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AJC in the News – L’AJJ fait les manchettes

Decision unduly limits political rights of prosecutors: lawyers’ union

David Dias, Canadian Lawyer Blog, October 15, 2015

The union representing federal prosecutors is considering whether an appeal is in order after a recent decision that, despite stipulations to the contrary, may amount to a “blanket prohibition” on public prosecutors running for office.

Len MacKay, president of the Association of Justice Counsel, says the Federal Court’s decision on Tuesday upholding the firing of Emilie Taman — now running as an NDP candidate in the Ottawa-Vanier riding — sends a chilling message to federal prosecutors seeking political office.

“If somebody of Ms. Taman’s position is not permitted to run for office, I do fear that there’s a blanket prohibition,” says MacKay, “but the decision clearly states otherwise, that it’s not a blanket decision.”

Taman, a former prosecutor in the regulatory and economic prosecutions and management branch of the Public Prosecution Service of Canada, submitted a request in November 2014 to the Public Service Commission for an unpaid leave of absence while she sought the NDP nomination.

That request was denied after the commission considered Taman’s arguments as well as those of her employer. While the PPSC argued that the perception of Taman’s impartiality as a prosecutor would be irreparably damaged if she were allowed to run for office, Taman argued her Charter rights to engage politically must be accommodated if at all possible.

Indeed, in her submissions to the PSC, Taman lays out a number of ways in which she might be able to return to her job without jeopardizing the impartiality of the prosecutors’ office, including “firewalls” that would prevent her from dealing with a matter in the rare instance that it’s politically sensitive.

Despite failing to get permission, Taman decided to run anyway — which led the PPSC to fire her on administrative grounds. Taman then issued a grievance with her union, the Association of Justice Counsel, which also backed her application to have the Federal Court set aside the PSC’s decision.

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This week's ruling by Justice Catherine Kane upholds the PSC's denial and consequently the PPSC's termination order, which has left the AJC considering its options.

"I can tell you that the AJC and counsel for Ms. Taman are looking at the decision and reviewing it for the possibility of an appeal," says MacKay. "Certainly if you have a panel of three appellate-level judges, then I suspect you'd get a better look at the issues at hand."

The union president says that, while he saw no glaring error in Kane's decision, he found it frustratingly myopic in that it focused on provisions within the federal Public Service Employment Act while ignoring the fact that provincial statutes currently allow public prosecutors to run for office.

"They simply deflected those arguments by saying, 'Well that's not under the PSEA. We're only considering this act.'

"If all the other provinces think it's okay for public prosecutors to run for office, how could that be completely irrelevant?" asks MacKay.

While he acknowledges that political expression must be limited for civil servants, he wonders whether a prohibition on running for office — which he calls the "ultimate political expression" — crosses the line.

"I think you should be able to pursue just about any political action you want, if you're no longer working for the government. If you're willing to take that step, to take a leave of absence from your employment without pay and detach yourself from that position, you should be free to do things politically, including running for office."

Former federal prosecutor Emilie Taman can't run for office and keep her job, court rules

Kathryn May, Ottawa Citizen, October 14 2015

Ottawa-Vanier NDP candidate Emilie Taman has lost her bid to have the Federal Court overturn the Public Service Commission's refusal to let her run in the federal election.

In her ruling, Federal Court Justice Catherine Kane said the commission's decision was a "proportionate" balancing of Taman's rights as a citizen and her job as an impartial public servant. Kane said the commission had protected her constitutional rights as "fully as possible" in the situation.



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Taman, a former federal prosecutor, was seeking to set aside the PSC decision as “unreasonable,” arguing it failed to balance her obligations to be a loyal and impartial public servant with her constitutional right to seek public office.

Taman felt the commission put too much emphasis on the Public Service Employment Act, which governs public service neutrality, at the expense of Charter rights.

The commission has the exclusive right to grant leave for public servants who want to run as candidates in elections. Public servants who get approval can take leave without pay during the election period. If elected, they must leave the public service. In Taman’s case, the commission refused to give her permission. She ran anyway and was fired.

Kane said it wasn’t possible to fully protect Taman’s right to freedom of expression and to run in an election and let her return to her job as a federal prosecutor if she lost the election on Oct. 19.

“While she is not prohibited from pursuing her rights, the cost of doing so is the loss of her position as a federal prosecutor and public servant,” wrote Kane.

