

Federal Court



Cour fédérale

**Date: 20210112**

**Docket: T-1408-19**

**Citation: 2021 FC 45**

**Ottawa, Ontario, January 12, 2021**

**PRESENT: The Honourable Mr. Justice Ahmed**

**BETWEEN:**

**FRANCINE SÉGUIN**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] This application for judicial review concerns the decision of Mr. Timothy Sargent (the “Deputy Head”), the Deputy Minister of the Department of Fisheries and Oceans (“DFO”), determining that the Applicant’s position at the DFO is to remain classified at the AS-05 group and level (the “Decision”).

[2] The Applicant submits that the Decision is unreasonable for three reasons: the Deputy Head refused to classify the Applicant's position beyond April 1, 2016; the Deputy Head improperly applied the principles of classification; and the Deputy Head failed to conduct a relativity analysis between the Applicant's position and comparator positions. The Applicant further submits that the Deputy Head was biased, thus breaching his duty of procedural fairness.

[3] For the reasons that follow, I find that the Decision is unreasonable because the Deputy Head failed to reasonably apply the principles of classification. This application for judicial review is therefore allowed.

## **II. Facts**

[4] Before discussing the particular facts of this case, I find it is first useful to outline the classification procedure.

### **A. *Classification Procedure***

[5] The Applicant's position is classified according to the Administrative Services Classification Standard ("AS Standard"). The AS Standard defines factors and sub-factors pertaining to work duties, each containing levels of degrees. To classify a position, a position's work description is assessed against the factor or sub-factor defined under the AS Standard. The higher the degree a position is determined to be under a given factor or sub-factor, the more points will be assigned to that position. The total number of points determines a position's classification (*Adamidis v Canada (Treasury Board)*, 2006 FC 243 [*Adamidis*] at para 9).

[6] The following table illustrates the factors and sub-factors under the AS Standard:

<b>Factor</b> <ul style="list-style-type: none"> <li>• <b>Sub-factor</b></li> </ul>	<b>Minimum Value</b>	<b>Maximum Value</b>
Knowledge <ul style="list-style-type: none"> <li>• Education and Experience</li> <li>• Continuing Study</li> </ul>	60  10	300  50
Decision Making	70	350
Responsibility for Contacts	26	130
Supervision	0	170

[7] By way of further example, the following table illustrates the rating scale for the “Knowledge — Continuing Study” sub-factor:

Degree	Description	Points
1	Work requires knowledge of statutes, regulations, policy and procedures related to the work performed, gained by continuing study of directives and manuals issued by departments and central agencies.	10
2	Work requires knowledge of trends and developments in an administrative or technical speciality directly related to the duties performed, gained by continuing study of texts, journals and periodicals.	30
3	Work requires development and maintenance of knowledge in depth in an administrative speciality through broad-ranging, intensive study, OR knowledge of the nature and interrelationships of trends and developments in a number of fields through study of a wide variety of texts, journals and periodicals.	50

[8] The AS Standard also outlines Benchmark (“BM”) positions. Each BM position consists of a job summary and specifications describing each of the factors and sub-factors defined under the AS Standard. Positions being classified are compared to BM positions to determine their appropriate classification. If a position is similar to a BM position for a particular factor or sub-factor, then it will be scored the same as that BM position (*Adamidis* at para 9).

[9] Under subsections 11.1(1)(b) and 11.2(1) of the *Financial Administration Act*, RSC 1985, c F-11, deputy heads have the delegated authority to classify positions within the core public administration. The Operational Classification Committee (“OCC”) may review classifications. The OCC is an employer-mandated committee that recommends the classification a given position should receive.

[10] When an employee is dissatisfied with a classification decision, a classification grievance may be filed pursuant to subsection 208(1)(b) of the *Federal Public Sector Labour Relations Act*, SC 2003, c 22, s 2. The Treasury Board's *Directive on Classification Grievances* (the "Grievances Directive") governs the procedure for classification grievances. This policy was amended on April 1, 2020, entailing that the previous version is what applies to the Decision. The provisions referenced below therefore do not reflect the current version of the *Grievances Directive*.

[11] Classification grievances are considered by the Classification Grievance Committee ("CGC"), which then recommends a classification of the grieved position to the Deputy Head: *Grievances Directive*, subsection 6.4.2. Upon receiving the CGC's report, the Deputy Head must either approve or reject the CGC's recommendation(s): *Grievances Directive*, Appendix B, subsection 4.1.1. If the Deputy Head rejects the CGC's recommendation, the Deputy Head must provide reasons for doing so that are "tied directly to the justification used by the [CGC] in arriving at its recommendation": *Grievances Directive*, Appendix B, subsection 4.1.1(b).

[12] Employees that are dissatisfied with the outcome of a classification grievance decision may apply for the judicial review of those decisions (*Canada (Attorney General) v Gilbert*, 2009 FCA 76 at para 18).

