COURT OF APPEAL FOR ONTARIO

CITATION: Longarini v. Rankin, 2025 ONCA 756
DATE: 20251105
DOCKET: M56380 & M56381 & COA-25-OM-0358

Thorburn J.A. (Motion Judge)

BETWEEN

Tiffany Longarini

Applicant
(Moving Party/Responding Party by way of cross-motions)

and

Evan Rankin of Singleton Urquhart Reynolds Vogel LLP, Matthew Marshall and Thomas David Marshall of Marshall Law Group, and Lauren Wilhelm of Dean D. Paquette Professional Corporation

Respondents
(Responding Parties/Moving Parties by way of cross-motions)

Tiffany Longarini, acting in person

Evan Rankin and Jonathon Obara, for the responding parties/moving parties by way of cross-motion, Evan Rankin, Thomas David Marshall, Matthew Marshall

Liz McLellan, for the responding party, Lauren Wilhelm

Heard: November 4, 2025

REASONS FOR DECISION

A. BACKGROUND

[1] In July 2023, the proposed appellant, Ms. Longarini, filed a criminal complaint against her former business partner ("the business partner" or "the

partner"). As a result, he was charged with three counts of sexual assault. The partner hired Ms. Wilhelm as his defence lawyer. The business partner had previously commenced an oppression application against Ms. Longarani.[1] The respondents Thomas David Marshall and Matthew Marshall (collectively, the "Marshalls") represent the business partner in that application.

[2] Ms. Longarini brought a motion to disqualify the Marshalls in respect of the business dispute. On July 26, 2024, Ms. Longarini sent an email to Evan Rankin, the lawyer appointed by LawPRO as agent to the Marshalls to argue this motion. Ms. Longarini's email reads in part, as follows:

> [O]n August 8th I will be adding Mathew Marshall, T. David Marshall and Marshall Law group to my Application with the Human Rights Tribunal of Ontario <u>for sexual harassment, discrimination and reprisal in which I am seeking 2.1 million in damages and aggravated damages</u>.
>
> …
>
> Under Rule 49 - Without prejudice I offer your client, and your client's client <u>an opportunity to settle these matters for 2.3 million dollars inclusive</u>. This offer will expire on Friday August 2, 2024 at 12:00pm. This amount I will include my retroactive wages, legal fees, shares in the company for a valuation of 750K. <u>In exchange I will drop ALL the legal matters in their entirety, including the HRTO application, criminal charges and provide a full and final release to all the parties</u> including Joanee Plaensken and Shaunna Mcphail. In exchange you/your clients will drop all the ALL legal actions against me and

[1] The former business partner also commenced a defamation action against Ms. Longarini

> provide me indemnity from the business, cancel the life insurance policy my abuser has on me, agree not to engage any more, and provide full and final release.
>
> If you decline this offer I look forward to creating new legal jurisprudence in Canada with you, and making an example of you, and your clients that will set a precedent, which will protect victims of sexual violence in the workplace forever. [Emphasis added.]

[3] Mr. Rankin sent the email to Ms. Wilhelm who forwarded the email to the Crown attorney. The Crown withdrew the criminal charges against the business partner in part, due to the contents of the email.

[4] On November 8, 2024, Ms. Longarini started an action against Ms. Wilhelm, Mr. Rankin, and the Marshalls seeking $1,475,000 in damages for breach of confidence resulting from the disclosure of the email.

[5] On May 30, 2025, the motion judge struck the Amended Statement of Claim in its entirety, finding no reasonable cause of action and denying Ms. Longarini leave to amend on the basis that the Claim could not be cured by amendment. He held that:

> [I]n my view, offering to settle for millions of dollars in exchange for withdrawing criminal charges constitutes unambiguous impropriety. It may be that [Ms. Longarini] intended to say that it was [the business partner] who had to pay the money, but the payment of the money is clearly tied to the withdrawal of the spurious allegations against the Marshalls. After setting out the offer, the plaintiff writes that if the offer is not accepted she will make an example of Rankin and the Marshalls.