Taman’s battle for public servants’ political rights became a cause célèbre. She is the most high-profile of 13 federal public servants running in this election, since she took the PSC to court over its refusal to let her become a candidate. While waiting for a hearing, she decided to defy the commission’s order and run anyway, losing her job for it.

Taman has filed a grievance to fight her dismissal and that process is still underway.

The Association of Justice Counsel, which represents Justice Canada lawyers, backed Taman in her challenge because it feared the PSC’s decision sets the stage for a “blanket prohibition” on federal prosecutors ever running for office.

One issue is that the prosecution service’s management recommended the PSC reject Taman’s leave because her ties to a political party would undermine the office’s independence and her perceived impartiality if she lost and returned to work.

“I don’t want this decision to heighten the chill felt across the public service that is leaving many fearful of engaging publicly in the democratic process,” said Taman. “Many public servants have been granted leave to run in the election. The decision is specific to federal prosecutors.”



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In the election, Taman has argued for more respect for the public service and repairing the relationship between bureaucrats and politicians while bringing back the critical role of experts, scientists and fact-based public policy.

Taman said her case was aimed at clarifying the rules and guidelines for public servants seeking to run in elections.

Taman had hoped the court would recognize that police officers or prosecutors in all provinces other than New Brunswick have the right to seek election and said the provinces have found ways to mitigate any concerns about impartiality if these workers return to their jobs.

“I have profound respect for the judicial process,” Taman said. “I had hoped for a different outcome given that the charter-protected right to run for office has been accommodated by prosecution services in virtually every province across Canada.”

La candidate Emilie Taman perd sa cause

Paul Gaboury, Le Droit, le 14 octobre 2015

La Cour fédérale a rejeté la demande de contrôle judiciaire de l'avocate Emilie Taman contre la Commission de la fonction publique (CFP), qui lui avait refusé la permission d'être candidate néo-démocrate aux élections fédérales du 19 octobre prochain.

Celle qui tente de déloger le député libéral sortant dans Ottawa-Vanier, Mauril Bélanger, s'est dite déçue de la décision de la Cour fédérale.

«J'ai un profond respect pour le processus judiciaire, a-t-elle déclaré. J'espérais une autre issue, étant donné que le droit de se présenter aux élections, garanti par la Charte, a été reconnu par les services des poursuites provinciales un peu partout au Canada.»

Ses conseillers juridiques et son syndicat, l'Association des juristes de justice, étudieront la décision avant de décider de faire appel ou pas.

Malgré le refus de la CFP, M^{me} Taman, fille de l'ex-juge de la Cour suprême Louise Arbour, avait quand même décidé de se présenter à l'investiture néo-démocrate dans Ottawa-Vanier, qu'elle a remportée. Depuis, elle a été congédiée par son employeur, congédiement qu'elle conteste dans une procédure de grief distincte de sa demande à la Cour fédérale. Elle était jusqu'à récemment procureure fédérale au Service des poursuites pénales du Canada.



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Madame Taman a persisté dans cette affaire afin de clarifier les règles s'appliquant aux fonctionnaires en matière d'élections. Elle souligne que cette décision s'applique spécifiquement aux procureurs fédéraux.

La candidate néo-démocrate souhaite maintenant que cette décision ne «s'ajoutera pas à la peur qui règne dans la fonction publique et qui décourage les gens de s'engager publiquement dans le processus démocratique».

«Il y a pourtant pas mal de fonctionnaires qui ont obtenu un congé pour se présenter aux élections», a-t-elle indiqué.

Si la Cour a rejeté la demande de contrôle judiciaire, elle a toutefois reconnu que ses droits avaient été bafoués, explique M^{me} Taman. La Cour a statué qu'elle avait agi avec intégrité en suivant à la lettre les procédures nécessaires à l'obtention de la permission et du congé sans solde requis pour se présenter aux élections. De plus, ses arguments déposés devant la Commission étaient détaillés. En outre, elle a relevé tous les éléments importants de sa cause, soulevé avec franchise les aspects de son travail qui auraient pu donner une impression de partialité et fourni des avenues pour y répondre.

NDP candidate Emilie Taman loses bid to campaign and keep federal prosecutor job

Ottawa-Vanier candidate has 'no regrets' she decided to run
CBC News, October 14 2015

The Federal Court has ruled the Public Service Commission used "proportionate balancing" when it denied a federal prosecutor a leave of absence without pay to seek the federal NDP nomination in Ottawa-Vanier.

