

FEDERAL COURT OF APPEAL

BETWEEN:

TELECOMMUNICATIONS WORKERS UNION

Applicant

- and -

CANADIAN INDUSTRIAL RELATIONS BOARD,
WARREN EDMONDSON and TELUS COMMUNICATIONS INC.

Respondents

MEMORANDUM OF FACT AND LAW
OF THE RESPONDENT, TELUS COMMUNICATIONS INC.

Heenan Blaikie LLP

P.O. Box 185, Suite 2600
South Tower, Royal Bank Plaza
Toronto, Ontario M5J 2J4

David Stratas / Brian Burkett / Brad Elberg
(416) 643-6846 / (416) 360-3529 / (416) 360-2618
(416) 360-8425 (fax)

Counsel for the Respondent, TELUS
Communications Inc.

TO:

The Administrator
Federal Court of Appeal
Toronto Local Office
7th Floor, Canada Life Building
330 University Avenue
Toronto, ON M5G 1R7

AND TO:

Owen Bird Law Corporation
P.O. Box 49130
Three Bentall Centre, 29th Floor
595 Burrard Street
Vancouver, BC V7X 1J5

D. Barry Kirkham, Q.C.
(604) 688-0401
(604) 688-2827 (fax)

Counsel for the Applicant, Telecommunications Workers Union

AND TO:

Paliare Roland Rosenberg Rothstein LLP
Suite 501 - 250 University Avenue
Toronto, ON M5H 3E5

Andrew Lokan
(416) 646-4318
(416) 646-4338 (fax)

Counsel for the Respondents, Warren Edmondson and the Canadian Industrial
Relations Board

PART I - STATEMENT OF FACTS

A. Overview

1. The Applicant, Telecommunications Workers Union (the "union") brought an application to the Canada Industrial Relations Board alleging a reasonable apprehension of bias. Although only one member of the Board, the Chair (the "Chair"), is alleged to have engaged in conduct that created the apprehension of bias and although there is no suggestion that the other members of the Board are not involved in any such conduct, the union seeks to disqualify the entire Board and seeks broad discovery orders forcing disclosure of confidential notes and records belonging to Board personnel and TELUS' chief negotiator in TELUS' ongoing collective bargaining negotiations with the union.

2. In support of its application for this radical relief, the union offered the flimsiest of evidence - an affidavit of its own Vice-President that was entirely hearsay evidence, including double, triple and quadruple hearsay. After its application, the union continued to participate in Board proceedings and to make submissions to the Board, rather than seeking prohibition or an interim stay of Board proceedings before this Court.

3. The Board properly held that the affidavit evidence making serious allegations against the Chair was based on nothing but multiple hearsay, was "not reliable", "has no probative value" and "is insufficient". This Court can only displace this evidentiary finding if it holds that there is "palpable and overriding error". The union does not make that submission and there is no basis for such a submission.

4. There are numerous other legal grounds for dismissing the application. For example, the Board proceeding which the union alleged was tainted by the Chair's conduct, actually proceeded through to a conclusion - three members of the Board (other than the Chair), whose conduct and impartiality have never been challenged by the union, decided the proceeding and ruled partially in the union's favour. The union has no valid complaint. Its application should be dismissed.

B. Background facts

(1) The interest of TELUS Communications Inc. in this application

5. TELUS Communications Inc. ("TELUS") is a party in this application because the conduct of the Chair of the Board (the "Chair"), the primary focus of this application, took place within ongoing proceedings involving the union and TELUS.

6. Although TELUS is a party in this application, the conduct of TELUS is not in question in this application. In this application, the union impugns the Chair for conduct which allegedly creates an apprehension of bias. It is primarily for the Board itself and the Chair - not TELUS - to respond to the union's attack against his conduct. As a result, TELUS makes limited submissions on this application.

7. TELUS does have an interest in this application. There are a number of ongoing and potential proceedings before the Board involving TELUS and the union that require the Board's attention. This application creates a cloud over the Board and may delay the due disposition of those proceedings. This application lacks merit. The cloud it creates should be lifted as soon as possible. Thus, TELUS makes these limited submissions in support of the dismissal of this application.

(2) The union's reliance on hearsay

8. As the Board correctly noted, the union's allegations of Board bias are based "entirely on hearsay evidence, including double, triple and quadruple hearsay".

