

Federal Court



Cour fédérale

Date: 20220616

**Dockets: T-335-19
T-1552-18**

Citation: 2022 FC 912

Ottawa, Ontario, June 16, 2022

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

HORAINE BENNETT

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

ORDER AND REASONS

UPON MOTION in writing by the Applicant for an extension of time to bring a motion under Rule 51 of the Federal Court Rules to appeal a Reconsideration Order of Prothonotary Ring dated February 18, 2022;

AND UPON considering the written representations of the Applicant and the Respondent;

IT IS HEREBY ORDERED that the motion is dismissed for the following reasons:

I. **Background**

[1] The notice of application in this matter was issued on February 18, 2019. The Applicant is a federally incarcerated inmate who sought judicial review of a decision related to his claim against the Crown for certain personal items while at Mission Institution in 2017.

[2] The Applicant has been granted five extensions of time as follows:

- a. extension to August 12, 2019, by Order dated July 11, 2019;
- b. extension to October 31, 2019, by Directions dated October 7, 2019;
- c. extension to November 21, 2019, by Directions dated November 1, 2019;
- d. extension to January 15, 2020, by Directions dated December 16, 2019; and
- e. a 12-week extension to April 23, 2021, on a peremptory basis, to serve and file the Applicant's Record, by Order dated January 21, 2021 (the "Peremptory Order"), failing which the Respondent had leave to informally apply for dismissal.

[3] Prothonotary Ring made the Peremptory Order dated January 26, 2021, after a status review.

[4] The Applicant failed to comply with the Peremptory Order. Consequently, the Respondent brought an informal motion by letter dated April 27, 2021, to dismiss the judicial review application.

[5] On May 31, 2021, Prothonotary Ring issued the Dismissal Order.

[6] The Applicant then sought reconsideration of the Dismissal Order but was untimely in doing so. He received two extensions of time for service and filing of a reconsideration motion, as follows:

- a. extension to June 30, 2021, by Order dated June 22, 2021; and
- b. extension to July 14, 2021, on a peremptory basis, by Directions dated June 30, 2021.

[7] The Applicant met the peremptory deadline of July 14, 2021, filing a motion record for an order pursuant to “Rules 397 and/or 399” for “reconsideration / set aside or variance” of the Dismissal Order.

[8] On February 18, 2022, Prothonotary Ring issued the Reconsideration Order.

[9] In her reasons for the Reconsideration Order, the Court found that the Applicant’s argument appeared to rely on Rule 397(1)(b), whereby the Court may reconsider an order if “a matter that should have been dealt with has been overlooked or accidentally omitted”.

Prothonotary Ring rejected the Applicant’s argument that she had misinterpreted and/or

misapprehended his submissions – to the contrary, she squarely dealt with them in the Dismissal Order. Prothonotary Ring also noted that the Applicant was confusing this matter with his other judicial review file T-1552-18, as she had not issued directions relating to Rule 311 in this proceeding. Furthermore, Prothonotary Ring had addressed the Applicant’s allegations that the inmate-used printer was out of ink and that he was “virtually barred” from the inmate library.

[10] Prothonotary Ring also considered Rules 399(1) and 399(2), and found the Dismissal Order was not made *ex parte* or in the Applicant’s absence since the Defendant had proven service of the dismissal motion and, more importantly, the Applicant had filed several letters in response to that motion. She also found that the Applicant had not identified or argued the criteria for variance.

[11] The Reconsideration Order dismissed the Applicant’s motion with fixed costs of \$100.00.

[12] The deadline for appealing for Reconsideration Order was February 28, 2022. The Applicant tendered for filing a Notice of Motion for appeal dated March 11, 2022, in which he asserted that he had received the Reconsideration Order on or about March 4, 2022. By Directions dated March 15, 2022, the Court directed the Registry to not accept the Notice of Motion for filing.

[13] On May 16, 2022, the Applicant filed the present motion record.

