

Federal Court of Appeal



CANADA

Cour d'appel fédérale

Date: 20110208

Docket: A-193-10

Citation: 2011 FCA 50

**CORAM: NOËL J.A.
EVANS J.A.
SHARLOW J.A.**

BETWEEN:

CLAYTON N. DONOGHUE

Appellant

and

**(Attorney General of Canada on behalf of)
THE MINISTER OF NATIONAL DEFENCE**

Respondent

Heard at Toronto, Ontario, on February 8, 2011.

Judgment delivered from the Bench at Toronto, Ontario, on February 8, 2011.

REASONS FOR JUDGMENT OF THE COURT BY:

EVANS J.A.

Federal Court of Appeal



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**REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Ottawa, Ontario, on February 8, 2011)**

EVANS J.A.

[1] This is an appeal by Clayton N. Donoghue from a decision of the Federal Court (2010 FC 404), in which Justice O'Keefe (Judge) dismissed Mr Donoghue's application for judicial review of a decision by the Canadian Human Rights Commission (CHRC) to reject his complaint pursuant to the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6, paragraph 41(1)(e), without investigating its merits.

[2] Paragraph 41(1)(e) confers a discretion on the CHRC to decline to investigate a complaint of discrimination made more than one year after the incident relied on by the complainant. Mr Donoghue filed a complaint of discrimination with the CHRC on November 30, 2007. His complaint form gave the date of the conduct of which he complained as having occurred from March 5, 1999 to around May 16, 2000.

[3] Mr Donoghue's complaint arises from his release from the Canadian Forces reserves in 1999, and subsequent related events. He alleges that he was discriminated against on account of injuries for which the Minister of National Defence, as the Minister accountable for the conduct of the Canadian Forces, was responsible.

[4] In its decision record, dated December 10, 2008, the CHRC stated that it was not appropriate to deal with Mr Donoghue's complaint, received six or seven years outside the one year limitation period, because he had not done everything that a reasonable person would have done in the circumstances to pursue the complaint, and the delay would seriously prejudice the respondent's ability to respond.

[5] The Judge concluded that the CHRC's rejection of Mr Donoghue's complaint for delay was not unreasonable. In reaching his decision, he took particular account of the breadth of the CHRC's discretion under paragraph 41(1)(e), the length of the delay, the resulting prejudice to the respondent, and Mr Donoghue's active pursuit of other forms of redress before going to the CHRC.

[6] Substantially for the reasons given by the Judge, we agree that, on the basis of the information before the CHRC when it made its decision, there is no warrant for judicial intervention in the exercise of the CHRC's discretion not to investigate Mr Donoghue's complaint because of his delay.

[7] Accordingly, the appeal will be dismissed. Counsel for the Attorney General requested costs in the amount of \$1,600.00. In the exercise of our discretion, based on all the circumstances of this case, costs will be awarded to the Attorney General in the amount of \$500.00, inclusive of disbursements.

“John M. Evans”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-193-10

(APPEAL FROM AN ORDER OF THE HONOURABLE JUSTICE JOHN O'KEEFE OF THE FEDERAL COURT, DATED APRIL 14, 2010, DOCKET NO. T-134-09)

STYLE OF CAUSE: CLAYTON N. DONOGHUE AND
(Attorney General of Canada on
behalf of) THE MINISTER OF
DEFENCE

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: February 8, 2011

REASONS FOR JUDGMENT OF THE COURT BY: (NOËL, SHARLOW AND EVANS
JJ.A.)

DELIVERED FROM THE BENCH BY: EVANS J.A.

APPEARANCES:

Clayton N. Donoghue APPELLANT ON HIS OWN
BEHALF

Derek C. Allen FOR THE RESPONDENT

SOLICITORS OF RECORD:

Myles J. Kirvan FOR THE RESPONDENT
Deputy Attorney General of Canada