



BETWEEN

PATRICK GIRARDEAU,

Applicant,

- and

THE ATTORNEY GENERAL OF CANADA,

Respondent.

REASONS FOR ORDER

PINARD J.:

This is an application for judicial review of the decision rendered on August 18, 1995 by Curt G. Allen, Assistant Commissioner of the Royal Canadian Mounted Police, acting as a Level II adjudicator, dismissing the applicant's grievance in regard to his dismissal for unsuitability. The applicant is seeking the quashing of this decision, the issuance of an order including reinstatement in his duties at the RCMP and finally, the issuance of an order requiring the said Curt G. Allen to refer his grievance to the RCMP's External Review Committee established under section 25 of the *Royal Canadian Mounted Police Act* (the "Act")¹.

¹ R.S. 1985, c. R-10:

25. (1) There is hereby established a committee, to be known as the Royal Canadian Mounted Police External Review Committee, consisting of a Chairman, a Vice-Chairman and not more than three other members, to be appointed by order of the Governor in Council.

(2) The Committee Chairman is a full-time member of the Committee and the other members may be appointed as full-time or part-time members of the Committee.

(3) Each member of the Committee shall be appointed to hold office during good behaviour for a term not exceeding five years but may be removed for cause at any time by order of the Governor in Council.

THE FACTS

The applicant, Constable Patrick Girardeau, became a member of the RCMP on July 17, 1990. He received his basic training as a recruit in French in Regina, Saskatchewan, and graduated on January 17, 1991. He was subsequently assigned on January 20, 1991 for a six-month probationary period at Fort Saskatchewan, Alberta, in "K" Division, to complete his recruit field training. In the course of his practicum, he began to experience some performance problems.

On July 22, 1991, the applicant consulted Dr. R.M. Goede in Fort Saskatchewan. The latter gave him a medical certificate worded as follows:

This is to certify that the above-named [i.e. Patrick Girardeau] was absent from work from 22/7/91 to 25/8/91 inclusive due to illness.

Prior to July 22, 1991, Dr. Tworek, the senior medical officer of "K" Division, had arranged an appointment for the applicant on July 26, 1991 with Dr. Ivan Kiss, an Edmonton psychologist, for a psychological assessment. The applicant went to this appointment and later, in his assessment, Dr. Kiss remarked that his "General level of cognitive functioning was at the lower end of the average

(4) A member of the Committee is eligible for re-appointment on the expiration of the member's term of office.

(5) No member of the Force is eligible to be appointed or to continue as a member of the Committee.

(6) Each full-time member of the Committee is entitled to be paid such salary in connection with the work of the Committee as may be approved by order of the Governor in Council.

(7) Each part-time member of the Committee is entitled to be paid such fees in connection with the work of the Committee as may be approved by order of the Governor in Council.

(8) Each member of the Committee is entitled to be paid reasonable travel and living expenses incurred by the member while absent from the member's ordinary place of residence in connection with the work of the Committee.

(9) The full-time members of the Committee are deemed to be employed in the Public Service for the purposes of the *Public Service Superannuation Act* and to be employed in the public service of Canada for the purposes of the *Government Employees Compensation Act* and any regulations made under section 9 of the *Aeronautics Act*.

range"; he also noted that "[I]t is likely that at least some of these difficulties are due to a previous severe traumatic head injury"; finally, Dr. Kiss expressed the following opinion:

Given Constable Girardeau's current level of cognitive abilities, it may be that he is unable to perform adequately as an RCMP Constable. It is also possible that interpersonal difficulties inherent in his current training situation have inhibited his performance and/or have biased evaluation of his performance.

It is my recommendation that Constable Girardeau be given a three month period working with entirely different colleagues, and that these officers receive no information regarding his previous performance or evaluations. If he is again seen as unable to perform required tasks, I strongly recommend that Constable Girardeau receive a complete vocational assessment to explore other career options.

