. It then observed that while many positions in an organization can claim to shape program direction or to make decisions on the Deputy Head's behalf, the real bases of classification analysis are (1) what was described as "the line of sight" between the role's recommendation and the end decision and (2) the decision's impact.

[18] The MRP role description, the consultant wrote, contains language copied directly from the classification standard and EWAs for Degree 6 decision making. She further observed that these instances are not substantiated by practical reference or examples, and that when assessed against the remainder of the work description, these statements are not cohesive with the work's description or purpose.

[19] After outlining why she was not able to accept the MRP role's description as written, in particular bullets #9 and #10 in the MRP work description responsibility section, the consultant stated:

It is clear through a detailed review and analysis of the MRP work description and organizational context information provided, that the core purpose of the MRP job is the regional operationalization and implementation of program and policy initiatives specific to the area of assigned responsibility within the assigned Region, as well as the direct management effectiveness of the work of the program delivery officers.

[20] After analyzing the MRP role description and Degrees 5 and 6 decision making descriptions, the consultant stated: "the full interpretation of the complexity statement of Degree 6 along with the guidelines and EWAs is clearly beyond the scope of the work of the [MRP],

regardless of whether or not some positions mapped to this job manage more than one program.”  
The consultant concluded by recommending that the MRP role remain at its current classification.

[21] On May 31, 2017, the Applicants responded to the CBSA package. The Applicants argued the consultant effectively re-ran the classification process without input from the Applicants, violating the “Directive on Classification Grievances” [the Directive], their legitimate expectations and procedural fairness. The Applicants also alleged that the report appears to have been prepared without the benefit of the Applicants’ submissions in the original classification process. According to the Applicants, this procedural unfairness could not be remedied by additional submissions as the report failed to address the Applicants’ concerns.

[22] The Applicants further argued that the report contained repeated legal and factual errors. First, they contend, the report modified the MRP work description by ignoring elements identical to Degree 6 decision making. Second, the report focussed on specific elements of the classification standard while ignoring others, including undue analysis on program development when the Degree 6 decision making factor speaks of “program development or delivery.” And third, the report reflected an inaccurate understanding of the MRP role, such as ignoring that some individuals in the MRP role manage multiple programs and/or manage budgets.

[23] On November 30, 2017, the Deputy Head rejected the Committee’s recommendation for the third time. He again disagreed with the Committee’s rating of MRP decision making at Degree 6. According to the Deputy Head, the operational context in which the MRP roles

function makes it clear they do not reach the threshold of providing substantive recommendations for program delivery beyond the operational level, the level required for Degree 6 decision making.

### III. **Issues**

[24] Having considered the parties' submissions, in my view the issues are the following:

- A. What is the applicable standard of review?
- B. Was there a breach of procedural fairness?
- C. Was the Deputy Head's decision reasonable?

### IV. **Legislative Framework**

[25] The Treasury Board has the legislative authority to classify positions and persons employed in the public service: *Financial Administration Act*, RSC 1985, c F-11, s 11.1(1)(b) [FAA]. The Treasury Board also has the authority to determine its own rules and procedures: *FAA*, above, s 5(4). To this end, the Treasury Board issued its Directive, which took effect on July 1, 2015. The procedure for classification grievances is set out in Appendix B to the Directive.

[26] Under the Directive, classification grievances are referred to a Committee to establish the appropriate classification based on the work description and additional information provided by the grievors and management. The process is not intended to be adversarial. However, the grievor must be given an opportunity to make a presentation. A management representative must

be available to respond to questions the Committee members may have about the position but is not permitted to argue in favour of, or against, the existing classification decision: Directive, Appendix B, s 3.6. After the hearing, the Committee prepares a report for the Deputy Head including a recommendation and the Committee's findings leading to the recommendation: Directive, Appendix B, s 3.8.1.

[27] On reviewing the Committee report and recommendation, the Deputy Head or delegate may: a) approve the committee's recommendation if it is unanimous; b) reject the recommendation with reasons tied directly to the Committee's justification in arriving at its recommendation; or c) approve the recommendation provided in either a majority report or in a minority report: Directive, Appendix B, Section 4.1.1.

[28] The relevant provisions of the Directive, the *Federal Courts Act*, RSC 1985, c F-7, the *FAA* and the *Act* are set out in Annex "A".

