



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

Citation: *Power v. Newfoundland and Labrador (Human Rights Commission)*,
2026 NLSC 77

Date: June 19, 2026

Docket: 202401G6352

2026 NLSC 77 (CanLII)

BETWEEN:

DAVID POWER

APPLICANT

AND:

**HUMAN RIGHTS COMMISSION
OF NEWFOUNDLAND AND
LABRADOR**

FIRST RESPONDENT

AND:

**NEWFOUNDLAND AND
LABRADOR HEALTH
SERVICES**

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 42 of the *Human Rights Act*, 2010, S.N.L. 2010, c. H-13.1, dated the 6th day of April 2023.

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

Date of Hearing: September 8, 2025

Supplemental Written Submissions: October 15 and 24, 2025

Date of Oral Judgment: November 7, 2025

Summary:

The Applicant filed a human rights complaint against a predecessor employer of the Second Respondent. A Board of Inquiry rendered a decision on the merits of the complaint in 2023, and a decision on the remedy in 2024. Following the decision on the remedy the Applicant sought leave to appeal the decision on the merits.

Held: The Applicant failed to meet the mandatory statutory timelines for appealing the decision on the merits. The Court is unable to extend the legislative time limits for filing an application for leave appeal. In the result, the application for leave to appeal the decision on the merits is denied.

Appearances:

Taylor R. Starrett	Appearing on behalf of the Applicant
Hillary Winter	Appearing on behalf of the First Respondent
Twila E. Reid	Appearing on behalf of the Second Respondent

Authorities Cited:

CASES CONSIDERED: *Ontario (Energy Board) v. Ontario Power Generation Inc.*, 2015 SCC 44; *Weir's Construction Limited v. Warford (Estate)*, 2018 NLCA 5; *Ind-Rec Highway Services Ltd. v. Miawpukek Band* (1999), 172 Nfld. & P.E.I.R. 245, 1999 CanLII 19592 (Nfld. C.A.); *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 ; *Coronado v. Memorial University of Newfoundland and Labrador*, 2025 NLSC 124; *Eastern Regional Integrated Health Authority v. Association of Registered*

Nurses of Newfoundland and Labrador, 2016 NLTD(G) 182; *YBC Development Limited v. Torbay (Town)*, 2024 NLSC 43

STATUTES CONSIDERED: *Human Rights Act, 2010*, S.N.L. 2010, c. H-13.1

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

REASONS FOR JUDGMENT

CONWAY, J.:

INTRODUCTION

[1] This matter involves an Application for leave to appeal.

[2] A preliminary issue has been raised with respect to the timeliness of the Application for leave to appeal under the *Human Rights Act, 2010*, S.N.L. 2010, c. H-13.1 (“Act”).

BACKGROUND

[3] The Applicant, David Power, filed a human rights complaint (“Complaint”) with the First Respondent, the Human Rights Commission of Newfoundland and Labrador (“Commission”).

[4] The Complaint was filed against Eastern Regional Integrated Health Authority, a predecessor employer of Newfoundland and Labrador Health Services (“Respondent”). The Complaint alleged harassment and discrimination in the workplace by the Respondent.

[5] The Complaint was referred to a Board of Inquiry and a hearing took place. The Board of Inquiry rendered its written decision on the merits of the Complaint on April 6, 2023 (“Merits Decision”). The parties were given thirty days to reach an agreement on remedy in the Merits Decision, failing which a decision on remedy would be issued.

[6] The parties did not reach an agreement on remedy, and the Board of Inquiry issued a subsequent decision on remedy on October 21, 2024 (“Remedy Decision”).

[7] On November 18, 2024, the Applicant filed an Originating Application with the Court seeking judicial review of the Merits Decision.

[8] On July 18, 2025, the Applicant filed this Application for leave to appeal the Merits Decision.

[9] The Respondent raised a preliminary issue concerning the timeliness of the Application for leave to appeal and thereby the intended appeal under the *Act*.

ISSUES

[10] The issues to be decided are:

- (i) whether the Application for leave to appeal has met the statutory timelines under the *Act*; and
- (ii) if not, whether the Court can extend or vary the timelines for filing the application for leave to appeal under the *Act*.

RULES OF COURT AND LEGISLATION

[11] *The Rules of the Supreme Court, 1986*, S.N.L. 1986, c. 42, Sch. D (“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.

...

