

Federal Court



Cour fédérale

Date: 20250114

Docket: T-1296-23

Ottawa, Ontario, January 14, 2025

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

FRANCESCO GABRIELE QUALIZZA, JOEL THOMAS WILLIAM ELLIS, PATRICK MERCIER, JILL LYNE DUCHESNEAU, JOSEPH BENJAMIN STEWART, ERIC DAVID FAUCHER, SCOTT PETER BACON, STEPHEN TROY CHLEDOWSKI, AMANDA LEIGH BENHAM, JOSHUA MARTIN MCCULLOCH, KYLE CORRIVEAU, JOSEPH DANIEL ERIC LOUIS MONTGRAIN, DUSTIN SHANE WIEBE, STEPHEN WJ MORRIS, DAVID GARCIA VARGAS, MICHAEL JOSEPH LIS, NATASHA KATRINA LIS, SOLANGE SINE DJOUECHE, PETER VLASSOV, FREDERIC VILLENEUVE-NORMAND, ESTATE OF JONATHAN EMMERSON JENKINSON, VALENTIN LAVROV, MARIE-EVE LABONTE, JESSE DALE FRIESEN, TANIA CATHERINE NORDLI, ANDRZEJ SKULSKI, DENNIS JOHN PAUL TONDREAU, EMMY-LOU LAURIE FORGET, DALLAS ALEXANDER FLAMAND, CHELSEA ELAINE ROGAL, BARON HORDO, TAYLOR MICHAEL HARVIE, VANESSA RAE LAROCHELLE, JACQUELINE MARIE FRANCE BOEHME, JAMES PAUL DANIEL FORMOSA, KAITLYN E CAMPBELL, LUCAS TIMOTHY VANCUREN, JERMAINE SHERIDAN BURRELL, ANTHONY DAVID HIATT, MICHAEL ST-LAURENT, ARMAND EDWARD A. GARNER, AMIT SODHI, CAMILLE FELIX J TURGEON, SAMANTHA GWENDOLYN STYLES, CAROL-ANN MARY T OUELLETTE, ROBERT JAMES TEREMCHUK, NATHANIEL J P TONDREAU, NIKOLA J GUY TONDREAU, LISA PAULINE LEOPOLD, HAILEY NOELLE SCHRODER, DOMINIQUE LAUZIER, VALERIE OUELLET, JOHN M GILLIS, MORGAN CHRISTOPHER WARREN, MARK ANDREW GOOD, SEAN MICHAEL MARCOTTE, MARK ANDREW LOLACHER, GABRIEL VILLENEUVE, KIRA ANNE YAKIMOVICH, MATHIEU W PETIT-MARCEAU, KIMBERLY NEDRA ETTTEL, CHRISTOPHER WILLIAM RAMBHAROSE, MICHAEL RYAN FRANK, EVAN JEFFERY MCFATRIDGE, PIERRE-ELIE LASNIER, ALESSANDRU WARD FORSTER BROWN, DANIS DOIRON, CARL JOSEPH D RIVEST-MARIER, JAROSLAW T CIESINSKI, STEPHEN WILLIAM HOLT, RANDOLPH RAYMOND JENKINS, ANDREW JOHN MACPHEE, VALERIE PALIN-ROBERT, ROGER CORY STOESZ, SHANE THOMAS WHITSON, CHRISTIAN KURT CARTER, MATTHEW JAMES ROWE, DAVE BOUCHARD, LAURIE C. BAKER, FREDERIC LAUZIER, LUCAS SHANE O'CONNOR, LAURA DIANNE ALLAN, GEORGE VRINIOTIS, SIENNA GERMAINE QUIRK, CHARLES BRUNO ALEXANDRE TURMEL, DEREK MARSHALL SPROULE, SHANE MICHAEL N. SINGER,

