

HIGH COURT OF AUSTRALIA

EDELMAN J

JING YU

PLAINTIFF

AND

JUDGES OF FEDERAL COURT OF AUSTRALIA &
ORS

DEFENDANTS

[2025] HCASJ 23
Date of Judgment: 14 August 2025
C12 of 2025

ORDERS

- 1. The name of the third defendant be amended from the "ACT Education Directorate" to the "Australian Capital Territory".*
- 2. The plaintiff's application filed on 6 June 2025 is dismissed.*
- 3. The plaintiff pay the third defendant's costs of the plaintiff's application filed on 6 June 2025.*

Representation

The plaintiff is unrepresented

Submitting appearances for the first and second defendants

Conditional appearance for the third defendant

1 EDELMAN J. The plaintiff, Ms Yu, applies for a constitutional or other writ against the "Judges of [the] Federal Court of Australia" (as first defendant), the "Judges of [the] Federal Circuit and Family Court [of Australia]" (as second defendant), and the "ACT Education Directorate" (as third defendant). The first and second defendants filed submitting appearances. The third defendant, who appeared conditionally, applies for an order that the name of the third defendant (an administrative unit which is incapable of being the subject of legal duties¹) be amended to the "Australian Capital Territory", the body politic which is the legal entity in which the rights and liabilities relevant to these proceedings are reposed.² That order should be made.

2 The third defendant also seeks an order that the proceeding be dismissed without a hearing under r 25.09.1 of the *High Court Rules 2004* (Cth). Rule 25.09.1 of the *High Court Rules* provides that an application for a constitutional or other writ may be determined without being listed for a hearing. The application can be dismissed on the ground that the application is an abuse of the process of the Court. For the following reasons, Ms Yu's application is an abuse of process and should be dismissed without being listed for hearing and these reasons should be published in accordance with r 25.09.2 of the *High Court Rules*.

3 Ms Yu was employed by the Australian Capital Territory as a teacher of Mandarin from 1991 until she was dismissed in 2016. By an originating application in the (formerly named) Federal Circuit Court of Australia, filed on 18 November 2016, Ms Yu commenced proceedings against the ACT Education Directorate alleging it had contravened numerous provisions of the *Fair Work Act 2009* (Cth) during the course of her employment and upon termination.

4 On 18 November 2021, Ms Yu's application was dismissed by Division 2 of the Federal Circuit and Family Court of Australia (Judge W J Neville).³ On 30 June 2022, the Full Court of the Federal Court of Australia (Thomas, SC Derrington and Halley JJ) allowed Ms Yu's appeal. The Full Court remitted the matter to the Federal Circuit and Family Court (Division 2) for the determination of appropriate remedies in respect of a breach of s 50 of the *Fair Work Act 2009* (Cth) that the Full Court had found to be made out.⁴ An application by Ms Yu for special leave to appeal against that decision was refused by this Court on

1 See *Public Sector Management Act 1994* (ACT), s 13(1) and *Administrative Arrangements 2025 (No 1)* (ACT), s 6, Sch 1, column 3.

2 *Australian Capital Territory (Self-Government Act) 1988* (Cth), s 7.

3 *Yu v ACT Education Directorate [No 2]* [2021] FedCFamC2G 267.

4 *Yu v ACT Education Directorate* [2022] FCAFC 110.

8 December 2022.⁵ On 19 January 2024, on the remitted application, the Federal Circuit and Family Court (Judge Cameron) held that the ACT Education Directorate was liable to pay Ms Yu pecuniary penalties totalling \$10,500. Ms Yu's claims for compensation (including aggravated damages) were otherwise dismissed.⁶

5 Ms Yu appealed to the Federal Court from the judgment in the remitted matter before Judge Cameron and also sought to set aside or invalidate the first instance judgment of Judge W J Neville and the Full Court judgment of Thomas, SC Derrington and Halley JJ. On 9 April 2025, the Federal Court (Raper J) allowed Ms Yu's appeal in part and determined that the appropriate penalties totalled \$18,600.⁷ Ms Yu has not sought to bring an application for special leave to appeal from that decision (which would now require an extension of time).

