Court File No.: T-962-22

FEDERAL COURT

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

JOHN C. TURMEL

Respondent

APPLICANT'S RECORD

VOLUME 1 of 8

ATTORNEY GENERAL OF CANADA
Department of Justice Canada
Ontario Regional Office
National Litigation Sector
120 Adelaide Street West, Suite 400
Toronto, Ontario M5H 1T1

Per: Jon Bricker
Tel: 647-256-7473
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Solicitor for the Applicant

TO: John C. Turmel
50 Brant Avenue
Brantford, Ontario
N3T 3G7

Respondent

AND TO: The Administrator
Federal Court of Canada
180 Queen Street West
Suite 200
Toronto, Ontario
M5V L6

Court File No.: T-962-22

FEDERAL COURT

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

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JOHN C. TURMEL

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VOLUME 3

VOLUME 7

Court File No.: T-962-22

FEDERAL COURT

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

JOHN C. TURMEL

Respondent

NOTICE OF APPLICATION

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED by the applicant. The relief claimed by the applicant appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at 180 Queen Street West, Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the applicant's solicitor or, if the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

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 APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date: May 10, 2022 *Issued by:* Duong, Rebecca Digitally signed by Duong, Rebecca Date: 2022.05.11 12:06:29 -04'00'

(Registry Officer)

Address of Local office: 180 Queen Street West
Suite 200
Toronto, Ontario
M5V 3L6

TO: John C. Turmel
50 Brant Avenue
Brantford, Ontario
N3T 3G7

Respondent

AND TO: The Administrator
Federal Court of Canada
180 Queen Street West
Suite 200
Toronto, Ontario
M5V L6

APPLICATION

THE APPLICANT MAKES AN APPLICATION for an Order:

(a) that no further proceedings may be instituted, and that any proceeding previously instituted may not be continued, by the respondent in the Federal Court or the Federal Court of Appeal, except with leave of the Federal Court;

(b) that any application by the respondent for leave to institute or continue proceedings must, in addition to satisfying the criteria in s. 40(4) of the *Federal Courts Act*, demonstrate that all outstanding costs awards against the respondent in the Federal Court and Federal Court of Appeal have been paid in full;

(c) prohibiting the respondent from preparing, distributing or in any way disseminating court documents, including template documents, for use by others in proceedings before the Federal Court or the Federal Court of Appeal;

(d) prohibiting the respondent from assisting others with their Federal Court or Federal Court of Appeal proceedings, including by filing materials or by purporting to represent or communicate with the Courts on their behalf;

(e) that no further proceedings may be instituted by anyone in the Federal Court or Federal Court of Appeal using originating documents that are in any way prepared, distributed, or disseminated by the respondent, except with leave of the Court;

(f) for costs; and

(g) for such other relief as counsel may advise and this Honourable Court may deem just.

THE GROUNDS FOR THE APPLICATION ARE:

(a) the respondent has persistently instituted vexatious proceedings and has conducted proceedings in a vexatious manner;

(b) since 1980, the respondent has instituted at least 67 proceedings in the courts of Ontario, the Federal Court, the Federal Court of Appeal, and the Supreme Court of Canada;

(c) since 2014, plaintiffs have also filed more than 800 Federal Court claims, as well as numerous motions, appeals and applications for leave to appeal,

based on litigation materials prepared, distributed and promoted by the respondent;

(d) the respondent persistently brings and encourages others to bring meritless claims, motions, appeals and applications for leave to appeal;

(e) the respondent brings and encourages others to bring proceedings for an improper purpose or that obviously cannot succeed;

(f) in his own proceedings and in materials prepared for use by others, the respondent frequently attempts to re-litigate issues which have already been decided;

(g) in his own proceedings and in materials prepared for use by others, the respondent uses pleadings to make bald, unsubstantiated and intemperate or scandalous allegations against others;

(h) the respondent frequently expresses disregard, and at times outright contempt, for the Federal Courts, including individual Justices and the Registry;

(i) the respondent frequently disregards court rules and orders;

(j) although not licensed to practice law, the respondent frequently advises others on the conduct of their claims or purports to represent others;

(k) the respondent persistently fails to comply with costs orders and encourages others not to pay costs orders;

(l) the requested order will promote the integrity of the judicial process of this Court and prevent the respondent from continuing to conduct, and from encouraging others to conduct, proceedings in an abusive and vexatious manner that is harmful to the court system and its participants;

(m) *Federal Courts Act*, RSC 1984, c F-7, ss 40, 44;

(n) the plenary jurisdiction of this Court;

(o) such further and other grounds as counsel may submit and this Honourable Court may accept.

THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL:

(a) the Affidavit of Lisa Minarovich; and

(b) such other material that counsel may advise and this Honourable Court may permit.

May 10, 2022

_____

ATTORNEY GENERAL OF CANADA
Department of Justice Canada
Ontario Regional Office, National Litigation Sector
120 Adelaide Street West, Suite #400
Toronto, Ontario M5H 1T1

Per: Jon Bricker

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E-mail: jon.bricker@justice.gc.ca

FEDERAL COURT

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

JOHN C. TURMEL

Respondent

CONSENT OF THE ATTORNEY GENERAL OF CANADA (SECTION 40 OF THE FEDERAL COURTS ACT)

THE ATTORNEY GENERAL OF CANADA, acting through the Assistant Deputy Attorney General, being a person appointed to serve in a capacity appropriate to granting a consent of this nature, hereby consents to the bringing of an application for an order pursuant to section 40 of the *Federal Courts Act*:

(a) that no further proceedings may be instituted, and that any proceeding previously instituted may not be continued, by John C. Turmel in the Federal Court or the Federal Court of Appeal, except with leave of the Federal Court;

(b) that any application by John C. Turmel for leave to institute or continue proceedings must, in addition to satisfying the criteria in s. 40(4) of the *Federal Courts Act*, demonstrate that all outstanding costs awards against John C. Turmel in the Federal Court and Federal Court of Appeal have been paid in full;

(c) prohibiting John C. Turmel from preparing, distributing or in any way disseminating court documents, including template documents, for use by others in proceedings before the Federal Court or the Federal Court of Appeal;

(d) prohibiting the respondent from assisting others with their Federal Court or Federal Court of Appeal proceedings, including by filing materials or by purporting to represent or communicate with the Courts on their behalf;

(e) that no further proceedings may be instituted by anyone in the Federal Court or Federal Court of Appeal using originating documents, that are in any way prepared, distributed or disseminated by John C. Turmel, except with leave of the Court;

(f) for costs; and

(g) for such other relief as counsel may advise and this Honourable Court may deem just.

DATED AT OTTAWA, ONTARIO this 4 day of May, 2022

Lovett, Sharon Digitally signed by Lovett, Sharon
Date: 2022.05.04 16:54:39 -04'00'

Lynn Lovett
Assistant Deputy Attorney General

Court File Number: T-962-22

FEDERAL COURT

B E T W E E N :

ATTORNEY GENERAL OF CANADA

Applicant

and

JOHN C. TURMEL

Respondent

AFFIDAVIT OF LISA MINAROVICH

I, LISA MINAROVICH, of the City of Brampton, in the Regional Municipality of Peel, SWEAR THAT:

1. I am a Paralegal in the Department of Justice assigned to the above-noted file.

2. In what follows, I describe numerous court proceedings commenced by or involving the respondent, John Turmel, or commenced by or involving other individuals. I worked as a paralegal on several of these proceedings and therefore have personal knowledge of those proceedings.

3. For proceedings that I did not personally work on, I have reviewed the available Department of Justice electronic files, available online court records, and judgment databases (CanLII, Quicklaw, and WestLaw) for those proceedings, and provide the following information, which I verily believe to be true.

4. In some cases, my Affidavit also relies on information from various counsel, other paralegals or assistants within the Department. In these instances, I have identified the source of my information below, and again verily believe the information provided to be true.

5. In what follows, I also describe and provide as exhibits several excerpts from the websites http://www.johnturmel.com/kits.htm (the "Turmel Kits website"), http://www.teamgoldstar.ca (the "Team Goldstar website"), http://www.facebook.com/john.turmel (the "Turmel Facebook website"), and http://groups.google.com/g/alt.fan.john-turmel (the "Turmel Google Groups website"). Based on my review of these websites, I verily believe that they are or were at the relevant time operated by or associated with Mr. Turmel, and unless otherwise indicated, I verily believe that the excerpts provided were authored by Mr. Turmel. Several of the excerpts below also include additional links to additional materials on the Turmel Kits website. While many of these links no longer work, many of the materials in question can now be found on www.smartestman.ca/kits, which I also verily believe to be a website operated by Mr. Turmel.

A. LIST OF PROCEEDINGS COMMENCED BY MR. TURMEL

6. Since 1980, Mr. Turmel, has commenced the following 67 proceedings in the Federal Court (formerly Federal Court (Trial Division)) ("FC"), Federal Court of Appeal (formerly Federal Court (Appeal Division) ("FCA"), Ontario Superior Court of Justice (formerly High Court of Justice and Ontario Court of Justice (General Division)) ("ONSC"), Court of Appeal for Ontario ("CAO"), and Supreme Court of Canada ("SCC"):

FC		
1.	*John C. Turmel v Canadian Radio-Television and Telecommunications Commission*	T-5154-80
2.	*John C. Turmel v Canadian Radio-Television and Telecommunications Commission*	T-5329-80
3.	*John C. Turmel, B.E.E. v Ottawa Crown Attorney*	T-3-81
4.	*John C. Turmel, B.E.E., Banking Systems Engineer v Gerald Bouey, Governor of the Bank (Gaming House) of Canada*	T-476-81

5.	*John C. Turmel v Gerald Bouey*	T-896-81
6.	*John C. Turmel v Bushnell Communications Ltd*	T-2883-83
7.	*John C. Turmel v Canadian Radio-Television and Telecommunications Commission*	T-2884-83
8.	*John C. Turmel v Canadian Radio-Television and Telecommunications Commission*	T-1516-84
9.	*John C. Turmel v Jean-Marc Hamel (Chief Electoral Officer)*	T-1805-84
10.	*John C. Turmel v Canadian Radio-Television and Telecommunications Commission*	T-798-85
11.	*John C. Canadian Broadcasting Corporation*	T-799-85
12.	*John C. Turmel v Canadian Radio-Television and Telecommunications Commission*	T-2263-85
13.	*John C. Turmel v Canadian Broadcasting Corporation*	T-1716-87
14.	*John C. Turmel v Canadian Radio-Television and Telecommunications Commission*	T-1717-87
15.	*John C. Turmel v Canadian Broadcasting Corporation*	T-1952-88
16.	*John C. Turmel v Her Majesty the Queen (Canada)*	T-488-14
17.	*John C. Turmel v Her Majesty the Queen (Canada)*	T-561-15
18.	*John C. Turmel v Her Majesty the Queen (Canada)*	T-1932-18
19.	*John C. Turmel v Her Majesty the Queen (Canada)*	T-130-21
20.	*John C. Turmel v Her Majesty the Queen (Canada)*	T-277-21
FCA		
21.	*John C. Turmel v Canadian Radio-Television and Telecommunications Commission*	A-912-80

22.	*John C. Turmel, B.E.E., Banking Systems Engineer v Gerald Bouey, Governor of the Bank (Gaming House) of Canada*	A-136-81
23.	*John C. Turmel v Canadian Radio-Television and Telecommunications Commission*	A-13-84
24.	*John C. Turmel v Canadian Radio-Television and Telecommunications Commission*	A-211-84
25.	*John C. Turmel v Canadian Radio-Television and Telecommunications Commission*	A-955-84
26.	*John C. Turmel v Canadian Radio-Television and Telecommunications Commission*	A-338-84
27.	*John C. Turmel v Jean-Marc Hamel (Chief Electoral Officer)*	A-1092-84
28.	*John C. Turmel v Canadian Radio-Television and Telecommunications Commission*	A-451-07
29.	*John C. Turmel v Canadian Radio-Television and Telecommunications Commission*	09-A-19
30.	*John C. Turmel v Her Majesty the Queen (Canada)*	A-342-14
31.	*John Turmel v Her Majesty the Queen (Canada)*	A-202-16
32.	*John C. Turmel v Her Majesty the Queen (Canada)*	17-A-5
33.	*John C. Turmel v Her Majesty the Queen (Canada)*	A-286-21
ONSC		
34.	*John C. Turmel v Canadian Broadcasting Corporation, Global Television Network and CTV Television Network*	1827/90
35.	*John C. Turmel v Canadian Broadcasting Corporation*	CV-10-48
36.	*John C. Turmel v Canadian Broadcasting Corporation*	CV-699-2010
37.	*John C. Turmel and J.J. Marc Paquette v Her Majesty the Queen (Canada)*	573/2002

38.	*Terrance Parker, John Turmel and Marc Paquette v Her Majesty the Queen (Canada)*	133-2003
CAO		
39.	*John C. Turmel v Her Majesty the Queen (Ontario)*	300/84
40.	*John C. Turmel v Her Majesty the Queen (Ontario)*	C18691
41.	*John C. Turmel v Her Majesty the Queen (Ontario)*	C21516
42.	*Terrance Parker, John Turmel and Marc Paquette v Her Majesty the Queen (Canada)*	C39653
43.	*John C. Turmel and Marc JJ Paquette v Her Majesty the Queen (Canada)*	C39740
44.	*John Turmel v Her Majesty the Queen (Canada)*	C40127
45.	*John Turmel v Her Majesty the Queen (Canada)*	C44587
46.	*John Turmel v Her Majesty the Queen (Canada)*	C44588
47.	*John Turmel v Her Majesty the Queen (Canada)*	C45295
48.	*John C. Turmel v Canadian Broadcasting Corporation*	C52849
49.	*John C. Turmel v Canadian Broadcasting Corporation*	C53732
50.	*John C. Turmel v Her Majesty the Queen (Canada)*	M45479
51.	*John C. Turmel v Her Majesty the Queen (Canada)*	M45751
SCC		
52.	*John C. Turmel v Ontario (Attorney General)*	17084
53.	*John C. Turmel v Gerald Bouey*	17314
54.	*John C. Turmel v Canadian Radio-Television and Telecommunications Commission*	17541
55.	*John C. Turmel v Toronto Dominion Bank*	18329
56.	*John C. Turmel v Her Majesty the Queen (Ontario)*	19099

57.	*John C. Turmel v Her Majesty the Queen (Ontario)*	25610
58.	*John C. Turmel v Her Majesty the Queen (Canada)*	30570
59.	*John C. Turmel v Her Majesty the Queen (Canada)*	30571
60.	*John C. Turmel v Her Majesty the Queen (Canada)*	32011
61.	*John C. Turmel v Her Majesty the Queen (Canada)*	32012
62.	*John C. Turmel v Her Majesty the Queen (Canada)*	32013
63.	*John C. Turmel v Canadian Radio-Television and Telecommunications Commission*	33319
64.	*John C. Turmel v Canadian Broadcasting Corporation*	34482
65.	*John Turmel v Her Majesty the Queen (Canada)*	36415
66.	*John Turmel v Her Majesty the Queen (Canada)*	36937
67.	*John C. Turmel v Her Majesty the Queen (Canada)*	37064
68.	*John Turmel v Her Majesty the Queen (Canada)*	37647

7. In what follows, I provide additional information concerning several of these proceedings. Where available, I have also provided as exhibits copies of the relevant court decisions. For some of the above-listed cases however, the age of the proceeding and state of the available records prevented me from locating additional information or copies of the relevant decision, and I accordingly have not addressed those proceedings or provided those decisions below.

8. As detailed below, Mr. Turmel has been largely if not entirely unsuccessful in all of the proceedings for which I was able to find information. Several of these proceedings were dismissed for failure to disclose a reasonable cause of action, for a total lack of evidence, as attempts to re-litigate issues previously decided, or as otherwise frivolous and vexatious or

an abuse of process. In the course of these proceedings, Mr. Turmel has frequently failed to follow the rules, and he has been the subject of numerous costs awards nearly all of which remain unpaid.

9. As further detailed below, since 2014, Mr. Turmel has also been preparing and disseminating template FC claims for others to file. These templates have resulted in the filing of more than 800 claims, nearly all of which have been dismissed or are in the process of being dismissed on the grounds that they failed to disclose a reasonable cause of action or were frivolous, vexatious or an abuse of process. In social media posts concerning these proceedings, Mr. Turmel has also acknowledged having filed materials for others, advised others on the conduct of their proceedings, encouraged others to "flood the registry" with claims, and has denigrated judges and others. The plaintiffs in several of these matters have also been the subject of numerous costs awards, many of which again remain unpaid.

B. PROCEEDINGS CONCERNING BANKING ISSUES

1. *John C. Turmel, B.E.E., Banking Systems Engineer v Gerald Bouey, Governor of the Bank (Gaming House) of Canada* (Court File Nos. T-896-81, A-136-81, 17314)

10. On February 20, 1981, Mr. Turmel commenced an application in this Court (*John C. Turmel, B.E.E., Banking Systems Engineer v Gerald Bouey, Governor of the Bank (Gaming House) of Canada*, Court File No. ("CFN") T-896-81). According to the reported FC decision in this matter, the application requested an order that "the Bank of Canada cease and desist the genocidal practice of interest and switch to a pure service charge."

11. By judgment dated February 26, 1981, the FC (Marceau J.) dismissed the application on the grounds that the requested order was both "clearly beyond the powers of the Court," and "frivolous, vexatious and … an abuse of the process of this Court."

12. Mr. Turmel appealed this FC decision to the FCA (CFN A-136-81). By judgment dated September 10, 1982, the FCA dismissed his appeal with costs.

13. Mr. Turmel sought leave to appeal the FCA decision in this matter to the SCC (CFN 17314). By judgment dated November 23, 1982, the SCC dismissed his leave application, with costs.

14. Attached hereto as Exhibit 1 are copies of the FC, FCA, and SCC decisions in these matters.

2. *John C. Turmel v Toronto Dominion Bank* (CFN 18329)

15. In or about the year 1983, Mr. Turmel brought an application for leave to appeal a CAO decision to the SCC (*John C. Turmel v Toronto Dominion Bank*, CFN 18329).

16. According to the reported SCC decision in this matter, the leave application arose out of a proceeding commenced by Toronto Dominion Bank against Mr. Turmel in County/District Court (Ontario), in which the court granted judgment in favour of the bank in the amount of $2,813.19.

17. The reported SCC decision also indicates Mr. Turmel unsuccessfully appealed the County/District Court decision to the CAO, and that in his eventual SCC leave application, Mr. Turmel alleged that the interest charged by the bank was a violation of natural, biblical or criminal laws.

18. By judgment dated February 20, 1984, the SCC dismissed this leave application. Attached hereto as Exhibit 2 is a copy of the SCC leave decision.

C. PROCEEDINGS CONCERNING ELECTION ISSUES

19. Mr. Turmel is a frequent candidate in municipal, provincial and federal elections, and is currently recognized by Guinness World Records as

holding the world record for most elections contested. According to the Guinness World Records website (an excerpt of which is attached hereto as Exhibit 3), Mr. Turmel contested 90 elections between 1979 and 1990. Of these, the website notes that Mr. Turmel was unsuccessful in 89 elections, and that the other, a federal by-election, was pre-empted by a general federal election.

20. As detailed below, Mr. Turmel has over the years commenced numerous court proceedings related to his candidacy in these elections.

1. *John C. Turmel v Canadian Radio-Television and Telecommunications Commission* (CFN T-5329-80, A-912-80, 17541)

21. On November 17, 1980, Mr. Turmel commenced an application in this Court against the Canadian Radio-Television and Telecommunications Commission ("CRTC") (*John C. Turmel v CRTC*, CFN T-5329-80). According to the reported FC decision in this matter, the application sought an order for mandamus to compel the CRTC to obtain written versions and graphs of the algorithms used by three radio networks to allocate free political broadcast time to candidates.

22. By decision dated November 26, 1980, the Court dismissed Mr. Turmel's application. In so doing, Walsh J. noted that it was a "fundamental law" that mandamus lies only to secure the performance of a public duty, and that the CRTC was under no duty to obtain the information. He found the application was therefore "clearly inadmissible and must be dismissed."

23. Mr. Turmel unsuccessfully appealed this Court's decision to the FCA (CFN A-912-80), and unsuccessfully sought leave to appeal the FCA decision the SCC (CFN 17541), which dismissed his leave application with costs.

24. Attached hereto as Exhibit 4 are copies of the FC and SCC decisions in these matters.

2. *John C. Turmel v Bushnell Communications* and *John C. Turmel v CRTC* (CFN T-2883-83, T-2884-83, A-13-84)

25. On December 5, 1983, Mr. Turmel commenced two further applications in this Court (*John C. Turmel v Bushnell Communications Ltd*, CFN T-2883-83 (the "Bushnell Application"), and *John C. Turmel v CRTC,* CFN T-2884-83 (the "CRTC Application"). According to the reported FC decision in these matters, the Bushnell Application sought an injunction to prevent the respondent broadcaster from airing an election debate with only three of the four registered candidates, while the CRTC Application sought an order for mandamus to compel the CRTC to prevent Bushnell from broadcasting the same debate.

26. By decision dated December 16, 1983, this Court dismissed both applications with costs. In dismissing the Bushnell Application, Walsh J. expressed doubt about the Court's jurisdiction to grant an injunction as the respondent broadcaster was not a "federal, board, commission or other tribunal." In any event, the Court concluded that it was not its place to interfere with a broadcaster's allocation of news time.

27. In dismissing the CRTC Application, Walsh J. also observed that the application raised many of the same issues concerning the availability of mandamus against the CRTC as Mr. Turmel's previous unsuccessful application in the matter with Court File No. T-5329-80, and concluded that there was no basis for departing from the Court's decision in that case. Attached hereto as Exhibit 5 is a copy of this Court's decision in these matters.

28. Mr. Turmel appealed this Court's decision to the FCA (CFN A-13-84). However, according to the online recorded entries for this matter, after filing a memorandum, Mr. Turmel took no further steps to pursue the appeal and on October 23, 1996, the FCA deemed the appeal to have been discontinued.

3. *John C. Turmel v CRTC* (CFN T-1516-84, A-955-84)

29. On July 20, 1984, Mr. Turmel commenced an FC application against the CRTC (*John C. Turmel v CRTC*, CFN T-1516-84). According to the reported FC decision in this matter, the application sought an order for mandamus to compel the CRTC to supervise the allocation of free political broadcast time to ensure that it was equally divided among registered parties in the then-ongoing federal election.

30. By judgment dated July 24, 1984, this Court dismissed the application with costs. In so doing, Muldoon J. observed that the application raised the same issues as Mr. Turmel's previous applications with Court File Nos. T-5329-80 and T-2884-84, and expressed agreement with the conclusions of Walsh J. in her decisions dismissing those applications. Attached hereto as Exhibit 6 is a copy of this Court's decision in this matter.

31. Mr. Turmel subsequently appealed this Court's decision to the FCA (CFN A-955-84). However, according to the online recorded entries for this matter, Mr. Turmel did not pursue the appeal to its conclusion, and on October 23, 1996, the FCA deemed the appeal to have been discontinued.

4. *John C. Turmel v CRTC* (CFN 300/84, 19099)

32. In or about 1984, Mr. Turmel brought an unsuccessful application for leave to appeal a CAO decision to the SCC (*John C. Turmel v CRTC*, CFN 19099).

33. According to the reported SCC decision in this matter, the leave application arose out of an unsuccessful application by Mr. Turmel in the High Court of Justice (Ontario), and an unsuccessful appeal by Mr. Turmel to the CAO (CFN 300/84). The reported SCC decision also notes that the underlying application concerned Mr. Turmel's exclusion from a televised provincial election debate, and sought mandamus against the provincial Crown.

34. Attached hereto as Exhibit 7 are copies of the CAO and SCC decisions in this matter.

5. *John C. Turmel v CRTC* and *John C. Turmel v CBC* (CFN T-798-85, T-799-85)

35. On April 23, 1985, Mr. Turmel commenced two applications in this Court (*John C. Turmel v CRTC*, CFN T-798-85, and *John C. Turmel v Canadian Broadcasting Corp.*, T-799-85). According to the reported decisions in these matters, the first application sought mandamus to compel the CRTC to supervise, regulate and ensure that CBC Television in Ottawa provided free broadcast time on an equitable basis to all provincial candidates, while the second application sought relief against the CBC itself.

36. By decision dated April 24, 1985, this Court dismissed both applications. In so doing, Dubé J. observed that the first application raised issues previously decided by the Court in the matters with Court File Nos. T-2884-83 and T-1516-84, and that while Mr. Turmel had advanced new arguments based on section 15 of the *Canadian Charter of Rights and Freedoms* ("Charter"), he had provided virtually no evidence in support of these arguments.

37. With respect to the second application, Dubé J. concluded that the CBC was not a "federal board, commission or other tribunal" subject to section 18 of the *Federal Courts Act*.

38. Attached hereto as Exhibit 8 is a copy of the FC reasons for judgment in these matters.

6. *John C. Turmel v CBC* and *John C. Turmel v CRTC and Global Television Network* (CFN T-1716-87, T-1717-87)

39. On August 12, 1987, Mr. Turmel commenced two applications in this Court (*John C. Turmel v CBC*, CFN T-1716-87, and *John Turmel v CRTC and Global Television Network*, CFN T-1717-87). According to the reported decisions in these matters, the first application sought an order

restraining CBC from broadcasting any free-time political programs unless all registered provincial political parties were invited to attend, while the second application sought mandamus to compel the CRTC to require that three television networks invite representatives of smaller parties to participate in a proposed televised political debate.

40. This Court dismissed both applications with costs. With respect to the first application, Joyal J. observed that it was "firmly established" that the CBC was not a "federal board, commission or other tribunal" subject to s. 18 of the *Federal Courts Act*, and that this principle had been previously followed "in successive and unsuccessful applications before this court by the same applicant in the years 1980, 1983 and 1984." With respect to the second application, Joyal J. similarly observed that "[t]he applicant admits having had many runs at the cat on this point. He has had no success in this Court in similar applications made in 1980, 1983 and 1984."

41. Attached hereto as Exhibit 9 are copies of the FC decisions in these matters.

7. *John C. Turmel v CBC, et al* (CFN 1827/90)

42. In or about August 1990, Mr. Turmel commenced an application in the High Court of Justice (Ontario) (*John C. Turmel v CBC, Global Television Network and CTV Television Network,* CFN 1827/90). According to a reported decision in this matter, the application sought a declaration that Ontario voters had a right to hear the views of all registered provincial party leaders, and a permanent injunction to restrain the respondent TV networks from proceeding with a televised election debate featuring the leaders of only the three parties with elected Members of Provincial Parliament.

43. In the result, the Court dismissed Mr. Turmel's injunction request, and stayed his request for declaratory relief until such time as Mr. Turmel posted security for the respondents' costs. In so doing, the Court noted that two of the three respondents had costs awards against Mr. Turmel

from prior proceedings that remain unpaid. There are no further publicly reported decisions in this matter.

44. Attached hereto as Exhibit 10 is a copy of the High Court of Justice decision in this matter.

8. *John C. Turmel v CRTC* and *John C. Turmel v CRTC* (CFN A-451-07, 09-A-19, 33319)

45. On October 4, 2007, Mr. Turmel commenced an application in the FCA (*John C. Turmel v CRTC*, CFN A-451-07). According to the reported decisions in this and other matters described below, Mr. Turmel was expelled from a televised provincial election candidates' debate on September 18, 2007. He subsequently complained to the CRTC that his removal infringed his right to an equitable share of free broadcast time during the election. Without waiting for a response to this complaint, he commenced this FCA application for judicial review.

46. By decision dated December 15, 2008, the FCA dismissed this application. The FCA decision notes that the CRTC had not yet rendered a decision that could be the subject of judicial review, and that there was no evidence of the CRTC refusing to deal with Mr. Turmel's complaint which was a prerequisite for mandamus.

47. In or about May 2009, Mr. Turmel also commenced a motion for leave to appeal a CRTC decision to the FCA (*John C. Turmel v CRTC*, CFN 09-A-19). According to the reported Supreme Court of Canada decision in this matter, after the FCA decision described immediately above, the CRTC proceeded to consider and dismiss Mr. Turmel's original complaint on the grounds that it was moot, and that the regulatory requirement to provide equitable broadcast time in any event did not apply to debate programs. In his motion to the FCA, Mr. Turmel sought leave to appeal this CRTC decision.

48. By order dated July 21, 2009, the FCA dismissed Mr. Turmel's motion.

49. Mr. Turmel filed an application for leave to appeal this FCA decision to the SCC (CFN 33319). However, this application was also dismissed, and a subsequent motion by Mr. Turmel for reconsideration of this decision was not accepted for filing.

50. Attached hereto as Exhibit 11 are copies of the available FCA decision, the CRTC broadcast decision, and SCC leave decision in these matters.

9. *John C. Turmel v HMQ* (CFN T-561-15, A-202-16, 37646)

51. On April 10, 2015, Mr. Turmel commenced an action in this Court for a declaration that s. 477.75 of the *Canada Elections Act* – which establishes limits for public reimbursement of audit expenses incurred by candidates – infringed his Charter s. 3 right to participate as a candidate in federal elections (*John C. Turmel v HMQ*, CFN T-561-15).

52. Mr. Turmel brought a motion for summary judgment in this matter. By Judgment dated May 12, 2016, the Court dismissed his motion and granted summary judgment in favour of Canada. In so doing, Phelan J. noted the importance of facts in Charter litigation, and that Mr. Turmel had provided "no evidence" that he was unable to afford audit fees, or that the reimbursement limits had impeded his ability to run as a candidate. The Court also awarded Canada costs, which were subsequently assessed and allowed in the amount of $6,105.03.

53. Mr. Turmel appealed the FC decision to the FCA (CFN A-202-16). However, he failed to file an appeal book after being given an extension of time to do so, and the Court dismissed his appeal for delay on May 1, 2017.

54. Mr. Turmel sought leave to appeal this FCA decision to the SCC (CFN 37647). His leave application was dismissed with costs, which were later taxed and fixed at $877.70.

55. Attached hereto as Exhibit 12 are copies of the FC, FCA and SCC judgments in these matters, together with the FC certificate of assessment and SCC certificate of taxation.

D. PROCEEDINGS CONCERNING GAMING ISSUES

1. *John C. Turmel, B.E.E. v Ottawa Crown Attorney* (CFN T-3-81)

56. On or about January 6, 1981, Mr. Turmel commenced an application in this Court against the Ottawa provincial Crown (*John C. Turmel, B.E.E. v Ottawa Crown Attorney*, CFN T-3-81). According to the reported decision in this matter, the application sought an order compelling the Crown to charge and prosecute the department store chain Simpsons-Sears for selling decks of playing cards, which Mr. Turmel alleged were gambling devices the sale of which was prohibited by *Criminal Code*, s. 186(1)(b).

57. By decision dated January 13, 1981, this Court dismissed this application with costs. Walsh J. found this Court lacked jurisdiction to grant the requested relief, and noted that the application followed Mr. Turmel's own conviction under s. 186(1)(b), and multiple unsuccessful attempts by Mr. Turmel to personally prosecute Simpsons-Sears and other retailers in the provincial courts. She also referred to affidavit evidence filed by Mr. Turmel, in which he stated that his goal in attempting to prosecute the retailers was "to drag someone really big down with me" who could better defend the charge, which Mr. Turmel hoped would lead to the s. 186(1)(b) offence being repealed, amended or no longer enforced. Attached hereto as Exhibit 13 is a copy of this Court's decision in this matter.

2. *R v John Turmel* (CFN 93-18193, C21516, 25610)

58. On July 21, 1993, Mr. Turmel was charged with keeping a common gaming house contrary to s. 201(1) of the *Criminal Code*. According to reported decisions in this matter, approximately two weeks prior to his trial in the Ontario Court of Justice (General Division) (*R v John Turmel*, CFN 93-18193), Mr. Turmel brought an application for certiorari and a stay of proceedings, which the Court dismissed.

59. The reported decisions note that, following the dismissal of this application, Mr. Turmel brought a further application, this time for prohibition, certiorari and a stay of proceedings pursuant to s. 24(1) of the Charter. By decision dated April 21, 1994, the Court dismissed this application on the grounds that it was "both frivolous and vexatious." Desmarais J. noted that the new application was "substantially the same" as Mr. Turmel's previous application, that Mr. Turmel had provided no evidence capable of supporting the requested relief, and that the application "smacks of a delay tactic to disrupt the orderly conduct of the trial."

60. The reported decisions indicate that Mr. Turmel was subsequently convicted of this charge and given a suspended sentence and probation, and that he appealed to the CAO (CFN C21516), which affirmed the conviction and largely affirmed the sentence decision. A subsequent application by Mr. Turmel for leave to appeal the CAO decision to the SCC (CFN 25610) was also dismissed.

61. Attached hereto as Exhibit 14 are copies of the available Ontario Court of Justice, CAO and SCC decisions in these matters.

