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Canada

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VIA EMAIL

Our File Number: LEX-500081718

July 18, 2023

Federal Court
180 Queen Street West, Suite 200
Toronto, Ontario M5V 3L6

Dear Registry:

Re: *Raymond Turmel v His Majesty the King, T-138-21* and other files listed in Annex A

I am writing on behalf of the defendant in the above-noted matters, Her Majesty the King (“Canada”), in response to the Court’s Orders of June 19, 2023 and July 18, 2023. I ask that you kindly place this letter before the case-management judge, Associate Justice Horne.

Canada requests costs of \$500 in each of these matters, with the exception of T-333-21, in which Canada seeks \$250.

The Plaintiffs’ claims are based on a “kit” Statement of Claim accessed from the website of John Turmel. The Federal Courts have consistently dismissed these types of claims on the grounds that facts pleaded concerning each plaintiff’s personal circumstances were insufficient to disclose a reasonable cause of caution.¹ Despite these decisions, the plaintiffs filed the present claims which suffered from the same fundamental defects. A cost consequence is reasonable in this circumstance given that the plaintiffs embarked on litigation with Statements of Claim they found online that they either knew, or should have known, were deficient.

Canada notes that the “kit claims” on which the Plaintiff relies appears to have been removed from the internet. Nonetheless, an award of costs in these circumstances will still serve as a deterrent to the filing of “kit claims” generally in any future matters. Kit claims do not advance any legitimate legal interest.

A lump sum award of \$500 for costs is appropriate. As this honourable Case Management Judge noted in his Orders of July 27, 2022 and September 6, 2022, an award of \$500 would be “sufficient to recognize the improper, vexatious and unnecessary nature of these actions (subrule

¹ *In the matter of numerous filings*, 2017 FC 30, paras 37-38; Order of Zinn J., dated in August 17, 2018, in *Hathaway v HMQ* (T-983-16); Order of Aalto, Proth., dated October 11, 2016 in several files including *MacDonald v HMQ* (T-1113-16); *Harris v HMQ*, 2019 FCA 232, paras 6, 19-20, 23; Order of Brown J, dated April 27, 2020, in several files including *McCluskey v HMQ* (T-2126-18); *Harris v HMQ*, 2020 FCA 124, paras 26, 30-38, 41-42, leave refused [2021] SCCA No 228.

400(3)(k)(i)), the need for deterrence, and the absence of a demonstrated good faith basis to file each of these statements of claim.” It would also be consistent with those two orders, which dealt with substantially similar kit claims.

In T-333-21, a lump sum of \$250 is appropriate. The Plaintiff in this matter, Mr. Dan Hingley, has advised Canada that he attempted to discontinue his action but was apparently unsuccessful due to his lack of familiarity with the Court system. Although Canada was unaware of this attempt (and it does not appear to be in the Court’s recorded entries), Canada trusts that Mr. Hingley made a good faith effort to exit the litigation he embarked upon. Given that Mr. Hingley appears to have recognized, albeit not immediately, the deficiency of his Statement of Claim, Canada submits a reduced cost consequence is appropriate in his circumstance.

Sincerely,

A handwritten signature in black ink, appearing to read "James Schneider". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

James Schneider
Counsel

c.c. **All Plaintiffs**, by email

Attachments

Order of September 6, 2022

Order of July 27, 2022

Federal Court



Cour fédérale

Date: 20220727

**Dockets: T-693-22
T-694-22
T-695-22
T-705-22
T-710-22
T-827-22
T-828-22
T-929-22**

Toronto, Ontario, July 27, 2022

PRESENT: Case Management Judge Trent Horne

Docket: T-693-22

BETWEEN:

JOSHUA FUDGE

Plaintiff

and

HER MAJESTY THE QUEEN

Defendant

Docket: T-694-22

AND BETWEEN:

ALIM MANJI

Plaintiff

and

HER MAJESTY THE QUEEN

Defendant



Docket: T-695-22

AND BETWEEN:

RENE BEAULIEU

Plaintiff

and

HER MAJESTY THE QUEEN

Defendant

Docket: T-705-22

AND BETWEEN:

ANGELA COLELLA KROEPLIN

Plaintiff

and

HER MAJESTY THE QUEEN

Defendant

Docket: T-710-22

AND BETWEEN:

ROSA TAMM

Plaintiff

and

HER MAJESTY THE QUEEN

Defendant

Docket: T-827-22

AND BETWEEN:

ROGER W GERVAIS

Plaintiff

and

HER MAJESTY THE QUEEN

Defendant

Docket: T-828-22

AND BETWEEN:

SHELLEY R GERVAIS

Plaintiff

and

HER MAJESTY THE QUEEN

Defendant

Docket: T-929-22

AND BETWEEN:

KATHERINE WRIGHT

Plaintiff

and

HER MAJESTY THE QUEEN

Defendant

ORDER

I. Overview

[1] These actions were dismissed by my judgment dated July 2, 2022 (“Judgment”).

