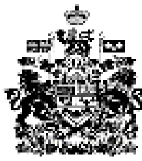

SUPREME COURT OF CANADA

CITATION: Merk *v.* International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 771, [2005] 3 S.C.R. 425, 2005 SCC 70

DATE: 20051124
DOCKET: 30090

2005 SCC 70 (CanLII)

BETWEEN:

Her Majesty The Queen *ex rel.* Linda Merk
Appellant
and
International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 771
Respondent

CORAM: McLachlin C.J. and Major, Binnie, LeBel, Deschamps, Abella and Charron JJ.

REASONS FOR JUDGMENT: (paras. 1 to 48)	Binnie J. (McLachlin C.J. and Major, LeBel, Abella and Charron JJ. concurring)
DISSENTING REASONS: (paras. 49 to 61)	Deschamps J.

Merk *v.* International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 771, [2005] 3 S.C.R. 425, 2005 SCC 70

Her Majesty The Queen *ex rel.* Linda Merk *Appellant*

v.

International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 771 *Respondent*

Indexed as: Merk *v.* International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 771

Neutral citation: 2005 SCC 70.

File No.: 30090.

2005: February 10; 2005: November 24.

Present: McLachlin C.J. and Major, Binnie, LeBel, Deschamps, Abella and Charron JJ.

on appeal from the court of appeal for saskatchewan

Labour law — Employee protection — Whistleblower — Provincial legislation providing that no employer can discharge employee who "has reported . . . to a lawful authority any activity that is or is likely to result in an offence" — Employee fired for reporting to union officials alleged financial abuse by supervisors — Whether "lawful authority" limited to persons capable of exercising

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authority with respect to offences — The Labour Standards Act, R.S.S. 1978, c. L-1, s. 74.

The appellant, M alleges that she was fired as bookkeeper and office manager of the respondent trade union because she blew the whistle by informing International Union of Iron Workers representatives of alleged financial misconduct committed by her immediate supervisors at Local 771. Under s. 74(1)(a) of the Saskatchewan *Labour Standards Act*, no employer can discharge an employee because the employee "has reported . . . to a lawful authority any activity that is or is likely to result in an offence". While the trial judge was satisfied that the financial misconduct amounted to "an offence" and that M was terminated because she reported it, she nevertheless concluded that M had not complained to a "lawful authority". In her view the expression "lawful authority" should be limited to a person or institution authorized by law to deal with the activity as an offence and did not include employers. Both the summary conviction appeal judge and the majority of the Court of Appeal agreed with the interpretation of "lawful authority" adopted by the trial judge.

Held (Deschamps J. dissenting): The appeal should be allowed and a conviction entered.

Per McLachlin C.J. and Major, Binnie, LeBel, Abella and Charron JJ.: The expression "lawful authority" in s. 74 of *The Labour Standards Act* includes not only the police or other agents of the state having authority to deal with the activity complained of "as an offence", but also individuals within the employer organization who exercise lawful authority over the employee(s) complained about,

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or over the activity that is or is likely to result in the offence. This interpretation of s. 74 flows from the plain meaning of the expression "lawful authority" and is consistent with its purpose and context. If the legislature had wished to limit the scope of s. 74 to complaints to a "public authority" instead of a "lawful authority" it would have said so. [3] [38]

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The plain meaning of s. 74 is reinforced by the labour relations context. Whistleblower laws, such as s. 74, seek to reconcile an employee's duty of loyalty to his or her employer with the public interest in the suppression of unlawful activity. The employees' duty of loyalty and the public's interest in whistleblowing is best reconciled with the "up the ladder" approach, i.e. protecting employees who first blow the whistle to the boss or other persons inside the employer organization who have the "lawful authority" to deal with the problem. The legislature wanted a workplace free of unlawful activity but it did not specify prosecution as the only or even the preferred method of bringing about that result. By withholding whistleblower protection unless and until the employee goes "outside" to the enforcement authorities of the state, the Court of Appeal's narrow interpretation of s. 74 would discourage the internal resolution of alleged misconduct. Failure by whistleblowing employees to "try to resolve the matter internally" is condemned by courts and labour arbitrators as *prima facie* disloyal and inappropriate conduct. There is nothing in s. 74 or surrounding context to suggest that the Saskatchewan legislature in 1994 intended to expose "loyal" employees to employer retaliation without a remedy. [16] [19] [23-26] [36]

M pursued an "up the ladder" reporting approach. Based on the trial judge's findings, M was discharged because she reported to a lawful authority (the International Union of Iron Workers) the financial misconduct of her supervisors. The

alleged misconduct was an "activity that is or is likely to result in an offence" within the meaning of s. 74. On a correct interpretation of "lawful authority", the union's dismissal of M violated s. 74(1)(a) of *The Labour Standards Act*. [42] [48]

Per Deschamps J. (dissenting): The wording of s. 74 and its context do not indicate that the legislature intended to extend protection to an employee who reports a suspected wrongdoing within an organization. Broadening the definition of "lawful authority" to include employers is therefore inconsistent with this Court's approach to statutory interpretation and the plain meaning of the provision. "Lawful authority", as used in s. 74, can only be understood to mean persons or entities with the authority to enforce federal and provincial statutes. Since there is a rational basis for the external reporting requirement, a court must not second-guess the legislature's decisions about how to formulate effective labour policy. [51] [54] [57]

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By Binnie J.

Referred to: *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27; *Bell ExpressVu Limited Partnership v. Rex*, [2002] 2 S.C.R. 559, 2002 SCC 42; *Kolodziejski v. Auto Electric Service Ltd.* (1999), 177 Sask. R. 197; *Re Ministry of Attorney-General, Corrections Branch and British Columbia Government Employees' Union* (1981), 3 L.A.C. (3d) 140; *Haydon v. Canada*, [2001] 2 F.C. 82; *Read v. Canada (Attorney General)* (2005), 30 Admin. L.R. (4th) 218, 2005 FC 798; *Re Simon Fraser University and Association of University and College Employees, Local 2* (1985), 18 L.A.C. (3d) 361; *Forgie and Treasury Board (Immigration Appeal Board)*,

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[1986] C.P.S.S.R.B. No. 310 (QL); *Re Treasury Board (Employment & Immigration) and Quigley* (1987), 31 L.A.C. (3d) 156; *Newfoundland and Labrador Nurses' Union v. Health Care Corp. of St. John's*, [2001] Nfld. L.A.A. No. 1 (QL); *R. v. Wust*, [2000] 1 S.C.R. 455, 2000 SCC 18; *R. v. McIntosh*, [1995] 1 S.C.R. 686; *R. v. Hasselwander*, [1993] 2 S.C.R. 398; *R. v. Goulis* (1981), 125 D.L.R. (3d) 137.

