

Date: 20020917

Docket: A-172-01

Neutral citation: 2002 FCA 337

**CORAM: DÉCARY J.A.
LÉTOURNEAU J.A.
PELLETIER J.A.**

BETWEEN:

THE ATTORNEY GENERAL OF CANADA

Plaintiff

and

MARIO LEMAY

Defendant

Hearing held at Montréal, Quebec, on September 17, 2002.

Judgment delivered from the bench at Montréal, Quebec, on September 17, 2002.

REASONS FOR JUDGMENT OF THE COURT:

DÉCARY J.A.

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REASONS FOR JUDGMENT OF THE COURT
**(Delivered from the bench at Montréal, Quebec,
on September 17, 2002.)**

DÉCARY J.A.

[1] We have heard this application for judicial review in the absence of the defendant, who was duly notified of the date and time of the hearing. The defendant also filed no record. Additionally, he did not appear before the board of referees.

[2] The umpire, and before him the board of referees, erred in their interpretation of s. 43(6) of the *Unemployment Insurance Act*. As this Court held in *Canada (Attorney General) v. Pilote* (1998), 243 N.R. 203, the false or misleading statement or representation referred to in the said section does not have to be made “knowingly”, unlike that mentioned in s. 33.

[3] Additionally, in finding that there was no notification of the overpayment in the case at bar the umpire wrongly addressed a question that was not raised before the board of referees. In any event, this Court has already held that indication of the amount of the overpayment in the written submissions made to the board of referees by the Commission - as in the case at bar - could serve as a “notification” within the meaning of s. 43(1) of the Act (see *Attorney General of Canada v. Rouleau*, A-930-96, unreported judgment of October 31, 1997; *Attorney General of Canada v. Gagnon*, A-676-96, unreported judgment of May 28, 1997).

[4] The application for judicial review will be allowed, the decision of the umpire reversed and the matter referred back to the chief umpire or an umpire designated by him to be again decided on the assumption that the appeal filed by the Attorney General of Canada from the decision of the board of referees should be allowed and the Commission’s decision restored. In the circumstances, no costs will be awarded.

“Robert Décary”

Judge

Certified true translation

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

FEDERAL COURT OF CANADA
APPEAL DIVISION

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Between:

THE ATTORNEY GENERAL OF CANADA

Plaintiff

and

MARIO LEMAY

Defendant

REASONS FOR JUDGMENT OF THE COURT

FEDERAL COURT OF CANADA
APPEAL DIVISION

SOLICITORS OF RECORD

FILE: A-172-01

STYLE OF CAUSE: **THE ATTORNEY GENERAL OF CANADA**

and

MARIO LEMAY

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: September 17, 2002

REASONS FOR JUDGMENT OF THE COURT: DÉCARY J.A.

CONCURRED IN BY: **LÉTOURNEAU J.A.**
PELLETIER J.A.

DATE OF REASONS: September 17, 2002

APPEARANCES:

Paul Deschênes FOR THE PLAINTIFF

SOLICITORS OF RECORD:

Morris Rosenberg FOR THE PLAINTIFF
Deputy Attorney General of Canada
Montréal, Quebec