The Board Decision Under Review (Letter Decision 1128), p. 10; Applicant's Record, p. 71

9. The union's evidence is that the Chair allegedly told Mr. Panelli (the Western Regional Director for the Board) who allegedly told Mr. Hodges (a mediator/conciliator appointed under

the Code) who allegedly told Mr. Bell (a Vice-President of the union) that TELUS should seek reconsideration of Board Decision No. 271. Mr. Lewis (a mediator/conciliator) also related this information.

The Board Decision Under Review (Letter Decision 1128), p. 4; Applicant's Record, p. 65

(3) Missing evidence

10. The evidence filed by the union is a single Affidavit of Mr. Bell, a Vice-President of the union, who reports these hearsay statements. There is no affidavit from Mr. Hodges. There is no affidavit from Mr. Lewis. There is no affidavit from Mr. Panelli. There is no evidence suggesting that these individuals could not swear affidavits.

(4) The only alleged involvement of TELUS

11. The union's evidence – again, multiple hearsay evidence offered only in a single affidavit – is that Messrs. Panelli and Lewis told Mr. Hodges who told the union's Vice-President, Mr. Bell, that Messrs. Panelli and Lewis had shared this information with Mr. Bedard, the lead negotiator with TELUS and that Mr. Bedard had said that he had shared it with the President of TELUS. Based on this multiple hearsay evidence reported through the union's Vice-President, the union asked the Board for comprehensive disclosure to it of all notes, phone records and other documents created by and belonging to TELUS' chief negotiator relevant to these alleged discussions.

The Board Decision Under Review (Letter Decision 1128), pp. 4-5; Applicant's Record, p. 65.

Union's application before the Board, para. 39; Exhibit "A" to the Affidavit of Sharon Critch, Applicant's Record, p. 86.

(5) The union participated fully in the reconsideration application before the Board and made no attempt to prevent the Board from considering that application

12. According to the union, the Chair's comment took place before TELUS filed application to the Board to reconsider Decision No. 271. On February 16, 2004, TELUS filed that application for reconsideration with the Board.

13. At any time after TELUS applied to the Board for reconsideration (*i.e.*, at any time after February 16, 2004), the union could have brought an application for prohibition to this Court, preventing a supposedly biased Board from dealing with TELUS' reconsideration application. It never did so. At any time in the proceeding for *certiorari* in this Court, the union could have brought a motion for an interim stay preventing the Board from proceeding further with TELUS' reconsideration application. The union did not bother.

14. Instead, the union took two fresh steps before the Board:

- On March 25, 2004, the union filed an application with the Board requesting that it appoint an arbitrator pursuant to Decision No. 271. This cannot stand with the union's submission in this application that the Board as a whole is so biased that it cannot deal with any matters.

The Board Decision Under Review (Letter Decision 1128), p. 3; Applicant's Record, p. 64

- The union filed submissions responding to TELUS' application for reconsideration of Decision No. 271. Again, this is inconsistent with the union's submission in this application that the entire Board is tainted with bias.

Letter Decision No. 1193, p. 3

15. Having received submissions from both the union and TELUS on TELUS' application for reconsideration of Decision 271, the Board rendered its decision on February 2, 2005.

(6) **The Board's reconsideration decision**

16. With the submissions of the union and TELUS before it, the Board (*per* Mr. Douglas G. Ruck, Q.C., Mr. Edmund Tobin and Ms. Louise Fecteau) partially allowed TELUS' reconsideration application. The Chair, who the union alleges made statements about the advisability of TELUS making a reconsideration application, was not on the panel. Nor is there any evidence that the Chair played any role in the decision.

Letter Decision 1193, dated February 2, 2005

17. Even if the union's evidence and allegations are taken as proven and at their highest, there is no evidence of any bias on the part of Messrs. Ruck and Tobin and Ms. Fecteau.

(7) **The union's application to the Board**

18. Based on the double, triple and quadruple hearsay evidence offered through its Vice-President's affidavit, the union applied to the Board for an order disqualifying the entire Board from proceeding with TELUS' application for reconsideration of Decision No. 271. In the alternative, it sought an oral hearing of the recusal application, full discovery of documents of all participants including TELUS' chief negotiator, an order that all participants including TELUS' chief negotiator be summonsed and that written statements of the Chair and Mr. Panelli be tendered at the oral hearing.

