



**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION**

Citation: *Coronado v. Memorial University of Newfoundland and Labrador*

2025 NLSC 124

Date: September 22, 2025

Docket: 202401G3880

BETWEEN:

CHRISTIAN CORONADO

APPLICANT

AND:

**MEMORIAL UNIVERSITY OF
NEWFOUNDLAND AND
LABRADOR**

FIRST RESPONDENT

AND:

**HUMAN RIGHTS COMMISSION
OF NEWFOUNDLAND AND
LABRADOR**

SECOND RESPONDENT

Before: Justice David G. Conway
Edited Transcript of Oral Reasons for Judgment

On Appeal From: A Decision of the Human Rights Commission of Newfoundland and Labrador pursuant to section 33 of the *Human Rights Act*, 2010, S.N.L. 2010, c. H-13.1, dated the 12th day of March, 2024.

Place of Hearing: St. John's, Newfoundland and Labrador

Date of Hearing: February 28, 2025

Date of Oral Judgment: September 5, 2025

Summary:

The Applicant filed a human rights complaint against Memorial University, which was dismissed by the Human Rights Commission. The Applicant sought judicial review of the dismissal of the complaint. Memorial University raised a preliminary issue as to whether the statutory timelines for challenging the dismissal of the complaint had been met.

Held: The Applicant failed to meet the mandatory statutory timelines for seeking judicial review of the dismissal of the complaint. The Court is unable to extend the legislative timelines for seeking judicial review. In the result, the Application for judicial review filed by the Applicant is dismissed.

Appearances:

Courtney E. Betty	Appearing on behalf of the Applicant
Ruth E. Trask	Appearing on behalf of the First Respondent
Hillary Winter	Appearing on behalf of the Second Respondent

Authorities Cited:

CASES CONSIDERED: *Ind-Rec Highway Services Ltd. v. Miawpukek Band* (1999), 172 Nfld. & P.E.I.R. 245, 1999 CanLII 19592 (Nfld. C.A.); *Eastern Regional Integrated Health Authority v. Assn. of Registered Nurses of Newfoundland and Labrador*, 2016 NLTD(G) 182; *Yatar v. TD Insurance Meloche Monnex*, 2024 SCC 8; *Royal Newfoundland Constabulary Public Complaints Commissioner v. Oates*, 2003 NLCA 40; *Blueberry River Indian Band v. Canada (Department of Indian Affairs & Northern Development)*, [1995] 4 S.C.R. 344; *YBC Development Limited v. Torbay (Town)*, 2024 NLSC 43; *Clancey v. Clarke Transport Canada Inc.* (1998), 163 Nfld. & P.E.I.R. 188, 1998 CanLII 18103 (Nfld. C.A.); *Blomer v. Workers Compensation Board*, 2020 ABCA 334; *Yeadon v. Newfoundland and Labrador (Fisheries, Forestry and Agriculture)*, 2023 NLSC 140; *Tartal v. Alberta (Human Rights Commission)*, 2023 ABKB 381

STATUTES CONSIDERED: *Human Rights Act, 2010*, S.N.L. 2010, c. H-13.1; *Interpretation Act*, R.S.N.L. 1990, c. I-19

RULES CONSIDERED: *Rules of the Supreme Court, 1986*, S.N.L. 1986, c. 42, Sch. D

REASONS FOR JUDGMENT

CONWAY, J.:

INTRODUCTION

[1] The Applicant, Christian Coronado, filed a human rights complaint (the “Complaint”) with the Second Respondent, the Human Rights Commission of Newfoundland and Labrador (the “Commission”)

[2] The Applicant was an employee of the First Respondent, Memorial University of Newfoundland and Labrador (“Memorial”). The Complaint alleged that Memorial had failed to meet its duty to accommodate the Applicant, in violation of the *Human Rights Act, 2010*, S.N.L. 2010 c. H-13.1 (the “Act”).

[3] The Executive Director of the Commission dismissed the Complaint. The Applicant sought leave to appeal the dismissal of the Complaint. The Applicant also sought judicial review of the dismissal of the Complaint.

[4] Memorial raised a preliminary issue as to whether the Applicant had met the statutory timelines for challenging the dismissal of the Complaint. This became the basis for an Interlocutory Application filed by Memorial.