(my emphasis)

Following this evaluation, on August 8, 1991, Dr. Tworek decided that there was no reason why the applicant could not return to work. In view of Dr. Kiss's recommendation, the RCMP authorities assigned a new supervisor, Constable W.D. Sparks, to the applicant. When the applicant returned to work on August 9, 1991, Constable Sparks confirmed to him that his probation period had been extended for a three-month period, to give him an opportunity to correct the deficiencies in his work. In a four-page *Performance Log* dated August 13, 1991, Constable Sparks describes in detail the content of his conversation with the applicant. The following is extracted from pages 1 and 2 of this *Performance Log* :

[...]

...You were advised that to date your performance has not attained an acceptable level in which you can expect to be removed from RFT [Recruit Field Training]. In fact it apparently hasn't come close. This is part of the reason for a change in trainers, to give a fresh approach.

I've told you I'm aware of your past performance. That I will be reviewing all documentation held in your RFT Program Course Training Standard as well as your local service file held by the NCO i/c.

I've undertaken this task with no bias as to your success or failure. Basically we are going to start out fresh. This is your opportunity to prove that you are worthy of being removed from the RFT program and get on with your career.

By fresh I do not imply that the past six (6) months disappear. You are accountable for your past, present and future performance. However, it is now up to you to work toward ending your RFT by attaining an acceptable level of performance and maintain it. I'm here to assist you any way I can. This does not mean I'm going to be your babysitter. After all you now have six (6) months experience so I will view your performance with this in mind. By this I expect you to use common sense and put an honest effort forth to show a marked improvement....

[...]

It appears from a memorandum dated July 24, 1991 and a transit slip dated July 30, 1991 that the RCMP authorities were contemplating the applicant's dismissal for unsuitability or, alternatively, for medical reasons, from the end of July 1991. Moreover, a transit slip dated June 14, 1991 written by Mr. Yvan Bouchard, the psychologist for "K" and "G" Divisions, contains the following comments concerning the applicant:

- member seen at office today
- Brief interview with member
- Speech somewhat slow english or french but otherwise no significant problems observed
- He is very determined to improve his performance over the next few months
- RFT extended to October
- No depression evident
- Neuropsychological assessment would likely find some minor dysfunctions - (non correctable) variety therefore discharge proceeding should be based on performance shortcomings & irregular appointment clause.

On November 26, 1991, Dr. Tworek sent a memorandum to Inspector S.A. Duncan, the officer in charge of Administration and Personnel in "K" Division, which mentioned having received additional medical information indicating that there had been a decline in the applicant's abilities over the last four years, presumably as a result of a head injury suffered by the applicant in 1986. Dr. Tworek wrote: "It is apparent that Cst. Girardeau is not capable of satisfactorily performing the duties of an RCMP Constable."

Around December 3, 1991, the applicant was orally advised by his superiors that he would be recommended for dismissal from the RCMP. On December 6, 1991, he filed a "grievance" on form 3081 in opposition to the oral notice of December 3, 1991. He was on sick leave owing to stress from December 6, 1991 to January 28, 1992. As of December 11, 1991, a document indicating that the applicant had a restricted medical profile circulated among the officers responsible for staff in the RCMP. It appears that the RCMP authorities were trying to find him an appropriate position within the RCMP for a person with his medical profile.

On January 28, 1992, Dr. Tworek certified that the applicant "is able to return to full duty". On January 30, 1992, Richard Winnick, a psychologist who had examined the applicant, reported the following:

Cst. Girardeau was seen by me on January 28, 1992 and was found fit for duty. It should be noted that this pertains to his emotional state and not an evaluation of his abilities. His ability to successfully complete necessary tasks should be evaluated specifically while "on the job".

On February 4, 1992, the appropriate officer served the applicant, under section 45.19 of the Act², a "Notice of Intention to Discharge" on the "ground

² Section 45.19 states:

(1) Before any officer is recommended for discharge or demotion under this Part or any other member is discharged or demoted under this Part, the appropriate officer shall serve the officer or other member with a notice in writing of the intention to recommend the discharge or demotion of the officer or to discharge or demote the other member, as the case may be.

(2) A notice of intention served on an officer or other member under subsection (1) shall include

(a) particulars of the acts or omissions constituting the ground of unsuitability on which it is intended to base the recommendation for discharge or demotion or the discharge or demotion, as the case may be;

(b) where the officer or other member is not a probationary member, a statement of the right of the officer or other member to request, within fourteen days after the day the notice is served, a review of the officer's or member's case by a discharge and demotion board; and

of unsuitability" as provided by section 45.18³. The notice stated that the

(c) where the officer or other member is a probationary member, a statement of the right of the officer or other member to make, within fourteen days after the day the notice is served, written representations to the appropriate officer.

