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Public Service
Staff Relations Act

Before an adjudicator

BETWEEN

ROBERT CAIRNS, GUY MCCULLUM, RICHARD ROBINSON, WILLIAM RYCHTAR, CAROL WEST, STEVEN WEST, GERARD CHARRON, GUY JOLY, DIANE LACERTE-FOURNIER AND GINETTE VAILLANCOURT

Grievors

and

TREASURY BOARD
(Department of Citizenship and Immigration)

Employer

Indexed as
Cairns et al. v. Treasury Board (Department of Citizenship and Immigration)

In the matter of grievances referred to adjudication pursuant to section 92 of the *Public Service Staff Relations Act*

REASONS FOR DECISION

Before: D.R. Quigley, adjudicator

For the Grievors: Chantal Homier-Nehmé, Public Service Alliance of Canada

For the Employer: Karl Chemsi, counsel

Heard at Ottawa, Ontario,
September 25 to 27, 2006.

Grievances referred to adjudication

[1] The grievors are PM-02 collection officers in the Collection Services Unit at the Department of Citizenship and Immigration (the "Department"). Their grievances read as follows:

> [I am] *grieving the retroactive date of March 12, 2002, as the UCS job description was dated March 23, 1999 and a subsequent "Draft Version" with only minor refinements was dated Sept 13, 2002.*

[2] They seek the following corrective action:

> [I] *would request retroactive pay from January 1, 2000.*

[3] Counsel for the employer called two witnesses and filed 12 exhibits. The grievors' representative called two witnesses and filed 13 exhibits. The parties agreed that Carol West would testify on behalf of all the grievors.

[4] Both parties made opening remarks.

[5] On April 1, 2005, the *Public Service Labour Relations Act*, enacted by section 2 of the *Public Service Modernization Act*, S.C. 2003, c. 22, was proclaimed in force. Pursuant to section 61 of the *Public Service Modernization Act*, these references to adjudication must be dealt with in accordance with the provisions of the *Public Service Staff Relations Act*, R.S.C., 1985, c. P-35 (the "former *Act*").

Summary of the evidence

[6] Most of the facts in this case are not in dispute. The employer maintains that the reclassification of the grievors' positions in October 2002 was as a result of the restructuring of the Collection Services Unit and the proclamation of the *Immigration and Refugee Protection Act* (*IRPA*) (Exhibit E-10), which replaced the *Immigration Act* (Exhibit E-9) in 2002.

[7] The employer's position is that, following the restructuring of the Collection Services Unit and the introduction the *IRPA*, the collection officers required a greater degree of knowledge, decision making, capabilities and competencies in their judgment and interviewing techniques. This, in itself, was reflected in a revised work description dated September 13, 2002 (Exhibit G-1). This work description was sent to a three-person classification committee, which unanimously agreed on

October 3, 2002, that the PM-01 positions would be upgraded to the PM-02 level effective March 12, 2002. Counsel for the employer stated that an adjudicator's jurisdiction with respect to classification is set out in section 7 of the *Public Service Staff Relations Act* (*PSSRA*).

[8] The grievors maintain that their duties prior to the coming into force of the *IRPA* remained the same after the new legislation was introduced and that, therefore, the effective date for retroactive pay should be January 1, 2000. At no time during this hearing did the grievors adduce evidence or provide any reason as to the significance of this date. They allege that the September 13, 2000, Universal Classification Standard (UCS)-format work description (Exhibit G-7), which the grievors participated in redrafting, had only minor changes in comparison to Exhibit G-1, the work description dated September 13, 2002, that was reviewed by the classification committee.

[9] The PM-01 collection officer work description of March 1997 was filed into evidence (Exhibit E-3). Marie Latour, a classification specialist who has since retired from the Department, elaborated on it. (Although Exhibit E-3 is undated, both parties agreed that the effective date was March 1997.)

