
CANADA / JUDGMENT

Dugré c. Doucet

2001 FCT 587

COURT

Federal Court

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Dugré c. Doucet

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T-1765-99

Decision Content

Date: 20010604

Docket: T-1765-99

Neutral Citation: 2001 FCT 587

Between:

JEAN DUGRÉ

Applicant

And:

MICHEL DOUCET

- and -

WILLIE GIBBS

- and -

SOLICITOR GENERAL OF CANADA

Respondents

REASONS FOR ORDER

NADON J.

- [1] Through his application for judicial review, the applicant Jean Dugré is seeking to have the recommendations and findings of the October 1999 report of the respondent Michel Doucet, a lawyer, set aside.
- [2] The relevant facts are quite simple and may be summarized as follows. The applicant is a member of the National Parole Board (the "NPB"). On May 14, 1999, he signed an affidavit[1] in support of the application for extension of time filed by an inmate, Raynald Desjardins, in the context of an application for judicial review asking the Court to set aside a decision of the Appeal Division of the NPB that had refused his release under sections 125 and 126 of the Corrections and Conditional Release Act, S.C. 1992, c. 20 (the "Act").
- [3] It is appropriate to note that the filing of the applicant's affidavit results from an order that was rendered by my colleague, Mr. Justice Rouleau, on May 10, 1999. This order reads as follows:

[Translation]

The hearing [of the application for an extension of time] adjourned to May 31, 1999.

The applicant shall submit to the Court evidence in affidavit form from a member of the Board attesting to the undue influence on the part of the authorities concerning the decision in relation to the applicant's parole - the evidence shall be filed before May 17, 1999 - The respondents may cross-examine before May 25, 1999 and file affidavit in opposition before May 28, 1999.

- [4] In his 36-paragraph affidavit of May 14, 1999, the applicant cited possible interference in the decision-making by certain NPB members, and more particularly in the case concerning Raynald Desjardins.
- [5] On June 24, 1999, the very day on which Mr. Justice Rouleau was dismissing Raynald Desjardins' motion for an extension of time, the Chairperson of the NPB, Mr. Willie Gibbs, appointed law professor Mr. Michel Doucet, Dean of the Faculty of Law of the University of Moncton, pursuant to subsection 152(4) of the Act, to investigate and report to him on the following questions:
- (i) the content, truthfulness and credibility of the allegations of interference made by the applicant in his affidavit of May 14, 1999;

(ii) the consistency of the aforementioned acts of the applicant with the NPB Code of Professional Conduct.

[6] In the order and inquiry terms of reference he signed on June 24, 1999, the NPB chairperson described as follows the events which, in this opinion, justified the mandate assigned to Mr. Doucet:

[Translation]

WHEREAS under subsection 152(4) of the Corrections and Conditional Release Act, S.C. 1992, c. 20, the Chairperson of the National Parole Board may appoint a person or persons to investigate and report on any matter relating to the operations of the Board;

and

WHEREAS the newspaper article entitled "[[Translation] Parole board member complains of an 'appearance of blatant interference,'" published in the Thursday, April 30, 1998 edition of La Presse, concerns Board member Jean Dugré;

and

WHEREAS on May 14, 1999, the full-time Board member Jean Dugré of the Quebec Region signed an affidavit on behalf of the offender Raynald Desjardins in the context of an application for judicial review in the Federal Court, Trial Division (No. 99-T-18);

and

WHEREAS this affidavit is also cited in correspondence dated May 26, 1999 from another lawyer;

and

WHEREAS the lawyers responsible for the aforementioned proceedings are appearing before the Board, Quebec Region, at parole hearings as offenders' assistants;

[7] In relation to the questions that constituted Mr. Doucet's terms of reference, the NPB chairperson ordered Mr. Doucet to provide him with his findings of fact and to make any recommendation concerning any process that he considered appropriate. In short, as Mr. Doucet notes at page 6 of his report, it was the allegations in the affidavit of May 14, 1999 that were the subject matter of his investigation.

[8] Following his investigation, Mr. Doucet wrote a provisional report dated August 1999. In this report, Mr. Doucet recounted the highlights of his investigation and his preliminary findings.

[9] On August 19, 1999, in view of the fact that he was attributing misconduct to certain persons, Mr. Doucet sent a copy of his preliminary report to those persons. Mr. Doucet also sent a copy of his preliminary report to Mr. Gibbs. The letter sent by Mr. Doucet to the applicant reads as follows:

[Translation]

I wish to thank you very much for taking the time to meet with me in the context of my investigation conducted under subsection 152(4) of the Corrections and Conditional Release Act.

I am now drafting my investigation report. In doing so, I am attempting to present the facts and findings in a fair, complete and accurate way. It is precisely this concern for fairness that is at the origin of my letter.

In preparing this report, I noted certain statements that in my opinion warrant your being given notice under section 13 of the Inquiries Act. I consider this information to be relevant and I think it is important to my investigation.

I want to satisfy myself that I have an accurate picture of the facts. That is why, pursuant to section 13, I am communicating those statements to you and offering you the possibility to respond to them. You will find them attached hereto.

I have not yet made a decision as to whether these statements should be included in my final report. This decision will not be made until you have had a reasonable opportunity to review them and respond to them.

To facilitate things, I am asking you to let me know as soon as possible if you intend to meet with me, accompanied by your counsel if you so wish, to discuss some statements that concern you. We would then be able to agree on a date and place for this meeting. If, by September 17, 1999, I have no reply, I will conclude that you do not wish to meet with me.

If you prefer to present your submissions in writing, please let me know as quickly as possible. I will examine with all the attention possible any written presentation on your part that reaches me before September 17, 1999.

