In the Court of Appeal of Alberta

Citation: Yaschuk v Emerson Electric Canada Ltd, 2025 ABCA 211

Date: 20250613
Docket: 2401-0072AC
Registry: Calgary

Between:

Tara Yaschuk

Appellant

- and -

Emerson Electric Canada Ltd., the Alberta Human Rights Commission (Tribunal) and the Director of Alberta Human Rights Commission

Respondents

The Court:

The Honourable Chief Justice Ritu Khullar
The Honourable Justice April Grosse
The Honourable Justice Alice Woolley

Memorandum of Judgment

Appeal from the Order by
The Honourable Justice C.B. Thompson
Dated the 4th day of March, 2024
Filed on the 21st day of March, 2024
(Docket: 2201-13639)

Memorandum of Judgment

The Court:

Introduction

[1] The appellant filed a complaint with the Alberta Human Rights Commission against her former employer, the respondent Emerson Electric Canada Ltd. In a decision released on May 27, 2022, an Alberta Human Rights Tribunal upheld the appellant's complaint and awarded her damages: *Yaschuk v Emerson Electric Canada Limited*, 2022 AHRC 62.

[2] The appellant disagreed with the damage award and filed an originating application for judicial review of the Tribunal's decision. She served the judicial review application on the Tribunal and on her employer, Emerson, within six months after the date of the decision, in accordance with rule 3.15(3) of the *Alberta Rules of Court.* However, she did not serve the Minister of Justice of Alberta in that six-month period.[1]

[3] On application by Emerson, a chambers justice struck the judicial review application on the basis that the appellant did not serve the Minister in accordance with the *Rules*. The appellant asks this Court to set aside the order to strike.

[4] For the reasons that follow, the appeal is dismissed.

Analysis

[5] Rule 3.15 deals with originating applications for judicial review. Subrules 3.15(2) and (3) read as follows:

> (2) Subject to rule 3.16 [not relevant here], an originating application for judicial review to set aside a decision or act of a person or body must be filed and served within 6 months after the date of the decision or act, and rule 13.5 does not apply to this time period.
>
> (3) An originating application for judicial review must be served on

[1] There is also a question as to whether the appellant served the Office of the Director of the Alberta Human Rights Commission, as distinct from the Tribunal, in time. However, since the argument before the chambers justice focused on the lack of service on the Minister, we have focused on that point as well.

> (a) the person or body in respect of whose act or omission a remedy is sought,
>
> (b) the Minister of Justice or the Attorney General for Canada, or both, as the circumstances require, and
>
> (c) every person or body directly affected by the application.

[6] Alberta courts have consistently enforced the time limits in rule 3.15 and its predecessors strictly, notwithstanding the harsh consequences: see, for example, *Julien v Alberta (Appeals Commission for Alberta Workers' Compensation)*, 2023 ABCA 81 at para 13; *Baker v Drouin*, 2017 ABQB 204. Strict enforcement flows from the express choice to preclude the application of rule 13.5, which otherwise permits extensions of time periods in the *Rules* by court order or agreement of the parties. Strict enforcement is also consistent with the policy objective that judicial review applications be managed in a timely and efficient manner so as to provide certainty to the public and all stakeholders affected by an administrative decision: *Baker* at para 13.

[7] The appellant does not take issue with the general proposition that the time limits in rule 3.15 are, and should be, strictly enforced. However, she argues that the requirement in rule 3.15(3)(b) to serve the Minister is an exception because of the addition of the words "as circumstances require" and because, practically, the Minister rarely participates in judicial review applications.

[8] Previous iterations of rule 3.15 simply required service on the "Attorney General" (defined as the "Minister of Justice and Attorney General"): see *Alberta Rules of Court*, Alta Reg 390/1968, r 753.09(1)(b) and r 5(2). In 2010, the language was changed to require service on "the Minister of Justice and Attorney General or the Attorney General for Canada, or both, as the circumstances require". As noted above, rule 3.15(3)(b) now refers to service on: "the Minister of Justice or the Attorney General for Canada, or both, as the circumstances require", which reflects a change in title for the Minister of Justice in Alberta. The appellant argues the change from a simple reference to the "Attorney General" reflects an intention to dispense with service on the Minister of Justice or the Attorney General of Canada, except as circumstances require.

[9] We disagree. The language of rule 3.15(3)(b) recognizes the constitutional division of powers in Canada and the reality that in any given judicial review, either the provincial government or the federal government, or both, may have an interest. Depending on the nature of the judicial review, the applicable office or offices must be served and must be served within the prescribed six-month time period. In our view, there is no other reasonable interpretation of rule 3.15(3)(b): see also *Silver Willow Water Co-op Ltd v Vermillion River (County)*, 2018 ABQB 952 at paras 7-8.

