

Public Servants Disclosure Protection Tribunal

Application by the Public Sector Integrity Commissioner of Canada

In the Matter of:

David Joy

Complainant

-and-

Blue Water Bridge Canada

Respondent

Notice of Application

Pursuant to paragraph 20.4(1)(a) of the *Public Servants Disclosure Protection Act*, S.C., 2005, c. 46 (PSDPA) and in accordance with Rule 5 of the *Public Servants Disclosure Protection Tribunal Rules of Procedure*, SOR / 2011-170, I am hereby making an application to the Public Servants Disclosure Protection Tribunal (the "Tribunal") for a determination of whether or not a reprisal, as defined under subsection 2(1) of the PSDPA, was taken against the Complainant and for a remedy in favour of the Complainant.

Basis for the Application

1. This Application relates to Mr. David Joy's termination of employment from Blue Water Bridge Canada (BWBC) on March 19, 2013 and the subsequent decision by BWBC to reduce the Complainant's severance benefits and entitlements.
2. Mr. Joy is a former public servant, as defined under subsection 2(1) of the PSDPA, who was employed at BWBC for close to 11 years; he held the position of Chief Financial Officer/Human Resources Manager when his employment was terminated.

3. The respondent BWBC is a federal parent Crown corporation as defined in the *Financial Administration Act*, R.S.C., 1985, c. F-11 and as incorporated under the *Blue Water Bridge Authority Act*, S.C. 1964-65, c. 6. The corporation operates and maintains an international bridge located between Sarnia, Ontario and Port Huron, Michigan.
4. On March 20, 2013, Mr. Joy made a reprisal complaint to the Office of the Public Sector Integrity Commissioner (the "Office" or PSIC) under subsection 19.1 of the PSDPA, alleging that his termination of employment, under the guise of a reorganization at BWBC, was in fact a reprisal measure taken against him for having made a protected disclosure of wrongdoing as defined under the PSDPA. He also alleged that he was subjected to a series of additional reprisal measures subsequent to his termination, including a reduction of his severance benefits and entitlements, the release of his personal information in a press release when his employment was terminated and a delay in being paid some of his severance entitlements.
5. The Complainant identified four persons as being responsible for the alleged reprisal measures taken against him:
 - Mr. Charles Chrapko, the former President and Chief Executive of BWBC;
 - Mr. Marcel Beaubien, the Chair of the Board of Directors for BWBC;
 - Mr. Larry Kinley, Board Member; and
 - Mr. Gary Atkinson, Board Member.
6. My Office investigated Mr. Joy's reprisal complaint and based on the results of the investigation, I find that there are reasonable grounds to believe that Mr. Joy's loss of employment and the subsequent reduction of his severance benefits were reprisal measures taken against him by BWBC because of his protected disclosures of wrongdoing. Accordingly, I have determined that an application to the Tribunal is warranted in regard to this complaint, pursuant to paragraphs 20.4(1)(a) and 20.4(3)(a) of the PSDPA.
7. As the results of the investigation do not suggest that the issuance of a press release by BWBC with respect to the terminations of employment at BWBC and BWBC's delay in paying some of the Complainant's severance entitlements were reprisals, these allegations will not be pursued by my Office at the hearing of this complaint before the Tribunal.