## V. Analysis

### A. *Standard of Review*

[29] This Court and the Federal Court of Appeal have previously accepted reasonableness as the appropriate standard of review of a Deputy Head's decision in classification grievances: *McEvoy v Canada (Attorney General)*, 2013 FC 685 at para 39, aff'd 2014 FCA 164 at para 17, 435 FTR 69; *Wilkinson #1*, above at paras 16–17. See also *Canada v Allard*, 2018 FCA 85 at para 25 [*Allard 2018*].

[30] A decision is reasonable if it is justified, transparent, intelligible, and falls within a range of possible, acceptable outcomes defensible in fact and in law: *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190. The decision maker's reasons need not be perfect, nor do they need to include all arguments or details the reviewing judge would have preferred; so long as the reasons allow the reviewing court to understand why the decision maker made the decision, and to determine whether the decision is within the range of acceptable outcomes, the reasons meet the *Dunsmuir* criteria: *Newfoundland and Labrador Nurses Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paras 16–18, [2011] 3 SCR 708.

[31] The Federal Court of Appeal has recently clarified that issues of procedural fairness do not involve strictly applying a standard of review; rather, the reviewing court is to determine whether the decision maker followed a fair and just process in light of the substantive rights and consequences involved: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54. In this context, the Deputy Head is owed no deference on procedural fairness concerns. The Court must determine for itself whether the Deputy Head followed a fair and just process.

B. *Was there a breach of procedural fairness?*

[32] The Applicants' position is that the Deputy Head violated procedural fairness by circumventing the mandated classification grievance process in adopting the consultant's report. Preparing the report violated procedural fairness, according to the Applicants, as it was done without their input. The Applicants describe the consultant's work as a "third party review" and object to it as they had not been invited to make submissions before CBSA retained the

consultant. The consultant process, they say, was a re-run of the classification grievance, violating the classification grievance procedures. They argue the process deprived them of the right to have their grievances determined through the mechanism mandated by the *Act* and the Directive.

[33] The Applicants submit that the consultant was provided with arguments on behalf of management in favour of Degree 5 decision making. The Applicants were not provided with a similar opportunity to provide evidence and make submissions to the consultant. The Deputy Head's decision contains verbatim extracts from the consultant's report. It does not, then, reflect his own reasons but those of the consultant, the Applicants argue.

[34] I am unable to agree with the Applicants that retaining the consultant and relying on her input breached the duty of fairness.

[35] It is well established that in the context of a grievance procedure, the Applicants' procedural fairness entitlements "fall in the lower spectrum": *Allard 2018*, above, at para 41. In *McEvoy*, above, at paras 20–21, the Federal Court of Appeal said as follows:

[20] The Supreme Court of Canada, in *Baker v. Canada (Minister of Citizenship and Immigration)*, at paragraphs 21 and 22, established that the duty of fairness is flexible, variable, and depends on the context of the particular statute and the rights affected. In the context of a classification resolution, the case law has determined that the degree of procedural fairness owed to the applicant is on the lower end of the spectrum.

[21] As a result, the duty of procedural fairness is satisfied "if the complainants had the opportunity to make their arguments relating to the classification of their positions and to be heard and if there was no restriction on their participation." [citations omitted]

[36] In my view, the duty of procedural fairness was satisfied in the present matter by providing the Applicants with an opportunity to respond to the recommendation package prepared for the Deputy Head's decision. I do not accept the Applicants' characterization of the consultant's role as re-running the Committee process. Rather, the consultant was engaged to ensure that the Deputy Head did exactly what the Court had asked him to do: specifically address the portions of the work description that supported the Committee's recommendation. In making his decision, it was open to the Deputy Head to rely on the consultant's analysis of those portions as well as the other elements of the work description.

[37] The consultant had the benefit of the Committee's report which described the grievors' input in detail. Procedural fairness in this context did not require that they be given another opportunity to provide their evidence and submissions as the focus of the consultant's analysis was on the work description and not on the MRP roles as the grievors described them.

[38] An undated document headed "Organizational Context" was included in the package prepared for the Deputy Head's consideration. The package was disclosed to the Applicants by letter dated May 8, 2017.