[10] Ms. Latour explained that the collection officers worked with management, and, specifically, with André Couture, the Director of Accounting Operations, on redrafting Exhibit G-7 using the UCS-format for work descriptions. Several of these draft UCS-format work descriptions were entered into evidence, including, specifically, Exhibit G-5, dated March 23, 1999, and Exhibit G-7.

[11] Ms. Latour explained that on May 8, 2002, the Treasury Board announced that applying a single standard and a single pay structure was not feasible in the current environment. In other words, the UCS project was cancelled. In June 2002 Ms. Latour, Mr. Couture and Jean-Guy Brin, Manager of the Collection Services Unit, met to rewrite the PM-01 collection officer work description. Ms. Latour stated that on March 12, 2002 (Exhibit E-2), Mr. Couture sent an email to Yvette Fontana-McGirr (her classification team leader) requesting that the supervisor and collection officer positions be reclassified. Ms. Latour was then assigned to work on the request.

[12] Ms. Latour described Exhibit G-7 as a UCS-format work description that recognized the general duties of a PM-01 position. Following discussions with Messrs. Couture and Brin, it became evident that the duties of the PM-01 collection

officers would change with the enactment of the *IRPA*. Their new duties and a requirement to be conversant in the new legislation were captured in a revised work description (Exhibit G-1). Along with Angela Mutsei and Bill Wackley, both classification advisors, Ms. Latour compared and evaluated Exhibit G-1 against the old work description (Exhibit E-3). On October 3, 2002, they recommended that the PM-01 classification be upgraded to the PM-02 level. This decision was based on the requirement for the collection officers to have a greater degree of knowledge and to perform decision making functions, as well as the requirement to possess the capability to interpret and communicate to their clients the new legislation. They also compared the PM-01 collection officer positions to other comparable positions within the Public Service. Ms. Latour stated that the committee did not use either Exhibit G-5 or Exhibit G-7 in its evaluation process, as those were draft UCS work descriptions.

[13] Ms. Latour stated that the following excerpts from Exhibit G-1, which are not found in either Exhibit G-7 or Exhibit E-3, highlight the differences in the collection officers' duties after the coming into force of the *IRPA*. Under "Information for the Use of Others" it states:

. . .

> *Contacts employers of the debtors to convince them to cooperate in accessing funds from the debtor, by informing them that if no amicable arrangement can be made, measures will be taken under s. 147(1) of the Immigration and Refugee Protection Regulations to garnish the employee's salary.*

. . .

> *Advises debtors of the consequences of not making the appropriate payments, such as set-off through income tax return and/or the transfer of accounts to private collection agencies, or action in justice. This is done by proceeding with analysis of cases and discussions with debtors to negotiate an acceptable re-payment schedule. When there is no cooperation from the client, develops cases highlighting full particulars for consideration through these collection programs.*

. . .

> *Provides information to sponsor groups on the status of accounts, of their obligation to repay the debt or to intervene with the debtor to resume payments on the debt.*

> *Informs debtors of their obligations to pay performance bonds (undertaking given by client to ensure the conditions of entry into Canada of a third person are met); this requires convincing debtors of their legal obligations. In such cases, collection action is more aggressive given the enforcement nature of the debt.*
>
> . . .

[14] Under "Job Content Knowledge" it states:

> . . .
>
> *The work requires knowledge of accounting and collection principles and techniques. There is a requirement to resolve all aspects of debt management; to research and analyse the debtor's actual income and expenses; to establish or revise the payment arrangements; to calculate interests based on rate of interest and date of payment, taking in consideration the age of the account that may be subject to the legislation prior to 1994, legislation since 1994 as well as the Immigration and Refugee Protection Act (IRPA).*
>
> . . .

