Federal Court of Appeal  Cour d'appel fédérale

Date: 20170207

Docket: A-44-16

Citation: 2017 FCA 26

[ENGLISH TRANSLATION]

CORAM: **SCOTT J.A.**
BOIVIN J.A.
DE MONTIGNY J.A.

BETWEEN:

GANDHI JEAN PIERRE

Appellant

and

ATTORNEY GENERAL OF CANADA
(CITIZENSHIP AND IMMIGRATION CANADA)

Respondent

Hearing held at Montreal, Quebec, on January 12, 2017.

Judgment delivered at Ottawa, Ontario, on February 7, 2017.

REASONS FOR JUDGMENT BY: SCOTT J.A.

CONCURRED IN BY: BOIVIN J.A.
DE MONTIGNY J.A.

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REASONS FOR JUDGMENT

SCOTT J.A.

I. Background

[1] Gandhi Jean Pierre (the appellant) is appealing a judgment of the Federal Court (2015 FC 1423) dated December 29, 2015, by Justice Gascon (the Judge), dismissing his application for judicial review of a decision by the Canadian Human Rights Commission (the

Commission). On August 29, 2014, the Commission found that the discrimination complaint the appellant had filed against his employer, Citizenship and Immigration Canada (CIC), was inadmissible under paragraph 41(1)(e) of the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6 (the Act) because it was filed out of time.

II. The appellant's representations

[2] The appellant claims that the Judge erred by finding that the Commission had the discretion to refuse to investigate his complaint because it was filed more than one year after the occurrence of the last acts on which it was based. He also argues that the Commission breached procedural fairness in dealing with his complaint and that it violated his freedom of expression, which is protected by the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act, 1982* (U.K.), 1982, c. 11 (the Charter).

[3] In his complaint form received by the Commission on July 9, 2013, the appellant stated that he was the victim of discriminatory practices on the part of his employer between June 2005 and May 2012, some of which occurred in the course of a hiring process. He stated that the last discernible act occurred on May 25, 2012, when he received certain documents that were obtained further to an access to information request. The documents contained discriminatory remarks that purportedly had a detrimental effect on his chances of success in the hiring process.

[4] Although his complaint was not filed in an acceptable format until July 9, 2013, the appellant maintains that it should have been received by the Commission when he sent it the first time (albeit in an inadmissible format), on May 23, 2013. Since the last act on which his

complaint is based occurred on May 25, 2012, he alleges that his complaint was filed within the one-year time period prescribed by the Act.

[5] Alternatively, he alleges that the delay can be explained by the fact that he suffered from two periods of severe depression that prevented him from filing his complaint sooner. In his view, the Commission should have considered this. Furthermore, he argues that the state of his health interrupted the prescription within the meaning of article 2904 of the Civil Code of Québec, C.Q.L.R. c. C-1991 (C.C.Q.).

III. Impugned decision

[6] The Judge found that the Commission's decision to dismiss the appellant's complaint because it was filed outside the time period set out in paragraph 41(1)(*e*) of the Act was not unreasonable, as the decision falls within a range of acceptable outcomes in respect of the facts and law. Furthermore, the Judge considered the appellant's allegation of a breach of the duty of procedural fairness. He determined that limiting the appellant's written representations to the Commission to 10 pages did not constitute a breach of procedural fairness, contrary to the appellant's arguments. He also pointed out that the Commission had informed the appellant clearly, in writing, of the procedure to follow to assert his position concerning the application of paragraphs 41(1)(*a*), (*d*) and (*e*) of the Act.

[7] The appellant's argument that the procedure established by the Commission constitutes a violation of his freedom of expression was also rejected by the Judge. The Judge relied on the case law of this Court and of the Supreme Court of Canada, which states that the right to

procedural fairness is subject to the authority of the tribunal, which is master of its own procedure. It follows that there cannot have been a violation of freedom of expression because the Commission's procedure with respect to the admissibility of complaints has been deemed procedurally fair.

[8] The Judge allowed the filing of additional evidence that concerned the appellant's mental health in light of his allegation of a breach of procedural fairness (Appellant's Record, Vol. 1, exhibits CF 18, CF 19, and CF 21). He found that these documents essentially reiterated what the appellant had argued in his letters dated September 24, 2013, and June 9, 2014, and that the Commission had taken this into account.

IV. Standard of review

[9] Sitting on appeal from a decision of the Federal Court that dismissed an application for judicial review, this Court must determine whether the Judge chose the correct standard of review and whether he applied it properly (*Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 S.C.R. 559 at paragraphs 45 to 47). This Court must step into the shoes of the Judge and focus on the Commission's decision.

V. Analysis

[10] I am of the opinion that the Judge did not commit a reviewable error by adopting the standard of reasonableness and applying it to the Commission's decision to dismiss the

appellant's complaint under paragraph 41(1)(*e*) of the Act and by adopting the standard of correctness and applying it to the procedural fairness issue raised by the appellant.

[11] This appeal does not raise any grounds warranting this Court's intervention because the Commission's decision to not investigate the appellant's complaint falls within a range of possible, acceptable outcomes.