By Deschamps J. (dissenting)

Rizzo & Rizzo Shoes Ltd. (Re), [1998] 1 S.C.R. 27; *Bell ExpressVu Limited Partnership v. Rex*, [2002] 2 S.C.R. 559, 2002 SCC 42; *R. v. B. (G.)*, [1990] 2 S.C.R. 57; *R. v. Morin*, [1992] 3 S.C.R. 286.

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Employment Standards Act, R.S.P.E.I. 1988, c. E-6.2, s. 35.

Employment Standards Act, R.S.Y. 2002, c. 72, s. 108.

Employment Standards Act, S.N.B. 1982, c. E-7.2, s. 28.

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Employment Standards Code, S.M. 1998, c. 29, s. 133.

Federal-Provincial Agreements Act, R.S.S. 1978, c. F-13, s. 9.

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Highway Traffic Act, R.S.N.L. 1990, c. H-3, s. 109.

Interpretation Act, 1995, S.S. 1995, c. I-11.2, ss. 10, 36.

Labour Standards Act, R.S.N.L. 1990, c. L-2, s. 78.

Labour Standards Act, R.S.N.W.T. 1988, c. L-1, s. 67.1.

Labour Standards Act, R.S.S. 1978, c. L-1, s. 74 [am. 1994, c. 39, s. 41].

Labour Standards Act, 1969, S.S. 1969, c. 24, s. 64.

Labour Standards Act (Nunavut), R.S.N.W.T. 1988, c. L-1, s. 67.1.

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APPEAL from a judgment of the Saskatchewan Court of Appeal (Tallis, Cameron and Gerwing JJ.A.) (2003), 238 Sask. R. 234, 305 W.A.C. 234, 233 D.L.R. (4th) 61, 28 C.C.E.L. (3d) 179, [2004] 7 W.W.R. 290, 2004 CLLC ¶210-005, [2003] S.J. No. 640 (QL), 2003 SKCA 103, reversing a judgment of Ball J. (2003), 229 Sask. R. 37, [2003] 6 W.W.R. 746, 2003 CLLC ¶220-045, [2003] S.J. No. 15 (QL), 2003 SKQB 9, reversing a decision of McMurtry Prov. Ct. J., [2002] S.J. No. 555 (QL), 2002 SKPC 78. Appeal allowed, Deschamps J. dissenting.

Roger J. F. Lepage, *Kerri A. Froc* and *Alison Mitchell*, for the appellant.

Roderick M. Gillies, for the respondent.

The judgment of McLachlin C.J. and Major, Binnie, LeBel, Abella and Charron JJ. was delivered by

1 BINNIE J. — In this case, the respondent trade union seeks to narrow the protection given to employees under the Saskatchewan "whistleblower" legislation contained in s. 74 of *The Labour Standards Act*, R.S.S. 1978, c. L-1 (as am. S.S. 1994, c. 39, s. 41). The somewhat unusual situation of a trade union seeking a dilution rather than an expansion of employee rights arises from the fact that the respondent union is itself being prosecuted by one of its own employees, Linda Merk.

2 Merk alleges that she was fired as bookkeeper and office manager of Local 771 because she blew the whistle on alleged financial abuses committed by her immediate supervisors, the president of the local, Charles Gumulcak, and its business manager, Bert Royer.

3 I agree with Cameron J.A., dissenting in the Saskatchewan Court of Appeal, that Linda Merk's letter to the General President of the International Union of Iron Workers that "blew the whistle" on these alleged financial abuses was a complaint "to a lawful authority" within the meaning of the Act and brought Merk within the Act's protection. The plain meaning of "lawful authority" includes those who exercise authority in both the private and public context. If the legislature had wished to limit the scope of s. 74 to complaints to a "*public* authority", it would have said so. The correctness of the broader interpretation is reinforced by the purpose and context of s. 74, as will be seen. Based on the trial judge's findings of fact, the union's

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dismissal of Merk violated the Act. The appeal must be allowed and a conviction entered.

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I. Facts

4 In the fall of 2000, Bert Royer received a Visa credit card for union expenses. Shortly thereafter, Merk realized that Royer was double charging expenses by putting them on his Visa card (which was paid directly by Local 771) despite already having received advances for the same expenses, or claiming reimbursement for the same amount as if the expenses had been paid from his own pocket. The trial judge found that in the result union funds were misappropriated. For example, Royer received a hotel advance for travel September 6-10, 2000, of $1,099.40. His actual hotel expense was $917.81. There was no evidence of repayment to the union. On October 28, 2000, he received $154.10 as an advance for hotel expenses. He then charged $162.64 on the union Visa to cover his hotel expense. There is no evidence of repayment. On October 19-20, 2000, Royer received an advance for an oil change and mileage for a trip to Saskatoon. He then put the oil change and gas charges of $48 on the union Visa. Merk alleged that Gumulcak was also collecting expenses to which he was not entitled.

5 After Merk's remonstration with Royer met with an angry response, Merk's father (a former business agent of Local 771) and three other union members wrote to the General President of the International Union of Iron Workers in Washington, Joseph Hunt, to complain that expense reimbursements to Royer and Gumulcak were not being dealt with in accordance with the union constitution. The General President assigned a union investigator from the International Union of Iron

Workers, one Fred Marr, who came to Saskatchewan to speak to those involved, including Merk. Fred Marr subsequently reported that in his view the only problem with the double-dipping expense claims was that the by-laws of Local 771 did not specifically prohibit collecting more than once for the same expenses. According to the trial judge, Marr believed that if the by-laws were rewritten, the complaints would be resolved. She commented:

> This is ridiculous. It should not be necessary to spell out in local by-laws that expenses are to be reimbursed one time only.
>
> ([2002] S.J. No. 555 (QL), 2002 SKPC 78, at para. 8)

Following receipt of Marr's "report", the executive of Local 771 met on September 21, 2001 and authorized the termination of Merk's employment. She was not at that time informed of this authorization and, for the next few weeks, her superiors chose not to act on it.

