

**Date: 20090311**

**Docket: A-113-08**

**Citation: 2009 FCA 76**

**CORAM: RICHARD C.J.  
SHARLOW J.A.  
LAYDEN-STEVENSON J.A.**

**BETWEEN:**

**ATTORNEY GENERAL OF CANADA**

**Appellant**

**and**

**FRANCE GILBERT**

**Respondent**

Heard at Ottawa, Ontario, on March 10, 2009.

Judgment delivered at Ottawa, Ontario, on March 11, 2009.

**REASONS FOR JUDGMENT BY:**

**RICHARD C.J.**

**CONCURRED IN BY:**

**SHARLOW J.A.  
LAYDEN-STEVENSON J.A.**

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**REASONS FOR JUDGMENT**

**RICHARD C.J.**

[1] This is an appeal of the decision of Justice Mactavish of the Federal Court, 2008 FC 202, in which she allowed an application for judicial review from the decision of the Director of the Organization and Classification Directorate of the Royal Canadian Mounted Police, with respect to the respondent's classification grievance.

[2] The respondent is a Strategic Planning Analyst with the Royal Canadian Mounted Police. In June 2004, she grieved the classification of her position, which was classified as an AS-04 and requested that her position be classified at the AS-05 level.

[3] In accordance with the procedures established by Treasury Board, the respondent's classification grievance was heard by a Classification Review Committee, which then prepared a report and recommendation to the Director, Organization and Classification, (the Director), who was the Deputy Head's nominee for classification grievances.

[4] The Administrative Services Classification Standard, which governs the classification of Ms. Gilbert's position, identifies four factors to be used in evaluating positions: knowledge, decision making, responsibility for contacts and supervision. The knowledge factor is divided into three elements: education, experience and continuing study.

[5] On September 15, 2006, the Director, Brian Preston, rendered his decision on the classification grievance. The decision confirmed the recommendation that had been made to the Director by the Classification Grievance Committee, and dismissed the grievance.

[6] The respondent commenced an application for judicial review of that decision on October 16, 2006.

[7] Following the commencement of the application for judicial review and by letter dated January 24, 2007, the respondent was informed by the Manager, Classification Grievances, Public Service Human Resources Agency of Canada that the decision of Brian Preston dated September 15, 2006, which approved the Classification Grievance Committee decision and recommendation, would be set aside and that a new hearing would take place.

[8] As noted by the Applications Judge in her Reasons for Judgment (para. 24), it is not clear who it was that actually made the decision to rescind the Director's decision.

[9] The respondent did not agree to attend before a new Classification Grievance Committee and proceeded with her application for judicial review.

[10] Before the Applications Judge, the appellant argued that the application for judicial review had become moot by reason of the decision to rescind the Director's decision and order a new Classification Grievance Committee hearing.

[11] We agree with the Applications Judge that the application for judicial review is not moot in the circumstance of this case where the application was taken before the purported rescission.

[12] We do not however agree with the reliance of the Applications Judge on subsection 96(3) of the *Public Service Staff Relations Act*, R.S.C. 1985, c. P-35, (*PSSRA*) for reaching this result.

[13] The appellant does not otherwise challenge the Applications Judge's decision to set aside the Director's decision. What the appellant challenges is the relief granting the respondent an Order that the matter be remitted to the Director with the direction that the respondent's position be assigned a "C" level for the "Education" factor identified in the Classification Standard.

[14] We are of the view that the appeal should be allowed on this limited ground only for the following reasons.

[15] The ability to classify and re-classify positions within the public service is the exclusive authority of Treasury Board.

[16] Section 7 of the *PSSRA* gives the employer "the right or authority ... to determine the organization of the Public Service and to assign duties to and classify positions therein". It also specifies that nothing in the *PSSRA* should be construed to affect such right or authority. The *PSSRA* defines "employer" as being Treasury Board for all departments and other portions of the public service listed in Schedule I to the *Financial Administration Act*, R.S.C. 1985, c. F-11 (the *FAA*). Schedule I includes the R.C.M.P., where the respondent works.

[17] A classification grievance is presented to a Classification Grievance Committee, which then makes a recommendation to the Deputy Head or the nominee of the Deputy Head. In the case at bar, the Deputy Head's nominee was the Director. The Director then has the discretion to accept a

recommendation made by the Classification Grievance Committee, to make a decision in the event that the Committee provided majority/minority reports, or to make an entirely new decision.

[18] If an employee is dissatisfied with the outcome of a classification grievance decision then he or she has the right of judicial review.

[19] The Applications Judge stated that the Classification Grievance Committee erred in assigning a “B” rating for the Education factor of the respondent’s position. She added: “Nor is there any question that if the position is assigned a “C” level for the education factor, that the points assigned to the position will require reclassification of the position to the AS-05 level” (at para. 55).

[20] As a result, the Applications Judge ordered that: “the case should be remitted to the Director of the Organization and Classification Directorate with the direction that Ms. Gilbert’s position be assigned a “C” level for the Education element of the Classification Standard” (at para 58).

[21] Classification of positions in the federal public service is a complex analysis, involving a number of related factors.

[22] Accordingly, the decisions resulting from classification grievances are reflective of a high level of expertise from the Classification Grievance Committee and the decision maker, who operate under a particular and specialised regime.

[23] In deference to the specialised knowledge of Classification Grievance Committees, when the Federal Court determines that a judicial review application ought to be granted with respect to a decision following a Classification Grievance Committee recommendation, it should refer the matter back for re-consideration.

[24] Accordingly, we will allow the appeal in part by ordering that the decision of the Director dated September 15, 2006 be set aside and that the matter be remitted to the Director for a further decision.

[25] In these circumstances, there will be no award of costs in this Court to either party.

"J. Richard"  
\_\_\_\_\_  
Chief Justice

"I agree  
K. Sharlow J.A."

"I agree  
Carolyn Layden-Stevenson J.A."

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-113-08

**(APPEAL FROM A JUDGMENT OF THE HONOURABLE ANNE MACTAVISH,  
DATED FEBRUARY 15, 2008, DOCKET NO. T-1823-06, 2008 FC 202.)**

**STYLE OF CAUSE:** ATTORNEY GENERAL OF  
CANADA v.  
FRANCE GILBERT

**PLACE OF HEARING:** Ottawa, Ontario

**DATE OF HEARING:** March 10, 2009

**REASONS FOR JUDGMENT BY:** RICHARD C.J.

**CONCURRED IN BY:** SHARLOW J.A.  
LAYDEN-STEVENSON J.A.

**DATED:** March 11, 2009

**APPEARANCES:**

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