[5] The Interlocutory Application was heard on February 28, 2025. The Applicant and Memorial were given until March 31, 2025, to file any further submissions.

[6] These are the reasons for Judgment concerning the Interlocutory Application of Memorial University and the preliminary issue that it raises.

BACKGROUND

[7] The Applicant was an employee with Memorial from August 2009 until November 2022.

[8] In August 2021, Memorial implemented a mandatory mask and vaccine policy in relation to the COVID-19 pandemic.

[9] In November 2021, the Applicant submitted a request for exemption from Memorial's vaccination policy on religious grounds. In December 2021, Memorial denied the Applicant's exemption request and the Applicant was placed on unpaid leave effective January 2022.

[10] The Applicant then filed the Complaint with the Commission. The Commission received the Complaint on February 8, 2022. The Applicant, based upon the circumstances, resigned his position with Memorial in November 2022.

[11] In a letter addressed to the Applicant via email dated March 12, 2024 (the "Decision"), the Executive Director of the Commission dismissed the Complaint in accordance with section 32 of the *Act*.

[12] The Decision noted that the Applicant had 30 days from the receipt of the letter to file an Application for judicial review with the Supreme Court of Newfoundland and Labrador, in accordance with section 33 of the *Act*.

PROCEDURAL HISTORY

[13] On April 11, 2024, the Applicant filed an Application for leave to appeal the Decision (the “Application for Leave to Appeal”), citing section 42(2) of the *Act*. That Originating Application is Court File No. 202401G2218.

[14] The Application for Leave to Appeal was served on the Commission on or about April 26, 2024. Memorial was not named as a party in the Application for Leave to Appeal and Memorial was not served with the Application for Leave to Appeal.

[15] The Application for Leave to Appeal was scheduled to be called in Court in May 2024. The Application for Leave to Appeal was not called in Court at the request of agent counsel for the Applicant. Agent counsel for the Applicant indicated that an application for judicial review would be filed in place of the Application for Leave to Appeal.

[16] An Application for judicial review, which forms the basis for this Decision, was filed with the Court on June 26, 2024 (the “Application for Judicial Review”), and it was subsequently served on the Commission and on Memorial.

[17] The Commission filed the Record and a Supplementary Record on August 22, 2024.

[18] The hearing of the Application for Judicial Review was scheduled for November 15, 2024. In its written submissions for that hearing, which were filed on November 4, 2024, Memorial raised the preliminary issue of timeliness.

[19] The Application for Judicial Review was not heard on November 15, 2024. Memorial, at the direction of the Court, filed an Interlocutory Application on January

2, 2025, concerning the preliminary issue of timeliness. The Applicant and the Commission provided written submissions concerning the preliminary issue.

[20] The Interlocutory Application concerning the preliminary issue was heard on February 28, 2025. The Commission was granted permission to make submissions on the preliminary issue.

[21] The Applicant and Memorial were given until March 31, 2025, to make further written submissions based upon the submissions of the Commission. No further written submissions were provided by the Applicant or by Memorial.

ISSUES

[22] The main issues to be decided are:

- (i) whether the Application for Judicial Review was filed within the appropriate timelines; and
- (ii) if not, whether the Court can extend or vary the timelines for filing the Application for Judicial Review.

RULES OF COURT AND LEGISLATION

[23] The *Rules of the Supreme Court, 1986*, S.N.L. 1986, c. 42, Sch. D (the “Rules”), state, in part, that:

Non-Compliance with rules

2.01.(1) A failure in a proceeding to comply with any requirement of these rules shall, unless the Court otherwise orders, be treated as an irregularity and shall not

nullify the proceeding, any step taken in the proceeding, or any document or order therein.

...

2.01.(3) The Court shall not wholly set aside any proceeding or the originating document by which it was begun, on the ground that the proceeding was required by any of these rules to be begun by the originating document other than the one used.

...

Extension, etc., of time

3.03.(1) The Court may, on such terms as it thinks just, extend or abridge the period within which a person is required or authorized by these rules, or by any order, to do or abstain from doing any act in a proceeding.

3.03.(2) The Court may extend any period referred to in rule 3.03(1) although the application for extension is not made until after the expiration of the period.

