Date: 20041005

Docket: T-1191-03

Citation: 2004 FC 1363

Ottawa, Ontario, the 5th day of October 2004

Present: THE HONOURABLE MR. JUSTICE SIMON NOËL

BETWEEN:

FRANCINE PELLETIER

Applicant

and

THE ATTORNEY GENERAL OF CANADA
and THÉRÈSE COUTURE

Respondents

REASONS FOR ORDER AND ORDER

[1] This is an application for judicial review of a decision on June 4, 2003, by which the chairperson of the Public Service Commission appeal board, Janine Kean (the chairperson of the appeal board) dismissed the appeal filed by Francine Pelletier (the applicant) pursuant to section 21 of the *Public Service Employment Act*, R.S.C. 1985, c. P-33 (the Act), to challenge the appointment made

following a competition organized by the Immigration and Refugee Board (I.R.B.) to fill the position of manager, Members Services (the position).

[2] The instant application for judicial review raises five questions concerning primarily a failure to observe the rules of natural justice, a reasonable apprehension of bias and the merit principle with respect to questions of fact and law. For the reasons contained herein, the Court concludes that the application for judicial review should be dismissed.

BACKGROUND TO CASE

[3] On June 21, 2002, a competition notice containing a statement of qualifications required for the position was sent to I.R.B. personnel in Montréal. On the same day a panel of two persons was formed: Francine Decelles (the panel chairperson) and John Pisciuneri (panel member).

[4] On October 10, 2002, five persons took the written examination and two of them obtained a passing grade, allowing them to proceed to the stage of an interview by the panel. The latter then met with the managers of the two candidates to assess the following qualities: discretion, judgment and interpersonal relations.

[5] On December 13, 2002, an eligibility list was created on which the name of T. Couture (the co-respondent) was first and the applicant's name second. The co-respondent was selected.

[6] On January 2, 2003, the applicant filed an appeal against the appointment of the co-respondent, pursuant to section 21 of the Act, an appeal board was formed and the chairperson of the appeal board constituted the board. A hearing was held on April 25, 2003, and a decision signed on June 4, 2003, in which the chairperson concluded that the appeal should be dismissed.

GROUNDS OF APPEAL BROUGHT BEFORE THE APPEAL BOARD

[7] The applicant submitted the following allegations in support of the appeal:

- the panel erroneously evaluated the applicant's replies by not giving them the correct rating (questions 10(a) and (b));
- on the verification of competence (question 8(b)), the panel did not take into account that there were two parts to the reply and consequently the applicant was unfairly evaluated, since the verification procedure did not allow a precise determination of candidates' merit;
- on questions 12, 14, 15 and 16, the applicant argued that there were no expected replies and consequently the panel's evaluation was first subjective, and second difficult to understand, which did not allow an adequate assessment of the candidates' merit;

- at the interview and the panel's meeting with the applicant's supervisor, the evaluation of her personal qualities was improperly done and in general there was a lack of fairness towards her;
- finally, the applicant complained of the fact that the panel consisted only of two members and there was a history of conflict between the panel's chairperson and the applicant, and consequently there should have been a third person on the panel to ensure impartiality and fairness in the procedure to be followed, and so avoid a biased result or an appearance of bias or conflict of interest.

HEARING BEFORE APPEAL BOARD AND ANALYSIS OF HEARING

[8] According to the evidence in the record, the chairperson of the appeal board, with over six months' experience as member of an appeal board, presided over a one-day hearing on April 25, 2003. The applicant was represented by Karina Krespo (Ms. Krespo), who began the presentation of the appeal, though she had never acted in this capacity before. In the course of the morning, she was replaced by T. Bilodeau (Ms. Bilodeau), an employee of the Employment and Immigration Union, a component part of the Public Service Alliance, since 1978. She had previously appeared before an appeal board on several occasions. The I.R.B. was represented by one of the panel members, Mr. Pisciuneri, a human resources advisor for the said Commission, who had experience

before an appeal board on one previous occasion. The chairperson of the selection panel was present. Ms. Couture, the co-respondent, told the appeal board that she could not attend for family reasons.