6 After waiting a time for some response from the International Union of Iron Workers following Marr's "investigation", Merk took it upon herself to write to Joseph Hunt, the General President of the International Union of Iron Workers, on October 19, 2001 setting out her complaints and saying:

> I hope you will appreciate my concerns and inform me of your decisions and subsequent actions regarding these serious problems by October 25, 2001. Your response will dictate any further actions that I may need to take. Any further delays will do nothing but jeopardize this local union which could unfortunately prove harmful to the membership and to this organization as a whole.

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7 The response from the union was not what Merk anticipated. She was dismissed from her job by letter dated November 5, 2001, signed by Royer and Gumulcak. It said:

> Due to a number of matters occurring during your employment; not the least of which occurred in the last few days prior to your leaving the workplace, as well as you forwarding your 19th of October 2001 correspondence to Joseph Hunt . . . and matters surrounding same, the local union has found it necessary to terminate your employment. [Emphasis added.]

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II. Statutory Provisions

8 *The Labour Standards Act*, s. 74, provides:

> **74**(1) No employer shall discharge or threaten to discharge or in any manner discriminate against an employee because the employee:
>
> (a) has reported or proposed to report to a lawful authority any activity that is or is likely to result in an offence pursuant to an Act or an Act of the Parliament of Canada; or
>
> (b) has testified or may be called on to testify in an investigation or proceeding pursuant to an Act or an Act of the Parliament of Canada.
>
> (2) Subsection (1) does not apply where the actions of an employee are vexatious.

III. Judicial History

A. *Trial Judge* ([2002] S.J. No. 555 (QL), 2002 SKPC 78)

9 McMurtry Prov. Ct. J. reviewed the law and concluded:

> Merk certainly was terminated because of her pursuit of the issue of Royer's expenses through the union. Once it appeared to Royer that the union's investigation cleared him, he felt safe to fire her. [para. 18]

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10 The trial judge was therefore "satisfied beyond a reasonable doubt that Merk was terminated because she complained about Royer's expenditures" (para. 15). In terms of s. 74, Royer's conduct qualified as an "activity that is or is likely to result in an offence pursuant to an Act or an Act of the Parliament of Canada". However, the Act also requires that the firing be related to a complaint to a "lawful authority". On this point, the trial judge said:

> If the language of the section permitted me to consider a member of the union bureaucracy as a lawful authority, I would have convicted. However, "lawful authority" must be interpreted as a person or institution authorized by law to investigate offences. If I am wrong and the General President of the union is a lawful authority, given his ability to remove any officer from his or her position, Merk's complaint to Marr, the President's investigator, would meet the test. I am convinced that Merk providing information to Marr is the reason she was dismissed. [Emphasis added; para. 19.]

In other words, but for a restrictive interpretation of the phrase "lawful authority" to officials of the state (rather than a private entity such as a union), she would have entered a conviction.

B. *Summary Conviction Appeal Judge — Ball J.* ((2003), 229 Sask. R. 37, 2003 SKQB 9)

11 The Queen's Bench judge agreed with the trial judge's interpretation of "lawful authority", but allowed the appeal on other grounds (not here relevant) and substituted a conviction (para. 51).

C. *Court of Appeal* ((2003), 238 Sask. R. 234, 2003 SKCA 103)

12 Gerwing and Tallis JJ.A. allowed the appeal but agreed with the narrow interpretation of "lawful authority" adopted in the courts below. Gerwing J.A., basing herself in part on predecessor legislation, took the view that

> the lawful authority must be one that is capable of exercising authority, i.e., compelling obedience, with respect to the conduct reported as an offence. Here the offence threatened to be reported, and the only one which can sustain the charge, is fraud, and the Union hierarchy, while it can enforce its own bylaws, has no capacity to deal with this as "an offence". [para. 20]

13 Cameron J.A., dissenting, would have affirmed a conviction but on grounds different from those of the summary conviction appeal court. In his view, the General President was a "lawful authority" because the purpose of the whistleblower law was "best attained by interpreting this expression liberally, to include other persons in authority, including persons possessed of corporate authority recognized by law to act upon the reported wrongdoing" (para. 46).

IV. Analysis

14 Whistleblower laws create an exception to the usual duty of loyalty owed by employees to their employer. When applied in government, of course, the purpose is to avoid the waste of public funds or other abuse of state-conferred privileges or authority. In relation to the private sector (as here), the purpose still has a public interest focus because it aims to prevent wrongdoing "that is or is likely to result in an offence". (It is the "offence" requirement that gives the whistleblower law a public aspect and filters out more general workplace complaints.) The underlying idea is to

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recruit employees to assist the state in the suppression of unlawful conduct. This is done by providing employees with a measure of immunity against employer retaliation. "[R]eports from insiders allow for early detection and reduction of harm, reduce the necessity for and expense of public oversight and investigation, and may ultimately deter malfeasance" (E. S. Callahan, T. M. Dworkin and D. Lewis "Whistleblowing: Australian, U.K., and U.S. Approaches to Disclosure in the Public Interest" (2004), 44 *Va. J. Int'l L.* 879, at p. 882).

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15 The terminological debate in the Saskatchewan courts over the scope of the words "lawful authority" in s. 74, which on a plain meaning (in my view) includes a private authority as well as a public authority, is rooted in a more philosophic issue. Is the Saskatchewan legislature's intention best respected by withholding s. 74 protection from employees unless and until they take their complaint to the police or some other public official who can "deal with the allegation *qua* offence", as was held by the Saskatchewan Court of Appeal (at para. 21), or is it best respected by extending the protection to employees who go "up the ladder" *inside* the employer organization in an effort to have the "activity" terminated rather than prosecuted? A contextual and purposeful reading of s. 74 confirms its plain meaning. Purpose and context are important, as Laskin J. (as he then was) wrote over 30 years ago:

> The distinction that I draw is between a purely formal, mechanical view of the law, antiseptic and detached, and a view of the law that sees it as purposive, related to our social and economic conditions, and serving ends that express the character of our organized society.
>
> (B. Laskin, "The Function of the Law" (1973), 11 *Alta. L. Rev.* 118, at p. 119)

Here the legislature speaks of "lawful authority". This is a well-known concept. If, for example, a landowner orders a trespasser off her property, she is exercising as landowner "lawful authority" every bit as much as if a policeman (whose lawful authority flows from a different source) were to do so. The question is not whether the authority is public or private, but whether it is lawful.

