

Federal Court  
of Appeal



Cour d'appel  
fédérale

**Date: 20101214**

**Docket: A-110-10**

**Citation: 2010 FCA 347**

**CORAM: LÉTOURNEAU J.A.  
NADON J.A.  
TRUDEL J.A.**

**BETWEEN:**

**LOUIS-PHILIPPE ROCHON**

**Appellant**

**and**

**THE MINISTER OF JUSTICE OF CANADA  
AND  
THE CRIMINAL CONVICTION REVIEW GROUP**

**Respondents**

Heard at Montréal, Quebec, on December 14, 2010.

Judgment delivered from the Bench at Montréal, Quebec, on December 14, 2010.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**NADON J.A.**

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**REASONS FOR JUDGMENT OF THE COURT**

**(Delivered from the Bench at Montréal, Quebec, on December 14, 2010)**

**NADON J.A.**

[1] This is an appeal from a decision of the Federal Court refusing to extend the time within which the appellant could file an application for judicial review of the Minister of Justice's decision to dismiss an application for ministerial review of his criminal conviction under Part XXI.1 of the *Criminal Code*, R.S.C. 1985, c. C-46.

[2] In *Grewal v. Canada (Min. of Employment and Immigration)*, [1985] 2 F.C. 263 (*Grewal*), this Court set out the criteria to be considered in an application for an extension of time.

[3] The Federal Court judge held that three of the four criteria set out in *Grewal* had been met in this case, namely, that the appellant had a continuing intention to challenge the Minister's decision, that the application for judicial review he wanted to file was not bereft of any chance of success and that the respondent would not be prejudiced if the extension were granted.

[4] As to the last criterion, the judge found that the appellant had not provided a reasonable explanation for his delay in filing his application within the time specified in the *Federal Courts Rules*.

[5] In our opinion, the judge erred in making this finding. We are satisfied, in light of the evidence, that the appellant's explanation for the delay is reasonable. Specifically, the evidence shows that the delay can be explained by the pending decision in *Bilodeau v. Canada (Ministre de la Justice)*, 2009 QCCA 746, J.E. 2009-827, a case similar to that of the appellant determining which court—the Superior Court of Québec or the Federal Court—had jurisdiction to hear such a case; by the mistake of appellant's counsel at the time, who failed to file an application for judicial review with the Federal Court in time and failed to protect the appellant's rights before the Federal Court; by the appellant's difficulties in obtaining the relevant documents for his application for judicial review; by the fact that the appellant is incarcerated; and by the fact that his counsel was acting under a legal aid mandate.

[6] With respect to the judge, this evidence provided a reasonable explanation for the delay and, consequently, was capable of justifying an extension of the time in which the appellant had to file his application for judicial review.

[7] The appeal will therefore be allowed with costs, the Federal Court's decision will be set aside, and rendering the judgement that should have been rendered by the Federal Court, the application for an extension of time will be allowed with costs. Consequently, the appellant must serve and file his application for judicial review within 30 days from the date of this judgment.

“M. Nadon”

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J.A.

Certified true translation  
Johanna Kratz

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-110-10

**STYLE OF CAUSE:** Louis-Philippe Rochon v. the Minister of Justice et al.

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** December 14, 2010

**REASONS FOR JUDGMENT OF THE COURT BY:** LÉTOURNEAU J.A.  
NADON J.A.  
TRUDEL J.A.

**DELIVERED FROM THE BENCH BY:** NADON J.A.

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FOR THE RESPONDENTS

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