II. **Issue**

[14] The sole issue on this motion is whether the Applicant has established the test for an extension of time to appeal the Reconsideration Order.

III. **Analysis**

[15] Under Rule 51(1), an order of a prothonotary may be appealed by a motion to a judge of the Federal Court. Rule 51(2) imposes a deadline that the “motion shall be served and filed within 10 days after the day on which the order under appeal was made”.

[16] The Reconsideration Order was made February 18, 2022, so any appeal motion was due for filing by February 28, 2022. The Applicant submitted a Notice of Motion on March 11, 2022, which was rejected for filing. The Applicant’s latest Notice of Motion was filed two months later on May 16, 2022.

[17] Rule 8 of the Federal Court Rules provides for extensions of time. Four factors are to be considered. The Applicant must show:

- a. a continuing intention to pursue the application;
- b. some merit to the appeal;
- c. no prejudice arises from the delay; and
- d. there is a reasonable explanation for the delay.

Canada (Attorney General) v Hennelly, (1999) 2444 N.R. 399 (Fed. C.A.)

Canada (Attorney General) v Larkman, 2012 FCA 204 at para 61

[18] The overriding consideration is that the interests of justice be served.

Miller Thomson LLP v Hilton Worldwide Holding LLP, 2019 FCA 193 at para 6

[19] The Applicant argues that he had a continuing intention to appeal, but his excuse for delay – that the Court Registry should not have sent the Reconsideration Order to him by regular mail – is not reasonable, given his initial week delay between March 4th and 11th in attempting to file an appeal motion, and given the absence of further explanation and evidence as to why he did not seek a time extension for two months.

[20] Prejudice to the Respondent also weighs in favouring of not granting an extension of time to the Applicant. Time limits exist in the public interest, in order to bring finality to administrative decisions.

Cossy v Canada Post Corporation, 2021 FC 559 at para 21

Canada v Berhad, 2005 FCA 267 at para 60, leave to appeal to SCC ref'd
[2006] SCCA No. 31166

[21] Moreover, the Applicant's written representations lack any substantive representations in respect of the potential merit of his intended appeal. The Reconsideration Order was discretionary. It is well established by the Court of Appeal that a discretionary decision should only be interfered with "if the prothonotary made an error of law or a palpable and overriding error regarding a question of fact or mixed fact and law". As to what constitutes a palpable and

overriding error, it is “one that is obvious and substantial enough to potentially change the result of the case.” No such error exists in the Reconsideration Order.

Hospira Healthcare Corporation v Kennedy Institute of Rheumatology,
2016 FCA 215 at para 64

*Hospira Healthcare Corporation v Kennedy Trust for Rheumatology
Research*, 2020 FCA 177 at paras 6-7

[22] The Applicant’s history demonstrates ongoing delays and non-compliance with Court Orders and Directions.

[23] The motion is dismissed with costs, fixed in the amount of \$100.00.

[24] The Applicant shall not be permitted to file further documents with the Court until outstanding costs are paid in full and the Registry shall not accept such documents for filing until the costs are paid.

ORDER AND REASONS in T-335-19 and T-1552-18

THIS COURT ORDERS that:

1. The motion is dismissed;
2. Costs fixed in the amount of \$100.00;
3. The Applicant shall not be permitted to file further documents with the Court until outstanding costs are paid in full; and
4. The Registry shall not accept such documents for filing until the costs are paid.

"Michael D. Manson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKETS: T-335-19 and T-1552-18

STYLE OF CAUSE: HORAINÉ BENNETT v ATTORNEY GENERAL OF CANADA

DATE OF HEARING: MOTION IN WRITING

ORDER AND REASONS: MANSON J.

DATED: JUNE 16, 2022

APPEARANCES:

HORAINÉ BENNETT FOR THE APPLICANT

COURTENAY LANDSIEDEL FOR THE RESPONDENT

SOLICITORS OF RECORD:

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