

Public Servants
Disclosure Protection
Tribunal Canada



Tribunal de la protection
des fonctionnaires
divulgateurs du Canada

Citation: Wayne Roberts v. Atomic Energy Canada Limited, 2011 PSDPT 12

Tribunal File No. T-2011-02

Date: 20111110

Ottawa, Ontario, November 10, 2011

The Honourable Luc Martineau, Chairperson

Public Servants Disclosure Protection Tribunal

BETWEEN:

WAYNE ROBERTS

Complainant

-and-

OFFICE OF THE PUBLIC SECTOR INTEGRITY COMMISSIONER

and

ATOMIC ENERGY CANADA LIMITED

Respondent

ORDER

UPON MOTION by the Atomic Energy Control Limited (the employer), dated October 31, 2011 and filed with the Public Servants Disclosure Protection Tribunal (the Tribunal) on October 31, 2011, for an extension of time for the filing of its statement of particulars;

HAVING read the motion records filed by the parties;

CONSIDERING that an application has been made to the Tribunal by the Commissioner pursuant to subsection 20.4(1) of the *Public Servants Disclosure Protection Act*, SC 2005, c 46 (the Act) for a determination of whether or not a reprisal was taken against the complainant;

CONSIDERING that the motion for an extension of time within which the employer can file its statement of particulars is made pursuant to the *Public Servants Disclosure Protection Tribunal Rules of Procedure*, SOR/ 2011-170;

CONSIDERING section 21.6 of the *Public Servants Disclosure Protection Act*, SC 2005, c 46, and Rules 2 and 3 of the *Public Servants Disclosure Protection Tribunal Rules of Procedure*, as well as the principles of natural justice; and

CONSIDERING that on October 26, 2011, during a case conference call with all the parties present, the Tribunal requested submissions on the employer's request for an extension of time within which to file its statement of particulars;

HAVING now considered the employer's motion for an extension of time within which to file its statement of particulars, and the responses of the Commissioner and the employee;

HAVING considered that the employer was advised on September 15, 2011 to file its statement of particulars no later than October 31, 2011 and that the request for an extension arose in a very short period of time prior to the deadline for filing;

HAVING also considered further submissions of the external counsel of the employer, filed with the Tribunal on Wednesday, November 9, 2011, regarding his availability and the availability of his co-counsel in the first six months of 2012;

HAVING also considered the following factors from the submissions provided by the parties as well as the submissions filed by the external counsel of the employer on November 9, 2011 relating to the availability of its external counsel for a hearing:

- a) The sale of commercial aspects of AECL closed on October 2, 2011;

- b) As a direct result of the sale, nearly the entire former leadership team of AECL has left, including the former president and CEO of AECL and Katharine Palmer, AECL's former Senior Officer Designate;
- c) Mr. Murphy states that he was only recently able to secure instructions from AECL management;
- d) Several witnesses are no longer employed with the AECL and must be located;
- e) External counsel, recently retained by the employer, requires time to review the documentation filed by the Commissioner and other content collected during the course of the Commissioner's investigation and to file the particulars on behalf of the employer;
- f) The Commissioner consents to the extension of time for the filing of particulars;
- g) The employee consents to the extension of time for the filing of particulars, conditional upon proceeding with the hearing in January 2012;
- h) A one month postponement of time for the filing of the employer's particulars does not constitute prejudice on the part of the other parties;
- i) External counsel for the employer has provided details as to the reasons that he and his co-counsel cannot be available between January 9 and January 20, 2012; and
- j) External counsel has provided details as to his availability and the availability of his co-counsel in the first six months of 2012

THE TRIBUNAL ORDERS that:

[1] An extension of time shall be granted to the employer until December 1, 2011, to file its statement of particulars in the above noted Application;

[2] The Commissioner and the employee shall have until December 15, 2011 to file their respective replies to the statement of particulars filed by the employer.

[3] The Tribunal will hold a second case conference, by video conference, on Tuesday, November 22, 2011 from 09:30 a.m. to 11:00 a.m. A Notice for a Case Conference and an agenda will be issued shortly.

[4] The agenda will include a subject matter item to discuss the process that the employer and the other parties are proposing, relating to the employer's indication that it would like to take steps to mediate this matter.

[5] The Tribunal may rescind, amend or vary this order at any time for cause upon the initiative of the Tribunal, or further to a motion by one of the parties.

Luc Martineau

Chairperson