

Federal Court of Appeal



Cour d'appel fédérale

Date: 20181115

Docket: A-329-17

Citation: 2018 FCA 210

**CORAM: STRATAS J.A.
RENNIE J.A.
LASKIN J.A.**

BETWEEN:

CHANTAL DUNN

Applicant

and

**ATTORNEY GENERAL OF CANADA, OFFICE OF THE PUBLIC SECTOR
INTEGRITY COMMISSIONER AND SYLVIE LECOMPTE**

Respondents

Heard at Ottawa, Ontario, on November 15, 2018.

Judgment delivered at Ottawa, Ontario, on November 15, 2018.

REASONS FOR JUDGMENT OF THE COURT BY:

THE COURT

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REASONS FOR JUDGMENT OF THE COURT

[1] Ms. Dunn applies for judicial review of the decision dated October 3, 2017 of the Public Servants Disclosure Protection Tribunal (*per* Member Annis): 2017 PSDPT 3. The Tribunal dismissed her application under the *Public Servants Disclosure Protection Act*, S.C. 2005, c. 46 for relief arising from alleged reprisals taken against her.

[2] Among other things, the Tribunal made certain adverse credibility findings concerning certain witnesses. This, and other evidence, led it to conclude there was no adverse effect on Ms. Dunn's employment and working conditions and, thus, no reprisal against her. See the Tribunal's reasons at paras. 151, 168, 169, 232, 338, 353 and 358.

[3] Mr. Yazbeck submits, among other things, that the Tribunal's legal findings that *de minimis* reprisals are not caught by the Act and that intention is a necessary element of reprisals under the Act are both wrong in law. He says that these wrong legal findings tainted the Tribunal's factual findings, above. We do not agree that the factual findings were tainted. Overall, we consider the key factual findings of the Tribunal, above, to be unaffected by and independent of the legal issues the Tribunal canvassed.

[4] Bearing in mind the considerable deference that we must accord to the Tribunal's fact-finding, we see no ground to interfere with the Tribunal's decision.

[5] We wish to raise a larger concern with how the Tribunal proceeded in this case. In hundreds of paragraphs, it delved deeply into several legal issues and ventured opinions on them. This was not necessary to decide the case before it. By acting in this way, the Tribunal ran counter to the imperative of expedition in subsection 21(1) of the Act, caused much waste and needless expense for the parties in this application, and greatly complicated our task of review.

[6] In eloquent and forceful submissions, Mr. Yazbeck, supported by Ms. Virc, urged us to settle some of these legal issues owing to the deleterious effect of what the Tribunal incorrectly

held, the importance of the legal issues, the critical nature of the Act, and the key role of the Act in our governance. We agree the legal issues in this case, the Act and its role are important. But settling the legal issues in this case would take us too far into a law-making role. Mr. Yazbeck drew to our attention useful studies that postdated the Tribunal's decision concerning workplace reprisals, and more studies may come. Further, the decisions of other Tribunal members on the legal issues may inform a future court's consideration of them.

[7] Therefore, we decline to deal with these legal issues in this case. But we wish to add that many of the legal conclusions reached by the Tribunal in this case warrant critical scrutiny. As a matter of administrative law, other members of the Tribunal are not bound by the legal conclusions reached here: see, *e.g.*, *Canada (Attorney General) v. Bri-Chem Supply Ltd.*, 2016 FCA 257, [2017] 3 F.C.R. 123 at para. 40 and authorities cited therein. If the particular case requires it, and until this Court settles the matter, a member of the Tribunal is free to conduct her or his own analysis and reach different legal conclusions.

[8] We will dismiss the application with costs to the Attorney General fixed by agreement at \$3,500, all inclusive.

“David Stratas”

J.A.

“Donald J. Rennie”

J.A.

“J.B. Laskin”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:

A-329-17

**AN APPLICATION FOR JUDICIAL REVIEW OF THE DECISION OF THE PUBLIC
SERVANTS DISCLOSURE PROTECTION TRIBUNAL, DATED OCTOBER 3, 2017
FILE NO. T-2016-01**

STYLE OF CAUSE:

CHANTAL DUNN v. ATTORNEY
GENERAL OF CANADA, OFFICE
OF THE PUBLIC SECTOR
INTEGRITY COMMISSIONER
AND SYLVIE LECOMPTE

PLACE OF HEARING:

Ottawa, Ontario

DATE OF HEARING:

NOVEMBER 15, 2018

REASONS FOR JUDGMENT OF THE COURT BY:

STRATAS J.A.
RENNIE J.A.
LASKIN J.A.

DELIVERED FROM THE BENCH BY:

STRATAS J.A.

APPEARANCES:

David Yazbeck
Michael Fisher

FOR THE APPLICANT

Michel Girard

FOR THE RESPONDENT,
ATTORNEY GENERAL OF
CANADA

Sonia Virc

FOR THE RESPONDENT,
OFFICE OF THE PUBLIC
SECTOR INTEGRITY
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SOLICITORS OF RECORD:

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Ottawa, Ontario

FOR THE APPLICANT

FOR THE RESPONDENT,
ATTORNEY GENERAL OF
CANADA

FOR THE RESPONDENT,
OFFICE OF THE PUBLIC
SECTOR INTEGRITY
COMMISSIONER