

PUBLIC SERVICE

TERMINATION OF EMPLOYMENT

Judicial review of Governor in Council (GIC) decision, promulgated by Order in Council, PC 2017-456, to terminate applicant's appointment as member of Canadian Radio-television and Telecommunications Commission (CRTC) for cause — Applicant appointed as CRTC Commissioner for Ontario in June 2013 — Applicant's first termination for cause dated June 23, 2016 — Court in *Shoan v. Canada (Attorney General)*, 2017 FC 426 (2017 FC 426 decision) unable to determine whether GIC affording applicant sufficient procedural fairness when first terminating his appointment — GIC's decision quashed therein, applicant reinstated — GIC terminating applicant's appointment for cause second time for, *inter alia*, inappropriate contact with CRTC stakeholders, refusing to respect internal CRTC processes, practices, making negative public statements about CRTC — Concluding that such actions fundamentally incompatible with applicant's position — Main issues whether process adopted by GIC to terminate for second time applicant's appointment breaching duty of fairness owed to him; whether GIC's decision unreasonable — GIC's approach to redetermination herein procedurally fair, reasonable — Clear from 2017 FC 426 decision that GIC not required to abandon whole process leading to first termination or to allow or require further submissions, whether written or oral — Court leaving it to GIC to determine how best to handle redetermination while providing findings, observations that GIC could reasonably take into account — GIC not acting in procedurally unfair or unreasonable way by taking into account findings, conclusions in 2017 FC 426 decision as part of its redetermination, even if some of those findings, conclusions *obiter* — GIC not required to disregard findings, comments made in *obiter* — GIC acting fairly, reasonably by making clear that, upon further reconsideration of non-objectionable grounds, it chose to terminate applicant's appointment — Applicant given full notice of those non-objectionable grounds — Providing full response in written submissions wherein not raising some of objections now raising in present matter — Applicant given appropriate notification, opportunity to be heard on grounds leading to second termination — Question before Court herein whether procedurally fair, reasonable for GIC to effect second termination by noting analysis, findings in 2017 FC 426 decision, removing objectionable grounds, basing its decision on non-objectionable grounds without going through whole process again, or without allowing applicant to make further submissions or face-to-face meeting to explain his position orally — Neither procedurally unfair nor unreasonable for GIC to take this approach — Reasonable for GIC to read applicant's public statements as attacks on integrity of CRTC, its Chairperson — Applicant not denied procedural fairness because no face-to-face meeting taking place before decision made to terminate nomination second time — GIC clearly of view that applicant's conduct in particular posing significant threat to reputation, integrity of CRTC — Parliament granting CRTC broad discretion to remove CRTC Commissioner for cause — Considerable deference owed to GIC in these matters — In conclusion, applicant misreading 2017 FC 426 decision, mischaracterizing what was required of GIC to effect redetermination of his case — Attempting to introduce grounds for unfairness, unreasonableness not relevant to redetermination process — Grounds relied upon by GIC reasonable basis for termination of applicant's appointment — Application dismissed. [p. 84]

SHOAN V. CANADA (ATTORNEY GENERAL) (T-796-17, 2018 FC 476, Russell J., judgment dated May 7, 2018, 84 pp.)