

FEDERAL COURT

Between:

Michel Denis Ethier

Appellant

Plaintiff

AND

Her Majesty The Queen

Respondent

Defendant

RECORD OF APPEAL MOTION

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FEDERAL COURT

Between:

Michel Denis Ethier

Appellant

Plaintiff

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Respondent

Defendant

NOTICE OF APPEAL MOTION

TAKE NOTICE THAT Michel Denis Ethier moves in writing pursuant to Rule 369 to appeal for an Order overturning the April 8 2021 Order of Prothonotary Mandy Aylen, Case Management Judge, staying my action pending the resolution of the Lead Plaintiff's action without obliging Defendant to email me a copy of the documentation.

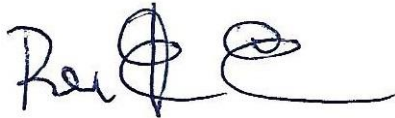
The grounds of the appeal are that:

- Plaintiff must decide whether to have my action move forward with insufficient information;
- checking the registry file is like checking an index without getting the book;
- getting the final decision with the arguments that were made limits my ability to decide whether I want to pursue my action if Turmel's is dismissed when I don't know the arguments he made that did not win;

- vigilant watching for updates is not as infallible as getting it in the email and not watching at all;
- objecting to less is not demanding more;
- an email copy CC: is no burden to any clerk;
- I must put in more effort to get what I am due;
- the Court had jurisdiction to oblige Defendant to send an email copy if they did not want to serve everyone.

AND FOR ANY ORDER abridging the time for service, filing, or hearing of the motion, or amending any defect of the motion as to form or content, or for any Order deemed just.

Dated at Cache Bay Ontario on April 19 2021.



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Cc: Registrar,
Benjamin Wong

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WRITTEN REPRESENTATIONS

1. In her Apr 8 Order, Prothonotary and Case Management

Judge Mandy Ayles wrote:

[3] The Defendant has indicated that the Defendant intends to bring a motion to strike the Statements of Claim...

[4] A case management conference was held on March 11, 2021... During that case management conference, the Court proposed that Mr. Turmel's claim in T-130-21 move forward as the lead claim and that the balance of the actions be held in abeyance, pursuant to section 50(1)(b) of the Federal Courts Act [Act], pending a final determination in T-130-21 and any appeal therefrom. Following that final determination, it would then be open to the Plaintiffs in the stayed actions to seek to have their actions move forward upon establishing that they are differently situated than T-130-21 and thus should not be bound by the outcome of that action.

[5] A number of the Plaintiffs expressed a willingness to proceed in this manner. However, they took issue with the information that would be provided to them by the Defendant regarding T-130-21 and requested that if their action was stayed, that they still be provided with all filings made in relation to T-130-21, including, for example, the Defendant's motion to strike. The Defendant indicated that they would not agree to

voluntarily serve all Plaintiffs with the materials in T-130-21, as there was no obligation to do so under the Federal Courts Rules.

Moreover, the Defendant indicated that they would not agree to periodically provide Mr. Turmel with a list of the email addresses of all Plaintiffs who commenced actions using the kit claim.

1. In moving to be granted dispensation from serving each of us personally, Defendant refused to do the easy email CC: of the Lead Plaintiff's documentation and doesn't want the Lead Plaintiff doing the easy CC: to us either.

[8] At the case management conference, the Plaintiffs in T-171-21... had indicated that they opposed the stay,

[9] Mr. Turmel filed submissions in which he drew to the Court's attention the approach taken by Justice Phelan in his case management of over 300 proceedings involving Canada's medical marijuana regulations, noting that Justice Phelan's determination applied to all plaintiffs and applicants without designating a lead plaintiff/applicant. He suggested that the Court could proceed in a similar manner and designate the style of cause as "In the matter of numerous APPLE ORANGE RESISTANCE filings seeking a declaration pursuant to s.52(1) of the Canadian Charter of Rights and Freedoms".

[10] Mr. Turmel noted that in a different group of case managed proceedings involving claims for damages due to long delays in processing medicinal marijuana grow applications, Justice Brown designated a lead claim and did not require that the other plaintiffs be kept informed, which Mr. Turmel felt was an error that should not be repeated in this case.

2. The error was by Turmel in not asking Justice Brown to keep the other plaintiffs informed, not by Justice Brown in not being asked.

[12]... The Defendant submits that interests of justice favour a stay of proceedings as the actions raise similar issues, a stay will conserve judicial and party resources and the stay will not result in any injustice to the parties.

[13] By way of reply, Mr. Turmel confirmed that the Court's proposal "would have been fine had Canada agreed to cc the other plaintiffs but no longer now that it has refused".

[18] It is evident to the Court, from the comments made at the case management conference and the minimal submissions made in response to the Court's proposal, that the Plaintiffs were largely prepared to agree to a stay of the proceedings provided that they were served with all of the materials filed in T-130-21. It was only when I noted at the case management conference that, under the Rules, there would be no obligation on the part of the Defendant to serve the Plaintiffs with the materials filed in T-130-21 and the Defendant advised that they were not prepared to provide Mr. Turmel with weekly or periodic contact information for any new kit claim proceedings that the majority of the Plaintiffs, led by Mr Turmel, then changed their position on the Court's proposal.

