

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20120615

Docket: 12-A-16

Citation: 2012 FCA 185

Present: EVANS J.A.

BETWEEN:

WILLIAM DONALD HUDGINS

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on June 15, 2012.

REASONS FOR ORDER BY:

EVANS J.A.

Federal Court
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REASONS FOR ORDER

EVANS J.A.

[1] This is a motion under rule 369 of the *Federal Courts Rules*, SOR/98-106 by William Donald Hudgins for an extension of time to file a Notice of Application. He wishes to apply for judicial review of a decision by the Canada Industrial Relations Board (CIRB), dated March 14, 2012 (2012 CIRB LD 2750).

[2] The CIRB dismissed Mr Hudgins' complaint that his union had breached the duty of fair representation imposed by section 37 of the *Canada Labour Code*, R.S.C. 1985, c. L-2 (Code), on the ground that the complaint was filed out of time and an extension of time was not warranted.

[3] Mr Hudgins filed his complaint with the CIRB on January 12, 2012. Subsection 97(2) of the Code imposes a ninety-day limitation period on complaints of a breach of section 37. The CIRB found that June 22, 2009 was the latest date at which he knew or ought to have known of the facts giving rise to his complaint, that is, more than twenty seven months outside the limitation period.

[4] The CIRB has a statutory discretion under paragraph 16(m.1) of the Code to extend the time limits for complaints under section 37 of the Code. However, in view of the labour relations considerations underlying Parliament's intention of ensuring that complaints are dealt with expeditiously, the CIRB sparingly exercises its discretion to grant extensions of time. To obtain an extension, an applicant must demonstrate compelling circumstances. The CIRB concluded that there were no such circumstances excusing Mr Hudgins' long delay that would warrant the grant of an extension.

[5] Mr Hudgins was also late in submitting his Notice of Application to this Court. Subsection 18.1(2) of the *Federal Courts Act*, R.S.C. 1985, c. F-7, provides that an application for judicial review must be made no later than 30 days after the decision or order in question was first communicated by the decision-maker to the person directly affected. However, a Judge has discretion to extend the time.

[6] Although Mr Hudgins was only a few days late for filing a Notice of Application, he still needs an extension of time in order to commence an application for judicial review of the CIRB's

decision. In exercising its discretion to grant an extension, the Court takes into account, among things, whether the applicant has an arguable case. If a proceeding is bound to fail, there is no point in permitting it to continue and thereby waste resources, both public and private.

[7] In a Direction dated May 31, 2012, (*per* Pelletier J.A.), Mr Hudgins was advised that, in order to obtain an extension of time from the Court he would have to demonstrate an arguable case that his proposed application for judicial review would succeed. Although Mr Hudgins has amended his motion in response to this Direction, his materials do not establish that his proposed application for judicial review has any prospect of success.

[8] Mr Hudgins' affidavit reiterates his allegations of harassment by his ex-wife and her friends, but does not explain why he delayed more than two years before filing a complaint with the CIRB. Most of the pages of the exhibits attached to his affidavit concern his problematic dental experiences. The CIRB's reasons for refusing an extension of time appear careful and thorough. This Court is very deferential to the CIRB's exercise of discretion, especially since its decisions are protected by a strong preclusive clause.

[9] In view of the material submitted by Mr Hudgins in his amended notice of motion, the reasons provided by the CIRB for refusing a two-year extension of time, and the deferential standard of review applied by this Court to the CIRB's decisions, there is no realistic possibility that his proposed application for judicial review could succeed. Accordingly, granting an extension of time would not serve the interests of justice.

[10] For these reasons, the motion for an extension of time for filing a Notice of Application will be denied.

“John M. Evans”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: 12-A-16

STYLE OF CAUSE: William Donald Hudgins v. Attorney
General of Canada

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY: EVANS J.A.

DATED: June 15, 2012

WRITTEN REPRESENTATIONS BY:

William Donald Hudgins

APPELLANT ON HIS OWN
BEHALF

Laura Tausky

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Myles J. Kirvan
Deputy Attorney General of Canada

FOR THE RESPONDENT