

**Date: 20080703**

**Docket: T-511-07**

**Citation: 2008 FC 832**

**Ottawa, Ontario, July 3, 2008**

**PRESENT: THE HONOURABLE MADAM JUSTICE DAWSON**

**BETWEEN:**

**CHRIS HUGHES**

**Applicant**

**and**

**ATTORNEY GENERAL  
OF CANADA**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] Christopher Hughes is a former employee of the Canada Border Services Agency (CBSA). He left that employment in September of 2004.

[2] On November 22, 2006, Mr. Hughes made a written complaint to the Corporate Security and Internal Affairs Division of the CBSA (internal affairs division) asking that ten CBSA officials be investigated. In brief, Mr. Hughes asked that:

- M.R. be investigated for unethical conduct and for retaliating against Mr. Hughes after he had filed a staffing complaint. This conduct is said to have led to many legal actions and wasted public money.

- D.K. be investigated for blacklisting Mr. Hughes, discrimination, retaliation, and illegal staffing in order to prevent Mr. Hughes from being hired.
- T.B., T.K., and K.P. be investigated for retaliation after Mr. Hughes filed a human rights complaint. That retaliation allegedly took the form of refusing to give Mr. Hughes employment references. Additionally, T.B., and possibly others, improperly influenced a hiring process. T.B. is also said to have made false promises in order to induce a person to work in a remote port.
- B.M. be investigated to see what involvement, if any, he had in what was "going on in his office" and because he may have failed to investigate the conduct of S.R.
- S.R. be investigated for a possible breach of the duty of loyalty in that she publicly criticized, on the internet, the government or government officials. She is also alleged to have "quasi" stalked Mr. Hughes in a public area.
- B.D. be investigated for failing to stop illegal contracts and failing to make proper management decisions to either investigate the blacklisting of Mr. Hughes or to mediate the dispute in a cost-effective way. This inaction is said to have caused public funds to have been improperly spent.

- B.L. be investigated for blacklisting, breach of confidentiality (commenting about Mr. Hughes' health issues), and unprofessional conduct (mocking Mr. Hughes and treating him with disrespect at a fact-finding meeting). She or B.M. is said to have then hired a Commissionaire to prevent Mr. Hughes from entering the local CBSA office. B.L. also allegedly caused Mr. Hughes' picture to be posted and told employees to be on the watch for him. This conduct, according to Mr. Hughes, may have violated the *Privacy Act*.
- M.N. be investigated for fixing an employment selection process.

[3] The internal affairs division responded to Mr. Hughes' complaint by letter dated February 28, 2007. In material part, the letter advised Mr. Hughes that:

I have reviewed the issues you have brought forward and the [internal affairs division] will not be initiating any investigation in regard to the issues surrounding the staffing process identified. Our role is to review the conduct of employees amidst allegations of criminal misconduct and serious breaches of [CBSA] policy. Staffing processes are governed by legislation and policy, which fall under the responsibility of the Public Service Commission. I understand you have exercised your right to have the staffing process judicially reviewed before the Federal Court, which is the best forum to provide an appropriate remedy, if one is required.

In regard to the issue of the Internet postings, I have requested a further investigation of this issue and I assure you that any findings will be reported to the appropriate management authority.

[4] Mr. Hughes now brings this application for judicial review of that decision. He seeks an order of *mandamus* "quashing the decision and ordering CBSA to properly investigate all allegations of misconduct."

[5] This application is dismissed because Mr. Hughes has failed to establish two of the elements that must be satisfied before *mandamus* can issue. Specifically, he has failed to establish that there was a public legal duty to act upon his complaint and failed to establish that any public duty was owed to him.

[6] Mr. Hughes also sought, in his memorandum of fact and law, alternate relief in the form of an order setting aside the decision and referring it back to the internal affairs division for redetermination with directions. This relief is denied because Mr. Hughes bases his application on a draft, internal CBSA policy that lacks the force of law.

