Federal Court of Appeal  Cour d'appel fédérale

Date: 20180525

Docket: A-158-17

Citation: 2018 FCA 98

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

BETWEEN:

GARY SAUVÉ

Appellant

and

ATTORNEY GENERAL OF CANADA,
HER MAJESTY THE QUEEN IN RIGHT OF CANADA

Respondents

and

MONECO SOBECO

Party-to-Action

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

Judgment delivered at Ottawa, Ontario, on May 25, 2018.

REASONS FOR JUDGMENT BY: NEAR J.A.

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

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REASONS FOR JUDGMENT

NEAR J.A.

I. Overview

[1] The appellant, Gary Sauvé, appeals a judgment of the Federal Court (per Justice Mactavish) of May 5, 2017 (*Sauvé v. Attorney General of Canada*, 2017 FC 453). The Federal

Court dismissed the appellant's applications for judicial review of four decisions relating to his dismissal from the Royal Canadian Mounted Police (RCMP).

II. Background

[2] The appellant was a member of the RCMP. After he was charged with several criminal offences, an Assistant Commissioner of the RCMP suspended the appellant without pay and benefits. He was subsequently charged with two counts of criminal harassment and, in a separate proceeding, the RCMP Adjudication Board dismissed him from the RCMP.

[3] The appellant filed two applications for judicial review. Together, the two applications sought judicial review of four decisions: (1) the Assistant Commissioner's 2005 decision to suspend the appellant without pay and benefits, (2) the Assistant Commissioner's 2013 letter advising the appellant that he was out of time to pursue an internal grievance regarding the decision to suspend him without pay and benefits, (3) the RCMP Adjudication Board's 2010 decision to dismiss the appellant from the RCMP, and (4) the Superintendent's 2014 decision refusing to grant the appellant an extension of time to appeal the dismissal decision.

III. Federal Court Decision

[4] The Federal Court heard both applications together and dismissed both applications in the same set of reasons. The Federal Court found that the appellant was out of time to apply for judicial review of each of the four decisions. Applying the test in *Canada (Attorney General) v. Hennelly*, 167 F.T.R. 158 at para. 3, 244 N.R. 399 (*Hennelly*) the Federal Court declined to exercise its jurisdiction to allow for an extension of time. As regards the decisions to suspend his

pay and benefits and to dismiss him from the RCMP, the Federal Court also found that the appellant did not exhaust all internal grievance processes available to him.

IV. Issues

[5] I would characterize the issue of the appeal as follows:

Did the Federal Court err in dismissing the applications for judicial review?

V. Standard of Review

[6] The standard of review for appeals from judicial reviews of the Federal Court applicable to the limitation period and exhaustion of internal grievance processes issues is that for appellate review outlined in *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235 (*Housen*). Applying *Housen*, questions of mixed fact and law are reviewable on the highly deferential standard of palpable and overriding error.

[7] When reviewing appeals from judicial reviews of the Federal Court on the substance of the decision, this Court must (1) decide whether the Federal Court identified the appropriate standard of review and (2) determine whether the Federal Court applied it correctly (*Agraira v. Canada*, 2013 SCC 36 at para. 45, [2013] 2 S.C.R. 559; *Canada Revenue Agency v. Telfer*, 2009 FCA 23 at para. 18, 386 N.R. 212).

VI. Analysis

[8] The appellant has not identified any palpable and overriding error in the Federal Court's refusal to exercise its discretion to hear the applications after the 30-day limitation period had

expired. Subsection 18.1(2) of the *Federal Courts Act*, R.S.C. 1985, c. F-7 requires an applicant to commence an application for judicial review within 30 days of the time that an administrative decision maker communicated a decision. A judge retains discretion to extend this limitation period where the applicant demonstrates: (1) a continuing intention to pursue his or her application, (2) that the application has some merit, (3) that no prejudice to the respondent arises from the delay, and (4) that a reasonable explanation for the delay exists (*Hennelly* at para. 3). In this case, the Federal Court thoroughly considered each of the factors outlined in *Hennelly* and declined to exercise jurisdiction to extend the limitation period for each of the four decisions. In my view, the Federal Court did not make a palpable and overriding error in exercising its discretion in this way.

[9] Similarly, the Federal Court did not err in finding that the appellant did not exhaust all internal grievance processes to challenge the suspension of his pay and benefits and his dismissal from the RCMP. With regards to the decision to suspend pay and benefits, the Federal Court explained: "[w]hile there may be some dispute as to whether Mr. Sauvé grieved the Assistant Commissioner's decision at the first level of the RCMP's grievance process, there is no dispute about the fact that he did not take his grievance to the second level of the grievance process" and that "Mr. Sauvé has not provided a satisfactory explanation for his failure to do so" (Reasons at para. 10). With regards to the decision to dismiss the appellant from the RCMP, the Federal Court explained that section 45.11 of the *Royal Canadian Mounted Police Act*, R.S.C. 1985, c. R-10 (*RCMP Act*) provides for an appeal to the Commissioner of the RCMP and found that the appellant did not provide a satisfactory explanation as to why he did not pursue this grievance process (Reasons at paras. 29–30). In my view, the Federal Court did not make a palpable and

overriding error in finding that the appellant had not exhausted all internal remedies. It is clear that the appellant does not trust the RCMP to provide him with a suitable hearing. This lack of trust, however, does not excuse the appellant from availing himself of the internal processes available to him.

[10] The appellant also submits that the Federal Court erred in not dealing directly with his submission that subsection 43(8) (now subsection 41(2)) of the *RCMP Act* required that a hearing be initiated within one year of when an appropriate officer becomes aware of the alleged contravention of the Code of Conduct and the identity of the member involved. The record before this Court does not disclose precisely when the RCMP initiated the hearing nor when the appropriate officer became aware of the alleged contravention of the Code of Conduct and the identity of the appellant as the member involved. Further, subsection 43(8) of the *RCMP Act* only requires the RCMP to initiate a hearing within one year of the alleged contravention and the identity of the member involved coming to the attention of the appropriate officer—there is no requirement that the hearing actually be held within that one year. In my view, the Federal Court did not err in not directly addressing the appellant's submission on this point given the lack of evidence in the record.

[11] The Federal Court properly identified reasonableness as the standard of review with respect to the Assistant Commissioner's and Superintendent's decisions not to grant an extension of time (Reasons at para. 49) and, in my view, properly applied the standard of review.

VII. Conclusion

[12] I would dismiss the appeal with costs set in the amount of $750.00 all inclusive.

"David G. Near"
J.A.

“I agree.
Richard Boivin J.A.”

“I agree.
Yves de Montigny J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

AN APPEAL FROM A JUDGMENT OF THE HONOURABLE JUSTICE ANNE MACTAVISH DATED MAY 5, 2017, T-1103-13 AND T-145-15.

DOCKET:	A-158-17
STYLE OF CAUSE:	GARY SAUVÉ v. AGC, HMTQ AND MONECO SOBECO
PLACE OF HEARING:	OTTAWA, ONTARIO
DATE OF HEARING:	MAY 23, 2018
REASONS FOR JUDGMENT BY:	NEAR J.A.
CONCURRED IN BY:	BOIVIN J.A. DE MONTIGNY J.A.
DATED:	MAY 25, 2018

APPEARANCES:

Gary Sauvé	FOR THE APPELLANT (ON HIS OWN BEHALF)
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