[39] The context document contains a generic discussion of what is involved in evaluating and classifying a job, excerpts from the FB classification standard, the Committee report and a series of recommendations that appear to relate to a separate departmental exercise pertaining to the content of the work description. It is not clear to me that the context document was provided to

the consultant for the purposes of her analysis as she notes that her references to management information were drawn from the Grievance Committee report:

The input information used for this purpose came from a series of interviews with three (3) Regional Executives conducted by the Grievance Committee in order to better understand management's perspectives in the MRP job, and, the surrounding work and organization structures, and operating context. Of particular focus in this analysis was reporting relationships, job design and operational usage, and the relationship between the regional program management work, and that of the governing Operations Branch, and headquarters Program and Policy centre roles.

[40] But even assuming that the consultant had the benefit of additional management input, such as the Organizational Context document, the duty of fairness was met when the Applicants were provided with the entire package prepared for the Deputy Head's consideration and invited to provide their comments in response. Similarly, the Applicants' concerns with the perceived errors in the consultant's report do not amount to a breach of procedural fairness. The Applicants were afforded the opportunity to highlight these concerns to the Deputy Head, and they provided submissions to this effect in response to that opportunity.

[41] It is worth noting that whereas the Directive prescribes a detailed process for the Committee's review of the grievance, it provides minimal guidance for the Deputy Head's decision. Where the Committee has provided a unanimous recommendation, the Directive instructs the Deputy Head to approve or reject it. If the Deputy Head rejects the recommendation, the Deputy Head must provide reasons tied directly to the Committee's justifications for its decision.

[42] It is reasonable in my view for a Deputy Head to seek assistance in the form of additional information or analysis when the Court has pointed to deficiencies in a prior decision. Here, it was appropriate for the Deputy Head to seek further information on whether the elements ignored before the decision in *Wilkinson #2* fit within the overall MRP work description. The consultant provided her analysis to the Deputy Head, and the Deputy Head provided the Applicants with the opportunity to comment on this analysis. As the Applicants were provided with all the materials before the Deputy Head and given the opportunity to comment, procedural fairness obligations were met.

*C. Reasonableness*

[43] The consultant's report concluded that specific parts of the MRP work description reflecting Degree 6 decision making were unsubstantiated. In accepting that finding, the Applicants argue, the Deputy Head effectively modified the work description contrary to Justice Zinn's ruling in *Wilkinson #2*. He had referred the matter back to the Deputy Head "for a redetermination in which the entire work description of the MRP position is considered": *Wilkinson #2* at para 17.

[44] Justice Zinn's reasons required the Deputy Head to expressly indicate that aspects of the work description strongly supporting Degree 6 decision making had been considered and to explain why he reached a decision contrary to that evidence: *Wilkinson #2*, above at para 16.

[45] The Applicants acknowledge that parts of the work description are identical to the wording in the classification standard but contend the Deputy Head has to take the description as

it is. The Committee's recommendation was based on a careful consideration of the work description and organizational context in their entirety, they argue. The Deputy Head cannot modify it to conform to the MRP responsibilities as he understands them to be. As Justice Roy commented in *Wilkinson# 1*: "the position is what it is and no more." The Applicants would add: the position is no less than the approved work description, despite what the Deputy Head might think. His decision, they argue, is supportable only if substantial portions of the work description are minimized or ignored.

[46] The Respondent now claims to have been unaware that when the job description was approved in 2010, it included language that is identical to the classification standard for Degree 6 decision making. I agree with the Applicants that it is now too late for the Respondent to raise this objection. Having accepted the work description following the job content grievance, it is not open to the Respondent in these proceedings to claim it is improper. That would only be appropriate in a job content grievance: *Allard v Canadian Food Inspection Agency*, 2012 FC 979 at para 37. In a classification grievance, the Committee and Deputy Head's task is to accept the work description and determine its appropriate classification as it is drafted.

[47] The Federal Court of Appeal recently ruled in *Allard 2018*, above, that it was reasonable for a Committee to diminish parts of a work description that do not accord with the work description as a whole. In that case, the Committee had considered the grieved role to be regional and not comparable to higher rated roles with a national impact, despite lines in the work description mentioning national and international tasks. The Court of Appeal found the Committee had not ignored the passages noting the possibility of national or international work;

rather, the Committee reasonably found the grieved role was principally a regional one, and it should not be classified at a level indicating national responsibility: *Allard 2018*, above at paras 36–38.

[48] Clearly, the Committee in this instance had considerable difficulty with the work description. They found it necessary to recall the grievors to respond to information provided by line managers. This information was inconsistent with that provided by the grievors during their initial presentation, particularly regarding supervisory responsibilities and reporting relationships. These inconsistencies led the Committee to its conclusion that the work description did not accurately reflect the duties and responsibilities of any of the positions occupied by the grievors. They pressed on regardless because the work description had been approved by CBSA management and, as my colleague Justice Roy said, “the position is what it is.”

