

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20150922**

**Dockets: A-203-14  
A-206-14**

**Citation: 2015 FCA 206**

**CORAM: NADON J.A.  
WEBB J.A.  
BOIVIN J.A.**

**Docket: A-203-14**

**BETWEEN:**

**SHIV CHOPRA**

**Appellant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**Docket: A-206-14**

**AND BETWEEN:**

**MARGARET HAYDON**

**Appellant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

Heard at Ottawa, Ontario, on September 22, 2015.  
Judgment delivered from the Bench at Ottawa, Ontario, on September 22, 2015.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**NADON J.A.**

**Federal Court of Appeal**



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**REASONS FOR JUDGMENT OF THE COURT**  
**(Delivered from the Bench at Ottawa, Ontario, on September 22, 2015).**

**NADON J.A.**

[1] In appeals A-203-14 and A-206-14, the appellants and the respondent take issue with that part of Mactavish J.'s decision of March 25, 2014 (2014 FC 246) wherein she held that the adjudicator, in a decision dated August 4, 2011 (2011 PSLRB 99), had failed to address material facts and arguments relevant to the issues of delay and condonation. Hence, on that basis, she allowed the appellants' judicial review applications and returned the matter to the adjudicator for redetermination in accordance with her reasons.

[2] The appellants challenge the Judge's decision on the grounds that she failed to deal with five of the six substantive issues raised by them in support of their submission that the adjudicator's decision should be set aside. The appellants say that the five unaddressed issues raise important questions with respect to the law on public statement by public service employees which, if successful, are determinative of their judicial review applications.

[3] As, in their view, the adjudicator's redetermination decision will be limited to the issue of condonation, the appellants say that by not addressing the five issues, the Judge has, in effect, prevented them from obtaining a decision on the merits of these issues. Thus, in the circumstances, if they are not successful on the redetermination of the condonation issue, they will have lost the opportunity of having the other issues determined and consequently will suffer prejudice.

[4] As we understand the appellants' position, their premise is that the adjudicator's decision of August 4, 2011 is now final other than in respect of the issue of condonation.

[5] In our opinion, the appeals should be dismissed.

[6] Because of her conclusion that the appellants' judicial review applications were to be allowed on the ground that the adjudicator had made a reviewable error with regard to whether Health Canada, the appellants' employer, had condoned their conduct, the Judge stated at paragraph 221 of her reasons that there was no need for her to address the other substantive arguments put forward by the appellants regarding the speaking out grievances.

[7] As a result, the Judge granted the appellants' judicial review applications (in Federal Court files T-2029-11 and T-2030-11) and remitted the matter back to the same adjudicator for redetermination in accordance with her reasons. By granting the appellants' judicial review applications, the Judge necessarily was setting aside the adjudicator's decision (see paragraph 221 of her reasons). This means, in our respectful opinion, that the adjudicator's decision of August 4, 2011 is no longer valid, it is of no effect.

[8] In our view, the adjudicator's redetermination decision will constitute a "new decision" and will be subject to a full challenge by any of the parties if not satisfied with the result. In other words, should the appellants wish to raise any of the issues which they say the Judge failed to address, they shall be at liberty to do so.

[9] Consequently, we cannot agree with the appellants that by failing to address the other five substantive issues raised in their challenge of the adjudicator's decision, the Judge has

precluded them from raising these issues in the context of a judicial review application of the adjudicator's redetermination decision.

[10] For these reasons, the appeals will therefore be dismissed with costs.

[11] We now turn to the respondent's cross appeals wherein the respondent says that the Judge was wrong to disturb the adjudicator's determination of the issue of condonation, i.e. that Health Canada had not condoned the appellants' conduct.

[12] In our view, there is no basis to intervene. We have not been persuaded that the Judge erred in concluding, as she did at paragraph 220 of her reasons, that the adjudicator had failed to address material facts and arguments relevant to the issues of delay and condonation. In other words, we are satisfied that it was open, on the record before her, for the Judge to reach her conclusion.

[13] The cross appeals will therefore be dismissed with costs.

"M. Nadon"

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKETS:** A-203-14 and A-206-14

**DOCKET:** A-203-14

**STYLE OF CAUSE:** SHIV CHOPRA v. ATTORNEY  
GENERAL OF CANADA

**AND DOCKET:** A-206-14

**STYLE OF CAUSE:** MARGARET HAYDON v.  
ATTORNEY GENERAL OF  
CANADA

**PLACE OF HEARING:** Ottawa, Ontario

**DATE OF HEARING:** SEPTEMBER 22, 2015

**REASONS FOR JUDGMENT OF THE COURT BY:** NADON J.A.  
WEBB J.A.  
BOIVIN J.A.

**DELIVERED FROM THE BENCH BY:** NADON J.A.

**APPEARANCES:**

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