

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20180523**

**Docket: A-264-17**

**Citation: 2018 FCA 96**

**CORAM: STRATAS J.A.  
NEAR J.A.  
DE MONTIGNY J.A.**

**BETWEEN:**

**ANDRÉ GAUTHIER**

**Appellant**

**and**

**THE ATTORNEY GENERAL OF CANADA**

**Respondent**

Heard at Ottawa, Ontario, on May 23, 2018.

Judgment delivered from the Bench at Ottawa, Ontario, on May 23, 2018.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**DE MONTIGNY J.A.**

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20180523**

**Docket: A-264-17**

**Citation: 2018 FCA 96**

**CORAM: STRATAS J.A.  
NEAR J.A.  
DE MONTIGNY J.A.**

**BETWEEN:**

**ANDRÉ GAUTHIER**

**Appellant**

**and**

**THE ATTORNEY GENERAL OF CANADA**

**Respondent**

**REASONS FOR JUDGMENT OF THE COURT**

**(Delivered from the Bench at Ottawa, Ontario, on May 23, 2018).**

**DE MONTIGNY J.A.**

[1] On April 5, 2016, the appellant filed a complaint with the Canadian Human Rights Commission (the Commission), alleging that his employer, Public Services and Procurement Canada (PSPC), discriminated against him on the basis of disability in May 2012. The Commission, in a decision issued on November 1, 2016, refused to deal with the appellant's

complaint on the grounds that it was based on facts that occurred more than one year before the complaint was filed, pursuant to paragraph 41(1)(e) of the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6 (the CHRA). On July 18, 2017, the Federal Court (*per* Justice Boswell) dismissed the appellant's application for judicial review of the Commission's decision. The appellant now appeals to this Court from that decision.

[2] We are all in agreement that this appeal shall be dismissed, essentially for the reasons given by the Court below. The Federal Court appropriately determined that the applicable standard of review with respect to the Commission's decision was reasonableness, and correctly applied that standard.

[3] Paragraph 41(1)(e) of the *CHRA* provides that the Commission shall deal with any complaint filed with it unless it appears to the Commission that "the complaint is based on acts or omissions the last of which occurred more than one year, or such longer period of time as the Commission considers appropriate in the circumstances, before receipt of the complaint".

[4] In the case at bar, there is no dispute that the last alleged acts of discrimination occurred in May 2012, when the appellant was denied an advance of paid sick leave and was refused his transfer to another department to accommodate his disabilities. As such, the appellant should have filed his complaint by May 2013. Instead, he waited until April 2016, almost four years after the alleged discriminatory conduct, to do so.

[5] The Commission reviewed the appellant's explanation for that delay, essentially based on evidence showing that he was on sick leave from May 11, 2012 to October 26, 2015 and that his medical condition had affected his memory and cognitive capacities, but found that it did not substantiate his claim that he was incapable of filing a complaint throughout the delay. Indeed, the Commission found persuasive that the appellant seemed to be functioning in his normal life, attended meetings with management and even attempted on more than one occasion gradual returns to work. It was open to the Commission to rely on these facts to draw its conclusion, and the intervention of this Court is not warranted.

[6] The Commission also took into account and weighed all other relevant factors to determine whether it would be justified to deal with the complaint even though it was filed outside the timelines set out in the *CHRA*. This included the fact that the alleged acts of discrimination were not ongoing in nature, there was a seven-month delay between the end of the appellant's sick leave and the filing of his complaint, the public interest was not affected by the issues raised by the appellant, and the appellant had been in contact with his union representative during part of the delay. The Commission also noted that PSPC's ability to defend the complaint would not be seriously prejudiced by the delay in filing the complaint, but found that this factor was not sufficient in and of itself to justify dealing with the complaint. On judicial review, the Federal Court found that the Commission reviewed these factors in a fair and impartial manner, and could reasonably find that they were not sufficient to offset the one-year time limit set out in the *CHRA*. Again, this Court sees no reason to intervene with this finding.

[7] Finally, the appellant argues that the Federal Court breached the requirements of procedural fairness by referring to the September 6, 2016 “constraint letter”, which was purportedly not before the Commission. However, that letter can be found in the record. All the Judge’s findings were therefore based on evidence that was before the Commission.

[8] In oral argument, the appellant submitted that the Commission’s decision is invalid because it was procedurally unfair: it did not have all of the documents and evidence received by the investigator before it. The Commission instead relied on the investigator’s report.

[9] We are not of the view that we should interfere on this ground. It was not unfair for the Commission to rely upon the report, subject to its ability to review the underlying information: *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, 174 D.L.R. (4th) 193. In this case, we adjourned to give the appellant an opportunity to review the relevant portion of the investigator’s report and, when Court resumed, to tell us if anything was missing. The appellant did not persuade us that anything material was missing. In the circumstances, the allegation of procedural unfairness cannot succeed: *Mobil Oil Canada Ltd. v. Canada-Newfoundland Offshore Petroleum Board*, [1994] 1 S.C.R. 202, 111 D.L.R. (4th) 1.

[10] The appeal is therefore dismissed, with costs in the fixed amount of \$300.00, all inclusive.

“Yves de Montigny”

---

J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-264-17

**STYLE OF CAUSE:** ANDRÉ GAUTHIER v. THE  
ATTORNEY GENERAL OF  
CANADA

**PLACE OF HEARING:** OTTAWA, ONTARIO

**DATE OF HEARING:** MAY 23, 2018

**REASONS FOR JUDGMENT OF THE COURT BY:** STRATAS J.A.  
NEAR J.A.  
DE MONTIGNY J.A.

**DELIVERED FROM THE BENCH BY:** DE MONTIGNY J.A.

**APPEARANCES:**

André Gauthier FOR THE APPELLANT  
(ON HIS OWN BEHALF)

Elizabeth Kikuchi FOR THE RESPONDENT  
Diya Bouchédid

**SOLICITORS OF RECORD:**

Nathalie G. Drouin FOR THE RESPONDENT  
Deputy Attorney General of Canada