

Federal Court



Cour fédérale

Date: 20250502

Docket: T-1436-22

Toronto, Ontario, May 2, 2025

**PRESENT:** Associate Judge John C. Cotter

**BETWEEN:**

**BERNARD ALBERT, MARIE ALLCHURCH, JULIA ALVAREZ,  
JASON AMARO, VANESSA APOSTOLOVSKI, MARIA ARENA,  
ALI BAHRI, RAYMOND. S. BAKER, DAVID BAKHUYZEN, KIM  
BANDO, ADILA BASIC, ANJA BATTIE, KELLI BATTYANYI,  
MICHAEL BECKER, JASON MATTHEW BERARD, WANDA  
BERG, LAURIE BERNES, ANDREA BIALOWAS, THERESA  
BICKLE, ANGELLA BLIER, MARK BOIKOVITIS,  
ERIK BOUCHARD, ROBERT BOURBONNIERE,  
BROOKE BOUTANG, VERONIQUE BRETON, NATASHA BUDY,  
JENNIFER-LYNN BULLICK, MARY BURKE, CATHERINE  
CABRAL-MCKEAND, EDUARDO CAETANO,  
ANTHONY CAETANO, JENNIFER CAUDRON, TRACY CHASE,  
NATACHA CHEVARIE, MIMI CHOO, WILLIAM CHOW,  
CHERYL CHOW, ANGELINA CLARK, PAUL CLEMENTS,  
SANDRA COLE, JENNIFER COMIN, ANTHONY COMMISSO,  
TANYA DOCANTO CORDEIRO, ESTERINA COSTA, ROCCO  
COTUGNO, FRANCESCO "FRANK" COTUGNO, RICHARD  
COUTURIER, WAYNE COWAN, KENTON CROOK,  
MICHAEL CURRIE, SELENA CVITAN, MARK DAGGETT,  
MARCO DALL'ANTONIA, JANA DANCAKOVA, AMANDA  
DEMPSEY, JASON DENTINGER, MARLICE DEPTUCH,  
ANTHONY DEROSE, LORRAINE DESCHAMPS, GISELE  
DESHARNAIS, KAREN DESROSIERS, JOHN DEVINE, SUSAN  
DEWALD, EZIO DIFONZO, DONALD WAYNE DUNHAM,  
BRANDY DUPAS, TERESA ELLISON, JOHN EMMANOUIL,  
JOHANNA EMMANOUIL, SHELLEY ESCOBAR, JOY  
ESDAILLE, WILLIAM FAUSTINO, RAQUEL FERREIRA,  
SHERRY FERREIRA, PAXTON FIRTH, MICHELINE FLEURY,  
SARAH FRANGIONE, ERIN FULLER, MICHAEL GAIREY,  
JESSICA GASKIN, KAREN GIBEAULT, SHEILA RAE GOW,  
JAYDE GRAVEL, MICHAEL GRIGORATOU, URVASHI  
GURUNG, RYAN HAMER, CHARLENE HANSON, JASMIN  
HARRISON, CARLY HART, TAMMY HAYES, JAYSON PETER**

