

Federal Court



Cour fédérale

**Date: 20120326**

**Docket: T-1287-11**

**Citation: 2012 FC 355**

**BETWEEN:**

**JOHANNES WHEELDON**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**REASONS FOR ORDER**

**PHELAN J.**

**I. INTRODUCTION**

[1] The circumstances of this judicial review are unusual and therefore call for an unusual remedy. The judicial review is in respect of a decision by the Social Science and Humanities Research Council (Council) in which the Applicant's application for a postdoctoral fellowship was denied (the Award Decision).

[2] The Award Decision was confirmed following an internal appeal (the Appeal Decision). While this judicial review is of that Appeal Decision, the real basis of the judicial review is the inadequacy of the explanation in the Award Decision.

[3] The Applicant was self-represented throughout the process and while not a lawyer, he has had legal education outside Canada.

## II. BACKGROUND

[4] In October 2010, the Applicant, Mr. Wheeldon, applied for a two-year postdoctoral fellowship from the Council.

[5] On February 10, 2011, the Applicant was informed in the Award Decision that he had not been successful. There are three critical elements in each of the two categories upon which applicants are evaluated. The Applicant claims that there are actually 15 elements and each is, by the Council's admission, weighted equally. The Award Decision gave the Applicant his scores for "Track Record" and "Proposed Program of Work".

[6] In response to questions from the Applicant about the assessment of applications, the Council informed him that he could file an internal appeal. The grounds of such an appeal were limited to procedural error or factual error.

[7] The Applicant pursued the matter further questioning the application process and requesting a copy of his file.

[8] In response to the request for his file, the Applicant received an administrative file but did not receive any file from the committee members who made the assessment of his application.

[9] In response to further questions from the Applicant, the Council provided some data as to the number of complaints/appeals that were received by the Council for postdoctoral fellowship funding since 2008 and confirmation that specific criteria was used by committee members in evaluating such applications for funding.

[10] On May 5, 2011, the Applicant formally appealed the scoring of his award application on the basis of procedural fairness in that he could not meaningfully understand the basis of the scoring.

[11] The Applicant's judicial review was based on inadequate reasons being a breach of procedural fairness.

### III. ANALYSIS

[12] The Supreme Court of Canada in *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 [*Newfoundland Nurses*], has dispelled the argument that adequacy of reasons is a stand alone ground of review. However, that same decision emphasized the importance of the "record" in supporting a decision, particularly where the reasons are sparse.

[13] At the judicial review hearing, it became evident that the Applicant had only received part of the material that formed the basis of the Award Decision.

[14] The Respondent's attempt to characterize this judicial review as only related to the Appeal Decision is misplaced. The substance of the judicial review is the Award Decision. The Applicant deferring judicial review until after the Appeal Decision is simply consistent with the general proposition that an applicant should exhaust internal review processes before seeking court review.

[15] The immediate problem is this - the Applicant requested better information but did not formalize the request in accordance with Rule 317 of the *Federal Courts Rules*, SOR/98-106. The Respondent so advised the Court that it did not produce all of the material related to the Award Decision.

[16] The burden of proof rests on the Applicant in the judicial review but given *Newfoundland Nurses*, above, the Court (and perhaps the Respondent) needs the complete file record in order to properly resolve the issues in this judicial review.

[17] The Court does not suggest that the failure to serve and file the complete file record is anything more than inadvertence. The Applicant's failure to use Rule 317 was caused by lack of knowledge.

[18] In order to deal properly with the merits of this judicial review, the documents which were before the Council, both initially and on appeal, should be before this Court (see *1185740 Ontario Ltd v Canada (Minister of National Revenue – MNR)* (1999), 247 NR 287).

[19] The Applicant made the request for the material in the possession of the Council, albeit orally and not in accordance with Rule 317. In my view, these are “special circumstances” under Rule 55 which justify dispensing with compliance with a rule of this Court.

[20] Rather than granting this judicial review based on inadequate record or dismissing this judicial review because the record does not establish the grounds pleaded, the Court will adjourn this matter; the Applicant, within thirty (30) days, shall serve and file a request under Rule 317 and the Respondent shall respond in accordance with Rule 318.

[21] Following compliance therewith, the usual rules will comply for the parties to file their respective records as amended records. When the judicial review is ready to be heard, the parties shall request a hearing date from the Judicial Administrator.

[22] The Court will remain seized of this matter and any issues related to compliance with the Order to be issued shall be directed to me.

“Michael L. Phelan”

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Judge

Ottawa, Ontario  
March 26, 2012

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

**DOCKET:** T-1287-11

**STYLE OF CAUSE:** JOHANNES WHEELDON  
and  
ATTORNEY GENERAL OF CANADA

**PLACE OF HEARING:** Ottawa, Ontario

**DATE OF HEARING:** March 21, 2012

**REASONS FOR ORDER:** Phelan J.

**DATED:** March 26, 2012

**APPEARANCES:**

Dr. Johannes Wheeldon FOR THE APPLICANT

Ms. Linda Wall FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

SELF-REPRESENTED FOR THE APPLICANT

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