…

> The plaintiff clearly uses the baseless threats against Rankin and the Marshalls in the settlement email, as well as the implied threat to continue with the allegations in the criminal proceedings against [the business partner], to attempt to extract a significant amount of money from either the Marshalls or [the business partner] or both.

…

> Reading the settlement email in context and giving the words of the email their plain and ordinary meaning, it is abundantly clear that the plaintiff was offering to do something to drop the criminal sexual assault charges against [the business partner] in exchange for money.

[6] He therefore held that: (a) the settlement email was not protected by settlement privilege because it contained "egregious threats" and "unambiguous impropriety"; (b) even if it were subject to settlement privilege, the email was subject to the “full answer and defence” exception; (c) Ms. Longarini did not allege that Rankin or the Marshalls misused the email within the meaning of the test for breach of confidence; and (d) there was no compensable harm arising from the disclosure of the settlement email to the Crown. In so doing he noted that:

> It is the Crown who determines whether to continue with or withdraw charges. Further, although complainants justly have increasing rights in prosecutions of sexual offences, sexual offences are not prosecuted for the benefit of the complainants. They are prosecuted on behalf of and for the benefit of society. A complainant has no “right” to a conviction against an accused charged with a sexual offence. Therefore, a complainant cannot be harmed, in the sense contemplated by breach of

> confidence, by a withdrawal of a charge by the Crown any more than by an acquittal of the accused.

[7] Moreover, the motion judge found that there was no prospect of amending the pleading to make it viable as Ms. Longarini did not suggest there were further facts that could be pleaded and awarded the respondents costs of the motion.

B. RELIEF SOUGHT

[8] Ms. Longarini now seeks an order to extend the time to appeal the motion judge's decision and the costs order.

[9] Mr. Rankin and the Marshalls challenge Ms. Longarini's right to extend the time to appeal. Ms. Wilhelm adopts the position taken by Mr. Rankin and the Marshalls. In the event that Ms. Longarini's motion is granted, Mr. Rankin and the Marshalls seek an order for security for costs in the amount of $24,580.04, and Ms. Wilhelm seeks an order for security for costs in the amount of $12,614.19. They claim an order for security for costs is warranted as the appeal has no reasonable prospect of success, no good reason has been offered for the delay, Ms. Longarini has not provided evidence to show she owns any assets in Ontario, and she has repeatedly described the dire nature of her personal financial circumstances.

C. ANALYSIS AND CONCLUSION

[10] The test on a motion to extend time is well-settled. On a motion seeking an extension of time, the overarching principle is whether the "the justice of the case"

requires that an extension be granted: *1250264 Ontario Inc. v. Pet Valu Canada Inc.*, 2015 ONCA 5, at para. 6; *Enbridge Gas Distribution Inc. v. Froese*, 2013 ONCA 131, 114 O.R. (3d) 636, at para. 15. Each case depends on its own circumstances, but the court is to consider all relevant considerations, including:

> (a) whether the moving party formed a *bona fide* intention to appeal within the relevant time period;
>
> (b) the length of, and explanation for, the delay in filing;
>
> (c) any prejudice to the responding parties caused, perpetuated or exacerbated by the delay; and
>
> (d) the merits of the proposed appeal.

[11] Lack of merit alone may be a sufficient basis for denying an extension request: *Enbridge Gas*, at para. 16; *Laski v. Laski*, 2016 ONCA 337 at para. 37; *Wardlaw v. Wardlaw*, 2020 ONCA 286, at para. 4.

[12] For the reasons that follow, I see no merit to the proposed appeal such that the motion to extend time to appeal should be denied. The motion judge did not find any of three conjunctive elements necessary to establish a breach of confidence: see *CTT Pharmaceutical Holdings, Inc. v. Rapid Dose Therapeutics Inc.*, 2019 ONCA 1018, at para. 31. Ms. Longarini has not raised any arguable issues of reversible error in the motion judge's analysis.

