

FEDERAL COURT OF APPEAL

BETWEEN:

JOHN C. TURMEL

Appellant

and

HER MAJESTY THE QUEEN

Respondent

RESPONDENT'S MEMORANDUM OF FACT AND LAW

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OVERVIEW

1. The Motion Judge did not err in affirming the Prothonotary's original order to strike the claim that forms the subject of this appeal. The Prothonotary identified the relevant legal principles concerning the elements of proper pleadings and the causes of actions alleged, and applied them to find that the appellant's claim failed to disclose a reasonable cause of action and was an abuse of process. On the appeal motion, the Motion Judge found no reviewable error in the Prothonotary's identification or application of these principles. The appellant has not established any error in either of these decisions that would warrant appellate intervention. Canada therefore requests that this appeal be dismissed with costs.

PART I – STATEMENT OF FACTS

A. THE JOHN TURMEL CLAIM

2. The appellant's claim (the "John Turmel Claim") is one of more than 70 virtually identical claims in which the self-represented plaintiffs seek various forms of relief related to federal COVID-19 mitigation measures. The statements of claim in each action are based on a "kit" made available on the internet by Mr. Turmel, and seek:

- (a) a declaration that the federal government's COVID-19 mitigation measures infringe subsections 2(c) and (d), 6, 7, 8, 9, and 12 of the *Canadian Charter of Rights and Freedoms* ("Charter") and are not justified under section 1 of the Charter;
- (b) an order pursuant to subsection 24(1) of the Charter prohibiting any COVID restriction measures "that are not imposed on the deadlier Flu";
- (c) a permanent personal constitutional exemption from any such measures;
and

- (d) an order for “unspecified damages for pain and losses incurred” as a result of stress, damaged personal connections, inconvenience and time lost in line-ups, and higher prices.¹

3. The Chief Justice of the Federal Court ordered that the claims be collectively case managed by Prothonotary Ayles (as she then was), who ordered that the other claims be stayed pending the final determination of the John Turmel Claim.²

4. The claims allege that the World Health Organization is exaggerating COVID-19 fatality rates, and that only 1 in 230,000 Canadians have died of COVID-19.³ The claims allege that COVID-19 is a “man-made virus, albeit a very mild one,” and that most COVID-19 deaths were in long-term care homes.⁴ They allege that asymptomatic transmission of COVID-19 is rare, and provides several paragraphs of statistics comparing COVID-19 mortality rates to those associated with the flu.

5. The claims allege a “cover up” to “fudge the statistical Cases and Fatalities data.”⁵ They refer to alleged changes by the American Centres for Disease Control and Prevention to its death certificate guidelines, as well as an effort by the mainstream media to suppress “HydroxyChloroQuine HCQ” as an alternative to “a Bill Gates-

¹ Statement of Claim at paras 1, 130 [Claim], **Appeal Book [AB], Tab 3 at 28.**

² Order of the Court dated February 26, 2021, in T-130-31, **Respondent’s Book of Authorities [RBOA], Tab 9**; Order of the Court dated April 8, 2021, in T-130-21, T-138-21, T-171-21, T-208-21, T-219-21, T-212-21, T-220-21, T-221-21, T-230-21, and T-242-21 [Stay Order], **RBOA, Tab 7**; aff’d in Order of the Court dated May 7, 2021, in T-171-21, **RBOA, Tab 11**; motion for an extension of time to appeal denied in Order of the Federal Court of Appeal dated August 9, 2021, in 21-A-14 [Stay Order FCA Appeal], **RBOA, Tab 12.**

³ Claim at para 2, **AB, Tab 3 at 29.**

⁴ Claim at paras 6-70, **AB, Tab 3 at 31-51.**

⁵ Claim at paras 71-96, **AB, Tab 3 at 51-58.**

funded Oxford Recovery HCQ test”, which the claims allege is “deliberate malevolence.”⁶

6. The claims allege that “Covid-Mitigation restrictions include lockdowns & curfews, quarantines, mandatory masks, mandatory social distancing, mandatory vaccine, [and] mandatory immunity card for public services.”⁷ They allege that “lockdown gain does not justify lockdown pain” and that lockdown measures are not supported by evidence, and have increased “suicides, murders, abuses, addictions, [and] truancy.”⁸

