Tyler v. Canada (Attorney General), 2025 FC 1457

Federal Court | Cour fédérale

Date: 20250903

Docket: T-1808-23

Citation: 2025 FC 1457

Edmonton, Alberta, September 3, 2025

PRESENT: Madam Associate Judge Catherine A. Coughlan

BETWEEN:

KAREN TYLER

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

ORDER AND REASONS

[1] Karen Tyler, the Applicant, brings this motion pursuant to Rules 8 and 369 of the *Federal Courts Rules,* SOR/98-106 [*Rules*], for an order granting her a further extension of time of four days from the date of this Order to file her Applicant's Record.

[2] The Respondent, Attorney General of Canada, opposes the motion on the basis that the Applicant has not met the test for an extension of time. Rather, the Respondent says that the Applicant has had over 16 months to serve and file a "complete applicant's record and has repeatedly failed to meet deadlines set by this Court." Further, the Respondent argues that while

it has shown considerable flexibility by consenting to numerous previous extensions, the ongoing delay has become unreasonable and prejudicial.

[3] For the reasons that follow, I am dismissing the motion. Pursuant to Rule 168, the underlying application is dismissed.

I. Background

[4] The Applicant challenges a redetermination decision (Decision) of the Canadian Human Rights Commission (the Commission) issued on July 26, 2023. In its Decision, the Commission determined that it would investigate certain portions of the Applicant's complaint regarding her then employer, the Canada Revenue Agency (CRA), but declined to deal with other allegations. Relying on paragraph 41(1)(d) of the *Canadian Human Rights Act*, RSC 1985, c H-6, the Commission concluded that the remaining allegations (those it chose not to investigate further) had already been addressed in the CRA's internal Harassment Investigation.

[5] On August 30, 2023, the Applicant filed a Notice of Application challenging the Commission's Decision not to investigate a portion of her complaint.

[6] On September 17, 2024, Justice Sadrehashemi and I were appointed to co-case manage the within application as the Applicant had not yet filed a Requisition for Hearing nor had she filed her Applicant's Record.

[7] It is noteworthy that this is the Applicant's second judicial review arising from the same underlying complaint against CRA. On April 16, 2016, the Applicant filed a human rights complaint with the Commission alleging that CRA had discriminated against her by terminating her employment and failing to provide her with a harassment-free work environment. In November 2015, the Applicant also initiated a complaint through CRA's internal process regarding the same allegations.

[8] On December 1, 2021, the Commission issued a decision declining to deal with the Applicant's complaints. Thereafter, the Applicant sought judicial review of the decision. In *Tyler v Canada (Attorney General*, 2023 FC 257, Madam Justice Pallotta allowed the application and remitted the matter back to the Commission for redetermination.

[9] Following redetermination of the complaint, the Commission issued the Decision that is now the subject of the within application. On November 27, 2023, at the Applicant's request, the Commission suspended its investigation into the Applicant's complaint pending the outcome of the judicial review application. In the result, that portion of the complaint the Commission was prepared to investigate remains in abeyance. The significance of this becomes manifest when addressing the Respondent's assertion of prejudice arising from a further extension of time.

II. Procedural History

[10] In response to the motion, the Respondent filed an extensive motion record including the Affidavit of Samantha Novak affirmed on August 13, 2025 (Novak Affidavit). Ms. Novak is a legal assistant employed with the Department of Justice at Winnipeg, Manitoba. In her affidavit,

Ms. Novak deposes to the history of delays in this proceeding related to the Applicant's service of her Rule 306 affidavits and the service and filing of the Applicant's Record.

[11] Ms. Novak's evidence reveals that the Applicant sought numerous extensions of time largely with the Respondent's consent. With respect to her Applicant's Record, which is all that is at issue on this motion, the Applicant's original deadline to serve and file was March 19, 2024. In a one-year period between March 19, 2024 and March 28, 2025, the Respondent consented to six additional extensions of time as follows: April 2, 2024, May 10, 2024, May 31, 2024, February 21, 2025, March 14, 2024, and March 28, 2025. The Respondent facilitated each of the extensions of time on behalf of the Applicant by way of informal motions supported by draft orders.

