FEDERAL COURT OF APPEAL

Between:

Michel Denis Ethier

Appellant

Plaintiff

AND

Her Majesty The Queen

Respondent

Defendant

NOTICE OF APPEAL

Pursuant to Rule 337

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the appellant. The relief claimed by the appellant appears on the following page.

THIS APPEAL will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court directs otherwise, the place of hearing will be as requested by the appellant. The appellant requests that this appeal be heard at Toronto.

IF YOU WISH TO OPPOSE THIS APPEAL, to receive notice of any step in the appeal or to be served with any documents in the appeal, you or a solicitor acting for you must prepare a notice of appearance in Form 341 prescribed by the Federal

Courts Rules and serve it on the appellants solicitor, or where the appellant is self-represented, on the appellant, WITHIN 10 DAYS of being served with this notice of appeal. IF YOU INTEND TO SEEK A DIFFERENT DISPOSITION of the order appealed from, you must serve and file a notice of cross-appeal in Form 341 prescribed by the Federal Courts Rules instead of serving and filing a notice of appearance.

Copies of the Federal Courts Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPEAL, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date: _____

Issued by: _____
(Registry Officer)

TO: Attorney General for Canada
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Toronto, ON, M5H 1T1
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Benjamin.Wong2@justice.gc.ca
Attn: Benjamin Wong

APPEAL

1. THE APPELLANT APPEALS to the Federal Court of Appeal from the May 7 2021 decision of Favel J. of Federal Court dismissing the appeal against the April 8 2021 Order of Prothonotary Mandy Aylen, Case Management Judge, staying my action T-171-21 pending the resolution of the Lead Plaintiff's action and ordering I state my course of action should Lead Plaintiff's action be dismissed without obliging Defendant to email me a copy of the documentation leading to that dismissal.

2. The grounds of the appeal are that staying the plaintiff's claim pending the Turmel claim while declining to require that Canada serve the plaintiff with its materials challenging the substantially similar Turmel Claim is a palpable and over-riding error required by the appellate standard of review that prejudices Plaintiff's action.

3. In her Apr 8 2021 Order, Prothonotary and Case Management Judge Mandy Aylen noted the Defendant intends to bring a motion to strike the Statements of Claim and was therefore not bound to file a Statement of Defence within 30 days pursuant to the Rules.

4. This claim is one of more than 70 actions in which the self-represented plaintiffs seek various forms of relief related to the federal Government's COVID-19 mitigation measures. The statements of claim in each action are almost identical and are based on a "kit" made available on the internet by John Turmel, the plaintiff in John Turmel v HMQ, T-130-21 (the "John Turmel Claim").

5. The COVID-19 Kit Claims are being case managed by Prothonotary Aylen. During a case management conference with the plaintiffs in the first ten COVID-19 Kit Claims, the Court proposed that the John Turmel Claim move forward as the lead claim, and that the balance of the actions (hereinafter referred to as the "Subsequent COVID-19 Kit Claims") be held in abeyance, pursuant to section 50(1)(b) of the Federal Courts Act, pending a final determination in the John Turmel Claim.

6. At the Mar 11 2021 case management conference, Canada agreed with the Court's proposal. The plaintiffs in the Subsequent COVID-19 Kit Claims were also largely prepared to agree to a stay provided that they were served with all of the materials filed in the John Turmel Claim. However, after Canada indicated that it would not provide this information, and the Court noted that Canada did not have an obligation to do so under the Federal Courts Rules, leaving the impression the court didn't have the power to require the Defendant to undertake the lesser burden as it lifted the greater burden, some plaintiffs agreed to be stayed, some did not, and some got more time to decide. Plaintiff in the present claim, expressed disagreement with having his claim stayed if not kept informed regarding the status of the John Turmel Claim while their claims were stayed.

7. 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".

8. After considering the parties' submissions and reviewing the principles underlying the interests of justice test that governed its discretion under paragraph 50(1)(b) of the Federal Courts Act, the Court concluded that the interests of justice favoured its proposal. The Court noted that in such circumstances, "considerations of judicial resources, efficiency, and the orderly conduct of multiple proceedings all support the Court's proposal."

9. The Court noted that the Subsequent COVID-19 Kit Claims significantly overlapped with the John Turmel Claim and that none of the plaintiffs disputed the John Turmel Claim's suitability as a lead claim. As the judge canvassed objections to Turmel as Lead Plaintiff, Canada supported the appointment while not telling the Court they were going to be disputing Turmel's suitability due to owed costs from past actions.

10. On April 8 2021, Case Management Judge Prothonotary Aylen ruled:

> **[1] The Court is case managing a group of more than 60 actions in which the self-represented Plaintiffs seek various forms of relief related to the federal Government's COVID-19 mitigation measures, including:**
> **(a) a declaration that the measures violate their Charter rights and are not saved by section 1 of the Charter;**
> **(b) an order prohibiting any measures that are not imposed on the flu;**

(c) a permanent constitutional exemption from any such measures; and
(d) damages for pain and losses incurred by the Plaintiffs as a result of such measures.
[2] The Statements of Claim in each action are almost identical and based on a "kit claim" made available on the internet by John Turmel, the Plaintiff in T-130-21.
[3] The Defendant has indicated that the Defendant intends to bring a motion to strike the Statements of Claim, without leave to amend, as well as motions for security for costs in relation to certain Plaintiffs who the Defendant asserts have unpaid cost awards.
[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.