**JAMES HEIDEBRECHT, DENISE HERBERT, JORGIE HIDALGO, TIMOTHY HIEBERT, DONNA HISCOCK, DENISE HOHN, ELAINA HUDYMA, KATHRYN (KATIE) HUNT, TANYA HUTCHINSON, ZDZISŁAW JABŁOŃSKI, MARTINE JARRY, CARLA JENKINS, STEPHANIE KATHLEEN JOHNSTON, NICHOLAS JOHNSTON, RIINA KAPP, RUDY KERN, MARK KILLEEN, SABRINA KINCAID, MARIETTA KIRBY, SANDRA KOSTENKO, CALVIN KOTOWICH, DAMIR KRAMARIC, SANDRA KRASINKIEWICZ, ROCKY KUJALA, HELENE LA ROCHELLE, AVINASH LALOO, MEGAN LANE-KARRAS, MARTINE LAROCQUE, LINE LAVALLEE, KEVIN LAWRES, CHUNG LE, LUC LEBLANC, DONNA LEEDER, PATRICK LESSARD, LISA LEVESQUE, LORRAINE LIGHT, GISELE LIRETTE, RANDY LOGAN, SANDRA M LOPES, KIM LUMSDEN, WENDY LUNDVALL, PAUL LUSSIER, PAUL LYNN, NICOLA MACDONALD, MICHAEL MAFILOVSKI, VIJAY MAHARAJ, CAROLINE MAHEUX, TANYA MANDEL, TRACY MA-PRICE, MARIE MARCOTTE, ANNA MARRO, DEVANMARSHALL, JUDY MARTENS, JOSYANNE MARTIN, JENNA MATHIES, TRACEY MATLOCK, DANIEL MATTI, WILLIAM GRANT MAYER, BOZENA MAZUR, DAWN MCFARLANE, MARGARET MCGEACHIE, CHRIS MCGRATH, LUCAS MCIVOR, KAREN MCQUADE, SZILVIA MERTL, ROCCO MESSERE, ANNA MIASIK, SARAH MICKALCO, JASON MIELKE, LAWRENCE (LARRY) MILLSON, SERGIO A MOLINA C, JAMES MORRIS, JAMES MORRISON, RACHEL MULLARKEY, PAUL NAHIRNIAK, DIDI (PREVIOUSLY DANIELLE) NAVALES (PREVIOUSLY FREEMAN), MARGARET NEB, AMANDA NEIL, SCOTT NEIL, TRACEY NELLIS, JOCELYN NELSON, GEORGE NICOLAIDES, LISA NICOLL, JULIE NOBLE, CHAD NORMANDEAU, CHERISE O'CONNOR, GERALDINE OLSON, MARC ORICHEFSKY, RYAN ORYDZUK, STEVEN OVERHOLT, KRISTY PACHOLKA FORD, FANY PELLETIER-GOUGEON, CHRIS PILLON, LESLIE J POLLOCK, ELZBIETA PONIKIEWSKA, KIMBERLEE PRIEST, NATHAN RAE (AKA ADAN EDEY), TRACEY RALSTON, KARL RATCHINSKY, DANIEL RAYO, ANTONIO REDA, JULIE REEVES, CORELEI REICHERT, DOLORES RELIC, AMBER RICARD, LENA (HELENE) RICCI, SHEILA RIDDELL, BREEANNE RIDGE, KEENAN ROBINSON, MICHAEL ROBITAILLE, MYRA ROBITAILLE, ROBERT ROBSON, JODI RODDY, DJ (DEBBY) RODNEY, AMANDA (GOOD) ROOSMETS, JEAN-FRANCOIS ROSA, SANDRA ROSSETTO, ANGELA**