JAROSLAW GRZEGORZ MARCZEWSKI, CHRISTOPHER NIGHTINGALE ANDERSON, FRANCIS JOSEPH MICHEL ARCHAMBAULT, CHRISTOPHER RAYMOND AUSTIN, JOHN ANTHONY BAKLINSKI, DAVID GLEN BARKHOUSE, MICHAEL BARRETTE, DARRIN THOMAS BEATON, BOBAK BEHESHTI, ANDRES FELIPE BOCANEGRA BELTRAN, NATHAN KYLE JOHNSON, CONRAD JOSEPH BENOIT, MATHIEU BERNARD, BRIAN JAMES BEWS, MICHAEL CHRISTOPHER BILL, ROBERT STEWART BISHOP, JEFFERSON MALCOME BISSENGUE, STEVEN BOLDUC, THOMAS GILL BONNETT, CHARLES ANTHONY VALMHOR BORG, PATRICK JAMES BOSCHALK, KARLA RAE BOWLER, KENNETH SCOTT BRADLEY, DWAYNE ARMAND BRATZKE, RYAN DOUGLAS BREAU, CHARA LOREN BROWNE, WILLIAM FREDERICK BULL, MARK A CALOW, JAMES GREGORY CAMERON, BRETT GRANT GORDON CAMPBELL, DAMIAN RONALD CAYER, JESSE SHAYNE CHAMBERS, VLADIMIR CHARNINE, SHAUN KYLE CHARPENTIER, DANIEL ROBERT CHESHIRE, DAVE CIMON, CHARLES BENOIT-JEAN COTE, REMI COTE, MATTHIEU COULOMBE, REBEKAH KATHLEEN COURTNEY, MAVERICK JEREMY JOSEPH COWX, JONATHAN WAYNE CROUCH, NICOLE JOHNNA CROWDER, BARTLOMIEJ DAVID CYCHNER, BEATA MARGARET CZAPLA, SARA DARBY, BRADY DAMIEN DEDAM, VIRGIL SEVERIN DESSOUROUX, SEAN ROBERT DIXON, ROBERT ADAM DOLIWA, DANIEL PIERRE DROLET, SAMUEL DROUIN, BENJAMIN GRAHAM DUNBAR, MATTHEW ALEXANDER J. DURDA, STEPHEN ANDREW TERENCE ELLS, AUSTIN KARN FAULKNER, ERIC MICHEL C S FONTAINE, WILLIAM JOSEPH R FORGET, SEAN MICHAEL FRANCIS, KORY MICHAEL FRASER, JASON JOSEPH KEVIN FRECHETTE, CHRISTOPHER BENJAMIN FUELLERT, STEVEN JAMES GALLANT, STEVEN ROY GAMBLE, TANYA LEE GAUDET, EMILIE GAUTHIER-WONG, TOMMY GAUVREAU, NICOLAS ALEXANDER GLEIS, MARCEL JOSEPH G E GOBEIL, TAMMY DANIELLE GREENING, EUGENE PIETER GREYLING, KEVIN CLARENCE J GRIFFIN, DOMINIC JOSEPH S GUENETTE, DARCY WAYNE HANSEN, BRETT NEVIN WELLCOME, RORY ALEXANDER HAWMAN, JAMES ADAM HEALD, KYLE KEITH HEPNER, JASON STANLEY GILBERT IGNATESCU, THANARAJAN JESUTHASAN, KEVIN THOMAS JOHNSON, GARY ADAM JOHNSTON, RYAN GREGORY JONES, JAMIE ALEXANDER CURTIS JORSTAD, ATILA STEPHEN KADLECSIK, DUSTY LEWIS KENNEDY, HUNTER ELMER KERSEY, LIAM OWEN KIROPOULOS, CHRISTOPHER ROBERT KNORR, EVAN VICTOR KOZIEL, MARTIN PHILIPPE LABROSSE, GERALD JN-FRITZ LAFORTUNE, ANDRE LAHAYE, KELLY-LEE MARIE LAKE, NICHOLAS EDWARD LANGE, SARAH-EMILIE LASNIER, DOMINIC JOSEPH M. LAVOIE, TARA LAVOIE, DRAKE MICHAEL LE COUTEUR, MARC LECLAIR, PIERRE LEMAY, JONATHAN JOSEPH A. LEMIRE, DANIEL PAUL LOADER, GARRETT CURTIS LOGAN, JORDAN TERENCE LOGAN, ALEXANDRE GUY RICHARD LOISELLE, ADAM FERNAND C. LUPIEN, WALTER GEORGE LYON, JOSEPH BREFNI W. MACDONALD, CHRISTIEN TAVIS ROGER MACDONNELL, JEAN JOSEPH MADORE, CHARLES JOSEPH J. MAGNAN, ANDREW ROBERT PAUL MALLORY, MARYLENE GINETTE S. MARTIN, MARCO MASTANTUONO, JAMIE RICHARD MCEWEN, JOHANNES WOUTER MULDER, TYLER EDWIN