7. The claims allege that COVID measures have resulted in line-ups at stores, higher prices, stress, neighbours “snitching” on neighbours, and lost friendships due to “accusations of deniers putting alarmists at risk from the invisible plague,”⁹ and that:

Such restrictions on civil liberties to mitigate a sham-virus are an arbitrary, grossly disproportional, conscience-shocking violation of the Charter Section 2 right to freedom of peaceful assembly and association is gone, S.6 right to [m]obility, S.7 right to life, liberty and security, S.8 right to be secure against unreasonable search or seizure, S.9 right to not to be arbitrarily detained or imprisoned, S.12 right to not be subjected to any cruel and unusual treatment or punishment, not in accordance with the principles of fundamental justice.¹⁰

8. The claims refer to a statement by the Prime Minister describing the requirements for international travellers arriving by air to produce a negative COVID-19 test before entering Canada, for all travellers to quarantine upon entering Canada,

⁶ Claim at paras 74-79, 87-96, **AB, Tab 3 at 52-54, 56-58.**

⁷ Claim at paras 103-105, **AB, Tab 3 at 60-61.**

⁸ Claim at para 103, **AB, Tab 3 at 60.**

⁹ Claim at para 103, **AB, Tab 3 at 60.**

¹⁰ Claim at para 104, **AB, Tab 3 at 60-61.**

and the potential for “fines and prison time” for not following these requirements.¹¹ They allege that “The Prime Minister and his Government have been duped,” and that “Restrictions on civil liberties are not warranted for a Covid threat if they are not warranted for the tenfold deadlier Flu threat.”¹²

9. The claims ask the rhetorical question “Who benefits?,” and allege that “Personal Protection Equipment producers, Skip-the-Dishes delivery come to mind but vaccine companies seem to have most to gain by an exaggerated scandemic.”¹³

10. The claims allege that the vaccine promotion is a “scam”, and that some would prefer alternatives including “drinking the waters of your own cistern”, vitamins, and supplements.¹⁴

11. The claims also allege that the government owes Canadians \$2 trillion in compensation, which it could pay by borrowing “new interest-free credits from the Bank of Canada.”¹⁵

B. THE PROTHONOTARY STRIKES THE JOHN TURMEL CLAIM WITHOUT LEAVE TO AMEND

12. Canada filed a motion to strike the John Turmel Claim on the grounds that it failed to disclose a reasonable cause of action and was an abuse of the Court’s process.¹⁶ In the alternative, Canada’s motion requested that the appellant be ordered

¹¹ Claim at para 114, **AB, Tab 3 at 65.**

¹² Claim at paras 117-118, **AB, Tab 3 at 66.**

¹³ Claim at paras 119-120, **AB, Tab 3 at 66-67.**

¹⁴ Claim at paras 121-127, **AB, Tab 3 at 67-68.**

¹⁵ Claim at paras 128-129, **AB, Tab 3 at 69.**

¹⁶ Order of the Court dated July 12, 2021 at para 12 [Prothonotary’s Order], **RBOA, Tab 10**; *Federal Courts Rules*, SOR/98-106, paras 221(1)(a),(c),(f) [*Federal Courts Rules*].

to provide security for costs in light of Canada's numerous costs awards against him that remain unpaid.¹⁷

13. On July 12, 2021, the Prothonotary granted Canada's motion (the "Prothonotary's Order").¹⁸ She found that the statement of claim disclosed no reasonable cause of action as it contained "bare assertions of *Charter* breaches without sufficient material facts to satisfy the criteria applicable to each of the *Charter* rights alleged to have been violated."¹⁹ She also noted that the claim contained no facts to indicate that the appellant was personally subjected to any federal COVID-19 mitigation measures, and that the appellant could not rely on facts applicable to other plaintiffs to support his *Charter* breach allegations.²⁰

14. The Prothonotary held that the statement of claim was an abuse of process as it "pleads bare assertions without the necessary material facts on which to base those assertions, such that the Defendant cannot know how to answer it, [and] is replete with lengthy diatribes and makes scandalous and extreme allegations that are unsubstantiated, such as alleged cover-ups and conspiracies."²¹

15. Given the nature of the deficiencies, and that the appellant had not suggested that his claim could be cured by way of amendment, the Prothonotary declined to grant leave to amend his claim.²²

¹⁷ Prothonotary's Order at paras 12-13, **RBOA, Tab 10**; *Federal Courts Rules*, s 416(1)(f).

