

Public Servants' Right to Express Personal Opinions

In the wake of 9/11 and a number of anthrax attacks in the United States, the Emergency Response Team (ERT) at Health Canada stockpiled antibiotics and smallpox vaccines as a precautionary measure in the event of a bioterrorist attack. Dr. Shiv Chopra, a senior scientist specializing in microbiology (who did not work directly for the ERT) made a series of statements to the press criticizing Health Canada's decision.

Canada's federal public service has mechanisms and policies in place for internal dispute resolution. The policies exist to ensure that government employees do not make public statements that might impair the trust and confidence that Canadians have in the operation of their government. After each incident with the press Dr. Chopra was made aware of these policies. At these meetings Dr. Chopra asserted his fundamental right to freedom of expression, which is protected under section [2\(b\)](#) of the Canadian Charter of Rights and Freedoms.

Ultimately Dr. Chopra was disciplined for his statements to the press with a five-day suspension from work without pay. Dr. Chopra appealed the sanction to the Canada Public Service Staff Relations Board (PSSRB).

The issue in *Chopra v. Treasury Board (Health Canada)* was balancing an individual's right to expression as a Canadian citizen while maintaining a fair, effective and impartial public service [1]. In other words, how far does Charter protection extend to public servants who wish to criticize government policies?

1. [*Fraser v. P.S.S.R.B.*] The Supreme Court of Canada outlined the duty of loyalty that public servants owe to the Government of Canada. The Court held that public servants have two dimensions to their jobs. The first relates to the employee's tasks and the other relates to the public's perception. To ensure a balance is struck, public servants have a duty to exercise restraint in their actions that criticize public policy. *Fraser* held that "a government employee is as free as a private citizen, however, to criticize government policies unrelated to his or her job or department" [2].
2. noted three instances where an employee was able to publicly express opposition to government policies: (1) when the government engaged in illegal acts; (2) in cases where the policies jeopardize the "life, health, or safety" of the public servant or the general public; and (3) where the comment had no impact on the employee's ability to perform his or her

duties effectively or on the public perception of that ability [3].

The Board upheld the suspension because Dr. Chopra failed to meet the criteria in Fraser. In Chopra's case, the government was not engaged in illegal acts. The court did rule that his comments were detrimental to his working relationship with his supervisor and would affect his work performance [4]. Dr. Chopra's attacks on the Minister and Health Canada were "repeated and derogatory" [5]. The Board held that this limited his usefulness as a public servant.

Forgie v. Canada (Immigration Appeal Board) followed Fraser. Forgie held that federal employees must attempt to resolve issues internally before expressing public criticism of government policy [6]. The PSSRB held that:

There is a heavy onus on an employee who makes public criticisms of questionable practices to establish that he has done everything reasonable to resolve the issue internally. This is a facet of the loyalty owed to him by his employer. It is not enough for an employee to claim that he doubted the internal avenues would lead to a successful resolution of the question [7].

This principle was affirmed in the 2001 Haydon v. Canada decision [8].

In addition to not meeting the Fraser test, the PSSRB also upheld the suspension on other grounds. Namely, Dr. Chopra did not use the available internal review and discussion mechanisms for dealing with his grievance before resorting to public criticism of the Minister and the department's decision as set out in both Forgie and Haydon. Although, the Board noted that even if he had used the appropriate channels for relaying his grievances, his comments about the Minister were still inappropriate.

Cases:

Fraser v. P.S.S.R.B., 1985, CanLII 14 (S.C.C)

Forgie v. Canada (Immigration Appeal Board), (Board file 166-2-15843); aff'd [1987] F.C.J. No. 541 (C.A.)

Chopra v. Treasury Board (Health Canada) 2003 PSSRB 115

Haydon v. Canada (T.D.), 2000 CanLII 16081 (F.C.)

Further Reading:

[Freedom of Expression Background](#)

Freedom of the Press and Self-Censorship in the Media

[1] Chopra v. Treasury Board (Health Canada) 2003 PSSRB 115 at 76.

[2] Fraser v. P.S.S.R.B., 1985, CanLII 14 (S.C.C) at 28.

[3] Fraser supra note 2 at 41.

[4] Chopra, supra note 1 at 104.

[5] Chopra, supra note 1 at 105.

[6] Forgie v. Canada (Immigration Appeal Board), (Board file 166-2-15843); aff'd [1987] F.C.J. No. 541 (C.A.), at page 26.

[7] Forgie supra note 6 at page 26.

[8] Haydon v. Canada (T.D.), 2000 CanLII 16081 (F.C.). at 120.