### **The Draft CBSA Security Manual**

[7] Mr. Hughes argues, at paragraph 25 of his written submissions, that sections 11.1 and 12 of the *Financial Administration Act*, R.S.C. 1985, c. F-11, and "various Treasury Board and CBSA policies give CBSA legal authority to investigate and discipline its employees." Relevant sections from the *Financial Administration Act* are set out in the appendix to these reasons. None deal expressly with the CBSA.

[8] The only policy specifically referred to by Mr. Hughes in his written argument is the draft of chapter 17 of the CBSA Security Manual entitled "Policy - Internal Investigations of Alleged or Suspected Employee Misconduct" (Security Manual). While Mr. Hughes also refers in his submissions to the CBSA Code of Conduct and the Treasury Board of Canada Secretariat (Treasury Board) document "Values and Ethics Code for the Public Service", the only policy he relies upon as a source for the internal affairs division's investigatory authority is the Security Manual.

[9] This position is consistent with the evidence of the Director of the internal affairs division (Director) that:

3. There is no statutory obligation upon the [internal affairs division] to investigate any particular type of complaint. The [internal affairs division]'s mandate is derived solely from policy, namely, Chapter 17 of the CBSA Security Policy (the "Security Policy").

4. Chapter 17 of the Security Policy is titled "Internal Investigations into Alleged or Suspected Employee Misconduct", a copy of which is attached hereto as Exhibit "A" to this my Affidavit. This is the document the [internal affairs division] considers as establishing its mandate, which is generally to investigate misconduct of a criminal nature or a serious breach of CBSA policy.

[...]

11. There are no other policies or manuals that govern [internal affairs division]'s mandate.

[10] The Director also confirmed that the Security Manual is a draft document because the CBSA was only created in 2003. The Security Manual is to be finalized as soon as possible.

[11] The Director was not cross-examined on his evidence, and I accept it to accurately describe the origin and status of the Security Manual. Specifically, I accept that there is no statutory obligation upon internal affairs to investigate staff complaints and that the mandate of internal affairs is set out in the Security Manual.

### **The Legal Effect to be given to the Security Manual**

[12] Historically, "policy directives, whether made pursuant to regulatory authority or general administrative capacity, are no more than directions and are unenforceable by members of the

public." See: *Mohammad v. Canada (Minister of Employment and Immigration)*, [1989] 2 F.C. 363 (C.A.) at page 372.

[13] At present, the treatment of internal policies such as found in the Security Manual is more nuanced. The Court considers the intent and context in which policies are issued. This is reflected in the following decisions of the Court.

[14] In *Girard v. Canada* (1994), 79 F.T.R. 219 (T.D.), a claim for damages was made for an alleged breach of a Treasury Board policy, which provided that persons hired on a contract basis who completed five years of continuous service would be made permanent employees. The claim was dismissed. Justice Rouleau made the following comments regarding the effect of the Treasury Board policy:

36. In *Martineau and Butters v. Matsqui Institution Inmate Disciplinary Board (No. 1)*, [1978] 1 S.C.R. 118, the Supreme Court had to consider the nature and consequences that might result from a directive creating certain rules of procedure intended to apply to the imposition of penalties by disciplinary boards at the Matsqui Institution. As Pigeon J., speaking for a majority of five judges, explained at 129:

I have no doubt that the regulations are law.  
The statute provides for sanction by fine or  
imprisonment . . .

I do not think the same can be said of the  
directives. It is significant that there is no provision  
for penalty and, while they are authorized by  
statute, they are clearly of an administrative, not a  
legislative, nature.

37. A directive or policy does not have the force of law because it lacks the essential features of a regulation. The courts clearly do not intervene to enforce a rule which they consider to be essentially administrative in nature and scope.