3.03.(3) The period within which a person is required by these rules or any order to serve, file or amend any pleading or other document may be extended by consent in writing of the parties.

...

Preliminary determination of questions of law, etc.

38.01.(1) The Court may, on the application of any party or on its own motion, at any time prior to a trial or hearing,

- (a) determine any relevant question or issue of law or fact, or both;

...

38.01.(2) Where in the opinion of the Court, the determination of any question or issue under rule 38.01(1) substantially disposes of the whole proceeding, or any cause of action, ground of defence, or counterclaim, the Court may thereupon order the entry of such judgment or make such order, as is just.

...

Filing and service of application

54.06. An originating application for an order in the nature of certiorari shall be filed and served within a reasonable time after the date of

- (a) filing of the judgment;
- (b) issuing of the order or award;
- (c) service of the warrant;
- (d) rendering of the report of the inquiry

to which it relates.

[24] Sections 32 and 33 of the *Act* state that:

Dismissal of complaint

32.(1) The executive director may, at any time before a complaint is referred to a board of inquiry under section 34 , dismiss all or part of the complaint where the executive director is satisfied that

- (a) this Act provides no jurisdiction to deal with the complaint or that part of the complaint;
- (b) the complaint or that part of the complaint is trivial, frivolous, vexatious or made in bad faith; or
- (c) the substance of the complaint or that part of the complaint has been appropriately dealt with in another proceeding.

(2) Where the executive director dismisses all or part of a complaint, the executive director shall serve the parties to the complaint with a written notice of and the reasons for the dismissal.

Appeal of dismissal

33. Where a complaint or part of a complaint is dismissed, a party to the complaint may, within 30 days after service of the written notice of the dismissal, apply for judicial review of the dismissal by filing an application with the Trial Division and serving it on all the parties to the complaint and the executive director.

[25] Section 22(k) of the *Interpretation Act*, R.S.N.L. 1990, c. I-19, states that:

Implied Provisions

22. In an Act or regulation...

(k) where a number of days not expressed to be "clear days" is prescribed the days shall be counted exclusively of the 1st day and inclusively of the last and where the days are expressed to be "clear days" or where the term "at least" is used both the 1st day and the last shall be excluded

POSITIONS OF THE PARTIES

Submissions of Memorial

[26] Memorial states that, even if the Application for Leave to Appeal is converted to an application for judicial review as per Rule 2.01 of the *Rules*, the Applicant only had until April 11, 2024, to file and to serve an application.

[27] Memorial submits that section 33 of the *Act* creates a mandatory requirement to file and serve an application on all the parties to a complaint within 30 days of service of a decision to dismiss a complaint. The date of service of the Decision on the Applicant in this case was March 12, 2024.

[28] Memorial states that the Commission was not served with the Application for Leave to Appeal until at least April 26, 2024, and that Memorial was not served with the Application for Leave to Appeal. As such, Memorial submits that the Applicant did not meet the statutory timelines in section 33 of the *Act* for filing and serving an application upon all of the parties to the Complaint.

[29] Similarly, Memorial further submits that the filing and service of the Application for Judicial Review also exceeded the statutory timelines in section 33 of the *Act* for challenging the dismissal of the Complaint. Again, the Application for Judicial Review was filed on June 26, 2024.

[30] Finally, Memorial submits that the Court is unable to extend or vary the statutory timelines in section 33 of the *Act*, whether through the use of the *Rules* or otherwise.

[31] Memorial asks that the Interlocutory Application be allowed and that, accordingly, the Application for Judicial Review be dismissed as per Rule 38.01.(2) of the *Rules*.

Submissions of the Commission

[32] The Commission states that it does not provide notice to respondents when it chooses to dismiss a complaint under the *Act*. In this case, the Commission did not notify Memorial of the Decision to dismiss the Complaint.

[33] The Commission acknowledges that the plain wording of section 33 of the *Act* indicates that both the filing and the service of an application should occur within 30 days of a dismissal notice.

[34] The Commission, for its part, states that it does not take issue with judicial review applications that are served a few days or weeks outside of the 30 day timeframe noted in section 33 of the *Act*.

[35] The Commission submits that in interpreting the provisions of the *Act* and the timelines the Court should take into account the needs of the individuals engaging in the complaints process, who are often self-represented, and the purposes of the *Act* itself.