[15] Ms. Latour also stated that the relevant excerpt in Exhibit E-3, "CLIENT-SERVICE RESULTS - Implements a collection program for hard core accounts for the Immigration Branch," was changed in Exhibit G-1 to the following:

> ***Client-Service Results***
>
> *The collection of loans/debts from immigrants/refugees who owe money to the department for a variety of reasons.*
>
> *The collection of program overpayments and other debts owed to the department by employees, members of the public and recently arrived immigrants.*

[16] Ms. Latour concluded by stating that with the enactment of the *IRPA* the PM-01 collection officers were given broader legislative and legal authorities, and with the requirement for increased knowledge and decision making a decision was taken to reclassify the PM-01 positions to the PM-02 level.

[17] In cross-examination, Ms. Latour confirmed that Exhibit G-7 was not sent for classification, as it was a UCS draft work description; it was Exhibit E-3 that was used for comparison since it was the only valid work description.

[18] Mr. Couture stated that the official change in the organizational structure of the Collection Services Unit was effective as of November 5, 2002 (Exhibit E-5). The manager position was reclassified from the PM-04 group and level to the AS-06 group and level effective June 2001; the PM-02 supervisor positions were reclassified to the PM-04 level effective March 12, 2002; and the PM-01 collection officer positions were reclassified to the PM-02 level, effective March 12, 2002. As well, the new structure now also contains PM-01 collection officer developmental positions and an AS-04 monitor specialist. The CR-04 support staff is still part of the structure; however, the receptionist/mail clerk position has been abolished.

[19] Between November 7 and 14, 2002, the grievors all signed the revised work description (Exhibit E-7) that reclassified their positions to the PM-02 level effective March 12, 2002. Mr. Couture explained his reason for choosing March 12, 2002, as the effective date.

[20] Mr. Couture stated that, to his recollection, in March 2001 the *IRPA* was at its third reading in the House of Commons and, with a majority government, he felt that the new legislation would be passed. The *IRPA* was proclaimed in force on June 28, 2002.

[21] Mr. Couture stated that during March, April and June 2002, management started reviewing the work descriptions within the Collection Services Unit in anticipation of the enactment of the *IRPA*. New policies were being generated; delegation of authority was being assessed; and communications were being posted on the Department's Web site about the proposed changes with the coming into force of the *IRPA* and the training of employees on the *IRPA*. He stated that on March 12, 2002, he formally requested a reclassification of the supervisors' and collection officers' positions (Exhibit E-2). He noted that it was the enactment of the *IRPA* and the *Immigration and Refugee Protection Regulations* (Exhibit E-11) that affected the grievors' work knowledge and decision making.

[22] Mr. Couture stated that, although the *IRPA* was not enacted until June 28, 2002, the decision to backdate the effective date to March 12, 2002, was made to recognize and compensate the reclassified PM-01's and PM-02's for absorbing the new changes brought about by the impending legislation. He stated that in an operational environment one does not have the luxury of having employees spend hours in the classroom. Management recognized that the collection officers would need time to

absorb the changes brought about by the new legislation, and that they would be required to restructure their questions and approach to their clients as a result of the broader authorities granted to them with the introduction of the *IRPA*.

[23] In cross-examination, Mr. Couture did not agree with the grievors' representative that the duties of the PM-01 collection officers remained the same after the *IRPA* came into force. Mr. Couture was adamant that the duties were different: the collection officers now had to be more rigorous in the assessment of client files, and a greater degree of knowledge and decision making was required.

[24] When asked what new duties were assigned to the PM-04 supervisors, Mr. Couture was unable to answer. In cross-examination, Ms. Latour, as well, could not recall the assigned new duties.

[25] From July 1982 to November 2002, Ms. West was a PM-01 collection officer. On November 7, 2002, her position was reclassified to the PM-02 level.

[26] Ms. West testified that in 1999 she and Mr. Couture were part of a committee that was incorporating the new work duties not reflected in Exhibit E-3 into a UCS work description format. Ms. West identified Exhibit G-5 as a draft UCS work description containing handwritten comments made by Mr. Couture. Exhibits G-6(a) and (b) contain comments provided by the collection officers. The result of this collaboration was Exhibit G-7, which was not sent to the classification committee.

