

Federal Court  
of Appeal



Cour d'appel  
fédérale

**Date: 20100528**

**Docket: A-41-09**

**Citation: 2010 FCA 140**

**CORAM: LÉTOURNEAU J.A.  
PELLETIER J.A.  
TRUDEL J.A.**

**BETWEEN:**

**RUI BIN XU**

**Appellant**

**and**

**M. MURPHY, OC TRANSP, S. FLINT,  
SPL. CST. MAKHAL, SPL. CST. BLEECKER,  
K. FAHEY, G. CLARK**

**Respondents**

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on May 28, 2010.

REASONS FOR ORDER BY:

PELLETIER J.A.

CONCURRED IN BY:

LÉTOURNEAU J.A.  
TRUDEL J.A.

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**Respondents**

**REASONS FOR ORDER**

**PELLETIER J.A.**

[1] In response to a Notice of Status Review, Mr Xu brings this motion for an extension of time to file an appeal from a decision of the Federal Court. My Xu filed a Statement of Claim against the Ottawa municipal transit system, known as OC Transpo, and six of its employees for damages suffered when he was allegedly assaulted by these employees. The Federal Court dismissed

Mr. Xu's claim on the ground that the Federal Court lacked jurisdiction over the defendants and the subject matter of the claim.

[2] Mr. Xu appealed from that decision in the time provided by the Rules. As a result, he does not require leave to do that which he has already done. That, however, does not dispose of the problem. An appellant who must respond to a Notice of Status Review must set out the reasons for the delay in proceeding with his appeal and propose a timetable for the remaining steps to be taken in the appeal: see Rule 382.3(1) of the *Federal Courts Rules*, SOR/98-106. In this case, Mr. Xu has done neither of these things. In fact, he has not taken the first step to perfect his appeal, namely to settle the contents of the appeal book, either by agreement or by motion. These omissions are sufficient ground to dismiss the appeal on the ground of delay.

[3] Rule 382.4(2) provides that if a judge is not satisfied that a proceeding should continue, he or she may dismiss the proceeding. Since Mr. Xu has not satisfied the requirements of Rule 382.3(1), I am not satisfied that the appeal should be allowed to proceed. I would add that this results in no injustice in that the appeal is doomed to fail in any event. The Federal Courts have no jurisdiction over an action in tort between an individual and a municipal agency. OC Transpo is not the Crown in right of Canada nor is it in any way an agent of the Crown. Consequently, the right of action against the Crown found at section 17 of the *Federal Courts Act*, R.S.C. 1985, c. F-7, and the enabling provisions of the *Crown Liability and Proceedings Act*, R.S.C.1985, c. C-50, are of no assistance to Mr. Xu. He has sued in the wrong court.

[4] As a result, I would dismiss Mr. Xu's notice of motion for an extension of time to file his notice of appeal and I would dismiss his appeal for delay.

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J.A.

"I agree.  
Gilles Létourneau J.A."

"I agree.  
Johanne Trudel J.A."

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:**

A-41-09

**STYLE OF CAUSE:**

RUI BIN XU and OC TRANSP. ET  
AL.

**MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES**

**REASONS FOR ORDER BY:**

PELLETIER J.A.

**CONCURRED IN BY:**

LÉTOURNEAU J.A.

TRUDEL J.A.

**DATED:**

MAY 28, 2010

**WRITTEN REPRESENTATIONS BY:**

RUI BIN XU

FOR THE APPELLANT , ON HIS  
OWN BEHALF