File: 166-2-27316

Public Service Staff Relations Act

Before the Public Service Staff Relations Board

BETWEEN

HÉLÈNE BEAULIEU

Grievor

and

TREASURY BOARD
(Justice Canada)

Employer

Before: Yvon Tarte, Chairperson

For the Grievor: Ionnis Mavrikakis

For the Employer: Carole Bureau, Counsel

Heard at Montreal, Quebec,
October 7, 1996

On June 5, 1996, Hélène Beaulieu requested that the Board refer the following grievance to adjudication:

(Translation)

Details of Grievance

1. *The undersigned has been employed by the federal government since September 28, 1992.*

2. *The undersigned has been working as a legal officer for the Department of Justice (LA-01) since November 22, 1992, on which date she was called to the Quebec Bar;*

3. *I was appointed at the LA-1 level, with a starting salary of $45,050.*

4. *The undersigned is not covered by a collective agreement since, for the purposes of the Public Service Staff Relations Act (R.S.C. 1985, c. P-35), I was employed as a legal officer with the Federal Office of Regional Development - Quebec, and subsequently with Industry Canada;*

5. *The undersigned has always performed her duties efficiently, competently, and to the complete satisfaction of her superiors and clients.*

6. *As a legal officer with the Department of Justice, the undersigned is covered by a salary administration plan adopted unilaterally by the Treasury Board under paragraphs 7(1)(e) and 11(2)(d) of the Financial Administration Act.*

7. *This plan is set forth in Chapter 3-1 of the Treasury Board Manual and is entitled **"Salary Administration Policy - Law Group - Department of Justice and Other Excluded Legal Officers.***

8. *The salary administration plan provides that, unlike federal government legal officers who are covered by a collective agreement and progress from one level of their salary range to another as a simple function of time, Public Service legal officers excluded from collective bargaining shall be remunerated according to their **contribution** to the organization and their attainment of performance goals.*

9. *The plan also provides that the Deputy head of each Department, including the Deputy Minister of Justice, shall ensure that the salaries of legal officers excluded from collective bargaining are administered in accordance with the provisions of the said plan.*

10. *More specifically, the plan provides that performance pay for LA-01 legal officers shall be based on their performance review and appraisal report.*

11. *The plan also provides that any legal officer whose performance is considered* ***"satisfactory", "fully satisfactory", "superior"*** *or* ***"outstanding"*** *for a given year may receive, at the beginning of the following year, a performance increase corresponding respectively to 3 percent, 5 percent, 7 percent or 10 percent of his or her salary.*

12. *The reference year used for determining performance increases is April 1 of a given year to March 31 of the following year, while that for performance reviews is from January 1 to December 31 of the preceding year.*

13. *Furthermore, the salary range for each level covered by the plan has been readjusted on June 1 of every year since at least 1990.*

14. *On April 2, 1993 the Government Expenditures Restraint Act (S.C. 1993, c. 13) was adopted, extending for an additional two-year period the salary administration plans in effect in the federal Public Service — which had already been extended for two years under the aforementioned Public Sector Compensation Act.*

15. *Under the terms of this new legislation the salary administration plan covering the undersigned was maintained in its entirety, and no provisions thereof granted the Treasury Board any right whatsoever to suspend application of that plan.*

16. *Subsequent to joining the Department of Justice in September 1992, the undersigned was seconded to Industry Canada (Bankruptcy Branch) and later (October 1994) to FORD-Q, and signed offers of employment for the following periods:*

    (a) September 28, 1992 to November 22, 1992 - articling student;
    (b) November 23, 1992 to December 18, 1992 (LA-1);
    (c) December 21,1992 to March 31, 1993;
    (d) April 1, 1993 to September 30, 1993;

(e) October 1, 1993 to March 31, 1994;
(f) April 1, 1994 to March 31, 1995;
(g) April 1, 1995 to March 31, 1996.