[10] The appellant further argues that since the Minister of Justice was ultimately served, albeit more than a year late, and did not request a remedy for the late service or otherwise engage in the

proceedings, the Minister should be taken to have waived either the service requirement or the service defect. The appellant's position is that Emerson should not be able to rely on late service on the Minister when Emerson was served in time. These points are intuitively attractive but ultimately unpersuasive.

[11] The answer to the appellant's first point is that service on the Minister is required because of the public nature of judicial review and the Minister's interest in monitoring challenges to the decisions, acts or omissions of public authorities: see Alberta Law Reform Institute, *Rules: Judicial Review*, Consultation Memorandum No 12.13 (Edmonton: ALRI, 2004), 2004 CanLIIDocs 137 at paras 51-52; Alberta Law Reform Institute (Institute of Law Research and Reform), *Judicial Review of Administrative Action: Application for Judicial Review*, Report No 40 (Edmonton: ALRI, 1984), 1984 CanLIIDocs 4 at paras 2.3 and 12.25; *Kyambadde v Calgary Police Service*, 2024 ABKB 370 at para 13; *Peter Lehmann Wines Ltd v Vintage West Wine Marketing Inc*, 2015 ABQB 481 at paras 47-48. The Minister may choose not to participate in a particular judicial review proceeding and, in that event, the Minister is not required to take steps after receiving service. That the Minister may ultimately choose not to participate does not relieve the party seeking judicial review from the obligation to serve the Minister. The effect of the appellant's argument is that applicants for judicial review could ignore the requirement to serve the Minister, thereby undermining the public oversight role supported by rule 3.15(3)(b), and there would be no consequence unless the Minister took steps to make a court application. That is inconsistent with the *Rules*, which allow the Minister to fulfill the public oversight role by accepting service and taking no further steps where none are warranted.

[12] We need not otherwise consider whether, or to what extent, waiver is permitted by rule 3.15, as the appellant acknowledges the Minister has not expressly waived either the service requirement or the service defect.

[13] With respect to one party raising a lack of service on another as grounds for an application to strike, the nature of judicial review makes it harder to proceed against one party but not another, as often occurs in civil litigation. The remedy in judicial review is generally sought by reference to the decision under review and applies to all interested parties. Therefore, if service is not in order with respect to one party, the others risk participating in a process that is subject to being set aside if the unserved party later complains. For example, see *Kyambadde*. The net effect is that each party has an interest in all service defects. Alberta courts have entertained applications to strike or dismiss judicial review applications by served parties based on a failure to serve other parties in a number of cases: for example, see: *Julien; ENMAX Corporation v Alberta (Labour Relations Board)*, 2018 ABQB 431 at paras 15-18; *Hazkar Developments Inc v Cochrane (Town)*, 2019 ABQB 552.

[14] Finally, the appellant argues that service on the Minister is in order because service on the Tribunal amounts to service on the Minister. She notes that the Minister of Justice is designated as the Minister responsible for the *Alberta Human Rights Act* and is otherwise related by statute and

contract to the Chief of the Commission and Tribunals (the "Chief") and to the Commission. The appellant also argues that the Chief is a barrister or solicitor employed in the Department of Justice for the purposes of section 13 of the *Proceedings Against the Crown Act*, RSA 2000, c P-25.

[15] Any statutory or contractual relationships that may exist among the Human Rights Commission, the Tribunal, the Chief, and the Minister are irrelevant to the question before the Court. The Human Rights Commission is an independent public agency and service on the Chief, the Tribunal or the Commission does not equate to service on the Minister of Justice in this context.

[16] We note that there was some discussion during the hearing of the appeal about advice on the Commission website regarding the need to serve a judicial review application on the Tribunal. Counsel to the Director of the Human Rights Commission agreed to review that advice or draw it to the attention of the Director in the spirit of considering whether there is a risk that it could create confusion regarding the requirements for service of a judicial review application.

Conclusion

[17] The appeal is dismissed.

Appeal heard on April 17, 2025

Memorandum filed at Calgary, Alberta
this 13th day of June, 2025

Authorized to sign for: Khullar C.J.A.

Grosse J.A.

Woolley J.A.

Appearances:

B. Miller
for the Appellant

M. Brunette
T. Presber
for the Respondent Emerson Electric Canada Ltd.

M.L. Luhtanen
for the Respondent the Alberta Human Rights Commission (Tribunal)

D. Klaudt
for the Respondent the Director of Alberta Human Rights Commission