

FEDERAL COURT

BETWEEN:

JOHN TURMEL

Plaintiff
(Moving Party)

and

HER MAJESTY THE QUEEN

Defendant
(Responding Party)

APPELLANT'S REPLY

1. From the Defendant Canada's Response Representations in the the May 6 2021 Order of CMJ Aylen with a timeline of steps for Canada's motion to strike the Lead Plaintiff's action for no cause of action:

ORDER

1. The Defendant shall serve their Notice of Motion and affidavit(s) by no later than May 21, 2021.
2. The Plaintiff shall serve any responding affidavit(s) by no later than June 7, 2021.
3. Cross-examinations, if any, shall be completed by no later than 10 days following the date the Plaintiff serves his responding affidavit(s).
4. The Defendant shall serve and file their complete motion record by no later than 15 days from the expiration of the time to conduct cross-examinations, or, if the Plaintiff does not intend to serve an affidavit or conduct cross-examinations, 15 days from the date that the Plaintiff so advises the Defendant.

5. The Plaintiff shall serve and file his complete motion record within 15 days of service of the Defendant's motion record.

6. The Defendant shall serve and file their reply motion record within seven days of service of the Plaintiff's responding motion record.

"Mandy Aylen" Case Management Judge

2. Rule 364 lays out a motion's component parts:

Rule 364 (1) a person bringing a motion shall serve a motion record...

(2) containing

(b) the notice of motion;

(c) all affidavits and other material served by the moving party for use on the motion;

(e) subject to rule 366, written representations..

Rule 367 A notice of motion or any affidavit.. may be served and filed as part of the party's motion record and need not be served and filed separately.

3. The CMJ has allowed a motion to be filed that does not comply with the rules.

4. The Notice, Affidavits and Memorandum of Arguments of how the facts apply must be filed at the same time even if filed separately. My appeal argues how filing Plaintiff's Affidavits in Response without having had the Written Representations explaining how the facts in the Defendant's affidavits apply puts Plaintiff at a disadvantage. Written Representations explain how the facts relate. How can the Court expect Respondent submit affidavits in response to Mover's Affidavits when there are no Written Representations of how the Mover's Affidavits apply?

5. On May 27 2021, the Crown wrote:

16. In this circumstances of Canada's motion, a departure from the timeline set out in Rule 369 was warranted, because the timeline did not contemplate

crossexaminations on affidavits, and would have effectively required Canada to file its written representations before being served with the plaintiff's evidence.

17. The plaintiff asserts that he is unable to prepare his supporting affidavit without Canada's written submissions because he will not know how the facts in Canada's supporting affidavit will apply to Canada's arguments. However, all notices of motion set out the relief being sought by the moving party, the grounds intended to be argued, references to any statutory provision or rule to be relied on, and a list of the evidence to be used at the hearing of the motion.¹³ Indeed, the same day that he was served with Canada's notice of motion and supporting affidavit, the plaintiff was able to advise that he would not be filing supporting affidavits or cross-examining Canada's affiant.

18. Requiring parties to serve evidence and conduct cross-examinations before written submissions is an accepted practice and does not give rise to prejudice - for example, oral motions and applications for judicial review at the Federal Court routinely proceed on this basis. On the other hand, requiring Canada to file written representations before the close of evidence would prejudice Canada's ability to respond to the plaintiff.

6. An argument for getting rid of the Memorandum Part of a Motion Record. But why would the framers have included Arguments with Notice and Affidavit Facts in a Motion Record? Why have included the Record covers with Table of Contents and Notice, Affidavit, Argument Memorandum when only the Notice and Affidavit were necessary to initiate the motion? This "departure from the timeline set out in Rule 369" for the Prothonotary to allow an incomplete record to initiate a motion is a palpably erroneous departure from the norm.

7. It is not the close of evidence, it's an affidavit in a motion. Not the last chance to introduce evidence!

8. I might have filed response affidavits if I were a fortune-teller gifted at predicting the cards I'd need when I'm finally told whether he's going for a Flush or a Straight or Two-Pair. I found it unfair to make me predict the affidavits I'd need when he finally tells me what he's going for. That's how I felt when told to call my cards before I'm told how he's playing his cards when the rules say he must play them all together. And the judge let him play them in two-parts.

9. Rule 369 does contemplate the exchange of affidavits:

369 (1) A party may, in a notice of motion, request that the motion be decided on the basis of written representations.

(2) A respondent to a motion brought in accordance with subsection (1) shall serve and file a respondent's record within 10 days..

10. Nowhere does it say affidavits in Motion or Response Records can't be examined. Motion records contain the affidavits and cross-examination on all affidavits is not precluded. Extensions of time may be sought if needed but must have been so rare that it didn't have to be contemplated out loud that it was always so that affidavits may always be examined. Not contemplated doesn't mean they can't.

11. Under Rule 369, a Motion is brought when a Motion Record with Table of Contents, Notice, Affidavits and Written Representations initiate the proceeding. Then the Respondent files a Motion Record with his affidavits and Written Representations in 10 days, then the Mover files a Reply in 4 days. 14 days, two weeks maximum.

