

Federal Court



Cour fédérale

**Date: 20210408**

**Docket: T-130-21**

**Ottawa, Ontario, April 8, 2021**

**PRESENT: Case Management Judge Mandy Ayles**

**BETWEEN:**

**JOHN TURMEL**

**Plaintiff**

**and**

**HER MAJESTY THE QUEEN**

**Defendant**

**Docket: T-138-21**

**AND BETWEEN:**

**RAYMOND TURMEL**

**Plaintiff**

**and**

**HER MAJESTY THE QUEEN**

**Defendant**

**Docket: T-171-21**

**AND BETWEEN:**

**MICHEL DENIS ETHIER**

**Plaintiff**

**and**

**HER MAJESTY THE QUEEN**

**Defendant**

**Docket: T-208-21**

**AND BETWEEN:**

**BIAFIA INNISS**

**Plaintiff**

**and**

**HER MAJESTY THE QUEEN**

**Defendant**

**Docket: T-219-21**

**AND BETWEEN:**

**RAYMOND BRUNET**

**Plaintiff**

**and**

**HER MAJESTY THE QUEEN**

**Defendant**

**Docket: T-212-21**

**AND BETWEEN:**

**NATHANAEL INNISS**

**Plaintiff**

**and**

**HER MAJESTY THE QUEEN**

**Defendant**

**Docket: T-220-21**

**AND BETWEEN:**

**WILLIAM ERNEST WAYNE ROBINSON-RITCHIE**

**Plaintiff**

**and**

**HER MAJESTY THE QUEEN**

**Defendant**

**Docket: T-221-21**

**AND BETWEEN:**

**WAYNE BRIAN ROBINSON**

**Plaintiff**

**and**

**HER MAJESTY THE QUEEN**

**Defendant**

**Docket: T-230-21**

**AND BETWEEN:**

**TREVOR J. LEADLEY**

**Plaintiff**

**and**

**HER MAJESTY THE QUEEN**

**Defendan**

**Docket: T-242-21**

**AND BETWEEN:**

**JASON BRAUN**

**Plaintiff**

**and**

**HER MAJESTY THE QUEEN**

**Defendant**

**ORDER**

[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 among the parties in the initial group of actions assigned into case management - namely, 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 [Initial Group of Actions]. 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.

[6] In order to permit the Plaintiffs an opportunity to consider the Court's proposal, the Court directed that any Plaintiff in the Initial Group of Actions who does not consent to a stay of their action based on the Court's proposal was to so advise the Court by March 18, 2021 and provide, by that date, any submissions as to why their action should not be stayed. The Defendant was given until March 24, 2021 to serve and file any responding submissions and the objecting Plaintiffs were then given until March 29, 2021 to serve and file any reply submissions.

[7] The Court received the following submissions from the Plaintiffs:

- A. The Plaintiff in T-138-21 advised that, while on the case management conference he agreed to the stay, he has changed his decision and wants to "participate in any procedures even if only to watch and listen". No further submissions were provided in support of this position.

B. The Plaintiffs in T-208-21, T-212-21 and T-219-21 advised that they do not consent to having their actions stayed and want to receive updates and documentation from T-130-21. No further submissions were provided in support of this position.

C. The Plaintiff in T-221-21 advised that he does not want his action stayed pending the final determination in T-130-21. No submissions were provided in support of this position.

[8] No submissions were received from the Plaintiffs in T-171-21, T-220-21, T-230-21 or T-242-21. At the case management conference, the Plaintiffs in T-171-21 and T-220-21 had indicated that they opposed the stay, the Plaintiff in T-230-21 had indicated that they consented to the stay and the Plaintiff in T-242-21 had indicated that they were undecided.

[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.

[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.

[12] By way of their responding submission, the Defendant advised that the Defendant supports the Court's proposal to designate a lead claim and to stay the remaining claims pursuant to section 50(1)(b) of the *Act*. 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. Specifically:

- A. Allowing a lead claim to proceed has the potential to significantly narrow the issues in dispute in the other files and to conserve resources that would otherwise be spent on those issues.
- B. Since the Initial Group of Actions was filed, more than 50 additional actions have been commenced and there is a significant likelihood of more such claims, which, if not stayed, would consume further resources while also creating a moving target for the Defendant's forthcoming motion to strike.

- C. A temporary stay will not result in any injustice to the Plaintiffs as they will have the opportunity to make submission on the merits of their claim following the final determination of the lead claim. Moreover, the Plaintiffs wishing to monitor the status of the lead claim may do so through the Court's website or through a public website set up by Mr. Turmel that appears to be providing comprehensive updates on the status of the claims.

[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". Mr Turmel made numerous additional submissions in response to those made by the Defendant, the majority of which related to the other Plaintiffs. As I already advised Mr. Turmel at the case management conference, he does not represent the other Plaintiffs and cannot speak for them. That said, I have nonetheless taken into consideration his additional submissions in this regard.

[14] None of the other Plaintiffs made any submissions in reply to the Defendant's submissions.

[15] Pursuant to section 50(1)(b) of the *Act*, the Court may, in its discretion, stay its own proceedings where it is in the interests of justice to do so. In considering a request for a stay under section 50(1)(b), the tri-partite test set out in *RJR Macdonald Inc v Canada (Attorney General)*, [1994] 1 SCR 110 does not apply. Rather, the question is whether it would be in the interests of justice for a stay to be granted [see *Clayton v Canada (Attorney General)*, 2018 FCA 1].

[16] The interests of justice test is a wide-ranging test that can embrace many elements and the Court must consider the totality of the circumstances of a particular case when considering whether to exercise its discretion to stay its proceedings. The Court should be guided by certain principles, including securing the just, most expeditious and least expensive determination of every proceeding on its merits, as expressly provided in Rule 3 of the *Federal Courts Rules*, and the fact that as long as no party is unfairly prejudiced and it is in the interests of justice, the Court should exercise its discretion against the wasteful use of judicial resources. The Court should also take into consideration the public interest in moving a proceeding forward fairly and with due dispatch [see *Jensen v Samsung Electronics Co Ltd.*, 2019 FC 373; *Coote v Lawyers' Professional Indemnity Co*, 2013 FCA 143; *Clayton, supra*].

[17] As was stated by the Court in *Jensen*, the case law establishes that the interests of justice test is anchored in three overarching principles: (1) a flexible approach aimed at protecting the interest of a just, fair and efficient resolution of a proceeding; (2) the existence of some form of prejudice, harm or injustice, as opposed to simple inconvenience, to be suffered by the moving party in the absence of a stay; and (3) the determinative place of the particular factual circumstances presented to the Court.

[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.

**THIS COURT ORDERS that:**

1. The actions bearing Court File Nos. 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 are 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-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.
3. In the event that any party in T-138-21, T-171-21, T-208-21, T-219-21, T-212-21, T-220-21, T-221-21, T-230-21 or T-242-21 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.

4. The terms of this Order shall apply to any new Statement of Claim filed subsequent to the date of this Order which is substantially identical to those filed 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 or T-242-21.
5. The terms of this Order may be varied or amended as the Court determines necessary.
6. There shall be no costs associated with this Order.

“Mandy Aylen”  
Case Management Judge