[2] The Judgment did not fix costs. The defendant was directed to serve and file submissions as to costs within 10 days of the date of the Judgment. Any responding submissions from the plaintiffs as to costs were directed to be served and filed within 20 days of the date of the Judgment.

[3] The defendant’s costs submissions were received on July 14, 2022.

[4] Alim Manji (T-694-22) filed costs submissions dated July 13, 2022; nothing was filed in response to the defendant’s submissions.

[5] The other plaintiffs did not file any costs submissions.

[6] For the reasons that follow, the defendant will be awarded costs of each proceeding in the amount of \$500.00, payable forthwith.

II. Background

[7] The genesis of these proceedings are statements of claim filed by John Turmel.

[8] Mr Turmel commenced a first action related to the federal Government’s COVID-19 mitigation measures, which was assigned Court file no T-130-21. A number of substantially

identical claims were filed by other plaintiffs, which were stayed by order of prothonotary Aylen (as she then was) dated April 8, 2021.

[9] The statement of claim in T-130-21 was struck, with costs, by order of prothonotary Aylen dated July 12, 2021. That order was upheld on appeal by justice Zinn (*Turmel v. Canada*, 2021 FC 1095). Mr Turmel further appealed justice Zinn's decision; that appeal is pending.

[10] While the appeal of justice Zinn's decision was underway, Mr Turmel commenced a second action, which was assigned Court file no T-277-22. The material difference between Mr Turmel's first claim and second claim is that the latter specifically challenges a January 15, 2022 decision of the Minister of Transport to make an interim order in the form of an *Interim Order Respecting Certain Requirements for Civil Aviation Due to Covid-19, No. 52* ("Interim Order No. 52"). The second claim sought a declaration that certain sections of this decision violate the plaintiff's section 6 *Charter* rights, and that these violations are not demonstrably justified under section 1 of the *Charter*.

[11] As with the first action in T-130-21, Mr Turmel made a copy of his statement of claim in T-277-22 available on the internet so that others could substitute their name as the plaintiff, and then commence an identical action seeking the same relief. Such actions have been referred to as "kit claims".

[12] The statements of claim in each of these actions are almost identical, and are based on the materials made available on the internet by Mr Turmel.

[13] By order dated May 18, 2022, I stayed these proceedings. The order noted that none of the plaintiffs took issue with the Court's observation that their claims are essentially the same as

the statement of claim in T-277-22, and that none of the plaintiffs have submitted that they are differently situated than Mr Turmel. I also concluded that staying the “kit claims” would be consistent with the manner in which the Court managed the multiple proceedings that were based on or copied from the statement of claim in T-130-21.

[14] Mr Turmel’s action in T-277-22 was dismissed by my judgment dated May 18, 2022.

This judgment was not appealed, and is final.

[15] Despite having the opportunity to do so, none of the plaintiffs made submissions that their proceeding was differently situated than T-277-22. These actions were dismissed by the Judgment. The only remaining matter to be determined is costs.

III. Analysis

[16] The Court has full discretionary power over the amount and allocation of costs (*Federal Courts Rules*, SOR/98-106, subrule 400(1)).

[17] With the exception of Alim Manji, none of the plaintiffs filed submissions on costs. There is no material before me to indicate what, if any, consideration any of the plaintiffs gave to the merits of their claim before filing it, considered whether the claim advanced a credible cause of action, or complied with the rules of pleading.

[18] I have difficulty understanding how completing a “kit claim”, replacing only the name of the plaintiff and otherwise adopting the pleading of someone else, advances a legitimate legal interest, particularly when the relief sought in T-277-22 challenged the constitutionality of Interim Order No. 52 generally, not just as it applied to Mr Turmel. Absent any separate or

unique claim to advance, the plaintiffs knew, or ought to have known, that their duplicative actions would be stayed (just like the proceedings were stayed in T-130-21), and have the same outcome as the proceedings in T-277-22. None of the plaintiffs have demonstrated a distinct or practical result that could flow from filing or prosecuting their own action, separate and apart from what could have been ordered in Mr Turmel's action.

[19] In the absence of any submissions from the plaintiffs, I can only conclude that these actions were improper, vexatious and unnecessary. There is no indication that any of the plaintiffs had an intention or interest to independently prosecute the actions they commenced. In the absence of evidence or submissions from the plaintiffs, it appears that the plaintiffs' objectives in filing these claims was to clog the registry with redundant actions, and vex the defendant with needless filings. Even if I am incorrect in this respect, I have no difficulty concluding that these actions were filed for a collateral purpose, and not to advance a reasonable cause of action.

