

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20170131**

**Docket: A-7-16**

**Citation: 2017 FCA 18**

**CORAM: NEAR J.A.  
BOIVIN J.A.  
RENNIE J.A.**

**BETWEEN:**

**JOSE LUIS FIGUEROA**

**Appellant**

**and**

**THE MINISTER OF PUBLIC SAFETY AND  
EMERGENCY PREPAREDNESS**

**Respondent**

Heard at Vancouver, British Columbia, on January 30, 2017.

Judgment delivered at Vancouver, British Columbia, on January 31, 2017.

**REASONS FOR JUDGMENT BY:**

**BOIVIN J.A.**

**CONCURRED IN BY:**

**NEAR J.A.  
RENNIE J.A.**

**Federal Court of Appeal**



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**Appellant**

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EMERGENCY PREPAREDNESS**

**Respondent**

**REASONS FOR JUDGMENT**

**BOIVIN J.A.**

[1] The appellant appeals an order of the Federal Court dated December 21, 2015, in which Brown J. (the Judge) dismissed the appellant's letter request for an extension of time to file a motion under Rule 397. The appellant sought an extension to file a motion for reconsideration of the Judge's order dated December 2, 2015 dismissing the appellant's appeal of an interlocutory order rendered by Prothonotary Lafrenière (the Prothonotary).

[2] Essentially, the appellant argues that it was not necessary for him to file an affidavit in support of his request because he was not bringing a motion, but rather following the procedure set out in the Prothonotary's order of April 21, 2015, which stated the following:

1. The application shall continue as a specially managed proceeding.
2. Unless otherwise ordered or directed by the Court, and subject to any Rule 7 consent, subsequent steps in the proceeding shall be taken within the deadlines fixed in Part 5 of the *Federal Courts Rules*.
3. Either party may request an extension of time to comply with the procedural steps by letter, if on consent or unopposed, or otherwise by requisitioning a case management conference

[emphasis added].

[3] I cannot agree with the appellant's submissions.

[4] The appellant's reliance on the Prothonotary's order dated April 21, 2015 is misplaced. Indeed, the Prothonotary's order only concerns steps taken under Part V of the *Federal Courts Rules*, SOR/98-106. The appellant's motion for reconsideration under Rule 397 was not a "procedural step" to be taken in order to further the appellant's application for judicial review under Part V of the Rules.

[5] Even if I were to assume that the Prothonotary's order dated April 21, 2015 relieved the appellant of the obligation to file a motion record and an affidavit, there is nothing in the appellant's letter that could provide a factual or legal basis upon which the Judge might base his evaluation.

[6] Further, the appellant's letter did not address the factors set out in *Canada (Attorney General) v. Hennelly*, [1999] F.C.J. No. 846. I agree with the respondent that as the *Hennelly* criteria were not before the Judge, they cannot be considered by this Court.

[7] Accordingly, I find that the appellant has failed to put forth any convincing argument demonstrating that the Judge made an error in his order dated December 21, 2015 warranting the intervention of this Court.

[8] For these reasons, I would dismiss the appeal with costs.

"Richard Boivin"

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J.A.

"I agree  
David G. Near J.A."

"I agree  
Donald J. Rennie J.A."

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:**

A-7-16

**(APPEAL FROM AN ORDER OF THE HONOURABLE MR. JUSTICE HENRY S. BROWN OF THE FEDERAL COURT, DATED DECEMBER 21, 2015, NO. T-427-15)**

**STYLE OF CAUSE:**

JOSE LUIS FIGUEROA v. THE  
MINISTER OF PUBLIC SAFETY  
AND EMERGENCY  
PREPAREDNESS

**PLACE OF HEARING:**

VANCOUVER, BRITISH  
COLUMBIA

**DATE OF HEARING:**

JANUARY 30, 2017

**REASONS FOR JUDGMENT BY:**

BOIVIN J.A.

**CONCURRED IN BY:**

NEAR J.A.  
RENNIE J.A.

**DATED:**

JANUARY 31, 2017

**APPEARANCES:**

Jose Luis Figueroa

FOR THE APPELLANT  
SELF-REPRESENTED

Brent Nash

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

William F. Pentney  
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FOR THE RESPONDENT