[36] The Commission submits that the provisions of the *Act* should be interpreted to increase complainants' rights rather than minimize those rights.

Submissions of the Applicant

[37] The Applicant submits that Memorial is not a necessary party to these proceedings and that, as such, there is no requirement to serve any application on Memorial.

[38] The Applicant further submits that, even if Memorial is a necessary party to these proceedings, the Court should exercise its inherent jurisdiction or apply the curative provisions outlined in Rules 2 and 3 or the *Rules* to proceed to a hearing on the merits.

ANALYSIS

Rule 38.01

[39] I have decided that it is appropriate to decide this matter using Rule 38.01 of the *Rules*. This follows from paragraphs 14-20 of the Court of Appeal decision in *Ind-Rec Highway Services Ltd. v. Miawpukek Band* (1999), 172 Nfld. & P.E.I.R. 245, 1999 CanLII 19592 (Nfld. C.A.). Concisely stated:

- there is a discernible advantage to deciding the preliminary issue on its own;
- Rule 38 is a suitable process for deciding the preliminary issue;
- the evidentiary background for deciding the preliminary issue has been established;
- determining the party status of Memorial is possible using Rule 38; and
- a hearing on the merits can still proceed if the Interlocutory Application is dismissed.

Parties to the Proceedings

[40] A question has arisen as to which parties are entitled to be part of these proceedings and to be served with an application.

[41] The Complaint was filed with the Commission against Memorial as a named party. Although Memorial was not given notice of the Complaint by the Commission, Memorial was the respondent to the Complaint.

[42] Memorial was the only responding party in terms of the Complaint and it was the only party adverse in interest to the Applicant.

[43] The Commission has stated that if the Complaint had not been dismissed at the initial stage and had proceeded further, Memorial would have been given notice of the Complaint by the Commission.

[44] The lack of notice to Memorial by the Commission does not serve to exclude Memorial as a party to the Complaint. The Commission effectively decided the Complaint on an *ex parte* basis in a manner that favoured Memorial. Deciding a matter on an *ex parte* basis does not mean that a respondent is excluded as a party to a proceeding.

[45] I find that Memorial, even though it was not provided with notice, was a party to the Complaint. The Complaint was made against Memorial based upon the actions of Memorial. To remove Memorial as a party or to treat Memorial as a non-party would be a denial of procedural fairness.

[46] As the only named respondent in the Complaint, Memorial was entitled to be served with an application as per section 33 of the *Act*. Section 33 of the *Act* states, in part, that an application is to be served on “all parties” to the complaint and the Executive Director.

[47] It would be incongruous for Memorial to be a party to the Complaint but not a party for the purposes of section 33 of the *Act*. As such, I find that section 33 of the *Act* required both the Commission and Memorial to be served with an application.

The Rules

[48] Although I am, strictly speaking, deciding the Application for Judicial Review, I will comment upon the Application for Leave to Appeal and the timelines in both matters.

[49] In terms of the Application for Leave to Appeal, it would no doubt be appropriate to convert that filing to an Application for Judicial Review under Rule 2.01 of the *Rules*.

[50] It was a technical error to have initially filed the Application for Leave to Appeal instead of the Application for Judicial Review. The Court can cure that type of technical error by applying the *Rules*.

[51] On that basis, and for the purposes of this analysis, I am prepared to presume that the Application for Judicial Review was actually filed on April 11, 2024. As previously indicated, I have already determined that Memorial is and should have been a party to any application under section 33 of the *Act*.

Requirements of the Act

[52] The filing of the Application for Judicial Review as of April 11, 2024, would meet the “filing an application” requirement under 33 of the *Act*, since it was within 30 days of service of the Decision on March 12, 2024.

[53] Section 33 of the *Act* arguably also requires that the Application for Judicial review be served within 30 days of service of the Decision on March 12, 2024. Even if Memorial is excluded as a party, the Commission itself was not served until at least April 26, 2024.

Statutory Interpretation

[54] Courts have adopted a contextual approach to statutory interpretation. This type of approach presumes that legislation is introduced to address a concern, anticipate a difficulty or in some way promote the goals of the legislature. In terms of this, see paragraph 48 of *Eastern Regional Integrated Health Authority v. Assn. of Registered Nurses of Newfoundland and Labrador*, 2016 NLTD(G) 182.