[9] Although no provision in legislation or regulations requires that the hearing of an appeal board be taped, the chairperson of the appeal board ensured that it was. Having in mind the strong possibility that the decision to be rendered by the appeal board would be the subject of judicial review, Ms. Bilodeau asked the appeal board chairperson several times during the hearing to check the recording, which was done. However, the three cassettes recording the hearing proved to be blank and a representative of the federal Public Service Commission Recourse Branch (the Recourse Branch), R. Maisonneuve (Mr. Maisonneuve), informed Ms. Bilodeau in writing that [TRANSLATION] "the recording was not working during the hearing". Additionally, the parties informed the Court that the evidence as it stood in the case at bar was sufficient for a ruling to be made on each of the arguments raised.

[10] At the start of the hearing the chairperson of the appeal board, relying in part on section 5.9 of the *Appeal Board Practice and Procedures Guide* (the Guide) prepared by the Recourse Branch, explained the procedure to be followed:

- the I.R.B. gives an outline of the selection process, including an explanation of the results and the reasons for the applicant's lack of success; the applicant may request clarification of the explanations and reasons;

- the applicant is asked to submit her allegations (the grounds for appeal) and to present her evidence by way of documents and witnesses, who in turn may be cross-examined by the I.R.B. or questioned by the successful candidate or the appeal board;
- the I.R.B. is then asked to respond to the allegations and present its evidence, which it does through documents and witnesses; the latter are subject to cross-examination by the applicant and questions from the appeal board or the successful candidate;
- if the successful candidate is present, she is invited to submit her evidence or make representations;
- the applicant has an opportunity to make a reply, so that she may again rebut the I.R.B.'s response and evidence;
- before making its decision, the appeal board may seek information from the parties and the successful candidate, and ask them to make the necessary clarifications, and the parties are asked to submit their arguments.

As formulated, this procedure allowed the parties to make their case at the hearing.

[11] Mr. Pisciuneri, speaking for the I.R.B., spent over twenty minutes explaining the staffing process, its background, the statement of qualifications, the written examination, the interview and consultation with the candidates' managers, and filed the documents in support of the said process. At the end of his submission, he tried to comment on disclosure and criticism by the applicant in this regard, but the appeal board chairperson intervened, telling him he should observe the procedure and was not entitled to discuss this issue at that time.

[12] Through Ms. Krespo, the applicant filed an objection to the non-disclosure of certain (unspecified) documents, since they had still not been given to the applicant. Despite the fact that the *Public Service Employment Regulations* (2000), SOR/2000-80 (the Regulations), provide in subsections 25(2) and 25(3) that disclosure must be made within a specified time (45 days after the notice of appeal) and that the hearing cannot take place until disclosure is complete, and the applicant did not ask the appeal board to make a ruling on this point before the hearing, the appeal board chairperson took [TRANSLATION] "the objection under reserve, indicating that if the undisclosed information was supplied by the Department the appellant would be entitled to add to her allegations, if necessary" (see paragraph 3 of the reasons for decision). At paragraph 27 of the reasons, the appeal board dismissed the objection: [TRANSLATION] "as none of the missing information or documents was identified, the appeal board cannot allow the objection".

[13] In submitting this objection, Ms. Krespo consulted with Ms. Bilodeau on the spot.

[14] Then, after her submission, as the applicant considered she was [TRANSLATION] "in cross-examination" (see respondent's record, examination of Ms. Bilodeau on affidavit, at pages 80, 87, 91 and 92), she tried to obtain replies from Mr. Pisciuneri and the panel chairperson. The appeal board chairperson intervened several times to determine the relevance of questions or a reference to the allegation justifying a particular question. The result of the exercise was that certain questions had to be answered and others not, for reasons of relevance or a lack of connection with any of the allegations (see reasons for decision, at paragraphs 13 and 14).

[15] The appeal board chairperson, with an explanation, asked the applicant to file the written allegations. The applicant only filed them after the appeal board chairperson insisted, and did so with some reluctance.

[16] There was a break for about 15 minutes in the morning. Ms. Bilodeau requested another about half an hour before the noon break, and this was denied, the reason being that the next break was imminent. This last break lasted for over an hour.

[17] When she returned the applicant, through Ms. Bilodeau, told the appeal board that she could not continue because of the appeal board chairperson's lack of objectivity and that her decision was to withdraw from the process and leave the room, but not to withdraw the appeal.