[12] The evidence further reveals that various reasons animated the Applicant's multiple requests for extensions of time. Exhibited to the Novak Affidavit are numerous email communications from the Applicant to counsel for the Respondent in which the Applicant describes, in extensive detail, the various circumstances necessitating further time to complete her Applicant's Record. They include the Applicant's physical and mental health issues, family health issues, pet illnesses, employment issues, financial and technology-related challenges. In each instance, the Respondent consented to the extension of time request and graciously took steps to obtain the extension from the Court.

[13] However, with respect to the informal request for an extension of time made on March 14, 2025, while the Respondent consented to the extension, it advised the Court and the

Applicant that it would be the final extension to which they would consent. As a result, I granted the Applicant an extension of time to March 28, 2025 to file her Applicant's Record. That deadline was made on a peremptory basis providing that "there shall be no further extensions of time for the service and filing of the Applicant's Record." That provision notwithstanding, the Applicant sought a further extension, informally, by letter without the Respondent's consent. The request was denied. When the Applicant failed to meet the peremptory deadline, the application was dismissed for failure to comply with a court order and for delay.

[14] The Applicant filed a Rule 51 appeal within the 10-day deadline provided by the *Rules*. The Respondent took no position on the appeal. In her May 27, 2025 Order allowing the appeal, Justice Sadrehashemi found I had made palpable and overriding errors by failing to state the reason for the Applicant's request for a further extension of time and for failing to address the Applicant's request for a case management conference. Justice Sadrehashemi granted the Applicant an extension of time to June 11, 2025, to serve and file her Applicant's Record. She cautioned the Applicant that if she failed to file by the requisite date, her application may be dismissed.

[15] Through an administrative error, the May 27, 2025 Order was not communicated to the Applicant for some eight days. In consequence, Justice Sadrehashemi issued a Direction dated June 18, 2025, providing the Applicant until June 27, 2025, to serve and file her Applicant's Record. Justice Sadrehashemi observed that the Applicant's Record tendered to the Registry, on June 12, 2025, contained irregularities which would have to be corrected. Again, the Court

cautioned the Applicant that failure to meet the deadline "may result in the Court dismissing the application in its entirety."

[16] The evidentiary record also discloses that the Applicant contacted the Court Registry in or around June 11, 2025, for assistance to file her Applicant's Record. A Senior Registry Officer provided the Applicant with guidance as to the specific contents required for inclusion in her Record and offered to assist the Applicant to put her record together. The Applicant was provided with a SharePoint Link to upload her Applicant's Record. Nothing was ever received via the SharePoint Link.

[17] On June 12, 2025, by way of an email, the Senior Registry Officer advised the Applicant that they had done everything they could to assist her but as no documents were received from her, she would need to file a motion for an extension of time.

[18] On June 27, 2025, the Respondent received four documents from the Applicant including the Applicant's Record cover page and table of contents; two affidavits of the Applicant; a document titled "History and Timelines of Events Affecting Application"; and a document titled "t1808-23last." This latter document appears to have been interpreted by Respondent's counsel as the Applicant's Memorandum of Fact and Law (MOFL).

[19] On the same date, the Applicant uploaded several documents to a SharePoint Link provided by the Court. The Court Registry was unable to file the documents as they did not comply with Rule 309.

[20] On July 2, 2025, the Applicant advised Respondent’s counsel by email that the document titled “t1803-23last” was not a proper file, and the Respondent should “not spend any effort trying to match references to the affidavits as it was not the correct file.”

[21] On July 9, 2025, the Applicant wrote to the Court advising that an incorrect version of her MOFL had been filed, and she requested an accommodation, due her disability, to allow her to file her Applicant’s Record. Her letter advised she could have the Applicant’s Record filed before the weekend; that is, within three days.

[22] On July 22, 2025, counsel for the Respondent wrote the Court advising that based on the extensive procedural history of this matter, they would oppose the request.