(3) An officer or other member who is served with a notice under subsection (1) shall be given a full and ample opportunity to examine the material relied on in support of the recommendation for discharge or demotion or the discharge or demotion, as the case may be.

(4) An officer or other member, except a probationary member, who is served with a notice under subsection (1) may, within fourteen days after the day the notice is served, send to the appropriate officer a request in writing for a review of the officer's or member's case by a discharge and demotion board.

(5) An appropriate officer shall forthwith after receiving a request under subsection (4) forward the request to the officer designated by the Commissioner for the purposes of this section.

(6) A probationary member who is served with a notice under subsection (1) may, within fourteen days after the notice is served, make written representations to the appropriate officer.

(7) Where an officer or other member, except a probationary member, who is served with a notice under subsection (1) does not request a review of the officer's or member's case by a discharge and demotion board within the time limited for doing so, the appropriate officer shall serve the officer or other member with a notice in writing of the decision to recommend discharge or demotion of the officer or to discharge or demote the member, as the case may be.

(8) Where a probationary member who is served with a notice under subsection (1) does not make written representations to the appropriate officer within the time limited for doing so, the appropriate officer shall serve the probationary member with a notice in writing of the decision to recommend discharge of the probationary member or to discharge the probationary member, as the case may be.

(9) An appropriate officer shall forthwith after receiving written representations pursuant to subsection (6) consider the representations and either

(a) direct that the probationary member be retained in the Force; or

(b) serve the probationary member with a notice in writing of the decision to recommend discharge of the probationary member or to discharge the probationary member, as the case may be.

(10) A member, other than an officer, who is served with a notice under subsection (7), (8) or (9) is discharged on such day as is specified in the notice or is demoted on such day and to such rank or level as is specified in the notice, as the case may be.

(11) In this section, "probationary member" means a member with less than two years of service in the Force.

Section 45.18 states:

(1) Any officer may be recommended for discharge or demotion and any other member may be discharged or demoted on the ground, in this Part referred to as the "ground of unsuitability", that the officer or member has repeatedly failed to perform the officer's or member's duties under this Act in a manner fitted to the requirements of the officer's or member's position, notwithstanding that the officer or member has been given reasonable assistance, guidance and supervision in an attempt to improve the performance of those duties.

applicant had 14 days following service of the notice to make his written representations to the appropriate officer, pursuant to subsection 45.19(6) of the Act⁴. On February 10, 1992, the officer in charge of Administration and Personnel replied to the "grievance" filed earlier by the applicant on December 6, 1991. The officer told him he did not view this form 3081 as a "grievance", since the provisions of Part V of the Act specify the remedies of members administratively discharged. The applicant's motion, dated December 6, 1991, was considered to be premature at that time.

On February 12, 1992, the applicant sent a transit slip A-5 to the officer i/c in Administration and Personnel, Supt. M.K.M. Clegg, in which he requested the assistance of the division representative S/Sgt. Gaëtan Delisle, the DSRR of "C" Division, to prepare his defence. He also asked that all documents on which his discharge was based be translated into French, that all communications in regard to him be in French as well, and that he be granted an extension of the time in which to prepare his defence.

In a memorandum dated February 18, 1992 (February 24, 1992 for the French version), the officer i/c in Administration and Personnel of "K" Division, M.K.M. Clegg, informed the applicant that his request for an extension was accepted, and that he was "presently seeking guidance on your request to have

(2) No officer may be recommended for a demotion under this Part of more than one rank and no other member may be demoted under this Part by more than one rank or level.

(3) No inspector may be recommended for demotion under this Part and no constable may be demoted under this Part.

⁴ Subsection 45.19(6) of the Act states:

(6) A probationary member who is served with a notice under subsection (1) may, within fourteen days after the notice is served, make written representations to the appropriate officer.

S/Sgt. Delisle assist you and to have all the substantive material served on you translated into French".

