

Federal Court



Cour fédérale

**Date: 20161003**

**Docket: T-648-15**

**Citation: 2016 FC 1100**

**Ottawa, Ontario, October 3, 2016**

**PRESENT: Madam Prothonotary Mireille Tabib**

**BETWEEN:**

**DENNIS D. RUSSELL**

**Applicant**

**and**

**THE NATIONAL PAROLE BOARD**

**Respondent**

**JUDGMENT AND REASONS**

[1] An Interim Notice of Status Review was issued on August 2, 2016, requiring the Applicant, Dennis Russell, to file written representations stating the reasons why this application should not be dismissed for delay.

[2] To avoid dismissal, the Applicant had to justify his delay in proceeding and propose a timetable to complete the steps in this proceeding expeditiously.

[3] The Applicant filed his submissions on August 11, 2016, the Respondent filed submissions on August 18, 2016 and the Applicant replied on August 22, 2016.

[4] This is an application for judicial review of a decision of the National Parole Board issued on March 23, 2015. Applications for judicial review are not just another step in the appeal process of administrative tribunal decisions. They are extraordinary procedures that challenge the legality of administrative decisions. They should proceed to a hearing in a summary fashion, and without delay.

[5] Here, the Applicant filed an affidavit in support of his application on May 22, 2015, but failed to follow-up by preparing and filing an application record when it was due in August 2015.

[6] The Chief Justice accordingly issued, on November 24, 2015, an order designating this application as a specially managed proceeding and requiring the Applicant to propose a schedule to bring this proceeding to a hearing expeditiously.

[7] The Applicant's proposal was unsatisfactory. The Court had to intervene and in an order dated May 30, 2016, the Court noted that:

The Applicant's communications demonstrate a great misunderstanding of the rules and process of the Court, to the point that the Court fears that the Applicant might be unable, without legal assistance, to put together the necessary Applicant's record. The Court cannot relieve the Applicant from this obligation, as a record is necessary for the Court to have before it the materials and information it needs to determine the issues raised in this application. Nor can the Court offer legal assistance to the

Applicant. All that the Court can do is to urge the Applicant to seek assistance, and to simplify the proceedings as much as possible by fixing a schedule without requiring the Applicant to seek an extension of time.

[8] The Court therefore gave the Applicant a further 45 days to serve and file his application record, “in accordance with Rule 309”.

[9] On July 14, 2016, on the very day the deadline expired, the Applicant submitted a record for filing. That record did not comply with Rule 309, because it included a large number of documents that were not properly part of the record. By direction dated July 28, 2016, the Court directed that the record could not be accepted for filing. The Applicant’s inability to put together the necessary record, in compliance with the Rules, meant that he was in default of the order of May 30, 2016, which required him to serve and file a complying record by July 14, 2016. This is why the Interim Notice of Status Review came to be issued.

[10] The Applicant’s representations explain the delay which occurred between the time he served his affidavit in May 2015 and the time the Court issued the May 30, 2016 order. The first six months were satisfactorily explained by the fact that the Applicant was the victim of an assault. The next six months’ delay however, was due to the Applicant’s failure to understand the rules and what he was required to do to advance this litigation, as recognized in the May 30, 2016 order. The time between May 30, 2016 and the issuance of the Interim Notice of Status Review was also, clearly, occupied by the Applicant’s unsuccessful attempt to put together his record. He explains that he obtained misleading or incorrect advice from a lawyer, and was unsuccessful in finding another lawyer to assist him. Unfortunately, and while the Court

sympathizes with the Applicant's difficulties is securing legal advice, a party's inability to secure legal representation, a lawyer's error, or a party's lack of understanding of the Rules of the Court are not, in and of themselves, appropriate justifications for delay. Thus, more than half of the delay in moving this application forward is unjustified.

[11] Even a poor justification for delay can be overlooked and compensated by a robust and credible plan for moving the matter forward expeditiously. The Applicant's submissions in that regard are entirely unsatisfactory. They are limited to suggesting either that he resubmits the entire Application as is (including the documents held to have been improperly submitted) or that he serve and file an "updated" affidavit to include the documents improperly submitted. The Applicant's proposal is effectively that the rules of evidence and of procedure be ignored, in order to give him "some latitude", or else that he be allowed, after over one year of delay, to simply start his application back from square one with a new affidavit.

[12] The Applicant fails to put forward any justification for being exempted from following the rules that apply to everyone else, and fails to explain how that might be fair or not prejudicial to the Respondent. In addition, the manner in which the Applicant has conducted himself in this matter and the content of his representations continue to demonstrate his profound misunderstanding of the judicial process. The history of this matter has demonstrated, and the Court is satisfied that, even if granted "latitude", the Applicant has been, is and will continue to be unable to complete the steps required to bring this application to a hearing in a just, fair and expeditious manner.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that:**

1. This Application be, and it is hereby, dismissed for delay.

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"Mireille Tabib"

Prothonotary

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-648-15

**STYLE OF CAUSE:** DENNIS D. RUSSELL v THE NATIONAL PAROLE BOARD

**MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO, PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES*.**

**JUDGMENT AND REASONS:** TABIB P.

**DATED:** October 3, 2016

**WRITTEN REPRESENTATIONS BY:**

Dennis D. Russell

FOR THE APPLICANT  
(Self-represented)

François Paradis

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Dennis D. Russell  
Vancouver, BC

FOR THE APPLICANT  
(Self-represented)

William F. Pentney  
Deputy Attorney General of  
Canada  
Ottawa, Ontario

FOR THE RESPONDENT