**RYCKMAN, STEPHANIE SAMSON, JOSHUA SAMUELSON,  
RUSSEL "RUSS" SAWCHUK, JUSTIN SCHEFFER,  
DEREK SCHOENFELDT, AARON SCHROEDER,  
CARMEN SCHVARCZINGER, SHAUNA SCOTT, STEPHEN SEE,  
JACQUELINE(JACKIE) SELK, FLAMUR SELMANI,  
MARION SERINK, JOHN-LUIS GABRIEL SERRAMBANA,  
DEWITT C. SHAINLINE, SHRIKANT (SHRE) SHARMA,  
DEBORAH SHAW, ALAN SHUM, WANITA SIKLENKA,  
NATHANIEL SLEDZ, BENJAMIN BRADLEY, ARTHUR SMITH,  
KARINE SOLAKIAN, JULIE SRIGLEY, DAVID STEEVES,  
KAREN STEVENS, MICHELENE STEWART, JAMES STEWART,  
SUSAN STEWART, ROBERTA STRICKLAND, MARTYNA  
STYRCZULA, LINDSAY SUNTHGOLAM, PAWEL SZOPA,  
ANTHONY PALOZZI, STEVEN TANNER, LORI  
TAYLOR, SINA TEHRANCHI, HOLLY THIBODEAU,  
CHRISTOPHER THOMPSON, JENNIFER TOBIN, VANESSA  
TOEWS, ZVONIMIR TOMAS, JOSHUA DON TORRES,  
ENRIQUE TOSI, ERIC TOUPIN-SELINGER, TIMOTHY  
DOUGLAS TRACY, CATY TRAN, HUGO TREJO, LARA  
TRENAMAN, MELISA TREPANIER, CAROL-ANNE  
VALCOURT, LEONARDO VASQUEZ, MELANIE VENDRYES,  
LUIZA VISIC, CARRIE VISSER, JENNIFER VOGELGESANG,  
SHANDA VORRATH, MARY VUK, PAMELA WAGNER,  
MARIAM WALL, HEIDI WANJON, JOEL WAZNICKY, CORY  
WEGE, ELVIN WEGNER, NANCY WHITCOME, WARREN  
WHITE, JOHANN WILSON, JAMES WINNING, LINDEN  
WRIGHT, SHANE YAWORSKI, YVONNE YUTUC, CARSON  
ZORGET, MICHAEL ZOTTOLA, MARCIA HEWETT-HICKS**

**Plaintiffs**

**and**

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

**Defendants**

**ORDER**

**UPON MOTION** by 66 of the plaintiffs (listed in Schedule “A” to the notice of motion)

[Moving Plaintiffs] dated November 14, 2024, and filed November 15, 2024, for:

1. An Order granting the Applicants an extension of time pursuant to Rule 8 of the Federal Court Rules, SOR/98-106 to commence an appeal of the order and decision to strike the Plaintiffs' claim with no leave to amend, made on March 13, 2013 [sic], by Associate Justice Coughlan; and
2. Such further and other relief as may be necessary to give effect to the intention of this motion.

**AND UPON** reviewing and considering the materials filed including:

- a) the motion record of the Moving Plaintiffs filed February 14, 2025, and titled "APPLICANTS" MOTION RECORD";
- b) the motion record of the defendant His Majesty the King in Right of Canada [Canada] filed February 27, 2025, and titled "RESPONDENT'S MOTION RECORD OF HIS MAJESTY THE KING IN RIGHT OF CANADA"; and
- c) the motion record of the defendant Canada Post Corporation [Canada Post] filed February 28, 2025, and titled "MOTION RECORD OF THE RESPONDENT, CANADA POST COPRORATION";

**AND UPON** hearing and considering the submissions of counsel for the parties made at the hearing of this motion held by video conference on April 8, 2025;

**AND UPON** considering:

[1] Unless otherwise indicated, all dates referred to in this Order are in 2024.

I. The Action

[2] This action was commenced on July 12, 2022. At that time, there were 281 plaintiffs. They were current or former employees of Canada Post. The statement of claim raised issues with Canada Post's mandatory vaccination policy and states that the majority of the plaintiffs were neither partially nor fully vaccinated against COVID-19, and that they "resigned or retired under duress because of the [vaccination] Practice".

## II. The Decision

[3] The Order and Reasons of Associate Judge Coughlan dated March 13, 2024 [Decision] granted motions by both defendants and struck out the amended amended statement of claim without leave to amend. Specifically, it was ordered that:

1. The motions of Canada Post and Canada are allowed.
2. The Amended Amended Statement of Claim is struck without leave to amend.
3. Canada and Canada Post shall have their costs set at \$10,000 each payable by the Plaintiffs, jointly and severally.
4. The style of cause is hereby amended with immediate effect to remove any reference to the Attorney General of Canada.

[4] At the time of the hearing of the motion that resulted in the Decision there were 149 plaintiffs remaining in the action, with 132 having discontinued their action.