[49] While that is true, in my view it does not preclude the Deputy Head from reaching the conclusion that the MRP positions do not involve Degree 6 decision-making. It was open to the Deputy Head to conclude, based on the evidence as a whole, that the MRP positions did not meet the threshold for substantive recommendations as required for Degree 6 decision making.

[50] The Deputy Head’s decision does not diminish the significance of the MRP positions in the regions. They manage important front line operations. But it reflects the reality that recommendations from the position holders go up the chain of command before decisions are made. The MRP role is contributory as it relates to decisions of national policy and program development, the Deputy Head concluded, and their recommendations are not substantive in the

sense that they generally become the decision without further analysis and scrutiny. To reach that threshold, the “line of sight” between recommendation and decision needs to be direct. The MRP job is one of many within the regions and at the lower end of the agency’s organizational chart.

[51] It was reasonable for the Deputy Head to make that decision so long as he considered the work description in its entirety, took the Committee’s reasoning into account and explained why he could not reach the same conclusion. In doing so, the Deputy Head addressed the concerns that led the Court to quash the prior decisions in *Wilkinson #1* and *#2*.

[52] For these reasons, I am satisfied the Deputy Head’s decision was justified, transparent, and intelligible, and fell within the range of possible, acceptable outcomes defensible in fact and in law.

## VI. Costs

[53] The Respondent has requested costs in the event the application for judicial review is dismissed. The Respondent’s significant delays in reaching decisions on this classification grievance have unnecessarily prolonged the outcome. I note that the decision in *Wilkinson #2* was released on August 24, 2016; the Deputy Head’s decision is dated November 30, 2017, more than 15 months later. The Applicants considered it necessary to file two notices of application for judicial review seeking an order of *mandamus* because of these delays. In the circumstances, I will exercise my discretion not to award costs to the successful party.

**JUDGMENT IN T-1895-17**

**THIS COURT'S JUDGMENT is that** the application is dismissed. No costs are awarded.

“Richard G. Mosley”

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Judge

## ANNEX A

### Directive on Classification Grievances / Directive sur les griefs de classification

#### **Appendix B: Classification Grievance Procedure**

#### **Annexe B – Procédure de règlement des griefs de classification**

#### **3. Classification Grievance Committee**

#### **3. Comité de règlement des griefs de classification**

#### **3.6 Hearing**

#### **3.6 Audience**

3.6.1 The classification grievance process is not intended to be adversarial. It provides an opportunity for the presentation and provision of information to the Classification Grievance Committee.

3.6.1 Le processus de règlement des griefs de classification n'a pas pour but d'opposer les parties. Il permet plutôt de présenter et de fournir des renseignements au comité de règlement des griefs de classification.

#### **3.6.2 Presentation by the grievor and the grievor's representative**

#### **3.6.2 Présentation par le plaignant et son représentant**

The grievor and the grievor's representative must be given the opportunity to make a presentation, in person (for example, by teleconference) or in writing, to the Classification Grievance Committee before a recommendation is made regarding the classification of the grieved position. Once the presentation is completed, they must withdraw from the meeting.

Le plaignant et son représentant doivent avoir l'occasion de faire une présentation en personne (par exemple, par téléconférence) ou par écrit au comité de règlement des griefs de classification avant que le comité ne formule une recommandation au sujet de la classification du poste visé par le grief. Dès que leur présentation est achevée, ils doivent se retirer de la réunion.

#### **3.6.3 Management information**

#### **3.6.3 Renseignements de la direction**

A management representative

Un représentant de la direction

familiar with the work of the grievor position must be available to respond to questions the committee members may have about the position.

The management representative is not permitted to:

- Argue in favour of, or against, the existing classification decision;
- Attempt to influence the committee members;
- Participate in the committee's deliberations; or
- Be present when the grievor and the grievor's representative make a presentation to the committee.

#### 3.6.4 Additional information

The committee may call upon other persons to provide additional information and to conduct a job validation review, as necessary.

Because classification grievances are heard at the final level of the grievance process and the decision is final and binding, it is critical that the decision be based on an accurate job description describing the work assigned by management. To facilitate the committee's work and avoid delay, it is encouraged,

qui connaît bien la nature du travail du poste visé par le grief doit être disponible afin de répondre aux questions que les membres du comité peuvent avoir au sujet du poste.