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16 The general principles of labour relations provide, I believe, the appropriate context. In employment law, there is a broad consensus that the employee's duty of loyalty and the public's interest in whistleblowing is best reconciled with the "up the ladder" approach. The Saskatchewan legislature was not oblivious to the realities of the workplace.

A. *Applicable Rules of Statutory Interpretation*

17 The direction from the Saskatchewan legislature to the courts in s. 10 of *The Interpretation Act, 1995*, S.S. 1995, c. I-11.2, is that "[e]very enactment shall be interpreted as being remedial and shall be given the fair, large and liberal construction and interpretation that best ensure the attainment of its objects." The "objects" of s. 74 include better protection for employees who not only uncover unlawful "activity" but who bring this activity to the attention of a "lawful authority" who can do something about it. The question is how best to attain that objective.

18 Allied with s. 10 of *The Interpretation Act, 1995* is the contextual approach to statutory construction encapsulated by E. A. Driedger: "[T]he words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of

Parliament." (*Construction of Statutes* (2nd ed. 1983), at p. 87). This approach has regularly been adopted and applied in this Court: *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27; *Bell ExpressVu Limited Partnership v. Rex*, [2002] 2 S.C.R. 559, 2002 SCC 42. The analysis is applied in several steps.

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(1) Grammatical and Ordinary Sense

19 Gerwing J.A. held that "lawful authority" should be limited to someone "in a position to deal with the allegation *qua* offence" (para. 21). In her view the words "lawful authority" take their colour from the reference in s. 74 to an "offence", but it seems to me the word "offence" simply delineates the sort of "activity" the legislature wished to ferret out. The legislature's desire was to have such "activity" brought to the attention of someone who had the "lawful authority" (public or private) to remedy the problem. While the response to unlawful conduct could include prosecution for an "offence", it could also include steps short of prosecution through action by an employer or other private authority who has the lawful power to put a stop to the wrongful conduct. The legislature wanted a workplace free of unlawful activity. It did not specify prosecution as the only or even the preferred method of bringing about that result. Taking this case as an example, Joseph Hunt, the General President of the International Union of Iron Workers was not a public official but he had lawful authority, through mobilization of the powers of the international union, to bring to an end the ongoing misappropriations of members' money at Local 771. There is nothing in the "grammatical and ordinary meaning" of s. 74 to cast doubt on this broader interpretation of "lawful authority".

(2) The Scheme of the Act

20 *The Labour Standards Act* is essentially employee protection legislation. The whistleblower measure was expanded in 1994 together with other provisions collectively justified by the Labour Minister to the Legislative Assembly as follows:

> The primary purpose of this Bill is to rectify some real injustices — injustices which most fair-minded people admit exist and need to be tackled, although they may not agree upon the means we have chosen.
>
> (Saskatchewan, Legislative Assembly, *Debates and Proceedings (Hansard)*, 4th Sess., 22nd Leg., April 22, 1994, at p. 1785)

21 One of the injustices addressed in *The Labour Standards Act* amendments was the problem of workplace retaliation against employees who blow the whistle on unlawful conduct. The courts in Saskatchewan have called for a "generous" interpretation of the Act. For example, Lane J.A., writing in a somewhat different context for the court in *Kolodziejski v. Auto Electric Service Ltd.* (1999), 177 Sask. R. 197 (C.A.), explained, at para. 18, that:

> Labour standards legislation is characterized as "benefits-conferring legislation". As such, it must be interpreted generously and any doubt arising from difficulties in language must be resolved in favour of the claimant. [Emphasis added.]

22 The appellant claims the benefit of the protection of the Act. The union respondent would deny it.

(3) The Object of the Act

23 Section 74, as stated, seeks to reconcile an employee's duty of loyalty to his or her employer with the public interest in the suppression of unlawful activity.

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A long line of decisions in the labour relations field affirms that this balance is best achieved if "loyal" employees are encouraged to resolve the problems internally rather than marching forthwith to the police, i.e. work with internal remedies before going public. Yet the interpretation given s. 74 by the Saskatchewan Court of Appeal denies the "loyal" employee protection: the employee only obtains protection when the complaint is taken outside the employer organization to the police or other public authority. This is the antithesis of good labour relations policy, as noted by J. M. Weiler almost a quarter of a century ago in his arbitral award in *Re Ministry of Attorney-General, Corrections Branch and British Columbia Government Employees' Union* (1981), 3 L.A.C. (3d) 140, at p. 163:

> The duty of fidelity does not mean that the Daniel Ellsbergs and Karen Silkwoods of the world must remain silent when they discover wrongdoing occurring at their place of employment. Neither the public nor the employer's long-term best interests are served if these employees, from fear of losing their jobs, are so intimidated that they do not bring information about wrongdoing at their place of employment to the attention of those who can correct such wrongdoing. However, the duty of fidelity does require the employee to exhaust internal "whistle-blowing" mechanisms before "going public". These internal mechanisms are designed to ensure that the employer's reputation is not damaged by unwarranted attacks based on inaccurate information. Internal investigation provides a sound method of applying the expertise and experience of many individuals to all problems that may only concern one employee. [Emphasis added.]

24 This so-called "up the ladder" approach has also been favoured by courts and other labour arbitrators. In *Haydon v. Canada*, [2001] 2 F.C. 82 (T.D.), Tremblay-Lamer J. stated, at para. 120:

> The applicants endeavoured on several occasions to have their concerns addressed internally without success. As a general rule, public criticism will be justified where reasonable attempts to resolve the matter internally are unsuccessful. [Emphasis added.]

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See also *Read v. Canada (Attorney General)* (2005), 30 Admin. L.R. (4th) 218, 2005 FC 798, *per* Harrington J., at para. 123; *Re Simon Fraser University and Association of University and College Employees, Local 2* (1985), 18 L.A.C. (3d) 361 (R. B. Bird); *Forgie and Treasury Board (Immigration Appeal Board)*, [1986] C.P.S.S.R.B. No. 310 (QL) (M. Bendel); *Re Treasury Board (Employment & Immigration) and Quigley* (1987), 31 L.A.C. (3d) 156 (J. M. Cantin), and *Newfoundland and Labrador Nurses' Union v. Health Care Corp. of St. John's*, [2001] Nfld. L.A.A. No. 1 (QL) (P. Kelsey), at paras. 292-94, 298-99 and 312. Many of these cases arose in relation to public sector employees where the public interest in "whistleblowing" may be more obvious, but the need in the private sector to strike a proper balance is the same.