[23] On July 29, 2025, I issued a Direction permitting the Applicant to serve and file a motion for an extension of time by no later than August 5, 2025. The Applicant filed the within motion.

III. Preliminary Issue

[24] The Respondent argues that the Applicant’s written representations rely on four case citations to jurisprudence and propositions of law that do not exist:

a. *Gallant v Canada (Attorney General*), 2012 FC 536 — Included for the proposition that this Court “granted an extension to an applicant receiving CPPD, recognizing that mental illness can constitute exceptional circumstances under the Rules”;

b. *Moussaoui v Canada (Citizenship and Immigration*), 2016 FC 135 — Included for the proposition that “delay due to psychological illness was excused because “strict compliance with procedural rules should not override the right to a fair hearing””;

c. *Fontanilla v Canada*, 2005 FC 1014 — Included for the proposition that "an extension was granted due to disability and self-representation, with the Court holding that "the overriding consideration is whether the interest of justice is best served by allowing the matter to proceed""; and

d. *Fournier v Canada (Attorney General)*, 2016 FC 555 — Included for the proposition that "the Court stated that procedural rules must not become "a barrier to constitutional access to justice," especially for disabled persons."

[25] The Respondent argues that the inclusion of these cases is "at best, erroneous, and at worst, deliberately misleading." Citing *Zhang v Chen*, 2024 BCSC 285 at para 2, the Respondent says that regardless of the Applicant's intent, such conduct is an abuse of process and tantamount to making a false statement to the Court. The Respondent requests that the erroneous citations and the propositions for which they purport to stand be disregarded by the Court.

[26] In her Reply, the Applicant claims that she did not use an artificial intelligence product to assist her in the preparation of her written representations. She says the erroneous case references resulted from "cutting and pasting" from a draft document to meet the filing deadline. The Applicant offered her apologies for the "oversight."

[27] In respect of any potential adverse costs award, the Applicant argues that her erroneous inclusion of the authorities is not an abuse of process as she made good-faith efforts to research and advance her case. The inadvertence arose, she says, because she is a layperson trying to navigate complex jurisprudence.

[28] With respect to her Reply representations, however, the Applicant declared her use of ChatGPT.

[29] In my view, the Applicant's explanation for the inclusion of erroneous case citations is not credible. Having undertaken my own search for the case authorities, I am satisfied that they do not exist. I fail to see how "cutting and pasting" can conjure citations that simply do not exist. I am satisfied that the Applicant used an artificial intelligence product without making the appropriate declaration as required by this Court.

[30] That, however, does not end the matter. In my review of the Applicant's Reply representations, further hallucinated citations have come to light, including *Poirier v Canada (Attorney General*), 2019 FC 739 and *Bergmann v Canada (Attorney General)*, 2020 FC 1111.

[31] While the Applicant did disclose the use of an artificial intelligence product for the preparation of her Reply, that does not absolve her of her duty to the Court to verify the accuracy and reliability of the legal authorities upon which she relies: *NCR v KKB*, 2025 ABKB 417 at paras 109-110. Here, the Applicant failed in her duty to the Court.

[32] I agree with the Respondent that the Applicant's inclusion of non-existent and unreliable case authorities deprives the Respondent of the opportunity to respond efficiently to the Applicant's submissions. To that I would add that it also burdens the Court with the responsibility to check each citation to ensure its accuracy. The Court simply does not have the resources to undertake that responsibility. The Applicant's 25-page Reply contains numerous

case references. As this Court noted in *Hussein v Canada (Immigration, Refugees and Citizenship)*, 2025 FC 1060 at para 39 (CanLII), the Court should not be burdened with "hunting for cases which do not exist or considering erroneous propositions of law."

[33] It also goes without saying that reliance on fabricated jurisprudence and the erroneous propositions of law for which they purportedly stand, merely serves to undermine the Applicant's arguments.

[34] Accordingly, I am satisfied that the erroneous references as well as the propositions for which they purport to stand, found at paragraph 24 of the Applicant's written representations, should be disregarded.

