

F I L E D	FEDERAL COURT COUR FÉDÉRALE	D E P O S É
	23-OCT-2023	
Jennifer Sorvisto		
Edmonton, AB		19

Court File No.: T-1436-22

**FEDERAL COURT**

BETWEEN:

**BERNARD ALBERT AND OTHERS**

Plaintiffs

and

**CANADA POST CORPORATION, HIS MAJESTY THE KING IN RIGHT OF CANADA,  
THE ATTORNEY GENERAL OF CANADA**

Defendants  
(Moving Party)

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**MOTION RECORD OF HIS MAJESTY THE KING IN RIGHT OF CANADA AND THE  
ATTORNEY GENERAL OF CANADA**

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**FEDERAL COURT**

BETWEEN:

**BERNARD ALBERT AND OTHERS**

Plaintiffs

and

**CANADA POST CORPORATION, HIS MAJESTY THE KING IN RIGHT OF CANADA,  
THE ATTORNEY GENERAL OF CANADA**

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**NOTICE OF MOTION OF HIS MAJESTY THE KING IN RIGHT OF CANADA AND  
THE ATTORNEY GENERAL OF CANADA**

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**TAKE NOTICE THAT** pursuant to Rule 369 of the *Federal Courts Rules*, a motion will be made in writing on behalf of His Majesty the King in right of Canada and the Attorney General of Canada (collectively, **Canada**).

**THE MOTION IS FOR** an Order amending the Order of Madam Associate Judge Catherine A. Coughlan dated July 7, 2023 (**Order**), extending the time for the Defendants to serve and file their Motion Records to January 12, 2024 and for the Plaintiffs to serve and file their responding Motion Record to February 2, 2024.

**THE GROUNDS FOR THE MOTION ARE:**

1. the Order originally included January 23-35, 2024 motion hearing dates;
2. the motion hearing dates were later changed to March 4-6, 2024;
3. Canada requests that the deadlines in the Order for the parties to submit their respective records be extended, due to counsel for Canada experiencing scheduling conflicts;
4. it is in the interests of justice for the extension to be granted; and
5. such further and other grounds as Canada may advise and this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

1. the Court's file.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**

Dated at Edmonton, Alberta on Monday, October 23, 2023.

*DVassberg*

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Daniel Vassberg  
Counsel for the Respondent

TO: The Registrar  
Federal Court of Canada

AND TO: Christopher Pigott, counsel for Canada Post Corporation  
Leighton Grey, K.C., counsel for the Plaintiffs

**FEDERAL COURT**

BETWEEN:

**BERNARD ALBERT AND OTHERS**

Plaintiffs

and

**CANADA POST CORPORATION, HIS MAJESTY THE KING IN RIGHT OF CANADA,  
THE ATTORNEY GENERAL OF CANADA**

Defendants  
(Moving Party)

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**WRITTEN REPRESENTATIONS OF HIS MAJESTY THE KING IN RIGHT OF  
CANADA AND THE ATTORNEY GENERAL OF CANADA**

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**OVERVIEW**

1. His Majesty the King in right of Canada and the Attorney General of Canada (collectively, **Canada**) have brought this motion, pursuant to Rules 8 and 369 of the *Federal Courts Rules* (**Rules**), to amend the Order of Madam Associate Judge Catherine A.C. Oughlan dated July 7, 2023 (**Order**), to extend the time for the Defendants to serve and file their motion records to January 12, 2024 and for the Plaintiffs to serve and file their responding motion record to February 2, 2024.

2. The hearing date for the motions was changed after the issuance of the Order to March 4-6, 2024. Currently, the latest deadline for the exchange of materials is the Respondent's motion record due date of December 8, 2023, three months prior to the actual hearing of the motions.

3. Counsel for Canada is experiencing scheduling conflicts that are jeopardizing his ability to draft Canada's motion record within the current timelines. It is in the interests of justice for the extension of time to be granted under the circumstances.

### **Part I - Facts**

4. The Order originally included January 23-35, 2024 hearing dates, and the following terms at section 1:

(d) Canada Post and Canada shall serve and file their complete motion records, in accordance with Rule 364 of the Federal Courts Rules [Rules], along with proof of service, by November 17, 2023; and

(e) The responding parties shall serve and file their complete motion record, in accordance with Rule 365 of the Rules, along with proof of service, by December 8, 2023

5. The hearing dates were subsequently changed to March 4-6, 2024. The terms noted above were unchanged.

6. Counsel for Canada is experiencing scheduling conflicts that are jeopardizing his ability to draft Canada's Motion Record within the current timelines, specifically resulting from a trial scheduled for November 14 through 29, 2023 in the Court of King's Bench of Alberta that is expected to proceed. That file was previously assigned to other counsel.

7. On October 17, 2023, Canada requested that the other parties to this action consent to the extension sought. To-date, no other parties have consented.

## Part II - Issue

8. Should Canada's motion for an extension of time to serve and file its motion record be granted?

## Part III - Submissions

9. Rule 8 of the *Rules* provides that this Court may extend a time period fixed by an order.

*Federal Courts Rules, SOR/98-106, r 8*

10. In *Canada v Hennelly*, the Federal Court of Appeal set out the following test that a party has to meet to obtain an extension of time:

1. a continuing intention to pursue the matter;
2. that the underlying claim has some merit;
3. whether prejudice arises from the delay; and
4. that a reasonable explanation for the delay exists.

*Canada (AG) v Hennelly*, (1999), 244 NR 399 (FCA)

11. The overriding principle in applications for an extension of time is whether the extension is in the interests of justice.

*Oleynik v Canada (AG)*, 2023 FCA 162

12. Canada intends to proceed with its motion.

13. No prejudice arises to the Plaintiffs or Canada Post Corporation as a result of the delay. The hearing date for the motions will remain as scheduled, and all parties will be afforded an equal extension of time to prepare, file, and serve their materials.

14. A reasonable explanation for the delay exists. Extensions based on counsel capacity are avoided by Canada unless absolutely necessary.

15. It is in the interests of justice for the extension sought to be granted. The extension can reasonably be viewed as benefiting all parties.

**Part IV – Order**

16. Canada requests an Order amending the Order of Madam Associate Judge Catherine A. Coughlan dated July 7, 2023, extending the time for the Defendants to serve and file their motion records to January 12, 2024 and for the Plaintiffs to serve and file their responding motion record to February 2, 2024.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**

Dated at Edmonton, Alberta on Monday, October 23, 2023.

*DVassberg*

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Daniel Vassberg  
Counsel for the Respondent

TO: The Registrar  
Federal Court of Canada

AND TO: Christopher Pigott, counsel for Canada Post Corporation  
Leighton Grey, K.C., counsel for the Plaintiffs



## **List of Authorities**

1. *Federal Courts Rules*, [SOR/98-106](#).
2. *Canada (AG) v Hennelly*, [\(1999\), 244 NR 399 \(FCA\)](#).
3. *Oleynik v Canada (AG)*, [2023 FCA 162](#).