

Federal Court of Appeal	 CANADA	Cour d'appel fédérale
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**Date: 20101028**

**Docket: A-491-09**

**Citation: 2010 FCA 286**

**CORAM: EVANS J.A.  
SHARLOW J.A.  
STRATAS J.A.**

**BETWEEN:**

**ESPER POWELL**

**Appellant**

**and**

**UNITED PARCEL SERVICE**

**Respondent**

Heard at Toronto, Ontario, on October 27, 2010.

Judgment delivered at Toronto, Ontario, on October 28, 2010.

**REASONS FOR JUDGMENT BY:**

**STRATAS J.A.**

**CONCURRED IN BY:**

**EVANS J.A.  
SHARLOW J.A.**



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**REASONS FOR JUDGMENT**

**STRATAS J.A.**

[1] The appellant appeals from an order dated December 2, 2009 of the Federal Court. The Federal Court dismissed the appellant's motion for an extension of time to serve and file a notice of application for judicial review of a decision of the Canadian Human Rights Commission.

[2] The Commission's decision was communicated to the appellant on or about February 27, 2009. Subsection 18.1(2) of the *Federal Courts Act*, R.S.C. 1985, c. F-7, required the appellant to bring any application for judicial review within 30 days from that time. Approximately six months

after that deadline expired, the appellant brought her motion for an extension of time in the Federal Court.

[3] The Federal Court exercised its discretion against granting the extension of time. Based on the legal test in *Canada (Attorney General) v. Hennelly* (1999), 244 N.R. 399 (F.C.A.) and the evidence filed before it, including evidence of impecuniosity, the Federal Court concluded that the appellant had failed to meet that test. Specifically, the Federal Court concluded that the appellant had not demonstrated a continuing intention to pursue the application for judicial review and had not provided a reasonable explanation for her delay.

[4] In my view, the Federal Court was entitled to reach that conclusion based on the law and the material before it. The appellant has not demonstrated that the Federal Court's exercise of discretion was vitiated by error of law or palpable and overriding error. On the issue of impecuniosity, the material does show that the appellant was having difficulty raising funds for the retainer sought by counsel but there is no evidence that her impecuniosity prevented her from preparing and filing a short notice of application within the thirty day period.

[5] Therefore, I would dismiss the appeal. The respondent does not seek its costs of the appeal.

“David Stratas”

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J.A.

“I agree  
John M. Evans”

“I agree

K. Sharlow”

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-491-09

**(AN APPEAL FROM THE ORDER OF THE HONOURABLE MADAM JUSTICE  
SNIDER FROM THE FEDERAL COURT, DATED DECEMBER 2, 2010, IN DOCKET NO.  
09-T-61.)**

**STYLE OF CAUSE:** ESPER POWELL v. UNITED  
PARCEL SERVICE

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** OCTOBER 27, 2010

**REASONS FOR JUDGMENT BY:** STRATAS J.A.

**CONCURRED IN BY:** EVANS J.A.  
SHARLOW J.A.

**DATED:** OCTOBER 28, 2010

**APPEARANCES:**

Ernest J. Guiste FOR THE APPELLANT

Douglas Best  
Nafisah Chowdhury FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Ernest J. Guiste FOR THE APPELLANT

Miller Thomson LLP FOR THE RESPONDENT