IV. <u>Legal principles</u>

[35] The power to extend time is a discretionary one. The parties agree that the proper test when considering a request for an extension of time is whether the moving party has demonstrated:

(a) a continuing intention to pursue the application;

(b) the application has some merit;

(c) no prejudice to the respondent arises from the delay; and

(d) a reasonable explanation for the delay exists: *Canada (Attorney General) v Hennelly* [1999], 244 NR 399 (FCA) at para 3 [*Hennelly*]; *Canada (Attorney General) v Larkman*, 2012 FCA 204 at para 61 [*Larkman*]; *Oleynik v Canada (Attorney General*), 2023 FCA 162 at para 36.

[36] An applicant need not satisfy all the factors to be successful in his or her application for an extension of time. The overriding consideration for the Court in an application to extend time is to ensure that justice is done between the parties: *Canada (Minister of Human Resources Development) v Hogervorst*, 2007 FCA 41 at para 33; *Akanda Innovation Inc v The Queen*, 2018 FCA 200 at paras 19 and 39; *Whitefish Lake First Nation v Grey*, 2019 FCA 275 at para 3.

[37] However, the party seeking an extension of time bears the burden of establishing the elements necessary for an extension of time. Generally, this must be done by affidavit evidence sworn by the moving party itself that can be subject to cross-examination: *Virdi v Canada (Minister of National Revenue)*, 2006 FCA 38 at para 2.

[38] In this case, the Applicant relies on her own affidavit, sworn (or affirmed) on August 5, 2025. I pause to note that a review of the affidavit reveals that some of the exhibits do not have a proper jurat and others are marked August 1, 2025, four days before the affidavit was sworn/affirmed. Notwithstanding the obvious impropriety of appending documents to the affidavit after it is sworn, for the purposes of this motion only, I will weigh the evidence as though the affidavit was properly sworn and the exhibits properly commissioned.

V. Analysis

[39] While my analysis will address each of the *Hennelly/Larkman* factors, the controlling issues on this motion are the Applicant's justification for the delay and the potential prejudice to the Respondent.

A. *Is there a reasonable explanation for the delay?*

[40] Numerous decisions of this Court have held that only an unanticipated event that is beyond the control of the applicant will constitute a reasonable explanation for delay justifying an extension of time: *Nwammadu v Canada (Minister of Citizenship and Immigration)*, 2005 FC 107 at para 10; *Kiflom v Canada (Citizenship and Immigration)*, 2020 FC 205 at para 37; *Singh v Canada (Citizenship and Immigration)*, 2021 FC 93 at para 21; *Dabiri Sharifabad v Canada (Citizenship and Immigration)*, 2024 FC 740 at para 33 (CanLII).

[41] In her supporting affidavit, the Applicant chronicles her difficulties in trying to prepare, serve and file her Applicant's Record. She deposes that since 2021, she has received Canada Pension Plan Disability benefits because of her health conditions. More specifically, because of her mental and physical health problems, her ability to plan, organize and execute tasks is restricted. I note that the Applicant's mental and physical health conditions are consequential and are documented in the evidence including through letters from Dr. Parag Gajer MD and Belynda Salter-Oliver, MD CCFP.

[42] In addition to her medical issues, the Applicant deposes to various other problems that hindered her filing her Applicant's Record including: (i) inability to obtain legal assistance; (ii) technical problems related to her use of a computer; (iii) difficulties accessing medications necessary to treat her medical condition; (iv) lack of access to her computer for a period of time in order to assist her daughter; and (v) problems encountered in trying to upload her record to the Registry despite considerable assistance from Registry Officers.

[43] Notwithstanding the Applicant’s evidence, I am not satisfied that the evidentiary record is adequate to justify the numerous and lengthy delays. As the Respondent rightly notes, while the Applicant has contended with numerous and serious conditions, she has not provided sufficient evidence nor explained how these conditions and challenges have prevented her from serving and filing her Applicant’s Record throughout the 16-month period of delay. Further, much of the evidence does not meet the high threshold of unanticipated events that are beyond the Applicant’s control.