[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".

[11] Mr. Turmel proposes that the Court should proceed as per Justice Phelan's approach and keep all Plaintiffs on the style of cause, as this would keep them fully apprised of the status of the legal proceeding.

[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 by requiring the Defendant to serve them with all of their materials, 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.

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

[21] As the Statements of Claim are based on Mr. Turmel's kit claim, they are substantially similar, with only minor variations regarding the basis for the damages sought by some of the Plaintiffs. The claims in the actions therefore significantly overlap. I note that none of the Plaintiffs have disputed T-130-21's suitability as a lead claim by suggesting they are differently situated. In such circumstances, considerations of judicial resources, efficiency and the orderly conduct of multiple proceedings all support the Court's proposal.

[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. It will remain open to the Plaintiffs to request that the Court permit their claims to proceed following the final determination of T-130-21 if they can demonstrate that they are differently situated than T-130-21 such that they should not be bound by any final determination made therein.

11. Staying the plaintiff's claim pending the Turmel claim while declining to require that Canada serve the plaintiff with its materials in the Turmel Claim was palpable and over-riding error to meet the appellate standard of review and was appealed on the grounds that:

A) objecting to less convenient is not demanding more;

B) i) making all plaintiffs request a copy of a document from the registry is more work for the Registry clerks than if Defendant were to email a copy;

ii) having to watch for updates is not as infallible as getting it in the email and not having to watch at all;

iii) getting the final decision without 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;

iv) an email copy is no burden to any clerk;

v) the Court had jurisdiction to require the Defendant to send an email copy if they wanted to have the burden of personalized motions lifted but declined to require the lesser burden while granting lifting the greater burden;

vi) Making me put in more effort to get what I am due to save the Defendant putting in effort that is due shows injudicious partiality.

vii) Plaintiff is prejudiced by having to decide whether to have his action move forward with insufficient information;

12. A) Both the Crown and the Court misconstrued the Plaintiff's objection to the Court making being updated less convenient as seeking to make it more convenient. Plaintiff is not seeking to make things more convenient than the status quo but seeking to not make it less convenient.

13. B) Canada argues that there would be no injustice to the parties because:

> **Plaintiffs wishing to monitor the status of the lead claim during any stay would also have the opportunity to do so via the Federal Court's online docket or at https://groups.google.com/g/alt.fan.john-turmel, a public website where Mr. Turmel appears to be providing comprehensive updates on the status of the claims.**

14. If I cannot participate in the trial of my action with Turmel, I can't add something Turmel missed and then may not know what Turmel missed.

15. i) Making me watch the Registry's website to request a copy of any documentation impacting on my claim makes more work for the Registry clerks. Making me watch Turmel's site for updates is again more work. The Court has ruled that this would conserve resources. Not filing 70 motions to strike 70 actions in 70 Registry files would conserve judicial resources but not emailing 70 copies of the one motion would conserve virtually none in our day of merge-printing of document with list of recipients that do not expend much resources.

16. ii) Other plaintiffs must keep watching Turmel's site every day over the next few years to see if anything new was posted anything rather than get the news ourselves in the mail. The less-vigilant would suffer prejudice. Not getting copies of the documentation enables missing some documents that would impact the decision on whether to proceed or not.

17. iii) 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. If the Court may order that I receive a Final Copy of the Turmel strike motion decision, why couldn't it order I receive a copy of the Turmel Strike Motion too! Why do I get less than all the information?

18. iv) Appending a copy of an email may be an insurmountable burden to an attorney but not to a clerk.

19. v) The Rules make no provisions to order Canada to email me a copy of the motion to strike the similar Turmel claim

but the Rules also do not have provisions to dispense with Canada serving me my own personalized motion.

20. vi) If not being specifically in the rules does not allow ordering Canada to email me a copy of the strike motion, they not being in the rules should not allow ordering Canada to not email me my own motion. The bias in making me put in extra effort to save Canada effort seems evident.

21. vii) Though the other plaintiffs can still present their own submissions, it cannot be as effective as if they had been in on the whole proceeding. They would be denied the information they are due. Not being kept apprised allows the chance they might seek remedies that were already settled while they weren't watching. Getting their own emailled motion does not pose such risk them missing something if they fail to check Turmel's blog for developments. To watch is to be able to do it better and make more perfected arguments when comes the time, later, as Crown says.

22. Our submissions mentioned no objection to the stay "As long as the other plaintiffs receive all documentation by email before ceding right to be served personally with relevant documents" and asked that the Court order that Defendant provide Lead Plaintiff with the list of plaintiff emails, say once a week. When Defendant refused to email a Carbon Copy of the documentation to those upon which it wished to not serve documentation, Plaintiffs requested they be treated normally.