Yours very truly,

[10] In October 1999, Mr. Doucet signed his final report and sent it to Mr. Gibbs, who received a copy around October 15, 1999. The applicant received his own copy of the report around October 29, 1999. The summary of this report, which is found at pages 2, 3 and 4, is as follows:

[Translation]

4. Summary

The following are the conclusions of the report of the investigation into the allegations set out in the affidavit of Board member Jean Dugré, executed on behalf of the offender Raynald Desjardins, in the Federal Court, Trial Division, in docket No. 99-T-88:

- The allegations contained in paragraphs 5, 6 and 7 and that are attributed to Renaud Dutil are inaccurate;

- The allegations contained in paragraph 8 are inaccurate. Concerning paragraph 9, the fact that Renaud Dutil was never invited to sit in the Appeal Division has nothing to do with the reasons that are given in this paragraph;
- The allegations in paragraphs 11 and 12 are inaccurate;
- Concerning paragraph 13, while it is true that Board member Renaud Dutil was made use of less often than Board member Jean-Pierre Beauchesne, this situation has nothing to do with reprisals but is rather due to the lack of availability of Board member Dutil, given his professional commitments;
- Concerning paragraph 14, I did not find any evidence of the existence of an "administration philosophy" to which Board members are to adhere;
- The allegations in paragraph 15(a), as stated, are accurate;
- The allegations in paragraph 15(b), as stated, are accurate, but the reasons for the under-utilization of the Board member do not establish interference by the administration;
- Contrary to the allegations in paragraph 15(c), I am unable to conclude that the Board member who is referred to was little used and that she was subjected to reprisals;
- Concerning paragraph 15(d), it is clear that Daniel Dortélus sincerely believes he was subjected to reprisals. However, the testimony and the documents that I have in my possession do not allow me, in all conscience, to reach this conclusion;
- There is no evidence that the Board member referred to in paragraph 15(e) was subjected to reprisals;
- It is correct that the Board member referred to in paragraph 15(f) received a negative performance evaluation for 1997-98. I conclude as well that the Board member informed certain Board members of his intention to take legal action against the regional Vice-Chairperson. However, I have no basis for finding that he threatened the Vice-Chairperson with such action;
- It is correct that the Board member referred to in paragraph 16 met with the Vice-Chairman to discuss his evaluation and that in the course of this meeting the Vice-Chairman suggested that he himself write a draft evaluation, which he did;
- It is correct that the two Board members referred to in paragraph 18 had negative performance evaluations for 1997-98. It is also correct that the Vice-Chairperson approached them to get them to meet with him to discuss their evaluation. However, the Vice-Chairperson never proposed to these Board members that they write their own evaluations as this paragraph suggests. Nor can I conclude that these evaluations consisted of reprisals;
- The comments attributed to the Correctional Service of Canada officer in paragraphs 19 to 22 do not correspond to what that officer says he told the author of the affidavit;

- The allegations in paragraph 23 are, in my opinion, of no importance;
- The allegations in paragraphs 24 and 25 cannot have occurred since on December 9, 1997, the decision in the Raynald Desjardins case had already been written;
- The allegations in paragraph 26 are inaccurate;
- The allegations in paragraph 27 are inaccurate;
- Given that the allegations in paragraph 27 are inaccurate, the conclusions in paragraphs 28, 29, 30 and 31 are also inaccurate;

I am of the opinion that in his activities Board member Jean Dugré has contravened a number of provisions of the Code of Professional Conduct, his oath of office and discretion, as well as the confidence placed in him at the time of his appointment.

In view of the conclusions of my report, I advise the Chairperson to recommend to the Minister that an inquiry be held under section 155.1 of the Act concerning the activities of Board member Jean Dugré.

- [11] It is to be noted that on September 3, 1999, the Chairperson of the NPB suspended the applicant with pay from his duties as a member of the Board until further notice.
- [12] On October 4, 1999, the applicant filed this application for judicial review, which raises the following questions:[2]
- (i) Did Mr. Doucet, appointed by the Chairperson of the NPB under subsection 152(4) of the Act, have the power to investigate the applicant in relation to a provision of the Code of Conduct?
- (ii) If Mr. Doucet had such jurisdiction, were the principles of procedural fairness breached in this case, and did Mr. Doucet consequently exceed his jurisdiction?
- (iii) Did the applicant have a reasonable apprehension of bias?
- [13] For the reasons that follow, I will address only the first question raised by the applicant. This question suffices, in my opinion, to dispose of the application for judicial review.
- [14] The relevant provisions of the Act are subsections 152(4), 155.1(1) and (2), and subsections 155.2(1), (2) and (3), which read as follows:
152. (4) The Chairperson may appoint a person or persons to investigate and report on any matter relating to the operations of the Board, and sections 7 to 13 of the Inquiries Act apply in respect of such investigations, with such modifications as the circumstances require, as if the references to "commissioners" in those sections were references to the person or persons so appointed.

155.1 (1) the Chairperson may recommend to the Minister that an inquiry be held to determine whether any member of the Board should be subject to any disciplinary or remedial measures for any reason set out in any of paragraphs 155.2(2)(a) to (d).

(2) Where the minister considers it appropriate that an inquiry under this section be held, a judge, supernumerary judge or former judge of the Federal Court, in this section and section 155.2 referred to as a "judge", shall conduct the inquiry

155.2 (1) After an inquiry under section 155.1 has been completed, the judge who conducted the inquiry shall prepare a report of the conclusions of the inquiry and submit it to the Minister.

(2) Where an inquiry under section 155.1 has been held and, in the opinion of the judge who conducted the inquiry, the member of the Board in respect of whom the inquiry was held:

(a) has become incapacitated from the due execution of the member's office by reason of infirmity;

(b) is guilty of misconduct,

(c) has failed in the due execution of the member's office, or

(d) has been placed, by conduct or otherwise, in a position that is incompatible with the due execution of the member's office,

the judge may, in the report of the inquiry, recommend that the member be suspended without pay or be removed from office or may recommend that such disciplinary or remedial measure as the judge considers necessary be taken.

(3) Where the Minister receives a report under subsection (1), the Minister shall send a copy of the report to the Governor in Council, who may suspend the member of the board to whom the report relates without pay, remove the member from office or take any other disciplinary or remedial measure.

152. (4) Le président peut nommer une ou plusieurs personnes chargées d'enquêter et de faire rapport sur toute question portant sur les activités de la Commission; les articles 7 à 13 de la Loi sur les enquêtes s'appliquent à ces personnes, avec les adaptations nécessaires, comme si les renvois aux commissaires étaient des renvois aux personnes que nomme le président.

155.1 (1) Le président peut recommander au ministre la tenue d'une enquête sur les cas de mesures disciplinaires ou correctives au sein de la Commission pour tout motif énoncé aux alinéas 155.2(2)a) à d).

- (2) Si le ministre estime qu'une enquête s'impose, celle-ci est tenue par un juge, juge surnuméraire ou ancien juge de la Cour fédérale.

155.2 (1) À l'issue de l'enquête, l'enquêteur présente au ministre un rapport sur ses conclusions.

- (2) L'enquêteur peut, dans son rapport, recommander la révocation, la suspension sans traitement ou toute mesure disciplinaire ou corrective s'il est d'avis que le membre en cause de la Commission est inapte à remplir utilement ses fonctions pour l'un ou l'autres des motifs suivants:

- a) invalidité;
 - b) manquement à l'honneur ou à la dignité;
 - c) manquement aux devoirs de sa charge;
 - d) situation d'incompatibilité, qu'elle soit imputable au membre ou à toute autre cause.
- (3) Le ministre transmet le rapport au gouverneur en conseil qui peut, s'il l'estime indiqué, révoquer le membre en cause, le suspendre sans traitement ou prendre toute autre mesure disciplinaire ou corrective.