12. Perhaps the Rule did not contemplate exchange nor examination of affidavits because the facts are usually clear. Not disputed. And even then, Respondent has 10 days to examine on the Motion Affidavits before filing his Response Record and the Plaintiff has 4 days to examine on the Resondent's Affidavit before having to file his Reply. They would have to act fast in the rare case when a fact is unverified or disputed. But it would seem that though examinations are not mentioned, they are not precluded and are therefore possible. Just a bit of a pain and delay. But almost never needed. To argue that's it's still too fast for lawyers to do, I can only argue it's not too fast for a non-lawyer to do so it's doable. So no contemplation of something obvious was needed to be said out loud. Examinations are always allowed but move on it. With, if necessary, extension of time for examination sought and doubtlessly granted.

13. With both the Mover and the Respondent having opportunity to file affidavit evidence, Rule 369 has contemplated the filing of affidavit evidence by both. What the rule does not contemplate out loud is the cross-examination of affidavits.

14. Canada will not introduce any evidence on the claims of other stayed claims:

19. The plaintiff also asserts that the Court cannot consider affidavit evidence in Canada's motion to strike and for security for costs. This mischaracterizes the law concerning evidence on motions. While the Rules prohibit evidence on a motion to strike for no reasonable cause of action, Canada does not intend to file evidence in support of argument on that issue,¹⁴ but only in support of its alternative request for

security for costs. In particular, Canada intends to file evidence of its previous costs awards against the plaintiff, and that these costs awards remain unpaid. Evidence is clearly permitted for this purpose.¹⁵

15. While the Rules prohibit evidence on a motion to strike for no reasonable cause of action, Canada does not intend to file evidence in support of argument on that issue, So it will not be introducing any affidavit evidence against the Statement of Claim, their affidavit evidence is against the Lead Plaintiff's past costs owed, it is an admission that they have no affidavit with which to challenge the claims of others who don't owe costs for past battles.

16. The affidavit which the Crown said was required against John Turmel is not required against any of the other stayed plaintiffs, is it? So presume Lead Plaintiff is disqualified for costs owed and another plaintiff is chosen with his action is unstayed and he is deemed the new Lead Plaintiff. How the Case Management Judge will choose the another Lead Plaintiff will be interesting? Can she dismiss their cases because the Lead Plaintiff was dismissed for personal reasons? There is no affidavit evidence that would be relevant to any other plaintiff, so the issue of exchange of affidavits was always imaginary, only relevant to me.

17. Affidavits were only ever to be exchanged between a Lead with personal issues and never with anyone else. Had a Lead been chosen without cost issues, the CMJ's order would have enabled the Crown to file no relevant affidavit and the plaintiff to file no relevant affidavit either before getting on to completing our Motion Records with only the loss of time resulting.

18. According to the rules, the completed Motion Record is filed, Response Record with or without cross-examination in 10 days, and Reply Record with or without cross-examination in 4 days. Then onto a judge's desk. If Plaintiff's Response is sooner, sooner.

19. According to the Rules, Canada is effectively required to file its written representations before being served with plaintiff's evidence. They're arguing to be allowed to keep me filing first while the rules say they must file first.

20. So I have complained that forcing me to file my evidence before they file their arguments puts me at a disadvantage, the Crown turns it around to argue they're being disadvantaged by having to file their arguments before I have to file my evidence. Having to play by the rules puts them at a disadvantage and they're not under CMJ Ayles's rules and they want to keep it that way.

21. Crown says:

20. Finally, the plaintiff alleges that the Court committed a palpable and overriding error by extending the timelines for Canada's motion in writing because it "wastes time while Canadians are dying from lockdown." However, the plaintiff did not file any evidence below to support these bald allegations of prejudice.

22. Judge Brown did explain that the Statement of Claim is presumed to be provable when showing no cause of action. So record suicides, murders, missed medical appointments causing death, even vaccine poisoning are presumed to be provable. And we still have to get our chance when comes time to file our affidavit on the action, not the motion.

23. Crown said:

Nor can the plaintiff rely on facts that are applicable to other individuals to support his allegations of prejudice.¹⁶

24. If the other plaintiffs had not been stayed, then it would make no difference whether I get disqualified for personal reasons. But let's presume others have some tales of woe to satisfy the Crown's wish for deadly details. If only they had not been stayed, I would not be so alone with only my mild sufferings.

25. When the Court read the math showing that the government had been tricked by an Apple to Orange comparison exaggerating the Covid threat a hundredfold, I'd have expected any judge to have sped up the process of getting the facts before the court and out to the public. Instead, we're almost 4 months past when Canada should have filed their motion on Feb 18 before the 30-day default on their Statement of Defence.

26. Righteous anger at being hoaxed into lockdown by an elementary statistical trick is mischaracterized:

5... Canada's motion, which will seek an order either striking the claim on the grounds that the claim does not identify the impugned federal measures, disclose a reasonable cause of action, or is frivolous and vexatious,

27. We don't want "any" laws restricting us and they ask "which any?" Fudging numbers to trick a lockdown is not an unreasonable cause of righteous angry action; no one's finds record suicides and deaths very funny.

Dated at Brantford Ontario on May 22 2021

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File No: T-171-21

FEDERAL COURT

Between:

John Turmel

Appellant

Plaintiff

AND

Her Majesty The Queen

Respondent

Defendant

APPELLANT'S REPLY

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