Date: 20061030

Docket: T-1268-05

Citation: 2006 FC 1308

Ottawa, Ontario, the 30th day of October 2006

Present: the Honourable Mr. Justice de Montigny

BETWEEN:

GUY BEAULIEU

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant Guy Beaulieu has been employed by the Canada Customs and Revenue Agency (CCRA) since it was created on November 1, 1999. He previously worked for the Canada Department of National Revenue, which was replaced by the CCRA when the *Canada Customs and Revenue Agency Act*, S.C. 1999, c. 17, was adopted. His candidacy was rejected for a level AU-2 Auditor/Investigator position; he first asked for individual feedback and then a review of the decision, both of which resulted in the original decision being upheld.

[2] By this application for judicial review, Mr. Beaulieu is seeking to reverse the decision made in the review process on the ground that the Director of the Eastern Quebec Taxation Services

Office erred in not concluding that the assessment made of his competencies was arbitrary. Consequently, he asked that his review request be sent to another manager to be reassessed.

FACTS

[3] Mr. Beaulieu studied accounting and administration at Université Laval, as a result of which he became a member of the Ordre des comptables en management accrédités (CMA). Since January 2000, he has held various AU-1 Auditor/Investigator positions; then, as of January 12, 2004, he was assigned to an AU-2 position until December 31, 2004.

[4] On November 25, 2004, CCRA posted a notice of job opportunity to fill a position of Auditor/Investigator, level AU-2, Investigations Division, Quebec Taxation Services Office, having selection number 2004-3554-QUE-1206-1002. The applicant submitted his candidacy for this position on November 30, 2004.

[5] On December 20, 2004, CCRA notified the applicant that his candidacy met the prerequisites for the position and that his candidacy would be considered at the next stage, that of assessment.

[6] In December 2004 and January 2005, CCRA gave candidates information on the way in which their competencies would be assessed. Candidates were given a session and they were sent documentation by electronic means so that they could prepare for the assessment.

[7] On January 6, 2005, the applicant was invited to a targeted behavioural interview to be held on January 25. Robert Pelchat, a certified competency consultant with CCRA, indicated to him the competencies that would be assessed at the interview, namely, adaptability, effective interactive communication, control of difficult situations, and analytic reasoning, and he suggested that the applicant consult the Infozone for the definitions of these competencies.

[8] Then, following the interview, the applicant submitted his competency portfolio within the required time limits, so that the other two required competencies, customer service orientation and initiative, could be assessed.

[9] On March 24, 2005, CCRA notified the applicant that he had not achieved the required minimum in all the required competencies and that, accordingly, he could not be accepted as a candidate for the next stages in the selection process.

[10] Mr. Beaulieu was not satisfied with his assessment and made use of the recourses provided for in the Staffing Program. He first asked for individual feedback, indicating in the form prescribed for the purpose that he was challenging [TRANSLATION] "all the results, comments or reasons supporting the results assigned [to him] by the appraiser". So he could prepare effectively, he asked for all the grids used in the assessment and all relevant information.

[11] Mr. Pelchat, who first assessed the applicant, agreed to give the applicant individual feedback. He told him that all the relevant information had already been given to him. On the marking grids, he answered that the CCRA competency catalogue available on Infozone was used.

[12] The individual feedback took place by telephone on April 25, 2005. According to the account prepared by Mr. Pelchat, he first confirmed that he had received the applicant's comments on his assessment. He stated that he then explained the way in which the behavioural events were assessed and discussed the competencies on which the applicant had not obtained a passing grade. Following this, Mr. Pelchat confirmed his initial assessment and concluded that there would be no change in the reports submitted.

[13] On May 4, 2005, the applicant wrote to André Paquin, Director of the Eastern Quebec Tax Services Office, asking him to review Mr. Pelchat's decision. Mr. Beaulieu alleged that he had been treated arbitrarily in the selection process. In particular, he maintained that the competency consultant had not taken his performance appraisals into account, had not taken notes at the interview, and had underrated him. He especially objected to the fact that the candidates were assessed by different appraisers and the fact that the Staffing Program did not entitle him to have access to the other candidates' results.