Union's application before the Board, para. 39; Exhibit "A" to the Affidavit of Sharon Critch, Applicant's Record, pp. 86-87.

(8) **The Board's decision**

19. The Board dismissed the union's application, based on the flimsiness of the factual record placed before it. The Board decided that the union's evidence, "entirely ... hearsay evidence, including double, triple and quadruple hearsay", was "not reliable", "has no probative value" and "is insufficient". The Board also found that even if a case of bias on the part of the Chair were proven, "the Board would not have been precluded from hearing TELUS'

reconsideration application, because such a determination does not impute, in itself, a reasonable apprehension of bias on the entire Board". In short, there was a complete absence of evidence showing any taint of the part of the other members of the Board.

The Board Decision Under Review (Letter Decision 1128), pp. 10-12; Applicant's Record, pp. 71-73

PART II – POINTS IN ISSUE

20. Is the entire Board disqualified on account of bias?

PART III – SUBMISSIONS

A. **The Board's decision is a factual one: there was no reliable evidence. This decision cannot be reviewed absent palpable and overriding error**

21. Absent palpable and overriding error, reviewing courts and appellate courts must respect the factual findings of a subordinate tribunal or a trial court. The Board declined to rely on the double, triple and quadruple hearsay evidence proffered by the union through its Vice-President. In its memorandum, the union does not suggest that this was palpable and overriding error. As a result, there is no evidence that can be relied upon to establish bias or a reasonable apprehension of bias.

Housen v. Nikolaisen, [2002] 2 S.C.R. 235

22. In applications, the Federal Court of Appeal does not admit hearsay evidence. The Affidavit of Mr. Bell before this Court is purely hearsay evidence. The Applicant has not attempted to suggest any exceptions to the inadmissibility that apply in this case. Simply put, there is no record before this Court or any factual background that can legally support the existence of a reasonable apprehension of bias.

Rule 81(1) of the *Federal Courts Rules*

B. The evidentiary threshold for a party seeking to establish bias, actual or apprehended, is very high

23. Courts have consistently demanded that those seeking to establish bias, actual or apprehended, must adduce compelling evidence. The union has failed to do so.

Canadun Union of Postal Workers v. Canada Post Corp., [1998] F.C.J. No. 1090 (T.D.)

Majeed v. Canada (Minister of Employment and Immigration), [1994] F.C.J. No. 1401 (F.C.A.)

Strikes With A Gun v. Canada (Minister of Indian Affairs and Northern Development), [2002] F.C.J. No. 1284 (T.D.)

Trent Construction Ltd. v. Labourers International Union of Newfoundland, Local 1208 (1995), 136 Nfld. & P.E.I.R. 240, 423 A.P.R. 240 (Nfld. S.C.T.D.) (insufficient evidence to support a reasonable apprehension of bias because the complainant had relied solely on hearsay evidence as the entire foundation of his claim and it had no other evidence to support the allegation)

Adams v. British Columbia (Workers' Compensation Board), [1989] B.C.J. no. 2478 (B.C.C.A.)

David Phillip Jones and Anne S. de Villars, *Principles of Administrative Law*, 3rd ed. (Scarborough: Carswell, 1999), page 401; "[T]he onus of establishing a reasonable apprehension of bias is on the party making the allegation. The tribunal has no onus to justify its conduct in the face of a bare allegation; it has, at most, a strategic onus of fending off allegations of bias that would otherwise be sufficient to establish a *prima facie* case. The applicant has to establish a case. Mere speculation will not do."

C. There is no reasonable apprehension of bias. The union in fact accepted this. It has taken fresh steps before the Board

24. As set out in paragraph 14, above, the union took fresh steps before the Board after it says it became aware of the alleged statement by the Chair. It was content to have the Board, supposedly biased, deal with matters before it.

25. The union could have sought prohibition. Within this application, it could have sought an interim stay of the supposedly biased Board, preventing it from dealing with matters before it. However, the union pursued neither option. Instead, it simply allowed a supposedly biased Board to continue to deal with matters before it. Indeed, took no action to prevent the Board from considering the parties' submissions concerning TELUS' application for reconsideration of Decision No. 271 and to determine that application – the very matter that the union says the Chair improperly commented upon.