38. In the case at bar the administrative policy is simply an internal rule of conduct made by the Treasury Board. It was established under a general power enjoyed by the Board under s. 11(2) of the *Financial Administration Act*, R.S.C. 1985, c. F-11. Although s. 10(f) gives the Treasury Board the power to make regulations "for any other purposes necessary for the efficient administration of the public service of Canada", those concerned chose to proceed by way of a statement of policy. [emphasis added]

[15] In *Endicott v. Canada (Treasury Board)* (2005), 270 F.T.R. 220 (F.C.), a grievance was based upon the failure of the decision-maker to treat two Treasury Board policies regarding indeterminate employment as legally binding. Justice Strayer noted, at paragraph 11 of his reasons, that whether the policies created legal rights that a court could define or enforce depended upon the intent and context in which the policies were issued. After considering the content of the policies and the context surrounding their development, Justice Strayer found no indication that the policies were intended to be treated as a law conferring a term appointment on the applicant.

[16] In *Glowinski v. Canada (Treasury Board)* (2006), 286 F.T.R. 217 (F.C.), the applicant sought judicial review of a decision by the Treasury Board and Industry Canada that he was an employee in the public service. There were a "multitude" of different Treasury Board policies that defined "employee" in inconsistent ways. Justice Kelen noted that, generally speaking, such policies are not legally binding unless the enabling statute requires a department to issue the policy. Thus, he noted that in *Gingras v. Canada*, [1994] 2 F.C. 734 (C.A.), effect was given to a Treasury Board policy entitled "Bilingualism Bonus Plan" where the policy was precise, conferred a benefit, and left no discretion to government departments. On the facts before him, Justice Kelen concluded that he should not interpret or reconcile the inconsistent Treasury Board policies and that he should not give legal effect to them. Justice Kelen agreed with Justice Rouleau in *Girard* that, if the

Treasury Board had intended the policies to have legal effect, the Treasury Board would have exercised its right to enact the policies by way of regulation.

[17] Applying those principles to the Security Manual in this case, my first observation is that the policy is a draft document. The Director's evidence to this effect is consistent with the content of Exhibit G to Mr. Hughes' affidavit, which is a report printed from the CBSA's website about workplace investigations. The report notes that the internal affairs division "is currently developing a suite of security policies for the CBSA" and that the new policies "will supplement the broader" Government Security Policy.

[18] My second observation is that the broader Government Security Policy, which the future CBSA security policies are intended to supplement, is itself a policy issued by the Treasury Board and does not have the force of a regulation.

[19] The *Financial Administration Act* provides that:

- the Treasury Board is responsible for all matters relating to human resources management in the federal public administration (paragraph 7(1)(e));
  - the Treasury Board may make regulations for any purpose necessary for the effective administration of the federal public administration (subsection 10(f));
  - in the exercise of its human resources management responsibilities, the Treasury Board may establish policies or directives respecting the disclosure by persons employed in the public service of information concerning wrongdoing in the public service (paragraph 11.1(1)(h));
- and



- the "public service" includes the CBSA (subsection 11(1) and Schedule IV).

[20] As stated above, the Treasury Board's Government Security Policy is not contained in a regulation and, indeed, the *Financial Administration Act* contemplates that the disclosure by public servants of allegations of wrongdoing will be dealt with by way of policy.

[21] With respect to the Security Manual itself, the Security Manual does not confer any benefit or create any entitlement. This makes the situation distinguishable from that considered in *Gringras*. No Act or regulation has been identified that requires the CBSA to issue the policy embodied in the Security Manual. The unchallenged evidence before the Court is that there is no statutory obligation upon the internal affairs division to investigate any type of complaint. The Security Manual, which establishes and governs the mandate of the internal affairs division, is simply a matter of policy.

[22] Taking all of these considerations into account, I find that Mr. Hughes has failed to demonstrate that Parliament intended the Security Manual to be given the force of law. Neither the content of the Security Manual, nor the context in which it came into being (as a draft), support the view that Parliament intended it to have legal effect. Accordingly, the Court will not enforce what is an administrative policy.

[23] Before leaving this issue, I have considered the decision of this Court in *Myers v. Canada (Attorney General)*, [2007] F.C.J. No. 1246 (QL), which is relied upon by Mr. Hughes. In that case, Justice Kelen gave legal effect to the Government Security Policy. However, the evidence before

Justice Kelen was that the relevant agency, the Canada Revenue Agency, had entered into a memorandum of understanding with the Treasury Board, whereby the Canada Revenue Agency agreed to be subject to the provisions of the Government Security Policy. There is no similar evidence before the Court on this application, and the *Myers* decision is distinguishable on that basis.

