



Lawyers' union to fight for prosecutor turned political hopeful

Kathryn May, Ottawa Citizen, July 6, 2015

The union for Canada's federal lawyers is prepared to defend prosecutor Emilie Taman if she loses her job for defying the Public Service Commission so she could seek the NDP nomination in the riding of Ottawa-Vanier.

→ Len MacKay, president of the Association of Justice Counsel, said he expects Taman will be suspended or fired but "we will defend her no matter what happens" and fight for her to get her job back.

"We are willing to defend her in any way we can if she is fired to ensure she is reinstated," said MacKay.

Taman, a prosecutor with the Public Prosecution Service of Canada (PPSC) and daughter of former Supreme Court Justice Louise Arbour, announced plans on the weekend to run for the NDP nomination despite objections from the watchdog overseeing neutrality in the public service.

She didn't formally resign from the public service and took what she called an "unauthorized leave," which can be grounds for dismissal.

Taman was previously warned by her bosses to be at work on Monday even though she prepared them for her departure, turning over her files to colleagues and clearing out her office last week.

Taman said she has heard nothing from the PPSC or the commission on whether she is being disciplined. If she does, she can file a grievance with the union to challenge it.

David Zussman, a former PSC commissioner, said the commission can move for her dismissal, but that would take months and the election is only 14 weeks away.

The PSC refused last December to give Taman leave so she run in the October federal election. Taman went to the Federal Court to set aside the PSC decisions as "unreasonable" because it

fails to balance her obligations to be a loyal and impartial public servant with her constitutional right to seek public office.

The case won't be heard until Sept 1, which means Taman won't have a ruling before the nomination meeting. She recently asked the PSC to reconsider its decision and grant her leave until the Federal Court determines her case, but it refused.

The PSC has the exclusive authority to decide who can seek nominations and run in elections. Public servants who get approval can take leave without pay during the election period. If elected, they must leave the public service.

MacKay said the union took on Taman's case from the start because the PSC's ruling could set the "precedent" to deny leave for all federal prosecutors who may want to run in an election. Taman's case is the first of a prosecutor being denied the right to run since the PPSC's creation.

A big concern 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.

He said the next milestone in defending bureaucrats' political rights is to allow them to return to the public service if they win and lose that seat after a four-year term. There are no rules stopping defeated MPs from getting a job in the public service or cabinet ministers getting judicial or other appointments requiring impartiality.

"There is not a huge distinction in impartiality between running for a party and being successful or being unsuccessful. If you are unsuccessful you are still held out as being tied to a party so I don't think it should matter whether you are successful or not. There are enough checks and balances in the system that to allow a return to the job."

MacKay said he understands concerns about impartiality and feels the principle should apply to public servants in more senior jobs who are making policy, providing litigation advice or working with ministers and political staff and need their confidence.

But he argues front-line prosecutors handling routine cases should not be stopped from seeking a nomination or a candidacy. He said Taman prosecutes cases on the directions from her bosses and she doesn't have complete discretion on the handling of cases.

The Supreme Court of Canada's pivotal Osborne decision in 1991 changed the landscape for public servants, who were once forbidden to take part in political activities. That ruling recognized principle of political neutrality but it had to be balanced with the right of public servants to participate in political activities.

As a result, public servants can take part in political activities as long as it doesn't impair or compromise their ability to do their jobs impartially — or leave a perception of compromise.

For the upcoming federal election, the PSC has considered 39 requests for leave from public servants who want to run.

But Zussman said there is an inherent conflict that makes that line between neutrality and political activity difficult to draw. He said he has long said public servants shouldn't be politically active.

He said the rules are inconsistent when former politicians can join the public service or the prime minister can appoint party faithful and cabinet ministers to the judiciary or other patronage appointments that require neutrality.

Until the Conservatives came to power, former political staff were able to get a priority on jobs in the public service.

Zussman said the PSC puts public servants through an investigation if they want to run for office but there is little scrutiny of other political activities. They can write speeches, canvass, fundraise and campaign for candidates, write letters to the editor endorsing a candidate or attend peaceful demonstrations on political issues.

Zussman said he finds it hard to reconcile that public servants can be loyal public servants "by day and spend evenings advocating to get rid of the government you serve."