CITATION: Taylor v. Pivotal Integrated HR Solutions, 2020 ONSC 6108
DIVISIONAL COURT FILE NO.: 381/20
DATE: 2020/10/08

ONTARIO

SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

H. Sachs J.

BETWEEN:	)	
	)	
Paul Taylor	)	
	)	Applicant/Responding Party appearing on
Applicant/Responding Party	)	his own behalf
	)	
– and –	)	
	)	
Pivotal Integrated HR Solutions	)	*Andrew Lokan*, for the Moving Party,
	)	Workplace Safety and Insurance Appeals
Respondent	)	Tribunal
	)	
	)	
	)	
	)	**HEARD at Toronto by videoconference:**
	)	October 5, 2020

Overview

[1] Mr. Taylor has commenced an application to judicially review two decisions of the Workplace Safety and Insurance Appeals Tribunal (the "Tribunal") that were issued in 2008 and 2013. The only named respondent to that application is Pivotal Integrated HR Solutions, the successor to the employer who employed Mr. Taylor at the time he suffered his workplace injuries, which occurred over twenty years ago. Pivotal has not responded to the application.

[2] The Tribunal has brought two motions before me: the first seeking to be added as a party to the application and the second seeking to have the application dismissed as an abuse of process. If I decline to dismiss the application, the Tribunal seeks alternative relief by way of an order staying the application until Mr. Taylor pays outstanding costs orders in the amount of $5500.00.

[3] Mr. Taylor opposes the Tribunal's motions.

[4] Pivotal did not appear on the motion and neither did the Federal Department of Justice nor the Attorney General for Ontario. The latter two entities were served with the motion materials since the underlying application claims *Charter* relief.

[5] For the reasons that follow I am granting the Tribunal's motion to be added as a party and granting its motion to dismiss Mr. Taylor's application.

Factual Background

Workplace Injuries and Board Decisions

[6] Mr. Taylor was injured on the job on February 6, 1997, while unloading a large shipment of goods from a truck. He had a second accident on August 20, 1997, which aggravated that injury.

[7] Mr. Taylor made an application for benefits as a result of his injuries to the Workplace Safety and Insurance Board (the "Board"). As a result of that application he received loss of earnings benefits for the times he was not working from 1997 to 2000. In 2000 he received a 14% Non-Economic Loss Award as a result of what the Board determined to be a permanent injury to his lower back. From 2000 to December 2002 the Board provided him with labour market re-entry assistance (retraining).

[8] Mr. Taylor challenged the benefits he was awarded within the Board system. He then sought reconsideration of and/or amendment to those decisions, all of which were denied.

Proceedings Before the Tribunal

[9] In 2005 Mr. Taylor commenced an appeal before the Tribunal. The Tribunal held a hearing over 4 days in 2007. On February 11, 2008, the Tribunal allowed his appeal in part by finding that he was entitled to benefits for an injury to his neck (in addition to the injury to his lower back that had already been recognized) and granting him entitlement to 100 percent of Loss Earnings Benefits for the periods from October 2, 1998 to December 16, 1998 and from January 13, 1999 to March 8, 2000 (where the Board had granted entitlement for only 50%.)

[10] Over four years after receiving the Tribunal's decision on his appeal, Mr. Taylor applied to the Tribunal for a reconsideration of its decision. On June 13, 2013, Mr. Taylor's application for reconsideration was dismissed.

First Court Application

[11] On July 11, 2013 Mr. Taylor filed an application in the Superior Court of Justice under Rule 14 seeking to challenge the Tribunal's original decision and its reconsideration decision. That application had a return date in November of 2013.

[12] After receiving notice of the application counsel for the Tribunal wrote to Mr. Taylor in July of 2013 advising him that his application was essentially an application for judicial review, which had to be pursued in Divisional Court.

[13] After receiving that letter, Mr. Taylor abandoned his Superior Court application.