[24] This conclusion is sufficient to dispose of the application. However, for completeness, I think it prudent to deal with the relief sought by Mr. Hughes in his notice of application.

### ***Mandamus***

[25] In *Apotex Inc. v. Canada (Attorney General)*, [1994] 1 F.C. 742 (C.A.), the Federal Court of Appeal listed the principal requirements that must be satisfied before *mandamus* will issue. Two of those requirements are that there be a public legal duty to act and that the duty be owed to the applicant. See: *Apotex* at paragraph 45.

[26] In the present case, I have found the Security Manual not to have any legal force or effect. It follows that the Security Manual does not create any legally enforceable duty on the part of the internal affairs division to act on Mr. Hughes' complaint.

[27] Even if a legally enforceable duty to investigate existed, before *mandamus* could issue, Mr. Hughes would have to establish that the duty in question was owed to members of the general public. A duty owed to the Crown will not support the issuance of *mandamus*. See: *Secunda Marine Services Ltd. v. Canada (Minister of Supply and Services)* (1989), 27 F.T.R. 161 (T.D.), and

*Rothmans of Pall Mall Canada Ltd. v. Canada (Minister of National Revenue)*, [1976] 2 F.C. 500 (C.A.).

[28] The policy objective of the Security Manual is to ensure that allegations or suspicions of employee misconduct are promptly reported and investigated. This is said, in Exhibit G to Mr. Hughes' affidavit, to ensure that the professional responsibility of the staff and the integrity of CBSA operations are protected.

[29] I find, therefore, that the purpose of the Security Manual is not to provide a benefit to any particular person, but rather to provide for the better management of the CBSA. As such, there is no duty owed to Mr. Hughes.

### **Costs**

[30] Both sides sought costs if successful. I see no reason why costs should not follow the event.

[31] As to the quantum of such costs, I fix them in the lump sum amount of \$1,700.00. This reflects consideration of Rule 407 and items 2, 13 and 14 of the table to Tariff B of the *Federal Courts Rules*, SOR/98-106.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that:**

1. The application for judicial review is dismissed.
2. Mr. Hughes shall pay to the Attorney General costs, fixed in the amount of \$1,700.00, all-inclusive.

“Eleanor R. Dawson”

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Judge

## APPENDIX

Subsection 7(1) and sections 11, 11.1 and 12 of the *Financial Administration Act* read as follows:

7(1) The Treasury Board may act for the Queen's Privy Council for Canada on all matters relating to

- (a) general administrative policy in the federal public administration;
- (b) the organization of the federal public administration or any portion thereof, and the determination and control of establishments therein;
- (c) financial management, including estimates, expenditures, financial commitments, accounts, fees or charges for the provision of services or the use of facilities, rentals, licences, leases, revenues from the disposition of property, and procedures by which departments manage, record and account for revenues received or receivable from any source whatever;
- (d) the review of annual and longer term expenditure plans

7(1) Le Conseil du Trésor peut agir au nom du Conseil privé de la Reine pour le Canada à l'égard des questions suivantes :

- a) les grandes orientations applicables à l'administration publique fédérale;
- b) l'organisation de l'administration publique fédérale ou de tel de ses secteurs ainsi que la détermination et le contrôle des établissements qui en font partie;
- c) la gestion financière, notamment les prévisions budgétaires, les dépenses, les engagements financiers, les comptes, le prix de fourniture de services ou d'usage d'installations, les locations, les permis ou licences, les baux, le produit de la cession de biens, ainsi que les méthodes employées par les ministères pour gérer, inscrire et comptabiliser leurs recettes ou

and programs of departments, and the determination of priorities with respect thereto;

(d.1) the management and development by departments of lands, other than Canada Lands as defined in subsection 24(1) of the Canada Lands Surveys Act;