- [15] The conclusions and recommendations of Mr. Doucet's report, which are attacked by the applicant, are as follows:

[Translation]

- (i) The information I gathered during my interviews and the documents I consulted lead me to conclude that many of the allegations contained in Board member Dugré's affidavit are inaccurate and that certain observations are based on misinterpretations of the facts. Such statements are likely, in my view, to damage the reputation and credibility of the NPB. Moreover, I could see that this affidavit, a public document, has gained some notoriety in the prison community and will make the work of the Board members more difficult.

I also note that in signing this affidavit, Board member Dugré has complicated his relations with his colleagues on the Board. While some Board members told me they would agree to sit with Mr. Dugré, while being careful about what they might tell him, others told me directly that they would refuse to do so. It is obvious that this situation is harmful to the activities of the NPB, Quebec Region.

In my opinion, Board member Dugré erred in signing this affidavit without seriously checking into some of these allegations and that he acted in a way that affects the activities of the NPB. [pages 48 and 49 of the report]

- (ii) It is my opinion that in a number of instances Board member Dugré acted in violation of the NPB's Code of Professional Conduct, oath of office and discretion, as well as the confidence placed in him at the time of his appointment. [page 56 of report]

(iii) From the investigation I conducted pursuant to my terms of reference, I was able to find:

1. that the affidavit of Board member Jean Dugré executed on behalf of Raynald Desjardins in the context of an application for judicial review in the Federal Court (No. 99-T-18) contains a number of imprecisions and inaccuracies;
2. [that] Board member Jean Dugré, through his actions, has breached a number of provisions of the Code of Professional Conduct of the National Parole Board.

Given the conclusions of my report, I advise the chairperson to recommend to the Minister that an inquiry be held under section 155.1 of the Act concerning the actions of Board member Jean Dugré. [page 67 of the report]

- [16] As I indicated earlier, Mr. Doucet had been instructed to investigate and report on two questions. The first concerns the content, truthfulness and credibility of the allegations made by the applicant in his affidavit of May 14, 1999. The second question concerns the consistency of the applicant's actions, namely, the execution of the affidavit of May 14, 1999 and his allegations of interference, with the NPB's Code of Professional Conduct. For the reasons that follow, I have concluded that Mr. Doucet did not have jurisdiction to investigate and report on these questions.
- [17] Mr. Doucet's report is divided into seven sections. Section I is the summary of the report that I reproduced earlier. In section II of his report, Mr. Doucet summarizes the facts that led to the execution of the affidavit of May 14, 1999, i.e. the facts concerning the application for an extension of time filed by Raynald Desjardins in the context of his application for judicial review in the Federal Court. In section III of his report, Mr. Doucet provides an account of the steps he took in the context of his investigation and that enabled him to produce the report he submitted to the Chairperson of the NPB in October 1999. Specifically, Mr. Doucet lists the documents he examined and the names of the people he met with before signing his preliminary report. Mr. Doucet also describes what happened following the sending of his preliminary report and the notices under section 13 of the Inquiries Act, R.S.C. 1985, c. I-11. More particularly, Mr. Doucet describes the correspondence and discussions he had with the applicant and his counsel, Mr. Paquin.
- [18] In section IV of his report, Mr. Doucet does an analysis of the NPB and its operations. He cites the 1994 Report of the Auditor General concerning the process for selecting Board members that existed prior to 1994, and the fact that a new selection process was adopted in 1994. Mr. Doucet goes on to review the responsibilities of the Vice-Chairperson of a regional division and his relationships with the Board members in relation to the distribution of files "[Translation] and all matters of administration that concern them". Mr. Doucet also cites the administrative structure supporting the Board members in the performance of their duties. Finally, Mr. Doucet refers to the Supreme Court of Canada decision in *Mooring v. Canada* (National Parole Board), [1996] 1 S.C.R. 75. Mr. Doucet summarizes this decision at pages 17 and 18 of his report, as follows:

[Translation]

In *Mooring v. Canada (NPB)*, [1997] [sic] 1 S.C.R. 75, the Supreme Court considered the status of the NPB. The Court held that the NPB is neither a judicial nor a quasi-judicial tribunal, but an independent administrative tribunal. As such, it does not hear and assess evidence but instead acts on information. The NPB's hearings differ in several respects from those held in traditional courts. For example, the role of counsel appearing before the Board is limited to that of an assistant. He does not confront any adversary, since the hearing is held for investigative purposes. He may speak at only one point, at the end of the hearing when he may address the Board on behalf of his client. The traditional rules of evidence do not apply to hearings before the Board.

In the Board's risk assessment function, the factors which predominate are those which concern the protection of society. And society's essential interests prevail over the protection of the offender. In assessing the risk to society, the emphasis is on ensuring that all reliable information is considered.

It is trite law that statutory tribunals such as the NPB are required to act fairly when ruling on an individual's rights or privileges. What is the content of the Board's "duty to act fairly"? Mr. Justice Sopinka answers this question as follows:

The content of the duty of fairness varies according to the structure and the function of the board or tribunal in question. In the parole context, the Parole Board must ensure that the information upon which it acts is reliable and persuasive.

The NPB must comply with the principles of fundamental justice in the conduct of its proceedings, and, to this effect, is subject to the dictates of section 7 of the Canadian Charter of Rights and Freedoms.

[19] Section V of Mr. Doucet's report specifically concerns the Quebec regional division of the NPB. At page 21 of his report, Mr. Doucet states that he received no testimony during the course of his investigation that would enable him to conclude that the Vice-Chairperson of the Quebec regional division, Serge Lavallée, had attempted to influence the decisions of his Board members. Finally, Mr. Doucet states that it is common practice in Quebec, in contrast to what happens in the rest of Canada, to have lawyers present at NPB hearings. Mr. Doucet concludes this section with the following statement:

[Translation]

In Quebec, the presence of lawyers at NPB hearings is explained by the fact that legal aid provides funding for inmates who wish to be represented by a lawyer. This has promoted the development of a more "legalistic" culture in the parole context. A number of lawyers have become specialists in prison law and have been appearing regularly for many years before the NPB. They have even organized in an association, the Association des avocats en droit carcéral du Québec. The Barreau du Québec also seems to take a greater interest in the NPB's activities. As a result, the operating culture of the NPB, Quebec region, is much more "legalistic" than that of the

other regional divisions.