Federal Courts Act, ss. 18 and 18.1 (entitlement to seek prohibition)

Federal Courts Act, s. 18.2 and 50 (entitlement to seek interim stay)

Letter Decision 1193, dated February 2, 2005 (Board's decision on the application for reconsideration of Decision No. 271)

The Board Decision Under Review (Letter Decision 1128), p. 3; Applicant's Record, p. 64

26. The union had a choice. It could have maintained its allegations that the Board was disqualified from hearing the matter on account of bias and acted to prevent the Board from proceeding further with its reconsideration of Decision No. 271. Or it could have accepted the legitimacy and legality of the Board determining the matters before it, in the hope that the Board might decide in its favour. The union chose the latter and, indeed, the Board decided the reconsideration partially in its favour. The union cannot have it both ways. It cannot complain that the Board, once allowed to proceed with the reconsideration application, was in fact disqualified from proceeding with that matter.

Letter Decision 1193, dated February 2, 2005 (Board's decision on the application for reconsideration of Decision No. 271)

Energy and Chemical Workers' Union and Atomic Energy of Canada Ltd., [1986] 1 F.C. 103 (C.A.)

D. There is no evidence that the entire Board was tainted

27. Even if the union's evidence were first hand evidence and if the Chair had in fact made the statements that he is alleged to have made, there is a complete absence of evidence suggesting that any other members of the Board are biased. A fully informed person, looking at the matter reasonably, would not conclude that the members of the Board, other than the Chair, are biased.

The Committee for Justice and Liberty v. National Energy Board, [1978] 1 S.C.R. 369 at 394: "... the apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information. In the words of the Court of Appeal, that test is "what would an informed person, viewing the matter realistically and practically - and having thought the matter through - conclude."

F. As a matter of law, the bias, real or apprehended, of one member of the tribunal does not disqualify the other members of the tribunal

28. Where a member of a tribunal is perceived to be biased and there is no evidence that the bias has spread to other members of the tribunal, the other members of the tribunal are not disqualified. They are assumed, in the absence of any contrary evidence, to be untainted by any bias.

E.A. Manning Ltd. v. Ontario Securities Commission (1995), 23 O.R. (3d) 257 (C.A.) (statements by a chair that suggest bias do not disqualify other Board members; there is a presumption that the other board members will act fairly and impartially)

F. Even if all of the members of the Board were found to be biased, the doctrine of necessity would permit the Board to determine the reconsideration application.

29. The Code vests in the Board jurisdiction to deal with applications before it. This jurisdictional obligation compels the Board to be available to perform its statutory role. Even if all of the members of the Board were found to be biased, as a matter of necessity the Board would still have to deal with matters properly before it. The "doctrine of necessity" operates to ensure that the Board in fact deals with the important matters entrusted to it.

Finch v. Assn. of Professional Engineers and Geoscientists of British Columbia, [1996] B.C.J. No. 743 (B.C.C.A.), citing *Laws v. Australian Broadcasting Tribunal*, [1990] 64 A.L.J. 412 at 420 (H.C.) ("The rules of natural justice cannot be invoked to frustrate the intended operation of a statute which sets up a tribunal and requires it to perform the statutory functions entrusted to it") and citing *Milne v. Joint Chiropractic Professional Review Committee*, [1992] 3 W.W.R. 354 (Sask. C.A.) to the effect that "the doctrine is used to prevent an injustice".

Canada (Minister of Citizenship and Immigration) v. Dueck, [1996] F.C.J. No. 1667 (F.C.A.)

Halsbury's Laws of England (4th ed.), Vol. 1(1), at para. 102, page 235: "If all members of the only tribunal competent to determine a matter are subject to disqualification, they may be authorized and obliged to hear and determine that matter by virtue of the operation of the common law doctrine of necessity."

R.R.S. Tracey, "Disqualified Adjudicators: the Doctrine of Necessity in Public Law", [1982] Public Law 628

G. This application is moot

30. As mentioned, there is no evidence of any bias on the part of the members of the Board other than the Chair (the evidence concerning him was double, triple and quadruple hearsay). The bias alleged by the union relates only to the Board's ability to hear the reconsideration application. The Board, comprised of three members of the Board (none of whom is the Chair) has now determined the reconsideration application. Since unbiased members of the Board have determined the application, the union's concern about bias affecting that determination now lacks any basis whatsoever. This application is moot.