(e) human resources management in the federal public administration, including the determination of the terms and conditions of employment of persons employed in it;

(e.1) the terms and conditions of employment of persons appointed by the Governor in Council that have not been established under this or any other Act of Parliament or order in council or by any other means; and

(e.2) internal audit in the federal public administration;

(f) such other matters as may be referred to it by the Governor in Council.

leurs créances;

d) l'examen des plans et programmes des dépenses annuels ou à plus long terme des ministères et la fixation de leur ordre de priorité;

d.1) la gestion et l'exploitation des terres par les ministères, à l'exclusion des terres du Canada au sens du paragraphe 24(1) de la Loi sur l'arpentage des terres du Canada;

e) la gestion des ressources humaines de l'administration publique fédérale, notamment la détermination des conditions d'emploi;

e.1) les conditions d'emploi des personnes nommées par le gouverneur en conseil qui ne sont pas prévues par la présente loi, toute autre loi fédérale, un décret ou tout autre moyen;

e.2) la vérification interne au sein de l'administration publique fédérale;

f) les autres questions que le gouverneur en conseil peut lui renvoyer.

[...]

[...]

11(1) The following definitions apply in this section and sections 11.1 to 13.

"core public administration"  
«administration publique centrale »

"core public administration"  
means the departments named in Schedule I and the other portions of the federal public administration named in Schedule IV.

"deputy head"  
«administrateur général »

11(1) Les définitions qui suivent s'appliquent au présent article et aux articles 11.1 à 13.

«administrateur général »  
"deputy head"  
«administrateur général »

S'entend :

a) à l'égard de tout ministère figurant à l'annexe I, du sous-ministre;

b) à l'égard de tout secteur de l'administration publique fédérale figurant à l'annexe IV, de son premier dirigeant ou, à

<p>"deputy head" means</p> <p>(a) in relation to a department named in Schedule I, its deputy minister;</p> <p>(b) in relation to any portion of the federal public administration named in Schedule IV, its chief executive officer or, if there is no chief executive officer, its statutory deputy head or, if there is neither, the person who occupies the position designated under subsection (2) in respect of that portion;</p> <p>(c) in relation to a separate agency, its chief executive officer or, if there is no chief executive officer, its statutory deputy head or, if there is neither, the person who occupies the position designated under subsection (2) in respect of that separate agency; and</p> <p>(d) in relation to any portion of the federal public administration designated for the purposes of paragraph (d) of the definition "public service", its chief executive officer or, if there is no chief executive officer, the person who occupies the position designated under subsection (2) in respect of that portion.</p> <p>"public service" «fonction publique »</p> <p>"public service" means the several positions in or under</p> <p>(a) the departments named in Schedule I;</p> <p>(b) the other portions of the federal public administration named in Schedule IV;</p> <p>(c) the separate agencies named</p>	<p>défaut, de son administrateur général au titre de la loi ou, à défaut de l'un et l'autre, du titulaire du poste désigné en vertu du paragraphe (2) à l'égard de ce secteur;</p> <p>c) à l'égard de tout organisme distinct, de son premier dirigeant ou, à défaut, de son administrateur général au titre de la loi ou, à défaut de l'un et l'autre, du titulaire du poste désigné en vertu du paragraphe (2) à l'égard de cet organisme;</p> <p>d) à l'égard de tout secteur de l'administration publique fédérale désigné pour l'application de l'alinéa d) de la définition de «fonction publique » , de son premier dirigeant ou, à défaut, du titulaire du poste désigné en vertu du paragraphe (2) à l'égard de ce secteur.</p> <p>«administrateur général au titre de la loi »</p> <p>"statutory deputy head" «administrateur général au titre de la loi » Toute personne qui, au titre d'une loi fédérale, est ou est réputée être administrateur général ou en a ou est réputée en avoir le rang ou le statut.</p> <p>«administration publique centrale »</p> <p>"core public administration" «administration publique centrale » Les ministères figurant à l'annexe I et les autres secteurs de l'administration publique fédérale figurant à l'annexe IV.</p> <p>«fonction publique »</p> <p>"public service" «fonction publique »</p> <p>L'ensemble des postes qui sont</p>
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in Schedule V; and  
 (d) any other portion of the federal public administration that may be designated by the Governor in Council for the purpose of this paragraph.  
 "separate agency"  
 «organisme distinct »  
 "separate agency" means a portion of the federal public administration named in Schedule V.  
 "statutory deputy head"  
 «administrateur général au titre de la loi »  
 "statutory deputy head" means any officer who, by any Act of Parliament, is or is deemed to be a deputy head or who has, or is deemed to have, the rank of a deputy head.

