

Federal Court



Cour fédérale

**Date: 20200313**

**Docket: T-1495-18**

**Citation: 2020 FC 376**

**Ottawa, Ontario, March 13, 2020**

**PRESENT: Mr. Justice Norris**

**BETWEEN:**

**REGAN DOW**

**Applicant**

**And**

**CANADIAN NUCLEAR SAFETY  
COMMISSION**

**Respondent**

**JUDGMENT AND REASONS**

[1] In May 2017, Regan Dow, the applicant, made a complaint to the Canadian Nuclear Safety Commission [CNSC], the respondent. She alleged that her former employer, Canadian Nuclear Laboratories [CNL], had taken disciplinary action against her, including terminating her employment, for assisting or giving information to the CNSC. It is an offence under paragraph 48(g) of the *Nuclear Safety and Control Act*, SC 1997, c 9 [NSCA] to take “disciplinary action against a person who assists or gives information to an inspector, a designated officer or the

Commission in the performance of the person's functions or duties under this Act." Ms. Dow alleged that CNL had committed this offence because it took disciplinary action against her after she had provided certain information to the CNSC in October 2016 regarding the conduct of CNL.

[2] In the October 2016 complaint, Ms. Dow had raised concerns about information CNL had provided to the CNSC concerning its operations. She also made a number of complaints about how she had been treated by CNL. Since this was the first time Ms. Dow had made a complaint to the CNSC about anything, there was no suggestion at that time that CNL's adverse treatment of her was because she had provided information to the CNSC. Ms. Dow raised that issue only later, in her May 2017 complaint. Among other things, Ms. Dow alleged that CNL terminated her employment as a Senior Quality Specialist in April 2017 because she had complained to the CNSC in October 2016.

[3] By its own admission, initially the CNSC did not fully investigate Ms. Dow's May 2017 complaint. However, it agreed to re-open the investigation in February 2018. Investigators from the Technical Services Branch of the CNSC met with and interviewed Ms. Dow and several other individuals. They received and reviewed a number of relevant documents. The investigation resulted in an eighty-three page, single-spaced report dated June 2018. As set out in the report, the investigators concluded that there was no evidence that CNL had taken disciplinary action against Ms. Dow for assisting or giving information to the CNSC. The investigators determined that, apart from her termination, most if not all of the examples of mistreatment by CNL that Ms. Dow alleged had occurred before the October 2016 complaint to

the CNSC. Most importantly, the investigators also determined that CNL did not learn that Ms. Dow had made a complaint to the CNSC until November 25, 2016. The employment-related issues that eventually led to Ms. Dow's termination had nothing to do with this complaint and, in any event, had arisen before November 25, 2016.

[4] In a letter dated July 9, 2018, Peter Elder, Vice-president and Chief Science Officer, Technical Services Branch, informed Ms. Dow that the investigation into her complaint had been completed. He enclosed with his letter a two page summary of the conclusions of the investigation. While not stated in so many words, it was clear from the letter and the summary of conclusions that, having found no evidence that CNL had committed an offence under the NSCA, the CNSC would not be taking any further action on Ms. Dow's complaint.

[5] Ms. Dow has applied for judicial review of the disposition of her complaint by the CNSC under section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7. Her principal ground for seeking review is that the CNSC's investigation, including its ultimate decision to take no further action because there was no evidence that CNL had committed an offence, breached the requirements of procedural fairness. Ms. Dow seeks an order setting aside this decision and referring the matter back to the Technical Services Branch for "further consideration and determination."

[6] The CNSC opposes the application for judicial review on several grounds but in my view one ground is sufficient to dispose of the application. I agree with the CNSC that it is not open to Ms. Dow to seek judicial review of CNSC's disposition of her complaint because she is not

“directly affected by the matter in respect of which relief is sought,” as section 18.1(1) of the *Federal Courts Act* requires. As a result, this application must be dismissed.

[7] Section 18.1(1) of the *Federal Courts Act* provides as follows:

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.

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

[8] It is a fundamental precondition of the right to seek judicial review of a matter under section 18.1 of the *Federal Courts Act* that, unless one is the Attorney General of Canada, the applicant must be “directly affected by the matter in respect of which relief is sought.” As this precondition has been interpreted in the jurisprudence, it captures two distinct questions. One is whether the “matter” in question is susceptible to judicial review. The other is whether an applicant has standing to bring an application for judicial review. There may be circumstances where the answers to these two questions diverge. For example, a matter may be susceptible to judicial review but not at the behest of the particular applicant who has brought the application. In the present case, however, I find that the answers converge and support the same outcome.

[9] An administrative body’s conduct does not trigger a right to bring a judicial review application where the conduct attacked “fails to affect legal rights, impose legal obligations, or cause prejudicial effects” (*Air Canada v Toronto Port Authority*, 2011 FCA 347, [2013] 3 FCR 605, at paras 28-29; *Bernard v Close*, 2017 FCA 52 at para 2; *Democracy Watch v Canada (Attorney General)*, 2018 FCA 194 at para 29; *Laurentian Pilotage Authority v Corporation des*

*Pilotes de Saint-Laurent Central Inc*, 2019 FCA 83 at para 31). Put another way, does the disposition of the complaint have any independent legal or practical effect for Ms. Dow? If it does not, it is not reviewable at her behest (cf. *Taseko Mines Limited v Canada (Environment)*, 2019 FCA 319 at para 36).