[14] Following a meeting between Mr. Beaulieu and Mr. Paquin, the latter notified the applicant in a letter on June 21, 2005, that he would not be recommending corrective action because he had no reason to think that the competency assessment had been made arbitrarily. The relevant portion of that letter reads as follows:

> [TRANSLATION]
>
> Pursuant to the Directives on Recourse for Staffing, my role as the reviewer of the decision is not to give my opinion on the relevance of

> the level assigned to the candidate in the assessment, but to determine whether the candidate was treated arbitrarily, that is, in an unreasonable manner done capriciously, not done or acting according to reason or judgment.
>
> Although you may disagree with the definition of certain competencies and you may feel that the examples you were given in your interview deserve a higher rating than that assigned to you by the appraiser, I cannot substitute my judgment. Instead, I have carefully considered whether there could have been anything which led to an arbitrary assessment by him.
>
> I have undertaken an analysis of your portfolio, listened to the tape of your interview and taken into account the comments you made at our meeting on June 14 last.
>
> After reviewing the file as a whole, I have no reason to think that the competency assessment in this process was made arbitrarily and, consequently, I am not recommending any corrective action.

[15] In his review application, the applicant asked Mr. Paquin to determine whether any documents existed in the competency consultant's possession to which he did not have access. Mr. Paquin did not see fit to answer this request and made no reference in his letter to the disclosure of documents which the consultant may have reviewed.

[16] In the affidavit he submitted in support of his application for judicial review, Mr. Beaulieu alleged that three different appraisers had been used to make the assessment of the candidates in the competition. Mr. Pelchat allegedly told the applicant that he [TRANSLATION] "only very rarely" and "in exceptional cases" awarded a grade "3". At the same time, he stated that he learned from discussing the matter with some of his fellow employees that another appraiser had given "3" grades about seven times, while he and the other candidate assessed by Mr. Pelchat had obtained no "3" grades.

ISSUES

[17] Essentially, the application for judicial review at bar appears to the Court to raise three questions:

- What should the standard of review applicable to the Director's decision be?
- Did the Director make a reviewable error in failing to conclude that the assessment of candidates by different appraisers was arbitrary and that the selection and/or staffing process required corrective action?
- Did the Director make a reviewable error by refusing to disclose the results of the other candidates?

ANALYSIS

[18] In order to fully understand this matter and to properly answer the questions identified in the preceding paragraph, it will be useful to quickly review of the CCRA Staffing Program.

[19] As mentioned earlier, CCRA was established in 1999. Subsection 53(1) of the *Canada Customs and Revenue Agency Act* gives CCRA the exclusive right to appoint its staff, and subsection 54(1) requires CCRA to "develop a program governing staffing, including the appointment of, and recourse for, employees". The effect of these provisions is to remove CCRA from the scope of the provisions in the *Public Service Employment Act*, R.S.C. 1985, c. P-33.

53. (1) The Agency has the exclusive right and authority to appoint any employees that it considers necessary for the proper conduct of its business.	53. (1) L'Agence a competence exclusive pour nommer le personnel qu'elle estime nécessaire à l'exercice de ses activités.
(2) The Commissioner must exercise the appointment authority under subsection (1) on behalf of the Agency.	(2) Les attributions prévues au paragraphe (1) sont exercées par le commissaire pour le compte de l'Agence.

54. (1) The Agency must develop a program governing staffing, including the appointment of, and recourse for, employees.	54. (1) L'Agence élabore un programme de dotation en personnel régissant notamment les nominations et les recours offerts aux employés.
(2) No collective agreement may deal with matters governed by the staffing program.	(2) Sont exclues du champ des conventions collectives toutes les matières régies par le programme de dotation en personnel.

[20] In accordance with this legislation, CCRA adopted a Staffing Program. This program provides that the selection process is one of the chief means for promoting staff. The procedure is in three principal stages: Review of Prerequisites, Assessment, and Placement (P4.3-3).

[21] The Review of Prerequisites involves the selection board determining whether a candidate meets the prerequisites indicated in the notice of job opportunity or in the statement of staffing requirements (P4.3.2-1). Only candidates meeting the essential qualifications are consisdered for assessment, which is the second stage in the selection process (P4.3.2-2).

[22] The case at bar concerns only the second stage, the assessment, which involves determining whether the candidate has the necessary competencies or qualifications for the position. The Staffing Program clearly states that this is an individual, not a comparative, assessment:

> P4.3.3-2 Assessment is a comparison of a candidate's competencies/qualifications against established assessment criteria, not a comparison amongst candidates (not ranking).

