Federal Court of Appeal | Cour d'appel fédérale

Date: 20260217

Docket: A-26-25

Citation: 2026 FCA 32

CORAM: **LOCKE J.A.**
GOYETTE J.A.
ROCHESTER J.A.

BETWEEN:

JAMIE MORGAN BOULACHANIS

Appellant

and

HIS MAJESTY THE KING

Respondent

Heard at Montréal, Quebec, on February 17, 2026.
Judgment delivered from the Bench at Montréal, Quebec, on February 17, 2026.

REASONS FOR JUDGMENT OF THE COURT BY: ROCHESTER J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Montréal, Quebec, on February 17, 2026).

ROCHESTER J.A.

[1] This is an appeal of an order of the Federal Court (*per* St-Louis J.) dated December 23, 2024 (2024 FC 1845), granting the respondent's motion to dismiss the appellant's action for undue delay pursuant to Rule 167 of the *Federal Courts Rules*, SOR/98-106 [the Rules].

[2] Rule 167 states that:

The Court may, at any time, on the motion of a party who is not in default of any requirement of these Rules, dismiss a proceeding or impose other sanctions on the ground that there has been undue delay by a plaintiff, applicant or appellant in prosecuting the proceeding.	La Cour peut, sur requête d'une partie qui n'est pas en défaut aux termes des présentes règles, rejeter l'instance ou imposer toute autre sanction au motif que la poursuite de l'instance par le demandeur ou l'appelant accuse un retard injustifié.

[3] The three-prong test to be applied when exercising the discretion under Rule 167 to dismiss a proceeding for undue delay is as follows. The Court must determine whether: (1) there has been an undue delay; (2) whether the delay is excusable; and (3) whether the defendants or respondents are likely to be seriously prejudiced by the delay: *Sweet Productions Inc. v. Licensing LP International S.À.R.L.*, 2022 FCA 111 at para. 35; *Vermillion Networks Inc. v. Green Circle Ideas Inc.*, 2024 FC 579 at para. 17; *Canada v. Smiling Spruce Farms Ltd.*, 2003 FC 1238, 241 F.T.R. 230 at para. 12; *Ruggles v. Fording Coal Ltd.* [1998] F.C.J. No.1172, 152 F.T.R. 96 at para. 3 [*Ruggles*]; *Canada v. Aqua-Gem Investments Ltd.*, [1993] 2 FC 425, [1993] F.C.J. No. 103.

[4] A central element of Rule 167 is the wide discretionary power granted to the Court to impose any type of sanction it sees fit to ensure the orderly and timely prosecution of a proceeding: *Sweet Productions* at paras. 39 and 45. As such, the Court must consider whether a

measure less drastic than dismissal ought to be applied: *Dick v. Canada*, 2000 CanLII 15113 (FCA), [2000] 2 C.T.C. 277; *Ruggles* at para. 10; *Comartin v. Marsh*, 2024 FC 160 at para. 21.

[5] Discretionary orders rendered by Federal Court judges are reviewable under the appellate standard of review, meaning that questions of law are reviewable on the correctness standard whereas findings of fact and findings of mixed fact and law can only be overturned in the presence of a palpable and overriding error: *Hospira Healthcare Corporation v. Kennedy Institute of Rheumatology*, 2016 FCA 215 at para. 79; *Housen v. Nikolaisen*, 2002 SCC 33 at para. 1. A palpable error is one that is obvious, whereas an overriding error is one that goes to the very core of the outcome of the case: *Qualizza v. Canada*, 2025 FCA 222 at para. 9. The standard of palpable and overriding error is highly deferential and is not easily met: *Ibid*; *Western Oilfield Equipment Rentals Ltd. v. M-I L.L.C.*, 2021 FCA 24, at para. 11.

[6] Our Court has stated that a decision to dismiss the proceeding instead of imposing another sanction under Rule 167 is largely a question of mixed fact and law: *Sweet Productions* at para. 24. We find this to be true in the present case.

[7] The Federal Court identified the correct test when considering whether the appellant's action should be dismissed and applied each limb of the test to the evidence before it. In addition, the Federal Court, as the case management judge, turned its mind to whether a sanction other than dismissal would be appropriate under the circumstances. In so doing, the Federal Court noted that the matter had been under special case management since November 2020 and

the discovery of the Plaintiff had not yet been completed. The Federal Court then concluded that the alternatives to dismissal had already been exhausted without any concrete results.

[8] We have not been satisfied that the Federal Court has committed a reviewable error. While the appellant alleges several extricable errors of law—namely distorting, misapprehending and misconstruing the test—we find that the Federal Court identified and applied the correct test. Ultimately, the appellant's arguments are tantamount to a request to reevaluate the evidence before the Federal Court. An appeal from the Federal Court's discretionary order is not a redo: *Tymchyshyn v. Canada (Attorney General)*, 2026 FCA 26 at para. 9). Absent a palpable and overriding error, this Court does not reevaluate or reweigh the evidence dealt with by a case management judge in their application of the tripartite test. We find no such error in the Federal Court's extensive and detailed reasons.

[9] Further, we are not persuaded by the appellant's submission that the Federal Court erred in its treatment of the case management direction dated April 16, 2024 ("Direction"). The appellant pleads that the effect of the Direction was that it resolved the issue of outstanding undertakings and concluded the discovery phase of the action. The Direction, in the appellant's view, therefore precluded a motion for dismissal for undue delay.

[10] We agree with the Federal Court's conclusion that the appellant has not demonstrated that the Direction operated to preclude the respondent from bringing its motion under Rule 167. The appellant has sought to characterize the Direction as effectively relieving her of her obligation to fulfill her undertakings. Contrary to the appellant's submissions, neither the

Direction nor its reference to Rule 248 enable her to resile from her obligation to provide answers to her undertakings.

[11] It is clear that the appellant considers that the conclusion reached by the Federal Court was disproportionate, drastic, and deprived her of her day in court. Nevertheless, while we understand the appellant's disappointment, she has failed to identify a reviewable error that would warrant the intervention of this Court.

[12] For these reasons, the appeal will be dismissed with costs.

"Vanessa Rochester"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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