(4) The Public Policy Debate

25 Saskatchewan is not alone in its desire to protect legitimate whistleblowers. Amongst other more or less contemporaneous initiatives was the report to the federal government by the former Chief Justice of Ontario, Charles L. Dubin, who wrote in contemplation of amendments to the *Competition Act*, R.S.C. 1985, c. C-34, that he too supported an "up the ladder" approach:

> [T]he decisions of arbitral panels hearing grievances from whistleblowing employees suggest that the employee's duty of fidelity is a strong one, and is generally breached when an employee criticizes his or her employer publicly or discloses information that damages the employer's interests. An employee may be justified in going public to expose wrongdoing or illegal acts by the employer. But in order to successfully rely on that justification, the employee must first try to resolve the matter internally. Although these same principles would probably apply to common law

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> actions for wrongful dismissal brought by non-unionised employees, there do not appear to be any reported judgments that deal with this issue. [Emphasis added.]
>
> (C. L. Dubin and J. Terry, *Whistleblowing Study* (1997), at p. 20)

Failure to "try to resolve the matter internally" is condemned by courts, labour arbitrators and other commentators as *prima facie* disloyal and inappropriate conduct. It would be anomalous to interpret s. 74 as requiring recourse to outside agencies as a condition precedent to protection.

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26 The correctness of the broader approach is confirmed by the experience in many other jurisdictions. In Britain, for example, whistleblower protection contained in the *Employment Rights Act 1996* (U.K.), 1996, c. 18, requires (except in special circumstances) that an employee first make a good faith disclosure internally, either to his employer (s. 43C(1)(a)) or to another "internal" person when the worker reasonably believes that the relevant failure relates to the conduct of that person or that that person has legal responsibility over the matter. In New Zealand, the *Protected Disclosures Act 2000* (N.Z.), 2000, No. 7, which covers both the public and private sectors, requires whistleblowers to report through internal channels (with a few minor exceptions) before blowing the whistle publicly (s. 7). In Europe, the so-called Whistleblowers' Charter, 1999 is administered by the Anti-Fraud Office of the European Commission and creates procedures that require employees to exercise all internal avenues for reporting misconduct before they can blow the whistle to an outside authority. (See art. 2 of Commission Decision dated April 28, 1999 (1999/352/EC, ECSC, Euratom), [1999] O.J. L. 136/20, and related Council Decision dated May 25, 1999 (1999/394/EC, Euratom), [1999] O.J. L. 149/36; and arts. 22a and 22b of the Staff Regulations of officials of the European Communities, [1968] O.J. L.

56/1 (amended by Council Regulation (EC, Euratom) No. 723/2004 dated March 22, 2004, [2004] O.J. L. 124/1.) There is nothing in s. 74 or surrounding context to suggest that the Saskatchewan legislature in 1994 intended to expose "loyal" employees to employer retaliation without a remedy.

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(5) Avoidance of Anomalous Results

27 The argument that an employer can dismiss without fear of prosecution an employee for bringing serious wrongdoing to its attention internally, but cannot do so as soon as the employee goes to outside authorities, invites rejection on the basis of irrationality, as described in R. Sullivan, *Sullivan and Driedger on the Construction of Statutes* (4th ed. 2002), at p. 246:

> A variation on irrational distinction occurs when an interpretation leads to an outcome in which persons deserving of better treatment receive worse treatment or vice versa.

See also P.-A. Côté, *The Interpretation of Legislation in Canada* (3rd ed. 2000), at pp. 451-52. In *R. v. Wust*, [2000] 1 S.C.R. 455, 2000 SCC 18, our Court declined to accept the interpretation of a sentencing provision which "would reward the worst offender and penalize the least offender" (para. 42). A comparable anomaly would arise here if a narrow view of "lawful authority" were adopted.

(6) Legislative History

28 Part of Driedger's "entire context" is legislative history. The majority opinion of Gerwing J.A. was in part predicated on her view that s. 74 was intended

merely as an incremental advance on an earlier immunity clause contained in s. 64 (later renumbered s. 74), which itself was limited to cooperation with public authorities:

> **64.** No employer shall discharge or threaten to discharge or in any manner discriminate against an employee because the employee has testified or is about to testify in an investigation or proceeding held or to be held pursuant to the provisions of this Act, or an employee who makes a complaint or furnishes information to the minister or his agent under this Act.
>
> (*The Labour Standards Act, 1969*, S.S. 1969, c. 24)

On this basis Gerwing J.A. concluded:

> The current s. 74 broadened the protection to other statutes, but nothing in its wording or in the legislative history suggests that the term "lawful authority" should be extended to someone not in a position to deal with the allegation *qua* offence. [para. 21]

29 There are, of course, legislative provisions in other jurisdictions that adopt this narrower approach. Section 425.1 of the *Criminal Code*, R.S.C. 1985, c. C-46, for example, gives protection to employees who blow the whistle to "a person whose duties include the enforcement of federal or provincial law". It will be noted, however, that the wording of the *Criminal Code* is a good deal more explicit in its restricted scope. The effect of the majority decision in the Saskatchewan Court of Appeal, with respect, is to read into s. 74 the more restrictive language of the *Criminal Code* without textual or contextual justification.

30 The aim of predecessor sections to s. 74 was to encourage employee cooperation with government officials in labour matters, and was typical of the protection that is found in most Canadian labour codes; see, e.g., *Employment*

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Standards Act, R.S.B.C. 1996, c. 113, s. 83; *Employment Standards Code*, R.S.A. 2000, c. E-9, s. 125; *The Employment Standards Code*, S.M. 1998, c. 29, s. 133; *Employment Standards Act, 2000*, S.O. 2000, c. 41, s. 74; *An Act respecting labour standards*, R.S.Q., c. N-1.1, s. 122; *Employment Standards Act*, S.N.B. 1982, c. E-7.2, s. 28; *Employment Standards Act*, R.S.P.E.I. 1988, c. E-6.2, s. 35; *Labour Standards Code*, R.S.N.S. 1989, c. 246, s. 30; *Labour Standards Act*, R.S.N.L. 1990, c. L-2, s. 78; *Labour Standards Act*, R.S.N.W.T. 1988, c. L-1, s. 67.1; *Labour Standards Act (Nunavut)*, R.S.N.W.T. 1988, c. L-1, s. 67.1; *Employment Standards Act*, R.S.Y. 2002, c. 72, s. 108.

