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**CASE SUMMARY: ADDRESSING THE DOCTRINE OF LEGITIMATE EXPECTATIONS IN THE CONTEXT OF AN INVESTIGATION AND REPORT INTO A HARASSMENT COMPLAINT, THE COURT FOUND THE APPLICANT HAD A LEGITIMATE EXPECTATION BASED ON A REPRESENTATION MADE AND THAT THIS WAS NEVER FULFILLED; THE MATTER WAS REMITTED BACK FOR RECONSIDERATION**

**Administrative law – Decisions reviewed – Human rights complaints – Harassment – Judicial review – Procedural requirements and fairness – Standard of review – Unreasonableness – Natural justice**

*Gareau v. Canada (Attorney General)*, [2018] F.C.J. No. 135, 2018 FC 157, Federal Court, February 9, 2018, A.M. McDonald J.

The applicant, Paul Gareau, was the Deputy Director at the Centre for Learning and International Affairs and Management. In August 2014, Mr. Gareau filed a harassment complaint against his supervisor, AS. Mr. Gareau alleged that AS agreed to extend his term as Deputy Director, but then reneged on that agreement after Mr. Gareau voiced concerns about AS's comments relating to the French language. In refusing to extend his term, AS relied on complaints made about Mr. Gareau, but refused to disclose the nature of the complaints or the identity of the complainants.

An investigation was ordered by the respondent, which concluded that AS did not abuse his authority and therefore did not harass Mr. Gareau by refusing to extend his term. Mr. Gareau sought reconsideration of the harassment complaint on the basis, among other things, that the report failed to consider the specific complaints of harassment he raised against AS. A subsequent decision of the Inspector General concluded the report was satisfactory and the investigation appropriate.

Mr. Gareau subsequently filed a grievance under the *Public Sector Labour Relations Act*. The Assistant Deputy Ministry, Human Resources, Global Affairs Canada (the "ADM") agreed the report lacked particulars on the specific instances of harassment alleged and, therefore, returned the grievance complaint, requesting that each allegation be articulated with greater clarity in a subsequent report.

An "Addendum" report was eventually issued by the ADM. However, Mr. Gareau argued the Addendum report also lacked the required clarity mandated by the ADM. He sought judicial review.

One of the central arguments raised by Mr. Gareau was that his rights to procedural fairness had been breached because he had a legitimate expectation that the specific instances of harassment that were alleged would be further investigated, considered and reasons provided, which was never ultimately done in the Addendum report. Relying on the doctrine of legitimate expectations, he argued the failure of the Addendum report to provide details respecting the specific allegations of harassment was a breach of his legitimate expectations and hence a breach of his rights to procedural fairness. On the other hand, the respondent argued that the doctrine of legitimate expectations did not apply because the representations were made about a particular substantive outcome.

The court agreed with Mr. Gareau. The court concluded a representation had been made by the ADM to Mr. Gareau in relation to the process of providing him the details he sought regarding the complaints. The court said the representation was clear and unequivocal. Further, the representation was not about the substance of the original harassment complaint; it was about the procedure. In essence, the court found that the ADM promised to provide reasons with respect to the complaints, but simply failed to do so in the final report. Mr. Gareau, the court said, was “entitled to a responsive decision on the allegations he raised”, which was never provided. For this reason, his rights to procedural fairness were breached. The court buttressed this position on the basis that Mr. Gareau was entitled to a high level of procedural fairness, given the nature of the complaint, when applying the Baker criteria.

Ultimately, the court decided to remit the matter back for reconsideration.

This case was digested by [Adam R. Way](#), and first published in the LexisNexis® Harper Grey Administrative Law Netletter and the Harper Grey Administrative Law Newsletter. If you would like to discuss this case further, please contact Adam R. Way at [away@harpergrey.com](mailto:away@harpergrey.com).