Federal Court  Cour fédérale

Date: 20190906

Docket: T-125-18

Citation: 2019 FC 1144

Ottawa, Ontario, September 6, 2019

PRESENT: Mr. Justice Peter Annis

BETWEEN:

MICHELINE GODBOUT

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

ORDER AND REASONS

[1] The Applicant brings a motion in writing pursuant to Rule 369 of the *Federal Courts Rules*, SOR/98-106 [*"Rules"*] appealing the Order of Prothonotary Tabib dated April 25, 2019. The Prothonotary dismissed the Applicant's motion for an extension of time pursuant to Rule 8(1) to serve and file her record as required by the Court's case management Order dated February 14, 2019. Thereafter, in accordance with Rule 168 and paragraph 5 of the case management Order, the motion was dismissed with costs.

[2] For the reasons that follow the appeal is dismissed with costs in favour of the Respondent.

[3] The motion has its genesis in an application for judicial review of a decision of the Canadian Human Rights Commission (the "Commission") dated December 15, 2017 which dismissed her complaint. The Commission found that the application was not in an acceptable form pursuant to section 40 (1) of the *Canadian Human Rights Act* (R.S.C., 1985, c. H-6) (*"CHRA"*).

[4] On February 14, 2019, Prothonotary Tabib ordered the Applicant to present a motion to extend the time to serve and file her record no later than March 5, 2019, failing which the application would of necessity be dismissed.

[5] Instead of filing a record, on March 5, 2019 the Applicant brought a further application for an extension of time, without written representations or memorandum of fact and law, supported only by an affidavit sworn the same date.

[6] In her reasons, the Prothonotary applied the four-factor test for an extension of time (Canada (Attorney General) v. Hennelly, 1999 CanLII 8190 (FCA)) noting the overarching principle on a motion to extend that justice be done between the parties, while indicating the necessity to weigh and balance weaker factors against the stronger ones in order to reach a fair result.

[7] The Prothonotary concluded that the delay by the Applicant was very long and the reasons for the delay weak, primarily relating to her misapprehension that an affidavit by the Respondent had not been served, when in fact it had been served along with the procedures for cross-examination of the affidavit.

[8] The Prothonotary found that although the Applicant was acting in good faith and was genuinely confused about the process, it was not an acceptable justification for delay, citing in support the decision of *Patterson v. Canada (Attorney General)*, 2016 FC 1179.

[9] The Prothonotary further indicated as a more important consideration that she was not satisfied that it was in the interests of justice to grant an extension of time, due to the lack of apparent merit in the Applicant's application.

[10] The standard of review for an order of a Prothonotary is whether it contains an error of law or a palpable and overriding error of fact: *Hospira Health Corp. V. Kennedy Institute of Rheumatology*, [2017] 1 FCR 331.

[11] The Applicant has failed to address the main issues on appeal whether the order contains a palpable overriding error of fact in the Prothonotary's order. Having reviewed the motion materials and submissions of the parties, the Court concludes that the Applicant has failed to demonstrate any reason to set aside the error of the Prothonotary.

[12] The Court finds that the proper test for an extension was applied. The Applicant did not provide a reasonable explanation for the delay with respect to the procedure when, in July 2018, she was advised that she had already been served with the Respondent's affidavit. Good faith confusion due to an applicant's lack of understanding of the Rules and procedures does not constitute an acceptable explanation for the delay, given the clarity of the facts as they actually occurred.

[13] Additionally, there is no error in the exercise of the Prothonotary's discretion in concluding that the grounds to challenge the Commission's dismissal of a complaint because the complaint is in a form it found unacceptable. This conclusion is supported by section 40 (1) of the *CHRA* entitling the Commission to prescribe complaints "in a form acceptable to the Commission". In this regard, the Federal Court of Appeal has stated that the Commission is the master of its own process: *Tahmourpour v. Canada (Solicitor General)*, 2005 FCA 113 at para 39.

[14] Accordingly, the Applicant's motion is dismissed with costs to the Respondent if sought, to be agreed upon, failing which, brief submissions are to be made to the Court.

THIS COURT ORDERS that:

1. The appeal is dismissed with costs to the Respondent.

"Peter Annis"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-125-18

STYLE OF CAUSE: GODBOUT v. ATTORNEY GENERAL OF CANADA

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

ORDER AND REASONS: ANNIS J.

DATED: SEPTEMBER 6, 2019

WRITTEN REPRESENTATIONS BY:

Micheline Godboult	FOR THE APPLICANT
Malcolm Palmer	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Micheline Godboult	FOR THE APPLICANT (Self-Represented)
Malcolm Palmer Department of Justice	FOR THE RESPONDENT