

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20140916**

**Docket: A-210-13**

**Citation: 2014 FCA 202**

**CORAM: NOËL C.J.  
SCOTT J.A.  
BOIVIN J.A.**

**BETWEEN:**

**DAVID LESSARD-GAUVIN**

**Appellant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

Heard at Québec, Quebec, on September 16, 2014.

Judgment delivered from the Bench at Québec, Quebec, on September 16, 2014.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**BOIVIN J.A.**

Federal Court of Appeal



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**REASONS FOR JUDGMENT OF THE COURT**  
(Delivered from the Bench at Québec, Quebec, on September 16, 2014).

**BOIVIN J.A.**

[1] This is an appeal by Mr. Lessard-Gauvin (the appellant) against a decision of Justice Tremblay-Lamer of the Federal Court (the Judge).

[2] The Judge dismissed the appellant's motion for an extension of time to file a notice of application for judicial review because the application had no basis in law and was certain to fail.

[3] The appellant is primarily seeking judicial review of a decision rendered on March 27, 2013, at the final level in the internal grievance process. That decision concerns the interpretation or application in respect of him of a provision of the collective agreement, a matter that could have been referred to adjudication under section 209 of the *Public Service Labour Relations Act*, S.C. 2003, c. 22, s. 2 [PSLRA], if the bargaining agent had agreed to represent the appellant in the adjudication proceedings, which it refused to do.

[4] Having carefully analyzed the record, and having considered the appellant's written and oral arguments, we are all of the opinion that his appeal should be dismissed.

[5] As the Judge states in her order, this is not a situation where the appellant's grievance was not referred to adjudication because of the provisions of the Act. This is, rather, a situation where the bargaining agent refused to agree to refer it. The bargaining agent's refusal means that the decision dated March 27, 2013, is not subject to judicial review (subsection 209(2) of the PSLRA; *Rhéaume v. Canada (Attorney General)*, 2010 FCA 355 [*Rhéaume*]).

[6] The appellant argues that this Court nonetheless has the residual power of a superior court to hear an application for judicial review of the decision dated March 27, 2013, that dismissed his grievance. However, as is established in *Rhéaume*, the statutory framework of the PSLRA—more specifically, subsection 209(2) of that Act—requires the consent of his bargaining agent. The consent of the bargaining agent is in fact mandatory.

[7] Contrary to the appellant's contention, from the standpoint of principle the decision of this Court in *Rhéaume* is not distinguishable as regards the present case.

[8] In these circumstances, the Judge did not err in applying the principles governing the exercise of her discretion (*Canada (Attorney General) v. Larkman*, 2012 FCA 204).

[9] Moreover, we see no grounds on which to deny costs to the respondent.

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

“Richard Boivin”

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J.A.

Certified true translation  
Erich Klein

**FEDERAL COURT OF APPEAL**

**SOLICITORS OF RECORD**

**DOCKET:** A-210-13

**STYLE OF CAUSE:** DAVID LESSARD-GAUVIN v.  
ATTORNEY GENERAL OF  
CANADA

**PLACE OF HEARING:** Québec, Quebec

**DATE OF HEARING:** SEPTEMBER 16, 2014

**REASONS FOR JUDGMENT OF THE COURT BY:** NOËL C.J.  
SCOTT J.A.  
BOIVIN J.A.

**DELIVERED FROM THE BENCH BY:** BOIVIN J.A.

**APPEARANCES:**

David Lessard-Gauvin SELF-REPRESENTED

Benoît de Champlain FOR THE RESPONDENT  
ATTORNEY GENERAL OF  
CANADA

**SOLICITORS OF RECORD:**

William F. Pentney FOR THE RESPONDENT  
Deputy Attorney General of Canada ATTORNEY GENERAL OF  
CANADA