Le représentant de la direction ne doit pas :

- Intervenir en faveur de la décision de classification actuelle ou contre celle-ci;
- Tenter d'influencer les membres du comité;
- Participer aux délibérations du comité; et
- Être présent pendant la présentation du plaignant, de son représentant, ou des deux, au comité.

#### 3.6.4 Renseignements supplémentaires

Si nécessaire, les membres du comité peuvent convoquer d'autres personnes pour fournir des renseignements supplémentaires et effectuer un examen de validation de l'emploi.

Étant donné que les griefs de classification sont examinés au dernier palier du processus de règlement des griefs et que la décision est définitive et obligatoire, il est important que cette dernière se fonde sur une description d'emploi exacte décrivant le travail assigné par

when a classification grievance is presented, that a job validation review be conducted with the employee and in consultation with the employee's manager before the hearing. A copy of the job validation report must be provided to the grievor and the grievor's representative.

### **3.6.5 Disclosure of new or contradictory information**

When information that the grievor could not reasonably have known is provided to the committee by a management representative, or others, and the committee determines that the information is relevant to its deliberations, including information that contradicts the information provided by the grievor or the grievor's representative, the committee must disclose the information to the grievor or the grievor's representative and provide him or her with the opportunity to respond.

## **3.8 Classification Grievance Committee report and recommendation**

3.8.1 The Classification Grievance Committee report summarizes the recommendation of the

la direction. Afin de faciliter la tâche du comité de règlement des griefs et d'éviter les délais, il est recommandé, lorsqu'un grief de classification est présenté, qu'un examen de validation de l'emploi soit effectué avec l'employé et en consultation avec son gestionnaire avant l'audience. Une copie du rapport de validation d'emploi doit être remise au plaignant et à son représentant.

### **3.6.5 Divulgence de renseignements nouveaux ou conflictuels**

Lorsqu'un représentant de la direction ou toute autre personne fournit au comité des renseignements dont le plaignant ne peut raisonnablement pas avoir eu connaissance, et le comité détermine que ces renseignements sont pertinents pour leurs délibérations, y compris les renseignements qui contredisent l'information fournie par le plaignant ou son représentant, le comité doit divulguer les renseignements au plaignant ou à son représentant et leur donner l'occasion d'y répondre.

## **3.8 Rapport et recommandation du comité de règlement des griefs de classification**

3.8.1 Le rapport du comité de règlement des griefs de classification résume la recommandation du comité,

committee, responds to the arguments and relativity put forward by the grievor and the grievor's representative, and provides the analysis used by the committee to arrive at its recommendation. The report must include the following information:

a. **Identifying information**

This section should provide the grievance case number; the grievor's name; the grieved position's number, title and classification; the organization's name; and the geographical location.

b. **Committee members**

This section should list the names and organizations of the committee's chairperson and members.

c. **Date and location of grievance hearing**

d. **Nature of Complaint**

This section should provide a summary of the classification action or decision giving rise to the grievance and the specific corrective action requested by the grievor.

e. **Representation by, or**

répond aux arguments et aux points concernant la relativité avancés par le plaignant et son représentant et présente l'analyse dont s'est servi le comité pour formuler sa recommandation. Il devrait contenir les renseignements suivants :

a. **Renseignements de base**

Cette section sert à fournir le numéro du dossier de grief; le nom du plaignant, le numéro du poste, le titre et la classification du poste faisant l'objet du grief, le titre de l'organisme et le lieu géographique.

b. **Membres du comité**

Cette section doit comprendre le nom du président et des membres du comité de même que le titre de leur organisme.

c. **Date et lieu de l'audience**

d. **Objet du grief**

Cette section doit résumer la mesure ou la décision de classification ayant donné lieu au grief et les mesures correctives demandées par le plaignant.

e. **Représentation par le**

**on behalf of, the grievor**

This section should provide the name of the grievor's representative, if applicable. It should summarize the salient points made in support of the grievance, including relativity put forward and the rationale for the classification proposed by the grievor.

**plaignant ou en son nom**

Cette section sert à fournir le nom du plaignant et celui de son représentant, s'il y a lieu. Elle devrait résumer les points importants présentés à l'appui du grief, y compris la relativité mise de l'avant et la justification de la classification proposée par le plaignant.