¹⁸ Prothonotary's Order, paras 28-30, **RBOA, Tab 10**.

¹⁹ Prothonotary's Order at paras 25-28, **RBOA, Tab 10**.

²⁰ Prothonotary's Order at paras 25, 27, **RBOA, Tab 10**.

²¹ Prothonotary's Order at para 29, **RBOA, Tab 10**.

²² Prothonotary's Order at para 30, **RBOA, Tab 10**.

16. Finally, the Prothonotary noted that, had she not struck the claim without leave to amend, she would have granted an order for security for costs in the amount of \$11,350 in light of the appellant's numerous unpaid cost awards and the absence of any demonstration that he was impecunious.²³

C. THE MOTIONS JUDGE AFFIRMS PROTHONOTARY AYLEN'S DECISION

17. The appellant appealed the Prothonotary's order. On October 18, 2021, Justice Zinn dismissed the appeal with costs (the "Motions Judge's Decision"), finding that Prothonotary Aylen did not err in striking the claim without leave to amend.²⁴

18. In his decision, the Motions Judge first identified that the governing standard of review – intervention by the Federal Court on an appeal of a decision of a prothonotary is justified where a prothonotary has made an error of law, has exercised her discretion on wrong principles, or where they have misapprehended the evidence such that there is a palpable and overriding error.²⁵

19. The Motions Judge considered the appellant's argument that the Prothonotary did not accept the facts set out in the claim as true as required on a motion to strike. The Motions Judge disagreed, finding that the Prothonotary "did indeed consider the statistics on which he relies... However, she found that those facts were insufficient to establish that the Plaintiff's personal Charter rights were breached" (emphasis in original).²⁶

²³ Prothonotary's Order at para 31, **RBOA, Tab 10**.

²⁴ *John C Turmel v Her Majesty The Queen*, [2021 FC 1095](#) at para 26 [Motion Judge's Decision], **RBOA, Tab 15**.

²⁵ Motion Judge's Decision at para 8, **RBOA, Tab 14**.

²⁶ Motion Judge's Decision at para 14, **RBOA, Tab 14**.

20. After reviewing the claim, as well as the Prothonotary's findings on each of the alleged *Charter* breaches, the Motions Judge found that "the observations of the Prothonotary regarding the lack of facts necessary to support these claims are accurate" and that "her decision that this claim fails to disclose a cause of action for the Plaintiff is reasonable on the facts and her observations on the law are correct."²⁷

21. The Motions Judge considered the appellant's argument that the absence of relevant facts would be overcome if the Court considered the facts alleged by other plaintiffs in the stayed "kit" claims. He rejected this argument, noting that the appellant was not permitted to represent other plaintiffs or rely on facts pleaded by others.

22. Finally, the Motions Judge agreed with the Prothonotary's determination that the claim as drafted constituted an abuse of process. He noted that "While a self-represented litigant may expect to be granted some leniency by a court, he must still draft a claim that discloses a cause of action to which the defendant can respond. This Statement of Claim falls well short of that requirement."²⁸

PART II – POINTS IN ISSUE

23. The issues in this motion are:

- (a) What is the appellate standard of review?
- (b) Did the Motion Judge err in affirming the Prothonotary's decision to strike the claim?; and
- (c) If the claim should not be struck, should security for costs should be granted?