Emilie Taman applied for a judicial review after losing her job when she decided to run against Liberal incumbent Mauril Bélanger.

"Obviously, I'm disappointed. I have been pursuing this largely as a matter of principle," she told CBC News Wednesday about the ruling.

"I wasn't hinging my personal well-being on the outcome of this process, but I wanted to have clarity from the court for the benefit of my colleagues and those who may come after me."



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Federal Court Judge Catherine Kane ruled in a decision released Tuesday that while Taman's charter rights were limited, the commission struck the right balance "with the principle of political impartiality in the public service."

Taman said she has "no regrets" that she decided to run.

She will review the Federal Court's 51-page decision with her union before deciding whether to file an appeal. But with the federal election less than a week away, she said it might not be worth pursuing.

"I'm hopeful that the question of a judicial review will be moot because I will have a new job next week as a member of Parliament for Ottawa-Vanier," she said.

Bélanger has represented the riding federally for more than 20 years, taking nearly 62 per cent of the vote at his peak in 1997, but slipping to 38 per cent last election in 2011, as the NDP candidate took 29 per cent and the Conservative candidate took 27 per cent.

David Piccini is the Conservative candidate in this federal campaign.

[Read the full Federal Court decision here.](#)

A once-spurned Liberal candidate is suddenly shining brightest

Aaron Hutchins follows Liberal candidate **Marco Mendicino** on the campaign trail in the Toronto riding of Eglinton–Lawrence

Aaron Hutchins, Maclean's, October 15 2015

A sure sign of the election campaign nearing its end is lying on doorsteps around the Toronto riding of Eglinton–Lawrence. As Liberal candidate **Marco Mendicino** goes door-knocking, some homes have pamphlets for all the major parties outside—his included.

Based on the campaign lawn signs, the majority seem to have already decided how they're voting: Most of them are red, but an almost equal number are blue. There's enough orange, too, to make an impression. A three-way race is what many locals first expected in a riding with candidates like the Conservatives' Finance Minister Joe Oliver and the NDP star candidate, Andrew Thomson, a former Saskatchewan finance minister.

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By comparison, the Liberal candidate, Mendicino, is a political rookie, which might explain why leader Justin Trudeau announced in February that Conservative MP Eve Adams was jumping ship to join the Liberals and would vie for the party's candidacy in the riding.

But Mendicino is not a rookie in the politics of persuasion. A former federal prosecutor, he was co-lead prosecutor on the case that prosecuted the "Toronto 18" terror group. He didn't grumble publicly about Adams parachuting into the riding. Instead, he went door-knocking and perhaps saved Trudeau from an early political blunder.

Lifelong Liberals weren't impressed by the Tory defector's arrival. A Forum Research survey in February, soon after Adams announced her intention to seek the nomination in Eglinton–Lawrence, suggested it would be an uphill battle for the new Liberal. Oliver polled at 49 per cent while Adams's early numbers were at 28 per cent. "I couldn't believe when she walked across the aisle and Trudeau started touting her as the next big thing," says John Crawley, a local retiree. "I never send emails, but I sent one [to] the Liberal party and said, 'Forget it. That's it.'" A staunch Liberal, Crawley wasn't going to vote for Adams under any circumstances. Fortunately for the Grits, Mendicino trounced Adams in the open nomination. What does Crawley think of Mendicino? "He's Liberal, so it doesn't matter," Crawley says, "as long as it's not Eve Adams and it's not Oliver." One more vote for the Liberals. One by one, it's added up.

If Mendicino wins, not only would he reclaim a seat that had previously gone Liberal in every election since the riding was created in 1979, but he would become the third person to unseat an incumbent finance minister since Confederation. Projections this week from the poll aggregator site ThreeHundredandEight.com give Mendicino an 82 per cent chance of winning Eglinton–Lawrence, perhaps with more than half of the votes in the riding. Mendicino knows the polls, and uses them to his advantage.

It's been about two weeks since Melissa Morrow contacted the NDP, asking for a sign for her front gate in support of Thomson. She respects that leader Tom Mulcair remained firm in his stance to repeal Bill C-51, has remained strong on women's issues and also brought in Thomson to run against Oliver. "If they didn't have confidence in their platform and being elected [in Eglinton–Lawrence], why would they run such a big, qualified candidate in this riding?" the mother of two young girls says. "I felt that gave them a lot more legitimacy."