[20] In section VI of his report, Mr. Doucet analyzes in detail the allegations contained in the affidavit of May 14, 1999. The following are the conclusions contained in this section:

[Translation]

- In my opinion, and judging from the testimony I gathered and the documents I examined, the allegations contained in paragraphs 5, 6 and 7 that are attributed to Renaud Dutil are inaccurate. [page 28 of the report]
- In my opinion, and judging from the testimony I gathered, the allegations contained in paragraph 8 are inaccurate. Concerning paragraph 9, while it is true that Renaud Dutil was never subsequently invited to sit in the Appeal Division, the reasons for this situation have nothing to do with those that are given in this paragraph. [page 29 of the report]
- In my opinion, and judging from the testimony I gathered, while it is true that Board member Dutil was made use of less often than Board member Beauchesne, this has nothing to do with reprisals but is rather due to his lack of availability given his other professional commitments. [page 31 of the report]
- I did not find any evidence of the existence of an "administration philosophy" to which Board members are to adhere. [page 32 of the report]
- The allegations in paragraph 15(a) are accurate but the reasons for this under-utilization of Board member Vanasse have nothing to do with interference by the administration in the work of the member. [page 34 of the report]
- The allegation in paragraph 15(b) that Board member William Hartzog has heard few cases during his term on the Board is accurate, but the reasons for this under-utilization do not establish interference in the work of the Board members. [page 35 of the report]
- In my opinion, neither the evidence I gathered nor the documents I consulted allow me to conclude that Lucie Demers has been under-utilized and that she has been subjected to reprisals as indicated in paragraph 15(c). [page 37 of the report]
- In my opinion, the statement that Mr. Harel had to abandon his duties as a result of reprisals is not supported by the information I was able to put together from a review of his file. [page 37 of the report]
- In my opinion, it is clear that Daniel Dortéus sincerely believes he was subjected to reprisals for refusing to accept interference in the performance of his duties. However, the testimony and documents I have in my possession do not allow me, in all conscience, to reach this conclusion. [pages 40 and 41 of the report]

- As a result of the information I gathered and the documents I consulted, I conclude that Board member Michel Dagenais was in fact given a negative evaluation for 1997-98. I conclude as well that Board member Dagenais informed certain Board members of his intention to take legal action against Vice-Chairperson Lavallée. However, I have no basis for finding that he threatened the Vice-Chairperson with a legal action.

I conclude that Board member Dagenais and Vice-Chairperson Lavallée met to discuss the evaluation and that during this meeting the Vice-Chairperson suggested to the Board member that he write up a draft evaluation and that he subsequently signed it. This draft evaluation prepared by Board member Dagenais reflected the discussions he had had with the Vice-Chairperson. I conclude as well that Board member Dagenais emerged satisfied from his meeting with the Vice-Chairperson.

It is true that Board members Dugré and Dortélus were given negative performance evaluations for 1997-98. It is also true that the Vice-Chairperson approached both Board members individually to get them to meet to discuss their evaluation. However, Vice-Chairperson Lavallée never proposed to these Board members that they write their own evaluations as is suggested in paragraph 18.

Concerning the comments that these evaluations consisted of reprisals that had nothing to do with the competence of the Board members, I am unable, having examined them, to reach this conclusion. I do recognize, however, that certain statements made in the evaluations could have been more nuanced. [page 43 of the report]

- In my opinion, the comments attributed to Serge Talbot in paragraphs 18 to 22 of the affidavit do not correspond to what he says he told Board member Dugré. [page 45 of the report]
- In my opinion, the events that are alleged in paragraphs 24 and 25 cannot have occurred since the decision in the Desjardins case had already been drafted by Board member Beauchesne and submitted on the morning of December 9, 1997 to the clerk Johanne Rheault. [page 46 of the report]
- In my opinion, and judging from the evidence gathered, the allegation in paragraph 26 is inaccurate. [page 47 of the report]
- It is false to say that Board member Bachand upheld the Appeal Division decision in the Desjardins case on October 12, 1998. [page 47 of the report]
- Given that Board member Bachand's decision in the Appeal Division was rendered on October 1, 1998, contrary to what is alleged in paragraph 27, the conclusions of paragraph 31 are inaccurate. [page 48 of the report]

- [21] Finally, Mr. Doucet's conclusion concerning section VI is at pages 48 and 49. This conclusion is already reproduced in paragraph 15(i) of my reasons and is to the effect that the applicant erred in signing the affidavit of May 14, 1999 "without seriously checking into some of these allegations and that he acted in a way that affects the activities of the NPB".
- [22] Section VII of the report deals with the code of ethics question. Mr. Doucet's conclusion is reproduced at paragraph 15(ii) of my reasons. This conclusion is that the applicant acted in violation of the NPB's Code of Professional Conduct and his oath of office and discretion, and that he undermined the confidence placed in him at the time of his appointment.
- [23] At the end of section VII of his report, Mr. Doucet raises the case of the inmate Raymond Boulanger. At page 57 of his report, Mr. Doucet states:

[Translation]

In the "Whereases" of the order and investigation terms of reference, reference is made to a newspaper article entitled "Parole board member complains of an 'appearance of blatant interference'," published in the Thursday, April 30, 1998 edition of the daily newspaper La Presse. During my interviews, a number of persons mentioned this case. Board member Dugré described the events surrounding this "stab in the back" in so far as the independence of the Board members was concerned. Although this case is not officially part of my terms of reference, I think it deserves some discussion on my part, for the reasons I have just stated.

- [24] I do not know why Mr. Doucet decided to discuss the Boulanger case in his report. When I learned of this text for the first time, I was under the impression that Mr Doucet was going to discuss some allegations of interference that had been raised in the past concerning this case and, more particularly, in the letter that the applicant sent to the Chairperson of the NPB on March 27, 1998. In that letter, the applicant, one of the Board members assigned to sit on the Boulanger case, tries to alert the Chairperson to the fact that there was allegedly some interference in this case. In his letter, the applicant also refers to the remarks by Mr. Justice Jean-Guy Boilard of the Superior Court in the context of an application for habeas corpus filed with him by the inmate Boulanger. The applicant's letter, sent to the Chairperson of the NPB, reads as follows:

[Translation]

As a member of the panel, I wish to inform you of a disturbing situation.

I was assigned to a file, that of Mr. Raymond Boulanger - Sed 233870C on 6/11/97, after Mr. Serge Lavallée, regional Vice-Chairperson and Board member, voted against ordering day parole, on 6/10/97. My colleague Mr. Michel Dagenais, former Chairperson of the NPB, and myself had been delegated by Mr. Lavallée to render a final decision in this speedy review case.

