

SUPREME COURT OF CANADA -- JUDGMENTS TO BE RENDERED IN APPEALS

OTTAWA, 3/11/03. THE SUPREME COURT OF CANADA ANNOUNCED TODAY THAT JUDGMENT IN THE FOLLOWING APPEALS WILL BE DELIVERED AT 9:45 A.M. ON THURSDAY, NOVEMBER 6, 2003.

FROM: SUPREME COURT OF CANADA (613) 995-4330

COUR SUPRÊME DU CANADA -- PROCHAINS JUGEMENTS SUR APPELS

OTTAWA, 3/11/03. LA COUR SUPRÊME DU CANADA A ANNONCÉ AUJOURD'HUI QUE JUGEMENT SERA RENDU DANS LES APPELS SUIVANTS LE JEUDI 6 NOVEMBRE 2003, À 9 h 45.

SOURCE: COUR SUPRÊME DU CANADA (613) 995-4330

1. *Glenda Doucet-Boudreau, et al. v. Attorney General of Nova Scotia* (N.S.) (28807)
 2. *Canadian Union of Public Employees, Local 79 v. City of Toronto, et al.* (Ont.) (28840)
 3. *Ontario Public Service Employees Union v. Her Majesty the Queen in Right of Ontario as represented by the Ministry of Community and Social Services, et al.* (Ont.) (28849)
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28807 **Glenda Doucet-Boudreau et al v. Attorney General of Nova Scotia**

Canadian Charter of Rights and Freedoms - Procedural law - Jurisdiction - *Functus officio* - Judge ordering a series of mandatory injunctions pursuant to s. 24(1) requiring school board and Ministry to use "best efforts" to complete five homogenous French schools in order to prevent further assimilation of French speaking children - Order further requiring parties to appear before same judge periodically to report on progress of construction and to ensure compliance with the order - Whether judge lost jurisdiction to adopt supervisory function - Scope of remedial power under s. 24(1) of the *Charter*.

The Appellants are a group of parents in the province of Nova Scotia who applied for declaratory relief in relation to their right under s. 23 of the *Charter* to have their children educated in the language of the minority in publicly funded French language school facilities. This right and the obligation of the Respondent to provide proper facilities was conceded at trial. Although the French-speaking minority in the province had the right to school their children in the French language since 1982 when the *Charter* was entrenched, their efforts to enforce this right was frustrated by a series of delays. As a result, the rate of assimilation of French-speaking children had been increasing over the years. The Appellants requested an order that the numbers of French children in each of five school districts warranted the provision of homogenous French programs in homogenous French facilities pursuant to ss. 23(3)(a) and 23(3)(b) of the *Charter*. The court ordered Le Conseil scolaire acadien provincial ("CSAP") and the Respondent to use their "best efforts" to provide both the programs and the facilities in different communities by September 2000, January 2001, and September 2001. Further, the trial judge declared that he would retain jurisdiction, and scheduled meetings with the parties at which time the Respondent would be required to report on the status of its efforts to meet the deadlines.

The Respondent attended before the trial judge in a series of meetings to report on the progress of compliance with the order, the last of which was to have been held in August, 2001. Moreover, the Respondent provided both the programs

and the homogenous facilities in the five districts in the time frames required (although one was not completed at the time of the Court of Appeal hearing). They appealed, however, the part of the order by which the trial judge retained

jurisdiction to monitor compliance. The Court of Appeal agreed, striking out this portion of the order.

Origin of the case: Nova Scotia
File No.: 28807
Judgment of the Court of Appeal: June 26, 2001
Counsel: Joel Fichaud Q.C. for the Appellants
Alexander M. Cameron for the Respondent

28807 Glenda Doucet-Boudreau et autres c. Le procureur général de la Nouvelle-Écosse

Charte canadienne des droits et libertés - Droit procédural - Compétence - Functus officio - Par son ordonnance, le juge de première instance ordonné en vertu du paragraphe 24(1) de la Charte au Conseil scolaire acadien provincial et au ministère de l'Éducation de la Nouvelle-Écosse de faire de son mieux pour terminer la construction de cinq écoles homogènes de langue française dans le but de freiner l'assimilation des enfants de langue française - Le juge de première instance ordonné également aux parties de comparaître périodiquement devant lui afin de faire rapport sur l'avancement des travaux de construction et le respect des échéances - Le juge a-t-il compétence pour s'attribuer une fonction de surveillance? - Étendue du pouvoir de réparation prévu au paragraphe 24(1) de la Charte.