Mr. Taylor Commences an Action

[14] After abandoning his Superior Court application Mr. Taylor commenced an action against the Board and the Tribunal seeking the same relief he had sought in his application, but adding a claim for substantial damages, which was later amended to include punitive damages. His Statement of Claim in that action was issued on February 20, 2014.

[15] Both the Board and the Tribunal brought a motion to strike Mr. Taylor's claim, which was granted by Price J. on February 22, 2017.Among other things, Price J. found that the Superior Court did not have jurisdiction to engage in a judicial review of the Tribunal's decisions in the context of an action and that Mr. Taylor's claim disclosed no reasonable cause of action. One of those claims was a claim for assault, which was grounded in certain statements that Mr. Taylor alleged had been made by a Tribunal member during the course of deliberations. Mr. Taylor had made a surreptitious recording of those deliberations. Price J. determined that the recording violated deliberative secrecy and therefore could not be admitted. The recording also formed the basis for Mr. Taylor's claim of bad faith.

[16] During the course of his decision Price J. found that Mr. Taylor had not provided a reasonable explanation for his four-year delay in seeking a reconsideration of the Tribunal's 2008 decision (para. 78) on the basis of bad faith. Price J. awarded the Tribunal costs fixed in the amount of $3000.00. These costs remain unpaid.

[17] Mr. Taylor appealed Price J.'s decision and on February 6, 2018, the Court of Appeal dismissed his appeal. The Court of Appeal upheld the motion judge's finding with respect to jurisdiction and his finding that admitting the surreptitious recording would violate the principle of deliberative secrecy. The Court awarded the Tribunal costs fixed in the amount of $2500.00, which also remain unpaid.

[18] Mr. Taylor applied for leave to appeal the Court of Appeal's decision to the Supreme Court of Canada, which was denied on April 16, 2020.

Mr. Taylor's Second Application Before the Superior Court

[19] A few weeks prior to receiving the Supreme Court of Canada's decision denying leave, on March 13, 2020, Mr. Taylor commenced an application for judicial review before the Superior Court returnable on March 24, 2020. On this application he again sought to challenge the Tribunal's decisions. On this application the only named responding party was the Tribunal.

[20] The application could not proceed on March 24, 2020 due to COVID-19.

[21] On June 3, 2020 Mr. Taylor wrote to the Tribunal advising that he intended to bring a motion in writing on June 15, 2020 to the Guelph Superior Court seeking various procedural orders, including an order for electronic service. On June 9, 2020, counsel for the Tribunal wrote to Mr. Taylor and set out its position that the matter should be brought in Divisional Court and that if Mr. Taylor did commence an application in Divisional Court the Tribunal would seek to have it dismissed on a number of bases, including extreme delay.

[22] On June 26, 2020 Mr. Taylor advised the Tribunal that he was abandoning his application in Superior Court on the basis that the Tribunal "is not a legal party" and that he would be filing a "corrected notice". Counsel for the Tribunal responded that day stating again that any "corrected notice" should be in Divisional Court and that by virtue of s. 9 of the *Judicial Review Procedural Act*, R.S.O. 1990, c. J.1 (the "*JRPA*") the Tribunal should be named as a respondent.

Mr. Taylor's Third Application – The Present Application for Judicial Review to the Divisional Court

[23] On August 14, 2020 Mr. Taylor commenced another application for judicial review, which he sought to have heard on an urgent basis. This time the only named respondent on the application was Pivotal Integrated Solutions. It is this application that gives rise to the motions before me.

Should the Tribunal Be Added as a Party?

[24] Pursuant to s. 9(2) of the *JRPA*, the Tribunal has a statutory right to be a party to this application. Section 9(2) provides as follows:

> **Exercise of power may be a party**
>
> (2) For the purposes of an application for judicial review in relation to the exercise, refusal to exercise or proposed or purported exercise of a statutory power, the person who is authorized to exercise the power may be a party to the application.