E. ADDITIONAL PROCEEDINGS AGAINST THE CANADIAN BROADCASTING CORPORATION

62. In or about January 2010, Mr. Turmel commenced an action in the ONSC against the Canadian Broadcasting Corporation (*John C. Turmel v CBC*, CFN CV-10-48). According to the reported decision in this

matter, in May 2009, Mr. Turmel participated in a taping of *Dragon's Den*, a CBC television program in which contestants pitch business ideas and seek financial investment from the program's hosts. Mr. Turmel sought a $100,000 investment to develop a local currency. Following a broadcast of his appearance, Mr. Turmel commenced the above-noted action in which he alleged that CBC had edited his pitch so as to misrepresent and portray it as confusing and difficult to follow.

63. By decision dated September 27, 2010, the Court granted a motion by CBC for summary judgment, and dismissed Mr. Turmel's action with costs of $7,453.04. The Court decision notes that Mr. Turmel failed to provide CBC with advance notice of the action as required by the provincial *Libel and Slander Act*, and that Mr. Turmel consented to CBC editing the taping, such that there could be no claim for breach of contract.

64. In or about November 2010, Mr. Turmel served a libel notice and commenced a further action against the CBC in the ONSC (*John C. Turmel v CBC*, CFN CV-699-2010). According to the reported decision in this matter, the action again alleged defamation, this time in relation to the CBC's re-broadcast of the January 2009 *Dragon's Den* episode featuring Mr. Turmel.

65. By decision dated April 19, 2011, the Court granted a motion by CBC for summary judgment, and dismissed this action with costs of $7,500. While Mr. Turmel had served the required libel notice this time, the Court found that the consent signed by Mr. Turmel remained a complete bar to the claim, and that *res judicata* also operated to bar the claim in these circumstances.

66. Mr. Turmel appealed the decisions dismissing both of his actions to the CAO (CFN C52849 and C53732). By decision dated July 13, 2011, the CAO dismissed his appeals with costs of $3,500.

67. Mr. Turmel then commenced an application for leave to appeal the CAO decision to the SCC (CFN 34482). By decision dated December 8, 2011, that Court dismissed his leave application. According to the online recorded entries for this matter, Mr. Turmel subsequently filed a motion for reconsideration of the leave decision. This motion was not accepted for filing.

68. Attached hereto as Exhibit 15 are copies of the ONSC, CAO, and SCC decisions in these matters.

F. PROCEEDINGS CONCERNING CANNABIS ISSUES

1. Challenges to the Controlled Drugs and Substances Act

a) *R v John Turmel* (CFN 550-01003994)

69. On November 7, 2001, Mr. Turmel was charged with criminal contempt of court (*R v Turmel*, Superior Court of Québec CFN 550-01-003994-011). According to the reported decisions in this matter, the charge was based on Mr. Turmel's alleged violation of a publication ban issued in the course of the criminal trial of his brother, Raymond Turmel.

70. The reported decisions note that, in the course of the contempt proceeding, Mr. Turmel brought a motion for a declaration that the marihuana provisions of the *Controlled Drugs and Substances Act* ("CDSA"), under which his brother was charged, infringed s. 7 of the Charter. By decision dated July 12, 2002, the Court dismissed this motion on the grounds that Mr. Turmel was not charged under the CDSA and accordingly lacked standing to challenge that Act.

71. By further decision dated September 27, 2002, Mr. Turmel was convicted of the contempt charge. According to the reported conviction decision, Mr. Turmel admitted to having knowingly posted material to the Internet in violation of the publication ban, but argued that the publication was necessary in order to avoid what he described as a genocide of medical cannabis users by Health Canada. The Court noted that Mr. Turmel had

presented no evidence to support this defence, and that his "personal belief that people were dying because of the bureaucracy of Health Canada has no air of reality."

72. Attached hereto as Exhibit 16 are copies of the motion and conviction decisions in this matter.

a) *Turmel and Paquette v HMQ* (CFN 573/2002, C39740, 30571); *Parker, Turmel and Paquette v HMQ* (CFN 133-2003, C39653); *R v Turmel* (C40127, 30571)

73. In 2002, Mr. Turmel and a second applicant, Marc Paquette, commenced an application in the ONSC (*Turmel and Paquette v HMQ* (CFN 573/2002) (the "Turmel / Paquette application"). According to the reported decisions in this matter, the application sought a declaration that the CDSA prohibitions on marihuana were unconstitutional and "personal judicial exemptions" for the applicants from the CDSA.

74. By decision dated January 9, 2003, the ONSC dismissed Mr. Turmel's portion of the Turmel / Paquette application. Lederman J. noted that Mr. Turmel was physically healthy but believed that marihuana had preventive qualities and that Health Canada was perpetrating a "genocide" by not permitting Canadians to use it preventively. Lederman J. observed that Mr. Turmel had "presented no medical evidence to support his bald assertions," but only statistical arguments which Lederman J. described as "weak and unsubstantiated."

75. In or about February 2003, Messrs. Turmel and Paquette commenced a motion in the course of the same proceeding. According to the reported motion decision, the motion once again sought a declaration that the criminal prohibition on marihuana possession was a genocidal infringement of Charter s. 7. By decision dated February 7, 2003, the Court dismissed this motion. In so doing, Charbonneau J. noted that Lederman J. had already

considered and rejected the applicants' arguments, and that the motion was an impermissible attempt to impugn his decision.

76. On February 10, 2003, Messrs. Turmel, Paquette and a third applicant, Terrance Parker, commenced a further application in the ONSC (*Parker, Turmel and Paquette v HMQ*, CFN 133-2003) (the "Turmel / Paquette / Parker application). According to the reported decisions in this matter, this application sought a declaration that the CDSA prohibition on possession of marihuana had been invalid since August 1, 2001, which was one year from the date that the CAO had issued a one-year suspended declaration of invalidity in *R v Parker* (2000), 188 DLR (4th) 385 (Ont. CA) ("*Parker* 2000").

77. By decision dated February 14, 2003, the Court dismissed the Turmel / Paquette / Parker application with costs of $1,000. Charbonneau J. observed that the issues raised by the applicant were exactly the same in substance as those previously raised and decided by Lederman J. in the Turmel / Paquette application, and that "I would have thought my decision last week made that clear but obviously it didn't."

78. On March 14, 2003, Mr. Turmel was charged criminally with possessing marihuana for the purpose of trafficking, contrary to s. 5(2) of the CDSA (*R v Turmel*, CFN unknown) (the "Turmel CDSA prosecution"). According to the reported decisions in this matter, Mr. Turmel brought a motion in the ONSC for a stay of proceedings, which was denied.

79. Mr. Turmel separately appealed the decisions dismissing the Turmel / Paquette application, the Turmel / Paquette / Parker application, and his motion for a stay of proceedings in the Turmel CDSA prosecution, all to the CAO (respectively, CFN C39740, C39653, and C40127).

80. By separate decisions dated October 7, 2003, the CAO dismissed each of these appeals. The CAO observed that Mr. Turmel had

provided no medical evidence that marihuana use among healthy individuals had any prophylactic effect, and that his arguments in this regard were inconsistent with the jurisprudence. The Court also found that the relief sought in the Turmel / Paquette / Parker application "was exactly the same" as that previously sought in the Turmel / Paquette application, and that Mr. Turmel's argument concerning the legal impact of *Parker* (2000), was "based on a fundamental misconception" of that decision.

81. On October 7, 2004, Mr. Turmel filed applications for leave to appeal the CAO decisions in the Turmel / Paquette application and the Turmel CDSA prosecution to the SCC (CFN 30570 and 30571, respectively). As the deadline to seek leave had expired ten months earlier, he also filed motions for extensions of time to appeal.

82. By decisions dated March 11, 2005, the SCC dismissed Mr. Turmel's motions for extensions of time on the grounds that Mr. Turmel's had offered no persuasive reason for his delay.

83. Attached hereto as Exhibit 17 are copies of the ONSC, CAO, and SCC decisions in the Turmel / Paquette and Turmel / Paquette / Parker applications, and concerning Mr. Turmel's motion for a stay of the Turmel CDSA prosecution.

b) *R v Turmel* (CFN C44587, C44588, C45295, 32011, 32012, 32013, M45479, M45751, 37064)

84. By decision dated March 10, 2006, the Ontario Court of Justice convicted Mr. Turmel of the CDSA charge described above. According to the reported conviction decision, in the course of the criminal proceedings, Mr. Turmel commenced two additional unsuccessful pre-trial applications in the ONSC for orders quashing or staying the charges against him on the grounds that recent appellate decisions including *Parker* 2000 had rendered the possession offence invalid. The conviction decision notes that Mr. Turmel also attempted to raise the same argument at trial. Bélanger J. rejected these

arguments, noting that Mr. Turmel had previously and unsuccessfully raised the same arguments in multiple proceedings before higher courts whose decisions were both persuasive and binding on the Ontario Court of Justice.

85. Mr. Turmel appealed the decisions denying two of his motions for prerogative remedies to the CAO (respectively, CFN C44587 and C44588). He also appealed his ultimate conviction (CFN C45295).

86. By decision dated February 23, 2007, the CAO dismissed the prerogative remedy appeals as moot in light of Mr. Turmel's ultimate conviction, and dismissed his conviction appeal on the grounds it relied on arguments that Mr. Turmel could have raised below or that had been previously considered and rejected by the Court in multiple prior proceedings involving Mr. Turmel.

87. Mr. Turmel commenced applications for leave to appeal the decisions denying his prerogative remedy appeals and conviction appeal to the SCC (respectively, CFN 32011, 32012 and 32013). By decisions dated July 12, 2007, the SCC dismissed each of these applications.

88. According to the recorded entries for these matters, Mr. Turmel subsequently attempted to file motions for reconsideration of all three of these SCC leave decisions. However, he did not pay the required motion fees and his motions were accordingly not accepted for filing.

89. On June 11, 2015, the SCC in *R v Smith*, 2015 SCC 34 ("*Smith*"), declared CDSA sections 4 (possession) and 5 (trafficking) of no force and effect to the extent that they prohibited medically authorized persons from possessing cannabis derivatives for medical purposes.

90. Following the *Smith* decision, Mr. Turmel brought a motion in the CAO for an extension of time to appeal his 2006 conviction on the grounds that *Smith* had changed the legal landscape (CFN M45479). On or about November 3, 2016, the Court (Doherty JA) dismissed this motion on the

grounds that the Court had already dismissed a previous appeal by Mr. Turmel, and that any new appeal was *res judicata.*

91. Mr. Turmel subsequently brought a further motion in the CAO for an order setting aside Doherty JA's decision (CFN M45751). By decision dated April 5, 2016, the Court dismissed this motion.

92. Mr. Turmel commenced an application for leave to appeal the April 5, 2016, CAO decision to the SCC (CFN 37064). By decision dated October 6, 2016, the SCC dismissed this leave application.

93. Attached hereto as Exhibit 18 are copies of the available Ontario Court of Justice, CAO and SCC decisions concerning Mr. Turmel's pre-trial applications and ultimate conviction.

c) Criminal proceedings involving others

94. On May 28, 2008, the accused in *R v Turner*, a CDSA prosecution in the ONSC (CFN 12775) ("*Turner* 2008"), brought an application for an order prohibiting the prosecution of all marihuana charges under the CDSA, and citing the federal Minister of Justice in contempt of court for permitting Mr. Turner's prosecution to proceed. According to a reported decision in this matter, Mr. Turner did not prepare his own materials in support of this argument, but rather relied on photocopies of the materials previously filed by Mr. Turmel in support of his own 2003 application for a stay of the Turmel CDSA prosecution.

95. By decision dated December 1, 2008, the Court dismissed Mr. Turner's application. In so doing, Lalonde J. observed that the application was non-compliant with the *Criminal Proceedings Rules*, was an attempt to re-litigate Mr. Turmel's appeal in the matter with Court File No. C40127, and sought relief on behalf of other accused persons which Mr. Turner had no standing to seek. Lalonde J. also observed that:

> It is my hope that, in the future, such frivolous and vexatious applications for prohibition will not prevent Crown counsel across the Province of Ontario to get on with the prosecutions of charges such as we have in this case. The constitutional questions raised by the Turmels and Turners of this world are matters to be decided by the trial judge from whom an appeal lies to the Ontario Court of Appeal. There should be no further interruption of the trial process with applications such as discussed in this case. I also think that applicants like Mr. Turmel and Mr. Turner should pay court costs when frivolous applications are brought before the courts.

96. On June 10, 2010, the accused in *R v Nadeau*, a CDSA prosecution (CFN CR-568-10) ("*Nadeau*"), also brought an application in the ONSC for various forms of relief, including an order prohibiting the prosecution of all marihuana offences. The reported decision notes that the accused was self-represented, but was accompanied at the application hearing by Mr. Turmel whom he described as his "coach."

97. By decision dated September 2, 2010, the Court dismissed this application on the grounds that it was frivolous and vexatious. The Court observed that "identical applications" had been previously dismissed by the Court as being "totally without legal foundation in a number of cases" and described the application as "an obvious tactic to delay the proceedings" against the applicant.

98. On or about March 2011, the accused in *R v Turner*, a CDSA prosecution, brought a pre-trial application in the ONSC (CFN 06-G1708) ("*Turner* 2011"). According to the reported decision in this matter, the application sought an order quashing "all CDSA charges relating to marijuana" on the grounds that prior jurisprudence had rendered the marihuana provisions of the CDSA of no force or effect.

99. By decision dated March 9, 2011, the Court dismissed this application. The Court noted that the same arguments had been previously

and unsuccessfully advanced in numerous proceedings before multiple courts. Ray J. also observed that:

> [8] At the opening of submissions, the defendant who is self represented, asked if Mr. Turmel who was sitting in the body of the court could speak on his behalf. It appears from the repeated references to Mr. Turmel in the jurisprudence that he is seen by the defendant to have some experience in dealing with and is in fact the author of the particular argument that he was advancing. Since Mr. Turmel is not a lawyer, I refused to grant permission. At one stage, Mr. Turmel seemed unable to control his outburst and left the courtroom after I admonished him for his interruptions.

100. On or about August 2014, the accused in *R v Turner* brought a further application in the course of the same proceeding. According to the reported decision in this matter, this application sought a stay of proceedings, a declaration that the *Marihuana Medical Access Regulations* were unconstitutional, and a further declaration that prior decisions had rendered the possession and trafficking provisions of the CDSA of no force or effect.

101. By decision dated August 7, 2014, the Court dismissed this application. Ray J. noted the following:

> [7] The history of this matter is part of campaign launched by persons similar to the defendant who are engaged in an unrelenting series of legal challenges designed to change the law as it relates to marijuana and to frustrate criminal proceedings. …
>
> …
>
> [10] Similarly concerning is that the written materials filed by the defendant are also modelled after materials on John Turmel's website. The language from the website speaks to legal warfare and is a boilerplate approach. In fact there is nothing in the defendant's application materials that relates to his personal circumstances. …

102. Attached hereto as Exhibit 19 are copies of the above-noted decisions in the *Turner* 2008, *Nadeau* and *Turner* 2011 matters.

2. Turmel Kit MMAR-MMPR claims, including *John C. Turmel v HMQ* (CFN T-488-14, 14-A-15, 14-A-18, A-342-14, 17-A-5, 36415, 36937)

103. I am advised by Gabriella Plati Trotto, Legal Assistant in the Ontario Regional Office of the Department of Justice, and do verily believe that she visited the Turmel Kits website on March 6, 2014, and that under the heading "MMPR Federal Court Grow-op Exemption Kits," she located:

a) a template FC statement of claim, which requested declarations that the CDSA, the *Marihuana Medical Access Regulations* ("MMAR") and the *Marihuana for Medical Purposes Regulations* ("MMPR") were unconstitutional, a permanent personal exemption from the CDSA, and damages,

b) a template motion record in support of a motion for an interim exemption from the CDSA pending trial, and

c) instructions on how to complete the templates, and file a claim and motion.

Attached hereto as Exhibit 20 are copies of these templates and filing instructions.

104. Between February 2014 and July 2016, 309 self-represented plaintiffs, including Mr. Turmel, commenced claims in this Court and more than 60 commenced motions for interim relief based on these templates. Of the 309 plaintiffs who filed claims, six commenced two claims each, for a total of 315 claims (the "Turmel Kit MMAR-MMPR claims"). Attached hereto as Exhibit 21 is a list of all of the claims filed.

105. Also attached hereto as Exhibit 22 are copies of Mr. Turmel's statement of claim and motion record (*John C. Turmel v HMQ*, CFN T-488-14).

106. On March 2, 2014, Mr. Turmel posted an entry to the Turmel Facebook website which notes in part:

> Jct: Going in to Toronto tomorrow to file Terry Parker and Wayne Robinson and friends and am meeting another in Hamilton to join us. Anyone wanting to file tomorrow can meet us in Hamilton as we go by.
>
> Let me know. 7 Copies of the Statement of Claim and 5 copies of the Record of Motion and your fee and you get a gold star proving you were in on the kill for your trophy wall.

Attached hereto as Exhibit 23 is a copy of this entry.

a) The Federal Court stays the Turmel Kit MMAR-MMPR claims

107. By direction dated March 7, 2014, and amended March 10, 2014 (the "March 7 Direction"), Crampton CJ stayed the Turmel Kit MMAR-MMPR claims pending determination of a motion for interim relief in another FC proceeding that raised substantially similar issues, *Allard et al v HMQ* (CFN T-2030-13) ("Allard"). Attached hereto as Exhibit 24 is a copy of the March 7 Direction.

108. Six plaintiffs appealed the March 7 Direction to the FCA, and three plaintiffs brought motions for extensions of time to appeal the March 7 Direction. This includes Mr. Turmel, who commenced two motions for extensions of time to appeal the March 7 Direction (CFN 14-A-15 and CFN 14-A-18). In the course of these appeals and motions for extensions of time, each plaintiff also sought an interim constitutional exemption from the CDSA marihuana provisions pending either appeal or the trial of their actions. By orders dated April 1, 2014, the FCA dismissed these appeals and motions. Attached hereto as Exhibit 25 are copies of these orders.

109. By order dated March 31, 2014, Crampton C.J. appointed Phelan J. as case management judge for the Turmel Kit MMAR-MMPR claims, and ordered the Registry not to accept any further filings by the parties until further instructions were issued by Phelan J. (the "March 31 Order"). Attached hereto as Exhibit 26 is a copy of this order.

110. Nine plaintiffs appealed the March 31 Order to the FCA. The appellants in seven of these matters also filed motions for interim constitutional exemptions from the CDSA marihuana provisions pending appeal or trial. By orders dated June 9 and July 31, 2014, the FCA dismissed each of these appeals and motions, and ordered those plaintiffs who had filed motions for interim relief to pay costs of $500 each. Attached hereto as Exhibit 27 are copies of these orders.

111. On April 1, 2014, the MMAR were repealed and succeeded by the MMPR. On April 7, 2014, Mr. Turmel posted an entry to the Turmel Facebook website which notes in part:

> Jct: People are wondering if our torts against the MMAR are now mooted. I've given some thought to dropping the 16 MMAR torts, 10 still in the MMPR with the 6 that are solely in the MMAR. …
>
> … So why not cut those 6 out of the Claim and just stick with the big 20 against the MMPR which include the 10 held over from the MMAR? Because I can put it on record. Because the Crown can move to strike it. … So Health Canada's MMAR unique flaws stay in, just a few extra pages to smear them with their own dirt. These are malevolent government gremlins and I'm about to really light a fire under their asses.

Attached hereto as Exhibit 28 is a copy of this entry.

112. On April 8, 2014, Mr. Turmel also posted the following further entry to the Turmel Facebook website:

> Jct: Gold Stars. I need to know where everybody lives for my next move. I need it fast, I move fast. Those who send me their location to johnturmel@yahoo.com can get in on it. I'll remind you only 15 moved fast enough to score into the Federal Court of Appeal against the Mar 7 stay and only 9 against the Mar 31 stay before they were lifted. Anthony Van Edig and Michael Spottisfood [*sic*] having the only double CoA on their http://johnturmel.com/mmprgold star record. So when the sapper general says "time to follow," you'd best be quick to react. Those wanting in on the next move, let me know. And it's another Freebie that's really really going to hurt the bad guys!

Attached hereto as Exhibit 29 is a copy of this entry.

113. On April 22, 2014, Mr. Turmel served Canada with, and attempted to file, a motion for summary judgment. Attached hereto as Exhibit 30 is a copy of Mr. Turmel's motion record in support of this motion, which was not accepted filing as the *Federal Courts Rules* do not permit summary judgment in a simplified action.

114. On April 23, 2014, Mr. Turmel sent a letter to the FC in which he described himself as the "author of the arguments" advanced by the Turmel Kit MMAR-MMPR plaintiffs, and requested that his claim be removed from the simplified procedure so that he could bring a motion for summary judgment, failing which the plaintiffs whose claims were not filed as simplified actions would instead bring their own individual summary judgment motions. Attached hereto as Exhibit 31 is a copy of this letter.

115. By order dated May 7, 2014, this Court further stayed the Turmel Kit MMAR-MMPR claims, this time pending a trial decision in Allard. In so doing Phelan J. made the following observations concerning the Turmel Kit MMAR-MMPR claims:

> [4] Several of these lay litigants have followed the advice and used the precedents created by John Turmel, a litigant here. The statement of claim/applications are based on the downloadable documents "Turmel's Grow-Op Exemption Kits and/or Legal Defence Kit".
>
> …
>
> [13] There are technical aspects with some pleadings (seeking damages in an application, seeking declarations in an action, etc.). There is a dearth of detail in some of the pleadings and in the motions for interim relief.
>
> …
>
> [21] The state of the many files before the Court is also relevant. Many suffer from a paucity of information. Those using the Turmel Kit blindly may wish to consider whether doing so will advance their particular interest. Vague generality and hyperbole are not always of assistance.

Attached hereto as Exhibit 32 is a copy of this decision.

116. I am advised by Jon Bricker, Senior Counsel with the Department of Justice with carriage of this application, and do verily believe that, on or about May 14, 2014, he visited the Team Goldstar website and reviewed an entry containing links to a template Turmel Kit MMAR-MMPR claim and motion for interim relief. The entry also included the statement "Note: JCT 'Do not file any motions until quarterback calls signal. This is only what the next updated one will look like.'" Attached hereto as Exhibit 33 is a copy of this entry.

b) The Federal Court dismisses the motions for interim relief

117. By order dated June 4, 2014 (the "June 4 Order"), and amended July 9, 2019 (the "July 9 Amended Order"), this Court affirmed its previous stay of the Turmel Kit MMAR-MMPR claims, and dismissed the various motions by the plaintiffs for interim personal constitutional exemptions from the CDSA pending trial. Phelan J. noted:

> [18] The motions materials consist of a boiler plate Notice of Motion, Affidavit and Memorandum. In the Notice of Motion, claimants have ticked boxes indicating their purpose of using marihuana, submitted information regarding an [authorization to possess to cannabis] (where applicable) and indicated the calculations by which they arrived at their damage claim. The Memorandum largely repeats the arguments of the Statement of Claim, such as attacks on the 150 gram limit in the Allard Injunction, on the statistics relied on by the Respondent in the Allard Litigation and allegations of a "genocidal violation" of the claimant's rights.
>
> …
>
> [28] In addition, the motions materials are inadequate to grant any relief. Although the motion record contains an affidavit portion which contains different degrees of personal information, each fails to plead sufficient evidence regarding the claimant's personal circumstances to warrant any relief. While some claimants have indicated an [authorization to possess] permit number, most have failed to provide a copy of that permit or to indicate whether it was relevant on the

> relevant dates. Further, the claimants' submissions in respect of the law relating to interim relief range from entirely absent to inadequate.

Attached hereto as Exhibit 34 are copies of this Court's reasons for the June 4 order, and of the July 9 Amended Order.

118. On July 11, 2014, Mr. Turmel posted an entry to the Turmel Facebook website. Titled "TURMEL: Chance to appeal for interim exemptions at FCA too," the entry notes in part that:

> Maybe it's time to swamp them with legitimate claims for relief. So, if [*sic*] anyone interested in filing a Notice of Appeal and motion for interim relief too? If so, I'll do a kit.
>
> So far, I've written up motions and replies for personal appellants. I think it can be woven together to let anyone in as one kit. Just tick off which class of victim you're in.

Attached hereto as Exhibit 35 is a copy of this entry.

119. Twenty-six plaintiffs, including Mr. Turmel, appealed either the June 4 Order or the July 9 Amended Order to the FCA, using substantially similar notices of appeal. Attached hereto as Exhibit 36 is a copy of Mr. Turmel's notice of appeal (CFN A-342-14).

120. On July 15, 2014, Mr. Turmel posted a further entry to the Turmel Facebook website, in which he made the following statements concerning several of these appeals:

> I filed Terry Parker first, the Terry Parker whom them [*sic*] MMAR should have exempted first and whom it never did when he could never get a doctor to participate in the regime.
> …
>
> Then I filed Stephen (Paddy) Burrows who had cut the size of his cancer in half with cannabis oil before being cut off, in 3 dimensions, 1/2*1/2*1/2=1/8, that's 7/8ths gone!
>
> …
>
> Then I filed Robert Roy who had missed out on the Manson relief by having his Possess Permit expire 3 days before the

> Manson decision extended everyone's Permit from then on while still grand-fathering his grow permit back to last year.
> …
>
> Then today I filed Ray Turmel, who has an ATP but who faces a 1-year mandatory minimum under the MMAR for growing too fast (too many plants) while being 4/11th of his storage!
>
> …
>
> Tomorrow, we have Michael Pearce and Kevin Moore going in to file their appeals first.
>
> …
>
> Everything is on track and on timetable. No one who is stayed has to do anything and can wait to see what happens to the lead pioneers sapping our way.

Attached hereto as Exhibit 37 is a copy of this entry.

121. Of the 26 plaintiffs who appealed the June 4 Order and July 9 Amended Order, 12 filed motions for interim constitutional exemptions from the CDSA marihuana provisions pending their appeal. By orders dated July 17 and September 9, 2014, the FCA dismissed these motions. Of the twelve motions, seven were dismissed with costs of $500 per plaintiff, and five were dismissed without costs. Attached hereto as Exhibit 38 are copies of the FCA orders in these matters.

122. Of the twelve plaintiffs whose FCA motions were dismissed, four subsequently filed substantially similar applications for leave to appeal the motions decision to the SCC, as well as motions for interim exemptions from the CDSA marihuana provisions pending their leave applications. By orders dated February 26, 2015, the SCC dismissed these leave applications and motions for interim relief. All four plaintiffs subsequently attempted to file motions for reconsideration of these leave decisions. However, these motions were not accepted for filing. Attached hereto as Exhibit 39 are copies of the SCC leave decisions in these matters.

123. On September 24, 2014, Canada filed a motion to consolidate the appeals from the June 4 Order and July 9 Amended Order. On November 4, 2014, Mr. Turmel responded to Canada's motion. His response advised of his consent to consolidation with Mr. Turmel himself as the lead appellant, and that "no other Appellant will object to consolidation." Attached hereto as Exhibit 40 is a copy of this response.

124. On December 4, 2014, Mr. Turmel sent a further letter to the FCA, in which he proposed that he be personally responsible for any costs award issued against the appellants. Attached hereto as Exhibit 41 is a copy of this letter.

125. By order dated December 12, 2014, the FCA (Boivin J.A.) consolidated the appeals from the June 4 Order and July 9 Amended Order, appointed Mr. Turmel as the lead appellant, and ordered that an agreement as to the contents of the consolidated appeal book be filed on or before January 29, 2015. Attached hereto as Exhibit 42 is a copy of this order.

126. Mr. Turmel did not file an appeal book agreement by January 29, 2015, but subsequently commenced a motion for an extension of time to do so. By order dated March 26, 2015, the Court granted this motion for an extension of time. In so doing however, Ryer J.A. noted Mr. Turmel's "seeming indifference towards compliance with the order of Boivin J.A." and ordered Mr. Turmel to pay Canada $100 in costs. Attached hereto as Exhibit 43 is a copy of this order.

127. By judgment dated January 13, 2016, the FCA dismissed the consolidated appeals of the June 4 Order and July 9 Amended Order on the grounds that the appellants had not demonstrated any error in those decisions. Noting that the parties had agreed to costs of $3,350 and that Mr. Turmel had had undertaken to pay these costs on behalf of the appellants, the Court also ordered Mr. Turmel to pay this amount. Attached hereto as Exhibit 44 is a copy of the reasons for judgment in the consolidated appeals.

128. Ten plaintiffs filed applications for leave to appeal the January 13, 2016, FCA decision to the SCC. Of these plaintiffs, nine, including Mr. Turmel, were late in filing their leave applications and accordingly also sought extensions of time to seek leave. Attached hereto as Exhibit 45 are copies of Mr. Turmel's notice of application and memorandum in this matter (CFN 36937).

129. On April 12, 2016, Mr. Turmel posted an entry to the Turmel Facebook website which notes in part:

> Jct: The Supreme Court of Canada Registry wrote Ray to say that his Application for Leave to Appeal had been accepted despite the irregularity that I had cited Rule 25 rather than S.40. So I've changed the http://johnturmel.com/C26.pdf for any of the 26 Appellants who want to take it to the top. It includes the motion for extension of time to file a bit late to join the rest of us. Believe me, it will get in with the rest of us even if you file now.

Attached hereto as Exhibit 46 is a copy of this entry.

130. By judgments dated June 23, 2016, the SCC granted the motions for extensions of time, and dismissed the leave applications for leave to appeal, all with costs. Attached hereto as Exhibit 47 are copies of the SCC leave decisions in these matters, and of the certificate of taxation fixing the costs of Mr. Turmel's leave application at $807.86.

131. On July 13, 2016, Mr. Turmel posted an entry to the Turmel Google Groups website. Under the title "TURMEL: Supreme Court Reconsider C26 "Phelan can't play doctor?," the entry notes in part:

> Supreme Court of Canada Justices McLachlin, Moldaver, Gascon dismissed accepting Phelan keeping patients away from their meds was a discretion he had that should not be tampered with. Too bad about all the corpses.
>
> Now, there is a rarely used option to move for reconsideration. But it take [*sic*] something extra. I've done it before when I really wanted to slam the judges for being unjust. Stick the crime in their faces.
> …
> Since I have all the right materials, and it will be short, just a

> punch line for those who want to explain how it hurt. So those who want to file a motion for reconsideration, just send me an image or picture of your signature and any personal details you'd like to add about how you suffered, and I'll prepare them here and mail them all in together.
>
> If doctors would end up on death row for cutting meds for non-medical reasons, why not judges? Oh right, they weren't doctors, no professional misconduct! Just corpses.
>
> ….
>
> What do you think, will telling them they deserve death row for what they've done get reconsideration? Even if not, nice ending to the case for historians.

Attached hereto as Exhibit 48 is a copy of this entry.

132. Of the ten plaintiffs whose applications for leave to appeal were dismissed, one, Beverly Sharon Misener, served Canada with a motion for reconsideration of the SCC leave decision. The motion record in support of this motion includes an electronic scan of what appears to be her signature, and was faxed from the number 519-753-5122 which, based on Mr. Turmel's own pleadings, appears to be a fax number belonging to Mr. Turmel. Attached hereto as Exhibit 49 is a copy of this motion record.

133. According to the online recorded entries for this matter, the Supreme Court of Canada wrote to Ms. Misener on August 24, 2016, to advise that the motion record was incomplete.

134. Our office recently conducted a search of the Province of Ontario Vital Statistics Death Registry. The Registry indicates that Ms. Misener died on November 6, 2016. Despite her death, the online recorded entries for the above-noted Supreme Court of Canada matter indicate a completed motion for reconsideration to the Court was filed on Ms. Misener's behalf on November 18, 2016. This motion was ultimately unsuccessful.

135. On January 4, 2017, Canada wrote to Mr. Turmel to request that he pay the costs awarded to Canada in the above-noted matters with Court File Nos. T-488-14, A-342-14, 36937, 37647, and T-561-15. Attached hereto as Exhibit 50 is a copy of this letter.

136. On January 15, 2017, Mr. Turmel posted an entry to the Turmel Google Groups website, in which he made the following statements concerning the costs award in the SCC matter with Court File No. 36937:

> 50 Gold Stars had filed motions for Personal Medical Use Exemptions with their numbers and illnesses. 26 appealed his ruling he could play doctor. 11 took it to the Supreme Court. We all got an $800 bill. To show my intention, I'm going to send them a check for $1 for now while trying to raise the rest. Har har har. But I'll make my first payment.
>
> …
>
> By the way, I'm serious. If you did get an $800 bill from the Crown, do send them your first $1 payment and mention you're working on the rest.

A copy of this entry is attached above as Exhibit 51.

137. To date, Mr. Turmel has not provided Canada with a cheque for $1 in relation to this matter, nor has he otherwise paid any of the cost awards referenced in Canada's letter of January 4, 2017.

c) Motions by Mr. Turmel

138. On or about December 24, 2014, Mr. Turmel attempted to file a motion for summary judgment in his FC action, without having served Canada. By direction dated January 5, 2015, this Court declined to accept the motion for filing on the grounds that, among other things, Mr. Turmel's action remained stayed pending Allard. Attached hereto as Exhibit 52 is a copy of this direction.