A longtime Liberal voter, Morrow says her decision to switch to the NDP was largely based on the *Maclean's* debate; she had high hopes for Trudeau, but felt he didn't have any concrete numbers to back up his pledges. "It was just rhetoric," she says. But she also sees a different set of numbers online, these ones from a Forum poll in late September that had Mendicino surging to front-runner status with 44 per cent of the vote, while Oliver dropped to 38 per cent and Thomson a distant third with 17 per cent.



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She says she doesn't like how the Liberals are trying to scare people with the prospect of vote-splitting, but adds that she would be upset if she voted NDP and ended up missing a chance to oust Oliver.

Mendicino has heard this argument before. He tells NDP leaners like her to vote with their conscience, but with a twist. "If your conscience is telling you to get rid of Mr. Harper, I think the two are reconcilable," he says. Which means the best way to do that is vote Liberal in the riding.

Judy Goddard, a longtime Conservative supporter in the riding who once worked on Brian Mulroney's campaign, also sees troubling signs. Why, she asks, are so many big names—such as John Baird, James Moore and Peter MacKay—not running this time around? If the Tories or Liberals win on Oct. 19, she won't be distraught. But if Trudeau wins a minority, "[the Liberals] are more likely to hop in bed with the NDP, and that terrifies me," she says.

At one door, another voter in the riding says Harper's inability to draw star candidates is one reason why he is choosing Liberal this time around.

Mendicino would probably have been welcomed as a star by any party. He studied law at the University of Windsor, which is also where he met his wife, also a lawyer. Out of law school, he got a job articling with the Department of Justice. He then had a stint with immigration law, tax law services, the war crimes unit in Ottawa, then criminal law. His biggest trial was that of the Toronto 18, a case he thinks about often. When asked if he remembers all their names, he lists half with ease before losing track after chatting with a constituent waiting by the door. After nearly a decade as a federal prosecutor, he worked for a year at the Law Society of Upper Canada before becoming co-owner of the firm Ellis Mendicino. In August 2014, he told his family and friends he wanted to get into politics.

At some doors, he'll ask locals for their support, only to be met with an apology that they won't be voting for him. "Is it the blue team?" Mendicino will ask. He'll get a nod in return.

But then there are those NDP signs he hopes to persuade. "It's probably going to be a game-day decision," Morrow says. "It doesn't look very good to have an orange sign and vote red, but we'll see what happens." Mendicino wouldn't object.

Former Supreme Court Justice Louise Arbour sounds alarm over financial tracking law

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**Could affect 'politically-exposed' persons like judges, MPs, military officers and their families
CBC News, October 15 2015**

A retired supreme court justice and former United Nations human rights commissioner whose daughter is running in the 2015 federal election is sounding the alarm about an obscure piece of legislation designed to track the financial transactions of so-called "politically-exposed persons."

Louise Arbour said her daughters **Emilie** and Catherine have been unfairly targeted by their banks and have been asked personal questions about their finances — inquiries about deposits, income sources, and the names of family members on joint accounts — because of the legislation.

Her daughter Catherine had her account suspended until she answered the questions, Arbour added.

"You wonder why they would be asking such questions." Arbour told Robyn Bresnahan, host of CBC's *Ottawa Morning*, on Friday.

Emilie Taman is a federal prosecutor who is running for the NDP in the [riding of Ottawa-Vanier](#). Earlier this week, Taman lost a legal battle to keep her job after she was denied a leave of absence with pay to run for federal office.

Although the phone calls to her daughters came three years ago, Arbour — who wrote an editorial in the *Globe and Mail* this week about the little-known legislation — said she wanted to speak out now because of changes to the law [introduced in a 2014 omnibus bill](#), slated to go into effect next year.

The earlier version of the legislation, introduced in 2008, targeted "politically-exposed foreign persons" and their families, said Arbour.

Arbour believes she and her family shouldn't have been covered by that legislation. But last June, that legislation was updated as part of Bill C-31, officially titled "An Act to implement certain provisions of the budget tabled in Parliament on February 11, 2014 and other measures."

The new bill amended the [Proceeds of Crime \(Money Laundering\) and Terrorist Financing Act](#) to include "politically-exposed foreign persons" — such as mayors, high-ranking military officers, heads of government agencies, and the "holder of any prescribed office or position."

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The amendments also would cover family members of those individuals and people who are "closely associated, for personal or business reasons." They would also cover judges like Arbour.

'Invasion of privacy rights'

Arbour said the amendments are misguided. "I think it casts a very wide net to catch, frankly, probably, very few fish," Arbour said.

