

Federal Court



Cour fédérale

**Date: 20210826**

**Docket: T-627-20**

**Citation: 2021 FC 889**

[ENGLISH TRANSLATION REVISED BY THE AUTHOR]

**Ottawa, Ontario, August 26, 2021**

**PRESENT: Mr. Justice Sébastien Grammond**

**BETWEEN:**

**LYNE BRASSARD**

**Plaintiff**

**and**

**ATTORNEY GENERAL OF CANADA  
(IMMIGRATION, REFUGEES AND  
CITIZENSHIP CANADA AND  
EMPLOYMENT AND SOCIAL  
DEVELOPMENT CANADA)**

**Defendant**

**ORDER AND REASONS**

[1] The plaintiff is appealing an order made by Prothonotary Sylvie M. Molgat on June 30, 2021. Prothonotary Molgat ordered that a status review be conducted.

[2] I dismiss the plaintiff's appeal. Given the plaintiff's failure to file her documents in a timely manner, the prothonotary's decision was entirely reasonable.

I. Background

[3] The plaintiff brought a simplified action against the defendant. The defendant filed a statement of defence, and the plaintiff filed a reply. The plaintiff then made a motion for a settlement conference. As he was of the view that such a conference could only be fruitful after the parties had exchanged documents, Prothonotary Kevin R. Aalto dismissed the motion and ordered that the proceeding continue as a specially managed proceeding, as provided for in rule 384 of the *Federal Courts Rules*, SOR/98-106. Prothonotary Aalto also asked the parties to indicate their availability for a case management conference. The Chief Justice then assigned Prothonotary Molgat to act as the case management judge.

[4] On January 28, 2021, Prothonotary Molgat scheduled the case management conference for Monday, March 22, 2021. On February 19, 2021, she also set out a schedule for the following steps in the proceeding, including the exchange of the parties' documents on March 15, 2021, and the exchange of examinations for discovery on April 15, 2021.

[5] On the evening of Friday, March 19, 2021, the plaintiff sent an email message to the Court Registry stating that an important commitment would prevent her from attending the case management conference on the following Monday and requesting that the conference be postponed to a date in the following weeks.

[6] The case management conference was nevertheless held on March 22, 2021, in the plaintiff's absence. Prothonotary Molgat's order merely set out a new schedule, noting that the plaintiff had failed to produce her documents in a timely manner. The date for filing documents was set for April 1, 2021, and the date for the exchange of examinations for discovery was set for April 26, 2021.

[7] The plaintiff sent the defendant a list of her documents on March 30, 2021. She also sent an examination for discovery on April 20, 2021. However, she never sent a copy of her documents.

[8] On May 3, 2021, Prothonotary Molgat gave a direction asking the parties to indicate their availability for a case management conference in the following weeks. Having failed to receive a response from the plaintiff within the time limit, the prothonotary gave a new direction on May 6, 2021, again asking the plaintiff to indicate her availability. In addition, noting the plaintiff's failure to provide her documents, the prothonotary suspended the deadlines for the subsequent steps in the proceeding.

[9] On June 2, 2021, noting that the plaintiff still had not sent the defendant her documents, the prothonotary made an order setting out a new schedule. The schedule stated the following with respect to documents:

[TRANSLATION]

The plaintiff must produce and serve copies of her documents (in printed or electronic form) on the defendant no later than June 15, 2021, failing which the Court may order a status review under subsection 385(2) of the *Federal Courts Rules*.

[10] On June 30, 2021, noting that the plaintiff still had not provided her documents, the prothonotary made the order that is the subject of this appeal. The plaintiff brought her motion to appeal on July 5, 2021, within the 10-day period provided for in subsection 51(2).

## II. Grounds of appeal

[11] In her notice of motion, the plaintiff sets out three grounds of appeal. First, Prothonotary Molgat allegedly breached the plaintiff's procedural rights by holding the case management conference in her absence on March 22, 2021, and by failing to provide her with the technical information required in order to attend. Second, the plaintiff claims to have been kept uninformed about the role of Prothonotary Molgat. Third, Prothonotary Molgat allegedly [TRANSLATION] "micromanaged" the case and breached the plaintiff's rights.

[12] The motion is supported by an affidavit from the plaintiff describing various conversations with staff at the Registry and the Courts Administration Service. The plaintiff states that the Registry responded to her more quickly before the case was specially managed. She also states that she filed a complaint against Prothonotary Molgat, without providing any further details.

