Anne E. Posno
416-865-3095
aposno@litigate.com

June 12, 2015

Reprisal Triggers 60-day Time Limit to Seek Protection under Whistle Blower Legislation

In a judicial review, the Federal Court upheld the decision of the Public Sector Integrity Commissioner (Commissioner) not to investigate a complaint under whistle blower legislation – the Public Servants Disclosure Protection Act, S.C. 2005 c. 46 (Act) -- on the grounds of a 6-year delay.

In a judicial review, the Federal Court upheld the decision of the Public Sector Integrity Commissioner ("Commissioner") not to investigate a complaint under whistle blower legislation – the *Public Servants Disclosure Protection Act*, S.C. 2005 c. 46 ("*Act* ") -- on the grounds of a 6-year delay.

This decision confirms that, unless there is a good reason to stay silent at the time of a reprisal, a complaint should be filed within 60 days of the reprisal if one wishes to seek statutory protection under the whistle blower legislation.

On January 10, 2014, the applicant first complained to the Commissioner that he had suffered ongoing reprisals in the workplace since 2008, after he disclosed wrongful conduct by his supervisors. At the time, the applicant was a research scientist with National Resources Canada.

The reported wrongful conduct involved an alleged illegitimate transfer of money from one contract to another contract. The validity of the alleged reprisals and the nexus between the "protected disclosure" and the prohibited reprisals remain untested by the Commissioner and the court.

The main issue was the lengthy delay in bringing the complaint. The *Act* requires a complaint to be filed no later than 60 days from when an applicant knew or ought to have known of a reprisal, subject to the Commissioner's authority to extend the time limit.

The applicant argued that the time limit should be extended because the reprisals were ongoing, following the reasoning in other limitation period cases. After a review, the Commissioner held that there was no reason to extend the time to investigate allegations preceding November 2013. There was "an overwhelming lack of information supporting an extension on the time to file".

In upholding the discretionary decision of the Commissioner,

the Court emphasized that the intention of the *Act* is to ensure that complaints are brought quickly, followed by efficient investigations and decisions. The procedures are to be effective, not protracted.

Both the Commissioner and court noted that the applicant had knowledge of the whistle blower legislation in January 2009, but chose not to engage it.

The applicant's reference to the treatment of ongoing reprisals under the *Canadian Human Rights Act* to circumvent the 60-day time limit backfired. The court found the distinct statutory language between the legislation to be intentional.