[19] I am satisfied that there will be no prejudice or harm to the Plaintiffs if their proceedings are stayed pending the determination in T-130-21. Indeed, there has been no suggestion from any of the Plaintiffs of any specific harm or prejudice. To the extent that the Plaintiffs are concerned about being kept informed regarding the status of T-130-21, I agree with the Defendant that the recorded entries in T-130-21 are available for viewing on the Court's website and, as acknowledged by Mr. Turmel in his reply submissions, the Plaintiffs can obtain updates on the status of T-130-21 on Mr. Turmel's website. While the Plaintiffs and Mr. Turmel would prefer that their access to information regarding T-130-21 be rendered more convenient for them I am not prepared to impose such a burden on the Defendant. If the Plaintiffs are interested in T-130-21, they can put in the effort to follow its progress.

3. The recorded entries in T-130-21 available for viewing on the Court's website registry do not have links to the documents, much like an index without the book. Knowing that document x is filed is not the same as knowing what document x says. The entries in the index are not equivalent to the document itself.

4. We have to watch Turmel's site every day for a posting rather than get it in the mail to eliminate any chance of missing one. Making us watch for updates isn't as good as making us not watch.

5. Plaintiffs are not asking that what we are due be more conveniently accessed, we're asking not to grant that it be less conveniently accessed. Canada is asking for more convenience, not Plaintiff. We're asking for "not less." Objecting to loss is not seeking gain.

6. As for adding a CC: to an email, it may be an insurmountable burden for a attorney but not for a clerk.

7. To lessen effort on Crown, increase effort on plaintiff? I should not have to put in more effort so Defendant may be granted putting in less? Justice Phelan didn't make plaintiffs put in any more or less effort, Justice Brown only cut them out of the loop by Turmel's admitted error. But I am made to put in effort to keep apprised of documentation I am due and would receive as due if the dispensation were not granted. Any argument that what the Crown could handle under Judge Phelan can no longer be handled under Prothonotary Ayles would be an incredible deterioration of their Ministry. There is harm in having to put in effort.

[20] Moreover, I will require that the Registry provide a copy of any final determination in T-130-21 to each of the Plaintiffs.

8. The Final decision is a judicial conclusion. It cannot cite all the arguments in the memoranda of both sides nor the case law in the Books of Authorities. That cannot help me much decide whether my case is different enough to proceed.

[22] In light of the above, I am satisfied that it is in the interests of justice to stay these proceedings pending a final determination of the lead claim and any appeal therefrom. Proceeding in this manner will ensure the just, most expeditious and least expensive determination of the issues raised in the Statements of Claim.

THIS COURT ORDERS that:

1. The actions bearing Court File Nos. T-171-21,.. hereby stayed pending the final determination (by judgment or order) in T-130-21 and any appeal therefrom.

2. The Registry shall provide a copy of any final determination in T-130-21 to each of the Plaintiffs in T-171-21...

9. If the Court may order that we receive a Final Copy of the Turmel decision, it can order we receive a copy of the Motion to Strike the Turmel Action!

3. In the event that any party in T-171-21, takes the position that their action is differently situated than T-130-21 such that the final determination in T-130-21 (and any appeal therefrom) should not apply to their action, that party shall, within 30 days of the final determination in T-130-21 and any appeal therefrom, requisition a case management conference to establish a schedule for a motion to determine whether their action should move forward.

10. I'm given 30 days to decide if my case is differently situated from the Lead Plaintiff's case whose documentation I won't get to see. I submit my ability to argue why my case is different enough from Turmel's to press on if he loses is affected by not being informed on his case? I can better explain why Turmel's loss shouldn't bind me with me sitting in at ringside. It's hard to cite a difference without having seen original to compare!

11. It also means I can't get into a the call with the Court like the other Phelan J. plaintiffs did. I not only don't get any documentation, I can't participate in the trial of my action, I can't add something Turmel missed like they could.

12. Paragraph 18: There is no obligation on the part of the Defendant to serve the Plaintiffs with the materials filed in T-130-21 only because the Prothonotary did not oblige them to do so if they wanted to be granted dispensation with personal service on the others. Such obligation to serve me exists if I am not stayed. Crown can only avoid sending me the data I am normally due by being granted the stay not to send me what I'm due.


13. There are no rules obliging Defendant to email a CC copy to each plaintiff once Defendant is granted dispensation from serving a personal copy on each plaintiff but there are rules of procedure if dispensation is not granted. Then I must get a copy of everything. They asked for dispensation from the rules, not me.

14. The judge could have said:

- 1) "I refuse to grant your motion unless you do this,"
- 2) email them a copy of T-130-21 or I refuse to grant your dispensation from serving all plaintiffs their own personal copy;
- 3) Send them an email or serve each a personal copy;
- 4) You don't get it if they don't get it;
- 5) Serve or email, your choice;
- 6) Keep plaintiff informed the hard way or the easy way.

15. Instead, I'm told the Rules do not oblige Canada to keep me informed when the judge could have obliged them. Should this Court agree the Prothonotary could not refuse to grant the motion without condition, then we can go home.

Dated at Cache Bay Ontario on April 19 2021



For the Appellant/Plaintiff

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