In a memorandum dated March 3 1992, (March 12, 1992 for the French version), M.K.M. Clegg, referring to the existing policy, rejected the applicant's request to be assisted by S/Sgt. Delisle. The request that all documents relevant to his dismissal be translated into French was likewise rejected.

On March 17, 1992, the applicant filed a new form 3081 in which he challenged the refusal (dated February 10, 1992) of the officer i/c to process the grievance he had filed on December 6, 1991.

On March 27, 1992, the officer i/c Administration and Personnel allowed the applicant an extension of time to enable him to find a qualified member of the RCMP to help him in his dismissal proceedings.

In a memorandum dated April 30, 1992 (May 11, 1992 for the French version), Inspector S.A. Duncan dismissed the applicant's "grievance" dated February 10, 1992, and pointed out that his decision of February 10 remained unchanged. He wrote:

[*Translation*]

[...]

2. Subsection 31(1) of the R.C.M.P. Act is completely clear and explicit. Since the Act gives you a remedy under Part V, you do not have the right to file a grievance at this point, which means that your 3081 forms dated December 6, 1991 and March 17, 1992 are not grievances and cannot be treated as such.

[...]

[emphasis in original]

On June 10, 1992, Const. Girardeau "[*Translation*]" again challenges through a grievance the refusal of the AP officer to change his mind". In a memorandum dated July 6, 1992, the acting officer i/c Administration and Personnel, Inspector S.A. Duncan, replied to the "grievance" dated June 10, 1992. He explained the grievance procedure again to the applicant (he had to comply with Part V, but could grieve if he was dismissed), and informed him as well that the documents in relation to his discharge would be sent to him and he would have 14 days after receipt of this information in which to file his submissions in opposition to his dismissal. On July 8, 1992, the applicant filed another form 3081, in which he challenged the 14-day deadline for making his submissions. On July 14, 1992, the Commanding Officer of "K" Division, W.L. Holmes, refused to grant the requested extension of time.

On July 15, 1992, the applicant was informed by the appropriate officer that the decision had been taken to dismiss him, in accordance with subsection 45.19(9) of the Act⁵.

On July 17, 1992, the applicant again filed a "grievance" on form 3081, challenging Insp. Duncan's decision to deny him an extension of the 14-day deadline. In a memorandum dated July 24, 1992, the Commanding Officer of "K" Division informed the applicant that his request "[*Translation*]" does not meet

⁵ Subsection 45.19(9) of the Act states:

(9) An appropriate officer shall forthwith after receiving written representations pursuant to subsection (6) consider the representations and either

(a) direct that the probationary member be retained in the Force; or

(b) serve the probationary member with a notice in writing of the decision to recommend discharge of the probationary member or to discharge the probationary member, as the case may be.

the criteria of subsection 31(1) of the Act⁶ and cannot be treated as a grievance". He therefore ordered that no further steps be taken in relation to this request of July 17, 1992.

On July 31, 1992, the applicant filed a grievance pursuant to subsection 31(1) of the Act⁷ challenging the July 15, 1992, decision to dismiss him. He asked that he be provided with all the documents on which the Commanding Officer of "K" Division had relied in rendering his decision, and that he be given 30 days after receipt of this documentation in which to submit his reasons in support of his grievance. It appears that this extension was granted to him. On August 27, 1992, he filed another grievance form, with lengthy correspondence explaining in detail the basis of his grievance. He argues that the grievance should be referred to the External Review Committee, on the basis that his dismissal was based instead on medical reasons.

⁶ Subsection 31(1) [sic] of the Act states:

(1) Subject to subsections (2) and (3), where any member is aggrieved by any decision, act or omission in the administration of the affairs of the Force in respect of which no other process for redress is provided by this Act, the regulations or the Commissioner's standing orders, the member is entitled to present the grievance in writing at each of the levels, up to and including the final level, in the grievance process provided for by this Part.

(2) A grievance under this Part must be presented

(a) at the initial level in the grievance process, within thirty days after the day on which the aggrieved member knew or reasonably ought to have known of the decision, act or omission giving rise to the grievance; and

(b) at the second and any succeeding level in the grievance process, within fourteen days after the day the aggrieved member is served with the decision of the immediately preceding level in respect of the grievance.