**f. Management information**

This section should provide the name and title of the management representative and the representative's hierarchical relationship to the position being grieved. It should summarize the information provided by this representative, including responses to the questions asked by the committee. Any submitted documentation should also be noted. As required by subsection 3.6.5 of this appendix, the committee must provide the grievor with the right to respond to information that the grievor could not reasonably have known or that

**f. Information de la direction**

Cette section devrait comprendre le nom et le titre du représentant de la direction ainsi que le lien hiérarchique de ce dernier avec le poste faisant l'objet du grief. Elle devrait résumer les renseignements fournis par le représentant de la direction, y compris les réponses aux questions posées par les membres du comité. Elle devrait également comprendre la liste des documents soumis. Conformément à la section 3.6.5 de la présente annexe, le comité doit accorder au plaignant le droit de répondre aux renseignements dont il pourrait raisonnablement ne pas avoir eu connaissance ou qui contredisent

contradicts the information presented by the grievor or the grievor's representative and that is relevant to the committee's deliberations.

l'information présentée par le plaignant ou son représentant et qui sont pertinents aux délibérations du comité.

**g. Committee deliberation**

This section is the heart of the report and must clearly indicate how the committee arrived at its recommendation. It should analyze the work assigned to the grievor in relation to the job evaluation standard(s), the arguments (in particular, the proposed ratings, benchmark positions and relativity) made by, or on behalf of, the grievor and the information presented by management; and should provide an explanation of the committee's evaluation. It should state why the committee evaluated the position in the specific occupational group and subgroup and applied a specific standard; how it arrived at a specific level; and what, if any, other occupational groups and job evaluation standards were considered, and the reasons why they were considered

**g. Délibérations du comité**

Cette section constitue la partie essentielle du rapport, et elle doit expliciter la démarche qui sous-tend la recommandation formulée par le comité. Elle devrait contenir une analyse du travail attribué au plaignant relativement aux normes d'évaluation des emplois, des arguments (p. ex. les cotes proposées, les postes repères et la relativité) invoqués par le plaignant ou en son nom et des renseignements transmis par la direction. Cette section devrait également fournir une explication de l'évaluation effectuée par le comité en indiquant pourquoi le comité a évalué le poste dans le groupe et le sous-groupe professionnels précisés, pourquoi il a appliqué une norme particulière et comment il a retenu le niveau particulier. Il faudrait aussi préciser

inappropriate. For ratings that have not been contested and for which, after review, the committee concurs with the existing departmental evaluation, the report does not need to include a justification if the departmental rationale is part of the grievance case documentation.

d'autres groupes professionnels ou normes d'évaluation d'emploi qui ont été envisagés ainsi que les raisons pour lesquelles ils ont été jugés inappropriés. Pour les cotes n'ayant pas été contestées et pour lesquelles, après les avoir revues, le comité est en accord avec l'évaluation ministérielle existante, il n'est pas nécessaire de justifier à nouveau ces cotes si la justification ministérielle fait partie de la documentation du cas de grief.

**h. Committee recommendation**

This section should state the committee's recommendation regarding the occupational group, the relevant standard and the level of the position. It should also indicate the authorized effective date.

**h. Recommandation du comité**

Cette section doit faire état de la recommandation formulée par le comité quant au groupe professionnel, à la norme pertinente et au niveau du poste. Elle doit aussi indiquer la date d'entrée en vigueur autorisée.

**i. Signatures**

All committee members and the deputy head or delegate must sign and date the report.

**i. Signatures**

Tous les membres du comité et l'administrateur général ou son délégué doivent signer et dater le rapport.

#### **4. Classification grievance decision**

##### **4.1 Decision by the deputy head or delegate**

4.1.1 On reviewing the Classification Grievance Committee report and recommendation, the deputy head or delegate may:

- a. Approve the committee's recommendation if the report is unanimous;
- b. Reject the committee's recommendation(s). If the delegate rejects the unanimous recommendation or the minority and majority recommendations of the committee, the decision must be personally approved by the deputy head. In such circumstances, the deputy head must report to OCHRO, and include in his or her response to the grievor, the reasons for non-acceptance, tied directly to the justification used by the committee in arriving at its recommendation; or

#### **4. Décision relative à un grief de classification**

##### **4.1 Décision par l'administrateur général ou son délégué**

4.1.1 Après avoir examiné le rapport et la recommandation du comité de règlement des griefs de classification, l'administrateur général ou son délégué peut prendre l'une des mesures suivantes :