H. There is no evidentiary basis for the union to gain access to the confidential notes and documents of TELUS' chief negotiator

31. Wide-ranging production requests must be supported by strong evidence demonstrating compelling need.

Majeed v. Canada (Minister of Employment and Immigration), [1994] F.C.J. No. 1401 (F.C.A.)

32. This is especially important in the circumstances of this case. There would be havoc in labour relations if a union could have one of its officers, for example a Vice-President, swear an affidavit containing double, triple and quadruple hearsay and obtain – merely on the basis of those assertions – full discovery of the confidential notes and documents of an employer's chief negotiator. It is submitted that the circumstances where a union could ever obtain disclosure of the confidential notes and documents of the chief negotiator with whom it is negotiating would be exceptionally rare, if ever. Even then they would be ordered only on the basis of the strongest, most compelling evidence imaginable. In this case, there is absolutely no basis for such an order to be made against TELUS' chief negotiator, Mr. Bedard.

PART IV – ORDER SOUGHT

33. The Applicant has misnamed the Board in the title of proceeding. The title of proceeding should be amended to change the name of the Board to the Canada Industrial Relations Board, not the Canadian Industrial Relations Board.

34. The Applicant respectfully requests that the application be dismissed, with costs.

All of which is respectfully submitted, this 7th day of February, 2005, at Toronto, Ontario

David Stratas

Brian Burkett

Brad Elberg

PART V – LIST OF AUTHORITIES TO BE REFERRED TO

<u>Case</u>	<u>Tab in Book of Authorities</u>
<i>Adams v. British Columbia (Workers' Compensation Board)</i> (1989), 42 B.C.L.R. (2d) 228 (B.C.C.A.)	1
<i>Canada (Minister of Citizenship and Immigration) v. Dueck</i> , [1996] F.C.J. No. 1667 (F.C.A.); aff'd sub nom. <i>Canada (Minister of Citizenship and Immigration) v. Tobias</i> , [1997] 3 S.C.R. 391	2
<i>Canadian Union of Postal Workers v. Canada Post Corp.</i> (1998), 152 F.T.R. 13 (T.D.); aff'd [1998] F.C.J. No. 1439 (C.A.)	3
<i>E.A. Manning Ltd. v. Ontario Securities Commission</i> (1995), 23 O.R. (3d) 257 (C.A.)	4
<i>Energy and Chemical Workers' Union and Atomic Energy of Canada Ltd.</i> , [1986] 1 F.C. 103 (C.A.)	5
<i>Finch v. Assn. of Professional Engineers and Geoscientists of British Columbia</i> (1996), 18 B.C.L.R. (3d) 361 (B.C.C.A.)	6
<i>Housen v. Nikolaisen</i> , [2002] 2 S.C.R. 235	7
<i>Strikes With A Gun v. Canada (Minister of Indian Affairs and Northern Development)</i> , [2002] F.C.J. No. 1284 (T.D.)	8
<i>The Committee for Justice and Liberty v. National Energy Board</i> , [1978] 1 S.C.R. 369	9
<i>Trent Construction Ltd. v. Labourers International Union of Newfoundland, Local 1208</i> , (1995), 136 Nfld & P.E.I.R. 240 (Nfld. S.C.T.D.)	10

APPENDIX "A" - TEXT OF STATUTORY PROVISIONS

Index to the Appendix

Provisions

Page no. in Schedule

Federal Courts Act, R.S.C. 1985, c. F-7 2

Federal Courts Rules, SOR/98-106 8

Federal Courts Act, R.S.C. 1985, c. F-7

Extraordinary remedies, federal tribunals

18. (1) Subject to section 28, the Federal Court has exclusive original jurisdiction

(a) to issue an injunction, writ of *certiorari*, writ of prohibition, writ of *mandamus* or writ of *quo warranto*, or grant declaratory relief, against any federal board, commission or other tribunal; and

(b) to hear and determine any application or other proceeding for relief in the nature of relief contemplated by paragraph (a), including any proceeding brought against the Attorney General of Canada, to obtain relief against a federal board, commission or other tribunal.

