

**Date: 20080215**

**Docket: A-229-07**

**Citation: 2008 FCA 61**

**CORAM: NADON J.A.  
SEXTON J.A.  
RYER J.A.**

**BETWEEN:**

**MOHAMMAD ASLAM CHAUDHRY**

**Appellant**

**and**

**THE ATTORNEY GENERAL OF CANADA**

**Respondent**

Heard at Toronto, Ontario, on February 13, 2008.

Judgment delivered at Toronto, Ontario, on February 15, 2008.

**REASONS FOR JUDGMENT BY:**

**SEXTON J.A.**

**CONCURRED IN BY:**

**NADON J.A.  
RYER J.A.**

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**Respondent**

**REASONS FOR JUDGMENT**

**SEXTON J.A.**

[1] The appellant, a self-represented litigant, appeals the decision of Simpson J. who dismissed his application for judicial review of a decision of an adjudicator who, in turn, had rejected the appellant's grievance against his rejection on probation.

[2] The appellant commenced term employment as an administrative service assistant at Bath Institution. He was put on a probationary period of 12 months for all employees appointed from outside the public service.

[3] After the probationary period, the appellant was rejected for further employment because of unacceptable job performance.

[4] The Motions Judge denied the appellant's application for judicial review of the decision of Adjudicator Ian Mackenzie (the "adjudicator") in *Chaudhry v. Treasury Board (Correctional Service of Canada)* 2005 PSLRB 72, where the adjudicator decided that he did not have jurisdiction to hear the appellant's grievance of his rejection on probation.

[5] The Motions Judge utilized the pragmatic and functional approach and concluded that the standard of review of the adjudicator's decision was reasonableness *simpliciter*. This was consistent with the outcome in *Canada (Attorney General) v. Assh* 2005 FC 734, at paragraph 9.

[6] Subsection 28(2) of the *Public Service Employment Act*, R.S.C. 1985, c. 33 (the "Act") provides that notice may be given to provide that the probationary employee will be rejected for cause at the end of the notice period. The appellant received such notice from the Warden by way of a letter dated February 6, 2004. No other notice was required beforehand. Contrary to the assertions of the appellant, such a notice does not offend the provisions of section 11 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act*

1982 (U.K.), 1982, c. 11 (the “Charter”). Section 11 only applies to persons “charged with an offence” and that term can only be understood to encompass criminal, quasi-criminal, or regulatory offences: see *R. v. Wigglesworth*, [1987] 2 S.C.R. 541. The appellant has not been charged with an offence, no matter how broadly the term is interpreted.

[7] In a similar vein, the appellant argues that the fact that he did not receive a hearing prior to his rejection of probation violated his right to a fair hearing pursuant to section 2(e) of the *Canadian Bill of Rights*, S.C. 1960, c. 44, reprinted in R.S.C. 1985, App. III (“Bill of Rights”). Section 2(e) of the Bill of Rights only provides for a right to a fair hearing for the determination of one’s rights and obligations. Those rights and obligations were part of the conditions for his probationary hiring. I do not see that he became entitled to a hearing prior to his rejection of probation. In any event, the appellant had a hearing before the adjudicator, and that hearing, in my opinion, was conducted fairly in accordance with the principles of fundamental justice.

[8] The appellant makes two additional arguments, namely that his manager had no authority to deploy him to a new position in October 2003, and that the Warden did not have the authority to reject him on probation. These arguments appeared in neither the Notice of Application nor in the appellant’s memorandum of fact and law before the Motions Judge. We therefore feel it would be inappropriate to address either submission. Unless there is a compelling reason otherwise, a party cannot succeed on appeal by advancing arguments which the parties and the Motions Judge had no opportunity to address. Counsel for the respondent stated that he would have lead evidence in respect of these matters had he been made aware that they would be raised.

[9] For these reasons, the appeal is dismissed with costs.

“J. Edgar Sexton”

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J.A.

“I agree

M. Nadon”

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J.A.

“I agree

C. Michael Ryer”

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-229-07

**(AN APPEAL FROM AN ORDER OF THE HONORABLE MADAM JUSTICE SIMPSON,  
DATED APRIL 13, 2007, FROM COURT FILE NO. T-374-06).**

**STYLE OF CAUSE:** MOHAMMAD ASLAM  
CHAUDHRY v. THE ATTORNEY  
GENERAL OF CANADA

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** FEBRUARY 13, 2008

**REASONS FOR JUDGMENT BY:** SEXTON J.A.

**CONCURRED IN BY:** NADON J.A.  
RYER J.A.

**DATED:** FEBRUARY 15, 2008

**APPEARANCES:**

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(SELF-REPRESENTED)

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**SOLICITORS OF RECORD:**

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