[20] Litigation is a serious business which consumes public resources. The plaintiffs' conduct has abused these resources.

[21] The submissions by Alim Manji refer to other matters where numerous plaintiffs filed "kit claims", and no costs were awarded when they were ultimately dismissed. Mr Manji submits that the Crown did not have to file documentation to deal with these stayed actions, and has been awarded costs from the lead plaintiff (Mr Turmel). Mr Manji expresses a hope that no costs will be awarded.

[22] I do not view the costs awards in earlier proceedings involving multiple “kit claim” plaintiffs as binding on me. There is no default position that copycat claims are immune from adverse cost consequences. Each case is considered on its own facts. If costs were never awarded in “kit claim” actions, it would only serve to encourage behaviour that should be discouraged.

[23] While the defendant has not filed a defence in these actions, it cannot be disputed that the defendant has devoted resources to deal with these proceedings. These proceedings added nothing to the substance of the issues, rather only served to create work for the defendant and the Court.

[24] The defendant requests \$250.00 in costs for each action. In part, the defendant submits that an award of costs in these circumstances would serve as a deterrent to the continued filing and promotion of these claims.

[25] Deterrence is a factor that can be considered in the assessment of costs (*Hutton v. Sayat*, 2020 FC 1183 at paras 64 and 66).

[26] The Court is not restricted to Tariff B in an assessment of costs, and may award a lump sum (subrule 400(4)).

[27] I agree with the defendant’s submissions, but do not agree that the amount requested would be sufficient to recognize the improper, vexatious and unnecessary nature of these actions (subrule 400(3)(k)(i)), the need for deterrence, and the absence of a demonstrated good faith basis to file each of these statements of claim. A lump sum award of costs of \$500.00 in each action is appropriate in the circumstances.

THIS COURT ORDERS that:

1. The plaintiffs in Court file nos T-693-22, T-694-22, T-695-22, T-705-22, T-710-22, T-827-22, T-828-22, T-929-22 shall each pay costs to the defendant, fixed at \$500.00, payable forthwith.

"Trent Horne"

Case Management Judge

Federal Court



Cour fédérale

Date: 20220906

Dockets: T-740-22

T-837-22

T-841-22

Toronto, Ontario, September 6, 2022

PRESENT: Case Management Judge Trent Horne

Docket: T-740-22

BETWEEN:

RAYMOND TURMEL

Plaintiff

and

HER MAJESTY THE QUEEN

Defendant

Docket: T-837-22

AND BETWEEN:

STEVEN BEAUSOLEIL

Plaintiff

and

HER MAJESTY THE QUEEN

Defendant

Docket: T-841-22

AND BETWEEN:

HEATHER WEINHARDT

Plaintiff

and

HER MAJESTY THE QUEEN

Defendant

JUDGMENT

UPON a judgment dated August 10, 2022;

AND UPON considering:

I. Overview

[1] On August 10, 2022, a judgment issued in T-740-22, T-837-22, and T-841-22 (“Judgment”). The Judgment struck the statements of claim, and set a timetable for the exchange of costs submissions.

[2] The defendant served and filed costs submissions on August 12, 2022. None of the plaintiffs made submissions as to costs, and the time for doing so has expired.

[3] For the reasons that follow, the defendant will be awarded costs of each proceeding in the amount of \$500.00, payable forthwith.

II. Background

[4] The genesis of these proceedings are statements of claim filed by John Turmel.

[5] Mr Turmel commenced a first action related to the federal Government's COVID-19 mitigation measures, which was assigned Court file no T-130-21. A number of substantially identical claims were filed by other plaintiffs, which were stayed by order of prothonotary Aylen (as she then was) dated April 8, 2021.

[6] The statement of claim in T-130-21 was struck, with costs, by order of prothonotary Aylen dated July 12, 2021. That order was upheld on appeal by justice Zinn (*Turmel v Canada*, 2021 FC 1095). Mr Turmel further appealed justice Zinn's decision; that appeal is pending.

[7] While the appeal of justice Zinn's decision was underway, Mr Turmel commenced a second action, which was assigned Court file no T-277-22. The material difference between Mr Turmel's first claim and second claim is that the latter specifically challenges a January 15, 2022 decision of the Minister of Transport to make an interim order in the form of an *Interim Order Respecting Certain Requirements for Civil Aviation Due to Covid-19, No. 52* ("Interim Order No. 52"). The second claim sought a declaration that certain sections of this decision violate the plaintiff's section 6 *Charter* rights, and that these violations are not demonstrably justified under section 1 of the *Charter*.