How to start an appeal (where leave required)

58.03 (1) A person must seek leave of a judge to start an appeal where any of the following circumstances apply:

- (a) the person intends to appeal a decision made in an uncompleted matter;
- (b) the person intends to appeal a decision which was made by consent;
- (c) the only portion of a decision the person intends to appeal relates to costs;
or
- (d) a statute requires that the person seek leave of the Court prior to starting an appeal.

(2) Where leave to start an appeal is required, a person may request leave by filing a Notice of Appeal, completed in accordance with rules 58.04(2) to (4), with an interlocutory application for leave to appeal attached.

(3) Unless a statute specifies a different time limit, the Notice of Appeal and application for leave required under subrule (2) must be filed within

- (a) 10 days of the date the decision appealed from was made, where the matter before the decision-making authority appealed from is uncompleted;
or
- (b) 30 days of the date of the decision appealed from, if the matter is completed.

...

Participation in the appeal

58.05 (1) A decision-making authority served under this rule is not a respondent but may participate in the appeal to provide the Court with information regarding its function and processes or to any further extent permitted by a judge.

[12] Section 42 of the *Act* states that:

Appeal of board decision

42. (1) A party to a proceeding before a board of inquiry may appeal an order or decision of the board by way of application to the Trial Division.

(2) Where the grounds of the appeal consist wholly or partly of a question of fact or of mixed fact and law, an appeal shall not be made without leave of a judge of the Trial Division.

(3) An application for leave to appeal made under subsection (2) shall be made by way of originating application, without giving notice to other interested parties, within 30 days of the receipt by the appellant of the order of the board of inquiry.

(4) A judge may, after taking into consideration those matters that he or she considers appropriate, grant leave to appeal.

POSITIONS OF THE PARTIES

Submissions of the Applicant

[13] The Applicant states that the Board of Inquiry bifurcated the decision into two parts, the Merits Decision and the Remedy Decision.

[14] The Applicant submits that since the *Act* is silent on the notice period for bifurcated decisions, the thirty-day time limit in section 42(3) of the *Act* begins when the matter is complete.

[15] The Applicant submits that the matter was not complete until the Remedy Decision was rendered, such that the Applicant sought leave to appeal within the appeal period as outlined in Rule 58 of the *Rules* and the *Act*.

[16] The Applicant further submits that barring the appeal in this matter would not promote efficiency in proceedings since it would deter parties from bifurcating issues.

Submissions of the Commission

[17] The Commission has taken a somewhat limited role in terms of its submissions, citing the Supreme Court of Canada decision in *Ontario (Energy Board) v. Ontario Power Generation Inc.*, 2015 SCC 44, and the Court of Appeal decision in *Weir's Construction Limited v. Warford (Estate)*, 2018 NLCA 5.

[18] The Commission has pointed out the procedural history in this matter, the relevant information and the sections of the *Act* that the Court must consider.

[19] Notwithstanding the Commission's limited role, it has provided its position on when the thirty-day timeframe for filing an application for leave to appeal in this matter commenced. The Commission has also put forward its interpretation on whether the Application for leave to appeal is statute barred.

[20] Given the limited role that the Commission should have in situations such as this, and in light of Rule 58.05, I will not be relying upon the Commission's position and submissions as to whether the Application for leave to appeal is statute barred.

Submissions of the Respondent

[21] The Respondent submits that the statutory timelines in section 42(3) of the *Act* are mandatory and not directory.

[22] The Respondent submits that the Applicant did not meet the mandatory requirements in the *Act* to file an application for leave to appeal within thirty days of receipt of the Merits Decision.

[23] In terms of this, and the background facts and wording of the *Act*, the Respondent submits that there is no effective distinction between an “order” and a “decision” of a Board of Inquiry.

[24] The Respondent submits that the failure of the Applicant to meet the statutory time limits results in the Court having no jurisdiction to hear the Application for leave to appeal or the intended appeal.

[25] The Respondent requests that the filings by the Applicant be dismissed in full.

ANALYSIS

Rule 38.01

[26] Although this is an Application for leave to appeal, and there are criteria for deciding whether to grant leave to appeal, I have decided that it is more appropriate to decide the preliminary issue that has been raised as per Rule 38.01:

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;

...

(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.

[27] The use of Rule 38.01 follows from paragraphs 14 to 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.). Briefly 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; and
- a hearing on the merits can still proceed if the preliminary issue is decided in favour of the Applicant.

