

Federal Court of Appeal



Cour d'appel fédérale

Date: 20260226

Docket: A-367-24

Citation: 2026 FCA 43

**CORAM: WEBB J.A.
MONAGHAN J.A.
BIRINGER J.A.**

BETWEEN:

KANIZ FATEMA

Appellant

and

D.B. HIGA

Respondent

Heard at Calgary, Alberta, on February 26, 2026.

Judgment delivered at Calgary, Alberta, on February 26, 2026.

REASONS FOR JUDGMENT BY:

BIRINGER J.A.

CONCURRED IN BY:

**WEBB J.A.
MONAGHAN J.A.**

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REASONS FOR JUDGMENT

BIRINGER J.A.

[1] This is an appeal from an order of the Federal Court (2024 FC 1622, *per* Battista J.) affirming an order of Associate Judge Ring (*Fatema v. Higa* (5 September 2024), Vancouver T-1786-24 (F.C.), Appeal Book, pp. 16–25). The Associate Judge struck out the appellant’s statement of claim without leave to amend because it was “plain and obvious” that the Federal

Court lacked jurisdiction, the claim disclosed no reasonable cause of action and the claim constituted an abuse of process.

[2] The respondent is an Assistant Chief Justice of the Alberta Court of Justice. In that capacity, the respondent stayed a lawsuit filed by the appellant: *Fatema v. Corporation of the Town of Ajax et al.* (24 March 2023), Calgary P2290102607 (Alta. C.J.), Appeal Book, pp. 61–62. In the appellant’s Federal Court action against the respondent, the appellant sought damages for losses allegedly resulting from the stay and from violations of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (U.K.), 1982, c. 11 (Charter)*. In her written materials, the appellant submitted that the judges below erred in determining that the Federal Court lacked jurisdiction over these matters. She also submitted that the statement of claim disclosed a reasonable cause of action and was not an abuse of process.

[3] On February 25, 2025, the appellant advised the Court that she would not be attending today’s hearing. While the appellant claims that she did not consent to the hearing date, on several occasions the Court’s Registry provided notice of the hearing date to her and attempted to contact her. The appellant did not raise any concerns with the proposed hearing date prior to the letter of February 25, 2025, which confirms that she was aware of today’s hearing. This morning, the Court waited for thirty minutes after the scheduled start of the hearing in case the appellant decided to attend. She did not. The respondent appeared but did not make oral submissions other than with respect to costs, seeking an award of \$500, if successful. This appeal is therefore being decided on the basis of the parties’ written submissions.

[4] In this appeal, the appellate standards of review set out in *Housen v. Nikolaisen*, 2002 SCC 33 [*Housen*] apply. Those same standards of review applied to the Federal Court’s review of the Associate Judge’s order: *Hospira Healthcare Corporation v. Kennedy Institute of Rheumatology*, 2016 FCA 215 at paras. 64–65. The question before this Court is whether the Federal Court judge erred by refusing to interfere with the Associate Judge’s order: *Davis v. Canada (Royal Canadian Mounted Police)*, 2024 FCA 115 at para. 20, citing *Sikes v. Encana Corporation*, 2017 FCA 37 at para. 12. The jurisdiction of the Federal Court is a question of law subject to review on a standard of correctness: *Crowe v. Canada (Attorney General)*, 2008 FCA 298 at para. 15 [*Crowe*]; *Inuksuk I (Ship) v. Sealand Marine Electronics Sales and Services Ltd.*, 2023 FCA 170 at para. 47; *Housen* at para. 8.

[5] The Federal Court lacks jurisdiction over the appellant’s proposed action. The Federal Court’s jurisdiction is limited to what is assigned to it by federal statutes: *Canada (Prime Minister) v. Hameed*, 2025 FCA 118 at paras. 25–27, citing *ITO-Int’l Terminal Operators v. Miida Electronics*, [1986] 1 S.C.R. 752 at p. 766 (S.C.C.). In *Crowe*, this Court held that no statute grants the Federal Court jurisdiction over claims based on the alleged misconduct of federally appointed judges (at para. 18; see also *Feeney v. Canada*, 2022 FCA 190 at paras. 10–13). Also true, but even more evident, is that the Federal Court does not have jurisdiction over the appellant’s claims against the respondent, a provincially appointed judge.

[6] Nor does the Charter empower the Federal Court to grant the relief sought by the appellant. By itself, the Charter does not grant jurisdiction to the Federal Court: *Windsor (City) v. Canadian Transit Co.*, 2016 SCC 54 at paras. 59–65. Rather, the Federal Court may only award

remedies under the Charter where it has jurisdiction over the underlying claim: *Kaur v. Canada (Citizenship and Immigration)*, 2020 FCA 136 at para. 11, citing *Mahabir v. Canada (Minister of Employment & Immigration)*, [1992] F.C. 133 at p. 138 (F.C.A.); see also *R. v. 974649 Ontario Inc.*, 2001 SCC 81 at para. 15, citing *Mills v. The Queen*, [1986] 1 S.C.R. 863 at p. 890 (*per* Lamer J., dissenting, but not on this point) (S.C.C.). Lacking jurisdiction over the wrongs alleged by the appellant, the Federal Court could not order Charter damages or other remedies.

[7] Given the conclusion that the Federal Court lacked jurisdiction, it is unnecessary to address the other issues raised by the appellant.

[8] Therefore, I would dismiss the appeal with costs fixed in the amount of \$500, all-inclusive of taxes and disbursements.

“Monica Biringer”

J.A.

“I agree.

Wyman W. Webb J.A.”

“I agree.

K.A. Siobhan Monaghan J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-367-24

STYLE OF CAUSE: KANIZ FATEMA v. D.B. HIGA

PLACE OF HEARING: CALGARY, ALBERTA

DATE OF HEARING: FEBRUARY 26, 2026

REASONS FOR JUDGMENT BY: BIRINGER J.A.

CONCURRED IN BY: WEBB J.A.
MONAGHAN J.A.

DATED: FEBRUARY 26, 2026

APPEARANCES:

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