17. ***Only recently*** *was the undersigned given a performance review for 1993, even though the Treasury Board Manual provides that LA-1 legal officers may be reviewed on a semi-annual basis and an in-range increase for performance granted in accordance with assessed performance.*

18. *Because of the quality of her work, the undersigned was given a rating of "very good" for the years she received a performance review (1993 and 1994).*

19. *However, despite the provisions of her salary administration plan, the undersigned did not receive any of the performance increases she was entitled to expect.*

20. *The undersigned considers herself grieved because the Department of Justice did not examine the legality of the suspension of her salary administration plan, leaving her uncertain as to her rights.*

21. *The undersigned considers herself grieved because the Department of Justice failed in its obligation to administer the salary administration plan in accordance with its own principles.*

22. *The undersigned considers herself grieved because she has not received the performance pay merited by her performance and competence, and in particular because her present salary is not what it should be and, given that this loss of income is perpetuated from day to day, it will affect the undersigned's compensation for the rest of her career in the federal Public Service, and possibly her retirement benefits as well.*

23. *By not honoring its commitments, the federal government has taken advantage of the undersigned's performance and neglected to provide an equitable consideration for her services.*

24. *This failure by the federal government to respect its commitments constitutes a form of unjust enrichment, as the undersigned provided a higher level of service than that for which she was remunerated.*

25. *The Treasury Board is bound by its own policies, and cannot suspend them arbitrarily.*

26. *This suspension is unlawful, unfair and arbitrary, as the Public Sector Compensation Act (S.C. 1991, c. 30) and the Government Expenditures Restraint Act (S.C. 1993, c. 13) prohibit any amendments to the plan.*

27. *This suspension has no legal foundation and goes against the most fundamental principles of equity and distributive justice.*

28. *It would seem clear that the Treasury Board was perfectly aware of the unlawfulness of the suspension of the salary administration plan for legal officers excluded from collective bargaining, because it took care to include in the Budget Implementation Act, 1994 (S.C. 1994, c. 18), inter alia, a provision to suspend for two years, as from the effective date the Act (i.e., June 15, 1994), the salary administration plan for Department of Justice legal officers. This provision was completely new and did not exist in previous legislation.*

29. *Furthermore, the undersigned is legitimately entitled to expect the Treasury Board to honour the provisions of its own salary administration plan.*

30. *Accordingly, the Treasury Board had no authority whatsoever to suspend the undersigned's salary administration plan prior to June 15, 1994 and to not grant the performance pay she should have received before that date.*

31. *Furthermore, this suspension is discriminatory and unlawful, because the other performance-increase plans adopted by the Treasury Board, except apparently that covering Executive Group employees, were not suspended in other departments or government agencies.*

32. *The suspension is unlawful because it is based on irrelevant grounds, that is, on an arbitrary distinction between legal officers included in collective bargaining and those who are not, and between Department of Justice legal officers and those from other departments and government agencies.*

33. *The suspension is also discriminatory and unlawful because it was not implemented uniformly, and other LA-01 Department of Justice legal officers continued to receive salary increases.*

34. *The undersigned asks that justice be rendered and that the Treasury Board respect its commitments for the years 1992, 1993 and 1994.*

35. *Furthermore, FORD-Q, a new client to which the undersigned is now seconded, prepared a 1995 budget for providing for a salary for the undersigned corresponding to that which she is entitled to receive;*

36. *In addition, the legal officer employed by FORD-Q before the undersigned was classified LA-02, and the first position occupied by the undersigned as LA-01 in November 1992 has also been filled since the undersigned's departure (October 1994) by an LA-02.*

37. *In other words, both clients have benefited from the competence of the undersigned, whose performance was rated by her supervisor as "very good" , without paying her a fair consideration in return.*

38. *As part of her professional development strategy the undersigned registered in a Master's program in bankruptcy law, which is naturally to the advantage of her client (Industry Canada - Bankruptcy Branch), and, once her thesis has been submitted, intends to complete a doctoral degree in work-related issues.*

39. *The undersigned cites the following jurisprudence in support of her application: Ménard and Ouellette v. Canada, 146 (1993) N.R. 92, Gingras v. Canada (1994) 165 N.R. 101 and Hughes v. D.H.S.S. (H.L. (E)), [1985] 1 A.C. 776.*

40. *This grievance is submitted in accordance with the provisions of section 91 of the Public Service Staff Relations Act (R.S.C. 1985, c. P-35) and sections 71 and following of the P.S.S.R.B. Regulations and Rules of Procedure (1993), SOR\93-348.*

41. *The undersigned reserves the right to submit other arguments of fact and law.*

42. *This grievance is well founded in fact and law.*

Remedies Sought

1. *I ask that the performance pay due me be paid.*

2. *I ask that my salary be adjusted to the appropriate level.*

3. *I ask that all sums due me retroactively be paid.*

4. *Given the fact that this grievance involves decisions made by Treasury Board and Department of Justice authorities,*

