

Federal Court



Cour fédérale

**Date: 20170531**

**Docket: T-1424-16**

**Citation: 2017 FC 525**

**Ottawa, Ontario, May 31, 2017**

**PRESENT: The Honourable Madam Justice Strickland**

**BETWEEN:**

**ANGELA MIGLIALO**

**Applicant**

**and**

**ROYAL BANK OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

[1] This is an appeal, brought by the Applicant pursuant to Rules 51 and 369 of the *Federal Courts Rules*, SOR/98-106, of the Order of Prothonotary Lafrenière, dated April 27, 2017, wherein he dismissed for delay the Applicant's application for judicial review.

[2] Discretionary orders of prothonotaries should only be interfered with when such decisions are incorrect in law or are based on a palpable and overriding error in regard to the facts (*Hospira Healthcare Corporation v Kennedy Institute of Rheumatology*, 2016 FCA 215 at

paras 64 and 79, application for leave to appeal to the Supreme Court of Canada filed on December 9, 2016 in 2016 CarswellNat 7112 (WL)). A party in receipt of a Notice of Status Review is required to address two questions: is there a justification for the failure to move the case forward, and, what measures does the party propose to take to move the case forward (*Liu v Matrikon Inc*, 2010 FCA 329 at para 2; citing *Baroud v R*, [1998] FCJ No 1729 (FCTD); also see *Cotirta v Missinippi Airways*, 2012 FC 1262 at para 8, affirmed by the Federal Court of Appeal in 2013 FCA 280).

[3] Here the subject application concerns a complaint to the Privacy Commissioner, which application was filed on August 26, 2016. No further steps were taken to advance the proceeding. On April 4, 2017 this Court issued a Notice of Status Review to which the parties filed written responses. Prothonotary Lafrenière dismissed the application on the basis that the only explanation for the delay offered by the Applicant was that she was self-represented and not aware of the procedural steps to be taken following service of the Notice of Appearance. The Prothonotary did not accept this as a valid reason, noting that it was her responsibility to familiarize herself with the procedural rules and to comply with them (*Enu Scheuneman v R*, 2003 FCT 37). Nor had the Applicant explained the substantive period of inactivity and, despite the clear wording of the Notice of Status Review, she had not proposed any concrete steps to advance the case should the proceeding be allowed to continue. In light of the inordinate and unjustified delay, and the Applicant's continued failure to assume her responsibilities, the Prothonotary dismissed the application for delay.

[4] On appeal the Applicant does not suggest that the Prothonotary made an error of law or that he based his decision on a palpable and overriding error in fact. Instead, she again explains that she did not understand what was required of her and states that she was challenged by the technical wording of the Notice of Status Review and Order, and, that law firms that she contacted could not act for her because they acted for the Respondent or did not have Federal Court experience. This, however, is simply a reassertion of the reasons she provided in response to the Notice of Status Review and is not sufficient to warrant interference by the Court with the Prothonotary's decision. Nor is the wording of the Notice of Status Review challenging. It states that an applicant must provide "representations stating the reasons why the proceeding should not be dismissed for delay. The representations shall include a justification for the delay and a proposed timetable for the completion of the steps necessary to advance the proceeding in an expeditious manner."

[5] The Applicant also filed an affidavit in support of her appeal which sets out the factual background to her complaint to the Privacy Commissioner. It also attaches medical records for the period February 20, 2014 to May 6, 2016 pertaining to the anxiety she suffered as a result of the alleged privacy breach, the most recent of these documents concludes with the statement that the Applicant wants to bring closure to the issue of the breach of privacy and was planning to file her complaint in the Federal Court. The Applicant submits that this demonstrates her continuing intention to pursue her application, so as to bring closure to the emotional stress she has endured. Leaving aside the fact that this information was not presented to the Prothonotary, the latest medical record precedes the filing of the application for judicial review and does not explain the delay in pursuing that matter.

[6] However, the Order states that despite the clear wording of the Notice of Status Review, the Applicant does not propose any concrete steps to advance the case should the proceeding be allowed to continue. Further, that “it is simply insufficient to state in reply that she reviewed the court rules “and the next proceeding to continue on its merits””. In fact, that statement is contained in the Applicant’s written submissions made in response to the Notice of Status of Review, filed on April 13, 2017, which did not include a proposed timetable. On April 26, 2017, one day prior to the issuance of Prothonotary Lafrenière’s Order, the Applicant filed a reply to the Respondent’s written representations in respect of the Notice of Status of Review. The reply includes a table, which is described by the Applicant as, “a proposed timetable for the completion of the steps necessary to advance the proceeding in an expeditious manner and on its merits”.

[7] Given the timing and the language of the Order, it is possible that the Prothonotary did not have the Applicant’s April 26, 2017 reply before him when he made the Order or that it was inadvertently overlooked. The Applicant in this matter is self-represented and has not raised this potential error of fact. However, in these circumstances, it is in the interest of justice that the appeal be allowed, the Order dismissing the application for delay be quashed and the matter continue as a specially managed proceeding (see *Housen v Nikolaisen*, 2002 SCC 33 at para 72).

**JUDGMENT**

**THIS COURT'S JUDGMENT is that:**

1. The appeal from the Order of Prothonotary Lafrenière, dated April 27, 2017 is granted and that Order, dismissing the application for judicial review for delay, is quashed;
2. The matter will continue as a specially managed proceeding pursuant to Rule 384;
3. There shall be no order as to costs.

“Cecily Y. Strickland”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-1424-16

**STYLE OF CAUSE:** ANGELA MIGLIALO v ROYAL BANK OF CANADA

MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES*.

**JUDGMENT AND REASONS:** STRICKLAND J.

**DATED:** MAY 31, 2017

**WRITTEN REPRESENTATIONS BY:**

Angela Miglialo

FOR THE APPLICANT  
(ON HER OWN BEHALF)

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