23. vii) The Crown added:

> **Finally, a temporary stay will not result in an injustice to the plaintiffs. Following the final determination of the lead claim, the plaintiffs in the other matters will have the opportunity to provide submissions on the merits of their claims.**
> **Although the plaintiff alleges that these options are inadequate because he requires all materials filed in the John Turmel Claim to make a decision on whether to pursue his claim, he has not explained why information beyond the Court's findings in the John Turmel Claim are necessary.**

24. Having to decide on a course of action dependent on the Turmel decision without ensuring I have the memoranda and authorities in the Turmel decision prejudices my options. I'm given 30 days to decide if my case is differently situated from the Lead Plaintiff's case whose documentation I must put in extra effort 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 fully informed on his case? I can better explain why Turmel's loss shouldn't bind me if I was sitting in at ringside. It's hard to cite a difference without having seen original to compare!

25. Canada argues:

> **The plaintiff alleges that the absence of a requirement for Canada to serve him with the materials filed in the John Turmel Claims created unfair prejudice that militates against a stay. Defendant argues however that the Court did not err when it determined that 1) Canada did not have an obligation to serve him with the materials, and that 2) the absence of an obligation did not create the level of harm or prejudice contemplated in the interests of justice test.**

26. The only reason there is an absence of requirement to be served the Turmel materials is not because it's not in the Rules but because the Case Management Judge declined to

require it. If the Judge hadn't had the power to oblige the lesser burden, there would be no appeal herein. The Court had the power to lessen the burden and didn't have to lessen it all the way. Pointing out that requiring the lesser burden is not in the rules does not mean it was not possible to oblige the lesser burden.

27. Canada adds:

> 19. Contrary to the plaintiff's assertion that Canada was "moving to be granted dispensation from serving each of us personally," the Court correctly found that there was no legal requirement under the Federal Courts Rules that Canada serve the plaintiff with the materials filed in the John Turmel Claim.

28. Though the Court may have correctly found there was no legal requirement under the Federal Courts Rules that Canada serve the plaintiff with the materials filed in the John Turmel Claim, the Court incorrectly found that there was no legal requirement that Canada serve the materials in the plaintiff's claim.

29. Canada adds:

> there was no palpable and overriding error when it found that while the plaintiff would prefer that his access to information be rendered more convenient for him, this did not amount to prejudice, and if the plaintiff was interested in the John Turmel Claim, he "can put in the effort to follow its progress."

30. Making Plaintiff put in extra effort to follow its progress when no extra effort would be needed to send a lousy email copy if the Court did not lift the Defendant's burden ! Thinking that sending a copy of an email would be a burden is a palpable error. Canada says the Court doesn't have to grant the copies. Appellant submits she doesn't have

to grant them not having to personally serve me without it. 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. Such obligation to serve me exists if she had not stayed my claim. The 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.

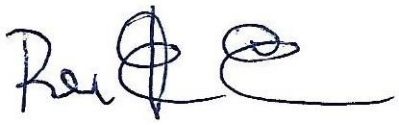
31. In the May 7 2021 decision, Favel J. ruled:

> **[1] This Plaintiff has brought a motion in writing pursuant to Rule 369 seeking an order pursuant to Rule 51 of the Federal Courts Rules allowing an appeal of Prothonotary's Aylen's April 8, 2021 Order [the Order]. Prothonotary Aylen is case managing this action and several other actions involving essentially the same matter.**
>
> **[2] The Plaintiff's action is one of more than 60 actions in which self-represented plaintiffs seek relief from the federal Government's COVID-19 mitigation measures. The Statements of Claim in each action are almost identical and are based on a kit made available on the internet by Mr. John Turmel [Mr. Turmel], the Plaintiff in T-130-21.**
>
> **[3] As case manager, Prothonotary Aylen ordered that, pursuant to Section 50(1)(b) of the Federal Courts Act, it was in the interests of justice to stay certain actions before her, including the Plaintiff's claim, in order for Mr. Turmel's action to proceed. The basis of this Order was due, in short, to the almost identical feature of the statements of claims. Prothonotary Aylen also determined that, rather than ordering the Defendant to keep the Plaintiffs updated on the status of Mr. Turmel's action, the Plaintiffs in the case management matters before her could access any updates on Mr. Turmel's action from the Federal Court's website, and from Mr. Turmel's website. Ultimately, all Plaintiffs would be provided a copy of the decision of Mr. Turmel's action and could take the necessary action thereafter...**

[8] I find that Prothonotary Aylen did not make a palpable and overriding error in making the Order. I also find that Prothonotary Aylen considered the totality of the circumstances and applied the correct legal principles in exercising her discretion.
[9] The Appeal is therefore dismissed.

32. 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, 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 by the Court. There is harm in making me to put in more effort.

Dated at Sturgeon Falls on June 7 2021



_____

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For the Appellant/Plaintiff

Cc: Registrar,
Benjamin Wong

File No:

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For the Appellant/Plaintiff
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