[23] At this stage of the staffing process, two recourses are available to dissatisfied candidates. The first, individual feedback, is a necessary stage before proceeding to any other form of recourse (P5.0-6). It is not merely a recourse, but also a key part of the career management process, which is intended to give employees input on development needs (P5.0-6).

[24] The second recourse, at the assessment stage of a selection process, is review of the decision (P5.0-7). In this process, the supervisor of the authorized person or his or her delegate is responsible for conducting a review and making a decision.

[25] Candidates found to be qualified are entered in a pool of qualified candidates that the Agency can use to proceed with placement. "Placement" is the final stage of the selection process. The manager may choose an individual from among qualified candidates in accordance with the particular operational requirements of the organization (P4.3.4-1). It is clearly stated that placement is not the result of a ranking of candidates by merit:

> P4.3.4-2 Placement is a comparison of a candidate against specified placement criteria and is not a ranking of individuals.

[26] At this last stage of the staffing process, a qualified candidate who has not been appointed to a position has three recourses available: individual feedback, decision review and independent third party review. As its name indicates, the latter review is carried out by a person from outside CCRA and produces a binding decision which does not create a precedent (P5.0-9).

[27] Regardless of the type of recourse provided for in the Staffing Program, the purpose is to ensure that an employee is not treated arbitrarily. The Directive on Recourse for Staffing (the Directive) in fact states this specifically. Under the heading "Grounds for Recourse", it states:

> In all cases, the grounds for recourse for Individual Feedback, Decision Review Process and Independent Third Party Review is whether the employee exercising recourse was treated in an arbitrary way. The focus should be on the treatment of the individual in the process and not on the evaluation of other candidates or employees.

[28] The word "arbitrary" is defined as follows in the aforementioned section:

> "In an unreasonable manner, done capriciously; not done or acting according to reason or judgment; not based on rationale, on established policy; not the result of a reasoning applied to relevant considerations; discriminatory (i.e. difference of treatment or denial of normal privileges to persons because of their race, age, sex, nationality, religion, or union affiliation."

[29] Accordingly, this is the legislative and administrative background against which the Court must assess the decision made by Mr. Paquin and determine whether he erred in concluding that the applicant was not treated arbitrarily in the selection process. In order to answer this question, the Court must first consider the applicable standard of review.

[30] In two earlier judgments, this Court has had occasion to look at the standard of review applicable to the decision resulting from a feedback session (*Anderson v. Canada (Customs and Revenue Agency)*, 2003 FCTD 667, [2003] F.C.J. No. 924 (QL)) and to the decision made following an independent third party review (*Canada (Customs and Revenue Agency) v. Kapadia*, 2005

FC 1568, [2005] F.C.J. No. 2086 (QL)). However, I have not been able to locate any decision dealing with the review recourse at issue here.

[31] The pragmatic and functional approach suggests that the Court look at the legislative intent through four background factors identified by the Supreme Court, *inter alia* in *U.E.S., Local 298 v. Bibeault*, [1988] 2 S.C.R. 1048, *Canada (Director of Investigation and Research) v. Southam Inc.*, [1997] 1 S.C.R. 748, *Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, [1998] 1 S.C.R. 982 and *Dr. Q v. College of Physicians and Surgeons of British Columbia*, [2003] 1 S.C.R. 226. These factors are the presence or absence of a privative clause or of a right of appeal in legislation, the expertise of the Court on the point at issue as compared with the reviewing tribunal, the purpose of the legislation and the specific provision, and the nature of the question raised.

[32] It may first be noted that the legislation says nothing about possible review of decisions made on the basis of a recourse, whether by judicial review or by appeal. The Staffing Program and Directive also have nothing to say in this regard. Accordingly, this factor does not allow the Court to draw any conclusion whatever as to the severity of the applicable standard of review.

[33] On the expertise of the decision-maker as compared with that of the Court on the point at issue, the following comment has to be made. As regional director of the Taxation Services Office and Mr. Beaulieu's supervisor, Mr. Paquin almost certainly has broad experience and the expertise necessary to fill the position applied for by Mr. Beaulieu. As a manager, he is undoubtedly required to make regular rulings on the definitions of duties in the principal categories of his employees, the skills required to perform those duties adequately, and the review of decisions made by selection

boards. It must also be assumed that he is fully familiar with CCRA's mandate, its internal organization and the various aspects of its human resources. Through his duties, he is also familiar with the Agency's staffing process and operational requirements. Finally, he has had the great advantage of meeting Mr. Beaulieu, discussing his problems with him and listening to the recording of the interview with the appraiser.