139. Mr. Turmel sought to appeal this direction. By further direction dated February 13, 2015, the FCA directed that his notice of appeal not be

accepted for filing on the grounds that no appeal lies from an FC direction. Attached hereto as Exhibit 53 is a copy of this direction.

140. Mr. Turmel subsequently sought leave to appeal the January 5, 2015, FCA direction to the SCC (CFN 36415). By judgment dated September 24, 2015, the SCC dismissed this leave application. Attached hereto as Exhibit 54 is a copy of this judgment.

141. On or about October 23, 2015, Mr. Turmel filed a further motion in FC, this time for an order lifting the stay of his action so that he could proceed with a motion for summary judgment. Attached hereto as Exhibit 55 is a copy of Mr. Turmel's motion record in support of this motion.

142. By order dated November 6, 2015, this Court dismissed this motion with costs of $250. Phelan J. noted that Mr. Turmel had not shown any substantial change of facts that would warrant lifting the stay, and that "the Plaintiff is, in effect, attempting to re-litigate the stay order in the face of a pending appeal." Attached hereto as Exhibit 56 is a copy of this order.

d) The Federal Court strikes the Turmel Kit MMAR-MMPR claims

143. On February 24, 2016, this Court issued its final decision in Allard. The Court declared the MMPR invalid, but suspended its declaration for six months in order to allow Canada to respond legislatively.

144. On April 26, 2016, Canada filed a motion in writing in this Court to strike the Turmel Kit MMAR-MMPR claims, as well as the similar claim in *Bradley Hunt et al v HMQ* (CFN T-1548-18), on several grounds, including that Allard had rendered them moot, that the claims sought relief which was unavailable at law, that the claims failed to disclose a reasonable cause of action, and that the claims were frivolous, vexatious and an abuse of process.

145. On April 27, 2016, Mr. Turmel sent a letter to the Court in which he requested, purportedly on behalf of all plaintiffs, that Canada's motion be heard orally. This letter notes in part that:

> [R]ather than have patients all waste their time filing 300 responses to the one Motion, only I will take the time to respond to the Her Majesty's rather obtuse argument that settlement of the overlapping issues mootens the non-overlapping ones too. …
>
> Turmel Kit plaintiffs would be at a disadvantage without Turmel's help but I do not have the emails of all the plaintiffs and in order for me to keep them abreast, I would ask for a Direction that the Crown provide me with the list of emails to go with the addresses in the documents.

Attached hereto as Exhibit 57 is a copy of this letter.

146. On May 17, 2016, Mr. Turmel posted an entry to the Turmel Google Groups website which notes in part:

> Now that Allard has won the challenge proving that the MMPR that shut you down was not constitutional, we don't have to any more and I've now tailored the Statement of Claim down from 50 pages with constitutional argument to 5 pages with only claim for damages now that the constitutional declarations are no longer sought!!
> …
>
> So I'm telling the world about the new kit for the MMPR victims as we start our search for other victims to flood the registry.
>
> …
> For a lousy $2, on such a simple and clean issue of damages, we have a chance for the victims to give the bad guys a documentary nightmare.
>
> Here's the claim from the new http://johnturmel.com/mmprsc.pdf or http://johnturmel.com/mmprsc.docx (to set up signatures) about as simple as it can get.
> …
>
> So I'd like to flood the registry with email filings this weekend. We flooded them before and we can flood them again. And if a ton flow in, pretty tough to throw our [*sic*] your damages

> claims in the back room.
>
> So if you want to help cinch your own damages claims, you have to help find and file other MMPR victims and explain how truly easy it is to file their $2 Federal Court PDF claim online.
>
> Let's go, let's make noise. I hope to hit 100,000 today.
>
> Har har har har har har har har har. The chase for justice is on.

Attached hereto as Exhibit 58 is a copy of this entry.

147. By direction dated May 24, 2016, the Court denied Mr. Turmel's request for an oral hearing of Canada's motion to strike. The direction also notes that "Mr. Turmel is reminded that he cannot represent or purport to represent other persons (Rule 119). Each plaintiff is entitled to his own determination of his or her case." Attached hereto as Exhibit 59 is a copy of this direction.

148. By order dated January 11, 2017, this Court granted Canada's motion, and struck the Turmel MMAR-MMPR claims without leave to amend. In so doing, Phelan J. made the following further observations concerning the claims:

> [4] Since February 2014, more than 300 self-represented plaintiffs have filed virtually identical claims at the Federal Court in Alberta, British Columbia, Manitoba, Nova Scotia, Ontario, Quebec, and Saskatchewan. The claims are based on the Turmel Kit downloaded from the website of a plaintiff John Turmel. …
>
> …
>
> [18] …[T]he Court understands that Turmel wants the matter to be heard orally and that he purports to speak on behalf of all other Plaintiffs/Applicant, despite the prohibition in R 119 against a non-solicitor representing other persons.
>
> [19] This is an appropriate case for a R 369 proceeding. The issues of mootness, relief not available at law, absence of reasonable causes of action, proceedings that are frivolous,

vexatious, and abuse of process, and ancillary issues are all capable of being decided on the record. As noted, the record is thin in substance and largely consists of a template-type statement of claim.

…

[32] While the Plaintiffs claim damages – with few of the necessary specifics for such claims – the claims are largely for loss of unused marihuana grown or loss of the production sites.

[33] As held in *Quebec (Commission des droits de la personne et des droits de la jeunesse) v Communauté urbaine de Montréal*, 2004 SCC 30, [2004] 1 SCR 789, absent wrongful conduct, bad faith, or abuse of power, in respect of public law matters courts will not award damages for harm suffered as a result of an enactment which is subsequently declared unconstitutional.

[34] The subject pleadings contain insufficient, if any, particulars of bad faith or abuse of process.

…

[38] I need not go into great detail that the claims disclose no reasonable cause of action. I noted that neither the users of the Turmel Kit nor Hunt have filed claims that contain details of their personal circumstances and personal infringement of their rights. These pleadings are in marked contrast to the pleadings in *Allard*.

[39] This Court in its stay decision referred to the “dearth of detail”, the vague generalities and hyperbole of the Turmel Kit, and the paucity of information on personal circumstances. Nothing has changed and no party took advantage of the opportunity provided by the Court to amend and provide further details. It would be unjust to allow amendments at this stage.

[40] Along the same lines and with respect to the “frivolous, vexatious and abuse of process” argument, the pleadings fail on this ground also. …

[41] The pleadings, as noted above, suffer from such a lack of specificity that it is difficult to respond or to regulate the proceedings. Comments in the Turmel Kit are overblown, insulting, and argumentative.

> …
>
> [43] As noted earlier, the Plaintiffs/Applicant seek to re-litigate decided matters. As such, this is an abuse of process.

Attached hereto as Exhibit 60 is a copy of this Court's order and reasons striking the Turmel Kit MMAR-MMPR claims.

149. On January 15, 2017, Mr. Turmel posted an entry to the Turmel Google Groups website. Titled "TURMEL: Judge Phelan dismisses Gold Star Claims," the entry notes in part:

> JCT: We all got an email with Judge Phelan's decision throwing out our actions for remedies without adjudication. Says he has good reasons why our claims should not be considered. …
>
> …
>
> JCT: Too bad David Shea and Sharon Misener are dead when they get this judgment. But Phelan ruled he needed to see more medical evidence than just their their [*sic*] illness and previous exemption number.
>
> …
> Just remember, people died and Phelan was na [*sic*] executioner so why would he think it wrong for bureaucrats to cut off sick people's medicine, he's already done it personally to the victims in front of him. …
>
> …
>
> JCT: The Court thinks engineering elegance, just enough to Keep It Super Simple is a "dearth of detail." Just doesn't get elegance. Sharon said: I have cancer, my doctor authorized x grams per day. I've been shut down. I need an interim exemption." Judge said that's not enough. Wanted to see her X-rays, maybe give her a feel for those tumors before Doubting Thomas would believe.
>
> …
>
> Blood on his hands. And a personal friend. I'll never let him forget Sharon Misener. She's already told her story to the Supreme Court while she was alive. Now I'll get to tell it again now that she's dead.

> …
>
> My only silver lining is that I'm going to appeal and get it on record before all the courts above of what Justice Phelan did that was not only objectionable but genocidal for some of our Gold Stars. He doesn't spill my friends' blood and get off the the [*sic*] public condemnation hook. I'm [*sic*] can't let this die with her?
>
> No one else needs do anything. I'll keep going. If it should be declared that Phelan had no right to deny the claims for damages, maybe you'll still win something. No matter what, what Phelan did to you will make the annals of judicial history. Don't think the most "remarkable, unprecedented and extraordinary" medpot case in Canadian history can stay buried forever. Especially with the only appeals going on. Sure, the chances are slim but I enjoy exposing judicial failures to their bosses.
>
> I can't imagine the judge got paid enough to do what he did. But he's got Sharon's blood on his hands and I'll enjoy reminding him the rest of our lives.

Attached hereto as Exhibit 61 is a copy of this entry.

150. Mr. Turmel did not appeal the order striking the Turmel Kit MMAR-MMPR clams to the FCA by the appeal deadline, but subsequently filed a motion for an extension of time to do so (CFN 17-A-5). Attached hereto as Exhibit 62 is a copy of Mr. Turmel’s motion record in support of this motion.

151. By order dated March 1, 2017, the FCA dismissed Mr. Turmel’s motion for an extension of time. Rennie J.A. noted that Mr. Turmel had “made no effort to establish the existence of an arguable case” on appeal, and that the Court was not satisfied in these circumstances that an extension would be in the interests of justice. Attached hereto as Exhibit 63 is a copy of this order.

3. Turmel Kit motions for extensions of time to appeal the interlocutory decision in Allard v Canada

152. On December 30, 2014, this Court (Manson J.) amended an interlocutory injunction order that it had previously issued on March 21, 2014, in Allard (the “December 30 Allard Order”). Attached hereto as Exhibit 64 is a copy of the December 30 Allard Order.

153. On March 1, 2015, Mr. Turmel posted an entry to the Turmel Google Groups website. Under the title “Manson victims should file for appeals,” the entry includes links to template FC materials in support of a motion for an extension of time to appeal the December 30 Allard Order. The entry also includes instructions for filing a motion and invites readers to “print up some blank kits to pass out to friends and victims.” Attached hereto as Exhibit 65 is a copy of this entry.

154. Also attached hereto as Exhibit 66 is a copy of the template motion record referenced in the above-noted entry.

155. On the same date, Mr. Turmel also posted an entry to the Turmel Google Groups website. Titled “Magnificent 7 Manson victims filing tomorrow, maybe more,” this entry notes in part that:

> So, 3 in Vancouver, 2 in Toronto and 2 in NS are committed, that's seven though there are many more who want amendments, who know how easy getting your request on the judge's desk really is, so I don't get why more aren't getting ready? The more in, the less likely it's dismissed peremptorily. Anyway, another Magnificent Seven leading the charge about to go.
>
> Of course, there's no deadline so you can file any time.
>
> Anyway, I'm helping all the above so if anyone else wants in on amending their ATPs, I'm up all night. Takes me 30 minutes including punching up your info in the affidavit.

Attached hereto as Exhibit 67 is a copy of this entry.

156. On March 2, 2015, Mr. Turmel posted a further entry to the Turmel Facebook website, which notes in part:

> The kits work, the instructions work. The Engineer has sapped an adit straight to the judge's desk asking for personal relief for all of Manson's 12,000+ victims. Har har har.
>
> So we have 2 weeks to give them a shock. That'll teach them to screw so many at once if so many can now ask for remedy one at a time.
>
> So get your requests onto the judge's desk. The more there are, the more likely it's not going to be dismissed casually nor hit with any costs. There's protection in numbers.

Attached hereto as Exhibit 68 is a copy of this entry.

157. Between March 2 and March 9, 2015, 11 individuals filed motions in the FCA for extensions of time to appeal the December 30 Allard Order, and eight others attempted to do so. The motions also sought interim orders amending the applicant's MMAR permits and permitting them to possess in excess of 150 grams of dried marihuana pending their proposed appeals. Attached hereto as Exhibit 69 is a copy of one of these motions.

158. By orders dated April 14, 2015, the FCA dismissed the 11 motions that had been accepted for filing, noting in its orders that the applicants had provided no evidence concerning two of the criteria applicable on a motion for an extension of time. The orders also noted that the applicants were not parties to the Allard action and accordingly lacked standing to appeal an order issued in that case. Attached hereto as Exhibit 70 are copies of these orders.

159. By directions dated April 13, 14 and May 15, 2015, the FCA also directed the Registry not to accept the other eight motions for filing, again on the grounds that the applicants lacked standing to appeal an order made in Allard. Attached hereto as Exhibit 71 are copies of these directions.

160. On June 11, 2015, Mr. Turmel posted an entry to the Turmel Facebook website which notes in part:

> Jct: Mean Seventeen Manson Amenders, stay tuned. The kit to file the refusal to grant standing to anyone but [Allard plaintiffs Tanya Beemish and David Hebert] to appeal Manson's decision will be ready for the Supreme Court of Canada today.
>
> …
>
> [R]emember, the last 5 had their motions rejected without filing by Direction. Just like them, any newbies can immediately file in the Supreme Court with the Mean Seventeen before the case goes to the 3 judges in September.
>
> …
>
> Could be quite the avalanche of applications over the summertime. Could set a record. But the Gold Stars did in lower court.
>
> So let's all pray that a tidal wave of 18,000 angry Left-Outs at the Supreme Court of Canada threatens such inconvenience that Phelan will just vary it whether he can or not (since no one's going to appeal anyway!)
>
> Let's hope Phelan appreciates what's going to happen if he keeps the Left-Outs out.

Attached hereto as Exhibit 72 is a copy of this entry.

161. On August 15, 2015, Mr. Turmel posted a further entry to the Turmel Google Groups website titled “TURMEL: Amend Permits Kits now ready for FCA & SCC.” This entry notes in part that:

> If you were Left-Out of the Manson relief or your [authorization to possess] needs amending, filing right now will get your file into the Supreme Court of Canada within weeks, for as little as $75, even free if you're on support! This is probably your one and only chance to get your name into the medpot history books for this historic court battle at the top.
>
> …

> So all is set on the civil front for all the Manson victims to ream out the Registry of the Supreme Court with more Applications in a month than in half their history.
>
> And on the criminal front with all busted victims to ream out the Registries of the lower courts with more applications by self-defenders than in their history.

Attached hereto as Exhibit 73 is a copy of this entry.

162. Of the 19 applicants whose motions for extensions of time were dismissed or refused for filing by the FCA, five filed applications for leave to appeal to the SCC and for an interim exemption from the CDSA marihuana provisions pending any appeal. Attached hereto as Exhibit 74 is a copy of one of these applications.

163. By judgments dated November 5, 2015, the SCC dismissed all five of these leave applications. Attached hereto as Exhibit 75 are copies of the leave judgments in these matters.

4. Turmel Kit juice and oil claims

164. On June 22, 2016, Raymond Lee Hathaway commenced an FC claim in which he alleged that cannabis derivatives remained practically unavailable despite the SCC decision in *Smith* (the “Hathaway claim”). The Hathaway claim sought a declaration that the CDSA marihuana prohibitions had been invalid since August 1, 2001, or in the alternative, a declaration that “provisioners of cannabis juice, oil and products to licensed patients” are exempted from the CDSA. Attached hereto as Exhibit 76 is a copy of this claim.

165. On July 6, 2016, Mr. Turmel posted an entry to the Turmel Google Groups website with the title “TURMEL: Exemptees go for Kill to Repeal over No Juice or Oil.” The entry notes in part:

> Back in 2014, it took months to get the word out to over 300 "Gold Star" Plaintiffs for Repeal or Exemptions. The Crown labelled the April 29 Big Event videotelecast in 12 courtrooms in 10 provinces as "unprecedented,"

"remarkable" and "extraordinary" three times. The Crown and the Registry were mightily taxed by only hundreds of self-represented plaintiffs using the same forms.

So the stake through the heart happens to be pioneered by Raymond Lee Hathaway. His statement of claim for repeal because he can't get fresh juice or oil products got past Phelan who couldn't use the Gold Star automatic stay on him.

So Lee has sapped the court's defences and now it's up to everyone with a permit but who wants fresh juice or oil products to join him in his $2 quest for complete repeal or exemptions for provisioners. That's everyone in the chain of production who's protected.

http://johnturmel.com/hathaway has 4-page Statement of Claim with instructions.

So this is our chance to flood the Registry with possibly 60,000 to 120,000 (I've heard both) current exemptees and every new one who gets a permit in the future.

…

If we semi-paralyzed them with 300 Gold Stars last time in a couple of months, given they deal with about 3,000 cases a year, it could be possible for the marijuana community to give them a couple of decades of work in just a few weeks.

…

The real winning power here is once again what freaked both the Crown and Registry last time, the volume.

Let's say 200 of the 300 Gold Stars did file their Statements of Claim online last time. It should be easy to do it again. But now, knowing so many other legal users, actually get them filed online. Just add their info to the form, take a picture of their signature and insert, save to PDF and take 3 minutes to upload it to the Court computer. A dispensary could sign up every patient who walks in.

For any who can't use computers that well, email me an image of your signature and I'll file it for you. Anyone can file it for you, you just pay the $2.

> ...
>
> I'm contacting every Gold Star and expect them to take the 10 minutes to get in on the kill. And pleading that pushing your dispensaries to sign up tens of thousands of patients demanding fresh juice to swamp the Crown and Registry is the winning move.
>
> …
>
> So the kit and all info to start their documentary nightmare are at http://johnturmel.com/juiceoil
>
> This one I need others to pass along to other groups. I got banned last time, this one has to get out, so I need help. Share this everywhere.
>
> On Monday, I filed Sharon Misener, Ron and Linda Yule. So there are now 4 on Hathaway's Juice-Oil bandwagon. Hope the dispensaries can give us a hand getting them exemptions to provision us. Might not be such a tough sell.

Attached hereto as Exhibit 77 is a copy of this entry.

166. Between July 6 and July 27, 2016, seven additional plaintiffs filed claims that were based on the template claim referenced in the Turmel Google Groups post above (the “Turmel Kit juice and oil claims”).

167. By orders dated August 17 and October 11, 2016, this Court struck the Hathaway claim and the other seven claims without leave to amend. The claims were struck on the grounds that it was plain and obvious that they did not disclose a reasonable cause of action. Attached hereto as Exhibit 78 are copies of these orders.

168. On October 15, 2018, Mr. Turmel posted an entry to the Turmel Google Groups website. The entry notes in part that:

> JCT: I've created what I hope is the killer app to strike down the marijuana prohibitions because the Licensed Producers can't provide fresh cannabis for juice.
>
> …

> As always, all kits from http:johnturmel.com/kits but this one has instructions http://johnturmel.com/insjuice.pdf
>
> The other actions don't aim to strike down the prohibitions, they aim to strike down bad provisions in the exemption regime. But this is the killer application. Spend the $2 and join the final attack.

Attached hereto as Exhibit 79 is a copy of this entry.

169. On November 5, 2018, Mr. Turmel filed an FC statement of claim that was based on the above template (*John C. Turmel v HMQ*, CFN T-1932-18). Attached hereto as Exhibit 80 is a copy of this claim.

170. Canada subsequently filed a motion to strike this claim on the grounds that the requested declarations concerning the CDSA were moot, and that the claim also failed to disclose a reasonable cause of action and was scandalous, frivolous and vexatious.

171. Following service and filing of Canada's motion, Mr. Turmel discontinued his claim. By certificate of assessment dated April 21, 2020, the Court allowed Canada's costs of the discontinued action in the amount of $450. Attached hereto as Exhibit 81 is a copy of this certificate of assessment.

172. On March 24, 2022, I visited the Turmel Kits website page referenced in the Turmel Google Groups entry described above. It includes links to a template FC statement of claim which is substantially similar to the previously dismissed Turmel Kit juice and oil claims, and to instructions for preparing and filing a claim. Attached hereto as Exhibit 82 are copies of this webpage, template claim and filing instructions.

5. Turmel Kit processing-time claims

173. On September 9, 2017, Mr. Turmel posted an entry to the Turmel Google Groups website. Titled "TURMEL: Medpot Grow Permit

'Delayeds' Federal Court $2 Statement of Claim kit," the entry notes in part that:

> If you applied [for registration to produce cannabis for personal medical use] and have waited over 10 weeks and want to bump your application to the top of their attention, you can file a $2 Statement of Claim for the value of your prescription over the improperly-delayed period.
>
> http://johnturmel.com/delscins.pdf has all the instructions. Come on Goldstars, we've done this before. Time to find your friends who are victims of this 4-man bureaucracy and swamp them with claims.
>
> Remember, it takes under 10 minutes to file your claim!
>
> Do send me an email when you file so I can keep track of the new team.

Attached hereto as Exhibit 83 is a copy of this entry.

174. I have visited the Turmel Kits website page referenced in the above-noted Google Groups entry. It includes a template FC statement of claim, together with instructions to complete and file the claim. Attached hereto as Exhibit 84 are copies of this template statement of claim and filing instructions.

175. Since August 2017, plaintiffs have filed at least 393 FC claims based on these templates (the "Turmel Kit processing-time claims"). The claims alleged that the plaintiffs were medically authorized to use cannabis for medical purposes but that Health Canada had not yet granted their applications for registration to personally produce cannabis. The claims sought declarations that the processing time for registration to produce cannabis for personal medical use infringe the plaintiffs' s. 7 Charter rights. Several of the claims also sought damages. Attached hereto as Exhibit 85 is a list of these claims.

176. By orders dated November 24 and December 11, 2017, the Court designated *Allan J. Harris v HMQ* (CFN T-1379-17) (the "Harris

processing-time claim") as the lead claim among the Turmel Kit processing-time delay claims, set a timetable for a proposed motion by Canada to strike the Harris processing-time claim, and stayed the other claims pending determination of the Harris processing-time claim. Attached hereto as Exhibit 86 is a copy of the Harris processing-time claim.

177. Also attached hereto as Exhibit 87 are copies of the orders dated November 24 and December 11, 2017, in these matters.

178. After Canada filed its motion to strike the Harris processing-time claim, Igor Mozajko filed the claim in *Igor Mozajko v HMQ* (CFN T-92-18) (the "Mozajko processing-time claim"). In addition to alleging unconstitutional delay in processing applications for registration to produce cannabis for personal medical use, the Mozajko processing-time claim alleged that Health Canada's approach to calculating the period of registration also infringed Charter s. 7. Attached hereto as Exhibit 88 is a copy of the Mozajko processing-time claim.

179. As the period of registration issue was not addressed in the original Harris processing-time claim, Canada filed a separate motion to strike the Mozajko processing-time claim. After Canada filed this motion, Mr. Harris amended his own claim to also address the period of registration issue.

180. On January 25, 2018, the Court convened a teleconference to discuss a motion for interim relief filed by the plaintiff in another Turmel Kit processing-time claim, *Terry Dale Johnsgaard v HMQ* (CFN T-134-18). Following this teleconference, on February 4, 2018, Mr. Turmel posted an entry to the Turmel Google Groups website which notes in part:

> JCT: After last week's hearing for Terry Johnsgaard, the Crown made a few points I have handled. I have always relied upon the S.7 Charter Right to Life, never bothered raising with Liberty and Security.
>
> But Crown Jon Bricker made the point that the Right to Life

> may apply to a patient with cancer but not to a patient with a broken arm.
>
> …
>
> So I've amended the Statement of Claim so what [*sic*] wherever I'd said "Right to Life," I replaced with "Right to Life, Liberty, Security." …

Attached hereto as Exhibit 89 is a copy of this entry.

181. On February 1, 2018, the Court also held a case management conference in *Arthur Jackes v HMQ* (CFN T-1654), which is further described below. Following this case management conference, Mr. Turmel posted an entry to the Turmel Google Groups website. Titled “TURMEL: Blew deadline, asking Judge Brown for extension of time” and dated February 6, 2018, this entry notes in part:

> JCT: At today's case management hearing for Art Jackes' claim that they cost him time by improperly rejecting his black-ink original as not original, Judge Brown informed Jeff that we'd missed the deadline for filing a response to the Crown's motion to dismiss.
>
> Darned, I checked, and yes, his Order said that that the Plaintiff had until Feb 5 to file and the Defendant had until Feb 12 to Reply.
>
> Somehow, since we're defending against their motion to dismiss, I forgot we weren't the Defendant but the Plaintiff. So we're late. Usually, not a problem. But we have to file a motion for an extension of time.

Attached hereto as Exhibit 90 is a copy of this entry.

182. On February 20, 2018, Mr. Turmel posted a further entry to the Turmel Google Groups website titled “TURMEL: Luc Lapierre signs up 7 more MedPot Grow Delayeds.” This entry notes in part that:

> JCT: Luc Lapierre's been busy spreading the word about speeding up applications and getting their short-changed time back.
>
> Last week, he signed up

> Feb 13,
> Karine Thibodeau T-298-18
> Nicholas Prosper T-302-18
>
> Feb 18,
> Jonathan Courcelles T-327-18
>
> Feb 20,
> David Garfalo T-340-18
> Bruno Roy T-341-18
> Charline Pelissier T-343-18
> Patrice Letourneau T-345-18
>
> Talk about keeping the Montreal Registry busy. Thank you Luc, you're a one-man recruitment office for our little army of Gold Stars.

Attached hereto as Exhibit 91 is a copy of this entry.

183. By order dated July 20, 2018, this Court partially granted Canada's motion to strike the Harris processing-time claim. It declined to strike the portion of the claim concerning the processing time for registration to produce cannabis, but struck the portion concerning the period of registration as it was plain and obvious that this portion of the claim did not disclose a reasonable cause of action. Attached hereto as Exhibit 92 is a copy of the Court's reasons and order in this matter.

184. Mr. Harris appealed this decision, and Canada cross-appealed (*Harris v AGC*, CFN A-258-18) (the "Harris processing-time appeal").

185. By order dated October 2, 2018, the Court partially granted Canada's motion to strike the Mozajko processing-time claim for the reasons previously given in the Harris matter. Attached hereto as Exhibit 93 is a copy of this order.

186. Canada appealed this decision, and Mr. Mozajko cross-appealed (*HMQ v Mozajko*, CFN A-339-18) (the "Mozajko processing-time appeal").

187. On October 6, 2018, Mr. Turmel posted an entry to the Turmel Google Groups website. Titled “TURMEL: Now 252 Plaintiffs for damages due to process delay,” the entry notes in part that:

> If it took you over a month to get your permit, you can bet a 2 Court filing fee to see if you get cash for the pain the evil bureaucrats inflicted on you.
> …
>
> http://johnturmel.com/insdel.pdf is the new page of instructions for the Delay Claim to place your $2 bet on winning damages.
>
> As the Great Canadian Gambler http://SmartestMan.Ca/gambler I'm quite proud of having prodided [*sic*] all those who got stalled a $2 chance to get a just pay-out.
>
> Similarly, http://johnturmel.com/ins150.pdf is the new page of instructions for exemption from the 150-gram limit for at least a 10-day supply awaiting the claim for 30 days.
>
> Next kit will be for Designated Persons to grow for more than 2 licenses and to have more than 4 licenses at a site.
>
> Next kit will be for those who have had their prescriptions reduced or refused due to doctors being harassed by calls from Health Canada and the Doctor's Association.
>
> Next kit will be for those who have permanent illnesses and don't want to have to renew every year.
>
> And more should be coming fast.
>
> http://johnturmel.com/kits has the Menu of all kits, civil and criminal so you can always start there to get down the tree to the right kit.

Attached hereto as Exhibit 94 is a copy of this entry.

188. On or around March 11, 2019, Mr. Mozajko wrote to the FCA to request that his appeal be heard together with the Harris processing-time appeal. By direction dated April 1, 2019, the FCA (Stratas J.A.) denied this request, noting that the two appeals involved different first-instance decisions, that the parties had requested hearings in different locations, and

that the appeals were at different stages of progress. Attached hereto as Exhibit 95 are copies of Mr. Mozajko's March 11 letter and the Court's April 1 direction.

189. Despite this direction, on April 8, 2019, Mr. Mozajko filed a formal motion for an order that his appeal be heard together with the Harris processing-time appeal. On April 15, 2019, Mr. Turmel also posted an entry to the Turmel Google Groups website in which he notes that he prepared this motion on Mr. Mozajko's behalf. Attached hereto as Exhibit 96 is a copy of this entry.

190. By order dated May 13, 2019, the FCA dismissed this motion. In so doing, Gauthier J.A. noted that Stratas J.A. had already rejected a similar request. She also observed that Mr. Mozajko had missed the deadline to file a memorandum of fact and law in his appeal, and would require a motion for an extension of time to do so. Attached hereto as Exhibit 97 is a copy of this order.

191. By judgment dated September 18, 2019, a unanimous panel of the Federal Court of Appeal dismissed Mr. Harris' appeal, granted Canada's cross-appeal, and struck the Harris processing-time claim in its entirety without leave to amend on the grounds that the claim failed to disclose a reasonable cause of action. In so doing, Webb J.A. noted that the claim appeared to be based on a form copied from the Internet, and that it provided very few facts and no indication of how Mr. Harris' Charter rights 7 were engaged. The Court awarded Canada its costs of the cross-appeal, which were subsequently assessed and allowed in the amount of $2,510.61. Attached hereto as Exhibit 98 are copies of the reasons for judgment and the certificate of assessment in this matter.

192. Mr. Harris has since paid the costs in the above-noted appeal. The costs were received by Canada on March 26, 2020, and took the form of a money order and several post-dated cheques signed by Mr. Turmel and

originating from a bank account apparently belonging to Mr. Turmel. Attached hereto as Exhibit 99 are copies of this money order and post-dated cheques.

193. Following the dismissal of the Harris processing-time claim, Canada requested that the FC dismiss the other Turmel Kit processing-time claims for the reasons given by the FCA in the Harris matter. Canada also requested that any plaintiffs who opposed the dismissal of their claims be ordered to pay $150 in costs if their claims were ultimately struck, but did not seek costs against those plaintiffs who did not oppose the dismissal of their actions.

194. On October 5, 2019, Mr. Turmel posted an entry to the Turmel Google Groups website. The entry summarizes Canada's letter, and notes in part:

> JCT: Perfect. I only need to file one response. If it wins, they all win. If it loses, only he loses the $150 and everyone else is dismissed with no costs! So the smart move is to have one super-aggrieved patient respond and no one else.
> …
>
> So we really need more people to file for damages if they were delayed back in 2017 up to now. The more newbies with the gaps filled means the more chance the others get to join them with the new updated claim.
> http://johnturmel.com/delsc8.pdf

Attached hereto as Exhibit 100 is a copy of this entry.

195. On November 8, 2019, Mr. Mozajko wrote to the FCA and requested that he be allowed to participate in his own appeal hearing via teleconference. The letter also notes in part that "My McKenzie Friend, John Turmel, author of my documentation, will attend any hearing should the Court need an amicus to respond to any questions." Attached hereto as Exhibit 101 is a copy of this letter.

196. Also on or about November 8, 2019, Mr. Mozajko served and attempted to file a memorandum of fact and law as cross-appellant. By

direction dated December 3, 2019, the FCA directed the Registry not to accept this memorandum for filing as Mr. Mozajko had not sought or obtained an extension of time to do so, as required by the Rules and the Court's May 13, 2019, order. Attached hereto as Exhibit 102 is a copy of this direction.

197. On December 16, 2019, this Court directed any Turmel Kit processing-time plaintiff who opposed the dismissal of their claim to make submissions as to why their claim should not be dismissed, and provided a timetable for these submissions. On December 19, 2019, Mr. Turmel posted an entry to the Turmel Google Groups website which notes in part:

> JCT: Steve Vetricek is the only plaintiff to respond to the Crown's last letter. Steve Vetricek leads the opposition for all those early plaintiffs with identical statements of claim as Jeff Harris. He'll respond by Jan 21 2020 and if he loses, only he pays the $150. If he wins, Brown won't strike the others. So pass this around. Everyone sit tight. Don't try filing any documentation.

Attached hereto as Exhibit 103 is a copy of this entry.

198. On the same date, Mr. Turmel also posted the same entry to the Turmel Facebook website, and states in comments following this entry that "I selected Steve to be the only plaintiff to lead the response but it's at my blog." Attached hereto as Exhibit 104 is a copy of this entry and comment.

199. Of the Turmel Kit processing-time plaintiffs, only the plaintiff in *Steve Vetricek v HMQ* (CFN T-1371-18) (the "Vetricek processing-time claim") filed submissions opposing the dismissal of his claim. This plaintiff requested that his claim remain stayed pending the outcome of the Mozajko appeal.

200. By orders dated April 27 and October 19, 2020, the FC struck all then-outstanding Turmel Kit processing-time claims, with the exception of the Vetricek processing-time claim, on the grounds that the claims were substantially the same as the Harris claim. In accordance with Canada's

request, the claims were struck without costs. Attached hereto as Exhibit 105 are copies of these orders.

