

Federal Court of Appeal



Cour d'appel fédérale

Date: 20260209

Docket: A-243-24

Citation: 2026 FCA 26

**CORAM: DE MONTIGNY C.J.
LEBLANC J.A.
BIRINGER J.A.**

BETWEEN:

COREY SCOTT TYMCHYSHYN

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Ottawa, Ontario, on February 9, 2026.
Judgment delivered from the Bench at Ottawa, Ontario, on February 9, 2026.

REASONS FOR JUDGMENT OF THE COURT BY:

BIRINGER J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Ottawa, Ontario, on February 9, 2026).

BIRINGER J.A.

[1] This is an appeal of an order of the Federal Court dismissing the appellant's request for an extension of time within which to file a notice of application for judicial review: *Tymchyshyn v. Attorney General of Canada* (12 July 2024), Toronto 24-T-64 (F.C.).

[2] The deadline for filing an application for judicial review is 30 days after a decision has been communicated to the affected party: *Federal Courts Act*, R.S.C. 1985, c. F-7, s. 18.1(2). On May 16, 2024, the appellant sought an extension of time to apply for judicial review of two grievance decisions of the Correctional Service of Canada (CSC). The decisions had been communicated to the appellant on January 5, 2023 and July 28, 2023.

[3] To obtain an extension of time, an applicant must establish: (1) a continuing intention to pursue the application; (2) that the application has merit; (3) that no prejudice arises from the delay; and (4) that a reasonable explanation for the delay exists: *Canada (Attorney General) v. Hennelly*, 1999 CanLII 8190 at para. 3 (F.C.A.) [*Hennelly*]; *Canada (Attorney General) v. Larkman*, 2012 FCA 204. This determination turns on the facts of each particular case.

[4] The Federal Court concluded that the appellant had not sufficiently established any of the *Hennelly* factors. Acknowledging the appellant's difficulty in retaining counsel and lack of funds, the motion judge found that the appellant's explanations did not adequately justify the delay in filing an application for judicial review. The request for an extension of time was dismissed.

[5] Whether to grant an extension of time is a discretionary decision. A discretionary decision is subject to considerable deference on appeal. Unless an extricable question of law can be identified, which is reviewed on a standard of correctness, the Federal Court's order is reviewed based on a standard of "palpable and overriding error": *Qualizza v. Canada*, 2025 FCA 222 at para. 9; *Hospira Healthcare Corporation v. Kennedy Institute of Rheumatology*, 2016

FCA 215 at para. 79; *Canada (Transportation Safety Board) v. Carroll Byrne*, 2022 SCC 48 at para 41. An error is palpable when it is obvious. An error is overriding when it affects the core of the outcome of the case: *Benhaim v. St-Germain*, 2016 SCC 48 at para. 38, citing *Canada v. South Yukon Forest Corporation*, 2012 FCA 165 at para. 46. This is a high threshold that is not easily met.

[6] The Federal Court's order addressed the appellant's request for an extension of time. The appellant's written submissions in this Court miss the mark as they deal almost exclusively with the merits of the proposed judicial review of the CSC decisions. That matter is not before us. Neither the appellant's written submissions nor the oral submissions made by the appellant at the hearing point to any error in the motion judge's reasons that would justify interfering with the Federal Court's order.

[7] Regarding a preliminary matter, the appellant claims procedural unfairness for having been denied the opportunity to include certain evidence in the appeal book which was not before the Federal Court. We disagree. The Court has no information about this evidence and there are strict requirements for admitting fresh evidence on appeal: *Palmer v. The Queen*, [1980] 1 S.C.R. 759 (S.C.C.); *Barendregt v. Greblinas*, 2022 SCC 22. On January 22, 2025, the Court directed the appellant to file a motion if he sought to add fresh evidence to the appeal book: *Tymchyshyn v. Attorney General of Canada* (22 January 2025), Ottawa A-243-24 (F.C.A.). While the appellant attempted to unilaterally file an appeal book, including proposed new evidence, that appeal book was not accepted for filing and no motion for new evidence was brought. There has been no procedural unfairness.

[8] Turning to the appellant's arguments on the extension of time, the appellant submits that the motion judge erred because the criteria in *Hennelly* are satisfied. He says that he demonstrated a clear intention to pursue the application for judicial review, but that his lawyers missed the filing deadline, providing a reasonable basis for the delay. He also submits that his claim is meritorious and that no prejudice resulted from the delay.

[9] These arguments were all presented to the motion judge and were rejected. The motion judge correctly relied on the *Hennelly* test applicable to extensions of time and applied the test to the facts. An appeal from the Federal Court's discretionary order is not a redo. Absent a reviewable error, this Court does not reevaluate the evidence or reweigh the motion judge's application of the *Hennelly* factors. We see no error in the motion judge's analysis, including on the absence of a reasonable explanation for the delay and that there was little evidence to substantiate the appellant's continuing intention to pursue the application. The motion judge's order must stand.

[10] For these reasons, the appeal will be dismissed. Although the respondent asks for costs, none shall be awarded.

“Monica Biringer”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-243-24

STYLE OF CAUSE: COREY SCOTT TYMCHYSHYN
v. ATTORNEY GENERAL OF
CANADA

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: FEBRUARY 9, 2026

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BIRINGER J.A.

DELIVERED FROM THE BENCH BY: BIRINGER J.A.

APPEARANCES:

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