## III. The Present Motion

[5] On November 14, after having retained new counsel, and a little more than eight months after the Decision, the Moving Plaintiffs served their notice of motion [Notice of Motion] for an extension of time in respect of the 10-day deadline to appeal the Decision. This was 234 days after the applicable deadline. The Notice of Motion was filed on November 15. In the

circumstances of this case, nothing turns on the one-day difference between the service and filing of the Notice of Motion.

[6] The affidavit evidence filed by the Moving Plaintiffs in support of this motion included an affidavit of Karine Solakian affirmed November 14 [Solakian Affidavit], on which she was cross-examined. Ms. Solakian is one of the Moving Plaintiffs, is responsible for instructing the Moving Plaintiffs' current counsel, and "was among the team of four plaintiffs who instructed the former legal counsel [Former Counsel] [...] on behalf of each of the 145 plaintiffs".

#### IV. Applicable deadline

[7] As per Rule 51 the applicable deadline to serve and file a notice of motion appealing an order of an Associate Judge is 10 days after the day on which the order was made (any reference in this Order to a Rule is to those in the *Federal Courts Rules*). Rule 51 states:

#### **Appeals of Prothonotaries' Orders**

##### **Appeal**

**51 (1)** An order of a prothonotary may be appealed by a motion to a judge of the Federal Court.

##### **Service of appeal**

**(2)** Notice of the motion shall be served and filed within 10 days after the day on which the order under appeal was made and at least four days before the day fixed for the hearing of the motion.

#### **Appel des ordonnances du protonotaire**

##### **Appel**

**51 (1)** L'ordonnance du protonotaire peut être portée en appel par voie de requête présentée à un juge de la Cour fédérale.

##### **Signification de l'appel**

**(2)** L'avis de la requête est signifié et déposé dans les 10 jours suivant la date de l'ordonnance frappée d'appel et au moins quatre jours avant la date prévue pour l'audition de la requête.

[8] In this case, the deadline was 10 days from March 13, resulting in a deadline of March 25, 2024 [Appeal Deadline], the 10<sup>th</sup> day having fallen on a weekend.

V. Events following the Decision

[9] As an extension of time is being sought, it is useful to set out the chronology of certain of the events following the Decision up to the filing of the Notice of Motion.

[10] The Decision was provided to the plaintiffs by their Former Counsel on March 14. As stated by Ms. Solakian, “The plaintiffs then immediately, on March 14, requested legal advice from GWS LLP [*i.e.*, Former Counsel] on the merits of an appeal” (Solakian Affidavit, para 7).

[11] By March 16, which is three days following the Decision, 40 of the plaintiffs had confirmed their intention to appeal. Ms. Solakian did not recall any of those 40 changing their mind and not participating in the current motion.

[12] According to the Solakian Affidavit (para 18) “We crystalized our collective intention to appeal the Decision on April 8, 2024, and communicated that collective intention to our previous legal counsel on April 8, 2024” (see also para 8). This was after the 10-day appeal period. At that point, Ms. Solakian believed that the appeal period was 30 days, although she suspected it might be 10 days. Former Counsel later advised that the appeal period was 10 days.

[13] On April 18, rather than bringing a motion for an extension of time, the Moving Plaintiffs by letter from their Former Counsel wrote to the Court indicating that they “are instructed to bring a motion to extend the timeline for filing a Motion for Appeal” of the Decision. After setting out the grounds for the motion, the letter concludes with “We seek the Court’s further direction”.

[14] The above-noted April 18 letter was the subject matter of a Direction of the Court, dated April 23, which concluded with the following “if the Plaintiffs wish to file a motion for an extension of time to appeal, they are free to do so”.

[15] Approximately five weeks later, on May 14, Ms. Solakian sent an email to Former Counsel asking for the following update:

We were wondering if the courts have finalized [sic] and granted us an extension to submit the appeal.

We asked several times now and have not received any documentation verifying it.

Where are we in the process?

[16] Former Counsel responded the next day, on May 15, stating that there “is still some fine-tuning that needs to be done [...] We will provide you with an update once our Motion is finalized.”