The Rules

[28] Although I am deciding a preliminary issue related to the Application for leave to appeal, I will comment upon the application for judicial review that the Applicant also filed.

[29] It was a technical error to have initially filed an application for judicial review rather than the Application for leave to appeal. That type of technical error can be cured under the *Rules*.

[30] As such, and for the purposes of this analysis, I am prepared to presume that the Application for leave to appeal was filed on November 18, 2024, instead of July 18, 2025.

Requirements of the Act

[31] The Merits Decision made findings concerning the discrimination issues raised in the Complaint.

[32] The Merits Decision found that there was no age discrimination under section 14 of the *Act* relating to the termination of the Applicant's employment. The Merits Decision found, though, that there was discrimination under section 17 of the *Act* related to harassment.

[33] The Merits Decision did not address damages following from its finding of discrimination. The Merits Decision referenced a further hearing on damages, if necessary.

[34] The intended appeal, which seeks to challenge the Merits Decision, would involve questions of mixed fact and law. As such, leave to appeal is required under section 42(2) of the *Act*.

[35] Section 42(3) of the *Act* requires an application for leave to appeal to be filed "within [thirty] days of the receipt by the appellant of the order of the board of inquiry."

[36] There is no dispute that the Merits Decision was received by the Applicant in April 2023. There is also no dispute that, at the earliest, the Applicant sought to challenge the Merits Decision by filing documents with the Court in November 2024.

[37] The Applicant submits that because the hearing before the Board of Inquiry was bifurcated, the decision was not complete until the Remedy Decision was rendered in October 2024. I disagree.

[38] The Merits Decision of the Board of Inquiry on April 6, 2023, was a final order or final decision of the Board of Inquiry concerning the merits of the Complaint.

[39] There was nothing left for the Board of Inquiry to decide concerning the merits of the Complaint following April 6, 2023. The Complaint was upheld in part, and dismissed in part, concerning discrimination.

[40] As of April 6, 2023, what was left for the Board of Inquiry to potentially decide was the issue of damages. The Board of Inquiry left it to the parties to resolve the issue of damages, with a possible hearing on damages as needed.

[41] There did not have to be a further hearing and a further decision by the Board of Inquiry concerning the remedy or damages. To accept the submissions of the Applicant would set up a potentially very prolonged time limit for a bifurcated proceeding such as this.

[42] If the parties had settled the issue of damages twelve months after the Merits Decision, there would have been no need for a further hearing and no Remedy Decision. That conclusion date, by way of settlement, would then arguably be the start of the time limit for seeking leave to appeal the Merits Decision. This does not make sense in terms of finality in the complaint process.

[43] As it is, the parties did not resolve the issue of damages and a further hearing was needed, which resulted in the Remedy Decision.

[44] Whether or not a hearing was subsequently held concerning damages did not and could not change the Merits Decision. If there had been no hearing on damages, then the timeline for challenging the Merits Decision would and should have been the same.

[45] There is no ambiguity in the wording of section 42(1) of the *Act*. That is, that a party may appeal an order or decision of a Board of Inquiry. The Merits Decision was an order or decision of the Board of Inquiry. The Merits Decision was not a decision on a preliminary point or an uncompleted decision. It was a final decision.

[46] Given that there is no ambiguity in the wording of the *Act*, it is not appropriate to rely on Rule 58.03 in terms of an applicable time limit. The statute in this case specifies a time limit for seeking leave to appeal.

[47] I accept the submissions of the Respondent that section 42 of the *Act* uses the words “decision” and “order” interchangeably and that those two words should be treated as being interchangeable for the purposes of interpretation.

[48] Even if the words *decision* and *order* are not interchangeable, I would find that the Merits Decision is a “decision” in accordance with section 42 of the *Act*. The Merits Decision decided the discrimination allegations in the Complaint.

[49] Furthermore, the Merits Decision, under the heading “Conclusion,” contains an order. The order under that heading, in terms of the *Act*, is that the section 14 aspect of the Complaint is dismissed and the section 17 aspect of the Complaint is upheld. As such, the Merits Decision is an order of the Board of Inquiry.

[50] The Applicant had thirty days to file an application for leave to appeal the Merits Decision and the Applicant did not do so. I find that the Applicant did not meet the statutory timelines for filing an application for leave to appeal the Merits Decision.