NEUFELD, LAURA LEE NICHOLSON, KERI MERRIAM NIXON, JONATHAN NOEL, JOSHUA BRUCE OLSON, CAROLINE MARY AUDREY OUELLET, JOSEPH ANTHONY PAPALIA, MELANIE MARIE I. PARE, ALEXANDRU PATULARU, JOSHUA ALEXANDER PICKFORD, AGNES PINTER-KADLECSIK, JEAN-SIMON PLAMONDON, KRISTER ALEXANDER POHJOLAINEN, AURA A. PON, BRODY ALLEN POZNIKOFF, STEFAN PRISACARI, MONIKA ANNA QUILLAN, ROMAIN RACINE, DOMINIC LAURENS WILLIAM RAGETLI, STEPHANE RATTE, BRYAN THOMAS RICHTER, WILLIAM RIOS, JENNA LEIGH ROBERTS, JOSHUA CALVIN ROBERTS, LAURIE ROSE, RORY ALEXANDER DAVID ROSEN, SEBASTIEN SALVAS, CAMERON RAY S. SANDERS, CARL JEAN G. SAVARD, TORSTEN SCHULZ, PAUL RUSSELL SHAPKA, BLAKE ALEXANDER SHEEDY, QUINTON JAMES STENDER, CALEB ETHAN M. STENER, GABRIEL-ALEXANDRE ST-GELAIS, NICOLAS JOSEPH ST-GERMAIN, ROBERT CHRISTOPHER STULL, JAMES ROARK SUTER, DALEN DREW TANNER, JUSTIN MYLES TENHAGE, JACOB CYRIL THERIAULT, SIMON BOBBY H TILLY, JEAN-PHILIPPE TRUDEL, ALBERT JASON TSCHETTER, SHELLEY DIANE TULLY, MAGALI TURPIN, JULIAN PHILIP TUTINO, GREGORY VINCENT-WALKER, CADE AUSTIN WALKER, BRENNEN BO ANTHONY WATSON, BENJAMIN KYLE WESTON, MATTHEW MAX WHICHER, JOSHUA JAMES WHITE, ANDREW ERNEST WILKOWSKI, DONALD JAMES WILLIAMS, CURTIS MALCOM WILSON, WADE GEORGE WILSON, ANDREW DEAN WYCHNENKA, MARC ZORAYAN, BRANDON TYLER PETER ZWICKER, WILLIAM H L LEVI WALL, KAREN PAIGE NIGHTINGALE, MARC-ANTOINE POULIN, KEEGAN MARSH, RYAN MICHAEL, THOMAS PATRICK HAYES, JAMES MARK CHARLEBOIS, HALSTON RANDAL NICHOLSON, MELISSA-JANE SARAH KRIEGER, GIANLUCA LUCHETTA, BENJAMIN JAMES WILCOX, MARK RONKIN, SERGE JOSEPH LEO FAUCHER, JACOB THOMAS FIDOR, LUCAS GERARD ZIEGELBAUER, SPENCER DANIEL LORD, IAN OCEGUERA, JOHN NESRALLAH, DANIEL NINIAN RODRIGUES, CORY JASON KRUGER, STEPHEN YOUNG SMITH, FOURAT YACOUB YOUSIF JAJOU, ANTHONY BILODEAU, JONATHAN MICHAEL RECOSKIE, THOMAS L. EDWARDS, LINDSAY ANNE MACKENZIE, SARAH EVELYN LAPRADE, DANY PILON, JAMES ANDREW COOK, DEREK JOHN GAUTHIER, DAVID ADAM DOBBIE, GABRIELLE CHARPENTIER, DANIEL JOHANNES RECKMAN, ZACHARY CLEELAND, MATEUSZ CAMERON KOWALSKI, TARA J. MACDONALD, PAUL DAVID WILSON, BRENDAN V. T. LEBERT, JOCELYN LAMOTTE, ANTHONY J. DUKE, RILEY MALCOLM MACPHERSON, KIM NOEL LAUZON, KURTIS ROCKEFELLER RUTHERFORD, SERGIU GEORGE CANDEA, JESSE HENRY FIELD, WILLIAM EDWARD BRENDON, CAMERON SAMUEL NOBERT, DAVID HOUDE, ALYSSA JOY BLATKEWICZ, COLIN PERRY KAISER, FABRICE DOURLANT, CORY LANCE GARGIN, ANITA GRACE HESSLING, JENNIFER BETHANY FRIZZLEY, DAVID ANDREW BENSON, BRANDON JOHN ARMSTRONG, REJEAN BERUBE, JEAN-PHILIPPE JOSEPH BOUCHARD, DHILLON DAVID COLE, PIERRE-OLIVIER COTE-GUAY, IAN M MENZIES, ERIC MONNIN, ELLIOT GAMACHE, NICHOLAS NEIL LLOYD CROCKER, ROBERT