#### B. *The Applicant*

[13] The Applicant is an employee of the DFO and holds the position of National Team Leader, Workplace Well-Being within Human Resources ("HR"). On December 4, 2015, the

work description for the Applicant's position was updated and classified as an AS-05 level under the AS Standard (the "Work Description"), with a retroactive application until January 1, 2010. The Work Description was then sent to the OCC for review.

[14] On April 1, 2016, the Applicant's work duties and supervisors were modified due to a restructuring at HR. Accordingly, the DFO requested a second review of the Applicant's position to reflect the changes that occurred due to the restructuring. That second review is not the subject of this application for judicial review.

[15] In March 2017, the OCC wrote a draft report recommending that the Work Description be classified to the AS-06 level under the AS Standard (the "Draft Report"). The Draft Report was not signed by all the OCC members, was not entered into HR's management system, and was not provided to the Applicant or her union.

[16] In the Draft Report, the OCC recommended that the Work Description's "Supervision" factor be increased from degree A1 to degree A2 because the Applicant supervised between one and three employees, one of which was classified at the intermediate level (*i.e.*, the AS-04 group and level). This change in the "Supervision" factor was sufficient for the Work Description to be reclassified upwards to AS-06.

[17] On March 30, 2017, a member of the OCC sent the Draft Report to Ms. Catherine Taubman, the Director of Classification for DFO. On April 3, 2017, Ms. Taubman replied and asked the OCC member to "write the new AS-05 job" report.

[18] On July 5, 2017, the OCC issued a final report, which recommended that the Work Description remain classified at the AS-05 level and group (the “Final Report”). The Final Report found that the “Supervision” factor of the Applicant’s position should not be increased from degree A1 to degree A2 because the Applicant had not supervised an intermediate employee since January 7, 2010.

[19] Upon receiving the Final Report, the DFO decided to maintain the Work Description classification at the AS-05 level. On July 20, 2017, the Applicant grieved that decision and requested that the Work Description be reclassified upwards effective January 1, 2010.

[20] In a report dated May 29, 2019, made pursuant to the Applicant’s grievance, the CGC recommended that the Work Description be classified at an AS-06 level. The CGC found that the Work Description’s “Knowledge — Continuing Study,” “Responsibility for Contacts” and “Supervision” (sub-)factors should be adjusted upwards. The CGC’s report and its supporting materials were then provided to the Deputy Head.

[21] In the Decision, dated July 29, 2019, the Deputy Head rejected the CGC’s recommendation to classify the Work Description at the AS-06 level and maintained its classification at the AS-05 level. The Applicant now comes before this Court seeking judicial review of that decision.

C. *Decision Under Review*

[22] The Deputy Head found that the classification of the Work Description applies only for the period of January 1, 2010 to April 1, 2016. The Deputy Head noted that subsequent to the restructuring at HR that occurred on April 1, 2016, the Applicant moved from one organizational unit to another, she changed supervisors, and her work duties were modified, including the removal of her supervisory responsibilities. The Deputy Head further noted that the CGC had only one work description to evaluate because the description was not updated after the DFO restructured.

[23] Given the above, the Deputy Head required management to update the Applicant's work description to reflect the changes that occurred subsequent to April 1, 2016. In the event that the OCC's review of the new description results in a higher classification level, the Deputy Head ordered that the classification of the new description be retroactive to April 1, 2016.

[24] The Deputy Head noted that the OCC and the CGC came to two conflicting outcomes: the former recommended that the Work Description remain at AS-05, while the latter recommended that it be reclassified upwards to AS-06. In affirming the OCC's recommendation, the Deputy Head rejected the CGC's recommendation that the "Knowledge — Continuing Study," "Responsibility for Contacts," and "Supervision" (sub-)factors of the Work Description should be adjusted upwards. Each of these factors shall be addressed respectively.



## (1) Knowledge — Continuing Study

[25] The Deputy Head accepted the OCC’s recommendation to rate the Work Description at degree 2 under the “Knowledge — Continuing Study” sub-factor, and rejected the CGC’s recommendation to increase this rating to degree 3.

[26] The AS Standard defines degree 2 and degree 3 under the “Knowledge — Continuing Study” sub-factor as follows:

Degree 2	Work requires knowledge of trends and developments in an administrative or technical speciality directly related to the duties performed, gained by continuing study of texts, journals and periodicals.
Degree 3	Work requires development and maintenance of knowledge in depth in an administrative speciality through broad-ranging, intensive study, OR knowledge of the nature and interrelationships of trends and developments in a number of fields through study of a wide variety of texts, journals and periodicals.

[27] The Deputy Head agreed with the OCC’s recommendation that the appropriate BM equivalency for the Applicant’s position under this sub-factor was BM 5, which is rated at degree 2. The Deputy Head found that in both BM 5 and the Work Description, the knowledge of trends and developments directly related to the duties performed are gained through “the continuing study of periodicals and other publications related to the responsibilities of the position.”