[18] The appeal board chairperson suggested that the applicant should carefully assess the consequences of such a decision, and a fifteen-minute break was taken for this purpose. After the break, the chairperson asked the applicant if her decision was the same, and received an affirmative answer. At the time of departure, Mr. Pisciuneri indicated that he intended to proceed with his evidence (see respondent's record, examination of Ms. Bilodeau, page 126), and in this regard he filed a working paper prepared for the hearing titled [TRANSLATION] "Meeting with P.S.C. in connection with Appeal by Francine Pelletier" (Exhibit M-15). The hearing continued with only the I.R.B. present.

APPEAL BOARD'S DECISION

[19] As mentioned earlier, the decision on June 4, 2003, was to dismiss the appeal. The reasons in support of this decision were the following:

- as indicated earlier, the preliminary objection to the incomplete disclosure of certain unidentified documents and/or information taken under reserve was dismissed;
- Ms. Bilodeau, the applicant's representative, challenged the procedure to be followed as set out by the appeal board chairperson;
- the appeal board chairperson had to insist that the written allegations be filed;

- the chairperson indicated that she had to intervene [TRANSLATION] “several times” in order to understand the relevance of the questions, and she had to remind the applicant’s representative to present her evidence before proceeding with argument, and that breaks were allowed so the evidence to be presented could be identified in relation to the allegations;
- after reviewing the allegations as presented by the applicant, and the I.R.B.’s position in reply, and after noting the applicant’s decision to withdraw without discontinuing the appeal, the chairperson ruled that the evidence submitted did not support any allegation, and on the contrary the expected responses were justified and the marking was reasonable and unbiased; consequently, the followed procedure showed that the merit principle had been observed.

APPLICANT’S ARGUMENT

[20] The applicant argued that as the appeal board chairperson did not have much experience, she imposed on the parties a procedure that was contrary to what Ms. Bilodeau had seen in her many appearances before appeal boards, and that by acting in this way she created a reasonable apprehension of bias. Her actions prevented the applicant from making her case and so created a denial of justice. Amongst others, the way the preliminary objection was handled, the continual interruption of representatives, the fact that witnesses were not sworn, the refusal to allow a second break in the

morning and the filing of a new document (Exhibit M-15) after the applicant had withdrawn from the hearing were examples of unacceptable behaviour by an appeal board chairperson.

[21] Because of that behaviour the applicant, her witnesses and her representatives had to leave the hearing, as they were not receiving fair and equitable treatment and their right to be heard at the hearing was not being respected.

[22] Further, the applicant found it difficult to understand why the three hearing cassettes were blank, especially as the appeal board chairperson checked the recording during the hearing at Ms. Bilodeau's request.

[23] The applicant submitted that a right-minded and reasonable person with knowledge of the situation would conclude that the chairperson could not have given a fair and equitable decision.

[24] The applicant added that the appeal board chairperson should not have concluded that the selection process was in accordance with the merit principle, as she did not have all the evidence which the applicant could supply, having prevented her from supplying it by her conduct and attitude and consequently forcing the applicant, her witnesses and representatives to withdraw from the hearing.

ARGUMENT OF ATTORNEY GENERAL OF CANADA (co-respondent)

[25] In rebuttal, the co-respondent argued that the applicant wanted to impose her own procedure through her representatives, thereby departing from the procedure set out at the start of the hearing. According to the rules, the preliminary objection as to disclosure should have been made long before and such an objection could not be made at the hearing.

[26] The conduct of the applicant's representatives (such as not following the procedure explained at the start of the hearing) led the appeal board chairperson to intervene several times when they were putting questions to I.R.B. representatives. The decision to take the preliminary objection under reserve did not show that the appeal board chairperson was preventing the applicant from making her case.

[27] The second request by Ms. Bilodeau for a break in the morning was made close to the noon break and the chairperson was justified in denying it for that reason. In any case, the decision was discretionary and was part of the appeal board's function at the hearing.

[28] As to the taping of the hearing and the question of whether the swearing in of witnesses was necessary, the co-respondent explained that there was no legislative or regulatory requirement to that effect. The appeal board is master of its own procedure and the absence of a recording does not infringe the rules of natural justice.