[25] "Statutory power" is in turn defined as including a "statutory power of decision", which is defined in s. 1 of the *JRPA* as meaning "a power or right conferred by or under a statute to make a decision deciding or prescribing, (a) the legal rights, powers, privileges, immunities, duties or liabilities of any person or power or party, or (b) the eligibility of any person or party to receive, or to the continuation of, a benefit or licence, whether the person is legally entitled to or not.."(emphasis added).

[26] It is clear that the Tribunal's decisions, which Mr. Taylor seeks to challenge on this application, are an exercise of the Tribunal's power to make a decision under the *Workplace Safety and Insurance Act* to determine Mr. Taylor's eligibility for benefits under that Act. Therefore, the Tribunal may be added as a party.

[27] Mr. Taylor submits that allowing the Tribunal to be participate in this application would offend the "rule of law". The Tribunal, as the party who made the decisions in question, should not be able to exercise an "undue influence" over the courts by being granted leave to appear in court to defend their decisions on the merits.

[28] The ability of tribunals to participate on judicial review applications is well-established. The proper scope of such application may be open to debate. The courts have held that a too aggressive defence of a tribunal's decision on the merits may be inappropriate. However, where the tribunal is the only party opposing the application, the court benefits from an adversarial presentation. As the Supreme Court of Canada held in *Ontario (Energy Board) v. Ontario Power Generation Inc.*, 2015 SCC 44 at para. 54:

> Some cases may arise in which there is simply no other party to stand in opposition to the party challenging the tribunal decision. Our judicial review processes are designed to function best when both sides of a dispute are argued vigorously before the reviewing court. In a situation where no other well-informed party stands opposed, the presence of a tribunal as an adversarial party may help the court ensure that it has heard the best of both sides of a dispute.

[29] As already noted, there is no other party who has appeared to oppose Mr. Taylor's application for judicial review. The named respondent has not appeared. Further, if it did so, it would not be "well-informed". It did not appear before the Tribunal and has not participated in the extensive and complicated procedures that preceded this application. Neither Attorney General has suggested that they will participate. On the other hand, the Tribunal has been an active participant in these proceedings throughout its fairly tortured history and its presence as an adversarial party will ensure that the court can deal with this dispute in a fair and informed manner.

[30] For these reasons I find that the Tribunal should be added as a party to this application.

Should the Present Application be Dismissed as an Abuse of Process?

[31] The Tribunal submits that this application should be dismissed on the basis of delay. In doing so it points out that the Tribunal decision that Mr. Taylor seeks to review was made on February 11, 2008, twelve and a half years ago.

[32] Judicial review is a discretionary remedy that can be denied on the basis of excessive delay, regardless of the merits of the case (*Ransom v. Ontario*, 2010 ONSC 3156 at para. 4; affirmed 2011 ONSC 5594 (Div. Ct.).

[33] In exercising its discretion to dismiss an application for judicial review, the court will consider the following factors:

(a) The length of delay;

(b) The reasonableness of any explanation offered for the delay; and

(c) Any prejudice suffered by the respondent as a result of that delay. (Becker *v. WSIAT*, 2012 ONSC 6946 (Div. Ct.)).

The Length of the Delay

[34] In the present case, Mr. Taylor delayed 12 and half years since the Tribunal's original decision in bringing this application. Mr. Taylor delayed over four years before applying for a reconsideration of the original decision and it has been over 7 years since the Tribunal issued its reconsideration decision.

[35] Judicial review applications are regularly dismissed for delay where six or more months pass before the commencement of the application and/or where twelve or more months pass before the perfection of the application (*Amodeo v. Ontario Labour Relations Board*, 2010 ONSC 1611 (Div. Ct.) paras. 5-6; *Becker, supra* at para. 8; *Zhang v. University of Western Ontario*, 2010 ONSC 6489 (Div. Ct.), paras. 2-3).

[36] The delay in this case is, by any measure, extraordinary.

Explanation for the Delay

[37] Mr. Taylor has offered the following explanations for his delay:

(1) He is self-represented and thus, did not have the requisite legal knowledge to process his application in a timely manner. Further, to quote from para. 67 of his factum "there is confusion over the lawful avenue for injured workers to fight for their lawful right of redress."