[27] Ms. West testified that the duties described in Exhibit G-1 are the same as those in Exhibit G-7, which was completed two years earlier. She stated that her duties have not changed since 1999 and are still the same today. She also stated that the new reference in Exhibit G-1 to subsection 147(1) of the *Immigration and Refugee Protection Regulations* did not affect her duties, and, also, that she had never received any training in respect of the *IRPA*.

[28] In reference to the "Garnishment Procedures" document (Exhibit G-8(a)), Ms. West stated that the collection officers' process on garnishment did not change with the passage of the *IRPA* on June 28, 2002. She stated that her duties in preparing letters to clients, filling out the financial questionnaire, talking to the clients over the telephone, initiating payments with employers with respect to payroll deductions, etc., remain the same. If a client or an employer is unwilling to comply, the manager sends

a letter to them stating that, pursuant to section 147 of the *IRPA*, the debtor will be subject to garnishment of his or her wages. Ms. West stated that she prepares the letters stating that the employer has the right to garnish the debtor's wages pursuant to subsection 147(1) of the *IRPA*.

[29] She explained, as well, that employers are asked to voluntarily comply with payroll deductions if an immigrant or a departmental employee is in debt. However, the Department can invoke subsection 147(1) of the *IRPA* if the employer is unwilling to comply with a payroll deduction.

[30] The collection officers, before and after the *IRPA,* did not and do not have the authority to force an employer to comply with the garnishment of an immigrant's or departmental employee's wages. It is only the manager of the Collection Services Unit who has that authority, as is evident from Exhibit G-10. Ms. West stated that she has never been required to have the manager invoke Exhibit G-10, which informs an employer that the Department has the legal authority, pursuant to subsection 147(1) of the *IRPA*, to require the employer to submit payment of an immigrant's or departmental employee's wages to the Receiver General for Canada. Ms. West stated, however, that she could not be sure whether or not any of her colleagues ever had to invoke subsection 147(1) of the *IRPA* to force an employer to comply with the garnishment of wages.

[31] Ms. West acknowledged Exhibit G-9 as the "Authorization for Payroll Deductions" form that is now in use. She noted, however, that, although the old form (Exhibit G-11) did not mention subsection 147(1) of the *IRPA*, this did not affect the process for payroll deductions.

[32] Ms. West noted, as well, that the garnishment process did not exist prior to the introduction of the *IRPA*. However, under the former process, use of Exhibit G-11 required her to draft a memorandum to the Department's Legal Services Branch for the signature of the director. This memorandum is no longer a requirement.

[33] Ms. West stated that there was no restructuring of positions within the Collection Services Unit, and no change in duties. She acted as a PM-02 supervisor on a number of occasions between 1998 and 2000, and the duties she performed then are the same as the duties the supervisors perform today, although their positions are now

at the PM-04 level. She concluded by stating that her duties as a collection officer have not changed since 1999.

[34] In cross-examination, Ms. West stated that, although the "Garnishment Procedures" document (Exhibit G-8(a)) did not exist prior to the introduction of the *IRPA*, the procedures she follows now in the preparation of documentation, etc., are the same as the ones she followed in the past.

[35] Janine Mercier was the Chief/Manager of the Collection Services Unit from 1996 to May 2001. At the time, her position was at the PM-04 group and level. She testified that when her position was reclassified to the AS-06 group and level she had to compete for the position, but was unsuccessful, as she did not have the financial background required. She also testified that, prior to her departure in May 2001, the PM-01 positions had not been reclassified.

[36] Ms. Mercier testified that subsection 147(1) of the *IRPA* gives the collection officers more authority for the garnishment of wages. However, she has never seen or heard of an employer refusing to garnish a debtor's wages. An employer may grumble, but it always complies.