Les appelants, un groupe de parents de la Nouvelle-Écosse, ont présenté une requête pour l'obtention d'un jugement déclaratoire sur leur droit en vertu de l'article 23 de la *Charte* de faire instruire leurs enfants dans la langue de la minorité dans des établissements d'enseignement de langue française financés sur les fonds publics. L'existence de ce droit et de l'obligation de la Nouvelle-Écosse de fournir des installations adéquates a été admis au procès. Malgré que la minorité de langue française de la province ait le droit, depuis l'adoption de la *Charte* en 1982, de faire instruire ses enfants en français, une série de retards a contrecarré les efforts qu'elle a déployés afin d'exercer son droit. Par conséquent, le taux d'assimilation des enfants de langue française avait augmenté au fil des ans. Les appelants ont demandé au tribunal une ordonnance à l'effet que le nombre d'enfants de langue française dans chacun des cinq districts scolaires justifiait la prestation de programmes homogènes en français dans des écoles homogènes de langue française en conformité avec les alinéas 23(3)a) et 23(3)b) de la *Charte*. Le tribunal a ordonné au Conseil scolaire acadien provincial et au ministère de l'Éducation de la Nouvelle-Écosse de déployer leurs meilleurs efforts afin de livrer les programmes et les installations dans les différentes collectivités, en septembre 2001 pour certaines écoles, en janvier 2001 pour d'autres et la dernière en septembre 2001. De plus, le juge de première instance a déclaré qu'il demeurerait saisi du dossier et a fixé des séances à certaines dates avec les parties au cours desquelles l'intimé devrait faire rapport sur l'état des travaux et le respect des échéances.

Le ministère de l'Éducation a présenté au juge de première instance plusieurs rapports sur l'avancement des travaux, le dernier séance de rapport devant avoir lieu en août 2001. De plus, l'intimé a livré les programmes et les installations homogènes dans les cinq districts selon l'échéancier prévu (une des installations n'était, toutefois, pas encore terminé à la date de l'audition de l'appel). Mais l'intimé a interjeté appel de la partie de l'ordonnance du juge de première instance par laquelle le juge demeurerait compétent pour la surveillance de l'exécution de l'ordonnance. La Cour d'appel a accueilli l'appel et a radié cette partie de l'ordonnance.

Origine : Nouvelle-Écosse
N° du greffe : 28807
Arrêt de la Cour d'appel : 26 juin 2001
Avocats : Joel Fichaud, c.r. pour les appelants
Alexander M. Cameron pour l'intimé

Administrative law - Labour law - Arbitration - Judicial review - What is the appropriate standard of judicial review of the Arbitrator's decision(s) - Whether the Arbitrator erred in his decision(s) - Whether the court should substitute its view and quash the Arbitrator's award(s), without remitting the matter to the Arbitrator.

Glenn Oliver worked as a recreation instructor for the Respondent City of Toronto (the "City"). During the term of his employment he was charged with sexually assaulting a young boy who had participated in recreational programs offered by the Respondent City and supervised by Mr. Oliver. Mr. Oliver pleaded not guilty, however the trial judge found that the complainant was credible and that Mr. Oliver was not. Mr. Oliver was found guilty, and his conviction was affirmed on appeal. The Respondent City fired Mr. Oliver a few days after his conviction, and Mr. Oliver grieved his dismissal. The arbitrator reviewed the evidence, but did not hear from the complainant. He allowed the grievance and directed that the Mr. Oliver be reinstated.

The Respondent City brought an application for judicial review of the arbitrator's decision. Relying upon the rule against collateral attack and on issue estoppel and abuse of process, the Superior Court of Justice, Divisional Court, found that the arbitrator should not have gone behind the criminal conviction and made his own assessment on the issue of the sexual assault. It made the same finding in two other applications for judicial review which were heard together with the present case. The Court of Appeal for Ontario dismissed the appeals on the basis of the finality principle.

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| Origin of the case: | Ontario |
| File No.: | 28840 |
| Judgment of the Court of Appeal: | August 10, 2001 |
| Counsel: | Douglas J. Wray for the Appellant Jason Hanson/Mahmud Jamal/Kari M. Abrams for the Respondent City of Toronto Douglas C. Stanley for the Respondent |

28840 Syndicat canadien de la fonction publique, section locale 79 c. La cité de Toronto et al.

Droit administratif - Droit du travail - Arbitrage - Contrôle judiciaire - Quelle norme de contrôle judiciaire convient-il d'appliquer aux décisions de l'arbitre? - L'arbitre s'est-il trompé dans ses décisions? - La Cour devrait-elle substituer sa propre opinion et annuler les sentences arbitrales sans renvoyer l'affaire à l'arbitre?

Glenn Oliver travaillait comme récréologue pour l'intimée, la cité de Toronto (la cité). Pendant la durée de son emploi, il a été accusé d'agression sexuelle sur un jeune garçon qui avait participé aux programmes récréatifs offerts par la cité intimée. Ce jeune garçon était sous la surveillance de M. Oliver. Ce dernier a plaidé non coupable. Le juge du procès, cependant, a conclu que le plaignant était crédible et que M. Oliver ne l'était pas. M. Oliver a été déclaré coupable et sa déclaration de culpabilité a été confirmée en appel. La cité intimée a congédié M. Oliver quelques jours après sa déclaration de culpabilité et celui-ci a déposé un grief contre son congédiement. L'arbitre a examiné la preuve mais n'a pas entendu le plaignant. Il a accueilli le grief et a ordonné la réintégration de M. Oliver.

