

THE CANADIAN HUMAN RIGHTS ACT
R.S.C. (1985), chap. H-6(as amended)

HUMAN RIGHTS REVIEW TRIBUNAL

BETWEEN:

PAUL LAGACÉ

Appellant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

CANADIAN ARMED FORCES

Respondent

DECISION OF THE REVIEW TRIBUNAL

TRIBUNAL: S. Jane Armstrong, Chairperson
Joseph Sanders, Member
Alvin Turner, Member

APPEARANCES: René Duval, Counsel for the Canadian Human Rights
Commission
Paul Lagacé, the Appellant
Donald J. Rennie, Counsel for the Respondent

DATES AND

LOCATION OF HEARING: November 18 and 19, 1993
Ottawa, Ontario

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A Review Tribunal was constituted pursuant to Section 56 of the Canadian Human Rights Act to hear the appeal brought by the complainant, Paul Lagacé, of a one member tribunal decision pronounced on the 8th day of April, 1993.

At the opening of the hearing, a preliminary matter was raised by counsel for the respondent, The Canadian Armed Forces, as to the timeliness of the appeal of the complainant.

At the outset counsel for the Commission advised that Mr. Lagacé would be making his own submissions as to the merits of the appeal. As to the matter of timeliness, however, Mr. Lagacé confirmed to the Review Tribunal that he would rely on the Commission to make submissions on his behalf.

Argument was heard from counsel for the respondent and counsel for the Commission on November 18th and November 19th, 1993, at Ottawa. Further written submissions were received from counsel in March and May 1994.

The section of the Canadian Human Rights Act governing the appeal is Section 55. It reads as follows:

55. Where a tribunal that made a decision or order was composed of fewer than three members, the Commission, the complainant before the tribunal or the person against whom the complaint was made may appeal the decision or order by serving a notice, in a manner and form prescribed by Order of the Governor in Council, within thirty days after the decision or order appealed was pronounced, on all persons who received notice from the tribunal under subsection 50(1).

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The regulation respecting the manner and form of making an appeal is Regulation SOR/80-394. It sets out the form of the Notice of Appeal and provides that service on all parties shall be made personally or by registered mail.

The decision appealed from was pronounced on April 8th, 1993, and the Canadian Armed Forces were served with the Notice of Appeal on May 10th, 1993, service of which was personally effected on their counsel, the Department of Justice. There was no dispute among the parties that the offices of the Department of Justice were open on Saturday, May 8th, 1993, and that there were individuals present in the buildings who could accept service.

It is argued by the respondent that service of the Notice of Appeal upon it on the 10th day of May, 1993, is outside the time limit prescribed by Section 55.

The Review Tribunal was directed to the provisions of the Interpretation Act for the purposes of calculating the time within which a Notice of Appeal must be served in accordance with Section 55. The Review Tribunal was directed in particular to Section 27(2) of the Interpretation Act which provides that in counting thirty days from the date of pronouncement of the decision the date of pronouncement itself is excluded. Therefore, in counting thirty days from April 9th, 1993, the thirtieth day falls on May 8th, 1993, a Saturday.

The respondent argues that, as Saturday does not fall within the definition of holiday contained in Section 35 of the Interpretation Act, the complainant cannot avail himself of

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Section 26 of the Interpretation Act which provides that:"where the time limited for the doing of a thing expires or falls on a holiday, the thing may be done on the next day following that is not a holiday".

The Commission, relying upon the Federal Court of Appeal decision of *P.F. Collier and Son Ltd. v. M.N.R.* [1986] 70 N.R. 92, asked that the Review Tribunal view the service of the Notice of Appeal on Monday, May 10th, 1993, as within the time prescribed by statute. With respect we are of the view that the decision is not helpful to us. The appeal in that case could not be filed as the Tariff Board Office was closed. Therefore, the closing of the office prevented the appellant in that instance from filing his Notice of Appeal within the time prescribed by Statute. In the instant case the offices of the Department of Justice were open for service on Saturday, May 8th, 1993. Accordingly, service could have been effected by the appellant on such date. Therefore, the finding in *Collier and Son Ltd.* is distinguished from the instant case.