201. On May 4, 2020, Mr. Turmel posted an entry to the Turmel Google Groups website. Titled “TURMEL: MedPot Delay Damages actions dismissed,” the entry notes in part:

> When you lose your action and the judge orders no costs for the other side, it does punish the other side. The [*sic*] did all that work and have to pay for it themselves. Over 400 cases and they have to cover all their costs themselves! Har har har. … Anyway, Judge Brown is still the best judge we've ever had and when the story is written, his decisions will be respected by posterity if not the 3 higher judges who blew their cred disagreeing with him for silly reasons.
>
> …
>
> So everyone loses their $2 filing fee. If anyone feels I scammed them into the loss, I'll cover your loss. Send me an email and I'll cover your $2 loss.
>
> No kidding. Remember Jeff Harris being hit with $2,500 in Court of Appeal costs. I'm paying it. So if you think I scammed you, send an email and I'll cover your loss. …

Attached hereto as Exhibit 106 is a copy of this entry.

202. I am advised by Mr. Bricker, and do verily believe that, at the November 10, 2020, hearing of the Mozajko appeal and cross-appeal, Mr. Mozajko asked if Mr. Turmel could make oral submissions on his behalf. The FCA panel denied this request.

203. By judgment dated February 10, 2021, the FCA granted Canada’s appeal in Mozajko, dismissed Mr. Mozajko’s cross-appeal, and struck the Mozajko processing-time claim in its entirety without leave to amend with costs of $3,500. Attached hereto as Exhibit 107 is a copy of the reasons for judgment in this matter.

204. Despite these orders, plaintiffs have continued to file Turmel Kit processing-time claims. Since this Court’s April 27, 2020, decision striking

more than 300 claims, at least 13 plaintiffs have filed new claims that are substantially similar to those that were struck.

205. Of these claims, 12 claims are currently outstanding, and one (*Gisele Pilon v HMQ*, CFN T-193-20) (the "Pilon claim") was struck without leave to amend on the grounds that it was substantially the same as the Harris claim. The Court also awarded Canada its costs of this matter. In dismissing the claim, Brown noted that the costs award was both in keeping with the normal rule that costs follow the event, and that costs were also "appropriate to serve as a deterrent to the continued filing of such claims." Attached hereto as Exhibit 108 is a copy of this judgment.

206. On March 30, 2021, Mr. Turmel posted an entry to the Turmel Google Groups website concerning the dismissal of the Pilon claim. The entry notes in part that:

> I'm sure when history reads my cases in the Court archives,. every judge who dismissed the claim failed in rendering justice. A wall of shame. Usual card: Insufficiently shown.
>
> JCT: Nothing to be gained by appealing, I can get Gisele off her pot charge with Health Canada proof of medical need in hand (Hitzig 170). …

Attached hereto as Exhibit 109 is a copy of this judgment.

207. On April 9, 2021, Mr. Mozajko served Canada with an application for leave to appeal the FCA decision striking his claim to the SCC. To date, this leave application has not been accepted by the SCC for filing.

208. Also on April 9, 2021, Mr. Turmel posted an entry to the Turmel Google Groups website titled "TURMEL: Igor Mozajko files slow medpot permit processing damages in Supreme Court," in which Mr. Turmel reproduced the text of Mr. Mozajko's leave memorandum, and then notes the following:

> JCT: So there is our best defence of Justice Brown's great decision and the Court of Appeal's stinkers. Someday, the politicians, Crown attorneys and Judiciary will get the

> derision and antipathy they deserve for having kept a miraculous herbal remedy illegal an extra 15 years and all the blood on their hands that entails.
>
> Crown has 30 days to respond, then we have 10 days to Reply, then it gets sent to 3 judges to decide whether they let it in before the whole 9-judge panel.

Attached hereto as Exhibit 110 is a copy of this entry.

209. On August 31, 2021, Mr. Turmel emailed Canada an amended notice of application for leave to appeal on Mr. Mozajko's behalf. Attached hereto as Exhibit 111 is a copy of this email and amended notice.

210. To date, the SCC has not accepted Mr. Mozajko's application for leave to appeal for filing.

6. Arthur Jackes v HMQ (T-1654-17)

211. On October 31, 2017, Arthur Jackes commenced an FC claim (*Arthur Jackes v HMQ*, CFN T-1654-17) (the "Jackes claim"). The claim alleged that Health Canada had rejected the plaintiff's application to amend his registration to produce cannabis on the grounds that the application lacked the necessary original signatures. The claim requested declarations that delaying the plaintiff's application, and that Health Canada's suggestion that he submit a new application signed in blue ink, infringed the plaintiff's Charter s. 7 right to life. Attached hereto as Exhibit 112 is a copy of this claim.

212. Also on October 31, 2017, Mr. Turmel posted an entry to the Turmel Google Groups website, in which he notes that he personally prepared the Jackes claim. Attached hereto as Exhibit 113 is a copy of this entry.

213. Canada brought a motion to strike the Jackes claim. By judgment dated August 28, 2018, this Court granted Canada's motion and struck the Jackes claim without leave to amend on the grounds that it did not disclose a reasonable cause of action. In so doing, Brown J. noted that Mr.

Jackes remained free to submit a new and properly signed application to Health Canada, and that its previous suggestion that the new application be signed in blue ink "did not constitute a violation of *Charter*-protected rights, and if it did, such violation would be trivial." Attached hereto as Exhibit 114 is a copy of this judgment.

214. Mr. Jackes appealed the decision striking his claim to the FCA (CFN A-294-18). By letter dated March 12, 2019, he also requested that his appeal be heard together with the Harris processing-time appeal. By direction dated April 1, 2019, the FCA (Stratas J.A.) rejected this request. Attached above as Exhibit 95 is a copy of this direction.

215. Despite this direction, on April 8, 2019, Mr. Jackes filed a motion which again requested that his appeal be heard together with the Harris processing-time appeal. On April 15, 2019, Mr. Turmel posted an entry to the Turmel Google Groups website in which he notes that he prepared this motion on Mr. Jackes' behalf. Attached above as Exhibit 115 is a copy of this entry.

216. By order dated May 13, 2019, the FCA dismissed this motion. Attached hereto as Exhibit 116 is a copy of this order.

217. On May 16, 2019, Mr. Turmel posted an entry to the Turmel Google Groups website. Titled "TURMEL: Court nixes Jackes with Harris MedPot appeal," the entry reproduces the text of the order dismissing Mr. Jackes' motion, and concludes with the following note by Mr. Turmel:

> JCT: Okay, so Art will ask the Crown what days they can't make it and prepare a Requisition for Hearing - Appeal by next week.
>
> Then file a motion in writing for an extension of time to file the Requisition because he was only late in trying to get in with Jeff's hearing.
>
> And he can still ask that his appeal hearing be with Jeff in

> the week of June 24!! Har har har har har har. Another kick at the can.

Attached hereto as Exhibit 117 is a copy of this entry.

218. On May 27, 2019, Mr. Jackes filed a motion for an extension of time to serve and file a requisition for hearing. On May 29, 2019, Mr. Turmel posted an entry to the Turmel Google Groups website in which he describes this motion and expresses his hope that the motion will be granted in time for the Jackes and Harris appeals to be heard together. He also notes the following:

> Under normal guerrilla law circumstances, I'd be the one wanting separate appeals to waste twice as much court time as possible. And Mozajko a third panel to waste even more time. So let's see what happens.

Attached hereto as Exhibit 118 is a copy of this entry.

219. By order dated June 19, 2019, the FCA dismissed Mr. Jackes' motion for an extension of time and underlying appeal with costs. In so doing, the Court noted that "There is not a scintilla of an argument purporting to establish a reviewable error in the Brown J.'s conclusion that any violation of the appellant's Charter rights is, at best, trivial," and that Mr. Jackes had delayed bringing a motion for an extension of time for nearly three months "despite numerous occasions to do so."

220. The Court awarded Canada its costs of the appeal, which were later assessed and allowed in the amount of $2,174.98. Attached hereto as Exhibit 119 are copies of the FCA order and certificate of assessment in this matter.

7. Turmel Kit public possession and shipping limit claims and medical authorization claims

221. On October 1, 2018, Mr. Turmel posted an entry to the Turmel Groups Website. Titled "TURMEL: Challenge to 150-gram Possess &

Shipping Limits," the entry includes the text of a template FC statement of claim, as well as the following comments from Mr. Turmel:

> So I'm preparing a kit for those who'd like to ask Federal Court to give them not only a 10-day supply but the full 30 days. JCT: I have several people ready to file, two with 200 gram prescriptions and two with 100 gram prescriptions!
>
> I'd appreciate any suggestions or any typos found. Just mail to johnt...@yahoo.com
>
> Kit should go up this week with instructions at http:// johnturmel. com/150grams.pdf

Attached hereto as Exhibit 120 is a copy of this entry.

222. On May 18, 2022, I visited the page linked in the Turmel Kits website page referenced above. Under the title "STRIKE 150 GRAM CAP," Mr. Turmel provides filing instructions and links to a template FC statement of claim challenging the constitutionality of the 150-gram limit on public possession and shipping of cannabis for medical purposes. Attached hereto as Exhibit 121 is a copy of this page and template statement of claim.

223. Between October 2018 and September 2019, 36 self-represented plaintiffs filed FC claims based on these templates (the "Turmel Kit public possession and shipping limit claims"). Attached hereto as Exhibit 122 is a list of these claims.

224. Also on October 1, 2018, Mr. Turmel posted an entry to the Turmel Google Groups website titled "Challenge to 1-year medpot prescriptions cap for permanently ill." This entry notes in part that:

> For many years, I've railed against yearly renewals for permanently-ill patients.
>
> …This is not going to be a kit for many people, I really only need one person with an incurable disease who wants to ask the court to scrap the 1-year limit on prescriptions for permanently-ill patients.
>
> It will be a really short and easy action.

> Any volunteers for this attack? johnt...@yahoo.com

Attached hereto as Exhibit 123 is a copy of this entry.

225. On May 18, 2022, I visited the Turmel Kits website. On a page titled “STRIKE 1-YEAR CAP,” Mr. Turmel provides filing instructions and links to a template FC statement of claim challenging the constitutionality of the requirement for annual healthcare practitioner authorization to use cannabis for medical purposes. Attached hereto as Exhibit 124 is a copy of this page and template statement of claim.

226. Between October 2018 and September 2019, four self-represented plaintiffs filed FC claims based on these templates (the “Turmel Kit medical authorization claims”). Attached hereto as Exhibit 125 is a list of these claims.

227. By direction dated October 19, 2018, the Court directed the parties to the Turmel Kit public possession and shipping limit claims to each provide a proposed timetable by October 25, and to attend a case-management conference, which took place on October 30, 2018.

228. Following this case management conference, Mr. Turmel posted an entry to the Turmel Google Groups website, which notes in part that:

> At the Tuesday Oct 30 afternoon hearing, the judge had directed that all plaintiffs provide him with a proposed timetable and though I was going to write that we'll follow the regular court timeline after the Crown files their Statement of Defence in 30 days, I forgot. So Judge Brown gave them more time to submit their timetables.
>
> …
>
> I know the Plaintiffs may not like being berated over and over for using the Turmel's kits... like it's some sort of weakness. But I take pride in being mentioned as the mastermind of the Repeal Prohibition resistance.

Attached hereto as Exhibit 126 is a copy of this entry.

229. Following the October 30 case-management conference, the Court designated *Allan J. Harris v HMQ* (CFN T-1765-18) (the "Harris public possession and shipping limit claim") as the lead claim among the Turmel Kit public possession and shipping limit claims, and designated *Mike Spottiswood v HMQ* (CFN T-1913-18) (the "Spottiswood medical authorization claim") as the lead claim among the Turmel Kit medical authorization claims. The Court also set a timetable for a motion by Canada to strike the lead claims, and placed the other claims in abeyance pending the outcome of the lead claims.

230. On January 24, 2019, Mr. Turmel posted an entry to the Turmel Google Groups website. Titled "TURMEL: Need more plaintiffs against "Year Max" prescriptions, the entry notes in part that:

> JCT: In the upcoming motion to strike our claims, the Crown has opposes [*sic*] the Jeff Harris' claim against the 150 gram cap and Mike Spottiswood's claim against the yearly visits to the doctor for people with permanent illnesses.
>
> …
>
> The Crown argues that since Mike is under the MMAR and hasn't had to see his doctor since 2014, he can't complain about the new Cannabis Regulations still limiting prescriptions to one year.
>
> There are many out there who are affected by the Cannabis Regulations including Jeff Harris. So yesterday, Jeff filed the Statement of Claim for a declaration that the 1-year limit violates the rights of permanently-ill patients by making them waste time and resources for nothing.
>
> So, though they might be able to strike Mike's claim because he doesn't have to visit his doctor yearly, yet, they can't say that about Jeff.
>
> Now, the Feb 1 Response to the Crown's motion is going to mention how Jeff represents those who have permanent illness and don't want yearly visits at high costs too.

> But what we really need is more than just Jeff. So why don't you who have permanent illnesses join him by filing the $2 Statement of Claim. If a dozen more plaintiffs file, the Crown will have that much tougher a time to strike the claim.
>
> http://johnturmel.com/insyear.pdf has the claims and instructions for the simple online efiling at the Court site. Takes 10 minutes to prepare the Claim and 10 minutes to get it filed.

Attached hereto as Exhibit 127 is a copy of this entry.

231. On February 7, 2019, Mr. Turmel posted a further entry to the Turmel Google Groups website. Titled “TURMEL: Need more permanently-ill plaintiffs,” the entry notes in part that:

> So if you're permanently-ill and tired of paying a doctor every tons of cash every year, why not take the $2 gamble and join Jeff in objecting. If a bunch more plaintiffs got filed, the Crown would not be so easily able to argue that the annual filing is proper.
>
> So come on, if you paid a ton to your doctor for your permit, why not spend $2 to try to avoid having to waste that cash and time every year.
>
> http://johnturmel.com/insyear.pdf has the easy instructions to get filed in under 10 minutes. Do take the 10 minutes to try to save yourselves an expensive wasted visit every year. You know the gremlins in government made up the year cap precisely in order to make it harder for the patients to get their medicine. Besides, won't this be a great trophy on your wall when it wins.

Attached hereto as Exhibit 128 is a copy of this entry.

232. By order dated May 7, 2019, this Court partially granted Canada’s motion to strike. The Court struck the Spottiswood medical authorization claim and other Turmel Kit medical authorization claims without leave to amend on the grounds that the requirement for medical authorization to use cannabis had been consistently upheld in past cases, and that the Spottiswood medical authorization claim contained “no facts regarding the current annual medical authorization or how it impacts his s. 7 Charter rights.”

233. With respect to the Harris public possession and shipping limit claim, the Court declined to strike the portions of the claim concerning Mr. Harris' liberty and security of the person. However, it struck the allegation that the public possession and shipping limits engaged Mr. Harris' life as the statement of claim contained no facts to explain how this right was engaged. The Court also struck as frivolous and vexatious Mr. Harris' allegations that the public possession and shipping limits amounted to criminal "genocide," and that these limits were the result of "statistical fraud" by Health Canada.

234. In the course of the same decision, the Court also granted a motion by Mr. Harris for interim relief from the public possession and shipping limits pending trial. Attached hereto as Exhibit 129 is a copy of this Court's order and reasons in this matter.

235. Canada appealed this Court's decision to the FCA (*Canada v Harris*, A-175-19) and sought an interim stay of the order granting Mr. Harris interim relief pending trial. By order dated June 14, 2019, the FCA granted Canada's stay motion. Attached hereto as Exhibit 130 is a copy of the FCA stay decision.

236. On June 16, 2019, Mr. Turmel posted an entry to the Turmel Google Groups website. Titled "TURMEL: Court of Appeal stays Harris 10-day supply pending appeal," the entry notes in part that:

> I feel sad for what [Near J.A.] has done to punish 7,000 sick people. Because that's the number who will benefit when we strike the cap. God'll get him.
>
> …
>
> People ask me why I keep fighting so many loser fights. It's because I love ruining the careers of the judges and Crowns who get added to the History Wall of MedPot Shame. The people who contributed to its prohibition. What they did can never be erased and will shame their careers in the eyes of a wiser posterity. Especially those judges whose decisions kept the prohibition alive to keep denying dying patients their life-saving meds.

Attached hereto as Exhibit 131 is a copy of this entry.

237. By judgment dated July 21, 2020, the FCA granted Canada's appeal, and struck the Harris public possession and shipping limit claim on the grounds that the facts pleaded were insufficient to disclose a reasonable cause of action. The Court also denied leave to amend, noting that Mr. Harris' three previous claims (a Turmel Kit MMAR-MMPR claim, a Turmel Kit juice and oil claim, and a Turmel processing-time claim) had all been struck for no reasonable cause of action, and "With this information, and that his past experience before the courts Mr. Harris had ample opportunity to prepare a claim with sufficient detailed facts. But his claim was almost totally devoid of any factual foundation." The Court also awarded Canada costs of $1,500. Attached hereto as Exhibit 132 is a copy of the FCA's reasons for judgment in this matter.

238. Mr. Harris has since paid the costs in the above-noted appeal. The costs were received by Canada on September 11, 2020, and took the form of several post-dated cheques signed by Mr. Turmel and originating from a bank account apparently belonging to Mr. Turmel. Attached hereto as Exhibit 133 are copies of these post-dated cheques.

239. On August 1, 2020, Mr. Turmel posted an entry to the Turmel Google Groups website. Titled "TURMEL: Court ruling on Harris 10-day MedPot carry & 150-gram cap challenge," the entry reproduces the text of the FCA decision striking the Harris public possession and shipping limit claim, with additional comments by Mr. Turmel including the following:

> JCT: Remember, the whole issue boils down to Judge Brown seeing sufficient facts to do the Cap/Dosage division and Judge Woods not being able to do the computation. It's sad Judge Brown is in the lower court and Judge Woods floats at the top.

Attached hereto as Exhibit 134 is a copy of this entry.

240. On March 10, 2021, Mr. Harris filed an application for leave to appeal the above FCA decision to the SCC (CFN 39742). By decision dated January 20, 2022, the SCC dismissed this leave application, with costs. Attached hereto as Exhibit 135 is a copy of this decision.

8. Turmel Kit challenge to production site limits

241. On August 7, 2019, Raymond Turmel commenced an FC claim (*Raymond Turmel v HMQ*, CFN T-1261-19). The claim sought a declaration that the provisions of the *Cannabis Regulations* prohibiting a designated producer from producing for more than two medical users, and prohibiting more than four medical users from sharing a production site, infringed Charter s. 7. Attached hereto as Exhibit 136 is a copy of the statement of claim in this matter.

242. On August 7, 2019, John Turmel posted an entry to the Turmel Google Groups website. Titled "TURMEL: Ray Turmel files claim to grow for more than 4!!," the entry notes in part that:

> JCT: I've had this kit to challenge the cap on 2 patients per grower and 4 permits per site ready for quite awhile.
>
> http://johnturmel.com/insdp.pdf But since no one has yet filed, my brother Ray volunteered …

Attached hereto as Exhibit 137 is a copy of this entry.

243. On September 27, 2019, Canada filed a motion for security for costs in this matter on the grounds that Canada had multiple costs awards against Raymond Turmel that remained unpaid.

244. On October 8, 2019, John Turmel posted an entry to the Turmel Google Groups website which notes in part:

> JCT: Brother Ray Turmel filed a Statement of Claim to strike the 2 patient/grower and 4 permits/site caps and allow him to grow for many small dosers.
>
> The Crown has filed a motion that he put up security for costs because he hasn't paid costs from a 2014 case. So there is

> another reason we need a few more filers of the Designated Person claim who have no debts to Canada.
>
> …
>
> JCT: So Ray is out on a limb all alone. If a few more people filed and the prosecution of the case inevitable, there would be less reason to not let Ray join the fight.

Attached hereto as Exhibit 138 is a copy of this entry.

245. By order dated October 29, 2019, this Court granted Canada's motion, ordered Raymond Turmel to provide $5,750 in security for costs, and stayed his claim pending payment of this security. In so doing, Brown J. observed that Raymond Turmel had asserted impecuniosity without any affidavit evidence, and that the underlying claim contained "no material facts" concerning how the plaintiff's Charter s. 7 rights were engaged by the impugned provisions. The Court also awarded Canada its costs of the motion, which the Court fixed at $350. Attached hereto as Exhibit 139 is a copy of the order and reasons in this matter.

246. The plaintiff Raymond Turmel subsequently discontinued his claim without providing security for costs or paying Canada's costs of the motion described above.

9. Turmel Kit challenge to criminal record requirements

247. On August 6, 2019, Bela Beke commenced an FC claim (*Bela Beke v HMQ*, CFN T-1262-19) (the "Beke claim"). The statement of claim alleged that the plaintiff had a criminal record for a cannabis offence, and sought declarations that the provisions of the *Cannabis Regulations* prohibiting individuals convicted of prescribed cannabis offences from producing cannabis for personal medical use were unconstitutional. Attached hereto as Exhibit 140 is a copy of the statement of claim in this matter.

248. On August 9, 2019, Mr. Turmel posted an entry to the Turmel Google Groups website. Titled “TURMEL: Strike Grower 10-Year Criminal Record Ban kit uploaded,” the entry notes in part:

> Earlier this week, Ray Turmel filed a claim to grow for more than 4 and Bela Beke filed a claim to strike the 10-year criminal record ban for growers. Ray used a kit that had been on my kits page which no one tried. So he has.
>
> And Bela is a friend who's been in courts with us before and knows the court trapeze.
>
> So the http://johnturmel.com/kits page now includes a link to a kit to strike the Criminal Record check. If you'd like to go straight and be a designated person to grow for patients but your criminal record for a cannabis offence makes you wait 10 years. join Bela and spend the 10 minutes preparing your claim and the 10 minutes to upload it to court online. The more who file, the better the message that those who've paid their debt to society are tired of being extra punished.
>
> http://johnturmel.com/crsc.pdf is the claim to file. What do you have to lose but your 10-year chain?

Attached hereto as Exhibit 141 is a copy of this entry.

249. On October 4, 2019, Canada filed a motion to strike the Beke claim on the grounds that it failed to disclose a reasonable cause of action.

250. On October 12, 2019, Mr. Beke filed a letter in response to Canada’s motion. The letter noted that Mr. Beke wished to abandon his claim as his sole conviction was for simple cannabis possession, and he discovered upon reviewing Canada’s motion record that this was not a prescribed offence under the *Cannabis Regulations*. Attached hereto as Exhibit 142 is a copy of this letter.

251. On October 17, 2019, Mr. Turmel posted an entry to the Turmel Google Groups website, which notes in part:

> JCT: How many people knew that no convictions under a "controlled substance offence" no longer includes convictions under S.4(1) Possession Offence! I just found

> out the Good News. Conviction for Possession does not bar growers from becoming Designated Persons to Produce.
>
> …
>
> How did I find out? The Crown response to Bela Beke's action to strike the 10-year criminal record check
>
> …
>
> JCT: I've now upgraded to the 2nd version of the Criminal Record template http://johnturmel.com/crsc2.pdf available at the instructions page: http://johnturmel.com/inscr.pdf

Attached hereto as Exhibit 143 is a copy of this entry.

10. Proposed Turmel Kit challenges to impaired driving provisions

252. On December 25, 2018, Mr. Turmel posted an entry to the Turmel Google Groups website. Titled “The Healthy to lose cars with Pot Road-side tests,” the entry notes in part that:

> Justin's Legalization has put in traps so healthy people lose their licenses and their cars while keeping cops on the job in the same old prohibition.
>
> There is only way to fight back and that's through mass action in the courts. Fortunately, I've found a way for lots of people to say ouch, to participate in similar cases by using similar forms. 350 in 2014, 270 now.

Attached hereto as Exhibit 144 is a copy of this entry.

253. To date, I am not aware of Mr. Turmel having developed a template claim concerning this issue, or of anyone having filed such a claim.

11. Template claims still available for download

254. On May 19, 2022, I visited the page linked in the Turmel Kits website page referenced above. Although the Federal Court has previously struck numerous Turmel Kit juice and oil claims, and Turmel Kit processing-time claims, filing instructions and template versions of each of these claims remain available for download on the website. Attached hereto as Exhibit 145

are excerpts from the Turmel Kits website containing links to these filing instructions and template claims.

G. THE TURMEL KIT COVID-19 CLAIMS, INCLUDING *JOHN C. TURMEL v HMQ* (CFN T-130-21, A-286-21) AND *JOHN C. TURMEL v HMQ* (CFN T-277-22)

255. Since January 2021, 80 self-represented plaintiffs, including Mr. Turmel, have filed substantially identical FC claims challenging the constitutionality of the Government of Canada's COVID-19 mitigation measures. The claims seek declarations that the mitigation measures infringe Charter sections 2(c), 6, 7, 8, 9 and 12, as well as injunctive relieve, personal constitutional exemptions, and damages (the "Turmel Kit COVID-19 claims"). Attached hereto as Exhibit 146 is a list of these claims.

256. Also attached hereto as Exhibit 147 is a copy of the statement of claim filed by Mr. Turmel (*John C. Turmel v HMQ*, CFN T-130-21).

257. On January 21, 2021, Mr. Turmel posted an entry to the Turmel Google Groups website. Titled "TURMEL: Federal Court Covid Restrictions Challenge Template Up," the entry notes in part:

> JCT: http://SmartestMan.Ca/c19scjct.pdf is my Jan 19 2021, Statement of Claim with active links I filed in Federal Court to prohibit Covid mitigation restrictions because they compared the C19 Apple to the Flu Orange to exaggerate the Covid threat by a hundredfold or to be exempted from useless restrictions. I'm an expert in Federal Tax Court in the Mathematics of Gambling which should help.
>
> http://SmartestMan.Ca/c19ins.pdf are the instructions to fill out the Covid challenge template Statement of Claim for yourself, SAVE AS pdf, then go to the efiling instructions for efiling with the Federal Court Registry.
>
> Read the Statement of Claim to see if you want to join me in the court protest too. Costs $2 to file in Federal Court. The Statement of Claim is a template. My templates have been used in self-defence or self-offence hundreds of times before. http://SmartestMan.Ca/kits is my page listing all the court templates I've engineered over the years.

We've swamped the courts in protest with almost 400 self-Plaintiffs out of under 20,000 aggrieved patients twice before! How many have been aggrieved by Covid restrictions?

I'm not a lawyer, better, but have gotten an infamous reputation as a guerrilla lawyer since the Great Canadian Gambler was first busted running underground Blackjack games in 1977 and defended myself. Since then, I've learned the Criminal Court ropes by self-defending on all later busts including OPP Project Robin Hood in 1993 on my 28-table 155-employee underground Casino Turmel, the world's biggest ever gaming house raid, to the Supreme Court of Canada.

In the 1980s, I offered those being foreclosed under the 22% interest rates to self-defend with templates of arguments they could sign and file to stall their eviction. The Toronto Woodhouse case was stalled 33 months while they fought rent free!

After 2,000, I used templates for people to self-defend criminal cannabis charges. I appeal all my cases to the Supreme Court, learned those ropes too, and the judges know it. …

I learned the Federal Court ropes by suing Elections Canada every time I was a candidate in one of my Guinness Record 101 elections contested over 42 years and a media station didn't give me an equitable share of free debate time. I sued them umpteen times. Lots of election case law with my name on it. Ropes learned well.

After 18,000 medpot patients had had their Health Canada grow permits cut off by a judge 6 years ago based on the date of the permit, all grow permits extended but only the second half of year kept their possession permits, first half lost their permits to possess what they had a licence to grow! With the media focusing on the 18,000 joyous survivors and ignoring the 18,000 devastated losers, I got almost 400 patients to file a $2 Statement of Claim trying to get their exemptions back from Health Canada based on the fact their doctors had prescribed it and who cares what a judge thinks about dates? It swamped the Crown and the Registry.

> …
>
> Two years later, a second group of medpotters used templates to claim damages due to delay by Health Canada in processing medpot permits and I got another almost 400 patients to file online. In that instance, Judge Brown named one Lead Plaintiff and what happened to him was persuasive for others. Except only 1 plaintiff would pay any order for costs and they're peanuts.
>
> If 400 out of 18,000 aggrieved plaintiffs filing self-offence claims freaked out the Crown and Registry, imagine if 4,000 or 40,000 out of the millions aggrieved by Covid restrictions do too?
>
> …
>
> Once I've got a bunch of people to shake up the Crown with an onslaught of Claims, then we can file motions for hearings to get personal interim exemptions, just like the medpot applicants did. In our 150-gram possession in public cap challenge, the Crown moved to strike the claims but the judge let them in and granted Lead Plaintiff a 10-day supply carry pending trial of the challenge to the cap. So we'll ask too.
>
> This Scamdemic has to be put to rest and good statistics are available and should be all that are needed squelch it.
>
> http://SmartestMan.Ca/c19ins.pdf for instructions.
>
> …
> You might even be able to get paid to sign people up who can't navigate what I've been told are simple instructions. All you need is their basic name, address, phone, email and a jpg of their signature to add, then you can file it for them. Charge them. They will end up with a nice Gold Star Statement of Claim as a trophy.

Attached hereto as Exhibit 148 is a copy of this entry.

258. Also attached hereto as Exhibit 149 are copies of the template FC statement of claim and filing instructions described in the above Turmel Google Groups website entry.

259. On March 2, 2021, Mr. Turmel wrote to the Court concerning the Turmel Kit COVID-19 claims. This letter raised several procedural issues, and included a request by Mr. Turmel for an order that the defendant provide him with the email addresses of the other plaintiffs. Attached hereto as Exhibit 150 is a copy of this letter.

260. On March 11, 2021, the case-management judgment in these matters, Prothonotary Aylen (as she then was) advised the parties that the Court was considering designating Mr. Turmel's claim as the lead claim among the Turmel Kit COVID-19 claims, and staying the other claims pending final determination of Mr. Turmel's claim. The direction also invited any party that did not consent to this proposal to make submissions as to why their claim should not be stayed.

261. On March 15, 2021, Mr. Turmel posted an entry to the Turmel Google Groups website, which notes in part:

> So, I have to advise plaintiffs to oppose being stayed and to make the Crown serve a personal copy of a motion on each individual plaintiff. I tried to make it easy on them but now I'm for making it hard on them now that they chose to make it hard on us.
>
> For those who have a choice to register, you only have to send an email to Case Management Judge Aylen at fc_rece...@cas-satj.gc.ca
>
> with copies to
>
> benjami...@justice.gc.ca and me johnt...@yahoo.com

Attached hereto as Exhibit 151 is a copy of this entry.

262. By order dated April 8, 2021, Prothonotary Aylen designated Mr. Turmel's claim as the lead claim among the first ten Turmel Kit COVID-19 claims, and stayed the other nine claims pending final determination of Mr. Turmel's claim. In so doing, she noted that the majority of Mr. Turmel's submissions opposing a stay related to other plaintiffs, and that "As I already

advised Mr. Turmel at the case management conference, he does not represent the other Plaintiffs and cannot speak for them." Attached hereto as Exhibit 152 is a copy of this order.

263. The plaintiff in *Michel Ethier v HMQ* (CFN T-171-21) filed a motion to appeal the April 8 stay order on the grounds that the Court erred in staying the claims without requiring that Canada serve the plaintiffs whose claims were stayed with copies of its materials in Mr. Turmel's file.

264. On April 19, 2021, Mr. Turmel posted an entry to the Turmel Google Groups website. The entry reproduces the text of Mr. Ethier's notice of motion and written representations in support of his appeal motion, and includes the following additional comments from Mr. Turmel concerning Prothonotary Aylen's stay order:

> JCT: If the real judge rules the appointed judge couldn't place a condition on granting their motion to dispense with the effort to serve documentation on me, but could grant their motion not to, and then not oblige them to send me a copy, I can go home. But I don't think any judge will say he couldn't say "You get nothing if they get nothing."
>
> Now the Crown has 10 days to file a Response and then he has 4 days to file a Reply before the judge will rule.
>
> Sure, it's a waste of time but the blood of every suicide and murder under lockdown is on her hands.

Attached hereto as Exhibit 153 is a copy of this entry.

265. By order dated May 7, 2021, this Court dismissed Mr. Ethier's appeal motion with costs of $500. Attached hereto as an Exhibit 154 is a copy of this order.

266. Mr. Ethier filed a motion for extension of time to appeal this order to the FCA (CFN 21-A-14). By order dated August 9, 2021, the FCA dismissed this motion with costs of $500. In so doing, Gleason JA noted in part that Mr. Ethier "failed to identify any relevant argument in support of

setting aside the decision of the Federal Court." Attached hereto as Exhibit 155 is a copy of this order.

267. By order dated April 26, 2021, this Court stayed several more, newly filed Turmel Kit COVID-19 claims pending final determination of Mr. Turmel's claim.