[37] Ms. Mercier testified that, although Exhibit G-7 was never sent for classification review, the UCS-format work description was more up to date than Exhibit E-3, and was used for staffing purposes.

[38] In cross-examination, Ms. Mercier agreed that the UCS was not meant to be an exercise to reclassify positions, but, rather, to update work descriptions to reflect the duties of positions.

Summary of the arguments

For the grievors

[39] The grievors' representative referred to the collective agreement between the Treasury Board and the Public Service Alliance of Canada for the Program and Administrative Services Group (expiry date: 20 June 2003). Counsel for the employer objected on the grounds that during the two days of hearing there was no mention of the collective agreement or any relevant clauses. Counsel subsequently agreed that the collective agreement would be entered as an exhibit on consent (Exhibit G-13).

[40] The grievances concern retroactive pay based on the grievors having performed the duties of a higher classification (PM-02) prior to the official date of the reclassification of their PM-01 positions.

[41] Exhibit G-1, dated September 13, 2002, contains substantially the same duties as Exhibit G-7, which is dated September 13, 2000.

[42] The corrective action requested is compensation, not classification.

[43] The employer's failure to have Exhibit G-7 classified in a timely manner was negligence on its part, and the grievors are entitled to retroactive pay as of January 1, 2000, rather than as of March 12, 2002.

[44] The employer's own witnesses, Ms. Latour and Mr. Couture, could not identify the new duties assigned to the supervisors. Ms. West testified that between 1998 and 2000 she acted as a supervisor and, to the best of her recollection, the position's duties have not changed.

[45] As far as restructuring the Collection Services Unit, the only significant change was that the chief/manager position was reclassified from the PM-04 group and level to the AS-06 group and level. As well, the receptionist/mail clerk position was abolished.

[46] Ms. West testified that no training was provided to the collection officers following the introduction of the *IRPA*.

[47] The grievors' representative referred to subclause 64.07(a) of the collective agreement, which reads as follows:

> ***64.07***
>
> *(a) When an employee is required by the Employer to substantially perform the duties of a higher classification level in an acting capacity and performs those duties for at least three (3) consecutive working days or shifts, the employee shall be paid acting pay calculated from the date on which he or she commenced to act as if he or she had been appointed to that higher classification level for the period in which he or she acts.*

[48] The grievors' representative argued that the grievors were substantially performing, on an acting basis, the duties of a higher classification level (PM-02) prior to March 12, 2002. She also referred to clause 55.01 ("Statement of Duties"), which reads as follows:

> ***55.01*** *Upon written request, an employee shall be provided with a complete and current statement of the duties and responsibilities of his or her position, including the classification level, and where applicable, the point rating allotted by factor to his or her position, and an organization chart depicting the position's place in the organization.*

[49] The grievors' representative concluded by stating that the grievors were not provided with a complete and current statement of the duties and responsibilities of their position.

[50] The grievors' representative referred to the following cases: *Stagg v. Canada (Treasury Board)*, [1993] F.C.J. No. 1393 (QL); *Blais v. Treasury Board (Agriculture Canada)*, PSSRB File No. 166-2-15006 (1986); *Macri v. Treasury Board (Indian and Northern Affairs Canada)*, PSSRB File No. 166-2-15319 (1987); *Vanier v. Treasury Board (Revenue Canada – Customs and Excise)*, PSSRB File No. 166-2-23562 (1994); and *Woodward v. Treasury Board (Fisheries and Oceans Canada)*, 2000 PSSRB 44.

For the employer

[51] Counsel for the employer objected to the reference to subclause 64.07(a) of the collective agreement, as no mention was made in the grievances to acting pay. The corrective action the grievors are seeking is that the adjudicator grant them retroactive pay as of January 1, 2000. This would imply that the adjudicator must determine that the work description of September 13, 2000 (Exhibit G-7), should have been classified at the PM-02 level. The jurisprudence is clear that adjudicators are not classification experts.