[17] Approximately three weeks later, on June 6, Ms. Solakian sent an email to Former Counsel asking if there has “been any finalization [sic] of our Motion from the last time we contacted?”

[18] Approximately two weeks later, on June 19, Ms. Solakian attempted to contact Former Counsel by phone and left a voicemail asking for an update.

[19] Approximately two weeks later, on July 3, Ms. Solakian sent an email to Former Counsel asking for an update, and how much time they had “to submit the request” for an extension of time. Former Counsel responded by email the next day stating that that they would “endeavor to have a draft completed for your review before the weekend” and that “there is no prescribed timeline to submit the request, but the sooner we do, the better”. There is nothing to suggest that a draft was provided by that weekend, or that there was any follow-up on behalf of the Moving Plaintiffs at that point.

[20] Approximately two weeks later, on July 17, Former Counsel provided draft motion materials to Ms. Solakian by email. She provided comments on the draft materials by email on July 22.

[21] On July 29, Kim Priest sent an email to former counsel stating that “We’ve waited patiently since April 8.24 to have our motion to request an extension to appeal be filed” and set out a chronology of the communications with Former Counsel. Kim Priest, like Ms. Solakian, was one of the team of four plaintiffs responsible for instructing Former Counsel.

[22] The next development is more than a month later when Former Counsel indicated on September 4 that they were no longer able to handle the matter. Ms. Solakian confirmed on

cross-examination that as of September 3, she and the other Moving Plaintiffs “were aware that the appeal was around five months late”.

[23] The Moving Plaintiffs found their current counsel, Gratl & Company [Current Counsel] “in late September of 2024” and “agreed in principle to retain Gratl & Company to give advice on this appeal on September 22, 2024” (Solakian Affidavit, para 16).

[24] Approximately eight weeks later, on November 14, Current Counsel served a notice of change of solicitor, and the Notice of Motion for the present motion, with supporting affidavits. These documents were filed on November 15.

[25] The stated justification in the Solakian Affidavit for the almost eight-week gap between retaining Current Counsel and filing the Notice of Motion is that:

17. The Law Society of British Columbia requires personal verification of identification of new clients, either by the firm or by an outside agent, such as a lawyer or notary. The appellants are dispersed across Canada so this process of verification of identification and verifying written retainers was time consuming.
18. I am advised that Gratl & Company worked with reasonable diligence to research the legal issues and prepare the appeal and application to extend the deadline to appeal.

[26] On cross-examination Ms. Solakian gave the following evidence regarding the almost eight weeks that passed between agreeing to retain current counsel on September 22 and the Notice of Motion being served on November 14:

Q. [...] Why did it take eight weeks to get something filed?

A Because it took eight weeks to have the information looked at or to have the identification verified of all the plaintiffs and the retainer agreements of all the plaintiffs -- of the appellants, my apologies.

Q So it took eight weeks for some of the appellants to verify their identity and provide a retainer?

A Yes.

[27] Ms. Priest provided her identify verification to Current Counsel on September 22, with Ms. Solakian providing hers a few days later. However, other than very general statements about what was done, no other details were provided to explain what specifically was done, and when, during that process that took almost eight weeks.

[28] At no time following the Direction of the Court dated April 23, up until shortly before the Notice of Motion was served on November 14, was any notice given to the defendants that any of the plaintiffs were actually proceeding with a motion for an extension of time.

VI. Applicable principles on a motion for an extension of time

[29] The applicable principles on motion for an extension of time were aptly set out by Justice Régimbald in *Citizen for My Sea to Sky v Canada (Environment and Climate Change)*, 2023 FC 1721 [*Citizen for My Sea to Sky*]:

[14] In *Thompson v Canada (Attorney General)*, 2018 FCA 212 [*Thompson*] at paragraph 5 (see also *Canada (Attorney General) v Larkman*, 2012 FCA 204 at para 62 [*Larkman*]; *Grenier c. Canada (Procureur général)*, 2023 CAF 186; *Gagnon v Canadian Association of Professional Employees*, 2023 FCA 59), the Court of Appeal established the four factors that the Court must consider when determining whether an extension of time should be granted:

- a) Did the moving party have a continuing intention to pursue the judicial review application?

b) Does the moving party have a reasonable explanation for the delay?

c) Is there some potential merit to the application for judicial review?

d) Is there prejudice to the other party from the delay?