Following the hearing, Mr. Dagenais rendered the decision to order day parole, but I took the liberty of postponing my decision in order to request some additional and essential information for risk assessment, given that a portion of Mr. Lavallée's decision of 6/10/97 and the last-minute change in recommendation of the CSC case management team were based solely on some initially contradictory information from the RCMP some five years later and on some telephone conversations.

I took several days, therefore, to write this adjournment and on 14/11/97, I rendered the decision, stipulating "[Translation] When I have this essential information, I will make the necessary decision. I therefore adjourn my decision for a period of no more than 30 days."

In fact, I never sat on this case again. Except that I knew through some colleagues that another panel had been appointed by Mr. Lavallée to proceed in early December in the same case: Messrs. Lachance and Beauchesne.

Suddenly, 4 months later, I received a memo from Mr. Lavallée telling me that pursuant to an out-of-court agreement I was to rule on my adjournment.

Examining the file, I noticed all this legal commotion, on 17/03-98 only, and I clearly felt they were protecting themselves on the NPB for not returning the file to me. Incidentally, the information requested arrived somewhere in early December, 1997.

Carefully reading the information received and the motion for a writ of habeas corpus with certiorari in aid, I became aware of the appearance of blatant interference in the decision-making process.

I therefore made my final decision some 4 months later albeit despite myself. I then wrote a memorandum to Mr. Lavallée to the effect that it would be important to find out the comments of Judge Boilard. Meanwhile, the applicant's lawyer had forwarded these so-called comments. I was flabbergasted to learn that the Honourable Mr. Justice Jean-Guy Boilard of the Superior Court was stipulating that there was something irregular that had occurred. The administrative process had messed up somewhere and in a lamentable, shocking and scandalous way, he added. All of the Judge's comments speak for themselves.

He therefore ordered the lawyers to reach an agreement among themselves, otherwise he would take the necessary steps (see notes court March 5, 1998)

I believe, therefore, it is essential to conduct an independent and detailed inquiry to bring to light the truth about this matter of appearance of interference and unacceptable conflicts of interest in a panel.

[25] I must say, to my surprise, that Mr. Doucet does not ask himself any questions about the merits of the charges of interference that allegedly occurred in the Boulanger case. Instead, he questions whether the applicant was the one who had informed a reporter for La Presse in relation to the article that appeared in that newspaper on April 30, 1998. After summarizing the relevant facts in the Boulanger case, Mr. Doucet, at pages 58 and 59 of his report, writes:

[Translation]

In the wake of these events [the decision-making in the Boulanger case], which according to his testimony seriously upset him, Board member Dugré sent a letter on March 27, 1998 to the Chairperson of the NPB, with copies to the Minister of Justice and the Solicitor General. In this letter, he recounted the events and requested an investigation into what he considered to be "an appearance of blatant interference" in his work as a Board member. The Chairperson replied to the effect that there had been nothing irregular in this matter and that an investigation was unnecessary.

Almost one month later, the daily newspaper La Presse published an article relating these events. The reporter also reproduced the content of the letter that Board member Dugré had sent to the Chairperson. Board member Dugré states categorically that he never gave this letter to the reporter.

I have no reason to conclude that it was Board member Dugré who informed the reporter of these events and supplied him with a copy of the letter he had sent to the Chairperson of the NPB.

However, it seems surprising to me that, in the affidavit he filed in the Desjardins case, Board member Dugré did not refer to this case, which he nevertheless characterizes as "blatant interference". He chose instead to refer, in paragraph 15, to some situations concerning other Board members. Asked to explain why he had not referred to the Boulanger case to support the allegations in his affidavit, he simply stated that this case was already sufficiently known and that he did not think it was necessary to bring it up again in the affidavit.

[26] Subsequently, at pages 59 to 66 of his report, Mr. Doucet sets forth a number of recommendations concerning the operations of the NPB and, more particularly, the policy of assigning files and evaluating the performance of the Board members. Mr. Doucet also recommends that the NPB avoid having a Board member sit in appeal on a case on which he has previously ruled. Mr. Doucet also recommends that a Board member not sit in appeal on a decision from his own regional division. Finally, Mr. Doucet suggests that meetings be held once a month between the Board members and certain administrators to encourage discussions concerning situations that might be of concern to them.

[27] Subsection 152(4) of the Act authorizes the Chairperson of the NPB to appoint a person or persons to investigate and report on any matter relating to the operations of the Board. In my opinion, the second question assigned to Mr. Doucet does not fit within the framework of

subsection 152(4) of the Act. Rather, it fits within the framework of subsection 155.1(1), which states that the Chairperson may recommend to the Minister that an inquiry be held to determine whether any member of the Board should be subject to any disciplinary or remedial measures for any reason set out in any of paragraphs 155.2(2)(a) to (d), namely, that the member has become incapacitated from the due execution of the member's office by reason of infirmity, is guilty of misconduct, has failed in the due execution of the member's office, or has been placed, by conduct or otherwise, in a position that is incompatible with the due execution of the member's office. The question assigned to Mr. Doucet has to do entirely with the activities of a Board member, the applicant, and whether his activities were consistent with the NPB's Code of Professional Conduct.

[28] To convince oneself that Mr. Doucet's report concerns only the activities of the applicant, I will refer to certain extracts from that report. At pages 51 and 52 of his report, Mr. Doucet criticizes the applicant for irresponsibly executing the affidavit in the Desjardins case. Here is what he says:

[Translation]

In my opinion, based on the information I was able to gather in the course of my investigation, Board member Jean Dugré, through his actions, such as filing an affidavit in the Raynald Desjardins case without checking the allegations and conclusions with the care one would expect from a Board member with his experience, and disclosing information he had acquired as a result of his employment as a Board member, failed to comply with his oath of office and discretion.

...

In agreeing to file an affidavit without exercising the due diligence one is entitled to expect from a Board member with his years of experience in verifying the truth and accuracy of his allegations, observations and conclusions, Board member Dugré breached the provisions of the Code concerning the promotion of the integrity and independence of the NPB. The public notoriety that was given to his affidavit, particularly in the prison environment, had the effect of decreasing in the eyes of the public and the inmates the confidence they might have in the NPB.

[29] Later, at page 53, Mr. Doucet continues in the same vein, stating:

[Translation]

In agreeing to execute an affidavit in favour of Raynald Desjardins in a case involving the NPB and providing in that affidavit inaccurate and unverified information and observations, Board member Dugré acted in a manner incompatible with his responsibilities and duties as a Board member. Among other things, as I noted above, he breached his oath of office and discretion.