(3) No appointment by the Commissioner to a position prescribed pursuant to subsection (7) may be the subject of a grievance under this Part. ...

(7) The Governor in Council may make regulations prescribing for the purposes of subsection (3) any position in the Force that reports to the Commissioner either directly or through one other person.

⁷ Ibid.

On November 24, 1992, the applicant filed a complaint with the Canadian Human Rights Commission ("CHRC") in which he alleged that since January 1991 he had been discriminated against on the basis of mental disability within the RCMP in Fort Saskatchewan. On December 20, 1995, the CHRC dismissed this complaint "because on the evidence the allegation of discrimination is unfounded". On March 26, 1992, the applicant complained to the Office of the Commissioner of Official Languages. This complaint, too, was dismissed in September 1995, the investigators reporting that

[Translation] ... we are unable to conclude that there is any substance to the presumption of linguistic harassment. The RCMP's efforts to adapt to the complainant's lack of proficiency in English... would suggest the contrary.

The Grievance Advisory Board (GAB) met on May 31, 1994, and June 1, 1994, in Edmonton to consider the applicant's grievance filed on July 31, 1992, and completed on August 27, 1992. In a memorandum to the Commanding Officer of "K" Division, dated July 7, 1994, the GAB made the following recommendation:

All relevant and applicable information was considered and it was determined that Force policies and procedures were followed. Cst. Girardeau was equitably treated.

The Grievance Advisory Board unanimously recommends that Cst. Girardeau's grievance be denied.

On February 27, 1995, the Commanding Officer of "A" Division, J.W. Bryan McConnell, as a Level I adjudicator, rendered his decision dismissing the applicant's grievance. On August 18, 1995, Assistant Commissioner Curt G. Allen, acting as a Level II adjudicator, likewise dismissed the grievance that had been presented to him under paragraph 31(2)(b) of the Act⁸, which is the subject

⁸ *Supra*, note 6.

of this application for judicial review.

It is worth reproducing the following excerpt from the latter decision:

[...]

LEVEL II DECISION

I will state at the outset that I must deny the Grievor's request that his grievance be referred to the External Review Committee. If his discharge were for the reason of physical or mental disability; that is, a medical discharge, his grievance contesting such a discharge would be referable to the External Review Committee, pursuant to Section 36.(e) of the *RCMP Regulations*. Such is not the case. Although a medical discharge was contemplated during a certain period of time, the decision was made to proceed to discharge the Member because of his unsuitability, based on unsatisfactory performance as a probationary member, as was clearly documented in the Notice of Intention to Discharge. I am also aware that the Grievor was apparently wrongly informed that his grievance would be referred to the ERC. I do not consider myself bound by erroneous information provided to the Grievor.

I will also state that I find myself in essential agreement with the findings of the Grievance Advisory Board and the Level I decision.

The chronology of events from the time the Grievor was engaged has convinced me that he has been treated fairly and equitably and in compliance with Force policies and procedures. Specifically, I note that his Recruit Field Training was twice extended, which in itself indicates that the Force was patient and fair with the member, despite perceived and documented performance problems. Although the member suggests that his performance difficulties were partially attributable to his posting to a unilingual English Detachment (Fort Saskatchewan), I find the following quote from the Grievor to be significant, "even though my recruit training (Depot) was conducted entirely in French over six months, I take no exception to having been sent to this unilingual posting." In addition, since all of the member's files would have been in English, including his own entries, I find that the decision to refuse to translate these operational files into French was a proper decision.

I do not agree that the Grievor was denied the right to a full and complete defence in his mother tongue. His request for a certain DSRR from "C" Division was properly denied and the denial conformed to policy, which prohibits DSRRs from assisting members in Divisions other than their own. In addition, the Grievor was given the opportunity to provide the names of four members, in any Division, and one would be selected to assist him. I do not accept that he was not able to do this because of his lack of knowledge of any such persons.

Finally, I am not persuaded that the lack of any critical comment from his supervisor in Edmonton assists his case. While posted to Edmonton, the Grievor was not performing the full range of police duties which he would have been expected to perform following the completion of his probationary period. If this argument is intended to support his allegation of a conspiracy against him, I have to agree with Level I that there is no evidence of such a conspiracy.