In view of all this, I have no hesitation in concluding that this Court should be cautious about dismissing Mr. Paquin's conclusions. He was in a particularly good position to determine whether Mr. Beaulieu had been arbitrarily assessed, based on his experience and his knowledge of CCRA.

[34] However, the third factor, the purpose of the legislation, supports a need for less deference. The provisions dealing with recourses are not concerned with general questions of public policy or the weighing of conflicting interests between various groups. What is at issue here is the resolution of a dispute between an employer and one of its employees. It is true that the obtaining of a promotion is not a right in itself. Nevertheless, the dispute is closer to the conventional legal paradigm than a "polycentric" discussion, to use the language of Bastarache J. in *Pushpanathan*, *supra*. In other words, the outcome of such a dispute has more to do with the facts put before the decision-maker than broad considerations of social policy.

[35] That leaves the nature of the problem in question. It seems clear to the Court that the question of whether the selection board's decision not to accept Mr. Beaulieu's candidacy was arbitrary is a mixed question of fact and law. To answer this question, Mr. Paquin had to apply a legal standard, as defined in the Directive, to the particular facts before him in connection with the

recourse filed by the applicant. Ordinarily, this type of question requires a degree of deference comparable to the intermediate standard of review.

[36] Having weighed these various factors, I have come to the conclusion that the standard of review applicable to the decision made by Mr. Paquin is that of reasonableness *simpliciter*. This means that the Court must not interfere unless the decision for review is not supported by any reasons which can stand up to a somewhat probing examination. As Iacobucci J. stated in *Law Society of New Brunswick v. Ryan*, [2003] 1 S.C.R. 247, at paragraphs 55 and 56:

> **55** A decision will be unreasonable only if there is no line of analysis within the given reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived. If any of the reasons that are sufficient to support the conclusion are tenable in the sense that they can stand up to a somewhat probing examination, then the decision will not be unreasonable and a reviewing court must not interfere (see *Southam*, at para. 56). This means that a decision may satisfy the reasonableness standard if it is supported by a tenable explanation even if this explanation is not one that the reviewing court finds compelling (see *Southam*, at para. 79).
>
> **56** This does not mean that every element of the reasoning given must independently pass a test for reasonableness. The question is rather whether the reasons, taken as a whole, are tenable as support for the decision. At all times, a court applying a standard of reasonableness must assess the basic adequacy of a reasoned decision remembering that the issue under review does not compel one specific result. Moreover, a reviewing court should not seize on one or more mistakes or elements of the decision which do not affect the decision as a whole.

[37] Accordingly, it is with these parameters in mind that I will consider the applicant's arguments, which it will be recalled are of two kinds. Mr. Beaulieu maintained that Mr. Paquin made an error by not concluding that the assessment made of him was arbitrary and by refusing to disclose the results of the other candidates.

[38] Essentially, the applicant argued that he was arbitrarily assessed because the candidates in the competition for which he applied were assessed by three different appraisers, and they had different standards of assessment. In particular, he maintained in his affidavit that the appraiser to whom his case was assigned told him that he [TRANSLATION] "only very rarely and in exceptional cases awarded a grade '3'". He learned from discussing the matter with some of his fellow employees that one of the two other appraisers had given "3" grades about seven times, whereas he and the other candidate assessed by Mr. Pelchat had obtained no "3" grades.

[39] In my opinion, there are several problems with this argument. First, Mr. Beaulieu's allegation is based only on hearsay. There is nothing in the evidence to corroborate the statement. Ultimately, the applicant's arguments might have been more credible if he had filed in support of his application one or more affidavits from his fellow employees that confirmed what he said. By relying on hearsay the applicant deprived the respondent of the opportunity of cross-examining the persons directly involved about the truth of this information.

Additionally, there is no tangible evidence of the fact that Mr. Pelchat used different criteria of assessment from his colleagues or marked the candidates before him more harshly. In the affidavit filed by the Attorney General in support of her defence, Annie Lanteigne, industrial and organizational psychology consultant at the CCRA Human Resources Branch, indicated that, after checking the results for certain competencies, there were no significant differences between the three consultants mentioned by Mr. Beaulieu. It is true that the assessment results were not examined for all competencies, which might suggest that significant differences could have

appeared for some of them. However, there is nothing to allow the Court to arrive at such a conclusion. The applicant did not see fit to cross-examine Ms. Lanteigne on her affidavit, and he also did not make this argument in his written or oral submissions. Further, it would have been surprising if Mr. Pelchat had shown greater harshness than his colleagues in his assessments for certain competencies only.