²⁷ Motion Judge's Decision at paras 15-23, **RBOA, Tab 14.**

²⁸ Motion Judge's Decision at paras 24-25, **RBOA, Tab 14.**

PART III – SUBMISSIONS

A. APPELLATE STANDARD OF REVIEW

24. The standard of review applicable on review of a decision of a motions judge reviewing a discretionary order of a Prothonotary is palpable and overriding error with respect to the motion judge's findings of fact and mixed fact and law, and correctness with respect to the motions judge's findings on any extricable questions of law.²⁹

B. THE MOTIONS JUDGE DID NOT ERR IN AFFIRMING THE PROTHONOTARY'S DECISION

25. The Motions Judge did not err in concluding that there were no grounds to interfere with the Prothonotary's decision.

1) **The Courts below properly determined that the claim discloses no reasonable cause of action**

26. The claim was properly struck as disclosing no reasonable cause of action. In considering whether the claim disclosed a reasonable cause of action, the Prothonotary correctly identified the relevant legal principles underlying Rule 221(1)(a):

- (a) It must be plain and obvious that the pleading discloses no reasonable cause of action³⁰;
- (b) The material facts pleaded must be taken as true, unless the allegations are based on assumption and speculation³¹;
- (c) In order to disclose a reasonable cause of action, a statement of claim must plead each constituent element of every cause of action with

²⁹ *Hospira Healthcare Corp v Kennedy Institute of Rheumatology*, [2016 FCA 215](#) at para 83-84 [*Hospira*], **RBOA, Tab 2**.

³⁰ Prothonotary's Order at para 17, **RBOA, Tab 10**; *Operation Dismantle Inc v Canada*, [\[1985\] 1 SCR 441](#) at paras 7-8, 27, **RBOA, Tab 6**.

³¹ Prothonotary's Order at para 17, **RBOA, Tab 10**; *R v Imperial Tobacco Canada Ltd*, [2011 SCC 42](#) at para 17, **RBOA, Tab 11**

sufficient particularity and each allegation must be supported by sufficient material facts³²;

- (d) There are no separate rules of pleading for Charter cases, the substantive content of each Charter right has been clearly defined by the decisions of the Supreme Court of Canada and a plaintiff must plead sufficient material facts to satisfy the criteria applicable to the provisions in question³³; and
- (e) A plaintiff cannot rely on facts applicable to other individuals to support a claim that the plaintiff's Charter rights have been infringed.³⁴

27. The Prothonotary also relied on the Supreme Court of Canada jurisprudence concerning the essential elements of Charter subsections 2(c) and (d), 6, 7, 8, 9 and 12, and found that the claim lacked the material facts necessary to establish an infringement of any of these rights in the appellant's case.³⁵

28. On appeal, the Motions Judge affirmed that the Prothonotary's "observations on the law are correct," "the observations of the Prothonotary regarding the lack of facts necessary to support these claims are accurate," and "her decision that this claim fails to disclose a cause of action for the Plaintiff is reasonable on the facts."³⁶

29. The appellant continues to allege that, had the Court not stayed the other "kit" claims, he would be able to rely on facts applicable to the other plaintiffs to support his claim. The Motions Judge correctly dismissed this argument, noting 1) that the appellant had chosen a procedure that did not allow him to rely on facts applicable to

³² Prothonotary's Order at paras 18-19, **RBOA, Tab 10**; *Mancuso v Canada (National Health and Welfare)*, [2015 FCA 227](#) at paras 16-17, 19 [Mancuso], **RBOA, Tab 4**.

³³ Prothonotary's Order at para 20, **RBOA, Tab 10**; *Mancuso* at para 25, **RBOA, Tab 4**; *MacKay v Manitoba*, [\[1989\] 2 SCR 357](#) at para 9, **RBOA, Tab 3**.

³⁴ Prothonotary's Order at para 21, **RBOA, Tab 10**; *Harris v Canada (Attorney General)*, [2019 FCA 232](#) at para 22 [Harris], **RBOA, Tab 1**.

³⁵ Prothonotary's Order at para 25, **RBOA, Tab 10**.

