

Federal Court



Cour fédérale

Date: 20200213

Docket: 20-T-2

Citation: 2020 FC 248

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, February 13, 2020

PRESENT: The Honourable Mr. Justice Simon Noël

BETWEEN:

THE HONOURABLE MICHEL GIROUARD

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

ORDER AND REASONS

(Section 18.1 and Rules 300 et seq. of the *Federal Courts Rules*)

[1] The applicant, the Honourable Michel Girouard, is seeking an extension of time to file an application for judicial review, pursuant to rules 359, 364 and 369 of the *Federal Courts Rules*, SOR/98-106, of the recommendation included in the Report of the Judicial Compensation and Benefits Commission (“Commission”) dated October 28, 2019, which was communicated to the applicant on December 9, 2019.

[2] The 30-day deadline for filing applications for judicial review, pursuant to subsection 18.1(2) of the *Federal Courts Act*, RSC 1985, c F-7, was not met because one of the applicant's counsel failed to take the holiday period into account in his scheduling. As a result, the application was only filed on January 22, 2020, when it ought to have been filed by January 10, 2020.

[3] The applicant submits that he always intended to file the application for judicial review and that it was simply due to an error made in good faith that he failed to file it within the 30-day deadline set out in subsection 18.1(2). He adds that should the extension of time be granted, the Commission would not suffer any prejudice but that it would be extremely prejudicial to him if the extension of time were not granted.

[4] The Commission tabled this report following a letter from the Minister of Justice dated May 31, 2019, pursuant to subsection 26(4) of the *Judges Act*, RSC 1985, c J-1. The letter proposed a future amendment to the *Judges Act* with regard to the counting of years of continued service to obtain a judge's pension as of the date on which the Canadian Judicial Council (CJC) recommends the judge's removal to the Minister of Justice, and requested the Commission's opinion on the matter:

The amendment I propose would suspend the counting of the judge's years continued in judicial office as of the date on which the CJC issues a report recommending the judge's removal. The amendment would be made applicable on Royal Assent to any sitting judge whose removal has already been recommended, or is recommended in the future.

[5] Following the issuance of a notice, the Commission received a submission from the applicant in which he objected to such an amendment. Four other submissions were filed by various organizations or groups (the Government of Canada, the Barreau du Québec, the Canadian Superior Court Judges Association and the Federal Court Prothonotaries).

[6] At paragraph 29 of the Commission's report, after having examined the criteria set out in subsection 26(1.1) of the *Judges Act*, the Commission stated as follows:

The amendment proposed by the Minister of Justice:

“ . . . would not impact the adequacy of the salaries and other amounts payable under the *Judges Act* or the adequacy of judges' benefits generally when assessed in accordance with the criteria set out in subsection 26(1.1). However, the Commission makes no comment on the timing of the application of the proposed amendment, other than to note that it would be unfortunate if the making of the Request and the results of this report negatively affected those whom are already the object of deliberations and recommendations by the Canadian Judicial Council, and who have yet to complete the process of exercising recourses available to them within the law.”

[7] The respondent, the Attorney General of Canada, objects to both the motion for an extension of time and the application for judicial review. He argues that the motion [TRANSLATION] “has no merit” and that the applicant provided no reasonable explanation to justify the delay in filing. Accordingly, he concludes that it is not in the interests of justice to allow the motion.

[8] According to the respondent, the report is of no effect, being of a consultative nature as section 26 of the *Judges Act* indicates, and is not a “decision” within the meaning of section 18.1

of the *Federal Courts Act*. Accordingly, in the respondent's view, the report cannot be the subject of an application for judicial review. Furthermore, the respondent adds that the application is premature.

[9] The respondent submits to the Court that following the report, the Minister of Justice will respond to it in two ways: (1) by issuing a response to the Commission's report within four months after receiving it (namely by February 28, 2020) and, subsequently (2) if applicable, by preparing and introducing a bill to implement his response to the report, within a reasonable period (see subsection 26(7) of the *Judges Act* entitled "Response to report").

[10] In its conclusions, the respondent is asking this Court to:

- Dismiss the applicant's motion for an extension of time; or

Alternatively:

- Suspend the applicant's motion for an extension of time until the process set out in section 26 of the *Judges Act* has run its course.

[11] With respect to the alternative conclusion, the Attorney General argues that the application for judicial review is premature and that the Court should await [TRANSLATION] "the nature of the government's response".

[12] After having reviewed the matter and taken the parties' submissions into consideration, I believe that it is in the interests of justice that the motion for an extension of time be suspended until the Minister of Justice has submitted his response to the Commission's report, which is the next step in the process established under section 26 of the *Judges Act*.

[13] I have made this determination because, in my view, the process provided for in the *Judges Act* must run its course so as to properly crystallize the issues raised in the present motion for an extension of time and in the application for judicial review. It is only upon the Minister of Justice's response that the Minister will define the amendments as to the counting of years of continued service in relation to judges' pensions after having considered the recommendation included in the Commission's report. At that point, the process will have a more specific purpose that will provide an opportunity to better take into account the issues raised in this matter.

[14] Accordingly, I am issuing the following order.

ORDER

FOR THESE REASONS:

1. I am suspending the motion for an extension of time until the Minister of Justice has issued his response to the recommendation included in the Judicial Compensation and Benefits Commission's report, in accordance with the next step provided for in the process pursuant to subsection 26(7) of the *Judges Act*.
2. The respondent will provide the Court, and the applicant, with the response of the Minister of Justice in a timely manner upon its release.
3. Thereafter, within 10 days after receiving the response, the applicant will be able to submit a supplementary memorandum and the respondent will then have 10 days to respond, if applicable.

“Simon Noël”

Judge

Certified true translation
This 25th day of February 2020.

Johanna Kratz, Reviser

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: 20-T-2

STYLE OF CAUSE: THE HONOURABLE MICHEL GIROUARD v THE
ATTORNEY GENERAL OF CANADA

**MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO, PURSUANT to
RULES 359, 364 and 369 OF THE *FEDERAL COURTS RULES*, SOR/98-106**

ORDER AND REASONS: SIMON NOËL J.

DATED: FEBRUARY 13, 2020

WRITTEN REPRESENTATIONS BY:

Gérald R. Tremblay Louis Masson	FOR THE APPLICANT (THE HONOURABLE MICHEL GIROUARD)
Pascale-Catherine Guay Claude Joyal Linda Rouillard-Labbé	FOR THE RESPONDENT (THE ATTORNEY GENERAL OF CANADA)

SOLICITORS OF RECORD:

McCarthy Tétrault Montréal, Quebec	FOR THE APPLICANT (THE HONOURABLE MICHEL GIROUARD)
Therrien Couture Jolie-Cœur Québec, Quebec	
Attorney General of Canada	FOR THE RESPONDENT (THE ATTORNEY GENERAL OF CANADA)