[30] Similarly, at page 54 of his report, he states:

[Translation]

In my opinion and based on the evidence gathered, there was a breach on the part of Board member Dugré of his obligation of collegiality. In recounting in the affidavit some conversations he had with other Board members without so informing his colleagues and without ascertaining with them that the allegations he was submitting were accurate, Board member Dugré failed to comply with his obligation of collegiality.

- [31] It seems that Mr. Doucet's overriding concern was in regard to the inaccuracy of the allegations contained in the affidavit. There can be no doubt, in my opinion, that the applicant, a member of the National Parole Board, lacked judgment, to say the least, in executing an affidavit in support of proceedings in the Federal Court seeking to set aside a decision of the NPB's appeal division. Whether the applicant's allegations were accurate or not is not the question. Rather, the question is whether, as a member of the NPB, he could file such an affidavit in proceedings concerning a decision of the NPB. Merely filing this affidavit was sufficient, in my opinion, to raise some questions and possibly warrant the Chairperson of the NPB recommending to the Minister that an inquiry be held under subsection 155.1(1) of the Act. It was unnecessary, in my opinion, to mandate Mr. Doucet to reach this conclusion. Without saying so, Mr. Doucet seems to suggest that if the remarks made by the applicant in his affidavit of May 14, 1999 were accurate and well-founded, his conduct could not give rise to a disciplinary investigation. I certainly do not share that opinion. I am not concluding that the applicant should be disciplined. Such is not my role in the context of an application for judicial review. I am simply saying that it would not be unreasonable for the Chairperson of the NPB to recommend a disciplinary inquiry.
- [32] The first question assigned to Mr. Doucet is the one in relation to the content, truth and credibility of the allegations made by the applicant in his affidavit of May 14, 1999. In relation to this question, Mr. Doucet concluded, at pages 48 and 49 of his report, that the applicant had engaged in misconduct in executing his affidavit without ascertaining that the remarks he made in it were accurate and that he had consequently "acted in a way that affects the activities of the NPB".
- [33] In paragraph 20 of my reasons, I recount Mr. Doucet's findings of fact, which serve as the foundation for the finding of misconduct he arrives at concerning the first question. As I indicated earlier, the allegations contained in the affidavit of May 14, 1999 constitute the actual subject matter of Mr. Doucet's investigation. The reader might, *prima facie*, be under the impression that the purpose of the investigation was to investigate the allegations of interference in decision-making by the members of the National Parole Board, including the allegations made by the applicant in his affidavit of May 14, 1999. However, such is not the case.

- [34] It is clear from reading the report that only the allegations made by the applicant are the subject matter of the investigation. Consequently, Mr. Doucet's investigation is confined solely to the specific allegations contained in the affidavit of May 14, 1999. Moreover, as is clearly apparent from my reasons and more particularly paragraph 20, in which I refer to section VI of the report, Mr. Doucet attempted to determine whether the applicant's allegations had merit.
- [35] I am also of the opinion, as I am in regard to the second question, that this first question does not in any way fit within the framework of subsection 152(4) of the Act. This question, like the second, fits rather within the framework of section 155.1 of the Act. It is obvious, just from reading the report, that the investigation has nothing to do, other than incidentally, with the activities of the Board, but concerns the applicant's activities as a member of the NPB.
- [36] The two questions assigned to Mr. Doucet are intrinsically linked in that the conclusions in relation to the first question constitute the basis for the conclusions in relation to the second question. One need only read the report's conclusions, which are at pages 48, 49, 56 and 57, to be convinced of this. Having concluded that the applicant had engaged in misconduct in filing an affidavit with inaccurate and unfounded allegations, Mr. Doucet concluded that this "misconduct" was such as to constitute a breach of the Code of Professional Conduct, the oath of office and discretion, and of the confidence placed in the applicant at the time of his appointment.
- [37] I would have thought the appropriate mandate for Mr. Doucet under subsection 152(4) of the Act would be that of investigating the allegations of interference made in regard to the NPB, including the allegations made by the applicant. From that standpoint, it is notable that in his letter to the Chairperson of the NPB of March 27, 1998, that is, more than a year before the filing of his affidavit in the Desjardins case, the applicant had attempted to alert the Chairperson to the possibility of interference in the Boulanger case. In that letter, which I reproduced at paragraph 24 of my reasons, the applicant refers to the remarks made by Mr. Justice Boilard in the context of an application for habeas corpus presented to him in the Boulanger case. These remarks, which were criticized by Mr. Lavallée, the regional Vice-Chairperson of the NPB, should in my opinion have aroused some concerns on the part of the NPB Chairperson. The letter Mr. Gibbs sent in reply to the applicant on April 7, 1998 in no way convinces me that Mr. Justice Boilard's remarks aroused any such concern.
- [38] In the same vein, it should be noted that an application for habeas corpus was also presented to Mr. Justice Boilard in the Raynald Desjardins case. At the hearing of December 18, 1998, when he dismissed the application for habeas corpus, Boilard J. made the following remarks, at pages 27 and 28:

[Translation]

And secondly -- and, again, so the situation is very clear -- I too think it would be appropriate to conduct a review of the way in which the National Parole Board functions, and particularly of the activity of those who have been invested with the authority to render decisions.

In the past, I have been confronted with cases in which there was to my satisfaction proof of completely inadmissible interference in a decision that was to be handed down. And in the course of the proceedings that have come before me, I note that absolute transparency is not always *de rigueur* in those proceedings. But it is not my job to conduct this review and especially not to propose any remedies.

[39] The problem of interference was also raised by the Barreau du Québec in a brief in March of 1999. In that brief, reference is made to the remarks of Boilard J. in the Boulanger and Desjardins cases concerning possible interference in the NPB's decision-making process. It is also worth recalling that on August 11, 1998, Mr. Jacques Normandeau, on behalf of the Association des avocats en droit carcéral du Québec, wrote to the Solicitor General of Canada, the Honourable Andy Scott, alluding to the possibility of interference within the NPB. The Boulanger case was expressly cited in that letter.

[40] Given that the possibility of interference in the NPB's decision-making process had been raised more than a year before the applicant's affidavit was filed in the Desjardins case, it is surprising that the Chairperson of the NPB did not appoint an investigator into the question of interference until June 24, 1999. In my opinion, Mr. Doucet was not appointed to investigate and report on questions having to do with the Board's activities. He was appointed to investigate and report on the applicant's activities and conduct. Consequently, in my opinion, Mr. Doucet did not have jurisdiction to investigate and report on the two questions that had been assigned to him by Mr. Gibbs. I am of the opinion that all of the conclusions and recommendations dealing with the applicant's conduct and activities should be struck from the report. So there is no doubt as to the scope of my decision, striking out will include all of Mr. Doucet's conclusions concerning the specific paragraphs in the affidavit of May 14, 1999.