[55] Generally speaking, and even if there is a limited right of statutory appeal under a given piece of legislation, judicial review can still occur. This follows from the decision of the Supreme Court of Canada in *Yatar v. TD Insurance Meloche Monnex*, 2024 SCC 8.

[56] Even if section 33 of the *Act* did not exist, and there was no alternate effective statutory mechanism, the dismissal of a complaint could be subject to judicial review. There is no privative clause in the *Act* that seeks to preclude judicial review.

[57] The question becomes why the legislature specifically set out a right to judicial review under section 33 of the *Act* when the ability to seek judicial review could otherwise have followed.

[58] Section 33 of the *Act*, in addition to noting the right of a complainant to seek judicial review, prescribes a process for doing so. It also sets out a time limit for doing so.

[59] The right to judicial review is not unlimited. Similar to statutory appeals, the legislature can set time limits for seeking judicial review. In this case, a 30 day time period is noted in section 33 of the *Act*. If that time limit did not exist, then the “reasonable period of time” timeline under Rule 54 of the *Rules* could be applicable.

[60] One question that arises from the wording of section 33 of the *Act* is whether the 30 day time limit applies to the filing of an application or to the filing and service of an application. I read and find that the wording of this section and the use of the word “and” is conjunctive. That is, an application must be filed with the Court and served on all the parties to the complaint within 30 days.

[61] Another question that arises is whether the timelines in section 33 of the *Act* are mandatory or directory. The wording of section 33 of the *Act* is somewhat unusual in that it appears to be permissive. That is, the complainant “may, within [30] days” seek judicial review.

[62] In *Royal Newfoundland Constabulary Public Complaints Commissioner v. Oates*, 2003 NLCA 40, the Court of Appeal set out factors governing the interpretation of a procedural requirement as mandatory or directory.

[63] The Supreme Court of Canada decision in *Blueberry River Indian Band v. Canada (Department of Indian Affairs & Northern Development)*, [1995] 4 S.C.R. 344, is referenced within *Oates*. At page 374 of *Blueberry Indian River Band* it is stated, in part, that:

... the object of the statute, and the effect of ruling one way or the other, are the most important considerations in determining whether a directive is mandatory or directory...

[64] Here, I find that the object of section 33 of the *Act* is to provide finality in the resolution of a complaint. The legislature did not have to create section 33 of the *Act* to allow for judicial review. By enacting section 33 of the *Act* the legislature signaled its intention to impose a time limit for seeking judicial review from the dismissal of a complaint.

[65] Without any time limit for judicial review, complainants could wait months or potentially years to seek judicial review. The only constraint might be the “reasonable period of time” time-period noted for *certiorari* in Rule 54.06 of the *Rules*. Effectively, having no set time limit for judicial review under section 33 of the *Act* would be antithetical to finality in the complaint process.

[66] I also note that time limits are present in other parts of the *Act*, such as in section 25 and section 42 of the *Act*.

[67] Ruling one way or the other in terms of mandatory versus directory time limits will have a significant impact on the parties. Mandatory timelines will preclude the Application for Judicial Review from proceeding. Directory timelines will potentially allow the dismissal of the Complaint to be reversed and for the Complaint to proceed against Memorial.

[68] In the circumstances, and looking at the object of the statute and the impact on the parties, I find that the timelines in section 33 of the *Act* are mandatory. The intent of the legislature was to impose a process and a time limit for seeking judicial review.

[69] Here, and even if Memorial is not considered to be a party and the date of the Application for Judicial Review is presumed to be April 11, 2024, the Applicant still failed to meet the timelines for serving the Commission within 30 days.

[70] As it is, Memorial is a party in this matter. The Application for Judicial Review was filed on June 24, 2024, far in excess of the 30 day time limit that started on March 12, 2024. Service of the Application for Judicial Review did not occur until after June 24, 2024.

[71] In these circumstances, and based upon the mandatory timelines in section 33 of the *Act*, I find that the Application for Judicial review was filed outside of time limits.

[72] The final question becomes whether the Court can extend or vary the timelines in section 33 of the *Act*. The *Rules* allow the Court to extend or vary time limits within the *Rules* themselves, but the *Rules* do not override legislation.

