

SCC rules on discrimination in flight training case - blind application of decisions of foreign authorities may result in liability

Date : August 18, 2015

Organizations in the aviation industry are often required to comply with a host of laws and regulations often from multiple jurisdictions. Where there are conflicts in such laws, questions may arise relating to the legal risks that the subject organization may be exposed to. It is in this context that a recent decision of the Supreme Court of Canada will be of particular interest. In [Quebec \(Commission des droits de la personne et des droits de la jeunesse\) v. Bombardier Inc. \(Bombardier Aerospace Training Center\)](#) (July, 2015) one of the issues was the extent to which Bombardier could be liable for complying with a potentially discriminatory decision of the U.S Department of Justice (DOJ). Although the Supreme Court held that there was not sufficient evidence to establish that the DOJ's decision was discriminatory, it made it clear that organizations cannot blindly comply with discriminatory decisions of foreign authorities without exposing itself to liability under the Charter.

The facts giving rise to the case were fairly straightforward. Mr. Latif, a Canadian citizen of Pakistani origin was a licensed pilot in both Canada and the United States. In 2004 Bombardier refused to provide flight training to Mr. Latif in Montreal. This decision was based on the fact that the DOJ denied Mr. Latif security clearance for training at the Bombardier facility in Texas. Mr. Latif launched a complaint under Quebec's Charter of human rights and freedoms alleging that he was discriminated against on the basis of ethnic origin.

Mr. Latif was successful before the Tribunal, however the Court of Appeal set aside the decision as unreasonable. The case went before the Supreme Court of Canada. Canada's top court stated that because Bombardier's decision was based solely on the decision of the DOJ, it was necessary for the plaintiff to show that the DOJ decision was itself discriminatory. Although Mr. Latif did adduce circumstantial evidence that the DOJ was using racial profiling when it refused Mr. Latif security clearance, the Supreme Court found that the evidence was insufficient and dismissed the appeal. However, the court made the following caution:

However, we wish to make it clear that our conclusion in this case does not mean that a company can blindly comply with a discriminatory decision of a foreign authority without exposing itself to liability under the Charter. Our conclusion flows from the fact that there is simply no evidence in this case of a connection between a prohibited ground and the foreign decision in question.

In light of this caution, organizations in the aviation sector should be aware of the following:

- Applying decisions of foreign authorities may result in liability if the decision is

- discriminatory;
- The degree of proof necessary to establish a case of discrimination is the balance of probabilities; and
 - Organizations may consider conducting due diligence to ensure that the foreign decision to be applied is not discriminatory.

For further information, please contact [Amanda Sarginson](#) at 613-940-2765 or [Steven Williams](#) at 613-940-2737.