268. On April 27, 2021, Mr. Turmel posted an entry to the Turmel Google Groups website regarding this order. Titled "TURMEL: Judge Aylen stays Covid plaintiffs without data CC:," the entry notes in part that:

> [T]he Crown didn't want to send the others a copy of their motion to strike my claim. They won't send you a copy and didn't want to give me your emails so I could send you a copy either. They suggested you check my file at the Registry for new documents and then ask to have a copy of it emailled [*sic*] to you when something new is added, or watch my blog for a report.
>
> Actually, I don't mind if everyone contacts the registry to make them send copies to everyone if the Crown won't do it. Har har har har har har. More work for the clerks if not for the Crown.
>
> …
>
> You can't imagine how many Supreme Court of Canada, appellant judges, superior judges will end up laughed at by posterity for dismissing a motion for equitable justice. Their job. So how can I feel bad with so many judges dismissing righteous claims when I know the stain will be on their reputations on the wall of shame.
> …
>
> The silver lining in being stayed is that you get to join the real resistance for $2, watch what happens, and if it loses, no court costs. The $2 will be the total loss to join the Apple Orange Resistance!
> …
>
> So you can protest by going to a live demo, getting an $880 fine for attending an illegal event, and have your driver's license suspended if you don't pay, or you can protest by going to the court web site and filing a $2 Statement of Claim

> with no threat of costs or to your license.
>
> Pretty good deal, isn't it? Now we just need to get the word out that that [*sic*] it costs nothing more than $2 to add pressure on the Crown and the Bench to end the hoax.

Attached hereto as Exhibit 156 is a copy of this entry.

269. By direction dated April 26, 2021, the Court directed Canada and Mr. Turmel to confer and provide the Court with a jointly proposed timetable for a planned motion by Canada to strike Mr. Turmel's claim or for security for costs. On April 28, 2021, Mr. Turmel posted an entry to the Turmel Google Groups website regarding this direction. The entry notes in part:

> So what are the Crown and I supposed to discuss about the next steps when all steps are laid out in the Rules? Pure waste of time. I was hoping the extra time would add more plaintiffs and more pressure on the Crown and Bench until I heard of the suicides of the business people who lost everything. I don't like blood on my hands due to the delay. I could have appealed for a quicker timetable but chose to wait for more numbers. Logic is fine if the judge has his eyes open, but bigger numbers are more impressive for judges who do not. When we hit 400, or 1,000, or 10,000, we may get the attention of Rebel News.
>
> …
>
> I could appeal and make a stink of the stalling tactics and ask to force the Crown motion forward (reducing the blood on both our hands) but it's the numbers that will make the case to low-tech judges way more than the math of the hoax. So I don't mind mind [*sic*] building numbers while the CMJ stalls even if it ends up with more suicided victims. The stakes we are gambling are frighteningly high. How do you think I feel waiting for more numbers while people are dying? Could be the wrong play if we'd have caught a wise judge with his eyes open. But that's a rarity.

Attached hereto as Exhibit 157 is a copy of this entry.

270. On May 3, 2021, Mr. Turmel posted a further entry to the Turmel Google Groups website, which notes in part:

[L]et's give the court a taste of what's coming before the judge decides. Let's let the judge see by everyone starting their requests right now.

There are 23 entries in my file and you can order copies of them if they can be emailed.

So take a few minutes to email the Registry at: fc_rece...@cas-satj.gc.ca to ask for a copy of some of the documents. Maybe not all but a dozen of the more interesting ones. Maybe a different email for every request.

To get the minutes of the documentation for any claim, go to the Court's file search page at: https://www.fct-cf.gc.ca/en/court-files-and-decisions/court-files#cont

…

But whatever documents were sent electronically may be requested. So do and give the Registry such a taste of what could happen if a [*sic*] thousands sign on that they will want to overturn Aylen's decision.

I don't think you have to have an ongoing action to request the document be emailed to you. Reporters must ask. So I'd guess that all 600 of our AppleOrangeResistance could send in requests for copies of all those documents.

Michel Ethier's T-171-21 has more entries than me. Since he's appealing the stay that is also staying your participation, it should be of interest to you. Throw in a dozen requests for his documents.

So let's give them a taste of the nightmare we can give them if they insist on making you put more effort to get your due documentation so the Crown can put in less to give your due.

I'd bet that if even a dozen of our 600 members put in a dozen requests each, the clerks would tell the judge about it.

Ethier did mention what could happen, so let's show it happening too. Imagine if all 600 sent in the dozen requests! Har har har har har har.

…
And I'll take a second to boast about my greatest legal innovation. You'll notice a unique blurb in my motions:

> AND FOR ANY ORDER abridging the time for service, filing, or hearing of the motion, or amending any defect of the motion as to form or content, or for any Order deemed just.
>
> This is my sapper tool in case Her Majesty The Clerk gets uppity for any reason.
>
> …
>
> So with my motion to a judge for remedy, I always add the motion to accept any screw-ups. And when you point out to the clerk that the motion to fix anything is in the Notice, HMTC has to send it to a judge for a decision. I've seen some stunned clerks! Her defences are sapped in advance (engineers were called sappers because they sapped the underworks of fortresses).
>
> …
>
> Finally, who is Michel Denis Ethier? He was one of my greatest medpot warriors.
>
> …
>
> So he knows the ropes, has much experience (mainly with the criminal rather than civil) and must appreciate his chance to get his name in at the top. Most of my cases end up at the top. And to get your righteous cause in at the top even with an unrighteous judiciary will make for pride in posterity.
>
> It doesn't matter what the judges rule. What matters is what we said and what posterity rules. If some judge says "Comparing Apple to Orange! Watermelon to Grape. it's all fruit to me" who will doubt whom posterity will rule to be the imbecile in the matter?

Attached hereto as Exhibit 158 is a copy of this entry.

271. Canada and Mr. Turmel were unable to agree on a timetable for Canada’s motion to strike, and accordingly provided the Court with separate timetable proposals. By order dated May 6, 2021, the Court approved the timetable proposed by Canada. Attached hereto as Exhibit 159 is a copy of this court order.

272. On May 5, 2017, Mr. Turmel filed a motion to appeal the May 6 timetable order to a judge of the FC. As detailed below, Mr. Turmel's claim has since been struck, and as a result, this interlocutory appeal has not been heard.

273. On May 13, 2021, Mr. Turmel posted an entry to the Turmel Google Groups website. Titled "One-Time $2 tickets in Toronto to End lockdown," the entry notes in part:

> JCT: If our Resistance to the Apple Orange Hoax is to ever go viral, we have to make some news. I will be at the Queen's Park protest in Toronto Saturday May 15 High Noon. to show off my Gold Star Statement of Claim and pass out flyers inviting others to join http://smartestman.ca/c19flyer.pdf Our best visual aid is the Gold Star document in your hands. Some of you received two, your original Statement of Claim, and an early Order from Prothonotary Case Management Judge Mandy Aylen. So two Gold Star documents for $2. And more to come, for the same onetime $2 filing fee. Our hand (Statement of Claim) has all the cards we'll use.
>
> …
>
> Come on, when was the last time you ever got the chance to be in a law-suit for a one-time $2 fee? It's a lottery ticket! If Lead Plaintiff proves unjustified lockdown, you talk cash damages. If a judge rules "Watermelons, grapes, all just fruit to me!" then we lose our $2 filing fees but we do get another Gold Star on the order dismissing our actions for what we saw as a just demand.
>
> …
>
> Who'd have thought the Great Canadian Gambler could end up pushing a million $2 bets at the Crown and Bench! Lots of Gold Star paperwork due a million $2 tickets.

Attached hereto as Exhibit 160 is a copy of this entry.

274. On May 21, 2021, Canada served and filed its motion to strike Mr. Turmel's claim. In the alternative, this motion requested an order for security for costs based on Mr. Turmel's multiple unpaid costs awards. In

support of this request, Canada's motion record also included affidavit evidence detailing these costs awards.

275. On May 21, 2021, Mr. Turmel posted an entry to the Turmel Google Groups website. Titled "TURMEL: Crown files to Strike 'End Lockdown' Fed Court Actions," the entry notes in part:

> I must admit, I'd forgotten about all the times I stiffed them on costs and thought they were aiming at my brother Ray. Let's see if [Prothonotary Aylen] changes her mind to waste more time and add more suicides to her tab.
>
> …
>
> JCT: I finally know how much I've stiff [*sic*] them for over the years. Can't be counting my costs from the 1980s.
>
> …
>
> Sorry, but I just can't help repeating over and over how the delays have put blood on their hands. And not the kind that can be repaired. Those lives are lost and there's nothing Wong or Aylen J. can do to get them back. "Oops" won't cut it. Especially when you consider all the other things done to slow-walk the bucket of water to the fire. Remember, they are the only two who officially have the documentation of how lockdowns are based on lies as they give their all to keep the bloodletting going.

Attached hereto as Exhibit 161 is a copy of this entry.

276. On May 31, 2021, Mr. Turmel posted a further entry to the Turmel Google Groups website. Titled "TURMEL: Resistance to Covid Apple-Orange Comparison Intro VIDEO," the entry notes in part:

> JCT: As things seem to be getting worse and worse, I've just uploaded a video explaining how filing in Federal Court is the best route of civil resistance. Stuff the bad guys with paperwork.

Attached hereto as Exhibit 162 is a copy of this entry.

277. By order dated July 12, 2021, this Court granted Canada's motion, and struck Mr. Turmel's claim without leave to amend, with costs of $1,000. Prothonotary Aylen observed that the claim failed to identify any

impugned federal measures or to explain how they engaged Mr. Turmel's Charter rights. She also concluded that Mr. Turmel's allegations regarding Charter s. 12 were frivolous, and that the claim as a whole was an abuse of process in that it pleaded bare assertions without material facts, and was "replete with lengthy diatribes and makes scandalous and extreme allegations that are unsubstantiated, such as alleged cover-ups and conspiracies." Attached hereto as Exhibit 163 is a copy of this order.

278. Following this decision, Mr. Turmel posted an entry to the Turmel Google Groups website. Titled "TURMEL: Judge Aylen nixes 'Fudge Mortality Rates' action, the entry notes in part:

> JCT: Maybe we can file again when the corpses from the unneeded jab start piling up! And blame her for keeping it the fact there was no need due to the hype suppressed.
>
> …
>
> JCT: Again, that $1,000 does not apply to anyone but me. Now I'm going to appeal to a Federal Court judge, then to 3 Appeal Court judges then to the Supreme Court. If I lose them all, then you get to decide if you want to continue your action (facing costs) or accept her dismissal (no costs!).
>
> …
>
> If you are angered at being tricked into taking an experimental and seemingly dangerous jab, especially if you end up dying, let's make sure to blame it on the right person. Maybe we can call those who took the jab while she was sitting on the truth about the fudged mortality rates the Aylen Spikers. I was going to call people who took the Spike Protein "Spikers" anyway but if they took the spike while Aylen was suppressing the truth, they'll be the Aylen Spikers.
>
> But now that millions of Canadians have taken the jab due to her, what's a few more millions? Especially when the Aylen Spiker mortalities start making the news.

Attached hereto as Exhibit 164 is a copy of this entry.

279. On August 23, 2021, Mr. Turmel posted a further entry to the Turmel Google Groups website, which notes in part that:

> If you took the jab but wouldn't have if you'd known that Covid was a hoax, maybe you should send Prothonotary Aylen a message telling her that her you wouldn't have taken the experimental vaccine if she hadn't suppressed that the virus was a hoax. And if someone near you dies of a blood clot, let her know she did it to them.
>
> Ottawa girl thought she'd shut down that Ottawa eccentric Turmel and now she'll have the blood of millions on her hands. Har har har. Looks good on her. Not so good on her victims.
>
> Of course, the best way to let her know is to file a Statement of Claim she with us that she dismissed asking the Federal Court to call off lockdowns for a $2 filing fee and no more costs. No better way to tell the judge she's wrong than for more people to keep saying being tricked is a cause of anger.

Attached hereto as Exhibit 165 is a copy of this entry.

280. On August 31, 2021, Mr. Turmel filed a motion to appeal the order striking his claim. Attached hereto as Exhibit 166 is a copy of Mr. Turmel's record in support of this motion.

281. By order dated October 18, 2021, this Court dismissed Mr. Turmel's appeal motion with costs of $500. Attached hereto as Exhibit 167 is a copy of the order and reasons in this matter.

282. On October 27, 2021, Mr. Turmel filed a notice of appeal of the October 18, 2021, decision (CFN A-286-21). Attached hereto as Exhibit 168 is a copy of the notice of appeal in this matter. A hearing of this appeal has not yet been scheduled.

283. On February 16, 2022, Mr. Turmel filed the further Federal Court claim with Court File No. T-277-22. This claim sought declarations that provisions of the Minister of Transport's *Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19, No. 52*, infringe Charter sections 2, 6, 7, 8, 9, 12 and 15, and *ultra vires* the *Aeronautics Act*, RSC

1985, c A-2. Attached hereto is as Exhibit 169 is a copy of the statement of claim in this matter.

284. In addition to his claim, Mr. Turmel also filed a motion for a "personal constitutional exemption to the vaccine requirement for air travel promulgated by the Minister of Transport," pending trial of the claim. Attached hereto as Exhibit 170 is a copy of Mr. Turmel's motion record in support of this motion.

285. On May 16, 2022, Mr. Turmel posted an entry to the Turmel Google Groups website. While principally concerned with the ongoing Ontario provincial election, the entry also refers to the Turmel Kit COVID-19 claims, and notes in part that:

> Imagine the whole New Blue team filing and plugging up the court. http://SmartestMan.Ca/c19cins.pdf has instructions.
>
> …
>
> Imagine the power of clogging up the courts with documents from your homes rather than clogging up streets with trucks in Ottawa.
>
> …
>
> PLUG UP COURTS NOT STREETS
> The C19C template is up but I've urged previous self-plaintiffs to wait for some New Blue people to file first so New Blue can get the credit for asking! Otherwise, there are a few eager beavers who won't mind leading the charge for other Canadians to follow when I can't without paying the $15,000 in previous costs owed.

Attached hereto as Exhibit 171 is a copy of this entry.

286. On May 23, 2022, Mr. Turmel also posted a further entry to the Turmel Google Groups website, which further notes that:

> It takes 10 minutes to fill out the template, and 10 minutes to upload it to the Federal Court Registry site. I got 75 to do it in 2020 over lockdowns due to the false alarm and even if Lead Plaintiff appeals are dismissed, they'll pay no costs.

> So here's a move you can make for a $2 filing fee with no costs to clog the court and make the news.
>
> So I'm going to bug you all until the last day. Of course, making the news now rather than in a week gets you that much more publicity.

Attached hereto as Exhibit 172 is a copy of this entry.

287. Canada brought a motion to strike Mr. Turmel's challenge to the Minister of Transport's order respecting vaccination of air travellers. By decision dated May 18, 2022, the Court granted this motion, struck Mr. Turmel's claim without leave to amend, and awarded Canada $2,000 in costs. In so doing, Prothonotary Horne described Mr. Turmel's claim as an "abusive" attempt to re-litigate his previous COVID-19 claim while the decision to strike that claim remained under appeal. He also described the new claim as "rambling," and found that it contained the same "lengthy diatribes, and unsubstantiated allegations of cover-ups and conspiracies" as the previous claim, but only bare assertions of Charter infringements without any material facts to support those allegations. Attached hereto as Exhibit 173 is a copy of this Judgment and Reasons.

288. Despite the dismissal of his claim, on May 27, 2022, Mr. Turmel posted a further entry to the Turmel Google Groups website, in which he again refers to the Turmel Kit COVID-19 claim templates, and notes that:

> Clogging the courts for a mere $2 filing fee was a simple move that clogging the streets with trucks could never accomplish.
>
> …
>
> I published a short book on the Covid Mortality Hyped Hundredfold threat being a false alarm!
> https://www.amazon.com/dp/b09dfgld8d
>
> …
>
> But they're not going to hear unless I can clog the court with self-represented plaintiffs as I've done several times before.

> …
> 10 minutes to fill out the template and 10 minutes to upload the Statement of Claim to the registry.

Attached hereto as Exhibit 174 is a copy of this entry.

289. On May 27, 2022, I visited the Amazon.com webpage referenced in the above entry. It advertises what appears to be a book self-published by Mr. Turmel and self-titled “Covid Mortality Hyped Hundredfold.” It also includes a link to a book excerpt, in which Mr. Turmel provides a further link to the Turmel Kit COVID-19 claim template and encourages others to complete file a claim. Attached hereto as Exhibit 175 is a copy of this webpage and excerpt.

H. THE PRESENT APPLICATION

290. On May 13, 2022, the Canada effected service of its notice of application in the present matter on Mr. Turmel. The following day, Mr. Turmel posted an entry to the Turmel Google Groups website. Titled “TURMEL: Crown moves to stop legal templates,” the post reproduces portions of the text of Canada’s notice of application with commentary from Mr. Turmel, and concludes with the following statement:

> JCT: So the Crown has all those bogus reasons to stop me from doing guerrilla law. Let's see if I end up having to keep asking a judge to keep going. As if that's going to stop me.

Attached hereto as Exhibit 176 is a copy of this entry.

291. As detailed at paragraphs 285-288 above, since receiving Canada’s notice of application, Mr. Turmel has also continued to post entries to the Turmel Google Groups website in which he encourages others to “clog” the Court with Turmel Kit COVID-19 claims.

I. UNPAID COSTS AWARDS

292. As detailed in paragraphs 12, 13, 23, 26, 30, 40, 57, and 77, above, Mr. Turmel was ordered by this Court, the FCA or the SCC to pay

Canada's costs on at least eight occasions between 1982 and 1987. However, due to the age of these files, I have been unable to determine whether the costs in many of these proceedings were fixed, or if any of these costs have been paid.

293. Since 2015, Mr. Turmel has also been ordered by these Courts to pay Canada's costs on ten occasions between 2015 and the present. These orders are further detailed at paragraphs 52, 54, 126, 127, 130, 142, 171, 277, 281 and 287 above, and in the following chart:

Court	**CFN**	**Order Date**	**Amount**	**Exhibit**
FCA	A-287-14	March 26, 2015	$100	43
FC	T-448-14	Nov 5, 2015	$250	56
FCA	A-342-14	Jan 13, 2016	$3,350	44
SCC	36937	Jun 23, 2016 (certificate of taxation November 30, 2016)	$807.86	47
FC	T-561-15	May 12, 2016 (certificate of assessment May 17, 2018)	$6,105.03	12
SCC	37647	Nov 23, 2017 (certificate of taxation) February 7, 2018)	$877.70	12
FC	T-1932-18	Jan 2, 2019 (certificate of assessment April 21, 2020)	$450	81

Court	CFN	Order Date	Amount	Exhibit
FC	T-130-21	July 12, 2021	$1,000	163
FC	T-130-21	October 18, 2021	$500	167
FC	T-277-22	May 18, 2022	$2,000	173

294. Of these costs awards, Mr. Turmel has paid only the $100 costs award issued by the FCA in the matter with Court File No. A-287-14 on March 26, 2015. The other costs awards listed remain unpaid, and currently total $15,340 exclusive of post-judgment interest.

295. Canada has written to Mr. Turmel on multiple occasions to request payment of several of these costs awards. Attached hereto as Exhibit 177 are copies of these letters. However, in addition to not paying any of the outstanding costs, Mr. Turmel has not responded to any of these letters.

296. As noted at paragraphs 63-66 above, between 2010 and 2011, Mr. Turmel was also ordered by the SCJ and CAO to pay $18,453.04 in costs in respect of his unsuccessful defamation claims against the CBC. I am advised by Danielle Stone, Legal Counsel to the CBC, and do verily believe, that these costs also remain unpaid.

297. Individuals who relied on Mr. Turmel's litigation templates have also been ordered to pay Canada's costs on at least 35 occasions since 2015. Of these costs orders, 22 remain unpaid despite multiple letters from Canada to the plaintiffs requesting payment. The total outstanding on these costs awards, exclusive of post-judgment interest, is $16,362.82.

298. On November 23, 2018, Canada conducted a judgment debtor examination of Mr. Turmel in light of his numerous unpaid costs awards. In the course of this examination, Mr. Turmel advised that:

- He was convicted of an offence in 1993, and ordered to pay $2,500, which remains unpaid;

- He is the owner of the website www.johnturmel.com, and had owned the website for at least five years;

- He was the author of the Turmel Kit processing-time template claim;

- He filed an appeal on behalf of Mr. Harris in the FCA, paid the filing fee, and was later reimbursed by Mr. Harris; and

- He recently rented a cottage, which was provided to him at a discount by the cottage owner who had used one of Mr. Turmel's litigation kits.

Attached hereto as Exhibit 178 is a copy of the transcript of this examination.

299. On or about November 1, 2019, Mr. Turmel responded to an entry on the Turmel Facebook website. His response notes in part that:

> Jct: It's okay to skip out on paying the interest, that I've done. So I don't pay income tax. It's okay to skip out on costs to courts that allow me to be cheated by the guys I'm stiffing. But I do not say to just skip out on debts.

Attached hereto as Exhibit 179 is a copy of this entry and response.

300. On March 16, 2022, Mr. Turmel posted an entry to the Turmel Google Groups website concerning his newly filed constitutional challenge to the federal COVID-19 vaccination requirements for air travellers. The entry notes in part that:

> JCT: As a professional gambler, I could take on the biggest government ministries and banks and media stations and then stiff them for the costs. I think they gave up chasing me for the $25,000 I owe for suing Dragons Den. Youtube for it.

Attached hereto as Exhibit 180 is a copy of this entry.

J. COMMUNICATIONS WITH THE LAW SOCIETY OF ONTARIO

301. To my knowledge, Mr. Turmel is not licensed to practice law anywhere in Canada. On May 19, 2022, I also searched the online lawyer directories of all thirteen Canadian provincial and territorial law societies for Mr. Turmel's name, and received no results, which further suggests that Mr. Turmel is not licensed to practice law in any province or territory.

302. On August 23, 2016, the Department of Justice wrote to the Law Society of Upper Canada (as it was then known) to express its concern that Mr. Turmel's dissemination of litigation templates and attempts to advocate on behalf of others might amount to the unauthorized practice of law. Attached hereto as Exhibit 181 is a copy of the body of this letter. I have omitted attachments to this letter however, as they are voluminous and consist of documents many of which are found elsewhere in this Affidavit.

303. On November 15, 2016, a Law Society official responded with a letter advising that it had reviewed the Department of Justice's letter, and that its review did not uncover sufficient evidence to warrant further regulatory proceedings against Mr. Turmel. Attached hereto as Exhibit 182 is a copy of this letter.

304. On December 16, 2019, the Department of Justice wrote to the Law Society of Ontario again, this time to advise that Mr. Turmel was incorrectly described as a "Lawyer & Law Firm" on the "John Turmel's Gold Star Team" Facebook website, which I verily believe to be a Facebook website operated by Mr. Turmel. Attached hereto as Exhibit 183 is a copy of this letter.

305. To date, the Law Society of Ontario has not responded to this letter, and I am unaware of it having commenced any regulatory proceedings against Mr. Turmel.

SWORN before me by video conference with the Commissioner in the City of Toronto, in the Province of Ontario, and the affiant in the City of Brampton, in the Regional Municipality of Peel, on May 31, 2022

A Commissioner for Oaths

LISA MINAROVICH

THIS IS EXHIBIT "1" mentioned and referred to in the affidavit of LISA MINAROVICH SWORN before me by affiant in the City of Brampton, in the Regional Municipality of Peel, in the City of Toronto in the Province of Ontario this 31st day of MAY, 2022 in accordance with O. Reg. 431/20.

A COMMISSIONER FOR TAKING AFFIDAVITS

Court No. T-896-81

61

Federal Court of Canada
Trial Division

B E T W E E N :

JOHN C. TURMEL, B.E.E.
BAKING SYSTEMS ENGINEER,

Plaintiff,

- and -

GERALD BOUEY
GOVERNOR OF THE BANK (GAMING HOUSE)
OF CANADA,

Defendant.

I HEREBY CERTIFY that, upon an application on behalf of John C. Turmel for an Order that

> the Bank of Canada cease an desist the genocidal practice of interest and switch to a pure service charge.

the Court (Marceau, J.) on the 26th day of February, 1981, ordered as follows:

> "This application being for an order that is clearly beyond the powers of the Court, it is frivolous, vexatious and constitutes an abuse of the process of this Court. It is therefore dismissed. The Respondent not appearing, there will be no order as to costs."

DATED AT OTTAWA, THIS 27th DAY OF FEBRUARY, 1981.

Deputy Clerk of Process.

CANADA

Court File No.: A-136-81

Federal Court of Appeal

OTTAWA, ONTARIO, THE 10TH DAY OF SEPTEMBER, 1982.

CORAM: THE HONOURABLE MR. JUSTICE PRATTE
THE HONOURABLE MR. JUSTICE RYAN
THE HONOURABLE MR. JUSTICE KERR, D.J.

Between the Appellant:

JOHN C. TURMEL, B.E.E.
Banking Systems Engineer

And the Respondent:

GERALD BOUEY
Governor of the Bank (Gaming House) of Canada

J U D G M E N T

"The style of cause is amended so as to read:

John C. Turmel

v.

Gerald Bouey

The appeal is dismissed with costs.

Louis Pratte
J."

I HEREBY CERTIFY that the above document is a true copy of the original filed of record in the Registry of The Federal Court of Canada the 10th day of September A.D. 19 82.

Dated this 14th day of Sept. 19 82.

G. P. Bureau
Deputy Clerk of Process

Turmel v. Bouey, [1983] S.C.C.A. No. 38

Supreme Court of Canada Rulings on Applications for Leave to Appeal and Other Motions

Supreme Court of Canada

Record created: November 23, 1982.

File No.: 17314

[1983] S.C.C.A. No. 38 | Also reported at:46 N.R. 359

John C. Turmel v. Gerald Bouey

Appeal From:

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Case Summary

Status:

Application for leave to appeal is dismissed with costs (without reasons) November 23, 1982.

Catchwords:

Administrative law — Whether the interest charged by the Bank of Canada is in violation of Natural Biblical and Criminal Laws.

Counsel

In person, for the motion.

David Woods, contra.

Chronology:

1. Application for leave to appeal:
HEARD: November 1, 1982. S.C.C. Bulletin, 1982, p. 948. DISMISSED WITH COSTS: November 23, 1982 (without reasons). S.C.C. Bulletin, 1982, p. 1053. Before: Beetz, Chouinard and Lamer JJ.

Procedural History:

Judgment	at first instance: Application dismissed.
	Marceau J., February 26, 1981.

Judgment on appeal: Appeal dismissed.

Pratte, Ryan JJ. and Korr D.J., September 10, 1982.

End of Document

THIS IS EXHIBIT "2" mentioned and referred to in the affidavit of LISA MINAROVICH SWORN before me by affiant in the City of Brampton, in the Regional Municipality of Peel, in the City of Toronto in the Province of Ontario this 31st day of MAY, 2022 in accordance with O. Reg. 431/20.

A COMMISSIONER FOR TAKING AFFIDAVITS

Turmel v. Toronto Dominion Bank, [1984] S.C.C.A. No. 323

Supreme Court of Canada Rulings on Applications for Leave to Appeal and Other Motions

Supreme Court of Canada

Record created: February 20, 1984.

File No.: 18329

[1984] S.C.C.A. No. 323 | Also reported at:54 N.R. 160

John C. Turmel v. Toronto Dominion Bank

Appeal From:

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Case Summary

Status:

Application for leave to appeal is dismissed (without reasons) February 20, 1984.

Catchwords:

Debtor and creditor — Use of a credit card — Whether the interest charged by the Bank is in violation of Natural, Biblical and Criminal Laws — Whether conflict of interest — Whether the trial judge erred in relying on the doctrine of stare decisis.

Counsel

In person, for the motion.

Peter Pyper, contra.

Chronology:

1. Application for leave to appeal:
   HEARD: February 20, 1984. S.C.C. Bulletin, 1984, p. 213. DISMISSED: February 20, 1984 (without reasons). S.C.C. Bulletin, 1984, p. 213.

   Before: Estey, McIntyre and Wilson JJ.

Procedural History:

Judgment at first instance: Judgment in favour of the Bank in the amount of $2,813.19.
Forget Co. Ct. J., April 15, 1982.

Judgment on appeal: Appeal dismissed.
Houlden, Goodman and Grange JJ.A., December 17, 1982.

End of Document

THIS IS EXHIBIT "3" mentioned and referred to in the affidavit of LISA MINAROVICH SWORN before me by affiant in the City of Brampton, in the Regional Municipality of Peel, in the City of Toronto in the Province of Ontario this 31st day of MAY, 2022 in accordance with O. Reg. 431/20.

A COMMISSIONER FOR TAKING AFFIDAVITS

Most elections contested

Apply Now

Who

JOHN C TURMEL

Where

CANADA ()

When

17 NOVEMBER 2016

John C. Turmel of Ottawa, Canada, contested 90 federal, provincial and municipal elections in Canada from May 1979 to 17 November 2016, clocking up 89 defeats. His one non-loss occurred when the Guelph by-election was pre-empted by a federal election in 2008. Standing for the Pauper Party, Mr Turmel is due to contest his 91st election on 3 April 2017.

All records listed on our website are current and up-to-date. For a full list of record titles, please use our Record Application Search. (You will need to register / login for access)

Comments below may relate to previous holders of this record.

THIS IS EXHIBIT "4" mentioned and referred to in the affidavit of LISA MINAROVICH SWORN before me by affiant in the City of Brampton, in the Regional Municipality of Peel, in the City of Toronto in the Province of Ontario this 31st day of MAY, 2022 in accordance with O. Reg. 431/20.

A COMMISSIONER FOR TAKING AFFIDAVITS

TURMEL v. CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION

Federal Court, Trial Division, Walsh J. November 26, 1980.

Broadcasting — Regulations — Whether Canadian Radio-television and Telecommunications Commission required to obtain information from licensees as to allocation of broadcast time among political candidates — Broadcasting Act, R.S.C. 1970, c. B-11 — Television Broadcasting Regulations, C.R.C., c. 381, s. 9 — Radio (A.M.) Broadcasting Regulations, C.R.C., c. 379, s. 6.

As the Canadian Radio-television and Telecommunications Commission has no legal obligation under the *Broadcasting Act*, R.S.C. 1970, c. B-11, or the Regulations thereunder to obtain information from licensees, on behalf of a member of the public, regarding the allocation of broadcast time to political candidates, an order of *mandamus* will not be given against the Commission to obtain such information.

APPLICATION for an order of *mandamus* against the Canadian Radio-television and Telecommunications Commission.

John C. Turmel on his own behalf.
Robert J. Buchon, for defendant.

WALSH J.:—Plaintiff applies by originating notice of motion for an order of *mandamus* that the CRTC obtain in writing and in graph the algorithms used by CJOH, CFRA and CKOY for the allocation of the time available (presumably for free election broadcasts although the application itself does not so state). While the accompanying affidavit refers both to the February, 1980, general election in which plaintiff ran as an independent candidate and the recent Ottawa mayoralty election in November in which he ran for mayor, his principal grievance appears to be with respect to the latter election. As an engineer and mathematician

he is obsessed with the use of graphs and formulas, which most probably the television and radio stations themselves do not use, although according to him they should, but what it really comes down to is that he wants the defendant to obtain information from the said radio and television stations as to how many minutes of time were allotted to each candidate. Possibly, armed with such information, he might then consider bringing some form of action against the stations in question, who are not however parties to the present proceedings.

It is fundamental law that *mandamus* lies to secure the performance of a public duty in the performance of which the applicant has sufficient legal interest. The applicant must show that he has demanded the performance of the duty and that performance of it has been refused by the authority obliged to discharge it. It is therefore necessary for applicant to show that what he seeks is a duty which the CRTC is obliged to discharge. Nowhere in the *Broadcasting Act*, R.S.C. 1970, c. B-11, or in the *Television Broadcasting Regulations*, C.R.C. 1978, c. 381, or in the Public Notice published on January 9, 1980, with respect to the federal election, all of which were produced by defendant is there any requirement that the CRTC is under an obligation to obtain from regular radio or television stations information to be conveyed to a member of the public, even one such as plaintiff herein who has sufficient legal interest. As he concedes in argument, the objective of his proceedings is to force the CRTC to exercise more control over radio and television stations in connection with the allocation of free time for what might be described as "minor candidates". Another principle is that a *mandamus* will not be issued to order a body as to how to exercise its jurisdiction or discretion. See *Judicial Review of Administrative Action*, 2nd ed. (1968), p. 565, by S.A. de Smith, in which he states:

> In one sense, every body entrusted with powers of decision is under a duty to apply the law correctly; but not all errors of law are redressible by mandamus.