(2) The Governor in Council may designate any position to be the position of deputy head in respect of  
 (a) any portion of the federal public administration named in Schedule IV or V for which there is no chief executive officer; and  
 (b) each portion of the federal public administration designated for the purpose of paragraph (d) of the definition "public service" in subsection (1) for which there is no chief executive officer.

[...]

11.1(1) In the exercise of its human resources management responsibilities under paragraph 7(1)(e), the Treasury Board may

compris dans les entités ci-après ou qui en relèvent :  
 a) les ministères figurant à l'annexe I;  
 b) les autres secteurs de l'administration publique fédérale figurant à l'annexe IV;  
 c) les organismes distincts figurant à l'annexe V;  
 d) les autres secteurs de l'administration publique fédérale que peut désigner le gouverneur en conseil pour l'application du présent alinéa.  
 «organisme distinct »  
 "separate agency"  
 «organisme distinct » Secteur de l'administration publique fédérale figurant à l'annexe V.

(2) Le gouverneur en conseil peut désigner tout poste comme poste d'administrateur général :  
 a) pour chacun des secteurs de l'administration publique fédérale figurant aux annexes IV ou V sans premier dirigeant;  
 b) pour chacun des secteurs de l'administration publique fédérale sans premier dirigeant désigné pour l'application de l'alinéa d) de la définition de «fonction publique » au paragraphe (1).

[...]

11.1(1) Le Conseil du Trésor peut, dans l'exercice des attributions en matière de gestion des ressources humaines que lui confère



- (a) determine the human resources requirements of the public service and provide for the allocation and effective utilization of human resources in the public service;
- (b) provide for the classification of positions and persons employed in the public service;
- (c) determine and regulate the pay to which persons employed in the public service are entitled for services rendered, the hours of work and leave of those persons and any related matters;
- (d) determine and regulate the payments that may be made to persons employed in the public service by way of reimbursement for travel or other expenses and by way of allowances in respect of expenses and conditions arising out of their employment;
- (e) subject to the Employment Equity Act, establish policies and programs with respect to the implementation of employment equity in the public service;
- (f) establish policies or issue directives respecting the exercise of the powers granted by this Act to deputy heads in the core public administration and the reporting by those deputy heads in respect of the exercise of those powers;
- (g) establish policies or issue directives respecting
- (i) the manner in which deputy heads in the core public administration may deal with grievances under the Public Service Labour Relations Act to which they are a party, and the
- l'alinéa 7(1)e) :
- a) déterminer les effectifs nécessaires à la fonction publique et assurer leur répartition et leur bonne utilisation;
- b) pourvoir à la classification des postes et des personnes employées dans la fonction publique;
- c) déterminer et régler les traitements auxquels ont droit les personnes employées dans la fonction publique, leurs horaires et leurs congés, ainsi que les questions connexes;
- d) déterminer et régler les indemnités susceptibles d'être versées aux personnes employées dans la fonction publique soit pour des frais de déplacement ou autres, soit pour des dépenses ou en raison de circonstances liées à leur emploi;
- e) sous réserve de la Loi sur l'équité en matière d'emploi, fixer des orientations et établir des programmes destinés à la mise en oeuvre de l'équité en matière d'emploi dans la fonction publique;
- f) élaborer des lignes directrices ou des directives sur l'exercice des pouvoirs conférés par la présente loi aux administrateurs généraux de l'administration publique centrale, ainsi que les rapports que ceux-ci doivent préparer sur l'exercice de ces pouvoirs;
- g) élaborer des lignes directrices ou des directives :
- (i) d'une part, sur la façon dont les administrateurs généraux de l'administration publique

manner in which they may deal with them if the grievances are referred to adjudication under subsection 209(1) of that Act, and