[13] The plaintiff's submissions reiterate the elements set out in the affidavit. The plaintiff also claims to be dissatisfied with the service she is receiving from the Court Registry. She complains about the lack of information about special case management and the case management conference on March 22, 2021. She objects to the fact that Prothonotary Molgat continues to be the case management judge for this specially managed case.

### III. Analysis

[14] At the outset, it is useful to explain the scope of an appeal against a prothonotary's decision under rule 51. Where a case is specially managed, the prothonotary is called upon to make decisions enumerated in rule 385 at various steps in the proceeding. Each decision may be appealed separately. If a decision is not appealed, it cannot be challenged in the appeal of a subsequent decision (*Onischuk v Canada (Revenue Agency)*, 2021 FC 486 at paragraph 9).

[15] The role of the judge hearing an appeal against a decision by a prothonotary is to determine whether the prothonotary has correctly stated the applicable rule and to ensure that there has been no palpable and overriding error in its application (*Hospira Healthcare Corporation v Kennedy Institute of Rheumatology*, 2016 FCA 215, [2017] 1 FCR 331). Deference is owed to the reasonable exercise of discretion in managing the case.

[16] Moreover, an appeal against a decision by a prothonotary is not the appropriate vehicle for complaints regarding the quality of service provided by the staff of the Registry.

[17] The analysis of the appeal must therefore focus on the order made by Prothonotary Molgat on June 30, 2021. That order was permitted by subsection 385(2):

**385 . . . (2)** A case management judge or a prothonotary assigned under paragraph 383(c) may, at any time, order that a status review be held in accordance with this Part.

**385 . . . (2)** Le juge responsable de la gestion de l'instance ou le protonotaire visé à l'alinéa 383c) peut, à tout moment, ordonner que soit tenu un examen de l'état de l'instance en conformité avec la présente partie.

[18] This rule does not limit the grounds on which a prothonotary may order a status review. It was entirely reasonable for Prothonotary Molgat to rely on the plaintiff's failure to provide her documents despite repeated reminders. I would add that the prothonotary showed patience with the plaintiff by repeatedly postponing deadlines. She also gave a clear warning, in her order of June 2, 2021, that failure to meet the final deadline would lead to a status review.

[19] In the process leading up to the order of June 30, 2021, I find no breach of the plaintiff's procedural rights. The record filed by the defendant amply demonstrates that the plaintiff was in constant contact with counsel for the defendant and with the Court Registry. The plaintiff knew that she had to send her documents to the defendant but failed to do so. She gives no explanation for this in her motion record.

[20] The plaintiff did not appeal the order made by the prothonotary at the end of the case management conference on March 22, 2021. That order cannot be challenged in this appeal. In any event, that order merely gave the plaintiff more time to carry out various steps set out in the Rules. I would simply add that the reasons that the plaintiff is giving now for her absence are not the same as the reasons she gave at the time.

[21] In this appeal, I cannot review the Chief Justice's decision to assign Prothonotary Molgat to act as the case management judge. Rule 383 grants the Chief Justice, and only the Chief Justice, the power to appoint case management judges. It is not for me to review or change that decision.

[22] Lastly, the plaintiff's allegations that Prothonotary Molgat breached her rights under sections 7 and 15 of the *Canadian Charter of Rights and Freedoms* are wholly without merit.

IV. Conclusion

[23] The appeal against the order made by Prothonotary Molgat on June 30, 2021, will therefore be dismissed.

[24] The defendant is seeking its costs, and I see no reason to depart from the usual rule that costs are payable by the losing party. I believe that a lump sum of \$250 is appropriate.

**ORDER in T-627-20**

**THIS COURT'S ORDER** is as follows:

1. The appeal against the order made by Prothonotary Molgat on June 30, 2021, is dismissed.
2. A lump sum of \$250 in costs, including taxes and disbursements, is payable by the plaintiff to the defendant.

“Sébastien Grammond”

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Judge



**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-627-20

**STYLE OF CAUSE:** LYNE BRASSARD v ATTORNEY GENERAL OF  
CANADA (IMMIGRATION, REFUGEES AND  
CITIZENSHIP CANADA AND EMPLOYMENT  
AND SOCIAL DEVELOPMENT CANADA)

**MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO, PURSUANT TO  
RULE 369**

**ORDER AND REASONS:** GRAMMOND J.

**DATED:** AUGUST 26, 2021

**APPEARANCES:**

Lyne Brassard  
(on her own behalf)

FOR THE PLAINTIFF

Amani Delbani

FOR THE DEFENDANT

**SOLICITORS OF RECORD:**

Attorney General of Canada  
Ottawa, Ontario

FOR THE DEFENDANT