

Federal Court of Appeal



Cour d'appel fédérale

Date: 20260525

Docket: A-280-25

Citation: 2026 FCA 102

**CORAM: LEBLANC J.A.
 GOYETTE J.A.
 PAMEL J.A.**

BETWEEN:

GALE KINSEY

Appellant

and

INTERNATIONAL LONGSHORE & WAREHOUSE UNION, LOCAL 500

Respondent

Heard at Vancouver, British Columbia, on May 25, 2026.
Judgment delivered from the Bench at Vancouver, British Columbia, on May 25, 2026.

REASONS FOR JUDGMENT OF THE COURT BY:

LEBLANC J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Vancouver, British Columbia, on May 25, 2026).

LEBLANC J.A.

[1] This is an appeal of an order of the Federal Court (*per* Manson J., the Motion Judge), dated August 8, 2025, dismissing a motion for an interlocutory injunction brought by the appellant (the Motion) in which she was seeking an order prohibiting the respondent – her union – from continuing violating sections 9 and 10 of the *Canadian Human Rights Act*, RSC, 1985, c. H-6 (the Act), through the application of two of its policies, the *Pensioner Dispatch*

Rule and the *Pensioner Equalization Rule*, pending the final determination of a complaint she filed with the Canadian Human Rights Commission (the Commission) in respect to these two policies on April 24, 2025 (*Gale Kinsey v. International Longshore and Warehouse Union, Local 500*, Vancouver, Court File T-1975-25 (FC)).

[2] The appellant is an employee of the British Columbia Maritime Employers Association. When she turned 71 in 2020, she automatically began receiving pension benefits. This resulted in her being subjected to these two policies, which meant that her accrued seniority was no longer recognized for the purposes of work assignments. Before the Commission, she complains that this constitutes aged-based discrimination, contrary to sections 9 and 10 of the Act. In parallel, she is seeking declaratory relief from the Federal Court that the two policies contravene these two provisions of the Act. This is the Motion’s underlying proceeding.

[3] The appellant relies on a decision from the Canadian Human Rights Tribunal, released on February 6, 2025, in a case to which she was not a party, where the Tribunal found that the two policies constituted age-based discrimination (the Tribunal Decision) (*Sidhu & Kopeck v. International Longshore and Warehouse Union, Local 500*, 2025 CHRT 11). This ruling was on liability only and is currently being challenged by the respondent on judicial review. Pursuant to section 57 of the Act, a certified copy of the Tribunal Decision was filed by the appellant in the Federal Court “for the purpose of enforcement.”

[4] The Motion Judge applied the tripartite test for interlocutory mandatory injunctions and found that, even assuming that the serious issue criteria under the more stringent “strong *prima*

facie case” had been made out, the appellant had not established any likelihood of irreparable harm as the harms alleged by the appellant were either capable of being addressed by a monetary award, purely speculative or unsupported by the evidence. The Motion Judge further held that the appellant’s delay in bringing forward any proceeding challenging the impugned policies suggested that the alleged harms were not sufficiently important to warrant interlocutory relief. Given its finding on irreparable harm, the Motion Judge was satisfied as well that the balance of convenience favored the respondent.

[5] It is well settled that the decision to refuse an interlocutory injunction is discretionary in nature and is assessed on appeal against the highly deferential standard of palpable and overriding error (*Prince v. Canada (National Revenue)*, 2020 FCA 32 at para. 12, citing *Hospira Healthcare Corporation v. Kennedy Institute of Rheumatology*, 2016 FCA 215; *Bell Canada v. Lackman*, 2018 FCA 42 at para. 16; *Canada v. South Yukon Forest Corporation*, 2012 FCA 165 at para. 46).

[6] Here, applying that standard, we see no basis to interfere with the Motion Judge’s Order. First, we see no merit to the appellant’s main contention that the Motion Judge misconstrued the purpose and merit of the Motion, which, according to her, is more akin to a statutory injunction, where different considerations apply, including irreparable harm which need not be proven, than to a common law injunction. This is so, the appellant says, due to the enforceability of the Tribunal Decision, through the operation of section 57 of the Act, rendering thereby her statutory rights under the Act enforceable as well. The appellant relies on the Ontario Superior Court decision in *RHRA v. Wesley Moore*, 2023 ONSC 2079, for the proposition that her injunction

request amounts to seeking enforcement of legislation. However, this case concerned a public authority, which the appellant is not, seeking to compel compliance with legislation. It simply has no application to the present matter, which opposes two private parties. Put differently, the appellant is seeking to layer the principles supporting a statutory injunction on the present circumstances; we find no support for this proposition.

[7] Besides, and putting aside the fact that it concerns third parties and that it is currently being judicially reviewed, the Tribunal Decision determined liability, explicitly bifurcated remedy and did not, therefore, direct the respondent to take or refrain from any action, including, most importantly, to cease and desist from continuing to apply the policies at issue, which is what the appellant was looking for through her Motion. In other words, there is nothing of that nature in the Tribunal Decision that is enforceable at this point in time.

[8] Second, the appellant's contention that the Motion Judge erred in requiring that there be a statutory grant of jurisdiction to issue an interlocutory injunction must fail as well as it is of no moment, the Motion Judge, assuming it had jurisdiction to entertain the Motion, having considered the actual merits of the appellant's injunction request. Besides, there is no firm pronouncement by the Motion Judge that the Federal Court has no jurisdiction to issue injunctive relief in respect of decisions taken under the Act.

[9] Finally, the appellant raises rule of law and access to justice concerns, but these general considerations are of no moment as well as we are satisfied that the Motion Judge applied the correct legal test. We are also satisfied that he committed no palpable and overriding error in

applying that test to the facts before him, including when assessing the irreparable harm criteria of the test. The appellant claims in this particular regard that the Motion Judge failed to consider the significant need to provide her with effective and timely access to justice. On that, the Motion Judge noted that the appellant had been aware of the impugned policies for a number of years and had taken no action prior to filing her complaint to the Commission in April 2025, nor had she offered any explanation for the delay in asserting her rights. As mentioned earlier, for the Motion Judge, that delay suggested that the harm alleged to be suffered by the appellant was not sufficiently important to warrant interlocutory relief. We see no error there (*Canada (Attorney General) v. Oshkosh Defense Canada Inc.*, 2018 FCA 102 at para. 23).

[10] For all these reasons, we will dismiss the appeal, with costs to the respondent in the amount of \$2,000.00, all inclusive.

"René LeBlanc"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-280-25
STYLE OF CAUSE:	GALE KINSEY v. INTERNATIONAL LONGSHORE & WAREHOUSE UNION, LOCAL 500
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
DATE OF HEARING:	MAY 25, 2026
REASONS FOR JUDGMENT OF THE COURT BY:	LEBLANC J.A. GOYETTE J.A. PAMEL J.A.
DELIVERED FROM THE BENCH BY:	LEBLANC J.A.

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