

Federal Court of Appeal



Cour d'appel fédérale

Date: 20260326

Docket: A-189-25

Citation: 2026 FCA 65

**CORAM: LOCKE J.A.
WALKER J.A.
ROCHESTER J.A.**

BETWEEN:

ALFRED DONKOR

Appellant

and

**THE MINISTER OF PUBLIC SAFETY,
DEMOCRATIC INSTITUTIONS AND
INTERGOVERNMENTAL AFFAIRS**

Respondent

Heard at Ottawa, Ontario, on March 26, 2026.
Judgment delivered from the Bench at Ottawa, Ontario, on March 26, 2026.

REASONS FOR JUDGMENT OF THE COURT BY:

ROCHESTER J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Ottawa, Ontario, on March 26, 2026).

ROCHESTER J.A.

[1] Mr. Donkor appeals an order of the Federal Court dated May 5, 2025, in file number 25-T-43. The Federal Court dismissed Mr. Donkor's motion seeking an extension of time within which to file an application for judicial review. The respondent does not oppose the appeal and has elected not to file submissions.

[2] This appeal will be allowed on the basis that the Federal Court erred in its treatment of Mr. Donkor's motion.

[3] On April 11, 2025, Mr. Donkor's counsel served and filed the motion, along with an affidavit of service confirming service on the respondent. The notice of motion did not specify a return date for a hearing. Nevertheless, it appears the motion was originally set down for April 23, 2025. On April 22, 2025, the hearing date was moved to May 7, 2025. It is clear from the record that counsel for the respondent had not been made aware of the return date of April 23, 2025, as the next day she wrote to counsel for Mr. Donkor seeking confirmation that the motion would be heard in writing under Rule 369 of the *Federal Court Rules*, S.O.R./98-106.

[4] On April 30, 2025, after having been informed of the May 7, 2025, return date, counsel for the respondent confirmed that she did not intend to oppose the motion for an extension of time within which to file the notice of application for judicial review. Counsel for Mr. Donkor did not inform the Court that the respondent did not oppose the motion.

[5] For reasons unknown to us, the motion was placed before the Federal Court to be dealt with in writing and the resulting order was rendered on May 5, 2025. It is clear from the Federal Court's reasons that the court mistakenly believed that the motion was *ex parte*, despite the filing by Mr. Donkor's counsel of an affidavit of service on April 11, 2025. The Federal Court was also mistaken in its belief that no notice of motion had been filed.

[6] It is well established that the four factors relevant to the Court's discretion in granting an extension of time are whether: (1) the party had a continuing intention to pursue the matter, which commenced before the relevant time limit expired; (2) there is a reasonable explanation for the delay; (3) there is some merit to the party's application; and (4) there is no prejudice to the opposite party: *Greenblue Urban North America Inc. v. Deeproot Green Infrastructure, LLC.*, 2024 FCA 19 at para. 6.

[7] The fact that the Federal Court was unaware that the respondent had been served with, and consented to, the motion impacted its analysis as did its erroneous belief that the motion was *ex parte*.

[8] While we acknowledge Mr. Donkor's concern regarding further delay, we decline Mr. Donkor's request to grant the extension of time within which to file a notice of application for judicial review. Given that the decision to grant an extension of time is discretionary and affects the workload of the Federal Court, it is best dealt with by that Court on a complete record.

[9] Therefore, the appeal will be allowed, the decision of the Federal Court will be set aside, and the matter will be remitted to the Federal Court for a decision on Mr. Donkor's motion seeking an extension of time within which to file an application for judicial review. No costs shall be awarded.

"Vanessa Rochester"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-189-25

STYLE OF CAUSE: ALFRED DONKOR v. THE
MINISTER OF PUBLIC SAFETY,
DEMOCRATIC INSTITUTIONS
AND INTERGOVERNMENTAL
AFFAIRS

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: MARCH 26, 2026

REASONS FOR JUDGMENT OF THE COURT BY: LOCKE J.A.
WALKER J.A.
ROCHESTER J.A.

DELIVERED FROM THE BENCH BY: ROCHESTER J.A.

APPEARANCES:

John Allan FOR THE APPELLANT

Sarah Rajguru FOR THE RESPONDENT

SOLICITORS OF RECORD:

John Allan Professional Corporation FOR THE APPELLANT
Ottawa, Ontario
Deputy Attorney General of Canada FOR THE RESPONDENT