[10] This question dovetails with the principal ground of review on which Ms. Dow relies, namely, that there was a breach of the duty of procedural fairness ( cf. *Irving Shipbuilding Inc v Canada (Attorney General)*, 2009 FCA 116, [2010] 2 FCR 488, at para 28 [*Irving Shipbuilding*]). Where a party has a right to procedural fairness, they must have the right to bring the matter to Court to establish a violation of that right (*Chinatown & Area Business Association v Canada (Attorney General)*, 2019 FC 236 at para 71 [*Chinatown & Area Business Association*]; *Irving Shipbuilding* at para 28). For a party to have a right to procedural fairness in respect of a matter, the matter must affect that party's rights, privileges or interests (*Cardinal v Director of Kent Institution*, [1985] 2 SCR 643 at 653).

[11] For the sake of completeness, I note that section 18.1(1) of the *Federal Courts Act* can permit applications for judicial review by a party who is not directly affected by the matter in respect of which relief is sought in this sense as long as that party meets the test for public interest standing instead (see *Chinatown & Area Business Association* at paras 72-73 and the cases cited therein, including *Canada (Attorney General) v Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45 at para 37). Ms. Dow relied on public interest standing in the alternative in her original application for judicial review but, as a result of the subsequent abandonment of certain grounds, there is no longer any basis for considering such

standing. The case thus turns on Ms. Dow's assertion of personal standing to bring this application.

[12] I have concluded that Ms. Dow is not directly affected by the CNSC's disposition of her complaint in a way that gives rise to a right to seek judicial review of that matter.

[13] Ms. Dow does not suggest that the CNSC's disposition of her complaint imposes any legal obligations on her.

[14] Ms. Dow does submit that the disposition of her complaint could cause prejudicial effects in the form of harm to her professional reputation. However, assuming for the sake of argument that this sort of harm could trigger a right to seek judicial review (cf. *Chapman v Canada (Attorney General)*, 2019 FC 975 at paras 31-36), Ms. Dow provided no evidence that the disposition of her complaint affected her professional reputation in any way.

[15] The disposition of the complaint does not affect Ms. Dow's legal rights, either. More particularly, the decision to take no further action on her complaint does not deprive Ms. Dow of a legal remedy to which she might otherwise have had recourse. The steps the CNSC may take in relation to an allegation that an offence was committed under section 48(g) of the *NSCA* are limited. Most importantly, the CNSC does not have the power to order a personal remedy for the party against whom an unlawful disciplinary measure was taken. This stands in marked contrast to the powers of the Public Servants Disclosure Protection Tribunal, which may order a personal remedy for someone who suffered a reprisal for having disclosed alleged wrongdoing (see *Public*

*Servants Disclosure Protection Act*, SC 2005, c 46, section 21.7(1)). Even if the CNSC had concluded that there was evidence that CNL had committed an offence under the *NCSA* and proceeded with a charge against CNL, there could be no personal remedy for Ms. Dow.

Conversely, even if the CNSC's conclusion that there was no evidence that CNL had committed an offence was erroneous, this would not deprive Ms. Dow of a right to a remedy (cf. *Agnaou v Canada (Attorney General)*, 2015 FCA 29 at para 66). Finally, the disposition of the complaint by the CNSC did not prevent Ms. Dow from pursuing other kinds of legal recourse in relation to her employment with CNL, including an action for wrongful dismissal.

[16] In sum, absent any impact on her legal rights, legal obligations, or other sufficient interests, Ms. Dow was not directly affected by the CNSC's disposition of her complaint in a way that gives rise to a right to seek judicial review of that determination. Similarly, the necessary precondition for Ms. Dow to have a right to procedural fairness and for the CNSC to be under a corresponding duty to her in conducting its investigation is absent. There can be no doubt that Ms. Dow disagrees with and is disappointed by the outcome of her complaint to the CNSC. However, this alone cannot ground an application for judicial review.

[17] For these reasons, Ms. Dow's application for judicial review must be dismissed.

[18] The CNSC did not seek costs and none will be awarded.

**JUDGMENT IN T-1495-18**

**THIS COURT'S JUDGMENT is that**

1. The application for judicial review is dismissed without costs.

“John Norris”

---

Judge



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

**DOCKET:** T-1495-18

**STYLE OF CAUSE:** REGAN DOW v CANADIAN NUCLEAR SAFETY  
COMMISSION

**PLACE OF HEARING:** OTTAWA, ONTARIO

**DATE OF HEARING:** DECEMBER 4, 2019

**JUDGMENT AND REASONS:** NORRIS J.

**DATED:** MARCH 13, 2020

**APPEARANCES:**

David Yazbeck

FOR THE APPLICANT

Roy Lee

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Raven, Cameron Ballantyne &  
Yazbeck LLP  
Ottawa, Ontario

FOR THE APPLICANT

Attorney General of Canada  
Ottawa, Ontario

FOR THE RESPONDENT