

employment

August 2001

Chief Judge Goddard's recent decision rejecting a claim by Mrs Rankin against the Crown marked the end of a case which has preoccupied the media for months.

Short skirts, long earrings and other employment issues

What was Christine Rankin's claim?

Christine Rankin was appointed in 1998 for a three-year period as the Chief Executive of the Department of Work and Income. Her contract contemplated possible reappointment for a further term.

Mrs Rankin's fixed term was due to expire in July 2001. She was told in December 2000 that she would not be recommended for reappointment. Mrs Rankin took issue with that decision and argued that her employer had:

- Failed to consult with her prior to making a decision about her reappointment;
- Failed to take adequate steps to address a relationship problem that existed between her and her responsible Minister, Mr Maharey; and
- Given her a reasonable expectation that she would be reappointed.

What effect did the media have?

A person following the case through the media would be forgiven for thinking that the matters at issue were quite unrelated to those outlined above. Certainly more sensational aspects of the case were highlighted in television and print news, giving the impression that Mrs Rankin's claim was essentially based on allegations of discrimination about her gender and her flamboyant taste in clothing and jewellery.

The Chief Judge of the Employment Court found this evidence irrelevant and said that in a properly managed case it would not have been brought before the Court.



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What was the decision of the Court?

The Chief Judge accepted that, in light of its statutory obligation to be a "good employer", the Crown, through the CEO of the State Services Commission, Mr Wintringham owed certain obligations to Mrs Rankin. Mr Wintringham had a duty to disclose the factors which he had considered in making his decision not to reappoint and a duty to allow Mrs Rankin a reasonable opportunity to address any of his concerns. The Chief Judge decided that Mr Wintringham had unilaterally made a decision not to reappoint Mrs Rankin in May 2000. He held that this decision was motivated by statements of dissatisfaction about Mrs Rankin made both by the relevant Minister and on behalf of the Prime Minister. He also said that Mr Wintringham believed that any

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recommendation to reappoint Mrs Rankin would not be approved (by the Governor-General).

While Mr Wintringham’s actions did constitute a breach of procedural fairness, this was not an end to the matter. Mrs Rankin had challenged Mr Wintringham’s decision-making in November 2000 and had made a number of arguments to him in an attempt to convince him to change his position. Mr Wintringham carefully considered these arguments and reconsidered his decision: he did, however, decide not to change his mind, and subsequently made a formal decision not to reappoint. The Chief Judge found that in entertaining Mrs Rankin’s submissions, and in reconsidering his decision, Mr Wintringham had discharged his duty to consult with her and had effectively cured the previous procedural defects. It was on this basis that the Chief Judge decided that Mrs Rankin’s central claim should fail. Adopting similar reasoning, the Chief Judge rejected the other claims made by Mrs Rankin.

At the very end of the decision the Chief Judge commented that even if he had found in favour of

Mrs Rankin he would have been disinclined to make any “worthwhile” award of damages because her estimates of loss (which had exceeded \$1 million) were entirely speculative.

What does the decision mean?

This decision concerned the law which applies to senior public servants, and involved the consideration of a particularly unusual set of facts. It is, therefore, unlikely that this decision will carry any great significance as an employment law precedent.

Employers can take heart from the fact that the fixed term nature of Mrs Rankin’s contract was upheld and that the Court refused to be distracted from the legal issues by what became a media circus.

Given Mrs Rankin’s decision not to appeal the decision of the Employment Court this case now seems destined to be remembered largely because of its controversial personalities and evidence rather than for its legal merits.

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