31 In recent years, however, legislative horizons have expanded. Section 74 is not on its face directed to cooperation between employees and government officials. Having regard to the consideration already mentioned it seems to me that s. 74 should be seen as part of a broader legislative reform rather than the narrower incremental step favoured by the Saskatchewan Court of Appeal.

(7) Penal Provision

32 The respondent says that s. 74 is a penal provision and that it must therefore be read restrictively. Gerwing J.A., at para. 25 of her judgment, concluded that "the interpretation of a penal statute that is ambiguous must be resolved in a manner favourable to the accused person": *R. v. McIntosh*, [1995] 1 S.C.R. 686, at paras. 38-39.

33 In my view, with respect, this approach is of limited value when interpreting a regulatory statute such as *The Labour Standards Act*. If it is concluded

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in all the relevant circumstances that the legislature intended a broad approach, that is the approach that will be adopted. In *R. v. Hasselwander*, [1993] 2 S.C.R. 398, the Court addressed the interpretation of the definition of "prohibited weapon" in the *Criminal Code*, and noted that while one possible definition would bring the accused's weapon within the prohibition, the other would not. In resolving this issue, Cory J. adopted an earlier *dictum* of Martin J.A. of the Ontario Court of Appeal in *R. v. Goulis* (1981), 125 D.L.R. (3d) 137:

> . . . even with penal statutes, the real intention of the legislature must be sought, and the meaning compatible with its goals applied. [p. 413]

Sullivan also stated, at p. 387:

> The rule [of strict construction] is difficult to reconcile with federal and provincial Interpretation Acts which provide that all legislation is to be deemed remedial and given a liberal and purposive interpretation. In the clearest possible language, this statutory directive requires doubts and ambiguities in penal legislation to be resolved in a manner that promotes the purpose of the legislation, regardless of the impact on accused persons.

See also Côté, at p. 477.

34 Reference might also usefully be made to R. N. Graham, *Statutory Interpretation: Theory and Practice* (2001), at pp. 210-15, and to F. A. R. Bennion, *Statutory Interpretation: A Code* (4th ed. 2002), at p. 706:

> In accordance with the basic rule of statutory interpretation, a penal enactment will not be given a strict construction if other interpretative factors weigh more heavily in the scales.

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35 I conclude that in the circumstances of this case "other interpretative factors" outweigh the principle of strict construction of penal statutes relied upon by the respondent.

B. *Conclusion With Respect to the Scope of Employee Protection Afforded by Section 74*

36 The interpretation of s. 74 adopted by the majority of the Saskatchewan Court of Appeal would discourage the internal resolution of alleged misconduct by withholding whistleblower protection unless and until the employee goes "outside" to the enforcement authorities of the state. For the reasons given, I believe its interpretation of "lawful authority" is too narrow. Section 74 protection should be extended to employees who first blow the whistle to the boss or other persons *inside* the employer organization who have the "lawful authority" to deal with the problem. If the problem is not resolved internally, then employees can go "outside" to the police or another enforcement agency, but in order to obtain the protection of s. 74, it is not *necessary* that they do so.

37 I should add that there may well be circumstances where an employee is fully justified in not seeking an internal remedy but in going directly to the police, as where (for example) it is feared that the employer may destroy evidence. Whether or not an employee is justified in bypassing internal remedies will depend on the circumstances. My point is simply that a suitable "lawful authority" may be found *inside* as well as *outside* the employer organization, and if an employee chooses to go the inside route and suffers retaliation, the protection of s. 74 is still available.

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38 For the foregoing reasons, I conclude that the expression "lawful authority" in s. 74 includes not only the police or other agents of the state having authority to deal with the activity complained of "as an offence" but also individuals within the employer organization who exercise lawful authority over the employee(s) complained about, or over the activity that is or is likely to result in the offence.

C. *Subsequent Amendments to Section 74*

39 My colleague Deschamps J. notes that about a year after the decision of the Court of Appeal in this case, the Saskatchewan legislature amended s. 74 to provide expressly that "lawful authority" includes "up the ladder" supervisors:

> **74** . . .
>
> (3) In this section, **"lawful authority"** means:
>
> (a) any police or law enforcement agency with respect to an offence within its power to investigate;
>
> (b) any person whose duties include the enforcement of federal or provincial law with respect to an offence within his or her power to investigate; or
>
> (c) any person directly or indirectly responsible for supervising the employee.
>
> (*The Labour Standards Amendment Act, 2005*, S.S. 2005, c. 16, s. 8)

40 From this my colleague concludes that we should infer that the legislature intended to *expand* the meaning of "lawful authority" to include supervisors. I do not agree. Section 36 of *The Interpretation Act, 1995* of Saskatchewan provides that such an inference is not permissible. Section 36 says:

> **36**(1) The repeal or the amendment of a provision in an enactment does not imply:
>
> (a) . . .
>
> (b) a declaration as to the previous state of the law; or
>
> (c) a declaration that the law pursuant to the enactment prior to the repeal or amendment was different from the law as it is pursuant to the enactment as amended.
>
> (2) The re-enactment, revision, consolidation or amendment of a provision in an enactment does not imply an adoption of any judicial or other interpretation of the language used in the provision or of similar language.

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41 Equally consistent with the legislative amendment to s. 74 is the explanation (which I think is more likely) that the Saskatchewan legislature did not agree with the way in which the Saskatchewan Court of Appeal in this case had interpreted its handiwork. In any event such speculation either way is foreclosed by s. 36 of *The Interpretation Act, 1995*.

D. *Application to the Facts of This Case*

42 The appellant certainly pursued an "up the ladder" reporting approach. Prior to her termination, she had progressively disclosed Royer's and Gumulcak's alleged misappropriation of union funds (1) to Royer himself, as her supervisor; (2) to a trustee of Local 771 who along with two other trustees were responsible to the membership for the finances; (3) to the union's auditor who could have flagged the problem in his audit; (4) to the investigator, Fred Marr appointed by the General President of the International Union of Iron Workers; (5) to the General President of the International Union of Iron Workers; and only when none of these people could be stirred to action, (6) to the police. In reaching my conclusions, I do not wish to be taken as suggesting that Merk's complaint to the union trustee of Local 771 or its

auditor were not to a "person in authority". The appeal was argued by both sides on the basis of Merk's complaints to the International Union of Iron Workers representatives. As no argument was addressed to the status of the local people, and no provision of the local constitution was put forward to support that view, I say no more about potential s. 74 protection in that regard.

