

Federal Court of Appeal	 CANADA	Cour d'appel fédérale
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Date: 20101213

Docket: A-24-10

Citation: 2010 FCA 340

**CORAM: DAWSON J.A.
LAYDEN-STEVENSON J.A.
STRATAS J.A.**

BETWEEN:

LADISLAV KONECNY

Appellant

and

ONTARIO POWER GENERATION

Respondent

Heard at Toronto, Ontario, on December 13, 2010.

Judgment delivered from the Bench at Toronto, Ontario, on December 13, 2010.

REASONS FOR JUDGMENT OF THE COURT BY:

STRATAS J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on December 13, 2010)

STRATAS J.A.

[1] The appellant appeals from the judgment of the Federal Court, dated December 17, 2009: 2009 FC 1289. The Federal Court dismissed the appellant's judicial review against a decision of the Canadian Human Rights Commission dated September 28, 2007. The respondent cross-appeals.

[2] Before the Commission, the appellant complained that the respondent discriminated against him on the ground of disability when it investigated his conduct in the workplace and terminated his employment. In its decision, the Commission decided under paragraphs 41(1)(d) and (e) of the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6 not to conduct an investigation of the complaint because it was out of time, made in bad faith and frivolous. The appellant applied for judicial review in the Federal Court.

[3] The Federal Court dismissed the application for judicial review. It found that the complaint was frivolous in the sense that it was plain and obvious that it could not succeed. However, the Federal Court found that the complaint was neither out of time, nor made in bad faith.

[4] On the issue whether the complaint was frivolous in the sense that the complaint could not succeed, we agree with the Federal Court's finding, in paragraphs 30-38 of its reasons, that there was no reason to interfere with this aspect of the Commission's decision.

[5] In his submissions in this Court, the appellant also raises issues of procedural fairness before the Commission. We note that the appellant, in responding to the investigation report, had an opportunity to raise issues of procedural fairness and did not do so. Further, both the notice of application in the Federal Court and the notice of appeal in this Court do not raise issues of procedural fairness. Therefore, issues of procedural fairness are not properly before us.

[6] Therefore, we shall dismiss the appellant's appeal.

[7] In its cross-appeal, the respondent seeks to overturn the Federal Court’s conclusion in its reasons that the complaint was neither out of time, nor made in bad faith. However, the respondent does not question the correctness of the Federal Court’s judgment. That judgment dismissed the application for judicial review, nothing more, and the respondent does not seek to change it in any way. Appeals and cross-appeals in this Court lie against judgments and orders, not reasons for judgment: *Froom v. Canada (Minister of Justice)*, [2005] 2 F.C.R. 195, 2004 FCA 352. A cross-appeal is available only where a respondent seeks a different disposition of the judgment appealed from: Rule 341(1)(b). In argument before us, counsel for the respondent appropriately conceded that a cross-appeal was not available in these circumstances. Therefore, we shall dismiss the cross-appeal.

[8] As success has been divided, there shall be no costs.

“David Stratas”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-24-10

APPEAL FROM THE ORDER OF THE HONOURABLE MADAM JUSTICE SANDRA J. SIMPSON DATED DECEMBER 17, 2009

STYLE OF CAUSE: *LADISLAV KONECNY v.
ONTARIO POWER GENERATION*

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: December 13, 2010

**REASONS FOR JUDGMENT
OF THE COURT BY:** Dawson, Layden-Stevenson, Stratas JJ.A.

DELIVERED FROM THE BENCH BY: Stratas J.A.

APPEARANCES:

Ladislav Konecny

ON HIS OWN BEHALF

Brett A. Christen
Melanie D. McNaught

FOR THE RESPONDENT

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