[44] For example, this Court has found that difficulty using a computer, or other technological resources is insufficient to amount to reasonable delay: *MacDonald v Canada (Attorney General),* 2017 FC 2 at para 32, citing *Cotirta v Missinnipi Airway*, 2012 FC 1262 at para 13. This Court has also found a diagnosis alone does not establish that a party is incapable of taking the necessary procedural steps to move a matter forward: *Tanczos v Canada (Attorney General),* 2024 FC 232 at para 5 (CanLII). Here, the Applicant’s evidence merely outlines various conditions and limitations but fails to address the fact that she has had 16 months to perfect her Applicant’s Record.

[45] Further, the Applicant fails to grapple with the fact that Justice Sadrehashemi cautioned her twice to prepare and file a compliant record on time or risk having her application dismissed entirely. The evidence discloses that the Applicant waited until the June 27, 2025 filing deadline to upload portions of an incomplete record. At that point, the Applicant was well aware that her June 11, 2025 attempt to upload to a SharePoint link was unsuccessful. No explanation is

provided as to why the Applicant did not act with greater alacrity to ensure she met the Court ordered deadline.

[46] Equally troubling is the fact that as late as June 27, 2025, the Applicant's MOFL remained incomplete. On this motion, filed on August 5, 2025, the Applicant continues to seek another four days to complete it. The Applicant provides no explanation for why the MOFL is not yet complete nor why it was not tendered as part of this motion.

[47] It is noteworthy that while the Applicant has not completed her Applicant's Record in accordance with the Court's Orders and Direction, she has completed other motion records on a timely, short deadline basis, including the Rule 51 motion and the within motion.

[48] While the Court has sympathy for the Applicant and recognizes that it is challenging for self-represented litigants to navigate the judicial system, it remains that the Applicant bears the burden of moving her application forward; it is not a shared burden. As this Court has previously observed, "A degree of flexibility is needed to allow parties to represent themselves and to have access to the justice system; but flexibility cannot trump the ultimate demands of justice and fairness for all parties, and that is what the Rules and the principles set out in the cases seek to ensure": *Fitzpatrick v Codiac Regional RCMP Force, District 12*, 2019 FC 1040 (CanLII). The Applicant's personal circumstances, while challenging and genuine, fail to justify the continuing delay.

[49] For the reasons set out, the Applicant has failed to satisfy this factor of the *Hennelly*/*Larkman* test.

B. *Will the Respondent suffer prejudice?*

[50] The Respondent argues that the continuous delays cause uncertainty in the judicial process and stalls the Commission's investigation into the remainder of the Applicant's complaints. With respect to the former concern, the Respondent notes that whether the Court upholds or overturns the Commission's Decision, the public interest supports the Respondent's entitlement to certainty and finality. Finality, in the context of challenges to administrative decisions requires adherence to the short times limits: *Canada v Grenier*, 2005 FCA 348 at paras 27-29. I agree.

[51] With respect to the latter concern, the Respondent notes that the issues giving rise to the Applicant's complaints occurred over a decade ago and at the Applicant's request, the Commission's investigation is stayed pending the outcome of the application. The Respondent rightly observes that if this matter is ever heard by the Human Rights Tribunal, the delays occasioned to date will impact its ability to respond.

[52] I am satisfied that in circumstances where there is undue or inordinate delay, which is the case here, prejudice may be inferred: *Boulachanis v Canada*, 2024 FC 1845 at paras 67-68.

[53] Accordingly, I am satisfied that further delay will cause prejudice to the Respondent and, thus, this factor does not weigh in the Applicant's favour.

