

**Date: 20021120**

**Docket: A-138-01**

**Neutral citation: 2002 FCA 460**

**CORAM: RICHARD C.J.  
DÉCARY J.A.  
NOËL J.A.**

**BETWEEN:**

**THE ATTORNEY GENERAL OF CANADA**

**Plaintiff**

**and**

**GISÈLE GAGNON**

**Defendant**

Hearing held at Québec, Quebec, on November 20, 2002.

Judgment from the bench at Québec, Quebec, on November 20, 2002.

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

**NOËL J.A.**

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**BETWEEN:**

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**Plaintiff**

**and**

**GISÈLE GAGNON**

**Defendant**

**REASONS FOR JUDGMENT OF THE COURT**  
**(Delivered from the bench at Québec, Quebec,**  
**on November 20, 2002**

**NOËL J.A.**

[1] This is an application for judicial review of a decision (CUB 50 469) by the umpire on February 5, 2001, dismissing the appeal by the Employment Insurance Commission from a decision of the board of referees.

[2] The claimant admitted before the board of referees that she failed to report a work colleague's fraud to the Canada Customs and Revenue Agency. In so doing, she infringed the employer's code of conduct.

[3] She was suspended and the Commission deprived her of benefits on the ground that her suspension resulted from her own misconduct.

[4] The board of referees and the umpire subsequently found that the claimant's omission was excusable in the circumstances. It was also established that in each of these cases the claimant had failed to report her colleague contrary to the provisions of the code of conduct applicable to her, and that in so doing she had acted knowingly.

[5] Since the uncontradicted facts established quite clearly that the claimant intended not to report the fraud, this is quite certainly misconduct within the meaning of the *Employment Insurance Act* and however praiseworthy the claimant's reasons might be they do not change the act in question into anything but misconduct within the meaning of the said Act.

[6] The application for judicial review will be allowed, the decision of the umpire set aside and the matter referred back to the chief umpire or his delegate to be again decided on the basis that the claimant was excluded from benefits on account of her misconduct. No costs will be awarded.

“Marc Noël”

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Judge

Certified true translation

Suzanne M. Gauthier, C. Tr., LL.L.

**FEDERAL COURT OF CANADA**  
**APPEAL DIVISION**

**Date: 20021120**

**Docket: A-138-01**

**Between:**

**THE ATTORNEY GENERAL OF CANADA**

**Plaintiff**

**and**

**GISÈLE GAGNON**

**Defendant**

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**REASONS FOR JUDGMENT OF THE COURT**

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**FEDERAL COURT APPEAL DIVISION**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**COURT FILE No.:** A-138-01

**STYLE OF CAUSE:** THE ATTORNEY GENERAL OF CANADA  
and  
GISÈLE GAGNON

**PLACE OF HEARING:** Québec, Quebec

**DATE OF HEARING:** November 20, 2002

**REASONS FOR JUDGMENT  
OF THE COURT BY:** Noël J.A.

**CONCURRED IN BY:** Richard C.J.  
Décary J.A.

**DATED:** November 20, 2002

**APPEARANCES:**

Chantal Sauriol for the plaintiff

**SOLICITORS OF RECORD:**

DEPARTMENT OF JUSTICE for the defendant  
Montréal, Quebec