[28] The Deputy Head agreed with the OCC’s finding that the Work Description was smaller in scope under this sub-factor than BM 9, which is rated at degree 3. The Deputy Head noted that in her presentation to the CGC, the Applicant indicated that the source material she regularly read or researched were newsletters, bulletins, websites, media clippings, social media and other external sources. The Deputy Head found that those sources did not support the finding that knowledge is gained through “broad-ranging, intensive study,” as is required by degree 3. The Deputy Head further noted that the Work Description refers to the “ongoing study of texts, publications, and practices,” and that this is similar to degree 2, which refers to the “continuing study of texts, journals and periodicals.”

(2) Responsibility for Contacts

[29] The Deputy Head accepted the OCC’s recommendation to rate the Work Description at degree C1 under the “Responsibility for Contacts” factor, and rejected the CGC’s recommendation to increase this rating to degree C2.

[30] The AS Standard defines degree C1 and degree C2 under the “Responsibility for Contacts” factor, with respect to persons contacted, as follows:

Degree C1	...[contact with] employees in the same department, colleagues in other departments, sales representatives, and members of the general public.
Degree C2	...officials in other departments and agencies whose primary duties are not related to the provision of administrative services; officials in other departments or agencies who have authority to

	control or affect the extent and scope of the department's program; and associates in other levels of government, other countries, private organizations or industry.
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[31] Under the AS Standard, colleagues are defined as: “employees in the federal public service who are engaged in similar fields of work and who have no authority to control or affect the extent and scope of the department’s programs.” Similarly, associates are defined as: “persons with whom contacts are customarily established over long periods of time and in circumstances that develop an awareness of other’s requirements.” Finally, the AS Standard defines officials as: “administrators or other persons with some degree of executive authority who are not associates.”

[32] According to the Deputy Head, the CGC’s finding that the Applicant had contact with “officials” in central agencies and other departments was not supported by the Work Description. Accordingly, the Deputy Head found that the OCC “properly assessed” the Work Description to be at degree C1. The Deputy Head noted that the Applicant has contact with individuals “whose titles suggest a range of colleagues at various levels: director, senior advisor, advisor, program manager, senior program officer, program officer and manager.”

[33] The Deputy Head accepted the OCC’s finding that the Applicant’s reference to the “negotiation of a three year contract with the CEO of a private sector organization” was equivalent to BM 5, which is rated at degree C1 and references contacts with “representatives of private companies to discuss goods and services being supplied.” Consequentially, the Deputy Head accepted the OCC’s finding that the Work Description was smaller in scope than BM 9,

which is rated at degree C2 and references contacts with “officials when participating on interdepartmental committees.”

(3) Supervision

[34] The Deputy Head noted that the Applicant had not supervised an intermediate employee since January 7, 2010. Given this information, the Deputy Head agreed with the OCC’s recommendation to rate the Work Description at degree A1 under the “Supervision” factor (which requires “the continuous supervision of three junior employees”), and rejected the CGC’s recommendation to increase this rating to A2 (which requires “the continuous supervision of two junior employees and one intermediate employee”).

[35] The Deputy Head found that the CGC relied upon “erroneous information” by assessing points based on the supervision of a vacant intermediate position. The Deputy Head held that the OCC, by identifying discrepancies between the Work Description and how many employees the Applicant actually supervised, assessed the correct number and level of employees supervised by the Applicant.

**III. Issues & Standard of Review**

[36] This application for judicial review raises two issues:

A. Is the Decision reasonable?

- B. Was the Deputy Head biased, thereby breaching his duty of procedural fairness to the Applicant?

[37] It is common ground between the parties that the standard of review for the Decision is reasonableness. I agree. Reasonableness is the presumed standard of review (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 10). This presumption is rebutted and a correctness standard applies in two instances: where required by legislative intent or by the rule of law (*Vavilov* at paras 10, 17). In my view, neither of these instances apply in the case at hand. Therefore, reasonableness remains the applicable standard of review for a deputy head's decision in a classification grievance (*Wilkinson v Canada (Attorney General)*, 2019 FC 83 [Wilkinson 3] at para 29, citing *McEvoy v Canada (Attorney General)*, 2013 FC 685 [McEvoy] at para 39, aff'd 2014 FCA 164 at para 17; *Wilkinson v Canada (Attorney General)*, 2014 FC 741 [Wilkinson 1] at paras 16-17; *Canada (Attorney General) v Allard*, 2018 FCA 85 [Allard 2018] at para 25).

[38] Reasonableness review focuses both on the reasoning process behind a decision and the decision's outcome (*Vavilov* at para 83). A reasonable decision is one that is justified, transparent, and intelligible — it must be based on an internally coherent and rational chain of analysis that is justified in relation to the relevant facts and law (*Vavilov* at paras 85, 99). A decision will generally be unreasonable if “a decision maker's rationale for an essential element of the decision is not addressed in the reasons and cannot be inferred from the record” (*Vavilov* at para 98).