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43 There is some suggestion in the union's argument that Merk's allegations were made irresponsibly or in bad faith, leading the employer (the union) to conclude that she was unsuitable for the job. In effect, the union says the cause of dismissal was not retaliation for whistleblowing, but because of its conclusion about Merk's unsuitability illustrated by her irresponsible allegations. This argument, too, collapses in the face of findings of fact by the trial judge, who stated:

> Until the date of her termination, Ms. Merk had justification for being concerned that the payments were improper and it was reasonable for her to believe that some of Royer's expenditures were a fraud on the union. In my view, that is sufficient to meet the threshold in section 74. It would be unreasonable to require that she have evidence that establishes, beyond a reasonable doubt that an offence has occurred. [para. 16]

44 Who then, on the facts of this case, is a person with "lawful authority"? The trial judge answered that question too. Had she been persuaded as a matter of law that "lawful authority" included authorities internal to a union or corporation, she would have convicted. To repeat her finding, at para. 19 of her judgment:

> If I am wrong and the General President of the union is a lawful authority, given his ability to remove any officer from his or her position, Merk's complaint to Marr, the President's investigator, would meet the test. I am convinced that Merk providing information to Marr is the reason she was dismissed.

45 The reason the trial judge put her focus on Merk's communication to "the President's investigator", rather than on her October 19, 2001 letter to the General President himself, is that the executive of Local 771 authorized the firing of Merk on September 21, 2001, almost a month prior to the date of her letter to General President Hunt of October 19, 2001. The union says the letter to Hunt is irrelevant.

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46 The further facts are, however, that such "authorization" was not acted on until November 5, 2001. The letter of dismissal specifically refers to "your 19th of October 2001 correspondence to Joseph Hunt . . . and matters surrounding same". The "matters surrounding same" obviously included Merk's agitation about the improper expense claims going back for more than a year to the fall of 2000.

47 Irrespective of the authority given by the union executive to Royer and Gumulcak on September 21, 2001 to fire Merk, she knew nothing about it until November 5, 2001. That was the effective date of her dismissal. In terms of s. 74, the *actus reus* was not complete until November 5, 2001 and at that time the *mens rea* of Gumulcak and Royer was inflamed by Merk's letter to the General President of October 19, 2001, and they so stated in the letter of dismissal on that date. Accordingly, the *actus reus* and the requisite *mens rea* did not coincide until November 5, 2001 at which time the s. 74 offence was complete. The union having referenced Merk's October 19, 2001 complaint in its letter of dismissal, it does not now lie in the union's mouth to argue that her October 19th complaint to President Hunt about alleged financial misconduct did not at least contribute to her dismissal.

V. Conclusion

48 In summary, based on the trial judge's findings, Merk was discharged because she reported to a lawful authority (the International Union of Iron Workers) the financial misconduct of Gumulcak and Royer. The alleged misconduct was an "activity that is or is likely to result in an offence" within the meaning of s. 74. The offence was complete on November 5, 2001. On a correct interpretation of "lawful authority", there should have been a conviction. The appeal should therefore be allowed and a conviction entered. As we are advised that this is a private prosecution, the appellant will have her costs here and in the courts below on a party and party basis. The matter is returned to the trial judge to impose sentence and consider the appellant's claim for further and other relief.

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The following are the reasons delivered by

49 DESCHAMPS J. (dissenting) — The issue raised by this case is one of pure statutory interpretation. Rather than determining legislative intent, the majority asks whether employee protection can be best achieved by extending the meaning of s. 74 of *The Labour Standards Act*, R.S.S. 1978, c. L-1 (as am. S.S. 1994, c. 39, s. 41) to employees who blow the whistle inside an organization, or by withholding protection from them. In effect, the majority reasons that because the purpose of the legislation is remedial, the plain meaning of the provision should be ignored in order to provide the broadest protection possible. This is, in my view, a circular approach which strays far from the principles of statutory interpretation. I would therefore restate the question and ask what the legislature's intention is, rather than identifying the desired protection and asking whether the legislature should have afforded it to employees.

50 The majority raises an important concern about the peculiar situation created by s. 74. It may indeed appear unsatisfactory that an employee who reports

alleged wrongdoing to his or her superiors does not receive the same protection as an employee who reports directly to an outside agency. However, I disagree with the majority's broad interpretation of the expression "lawful authority". Amendments are left to the legislature; it is not for the Court to stretch the rules of statutory interpretation.

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51 "Lawful authority", as used in s. 74, can only be understood to mean a person or entity with the authority to enforce federal and provincial statutes. Extending "lawful authority" to the employer requires reading in words which do not accord with the plain meaning of the provision and go against this Court's interpretative approach.

I. What is "Lawful Authority"?

52 The Court has repeatedly held that "there is only one principle or approach" to statutory interpretation, "namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament" (E. A. Driedger, *Construction of Statutes* (2nd ed. 1983), at p. 87, as cited in *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at para. 21; see also *Bell ExpressVu Limited Partnership v. Rex*, [2002] 2 S.C.R. 559, 2002 SCC 42, at para. 26).

53 On its face, "lawful authority" refers to a person or entity authorized to exercise public power. This meaning is reinforced in s. 74 by the term's close proximity to "an offence pursuant to an Act or an Act of the Parliament of Canada", which suggests, as Gerwing J.A. of the Court of Appeal noted, that the lawful authority

must be capable of "compelling obedience, with respect to the conduct reported as an offence" (para. 20).

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54 The majority contends that a narrow reading of "lawful authority" leads to irrational consequences and therefore cannot be supported. It is a well-established principle of statutory interpretation that the legislature does not intend to produce consequences that are absurd, illogical or incoherent (*Rizzo & Rizzo*, at para. 27). With respect, however, requiring employees to report suspected offences to a public authority cannot be viewed as irrational. The legislature may have been motivated by a number of concerns. For example, persons or entities exercising public power, such as the police, are uniquely situated to enforce the law and to deal with allegations of criminal or quasi-criminal activity. As the Court of Queen's Bench judge observed in this case, encouraging employees to report internally could therefore work "against the goal of promoting disclosure to those responsible for enforcing federal and provincial statutes" ((2003), 229 Sask. R. 37, 2003 SKQB 9, at para. 39). Whatever the legislature's purpose in creating an external reporting requirement, s. 74 falls far short of "irrationality". Given that there is a rational basis for the requirement of reporting to an entity authorized to exercise public power, the Court must not second-guess the legislature's decisions about how to formulate effective labour policy.

