

**Public Servants Disclosure Protection Tribunal**

**Application by the Public Sector Integrity Commissioner of Canada**

**In the Matter of:**

**Cathy Gardiner**

**Complainant**

-and-

**Blue Water Bridge Canada**

**Respondent**

**Notice of Application**

Pursuant to paragraph 20.4(1)(a) of the *Public Servants Disclosure Protection Act*, S.C., 2005, c. 46 (PSDPA) and in accordance with Rule 5 of the *Public Servants Disclosure Protection Tribunal Rules of Procedure*, SOR / 2011-170, I am hereby making an application to the Public Servants Disclosure Protection Tribunal (the "Tribunal") for a determination of whether or not a reprisal, as defined under subsection 2(1) of the PSDPA, was taken against the Complainant and for a remedy in favour of the Complainant.

**Basis for the Application**

1. This Application relates to Ms. Cathy Gardiner's termination of employment from Blue Water Bridge Canada (BWBC) on March 19, 2013 and the subsequent decision by BWBC to reduce the Complainant's severance benefits and entitlements.
2. Ms. Gardiner is a former public servant, as defined under subsection 2(1) of the PSDPA, who was employed at BWBC for approximately 23 years; she held the position of Customer Service Manager when her employment was terminated.

3. The respondent BWBC is a federal parent Crown corporation as defined in the *Financial Administration Act*, R.S.C., 1985, c. F-11 and as incorporated under the *Blue Water Bridge Authority Act*, S.C. 1964-65, c. 6. The corporation maintains and operates an international bridge located between Sarnia, Ontario and Port Huron, Michigan.
4. On March 20, 2013, Ms. Gardiner made a reprisal complaint to the Office of the Public Sector Integrity Commissioner (the “Office” or PSIC) under subsection 19.1 of the PSDPA, alleging that her termination of employment, under the guise of a reorganization at BWBC, was in fact a reprisal measure taken against her because of her participation as a witness in a disclosure investigation conducted by my Office. She also alleged that she was subjected to a series of additional reprisal measures subsequent to her termination, including a reduction of her severance benefits and entitlements and a delay in being paid some of her severance entitlements.
5. The Complainant identified four persons as being responsible for the alleged reprisal measures taken against her:
  - Mr. Charles Chrapko, the former President and Chief Executive of BWBC;
  - Mr. Marcel Beaubien, the Chair of the Board of Directors for BWBC;
  - Mr. Larry Kinley, Board Member; and
  - Mr. Gary Atkinson, Board Member.
6. My Office investigated Ms. Gardiner’s reprisal complaint and based on the results of the investigation, I find that there are reasonable grounds to believe that Ms. Gardiner’s loss of employment and the subsequent reduction of her severance benefits were reprisal measures taken against her by BWBC because she participated, in good faith, in an investigation into a disclosure being conducted by my Office. Accordingly, I have determined that an application to the Tribunal is warranted in regard to this complaint, pursuant to paragraphs 20.4(1)(a) and 20.4(3)(a) of the PSDPA.
7. As the results of the investigation do not suggest that BWBC’s delay in paying some of the Complainant’s severance entitlements was a reprisal, this allegation will not be pursued by my Office at the hearing of this complaint before the Tribunal.

### **Summary of the Complaint**

8. Ms. Gardiner had her employment with BWBC terminated on March 19, 2013 on the basis that her position was declared “redundant”. The Complainant immediately believed that her employment was being terminated because of her

participation in my Office's investigation at BWBC. She filed a reprisal complaint with my Office the very next day, on March 20, 2013.

9. The Complainant was a witness in an investigation into a protected disclosure of wrongdoing made to this Office on February 21, 2012 by a BWBC employee. This disclosure concerned inappropriate severance payments made to two former employees of BWBC. This disclosure was investigated and resulted in a finding of wrongdoing against the former President and Chief Executive, Mr. Chrapko. The Complainant was interviewed on September 9, 2012 by the PSIC investigator in regard to that matter.
10. On December 21, 2012, my Office issued a preliminary investigation report in relation to this disclosure to Mr. Chrapko, in accordance with my obligations under subsection 27(3) of the PSDPA. Mr. Chrapko subsequently shared the preliminary investigation report with Board members. My Office also provided its preliminary investigation report to the Clerk of the Privy Council on December 27, 2012 and to the Minister responsible for BWBC on January 10, 2013.
11. In late January 2013, Mr. Chrapko announced his resignation from BWBC, effective March 15, 2013.
12. My Office completed its investigation into the disclosure on May 6, 2013. As required under the PSDPA, I tabled a case report in Parliament on June 6, 2013 in regard to that matter.
13. The Complainant's involvement in the subject-matter of the disclosure began in August or September 2012, when she was informed by the discloser that he had made a disclosure of wrongdoing to PSIC. At the time, the Complainant was asked by the discloser whether she could provide a statement to the PSIC investigator.
14. According to the Complainant, Mr. Chrapko and the Board members would have known of her participation in the investigation because of the nature of the information she provided to the investigator. Mr. Chrapko and the Board members would have been able to surmise her identity through the evidence outlined in the preliminary investigation report given to Mr. Chrapko on December 21, 2012.
15. On March 11, 2013, the Complainant was invited to meet with the Board of Directors on March 19, 2013, under the guise of a meeting with all managers to go over their respective areas of responsibility and to discuss proposals or suggestions for the way forward at BWBC.
16. When she arrived at the meeting, the Complainant was escorted into a room where she was met by Mr. Atkinson and a lawyer retained by BWBC. The lawyer informed the Complainant that her position was being eliminated, effective immediately, due to a reorganization at BWBC. The Complainant described being in shock by this unexpected turn of events as she had never been advised of any

possible restructuring at BWBC that could result in the elimination of the Customer Service Manager position. Furthermore, in various corporate reports prepared by BWBC, the position of Customer Service Manager had been slated for increased responsibility and not elimination. She immediately believed that her termination was related to her involvement in the disclosure investigation.

17. At the meeting of March 19, 2013, the Complainant was given a letter dated the same date and signed by Mr. Beaubien, which explained the terms of her termination and severance entitlements and benefits under BWBC's *Human Resources Policy 804* ("HR Policy 804"). The letter specified that she had until March 29, 2013 to accept these terms by signing a Declaration and a Severance Settlement Release form. The letter did not state any consequences should she not accept these terms.
18. Following the meeting, the Complainant received legal advice not to sign the Declaration and Severance Settlement Release forms. On April 3, 2013, she received a second letter from Mr. John Elliott, a BWBC employee who had been appointed by the Board as Interim Chief Operations Officer on March 15, 2013, advising her that as she had not accepted the severance terms as offered, she would now receive only the severance entitlements available under the *Canada Labour Code*, which are considerably less. The Complainant claims that the decision to not give her the benefits to which she was entitled under HR Policy 804 also constituted a reprisal measure.
19. In the course of the investigation into this reprisal complaint, the employer took the position that the Complainant's employment was terminated for no other reason than a reorganization at BWBC. However, the investigation revealed several inconsistencies between available documentation, actions that occurred and the different witnesses' versions of events.
20. Based on the foregoing, there are reasonable grounds to believe that the Complainant's termination of employment and the subsequent reduction of her severance benefits were reprisal measures taken against her because of her participation in the disclosure investigation.

Signed at Ottawa, Ontario, this 3<sup>rd</sup> day of February 2014.

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Mario Dion  
Public Sector Integrity Commissioner