[39] That being said, reasonableness review is not a “line-by-line treasure hunt for error” (*Vavilov* at para 102). The party challenging a decision must establish that the decision contains flaws that are more than superficial or peripheral to its merits; a decision’s flaws must be sufficiently central or significant to render it unreasonable (*Vavilov* at para 100). A reviewing court should refrain from reweighing or reassessing evidence before the decision maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125).

[40] Finally, reasonableness review is concerned with context: what constitutes a reasonable decision “will always depend on the constraints imposed by the legal and factual context of the particular decision under review” (*Vavilov* at para 90). In instances such as these, where a Deputy Head chooses to depart from the recommendations of the CGC, such a departure must be justified in light of the CGC’s expertise (*Wilkinson 1* at paras 20, 40; see also *Wilkinson v Canada (Attorney General)*, 2020 FCA 223 at paras 19-21).

[41] Issues of procedural fairness, including whether there exists a reasonable apprehension of bias, are reviewed without deference on what can roughly be described as a standard of correctness (*Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35). The central question is whether the procedure was fair having regard to all of the circumstances (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54, citing *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, [1999] SCJ No 39 at 837-841).

#### IV. Analysis

##### A. *Is the Decision reasonable?*

###### (1) Applicant's submissions

[42] The Applicant submits that the Decision is unreasonable for three reasons: (a) the Deputy Head refused to classify the Applicant's position beyond April 1, 2016; (b) the Deputy Head unreasonably applied the principles of classification; and (c) the Deputy Head failed to explicitly conduct a relativity analysis. Each of these grounds shall be addressed respectively.

- (a) *It was unreasonable for the Deputy Head to refuse to classify the Applicant's position beyond April 1, 2016.*

[43] The Applicant submits that it was unreasonable for the Deputy Head to use a classification grievance process to challenge the content of a work description, such as its effective dates (*Wilkinson v Canada (Attorney General)*, 2016 FC 1062 [*Wilkinson 2*] at para 13, citing *Wilkinson 1* at para 9; *Allard v Canadian Food Inspection Agency*, 2012 FC 979 [*Allard*] at paras 26, 39). The Applicant asserts that it was the Deputy Head's task to "accept the work description and determine its appropriate classification as it is drafted" (*Wilkinson 3* at para 46).

[44] The Applicant submits that the DFO had multiple opportunities throughout the grievance process to challenge the content of the Work Description if it disagreed with its accuracy.

Because any future changes to the Work Description resulting in downward reclassification can

only be applied prospectively, the Applicant argues that it was necessary for the Deputy Head to determine the classification for the period between April 1, 2016 and July 29, 2019, as that classification could only be maintained or increased despite any subsequent modifications to the Work Description (*P.A. Gallop v Treasury Board (Fisheries and Oceans)*, [1991] CPSSRB 266 at 5).

(b) *The Deputy Head unreasonably applied the principles of classification*

[45] The Applicant submits that the Deputy Head unreasonably applied the principles of classification in ranking the Work Description’s “Knowledge — Continuing Study,” “Responsibility for Contacts,” and “Supervision” (sub-)factors.

[46] With respect to the “Knowledge — Continuing Study” sub-factor, the Applicant submits that it was unreasonable for the Deputy Head to find that a degree 3 ranking requires “broad-ranging, intensive study.” The Applicant asserts that this finding ignores the alternative criterion under degree 3, which reflects the language of the Work Description. The Applicant notes the following similarities between the language of degree 3 and the Work Description:

<b>Degree 3 – Continuing Study</b>	<b>Work Description</b>
Work requires development and maintenance of knowledge in depth in an administrative speciality through broad-ranging, intensive study <u>OR knowledge of the nature and interrelationships of trends and developments</u> in a number of fields	In-depth <u>knowledge of</u> the legislation, policies, regulations, practices, principles and methodologies related to employee surveys, employee departure, employee assistance, employee appreciation and recognition, and organizational health and wellness studies, <u>as well as their</u>



<p><u>through study of a wide variety of texts, journals and periodicals.</u></p>	<p><u>interrelationship with the full range of HR areas, is required...</u></p> <p><u>In-depth knowledge of current trends and developments in workplace well-being, through ongoing study of a wide variety of texts, publications, and practices, both within and outside the public service, is required...</u></p>
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[47] The Applicant asserts that the Decision is not tied directly to the justification used by the CGC in arriving at its recommendation, as required by subsection 4.1.1(b) of the *Grievances Directive*, Appendix B. Accordingly, the Applicant submits that the Decision does not provide transparent or intelligible reasons for departing from the CGC’s recommendation (*Wilkinson 1* at para 40).