C. ***Is there merit to the underlying application?***

[54] The Respondent made lengthy submissions on the underlying merits of the application. In my view, however, a motion to extend time is procedural. On such a motion, the test to be met asks whether there is merit to the underlying application and not whether the Applicant will be successful. Generally, it is sufficient that the Applicant's case is not utterly devoid of merit or put another way, it is not frivolous or vexatious. This can often be discerned by a review of the proposed applicant's record. Here, the Applicant did not provide the Court with a proposed record but did provide the document sent to the Respondent on June 27, 2025, and marked as Exhibit "M" to the Applicant's affidavit in support of this motion. That document, while prolix and lacking the formal requirements of Rule 309, purports to challenge the Commission's decision — to that extent, it is not frivolous or vexatious.

[55] Accordingly, this factor weighs in favour of the Applicant.

D. ***Has the Applicant demonstrated a continuing intention?***

[56] The Respondent argues that while the Applicant took certain steps in her application, the "extended and repeated delays demonstrate an absence of a continuing intention to diligently pursue the matter." I tend to agree with the Respondent.

[57] I am particularly troubled by the Applicant's failure to heed the cautions provided by Justice Sadrehashemi's May 27, 2025 Order, and June 18, 2025 Direction. While the Applicant asserts that this application is of vital importance to her, her conduct in moving it forward does

not align with that assertion. As noted earlier, she was able to serve and file other motion records in this matter without apparent difficulty.

[58] I note too, that her Applicant's Record, not just the MOFL, remains outstanding. Despite being given explicit instructions by a Senior Registry Officer on June 11, 2025, regarding the contents for an applicant's record, the Applicant has yet to furnish a document that accords with Rule 309.

[59] In the result, I cannot find this factor weighs in her favour.

E. *Interests of Justice*

[60] Given my conclusions above, as the Applicant has failed to meet three of the four *Hennelly/Larkman* factors, I must assess whether the interests of justice are served by granting her an extension of time. Interests of justice considerations are broad and discretionary and can vary according to the circumstances of the case. They permit the Court to consider and "weigh all of the circumstances of a case — not just from the vantage point of the applicant's interests": *Ohanyan v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1078 at para 13.

[61] That said, as Justice Gascon has observed, the interests of justice do not exist in a vacuum, and they cannot be invoked to absolve applicants of their duty to meet their burden of proof: *Clinique Sherbrooke Inc v Canada*, 2023 FC 1755 at para 37.

[62] Having weighed the factors set out in *Hennelly/Larkman*, and considering the circumstances of this case, I am not satisfied that the Applicant has discharged her burden of proof to demonstrate that it is in the interests of justice to grant an extension of time. In reaching this conclusion, I give decisive weight to the absence of a reasonable justification for the delay and the existence of prejudice.

[63] In the result, the Applicant's motion is dismissed. In the absence of an Applicant's Record, the application cannot continue. Accordingly, pursuant to Rule 168 of the *Rules*, I am dismissing the application.

VI. Costs

[64] The Respondent seeks its costs in the amount of $1,260.00. In my view, the Respondent has been put to considerable expense to respond to the Applicant's motion. Further, given the undeclared use of artificial intelligence in preparing her motion record and its inclusion of hallucinated case authorities, additional work was required to ensure these erroneous citations, and the propositions of law were brought to the Court's attention. Given these circumstances, the Respondent's costs request is eminently reasonable.

ORDER in T-1808-23

THIS COURT ORDERS that:

1. The motion is dismissed.

2. The Respondent shall have costs fixed in the lump sum of $1,260.00, inclusive of taxes and disbursements.

"Catherine A. Coughlan"

Associate Judge

<u>FEDERAL COURT</u>

<u>SOLICITORS OF RECORD</u>

DOCKET:	T-1808-23
STYLE OF CAUSE:	KAREN TYLER v ATTORNEY GENERAL OF CANADA

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

ORDER AND REASONS:	COUGHLAN A.J.
DATED:	SEPTEMBER 3, 2025

<u>WRITTEN REPRESENTATIONS BY</u>:

Karen Tyler	FOR THE APPLICANT (SELF-REPRESENTED)
Christine Williams	FOR THE RESPONDENT

<u>SOLICITORS OF RECORD</u>:

Attorney General of Canada Winnipeg, Manitoba	FOR THE RESPONDENT