

APPLICATION

This is an application for judicial review in respect of the decision (2015 PSLREB 31) rendered by Stéphane J. Bertrand, an adjudicator at the Public Service Labour Relations and Employment Board (the “Board”), on April 2, 2015, in which he considered a policy grievance filed by the respondent contesting a standby duty directive applicable to counsel with the Immigration Law Directorate in the Québec Regional Office of the Department of Justice.

On November 28, 2010, the grievance was initially dismissed by the adjudicator, Michele Pineau, based on lack of jurisdiction (2011 PSLRB 135). On July 22, 2012, the Federal Court allowed the application for judicial review in *Association of Justice Counsel v. Canada (Attorney General)*, 2013 FC 806, and returned the grievance to the Board so that a new adjudicator could decide it on its merits.

In that decision, the adjudicator allowed the grievance, because he found that the directive violated clauses 5.02 and 6.01 of the collective agreement between the Treasury Board and the respondent (expiry date of May 9, 2011) (the “Collective Agreement”) and section 7 of the *Canadian Charter of Rights and Freedoms* (the “Charter”).

The applicant makes application for an order:

- (a) Granting this application for judicial review, with costs;
- (b) Setting aside the decision;
- (c) Referring the grievance to a different adjudicator who will consider the grievance anew in accordance with such directions as this Court deems appropriate; and

- (d) Granting any other relief this Court deems appropriate;

The grounds for the application are as follows:

- (a) The adjudicator committed an error of law and/or mixed law and fact in his interpretation and application of section 7 of the *Charter* and clause 6.01 of the Collective Agreement when he ruled that:
 - (i) the right to “liberty” guaranteed by section 7 of the *Charter* includes the activities claimed by the respondent; and/or
 - (ii) the infringement of that right is inconsistent with the “principles of fundamental justice” within the meaning of section 7 of the *Charter*.

- (b) The adjudicator committed an error of law and/or mixed law and fact in his interpretation and application of sections 7 and 11.1 of the *Financial Administration Act*, sections 6 and 7 of the *Public Service Labour Relations Act* and/or clause 5.02 of the Collective Agreement by:
 - (i) concluding that the employer does not have the authority to impose standby duty on counsel in the absence of an availability clause in the Collective Agreement; and/or
 - (ii) applying the wrong criterion of reasonableness to the managerial right exercised by the employer.

- (c) The adjudicator committed an error of law in determining the burden of proof applicable to the parties;

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- (d) Paragraphs 18.1(4) (c), (d) and (f) of the *Federal Courts Act*; and/or
- (e) Such other grounds as the applicant may raise and this Court allows it to raise.

The following documents will be relied on in support of this application:

- (a) An affidavit to be filed in the Court record;
- (b) The file of the adjudicator (tribunal); and
- (c) Such other evidence as the applicant considers appropriate to file and this Court authorizes.

PURSUANT TO subsections 317(1) and (2) of the *Federal Courts Rules*, the applicant requests that the grievance arbitrator send a certified copy of the following material that is not in the possession of the applicant but is in the possession of the grievance arbitrator to the applicant and to the Registry: All documents in the Board's complete file regarding this policy grievance, including all of the documentary evidence filed by the parties, the parties' written pleadings as well as all other documents on which the adjudicator based his decision.

This 29th day of April 2015.

William F. Pentney, Q.C.
Deputy Attorney General of Canada
Per: Carole Bidal, Counsel
Treasury Board Secretariat Legal Services
12th Floor, East Tower
140 O'Connor Street
Ottawa, Ontario K1A 0R5
Tel.: (613) 852-0514
Fax: (613) 954-5806
Attorney for the applicant