[40] That said, it is quite possible that competency consultants will not all have exactly the same standards when they assess candidates. In fact, the situation could not be otherwise once the assessment is not measuring only objective factors, but also involves a certain measure of subjectivity. As in a huge organization like CCRA it is impossible to have a single consultant assessing all candidates in the various competitions which are held each year, the only other option available to minimize subjectivity is to ensure that all candidates are assessed on the same criteria. That is precisely what CCRA tried to do, as indicated by the following paragraphs from Ms. Lanteigne's affidavit:

> [TRANSLATION]
>
> 3. All competency consultants obtain their certification following intensive training in which they must show that they have acquired the necessary skills and knowledge (i.e. coding and interview techniques) to undertake the assessment of organizational and behavioural compentencies. They must also show that they can undertake assessment of standardized assessment tools (i.e. skills portfolio, targeted behavioural interview). Additionally, after being certified, they must participate in monthly national calibration activities. These activities enable the Canada Revenue Agency to ensure that the results assigned by consultants comply with standardized assessment practices and that assessments of competencies are uniform.

> 4. Robert Pelchat, a competency consultant, received the necessary training and has been certified since April 1, 2002, to undertake standardized assessment of organizational and behavioural competencies.
>
> 5. All competency consultants use the same reference tools to make assessments of organizational and behavioural competencies. They use the Competency Catalogue as published on the Canada Revenue Agency's intranet competency site. In addition, there are supplementary notes for each competency which are for the use of certified competency consultants only. This information is protected by section 22 of the *Access to Information Act* and enables consultants to correctly interpret the marking scale for each competency.

[41] I would also add that Mr. Pelchat's [TRANSLATION] "admission", assuming he made the statement, is ambiguous to say the least. The fact that a consultant is less inclined to give very high marks does not necessarily mean that he will fail more candidates or that he will be more likely to conclude that a candidate has not answered a question. In this regard, based on the record as it stands, the Court can only guess as to the real meaning of the [TRANSLATION] "admission" allegedly made by Mr. Pelchat and the actual consequences that may have resulted for Mr. Beaulieu.

[42] Finally, and this is what appears to the Court to be most important, it seems clear from the review I have made of the CCRA staffing system that the merit principle as conceived in the *Public Service Employment Act* is not applied so strictly here. The principle that appears to be followed here is that of competency. As a result, the Staffing Program does not require any comparison to be made between candidates. Thus, at the stage of the preliminary assessment of qualifications, the only relevant question is whether, judging from his file, a candidate meets the essential requirements of the position. The decision made is objective in nature, in the sense that a candidate meets or does not meet the essential requirements of the position. At the second stage, the assessment involves a

comparison of the candidate's competencies or qualifications against established assessment criteria, rather than a comparison (or ranking) among candidates (P4.3.3-2).

[43] At the hearing the applicant tried to establish that, assuming it was not relevant at the assessment stage, the ranking of candidates could have an impact at the placement stage. Once again, I cannot accept that argument. As I indicated above, placement itself does not involve ranking candidates, but rather choosing from among candidates who have qualified the one who meets the organization's operational requirements. It is only in a situation where placement is made on the basis of assessment results that the application of criteria by which that assessment was made will become relevant.

[44] These were precisely the circumstances in which Eleanor Dawson J. had to make a ruling in *Sargeant* v. *Canada (Customs and Revenue Agency)*, 2002 FCTD 1043, [2002] F.C.J. No. 1372 (QL). In that case, the manager had chosen five eligible candidates for placement without taking into account their results at the assessment stage. Ruling on the decision by an independent appraiser who had concluded that it was not possible to order disclosure of documents relating to the assessment because the appraiser's role was limited to reviewing the placement stage, Dawson J. considered that the argument did not take into account the fact that the manager's choice had in effect created a linkage between the assessment and the placement stages. However, my colleague took great care to limit the scope of her judgment, emphasizing that the applicants would have been deprived of the right to exercise an effective remedy in the circumstances of the case if they had been unable to obtain the documents relating to the assessment to challenge a placement based

exclusively on the results of that assessment. Her comments at paragraph 44 of her reasons seem to me to be conclusive for the solution of the case at bar:

