

Case In Point

HRTO Dismissal of Application for Delay of One Day Upheld by Appellate Court

Date: October 2, 2018

In a useful decision for employers, the Ontario Divisional Court has confirmed that the one-year timeline for filing an application with the Human Rights Tribunal of Ontario (Tribunal) will be strictly enforced. The decision provides a valuable warning to applicants that the time limits required to bring a complaint are indeed requirements and will only be waived in circumstances where an applicant can provide a reasonable explanation for the delay in bringing a complaint.

In [James v. Human Rights Tribunal of Ontario](#), the Divisional Court upheld two decisions of the Tribunal where it had dismissed the application for delay of only one day.

The employer had terminated the applicant's employment on June 26, 2013. On June 27, 2014, the applicant filed an application with the Tribunal alleging discrimination and reprisal by the employer. He stated in his application that the last alleged discrimination occurred on June 26, 2013. In its response, the respondent employer raised a preliminary objection that the application should be dismissed for delay on the basis that it was filed one day late. The Tribunal also advised the applicant of the employer's position on delay through correspondence. The applicant failed to acknowledge that his application was filed late, asserting in his reply that the employer had "*put forward no reason or ground to dismiss his application... [and that] his application had been filed in the appropriate timeframe.*"

At the Tribunal, the adjudicator found that the application was not filed until June 27, 2014 and, as such, it was not filed within the one-year time limit required by the *Human Rights Code* (Code). Given that the application was outside the one-year time period, the adjudicator examined whether the delay was incurred in good faith as required under s. 34(2) of the Code. He stated that proving good faith involves "something more than simply showing an absence of bad faith." He concluded that, in the absence of evidence that the delay was incurred in good faith, he did not have jurisdiction to deal with the application under s. 34(2) of the Code. The applicant subsequently filed a Request for Reconsideration of the Tribunal's final decision but again did not provide evidence that the delay was incurred in good faith.

The applicant then applied for judicial review of the Tribunal's decisions and at the same time, brought a motion to adduce fresh evidence.

The fresh evidence consisted of an affidavit, as well as an email that the applicant sent to the Tribunal on June 26, 2014 (which was the due date for the application) at 9:08 a.m. The applicant had immediately received an auto response from the Tribunal stating the form in which the email was sent was not acceptable. At 11:18 a.m., the Registrar of the Tribunal sent the applicant an email, acknowledging that the email had been sent, but that they could not retrieve the attached documentation. The Registrar specifically advised that the Tribunal could not access documents sent through an online service provider and that documents were to be sent as a separate attachment in an email to the Registrar with a limitation of 10 MBS in any one email. He requested that the applicant resubmit his email with properly attached documents. The applicant did not comply and submitted his application the following day.

However, at no time during the initial hearing or reconsideration hearing did the applicant ever refer to these emails of June 26, 2014.

The Divisional Court applied *Keeprite Workers' Independent Union et al. and Keeprite Products Ltd.*, and, in doing so, found that the proposed fresh evidence did not disclose a breach of natural justice and was accordingly not admissible.

On the issue of whether the decisions of the Tribunal were reasonable, the Court found there was no denial of the applicant's

right to procedural fairness as the applicant had been put on notice on several occasions that his application was untimely and he failed to provide an explanation for the delay. The decisions were reasonable because of the lack of evidence he submitted.

This decision confirms that the time limits established by the Tribunal must be followed. Though a dismissal of an application for a delay of one day may seem harsh, in this case it was counteracted by the fact that the applicant did not provide any reasonable explanation, nor did the applicant adduce relevant email evidence at any point during the Tribunal proceedings; moreover, the applicant could not provide an explanation as to why he failed to do so. Accordingly, the time limit was strictly enforced. The decision stands as a useful reminder that delays in filing will not be tolerated without reasonable explanation.