[48] With respect to the “Responsibility for Contacts” factor, the Applicant submits that it was unreasonable for the Deputy Head to rate this factor at degree C1. The Applicant asserts that the Deputy Head’s failure to address the plain language of the Work Description and the evidence regarding the Applicant’s position, both of which strongly support a degree C2 rating, shows that the Deputy Head either failed to consider pertinent information or modified the Work Description’s duties (*Wilkinson 2* at paras 13, 16; *Allard* at paras 26, 39).

[49] The Applicant notes that the Work Description includes the following contacts:

- “the Office of the Chief Human Resources Officer at TBS, Statistics Canada, Health Canada, other central agencies and departments, and private industry”;

- “regional, sector and [Canadian Coast Guard] coordinators, portfolio program champions and bargaining agents”; and
- “...the Deputy Minister, champions and Departmental Management Committee members.”

[50] The Applicant submits that her role as Team Leader required her to:

- Engage in consultations and negotiations with directors in other departments.
- Represent the DFO at interdepartmental committee meetings alongside directors of other departments and agencies.
- Attempt to influence decision-making and engage in problem-solving discussions with officials in other departments to address the DFO’s needs and priorities.
- Negotiate contracts with senior officers of private industry suppliers.
- Act as contact person on behalf of the DFO for any union inquiries about the programs falling within her mandate.
- Collaborate with the unions and negotiate agreements between the DFO and the unions.

[51] With respect to the “Supervision” factor, the Applicant submits that it was unreasonable for the Deputy Head to rate this factor at degree A1 on the basis that the intermediate position supervised by the Applicant was vacant at the time of classification. The Applicant argues that the key consideration in a classification analysis is the highest level of responsibility that a position can perform, regardless if the person has never or only occasionally performed responsibilities at that level (*Allard* at paras 25-26, 34-35).

[52] The Applicant submits that it was unreasonable for the Deputy Head not to consider the intermediate position because the Applicant oversaw an intermediate employee from approximately July 27, 2004 until January 7, 2010, and because the Applicant could be called upon to oversee such an employee if the position is filled again (*Fok v Treasury Board (Fisheries and Oceans)*, [1995] CPSSRB No 84, [1995] CRTFPC No 84 [*Fok*] at 7-8; *Toronto (City) v C.U.P.E, Local 79 (Job Evaluation Grievance)*, [2013] OLAA 292 [*Toronto*] at para 88).

[53] The Applicant submits that the Treasury Board’s *Directive on Classification* (the “Classification Directive”) recognizes that vacant positions may have an impact on the classification of supervisory positions. The Applicant asserts that because the *Classification Directive* encourages the abolishment of vacant positions, the *Classification Directive* implies that vacant positions must be assessed when determining a position’s “Supervision” factor.

- (c) *It was unreasonable for the Deputy Head not to explicitly conduct a relativity analysis*

[54] The CGC recommended that the Work Description be classified at the AS-06 level based on the Work Description's similarity to comparator positions that were classified at that level. The Applicant submits that it was unreasonable for the Deputy Head not to explicitly address those comparator positions in the Decision (*Chong v Canada (Attorney General)*, [1995] FCJ No 1600, 104 FTR 253 [*Chong*] at paras 31-33, 46-47; *Morrisey v Canada (Attorney General)*, 2018 FCA 26 [*Morrisey*] at paras 18-22).

- (2) Respondent's submissions

[55] The Respondent submits that the Decision is reasonable and addresses each of Applicant's arguments to the contrary.

- (a) *It was reasonable for the Deputy Head to refuse to apply the classification decision beyond April 1, 2016*

[56] The Respondent asserts that the Deputy Head reasonably determined that the Work Description applied from January 1, 2010 to April 1, 2016. According to the Respondent, the Deputy Head did not attempt to challenge or modify the Work Description, as alleged by the Applicant, but rather recognized the need for a review of the Work Description that reflects the changes that occurred subsequent to the April 2016 restructuring at HR, and ordered management to update the Work Description to reflect those changes.

(b) *The Deputy Head reasonably applied the principles of classification*

[57] The Respondent submits that the Deputy Head provided justified, transparent and intelligible reasons for departing from the CGC's recommendations (*Wilkinson 1* at para 41).

[58] With respect to the "Knowledge — Continuing Study" sub-factor, the Respondent submits that the Deputy Head examined the materials that the Applicant studies and reasonably rated this sub-factor at degree 2. The Respondent notes that a classification is not as simple as doing a "word match," but rather requires reading the words of the Work Description and the AS Standard in context and looking at the whole of the work involved (*Bourdeau v Canada (Attorney General)*, 2015 FC 1089 [*Bourdeau*] at para 50).

[59] The Respondent asserts that it was reasonable for the Deputy Head to rely on portions of the Work Description that support a degree 2 classification, such as the reference to "ongoing study," despite that there might be language elsewhere in the description that supports a degree 3 classification (*Wilkinson 2* at para 16; *Allard 2018* at paras 36-37).