As previously indicated Mr. Turmel's affidavit starts off with his complaint about the allocation of time in the federal election in February. He wrote a very strongly worded letter to CJOH on February 15th setting out his mathematical theories, demanding an apology because his party had not got 62 seconds of time. On the same date a reply was written to him by Bushnell Communications Limited stating that they were well aware of the equitability requirements of the legislation and regulations and pointing out

that he had already been given an accurate, lengthy and adequate explanation of their position. On February 26th he wrote to Mr. Mahoney of the CRTC referring to this letter of February 15th and reiterating that equitable means "just and fair", and making some gratuitous comments about the spelling and mathematics of the writer of the Bushnell Communications Limited letter, and asking the CRTC to obtain in writing in graph form the algorithms determining the allocation of the time. On April 1, 1980, he again wrote Mr. Mahoney about obtaining this from CJOH even suggesting that they should reply as he has "bets that depend on the outcome of this investigation". No reply was received in writing until just before the hearing of his application when a letter dated November 14, 1980, from Mr. Mahoney refers to Mr. Turmel's letters of February 26th and April 1st to him, and February 15, 1980, to the CJOH management. It states that it was unfortunate that a written response was not provided previously by the Commission but that it had been explained to him in telephone conversations on February 13th and 14th, and in a face to face conversation when he delivered the copy of the CJOH-TV letter, that the Commission does not agree that "equitable" time necessarily means "equal" time. The letter concludes "The Elections Committee of the CRTC reviewed your complaint and the CJOH-TV response at that time and was of the view then, and confirms now that it finds no reason to conclude that you received an inequitable allocation of time in the broadcast in question."

With respect to the more recent Ottawa civic election Mr. Turmel complains that on October 25, 1980, CJOH announced its intention to give "their favorites" 10 minutes each of live time to express their views and to give Mr. Alphonse Lapointe and himself only 1 minute, 45 seconds to express their views (and that on tape) on the basis that they were "minor probability candidates". He also complains that although he had announced his candidacy in early August it was only reported by CJOH on October 20th, two and one-half months later. He complains that two radio stations also treated him in the same way, Hal Anthony of CFRA gave Pat Nicol and Marion Dewar two hours of live time each, giving Turmel only two minutes and Lapointe none. Lowell Green of CKOY gave Pat Nicol and Marion Dewar his whole show and gave Lapointe and Turmel no time. He states that the affidavit is made in support of the application for the *mandamus* requiring CRTC to obtain in graph and in writing the algorithms used by these stations for the allocation of the time available in an effort to determine if there is any legitimate basis to his complaint that he is not treated fairly.

It is unheard of to make a *mandamus* order to a public body requiring it to obtain information which it is not obliged by law to obtain to enable the person seeking the order to determine whether he has a legitimate complaint that he was not treated fairly by a third person, even if that third person is to a certain extent subject to the jurisdiction and control of the body against which the *mandamus* is sought. Section 15 of the *Broadcasting Act* gives the Commission power to regulate and supervise all aspects of the Canadian broadcasting system with a view to implementing the broadcasting policy enunciated in s. 3 of this Act, subject to the *Radio Act*, R.S.C. 1970, c. R-1, and any directions to the Commission from the Governor in Council under the authority of the *Broadcasting Act*. Section 3(*d*) of the *Broadcasting Act* reads as follows:

> 3. It is hereby declared that
>
> . . . . .
>
> (*d*) the programming provided by the Canadian broadcasting system should be varied and comprehensive and should provide reasonable, balanced opportunity for the expression of differing views on matters of public concern, and the programming provided by each broadcaster should be of high standard, using predominantly Canadian creative and other resources;

Section 16(1)(*b*) gives the Commission authority to "make regulations applicable to all persons holding broadcasting licences, or to all persons holding broadcasting licences of one or more classes" and subpara. (iii) reads as follows:

> (iii) respecting the proportion of time that may be devoted to the broadcasting of programs, advertisements or announcements of a partisan political character and the assignment of such time on an equitable basis to political parties and candidates,

It is the Commission's interpretation of the words "equitable basis" which applicant complains of. Section 9 of the *Television Broadcasting Regulations* reads as follows:

> 9(1) Each station or network operator shall allocate time for the broadcasting of programs, advertisements or announcements of a partisan political character on an equitable basis to all parties and rival candidates.
>
> (2) Political programs, advertisements or announcements shall be broadcast by stations or network operators in accordance with the directions of the Commission issued from time to time respecting
>
> (*a*) the proportion of time which may be devoted to the broadcasting of programs, advertisements or announcements of a partisan political character; and
>
> (*b*) the assignment of time to all political parties and rival candidates.

Similarly s. 6 of the *Radio (A.M.) Broadcasting Regulations*, C.R.C. 1978, c. 379, reads as follows:

> 6(1) Each station or network operator shall allocate time for the broadcasting of programs, advertisements or announcements of a partisan political character on an equitable basis to all parties and rival candidates.
>
> (2) Political programs, advertisements or announcements shall be broadcast by stations or network operators in accordance with such directions as the Commission may issue from time to time.

Again it is noted that the word "equitable" is used. Certainly if it had been intended that all candidates be given equal time the word would have been "equal".

In connection with the federal election public notice was given, as previously indicated, by the Commission which specified the time allocation to the various parties. It states:

> In arriving at these figures, the Commission first allocated six (6) minutes to each of the registered parties. The remaining time was divided among those parties with members of the House of Commons. The division was based on three factors: the percentage of popular vote in the last election, the number of seats in the House at dissolution and the number of candidates fielded in the last election. In this calculation each of the first two factors was given double weight and the third, single.
>
> The Commission however wishes to emphasize that while those factors were considered relevant under the present circumstances, the above allocation is for purposes of the current election and should not necessarily be taken as a precedent for future elections, where other factors and their relative importance may lead to a different distribution.

This appears to be a reasonable approach, in fact a generous approach with respect to certain parties which did not have the slightest chance of electing any members but nevertheless were allowed six minutes each. It is evident that it recognized the principle however that "equitable" time does not mean "equal" time.

It is also evident that similar regulations could not be applicable to a municipal election where the candidates do not (officially in any event) represent parties but run as individuals, and many of them have never run before, and where there may be ten or more candidates in a given ward for alderman, or running for mayoralty. While there is no doubt that candidates who have little or no chance of success inevitably suffer prejudice by not being given equal time, some common sense distribution of the time available has to be made, if for no other reason, in the interest of the listening public which would not tolerate, in a 20-minute broadcast for example, the allocation of only two minutes to each of the two leading candidates, with a similar amount of time being allotted to perhaps eight other candidates with no hope of winning, and who may have ulterior personal motives for running. In stating this I wish to make it clear that I am not making any criticism of Mr.

Turmel who has been a candidate in many elections, but merely generalizing why equal time cannot be allocated to each and every candidate. The danger in this is of course that it sets up the individual radio or television station as the arbiter and judge of which candidates are serious and worth hearing, which is undoubtedly not democratic. Mr. Turmel seems to feel that this authority should be exercised by the CRTC, and that it should direct the individual stations how the time should be allocated. As stated they did so for the federal election and could probably do the same for a provincial election but it is difficult to see how this authority could be exercised in a municipal election. In any event it is not the function of the Court to reconsider or criticize the merits of the decisions of the CRTC, and no *mandamus* should be issued against it provided it exercises the authority delegated to it by Parliament in accordance with the Act and Regulations. That it has done so is apparent from the fact that it has reviewed Mr. Turmel's complaint and the CJOH-TV response to it (in connection with the federal election) and has confirmed that it finds no reason to conclude that he received an inequitable allocation of time. Whether it has done the same in connection with the civic election is not apparent from the material on the record, but in any event, this is not what the application for *mandamus* seeks, since the application merely requires the Commission to obtain certain information from stations subject to supervision for such use as plaintiff may wish to make of it.

The application for *mandamus* is clearly inadmissible and must be dismissed, but defendant has not insisted on costs in connection with such dismissal.

ORDER

Plaintiff's application for *mandamus* against defendant is dismissed without costs.

Application dismissed.

Turmel v. Canadian Radio-Television and Telecommunications Commission, [1983] S.C.C.A. No. 383

Supreme Court of Canada Rulings on Applications for Leave to Appeal and Other Motions

Supreme Court of Canada

Record created: March 7, 1983.

File No.: 17541

[1983] S.C.C.A. No. 383 | Also reported at:48 N.R. 80

John C. Turmel, B.E.E. v. Canadian Radio-Television and Telecommunications Commission

Appeal From:

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Case Summary

Status:

Application for leave to appeal is dismissed with costs (without reasons) March 7, 1983.

Catchwords:

Administrative law — Mandamus — Whether within the discretion of the CRTC to provide information — Whether alternative remedy available — Whether report was judiciously pursued — Interpretation of the word "equitable" — Section 9(1) of the Television Broadcasting Regulations.

Counsel

In person, for the motion.

Robert J. Buchan, contra.

Chronology:

1. Application for leave to appeal:
HEARD: March 7, 1983. S.C.C. Bulletin, 1983, p. 245. DISMISSED WITH COSTS: March 7, 1983 (without reasons). S.C.C. Bulletin, 1983, p. 245.

   Before: Beetz, McIntyre and Chouinard JJ.

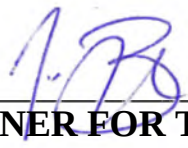
Procedural History:

Judgment at first instance: Application dismissed.
Walsh J., November 26, 1980.

Judgment on appeal: Appeal dismissed.
Heald, Ryan and Kerr JJ.A., December 7, 1982.

End of Document

THIS IS EXHIBIT "5" mentioned and referred to in the affidavit of LISA MINAROVICH SWORN before me by affiant in the City of Brampton, in the Regional Municipality of Peel, in the City of Toronto in the Province of Ontario this 31st day of MAY, 2022 in accordance with O. Reg. 431/20.



A COMMISSIONER FOR TAKING AFFIDAVITS

Turmel v. Canada (Canadian Radio-television and Telecommunications Commission - CRTC), [1983] F.C.J. No. 1132

Federal Court Judgments

Federal Court of Canada - Trial Division

Ottawa, Ontario

Walsh J.

Heard: December 6, 1983

Judgment: December 16, 1983

Action No. T-2884-83

[1983] F.C.J. No. 1132 | [1983] A.C.F. no 1132

Between John C. Turmel, Plaintiff, and Canadian Radio-Television and Telecommunications Commission, Defendant

(12 pp.)

John C, Turmel and D. Osborn, Plaintiff on his own behalf. D. Osborn, for the Defendant.

WALSH J.

This motion was argued at the same time as that bearing No. T-2883-83 John C. Turmel and Bushnell Communications Ltd. A mandamus is sought against Defendant to prevent Bushnell Communications Ltd. from broadcasting a free time political debate in which only three of the four registered candidates for office have been invited to participate on the grounds that such distribution is in violation of Section 9(1) of the Television Broadcast Regulations. An injunction is sought restraining Bushnell Communications Ltd. from airing the said debate for the same reason. Both motions were made presentable on December 6th, 1983 and sought an order abridging the time for service of them as the program in question was to be broadcast on the evening of that day. Because of the urgency of the matter both motions were heard and fully argued on such short notice by Mr. Turmel, representing himself, and by counsel representing the two defendants, and at the conclusion of the hearing the Court advised Plaintiff that neither motion would be granted but that full reasons for failure to do so would be issued since, as Plaintiff contends, the issue is a serious one which will be continually invoked from time to time unless and until definitive rulings are obtained disposing of the arguments raised once and for all.

Mr. Turmel is an independent candidate in almost every election for which he is eligible to run, whether federal, provincial, or municipal, or, as in the present case, a by-election. He has never been successful, nor even obtained a high proportion of the votes, but by virtue of running he obtains exposure and publicity to propound his somewhat unorthodox views, which he has a right to do. Section 3(d) of the Broadcasting Act [R.S.C 1970, c. B-11] reads as follows:

> 3. it is hereby declared that
>
> (d) the programming provided by the Canadian broadcasting system should be varied and comprehensive and should provide reasonable, balanced opportunity for the expression of differing

> views on matters of public concern, and the programming provided by each broadcaster should be of high standard, using predominantly Canadian creative and other resources.
>
> (underlining mine).

Section 16(1)(b) gives the Commission authority to "make regulations applicable to all persons holding broadcasting licences, or to all persons holding broadcasting licences of one or more classes" and subparagraph (iii) reads us follows:

> respecting the proportion of time that may be devoted to the broadcasting of programs, advertisements or announcements of a partisan political character and the assignment of such time on an equitable basis to political parties and candidates. (underlining mine).

It is the Commission's interpretation of the words "equitable basis" which applicant complains of. Section 9 of the Television Broadcasting Regulations [Consolidated Regulations of Canada, Ch. 381] reads as follows:

> 9. (1) Each station or network operator shall allocate time for the broadcasting of programs, advertisements or announcements of a partisan political character on an equitable basis to all parties and rival candidates.
>
> * Political programs, advertisements or announcements shall be broadcast by stations or network operators in accordance with the directions of the Commission issued from time to time respecting
> * the proportion of time which may be devoted to the broadcasting of programs, advertisements or announcements of a partisan political character; and
> * the assignment of time to all political parties and rival candidates. (underlining mine):

Similarly Sections 6 of the Radio (A.M.) Broadcasting Regulations [Consolidated Regulations of Canada, Ch. 379] read as follows:

> 6. (1) Each station or network operator shall allocate time for the broadcasting of programs, advertisements or announcements of a partisan political character on an equitable basis to all parties and rival candidates.
>
> **(23)** Political programs, advertisements or announcements shall be broadcast by stations or network operators in accordance with such directions as the Commission may issue from time to time.

In a somewhat similar action brought by Plaintiff against the Canadian Radio-Television and Telecommunications Commission arising out of a municipal election in the City of Ottawa [60 C.P.R. (2d) 37] I stated at page 41:

> Again it is noted that the word "equitable" is used. Certainly if it had been intended that all candidates be given equal time the word would have been "equal".

While in that case what was sought was a mandamus requiring the Defendant to obtain information respecting the methods used by three broadcasters for the allocation of the time available to candidates on free election broadcasts,

the principles involved were the same. One of the reasons for judgment was that Appellant had failed to show that there was a duty upon the C.R.T.C. to obtain the information requested.

An argument was raised in that case and repeated in the present cases by Mr. Turmel that in a federal election public notice had been given by the Commission specifying the time allocation to various parties, allocating six minutes to each of the registered parties and dividing the remaining time among the parties with members in the House, of Commons and specifying how the division was to be made. The notice given was however careful to specify that "The Commission however wishes to emphasize that while those factors were considered relevant under the present circumstances, the above allocation is for purposes of the current election and should not necessarily be taken as a precedent for future elections, where other factors and their relative importance may lead to a different distribution".

At page 42 of the judgment in commenting on this directive I repeated "It is evident that it recognized the principle however that "equitable" time does not mean "equal" time. I stated on the same page:

> It is also evident that similar regulations could not be applicable to a municipal election where the candidates do not (officially in any event) represent parties but run as individuals, and many of them have never run before, and where there may be ten or more candidates in a given ward for alderman, or running for mayoralty. While there is no doubt that candidates who have little or no chance of success inevitably suffer prejudice by not being given equal time, some common sense distribution of the time available has to be made, if for no other reason, in the interest of the listening public which would not tolerate, in a 20-minute broadcast,for example, the allocation of only two minutes to each of the two leading candidates, with a similar amount of time being allotted to perhaps eight other candidates with no hope of winning, and who may have ulterior personal motives for running. In stating this I wish to make it clear that I am not making any criticism of Mr. Turmel who has been a candidate in many elections, but merely generalizing why equal time cannot be allocated to each and every candidate. The danger in this is of course that it sets up the individual radio or television station as the arbiter and judge of which candidates are serious and worth hearing, which is undoubtedly not democratic. Mr. Turmel seems to feel that this authority should be exercised by the C.R.T.C., and that it should direct the individual stations how the time should be allocated. As stated they did so for the federal election and could probably do the same for a provincial election but it is difficult to see how this authority could be exercised in a municipal election. In any event it is not the function of the Court to reconsider or criticize the merits of the decisions of the C.R.T.C., and no mandamus should be issued against it provided it exercises the authority delegated to it by Parliament in accordance with the Act and Regulations.

Although in arguing the present motions Mr. Turmel seemed to find some of the statements I made during the course of the said judgment helpful to him, it is evident from the passages I have quoted that a firm conclusion was reached that "equitable" cannot be equated with "equal" in connection with time allocations and that it would frequently not be feasible to allow all candidates an equal opportunity to present their views.

I have not changed my views nor has any subsequent jurisprudence altered it.

In the present cases in addition to referring to the directive which was made by the C.R.T.C. in connection with a federal election (supra) Mr. Turmel states that in the 1979 and 1980 elections he was permitted to participate in all debates as an independent candidate as well as in 1981 when CJOH itself invited him to participate. On two occasions when he had at first not been invited to participate the stations eventually backed down and permitted him to do so. He feels that this created a precedent and should be applied in the present instance. He contends that it might be "equitable" if time constraints do not permit all candidates to be heard, to make a selection among them by flipping a coin, or other applications of the laws of chance, but that it is inequitable to permit broadcasters or program directors to themselves make a decision as to which candidate or candidates are worthy to be heard and exclude the others. While there is some merit to this argument particularly when viewed in the light of the Nicholson case which consecrated the duty to act fairly, even in connection with administrative decisions, the Court is in no better position to judge what is a fair allocation of the time than is a broadcaster, and in fact probably less so and less likely to be informed as to the political trends in any given election. Unless one accepts, which the Court does

not, that "equitable" time should be interpreted as meaning "equal" time it would be necessary to have some guidelines to follow to determine how to treat all candidates fairly without giving independent candidates, or in elections where there are no political parties, candidates with little chance of success equal time on the air or on television. While it can be said that no one, whether the producer of the program or even the Court is in a position to or should attempt to judge in advance which candidates, if any, have little chance of success, someone must make this decision and in the absence of guidelines from the C.R.T.C. independent broadcasters are left to make their own decisions in this connection.

Such decisions are administrative and should not be interfered with by the Courts except in cases of such flagrant abuse as to indicate that they have not been made fairly. Such a case would arise if a broadcaster indicated political bias by, for example, excluding representatives of one party, or any candidate generally recognized to be a major candidate, from any participation whatsoever in a political broadcast by it. This would then be in contravention of Section 9 of the Television Broadcasting Regulations (supra).

Counsel for C.R.T.C. submitted that there are some 1500 licensed broadcasting stations and that it would be impossible to attempt to define "equitable" in a manner which would apply to all stations, in all locations in the country, in all elections whether federal, provincial, municipal, or by-elections, as local conditions would require individual stations to make this determination for themselves. It can only intervene after the fact if a complaint is made and impose sanctions on an offending station, perhaps by suspending its licence. It has no authority to issue an order to Bushnell Communications Ltd. such as is sought to prevent the broadcast of the free time political debate in which Mr. Turmel was not invited to participate. The question of what powers the Broadcasting Act gives to C.R.T.C. to control the content of programs being broadcast by a network of individual stations was dealt with at considerable length in the case of National Indian Brotherhood v. Juneau et at and the Canadian Radio-Television Commission [1971 F.C. 498] which judgment was not appealed nor does it appear to have been reversed by any subsequent jurisprudence. At page 511 the judgment commented on the significance of the fact that although Section 18(2) provides that the Executive Committee may and shall in accordance with any direction to the Commission issued by the Governor in Council under the authority of the Act require a licensee to broadcast any programme deemed to be of urgent importance to Canadians generally or to persons resident in the area to which the notice relates there is no similar provision whatsoever for an order to be issued prohibition the broadcast of any given programme. At page 513 it was pointed out that in reading the Act as a whole it is difficult to conclude that Parliament intended to give the Commission the authority to act as a censor of programmes to be broadcast or televised. The judgment stated:

> ...If this had been intended, surely provision would have been made somewhere in the Act giving the Commission authority to order an individual station or a network, as the case may be, to make changes in a programme deemed by the Commission, after an inquiry, to be offensive or to refrain from broadcasting same. Instead of that, it appears that its only control over the nature of programmes is by use of its power to revoke, suspend or fail to renew the licence of the offending station. (underlining mine).

While it may be of little consolation to an aggrieved candidate to file a complaint with the C.R.T.C. in connection with a political broadcast after the broadcast has already taken place and the damage, if any, been done, it is clear that mandamus does not lie against the C.R.T.C. in a situation such as the present. While the C.R.T.C. had a duty pursuant to Section 3(d) of the Broadcasting Act to see that the programming should "provide reasonable balanced opportunity for the expression of differing views in matters of public concern" and Section 16(1)(b) giving the authority to make regulations applicable to all persons holding broadcasting licences with respect to programs of partisan political character and the assignment of such time on an "equitable" basis, such a regulation was made by Section 9 (supra). No special direction was given to the broadcasting stations in question in connection with this by-election as to how time should be assigned on an "equitable" basis as was once done previously in the case of a general election. There is no obligation to do so in connection with each and every election in Canada. The C.R.T.C. therefore performed all the duty which it was required to perform and no mandamus will lie. In the case of Karavos v. Toronto and Gillies [1948 3 D.L.R. 294, Ontario Court of Appeal] the principle was clearly stated that mandamus will only issue if an applicant establishes a clear legal right to have a duty performed which is actually due and obligatory at the time, and that it will not lie merely because of an anticipated breach of duty. It will not lie to

one person to command another to do the required act and no person other than the party whose conduct is called in question need be made a party respondent.

In the Saskatchewan Court of Appeal case of McNutt v. International Woodworkers of America and Moose Jaw Sash & Door Co. (1963) Ltd. [1980 5 Sask. R. 48] Chief Justice Culliton stated at page 549:

> ....while mandamus may lie to compel a statutory board to perform its statutory duty, it does not lie to compel such a board to exercise that duty in a particular way.

The motion for mandamus against the Canadian and Radio Television Commission therefore is dismissed with costs.

Turning now to the motion for injunctive relief against Bushnell Communications Ltd. there is considerable doubt as to whether this Court has any jurisdiction to even consider it, Bushnell being a private party. It is not a Federal Board Commission or other tribunal within the meaning of Section 18 of the Federal Court Act. Mr. Turmel himself referred to a judgment rendered on August 24th, 1983 by Justice Richard of the Supreme Court of Nova Scotia bearing No. S.H. No. 44800 in which he sought an injunction in connection with a political broadcast. The learned judge expressed the view that the C.B.C. program The Journal is basically a news program and follows the National News and is put between it and the local news. He expressed the view that it cannot be considered as a broadcast having a "partisan, political character" to use the words of Section 9(1) of the Television Broadcasting Regulations and that the Court would be most reluctant to impose its judgment as to the news content of basically a news program over the judgment of the people who are expert in that field. An injunction was therefore refused.

On the facts of the present case, according to counsel for Bushnell Communications Ltd., the program Mr. Turmel objects to commences with the 6:00 p.m. news in which it is proposed to devote 3 minutes to giving the profile of the riding, and after the 11:00 o'clock news each candidate will have 60 seconds to make a statement which was taped in advance. There would then be a 15 minute debate between the candidates of the three parties, in which Mr. Turmel was not invited to participate, although his name on candidacy would also have been mentioned in the profile and introduction. It was estimated that he would in all receive 5% to 6% of the air time and it was suggested that this is at least as much as the percentage of the vote which he had ever received in an election, although no proof was submitted of this. While Mr. Turmel complained that his tape was censored, it was disclosed in argument that this is so only to the extent that his five minute tape would have to be cut down to one minute. Certainly he could not elaborate his views in one minute, but that is the nature of the time restraint necessitated by the news program, and the Court should not interfere with the program director's allocation of the news time allotted to the director for this program. While there is some doubt in my mind as to whether a program devoted to the presentation of the views of the candidates in a local election is strictly speaking a news program, presumably it is so considered as being "current affairs".

Quite aside from the question of jurisdiction, therefore, the application for injunction is dismissed with costs.

WALSH J.

THIS IS EXHIBIT "6" mentioned and referred to in the affidavit of LISA MINAROVICH SWORN before me by affiant in the City of Brampton, in the Regional Municipality of Peel, in the City of Toronto in the Province of Ontario this 31st day of MAY, 2022 in accordance with O. Reg. 431/20.

A COMMISSIONER FOR TAKING AFFIDAVITS

1984 CarswellNat 1406
Federal Court of Canada - Trial Division

Turmel and Canadian Radio-Television and Telecommunications Commission, Re

1984 CarswellNat 1406, 27 A.C.W.S. (2d) 178

BETWEEN JOHN C. TURMEL, Applicant, - and - CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION, Respondent.

Muldoon J

Judgment: July 24, 1984
Docket: None given.

Counsel: John C. Turmel on his own behalf Mr. W. Howard for the C.R.T.T.C. Mr.E. Sojonky, Q.C. Mrs. S. Clark Mr. G. Flaherty, Q.C.)Miss S. Reddler for C.B.C. Mr.E. A. Ayers, Q.C.)Mr. D. Basskin for C.T.V.Mr. D. Migicovsky for Global Television

Subject: Public

***MULDOON, J.*:**

1 The applicant John C. Turmel (who inappropriately styled himself plaintiff, but filed no statement of claim) seeks an order of mandamus against the respondent.

2 It appears that, for the purposes of the 1984 general election for the House of Commons, to be held on September 4, next, two television programs, one in the French language and the other in the English language are to be broadcast featuring the leaders of the three political parties which were represented in the House immediately prior to Parliament's recent dissolution. The applicant complains that this arrangement is not "equitable" in terms of section 9(1) of the *Television Broadcasting Regulations*:

> 9 (1) Each station or network operation shall allocate time for the broadcasting of programs, advertisements or announcements of a partisan political character on an equitable basis to all parties and rival candidates.

3 Also notable is subsection (2) which, the respondent's counsel agreed, relates to the same subject matter.

> 9 (2) Political programs, advertisements or announcements shall be broadcast by stations or network operators in accordance with the directions of the Commission issued from time to time respecting
>
> (a) the proportion of time which may be devoted to the broadcasting of programs, advertisements or announcements of a partisan political character; and
>
> (b) the assignment of time to all political parties and rival candidates.

4 The applicant desires the court to make an order compelling the respondent to supervise the allocation of free-time political broadcasts so that the time will be divided equitably among all registered political parties. The applicant contends that such supervision should apply to tonight's and tomorrow's planned broadcasts even if, as he believes, they would have to

be postponed and re-cast.

5 The aplicant and the respondent are not strangers to each other in litigation. They previously met in a case styled *Turmel v. C.R.T.C.* reported (1980) 60 C.P.R. (2d) 37. There, Mr. Justice Walsh held that "equitable" time does not mean "equal" time, and dismissed the applicant's motion for *mandamus*. The parties met again in 1983 under the same style of proceeding, in T-2884-83, where the applicant again sought an order of *mandamus* against the respondent in order to prevent a broadcaster from a free-time political debate in which only three of four candidates were invited to participate, or, grounds that such arrangement violated section 9(1) of the mentioned regulations. Again Walsh, J. dismissed his application. In his exhaustive judgment, Mr. Justice Walsh reasoned in the second case as follows:

> He contends that it might be "equitable" if time constraints do not permit all candidates to be heard, to make a selection among them by flipping a coin, or other applications of the laws of chance, but that it is inequitable to permit broadcasters or program directors to themselves make a decision as to which candidate or candidates are worthy to be heard and exclude the others. While there is some merit to this argument particularly when viewed in the light of the Nicholson case which consecrated the duty to act fairly, even in connection with administrative decisions, the Court is in no better position to judge what is a fair allocation of the time than is a broadcaster, and in fact probably less so and less likely to be well informed as to the political trends in any given election. Unless one accepts, which the Court does not, that "equitable" time should be interpreted as meaning "equal" time it would be necessary to have some guidelines to follow to determine how to treat all candidates fairly without giving independent candidates, or in elections where there are no political parties, candidates with little chance of success equal time on the air or on television. While it ca be said that no one, whether the producer of the program or even the Court is in a position to or should attempt to judge in advance which candidates, if any, have little chance of success, someone must make this decision and in the absence of guidelines from the C.R.T.C. independent broadcasters are left to make their own decisions in this connection.

6 The applicant's contention comes to this: that "equitable" is basically a term of mathematical import, and does not involve any element of judgment or discretion. And yet, in terms of elections in a parliamentary democracy such as Canada's it could be quite inequitable to allocate broadcast time equally among all parties, because such an arrangement could be most unfair to those whom the vast majority of voters have favoured at the polls. One must make the assumption here that broadcasts do actually shape electoral results. One could go further and allocate time to a party which, although not represented in the previous Parliament, nevertheless showed promise (through public opinion polling) of gaining a certain significant proportion of seats in the ensuing election.

7 This is certainly not to say that unpopular or minority opinions are to be suppressed - quite the contrary. It is not to be suggested that freedom of opinion 1,-16 expression of opinion are to be suppressed. It is however clear from, the experience of other parliamentary democracies that the attempt to pretend that a plethora of parties expressing a cacaphony of contending policies are all of equal weight is more than parliamentary democracy can, with reasonable stability, withstand. Such experiences, which are well known, must have been contemplated when an "equitable" allocation of time was enunciated in the regulation. It is not a purely mathematical term, devoid of all judgment or discretion.

8 It is unfortunate that neither the statutes nor the regulations address these problems squarely. Indeed, it is unfortunate that the respondent itself seems not to have issued adquate or any directions pursuant to section 9(2) of the regulations. Without such directions, the respondent makes a self-fulfilling argument to the effect that all it can do is regulate after the fact, thus creating the possibility, if not the probability, that its own equitable concept will have been violated. Counsel for the respondent does argue persuasively however, in these poor circumstances, that the equitable allocation of time is not fastened onto any one program, but to the broadcast programming during the entire election campaign. That appears to be correct, but may be small consolation to a party which has been found to have had inequitable treatment after the election.

9 A valuable reform in this regard would reside in clarification of the statutes and the regulations.

10 The respondent's counsel, instead of presenting a preliminary objection, argued that the applicant lacks status to bring this motion because the applicant approached the respondent through counsel this time as he had on the two previous occasions. Although the applicant himself gave short notice of his application, nevertheless the respondent was too late here in attempting to block the applicant from presenting his motion. Citing *Karavos v. Toronto & Gillies*, [1948] 3 D.L.R. 294 the respondent contends that, for the first time, a formal demand in writing for rectification of the situation ought to have

been first made by the applicant, followed by a formal refusal in writing, Such may well be needed in any future litigation, if time then permits, but will not do for this case.

11 The applicant's mathematical diagrams do not advance his case beyond confirming it to the purely mathematical sense of the expression "equitable" which Walsh, a judge of concurrent jurisdiction, has already held cannot be equated with "equal". For this among the other reasons expressed above, this application is to be dismissed with costs.

O R D E R

IT IS ORDERED that the applicnt's motion for *mandamus* against the respondent be, and it is, dismissed with costs awarded in favour of the respondent.

F. C. Muldoon
Judge
Ottawa, Ontario 24 July, 1984

THIS IS EXHIBIT "7" mentioned and referred to in the affidavit of LISA MINAROVICH SWORN before me by affiant in the City of Brampton, in the Regional Municipality of Peel, in the City of Toronto in the Province of Ontario this 31st day of MAY, 2022 in accordance with O. Reg. 431/20.

A COMMISSIONER FOR TAKING AFFIDAVITS

R. v. Turmel, [1984] O.J. No. 1989

Ontario Judgments

Ontario Supreme Court - Court of Appeal

Toronto, Ontario

Dubin, Thorson and Robins JJ.A.

Judgment: August 1, 1984.

No. 300/84

[1984] O.J. No. 1989

Between Regina, and John C. Turmel

(1 p.)

On appeal from Galligan J.

Counsel

In person, for the appellant. Damien R. Frost, for the respondent.

The following judgment was delivered by

THE COURT

1 No grounds have been advanced before us which would warrant us interfering with the Judgment of Mr. Justice Galligan.

2 Appeal dismissed.

DUBIN J.A.

R. v. Turmel, [1984] S.C.C.A. No. 11

Supreme Court of Canada Rulings on Applications for Leave to Appeal and Other Motions

Supreme Court of Canada

Record created: December 3, 1984.

File No.: 19099

[1984] S.C.C.A. No. 11 | Also reported at:58 N.R. 76

John C. Turmel v. Her Majesty the Queen

Appeal From:

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Case Summary

Status:

Application for leave to appeal is dismissed (without reasons) December 3, 1984.

Catchwords:

Criminal law — Applicant, an independant candidate in a provincial by-election, is excluded from televised debate — Mandamus — Refusal of the Justice of the Peace to issue process.

Counsel

John C. Turmel, in person, for the motion.

J. Casey, contra.

Chronology:

1. Application for leave to appeal:
   HEARD: December 3, 1984. S.C.C. Bulletin, 1984, p. 1205. DISMISSED: December 3, 1984 (without reasons). S.C.C. Bulletin, 1984, p. 1205.

   Before: Estey, McIntyre and Wilson JJ.

Procedural History:

Judgment at first instance: Application for an order in mandamus is dismissed.
Galligan J., March 9, 1984.

Judgment on appeal: Appeal dismissed.
Dubin, Thorson and Robins JJ.A., August 1, 1984.

End of Document

THIS IS EXHIBIT "8" mentioned and referred to in the affidavit of LISA MINAROVICH SWORN before me by affiant in the City of Brampton, in the Regional Municipality of Peel, in the City of Toronto in the Province of Ontario this 31st day of MAY, 2022 in accordance with O. Reg. 431/20.

