

Mobil Oil loses discrimination appeal after playing 'hardball' with complainant

GARY OAKES VICTORIA

Alberta's top court has unanimously upheld a judge's findings that a once highly-regarded female employee of an oil firm was fired as a result of gender discrimination and retaliation.

"We're pleased with the decision," said Shirish Chotalia, counsel for plaintiff Delorie Walsh. "We do feel it's important for Alberta women to address ongoing issues of express and systemic discrimination, as well as retaliation," Chotalia told *The Lawyers Weekly*.

Justice Keith Ritter explained that Walsh was hired as a map clerk by Canadian Superior Oil Ltd. in 1984. She wanted to become a professional land agent or representative in the field but at the time, no woman worked in that area.

Such employees negotiate land agreements and act as a liaison between corporate or government agencies and the landowner.

When the company merged with Mobil Oil Canada in 1986, Walsh was kept on and eventually rose to the position of land representative, but on the way she "encountered a number of

obstacles" to her goal.

They "related to her being a woman in a field dominated by men.... [F]or example, [she] was [once] told by her superior that 'no damn woman will be a landman in the surface department'....

“Walsh was held back from a field position, where similarly situated men were not.

"[D]espite her ongoing efforts to gain a position in the field, and in spite of her consistently good performance evaluations, Walsh was held back from a field position, where similarly situated men were not. The basis of this treatment was the paternalistic attitudes of Walsh's superiors...The fact that Walsh was ultimately given a position in the field does not justify the differential treatment based on her gender up to that time. In our view, the discriminatory effect of that

treatment is obvious in this case.

"Moreover, Walsh suffered discrimination throughout because the compensation she received was always at the low end of [the] Mobil compensation scheme, even though her performance for most of her career with Mobil was at the high end, or at least above average...."

Walsh complained to the Alberta Human Rights Commission both before and after she was fired in 1995. The complaints were dismissed but a reviewing judge allowed her appeal, finding among other things that "the panel erred in law, or was unreasonable, in deciding there was no discrimination based on the good intentions of Walsh's supervisors." Now the Court of Appeal has upheld him.

In concurring reasons, Justice Marina Paperny said, "I take the view that a complainant does not need to prove intent and that retaliation can be established by the surrounding circumstances...."

Justice Ritter maintained that "whether proven directly or inferred, intent is a necessary aspect of the test for retaliation...."

He also held, with Justice Jean Côté concurring, that since the Human Rights panel has yet to

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LEGAL BRIEFS

Lawyers rule...almost

Prime Minister Stephen Harper, who categorizes himself as an amnist/lecturer/writer, leads the Government of Canada.

But Canadian lawyers can be proud that their occupation still plays an important, if not dominant, role in running Parliament and the courts.

A *Lawyers Weekly* look at Library of Parliament records disclosed the largest number of Senators and MPs in the present 39th Parliament as "businessperson" as their occupation: 101.

The second most popular occupational group, however, is "lawyer" with 72 MPs and Senators. And that understates the legal profession's influence since at least a handful of those who list themselves as "professor" are also lawyers.

The third most common occupation is the nebulous "consultant" with 67 MPs and Senators – a category that might also be dubbed "miscellaneous".

Administrators (32), teachers (31), professors (24), and farmers (23) are also among the top 10 occupations in the Parliament which began in 1867.

Notably 19 Conservative MPs are lawyers (all male), as are 22 Liberal MPs (including three women), 2 NDP (no women) and 3 Bloc Québécois (no women).

Although the background of Parliamentarians has changed considerably since Confederation, lawyers have mostly maintained their grip on the profession. In the intervening 141 years, lawyers and notaries were the dominant occupational group in the 1st Parliament of 1867, followed by merchants, doctors, editors and authors. Millers came out at the bottom of the list.

Among the current crop of MPs and Senators there are nine lawyers and two former judges.

There are 43 male lawyer-MPs, and 20 male Senators who are lawyers. The largest occupational group for male Senators. By *Cristin Schmalzer*

Top court upholds custodial sentence for N.S. youth

Courts considering whether a young offender should be incarcerated for an indictable offence may only take into account the youth's record of previous offences as it stood prior to the crime for which the young person is being sentenced, the Supreme Court has ruled 7-0 in *R. v. S.A.C.*, [2008] S.C. 39.

On July 31, Justice Marie Deschamps dismissed an appeal by a young man against a custodial sentence imposed on him that was upheld by the Nova Scotia Court of Appeal. The key legal point before the Supreme Court was the meaning of s. 39(1)(c) of the *Youth Criminal Justice Act* (YCJA) which restricts the use of custodial sentences.

According to the English version of the statute, a young person who has committed an indictable offence must not be committed to custody unless he or she has "a history that indicates a pattern of findings of guilt for indictable offences." But the French version stipulates custody is limited to cases