

COURT OF APPEAL FOR ONTARIO

CITATION: Brady v. Waypoint Centre for Mental Health Care, 2025 ONCA 722

DATE: 20251021

DOCKET: COA-25-CV-0206

Huscroft, Copeland and Rahman JJ.A.

BETWEEN

Shaunna Brady

Plaintiff (Appellant)

and

Waypoint Centre for Mental Health Care

Defendant (Respondent)

Amanda M. Chapman and Emerson H. Wargel, for the appellant

David S. Alli and Victoria A.F. McCorkindale, for the respondent

Heard: October 17, 2025

On appeal from the order of Justice Sharon Lavine of the Superior Court of Justice, dated January 6, 2025.

REASONS FOR DECISION

[1] The appellant appeals from the motion judge's order dismissing her claim for wrongful dismissal.

[2] The motion judge dismissed the claim for two independent reasons. First, she found that, in its essential character, the appellant's claim arose from the interpretation, application, administration, or alleged violation of the collective

agreement. As a result, pursuant to *Weber v. Ontario Hydro*, [1995] 2 S.C.R. 929, and s. 48(1) of the *Labour Relations Act, 1995*, S.O. 1995, c. 1, Sched. A, the Superior Court did not have jurisdiction over the claim. Second, she found that the claim was statute-barred because it was commenced after the two-year limitation period had expired. The appellant argues that the motion judge erred in both of these conclusions.

[3] Because the limitation issue would be dispositive, the court heard oral submissions on that issue first. After hearing the appellant's submissions, we did not call on the respondent and dismissed the appeal, with reasons to follow, on the basis that the claim was commenced after the expiration of the limitation period. As a result, it was not necessary to hear submissions on the jurisdictional issue and we do not address it.

[4] The parties are in agreement that the applicable limitation period is two years, pursuant to s. 4 of the *Limitations Act, 2002*, S.O. 2002, c. 24, Sched. B.

[5] The following facts are relevant to the limitation issue. The appellant's home position was in a bargaining unit represented by OPSEU Local 329. From October 2018, she began working in a temporary assignment as an acting manager. The acting manager position was not a bargaining unit position. On April 30, 2020, the appellant was advised that she would be terminated as acting manager and returned to her position in the bargaining unit. On or about

May 11, 2020, the appellant learned that her home position in the bargaining unit was not available for her to return to and that she was expected to return to a frontline clinical social work position. On May 14, 2020, the appellant went on medical leave, which she alleged was due to a traumatic response from being reassigned to a less senior role. On May 22, 2020, the respondent confirmed by memorandum that the appellant's temporary contract as acting manager ended on May 17, 2020. The appellant commenced her claim for wrongful dismissal by Notice of Action dated October 27, 2022 and served her statement of claim on November 24, 2022.

[6] The appellant argues that her claim was discoverable on April 30, 2020, the date she was advised she was being terminated from the acting manager position and would be returned to her position in the bargaining unit. We note that it could be argued that the claim was discoverable as late as May 22, 2020. However, because limitation periods were suspended throughout that period, the limitation analysis is the same whether the claim was discoverable on April 30, 2020 or as late as May 22, 2020.

[7] At the time the appellant's claim was discoverable in late April or mid-May 2020, limitation periods were suspended as part of the response to the COVID-19 pandemic. The relevant legislative and regulatory provisions are as follows:

Emergency Management and Civil Protection Act, R.S.O. 1990, c. E.9
(the "EMCPA")

7.1(6) If a provision establishing a limitation period or a period of time within which a step must be taken in a proceeding is temporarily suspended by the order and the order does not provide for a replacement limitation period or period of time, the limitation period or period of time resumes running on the date on which the temporary suspension ends and the temporary suspension period shall not be counted.

O. Reg. 73/20, formerly under the EMCPA

1. Any provision of any statute, regulation, by-law or order of the Government of Ontario establishing any limitation period shall be suspended, and the suspension shall be retroactive to Monday, March 16, 2020.

...

6. For greater certainty, any limitation period or period of time within which a step must be taken in a proceeding that is temporarily suspended under this Regulation resumes running on the date on which the temporary suspension ends and the temporary suspension period shall not be counted.

[8] The temporary suspension of limitation periods created by the regulation ended on September 14, 2020: O. Reg. 457/20, s. 1, under the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020*, S.O. 2020, c. 17. The total length of the suspension of limitation periods under the regulation was 183 days.

[9] We agree with the motion judge's conclusion that, although the appellant's claim was discoverable in late April or mid-May 2020, the limitation period was suspended until September 14, 2020, the date that the suspension of limitation periods ended. On September 14, 2020, the limitation period started running on the appellant's claim. Because the two-year period started running on September 14, 2020, it expired on September 14, 2022. The appellant

commenced her claim on October 27, 2022. This was outside the two-year limitation period.

[10] The appellant renews the argument made below that the limitation period should be calculated by starting on the date her claim was discoverable, April 30, 2020, and adding the full length of the suspension of limitation periods, 183 days, plus the two-year limitation period. Using this approach, the appellant argues that she had until October 30, 2022 to commence her claim – two years and 183 days from April 30, 2020. In support of this argument the appellant relies on *McAuley v. Canada Post Corporation*, 2021 ONSC 4528. In that case at para. 42, Boswell J. described the effect of the suspension of limitation periods as “to extend any running limitation period by 183 days. In other words, all limitation periods subject to the regulation were extended by roughly six months.”

[11] The motion judge rejected this argument. She was correct to do so. The appellant’s reliance on *McAuley* is misplaced. In *McAuley*, unlike this case, the claim was discoverable prior to the suspension of limitation periods. Thus, when limitation periods were suspended effective March 16, 2020, the limitation clock in *McAuley* was already running. The suspension of limitation periods under the *EMCPA* stopped the running of limitation periods for 183 days, and then the limitation clock restarted running on September 14, 2020. It was in the context of a limitation period that was already running when the suspension started on

March 16, 2020, that Boswell J. said that the effect of the extension of limitation periods “was to extend any running limitation period by 183 days.”

[12] Where, as in this case, the claim was not discoverable before the commencement of the suspension of limitation periods, the limitation clock did not start running until the suspension ended on September 14, 2020. There is no need to notionally add 183 days to the limitation period. The two-year period simply started running later – on September 14, 2020, when the suspension of limitation periods ended.

[13] The appellant argues, in the alternative, that if the claim was commenced after the expiry of the limitation period, there was no prejudice to the respondent. The appellant argues that the respondent was aware of the issues the appellant was raising about her employment from exchanges of correspondence, and the claim was filed only approximately six weeks after the limitation period expired.

[14] The *Limitations Act, 2002* does not provide for this type of discretionary relief. The basic limitation period of two years from when a claim is discoverable, created by s. 4 of the Act, is mandatory, “[u]nless [the] Act provides otherwise”: *Joseph v. Paramount Canada’s Wonderland*, 2008 ONCA 469, 90 O.R. (3d) 401, at paras. 15, 28; *Strathan Corporation v. Khan*, 2019 ONCA 418, at para. 8. None of the exceptions in the Act (such as ss. 6, 7, or 20) allow the limitation period in this case to be extended beyond September 14, 2022.

[15] The appeal is dismissed with costs to the respondent in the agreed amount of \$25,000, inclusive of disbursements and applicable taxes.

“Grant Huscroft J.A.”

“J. Copeland J.A.”

“M. Rahman J.A.”