[41] In *Canada (Attorney General) v. Canada (Commission of Inquiry on the Blood System)*, [1997] 3 S.C.R. 440, the Supreme Court of Canada had to rule on the scope and limits of the report of a commission of inquiry on the blood system in Canada. At page 446, Mr. Justice Cory, writing on behalf of the Court, stated the main question for determination by the Court:

What limits, if any, should be imposed upon the findings of a commission of inquiry? Can a commission make findings which may indicate that there was conduct on the part of corporations or individuals which could amount to criminal culpability or civil liability? Should different limitations apply to notices warning of potential findings of misconduct? It is questions like these which must be considered on this appeal.

[42] At pages 469 to 471, Cory J. discusses the issue of what may be included in a commissioner's report:

What then can commissioners include in their reports? The primary role, indeed the *raison d'être*, of an inquiry investigating a matter is to make findings of fact. In order to do so, the commissioner may have to assess and make findings as to the credibility of witnesses. From the findings of fact the commissioner may draw appropriate conclusions as to whether there has been misconduct and who appears to be responsible for it. However, the conclusions of a commissioner should not duplicate the wording of the Code defining a specific offence. If this were done it could be taken that a commissioner was finding a person guilty of a crime. This might well indicate that the commission was, in reality, a criminal investigation carried out under the guise of a commission of inquiry. Similarly, commissioners should endeavour to avoid making evaluations of their findings of fact in terms that are the same as those used by courts to express findings of civil liability. As well, efforts should be made to avoid language that is so equivocal that it appears to be a finding of civil or criminal liability. Despite these words of caution, however, commissioners should not be expected to perform linguistic contortions to avoid language that might conceivably be interpreted as importing a legal finding.

Findings of misconduct should not be the principal focus of this kind of public inquiry. Rather, they should be made only in those circumstances where they are required to carry out the mandate of the inquiry. A public inquiry was never intended to be used as a means of finding criminal or civil liability. No matter how carefully the inquiry hearings are conducted they cannot provide the evidentiary or procedural safeguards which prevail at a trial. Indeed, the very relaxation of the evidentiary rules which is so common to inquiries makes it readily apparent that findings of criminal or civil liability not only should not be made, they cannot be made.

[Emphasis added]

Perhaps commissions of inquiry should preface their reports with the notice that the findings of fact and conclusions they contain cannot be taken as findings of criminal or civil liability. A commissioner could emphasize that the rules of evidence and the procedure adopted at the inquiry are very different from those of the courts. Therefore, findings of fact reached in an inquiry may not necessarily be the same as those which would be reached in a court. This may help ensure that the public understands what the findings of a commissioner are -- and what they are not.

[43] As Cory J. says, the focus of an inquiry is not to find fault but to make findings of misconduct where necessary for the purpose of carrying out the mandate of the inquiry. In my opinion, the focus of the inquiry conducted by Mr. Doucet was to make findings of misconduct in regard to the applicant.

[44] One last point. I clearly do not, in the case at bar, have jurisdiction to make any findings concerning the merits of the applicant's allegations in his affidavit of May 14, 1999. However, I find rather surprising, for example, the conclusion reached by Mr. Doucet at page 28 of his report, that the allegations contained in paragraphs 5, 6 and 7 of the applicant's affidavit are

inaccurate. I find this conclusion surprising in view of the affidavit of Mr. Jacques Normandeau, a lawyer, dated September 15, 1999, which seems to corroborate what the applicant says about the possibility of interference in the Raynald Desjardins case. In an affidavit dated September 8, 1999, another lawyer, Mr. Yves Ménard, also seems to corroborate what the applicant says about the statements allegedly made in confidence to him by Mr. Renaud Dutil in regard to the Desjardins case. In his report, at pages 27 and 28, Mr. Doucet mentions that he reviewed the affidavits of Mr. Normandeau and Mr. Ménard. He says he then contacted Renaud Dutil on October 13, 1999, to confront him with the allegations made by these two lawyers. According to Mr. Doucet, Renaud Dutil "vigorously" denied the allegations made by Mr. Normandeau and Mr. Ménard. Mr. Doucet then concludes that the allegations contained in paragraphs 5, 6 and 7 of the affidavit of May 14, 1999 are inaccurate. Given the affidavits of Mr. Normandeau and Mr. Ménard, who, certainly *prima facie*, fully corroborate the applicant's allegations, it is surprising that Mr. Doucet so readily concluded that the paragraphs in question were inaccurate.

[45] In my opinion, this conclusion is the result of a mandate that should not have been assigned to Mr. Doucet. The true mandate, the one to investigate the applicant's conduct, should have been given to a judge of the Federal Court, as provided by subsection 155.1(2) of the Act.

[46] Accordingly, the application for judicial review will be allowed. The applicant shall be entitled to his costs.

Marc Nadon

J.

O T T A W A, Ontario

June 4, 2001

Certified true translation

Suzanne M. Gauthier, LL.L., Trad. a.

Appendix "A"

A F F I D A V I T

I, the undersigned Jean Dugré, a full-time member of the National Parole Board, the offices of which are situated at the Complexe Guy-Favreau, 200 René-Lévesque Boulevard West, 10th Floor, West Tower, solemnly affirm as follows:

1. I have read the motion by the applicant Mr. Raynald Desjardins bearing number 99-T-18 and the order of the Federal Court;
2. I have been a member of the National Parole Board (NPB) since 1989;
3. From 1989 to January 1993 I acted as a part-time Board member;

4. In January 1993, I was appointed a full-time Board member for a ten (10)-year term ending January 3, 2003;
5. On December 9, 1997, during a meeting of the NPB at the Correctional Service of Canada (CSC) staff college in Laval, Mr. Renaud Dutil, a part-time Board member, told me that there had been no direct violence in Raynald Desjardins' case;
6. Mr. Dutil told me that if he had made a decision to the contrary, i.e. ordering day parole for Raynald Desjardins, he would no longer have been able to work on the Board, being a contractual and at the mercy of the Vice-Chairperson;
7. Indeed, since the initial decision was made by the Vice-Chairperson of the NPB, Mr. S.L., Mr. Dutil's boss, and he is the one who designated Mr. Dutil and Mr. Beauchesne, two part-time Board members, for Mr. Desjardins' hearing, Mr. Dutil said he feared for his employment, this consisted of reprisals;
8. A few weeks later, Mr. Dutil told me that when he sat in the appeal division in Ottawa, he overturned a decision of S.L. and ordered a new hearing;
9. To illustrate his fears, Mr. Dutil confessed to me, and I have been able to observe, that he has never again been designated by Mr. L. to sit in the appeal division;
10. Mr. L. indeed has the power to designate some Quebec Board members to go and sit in the appeal division;
11. A few months later and still in relation to Mr. Desjardins' file, Mr. Dutil told me that in any event the appeal division could not do anything but order day parole, considering the lack of reasons to think that Mr. Desjardins would commit an act of violence prior to the expiration of his term if he were released;
12. Mr. Dutil told me he feared reprisals by the Vice-Chairperson in his work, i.e. no longer being designated to sit on the Board, fears that I consider founded even today;
13. For example, Mr. Dutil, a Board member with 13 years of seniority, was sitting only one or two days per week while Mr. Beauchesne, likewise a part-time Board member since 1996, was at that time working 7 days a week, more than a full-time Board member, although Mr. Dutil was available;
14. It was common knowledge among the members of the Board that if they did not adhere to the administration philosophy, there was little chance they could sit as part-time Board members even if they were available;
15. By way of examples:
 - (a) Mr. Y.V., a former part-time Board member, sat only a few times during his first year term, notwithstanding his availability;