[29] The applicant had to bear the consequences of withdrawing from the hearing. She could not argue she was prevented from making her case when she was herself responsible for creating the situation.

[30] Based on the evidence submitted, and taking the applicant's allegations into account, the appeal board chairperson had information on which she could conclude that the merit principle had been observed, and it was her duty to do so.

[31] The co-respondent Ms. Couture did not submit a memorandum.

POINTS IN ISSUE

[32] Could the actions and attitude of the appeal board chairperson at the hearing create a reasonable apprehension of bias in a right-minded, reasonable and informed person?

[33] In the circumstances, did the absence of a recording of the hearing infringe the rules of natural justice?

[34] Was the appeal board chairperson justified in refusing the request for a second break in the morning close to the noon break?

[35] Could the chairperson allow the filing as Exhibit M-15 of the document [TRANSLATION] "Meeting with P.S.C. in connection with Appeal by Francine Pelletier" after the applicant had withdrawn from the hearing?

[36] Did the appeal board make errors of fact and law in concluding that the evaluation process followed by the panel was consistent with the merit principle?

STANDARD APPLICABLE TO THIS JUDICIAL REVIEW

[37] On the argument that the appeal board did not observe the rules of natural justice and the chairperson's actions created a reasonable apprehension of bias, the Court has a duty to intervene if it finds facts that justify such conclusions (see *Siu M. Lai v. Canada (Attorney General of Canada)*, [2001] F.C.J. No. 1088 (F.C.T.D.) at paragraph 13).

[38] As to errors of fact, the Court has a duty to intervene if it is satisfied that the appeal board has based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or

without regard for the material before it (see paragraph 18.1(4)(*d*) of the *Federal Court Act*, R.S.C. 1985, c. F-7, as amended).

[39] On points of law decided by a body similar to an appeal board (an administrative tribunal responsible for labour relations between the federal Public Service and its employees), it is well established that some restraint must be shown towards its interpretation of the law (see *Pezim v. British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557 (QL)).

ANALYSIS AND ANSWERS TO POINTS IN ISSUE

[40] While taking into account the fact that the transcript of the recording of the hearing was not available for the reasons mentioned above, the Court considers it has what is needed to make the appropriate rulings arising out of the case at bar. After reviewing the records of the parties, the decision and reasons of the appeal board, the applicable legislation and regulations and the precedents cited by the parties and others, the Court has come to the conclusion that the application for judicial review should be dismissed for the reasons set out below.

Could the actions and attitude of the appeal board chairperson at the hearing create a reasonable apprehension of bias in a right-minded, reasonable and informed person?

[41] In answering this question, the Court recalls the comments of De Grandpré J. in *Committee for Justice and Liberty v. Canada (National Energy Board)*, [1978] 1 S.C.R. 369, when he wrote:

> . . . the apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information. In the words of the Court of Appeal, that test is "what would an informed person, viewing the matter realistically and practically _ and having thought the matter through _ conclude. Would he think that it is more likely than not that Mr. Crowe, whether consciously or unconsciously, would not decide fairly."

[42] The person to answer this question is not the applicant but someone who is not involved and who, as a right-minded and informed person, observes a situation of fact resulting from the interaction between the parties and the appeal board. That person is familiar with the legislation, regulations and guide applicable to such a situation. The person's response takes this body of knowledge into account and in particular he or she assesses the relationship between the parties and the appeal board.

[43] An appeal board is an administrative tribunal which has the powers (see sections 21, 7.2 and 7.4 of the "Act" and sections 19 to

28 of the "Regulations") of the *Public Service Employment Act* (cited above) and Part II of the *Inquiries Act*, R.S.C. 1985, c. I-II: In carrying out its functions it is "master of its own procedure", subject to legislative and regulatory requirements and the rules of natural justice (see *Wiebe v. Canada*, [1992] 2 F.C. 592, [1992] 5 Admin. L.R. (2d) 108 (F.C.A.) at paragraph 6).