**ALLAN HENDERSON, GABRIEL GILLES RJ RAMSAY, DEVIN JAMES
MCKENNA**

Plaintiffs

and

**HIS MAJESTY THE KING IN RIGHT OF CANADA,
CHIEF OF THE DEFENCE STAFF GENERAL WAYNE
EYRE, VICE CHIEF OF DEFENCE STAFF
LIEUTENANT-GENERAL FRANCES J ALLEN,
LIEUTENANT GENERAL JOCELYN J M J PAUL, VICE
ADMIRAL ANGUS I TOPSHEE, AND LIEUTENANT
GENERAL ERIC J KENNY, MINISTER OF NATIONAL
DEFENCE, THE HONOURABLE ANITA ANAND,
FORMER DEPUTY MINISTER OF NATIONAL
DEFENCE JODY THOMAS, SURGEON GENERAL
MAJOR-GENERAL JGM BILODEAU, CHAPLAIN
GENERAL BRIGADIER-GENERAL JLG BELISLE,
JUDGE ADVOCATE GENERAL REAR-ADMIRAL
GENEVIEVE BERNATCHEZ, AND BRIGADIER
GENERAL LIAM WADE RUTLAND**

Defendants

ORDER

[1] This is an appeal of the decision of Madam Associate Judge Coughlan dated November 13, 2024 [Judgment], striking the Applicant's pleadings without leave to amend under Rule 221 of the *Federal Courts Rules*, SOR/98-106 [*Rules*] and seeking an extension of time to do so in writing pursuant to Rule 369 of the *Rules*.

I. Statement of Facts

[2] On November 13, 2024, Associate Judge Coughlan struck out the within action without leave to amend. The Associate Judge found that the Amended Statement of Claim did not disclose a cause of action, and that the Court was without jurisdiction as the Plaintiffs were obliged to use the grievance system.

[3] The deadline to appeal the decision of a “prothonotary” is 10 days, as set out in Rule 51 of the *Rules*. The Plaintiffs brought this motion on December 12, 2024, 29 days after the Judgment was issued.

II. Preliminary Issues

A. *Improper Notice of Motion*

[4] The preamble to the Plaintiffs’ Notice of Motion indicates that the “Applicants will make a motion to the Court in writing under Rule 51(1) of the Federal Courts Rules.” The Plaintiffs’ Notice of Motion does not cite to Rule 8, which is the applicable rule that would apply to a motion for an extension of time.

[5] The Plaintiffs first seek “leave for the motion to be heard with written representation under *Federal Courts Act* Section 369.2(1).” Given that the Plaintiffs appear to rely on Rule 369.2(1) of the *Rules*, and that rule applies to motions brought in the Federal Court of Appeal, it is not applicable here. The appropriate rule is Rule 369(1).

[6] The Plaintiffs also seek “leave for an extension of time to apply for an Appeal of a prothonotary order.” What in fact the Plaintiffs are seeking is an extension of time.

[7] Finally, the Plaintiffs apply for “leave to commence an application for Appeal under the *Federal Courts Act* Section 51(1).” The Court assumes again that the Plaintiffs intend to rely on Rule 51(1) of the *Rules*, but leave is not required to appeal a decision of an Associate Judge.

