

FEDERAL COURT

BETWEEN:

JOHN TURMEL

Plaintiff
(Responding Party)

and

HER MAJESTY THE QUEEN

Defendant
(Moving Party)

**WRITTEN REPRESENTATIONS IN REPLY
OF THE DEFENDANT**

(Motion to Strike or for Security For Costs)

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A. OVERVIEW

1. In response to Canada's motion to strike, the plaintiff now acknowledges that he wishes to travel only domestically to visit family, and that while he is free to travel by other methods, he prefers to do so by aviation. These are not rights protected by s. 6 of the *Charter of Rights and Freedoms* ("Charter"), and if it was not already plain and obvious that the claim does not disclose a reasonable cause of action, these acknowledgments make it clear that the plaintiff's Charter claim cannot succeed.

2. The plaintiff's response also fails to identify any pleaded facts capable of establishing that the Interim Order is *ultra vires* or based on errors of fact. Even if these types of declarations were generally available in an action, the plaintiff has not identified any facts that suggest the Minister exceeded his legislative authority, nor has he identified the erroneous facts allegedly relied on by the Minister. This portion of the claim should also accordingly be struck.

B. THE CHARTER SECTION 6 CLAIM CANNOT SUCCEED

3. In his response to Canada's motion to strike, the plaintiff acknowledges that the present claim relies on many of the same facts as his previously struck claim, but notes that the previous claim sought declarations that all federal COVID-19 mitigation measures were unconstitutional, whereas the present claim seeks declarations concerning only the Minister of Transport's *Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19, No. 52* (the "Interim Order").

4. This remedial distinction does not assist the plaintiff. In striking the previous claim, this Court observed that the plaintiff had not pleaded facts to explain how any federal measure satisfied any of the constituent elements of the Charter provisions

relied on.¹ While the present claim is more narrowly focused on the Interim Order and alleges only a violation of s. 6 of the Charter, it suffers from the same fundamental defect as the previously struck claim in that it contains no facts to explain how the impugned measure infringes this Charter provision in the plaintiff's case.

5. Indeed, the plaintiff now acknowledges that he only wishes to fly within Ontario to visit family, and that he does not wish to leave and re-enter Canada or travel domestically to work or take up residence in another province.² He also acknowledges that he is free to travel by other methods, but states that he "desires" to do so by air.³ These are not rights protected by s. 6,⁴ and if it was not already plain and obvious that the claim did not disclose a reasonable cause of action, these acknowledgments make it clear that the claim cannot succeed.

6. The plaintiff also notes that the applicants in at least two ongoing applications for judicial review have similarly alleged that the Interim Order infringes Charter s. 6. Once again, this does not assist the plaintiff who is not entitled to rely on facts – let alone unproven allegations – applicable to others to support his own claim.⁵

C. THE OTHER REQUESTED DECLARATIONS ARE UNAVAILABLE

7. The plaintiff also continues to seek declarations that the Interim Order is *ultra vires* the *Aeronautics Act* and is based on errors of fact. However, even if these

¹ Order of the Court dated July 12, 2021, in Court File No.: T-130-21 at paras 25-26, 28-29 **Defendant's Book of Authorities ("DBOA"), Tab 20** (aff'd [2021 FC 1095, DBOA, Tab 12](#))

² Plaintiff's Written Representations, paras 50, 60-61

³ Plaintiff's Written Representations, para 65

⁴ Defendant's Written Representations, paras 31, 41-42

⁵ Defendant's Written Representations, para 29

declarations were generally available in an action (which they are not),⁶ the plaintiff still has identified no facts in the claim capable of supporting either request.

8. With respect to the *vires* allegation, while the plaintiff clearly disagrees with the policy merits of the Interim Order, his claim and response to Canada's motion do not address the scope of the Minister's authority under s. 6.41 or identify any facts to suggest that the Minister exceeded this authority in issuing the Interim Order.

9. Moreover, with respect to alleged factual errors, while he alleges that foreign and international organizations have made statements exaggerating the risks of COVID-19, the plaintiff does not assert that the Minister relied on any of these statements in making the Interim Order, identify the facts actually relied on by the Minister, or allege that the facts actually relied on were in error. The claim should be struck in these circumstances.

D. THE PLAINTIFF STILL HAS NOT SHOWN THAT HE IS IMPECUNIOUS

10. The plaintiff notes Canada's allegation that he has insufficient assets to pay Canada's costs, and suggests that this is evidence that he is impecunious. However, this allegation – which was included in Canada's notice of motion in anticipation of an argument under rule 416(1)(g)⁷ – has not been proven, and in any event, even if proven it would not be sufficient to establish impecuniosity.⁸ There is accordingly no reason why, if this claim is allowed to proceed, the plaintiff should not be ordered to provide security for costs.⁹

⁶ *Federal Courts Act*, RSC 1985, c F-7, s [18\(3\)](#)

⁷ While Canada's notice of motion refers to both subsections 416(1)(f) and (g), Canada ultimately elected not to pursue the s 416(1)(g) argument, and its request for security for costs instead relies solely on s 416(1)(f). *Federal Courts Rules*, [SOR/98-106](#), **DBOA, Tab 35**

⁸ Defendant's Written Representations, para 62

⁹ Rules, s [417](#)

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated at Toronto this April 22, 2022.



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AUTHORITIES CITED

- 1 Order of the Court dated July 12, 2021, in Court File No.: T-130-21, aff'd [2021 FC 1095](#)
- 2 *Federal Courts Act*, RSC 1985, c F-7, s [18\(3\)](#)
- 3 *Federal Courts Rules*, SOR/98-106, s [416\(1\)\(f\),\(g\)](#), [417](#)