(ii) the reporting by those deputy heads in respect of those grievances;

(h) establish policies or issue directives respecting the disclosure by persons employed in the public service of information concerning wrongdoing in the public service and the protection from reprisal of persons who disclose such information in accordance with those policies or directives;

(i) establish policies or issue directives respecting the prevention of harassment in the workplace and the resolution of disputes relating to such harassment; and

(j) provide for any other matters, including terms and conditions of employment not otherwise specifically provided for in this section, that it considers necessary for effective human resources management in the public service.

(2) The powers of the Treasury Board in relation to any of the matters specified in subsection (1)

(a) do not extend to any matter that is expressly determined,

centrale peuvent s'occuper des griefs présentés sous le régime de la Loi sur les relations de travail dans la fonction publique auxquels ils sont parties et plus particulièrement de ceux de ces griefs qui sont renvoyés à l'arbitrage en vertu du paragraphe 209(1) de cette loi, (ii) d'autre part, sur les rapports que ces administrateurs doivent préparer sur ces griefs;

h) élaborer des lignes directrices ou des directives concernant la communication par les personnes employées dans la fonction publique de renseignements sur les actes fautifs commis au sein de celle-ci et la protection de ces personnes contre les représailles lorsqu'elles communiquent ces renseignements conformément à ces lignes directrices ou directives;

i) élaborer des lignes directrices ou des directives concernant la prévention du harcèlement en milieu de travail et le règlement des différends auquel il donne lieu;

j) régir toute autre question, notamment les conditions de travail non prévues de façon expresse par le présent article, dans la mesure où il l'estime nécessaire à la bonne gestion des ressources humaines de la fonction publique.

(2) The powers of the Treasury Board in relation to any of the matters specified in subsection (1)

(a) do not extend to any matter that is expressly determined,

fixed, provided for, regulated or established by any Act otherwise than by the conferring of powers in relation to those matters on any authority or person specified in that Act; and

(b) do not include or extend to (i) any power specifically conferred on the Public Service Commission under the Public Service Employment Act, or (ii) any process of human resources selection required to be used under the Public Service Employment Act or authorized to be used by the Public Service Commission under that Act.

[...]

12(1) Subject to paragraphs 11.1(1)(f) and (g), every deputy head in the core public administration may, with respect to the portion for which he or she is deputy head, (a) determine the learning, training and development requirements of persons employed in the public service and fix the terms on which the learning, training and development may be carried out; (b) provide for the awards that may be made to persons employed in the public service for outstanding performance of their duties, for other meritorious achievement in relation to their duties or for inventions or practical suggestions for improvements; (c) establish standards of

fixed, provided for, regulated or established by any Act otherwise than by the conferring of powers in relation to those matters on any authority or person specified in that Act; and

(b) do not include or extend to (i) any power specifically conferred on the Public Service Commission under the Public Service Employment Act, or (ii) any process of human resources selection required to be used under the Public Service Employment Act or authorized to be used by the Public Service Commission under that Act.

[...]

12(1) Sous réserve des alinéas 11.1(1)(f) et g), chaque administrateur général peut, à l'égard du secteur de l'administration publique centrale dont il est responsable : a) déterminer les besoins en matière d'apprentissage, de formation et de perfectionnement des personnes employées dans la fonction publique et fixer les conditions de mise en oeuvre de cet apprentissage, de cette formation et de ce perfectionnement; b) prévoir les primes susceptibles d'être accordées aux personnes employées dans la fonction publique pour résultats exceptionnels ou toutes autres réalisations méritoires dans le cadre de leurs fonctions, pour des inventions

discipline and set penalties, including termination of employment, suspension, demotion to a position at a lower maximum rate of pay and financial penalties;

(d) provide for the termination of employment, or the demotion to a position at a lower maximum rate of pay, of persons employed in the public service whose performance, in the opinion of the deputy head, is unsatisfactory;

(e) provide for the termination of employment, or the demotion to a position at a lower maximum rate of pay, of persons employed in the public service for reasons other than breaches of discipline or misconduct; and

(f) provide for the termination of employment of persons to whom an offer of employment is made as the result of the transfer of any work, undertaking or business from the core public administration to any body or corporation that is not part of the core public administration.