A COMMISSIONER FOR TAKING AFFIDAVITS

Turmel v. Canadian Radio-Television and Telecommunications Commission (C.R.T.C.), [1985] F.C.J. No. 325

Federal Court Judgments

Federal Court of Canada - Trial Division

Ottawa, Ontario

Dubé J.

Heard: April 23, 1985

Judgment: April 24, 1985

Action No. T-798-85

[1985] F.C.J. No. 325 | [1985] A.C.F. no 325

Between John C. Turmel, Applicant, and Canadian Radio-Television and Telecommunications Commission, Respondent

(4 pp.)

John C. Turmel, on his own behalf. Graham Garton and Susan Clark, for the Respondent.

DUBE J. (Reasons for Order)

This motion was heard at the same time as another one by the applicant against the Canadian Broadcasting Corporation (T-799-85). The instant application seeks the issue of a writ of mandamus ordering the respondent to "supervise and regulate that a taped free-time political broadcast planned for April 24, 1985 by CBC-TV in Ottawa be made available on an equitable basis to all rival candidates pursuant to subsection 9(1) of the Television Broadcasting Regulations and on an equal basis pursuant to section 15 of the Charter of Rights". The provisions read as follows:

> 9. (1) Each station or network operator shall allocate time for the broadcasting of programs, advertisements or announcements of a partisan political character on an equitable basis to all parties and rival candidates.
>
> * (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Firstly, as to the allegation based on subsection 9(1) of the Regulations, Walsh J. of this Court in a similar application confronting the same two parties (John C. Turmel v. Canadian Radio-Television and Telecommunications Commission, T-2884-83) has already held that "equitable time" does not mean "equal time" and decided that "it is clear that mandamus does not lie against the C.R.T.C. in a situation such as the present".

That decision was followed by Muldoon J. in another judgment involving the same two parties (T-1516-84). The learned judge added that it was unfortunate that the C.R.T.C. had not issued "adequate or any directions pursuant to section 9(2) of the regulations". He pointed out that "without such directions, the respondent makes a self-fulfilling

argument to the effect that all it can do is regulate after the fact". He indicated that "a valuable reform in this regard would reside in clarification of the statutes and the regulations", I agree.

As much as I understand the frustration of the Applicant in not being invited to participate in a program along with the three candidates representing the main political parties, I will, of course, follow the established Jurisprudence in the interpretation of "equitable basis" in subsection 9(1) of the Regulations with regards to the C.R.T.C.

As to the Canadian Broadcasting Corporation, it has already been held [Wilcox v. Canadian Broadcasting Corp. 101 D.L.R. (3d) 484] by Thurlow, A.C.J. (now C.J.) that the CBC in respect of its broadcasting activities is not a "federal board, commission or other tribunal" within the meaning of section 2 of the Federal Court Act and that accordingly the Federal Court does not have the jurisdiction to entertain a motion under section 18 of the Act against it.

The jurisprudence, however, does not dispose of the claim by the applicant based on his right to equality under section 15 of the Charter, which section came into force but a few days ago. Whether the equality section will make him more equal than the "equitable basis" of the Regulations is yet to be decided. Unfortunately for the applicant, that constitutional question cannot be answered merely by way of an originating motion [Robert Gould and the Attorney General of Canada and the Solicitor General of Canada [1984] 2 S.C.R. 124] (and on a mere two hours notice).

Mandamus is an extraordinary remedy which will issue only if an applicant establishes a clear legal right to have a duty performed which is actually due and obligatory. [Karavos v. Toronto and Gillies [1948] 3 D.L.R. 294] The applicant says very little in his affidavit in support of the motion. He states merely that he has been excluded from "a free-time partisan political debate for Ottawa Centre on April 24, 1985".

I appreciate that time was and still is of the essence (the debate is to be held this evening), but constitutional matters cannot be solved on such a summary proceeding. The solution is for the applicant to proceed by way of a declaratory action that would allow for pleadings and discovery. The Court, apprised of all the relevant facts and with the benefit of legal arguments, would then be in a position to adjudge whether or not the equitable basis principle as interpreted by the Court is now in violation of section 15 of the Charter. Counsel for the CBC suggested that the proper defendant to such an action ought to be the Attorney General of Canada. I do not find fault with that proposition.

I realize, of course, that this solution will not assist the applicant with reference to the debate of tonight, but he is obviously a persistent man as well as a perennial candidate.

The motion is therefore denied, but under the circumstances, without costs.

DUBE J.
*

THIS IS EXHIBIT "9" mentioned and referred to in the affidavit of LISA MINAROVICH SWORN before me by affiant in the City of Brampton, in the Regional Municipality of Peel, in the City of Toronto in the Province of Ontario this 31st day of MAY, 2022 in accordance with O. Reg. 431/20.

A COMMISSIONER FOR TAKING AFFIDAVITS

Turmel v. Canada (Canadian Broadcasting Corp.), [1987] F.C.J. No. 809

Federal Court Judgments

Federal Court of Canada - Trial Division

Ottawa, Ontario

Joyal J.

Heard: August 12, 1987

Judgment: September 10, 1987

Court File No. T-1716-87

[1987] F.C.J. No. 809 | 14 F.T.R. 24 | 6 A.C.W.S. (3d) 295

Between John C. Turmel, B. Eng., Applicant, and Canadian Broadcasting Corporation, Respondent

Case Summary

Broadcasting — Federal Court not having jurisdiction to apply injunction in respect of Canadian Broadcasting Corp. — Federal Court Act, R.S.C. 1970 (2nd Supp.), c. 10, s. 18.

This was an application for a permanent injunction restraining the Canadian Broadcasting Corporation from broadcasting political broadcasts without full representation of all political parties.

HELD: The application was dismissed.

The corporation was not a federal board or commission to which the powers of the Federal Court extended.

John G. Turmel, for the Applicant. Miss Susan D. Clarke, for the Respondent.

JOYAL J. (Reasons for Order)

This is an application for a permanent injunction restraining the respondent from broadcasting any free-time partisan political programs in which not all the registered political parties in Ontario have been invited to attend.

The issues raised in this application arise from the same factual situation set out by the same applicant in a similar prayer for relief directed against the Canadian Radio-Telecommunications Commission the hearing of which was made concurrent with this one.

For purposes of the brief reasons for an order dismissing his application against the Canadian Broadcasting Corporation, it is unnecessary for me to repeat the facts. The sole issue is whether or not this Court has jurisdiction under section 18 of the Federal Court Act to restrain the respondent.

The quick answer to that question is NO. The respondent is neither a federal board, commission or other tribunal to which the prerogative powers of this Court extend. The respondent is in the business of broadcasting. It is not a statutory body exercising judicial or quasi-judicial functions in furtherance of the public interest. This principle is firmly established by the decision of this Court in Wilcox v. C.B.C., 101 D.L.R. (3d) 484, and by the decision of the Ontario Court of Appeal in Canada Metal Co. Ltd. et al. v. C.B.C. et al. (No. 2), 65 D.L.R. (3d) 231. This principle has been further respected in successive and unsuccessful applications before this court by the same applicant in the years 1980, 1983 and 1984.

The application is dismissed with costs to the respondent which are hereby fixed at $450.00

JOYAL J.

T-1717-87

Federal Court of Canada
Trial Division

BETWEEN:

JOHN C. TURMEL, B. ENG.

Applicant

- and -

CANADIAN RADIO-TELEVISION and TELECOMMUNICATIONS COMMISSION
- and -
GLOBAL TELEVISION NETWORK

Respondents

REASONS FOR ORDER

JOYAL J.:

At the conclusion of the hearing on this application on August 14, 1987, I informed the parties that I would issue an order dismissing the application and providing the parties with brief reasons therefor.

The applicant is not a stranger to this Court nor is he a neophyte in the subject matter of free political broadcasts at election times. Over the last few years, he has laboriously championed the cause of

minor political parties to obtain for them more equitable amounts of free exposure on television and radio for their partisan purposes. He has argued that the major parties have a stranglehold on these free broadcasts, a preemptive position to which the Canadian Radio-Television and Telecommunications Commission and the broadcasting networks under its jurisdiction have readily subscribed.

The applicant asks this Court to intervene in the arrangements made for a televised political debate in Ontario scheduled for August 17, 1987. These arrangements provide for the participation of the three major party leaders engaged in the Ontario elections. Other parties are excluded. The applicant is not happy with this. He cites section 8 of the **Television Broadcasting Regulations** which enjoin broadcasters to provide "equitable" exposure to all parties and rival leaders. He argues that the exclusion of minor parties is contrary to the Regulations and that the Court should enjoin the respondents to order the broadcasters namely, C.B.C., C.T.V. and Global, to invite leaders and representatives of the smaller parties to participate in this broadcast.

The applicant adopts an ingenious approach to his plea. Although egregiously involved in politics and an unsuccessful seeker of elected office in numerous elections, he approaches this Court as a private citizen who feels he has a right to hear from the minor parties. He stoutly argues that the air waves are a public trust

and that the exclusive air time given the major parties effectively precludes him from finding out what the other parties are all about, what their policies are and what solutions they propose to single or multiple issues facing the public. Democratic elections, he says, require an intelligent electorate, an electorate which is left in the dark on this and which is limited in its political judgment process to the oligopoly position of the major parties.

The applicant admits having had many runs at the cat on this point. He has had no success in this Court in similar applications made in 1980, 1983 and 1984. He has enjoyed some success in filing **ex post facto** complaints to the C.R.T.C. which provoked the latter to issue guidelines in 1985 and 1987 respecting the application of the "equitable" principle in the field of free political broadcasts.

These guidelines, however, do not help the applicant's case. The Court's power to intervene and impose its will on the C.R.T.C. has been traversed often enough. Furthermore, the law respecting orders in the nature of **mandamus** has not changed. This Court has no power of prior restraint. The Court must adopt the principle laid down in **Karavos v. Toronto & Gillies**, [1948] 3 D.L.R. 294, that **mandamus** will lie only when an applicant can firmly establish a clear, legal right to have a duty performed which is actually due and obligatory. There is no evidence before me that any duty in that respect is wanting.

I am not suggesting that there is no merit in the applicant's quest for what he considers a better deal for minor parties. His case, however, does not raise legal issues. It raises policy issues which this Court cannot entertain.

The application is dismissed with costs to the respondent which are hereby fixed at a lump sum of $700.00 and costs to the added respondent which are hereby fixed at a lump sum of $450.00.

O T T A W A

September 10, 1987

L.-Marcel Joyal

Judge

Federal Court of Canada

Court No. T-1717-87

BETWEEN

JOHN C. TURMEL, B. ENG.

Applicant

— and —

CANADIAN RADIO-TELEVISION and TELECOMMUNICATIONS COMMISSION
- and -
GLOBAL TELEVISION NETWORK

Respondents

REASONS FOR ORDER

FEDERAL COURT OF CANADA

Names of Counsel and Solicitors of Record

COURT FILE NO.: T-1717-87

STYLE OF CAUSE:

JOHN C. TURMEL, B. ENG.
Applicant

- and -

CANADIAN RADIO-TELEVISION and TELECOMMUNICATIONS COMMISSION
- and -
GLOBAL TELEVISION NETWORK
Respondents

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: August 13th, 1987

REASONS FOR ORDER BY: The Honourable Mr. Justice Joyal
DATED: September 10th, 1987

APPEARANCES:

John C. Turmel Applicant	on his own behalf
Mr. M. McGowan	for the Respondent Global Television Network
Mr. Bill Howard	for the Respondent Canadian Radio-Television and Telecommunications Commission

SOLICITORS OF RECORD:

6p

Fraser & Beatty Toronto, Ontario	for the Respondent Global Television Network
Frank Iacobucci, Q.C. Deputy Attorney General of Canada	for the Respondent Canadian Radio-Television and Telecommunications Commission

JUDICIAL REVIEW - BROADCASTING - POLITICAL DEBATE

Indexed as: Turmel v. Canada (Canadian Radio-Television and Telecommunications Commission)

CONTRÔLE JUDICIAIRE - COMMUNICATIONS - DÉBAT POLITIQUE

Répertorié : Turmel v. Canada (Conseil de la Radio-Télévision canadienne)

THIS IS EXHIBIT "10" mentioned and referred to in the affidavit of LISA MINAROVICH SWORN before me by affiant in the City of Brampton, in the Regional Municipality of Peel, in the City of Toronto in the Province of Ontario this 31st day of MAY, 2022 in accordance with O. Reg. 431/20.

A COMMISSIONER FOR TAKING AFFIDAVITS

90256 115

Action No. 1827/90

SUPREME COURT OF ONTARIO
(TORONTO WEEKLY COURT)

B E T W E E N :	
JOHN C. TURMEL Applicant	John C. Turmel In Person
- and -	
CANADIAN BROADCASTING CORPORATION, GLOBAL TELEVISION NETWORK and CTV TELEVISION NETWORK Respondents	Paul J. Evraire for the Respondent Canadian Broadcasting Corporation Michael McGowan for the Respondent Global Television Network and Diane I. Oleskiw for the Respondent CTV Television Network
	Heard: August 17, 1990

PHILP J.: (ORALLY)

This application brought by Mr. Turmel for a declaration of the democratic right of the Ontario voter to hear the views of all registered party leaders; and for a permanent injunction restraining the respondents, Canadian Broadcasting Corporation, Global and CTV from proceeding with a televised debate scheduled for August 20. The debate amongst the three leaders (all of whom

are members of the legislature) of the three parties which form 100% of the parties represented in the legislature.

The timing is very unfortunate and bad; I cannot grant an injunction on an application with two days notice and very little time to prepare; and with such deep and important issues involved.

I heard a motion by Mr. McGowan, counsel for Global, at the beginning of this application for an order for security for costs pursuant to r.56.01(1)(c), in view of the fact that the applicant had not paid the costs ordered to be paid by him in a previous application involving the same parties in 1987. He also asked that this application be adjourned until the security is posted. Because of the importance of the issue, I dismissed that motion at that time, in order to hear Mr. Turmel's argument on the merits. I also have allowed the short notice to be abridged. Counsel for the three respondents did not object to the short notice, and so the matter was heard in spite of the two days notice instead of ten days notice.

On the merits, I cannot allow this court to grant an injunction at this late date which would deny the people of Ontario the right to hear the three elected leaders of the three parties presently holding seats in the legislature. In my view, to accede to the applicant's request would be a clear blow to the freedom of

speech to which the leaders and citizens of Ontario, in fact, Canada are entitled.

The evidence before me indicates that the three leaders have agreed with the three respondents to participate in the debate on the major issues facing the province in the upcoming election. The agreement was negotiated amongst the leaders and the broadcasters; and did not include the presence of other debaters at the same time. This court cannot impose further terms or conditions on such a contractual agreement made amongst those parties. The application for injunction must therefore be dismissed.

The issue, however, is more important than the one debate to take place on August 20. The applicant has asked, as well, for a declaration. This court may, pursuant to r.38.11(1)(b), order that that issue be tried, in the normal procedure laid down in the Rules of Civil Procedure and I so order. This application shall be treated as an action in respect to the request for a declaration. If the applicant wishes to have this matter proceed further, he will deliver a statement of claim; and the respondents will deliver statements of defence and then it can proceed in the normal manner laid down by the rules. This application shall therefore be adjourned to be disposed of by the trial judge.

Before, however, the applicant can proceed with such an action, he must post security for costs as requested by counsel for Global Television and Canadian Broadcasting Corporation, in view of the outstanding costs awarded against him in the previous hearing before Reid J. and before the Federal Judge, Mr. Justice Joyal.

The material before me indicates that the costs for each party will exceed $1,000.00 at this time, and accordingly I order that the applicant post security by paying into court to the credit of this action the total of $3,000.00, $1,000.00 for each of the respondents; and that pursuant to rule 56.05, the application or action is stayed until he has filed the necessary security except, of course, to appeal this order, if he wishes.

I have been referred to the case of Trieger v. C.B.C. (1988), 66 O.R. (2d) 273, in which the issues before me were dealt with in great detail and in a very complete and comprehensive manner by Campbell J. I adopt his reasons completely, but do not intend to repeat them in view of the lack of time in which to properly review and prepare them.

For these reasons I am dismissing the application for injunction. As stated, if the applicant wishes to proceed further, he must first provide security for costs.

The costs of this application will be reserved to the future trial judge.

RELEASED: September 11, 1990

Action No. 1827/90

SUPREME COURT OF ONTARIO
(TORONTO WEEKLY COURT)

B E T W E E N :

JOHN C. TURMEL

Applicant

- and -

CANADIAN BROADCASTING CORPORATION, GLOBAL TELEVISION NETWORK and CTV TELEVISION NETWORK

Respondents

ORAL JUDGMENT

PHILP J.

RELEASED: September 11, 1990

GP

THIS IS EXHIBIT "11" mentioned and referred to in the affidavit of LISA MINAROVICH SWORN before me by affiant in the City of Brampton, in the Regional Municipality of Peel, in the City of Toronto in the Province of Ontario this 31st day of MAY, 2022 in accordance with O. Reg. 431/20.

A COMMISSIONER FOR TAKING AFFIDAVITS

Turmel v. Canada (Canadian Radio-Television and Telecommunications Commission), [2008] F.C.J. No. 1741

Federal Court Judgments

Federal Court of Appeal

Toronto, Ontario

Létourneau, Noël et Blais JJ.A.

Heard: December 15, 2008.

Judgment: December 17, 2008.

Docket A-451-07

[2008] F.C.J. No. 1741 | [2008] A.C.F. no 1741 | 2008 FCA 405

Between John C. Turmel, Applicant, and Canadian Radio-Television and Telecommunications Commission, Respondent

(13 paras.)

Case Summary

Media and communications law — Telecommunications — Civil liability of carriers — Application by Turmel for judicial review of a decision of the Canadian Radio-Television and Telecommunications Commission — Applicant was independent candidate in 2007 Ontario general election — He participated in a debate program hosted by Rogers Television — Applicant wore button showing his party affiliation — Moderator asked him to remove button, which he did — Applicant subsequently removed from debate because he interrupted another candidate — Applicant complained to respondent — Application for order in the nature of mandamus was dismissed — Application dismissed — There was no evidence that the respondent refused to deal with applicant's complaint.

Statutes, Regulations and Rules Cited:

Broadcasting Act, S.C. 1991, c. 11, s. 31(2)

Counsel

John C. Turmel, for himself.

Regan Morris and Peter McCallum, for the Respondent.

The judgment of the Court was delivered by

LÉTOURNEAU J.A.

1 Mr. John C. Turmel who is self-represented seeks by way of judicial review a declaratory relief against the respondent.

2 The facts underlying the applicant's demand can be summarized as follows.

3 Mr. Turmel was an independent candidate in the 2007 Ontario general election. On September 18, 2007, he participated in a debate program hosted by Rogers Television (Rogers) for six candidates of the riding of Brant.

4 Mr. Turmel wore a button showing his party affiliation. He was required to remove his button by the moderator, which he did. He was subsequently removed from the debate because, according to Rogers, he interrupted a fellow candidate.

5 Six days later, he complained to the respondent, alleging that his removal from the debate violated his equitable share of the free-time partisan political broadcast required by the CRTC regulations.

6 A staff member of the respondent informed Mr. Turmel that the respondent was seeking a response from Rogers and requesting that Rogers keep a tape of the broadcast in question.

7 By the same occasion, Mr. Turmel was informed that his complaint would be placed on the public file at the end of three weeks unless he objected. Failing an objection, the matter of the complaint would be dealt with by the respondent during licence renewal time or by interested parties. He did not object to this process proposed by the respondent.

8 On October 1, 2007, Mr. Turmel wrote to the respondent requesting it to compel Rogers to give the applicant an equitable share of time before Election Day. However, three days later, on October 4, 2007, he brought the issue before this Court by seeking an order in the nature of mandamus against the respondent. The application was dismissed by Décary J.A. on November 5, 2007.

9 After a review of the facts, the parties' submissions and the law, I have come to the conclusion that this application for judicial review should be dismissed.

10 The first difficulty encountered in these proceedings originates from the fact that the respondent rendered no decision which can be the subject of judicial review or against which relief can be sought. Mr. Turmel did not pursue his complaint before the respondent and request the respondent to rule on it. Instead, he applied to this Court for a mandamus.

11 This Court cannot, in the context of the present proceedings, exercise the jurisdiction conferred upon the respondent and proceed to assess the merit of Mr. Turmel's complaint. There is no evidence on the record that the respondent refused to deal with the complaint. On the contrary.

12 Moreover, had Mr. Turmel pursued his complaint and obtained a decision from the respondent, he would have had a right of appeal on leave from that decision pursuant to subsection 31(2) of the *Broadcasting Act*, S.C. 1991, c. 11. The existence of a right of appeal, whether or not limited by a requirement to obtain leave, is a bar against judicial review: see section 18.5 and subsection 28(2) of the *Federal Courts Act*, R.S.C. 1985, c. F-7 as amended and *Pachul v. Canadian Radio-Television and Telecommunications Commission* (2002), 289 N.R. 117 (F.C.A.). He would have been barred from bringing this judicial review proceeding.

13 For these reasons, I would dismiss the application for judicial review without costs since the respondent did not seek them.

LÉTOURNEAU J.A.
NOËL J.A.:— I agree
BLAIS J.A.:— I agree

End of Document

Canadian Radio-television and Telecommunications Commission
Conseil de la radiodiffusion et des télécommunications canadiennes

Broadcasting Decision CRTC 2009-184

Ottawa, 8 April 2009

Complaint regarding an election debate program broadcast by Rogers Cable Communications Inc. during the 2007 Ontario provincial election

In this decision, the Commission finds that Rogers Cable Communications Inc. did not breach section 27(4) of the Broadcasting Distribution Regulations *when it expelled a political candidate from an election debate program during the 2007 Ontario provincial election campaign. The Commission therefore* ***dismisses*** *the complaint by Mr. John Turmel.*

Introduction

1. On 24 September 2007, the Commission received a complaint from Mr. John Turmel regarding an election debate program broadcast by Rogers Cable Communications Inc. (Rogers) on its community channel, Rogers TV. In his complaint, Mr. Turmel submitted that Rogers breached regulations regarding the equitable allocation of time for programs of a partisan political character by expelling him from the program.

2. On 18 September 2007, Rogers taped a program involving a debate between six candidates in the riding of Brant, one of whom was Mr. Turmel. The program was to be broadcast a number of times in September and October 2007. The Ontario provincial election took place on 10 October 2007.

3. Rogers replied to Mr. Turmel's complaint on 27 September 2007. Mr. Turmel was not satisfied with Rogers' reply and on 1 October 2007, he requested that the Commission take action in relation to his complaint by directing Rogers to grant him an equitable share of airtime before election day.

4. On 4 October 2007, Mr. Turmel brought an application for judicial review in the Federal Court of Appeal in an effort to have the situation remedied before the further rebroadcast of the election debate program. A judge of the Federal Court of Appeal denied interim relief in November 2007. The Federal Court of Appeal dismissed Mr. Turmel's application on 17 December 2008 on the grounds that the Commission had not rendered a decision with respect to Mr. Turmel's complaint which could be the subject of judicial review or against which relief could be sought.[1]

5. Subsequently, on 26 January 2009, Mr. Turmel requested that the Commission render a decision on his complaint.

[1] John C. Turmel vs. CRTC, 2008 FCA 405

The complaint

6. Mr. Turmel submitted that he had been denied an equal share of time in Rogers' election debate program as required by the regulations regarding the equitable allocation of time for programs of a partisan political character. Mr. Turmel stated that, in contrast to the other candidates who were invited to participate in the debate and who received an equal share of a two-hour debate, he was given only seconds before being denied any further time. Mr. Turmel requested that the Commission direct Rogers to grant him an equitable share of time in the debate program before election day. Specifically, Mr. Turmel requested that Rogers correct the situation by allowing him to tape a 32-minute segment to be added before or after the remaining broadcasts of the election debate program.

Rogers' reply

7. In its reply, Rogers denied that Mr. Turmel was not granted equitable time in the election debate program. Rogers stated that Mr. Turmel was provided with the debate rules and format in advance, and at no time prior to the debate had Mr. Turmel raised concerns with regard to them. According to Rogers, Mr. Turmel used his opening statement to take issue with the moderator and the debate format; he refused to remove a badge he was wearing despite the fact that the debate rules prohibited candidates from displaying promotional material on the production set; and he interrupted the opening remarks of a fellow candidate. In Rogers' view, Mr. Turmel was provided with an equitable opportunity to participate in the debate program and Rogers acted in a professional manner to ensure the coverage of the debate was balanced and not disruptive to its viewers.

Commission's analysis and determinations

8. Given that the election has already taken place, the Commission considers moot Mr. Turmel's request for relief, namely, that the Commission compel Rogers to provide him with an equitable share of time as part of the broadcasts of the election debate program.

9. However, at the heart of Mr. Turmel's complaint is his allegation that, by expelling him from the debate program, Rogers breached the Commission's regulations regarding the equitable allocation of time for programs of a partisan political character during an election period.

10. The regulatory provision regarding the equitable allocation of time for programs of a partisan political character that applies to Rogers is set out in section 27(4) of the *Broadcasting Distribution Regulations*:

> If a licensee provides time on the community channel in a licensed area during an election period for the distribution of programming of a partisan political character, the licensee shall allocate that time on an equitable basis among all accredited political parties and rival candidates.

11. Similarly worded provisions exist in the *Radio Regulations, 1986*, the *Television Broadcasting Regulations, 1987*, and the *Specialty Services Regulations, 1990*.

12. In Public Notice 1995-44, the Commission clarified that the above provisions in the regulations do not apply to debate programs. In the same notice, the Commission further stated that it would not require that debate programs feature all rival parties or candidates in one or more programs. This notice followed the Ontario Court of Appeal's decision in *R. v. Canadian Broadcasting Corporation et al.*, [1993] 51 C.P.R.(3d), which held that debate programs were not programs of a "partisan political character" within the meaning of the Commission's regulations. In the Court's view, while the participants in a debate may very well be partisan, the program itself was not because it presented the views of multiple candidates. As such, the Court found that debate programs were not covered by the relevant provisions of the Commission's regulations. Leave to appeal this decision to the Supreme Court of Canada was denied.

13. The Commission reiterated these determinations in Broadcasting Circular 2007-5 in connection with the 10 October 2007 Ontario provincial election.

14. In light of the Commission's determinations in Public Notice 1995-44, the Commission considers that it is within Rogers' editorial discretion to set the rules and format for debates it chooses to air, and to exclude participants where, in its view, those rules are not being complied with.

15. Accordingly, the Commission finds that Rogers Cable Communications Inc. did not breach section 27(4) of the *Broadcasting Distribution Regulations* when it expelled Mr. Turmel from an election debate program during the 2007 Ontario provincial election campaign. The Commission therefore **dismisses** the complaint by Mr. John Turmel.

Secretary General

Related documents

- *Guidelines to all licensees of broadcasting undertakings serving the province of Ontario concerning the Ontario provincial election that will take place on 10 October 2007*, Broadcasting Circular CRTC 2007-5, 7 September 2007

- *Election-period broadcasting: Debates*, Public Notice CRTC 1995-44, 15 March 1995

Turmel v. Canada (Canadian Radio-Television and Telecommunications Commission), [2009] S.C.C.A. No. 334

Supreme Court of Canada Rulings on Applications for Leave to Appeal and Other Motions

Supreme Court of Canada

Record created: August 24, 2009.

Record updated: November 19, 2009.

File No.: 33319

[2009] S.C.C.A. No. 334 | [2009] C.S.C.R. no 334

John C. Turmel v. Canadian Radio-Television and Telecommunications Commission

Appeal From:

ON APPEAL FROM THE FEDERAL COURT OF APPEAL

Case Summary

Status:

Application for leave to appeal dismissed without costs (without reasons) November 19, 2009.

Catchwords:

Communications law — Broadcasting — Debate program — Allocation of time — Programming of a partisan political character — Whether the election candidate's removal from the election debate amounted to denying him an equitable share of free-time partisan political broadcasting during an election period as required by s. 27(4) of the BroadcastingDistribution Regulations, S.O.R./97-555.

Case Summary:

The Applicant, Mr. Turmel, was a candidate in a 2007 Ontario provincial election. He participated in an elections debate program hosted by Rogers Cable Communications Inc. At some point during or shortly after he made his opening statement, he was removed from the set and not allowed to participate further in the debate. According to Rogers, Mr. Turmel was removed because he used his opening statement to take issue with the moderator and the debate format, he refused to remove a badge despite the fact that debate rules prohibited him from wearing promotional material, and he interrupted the opening remarks of a fellow candidate.

Mr. Turmel filed a complaint with the Canadian Radio-Television and Telecommunications Commission ("CRTC") alleging his removal amounted to denying him an equitable share of free-time partisan political broadcast during an election period as required by s. 27(4) of the Broadcasting Distribution Regulations.

The CRTC dismissed the complaint. It noted that Mr. Turmel's request to compel Rogers to provide him with an equitable share of time in the debate was moot given that the election had already taken place. In any event, relying on the Ontario Court of Appeal decision in Vézina v. Canada Broadcasting Corporation (1993), 51 C.P.R. (3d) 192 (Ont. C.A.), the CRTC found that Rogers did not breach the broadcasting requirements set out in s.

27(4) of the Regulations because the provision does not apply to debate programs. Therefore, it was within Rogers' discretion to exclude participants from the debate who did not comply with the rules and format set for the program.

Leave to appeal the decision to the Federal Court of Appeal pursuant to s. 31(2) of the Broadcasting Act, R.S.C. 1985, c. B-9, was refused. No reasons were given.

Counsel

John C. Turmel, for the motion.

John Keogh (Canadian Radio-Television and Telecommunications Commission), contra.

Chronology:

1. Application for leave to appeal:
   FILED: August 24, 2009. S.C.C. Bulletin, 2009, p. 1198.

   SUBMITTED TO THE COURT: October 26, 2009. S.C.C.

   Bulletin, 2009, p. 1463.

   DISMISSED WITHOUT COSTS: November 19, 2009 (without

   reasons). S.C.C. Bulletin, 2009, p. 1601.

   Before: McLachlin C.J. and Abella and Rothstein JJ.

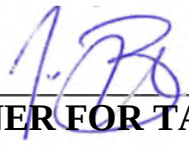
Procedural History:

Judgment at first instance: Applicant's complaint dismissed. Canadian Radio-Television and Telecommunications Commission, April 8, 2009.

Judgment on appeal: Motion for leave to appeal dismissed. Federal Court of Appeal, Nadon, Evans and Pelletier JJ.A., July 21, 2009.

Neutral Citation: 2008 FCA 405; [2008] F.C.J. No. 1741.

THIS IS EXHIBIT "12" mentioned and referred to in the affidavit of LISA MINAROVICH SWORN before me by affiant in the City of Brampton, in the Regional Municipality of Peel, in the City of Toronto in the Province of Ontario this 31st day of MAY, 2022 in accordance with O. Reg. 431/20.



A COMMISSIONER FOR TAKING AFFIDAVITS

Federal Court Cour fédérale

Date: 20160512

Docket: T-561-15

Citation: 2016 FC 532

Ottawa, Ontario, May 12, 2016

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

JOHN TURMEL

Plaintiff

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

Defendant

ORDER AND REASONS

I. Introduction

[1] This is a summary judgment motion in respect to an action challenging the constitutional validity of a provision of the *Canada Elections Act*, SC 2000, c 9 [Act]. That provision sets a cap on the reimbursement of auditor fees in accordance with s 477.75 of the Act. The parties have agreed to this proceeding by summary judgment.

[2] The Plaintiff contends that the cap, in his case, $250, is an impediment to his s 3 rights under the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982* being schedule B to the *Canada Act 1982 (UK)*, 1982, c 11 [*Charter*].

3. Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein.	**3.** Tout citoyen canadien a le droit de vote et est éligible aux élections législatives fédérales ou provinciales.

[3] In essence, the Plaintiff says that since he files a "nil" election expenses return – because he chooses not to raise money for his campaigns – the $250 reimbursement is inadequate to pay auditor's fees. The auditor's fees are incurred in preparing and filing with the Chief Electoral Officer a "nil" election expenses return. The fact that he has to pay out of his own pocket for most of the audit fee is argued to be an impediment to his s 3 *Charter* rights.

II. Background

[4] Mr. Turmel is unique in that he has run in 87 elections at the federal, provincial and municipal level. He has yet to be successful. His situation is not representative of the issues faced by others and therefore must be regarded on his own specific facts. His situation is not a "reasonable hypothetical" sometimes referred to by the Supreme Court of Canada as a basis for *Charter* analysis.

[5] The relevant legislative provisions are attached as Schedule A. The most pertinent is s 477.75 of the Act:

477.75 On receipt of the documents referred to in subsection 477.59(1), including the auditor's report, and a copy of the auditor's invoice for the auditor's report, the Chief Electoral Officer shall provide the Receiver General with a certificate that sets out the greater of	**477.75** Sur réception des documents visés au paragraphe 477.59(1), notamment le rapport du vérificateur, ainsi que d'une copie de la facture de celui-ci pour le rapport, le directeur général des élections transmet au receveur général un certificat indiquant le plus élevé des montants suivants :
(a) the amount of the expenses incurred for the audit, up to a maximum of the lesser of 3% of the candidate's election expenses and $1,500, and	**a)** le montant des dépenses engagées pour la vérification, jusqu'à concurrence du moins élevé de 3 % des dépenses électorales du candidat et 1 500 $;
(b) $250.	**b)** 250 $.