- a. Approuver la recommandation du comité, si le rapport est unanime;
- b. Rejeter les recommandations du comité. Si le délégué rejette la recommandation unanime ou les recommandations majoritaire et minoritaire(s) du comité, la décision doit être approuvée personnellement par l'administrateur général. En pareil cas, l'administrateur général doit indiquer au BDPRH, et inclure dans sa réponse au plaignant, les raisons qui ont conduit à rejeter les recommandations du comité, lesquelles sont liées directement à la justification avancée par le comité à l'appui de ses

recommandations.

c. Approve the recommendation provided in either a majority report or in a minority report. If the recommendation of a minority report is accepted by the delegate, the delegate must notify the deputy head before issuing a decision.

c. Approuver la recommandation fournie dans un rapport majoritaire ou dans un rapport minoritaire. Si le délégué approuve la recommandation formulée dans un rapport minoritaire, il doit en aviser l'administrateur général avant d'émettre sa décision.

### *Federal Courts Act / Loi sur les Cours fédérales*

#### **Application for judicial review**

**18.1 (1)** An application for judicial review may be made by the Attorney General of Canada or by anyone directly affected by the matter in respect of which relief is sought.

#### **Time limitation**

**(2)** An application for judicial review in respect of a decision or an order of a federal board, commission or other tribunal shall be made within 30 days after the time the decision or order was first communicated by the federal board, commission or other tribunal to the office of the Deputy Attorney General of Canada or to the party directly affected by it, or within any further time that a judge of the Federal

#### **Demande de contrôle judiciaire**

**18.1 (1)** Une demande de contrôle judiciaire peut être présentée par le procureur général du Canada ou par quiconque est directement touché par l'objet de la demande.

#### **Délai de présentation**

**(2)** Les demandes de contrôle judiciaire sont à présenter dans les trente jours qui suivent la première communication, par l'office fédéral, de sa décision ou de son ordonnance au bureau du sous-procureur général du Canada ou à la partie concernée, ou dans le délai supplémentaire qu'un juge de la Cour fédérale peut, avant ou après l'expiration de ces trente jours, fixer ou

Court may fix or allow before or after the end of those 30 days.

accorder.

### **Powers of Federal Court**

### **Pouvoirs de la Cour fédérale**

**(3)** On an application for judicial review, the Federal Court may

**(3)** Sur présentation d'une demande de contrôle judiciaire, la Cour fédérale peut :

**(a)** order a federal board, commission or other tribunal to do any act or thing it has unlawfully failed or refused to do or has unreasonably delayed in doing; or

**a)** ordonner à l'office fédéral en cause d'accomplir tout acte qu'il a illégalement omis ou refusé d'accomplir ou dont il a retardé l'exécution de manière déraisonnable;

**(b)** declare invalid or unlawful, or quash, set aside or set aside and refer back for determination in accordance with such directions as it considers to be appropriate, prohibit or restrain, a decision, order, act or proceeding of a federal board, commission or other tribunal.

**b)** déclarer nul ou illégal, ou annuler, ou infirmer et renvoyer pour jugement conformément aux instructions qu'elle estime appropriées, ou prohiber ou encore restreindre toute décision, ordonnance, procédure ou tout autre acte de l'office fédéral.

### **Grounds of review**

### **Motifs**

**(4)** The Federal Court may grant relief under subsection (3) if it is satisfied that the federal board, commission or other tribunal

**(4)** Les mesures prévues au paragraphe (3) sont prises si la Cour fédérale est convaincue que l'office fédéral, selon le cas :

**(a)** acted without jurisdiction, acted beyond its jurisdiction or refused to exercise its jurisdiction;

**a)** a agi sans compétence, outrepassé celle-ci ou refusé de l'exercer;

**(b)** failed to observe a principle of natural justice, procedural fairness or other procedure that it was required by law to observe;

**(c)** erred in law in making a decision or an order, whether or not the error appears on the face of the record;

**(d)** based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it;

**(e)** acted, or failed to act, by reason of fraud or perjured evidence; or

**(f)** acted in any other way that was contrary to law.

**b)** n'a pas observé un principe de justice naturelle ou d'équité procédurale ou toute autre procédure qu'il était légalement tenu de respecter;

