

Federal Court



Cour fédérale

Date: 20100923

Docket: T-1894-09

Citation: 2010 FC 949

Ottawa, Ontario, September 23, 2010

PRESENT: The Honourable Mr. Justice Pinard

BETWEEN:

PETER COLLINS

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

Upon the applicant's motion made in writing pursuant to Rule 369 of the *Federal Courts Rules, 1998*, SOR/98-106, for an extension of time to file the applicant's Application Record.

REASONS FOR ORDER AND ORDER

[1] In order to obtain an extension of time, the applicant must demonstrate a continuing intention to pursue his or her application; that the application has some merit; that no prejudice to

the respondent arises from the delay; and, that a reasonable explanation for the delay exists (see the Federal Court of Appeal decision in *Canada (Attorney General) v. Hennelly* (1999), 244 N.R. 399).

[2] The requested extension of time is denied on the main ground that the applicant has failed to satisfy the Court that a reasonable explanation for the delay exists.

[3] The underlying application was filed on November 18, 2009. The time for filing the applicant's Application Record expired on July 12, 2010. In his affidavit, counsel for the applicant states, at paragraph 7, that there is no valid explanation for the delay:

I have no explanation for delay other than to say that following the release of *Scott v. Canada (Attorney General)* [2010] F.C.J. No. 595 (*Scott*) on or about June 1, 2010, I took additional time to consider the merits associated with proceeding to court with this case. On its face, *Scott* appeared to have answered the question posed in this application. In the end, however, I decided to proceed on the basis that this case can be distinguished from *Scott*. Additionally, my office availability during the months of July and August 2010 contributed to the delay in drafting the memorandum in law. The legal memorandum and record are both now complete and ready for service and filing.

[4] The limited explanation contained therein for missing the due date under the *Federal Courts Rules* is not a reasonable one as found by Madam Justice Reed in *Chin v. Canada (Minister of Employment and Immigration)* (1993), 22 Imm. L.R. (2d) 136. See also Prothonotary Richard Morneau's decisions in *Hua et al. v. Canada (Minister of Citizenship and Immigration)*, 155 F.T.R. 278, and *Narinder Singh v. Minister of Citizenship and Immigration*, [1996] F.C.J. No. 314

(F.C.T.D.)(QL). Here, therefore, the lack of a reasonable explanation for the delay is determinative in consideration of the above test.

[5] Furthermore, assuming in spite of my serious doubts with respect to the merits of the underlying application that the latter indeed has some merits, I find that the applicant's affidavit in support of this motion does not display any serious evidence of continuing intention. The absence of action by the applicant between the July 12, 2010 filing date for his Record and the September 2, 2010 date of this motion does not support any suggestion of continuing intention.

[6] Finally, I agree with the respondent that there is a public interest in the expectation that parties to a judicial review application move the matter forward as expeditiously as possible. Where time limits are not complied with, a respondent is entitled to expect that extensions of such time limits will not be granted where the non-compliance with the time limits lacks a reasonable explanation. To grant an extension of time in such circumstances can only result in prejudice to an opposing party.

[7] For all the above reasons, the applicant's motion is dismissed, with costs.

ORDER

The applicant's motion is dismissed, with costs.

“Yvon Pinard”

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: T-1894-09

STYLE OF CAUSE: PETER COLLINS v. THE ATTORNEY GENERAL OF CANADA

MOTION IN WRITING PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES, 1998, SOR/98-106*

REASONS FOR ORDER AND ORDER: Pinard J.

DATED: September 23, 2010

SUBMISSIONS BY:

Mr. Brian A. Callender FOR THE APPLICANT

Mr. Lorne Ptack FOR THE RESPONDENT

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