[15] It is not necessary to satisfy each of the four criteria, nor does the criteria constitute an exhaustive list of questions that may be relevant in a given case. Instead, the Court must consider each factor and decide whether, on balance, the interests of justice would be served by granting the extension of time (*Thompson* at para 6; *Larkman* at para 62; *Heddle Marine Service (NL) Inc. v Kydy Sea (Ship)*, 2019 FC 1140; *Canada (Attorney General) v Hennelly*, 1999 CanLII 8190 (FCA)).

[30] As explained by the Federal Court of Appeal in *Canada (Attorney General) v Larkman*,

2012 FCA 204 [*Larkman*]:

[62] These questions guide the Court in determining whether the granting of an extension of time is in the interests of justice: *Grewal, supra* at pages 277-278. The importance of each question depends upon the circumstances of each case. Further, not all of these four questions need be resolved in the moving party's favour. For example, "a compelling explanation for the delay may lead to a positive response even if the case against the judgment appears weak, and equally a strong case may counterbalance a less satisfactory justification for the delay": *Grewal*, at page 282. In certain cases, particularly in unusual cases, other questions may be relevant. The overriding consideration is that the interests of justice be served. See generally *Grewal*, at pages 278-279; *Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 41 at paragraph 33; *Huard v. Canada (Attorney General)*, 2007 FC 195, 89 Admin LR (4th) 1.

## VII. Analysis

[31] I have considered the four questions set out in the case law, and conclude that it is not in the interests of justice to grant an extension of time. The prejudice from the delay, and the lack of a reasonable explanation for the delay, both auger heavily against the Moving Plaintiffs. While

the Moving Plaintiffs did have a continuing intention to appeal the Decision, even if I assume there is merit in the appeal, it is not in the interests of justice to grant the extension. Stated differently, even if there is merit in the appeal, that combined with the Moving Plaintiffs' continuing intention to pursue the appeal, is not sufficient to conclude that it is in the interests of justice to grant an extension of time, having regard to the prejudice from the delay, and the lack of a reasonable explanation for the delay. I discuss each of the four questions below.

A. *Does the moving party have a reasonable explanation for the delay?*

[32] The period of delay can be broken into two stages. There is the initial delay of almost six months, for which the Moving Plaintiffs blame Former Counsel. The second stage is the 53-day period from September 22, when Current Counsel was retained, until the Notice of Motion was served on November 14. Whether there is a reasonable explanation for the delay applies to the entire period of the delay (*Singh v Canada (Citizenship and Immigration)*, 2023 FC 380 [*Singh 2023*] at para 36). As a result, for the Moving Parties to have a reasonable explanation for the delay, they must have a reasonable explanation for both the initial delay of almost six months, as well as the subsequent delay of 53-days after Current Counsel was engaged.

[33] I will deal with the 53-day period first.

[34] As of September 22, when Current Counsel was retained, it was almost six months past the Appeal Deadline. Even if I were to conclude that there was a reasonable explanation for the that delay of almost six months (which is considered below), once Current Counsel was retained it was incumbent on the Moving Plaintiffs to act quickly. The very general excuses provided for

the delay of 53 days until the Notice of Motion was served are not sufficient to constitute a reasonable explanation for that delay. Stated differently, it is not possible to conclude that there is a reasonable explanation for that delay based on the very general evidence provided seeking to justify it.