³⁶ Motion Judge's Decision at paras 22-23, **RBOA, Tab 14**.

other plaintiffs, and 2) that the order staying the other “kit” claims had already been unsuccessfully appealed to the Federal Court of Appeal.³⁷

30. The appellant also notes that, in a previous group of claims that were similarly based on “kits” developed by the appellant, Phelan J. allowed the claims to proceed in parallel rather than identifying a lead claim and staying the remaining claims.³⁸ While the appellant referred to this group of cases in the Court below, he notes that the Motion Judge did not address it, and wrongly assumed that the appellant was referring to another case, *John Doe v Canada*, [2015 FC 916](#).

31. However, the case that the appellant identifies does not stand to the proposition that a plaintiff can rely on facts applicable to the other plaintiffs, and indeed this Court has more recently and expressly rejected this proposition in yet another proceeding that was also based on a “kit” developed by the appellant.³⁹ It is also noteworthy that the claims on which the appellant relies were, like the present case, ultimately struck on the grounds that they failed to disclose a reasonable cause of action and were an abuse of process.”⁴⁰

2) **The Courts below did not err in finding that the claim is an abuse of process**

32. In finding that the claim should also be struck as an abuse of process, the Prothonotary identified the correct legal principles governing Rule 221(1)(f), and did not commit a palpable and overriding error in applying them to the claim.⁴¹

³⁷ Motion Judge’s Decision at paras 12-13, **RBOA, Tab 14**.

³⁸ *Reference re subsection 52(1) of the Canadian Charter of Rights and Freedoms*, [2017 FC 30](#) at para 38 [*Reference Decision*], **RBOA, Tab 14**.

³⁹ *Harris v Canada (Attorney General)*, [2019 FCA 232](#) at para 22 [Harris], **RBOA, Tab 1**.

⁴⁰ *Reference Decision*, [2017 FC 30](#) at para 38, **RBOA, Tab 14**.

⁴¹ Prothonotary’s Order at para 22, **RBOA, Tab 10**.

33. The appellant does not allege any error in the Prothonotary's finding, or the Motion Judge's affirmation that the claim was bereft of material facts but "replete with lengthy diatribes and makes scandalous and extreme allegations that are unsubstantiated, such as alleged cover-ups and conspiracies."⁴²

34. In fact, the appellant's written submissions in support of the present appeal make additional scandalous and extreme allegations – for example, that "the pharma-cabal set off the alarm and this court refused to call it a false alarm and is thusly as responsible for the deadly repercussions as the preacher who did not call the false alarm" and "with such a powerful cabal to contend with, I can only hope for justice and not law."⁴³ These allegations are further evidence that the claim is an abuse of process and that it should not be allowed to proceed.

3) The Courts below not err in declining to grant leave to amend

35. The Prothonotary did not commit a palpable and overriding error in exercising her discretion not to grant the appellant leave to amend his claim.⁴⁴

36. In declining leave to amend, the Prothonotary observed that the appellant did not suggest that the deficiencies in the claim could be cured by amendment, and indeed acknowledged in written representations that many of his personal Charter rights were not engaged. The appellant has not alleged, let alone established, any error in this portion of the Prothonotary's analysis. The Court should accordingly affirm the decision striking the claim without leave to amend.

⁴² Prothonotary's Order at para 29, **RBOA, Tab 10**.

⁴³ Plaintiff's Memorandum of Fact and Law at paras 45, 54.

⁴⁴ Prothonotary's Order at para 30, **RBOA, Tab 10**.

C. IN THE ALTERNATIVE, SECURITY FOR COSTS SHOULD BE GRANTED

37. In the alternative, if the decision striking the claim is set aside, this Court should grant the alternative request made by Canada below for security for costs in the amount of \$11,350, and order that the appellant take no further steps in the action until security is provided.

38. Although the Motions Judge did not rule on this request, the Prothonotary found that Canada had numerous unpaid costs awards against the appellant and that the appellant had not demonstrated impecuniosity. The Prothonotary found that Canada was therefore entitled to security for costs, and noted she would have ordered security had it been necessary to decide the issue.⁴⁵ The appellant has not identified any legal error or palpable and overriding error of fact or mixed fact and law in this portion of the Prothonotary's analysis, and effect should be given to the Prothonotary's reasons in these circumstances.

