

Federal Court of Appeal



Cour d'appel fédérale

Date: 20130515

Docket: 13-A-14

Citation: 2013 FCA 130

Present: EVANS J.A.

BETWEEN:

NICHOLAS CHAN

Applicant

and

**MINISTER RESPONSIBLE FOR
PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
CANADA BORDER SERVICES AGENCY**

Respondents

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on May 15, 2013.

REASONS FOR ORDER BY:

EVANS J.A.

Federal Court of Appeal



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REASONS FOR ORDER

[1] This is a motion by Nicholas Chan pursuant to rules 8 and 369 of the *Federal Courts Rules* for an extension of time in which to appeal an Order by Justice de Montigny (Judge) of the Federal Court, dated January 8, 2013. The motion arises from Mr Chan's application for judicial review of a decision by the Respondents regarding a contravention of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17.

[2] In the Order that Mr Chan now seeks to appeal to this Court after the expiry of the limitation period, the Judge dismissed Mr Chan's motion for an extension of time to appeal an Order of Prothonotary Lafrenière, dated October 24, 2013, dismissing Mr Chan's application for judicial review for delay.

[3] The Prothonotary was not persuaded that the representations made by Mr Chan in response to a Notice of Status Review issued on August 1, 2012 justified his delay in proceeding with the application. The Prothonotary noted, in particular, the substantial delays that had already occurred and the absence of any communication from Mr Chan over a period of six months.

[4] In his reasons for dismissing Mr Chan's motion appealing from the Prothonotary's Order, the Judge noted that the discretion to grant an extension of time under rule 8 must be exercised in light of the following criteria identified by this Court in *Canada (Attorney General) v. Hennelly*, [1999] F.C.J. No. 846, dated June 2, 1999 (*Hennelly*): (1) a continuing intention to pursue the application; (2) that the application has some merit; (3) that no prejudice to the respondent arises from the delay; and (4) that a reasonable explanation for the delay exists.

[5] The Court's application of these criteria should be guided by a consideration of whether justice will be done between the parties by granting or refusing the requested extension of time: *Canada (Attorney General) v. Pentney*, [2008] 4 F.C.R. 265 (F.C.) at paras. 31 and following.

[6] The period for serving and filing a Notice of Appeal from the Judge's Order expired on February 8, 2013. The Respondents first learned of Mr Chan's intention to appeal 17 days later, on February 25, when he brought the present motion for an extension of time.

[7] I am not persuaded on the basis of the representations made by counsel on behalf of Mr Chan that the *Hennelly* criteria are satisfied or, more generally, that justice will be served by granting the extension of time requested. Two factors in particular militate against granting the extension.

[8] First, in addressing the issue of the merit of the underlying application for judicial review, Mr Chan states that he raised a serious issue (breach of procedural fairness) in the Notice of Application for Judicial Review. However, Mr Chan has provided no subsequent material that would enable an assessment to be made of whether this application has any merit.

[9] In any event, since Mr Chan is seeking an extension of time in which to appeal the Order of the Judge, the relevant question is whether he has established that his appeal from that Order has merit. I am not satisfied that it has: Mr Chan's written representations are silent on this issue; on an appeal from a discretionary interlocutory Order, this Court normally applies a deferential standard of review; and the Judge held that Mr Chan had provided no basis for finding any merit in his appeal from the Prothonotary's decision to dismiss the application for judicial review for delay.

[10] Second, both the Prothonotary and the Judge noted that the history of delay in this matter indicated a lack of an intention by Mr Chan to proceed with his application. As far as the

delay in his filing the present appeal to this Court is concerned, it is not clear from the evidence that Mr Chan was, as he alleged, outside Canada for the whole period between the date of the Judge's Order, January 8, 2013, and February 8, 2013, when the time for filing a Notice of Appeal expired. Moreover, there is no satisfactory explanation of the further 17 days' delay from February 8 to February 25, when the Respondents received notice of Mr Chan's intention to appeal.

[11] In these circumstances, I am not persuaded that justice will be served by granting the extension of time now sought by Mr Chan. Accordingly, the motion will be dismissed.

“John M. Evans”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: 13-A-14

STYLE OF CAUSE: Nicholas Chan v. Minister responsible
for Public Safety and Emergency
Preparedness Canada Border Services
Agency

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY: EVANS J.A.

DATED: May 15, 2013

WRITTEN REPRESENTATIONS BY:

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FOR THE APPLICANT

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