[60] The Respondent asserts that it was reasonable for the Deputy Head to accept the CGC's finding that the scope of the Work Description is smaller than BM 9, as the Work Description requires gathering and studying "information through various literature," whereas BM 9 requires developing and maintaining "a thorough knowledge in the relative domain in order to provide authoritative information, guidance or direction."

[61] With regards to the “Responsibility for Contacts” factor, the Respondent submits that the Deputy Head reasonably rated this factor at degree C1. The Respondent notes that under the AS Standard, the Deputy Head must only consider the contacts that form an integral part of the Applicant’s work. The Respondent asserts that the Deputy Head reasonably found that the contacts that form an integral part of the Applicant’s work consist of colleagues at various levels, as opposed to associates or officials.

[62] The Respondent notes that a disagreement as to the frequency or intensity of a duty does not amount to a modification of a work description (*Beauchemin v Canada (Canadian Food Inspection Agency)*, 2008 FC 186 at para 41; *Julien v Canada (Attorney General)*, 2008 FC 115 [Julien] at para 70, aff’d 2008 FCA 270). The Respondent submits that it was therefore reasonable for the Deputy Head to diverge from the CGC’s recommendation and find instead that the Applicant’s contacts with colleagues were more frequent and intense than with officials.

[63] With respect to the “Supervision” factor, the Respondent submits that the Deputy Head reasonably rated this factor at degree A1. The Respondent notes that under the AS Standard, a “position whose incumbent does not have a continuing and substantive responsibility for the supervision of the work of others is not to be assigned points under this factor.”

[64] The Respondent asserts that the Applicant does not have a continuing and substantive responsibility over an intermediate employee because the intermediate position that is included under the Work Description has been vacant since January 7, 2010. The Respondent further asserts that the *Classification Directive* does not create a requirement that a vacant position be

considered in rating the “Supervision” factor, and that such an interpretation would contradict the AS Standard.

- (c) *It was reasonable for the Deputy Head not to explicitly conduct a relativity analysis*

[65] The Respondent submits that the Deputy Head was not required to conduct a relativity analysis explicitly. The Respondent asserts that so long as the Deputy Head’s reasons allow this Court to understand the reasoning process behind the Decision, the Deputy Head is not required to make a finding on each element of the Decision or to explain why he did not accept certain evidence that was before him.

[66] The Respondent asserts that *Morrisey* and *Chong* are distinguishable from the case at hand.

[67] In *Morrisey*, the Respondent notes “relativity was not an argument made in passing but was at the crux of the Appellants’ argumentation” (at para 19). The Respondent also notes that *Morrisey* concerned the CGC’s recommendations, which under subsection 3.8.1 of the *Grievances Directive*, Appendix B, is required to account for the grieved position and how it relates to proposed ratings and BM positions, among other things. In contrast, the Deputy Head is not required to provide reasons for his conclusion on relativity under the *Grievances Directive*.

[68] The Respondent submits that *Chong* is distinguishable from the case at hand because in that case, a member of the CGC confirmed that the CGC did not consider the applicants’

submissions pertaining to relativity (at para 46). In the case at hand, the Respondent notes that the Deputy Head confirmed that he considered all the information that was before the CGC, which included submissions on relativity.

(3) Discussion

(a) *Was it unreasonable for the Deputy Head to refuse to classify the Work Description beyond April 1, 2016?*

[69] In my view, it was reasonable for the Deputy Head to refuse to classify the Work Description beyond April 1, 2016. The Applicant relies on *Allard* and *Wilkinson 3* for the authority that the Deputy Head altered the contents of the Work Description or refused to consider the duties and activities it contains during the classification grievance. I find, however, that those cases are distinguishable from the one at hand.

[70] In *Allard*, the CGC proceeded with a classification grievance despite receiving conflicting information from the applicants and the managers regarding the activities in the work description at issue. Given this disagreement, Justice de Montigny held that the CGC “should have made sure that the parties agreed on the work description before going any further” (*Allard* at para 37). By failing to do so, the CGC modified the content of the applicants’ work description (*Allard* at para 41).

[71] Similarly, in *Wilkinson 3*, the respondent claimed that it was unaware of the contents of the work description at issue, despite having already accepted its contents. Accordingly, Justice



Mosley found that it was too late for the respondent to claim that the work description was improper during the classification grievance, for such concerns must be raised in a job content grievance (*Wilkinson 3* at para 46).

[72] Unlike in *Allard* and *Wilkinson 3*, the Deputy Head is not attempting to alter the language and contents of the Work Description. Rather, it is the applicable period for which the Work Description applies that is at issue. In light of the restructuring at HR and the impact this change had on the duties of the Applicant's position, I find that it was reasonable for the Deputy Head not to apply the Work Description beyond April 1, 2016.