[35] A delay of 53 days is significant, and there is a no reasonable explanation for it. As per *Singh 2023* the question is whether the Moving Plaintiffs have a reasonable explanation for the entire delay from the March 25 Appeal Deadline to the service of the Notice of Appeal on November 14. Since they do not have a reasonable explanation for a significant portion of the period, namely 53 days, it is not possible to conclude that they have a reasonable explanation for the delay. The outcome of the analysis of the initial delay of almost six months will not change this conclusion.

[36] While it may not be necessary to also consider the initial delay of almost six months given the above conclusion, I will do so for completeness. The initial delay is the period from the Appeal Deadline of March 25 until Current Counsel was engaged on September 22. As noted above, the Moving Plaintiffs blame Former Counsel for that delay. The defendants advanced various arguments in response, the general tenor of which is that: a) clients must live with their choice of counsel and counsel's actions (subject to limited exceptions which the defendants say do not apply), with clients and counsel being treated as one for the purposes of a motion to extend time; and b) that the Moving Plaintiffs were insufficiently diligent in following up with Former Counsel in the circumstances of this case. The Moving Plaintiffs argued in response that the cases that have held that errors or inadvertence of counsel is not a reasonable explanation for

a delay are all immigration cases (for example, *Singh v Canada (Citizenship and Immigration)*, 2016 FCA 96 at para 66; *Cove v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 266 at paras 6-7; *Singh 2023* at para 37); and that this approach should not apply more generally because of the specific legislative regime that governs immigration cases. However, I note that those cases all use the same analytical framework as in this case, asking the same four questions and considering whether it is in the interests of justice to grant an extension of time. In any event, that debate turns out to be of no consequence in this case.

[37] Using the approach advocated for by the defendants, namely that errors or inadvertence of counsel is not a reasonable explanation for the delay, then there is no reasonable explanation for the delay. However, if that approach is not used, it is appropriate to consider the behavior of the Moving Plaintiffs during that period (*McBean v Canada (Citizenship and Immigration)*, 2009 FC 1149 at paras 14-16; see also *Cornejo Arteaga v Canada (Citizenship and Immigration)*, 2010 FC 868 at para 17; *Gover v Canada*, 2007 FC 1159 at para 32). Considering the conduct of the Moving Plaintiffs during that period of delay does not assist them. They knew that the Appeal Deadline had been missed, and that the filing of a motion for an extension of time was lagging considerably (and more so as time went on). However, despite that, there was only occasional follow-up by the Moving Plaintiffs. Having regard to what transpired during that initial period of almost six months, it is not possible to conclude that the Moving Plaintiffs diligently addressed the situation.

[38] As a result, regardless of the approach used, there is also no reasonable explanation for the initial delay of approximately six months.

B. *Have the defendants been prejudiced from the delay?*

[39] The delay in this case from the Appeal Deadline (March 25) until service of the Notice of Motion (November 14) was 234 days. Such a significant delay is itself prejudicial. The Alberta Court of Appeal held in *Ouellette v Law Society of Alberta*, 2021 ABCA 99, leave to appeal to ABCA refused, 2021 ABCA 283, that significant delay in bringing an appeal by itself causes recognizable prejudice to a respondent, concluding that:

[31] The applicants also failed to establish that their late filing has not caused the Law Society significant prejudice. A favourable judicial outcome is a valuable commodity. A respondent is entitled to expect that it will be able to rely on that benefit if an adverse party does not act in a timely manner to challenge it. The applicants' delay by itself causes recognizable prejudice to the Law Society.

[40] Such an approach is consistent with the importance of the principle of finality of decisions. That principle was discussed by the Federal Court of Appeal in *Canada v Grenier*, 2005 FCA 348. Although the issue in that case was not an extension of time, the principle applies equally in the present context. The Court stated:

[27] To allow a proceeding under section 17, whether in the Federal Court or in the provincial courts, in order to have decisions of federal agencies declared invalid, is also to allow an infringement of the principle of finality of decisions and the legal security that this entails.