[44] The conclusion arrived at by the Court is that at the start of the hearing the appeal board chairperson explained the procedure by which the parties could make their case, but the applicant's representatives did not wish to follow it (see paragraph 12 of the reasons for decision). Based on her experience, Ms. Bilodeau wanted to follow the procedure with which she was familiar and not that set out by the chairperson. Ms. Bilodeau wished to cross-examine the I.R.B.'s representatives and witnesses in the presentation of the applicant's evidence, not in the presentation of the I.R.B.'s reply. Ms. Bilodeau wished to postpone the written allegations to a time other than that suggested by the chairperson, namely the start of the presentation of the applicant's evidence. Ms. Bilodeau and Ms. Krespo asked questions the relevance of which was not apparent or which were apparently not related to any

of the allegations (see paragraphs 13 and 14 of the reasons for decision). Ms. Krespo and Ms. Bilodeau raised an objection regarding disclosure at the hearing, when subsections 25(2), 25(3) and 26(4) of the Regulations provide that this should be done prior to the hearing.

[45] The appeal board chairperson was [TRANSLATION] "master of her own procedure" and the parties had to comply with it. The applicant, through her representatives, did not follow the procedure and this led the chairperson to intervene several times.

[46] It is clear that the atmosphere was tense between the applicant's representatives and the appeal board chairperson. However, such a hearing is by its nature an adversary proceeding and the appeal board must ensure that the procedure is followed and the appropriate decisions made. The latter will not necessarily please the parties but must be made to ensure that the hearing proceeds in the interests of the parties and of justice.

[47] The objection regarding disclosure was taken under reserve and was later dismissed by the appeal board. The Regulations are clear. Disclosure must be finalized before the hearing, not during it. However, the Court notes that the evidence showed that the objection was vague and it was difficult to determine the information or documents sought (see paragraphs 3 and 27 of the reasons for decision).

[48] The applicant proceeded in such a way, through her representatives, that she prevented herself from making her case by seeking to impose her procedure at the expense of that set out by the chairperson. The appeal board cannot be blamed for a situation which the applicant created herself, by not following the proper procedure to present her evidence.

[49] Having said that, the Court notes that the appeal board chairperson asked the applicant to present her evidence:

[TRANSLATION]

> She explained to them that from the outset, there is evidence to be presented, and they had to present that evidence. There is a procedure to be followed, they had to follow that procedure. (Respondent's record, examination on affidavit of John Pisciuneri, page 47).

[50] Before withdrawing from the hearing, the chairperson explained the consequences of such a decision to the applicant and that the forum was at her disposal for the making of her case. Despite this, the applicant left the hearing room. An appeal board cannot be blamed for preventing her from making her case when the applicant herself gives up the opportunity of doing so.

[51] A right-minded, reasonable and informed person, having such a situation of fact described, could not conclude that there was a reasonable apprehension of bias by the appeal board. Such a person's conclusion would be that by seeking to impose her procedure contrary to that of the appeal board chairperson, the applicant herself undermined her own evidence and eliminated any possibility of eventually establishing the alleged bias by the appeal board. In the circumstances, such a withdrawal is unjustifiable. The Ontario Court of Appeal's remarks regarding the withdrawal of a party from an arbitration, at paragraph 7 of *Corporacion Transnacional de Inversiones, S.A. de C.V. v. STET International, S.P.A.*, seem highly appropriate:

> It hardly offends our notions of fundamental justice if a party that had the opportunity to present its case and meet the opposing case forfeits that opportunity by withdrawing from the arbitration.

It appears that in order to justify such a withdrawal a party will have to submit exceptional and unusual facts relating to a fundamental breach of the rule of natural justice. The facts in the case at bar do not justify such an exception.

In the circumstances, did the absence of a recording of the hearing infringe the rules of natural justice?

[52] The legislative and regulatory provisions setting out the parameters within which the appeal board must operate create no obligation to record hearings. It is up to the appeal board to decide whether it will record a hearing.

[53] As mentioned earlier, the appeal board chairperson had recording equipment at her disposal. At Ms. Bilodeau's request, the appeal board chairperson checked the recording during the hearing.

[54] An employee of the Recourse Branch, Mr. Maisonneuve, stated in a letter dated June 16, 2003, that [TRANSLATION] "in checking the cassettes, we found it had no sound and the recorder was not working during the hearing. We apologize. For further information, you can contact me" (see applicant's record, vol. 1, page 330).