> *I ask that it be referred directly to the fourth and final grievance level.*
>
> 5. *I ask that a grievance hearing be held with the undersigned at the fourth and final grievance level.*
>
> 6. *Respectfully submitted,*
>
> *Given at Montreal, this 5th day of October 1995.*

Ms. Beaulieu sent this grievance to the Deputy Minister on October 6, 1995:

> *Dear Sir:*
>
> *You will find attached Details of grievance concerning the salary for my position as LA-01 with the Department of Justice.*
>
> *In accordance with Treasury Board Directives and the Public Service Act, the document contains the grounds for the grievance as well as the demands relating thereto.*
>
> *Thanking you in advance for your attention in this regard, I remain.*
>
> *Yours sincerely,*

The Conflict of Interest Issue

At the outset of the hearing Mr. Mavrikakis raised the issue of conflict of interest in relation to Ms. Carole Bureau of the Department of Justice. The Grievor's representative stated that Ms. Bureau was involved as applicant in a case similar to that presented in file 166-2-27316 dealing with a salary issue and the enforcement of certain legislation governing compensation for government employees. In support of his thesis the Grievor's representative referred me to the following texts and decisions: *Code of Ethics for Legal Counsel* (R.S.Q. 1981, c. B-1, T. 1), *Guide sur les conflits d'intérêts (Service de recherche et de législation, Barreau du Québec)*, *MacDonald Estate v. Martin,* [1990] S.C.R. 1235, *2527-7195 Québec Inc.* v. *161442 Canada Inc.* (S.C., District of Montréal n°: 500-05-000372-894*)*, *Donald D. Thomson et al.* v. *Smith Mechanical Inc. et al.,* [1985] S.C. 782, *APV Pavailles Inc.* v. *Alain Bonischot and John A. Swift* (Court of Appeal, Montreal Office, no. 500-09-000999-912) and *Claude Pageau* v. *Dame Blanche Vanasse Aubry* (S.C., District of Montreal, no. 500-14-002503-910).

Mr. Mavrikakis therefore requested, *inter alia*, that Ms. Bureau be declared unqualified to represent the Department of Justice in this case, and that new counsel be appointed within the prescribed deadlines.

In reply to the questions raised by the Grievor's representative, the Department representative stated that the possibility of a conflict of interest could be raised with respect to file 166-2-27316 only as regards the salary issue, and that in any event, should the case be heard on its merits, she and Mr. Piché were prepared to withdraw.

Decision on the Conflict of Interest Issue

Given the fact that the Employer's representatives had undertaken to withdraw from file 166-2-27316 if the case were heard on its merits, I ruled that Ms. Bureau and Mr. Piché could submit their preliminary objection to jurisdiction with respect to Ms. Beaulieu's six referrals: i.e., Board files 166-2-27313 to 27316, 27289 and 27335. By limiting their intervention to questions of jurisdiction, counsel for the Department of Justice would not be in a conflict of interest situation, either real or apparent.

Preliminary Objection

On July 26, 1996 Ms. Bureau, on behalf of the Employer, submitted the following objection to jurisdiction.

> (Translation)
>
> *I wish to inform you that the Employer objects to the appointment by the Public Service Staff Relations Board of an adjudicator under paragraph 95(2)(c) of the Public Service Staff Relations Act (the Act) to hear the grievance in question on the following grounds:*
>
> *Ms. Hélène Beaulieu occupied a "managerial or confidential position" as defined in section 2 of the Act, as she held the title of legal officer in the Department and was excluded from collective bargaining.*
>
> *According to paragraph 92(1)(a) of the Act, Ms. Beaulieu cannot refer this grievance to adjudication because it does not involve the interpretation or application of a provision of a collective agreement or an arbitral award;*
>
> *Second, Ms. Beaulieu's grievance, entitled "Salary Complaint or Grievance," bears on the Employer's refusal to*

pay her a salary higher than that stipulated in her employment contract as appearing in the complaint of October 6, 1995, filed by the complainant in support of her grievance and this referral to adjudication.

However, as this grievance does not involve a suspension or a financial penalty, or even disciplinary action resulting in termination of employment or suspension or a financial penalty, Ms. Beaulieu may not avail herself of paragraph 92(b) of the Act to refer her grievance to adjudication.