Summary of the Complaint

8. Mr. Joy had his employment with BWBC terminated on March 19, 2013 on the basis that his position was declared “redundant”. The Complainant immediately believed that his employment was being terminated because of his involvement in making a protected disclosure of wrongdoing. He filed a reprisal complaint with my Office the very next day, on March 20, 2013.
9. The Complainant made a protected disclosure of wrongdoing to my Office on February 21, 2012. The disclosure concerned inappropriate severance payments made to two former employees of BWBC. This disclosure was investigated and resulted in a finding of wrongdoing against the former President and Chief Executive, Mr. Chrapko.
10. On December 21, 2012, my Office issued a preliminary investigation report in relation to this disclosure to Mr. Chrapko, in accordance with my obligations under subsection 27(3) of the PSDPA. Mr. Chrapko subsequently shared the preliminary investigation report with Board members. My Office also provided its preliminary investigation report to the Clerk of the Privy Council on December 27, 2012 and to the Minister responsible for BWBC on January 10, 2013.
11. In late January 2013, Mr. Chrapko announced his resignation from BWBC, effective March 15, 2013.
12. My Office completed its investigation into this disclosure on May 6, 2013. As required under the PSDPA, I tabled a case report in Parliament in regard to that matter on June 6, 2013.
13. The Complainant’s involvement in this disclosure began in August 2011. On August 29, 2011, in his capacity as Chief Financial Officer, the Complainant wrote a memorandum to the former President, Mr. Chrapko, in which he stated that the severance payment being proposed to a departing employee was inappropriate and he asked Mr. Chrapko to reconsider his decision. In this memorandum, he also referenced a previous severance payment made to another former employee of BWBC. The Complainant regarded both payments as being excessive and unjustified under the circumstances of these employees’ departures.
14. As the Complainant felt that his concerns were not being addressed by the former President, he subsequently contacted Transport Canada officials, who advised him that he could make a disclosure of wrongdoing to my Office. He also brought his concerns to the attention of the Office of the Auditor General of Canada as part of its audit of BWBC. On February 10, 2012, he also reported to Mr. Beaubien, who was at the time a member of the Board of Directors, a possible conflict of interest involving Mr. Chrapko in the awarding of these severance payments. Having exhausted internal and other avenues to have his concerns addressed, Mr. Joy then made a protected disclosure of wrongdoing to my Office.

15. On August 10, 2012, my Office notified Mr. Chrapko of the commencement of an investigation against him, who in turn informed Mr. Beaubien and the other Board members. Given Mr. Joy's known opposition to the severance payments, Mr. Chrapko and the Board members could have surmised the identity of the Discloser. Moreover, they could have also surmised the identity of the Complainant as a discloser from their review of the preliminary investigation report.
16. On March 11, 2013, the Complainant was invited to meet with the Board of Directors on March 19, 2013, under the guise of a meeting with all managers to go over their respective areas of responsibility and to discuss proposals or suggestions for the way forward at BWBC. The Complainant worked throughout the week-end to prepare his presentation.
17. When he arrived at the meeting, the Complainant was escorted into a room where he was met by Mr. Beaubien, Mr. Atkinson and a lawyer retained by BWBC. The lawyer informed the Complainant that his position was being eliminated, effective immediately, due to a reorganization at BWBC. The Complainant described being in shock by this unexpected turn of events as he had never been advised of any possible restructuring at BWBC that could result in the elimination of the Chief Financial Officer / Human Resources Manager's position. He immediately believed that his termination was related to his disclosures.
18. At the meeting of March 19, 2013, the Complainant was given a letter dated the same date and signed by Mr. Beaubien, which explained the terms of his termination and severance entitlements and benefits under BWBC's *Human Resources Policy 804* ("HR Policy 804"). The letter specified that he had until March 29, 2013 to accept these terms by signing a Declaration and a Severance Settlement Release form. The letter did not state any consequences should he not accept the terms.
19. Following the meeting, the Complainant received legal advice not to sign the Declaration and Severance Settlement Release forms. On April 3, 2013, he received a second letter from Mr. John Elliott, a BWBC employee who had been appointed by the Board as Interim Chief Operations Officer on March 15, 2013, advising him that as he had not accepted the severance terms as offered, he would now receive only the severance entitlements available under the *Canada Labour Code*, which are considerably less. The Complainant claims that the decision to not give him the benefits to which he was entitled under HR Policy 804 also constituted a reprisal measure.
20. In the course of the investigation into this reprisal complaint, the employer took the position that the Complainant's employment was terminated for no other reason than a reorganization at BWBC. However, the investigation revealed several inconsistencies between available documentation, actions that occurred and the different witnesses' versions of events.

21. Based on the foregoing, there are reasonable grounds to believe that the Complainant's termination of employment and the subsequent reduction of his severance and termination benefits were reprisal measures taken against him because of his protected disclosures of wrongdoing.

Contact Information for the Parties

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David Joy



Respondent / Employer

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Language of Proceedings

English

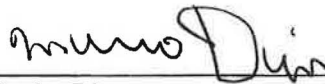
Location

To be determined by the Tribunal in consultation with the parties.

Special Arrangements

No

Signed at Ottawa, Ontario, this 3rd day of February 2014.



Mario Dion
Public Sector Integrity Commissioner