

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20160127**

**Docket: A-402-15**

**Citation: 2016 FCA 27**

**CORAM: TRUDEL J.A.  
STRATAS J.A.  
RYER J.A.**

**BETWEEN:**

**SEAN CAVANAGH**

**Applicant**

**and**

**CANADA REVENUE AGENCY**

**Respondent**

Heard at Toronto, Ontario, on January 27, 2016.  
Judgment delivered from the Bench at Toronto, Ontario, on January 27, 2016.

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

**TRUDEL J.A.**

**Federal Court of Appeal**



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**REASONS FOR JUDGMENT OF THE COURT**  
**(Delivered from the Bench at Toronto, Ontario, on January 27, 2016).**

**TRUDEL J.A.**

[1] In a January 19, 2015 decision, an adjudicator for the Public Service Labour Relations and Employment Board (the Board) rejected Mr. Cavanagh's grievances against his employer, the Canada Revenue Agency (CRA), with respect to three disciplinary actions against him for conflict of interest and for insubordination. The disciplinary actions included two suspensions

and culminated in termination of his employment. The Board's decision is cited as 2015 PSLREB 07.

[2] Mr. Cavanagh applies to this Court for judicial review of the Board's decision. He alleges that the adjudicator misinterpreted the CRA's *Conflict of Interest Code and Guidelines* and failed to consider his collective agreement, leading to an incorrect conclusion. He also alleges the adjudicator exceeded jurisdiction by affirming the CRA's disciplinary actions.

[3] It has previously been determined that the standard of review of a decision of the Board with respect to dismissal or disciplinary action is reasonableness (*Payne v. Bank of Montreal*, 2013 FCA 33, [2013] F.C.J. No. 123; *King v. Canada (Attorney General)*, 2013 FCA 131, [2013] F.C.J. No. 551). There is no reason in this case to disturb this settled law or to accept Mr. Cavanagh's invitation to afford less deference to the Board's decision because of the impact of its decision on Mr. Cavanagh's life or because the Board lacks expertise in business valuation.

[4] It would therefore only be appropriate to disturb the decision if it failed to meet the well-established standard of transparency, intelligibility and justification, or fell outside the range of reasonable outcomes (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at paragraph 47). To the extent that Mr. Cavanagh raises a true question of jurisdiction, this is to be addressed on a standard of correctness (*Ibidem* at paragraph 50).

[5] We have not been persuaded that the adjudicator's decision was unreasonable or otherwise subject to reversal. The adjudicator's reasons are thorough and demonstrate a complete

understanding of the facts and of Mr. Cavanagh's arguments. His conclusions that Mr. Cavanagh was in a conflict of interest position due to outside activities, that Mr. Cavanagh's resistance of the CRA's instructions to cease these activities constituted insubordination, and that the disciplinary actions against him were warranted were all justified by the evidence before the Board.

[6] We see no merit to the distinction Mr. Cavanagh seeks to raise between the existence of a potential conflict and his characterization of his outside activities as a situation where a conflict could exist and the ensuing argument that management could not act upon an apparent conflict of interest, as it had found (applicant's memorandum of fact and law at paragraphs 61 and 75). Neither do we accept his allegation that the adjudicator "created evidence outside that put forward by the parties." According to Mr. Cavanagh, the record shows that his involvement in the specific activities for which he was allegedly sanctioned by his employer had ceased well before or while he was under the cease and desist order from his employer so there was no evidence upon which a cease and desist order could be based on.

[7] In our view, having carefully examined the record, the adjudicator's interpretation of the *Conflict of Interest Code and Guidelines* and application to the evidence before him were entirely reasonable.

[8] Finally, the adjudicator clearly acted within his jurisdiction to hear Mr. Cavanagh's grievances and determine whether they ought to be allowed (*Public Service Labour Relations Act*, S.C. 2003, c. 22, s. 2, at ss. 209, 223, 226).

[9] For these reasons the application for judicial review will be dismissed, with costs.

"Johanne Trudel"

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-402-15  
**STYLE OF CAUSE:** SEAN CAVANAGH v. CANADA  
REVENUE AGENCY  
**PLACE OF HEARING:** Toronto, Ontario  
**DATE OF HEARING:** JANUARY 27, 2016  
**REASONS FOR JUDGMENT OF THE COURT BY:** TRUDEL J.A.  
STRATAS J.A.  
RYER J.A.  
**DELIVERED FROM THE BENCH BY:** TRUDEL J.A.

**APPEARANCES:**

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On his own behalf  
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CANADA REVENUE AGENCY

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