

Federal Court of Appeal



Cour d'appel fédérale

Date: 20260416

Docket: A-365-25

Citation: 2026 FCA 75

**CORAM: GLEASON J.A.
LOCKE J.A.
BIRINGER J.A.**

BETWEEN:

**KARINE SOLAKIAN, JULIA ALVAREZ, ALI BAHRI, ROBERT BOURBONNIERE,
LINE BUJOLD-LAVALLE, JENNIFER COMIN, ESTERINA COSTA, WAYNE
COWAN, SELENA CVITAN, MARK DAGGETT, JANA DANCAKOVA, MARLICE
DEPTUCH, GISELE DESHARNAIS, KAREN DESROSIERS, TANYA DOCANTO-
CORDEIRO, SARAH FRANGIONE, JOY ESDAILLE, RAQUEL FERREIRA, KAREN
GIBEAULT, PETER HEIDEBRECHT, STEPHANIE JOHNSTON, RIINA KAPP,
MARIETTA KIRBY, DAMIR KRAMARIC, LORRAINE LIGHT, PAUL LUSSIER,
TANYA MANDEL, TRACY MATLOCK, DANIEL MATTI, BOZENA MAZUR, SZILVIA
MERTL, LISA NICOLL, CHRISTOPHER PILLON, KIMBERLEE PRIEST, DOLORES
RELIC, AMBER RICARD, HELENE (LENA) RICCI, RUSSEL SAWCHUK, STEPHEN
SEE, MARION SERINK, JOHN SERRAMBANA, DEWITT SHAINLINE, SHRIKANT
SHARMA, ALAN SHUM, WANITA SIKLENKA, ROBERTA STRICKLAND, LINDSAY
SUNTHGOLAM, LORI TAYLOR-RIBERO, LARA TRENAMAN, LEONARDO DE
JESUS VASQUEZ, JENNIFER VOGELGESANG, MARIA VISIC, CARRIE VISSER,
SHANDA VORRATH, MARIAM WALI, NANCY WHITCOME, YVONNE YUCTUC,
CARSON ZORGET and MICHAEL ZOTTOLA**

Appellants

and

**CANADA POST CORPORATION and
HIS MAJESTY THE KING IN RIGHT OF CANADA**

Respondents

Heard at Vancouver, British Columbia, on April 16, 2026.

Judgment delivered from the Bench at Vancouver, British Columbia, on April 16, 2026.

REASONS FOR JUDGMENT OF THE COURT BY:

BIRINGER J.A.

Federal Court of Appeal



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DOLORES RELIC, AMBER RICARD, HELENE (LENA) RICCI, RUSSEL SAWCHUK,
STEPHEN SEE, MARION SERINK, JOHN SERRAMBANA, DEWITT SHAINLINE,
SHRIKANT SHARMA, ALAN SHUM, WANITA SIKLENKA, ROBERTA
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TRENAMAN, LEONARDO DE JESUS VASQUEZ, JENNIFER VOGELGESANG,
MARIA VISIC, CARRIE VISSER, SHANDA VORRATH, MARIAM WALI, NANCY
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and

**CANADA POST CORPORATION and
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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Vancouver, British Columbia, on April 16, 2026.)

BIRINGER J.A.

[1] This is an appeal of an order of the Federal Court (2025 FC 1623, *per* Kane J.) affirming an order of an Associate Judge (*Albert et al. v. Canada Post Corporation et al.* (2 May 2025), Toronto T-1436-22 (F.C.), Appeal Book, pp. 486-504, *per* Cotter A.J.). The Associate Judge dismissed the appellants' request for an extension of time to appeal an order striking their statement of claim without leave to amend (2024 FC 420, *per* Coughlan A.J.). The appellants' notice of motion seeking an extension of time was filed 234 days after the deadline for filing a notice of appeal: *Federal Courts Rules*, S.O.R./98-106, r. 51.

[2] The factors to be assessed in deciding whether to grant an extension of time are whether: (1) the moving party has a continuing intention to pursue the appeal; (2) the appeal has some merit; (3) the respondent is not prejudiced by the delay; and (4) a reasonable explanation for the delay exists: *Canada (Attorney General) v. Hennelly*, 1999 CanLII 8190 at para. 3 (F.C.A.) [*Hennelly*]. Not all factors need be decided in the moving party's favour and no single factor is determinative. The overarching consideration is whether it is in the interests of justice to grant the extension: *Grewal v. M.E.I.*, [1985] 2 F.C. 263 at pp. 272, 277-78 (F.C.A.); *Canada (Attorney General) v. Larkman*, 2012 FCA 204 at paras. 85-88 [*Larkman*]; *Greenblue Urban North America Inc. v. Deeprout Green Infrastructure, LLC*, 2024 FCA 19 at para. 6.