This motion to dismiss is submitted in the interests of justice, as it is useless to burden the Board with cases over which an adjudicator obviously has no jurisdiction.

We would be prepared, on behalf of the Employer, to make oral representations if the Board deems it appropriate to hold a hearing on this issue.

Given the preceding, we believe it would be inappropriate for the Board to immediately set a hearing date for the case in question over the period from October 7 and 11, 1996.

Awaiting your decision, I remain

Yours truly,

During the hearing for the grievance held October 7, 1996, Ms. Bureau repeated her preliminary objection.

In response to the objections submitted by Ms. Bureau on July 26, 1996, Mr. Mavrikakis submitted the following arguments in a letter dated August 16, 1996 dealing with the various grievances referred to adjudication by Ms. Beaulieu.

SUBJECT: Reference to Adjudication
(166-2-27289, 27313 to 316, 127335,
Hélène Beaulieu -
Justice Canada

Dear Assistant Secretary,

I acknowledge receipt of the letters of Mrs. Carole Bureau, representing the Department in this matter, and I fail to understand the first three paragraphs

that are repeated verbatim on the first page of each of the six letters.

On 11 June 1996, a grievance was brought before your Board by Mrs. Hélène Beaulieu. On 28 June, you informed the parties that a hearing on these matters would be held from 9 to 13 September 1996. Subsequently, we requested another date for the month of October, a request which the counsel for the employer, at that time Mr. Roger Lafrenière, accepted. Subsequently another solicitor was assigned for reasons familiar to you, and it was only on 26 July that the employer decided to object to the Board's hearing the grievances and complaints of Mrs. Hélène Beaulieu.

I wish to point out that in no case did the first counsel present this argument, and it was only 45 days after submission of the grievance that the employer, for reasons that remain obscure and that rely on rules enacted by the employer itself, objected to having the Board deal with Madame Beaulieu's case.

On this point, notwithstanding the Sections referred by Mrs. Bureau in her letter, and more particularly in the first three paragraphs of page one, we would remind the employer of the attachments and studies that the employer itself submitted concerning the policy on harassment in the workplace. I refer here to the Treasury Board document of 3 January 1995, signed by Mr. R.J. Giroux, which states on page 2:

> *"Please put this revised policy into immediate effect".*

And on page 13, in the "Grievance" paragraph:

> *"If an employee decides to submit a grievance....*

and on the following page the sentence

> *"Pursuant to an agreement between the Treasury Board Secretariat and the Public Service Commission, the latter will hear complaints of harassment."*

And in another document from the Department of Justice dealing with harassment in the workplace, harassment is defined in paragraph 2 of page 3, and page 4 states:

> *"harassment also relates to any abuse of power that involves the improper exercise of authority or power deriving from a position with a view to compromising the employment...."*

And on page 15 and following of the guidelines, the Department of Justice defines the role of the Public Service Commission, in particular referring to:

> *a complaint to the Investigations Directorate of the Public Service (harassment unrelated to a reason included in the Canadian Human Rights Act).*

which is the case at present, since it relates to an abuse of authority, among other things.

The Treasury Board, in its September 1994 study on harassment in the workplace, devoted long Sections to harassment in the workplace and in particularly to the question of abuse.

I also refer to the grievances document, and more particularly to paragraph 9.2.1 General Provisions of Volume 1 Chapter 13, Volume 7, chapter 5, chapter 6 and chapter 13, and to the Public Service Staff Relations Act (PSSRA, Sec. 91-101, Regulations and Rules of Procedure of the Public Service Staff Relations Board, Sec. 69-90), where paragraph "a" states:

> *"A grievance is a written complaint that an employee may submit concerning terms and conditions of employment".*

The Assistant Deputy Minister, Jean-Claude Demers, considering as he himself states that harassment in the workplace is a very serious matter, issued a policy in a memorandum dated 27 January 1995, which refers on pages 13 and 14 to "grievance":

> *"Pursuant to an agreement between the Treasury Board Secretariat and the Public Service Commission, the latter will investigate complaints of harassment ..."*

which show, among other things, that the Assistant Deputy Minister has adopted the same policy as the Treasury Board.