"Maybe elsewhere in the world, the capacity for moving money illegally belongs to this elite class of public servants. Maybe they have better access to the means to do that. I don't think there's any evidence in Canada that that's where the problem is," said Arbour.

A debate on the new legislation "at the very least" should have taken place, she added.

"This is not an earth-shattering issue. But it's also a pretty serious additional invasion of privacy rights, which I think has been increasingly invaded by a government that's very keen on surveillance of every sort," said Arbour.

Landmark case could open doors for N.W.T.'s North Slave Métis Alliance

Favourable outcome could mean more funding, leverage in land claim negotiations
CBC News, October 13 2015

[The outcome of a landmark Métis rights case now before the Supreme Court of Canada](#) could open doors for the N.W.T.'s North Slave Métis Alliance.

"It's conceivable here that the government of Canada would have to negotiate a land claim with the North Slave Métis people as Métis, through our Métis ethnicity," says alliance president Bill Enge.

In 1999, Métis leader Harry Daniels started the Métis and non-status Indian rights case. Daniels died in 2004, but his case finally went before the Supreme Court on Thursday.

The top court is being asked to determine whether Métis and non-status Indians in Canada have the right to be treated as "Indians" under the Constitution Act and fall under federal jurisdiction.



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The Métis case argues they do not get the same access to health, education and other benefits Ottawa gives status Indians: being able to hunt, trap, fish and gather on public land; and the ability to negotiate and enter treaties with the federal government.

Enge says a favourable decision in the Harry Daniels case could make a big difference for the North Slave Métis Alliance.

He says the outcome of the case would mean funding to run their band offices, similar to what First Nations get, and it could give them leverage in future land claim negotiations.

Enge says he's optimistic the Supreme Court will rule in the Métis' favour, but he doesn't expect a decision until the middle of next year.

The N.W.T. Métis Nation, which has been negotiating a land claim in the southern part of the N.W.T. for years, recently [signed an agreement-in-principal with the federal government](#).

Doctor-assisted dying panel asks Canadians to share thoughts online

**Forming report after Canada's top court struck down assisted-dying prohibition in January
CBC News, October 13 2015**

After canvassing people from Switzerland, Belgium and the Netherlands for their thoughts on doctor-assisted suicide, Dr. Harvey Max Chochinov now wants to hear from Canadians.

Chochinov, the Canada Research Chair of Palliative Care at the University of Manitoba, is a member of the [External Panel on Options for a Legislative Response to Carter v. Canada](#).

The panel's task, said Chochinov, is to come up with options for "a legislative response" by whichever government wins the upcoming federal election to the [Supreme Court of Canada's 2015 decision](#) to allow physician-assisted dying in limited cases.

"This is a profound issue for all Canadians. This is an issue that's going to change the way we in Canada approach issues related to suffering," said Chochinov, speaking Tuesday to the CBC Radio's Robyn Bresnahan, host of *Ottawa Morning*.

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Unanimous ruling in February 2015

In their unanimous ruling from February 2015, Canada's highest court overturned a ban on physician-assisted euthanasia, determining that people with grievous and irremediable medical conditions should have the right to ask a doctor to help them die.

The court's ruling only applies to competent adults with enduring, intolerable suffering who clearly consent to ending their lives. Federal and provincial governments were given 12 months to craft legislation to respond to the ruling, with the ban on doctor-assisted suicide standing until then.

If the government doesn't write a new law, the court's exemption for physicians will stand.

'With kindness, with wisdom'

"In Canada, it's no longer a question of if euthanasia-assisted suicide will happen, or when it will happen," said Chochinov, adding that his panel's task is to produce a report that will ensure the implementation of the court's ruling is done "with kindness, with wisdom and with integrity."

The report will be produced independently, and will not be "negotiated with whoever the government of the day is," said Chochinov, one of three panelists appointed by Stephen Harper's government in July.

Before that happens, Chochinov hopes to hear a diverse range of opinions from Canadians, who can contribute by sharing their thoughts and insights on the panel's website.

People have until Oct. 19 to submit their personal views to the panel, and until Nov. 1 to complete the panel's "issue book," an online questionnaire that asks people to submit their opinions on a wide range of issues relating to doctor-assisted suicide.

"Our panel is listening with what we've called 'empathic neutrality,'" said Chochinov. "We understand that everybody coming to this has the well-being Canadians and how they die — how they die well — at heart."