[52] The employer's position is that the introduction of the new legislation triggered the reclassification exercise and Mr. Couture now had a legitimate opportunity to rewrite the work description and submit it to a classification committee for review.

[53] Knowledge of the *IRPA* and its corresponding regulations is a new responsibility that was not reflected in Exhibit G-7. This is now an essential part of the day-to-day duties performed by the collection officers. Even if they do not refer to these

documents, they have access to them. As well, the collection officers now have the authority to force an employer to comply with payroll deductions and the garnishment of a debtor's wages.

[54] The collection officers are the eyes, ears and mouth of the minister. They are the ones on the telephone lines with clients; they are the frontlines per se, and must prepare a rigorous analysis and propose a decision that can be justified to the manager, who will make a determination for payroll deduction.

[55] Counsel for the employer concluded by stating that the burden of proof lay with the grievors to demonstrate that the coming into force of the *IRPA* did not trigger the reclassification of their positions. However, they have failed to do so.

[56] Counsel referred to the following cases: *Burchill v. Attorney General of Canada*, [1981] 1 F.C. 109; *Nagle v. Treasury Board (Consumer and Corporate Affairs)*, PSSRB File No. 166-2-21445 (1991); *Gendron v. Treasury Board (Environment Canada)*, PSSRB File No. 166-2-19054 (1989); and *Gvildys v. Treasury Board (Health Canada)*, 2002 PSSRB 86.

Reply for the grievors

[57] The grievors' representative argued that the reclassification to the PM-02 level is not in dispute. What is in dispute is whether the grievors performed the same work in 2000 as they did in 2002. The only difference is the reference now in their work description to the *IRPA*. The *IRPA* gives the minister the legislative authority to authorize the collection of a debt from an employer who is unwilling to comply. The collection officers are responsible for collecting debts, and the procedures they follow have not changed. They have no signing authority. Judgment to decide whether a debtor has the ability to pay or has a job was already a requirement of their position. If the collection officers were unsuccessful in collecting a debt, they would send the file to the Department's Legal Services Branch. The *IRPA* makes it easier for the Department to facilitate this process, as it now has the legislative authority.

[58] As far as the collection officers are concerned, their duties remained the same.

[59] The *IRPA* is a legislative authority administered by the minister. The essence of the collection officers' duties is to collect debts, if possible, and the steps taken to do so have not changed. The assessments conducted by the collection officers prior to and after the introduction of the *IRPA* are rigorous and defensible.

Reasons

[60] Subclause 64.07(a) of the applicable collective agreement reads as follows:

> ***64.07***
>
> *(a) When an employee is required by the Employer to substantially perform the duties of a higher classification level in an acting capacity and performs those duties for at least three (3) consecutive working days or shifts, the employee shall be paid acting pay calculated from the date on which he or she commenced to act as if he or she had been appointed to that higher classification level for the period in which he or she acts.*

[61] The grievors claim that this subclause gives an adjudicator the authority to hear their grievances and grant them the corrective action they are seeking.

[62] Counsel for the employer referred to section 7 of the *PSSRA*, which specifies that "Nothing in this Act shall be construed to affect the right or authority of the employer to . . . classify positions. . ." within the Public Service.

[63] As well, counsel argued that section 7 of the *PSSRA* precludes an adjudicator from considering the grievances on their merit.

[64] Paragraph 92(1)(*a*) of the *PSSRA* reads as follows:

> ***92****.(1) Where an employee has presented a grievance, up to and including the final level in the grievance process, with respect to*
>
> *(a) the interpretation or application in respect of the employee of a provision of a collective agreement or arbitral award;*
>
> . . .
>
> *and the grievance has not been dealt with to the satisfaction of the employee, the employee may, subject to subsection (2), refer the grievance to adjudication.*

[65] The issue of jurisdiction hinges on whether or not the grievances relate to the classification of positions within the Public Service or whether they relate to the interpretation or application of a provision of a collective agreement. If the grievances can be characterized as classification grievances, then, notwithstanding the provisions of subclause 64.07(a) of the relevant collective agreement, an adjudicator does not have jurisdiction to deal with such a matter.