55 A plain reading of "lawful authority" is also in line with analogous uses of the term in other federal and provincial statutes. "Lawful authority" appears repeatedly in the *Criminal Code*, R.S.C. 1985, c. C-46, as well as in multiple provincial statutes as varied as the Alberta *Election Act*, R.S.A. 2000, c. E-1, the Manitoba *Mines and Minerals Act*, S.M. 1991-92, c. 9, and the Newfoundland and Labrador *Highway Traffic Act*, R.S.N.L. 1990, c. H-3. While these statutes do not

specifically define "lawful authority" or, where applicable, its equivalent in French as a police officer or public agency, the term is consistently used in relation to an activity which is an offence unless carried out with authority conferred by statutory or common law. As such, an employer cannot be considered a "lawful authority" under s. 74 (see, for example, *Criminal Code*, ss. 40, 279, 294 and 369; Alberta, *Election Act*, s. 161; British Columbia, *Forest and Range Practices Act*, S.B.C. 2002, c. 69, s. 58; Manitoba, *Mines and Minerals Act*, s. 232(1); Newfoundland and Labrador, *Highway Traffic Act*, s. 109; Saskatchewan, *The Federal-Provincial Agreements Act*, R.S.S. 1978, c. F-13, s. 9).

56 In the small number of statutes where "lawful authority" is given an expanded meaning, the intention to do so is clear from the provision. The Saskatchewan legislature has, for example, extended lawful authority beyond its plain meaning in two provisions. Section 3 of the Saskatchewan *Privacy Act*, R.S.S. 1978, c. P-24, provides that proof of surveillance of an individual without the consent of the individual "or some other person who has the lawful authority to give the consent" is *prima facie* evidence of a violation of privacy. Similarly, s. 28.2(1) of the Saskatchewan *Mental Health Services Act*, S.S. 1984-85-86, c. M-13.1, provides that the director of mental health services may order the return of someone to another province if "an order has been issued by a person with the lawful authority to make that order in that jurisdiction for the person to be given a compulsory psychiatric examination" (see also Newfoundland and Labrador, *Privacy Act*, R.S.N.L. 1990, c. P-22, s. 4; New Brunswick, *Mental Health Act*, R.S.N.B. 1973, c. M-10, s. 1(1) "nearest relative"). By comparison, s. 74 contains no modifying phrase extending "lawful authority" to encompass those who supervise employees, and must, as a result, rest on the plain meaning of the term.

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57 The object of the Act is obviously remedial and, to this end, s. 74 affords a remedy to complainants who turn to a public authority for assistance. However, simply finding that the purpose of the Act is remedial is not in itself determinative and we must still ask how far the legislature intended to go. The wording of the statute and its context, in my view, do not indicate that the legislature intended to extend protection to an employee who reports a suspected wrongdoing within an organization. Broadening the definition of "lawful authority" and of its equivalent in French to include employers is therefore inconsistent with the plain meaning of the provision and this Court's approach to statutory interpretation.

58 As a matter of policy, the Saskatchewan legislature has already exercised its legislative mandate to strengthen whistleblower protections by amending s. 74. The amended provision (S.S. 2005, c. 16, s. 8), which came into force on May 27, 2005, expressly broadens the definition of "lawful authority":

> **74**(1) No employer shall discharge or threaten to discharge, take any reprisal against or in any manner discriminate against an employee because the employee:
>
> (a) has reported or proposed to report to a lawful authority any activity that is or is likely to result in an offence pursuant to an Act or an Act of the Parliament of Canada; or
>
> (b) has testified or may be called on to testify in an investigation or proceeding pursuant to an Act or an Act of the Parliament of Canada.
>
> (2) Subsection (1) does not apply where the actions of an employee are vexatious.
>
> (3) In this section, **"lawful authority"** means:
>
> (a) any police or law enforcement agency with respect to an offence within its power to investigate;

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> (b) any person whose duties include the enforcement of federal or provincial law with respect to an offence within his or her power to investigate; or
>
> (c) any person directly or indirectly responsible for supervising the employee.

I do not refer to the amendment, as my colleague Binnie J. suggests, as argument to infer the legislative intent but only to note that by explicitly expanding the definition of lawful authority to include supervisors, the legislature effectively resolved the dilemma highlighted by the majority without distorting the plain meaning of the term.

II. Application to the Facts of the Case

59 The trial judge found that the decision to terminate Merk was made by the Executive Board of the union on September 21, 2001. Although McMurtry Prov. Ct. J. found that "Merk certainly was terminated because of her pursuit of the issue of Royer's expenses through the union", she concluded that the decision to terminate Merk occurred before Merk threatened to go to the police in her letter of October 19th ([2002] S.J. No. 555 (QL), 2002 SKPC 78, at para. 18). The trial judge based this finding on several factors, including the minutes of the Executive Board meeting at which the termination was authorized, the similarity between the draft termination letter and the letter that was ultimately sent, and Royer's testimony that he did not terminate Merk immediately because she was ill. The trial judge concluded that "[o]nce it appeared to Royer that the union's investigation cleared him, he felt safe to fire her" (para. 18).

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60 The Court of Appeal refused to interfere with the trial judge's decision, finding that "[t]here was evidence to support [the factors] she accepted and no reason she could not have rejected the implied threat in the letter" ((2003), 238 Sask. R. 234, 2003 SKCA 103, at para. 18). I agree with the Court of Appeal in this regard. While the trial judge could have explored the events following September 21 more fully, an appeal court only has a limited role (*R. v. B. (G.)*, [1990] 2 S.C.R. 57; *R. v. Morin*, [1992] 3 S.C.R. 286). There is no basis for interfering with the trial judge's findings of facts.

III. Conclusion

61 Statutory provisions must be interpreted in their entire context and on their plain and ordinary meaning. Reading in a broader definition of "lawful authority" goes against this Court's interpretative tradition and creates inconsistencies with the use of the term in other legislative contexts. Ultimately it is up to the legislature, as occurred in this case, to extend the scope of the statute through legislative amendment. Having regard to all of these factors, I conclude that the Court of Appeal was correct to decline to intervene. I would have dismissed the appeal.

Appeal allowed with costs, DESCHAMPS J. *dissenting.*

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