

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20160316**

**Docket: A-42-15**

**Citation: 2016 FCA 91**

**CORAM: RYER J.A.  
NEAR J.A.  
BOIVIN J.A.**

**BETWEEN:**

**RUBY-ANN RUFFOLO**

**Appellant**

**and**

**FRASER VALLEY INSTITUTION FOR  
WOMEN**

**Respondent**

Heard at Vancouver, British Columbia, on March 16, 2016.  
Judgment delivered from the Bench at Vancouver, British Columbia, on March 16, 2016.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**NEAR J.A.**

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20160316**

**Docket: A-42-15**

**Citation: 2016 FCA 91**

**CORAM: RYER J.A.  
NEAR J.A.  
BOIVIN J.A.**

**BETWEEN:**

**RUBY-ANN RUFFOLO**

**Appellant**

**and**

**FRASER VALLEY INSTITUTION FOR  
WOMEN**

**Respondent**

**REASONS FOR JUDGMENT OF THE COURT**

**(Delivered from the Bench at Vancouver, British Columbia, on March 16, 2016).**

**NEAR J.A.**

[1] This is an appeal from an order of Justice James O'Reilly of the Federal Court (the "Judge"), dated November 4, 2014 in Docket 14-T-28, dismissing a motion brought by Ms. Ruby-Ann Ruffolo seeking a second extension of time to file an application for judicial review of a decision of the Acting Senior Deputy Commissioner of Correctional Service Canada, dated January 17, 2014 (the "Grievance Decision"), which denied a grievance that Ms. Ruffolo

filed pursuant to the *Corrections and Conditional Release Act*, S.C. 1992, c. 20 and the *Corrections and Conditional Release Regulations*, S.O.R./92-620.

[2] Ms. Ruffolo missed the March 21, 2014 deadline for filing an application for judicial review of the Grievance Decision. She brought an initial motion for an extension of time to file that application and also for an order appointing counsel to represent her and for a waiver of registry filing fees. By order dated May 22, 2014, the Judge granted the extension of time, allowing Ms. Ruffolo until June 23, 2014 to file her application. He denied her requests for the appointment of counsel and for a waiver of filing fees.

[3] In granting the May 22, 2014 extension order, the Judge determined that Ms. Ruffolo's application had merit, that she had a continuing intention to pursue the application, that she had a reasonable explanation for the delay and that the respondent would not be prejudiced by the delay.

[4] Ms. Ruffolo attempted to file the application for judicial review prior to the June 23, 2014 deadline but was unsuccessful because her notice of application did not comply with the *Federal Courts Rules*, S.O.R./98-106 and the registry refused to accept it for filing. An application for reconsideration of the Judge's denial of Ms. Ruffolo's request for a waiver of filing fees was also rejected by the registry because it was presented to the registry after the expiry of the time period prescribed in Rule 397 of the *Federal Courts Rules*.

[5] On August 19, 2014, Ms. Ruffolo brought a second motion for another order extending the time further to file her judicial review application, and for an order extending the time to file her reconsideration motion and an order reconsidering her request for a waiver of filing fees.

[6] The Judge rejected the application for another extension of time. He observed that the justification had been "scant" for Ms. Ruffolo's motion that gave rise to the May 22, 2014 order and that he was unpersuaded that Ms. Ruffolo had provided a satisfactory explanation for her failure to meet the June 23, 2014 deadline, as well as her delay in bringing the motion so long after the June 23, 2014 deadline had expired. As a result, he denied Ms. Ruffolo's request for a second extension of time and went on to conclude that this denial made it unnecessary for him to consider the additional relief that Ms. Ruffolo had requested.

[7] In appellate review of a discretionary decision on the part of a Federal Court Judge to decline a request for an extension of time to file an application for judicial review, the reviewing Court must show considerable deference to the decision under review.

[8] In the present circumstances, Ms. Ruffolo is essentially asking this Court to reweigh the evidence that was presented to the Judge. This is not our function. In exercising his discretion to decline the motion, the Judge found that Ms. Ruffolo had offered no satisfactory explanation for her failure to file the notice of application within the time stipulated by his prior order. Whether or not we would have reached the same conclusion is not the issue. Rather, the issue is whether or not his conclusion was open to him based upon the record before him. In our view, it was.

[9] Ms. Ruffolo has attempted to provide additional evidence and explanations for the delay in filing her application for judicial review of the Grievance Decision in her materials filed on this appeal. The introduction of new evidence on appeal is impermissible in the absence of an order from the Court, which was not requested by Ms. Ruffolo prior to the hearing. Without such an order, this Court is restricted to a consideration of the record that was before the Judge and, as noted above, we are of the view that the record before him was sufficient to justify his conclusion that Ms. Ruffolo had failed to provide a reasonable explanation for the delay in filing her application.

[10] For these reasons, we are not persuaded that the Judge made any reviewable error in denying Ms. Ruffolo's motion for a second extension of time to file her judicial review application. Similarly, we are of the view that the Judge correctly declined to consider the additional relief that Ms. Ruffolo had requested. Accordingly, the appeal will be dismissed with all inclusive costs in the amount of \$50.00.

"D.G. Near"

---

J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-42-15

**(APPEAL FROM A DECISION OF JUSTICE JAMES O'REILLY OF THE FEDERAL COURT, DATED NOVEMBER 4, 2014, DOCKET NO. (14-T-28))**

**STYLE OF CAUSE:** RUBY-ANN RUFFOLO v.  
FRASER VALLEY INSTITUTION  
FOR WOMEN

**PLACE OF HEARING:** Vancouver, British Columbia

**DATE OF HEARING:** MARCH 16, 2016

**REASONS FOR JUDGMENT OF THE COURT BY:** RYER J.A.  
NEAR J.A.  
BOIVIN J.A.

**DELIVERED FROM THE BENCH BY:** NEAR J.A.

**APPEARANCES:**

Ruby-Ann Ruffolo ON HER OWN BEHALF

Liliane Bantourakis FOR THE RESPONDENT  
Ryan Dawodharry

**SOLICITORS OF RECORD:**

William F. Pentney FOR THE RESPONDENT  
Deputy Attorney General of Canada  
Ottawa, Ontario