[66] The grievors' principal argument reposed on a comparison of the job descriptions dated September 2000 and September 2002. Their representative argued that both job descriptions were identical and that the grievors were therefore entitled to acting pay for a specific period of time prior to the employer reclassifying them. While I agree that such a grievance is a compensation rather than a classification grievance, I do not agree that the grievors' duties never changed. Upon review of both documents, I note that there are differences between the two, as were outlined by Ms. Latour in her evidence summarized above in paragraph 13. I also accept the evidence given by the witnesses for the employer to the effect that the introduction of the *IRPA* brought about increased responsibilities on the part of the collection officers. Although the grievors are sincere in their belief that their duties have not changed, it is clear to me that their responsibilities did change and that this change was what the employer decided justified the increase in classification.

[67] If the grievors are to be successful in this grievance, the onus is on them to prove to me that these same duties and responsibilities existed in January 2000. The evidence before me reveals that this is not, and indeed, cannot, be the case as the statutory authority for the new responsibilities did not exist prior to the coming into force of the *IRPA*.

[68] The grievors' representative argued that the grievances are compensation grievances given that the corrective action seeks compensation rather than reclassification. The redress requested in a grievance does not necessarily characterize a grievance. While the redress requested may be compensation, if the request for redress stems from what is essentially a classification grievance, my jurisdiction is ousted by operation of section 7 of the *PSSRA*. However, given my decision above I need not make any further findings regarding whether or not these grievances are to be characterized as grievances concerning remuneration or classification.

[69] The grievors' representative also argued that management had been negligent in not classifying Exhibit G-7, being the UCS job description, in a timely manner. Even if this were the case, such a failure on the employer's part would not, without more evidence, entitle them to be successful in this grievance. Firstly, I would note that no evidence was presented that Mr. Couture either guaranteed or promised the grievors that the UCS-format work description (Exhibit G-7) would be sent to classification or that a PM-02 level would be the outcome of any classification exercise. Secondly, if the grievors, at the time that Exhibit G-7 was prepared, felt that it, rather than their previous job description, adequately represented their duties and should have been adopted and sent for classification, they should have ensured that they made this request to management. In accordance with the collective agreement, it is incumbent upon the grievors to take action should they be of the opinion that they are improperly classified. It is also incumbent on the grievors to take this action in a timely manner, not two years after the fact.

[70] The grievors argued that the issue is the effective date of the reclassification from the PM-01 to the PM-02 level. The onus was on the grievors to provide evidence as to why they chose January 1, 2000, as the effective date and to prove, on a balance of probabilities, that they had been performing the duties of the PM-02 position since that date. The only evidence adduced was Ms. West's testimony that her duties have not changed since 1999. The employer contradicted her evidence by producing documents referring to legislative changes as a result of the introduction of the *IRPA* and its regulations, and these documents clearly indicated that new duties were officially given to the collection officers.

[71] Even if I accept that this case is a collective agreement interpretation issue, the principles established in *Coallier v. National Film Board of Canada*, [1983] F.C.J. No. 813, come into effect. The last three paragraphs of the decision of the Federal Court of Appeal read as follows:

. . .

> *It appears to the Court that, under clause 25.03 of the collective agreement, respondent's grievance could only concern the salary which the employer should have paid him during the twenty days preceding the filing of the grievance. The adjudicator's conclusion that respondent could claim more than that was not correct.*

> *Finally, contrary to what counsel for the appellant contended, we consider that, as the adjudicator held, respondent was entitled to the salary which, under the collective agreement, was attached to the position occupied by him.*
>
> *It follows that the application will be allowed, the decision a quo set aside and the matter referred back to the adjudicator to be again decided by him on the assumption that respondent's grievance was not admissible for the period prior to that of the twenty working days preceding the filing of the grievance.*
>
> . . .