[73] I am not persuaded by the Applicant's argument that because the Work Description cannot be reclassified downward retroactively, it was necessary for the Deputy Head to determine the classification for the period between April 1, 2016 and July 29, 2019. I find that it was reasonable for the Deputy Head to require that the Work Description's classification for the period of April 1, 2016 and onwards be subject to a second review. To provide otherwise, in the absence of a work description that reflects the changes that occurred after April 2016, would circumvent the standard classification procedure, as it would result in the Deputy Head classifying what is essentially a new work description. If the review ordered by the Deputy Head results in a retroactive downward reclassification, then the Applicant may grieve such a decision at that juncture.

(b) *Did the Deputy Head unreasonably apply the principles of classification?*

[74] In my view, the Deputy Head unreasonably applied the principles of classification to the “Knowledge — Continuing Study” and “Responsibility for Contacts” (sub-)factors. I find, however, that the Deputy Head’s classification of the “Supervision” factor is reasonable.

[75] With respect to the “Knowledge — Continuing Study” sub-factor, the Deputy Head is required to expressly indicate that he considered the aspects of the Work Description that strongly support a classification contrary to his own, and to explain why he reached a decision contrary to that evidence (*Wilkinson 2* at para 16). While I note that classification is not a “word match” (*Bourdeau* at para 50), the parallel language between the Work Description and the second criterion of degree 3 under that sub-factor support a classification that is contrary to the Deputy Head’s rating of degree 2.

[76] Given the above, I find that the Decision is unreasonable because the Deputy Head’s rationale for distinguishing the Work Description from the parallel language in degree 3 is not addressed in his reasons and cannot be inferred from the record (*Vavilov* at para 98). The Deputy Head did not substantively address the range and depth of study undertaken by the Applicant but rather baldly concluded that the materials studied by the Applicant do not support the finding that knowledge is gained through “broad-ranging, intensive study,” and therefore rated the Work Description at degree 2 under this sub-factor. In my view, the Deputy Head’s reasons for departing from the CGC’s recommendation are not sufficiently justified in light of the CGC’s reasons and expertise (*Wilkinson 1* at paras 20, 40).

[77] With respect to the “Responsibility for Contacts” factor, I find that the Deputy Head failed to reasonably explain why the Applicant’s contacts constitute colleagues under the AS Standard. The Deputy Head simply noted that the titles of the Applicant’s contacts “suggest a range of colleagues at various levels,” and therefore rated the Work Description at degree C1 under this factor. Again, the Deputy Head’s brief reasons for this finding are not sufficiently justified in light of the CGC’s recommendations to the contrary (*Wilkinson I* at paras 20, 40). The Deputy Head’s rationale for determining which contacts form an “integral part” of the Applicant’s work, as is required by the AS Standard, and which of those contacts are colleagues or officials, is not addressed in his reasons or readily inferable from the record, thus rendering his decision unreasonable (*Vavilov* at para 98).

[78] With respect to the “Supervision” factor, I find that it was reasonable for the Deputy Head to rank this factor at degree A1. Given that the Applicant has not supervised an intermediate employee since January 7, 2010, I find that the Deputy Head reasonably concluded that the Applicant did not have a “continuing and substantive” responsibility for supervising an intermediate employee, as is required by the AS Standard. Accordingly, the Deputy Head’s reason for departing from the CGC’s finding, which the Deputy Head explained was based on “erroneous information,” is justified, transparent, and intelligible (*Vavilov* at para 99).

[79] I am not persuaded by the Applicant’s argument that the *Classification Directive* creates a requirement for the Deputy Head to consider a vacant position when rating the “Supervision” factor. This policy does not pertain to the classification process and directly contradicts the AS Standard, which governs the classification process.

[80] I am also not persuaded by the Applicant's argument that *Fok* and *Toronto* stand for the principle that vacant positions ought to be considered when rating a work description under the "Supervision" factor, as neither of those cases concerned the interpretation of the AS Standard. The specific language of the AS Standard, which requires that points only be allocated to positions for which an incumbent has a "continuing and substantive responsibility," overrides any general principle that can be gleaned from those cases.

[81] Finally, I am not persuaded by the Applicant's argument that the principle in *Allard* — that a work description shows the qualifications required of an employee, even if an employee may not fulfil all of the functions and responsibilities of a work description at all times (at para 34) — is applicable to the case at hand. Again, *Allard* did not concern the interpretation of the "Supervision" factor under the AS Standard, which contains clear language that contradicts the principle that the Applicant attempts to extrapolate from that case.

(c) *Was it unreasonable for the Deputy Head not to explicitly conduct a relativity analysis?*

[82] In my view, the comparator positions submitted by the Applicant are not an essential element that the Deputy Head was required to address in order to render the Decision reasonable (*Vavilov* at para 98). As with the CGC, the Deputy Head is not required to explain why he did not accept every item of evidence before him (*McEvoy* at para 79).