[13] [13] First, the motion judge found that Ms. Longarini suffered no detriment from the use of the email. Although Ms. Longarini alleges that the harm was caused

by her business partner who "disclosed the alleged settlement-privileged communication to the Human Rights Tribunal of Ontario", she did not name her business partner as a defendant in this action. Nor is there any link between the filing of the alleged settlement communication to the Human Rights Tribunal and the withdrawal of the criminal charges as the business partner did not make the disclosure to the Human Rights Tribunal until after the criminal charges had been withdrawn.

[14] In any event, the withdrawal of criminal charges does not constitute compensable harm: *Odhavji Estate v. Woodhouse*, 2003 SCC 69, [2003] 3 S.C.R. 263, at para. 40. As such, the withdrawal of the criminal charges is not a detriment to Ms. Longarini.

[15] Second, the motion judge found that settlement privilege would not attach to the email, as the public interest in exposing the impropriety outweighs the public interest in according privilege, and therefore the information was not confidential and not communicated in confidence: see *Augier v. Vis*, 2011 ONSC 4583 at para. 18. Ms. Longarini was offering to do something to drop the criminal charges against her business partner in exchange for money, which is improper.

[16] In the alternative, the motion judge also did not misapply the “full answer and defence” exception to settlement privilege. The motion judge properly considered the law when stating that “where evidence may assist the accused in

making full answer in defence, this consideration will trump the policy consideration" which founds settlement privilege, and in quoting *R. v. Leipert*, [1997] 1 S.C.R. 281, which says, at para. 24: "[t]o the extent that rules and privileges stand in the way of an innocent person establishing his or her innocence, they must yield to the *Charter* guarantee of a fair trial."

[17] Further, in this case, the information contained in the email was possibly useful to the accused persons such that an exception to settlement privilege should be made so that the information could be disclosed to the accused, similarly to *R. v. Nestlé Canada Inc.*, 2015 ONSC 810, 124 O.R. (3d) 498.

[18] Ms. Longarini claims, as she did before the motion judge, that the settlement offer was in respect of "potential financial crimes stemming from alleged embezzlement" not the alleged sexual assault. However, what she said in the settlement offer, was that in exchange for $2.3 million, she would "drop ALL the legal matters in their entirety, <u>including the HRTO application, criminal charges</u> and provide a full and final release to all the parties". There is no reference to any financial improprieties and no criminal charges for financial crimes had been or ever were laid. As such, there is no reason to dispute the motion judge's conclusion that this argument should be rejected, and the settlement email refers to the sexual assault charges only and that the words of the offer tie the offer to the sexual assault allegations.

[19] Nor did the motion judge err in refusing to allow Ms. Longarini to amend her claim.

[20] Where it is clear the plaintiff cannot allege further material facts known to be true to support the allegations, leave to amend will be refused. The motion judge found that Ms. Longarini has failed to "suggest any further facts that could be pleaded to make the claim viable" or to "overcome the legal obstacles to the claim": see *Miguna v. Ontario*, (2005), 262 D.L.R. (4th) 222 (Ont. C.A.) at para. 22.

[21] Though there is no fresh evidence motion before this court, I briefly address what appears to be an attempt by Ms. Longarini to provide fresh evidence on appeal, namely a forensic audit and valuation of the company subject to the oppression application. However, this case and the motion judge's order were in respect of a motion to strike the pleading, for which evidence is not admissible. In any event, an audit is irrelevant to the issues pleaded as this claim does not involve Ms. Longarini's company; it is only in respect of alleged damages Ms. Longarini claims she has suffered because of the Crown's decision to withdraw the criminal charges against her former business partner.

[22] For these reasons, I see no merit in the proposed appeal as Ms. Longarini has failed to identify any errors in the motion judge's decision to strike her claim without leave to amend. The request for an extension of time to appeal is denied.

[23] It is therefore unnecessary to address the proposed respondents' cross-motions for security for costs.

[24] Given the success of the Rankin respondents on this motion and bearing in mind the proposed appellants impecuniosity, costs are awarded to the Rankin responding parties in the amount of $8,000.

"Thorburn J.A."