

Date: 20081120

Docket: A-36-08

Citation: 2008 FCA 360

**CORAM: LÉTOURNEAU J.A.
RYER J.A.
TRUDEL J.A.**

BETWEEN:

CAROLYN BREDIN

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Ottawa, Ontario, on November 18, 2008.

Judgment delivered at Ottawa, Ontario, on November 20, 2008.

REASONS FOR JUDGMENT BY:

TRUDEL J.A.

CONCURRED IN BY:

**LÉTOURNEAU J.A.
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REASONS FOR JUDGMENT

TRUDEL J.A.

Overview

[1] The appellant appeals to this Court from the order of Mr. Justice Frenette (the Applications Judge), dated December 21, 2007 (2007 FC 1361), by which he dismissed her application for judicial review of a decision of the Canadian Human Rights Commission (the Commission) dated February 17, 2007.

[2] Exercising its duty to deal with complaints filed with it under paragraph 41(1)(e) of the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6 (the Act), the Commission decided not to deal

with the appellant's complaint, dated May 10, 2005, because (a) it was out of time, as it was based on acts that had occurred more than one year before the filing of the complaint; and (2) the appellant's reasons for the delay did not appear to be sufficient justification for the Commission to bring the complaint into time (Commission's decision, AB, Tab 4, p. 38).

[3] This is the appellant's second challenge of the Commission's decision. When the appellant first sought judicial review of the impugned decision, Mr. Justice Blanchard granted the application and referred the matter back for re-determination, having found that the Commission's reasons were inadequate and insufficient (*Bredin v. Canada*, 2006 FC 1178 (*Bredin 1*)).

[4] Having examined the reasons of the Commission issued following *Bredin 1*, the Applications Judge found that the position taken by the Commission was reasonable and dismissed the application. Hence the within appeal, which I propose to dismiss.

[5] The Appellant does not dispute that her complaint was out of time. Thus, the issue in this case is whether the appellant met her burden of proof in providing a satisfactory explanation for the delay, one that the Commission could consider *appropriate in the circumstances* (paragraph 41(1)(e) of the Act).

The Facts

[6] With this in mind, the relevant facts can be summarized shortly.

[7] The appellant began her career in 1979 as an employee of Citizenship and Immigration Canada (CIC, the respondent in front of the Commission). She subsequently transferred to the Department of Justice (DOJ) effective April 30, 2001. In 1992, she was diagnosed with major depression and took a disability leave. Between October 4, 1993 and November 29, 1995, the appellant returned to work on a gradual basis before returning full-time. During that period, she was listed as a part-time employee (reasons for judgment, at para. 4, 5).

[8] In her complaint to the Commission, the appellant alleged that CIC treated her adversely based on disability by refusing to amend her employment status from part-time to full-time for the period in question. As a result of the respondent's refusal (December 18, 2001), the appellant was unable to buy back portions of her pension from 1993 to 1995 with ensuing significant repercussions on her pensions entitlements. (Section 41 Analysis Report, AB, Tab 4, p. 42, at para. 1; appellant's memorandum of fact and law, at para. 2). The appellant claims that she was misinformed with respect to the impact of being listed as a part-time employee.

[9] Before filing her complaint with the Commission, the appellant, through DOJ, pursued an informal review process with CIC regarding that matter (Section 41 Analysis Report, AB, Tab 4, p. 5, at para. 26).

[10] This internal review process culminated in a decision made by CIC on July 11, 2003 whereby CIC informed the appellant of its decision "not to amend her employment status for the

period requested". That decision forms the basis of the appellant's alleged adverse differential treatment (*Bredin 1*, at para. 53).

The Commission's Decision

[11] The Commission's investigator found that CIC's letter of July 11th, 2003 to the appellant "began the one-year time limitation period" to file a complaint. (Section 41 Analysis Report, AB, Tab 4, p. 45, at para. 24).