Cours fédérales, Loi sur les, (L.R. 1985, ch. F-7)

Recours extraordinaires : offices fédéraux

18. (1) Sous réserve de l'article 28, la Cour fédérale a compétence exclusive, en première instance, pour :

a) décerner une injonction, un bref de *certiorari*, de *mandamus*, de prohibition ou de *quo warranto*, ou pour rendre un jugement déclaratoire contre tout office fédéral;

b) connaître de toute demande de réparation de la nature visée par l'alinéa a), et notamment de toute procédure engagée contre le procureur général du Canada afin d'obtenir réparation de la part d'un office fédéral.

Extraordinary remedies, members of Canadian Forces

(2) The Federal Court has exclusive original jurisdiction to hear and determine every application for a writ of *habeas corpus ad subjiciendum*, writ of *certiorari*, writ of prohibition or writ of *mandamus* in relation to any member of the Canadian Forces serving outside Canada.

Recours extraordinaires : Forces canadiennes

(2) Elle a compétence exclusive, en première instance, dans le cas des demandes suivantes visant un membre des Forces canadiennes en poste à l'étranger : bref d'*habeas corpus ad subjiciendum*, de *certiorari*, de prohibition ou de *mandamus*.

Remedies to be obtained on application

(3) The remedies provided for in subsections (1) and (2) may be obtained only on an application for judicial review made under section 18.1.

Exercice des recours

(3) Les recours prévus aux paragraphes (1) ou (2) sont exercés par présentation d'une demande de contrôle judiciaire.

Application for judicial review

Demande de contrôle judiciaire

18.1 (1) An application for judicial review may be made by the Attorney General of Canada or by anyone directly affected by the matter in respect of which relief is sought.

Time limitation

(2) An application for judicial review in respect of a decision or an order of a federal board, commission or other tribunal shall be made within 30 days after the time the decision or order was first communicated by the federal board, commission or other tribunal to the office of the Deputy Attorney General of Canada or to the party directly affected by it, or within any further time that a judge of the Federal Court may fix or allow before or after the end of those 30 days.

Powers of Federal Court

(3) On an application for judicial review, the Federal Court may

- (a) order a federal board, commission or other tribunal to do any act or thing it has unlawfully failed or refused to do or has unreasonably delayed in doing; or
- (b) declare invalid or unlawful, or quash, set aside or set aside and refer back for determination in accordance with such directions as it considers to be appropriate, prohibit or restrain, a decision, order, act or proceeding of a federal board, commission or other tribunal.

Grounds of review

(4) The Federal Court may grant relief under subsection (3) if it is satisfied that the federal board, commission or other tribunal

18.1 (1) Une demande de contrôle judiciaire peut être présentée par le procureur général du Canada ou par quiconque est directement touché par l'objet de la demande.

Délai de présentation

(2) Les demandes de contrôle judiciaire sont à présenter dans les trente jours qui suivent la première communication, par l'office fédéral, de sa décision ou de son ordonnance au bureau du sous-procureur général du Canada ou à la partie concernée, ou dans le délai supplémentaire qu'un juge de la Cour fédérale peut, avant ou après l'expiration de ces trente jours, fixer ou accorder.

Pouvoirs de la Cour fédérale

(3) Sur présentation d'une demande de contrôle judiciaire, la Cour fédérale peut :

- a) ordonner à l'office fédéral en cause d'accomplir tout acte qu'il a illégalement omis ou refusé d'accomplir ou dont il a retardé l'exécution de manière déraisonnable;
- b) déclarer nul ou illégal, ou annuler, ou infirmer et renvoyer pour jugement conformément aux instructions qu'elle estime appropriées, ou prohiber ou encore restreindre toute décision, ordonnance, procédure ou tout autre acte de l'office fédéral.

Motifs

(4) Les mesures prévues au paragraphe (3) sont prises si la Cour fédérale est convaincue que l'office fédéral, selon le cas :

(a) acted without jurisdiction, acted beyond its jurisdiction or refused to exercise its jurisdiction;

(b) failed to observe a principle of natural justice, procedural fairness or other procedure that it was required by law to observe;

(c) erred in law in making a decision or an order, whether or not the error appears on the face of the record;

(d) based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it;

(e) acted, or failed to act, by reason of fraud or perjured evidence; or

(f) acted in any other way that was contrary to law.