- (b) Mr. W.H., a former part-time Board member, did not sit at all during the last two years of his term and very little during the first, notwithstanding his availability;
 - (c) Ms. L.D., a former part-time Board member, had to leave her position before her term was up because she was little used notwithstanding her availability and, moreover, she was subjected to reprisals;
 - (d) Mr. P.H., a former full-time Board member with 14 years of experience, was forced to abandon his duties as a result of reprisals;
 - (e) Mr. Daniel Dortélus, a former part-time Board member, was also subjected to reprisals for refusing to accept interference in the performance of his duties. As a reprisal, he was summonsed to the Board's office more often than any of the other Board members;
 - (f) Mr. Michel Dagenais, a former Chairperson of the NPB and a full-time Board member, was given a very negative performance evaluation by Mr. L, for reasons that had nothing to do with his skills as a Board member;
16. After reading his evaluation, Mr. Dagenais threatened to sue Mr. L., the Vice-Chairperson, and the latter notified him that he could henceforth redo his own evaluation at his convenience and that he, Mr. L., would subsequently sign it as if he were its author, which he did;
17. Mr. Dagenais had me read these two evaluations;
18. My colleague Mr. Dortélus and I , having also received negative evaluations, refused to discuss this possibility with Mr. L., since these evaluations consisted of reprisals that had nothing to do with the evaluation of our skills as Board members;
19. Concerning Mr. Desjardins' hearing, the case management officer responsible for his file, Mr. S.T., filed a report that did not recommend Mr. Desjardins' release;
20. Mr. T. confirmed to me more than once that he had been pressured by his colleagues when writing his report not to recommend Mr. Desjardins' release, given the status he represented in terms of society;
21. Mr. T. also confirmed to me that this case did not entail any violence that could warrant a negative recommendation or decision;
22. However, Mr. T. concluded his report in the negative, on the pretext that he had no other option and hoped that the Board members would remedy the situation;
23. During the training session of December 9, when the Board members were in the main auditorium, a large number of members noticed that the administrators S.L., M.F. and J.-M. T. were in turn frequently leaving the room;

24. Mr. Dagenais for his part confessed to me that he had witnessed the way in which the Desjardins decision had been written, which seemed to explain the comings and goings of the administrators;
25. Indeed, Mr. Dagenais told me that at the Board meeting of December 9, 1997, at the CSC Laval staff college, he had seen Messrs. S.L., the Vice-Chairperson, M.F., the conditional release manager, and J.-M. T., the regional director of the NPB, settle into an office with Mr. Beauchesne at the time when the latter was working on drafting the Desjardins decision;
26. Mr. Dagenais also confided to me that he had attended a dinner with some Board members that day, December 9, during which Mr. Beauchesne bragged that he had padded his decision with so many reasons of all kinds that the appeal division would never manage to overturn it;
27. In fact, Mr. A.B., a full-time Board member in the appeal division in Ottawa, upheld the Desjardins decision on Monday, October 12, 1998, Thanksgiving Day;
28. According to the official documents, prior to the signing of this decision, on Tuesday the 6th, Wednesday the 7th and Thursday the 8th of October, 1998, Mr. A.B., a Board member in the appeal division, was at the Donnacona Institution to sit alongside Mr. S.L., the Vice-Chairperson, who had been the initial decision-maker in the Desjardins case;
29. Also according to these documents, on Wednesday, October 7, the Board was to hear four custody cases, also in the Donnacona Institution, requiring the presence of three Board members;
30. Mr. L., who has the power to designate the Board members at first instance, then assigned Mr. Beauchesne to sit alongside Mr. A.B. and himself for that day;
31. The Board panel on that day, October 7, was therefore composed of the first and second decision-makers in the Desjardins case, as well as the decision-maker on appeal, who was to render his decision 5 days later, again according to the official documents;
32. As a Board member for 10 years, I have had the opportunity to work for two other Vice-Chairpersons of the NPB before Mr. L.: Messrs. Philippe Young and Keith Morgan;
33. At this time all temporary Board members had the same number of hearing days per week, and the work was allocated evenly;
34. Everything was done to facilitate the work of the Board members and none of them had to undergo any pressure of any kind from the NPB administration;
35. Mr. Dagenais told me a few weeks ago that if he were to be called some day to testify in a court of law on what he had known in the process of the Desjardins and other cases, he would willingly go;
36. Mr. Michel Dagenais died on May 12, 1999 at the Hôpital Saint-Luc in Montréal.

In witness whereof, I have signed in Montréal, this 14th day of May, 1999

[signature]

Jean Dugré, Board member

Affirmed before me in Montréal, this 14th day of May, 1999

[illegible]

FEDERAL COURT OF CANADA

TRIAL DIVISION

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET NO: T-1765-99

STYLE: JEAN DUGRÉ v. MICHEL DOUCET ET AL.

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: November 29, 2000

REASONS FOR ORDER OF NADON J.

DATED: June 4, 2001

APPEARANCES:

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David Lucas FOR THE RESPONDENTS

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[1] To enable the reader to better follow and understand, a copy of this affidavit is attached as Appendix "A" to these reasons.

[2] In paragraph 8 of his Memorandum, Mr. Paquin, the applicant's counsel, writes:

The applicant submits to this Honourable Court that his submissions in fact and in law in opposition to the report of August 29, 1999 [sic] that is the subject matter of this appeal on judicial review, apply as well in opposition to the October report filed in the docket of this Court under number GB-3 of the affidavit of Ms. Gisèle Brunet filed by counsel for the Deputy Attorney General of Canada.

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