[12] The Investigator wrote:

- a. ...This letter advises the complainant that the respondent denied her request (to amend her employment status from part-time to full-time from October 4th, 1993 to November 29th, 1995). Further, this letter specifically addresses the complainant's allegation that the respondent's Compensation and Benefits Advisor misinformed her about the impact of her part-time employment status when she returned to work in 1993. For this complaint to be in time, the complainant would have to have contacted the Commission by July 11th, 2004. The complainant first contacted the Commission on April 5th, 2005, almost two years after receiving the respondent's July 11th, 2003 decision. Although the effects of the alleged discrimination may be ongoing there has been no new alleged discriminatory act since July 11, 2003.
- b. Although the complainant has provided evidence that a psychiatrist has treated her for Major depression from May 2003 onward, and her psychiatrist states that her "condition affected her ability to function and to complete tasks in a timely manner," the evidence indicates that the complainant maintained contact with her current employer during this time (who subsequently followed up with the respondent for her) and she pursued an informal review process with the respondent regarding her employment status. The evidence indicates, therefore, that the complainant could have filed a complaint with the Commission in a timely manner, had she chosen to take that route.
- c. The delay in the complainant's filing of this complaint appears to have incurred in good faith. However, the complainant's attempt to resolve the issue informally does not justify the delay. The *Canadian Human Rights Act* does not require that complainants exhaust alternate redress before filing a complaint. The complainant

could have filed a complaint immediately after the respondent communicated its decision to her, and the Commission, at that time, may have exercised its discretion under section 41(1) to refer the complainant to alternate redress.

The Federal Court Decision

[13] The Applications Judge found that the Commission's decision was not patently unreasonable in the circumstances (reasons for judgment, at para. 68).

[14] At paragraphs 57 and 58, the Applications Judge wrote:

[57] The investigator acknowledged that the applicant had been diagnosed with severe depression in May 2003 and that she submitted that her disability rendered her incapable of making a formal human rights complaint. However, Dr. Vervaeke's letter does not specifically state that the applicant's condition was such that she would be unable to participate in the Commission's complaint process.

[58] The investigator also noted that the applicant continued to pursue the matter of her employment status informally. She received a letter and had two telephone conversations during this period of time. Moreover, I would note that the applicant was diagnosed with severe depression in May 2003; she has subsequently returned to work in June 2005. She was able to file her complaint on May 10, 2005 but she did not establish when she was well enough to be able to file her complaint. In the meantime, she was communicating with her employer in an informal way.

[15] The Applications Judge also found that:

(...) the applicant was able to disabuse herself of any concerns raised by the second investigation report and had an adequate opportunity to present the Commission with evidence she believed was relevant to its decision (*ibid.* at para. 52).

[16] The judgment under appeal was issued before the Supreme Court's decision in *Dunsmuir v. New Brunswick* 2008 SCC 9 (*Dunsmuir*). The parties agree that since *Dunsmuir*, the standard of

review of the Commission's decision on the application of its discretion to the facts of this case is reasonableness.

Analysis and Conclusion

[17] I agree with the Applications Judge that "although this Court may not have reached a similar conclusion, the evidence is sufficient to support the Commission's finding and no intervention is warranted" (*ibid.* at para. 40). In making this finding, the Applications Judge made no overriding and palpable error.

[18] It was incumbent upon the appellant to present a full record to the Commission and to provide adequate and sufficient reasons for it to deal with the complaint although it was out of time.

[19] The Commission examined all of the evidence made available to it, as it was directed to do following *Bredin I* (*supra* at para. 61) and, as the Applications Judge found, made a reasonable determination.

[20] Therefore, I propose to dismiss the appeal with costs before this Court.

"Johanne Trudel"

J.A.

"I agree
Gilles Létourneau J.A."

"I agree
C. Michael Ryer J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-36-08
(APPEAL FROM THE ORDER OF MR. JUSTICE FRENETTE DATED DECEMBER 21, 2007 (2007 FC 1361))

STYLE OF CAUSE: Carolyn Bredin v.
Attorney General of Canada

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: November 18, 2008

REASONS FOR JUDGMENT BY: TRUDEL J.A.

CONCURRED IN BY: LÉTOURNEAU J.A.
RYER J.A.

DATED: November 20, 2008

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