

Federal Court



Cour fédérale

Date: 20250527

Docket: T-1808-23

Citation: 2025 FC 958

Ottawa, Ontario, May 27, 2025

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

KAREN TYLER

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] On April 1, 2025, the Associate Judge who is case managing this proceeding dismissed the Applicant's application for judicial review in its entirety, for failure to comply with a peremptory order to file her Application Record and delay. The Applicant appealed this decision. The Respondent has indicated they do not oppose the Applicant's appeal motion.

[2] I am deciding in writing, under Rules 51 and 369 of the *Federal Courts Rules*, SOR/98-106, the Applicant's appeal of the April 1, 2025 Judgment that dismissed her application for judicial review. For the reasons that follow, I am granting the Applicant's appeal.

II. Procedural History

[3] The Applicant filed an application for judicial review in November 2023, challenging the decision of the Canadian Human Rights Commission to "not to deal with part of [her] human rights complaint". The Applicant has asked for several extensions, with the consent of the Respondent: first to file the Applicant's affidavit, and later to file the Applicant's Record.

[4] An Associate Judge and I were appointed to case manage this file in September 2024. Following a case conference with the Associate Judge in October 2024, the Applicant was ordered to file her Application Record by February 21, 2025.

[5] On February 21, 2025, the Associate Judge granted a joint request for a further extension to file the Applicant's Record by March 14, 2025.

[6] On March 14, 2025, the Respondent wrote on behalf of themselves and the Applicant, asking again, at the Applicant's request, for an extension of a further two weeks to file the Applicant's Record. The Respondent noted in their letter that this would be the final extension to which they would consent given the numerous delays in moving the file forward.

[7] On March 19, 2025, the Associate Judge granted the request for an extension, ordering that the Applicant's Record would now be due on March 28, 2025. The Order dated March 19, 2025 further explained that the March 28th deadline was "made on a peremptory basis and there shall be no further extensions of time for the service and filing of the Applicant's Record."

[8] On March 18, 2025, the Applicant's mother died in Victoria. The following day, March 19, 2025, the Applicant contacted counsel for the Respondent to advise about her mother's death. Counsel for the Respondent responded in an email that she could not provide her with legal advice but that she could make a request in writing for a case management conference, noting that the Court's Order stated that there would be no further extensions.

[9] The Applicant flew to Victoria where her mother had died and was there from March 20 to March 25, 2025. On March 26, 2025, the Applicant wrote to the Court and asked for a further extension of two weeks to file the Applicant's Record. The Applicant explained the reason for the request: that she learned her mother died on March 18, 2025; that she and her brothers, all in Winnipeg, were her mother's only remaining family members and had to urgently fly to Victoria; and that handling her mother's affairs and possessions has been "overwhelming on top of severe mental health disabilities". The Applicant also requested, if appropriate, an urgent case management conference.

[10] On March 27, 2025, the Associate Judge issued a direction stating that the Applicant's record was due on a peremptory basis the following day, on March 28, 2025, and therefore no extension would be provided. There is no mention in the direction of either the request for a case

management conference or the reason for the Applicant's request – namely the sudden death of her mother on March 18, 2025.

[11] The Applicant did not file the record the following day. The Applicant provided a further letter, dated March 29, 2025, asking for a case management conference. In the letter they provided the Respondent's availability for a conference to take place in April 2025.

[12] Four days after the deadline for the Applicant's Record had passed, on April 1, 2025, the Associate Judge, of her own initiative, issued a Judgment that dismissed the application for judicial review in its entirety for failure to comply with a peremptory order of the Court and for delay in filing the Applicant's Record. The Judgment does not mention the circumstances which prompted the Applicant to seek an extension of time, her mother's death, nor does it note the request for a case management conference.

III. Analysis

[13] On a Rule 51 appeal, I must review the decision of the Associate Judge on a standard of palpable and overriding error for questions of fact and questions of mixed fact and law, except where there is an extricable legal principle at issue and then, like on any question of law, the standard is correctness (*Housen v Nikolaisen*, 2002 SCC 33 at paras 17-31; *Hospira Healthcare Corporation v Kennedy Institute of Rheumatology*, 2016 FCA 215 at paras 64, 66).

[14] There is no extricable legal principle at issue on this appeal. Accordingly, the appropriate standard is a highly deferential one, where I can only allow the appeal if I determine there has been a palpable and overriding error.

[15] I find there was such an error, requiring the April 1, 2025 Judgment to be quashed.

[16] The Associate Judge found that “in light of Ms. Tyler’s failure to comply with the peremptory Order of this Court, Ms. Tyler has effectively abandoned her intention to proceed with this matter, and her application should be accordingly be dismissed for failure to comply with the March Order, and for delay.”

[17] In the April 1, 2025 Judgment at issue there is no acknowledgement of the extraordinary and unforeseeable circumstances that led the Applicant to seek an extension of the peremptory order – the death of her mother. Neither the April 1, 2025 Judgment nor the direction issued on March 27, 2025 provide any indication that the reason for the Applicant’s request was considered.

[18] This Court can amend its own orders. That the March 19, 2025 Order made the deadline for filing the Applicant’s Record peremptory is not a complete answer to the Applicant’s request; the reasons for the request matter and ought to have been addressed.

[19] I also find that the Applicant’s recent efforts to proceed with the judicial review were relevant and not mentioned in the Judgment. Part of the Associate Judge’s rationale for

dismissing the application was that the Applicant had “effectively abandoned her intention to proceed with this matter”. The Applicant made two requests for an urgent case management conference, once prior to the March 27, 2025 direction, and one the following day; neither request was addressed prior to the dismissal of the application in its entirety.

IV. Remedy

[20] The Respondent does not oppose the Applicant’s appeal.

[21] The Respondent proposed, if the appeal is allowed, that the Court order the Applicant’s Record be filed in two weeks from the date of the Court’s Order on this motion and the Respondent’s responding record be due 30 days after the filing and service of the Applicant’s Record.

[22] I agree that this is the most efficient way to proceed.

[23] I caution the Applicant that failing to comply with the June 11, 2025 filing deadline may result in the application for judicial review being dismissed.

JUDGMENT in T-1808-23

THIS COURT'S JUDGMENT is that:

1. The appeal is allowed;
2. The Judgment dated April 1, 2025 is quashed;
3. The Applicant must serve and file their Applicant's Record by June 11, 2025;
4. The Respondent must serve and file their responding record 30 days after being served with the Applicant's Record; and
5. No costs are ordered to any party.

"Lobat Sadrehashemi"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1808-23

STYLE OF CAUSE: KAREN TYLER v ATTORNEY GENERAL OF
CANADA

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

JUDGMENT AND REASONS: SADREHASHEMI J.

DATED: MAY 27, 2025

WRITTEN REPRESENTATIONS BY:

Karen Tyler

FOR THE APPLICANT
(ON HER OWN BEHALF)

Christine Williams

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada
Winnipeg, Manitoba

FOR THE RESPONDENT