

Federal Court  
of Appeal



Cour d'appel  
fédérale

**Date: 20120127**

**Docket: 11-A-31**

**Citation: 2012 FCA 32**

**Present: MAINVILLE J.A.**

**BETWEEN:**

**GRACE RANKOWICZ-TIMMS**

**Applicant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on January 27, 2012.

**REASONS FOR ORDER BY:**

**MAINVILLE J.A.**



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**REASONS FOR ORDER**

**MAINVILLE J.A.**

[1] On December 19, 2011, the applicant filed a motion under paragraph 27(2)(b) of the *Federal Courts Act*, R.S.C. 1985, c. F-7, seeking an extension of time to appeal the judgment of Favreau J. dated September 22, 2011 (reasons cited as 2011 TCC 445) and made pursuant to the informal procedure in the Tax Court of Canada (“Tax Court judgment”).

[2] In deciding whether or not to grant an extension of time to commence an appeal, the basic test is whether the interests of justice favour granting the extension. The factors to be considered are summarized in *Pharmascience Inc. v. Canada (Minister of Health)* 2003 FCA 333, [2004] 2 F.C.R. 349: (1) whether there is an arguable case on appeal, (2) whether there are special circumstances

that justify the delay in commencing the appeal, (3) whether there was a continuing intention to appeal, (4) whether the delay has been excessive, and (5) whether the respondent will be prejudiced if the extension of time is granted. The weight to be given to each of these factors will vary with the circumstances.

[3] The applicant, who resides in a suburb of Montreal, acknowledges that she received a copy of the Tax Court judgment on September 29, 2011. She asserts that she was impeded from proceeding with the appeal of this judgment in order to care for her ailing mother in Toronto from September 29 to November 6, 2011, and that she thereafter developed a bronchial pneumonia which incapacitated her for an additional three and a half weeks.

[4] The applicant also asserts that she believed she had three months to file an appeal. However, she acknowledges having contacted an “agent named Theresa” at the Tax Court of Canada on October 21, 2011, and further asserts that this agent would have informed her “that obtaining an extension in filing an appeal would not be a problem” given her situation: applicant’s affidavit sworn December 19, 2011 at paragraphs 5 and 6.

[5] From her affidavit, it appears that the applicant has been aware since at least October 21, 2011 of the timeframe to initiate her appeal. Nevertheless, she only decided to act some two months later by filing this motion on December 19, 2011 on the expectation that this Court would eventually grant her an extension. In these circumstances, I have not been convinced that the applicant has shown diligence in pursuing her appeal.

[6] Moreover, even if I had found that the applicant had been diligent, she has not demonstrated an arguable case on appeal. The applicant did not explain in her motion record how the Tax Court judgment is in error. At paragraph 15 of her reply to the respondent's motion record, the applicant only states that the "grounds on which I am filing an appeal at this time fall under paragraph 27(1.3) b and c (sic) of the *Federal Courts Act*", without explaining any of these grounds.

[7] Even if I were to accept, for the purposes of this motion, that an arguable case is a relatively low threshold, it is insufficient for an applicant to simply make vague assertions as to the grounds of appeal. In this case, it is not possible to assess the grounds of appeal which the applicant seeks to pursue. In such circumstances, I have no choice but to deny an extension of time to file a notice of appeal.

"Robert M. Mainville"

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** 11-A-31

**STYLE OF CAUSE:** Grace Rankowicz-Timms v. Her Majesty the Queen

**MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES**

**REASONS FOR ORDER BY:** MAINVILLE J.A.

**DATED:** January 27, 2012

**WRITTEN REPRESENTATIONS BY:**

Self-represented

FOR THE APPLICANT

Vlad Zolia

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

N/A

FOR THE APPLICANT

Myles J. Kirvan  
Deputy Attorney General of Canada

FOR THE RESPONDENT