The Commission invited us to find a conflict between the provisions of the Canadian Human Rights Act providing for thirty days within which a Notice of Appeal may be served and the provisions of the Interpretation Act, which, by not holding Saturday as a holiday, would in the Commission's argument deprive the complainant of the full thirty days necessary to file the Notice of Appeal as the tribunal offices were closed. Given the facts before us and the provisions of Section 55 which provide that the Notice of Appeal must be served and not filed within thirty days and the fact that the issue of timeliness of service is raised by the Canadian Armed Forces which could have been served on the

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thirtieth day i.e. Saturday, May 8, 1993, we do not find a conflict in the present case.

The proceedings were adjourned to allow counsel to provide the Review Tribunal with information as to postal services available to the appellant in Comox, British Columbia, the appellant's residence at the material time, for the purposes of serving the Notice of Appeal by registered mail. Information was provided to the tribunal that registered mail service was available to the appellant on Saturday, May 8th, 1993, in and near Comox, British Columbia, and accordingly the appellant could have effected service of the Notice of Appeal by registered mail. The appellant did not do so.

Counsel for the Commission invited the Review Tribunal to find ambiguity in Section 55 of the Canadian Human Rights Act and the Human Rights Tribunal Appeal Regulations in that the manner of computing the thirty day time period was not provided. We are of the view that the failure to provide a manner of computing the time frames in the Act does not constitute an ambiguity but in fact supports the position that the provisions of the Interpretation Act provide for the calculation of time frames within the Canadian Human Rights Act.

This is not a circumstance which gives rise to the argument of paramountcy vis-à-vis the Canadian Human Rights Act. The authorities provided by counsel for the Commission in this regard were not directly relevant in the instant case, as based on the facts before us, it is not necessary to address such arguments.

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Counsel for the Commission also provided the Review Tribunal with the decision of the Ontario Court (General Division) *Young v. Mississauga*, (1993) 16 O.R. 3d, 409. Counsel for the Commission and the respondent were invited to provide further submissions to the Review Tribunal as to the relevance, if any, of the *Young* decision to their respective arguments. Having reviewed all of counsels' submissions in this regard we are of the view that the *Young v. Mississauga* case does not advance the Commission's case. Such decision may be distinguished from the case before the Review Tribunal on its facts. The plaintiff in the *Young* decision was prevented from serving the Notice required to be served on the City of Mississauga pursuant to Section 284(5) of the Ontario Municipal Act by reason of the closing of the municipal offices of the City of Mississauga on Saturday the seventh and last day upon which such notice could be served. Two methods of giving notice were provided in Section 284(5) similar to the section of the Human Rights Tribunal Appeal Regulations; however, as the City of Mississauga made one method impossible by closing its offices, it was held that the two options provided by the Statute were not available to the plaintiff throughout the prescribed period. This is not the case before us. In the case before us, both methods of service of the Notice of Appeal were available to the appellant throughout the prescribed period.

The Review Tribunal is unable to accept the Commission's argument that Saturday is rendered a holiday by virtue of provisions of the Ontario Rules of Civil Procedure. The Federal Interpretation Act provides that a holiday includes a non juridical day by virtue of "an Act" of the legislature of the Province.

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The Ontario Rules of Civil Procedure do not constitute an Act of the legislature of the Province but in fact are regulations promulgated under the Courts of Justice Act.

The Review Tribunal is mindful that a statute such as the Canadian Human Rights Act is to be given a fair, large and liberal interpretation as best ensures the attainment of its objects. However, the Review Tribunal is a statutory body and, as such, cannot amend the Act which expressly states that the Notice of Appeal must be served within thirty days.

No right to extend the time within which a Notice of Appeal can be served is provided for in the Canadian Human Rights Act.

"A right of appeal is a right of exception which exists only when authorized by statute. Substantive and procedural provisions related to the exercise of this right, when given, are generally regarded as exhaustive".

Desjardins v. Blais, [1961] S.R.C. 306, S.C.C.

In arguing that it was not served within the time frame allotted by the provisions of Section 55, the respondent states that service could have been effected by the appellant within the time frame since the Department of Justice offices were open for service on Saturday, May 8th. Registered mail service was also available to the Appellant.

The appellant failed to serve the Notice of Appeal upon the respondent within thirty days and accordingly his appeal is dismissed.

DATED THIS DAY OF JUNE, 1994.

S. Jane Armstrong
Chairperson

Joseph Sanders
Member

Alvin Turner
Member