

Federal Court of Appeal



Cour d'appel fédérale

Date: 20150114

Docket: A-162-14

Citation: 2015 FCA 7

**CORAM: DAWSON J.A.
STRATAS J.A.
BOIVIN J.A.**

BETWEEN:

MICHAEL PANULA

Appellant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

Heard at Toronto, Ontario, on January 13, 2015.

Judgment delivered at Toronto, Ontario, on January 14, 2015.

REASONS FOR JUDGMENT BY:

STRATAS J.A.

CONCURRED IN BY:

**DAWSON J.A.
BOIVIN J.A.**

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REASONS FOR JUDGMENT

STRATAS J.A.

[1] The appellant, Mr. Panula, appeals from the judgment of the Federal Court dated February 24, 2014 (*per* Justice McVeigh) in file T-62-12. The Federal Court dismissed the appellant's application for judicial review from a decision of the Canadian Human Rights Commission. On November 29, 2012, the Commission, exercising its jurisdiction under paragraphs 41(1)(d) and (e) of the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6, decided not

to deal with the appellant's complaint that his former employer, the Canada Revenue Agency (and its predecessors), discriminated against him.

[2] In a case such as this – an appeal from a dismissal of an application for judicial review in the Federal Court – this Court must assess whether the Federal Court chose the appropriate standard of review and then applied it properly to the administrative decision before it.

[3] In my view, the Federal Court properly applied the standard of review of reasonableness, *i.e.*, whether the decision falls within a range of possible, acceptable outcomes which are defensible on the facts and the law: *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at paragraph 47; *Halifax (Regional Municipality) v. Nova Scotia (Human Rights Commission)*, 2012 SCC 10, [2012] 1 S.C.R. 364 at paragraph 44.

[4] I agree with the Federal Court's conclusions that the Commission's decision reached a reasonable outcome, for the reasons it gave at paragraphs 21-38. I do not agree with the appellant's submission that the Federal Court did not examine the Commission's decision in a sufficiently rigorous manner.

[5] I also agree with the Federal Court that the Commission's thirteen month delay does not amount to a violation of the duty of fairness in these circumstances, for the reasons its gave at paragraphs 39-46.

[6] In this Court, the appellant alleges that the Federal Court erred in not permitting him to refer to evidence that was not in the record. The Federal Court did not so err. The Federal Court relied upon the well-established principle that, in an application for judicial review, normally only materials that were before the administrative decision-maker, here the Commission, can be placed into the record. It also relied upon a pre-hearing order dated March 22, 2013 (unappealed) in which the Federal Court ruled against the appellant's attempt to have additional materials placed in the record. In this Court, the appellant moved again for the inclusive of additional materials and that motion was dismissed.

[7] The appellant also submits that the hearing time in the Federal Court was improperly and unfairly restricted. The order setting the matter down for hearing suggested that the hearing would take one to two days. At the outset of the hearing, the judge, having read all of the materials filed, opined that the hearing could be completed in one-half day. In fact, the hearing lasted three hours and ten minutes.

[8] There is nothing before this Court to suggest that the appellant was unable to present his case adequately and fully. Indeed, absent special circumstances, none of which are present here, a hearing of this length allows applicants, even unrepresented ones, sufficient time in a matter such as this to present their cases.

[9] For the foregoing reasons, I would dismiss the appeal with costs in the fixed amount of \$250.00, all inclusive.

“David Stratas”

J.A.

“I agree

Eleanor R. Dawson J.A.”

“I agree

Richard Boivin J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:

A-162-14

**APPEAL FROM A JUDGMENT OF THE HONOURABLE MADAM JUSTICE
MCVEIGH OF THE FEDERAL COURT, DATED FEBRUARY 24, 2014, IN DOCKET
NO. T-62-12.**

STYLE OF CAUSE:

MICHAEL PANULA v. THE
ATTORNEY GENERAL OF
CANADA

PLACE OF HEARING:

TORONTO, ONTARIO

DATE OF HEARING:

JANUARY 13, 2015

REASONS FOR JUDGMENT BY:

STRATAS J.A.

CONCURRED IN BY:

DAWSON J.A.
BOIVIN J.A.

DATED:

JANUARY 14, 2015

APPEARANCES:

Michael Panula

FOR THE APPELLANT
(ON HIS OWN BEHALF)

James Gorham

FOR THE RESPONDENT

SOLICITORS OF RECORD:

William F. Pentney
Deputy Attorney General of Canada

FOR THE RESPONDENT