[83] The Deputy Head is not required under the *Grievances Directive* to provide reasons for rejecting the CGC's relativity analysis. I accept the Respondent's argument that this fact

distinguishes the case at hand from *Morrisey*, as that case concerned the CGC's recommendations, which require a relativity analysis under subsection 3.8.1 of the *Grievances Directive*, Appendix B. I also accept the Respondent's argument that *Chong* is distinguishable, as a member of the CGC in that case indicated that the CGC did not consider the information of a comparator position (at para 46). In the case at hand, there is no reason to doubt the Deputy Head's statement that he carefully analyzed the CGC's report, including the CGC's relativity analysis.

[84] That being said, I do not accept the Respondent's argument that the Applicant placed "little emphasis" on the relativity analysis in her submissions to the CGC. The Applicant and her union submitted several comparator positions to the CGC, both internal and external to the DFO, that were considered by the CGC.

B. *Was the Deputy Head biased, thereby breaching his duty of procedural fairness to the Applicant?*

[85] The Applicant submits that the Deputy Head was biased. In support of this claim, the Applicant notes the DFO's repeated efforts to maintain an AS-05 classification for the Work Description despite two separate reports recommending an upward reclassification. The Applicant asserts that the "irregularities" leading up to the OCC's Final Report also raise a reasonable apprehension of bias. Specifically, the Applicant notes that Ms. Taubman instructed an OCC member to write a new "AS-05 job" report for the Applicant's position, and that the signatures of the OCC members were seemingly cut-and-paste from the Draft Report onto the Final Report.

[86] The Respondent submits that there is no evidence that the Deputy Head influenced the OCC's decision-making process. According to the Respondent, the Draft Report was not intended to be a final report, as it is unsigned and contains edits. The Respondent further submits that this Court is tasked with determining whether the process followed by the Deputy Head was procedurally fair, not the process followed by the OCC.

[87] In my view, the case at hand does not rise to the level of a reasonable apprehension of bias. I find that an informed person, viewing the matter realistically and having thought the matter through, would not conclude on a balance of probabilities that the Deputy Head did not decide fairly (*Yukon Francophone School Board, Education Area #23 v Yukon (Attorney General)*, 2015 SCC 25 at para 20, citing *Committee for Justice and Liberty et al. v National Energy Board et al.*, [1978] 1 SCR 369, [1976] SCJ No 118 at 394).

[88] While I agree with the Applicant that Ms. Taubman's request to the OCC member to "write the new AS-05 job" is suspicious, suspicion alone is insufficient to establish a reasonable apprehension of bias (*Sharma v Canada (Citizenship and Immigration)*, 2020 FC 381 at para 27, citing *Arthur v Canada (Attorney General)*, 2001 FCA 223 at para 8). Furthermore, a reasonable apprehension of bias with respect to Ms. Taubman does not necessarily entail that the Deputy Head was also biased.

[89] I am not persuaded by the Applicant's argument that the Deputy Head's reliance on the OCC's Final Report, which the Applicant alleges was biased, renders the Decision biased. The Applicant cites *Canadian Broadcasting Corp v Canada (Canadian Human Rights Commission)*,

[1993] FCJ No 1334, 71 FTR 214 [*CBC*], for the authority that a decision will be biased if it adopts a biased report. In *CBC*, the Canadian Human Rights Commission rendered a decision by adopting a report that was found to be biased without providing any reasons of its own (at paras 50-51).

[90] In the case at hand, the Deputy Head relied upon the Final Report authored by the OCC, but he provided his own reasons for doing so. Given this distinction, I find that even if the Final Report was biased, the Deputy Head's reliance on the Final Report does not render his decision as such. The Deputy Head's reasons display that he independently assessed the classification of the Work Description, as opposed to fully adopting and relying upon the reasons in the Final Report.

**V. Costs**

[91] In exercising my discretion and considering the factors under Rule 400(3), I award costs to the Applicant payable forthwith by the Respondent in accordance with Tariff B, column III of the *Federal Courts Rules*, SOR/98-106.

**VI. Conclusion**

[92] I find that the Decision is unreasonable and therefore allow this application for judicial review with costs.

[93] As a remedy, the Applicant requests a directed verdict ordering the Deputy Head to accept the CGC's recommendations. In my view, a directed verdict is not warranted in this case, as the outcome upon reconsideration is not so inevitable that remitting the case would serve "no useful purpose" (*Vavilov* at para 142). Instead, I will send back this matter for redetermination in accordance with the reasons for judgment set out in this decision.



**JUDGMENT IN T-1408-19**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is allowed. The decision under review is set aside and the matter returned back for redetermination in accordance with the reasons set out in this decision.
2. Costs are awarded to the Applicant.

"Shirzad A."

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-1408-19

**STYLE OF CAUSE:** FRANCINE SÉGUIN v ATTORNEY GENERAL OF CANADA

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE IN OTTAWA, ONTARIO

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**DATED:** JANUARY 12, 2021

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