In the Court of Appeal of Alberta

Citation: Siciliano v Alberta (Director of SafeRoads), 2024 ABCA 62

Date: 20240223
Docket: 2203-0178AC
Registry: Edmonton

2024 ABCA 62 (CanLII)

Between:

Kristian Siciliano

Appellant

\- and -

Director of SafeRoads Alberta

Respondent

The Court:

The Honourable Justice Dawn Pentelechuk
The Honourable Justice Jane A. Fagnan
The Honourable Justice April Grosse

Memorandum of Judgment

Appeal from the Order by
The Honourable Justice S.D. Hillier
Dated the 16th day of August, 2022
Filed on the 17th day of August, 2022
(Docket: 2104-00177)

Memorandum of Judgment

The Court:

INTRODUCTION

[1] The appellant, Kristian Siciliano, sought judicial review of a SafeRoads adjudication. A chambers judge summarily dismissed the judicial review application on the basis that the appellant did not serve the Director of SafeRoads Alberta (Director) within the 30-day time limit set out in section 24(2) of the *Provincial Administrative Penalties Act*, SA 2020, c P-30.8 [*Act*].

FACTUAL AND PROCEDURAL CONTEXT

[2] The appellant was issued a Notice of Administrative Penalty on December 12, 2020. Following a review, a SafeRoads adjudicator confirmed the notice on January 8, 2021. On February 5, 2021, the appellant's counsel submitted his application for judicial review to the Clerk of the Court of Queen's Bench for filing, though a stamped copy was not returned to counsel until some point between March 29, 2021 and April 8, 2021. On March 22, 2021, the appellant served the Director with an unstamped copy of the application; the stamped copy was served on April 8, 2021.

[3] Section 24(2) of the *Act* provides that an application for judicial review of an adjudicator's decision must be filed with the Court of King's Bench and served on the Director within 30 days of the date of the decision:

> 24(2) A decision or order of the Director or adjudicator may be questioned or reviewed by way of an application for judicial review seeking an order in the nature of certiorari or mandamus *if the application is filed with the Court of King's Bench and served on the Director or adjudicator no later than 30 days* after the date on which the decision or order was received by the applicant. [Emphasis added]

There is no other provision in the *Act* that allows for an extension of this 30-day time period for filing and service.

[4] The parties agree that the application for judicial review was filed within the 30-day period. However, the Director sought summary dismissal on the basis that it was not served in time.

[5] The chambers judge granted a dismissal order in oral reasons on August 16, 2022. Relying on this Court's decision in *Kehewin Cree Nation v Mulvey*, 2013 ABCA 294, the chambers judge found that the appellant's judicial review application was "non-compliant with the legislation and that the Court has no authority, residual or otherwise, to cure that." The chambers judge further

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stated that section 24(2) of the *Act* amounts to "de facto a limitation period on the exercise of the power of review."

ANALYSIS

[6] The appellant submits the chambers judge erred in law in finding he had no jurisdiction to permit late service of the application. Questions of law are reviewable on a standard of correctness.

[7] Other than disagreeing with the outcome, the appellant has not identified any error in the chambers judge's interpretation of section 24(2) of the *Act*, which is clear on its face. The appellant does not point to any other source of jurisdiction pursuant to which the chambers judge could have extended the time for service, other than saying it must be part of the court's inherent jurisdiction.

[8] The chambers judge properly considered himself bound by *Kehewin*, in which this Court at paragraph 11 held that "a judge cannot amend a time limit in a statute by shortening it or extending it, unless a statute gives that power." Similarly, a "power in the Rules of Court to extend times set by Rules or by orders does not empower extensions of time limits set by statutes": *Kehewin* at para 13. See also *Servus Credit Union Limited v Unruh*, 2021 ABCA 181; *Alberta Human Rights Commission (Director) v Vegreville Autobody (1993) Ltd*, 2018 ABCA 246; *Northern Sunrise (County) v De Meyer*, 2009 ABCA 205. The court's inherent jurisdiction does not extend to relieve against a statutory prescription: *Mallett v Yorkshire Trust Company*, 1986 ABCA 97 at para 5.

[9] The appellant argues that *Kehewin* is distinguishable because it involved a different statute, which included a provision that allowed a party to seek an extension of time, albeit only prior to the passing of the deadline in question. We disagree. The existence of an express power to extend a statutory time limit in some statutes does not mean that a similar power exists by implication or by residual authority in others. The appellant did not seek a reconsideration of *Kehewin.*

[10] The appellant also argues that in all the circumstances, the Director did not suffer any prejudice due to late service, and he points to the significant consequences that he faces under the SafeRoads legislative regime, including the *Act.* The appellant argues that it "makes no logical sense" that a person has more procedural rights in terms of missing deadlines or appearances under the *Traffic Safety Act*, RSA 2000, c T-6, or the *Criminal Code*, RSC 1985, c C-46, than under the *Act.* Assuming, without deciding, that the appellant's comparative assessment of the procedural protections afforded by these laws is fair, his complaint is with the policy choices of the legislature. The appellant has not brought any challenge or sought any remedy with respect to the *Act* itself.

[11] The appellant relies heavily on the assertion that it was impossible for him to serve the Director in compliance with section 24(2) because he did not receive a stamped copy of the application from the Clerk of the Court of Queen's Bench within the 30-day period. The parties agree that at the relevant time, the Court of Queen's Bench was experiencing significant delays in the processing of applications. They agree that the appellant did not receive notice that his

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application had been accepted for filing or a stamped copy showing it had been filed until at least March 29, 2021, after the expiry of the 30-day period prescribed for service by section 24(2) of the *Act*. However, this does not mean that compliance with section 24(2) was impossible.

[12] The appellant argues that service of an "unfiled" copy would have been a nullity, relying on *Baker v Baker*, 2012 ABQB 296. However, *Baker* is distinguishable because there was an issue as to whether the application in that case had even been submitted for filing. Further, unlike the case at bar, the *Baker* decision did not arise in circumstances where the court had published an acknowledgment on its website that filing was backlogged and advising parties: "please ensure your unfiled copies are served on the other side at the time you submit your documents and then again when you receive your filed materials." It is also noteworthy that *Baker* did not involve a statutory limitation period.

[13] Despite the delays in processing applications, compliance with section 24(2) of the *Act* was possible in this case. However, the appellant, contrary to the court's published advice, made no attempt to serve an unstamped copy of the application within the 30-day period. We need not address what would have happened if court processes had actually rendered compliance with section 24(2) of the *Act* impossible because that did not occur here.

[14] For the foregoing reasons, the appeal is dismissed.

Appeal heard on February 7, 2024

Memorandum filed at Edmonton, Alberta
this 23rd day of February, 2024

Authorized to sign for: Pentelechuk J.A.

Authorized to sign for: Fagnan J.A.

Grosse J.A.

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Appearances:

T. Foster, KC
K. Beyak (no appearance)
for the Appellant

S.A. Meenai
for the Respondent

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