[55] That is the explanation given in the record. The evidence did not indicate whether anyone obtained further information from Mr. Maisonneuve, as the latter suggested. Additionally, the Court again notes that the two parties indicated that the evidence as presented in the application for judicial review is sufficient for a final ruling to be made.

[56] The legal situation on the taping of hearings and the rules of natural justice was summarized by the Supreme Court in *Canadian Union of Public Employees, Local 301 v. Montréal (City)*, [1997]

1 S.C.R. 793, *per* L'Heureux-Dubé J. when she wrote at paragraph 81:

> In the absence of a statutory right to a recording, courts must determine whether the record before it allows it to properly dispose of the application for appeal or review. If so, the absence of a transcript will not violate the rules of natural justice. Where the statute does mandate a recording, however, natural justice may require a transcript.

[57] In the case at bar there was no legal obligation to record the appeal board's hearings, and in addition the parties considered the present record to be sufficiently complete for a final ruling to be made. The Court agrees. The fact that the appeal board chairperson intended to record the hearing, but did not succeed in doing so, does not create a right for the parties to have a transcript. There was thus no breach of the rules of natural justice.

[58] As the applicant raised the fact that the I.R.B.'s witnesses were not sworn in, without making this a substantive argument, the Court notes for clarification purposes that there was no statutory requirement for witnesses to be sworn in. The appeal board is "master of its own procedure" and decides whether witnesses will be sworn.

Was the appeal board chairperson justified in refusing the request for a second break in the morning close to the noon break?

[59] It will be recalled that the appeal board chairperson allowed a fifteen-minute break at around 10:30 a.m. At about 11:30 a.m. Ms. Bilodeau requested a second break, which was denied as it was near the noon break. Ms. Bilodeau complained of the sharp and authoritarian tone used in rejecting the request. Several consultations were held on the spot during the morning between Ms. Krespo and Ms. Bilodeau.

[60] The Court has already mentioned the fact that the appeal board is the "master of its own procedure", subject to the parameters laid down by legislation and the rules of natural justice. As part of its procedure, the appeal board has complete discretion to decide when it is appropriate to take a break, taking into account the progress of the hearing and the time at the disposal of the parties and the appeal board.

The parties' requirements should be taken into account as well as those of the interests of justice.

[61] In the case at bar, the chairperson exercised her discretion by rejecting the request, while noting that the noon break was imminent. Unless it can show unfair and unjustified treatment of the parties by the appeal board and a refusal to allow a break that affects the rules of natural justice, the Court should not intervene. That was the situation in the case at bar; the Court has no reason to intervene. The manner and tone of refusal by themselves cannot justify such intervention. The appeal board chairperson should be able to impose her procedure, in order to ensure a properly organized hearing which allows each of the parties to make its case.

Could the chairperson allow the filing as Exhibit M-15 of the document [TRANSLATION] "Meeting with P.S.C. in connection with Appeal by Francine Pelletier" after the applicant had withdrawn from the hearing?

[62] This document was prepared by the I.R.B. for the appeal board hearing. It is a document which sets out the panel's position in response to the applicant's allegations. It is not a document which should have been part of the disclosure in February 2003, as it simply did not exist at that time. The document was prepared in April 2003. Reading the document indicates that it is comparable to a pleading, a memorandum, explaining a party's position. The applicant considers that the document should not have been filed (see paragraph 54 of applicant's memorandum).

[63] This document was submitted by Mr. Pisciuneri after the applicant withdrew from the hearing. If she had been present when it was filed she would have been entitled to a copy of a document, subject to a ruling on an objection to the filing if the applicant had wished to make one. The Court considers this document a summary of the I.R.B.'s position in response to the applicant's allegations. Moreover, the chairperson of the appeal board refers to it at paragraph 37 of the reasons for decision. As she was [TRANSLATION] "master of her own procedure", the appeal board chairperson could agree to the filing

of such a document, which on reading appears to be a useful document for a decision-maker involved in such a proceeding.

Did the appeal board make errors of fact and law in concluding that the evaluation process followed by the panel was consistent with the merit principle?

[64] The applicant's argument is as follows: as the appeal board chairperson did not allow the applicant to present her case and she was led to withdraw from the hearing as a result, the board did not have all the evidence on which it could make a ruling justifying the evaluation procedure followed by the panel as consistent with the merit principle.