> Second, any review at the assessment stage could only relate to an applicant's own score because the staffing program prohibited access at that stage to anything, but his or her own personal assessment information. While that makes some sense at the assessment stage because an individual is only measured against the assessment criteria, in the present case, it ignores the possibility that the assessment standards were not applied consistently with the result that others received erroneously high scores. This becomes relevant when assessment scores are used for a purpose other than simply determining if an individual is entitled to enter a pre-qualified pool.
>
> See also to a similar effect *Professional Institute of the Public Service of Canada v. Canada (Customs and Revenue Agency)*, 2004 FC 507, [2004] F.C.J. No. 649 (QL).

[45] The applicant's argument that the Director made an error by refusing to give him the scores of the other candidates must of course be considered to be groundless in view of the purposes of the assessment stage. Since the logic applicable at that stage is not to compare candidates with each other but to assess them in accordance with established assessment criteria, the files of other candidates can be of no assistance to a candidate seeking to establish that the assessment was arbitrary. Clause P4.3.3-8 of the Staffing Program is quite clear in this regard:

> Access to information will be in accordance with the Access to Information Act and the Privacy Act. Candidates will have access only to their own personal assessment information.

[46] This statement of principle is reiterated and clarified in the Directive on Recourse for Staffing, section 4 of which, on disclosure of information, reads as follows:

- Recourse for the Staffing Program is subject to the *Access to Information Act* and the *Privacy Act*.
- For Individual Feedback and Decision Review, Authorized Persons may not divulge personal information of other employees without that employee's express written permission.
- Information regarding the assessment or treatment of another candidate in the selection process is considered to be personal information and may not be disclosed.
- Authorized Persons shall disclose all information relevant to the employee who is exercising recourse, except any information that could compromise national security, compromise the integrity of any standardized assessment method or any information that would contravene the *Privacy Act*.

[47] In *Professional Institute of the Public Service of Canada v. Canada (Customs and Revenue Agency)*, *supra*, ruling on the reasonableness of the Staffing Program and the recourse mechanisms contained in it, James Russell J. wrote at paragraph 122:

> So, from the perspective of participating in the Program as it is described in the directives and exercising recourse, an employee does not need the personal information of other candidates. Hence, it can hardly be unreasonable for the Program to exclude that information from "all information relevant to the employer [*sic*] who is exercising recourse."

[48] It is true that in *Sargeant, supra*, Dawson J. wrote at paragraph 39 of her reasons:

> Further support for this conclusion is found in those portions of the Guidelines which require the Reviewer to give expression to the principles of procedural fairness and which note that personal information regarding other employees would be available as warranted. Procedural fairness requires that participants have a meaningful opportunity to present their case fully and fairly. A full and fair presentation of the applicants' case would require access to information from the assessment stage as that relates to the assessment scores given to each candidate.

[49] These comments were made in the context of an application for judicial review of a decision by an independent third party at the placement stage. The Guidelines on the presentation and treatment of complaints for independent third party review, cited by the judge at paragraph 10 of her reasons, state the following:

> Access to personal information will be governed by the *Privacy Act* and the *Access to Information Act*. Such information would normally be provided by the manager. Personal information regarding the complainant will be available to the complainant and the reviewer. Personal information regarding other employees would be available to the complainant and the reviewer as warranted, i.e. if relevant with respect to the nature of the complaint and approved by an Agency official. [Emphasis added.]

[50] There is no equivalent to this provision in the Directive on Recourse for Staffing. In short, assessment and placement are two quite separate stages of the staffing process, with their own logic, and this is clearly reflected in the recourses available to dissatisfied candidates, as well as the provisions creating them. This is why it is important to avoid introducing the rules applicable to one stage into another stage.

[51] For all these reasons, therefore, I dismiss the application for judicial review. The respondent will be entitled to his costs, in accordance with column III of the table in Tariff B of the *Federal Courts Rules*.

JUDGMENT

THE COURT MAKES THE FOLLOWING JUDGMENT:

1- The application for judicial review is dismissed. The respondent will be entitled to his costs in accordance with column III of the table of Tariff B of the Federal Court Rules.

"Yves de Montigny"
Judge

Certified true translation
Mavis Cavanaugh

FEDERAL COURT

SOLICITORS OF RECORD

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