Defect in form or technical irregularity

(5) If the sole ground for relief established on an application for judicial review is a defect in form or a technical irregularity, the Federal Court may

(a) refuse the relief if it finds that no substantial wrong or miscarriage of justice has occurred; and

(b) in the case of a defect in form or a technical irregularity in a decision or order, make an order validating the decision or order, to have effect from such time and on such terms as it considers appropriate.

Interim orders

Measures provisoires

18.2 On an application for judicial review, the

18.2 La Cour fédérale peut, lorsqu'elle est

a) a agi sans compétence, outrepassé celle-ci ou refusé de l'exercer;

b) n'a pas observé un principe de justice naturelle ou d'équité procédurale ou toute autre procédure qu'il était légalement tenu de respecter;

c) a rendu une décision ou une ordonnance entachée d'une erreur de droit, que celle-ci soit manifeste ou non au vu du dossier;

d) a rendu une décision ou une ordonnance fondée sur une conclusion de fait erronée, tirée de façon abusive ou arbitraire ou sans tenir compte des éléments dont il dispose;

e) a agi ou omis d'agir en raison d'une fraude ou de faux témoignages;

f) a agi de toute autre façon contraire à la loi.

Vice de forme

(5) La Cour fédérale peut rejeter toute demande de contrôle judiciaire fondée uniquement sur un vice de forme si elle estime qu'en l'occurrence le vice n'entraîne aucun dommage important ni de ni de justice et, le cas échéant, valider la décision ou l'ordonnance entachée du vice et donner effet à celle-ci selon les modalités de temps et autres qu'elle estime indiquées.

Federal Court may make any interim orders that it considers appropriate pending the final disposition of the application.

saisie d'une demande de contrôle judiciaire, prendre les mesures provisoires qu'elle estime indiquées avant de rendre sa décision définitive.

Stay of proceedings authorized

Suspension d'instance

50. (1) The Federal Court of Appeal or the Federal Court may, in its discretion, stay proceedings in any cause or matter

50. (1) La Cour d'appel fédérale et la Cour fédérale ont le pouvoir discrétionnaire de suspendre les procédures dans toute affaire :

(a) on the ground that the claim is being proceeded with in another court or jurisdiction; or

a) au motif que la demande est en instance devant un autre tribunal;

(b) where for any other reason it is in the interest of justice that the proceedings be stayed.

b) lorsque, pour quelque autre raison, l'intérêt de la justice l'exige.

Stay of proceedings required

Idem

(2) The Federal Court of Appeal or the Federal Court shall, on application of the Attorney General of Canada, stay proceedings in any cause or matter in respect of a claim against the Crown if it appears that the claimant has an action or a proceeding in respect of the same claim pending in another court against a person who, at the time when the cause of action alleged in the action or proceeding arose, was, in respect of that matter, acting so as to engage the liability of the Crown

(2) Sur demande du procureur général du Canada, la Cour d'appel fédérale ou la Cour fédérale, selon le cas, suspend les procédures dans toute affaire relative à une demande contre la Couronne s'il apparaît que le demandeur a intenté, devant un autre tribunal, une procédure relative à la même demande contre une personne qui, à la survenance du fait générateur allégué dans la procédure, agissait en l'occurrence de telle façon qu'elle engageait la responsabilité de la Couronne.

Lifting of stay

Levée de la suspension

(3) A court that orders a stay under this section may subsequently, in its discretion, lift the stay.

(3) Le tribunal qui a ordonné la suspension peut, à son appréciation, ultérieurement la lever.

Federal Court Rules, 1998, SOR/98-106

*Règles de la Cour fédérale (1998),
D.O.R.S./98-106*

Content of affidavits

Contenu

81. (1) Affidavits shall be confined to facts within the personal knowledge of the deponent, le déclarant a une connaissance personnelle,

except on motions in which statements as to the deponent's belief, with the grounds therefor, may be included.

sauf s'ils sont présentés à l'appui d'une requête, auquel cas ils peuvent contenir des déclarations fondées sur ce que le déclarant croit être les faits, avec motifs à l'appui.