[65] On the evidence, the appeal board adopted the following position in its analysis:

[TRANSLATION]

Only the allegations relating to questions 12, 14, 15 and 16 and that relating to the evaluation of interpersonal relations were the subject of a submission by the appellant or her representative at the hearing. On the remainder, the appeal board only had the text of the allegations (Exhibit A-1), as the appellant's representatives and the appellant herself, dissatisfied at the way the hearing was proceeding, decided to leave before the end of the hearing, though without withdrawing the appeal. (See reasons for decision, paragraph 28)

[66] The Court has already noted that the applicant herself prevented the presentation of her case by having her representatives insist on following their own procedure, not that set out by the appeal board chairperson. Despite this, the Court notes that the appeal board chairperson had already received evidence regarding the allegations in questions 12, 14, 15 and 16 (the expected replies) and the evaluation of interpersonal relations before the applicant withdrew from the hearing. Further, the Court has already indicated that the applicant's decision to withdraw from the hearing created consequences. Although the appeal board chairperson asked the applicant to present her case and not withdraw from the hearing, the latter decided to leave. Such a decision has consequences. The applicant was giving up the opportunity to present evidence, thus limiting the evidence to be presented to the appeal board for analysis and the ruling to be made. Additionally, she thus prevented the tribunal from having a complete perspective of the situation as presented. The applicant was the author of her own misfortune. She had an opportunity to be heard. The incomplete presentation of the evidence was caused by the applicant. The appeal

board made the appropriate findings in the circumstances based on the evidence that was before it at the hearing.

[67] There are significant risks in withdrawing from a hearing and the applicant must bear their consequences.

[68] Recalling the comments by Pratte J.A. of the Court of Appeal in *Ratelle v. Canada (Public Service Commission Appeals Branch)*, [1975] F.C.J. No. 910, at paragraph 3, on the limited role of an appeal board in assessing the merits of a panel, the Court weighed the reasons for decision in light of the evidence placed before the appeal board.

[69] The appeal board chairperson examined the allegations, the evidence and the documents as well as the I.R.B.'s reply, heard the panel chairperson's [TRANSLATION] "detailed explanations" and concluded that the evidence did not support any of the allegations. Consequently, the board came to the conclusion that the I.R.B. had established that the merit principle was observed. In the particular circumstances of the case at bar, the reasons and the decision regarding the merit principle contain no errors of fact or law.

CONCLUSION

[70] The Court has painstakingly examined the position of each party and analysed the evidence as presented, including the affidavits, examinations on affidavit, the appeal board's record and the latter's reasons and decision. On reflection, the applicant's arguments are not admissible for the reasons mentioned above and the application for judicial review is dismissed.

[71] In closing, it is worth noting that the Court understands the importance of an appeal board and the part it must play in labour relations in the federal Public Service. Such an appeal board can only carry out its duties if the parties submit to its authority and its procedure. It is in the interests of justice for the parties to act accordingly, even in circumstances in which the decisions are not favourable. It is important that the parties accept the rules of the game until the end of the process, thus ensuring their position is irreproachable if a review of the decision occurs.

ORDER

THE COURT:

- dismisses the application for judicial review pursuant to section 18.l of the *Federal Court Act*, R.S.C. 1985, c. F-7, as amended, from the decision by the chairperson of the Public Service Commission appeal board, Janine Kean, on June 4, 2003;

- awards costs to the co-respondent, the Attorney General of Canada.

"Simon Noël"

Judge

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: T-1191-03

STYLE OF CAUSE: Francine Pelletier v. The Attorney General of Canada and Thérèse Couture

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: September 21, 2004

REASONS FOR ORDER AND ORDER BY: MR. JUSTICE SIMON NOËL

DATED: October 5, 2004

APPEARANCES:

James G. Cameron	APPLICANT
Alexander M. Gay	RESPONDENT - The Attorney General of Canada

SOLICITORS OF RECORD:

James G. Cameron Raven, Allen, Cameron, Ballantyne & Yazbeck LLP/s.r.l.	APPLICANT

Morris Rosenberg	RESPONDENT - The Attorney General of Canada
Deputy Attorney General of Canada	
Thérèse Couture	RESPONDENT - for herself