(2) He received misleading advice from Tribunal counsel about how to process his application.

(3) He suffers from many physical and psychological difficulties and his financial circumstances are such that it has been even more difficult for him to proceed with this matter in a timely manner.

(4) The delay of over four years in bringing the reconsideration application was due to the fact that he first went to the Ontario Human Rights Commission and then went back to the Tribunal to request that it ensure that the people who presided over the reconsideration decision were not the same people who presided over the original decision.

[38] Dealing first with the over four-year period before Mr. Taylor filed his reconsideration application, as noted above, Price J. found that there was no reasonable explanation for that delay. I agree. Mr. Taylor's oral submissions concerning going to the Human Rights Commission and asking for a different panel to consider the matter, are not supported by the record filed before me. Nowhere in that record is any mention made of these facts. Further, even if these facts were established, it does not provide a reasonable explanation for the delay. Mr. Taylor's choice to pursue other avenues does not relieve him of his

obligation to pursue his remedies in respect of the avenue he originally chose. At issue for the administration of justice are the important principles of timeliness and finality.

[39] Unfortunately, there are many unrepresented individuals who appear before the court and other administrative tribunals. Some, like Mr. Taylor, have financial and other problems. While some allowance can be made to accommodate the known difficulties that self-represented people encounter, that allowance cannot be made at the expense of the proper functioning of the administration of justice.

[40] In this case, contrary to his submissions, Mr. Taylor was provided with accurate advice from the Tribunal's counsel about the legal avenue he should pursue on more than one occasion. He chose to ignore this advice and seek to litigate his concerns in inappropriate forums. He was entitled to make those choices, but he cannot rely on those choices to justify his delay in proceeding to judicially review the decisions at issue in a proper manner. His position that the law surrounding the entitlement of injured workers is complicated and uncertain is belied by the fact that, in his case, his option to pursue a remedy in respect of the impugned decisions was clear and made known to him – apply for judicial review in the Divisional Court.

[41] For these reasons I find that Mr. Taylor has provided no reasonable explanation for his delay.

Prejudice

[42] Mr. Taylor submits that the Tribunal will suffer no prejudice if his application is allowed to proceed.

[43] When delays reach the magnitude of the delay in this case prejudice can be presumed. As the Tribunal points out, Mr. Taylor relies partly on alleged procedural defects in the Tribunal's original decision. It is difficult for any body to effectively respond to allegations regarding the conduct of a hearing that occurred over a dozen years ago.

[44] More importantly, the Tribunal has an interest in the finality of its proceedings, particularly in a situation such as this where Mr. Taylor is using his application to relitigate matters that have already been litigated and determined against him. For example, he seeks to introduce the transcript of the surreptitious recording that the courts have already determined to be admissible.

[45] Again, there is an institutional interest in timeliness and finality, an interest that is severely prejudiced when decisions continue to be challenged a dozen years after they were made.

Conclusion on Delay

[46] In conclusion I find that the delay in this case was excessive; that there is no reasonable explanation for the delay and that the Tribunal will suffer prejudice if the application is allowed to proceed.

Disposition

[47] For these reasons I am granting both of the Tribunal's motions. An order will go adding the Tribunal as a party and dismissing Mr. Taylor's application on the basis of delay. With respect to costs, the Tribunal seeks costs in the amount of $1000.00. This amount is reasonable, and it is ordered that Mr. Taylor shall pay the Tribunal its costs fixed in the amount of $1000.00, all inclusive.

_____

H. Sachs J.

Released: October 8, 2020

CITATION: Taylor v. Pivotal Integrated HR Solutions, 2020 ONSC 6108
DIVISIONAL COURT FILE NO.: 381/20
DATE: 2020/10/08

ONTARIO

SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

BETWEEN:

Paul Taylor

Applicant/Responding Party

– and –

Pivotal Integrated HR Solutions

Respondent

REASONS FOR JUDGMENT

H. Sachs J.

Released: October 8, 2020