

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20110708

Docket: A-27-11

Citation: 2011 FCA 222

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

BETWEEN:

KENNETH HAMMOND

Appellant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

Dealt with in writing without appearance of the parties

at Ottawa, Ontario, on July 8, 2011.

REASONS FOR ORDER BY:

LÉTOURNEAU J.A.

CONCURRED IN BY:

NADON J.A.
STRATAS J.A.

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REASONS FOR ORDER

LÉTOURNEAU J.A.

The nature of this proceeding

[1] The appellant, who is an inmate in a federal institution, seeks an Order for an extension of time to file a motion for an Order to have the Court Administrator prepare the appeal book under Rule 343(5) of the *Federal Courts Rules* (Rules).

The history of this proceeding

a) The first motion for an extension of time

[2] On October 8, 2010, Lemieux J. of the Federal Court denied the appellant a motion for an extension of time to file an application for judicial review of a third level grievance decision rendered on June 16, 2010 by the Correctional Service of Canada. The motion to Lemieux J. was made nearly two months after the impugned decision was rendered. Lemieux J. dismissed the appellant's motion on the ground that he was not satisfied that the application for judicial review had some merit. The third level grievance decision related to the seizure of the appellant's computer following the installation of unauthorized programs on it.

b) The second motion for an extension of time

[3] On December 1, 2010, the appellant filed an extension of time to file a Notice of Appeal against the decision of Lemieux J. The motion was granted by Mainville J.A. and the time to file the Notice of Appeal was extended to January 31, 2011.

c) The third motion for an extension of time to file a motion to have the administrator prepare the appeal book

[4] According to Rule 343(3) of the Rules, an agreement as to the content of the appeal book should have been filed by February 28, 2011. The present motion for an extension of time to file a

motion to have an administrator determine the content of the appeal book was served on the respondent on June 15, 2011, more than three and a half months after the time allocated by Rule 343(3).

Whether this third motion should be granted and the appeal should be allowed to continue

[5] Beyond a general statement from the appellant that he had no intention to cause delay, the fact is that a substantial delay of over four months occurred between the beginning of February 2011 and June 2011. The appellant provides no account of any positive steps that he had or would have taken to move the appeal forward during that period.

[6] Nor does he provide any timetable to make it up to past delays and ensure that his appeal will be prosecuted diligently if he were to be granted the requested extension of time.

[7] Counsel for the respondent submits that the appeal has no merit and should be dismissed on that ground as well. I am not seized with an application for an extension of time to file an application for judicial review, in which case it is proper to look at whether the appeal has a reasonable chance of success. The extension of time in this case has been granted by my colleague Mainville J.A. and I am not sitting on appeal from his decision. I do not think it would be appropriate on a motion for an extension of time to file a motion for an Order to have the Administrator prepare the content of the appeal book to second-guess whether the appeal has a reasonable chance of success.

[8] However, I am greatly concerned by the delay in prosecuting this appeal aimed at simply obtaining the authorization to begin a review of a decision already rendered more than a year ago. The appeal is still only at an infancy stage.

[9] Moreover, further delay is bound to result from the fact that the appellant is now self-represented and there is no agreement between the parties as to the contents of the appeal book. Without proper information and submissions on this issue, I am not in a position to determine the content of the appeal book, let alone order the Administrator to prepare it.

[10] Bearing in mind the nature of the issue raised before Lemieux J., the subject matter of this pending appeal (i.e. a discretionary refusal by Lemieux J. to grant an extension of time to file an application for judicial review), the unjustified and unexplained failure to prosecute the appeal diligently, the lack of guarantees of future compliance with the time limits set up by the Rules and the amount of judicial time and expenses already spent with so little progress in the prosecution of the appeal, I believe the interests of justice would be best served by a refusal of the motion and a dismissal of the appeal.

Conclusion

[11] For these reasons, I would dismiss the motion for an extension of time to file a motion for an Order to have the Administrator prepare the content of the appeal book and I would dismiss the appeal.

“Gilles Létourneau”

J.A.

“I agree

M. Nadon J.A.”

“I agree

David Stratas J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-27-11

STYLE OF CAUSE: KENNETH HAMMOND v.
THE ATTORNEY GENERAL OF CANADA

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY: LÉTOURNEAU J.A.

CONCURRED IN BY: NADON J.A.
STRATAS J.A.

DATED: July 8, 2011

WRITTEN REPRESENTATIONS BY:

Kenneth Hammond

SELF-REPRESENTED

Sarah Stanton

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Myles J. Kirvan
Deputy Attorney General of Canada

FOR THE RESPONDENT