[3] The Associate Judge found that the appellants had a continuing intention to pursue the appeal. However, he also held that even if he were to assume that the proposed appeal had merit,

it was not in the interests of justice to grant the extension. The length of the delay gave rise to concerns of prejudice to the respondents and the Associate Judge found that the appellants had not established a reasonable explanation for the delay. Finding no reviewable errors in the Associate Judge's decision, the Federal Court Judge dismissed the appeal.

[4] The question before this Court is whether the Federal Court Judge erred by declining 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.

Whether to grant an extension of time is a discretionary decision and is afforded considerable deference on appeal. Unless an extricable question of law can be identified, which is reviewed on a standard of correctness, a discretionary decision must stand absent "palpable and overriding error": *Qualizza v. Canada*, 2025 FCA 222 at para. 9 [*Qualizza*]; *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.

[5] An error is palpable when it is obvious and 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 high threshold is not easily met and the appellants conceded at the hearing that there is no palpable and overriding error in the Federal Court's decisions.

[6] The appellants submitted at the hearing that it was an error in principle for the Associate Judge to assume that the appeal had merit, without conducting a "summary assessment" of the merits. The appellants also challenge the Federal Court's finding that there was no reasonable explanation for the delay in filing a notice of appeal. The appellants also submit that the judges

below erred by inferring that the respondents had suffered prejudice because of the delay. Finally, the appellants submit that it was not in the interests of justice to refuse an extension of time as they suffer prejudice by being unable to appeal the order striking their statement of claim.

[7] None of these arguments can succeed. We see no error in the Associate Judge's assumption that the appeal had some merit, and applying the *Hennelly* factors on this basis. This assumption was made notwithstanding Associate Judge Coughlan's order striking the statement of claim on the basis that the appeal lacked merit. The assumption was in the appellants' favour. While the merits of a proposed appeal are relevant to the balancing exercise, a court is not required to conduct a full-scale evaluation of the merits of the appeal; rather, it only asks whether it has "some merit": *Hennelly* at para. 3; *LeBlanc v. National Bank of Canada*, [1994] 1 F.C. 81 at p. 92 (F.C.); *Qualizza* at para. 16.

[8] In disputing the finding of a lack of reasonable explanation for the delay, the appellants repeat arguments made before the Federal Court, including that the complexity of the case demanded further time to prepare materials and that the actions of their former counsel contributed to the delay. These arguments were carefully considered by the Federal Court and rejected, twice. The appellants bore the burden of providing a reasonable explanation for the delay and the Federal Court found the explanation lacking. There is no error in the Federal Court's finding and no basis for us to intervene.

[9] Regardless of whether there was evidence of actual prejudice to the respondents arising from the period of delay or whether the 234-day delay was inherently prejudicial, it was appropriate for the Federal Court to consider the long delay in assessing whether it was in the

interests of justice to grant an extension of time. The *Hennelly* factors do not comprise a closed list of all relevant considerations: *Larkman* at para. 62; *Gambler First Nation v. Ledoux*, 2020 FCA 204 at para. 6. The length of a delay bears directly on whether it is in the interests of justice to relieve a late party from the finality and certainty reflected in deadlines in the *Federal Courts Rules*: *Larkman* at paras. 86-88.

[10] Finally, the appellants have not identified a reviewable error in the Federal Court's conclusion that it would not be in the interests of justice to grant the extension of time. Contrary to the appellants' suggestion, *Koch v. Borgatti Estate*, 2022 FCA 201 did not alter the long-established test for granting extensions of time. The Associate Judge correctly identified the relevant factors and the weighing of those factors is entitled to deference on appeal: *Canada (Attorney General) v. Fontaine*, 2017 SCC 47 at para. 36. The consequences to the appellants of refusing an extension of time were expressly considered.

[11] For these reasons, the appeal will be dismissed. As agreed by the parties, the appellants are jointly and severally liable to pay costs of \$2,500, all-inclusive of taxes and disbursements, to each respondent.

“Monica Biringer”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-365-25

STYLE OF CAUSE: KARINE SOLAKIAN et al. v.
CANADA POST CORPORATION
et al.

PLACE OF HEARING: VANCOUVER, BRITISH
COLUMBIA

DATE OF HEARING: APRIL 16, 2026

REASONS FOR JUDGMENT OF THE COURT BY: GLEASON J.A.
LOCKE J.A.
BIRINGER J.A.

DELIVERED FROM THE BENCH BY: BIRINGER J.A.

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