[72] I therefore find that even if I were to allow the grievances, the grievors would not be entitled to receive retroactive remuneration back to 2000, given that they only filed their grievances in 2002 and that they have already been paid back much further than the 25-day time limit provided for in their collective agreement.

[73] These grievances were filed in November 2002, but the grievors request pay retroactive to January 1, 2000. It is clear from *Coallier* that a grievor cannot go back more than 25 days prior to the filing of the grievance. In this case, the grievors were paid as of March 12, 2002, which is far beyond the 25-day period.

[74] *Stagg v. Canada (Treasury Board)* concerned a grievor's claim for acting pay for the period of time before her position was reclassified to a higher level. The adjudicator decided that it was a classification matter and declined jurisdiction. Justice Muldoon, of the Federal Court, Trial Division, on reviewing the adjudicator's decision, was of the view that, as there was uncontradicted evidence that the grievor substantially performed the duties of a higher classification during the period in question, there was no reason for the adjudicator to have declined jurisdiction, as it was "clearly a case of a remuneration grievance."

[75] In *Stagg* there was an agreement between the parties as to the duties and responsibilities performed by the grievor. In this case, the employer's position is that following the introduction of the *IRPA* the collection officers' duties changed, which resulted in an upward reclassification. The grievors believe, however, that their duties have not changed since 1999, and they contest the effective date of the reclassification to the PM-02 level.

[76] Clause 55.01 of the collective agreement reads as follows:

> ***ARTILCE 55***
>
> ***STATEMENT OF DUTIES***
>
> ***55.01*** *Upon written request, an employee shall be provided with a complete and current statement of the duties and responsibilities of his or her position, including the classification level and, where applicable, the point rating allotted by factor to his or her position, and an organization chart depicting the position's place in the organization.*

[77] When dealing with a classification issue both the duties and responsibilities of the position are reviewed and evaluated. It does not matter whether the employee performs all of the duties listed in the work description on a daily basis. What is important is that the employee is responsible for performing those duties should the need arise.

[78] Therefore, the grievors' evidence that they never used the garnishment procedures is not relevant to the classification exercise. What is relevant is that they have the possibility and authority to do so.

[79] The employer not only stated that the grievors' duties have changed, but their responsibilities as well. Although the grievors' duties may or may not have changed significantly, the fact remains that as a result of the introduction of the *IRPA* and its regulations their responsibilities did change. Whether or not the grievors invoke the relevant authorities in their day-to-day work duties is irrelevant. The issue is that the grievors may invoke the appropriate authorities if required.

[80] Based on the evidence, I conclude that the introduction of the *IRPA* was the catalyst for the reclassification exercise. Although the collection officers may not use the authorities granted to them on a day-to-day basis, these authorities and the position's knowledge and decision-making requirements were, according to classification experts, what justified the increase to the PM-02 level.

[81] Given section 7 of the *PSSRA*, I am obliged to accept the employer's finding with respect to classification. The grievors' argument reposed entirely on the belief that no change in duties had occurred, which I have rejected. Had the grievors argued that they were entitled to acting pay regardless of the change in duties, I would agree with the employer's characterization of such a grievance as a classification grievance.

[82] Also, if the grievors' duties have not changed since 1999 as Ms. West contends, then why did they choose the date of January 1, 2000?

[83] It is my opinion that in January 2000 the grievors should have invoked clause 55.01 of their collective agreement and requested a complete and current statement of their duties and responsibilities. I was not provided with any evidence that they did so. I would note that it would have been prudent for them to have done so or to have filed a grievance to protect their rights.

[84] For all of the above reasons, I make the following order:

(The Order appears on the next page)

Order

[85] These grievances are dismissed.

November 24, 2006.

D.R. Quigley,
ajudicator