6 Ms Yu's application in the original jurisdiction of this Court seeks principal relief as follows: (i) a writ of mandamus compelling the Federal Court of Australia or Federal Circuit and Family Court of Australia "differently constituted, to determine the matter according to law"; and (ii) a writ of certiorari quashing the orders of the Federal Circuit and Family Court made on 18 November 2021 and 19 January 2024, and quashing the orders of the Full Court of the Federal Court of Australia made on 30 June 2022 and the orders of the Federal Court made on 9 April 2025.

7 It appears that the orders of the Federal Circuit and Family Court about which Ms Yu seeks certiorari have already been set aside, at least in part, on appeal by the Federal Court. And most of Ms Yu's applications for certiorari require a very substantial extension of time, which has not been sought.⁸ But there is a more fundamental problem with Ms Yu's application for a constitutional or other writ in this Court. To the extent that there are extant orders of Raper J that Ms Yu seeks to have quashed by a writ of certiorari, with a consequential writ of mandamus to compel a new decision, Ms Yu has not sought to exhaust the appellate process. And in relation to the decision of the Full Court of the Federal Court, she has not sought to bring a further application for special leave to appeal, identifying the

5 *Yu v ACT Education Directorate* [2022] HCASL 205.

6 *Yu v ACT Education Directorate* [2024] FedCFamC2G 29.

7 *Yu v ACT Education Directorate* [2025] FCA 335.

8 *High Court Rules 2004* (Cth), r 25.02.2(a). See *Re Commonwealth; Ex parte Marks* (2000) 75 ALJR 470 at 473-474 [13]; 177 ALR 491 at 495.

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exceptional circumstances that could justify that course.⁹ She seeks instead to "leapfrog" the ordinary appeals process.¹⁰

8 Ms Yu's application amounts to an attempt to circumvent that proper appeals process. As Nettle J has explained:¹¹

"even if grounds for judicial review were established by the plaintiff, this Court would be disposed to exercise its discretion to refuse the extraordinary relief sought unless satisfied that the remedy by ordinary appellate process is 'less convenient, beneficial and effective' in the interests of the parties or the public. And that is so notwithstanding that the ordinary appellate process available to the plaintiff would require ... special leave to appeal. Consequently, as this Court has recently made clear on several occasions, to seek review of a judgment on the merits by application for constitutional or other writs, rather than by application for special leave to appeal, without any explanation for the departure from the ordinary course, is an abuse of process."

9 Ms Yu has not identified any exceptional circumstances—such as a constitutional issue that must be determined in order to establish an entitlement to relief,¹² or a want or excess of jurisdiction by a federal judge that is "clearly shown"¹³—that could justify Ms Yu's circumvention of the appeals process. Ms Yu's application is an abuse of process and should be dismissed without a hearing under r 25.09.1 of the *High Court Rules*.

10 Contrary to Ms Yu's submissions, there is no basis for what she describes as a "public interest cost order". Ms Yu's application is brought to vindicate her private interests. Her application is an abuse of process and is brought without reasonable cause, including being brought after notification by the Registry of this Court that "constitutional writs are discretionary in nature and an applicant should

9 *Re Goulding* (2020) 94 ALJR 1014 at 1018 [11]; 384 ALR 204 at 207-208.

10 *Rilak v A Senior Registrar of the Family Court of Australia at Sydney* [2018] HCATrans 101 at 684-691.

11 *Bussa v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (2020) 94 ALJR 497 at 501 [13]; 337 ALR 228 at 232 (footnotes omitted).

12 *Construction Forestry Mining and Energy Union v Director of the Fair Work Building Industry Inspectorate* (2016) 91 ALJR 1 at 8-9 [22]; 338 ALR 360 at 367, citing *R v Cook*; *Ex parte Twigg* (1980) 147 CLR 15 at 30.

13 *Dimitrov v Supreme Court of Victoria* (2017) 263 CLR 130 at 138-139 [19], citing *R v Ross-Jones*; *Ex parte Green* (1984) 156 CLR 185 at 194.

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generally exhaust their avenues of appeal prior to making such an application".
Ms Yu should pay the costs of the third defendant.

11 Orders should be made as follows:

1. The name of the third defendant be amended from the "ACT Education Directorate" to the "Australian Capital Territory".
2. The plaintiff's application filed on 6 June 2025 is dismissed.
3. The plaintiff pay the third defendant's costs of the plaintiff's application filed on 6 June 2025.