

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20240514**

**Docket: A-239-22**

**Citation: 2024 FCA 94**

**CORAM: STRATAS J.A.  
MACTAVISH J.A.  
WALKER J.A.**

**BETWEEN:**

**WENDY SIN MING HO**

**Appellant**

**and**

**HIS MAJESTY THE KING IN RIGHT OF CANADA**

**Respondent**

Heard by online video conference hosted by the Registry on May 14, 2024.

Judgment delivered from the Bench at Ottawa, Ontario, on May 14, 2024.

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

**STRATAS J.A.**

Federal Court of Appeal



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**REASONS FOR JUDGMENT OF THE COURT**

**(Delivered from the Bench at Ottawa, Ontario, on May 14, 2024).**

**STRATAS J.A.**

[1] The appellant appeals from an Order dated November 4, 2022 of the Federal Court (*per* Bell J.), dismissing the appellant's motion for an extension of time to appeal two Federal Court

orders. In one, the Federal Court dismissed the appellant's motion for waiver of court fees. In the other, the Federal Court struck the appellant's statement of claim without leave to amend.

[2] In our view, the appeal must be dismissed with costs.

[3] The Federal Court made no reviewable errors. In the case of the denial of the extension of time, the Federal Court set out the correct legal test and exercised its discretion without committing palpable and overriding error: *Canada (Attorney General) v. Larkman*, 2012 FCA 204, 433 N.R. 184; *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235. The same can be said for the Federal Court's denial of a waiver of filing fees. In particular, palpable and overriding error is a difficult test to meet: *Benhaim v. St-Germain*, 2016 SCC 48, [2016] 2 S.C.R. 352, citing *Canada v. South Yukon Forest Corporation*, 2012 FCA 165, 4 B.L.R. (5th) 31.

[4] As well, we see no procedural unfairness. To the contrary, procedural errors by the appellant were frequently overlooked in order to move this case to adjudication on the merits.

[5] In this Court, the appellant brought a motion seeking two forms of relief: the right to raise new constitutional issues and leave to file fresh evidence. We will dismiss the motion. The appellant seeks to raise constitutional issues under sections 7, 15 and 24(1) of the Charter for the first time on appeal. In doing so, she seeks to argue in this Court the merits of the matter before the Federal Court. But that is not before us. The only issues in this appeal are whether the Federal Court committed reviewable errors in denying the appellant an extension of time. In these circumstances, the new issues are not admissible in this appeal: *Quan v. Cusson*, 2009 SCC

62, [2009] 3 S.C.R. 712; *Performance Industries Ltd. v. Sylvan Lake Golf & Tennis Club Ltd.*, 2002 SCC 19, [2002] 1 S.C.R. 678.

[6] As for the fresh evidence, this Court has previously rejected the appellant's similar efforts to introduce fresh evidence into this appeal, those previous rulings cannot be appealed to this panel (*Ignace v. Canada (Attorney General)*, 2019 FCA 239), and, in any event, the appellant has not satisfied any of the branches of the test for the admission of fresh evidence on appeal set out in *Palmer v. The Queen*, [1980] 1 S.C.R. 759.

[7] Therefore, we will dismiss the motion and the appeal with costs fixed in the amount of \$1,500, all-inclusive.

“David Stratas”

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-239-22

**STYLE OF CAUSE:** WENDY SIN MING HO v. HIS  
MAJESTY THE KING IN RIGHT  
OF CANADA

**PLACE OF HEARING:** HEARD BY ONLINE VIDEO  
CONFERENCE HOSTED BY  
THE REGISTRY

**DATE OF HEARING:** MAY 14, 2024

**REASONS FOR JUDGMENT OF THE COURT  
BY:** STRATAS J.A.  
MACTAVISH J.A.  
WALKER J.A.

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

**APPEARANCES:**

Wendy Sin Ming Ho FOR THE APPELLANT  
(ON HER OWN BEHALF)

Adrian Zita-Bennett FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Shalene Curtis-Micallef FOR THE RESPONDENT  
Deputy Attorney General of Canada