La cité intimée a déposé une demande de contrôle judiciaire de la décision de l'arbitre. Se fondant sur la règle interdisant l'attaque indirecte ainsi que sur les principes de la préclusion et de l'abus de procédure, la Cour divisionnaire de la Cour supérieure de justice a conclu que l'arbitre n'aurait pas dû revenir sur la condamnation au criminel et faire sa propre appréciation des faits relativement à l'agression sexuelle. Elle a formulé la même conclusion en ce qui a trait à deux autres demandes de contrôle judiciaire qui ont été entendues en même temps que la présente instance. La Cour d'appel de l'Ontario a rejeté les appels en s'appuyant sur le principe du caractère définitif.

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| Origine : | Ontario |
| N° du greffe : | 28840 |
| Arrêt de la Cour d'appel : | 10 août 2001 |
| Avocats : | Douglas J. Wray pour l'appellant |

Jason Hanson/Mahmud Jamal/Kari M. Abrams pour l'intimée, la
cité de Toronto
Douglas C. Stanley pour l'intimée

28849 Ontario Public Service Employees Union v. Her Majesty The Queen in Right of Ontario

Administrative law - Labour law - Arbitration - Judicial review - Is the proper standard of review of procedural and evidentiary decisions of Ontario Crown Employees Grievance Settlement Board one of correctness - In the absence of issue estoppel, collateral attack and a clear finding of abuse of process, is it proper for a court on judicial review to set aside an arbitrator's decision and apply a free-standing principle of judicial finality to restrict the evidence permitted in rebuttal of a criminal conviction - Did the Court err in interfering with the Board's exclusive jurisdiction over evidentiary and procedural matters, and the determination of just cause - Whether the Court erred by simply dismissing the appeals without providing adequate reasons.

The Superior Court of Justice, Divisional Court, heard together three applications for judicial review of arbitration awards, two of which are the subject of this appeal. In one application, the Ministry of Community and Social Services ("MCSS") applied for judicial review to quash an interim decision of the Grievance Settlement Board (the "Board") dated July 7, 1997. The grievor had been employed as a residential counsellor at the MCSS's Huronia Regional Centre. In a trial by jury at which the grievor did not testify or call evidence in his defence, the grievor was found guilty of sexual assault, and the conviction was confirmed on appeal. The MCSS terminated the grievor's employment in reliance on the conviction and the facts determined at trial. The grievor filed a grievance, claiming he was discharged without just cause, and it went to arbitration. The GSB held that the grievor's certificate of conviction would not be received at the arbitration either conclusively or on a *prima facie* basis of the fact of the sexual assault. The MCSS brought an application for judicial review of that decision and the Divisional Court held that the Board ought to have held that the certificate would stand as *prima facie* evidence of the sexual assault. The evidentiary ruling having been patently unreasonable, the matter was sent back to the Board for continuation of the hearing. The Board then determined that there would be no restriction placed on the scope of the evidence the grievor might call to rebut the *prima facie* evidence of the conviction.

The second application for judicial review was brought by the Ministry of Correctional Services (the "MCS"). The grievor was employed by the MCS as a guard at the Whitby, Ontario jail. Two female inmates complained that the grievor had sexually assaulted them. The MCS terminated the grievor. The matter proceeded to trial and the grievor was found guilty of two counts of sexual assault and one count of assault, which was affirmed on appeal. The grievor filed a grievance with the Crown Employees Grievance Settlement Board (the "CEGS Board") claiming that he had been discharged without just cause. In an interim decision, the CEGS Board held that the grievor was not precluded by doctrines of issue estoppel or abuse of process from attempting to rebut the facts of which the convictions were *prima facie* evidence. In a later decision it held that the grievor's convictions were only *prima facie* evidence but not conclusive evidence that the grievor had committed the sexual assaults. The MCS then launched its application for judicial review.

Relying upon the rule against collateral attack and on issue estoppel and abuse of process, the Superior Court of Justice, Divisional Court, found that the arbitration boards should not go behind the criminal conviction and make their own assessment on the issue of the sexual assault. The Court of Appeal for Ontario dismissed the appeals on the basis of the finality principle.

Origin of the case: Ontario

File No.: 28849

Judgment of the Court of Appeal: August 10, 2001

Counsel: Craig Flood for the Appellant
Mary Gersht/Sean Kearney/Meredith Brown for the
Respondent Her Majesty the Queen in Right of Ontario
Larry Stickland for the Respondent Board

Avocats :

Craig Flood pour l'appelant
Mary Gersht/Sean Kearney/Meredith Brown pour l'intimée Sa
Majesté la Reine du chef de l'Ontario
Larry Stickland pour l'intimée la Commission