The Grievor's failure to rebut the performance deficiencies itemized in the Notice of Intent to Discharge must lead me to conclude that the allegations are founded. I have no argumentation or evidence to the contrary. On this point, I agree with Level I.

In addition, in requesting Level II adjudication, the Grievor has provided me with no reasons why the Level I decision should not stand, but merely requested that his grievance be referred to the ERC. As I stated at the outset, this grievance is not ERC referable.

The grievance is denied. ...

[...]

THE ISSUE

Considering himself the victim “[*Translation*] of a disguised medical discharge made in bad faith”, effectively depriving him of the “[*Translation*] the necessary remedy”, the applicant alleges a breach of the duty to act fairly, excess of jurisdiction and errors of law and of fact on the part of the decision-maker.

ANALYSIS

The applicant has failed to persuade me that the decision of the Assistant Commissioner of the RCMP, Curt G. Allen, is so erroneous as to warrant the intervention of this Court.

I see nothing reprehensible, in the circumstances, in the actions of the responsible RCMP officers who, dissatisfied with the applicant's work performance and at the same time aware of his health problems, after giving him a second chance to prove himself, simply sought to find out whether the real cause of his inadequate performance was his health or indeed his unsuitability. It is not abnormal that, confronted with the applicant's unsatisfactory performance, a performance which, *per se*, was never disputed, his dismissal was contemplated at the end of July 1991 and that he was orally notified in early December 1991 that he would be recommended for discharge from the RCMP. The RCMP

authorities were under no obligation to decide at that point, while the medical consultations were going on, whether the discharge was to be based on medical reasons or on the applicant's unsuitability. It was not until the definitive opinion of the chief medical officer, Dr. Tworek, was known, and fully in accord with that opinion, that on February 4, 1992, the formal process of discharge for unsuitability was set in motion: the process prescribed in particular in Part V of the Act, as opposed to the one prescribed in sections 19 *et seq.* of the *Royal Canadian Mounted Police Regulations*⁹ (the *Regulations*) (concerning administrative discharge for, *inter alia*, physical or mental disability). It is worth noting, incidentally, that the discharge process, in both cases, if carried through, can only end in either a decision to discharge the member in question or an order that he continue to be a member of the RCMP or be retained in the Force. This is apparent from subsection 45.19(9) of the Act¹⁰ and subsection 20(9) of the *Regulations*¹¹. Furthermore, nothing apparently precludes the RCMP from setting in motion the process of discharging one of its members for unsuitability if it failed in its attempt to have him discharged on medical grounds. In the case at bar, the RCMP's actions, as it happens, actually minimized the possibility of such successive attempts at discharge. In the circumstances as a whole, I am far from persuaded of the bad faith, as alleged at the hearing, of the chief medical officer Dr. E.J. Tworek, Constable W.D. Sparks, Sergeant Spriggs or of any other member or officer of the RCMP.

⁹ SOR/88-360.

¹⁰ *Supra*, note 5.

¹¹ 20 (9) The appropriate officer shall consider the findings and recommendations of the administrative discharge board or medical board and may

(a) discharge the member or recommend the discharge of the officer; or
(b) order that the member or the officer be retained in the Force.

The prescribed procedure set out in Part V of the Act was fully adhered to and applied. The applicant was served with the notice of intention prescribed in subsection 45.19(1) of the Act¹². This notice describes in detail the incidents on which the RCMP relied in finding his performance inadequate and unsatisfactory. Pursuant to subsection 45.19(6)¹³, the applicant was given 14 days in which to make his written submissions. In fact, this deadline was extended several times. The applicant never disputed the fact that his performance was not satisfactory. The applicant's request that the documents pertaining to his discharge be translated into French was sufficiently met; the only documents that were not translated are those forming part of the operational file in which the original entries, including those of the applicant, were made in English; I agree with the Level I and II adjudicators that it would not have been appropriate to translate those documents. Moreover, although the applicant's request to be represented by S/Sgt. Gaëtan Delisle was refused under the existing policy, I am of the opinion that the RCMP authorities made sincere efforts to enable him to be represented by one of its Francophone members; he was offered the services of Corp. Magotiaux or, if he preferred, the services of any Francophone member of the RCMP working in Canada, with the exception of a division representative; the applicant never replied to this offer.