[12] First, as pointed out in the report by the Commission's analyst, the appellant's letter to the Commission dated May 23, 2013, did not reveal the essential elements of the complaint, contrary to paragraphs 9.2(f), (g), (h), and (i) of the *Canadian Human Rights Commission Dispute Resolution Operating Procedures* (Appellant's Record, Vol. 1, Exhibit CF 8, p. 165, http://www.chrc-ccdp.gc.ca/eng/content/dispute-resolution-operating-procedures). The appellant did not provide a description of the events that gave rise to the complaint, including their dates and locations, or the prohibited grounds. In these circumstances, it was open to the Commission to consider that the appellant had not sent this initial communication in a format that was acceptable for the filing of a complaint and for constituting the starting point for calculating the limitation period.

[13] Second, the Commission was also entitled to accept that the last discriminatory practice occurred in October 2011, and not on May 25, 2012, the date the appellant received the documents further to his access to information request. This finding by the Commission is based on the evidence in the record that showed, *inter alia*, the proceedings commenced by the appellant before May 25, 2012, that is, the date the grievances against CIC were filed following

alleged acts by his superiors, Ms. Giroux and Ms. Clément, that he considered to be discriminatory, and following the additional proceeding before the Public Service Staffing Tribunal in the context of a hiring process at the Canada Border Services Agency. The receipt of documents in May 2012 constitutes at most an additional confirmation of the existence of acts committed by Ms. Giroux and Ms. Clément that the appellant characterized as discriminatory.

[14] As a result, the Commission was entitled to find that the complaint filed on July 9, 2013, was filed out of time. In fact, even if the Commission had accepted the date of May 25, 2012, as being that of the last act of discrimination, the filing of the complaint on July 9, 2013, would still have been outside the prescribed time period.

[15] Furthermore, it is clearly established in the case law that an administrative tribunal is master of its own procedure (*Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 at paragraph 27, 174 D.L.R. (4th) 193; *Canada (Attorney General) v. Sketchley*, 2005 FCA 404, [2006] 3 F.C.R. 392 at paragraph 119). The Commission did not breach procedural fairness by applying its procedure requiring that a complainant's written representations on the report by the Commission's analyst must be limited to 10 pages. I also note that the appellant took the opportunity to make his representations before and after the analyst gave the Commission the final version of the report and that he was able to bring forward his strongest arguments therein.

[16] It is not for this Court to reconsider the probative value that was given to certain pieces of evidence. In this case, the Commission did not err by finding that the appellant had failed to

adduce sufficient evidence to establish that his mental health situation actually prevented him from filing his complaint within the time period prescribed by the Act. In fact, the medical certificates submitted demonstrate at most that the appellant was incapacitated for a three-month period between October 2011 and May 2014. Lastly, the appellant never clearly alleged before the Commission that he was relying on article 2904 of the C.C.Q. to argue the interruption of the prescription. The Commission therefore was not required to consider this argument.

[17] This Court has already determined that the Commission's refusal to hear a complaint that was filed out of time is unassailable (*Bell Canada v. Communications, Energy and Paperworkers Union of Canada*, [1999] 1 F.C.R. 113, 1998 CarswellNat 2203 at paragraph 40). Also, in *Richard v. Canada (Attorney General)*, 2010 FCA 292, 410 N.R. 145 at paragraph 19, the Court stated the following, interpreting paragraph 41(1)(*e*) of the Act: "[L]imitation periods, by their very nature, contemplate that claimants can be deprived of their remedy by the passage of time".

[18] Lastly, like the Judge, I cannot agree with the appellant's argument that there was a violation of his freedom of expression, a Charter right. The case law of this Court clearly states that the procedure put in place by the Commission on the admissibility of a complaint does not breach procedural fairness. It follows that the procedure cannot violate the right to freedom of expression.

[19] The Court noted the submissions of counsel for the respondent presented at the hearing to the effect that the style of cause needed to be amended. I note, however, that the Judge discussed

this at paragraphs 27 and 28 of his reasons and in the disposition of his judgment. There is therefore no need for this to be re-examined.

[20] Consequently, I propose that this appeal be dismissed with costs established at $2,000, inclusive of taxes and disbursements.

"A.F. Scott"

J.A.

"I agree.
Richard Boivin, J.A."

"I agree.
Yves de Montigny, J.A."

Certified true translation

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET:	A-44-16
APPEAL FROM A JUDGMENT BY JUSTICE GASCON OF THE FEDERAL COURT DATED DECEMBER 29, 2015, DOCKET NO 2015 FC 1423.	
STYLE OF CAUSE:	GANDHI JEAN PIERRE v. ATTORNEY GENERAL OF CANADA (CITIZENSHIP AND IMMIGRATION CANADA)
PLACE OF HEARING:	MONTREAL, QUEBEC
DATE OF HEARING:	JANUARY 12, 2017
REASONS FOR JUDGMENT BY:	SCOTT J.A.
CONCURRED IN BY:	BOIVIN J.A. DE MONTIGNY J.A.
DATED:	FEBRUARY 7, 2017

APPEARANCES:

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SOLICITORS OF RECORD:

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