[73] In this case the *Act* dictates the timelines, not the *Rules*. I find that the *Rules* cannot be used to override section 33 of the *Act*. Nor does the inherent jurisdiction of the Court permit the Court to override legislative time limits, including those in section 33 of the *Act*.

[74] The *Act* itself does not allow the Court to extend or vary the timelines in the *Act*. If it did, this matter could be decided differently.

[75] In support of this conclusion and outcome, I rely upon *YBC Development Limited v. Torbay (Town)*, 2024 NLSC 43, which is a decision of Justice Handrigan of this Court.

[76] Justice Handrigan notes a number of general principles concerning time limits at paragraph 24 of *YBC Development Limited*. Adapting those general principles to this matter results in the following statements:

- a judicial review under section 33 of the *Act* must be brought strictly within the terms of section 33 of the *Act*;
- there is no statutory power in the Court to extend time limits under the *Act* or otherwise, and no such power exists;
- the provisions of the *Rules* purporting to allow the Court to extend time limits do not apply here since section 33 of the *Act* does not engage the *Rules*;
- judicial review can be subject to time limits imposed by the legislature;

- if an application for judicial review under section 33 of the *Act* is not filed and served within 30 days then the Court lacks jurisdiction to hear the judicial review; and
- if the *Rules* and the *Act* clash over the procedure on judicial review, which they appear to here, then the *Act* prevails.

[77] Before concluding, I do wish to comment upon and distinguish some of the cases that were cited by the parties.

[78] In *Clancey v. Clarke Transport Canada Inc.* (1998), 163 Nfld. & P.E.I.R 188, 1998 CanLII 18103 (Nfld. C.A.), the issue concerned converting a notice of appeal to an application for judicial review. The chambers judge in that case declined to do so. In this matter that is not the issue. Converting the Application for Leave to Appeal and using the date of April 11, 2024, would still result in the statutory timelines being exceeded.

[79] In *Blomer v. Workers Compensation Board*, 2020 ABCA 334, both the legislation and the Alberta rules of court precluded the court from extending time limits. In this matter, I have found that the *Act* precludes the Court from extending time limits and that the *Rules* do not override the provisions of the *Act*.

[80] In *Yeadon v. Newfoundland and Labrador (Fisheries, Forestry and Agriculture)*, 2023 NLSC 140, an issue arose as to whether the dismissal of a complaint under the *Act* should proceed by way of an appeal or by way of judicial review. Similar to this case, and as per section 33 of the *Act*, it was determined that it should proceed as a judicial review.

[81] *Tartal v. Alberta (Human Rights Commission)*, 2023 ABKB 381, involved a somewhat similar situation to this matter. A human rights complaint was dismissed by the Alberta Human Rights Commission and the application for judicial review in that case was filed beyond the timelines under the Alberta rules of court for doing so.

[82] In *Tartal*, the Alberta rules of court required the application to be filed and served within 6 months. The Alberta court rejected the submissions of the applicant that the respondent to that complaint, the Hockey Association, did not have to be served with the application. The Alberta court also found that the 6-month time limit was mandatory and had been exceeded.

[83] To summarize:

- (i) section 33 of the *Act* has a plain meaning requiring an application for judicial review to be filed with the Court and served on all parties to a complaint within 30 days of service of the dismissal of a complaint;
- (ii) the nature of the *Act* and the complaint process support the conclusion that the timelines in section 33 of the *Act* are mandatory;
- (iii) there is nothing in the *Rules* or otherwise that allows the Court to extend or amend the timelines in section 33 of the *Act*; and
- (iv) interpreting section 33 of the *Act* as outlined results in overall fairness to the parties and the process.

CONCLUSION

[84] The Interlocutory Application filed by Memorial on the preliminary issue under Rule 38 of the *Rules* is allowed.

[85] The Application for Judicial Review was not filed in accordance with the mandatory timelines in section 33 of the *Act*. The Court has no ability to extend or vary the timelines under section 33 of the *Act*.

[86] In the result, the Court has no jurisdiction to hear the Application for Judicial Review. The Application for Judicial Review is dismissed.

[87] I would like to thank all counsel for their very capable and helpful submissions in this matter.

[88] Judgment accordingly.

DAVID G. CONWAY
Justice