Following the decision of the Commanding Officer of "K" Division, on July 15, 1992, to discharge the applicant on the ground of unsuitability under

¹² Subsection 45.19(1) states:

(1) Before any officer is recommended for discharge or demotion under this Part or any other member is discharged or demoted under this Part, the appropriate officer shall serve the officer or other member with a notice in writing of the intention to recommend the discharge or demotion of the officer or to discharge or demote the other member, as the case may be.

¹³ *Supra*, note 4.

subsection 45.19(9) of the Act¹⁴, the applicant's grievance, presented pursuant to section 31 of the Act¹⁵, went through all the stages of the Grievance Advisory Board and the Level I adjudicator only to be ultimately dismissed by the Assistant Commissioner of the RCMP, Curt G. Allen, acting as a Level II adjudicator, all in the prescribed way. Incidentally, the applicant did not allege any anomaly in the grievance procedure.

¹⁴ *Supra*, note 5.

¹⁵ Section 31 states:

31. (1) Subject to subsections (2) and (3), where any member is aggrieved by any decision, act or omission in the administration of the affairs of the Force in respect of which no other process for redress is provided by this Act, the regulations or the Commissioner's standing orders, the member is entitled to present the grievance in writing at each of the levels, up to and including the final level, in the grievance process provided for by this Part.

(2) A grievance under this Part must be presented

(a) at the initial level in the grievance process, within thirty days after the day on which the aggrieved member knew or reasonably ought to have known of the decision, act or omission giving rise to the grievance; and

(b) at the second and any succeeding level in the grievance process, within fourteen days after the day the aggrieved member is served with the decision of the immediately preceding level in respect of the grievance.

(3) No appointment by the Commissioner to a position prescribed pursuant to subsection (7) may be the subject of a grievance under this Part.

(4) Subject to any limitations prescribed pursuant to paragraph 36(b), any member presenting a grievance shall be granted access to such written or documentary information under the control of the Force and relevant to the grievance as the member reasonably requires to properly present it.

(5) No member shall be disciplined or otherwise penalized in relation to employment or any term of employment in the Force for exercising the right under this Part to present a grievance.

(6) As soon as possible after the presentation and consideration of a grievance at any level in the grievance process, the member constituting the level shall render a decision in writing as to the disposition of the grievance, including reasons for the decision, and serve the member presenting the grievance and, if the grievance has been referred to the Committee pursuant to section 33, the Committee Chairman with a copy of the decision.

(7) The Governor in Council may make regulations prescribing for the purposes of subsection (3) any position in the Force that reports to the Commissioner either directly or through one other person.

Faced with all these circumstances, I am of the opinion that the applicant has had the benefit of more than adequate procedural fairness, that the decision *a quo* was rendered in good faith, under the authority of and in full compliance with the Act, and that, in view of the available evidence, it was not unreasonable for Assistant Commissioner Allen to reach the conclusion that he did.

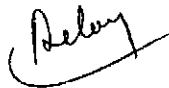
Accordingly, the application for judicial review shall be dismissed.

OTTAWA, Ontario
February 12, 1997

Yvon Pinard

JUDGE

Certified true translation



Christiane Delon

FEDERAL COURT OF CANADA
TRIAL DIVISION

NAMES OF COUNSEL AND SOLICITORS OF RECORD

FILE NO. T-2016-95

STYLE: PATRICK GIRARDEAU -and- THE ATTORNEY
GENERAL OF CANADA

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: JANUARY 21, 1997

REASONS FOR JUDGMENT OF PINARD J.

DATED: FEBRUARY 12, 1997

APPEARANCES:

JAMES R.K. DUGGAN FOR THE APPLICANT

RAYMOND PICHE FOR THE RESPONDENT

SOLICITORS OF RECORD:

JAMES R.K. DUGGAN FOR THE APPLICANT
MONTRÉAL, QUEBEC

GEORGE THOMSON FOR THE RESPONDENT
DEPUTY ATTORNEY GENERAL
OF CANADA