And in the Directive of the Deputy Minister of Justice, Mr. George Thomson, number 189SM of 16 February 1996, we find:

> *"I am very pleased to announce the new policy of the Department of Justice with respect to dispute settlement. This policy represents a further stage in the Department's commitment to provide high-quality legal services."*

And in the "Goals" paragraph, the Deputy Minister adds:

> *"Consistent with government policy, the Department encourages the use of the various mechanisms for dispute settlement, in all appropriate circumstances.*

and further on:

> *"Recourse to dispute settlement mechanisms is an affirmation of two principles in the Department's mission statement: "To assist the Minister in the task of ensuring that Canada remains a just and law-abiding society".*

The Department issues laws, and publishes manuals on harassment, but when it comes to enforcing them, it seeks to escape its responsibilities, by failing to recognize that its objections were submitted late, and ignoring all the fine statements and speeches that it has made on the subject.

PSSRB: 166-2-27289

(a) Mrs. Bureau states that Mrs. Beaulieu was employed ***"in a managerial or confidential capacity"****. There is no definition to my knowledge of "confidential capacity", since all employees at all levels of Departments occupy, I should assume, a position of trust, even the Minister's floor sweeper.*

> *Nevertheless, we must refer here to the Treasury Board's definition of LA-1, Chap. 3-1, where LA-1 is dealt with in the description of salary levels on page C-1:*

LA-1

> *"Legal advisers at this salary level perform legal work under general supervision".*

A reading of this paragraph does not suggest a Management position. Furthermore, in the description of Mrs. Beaulieu's tasks, we read:

> *"Under the supervision of a more experienced legal adviser, to perform legal work of a kind such as to acquire the training and experience necessary to obtain employment at a higher level."*

As can be seen, there is nothing in her tasks that would allow Mrs. Bureau to connect Mrs. Beaulieu's job to Section 2 of the Act.

(b) With reference to Mr. Marcel Gauvreau, and the notes are available to demonstrate this, Mrs. Bureau herself states in paragraph 2 of her letter:

> *"The response at the last level must have been made without taking account of the questions that she had asked the investigator."*

The case speaks for itself: a peremptory plea has been entered, despite her numerous appeals, as demonstrated in the record submitted to the deputy minister. In the face of repeated questions, the investigator, Mr. Baron, stated that he could no longer remember, he did not have his notes, and he was not in a position to reply to Mrs. Beaulieu's questions...

As to the fourth paragraph of Mrs. Bureau's letter, which states that the grievance does not relate to a suspension of financial penalty nor to any disciplinary action, it is appropriate to refer to complaint 166-2-27313 which is the result of this first grievance lodged by Mrs. Beaulieu against Mr. Marcel Gauvreau.

PSSRB: 166-2-27335

> *Mrs. Bureau states in paragraph 2*
>
> *"These proceedings are not yet terminated; the report from the department's official counsel has not been completed".*

The department's counsel forgets that Mr. Grosleau of the Staff Relations Branch has been trying in vain, since last December, to arrange a meeting with Mr. Mayrand, who seems to be very busy. In our letter of 4 June 1996, we indicated to Mr. Grosleau that more than ample time had passed, and that we were referring the whole affair to the Board.

The other reasons invoked are the same as those cited at the beginning of this letter. Consequently, there is no need for us to comment further.

PSSRB: 166-2-27314

The departmental counsel forgets that if it had not been for the complaints of abuse of authority and breach of ethics against Mr. Pépin, there would never have been a letter of dismissal, as mentioned in complaint no. 166-2-27313.

As to the rest, we would refer you again to the comments set out above.

PSSRB: 166-2-27315

I think the employer's counsel must be taking Mrs. Beaulieu's letters in another context when she says her supervisor gave a "divergent opinion".

This is not the point at issue. Mrs. Beaulieu's letter speaks for itself, saying in substance that it was a legal opinion that Mrs. Beaulieu had given, and that it had been approved by "her supervisor" in consultation with him, and that, for reasons that are not clear, he had changed his mind a few days later and issued another one, without Mrs. Beaulieu's knowledge, indeed without consulting her or telling her of its contents.

As to the rest, we would refer you again to the comments set out above.

PSSRB: 166-2-27313

The departmental counsel mentions that Mrs. Beaulieu ceased to be an employee upon expiration of the period for which she was appointed.

There are three points here that have either been left out or ignored:

(1) "The supervisor" did not have the required authority to declare her dismissed;

(2) The contract between FORD-Q and the Department of Justice, in paragraph 1 of the Agreement, provides that six months before expiry of said contract, FORD-Q must advise the Department of Justice of any change. Now, there is nothing on the file to show that any changes had been requested by FORD-Q.