[8] As with the first action in T-130-21, Mr Turmel made a copy of his statement of claim in T-277-22 available on the internet so that others could substitute their name as the plaintiff, and then commence an identical action seeking the same relief. Such actions have been referred to as "kit claims".

[9] The statements of claim in each of these actions are almost identical, and are based on the materials made available on the internet by Mr Turmel.

[10] Mr Turmel's action in T-277-22 was dismissed by my judgment dated May 18, 2022. This judgment was not appealed, and is final.

[11] On July 25, 2022, I issued the following direction:

The statements of claim in these proceedings appear to be virtually identical to the statement of claim in Court file no. T-277-22 filed by John Turmel. The proceedings in T-277-22 were struck, without leave to amend, by my judgment and reasons dated May 18, 2022. No appeal has been taken from this decision. The deadline to appeal was May 30, 2022 (Rule 51). The judgment in T-277-22 is therefore final. If any party in T-740-22, T-837-22, or T-841-22 takes the position that their action is differently situated than T-277-22 such that that the final determination in T-277-22 should not apply to their action, that party shall, within 15 days of the date of this direction, requisition a case management conference to establish a schedule for a motion to determine whether their action should move forward. If no request for a case management is made by that date, the action will be dismissed on the same grounds as the proceeding in T-277-22, and the parties will be invited to make submissions as to costs.

[12] Despite having the opportunity to do so, none of the plaintiffs made submissions that their proceeding was differently situated than T-277-22. These actions were dismissed by the Judgment. The only remaining matter to be determined is costs.

III. Analysis

[13] The Court has full discretionary power over the amount and allocation of costs (*Federal Courts Rules*, SOR/98-106, subrule 400(1)).

[14] None of the plaintiffs filed submissions on costs. There is no material before me to indicate what, if any, consideration any of the plaintiffs gave to the merits of their claim before filing it, considered whether the claim advanced a credible cause of action, or complied with the rules of pleading.

[15] I have difficulty understanding how completing a “kit claim”, replacing only the name of the plaintiff and otherwise adopting the pleading of someone else, advances a legitimate legal interest, particularly when the relief sought in T-277-22 challenged the constitutionality of Interim Order No. 52 generally, not just as it applied to Mr Turmel. Absent any separate or unique claim to advance, the plaintiffs knew, or ought to have known, that their duplicative actions would have the same outcome as the proceedings in T-277-22. None of the plaintiffs have demonstrated a distinct or practical result that could flow from filing or prosecuting their own action, separate and apart from what could have been ordered in Mr Turmel’s action.

[16] In the absence of any submissions from the plaintiffs, I can only conclude that these actions were improper, vexatious and unnecessary. There is no indication that any of the plaintiffs had an intention or interest to independently prosecute the actions they commenced. In the absence of evidence or submissions from the plaintiffs, it appears that the plaintiffs’ objectives in filing these claims was to clog the registry with redundant actions, and vex the defendant with needless filings. Even if I am incorrect in this respect, I have no difficulty concluding that these actions were filed for a collateral purpose, and not to advance a reasonable cause of action.

[17] Litigation is a serious business which consumes public resources. The plaintiffs’ conduct has abused these resources.

[18] While the defendant has not filed a defence in these actions, it cannot be disputed that the defendant has devoted resources to deal with these proceedings. These proceedings added nothing to the substance of the issues, rather only served to create work for the defendant and the Court.

[19] The defendant requests \$500.00 in costs for each action. I agree that such an amount is appropriate. In part, the defendant submits that an award of costs in these circumstances would serve as a deterrent to the continued filing and promotion of these claims. Deterrence is a factor that can be considered in the assessment of costs (*Hutton v Sayat*, 2020 FC 1183 at paras 64 and 66).

[20] I also awarded \$500.00 in costs in each of T-693-22, T-694-22, T-695-22, T-705-22, T-710-22, T-827-22, T-828-22, T-929-22, where the statements of claim are essentially identical to Mr Turmel's claim in T-277-22.

[21] The Court is not restricted to Tariff B in an assessment of costs, and may award a lump sum (subrule 400(4)).

[22] A cost award in these proceedings must recognize the improper, vexatious and unnecessary nature of these actions (subrule 400(3)(k)(i)), the need for deterrence, and the absence of a demonstrated good faith basis to file each of these statements of claim. A lump sum award of costs of \$500.00 in each action is appropriate in the circumstances.

THIS COURT ORDERS that:

1. The plaintiffs in Court files T-740-22, T-837-22, and T-841-22 shall each pay costs to the defendant, fixed at \$500.00, payable forthwith.

“Trent Horne”

Case Management Judge