

CANADA / JUDGMENT

Haytham Elzayat v. Rogers Communication

2026 ONCA 111

COURT

Court of Appeal for Ontario

DECIDED

13 February 2026

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Haytham Elzayat v. Rogers Communication Collection Decisions of the Court of Appeal Date 2026-02-13 Neutral citation 2026 ONCA 111 Docket numbers COA-24-CV-1022 Judges Gillese, Eileen E.; Coroza, Steve A.; Osborne, Peter J. Subject Civil Decision Content COURT OF APPEAL FOR ONTARIO CITATION: Haytham Elzayat v. Rogers Communication, 2026 ONCA 111 DATE: 20260213 DOCKET: COA-24-CV-1022 Gillese, Coroza and Osborne JJ.A. BETWEEN Haytham Elzayat Plaintiff (Appellant) and Rogers Communication Defendant (Respondent) Haytham Elzayat, acting in person Stephanie C. Kolla, for the respondent Heard: February 12, 2026 On appeal from the order of Justice R. Lee Akazaki of the Superior Court of Justice, dated November 23, 2024, with reasons reported at 2024 ONSC 4477. REASONS FOR DECISION

- [1] We dismissed the appeal with reasons to follow after hearing from the appellant. These are our reasons.
- [2] The appellant, Haytham Elzayat, appeals from an order striking his Statement of Claim (“the claim”) and dismissing his action brought against the respondent, Rogers Communication. The appellant also seeks leave to admit fresh evidence.
- [3] The appellant interviewed for a job with the respondent in 2015. The appellant alleges that, during this interview, he was asked about his country of origin, religion and family history.
- [4] The appellant then commenced an action against the respondent in 2022, seeking damages for discrimination. The respondent brought a motion to dismiss the appellant’s claim on the grounds that the claim failed to disclose a viable cause of action, the action was barred because of a release signed by the appellant, and the action was statute-barred under the Limitations Act, 2002, S.O. 2002, c. 24, Sched. B.
- [5] The appellant opposed the motion and brought his own motion to dismiss the respondent’s motion.

- [6] The motions judge disagreed with the respondent that the release barred the appellant's claim. However, he found that the claim did not disclose a viable cause of action because there is no tort of discrimination, and the action was barred by the expiry of the two-year limitation period as set out in the Limitations Act. Accordingly, he struck the claim and dismissed the appellant's action. The motions judge also dismissed the appellant's motion as unnecessary.
- [7] The appellant submits that the motions judge erred in striking his claim and dismissing his action.
- [8] First, the appellant argues that the motions judge erred because the specific damages he seeks cannot be awarded by a human rights commission. The appellant argues that the Superior Court of Justice is able to adjudicate his claim, and it is the appropriate forum for him to seek relief. We do not accept this submission. The motions judge found that the claim failed to disclose a viable cause of action because there exists no common law tort of discrimination, and thus the Superior Court could not award damages to the appellant against the respondent: see *Seneca College of Applied Arts and Technology v. Bhadauria*, [1981] 2 S.C.R. 181. According to the motions judge, the respondent, a federally regulated company, came within the Canadian Human Rights Act, R.S.C. 1985, c. H-6, and such legislation did not allow complainants to resort to court actions for relief. We see no basis for appellate intervention.
- [9] Second, the appellant renews his submission that his action is not statute-barred because the two-year limitation period was suspended due to his incapacity. We do not accept this submission.
- [10] The appellant's claim, commenced in 2022, stated that he felt discriminated against after he left the interview in 2015. The motions judge found that the appellant clearly started his action outside the two-year limitation period under ss. 4 and 5 of the Limitations Act. The appellant relied on s.7 of the Limitations Act, arguing that the two-year limitation period did not begin to run because he was incapable of commencing a proceeding in respect of the claim due to his physical, mental or psychological condition.
- [11] We note that the Limitations Act provides a presumption of capacity unless the contrary is proved: s. 7(2). Here, the motions judge found that the appellant did not adduce sufficient evidence to support his assertion that he was incapable of starting an action within the two years following his job interview in 2015. The motions judge also noted that the appellant brought several lawsuits in the time-period between the job interview and the commencement of these proceedings in 2022, demonstrating that the appellant was capable of commencing a proceeding despite his health condition. Finally, the motions judge noted that the appellant interviewed for another position with the respondent in 2018, further suggesting that he had the capacity to pursue his claim within the two-year limitation period. Again, we see no basis for appellate intervention.

- [12] The appellant seeks to adduce fresh evidence in support of his appeal. This evidence consists of medical records, correspondence with the respondent, and documents related to legal representation in prior proceedings. The fresh evidence does not satisfy the test for admission. Some of the evidence could have been adduced before the motions judge, and there is no explanation as to why it was not. Moreover, in our view, the proposed fresh evidence would not have affected the result. Consequently, the motion to admit the fresh evidence is dismissed.
- [13] The appeal is dismissed. The appellant shall pay the respondent's costs of the motion and the appeal fixed in the amount of \$5,000. "E.E. Gillese J.A." "S. Coroza J.A." "P.J. Osborne J.A."

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