(2) Subject to any terms and conditions that the Governor in Council may direct, every deputy head of a separate agency, and every deputy head designated under paragraph 11(2)(b), may, with respect to the portion of the federal public administration

ou pour des idées pratiques d'amélioration;

c) établir des normes de discipline et prescrire des mesures disciplinaires, y compris le licenciement, la suspension, la rétrogradation à un poste situé dans une échelle de traitement comportant un plafond inférieur et les sanctions pécuniaires;

d) prévoir le licenciement ou la rétrogradation à un poste situé dans une échelle de traitement comportant un plafond inférieur de toute personne employée dans la fonction publique dans les cas où il est d'avis que son rendement est insuffisant;

e) prévoir, pour des raisons autres qu'un manquement à la discipline ou une inconduite, le licenciement ou la rétrogradation à un poste situé dans une échelle de traitement comportant un plafond inférieur d'une personne employée dans la fonction publique;

f) régir toutes les questions relatives au licenciement des personnes à qui une offre d'emploi est faite en raison du transfert d'une activité ou entreprise de l'administration publique centrale à toute entité qui n'en fait pas partie.

(2) Sous réserve des conditions que fixe le gouverneur en conseil, chaque administrateur général d'un organisme distinct et chaque administrateur général désigné par le gouverneur en conseil en vertu de l'alinéa 11(2)b) peut, à l'égard du secteur de

for which he or she is deputy head,

- (a) determine the learning, training and development requirements of persons employed in the public service and fixing the terms on which the learning, training and development may be carried out;
- (b) provide for the awards that may be made to persons employed in the public service for outstanding performance of their duties, for other meritorious achievement in relation to their duties or for inventions or practical suggestions for improvements;
- (c) establish standards of discipline and set penalties, including termination of employment, suspension, demotion to a position at a lower maximum rate of pay and financial penalties; and
- (d) provide for the termination of employment, or the demotion to a position at a lower maximum rate of pay, of persons employed in the public service for reasons other than breaches of discipline or misconduct.

(3) Disciplinary action against, or the termination of employment or the demotion of, any person under paragraph (1)(c), (d) or (e) or (2)(c) or (d)

l'administration publique fédérale dont il est responsable :

- a) déterminer les besoins en matière d'apprentissage, de formation et de perfectionnement des personnes employées dans la fonction publique et fixer les conditions de mise en oeuvre de cet apprentissage, de cette formation et de ce perfectionnement;
- b) prévoir les primes susceptibles d'être accordées aux personnes employées dans la fonction publique pour résultats exceptionnels ou toutes autres réalisations méritoires dans le cadre de leurs fonctions, pour des inventions ou pour des idées pratiques d'amélioration;
- c) établir des normes de discipline et prescrire des mesures disciplinaires, y compris le licenciement, la suspension, la rétrogradation à un poste situé dans une échelle de traitement comportant un plafond inférieur et les sanctions pécuniaires;
- d) prévoir, pour des raisons autres qu'un manquement à la discipline ou qu'une inconduite, le licenciement ou la rétrogradation à un poste situé dans une échelle de traitement comportant un plafond inférieur de toute personne employée dans la fonction publique.

(3) Les mesures disciplinaires, le licenciement ou la rétrogradation découlant de l'application des alinéas (1)c), d) ou e) ou (2)c) ou d) doivent

may only be for cause.

être motivés.

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

**DOCKET:** T-511-07

**STYLE OF CAUSE:** CHRIS HUGHES V. ATTORNEY GENERAL OF CANADA

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**APPEARANCES:**

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