

Federal Court of Appeal



Cour d'appel fédérale

Date: 20181121

Docket: A-417-17

Citation: 2018 FCA 212

**CORAM: WEBB J.A.
NEAR J.A.
WOODS J.A.**

BETWEEN:

DEREK THOMPSON

Appellant

and

**ATTORNEY GENERAL OF CANADA,
NORMAN SABOURIN, & OR
CANADIAN JUDICIAL COUNCIL**

Respondents

Heard at Edmonton, Alberta, on November 8, 2018.

Judgment delivered at Ottawa, Ontario, on November 21, 2018.

REASONS FOR JUDGMENT BY:

NEAR J.A.

CONCURRED IN BY:

**WEBB J.A.
WOODS J.A.**

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REASONS FOR JUDGMENT

NEAR J.A.

[1] The Appellant, Derek Thompson, appeals from the Order of the Federal Court (*per* Harrington) dated November 27, 2017 (17-T-58) dismissing his motion for an extension of time to file a Notice of Judicial Review of a decision of the Canadian Judicial Council (the CJC) dated August 20, 2017.

[2] The Appellant has a lengthy history of litigation dating back to 2010. On March 27, 2017, the Court of Queen's Bench of Alberta declared him a vexatious litigant and ordered that he obtain leave of that Court prior to filing documents or proceedings. Despite the filing restrictions, the Appellant filed additional applications before the Court of Queen's Bench of Alberta without first seeking leave as required. When Verville, J. refused to hear two applications, the Appellant complained to the CJC. The CJC refused to consider his complaint.

[3] Pursuant to subsection 18.1(2) of the *Federal Courts Act*, R.S.C. 1985, c. F-7 (the Act), an application for judicial review is to be made within 30 days of the decision, or within any further time a judge may allow. The Appellant did not file a Notice of Judicial Review within 30 days. On November 27, 2017, the Federal Court dismissed his motion for an extension of time. The Appellant now appeals that Order before this Court.

[4] The sole issue relevant to the appeal is as follows:

- (1) Did the Federal Court commit a palpable and overriding error in dismissing the Appellant's motion for an extension of time?

[5] This Court may exercise its discretion to grant an extension of time on the basis of the following four criteria (*Canada (Attorney General) v. Larkman*, 2012 FCA 204 at para. 61 [*Larkman*]; *Grewal v. Canada (Minister of Employment & Immigration)*, [1985] 2 F.C. 263 (C.A.)):

- (1) Did the moving party have a continuing intention to pursue the judicial review application?
- (2) Is there some potential merit to the application for judicial review?

- (3) Does the moving party have a reasonable explanation for the delay?
- (4) Is there prejudice to the other party from the delay?

[6] It is not necessary that each of the four criteria be satisfied. Rather, the Court is to consider each and decide whether on balance the interests of justice would be served in granting the extension of time (*Larkman* at para. 62).

[7] The Appellant raises a number of allegations on appeal. He submits that in dismissing his motion, the Federal Court applied incorrect legal tests, was not impartial, and did not respect his status as a self-represented litigant. He further alleges that his appeal raises questions of national importance and implies that he has been subject to discrimination within the judicial system.

[8] Assuming, without deciding, that the decision of the CJC could be the subject of a judicial review, the issue is whether the time to make this application should have been extended. The discretionary decision of a judge in relation to a motion for an extension of time attracts the standard of review of “palpable and overriding error” for questions of mixed fact and law set out in *Housen v. Nikolaisen*, 2002 SCC 33 (*Hospira Healthcare Corporation v. Kennedy Institute of Rheumatology*, 2016 FCA 215 at para. 28; *Leishman v. Canada*, 2017 FCA 206 at para. 8). In my view, despite the strongly held beliefs of the Appellant, the Federal Court did not commit an overriding and palpable error in dismissing his motion for an extension of time. While the Appellant blames his filing delay on the failure of the CJC to notify him of his option to seek judicial review, this is not a reasonable explanation because, as the Federal Court properly stated, there is no obligation on the CJC to inform him of potential rights of review. The Appellant has not established a continuing intention to pursue the judicial review application. The Appellant

also fails to show that the application for judicial review had merit. Given the filing restrictions imposed upon the Appellant, it seems Verville J. was obliged to refuse to hear his applications unless the Appellant had first sought leave, which he did not. In the circumstances, it is unsurprising that the CJC dismissed the Appellant's complaint. The judicial review application had no reasonable prospect of success.

[9] The overriding consideration on a motion for an extension of time to file a Notice of Judicial Review is that the interests of justice be served (*Larkman* at para. 62). In my view, it is not in the interests of justice that this Court permit the Appellant to file his Notice of Judicial Review after the expiry of the deadline imposed under the Act. Given this finding, it is unnecessary to address the assorted assertions that the Appellant makes against the judicial system as a whole, including the Federal Court.

[10] I would dismiss the appeal with costs awarded to the Respondent Attorney General of Canada which are fixed in the amount of \$500, all inclusive.

"David G. Near"

J.A.

"I agree
Wyman W. Webb J.A."

"I agree
Judith Woods J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

**APPEAL FROM AN ORDER OF THE FEDERAL COURT DATED
NOVEMBER 27, 2017, DOCKET NO. 17-T-58**

DOCKET: A-417-17

STYLE OF CAUSE: DEREK THOMPSON v.
ATTORNEY GENERAL OF
CANADA, NORMAN SABOURIN,
& OR CANADIAN JUDICIAL
COUNCIL

PLACE OF HEARING: EDMONTON, ALBERTA

DATE OF HEARING: NOVEMBER 8, 2018

REASONS FOR JUDGMENT BY: NEAR J.A.

CONCURRED IN BY: WEBB J.A.
WOODS J.A.

DATED: NOVEMBER 21, 2018

APPEARANCES:

Derek Thompson ON HIS OWN BEHALF

James Elford FOR THE RESPONDENT,
ATTORNEY GENERAL OF
CANADA

SOLICITORS OF RECORD:

Nathalie G. Drouin FOR THE RESPONDENT,
Deputy Attorney General of Canada ATTORNEY GENERAL OF
CANADA