**c)** a rendu une décision ou une ordonnance entachée d'une erreur de droit, que celle-ci soit manifeste ou non au vu du dossier;

**d)** a rendu une décision ou une ordonnance fondée sur une conclusion de fait erronée, tirée de façon abusive ou arbitraire ou sans tenir compte des éléments dont il dispose;

**e)** a agi ou omis d'agir en raison d'une fraude ou de faux témoignages;

**f)** a agi de toute autre façon contraire à la loi.

### **Defect in form or technical irregularity**

**(5)** If the sole ground for relief established on an application for judicial review is a defect in form or a technical irregularity, the Federal Court may

### **Vice de forme**

**(5)** La Cour fédérale peut rejeter toute demande de contrôle judiciaire fondée uniquement sur un vice de forme si elle estime qu'en l'occurrence le vice n'entraîne aucun dommage important ni déni de justice et, le cas échéant, valider la décision ou l'ordonnance entachée du vice

et donner effet à celle-ci selon les modalités de temps et autres qu'elle estime indiquées.

**(a)** refuse the relief if it finds that no substantial wrong or miscarriage of justice has occurred; and

**(b)** in the case of a defect in form or a technical irregularity in a decision or an order, make an order validating the decision or order, to have effect from any time and on any terms that it considers appropriate.

**Financial Administration Act / La loi sur la gestion des finances publiques**

**Rules and Procedures**

**5 (4)** Subject to this Act and any directions of the Governor in Council, the Treasury Board may determine its own rules and procedures.

**Powers of the Treasury Board**

**11.1 (1)** In the exercise of its human resources management responsibilities under paragraph 7(1)(e), the Treasury Board may

**(b)** provide for the classification of positions and persons employed in the public

**Règlement intérieur**

**5 (4)** Le Conseil du Trésor établit son règlement intérieur sous réserve des autres dispositions de la présente loi et des instructions du gouverneur en conseil.

**Pouvoirs du Conseil du Trésor**

**11.1 (1)** Le Conseil du Trésor peut, dans l'exercice des attributions en matière de gestion des ressources humaines que lui confère l'alinéa 7(1)e :

**b)** pourvoir à la classification des postes et des personnes

service;

employées dans la  
fonction publique;

**Federal Public Sector Labour Relations Act / Loi sur les relations de travail dans le  
secteur public fédéral**

**Right of employee**

**Droit du fonctionnaire**

**208 (1)** Subject to subsections (2) to (7), an employee is entitled to present an individual grievance if he or she feels aggrieved

**208 (1)** Sous réserve des paragraphes (2) à (7), le fonctionnaire a le droit de présenter un grief individuel lorsqu'il s'estime lésé :

**(b)** as a result of any occurrence or matter affecting his or her terms and conditions of employment.

**b)** par suite de tout fait portant atteinte à ses conditions d'emploi.

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** T-1895-17

**STYLE OF CAUSE:** MURRAY WILKINSON, JERRY JESSO,  
CHRISTOPHER ARGUE, JAMES BASTARACHE,  
CATHERINE BLACK, CYNTHIA BURNS, LAURA  
CLARKE, RICHARD CUZZETTO, ANGELO DE RIGGI,  
JEFF DUNK, GEORGE DURSTON, JACQUES  
FRECHETTE, LILY-CLAUDE FORTIN, FRANK  
GONCALVES, NELSON GUAY, CLAUDE HARVEY,  
MARK HASTIE, MARK HAYES, FANNY HO, ALANA  
HUNTLEY, MARK KAPICZOWSKI, KEVIN KELLY,  
ROSE-ANNE JANG, ALAN JOHNS, ANGELIA  
JOHNSON, CAMERON JUNG, BOB LEDOUX,  
ROBERT LOHNES, INA MACRAE, DEBBIE MAIN,  
GREGORY MCKENNA, SHANE MCKINNON, KAREN  
MCMAHON, MAUREEN MILLER, MANJIT SINGH  
MOORE, RON NAULT, FIONA NORHTCOTE, HENRY  
PETERS, LINDA ROBERTSON, RALPH SCHOENIG,  
PATRICK SCOTT, DARLENE STAMP, RICHARD  
STEFANIUK, DOUG TISDALE, KEITH WATKINS,  
HARALD WUIGK V ATTORNEY GENERAL OF  
CANADA

**PLACE OF HEARING:** OTTAWA, ONTARIO

**DATE OF HEARING:** NOVEMBER 1, 2018

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