

**Date: 20060914**

**Docket: 06-A-43**

**Citation: 2006 FCA 302**

**Present: NOËL J.A.**

**BETWEEN:**

**JAMES ALEXANDER LIVINGSTON**

**Applicant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on September 14, 2006.

**REASONS FOR ORDER BY:**

**NOËL J.A.**

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**BETWEEN:**

**JAMES ALEXANDER LIVINGSTON**

**Applicant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

**REASONS FOR ORDER**

[1] This is an application for an extension of time to file a Notice of Appeal against an Order of Hughes J. issued on April 19, 2006, allowing the Crown's application for default judgment and ordering the applicant to pay the Crown the amount of \$24,922.27, plus costs.

[2] In resisting the motion, the Crown argues that the applicant's assertion that he received copy of the Order on April 26, 2006, is a deliberate attempt on his part to mislead the Court since the applicant signed a Notice of Appeal against the aforesaid decision the day before, that is April 25, 2006.

[3] The document signed by the applicant on April 25, 2006, is a letter addressed to the Court wherein he takes issue with the position taken by the Crown in the written submissions made in support of the application for default judgment. The words “Notice of Appeal” appear nowhere, and there is no reference in the letter to a prior judgment. Indeed, the document was treated by the Court as a late submission directed against the Crown’s motion for default judgment. Hughes J. agreed to consider the letter despite the fact that it was filed out of time and on May 1, 2006, he issued a further Order (improperly labelled as a Direction) in which he acknowledged the applicant’s late submission and confirmed that his earlier decision would stand.

[4] If anything, the fact that this letter makes no reference to a prior decision, supports the applicant’s contention that he was not aware of Hughes J’s original decision when he wrote it. Based on the record as presently constituted, the Crown’s allegation that the applicant misled the Court in stating that he received the decision on April 26, 2006 – since his letter of April 25, 2006, “appealing that decision” was written the day before – is groundless and should not have been made particularly when regard is had to its highly prejudicial nature (Reference is made to the Crown’s motion record, at pages 12 and 13, paragraphs 42 to 46).

[5] It is also apparent from the foregoing that the decision which the applicant should seek to appeal is not the decision of April 19, 2006, but that of May 1, 2006, since it is clear that by the latter, Hughes J. agreed to reconsider his earlier decision in light of the applicant’s late submission, and that he decided on May 1, 2006 to maintain the earlier decision. As such, the decision which the applicant must overcome is not the decision of April 19, 2006, which was obtained on the basis of

the Crown's submissions only, but the decision of May 1, 2006, which was rendered after taking into account the applicant's position.

[6] For these reasons, the application for an extension of time to file a Notice of Appeal against the decision of April 19, 2006 is denied with leave to file a fresh application to extend the time to appeal the decision rendered May 1, 2006. The parties will assume their respective costs.

"Marc Noël"

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** 06-A-43

**STYLE OF CAUSE:** JAMES ALEXANDER  
LIVINGSTON and HER MAJESTY  
THE QUEEN

**MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES**

**REASONS FOR ORDER BY:** NOËL J.A.

**DATED:** September 14, 2006

**WRITTEN REPRESENTATIONS BY:**

JAMES A. LIVINGSTON FOR THE APPELLANT /  
APPLICANT

SHARON McGOVERN FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

JAMES A. LIVINGSTON FOR THE APPELLANT /  
GUELPH, ONTARIO APPLICANT

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