[28] I need not expound at length on the importance of the principles of *res judicata* and the finality of decisions. Similarly, I need not say much about the abundant case law that recognizes and promotes these principles. I will confine myself to saying that these principles exist in the public interest and that Parliament's intention to protect that interest is illustrated by the short time limit allowed for challenging an administrative decision.

[41] Similarly, Justice Régimbald stated the following in *Citizen for My Sea to Sky* in discussing the 30-day period for commencing an application for judicial review. In my view, these comments also generally apply to the 10-day appeal period set out in Rule 51(2):

[16] As noted in *Larkman*, “[t]he need for finality and certainty underlies the thirty-day deadline. When the thirty-day deadline expires and no judicial review has been launched against a decision ..., parties ought to be able to proceed on the basis that the decision ... will stand.” Further, the Court of Appeal stated that “[f]inality and certainty must form part of our assessment of the interests of justice” (at para 87).

[17] Similarly, in *Canada v Berhad*, 2005 FCA 267 at paragraph 60, the Court of Appeal highlighted that the 30-day deadline to challenge administrative decisions is “not whimsical.” Rather, “[i]t exists in the public interest, in order to bring finality to administrative decisions so as to ensure their effective implementation without delay and to provide security to those who comply with the decision or enforce compliance....”

[...]

[66] As the Court of Appeal held in *Larkman* at paragraph 86, “Many authorities suggest that unexplained periods of delay, even short ones, can justify the refusal of an extension of time.” Moreover, at paragraph 87, the Court of Appeal held that:

[87] The need for finality and certainty underlies the thirty-day deadline. When the thirty-day deadline expires and no judicial review has been launched against a decision or order, parties ought to be able to proceed on the basis that the decision or order will stand. Finality and certainty must form part of our assessment of the interests of justice.

[42] The length of the delay in this case, namely 234 days, is significant and prejudicial. I pause here to note that in this case, even if the length of the delay did not itself constitute prejudice, I would consider the significant length of the delay as an additional factor in assessing the interests of justice, as the four questions are not an exhaustive list (*Larkman* at para 62; *Citizen for My Sea to Sky* at para 15).

C. *Did the moving party have a continuing intention to pursue the proceeding?*

[43] I am satisfied that the Moving Plaintiffs, through their instructing representative, had a continuing intention to seek to appeal the Decision. This can be seen in the steps taken by the Moving Plaintiffs' instructing representative, Ms. Solakian, including the emails sent to Former Counsel. In the circumstances of this case, whether or not those steps were taken in a timely manner is properly considered in assessing whether there is a reasonable explanation for the delay, which is dealt with above.

D. *Is there some merit to the proceeding?*

[44] As noted at the outset of the analysis, even if there were some merit to the appeal, it would not be sufficient to conclude that it is in the interests of justice to grant an extension of time. Because of the significance in this case of prejudice from the delay, and the lack of a reasonable explanation for the delay, my analysis proceeded as if there is some merit to the appeal.

#### VIII. Conclusion

[45] For these reasons, it is not in the interests of justice to grant the extension of time.

#### IX. Costs

[46] Counsel had not come to any agreement on costs, or discussed costs prior to the hearing of the motion. The Moving Plaintiffs requested costs of \$1,000 payable by each of the defendants. The defendants each requested costs of \$9,000, payable jointly and severally by the

Moving Plaintiffs. Although not specifically stated by any of the parties, I take these submissions as being the amounts sought if they are successful on the motion.

[47] Having regard to Rules 400 and 401(1), including the factors articulated in Rule 400(3), as well as Tariff B, costs are awarded to the defendants, fixed in the amount of \$5,000 per defendant, payable by the Moving Plaintiffs, jointly and severally.

**THIS COURT ORDERS that:**

1. The motion of the Moving Plaintiffs for an extension of time is dismissed.
2. Costs are awarded to the defendants, fixed in the amount of \$5,000 per defendant, payable by the Moving Plaintiffs, jointly and severally.

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"John C. Cotter"  
Associate Judge