⁴⁵ Prothonotary's Order at para 30, **RBOA, Tab 10**; *Federal Courts Rules*, ss 416(1)(f), 417; *Mapara v Canada (Attorney General)*, [2016 FCA 305](#) at para 5, **RBOA, Tab 5**.

PART IV – ORDER SOUGHT

39. Canada requests an order dismissing the appellant's appeal, with costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated at Toronto this February 24, 2022.



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PART V – AUTHORITIES CITED

- 1 *Harris v Canada (Attorney General)*, [2019 FCA 232](#)
- 2 *Hospira Healthcare Corp v Kennedy Institute of Rheumatology*, [2016 FCA 215](#)
- 3 *MacKay v Manitoba*, [\[1989\] 2 SCR 357](#)
- 4 *Mancuso v Canada (National Health and Welfare)*, [2015 FCA 227](#)
- 5 *Mapara v Canada (Attorney General)*, [2016 FCA 305](#)
- 6 *Operation Dismantle Inc v Canada*, [\[1985\] 1 SCR 441](#)
- 7 Order of the Court dated April 8, 2021, in T-130-21, T-138-21, T-171-21, T-208-21, T-219-21, T-212-21, T-220-21, T-221-21, T-230-21, and T-242-21
- 8 Order of the Court dated August 31, 2021
- 9 Order of the Court dated February 26, 2021, in T-130-31
- 10 Order of the Court dated July 12, 2021
- 11 Order of the Court dated May 7, 2021, in T-171-21
- 12 Order of the Federal Court of Appeal dated August 9, 2021, in 21-A-14
- 13 *R v Imperial Tobacco Canada Ltd*, [2011 SCC 42](#)
- 14 *Reference re subsection 52(1) of the Canadian Charter of Rights and Freedoms*, [2017 FC 30](#)
- 15 *Turmel v Her Majesty The Queen*, [2021 FC 1095](#)

APPENDIX A – LEGISLATION

Federal Courts Rules (SOR/98-106)

<p>Motion to Strike</p> <p>221 (1) On motion, the Court may, at any time, order that a pleading, or anything contained therein, be struck out, with or without leave to amend, on the ground that it</p> <ul style="list-style-type: none"> (a) discloses no reasonable cause of action or defence, as the case may be, (c) is scandalous, frivolous or vexatious, (f) is otherwise an abuse of the process of the Court, 	<p>Requête en radiation</p> <p>221 (1) À tout moment, la Cour peut, sur requête, ordonner la radiation de tout ou partie d'un acte de procédure, avec ou sans autorisation de le modifier, au motif, selon le cas :</p> <ul style="list-style-type: none"> a) qu'il ne révèle aucune cause d'action ou de défense valable; c) qu'il est scandaleux, frivole ou vexatoire; f) qu'il constitue autrement un abus de procédure
<p>Where security available</p> <p>416 (1) Where, on the motion of a defendant, it appears to the Court that</p> <p>(f) the defendant has an order against the plaintiff for costs in the same or another proceeding that remain unpaid in whole or in part,</p>	<p>Cautionnement</p> <p>416 (1) Lorsque, par suite d'une requête du défendeur, il paraît évident à la Cour que l'une des situations visées aux alinéas a) à h) existe, elle peut ordonner au demandeur de fournir le cautionnement pour les dépens qui pourraient être adjugés au défendeur :</p> <p>f) le défendeur a obtenu une ordonnance contre le demandeur pour les dépens afférents à la même instance ou à une autre instance et ces dépens demeurent impayés en totalité ou en partie;</p>
<p>Grounds for refusing security</p> <p>417 The Court may refuse to order that security for costs be given under any of paragraphs 416(1)(a) to (g) if a plaintiff demonstrates impecuniosity and the Court is of the opinion that the case has merit.</p>	<p>Motifs de refus de cautionnement</p> <p>417 La Cour peut refuser d'ordonner la fourniture d'un cautionnement pour les dépens dans les situations visées aux alinéas 416(1)a) à g) si le demandeur fait la preuve de son indigence et si elle</p>

	est convaincue du bien-fondé de la cause.
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