(3) In the matter that concerns us, FORD-Q had the duty, initially, to advise the Department of Justice six months before any changes to the Agreement between the Departments. Subsequently, the Department of Justice was supposed to review the situation of its staff, according to the order of employment seniority of legal advisers for the years 1993, 1994, and 1995, and then to reclassify Mrs. Beaulieu.

Mrs. Bureau, in her letter of 25 July to the Canadian Human Rights Commission regarding the questions raised by Mr. Jean-Guy Boissonneault, answers as follow on page 2, para. 4:

> *"With reference to the non-renewal of other employees of the Department for the years 1993, 1994 and 1995, the Department is now in the process of compiling this information, and I shall provide you with the appropriate comments as soon as they are available."*

This stands in contradiction to the letter of 26 July which she wrote to you, since she still does not have this information.

PSSRB: 166-2-27316

With all due respect, we strongly deny the employer's contentions, and the contents of the employer's letter of 26 July. We maintain that, when it comes to interpretation or enforcement of a Treasury Board directive affecting Mrs. Beaulieu, the Board has the power to deal with the case, since Mrs. Beaulieu has suffered financial injury. It is not a question here of a higher salary than that provided for in her employment contract, but rather of suspending the system of performance pay for the applicant, under which the applicant is entitled to receive performance increases consistent with the performance ratings she has earned in her work.

Let us not forget that the same counsel is pleading in another Federal Court case against the Department, for the same reasons, where she is invoking totally different arguments that would be just as acceptable in the present, similar case. This leads us to wonder about the good faith of the employer...

For all these reasons, we believe that the objections contained in the letters sent by the employer's counsel are ill-founded and should be rejected, and that the dates of 7 to 11 October should be retained as those on which the parties may appear before the Board and submit their arguments to adjudication.

I thank you in advance for your consideration of this matter. We are at your disposal to give an oral presentation of the responses outlined above, as you deem fit.

In the meantime, I remain, yours sincerely etc...

Grounds for Decision on Preliminary Objection

The jurisdiction of an adjudicator within the context of the *Public Service Staff Relations Act* derives from Section 92 of the text of that Act:

Adjudication of Grievances

Reference to Adjudication

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 an arbitral award; or*
>
> *(b) in the case of an employee in a department or other portion of the public service of Canada specified in Part I of Schedule I or designated pursuant to (4),*
>
> *(i) disciplinary action resulting in suspension or a financial penalty, or*
>
> *(ii) termination of employment or demotion pursuant to paragraph 11 (2)(f) or (g) of the Financial Administration Act, or*
>
> *(c) in the case of an employee not described in paragraph (b), disciplinary action resulting in termination of employment, suspension or financial penalty,*
>
> *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.*
>
> *(2) Where a grievance that may be presented by an employee to adjudication is a grievance described in paragraph (1)(a), the employee is not entitled to refer the grievance to adjudication unless the bargaining agent for the bargaining unit, to which the collective agreement or arbitral award referred to in that paragraph applies, signifies in the prescribed manner its approval of the reference of the grievance to adjudication and its willingness to represent the employee in the adjudication proceedings.*
>
> *(3) Nothing in subsection (1) shall be construed or applied as permitting the referral to adjudication of a grievance with respect to any termination of employment under the Public Service Employment Act.*
>
> *(4) The Governor in Council may, by order, designate for the purposes of paragraph (1)(b), any portion of the public service of Canada specified in Part II of Schedule I.*

Ms. Beaulieu's grievance concerns the salary for the position she occupied with the Department of Justice. This is not, therefore, a complaint with respect to disciplinary action that could be referred to adjudication in accordance with the terms of paragraphs 92(1)(b) and (c) of the Act. Furthermore, the fact that Ms. Beaulieu is a legal officer excluded from collective bargaining removes all possibility of referring to arbitration any grievance concerning the interpretation or application of a collective

agreement or an arbitral award under paragraph 92(1)(a). Subsection 92(2) requires that the employee be covered by a collective agreement and represented by a bargaining agent in order to refer a grievance with respect to the interpretation of a collective agreement or an arbitral award to adjudication.

I must therefore conclude that I do not have the jurisdiction to hear Ms. Beaulieu's grievance.

Yvon Tarte,
Chairperson

OTTAWA, January 10, 1997

Certified true translation

Serge Lareau