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Federal prosecutor fights decision to keep her from running in federal election

Kathryn May, Ottawa Citizen, April 5, 2015



Emilie Taman, a prosecutor with the Public Prosecution Service of Canada, wants the Federal Court to set aside a decision preventing her from seeking nomination as a federal candidate as “unreasonable” because it fails to balance her obligations as a public servant – to be loyal and politically impartial – with her constitutional right to seek public office. Bruno Schlumberger / Ottawa Citizen

A federal prosecutor is challenging a Public Service Commission decision that denied her permission to seek a federal party nomination in the riding of Ottawa-Vanier to run in this year’s election. Emilie Taman, a prosecutor with the Public Prosecution Service of Canada (PPSC), wants the Federal Court to set aside the decision as “unreasonable” because it fails to balance her obligations as a public servant — to be loyal and politically impartial — with her constitutional right to seek public office.

The Association of Justice Counsel, which represents 2,700 lawyers working in government, has taken on Taman's case.

AJC president Leonard MacKay, also a prosecutor, said the union fears the commission's decision sets the stage for a "blanket prohibition" on federal prosecutors ever running for office.

"We fear the worst," said MacKay. "Maybe some can't run because they are so visible and make potentially political decisions in their prosecution work, but we want to make sure that most can do so. It's a delicate balance of Charter rights and employee obligations."

MacKay said most provincial prosecutors are allowed to take leave from their jobs and run in provincial and federal elections.

For example, Julie Bourgeois, an assistant Crown attorney for Ontario, ran as a Liberal candidate in the riding of Glengarry-Prescott-Russell during the 2011 election and went back to that job when she lost. Alex Burton, a Crown prosecutor for British Columbia, ran for the leadership of the federal Liberal party.

The most notable example is Peter MacKay, the current minister of Justice and Attorney General, who was fired as a Crown prosecutor for Nova Scotia when he sought the Progressive Conservative nomination in his riding in 1997.

MacKay filed a wrongful dismissal suit, arguing a law that forbade doctors, lawyers and dentists in the public service from seeking office was unconstitutional. MacKay, who won election, eventually reached a settlement with the province, which included a review of the law. The law was rewritten to remove the blanket restrictions on which public servants could pursue political office.

On the federal front, the Public Service Commission is the watchdog of Canada's non-partisan public service and its main job is to ensure the bureaucracy stays neutral.

In December, the commission concluded Taman's ability to do her job impartially might be "impaired or perceived to be impaired" because of the visibility, recognition and "increased publicity" that would accompany her nomination or candidacy.

The commission has the exclusive authority to decide who can seek nominations and run in elections. Public servants who want to seek a nomination or run for office must get its approval. If approved, they take leave without pay during the election period. If elected, they must leave the public service.

The commission investigates all requests, interviewing would-be candidates, their supervisors and senior management.

It weighs a range of factors when deciding whether the visibility of a nomination or election race will affect the future impartiality of public servants should they lose and come back to work. The nature of their work, specific duties, role, level and importance in the department's hierarchy and public visibility are all considered.

Taman graduated from law school in 2004 and has been a federal prosecutor since 2008.

She handles regulatory prosecutions such as cases under the Immigration and Refugee Protection act, the Fisheries Act and Income Tax Act. She has also had two cases under the Lobbying Act.

As a lawyer, Taman follows in the footsteps of her well-known mother, Louise Arbour, a former Supreme Court of Canada justice who also served as the chief prosecutor for war crimes tribunals in the former Yugoslavia and Rwanda. Arbour was courted by the Liberals to run for office in the mid- and late-2000s but did not do so.

In an affidavit, Taman said she was involved in student councils as a youth and is active in community politics but has never been involved with a political party. Taman is said to be interested in the NDP nomination. Party officials say the nomination meeting hasn't been scheduled and wouldn't comment on whether Taman was a potential nominee.

The commission decision concluded she has a "high-level of autonomy" and decision-making. She offers legal advice to the RCMP and other federal organizations about prosecutions, can apply for seizure or forfeiture of property and is involved in plea and sentencing discussions with defence lawyers.

It noted she is "highly visible" when she appears in court where the public, as well as friends and family of the accused, might attend. She might also have to deal with the media about her cases.

The decision said the Public Prosecution Service's (PPSC) director, Brian Saunders, was particularly concerned that seeking a nomination or candidacy "indicated a significant allegiance to a political party and its platform which would undermine the independence" of the office's prosecutions.

"It is the Commission's view that this, in turn, could lead to a perception in that Ms Taman is not able to perform her duties in a politically impartial manner," said the commission decision.

The commission felt a leave of absence or returning to work other than that a prosecutor for a period of time if she lost would not "mitigate" the risk of political impartiality. It also noted senior management said the office was too small to accommodate her request for non-prosecutorial duties.

The union argues the commission didn't base its decision on the duties of her actual position and put too much stock on the concerns of senior management who presented the "broad principles of prosecutorial discretion" and the office's mandate.

In an affidavit, Taman called management's concerns about her "high visibility" an exaggeration and insisted "nothing I do is highly visible."

She also took exception to management's claims that she had a "high level of autonomy" arguing that the PPSC has a "consultative culture" and prosecutors are encouraged to consult with supervisors on their decisions, not make them on their own.

Historically, tensions surrounded the independence of the federal prosecution service when it was part of the Department of Justice answering to the Attorney-General who is also a cabinet minister.

The Public Prosecution Service was created in 2006 — as part of the Conservatives' Federal Accountability Act — to ensure prosecutors are immune from partisan influence.

Taman's case is the first case of a prosecutor being denied the right to run since the PPSC's creation, which the union fears could set a precedent.

"The description of the prosecution duties relied upon in the (commission) decision could easily describe virtually every prosecution job in the country — both federal and provincial," said the AJC's MacKay.

"The reasoning in that decision is tantamount to a blanket prohibition on federal prosecutors seeking office. As soon as senior management says that PPSC cannot (or will not) 'accommodate' a prosecutor seeking nomination, we can expect (the commission) to rubber stamp this decision, as they did here."