[8] Accordingly, the only request that may be considered in this proceeding is the request for an extension of time to appeal the Judgment under Rule 8 of the *Rules*.

B. *Improper Affidavit*

[9] In support of the Notice of Motion, the Plaintiffs rely on an affidavit sworn by counsel for the Plaintiffs (the “Affidavit”). This is improper under Rule 82 of the *Rules*, which reads:

Use of solicitor’s affidavit

82 Except with leave of the Court, a solicitor shall not both depose to an affidavit and present argument to the Court based on that affidavit.

[10] This rule has been interpreted to mean that lawyers “should not provide evidence in respect of contentious matters” (*Toys “R” Us (Canada) Ltd v Herbs “R” Us Wellness Society*, 2020 FC 682 at paras 10-11, and *Cross-Canada Auto Body Supply (Windsor) Ltd v Hyundai Auto Canada*, 2006 FCA 133 at paras 4-5). As the Affidavit here speaks to the steps supposedly taken in an attempt to explain the delay, it is evidence on a fundamental question in this motion, and the Affidavit will be disregarded.

III. Test for an Extension of Time

[11] The Plaintiffs have correctly set out the four factors the Court must consider on a motion for an extension of time:

- a) Did the moving party have a continuing intention to pursue the application?
- b) Is there some potential merit to the application?
- c) Has the respondent been prejudiced from the delay?
- d) Does the moving party have a reasonable explanation for the delay?

(Canada (Attorney General) v Hennelly, 1999 CanLII 8190 (FCA), 167 FTR 158; Canada (Attorney General) v Larkman, 2012 FCA 204 at paras 61-62)

A. *Continuing intention to appeal*

[12] The only evidence put forward in support of this factor is the Affidavit, which I have found inadmissible.

[13] Moreover, the Affidavit is silent with respect to any material facts in support of an intent to appeal; there is no assertion from any of the Plaintiffs that they always intended to appeal, just that the decision to appeal was made by December 11, 2024.

[14] This part of the test is not met.

B. *Potential merit of the appeal*

[15] In this case, the Affidavit and written submissions of the Plaintiffs are silent as to how the Appeal might be successful.

[16] Associate Judge Coughlan found two separate bases to strike the action: (i) the Amended Statement of Claim did not disclose a cause of action; and (ii) the Plaintiffs were obliged to follow the grievance process.

[17] The Plaintiffs would need to convince the Court on appeal that the Order contains palpable and overriding errors or errors of law on both findings (*Hospira Healthcare Corporation v Kennedy Institute of Rheumatology*, 2016 FCA 215 at para 79, citing *Housen v Nikolaisen*, 2002 SCC 33). No material facts are provided in this regard and there is no palpable and overriding error.

[18] The Plaintiffs have not met this element of the test.

C. *Prejudice to the Defendants*

[19] The Defendants do not assert that they will suffer any prejudice from the delay that has occurred so far. However, there is no explanation as to why the Plaintiffs did not provide their

motion record now, if they intend to proceed with the appeal in writing as claimed, or what a “full motion record for an Appeal” will consist of.

[20] In effect, the Plaintiffs seek leave to proceed with the filing of some kind of motion by the end of January.

[21] The delay that has occurred to date will be compounded by an indefinite delay going forward. The Defendants are almost certainly going to be prejudiced.

D. *Reasonable explanation for the delay*

[22] Even if the Affidavit was admissible, which it is not, it does not explain the delay in any rational sense.

[23] Moreover, there is no reasonable explanation for what the Plaintiffs intend to do, and why creating a motion record will take until January 31, 2025 (approximately six weeks from the date this motion was filed). This delay is unreasonable.

[24] The interests of justice do not justify the Court allowing poorly prosecuted litigation to proceed forward when there is no likelihood of success. The motion is dismissed.

IV. Costs

[25] The Plaintiffs shall pay costs to the Defendants in the amount of \$1080.

THIS COURT ORDERS that:

1. The motion is dismissed.
2. The Plaintiffs shall pay costs to the Defendants in the amount of \$1080.

"Michael D. Manson"

Judge