Mandatory or Directory Time Limits

[51] There remains the question of whether the time limits in section 42 of the *Act* are mandatory or directory.

[52] The Applicant does not necessarily dispute that the time limits under section 42 of the *Act* are mandatory. The Applicant submits, however, that there is a gap in the wording of the legislation for bifurcated or uncompleted matters, such that those mandatory time limits do not apply to the Merits Decision.

[53] I find that the time limits in section 42 of the *Act* are mandatory. Briefly stated, I adopt and rely upon the submissions and conclusion of the Respondent concerning the mandatory nature of the time limits in section 42 of the *Act*.

[54] 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.

[55] 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:

42 ... 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...

[56] Similar to my conclusion in *Coronado v. Memorial University of Newfoundland and Labrador*, 2025 NLSC 124, concerning section 33 of the *Act*, I find that the object of section 42 of the *Act* is to provide finality in the resolution of a complaint.

[57] In enacting section 42 of the *Act*, the legislature signaled its intention to impose a time limit for filing an appeal concerning questions of fact or questions of mixed fact and law arising from Board of Inquiry decisions or orders.

[58] Without any time limit for an appeal under section 42 of the *Act*, complainants could wait months or potentially years to seek an appeal. Having no set time limit for the appeal of a Board of Inquiry decision or order would be antithetical to finality in the complaint process.

[59] I would also note that time limits are present in other parts of the *Act*, such as in sections 25 and 33 of the *Act*.

[60] Ruling one way or the other in terms of mandatory versus directory time limits will have a significant impact on the parties.

[61] In the circumstances, though, and looking at the object of the statute and the impact on the parties, I find that the timelines in section 42 of the *Act* are mandatory. The intent of the legislature was to impose a process and a time limit for seeking a statutory appeal.

[62] Bifurcated proceedings, by their nature, can lead to separate final decisions under the *Act*. This may result in a party having to seek leave to appeal separately for separate final decisions. There is nothing unusual about that.

[63] Statutory appeals arise from specific wording in legislation, which differs from judicial reviews. There is no inherent right for a party to file a statutory appeal and no inherent ability of a Court to hear a statutory appeal.

[64] In this case, I find that the time limits in section 42 of the *Act* are mandatory.

Extension of Time Limits

[65] The final question becomes whether I can extend or vary the time limits in section 42(3) of the *Act*.

[66] The parties appear to agree that I have no ability under the *Act* or otherwise to extend or vary the time limits in section 42 of the *Act*. This is consistent with paragraph 27 of the Court of Appeal decision in *Eastern Regional Integrated Health Authority v. Association of Registered Nurses of Newfoundland and Labrador*, 2016 NLTD(G) 182.

[67] My lack of jurisdiction to extend the time limits under section 42 of the *Act* is also consistent with paragraph 24 of the decision of this Court in *YBC Development Limited v. Torbay (Town)*, 2024 NLSC 43.

[68] I would note, in terms of this point, that the *Rules* allow the Court to extend or vary time limits within the *Rules* themselves, but the *Rules* do not override legislation when the legislation contains a time limit.

[69] I find that section 42 of the *Act* dictates the time limits in this matter and that I am bound by those time limits. That is, I find that nothing in the *Act* or otherwise allows me to extend or vary the time limits in section 42 of the *Act*.

[70] In summary:

- (i) It is appropriate to decide the preliminary issue in this matter in accordance with Rule 38.
- (ii) The Applicant failed to meet the statutory time limits under section 42 of the *Act* for seeking leave to appeal the Merits Decision.
- (iii) The statutory time limits in section 42 of the *Act* are mandatory.
- (iv) The preliminary issue is allowed and leave to appeal the Merits Decision is denied.

CONCLUSION

[71] The preliminary issue is decided in favour of the Respondent. The Application for leave to appeal the Merits Decision under section 42 of the *Act* is statute barred.

[72] In the result, the Application for leave to appeal is denied. There is no appeal that can follow from the Merits Decision concerning questions of fact or questions of mixed fact and law.

[73] The Respondent is the successful party in this matter and is seeking costs against the Applicant. The Applicant shall pay the costs of the Respondent, in accordance with Column 3 of the Scale of Costs appended to Rule 55 of the *Rules*.

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

[75] Judgment accordingly.

DAVID G. CONWAY
Justice