

Date: 20090616

Docket: A-438-08

Citation: 2009 FCA 206

**CORAM: SHARLOW J.A.
LAYDEN-STEVENSON J.A.
RYER J.A.**

BETWEEN:

ANNA CHOW

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Ottawa, Ontario, on June 16, 2009.

Judgment delivered from the Bench at Ottawa, Ontario, on June 16, 2009.

REASONS FOR JUDGMENT OF THE COURT BY:

RYER J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Ottawa, Ontario, on June 16, 2009)

RYER J.A.

[1] This is an appeal from a decision of Heneghan J. of the Federal Court (2008 FC 942), dated August 12, 2008, dismissing an application for judicial review of a decision of Mr. Dan Butler (2006 PSLRB 112) acting as an adjudicator (the “Adjudicator”) in respect of grievances referred to adjudication under the *Public Service Staff Relations Act*, R.S.C. 1985, c. P-35 (the “PSSRA”). The Adjudicator dismissed a number of grievances that had been filed by Ms. Anna Chow on the basis that by virtue of subsection 91(1) of the PSSRA, he had no jurisdiction to hear them because the issues raised in them related, in substance, to alleged human rights violations for which there was an

administrative procedure for redress by the Canadian Human Rights Commission (the “Commission”) under the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6 (the “CHRA”).

[2] The task of this Court is to determine whether the Applications Judge, in reviewing the Adjudicator’s decision, determined the correct standard of review and applied it correctly. (See *Telfer v. Canada (Revenue Agency)*, [2009] F.C.J. No. 71, 2009 FCA 23 at paragraphs 13 and 14.)

[3] The Applications Judge determined that in the circumstances before her, the question of the Adjudicator’s jurisdiction to hear the grievances did not require the resolution of any issues of statutory interpretation. Instead, the question resolved itself into a characterization of the grievances. If they were, in pith and substance, human rights complaints in respect of which redress was available under the *CHRA*, then subsection 91(1) of the *PSSRA* precluded the Adjudicator from hearing them, in absence of a direction from the Commission under either paragraph 41(1)(a) or 42(2)(b) of the *CHRA*. With respect to this largely factual question, the Applications Judge determined that the standard of review was reasonableness.

[4] In our view, the Applications Judge made no error in this finding.

[5] We are also of the view that the Applications Judge made no error in the application of the standard of review. We agree with her that it was reasonable for the Adjudicator to conclude that in pith and substance the grievances were human rights complaints having regard to the record that was before him, Ms. Chow’s own assertions before the Commission and her specific request that

her grievances be held in abeyance pending the outcome of her complaint to the Commission on essentially the same facts as underpinned the grievances.

[6] We are also unpersuaded by the appellant's argument that Ms. Chow's lack of success before the Commission necessarily raises a question as to the correct interpretation of subsection 91(2) of the *PSSRA*. The question asked by that provision is whether an administrative procedure for redress is provided under an Act of Parliament. The answer to that question turns on the availability of a meaningful remedy. The jurisprudence has recognized that such a remedy is provided under the *CHRA*. The fact that Ms. Chow was not successful before the Commission does not derogate from the quality of the remedies available under the *CHRA*.

[7] For these reasons, the appeal will be dismissed with costs.

“C. Michael Ryer”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-438-08

**(APPEAL FROM A JUDGMENT OF THE FEDERAL COURT (2008 FC 942) DATED
AUGUST 12, 2008)**

STYLE OF CAUSE: Anna Chow
Appellant
and
Attorney General of Canada
Respondent

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: June 16, 2009

REASONS FOR JUDGMENT OF THE COURT BY: (Sharlow, Layden-Stevenson, Ryer
JJ.A)

DELIVERED FROM THE BENCH BY: Ryer J.A.

APPEARANCES:

Paul Champ FOR THE APPELLANT

Karl Chemsî FOR THE RESPONDENT

SOLICITORS OF RECORD:

Raven, Cameron, Ballantyne & Yazbeck LLP FOR THE APPELLANT

John H. Sims, Q.C.
Deputy Attorney General of Canada FOR THE RESPONDENT