



A-282-94

**CORAM:** THE HONOURABLE MR. JUSTICE STONE  
THE HONOURABLE MADAME JUSTICE DESJARDINS  
THE HONOURABLE MR. JUSTICE MCDONALD

IN THE MATTER of the Canadian Human Rights Act R.S.C. (1985) Chapter H-6 (as amended) and IN THE MATTER of the Decision of the Human Rights Tribunal rendered September 9, 1993 in the complaint of AZIZ KHAKI, MICHAEL ELTERMAN, and CHARAN GILL against CANADIAN LIBERTY NET, DEREK PETERSON, and TONY MCALEER

**Between:**

TONY MCALEER AND CANADIAN LIBERTY NET

Applicants

- and -

CANADIAN HUMAN RIGHTS COMMISSION,  
AZIZ KHAKI, MICHAEL ELTERMAN,  
AND CHARAN GILL

Respondents

HEARD at Vancouver, British Columbia, on Monday, September 29, 1997

JUDGMENT rendered at Vancouver, British Columbia, on September 29, 1997

REASONS FOR JUDGMENT DELIVERED BY:

STONE, J.A.



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AZIZ KHAKI, MICHAEL ELTERMAN,  
AND CHARAN GILL

Respondents

**REASONS FOR JUDGMENT OF THE COURT**

(Delivered from the Bench at Vancouver, British Columbia  
on Monday, September 29, 1997)

**STONE, J.A.**

This is an appeal from an order of Tremblay-Lamer J. of January 25, 1994, quashing the appellant's application for judicial review of a Human Rights Tribunal decision of September 28, 1993. The grounds for the motion to quash was that the application "is not supported by any affidavits verifying the facts relied on as required by Rule 1603(1) of the Federal Court Rules".

Among the issues that the appellant wishes to have reviewed is the refusal of the Human Rights Tribunal made in the course of the hearing on August 27, 1992, to grant an adjournment so as to allow the appellant McAleer to be present at the hearing.

In our view, the only issue that arises on this appeal is whether the learned Motions Judge erred in quashing the application for judicial review. Although she gave no written reasons for doing so, it is not unreasonable to infer that she agreed with the grounds put forward in the respondent's Notice of Motion.

Rule 1603(1) of the *Federal Court Rules* reads:

1603. (1) At the time of filing the notice of motion, the applicant shall also file one or more affidavits verifying the facts relied on by the applicant.

By Rule 1606(2), a copy of "each supporting affidavit, including its documentary exhibits and a transcript of any cross-examination on the affidavit" must be included in the applicant's application record.

It is thus clear that the filing of an affidavit by the party seeking to have a decision judicially reviewed and set aside is as important as it is mandatory. That it is mandatory is evident from a series of decisions of this Court:

*Marwin v. Minister of Employment and Immigration*, (1989), 99 N.R. 70 (F.C.A.)

*St-Louis v. The Canada Employment and Immigration Commission* (A-1065-92, Judgment rendered December 18, 1992 (F.C.A.))

*Mountainbell Co. Ltd. et al. v. W.T.C. Air Freight (H.K.) Ltd. et al.* (1990), 128 N.R. 75

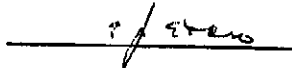
The importance of the requirement was emphasized by this Court in *IBM Canada v. Deputy Minister of National Revenue, Customs and Excise*, [1992] 1 F.C. 663, at page 678, where Décaré J.A. stated:

I am very conscious that where one is dealing with the integrity of the decision-making process, it would be a self-serving mistake for courts reviewing that process in a given case to seek on technical grounds to avoid facing the issue. On the other hand, precisely because one is dealing with a process that goes to the heart of our democratic institutions and which is particularly vulnerable to unfair and untrue allegations, it would be as serious a mistake for courts to be satisfied with innuendos whose foundations cannot be properly verified. The rule that evidence is to be provided by affidavits is not a mere question of technicality; it ensures that no one is hurt by allegations which one does not have a chance to challenge.

(Emphasis added)

In our view, the availability in the record of the transcript of the proceedings before the Human Rights Commission on August 27, 1992, does not satisfy the requirement of Rule 1603(1). That rule, as written, admits of no exception.

The appeal will therefore be dismissed with costs. This will not prejudice the appellants' right under subsection 18.1(2) of the *Federal Court Act* to seek an extension of time for filing a further application for judicial review of the decision of September 28, 1992.

  
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J.A.

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**COURT NO.:** A-282-94

**IN THE MATTER of the Canadian Human Rights Act R.S.C. (1985) Chapter H-6 (as amended) and IN THE MATTER of the Decision of the Human Rights Tribunal rendered September 9, 1993 in the complaint of AZIZ KHAKI, MICHAEL ELTERMAN, and CHARAN GILL against CANADIAN LIBERTY NET, DEREK PETERSON, and TONY MCALEER**

**STYLE OF CAUSE:** TONY MCALEER AND CANADIAN LIBERTY NET

- and -

**CANADIAN HUMAN RIGHTS COMMISSION, AZIZ KHAKI, MICHAEL ELTERMAN, AND CHARAN GILL**

**PLACE OF HEARING:** Vancouver, BC

**DATE OF HEARING:** September 29, 1997

**REASONS FOR JUDGMENT OF THE COURT BY:** STONE, J.A.

**CONCURRED IN BY:** DESJARDINS, J.A.  
MCDONALD, J.A.

**DATED:** September 29, 1997

**APPEARANCES:**

**Mr. Douglas Christie** for Applicants

**Mr. Eddie Taylor** for Respondents

**SOLICITORS OF RECORD:**

**Mr. Douglas Christie** for Applicants  
Victoria, BC

**Mr. Eddie Taylor** for Respondents  
Canadian Human Rights Commission