[6] The Act requires all candidates to have an auditor and provides for a form of subsidy to offset audit expenses. Currently, the subsidy ranges between $250 and $1,500 depending on the candidates' electoral expenses and fundraising.

[7] Mr. Turmel ran in the Toronto-Centre federal by-election on November 25, 2013. In respect of his previous federal campaigns, his then auditor charged only $250 for his audit. That auditor, having retired, was replaced by a firm that charged $678. Mr. Turmel, being eligible for the $250 subsidy, complains about the $428 shortfall.

[8] Mr. Turmel does not complain that he has no money to pay this audit expense. He is self-employed and earns his income from gambling. He has not provided any evidence of inability to pay the audit fees of which he complains.

[9] He has made a choice not to raise campaign funds to support his various runs for political office. It is clear that this choice was not imposed upon him.

III. Analysis

[10] It is settled law that a claimant asserting a breach of the *Charter* – in this case an impediment to s 3 electoral rights – must establish the alleged breach (*Phillips v Nova Scotia (Commission of Inquiry into the Westray Mine Tragedy)*, [1995] 2 SCR 97).

[11] The rights that underlie s 3 of the *Charter* are participatory in nature. These rights include the right to effective representation and meaningful participation (see *Figueroa v Canada (Attorney General)*, 2003 SCC 37, [2003] 1 SCR 912).

[12] For there to be a finding of a breach of s 3, there must be an appreciable interference with the capacity of a citizen to play a meaningful role in the electoral process. It is not a right to a publicly funded or unlimited role. In that regard I adopt the reasoning of the Ontario Superior Court in *De Jong v Ontario (Attorney General)* (2007), 88 OR (3d) 335.

[13] In my view, Mr. Turmel has not shown that the subsidy provision is an appreciable interference with his capacity to play a meaningful role in the electoral process. Even he admitted that there was no proof that the provision had interfered with his s 3 rights.

[14] Mr. Turmel provides no evidence that he had been limited by this provision in any past elections. To the contrary, he has had the opportunity to engage in meaningful participation in the election process. There is also no evidence that there is a likelihood of interference with his s 3 rights in the future.

[15] On that basis alone, Mr. Turmel cannot succeed in this challenge.

[16] The Supreme Court has often cautioned courts not to engage in *Charter* analysis on a hypothetical or theoretical basis. It is unnecessary and unwise to engage in any further consideration of the scope and impact of electoral finance laws and the interface with the *Charter* and s 3 in particular.

IV. Conclusion

[17] For these reasons, this action will be dismissed with costs.

ORDER

THIS COURT ORDERS that the action is dismissed with costs.

"Michael L. Phelan"
Judge

SCHEDULE A

Canada Elections Act, SC 2000, c 9

367 (1) Subject to subsection 373(4), no individual shall make contributions that exceed	**367 (1)** Sous réserve du paragraphe 373(4), il est interdit à tout particulier d'apporter des contributions qui dépassent :
(a) $1,500 in total in any calendar year to a particular registered party;	**a)** 1 500 $, au total, à un parti enregistré donné au cours d'une année civile;
(b) $1,500 in total in any calendar year to the registered associations, nomination contestants and candidates of a particular registered party;	**b)** 1 500 $, au total, à l'ensemble des associations enregistrées, des candidats à l'investiture et des candidats d'un parti enregistré donné au cours d'une année civile;
(c) $1,500 in total to a candidate for a particular election who is not the candidate of a registered party; and	**c)** 1 500 $, au total, au candidat qui n'est pas le candidat d'un parti enregistré pour une élection donnée;
(d) $1,500 in total in any calendar year to the leadership contestants in a particular leadership contest.	**d)** 1 500 $, au total, à l'ensemble des candidats à la direction pour une course à la direction donnée au cours d'une année civile.
…	…
477.59 (1) A candidate's official agent shall provide the Chief Electoral Officer with the following in respect of an election:	**477.59 (1)** L'agent officiel d'un candidat produit auprès du directeur général des élections pour une élection :
(a) an electoral campaign return, in the prescribed form, on the financing and expenses for the candidate's electoral campaign;	**a)** un compte de campagne électorale exposant le financement et les dépenses de campagne du candidat dressé sur le formulaire

prescrit;

(b) the auditor's report on the return under section 477.62;

b) le rapport, afférent au compte, fait par le vérificateur en application de l'article 477.62;

(c) a declaration in the prescribed form by the official agent that the return is complete and accurate; and

c) une déclaration de l'agent officiel attestant que le compte est complet et précis, effectuée sur le formulaire prescrit;

(d) a declaration in the prescribed form by the candidate that the return is complete and accurate.

d) une déclaration du candidat attestant que le compte est complet et précis, effectuée sur le formulaire prescrit.

…

…

(7) The documents referred to in subsection (1) shall be provided to the Chief Electoral Officer within four months after polling day.

(7) Les documents visés au paragraphe (1) doivent être produits auprès du directeur général des élections dans les quatre mois suivant le jour du scrutin.

…

…

477.62 (1) As soon as feasible after polling day, a candidate's auditor shall report to the candidate's official agent on the electoral campaign return and shall, in accordance with generally accepted auditing standards, make any examination that will enable the auditor to give an opinion in the report as to whether the return presents fairly the information contained in the financial records on which it is based.

477.62 (1) Dès que possible après le jour du scrutin, le vérificateur du candidat fait rapport à l'agent officiel de sa vérification du compte de campagne électorale dressé pour l'élection en cause. Il fait, selon les normes de vérification généralement reconnues, les vérifications qui lui permettent d'établir si le compte présente fidèlement les renseignements contenus dans les écritures comptables sur lesquelles il est fondé.

(2) The auditor's report shall include a completed checklist

(2) Le rapport du vérificateur comporte une liste de contrôle

for audits in the prescribed form.

…

477.75 On receipt of the documents referred to in subsection 477.59(1), including the auditor's report, and a copy of the auditor's invoice for the auditor's report, the Chief Electoral Officer shall provide the Receiver General with a certificate that sets out the greater of

(a) the amount of the expenses incurred for the audit, up to a maximum of the lesser of 3% of the candidate's election expenses and $1,500, and

(b) $250.

477.76 On receipt of the certificate, the Receiver General shall pay the amount set out in it to the auditor out of the Consolidated Revenue Fund.

477.77 (1) The Chief Electoral Officer shall provide the Receiver General with a certificate that lists the names of

(a) each candidate, including one who has withdrawn under subsection 74(1), whose official agent the Chief Electoral Officer is satisfied has provided the documents under section 477.59 and returned any unused forms referred to in

de vérification établie sur le formulaire prescrit.

…

477.75 Sur réception des documents visés au paragraphe 477.59(1), notamment le rapport du vérificateur, ainsi que d'une copie de la facture de celui-ci pour le rapport, le directeur général des élections transmet au receveur général un certificat indiquant le plus élevé des montants suivants :

a) le montant des dépenses engagées pour la vérification, jusqu'à concurrence du moins élevé de 3 % des dépenses électorales du candidat et 1 500 $;

b) 250 $.

477.76 Sur réception du certificat, le receveur général paie au vérificateur, sur le Trésor, la somme qui y est précisée.

477.77 (1) Le directeur général des élections remet au receveur général un certificat où figure le nom de :

a) tous les candidats — y compris le candidat qui s'est désisté en application du paragraphe 74(1) — dont il est convaincu que l'agent officiel a produit les documents visés à l'article 477.59 et remis au directeur du scrutin, en conformité

section 477.86, in accordance with subsection 477.88(2); and

avec le paragraphe 477.88(2), les exemplaires inutilisés des formulaires visés à l'article 477.86;

(b) any candidate who has died before the closing of all the polling stations.

b) tout candidat qui est décédé avant la clôture de tous les bureaux de scrutin.

(2) On receipt of the certificate, the Receiver General shall pay out of the Consolidated Revenue Fund the amount of each listed candidate's nomination deposit to their official agent. The payment may be made to the person designated by the official agent.

(2) Sur réception du certificat, le receveur général paie, sur le Trésor, le montant du cautionnement de candidature à l'agent officiel de chaque candidat dont le nom figure sur le certificat. Le paiement peut aussi être fait à une personne désignée par l'agent officiel.

(3) If there is no official agent in the case described in paragraph (1)(b), the Chief Electoral Officer may return the nomination deposit to any person that he or she considers appropriate.

(3) En l'absence d'agent officiel dans le cas visé à l'alinéa (1)b), le directeur général des élections détermine le destinataire de la remise du cautionnement de candidature.

(4) Any nomination deposit that is not returned under this section is forfeited to Her Majesty in right of Canada.

(4) Tout cautionnement de candidature qui n'est pas remis au titre du présent article est confisqué au profit de Sa Majesté du chef du Canada.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-561-15
STYLE OF CAUSE:	JOHN TURMEL v HER MAJESTY THE QUEEN IN RIGHT OF CANADA
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	MAY 10, 2016
ORDER AND REASONS:	PHELAN J.
DATED:	MAY 12, 2016

APPEARANCES:

John Turmel	FOR THE PLAINTIFF (ON HIS OWN BEHALF)
Jacob Pollice Gail Sinclair	FOR THE DEFENDANT

SOLICITORS OF RECORD:

William F. Pentney Deputy Attorney General of Canada Toronto, Ontario	FOR THE DEFENDANT

Federal Court of Appeal | Cour d'appel fédérale

Date: 20170501

Docket: A-202-16

Ottawa, Ontario, May 1, 2017

CORAM: **STRATAS J.A.**
WEBB J.A.
NEAR J.A.

BETWEEN:

JOHN TURMEL

Appellant

and

HER MAJESTY THE QUEEN

Respondent

ORDER

WHEREAS the Court issued a Notice of Status Review on January 24, 2017, requiring the appellant to file submissions as to why this appeal should not be dismissed for delay;

AND WHEREAS this Court in its order of March 21, 2017, gave the appellant one final chance to pursue this appeal and ordered that the appellant shall serve and file paper copies of the appeal book within thirty (30) days of the Court's order, failing which the appeal may be dismissed for delay;

AND WHEREAS the appellant has failed to file the appeal book as ordered by this Court;

AND WHEREAS Rule 382.4(2) of the *Federal Courts Rules*, authorizes the appeal to be dismissed in such circumstances;

THIS COURT ORDERS that the appeal is dismissed for delay.

"David Stratas"
J.A.

"WWW"
"D.G.N."

Turmel v. Canada, [2017] S.C.C.A. No. 262

Supreme Court of Canada Rulings on Applications for Leave to Appeal and Other Motions

Supreme Court of Canada

Record created: June 30, 2017.

Record updated: November 23, 2017.

File No.: 37647

[2017] S.C.C.A. No. 262 | [2017] C.S.C.R. no 262

John Turmel v. Her Majesty the Queen

Appeal From:

ON APPEAL FROM THE FEDERAL COURT OF APPEAL

Case Summary

Status:

Application for leave to appeal dismissed with costs (without reasons) November 23, 2017.

Catchwords:

Charter of Rights — Right to vote — Whether the 1974 reimbursement cap of $250 in s. 477.75 of the Canada Elections Act unconstitutionally limits the Applicant's right to participate in the electoral process — Whether striking the cap would be the right remedy — Whether it was unreasonable to dismiss an issue of national import because the Applicant did not have the means to print out an appeal book that was ready to go on USB — Canada Elections Act, S.C. 2000, c. 9.

Case Summary:

Mr. Turmel commenced an action challenging the constitutional validity of s. 477.75 of the Canada Elections Act, S.C. 2000, c. 9 which sets a cap on the reimbursement of auditor fees. Mr. Turmel submitted that the cap was an impediment to his s. 3 rights under the Canadian Charter of Rights and Freedoms. Mr. Turmel's action was dismissed on summary judgment. His subsequent appeal was dismissed for delay.

Counsel

John Turmel, for the motion.

Jacob Pollice (Department of Justice Canada), contra.

Chronology:

1. Application for leave to appeal:
   FILED: June 30, 2017.

   SUBMITTED TO THE COURT: October 16, 2017.

   DISMISSED WITH COSTS: November 23, 2017 (without reasons)

   Before: R.S. Abella, C. Gascon and M. Rowe JJ.

Procedural History:

Summary judgment dismissing Applicant's action challenging
constitutional validity of s. 477.75 of Canada Elections Act
May 12, 2016
Federal Court
(Phelan J.)
2016 FC 532; T-561-15

Appeal dismissed for delay
May 1, 2017
Federal Court of Appeal
(Webb, Stratas and Near JJ.A.)
A-202-16

Federal Court Cour fédérale

Date: 20180517

Docket: T-561-15

BETWEEN:

JOHN TURMEL

Plaintiff

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

Defendant

CERTIFICATE OF ASSESSMENT OF COSTS

UPON the Order and Reasons signed by the Court on May 12, 2016, dismissing the action, with costs;

AND UPON the bill of costs filed February 23, 2018, and amended on March 18, 2018;

AND UPON the directions issued and served on February 26, 2018, informing the parties that the assessment of costs would proceed in writing and of the deadline to file materials and representations;

AND UPON CONSIDERING the material in support of the bill of costs as well as the written representations on costs;

AND UPON CONSIDERING that no other representations were received by the Registry of the Court, nor were any requests to extend the time to file submissions;

AND UPON CONSIDERING the decision in *Dahl v Canada*, 2007 FC 192, in which it is stated at paragraph 2:

> Effectively, the absence of any relevant representations by the Plaintiff, which could assist me in identifying issues and making a decision, leaves the bill of costs unopposed. My view, often expressed in comparable circumstances, is that the *Federal Courts Rules* do not contemplate a litigant benefiting by an assessment officer stepping away from a position of neutrality to act as the litigant's advocate in challenging given items in a bill of costs. However, the assessment officer cannot certify unlawful items, i.e. those outside the authority of the judgment and the Tariff.

AND UPON HAVING CONSIDERED the above referenced comments and the lack of challenge by the opposing party, I have reviewed the file and the materials submitted;

AND UPON HAVING CONCLUDED that the assessable services claimed under Tariff B of the *Federal Courts Rules* are reasonable;

AND UPON HAVING CONCLUDED that the disbursements claimed were all necessary charges for the conduct of this matter and that the amounts claimed are reasonable;

I HEREBY CERTIFY that the bill of costs presented by the Defendant is assessed and allowed at $6,105.03.

"Johanne Parent"
Assessment Officer

CERTIFIED AT TORONTO, ONTARIO, this 17th day of May, 2018.

Supreme Court of Canada | Cour suprême du Canada

No. 37647

BETWEEN:

John Turmel

Applicant

- and -

Her Majesty the Queen

Respondent

ENTRE :

John Turmel

Demandeur

- et -

Sa Majesté la Reine

Intimée

I hereby certify that the costs of the respondent have been taxed and allowed in the sum of eight hundred seventy-seven dollars and seventy cents ($877.70).

Je certifie par les présentes que les frais de l'intimée ont été taxés et que leur montant a été fixé à huit cent soixante-dix-sept dollars et soixante-dix cents (877,70 $).

REGISTRAR OF THE SUPREME COURT OF CANADA

Dated this 7th day of February 2018.

REGISTRAIRE DE LA COUR SUPRÊME DU CANADA

Fait le 7e jour de février 2018.

THIS IS EXHIBIT "13" mentioned and referred to in the affidavit of LISA MINAROVICH SWORN before me by affiant in the City of Brampton, in the Regional Municipality of Peel, in the City of Toronto in the Province of Ontario this 31st day of MAY, 2022 in accordance with O. Reg. 431/20.

A COMMISSIONER FOR TAKING AFFIDAVITS

TURMEL v. OTTAWA (CROWN ATTORNEY), [1981] F.C.J. No. 23

Federal Court Judgments

Federal Court of Canada

TRIAL DIVISION

WALSH J.

OTTAWA, JANUARY 13 AND 15, 1981.

Action No. T-3-81

[1981] F.C.J. No. 23 | [1981] 2 F.C. 593

John C. Turmel, B.E.E. (Plaintiff) v. Ottawa Crown Attorney (Defendant)

COUNSEL

John Turmel for himself. Richard Mosley for defendant.

SOLICITORS

John Turmel, Ottawa, for himself. Richard Mosley, Ottawa, for defendant.

The following are the reasons for judgment rendered in English by

1 WALSH J.: This is an application for the issue of a writ of mandamus requiring

1. that the Crown prosecute Sears, retailers of gambling devices, for contravention of Section 186.1 b of the Criminal Code or

* that the gambling devices charge be dropped against my brother and myself,

b) that my past conviction be expunged from my record,

(22) that the Crown be reprimanded for biased and frivolous enforcement of the Criminal Code.

At first sight it is apparent that this Court cannot possibly have jurisdiction over this matter which concerns the application of the Criminal Code, R.S.C. 1970, c. C-34, the enforcement of which is vested in the provincial authorities, the Ottawa Crown Attorney, acting on instructions from the Attorney General of Ontario. While applicant does not dispute this he invokes the provisions of section 25 of the Federal Court Act, R.S.C. 1970 (2nd Supp.), c. 10, which reads as follows:

(10) The Trial Division has original jurisdiction as well between subject and subject as otherwise, in any case in which a claim for relief is made or a remedy is sought under or by virtue of the laws of Canada if no other court constituted, established or continued under any of the British North America Acts, 1867 to 1965 has jurisdiction in respect of such claim or remedy.

It is his contention that he has exhausted every remedy available before the Courts of Ontario all of which have declined jurisdiction. While he concedes that, had they merely refused to issue a mandamus ordering the provincial authorities, specifically the Ottawa Crown Attorney, to prosecute the charges which he has laid against Simpsons-Sears and The Bay among others he would have no recourse to this Court, he contends that the refusal to do so was in each case based on alleged lack of jurisdiction. While some verbal comments to this effect may have been made by the various judges before whom he has appeared, and this is not denied by counsel who represented defendant at the hearing before this Court, no documentary evidence was produced as to any judgment to this effect. Moreover, although the Ontario Courts would have jurisdiction to issue a mandamus in a matter which justified the issue of same, this is a far cry from saying that such a mandamus should have been issued, and it may well be merely a matter of semantics that when the Courts before whom he appeared refused to issue such an order for good reasons, the words "lack of jurisdiction" may have been used when what was intended was merely a statement that there was no authority justifying the issue of such an order by the Court. In any event I conclude that it cannot be said that no other Court has jurisdiction in respect of the remedy sought by defendant within the meaning of section 25 of the Federal Court Act which this Court must interpret.

2 While this disposes of the application it is of some interest to deal with the background of plaintiff's claim. He is a mathematician, well versed in the theory of probability and the laws of chance and claims that the gambling card game known as "black jack" can be mastered by such approach and hence is not a gambling game. His main contention is however that since a judgment of the Supreme Court in the Rockert case [[1978] 2 S.C.R. 704] to the effect that holding a one-night card game in a given place does not make it a common gaming house and that habitual use of the premises must be proven to establish that the place was kept or used as a gaming house, section 185 of the Criminal Code has become obsolete for "floating" gaming houses where the gambling is conducted in a different place on each occasion. Following this judgment he incorporated a transient casino in Ontario under the name of JCT CASINOS INC. and has conducted black jack games in various locations in the Ottawa area. In due course he was charged and convicted under the provisions of section 186(1)(b) of the Criminal Code which reads as follows:

> * Every one commits an offence who
>
> ...
>
> * imports, makes, buys, sells, rents, leases, hires or keeps, exhibits, employs or knowingly allows to be kept, exhibited or employed in any place under his control a device or apparatus for the purpose of recording or registering bets or selling a pool, or any machine or device for gambling or betting:

It is his contention that the only equipment required for the game in question was decks of cards which are of course commonly sold everywhere and that if he is guilty for this reason alone, then large department stores which advertise and sell cards are also guilty and should be prosecuted. He argues that in the prosecution of him and his brother they have been discriminated against and that section 186(1)(b) of the Criminal Code should be considered as having been "abrogated by custom" in that such prosecutions for the sale of playing cards are rarely if ever brought. He appealed his conviction and by judgment of the Supreme Court of Ontario in this appeal dated September 8, 1978, the appeal against his conviction was dismissed, but the appeal against the sentence was allowed, so as to vary it to a conditional discharge with probation for a period of one year upon conditions prescribed in the probation order attached. The order of forfeiture was quashed and the money seized ordered to be returned.

3 With respect to the charge which was laid against him this definitively disposes of his second demand as far as this Court is concerned as it is evident that whether this Court had jurisdiction over this present application or not it certainly cannot order that the charges laid against him and his brother be quashed and his conviction expunged.

4 Since he has been unsuccessful in the charge laid against him, and being something of a crusader, he wishes similar charges to be laid against someone "big" which will be well defended by legal counsel right through to the Supreme Court, and hopefully, in his view, lead in future to non enforcement of section 186(1)(b) of the Criminal Code

in cases such as his or perhaps even to its repeal or amendment. This argument is expressed by him in his affidavit as follows:

> Since I have been denied my only defense, my only hope is to drag someone really big down with me. Since they resurrected the charge against me, let them enforce it or declare it abrogated by custom and give it a legitimate legal funeral.

His reference to his being denied his only defence is with respect to a hearing before Justice L. Coulter, Provincial Court, Criminal Division, Judicial District of Ottawa-Carleton, pursuant to section 626(1) of the Criminal Code with respect to some 36 witnesses whom he had subpoenaed for his trial. The hearing was to determine whether these subpoenas should be issued. For example a Mr. Funnell from Simpsons-Sears had been subpoenaed to admit that they sold "professional gambling cards". Mr. Gerald Bouey, the Governor of the Bank of Canada, T.C. Bowen, the Manager of The Bank of Nova Scotia, Paul Laurin, the Executive Secretary of the Canadian Association of Chiefs of Police were also sought by plaintiff as witnesses. At the hearing Justice Coulter very properly held that the evidence of these witnesses would have nothing to do with his defence against the charges laid against him and his brother. Whether or not the charges which he had laid against Simpsons-Sears were properly laid and should be proceeded with was not before the Court at that hearing, and it is trite law to state that it is not a proper defence for a charge laid against an accused to allege that other persons guilty of similar offences have not been charged; for example a person properly charged with driving his motor vehicle at a speed in excess of the speed limit cannot defend himself by saying that while he was doing so other cars passed him going at a faster speed and the drivers were not charged. Similarly it is no defence against a ticket given for parking in a no-parking area to state that other vehicles parked in the same area were not ticketed. While no law should be applied in a discriminatory manner this is a matter for complaint to those charged with the administration and not a defence to an infraction of the law.

5 In view of the foregoing it is unnecessary to go into any further details with respect to the various attempts by plaintiff to personally prosecute Simpsons-Sears and others before Justice T.P. Callon of the Supreme Court of Ontario, and before Judge Soublière at the County Court level both of whom according to plaintiff declined "jurisdiction".

6 The Crown refused to prosecute these charges and the first paragraph of plaintiff's application for the issue of a writ of mandamus by this Court seeks an order that the Crown so prosecute. This is not a matter within the jurisdiction of this Court despite the invoking of section 25 of the Federal Court Act by plaintiff, and in any event, even if it were, in the discretion of the Court with respect to the issuing of writs of mandamus the issue of such a writ would not be authorized as the decision of whether or not to prosecute certain offences against the Criminal Code comes within the jurisdiction of the Attorneys General of the Provinces in question and of the Crown prosecutors and are administrative decisions. While I would not go so far as to say that there are no circumstances in which a Court having proper jurisdiction might issue mandamus ordering a prosecution, this would not in my view be a proper case for the issuance of such a writ even if this Court did have jurisdiction. The application is therefore dismissed with costs.

ORDER

7 Plaintiff's application for a writ of mandamus against defendant is dismissed with costs.

THIS IS EXHIBIT "14" mentioned and referred to in the affidavit of LISA MINAROVICH SWORN before me by affiant in the City of Brampton, in the Regional Municipality of Peel, in the City of Toronto in the Province of Ontario this 31st day of MAY, 2022 in accordance with O. Reg. 431/20.

A COMMISSIONER FOR TAKING AFFIDAVITS

1994 CarswellOnt 5934
Ontario Court of Justice (General Division)

R. v. Turmel

1994 CarswellOnt 5934, 24 W.C.B. (2d) 52

Her Majesty the Queen Respondent and John C. Turmel Applicant

Desmarais J.

Judgment: April 21, 1994
Docket: None given.

Counsel: Counsel — not provided

Subject: Criminal
Headnote
Criminal law

***Desmarais J.*:**

1 This is an Application by the Crown made without notice pursuant to Rule 6.15(2) of the *Criminal Proceeding Rules* seeking an Order dismissing the within application on the basis that it does not show a substantial ground for the order sought and is therefore frivolous and vexatious.

2 The order sought by the applicant (Turmel) is for Prohibition, Certiorari as well as an Order for a stay pursuant to s.24(1) of the Charter.

3 On March 29th, 1994 Turmel made an Application for an Order for Certiorari which was dismissed by Millette J.

4 The application for an Order for Certiorari found in the present application is substantially the same as was before Millette J.

5 For the reasons enunciated by Millette J. this portion of the application is dismissed.

6 The present application also seeks an Order for Prohibition. There are no supporting documents by way of evidence or otherwise as would provide grounds for the granting of such an Order.

7 There are no allegations of bias supported by facts which might give rise to an Order for Prohibition. Furthermore, rulings made by the presiding Judge does not of itself give rise to a reasonable apprehension of bias.

8 Turmel's trial before the Honourable Judge Wright of the Provincial Division is now at the stage of hearing submissions by Turmel.

9 The trial is scheduled to be reconvened for that purpose tomorrow (April 22, 1994).

10 The Application for Prohibition, unsupported as it is cannot be granted. It smacks of a delay tactic to disrupt the orderly conduct of the trial.

11 As a general rule, prohibition should be refused unless it can be shown the harmful consequences to the applicant clearly outweigh the delay and fragmentation of the trial resulting from the prohibition application. That is not the case here.

12 The application for both certiorari and prohibition are both frivolous and vexatious.

13 Turmel also seeks an Order pursuant to s.24(1) of the *Constitution Act*, 1982 to stay or quash the proceedings before the Honourable Judge Wright. The remedy being sought is in the nature of an interlocutory appeal. The S.C.C. in *Mills v. The Queen*, 26 C.C.C. (3d) 481 at p.496 made it clear that all criminal appeals are statutory and there should be no interlocutory appeals in criminal matters.

14 I am of the view therefore that the application is without foundation, frivolous and vexatious and should be dismissed accordingly.

15 The resulting effect is that the matter should be completed before the Honourable Judge Wright and, following his decision, either party may appeal the result.

16 Given the urgency of the within application by the Crown, the court has dispensed with the necessity of providing notice or the filing of a factum.

17 Order accordingly dismissing Application by Turmel, dated April 20, 1994.

End of Document

R. v. Turmel, [1994] O.J. No. 2406

Ontario Judgments

Ontario Court of Justice - Provincial Division

Ottawa, Ontario

P. Wright Prov. J.

May 16, 1994.

Action No. 93-18193

[1994] O.J. No. 2406 | 24 W.C.B. (2d) 455

Between Her Majesty The Queen, and John Turmel

(18 pp.)

Case Summary

Criminal law — Extraordinary remedies — Appeals, indictable offences — Gaming and betting — Common gaming houses.

This was the trial of an accused for keeping a common gaming house. The accused had filed a notice of appeal from the dismissal of an application for prohibition and argued that the filing should result in a stay. The Crown disagreed. On the merits, it argued the court should apply a common sense meaning to the word gain in section 197(a) of the Criminal Code.

HELD: There was no ground for a stay.

The Crown's interpretation was correct. The accused had been operating a commercial business on a large scale. The accused was convicted.

Statutes, Regulations and Rules Cited:

Criminal Code, R.S.C. 1985, c. C-46, ss. 197(a), 197(b), 201(1).

A. Marin, for the Crown. J. Turmel, representing himself.

P. WRIGHT PROV. J.

1 So on the basis that it is a legitimate argument done on time, fulfilled the rules flawlessly even at the eleventh

minute, excuse the inconvenience to the Crown, but I have a right to do it at the eleventh minute and I have my reasons and I don't want anything imputed, you know, dirty hand motives for doing this. Thank you very much.

2 THE COURT: Thank you. Are there any matters that are to be spoken to briefly? I'm going to take a few minutes to read the materials which have been provided to me, probably ten or fifteen minutes. (Brief recess).

3 THE COURT: This is a matter that was put over following submissions set to today's date for me to deliver a decision. Mr. Turmel has filed a notice of appeal against the' decision of Mr. Justice Desmarais of the Ontario Court of Justice (General Division) dismissing an application for prohibition. Prohibition results in a stay of proceedings. The defence argues that the same should apply to an appeal in this case to the Court of Appeal.

4 I've been referred by the Crown to a decision of the Quebec Court of Appeal in R. v. Boutin which decision is reported in 58 C.C.C. (3d), page 237. On page 240 of that decision, the court indicates about the middle of the page:

> Counsel for the appellants argue from this that an appeal as of right necessarily involves a stay of proceedings even though Parliament has not so specified. I cannot accept this position. Certiorari is essentially a discretionary remedy. It appears illogical to argue that Parliament intended that a stay itself be mandatory simply by creating a right of appeal against a decision which grants or refuses a measure of a discretionary nature.

And on the next page, page 242, the court indicates that:

> Should an appellant not wish a matter to proceed, the appropriate course is to apply for a stay of proceedings by way of an injunction.

In face of the decision of the Quebec Court of Appeal and the decision of Mr. Justice Desmarais directing that the trial continue, I propose to deliver my judgment at this time.

5 Mr. Turmel is charged with keeping a common gaming house. S. 201(1) reads as follows:

> Everyone who keeps a common gaming house or common betting house is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.

Many of the facts before the court come as a result of lengthy admissions and agreed statements of fact filed at the outset of the trial. In summary, the admissions include an admission by the accused that he was "in the business of gaming", that he was the keeper of the premises in question, that he "maintained control of the bank accounts", that at the premises games were played of blackjack and poker which are admitted to be games of chance or mixed chance and skill. The parties agree that the Crown must prove however that the place or places were "kept for gain".

6 By way of background, the agreed facts stipulate that between the 27th of February and the 14th of November 1992 Mr. Turmel rented a room at 1141 Baxter Road in the city of Ottawa referred to as the "Baxter premises", also called "Turmel's games room". It is further agreed that between the 13th of November 1992 and the 14th of July 1993, Mr. Turmel rented several units, in particular 102, 103, 104, 105 and 107 at 2335 St. Laurent Boulevard, Ottawa, referred to as the "St. Laurent premises" Casino Turmel. The accused's purpose in renting the two premises was to allow the playing of games such as blackjack and poker. The leases in respect of the premises were five hundred and twenty-five hundred dollars per week in respect of the Baxter and St. Laurent premises respectively.

7 Mr. Turmel had purchased and owned professional game playing tables at both premises. Food and non-alcoholic beverages were served to the patrons free of charge. The public was invited to attend at both premises for the purpose of playing blackjack with Mr. Turmel and his employees or poker with Mr. Turmel and other patrons. Mr. Turmel and his employees would act as cashiers.

8 The Casino Turmel and Turmel's game room were attended for the purpose of playing games such as blackjack

and poker, and the court was further advised that there was no fee required to enter the premises. A patron could buy into a game at two hundred dollars. Games were played with poker chips which were sold by cashiers in denominations of two dollars, fifty cents to five hundred dollars. If a player chose to become dealer/banker for blackjack, the player would leave the table if there were more than one player present, or stay at the table and all the other players would leave the table. This player would then become the dealer/banker against Mr. Turmel or one of his employees. Patrons were not allowed to bank against other patrons.

9 Numerous bank accounts with substantial balances were controlled by Mr. Turmel. However, the tips account for employees was not controlled by Mr. Turmel.

10 In February 1992, the accused attended at the Ottawa Police headquarters and met with senior members of the Ottawa Police including Inspector Gordon, Staff Sergeant Zuraw, Sergeant Cleary and Detective Ford. The purpose of the meeting was to discuss his intended operation at Baxter Road.

11 At the meeting, Mr. Turmel outlined the operation of his games room and described the operation with the rules including "Ubank" as operated both at the Baxter and the St. Laurent premises. He indicated that he felt that this method would place the operation of the blackjack game within the guidelines of the Criminal Code as everyone would have the chance to beat the house and therefore everyone would have the same chance.

12 He further advised that the poker game would be a no rake-off game and that the house would not taking any profit from the game.

13 Mr. Turmel was advised that the Ottawa Police were not condone the operation and that the situation would be monitored, that if activities were found to be in violation of the gaming sections, that he would be charged.

14 The banking records and the statements which were provided to the court as exhibits show very substantial expenditures for rent, food, promotion, and even transportation of patrons from Montreal which were incurred over certain timeframes and during those timeframes very substantial incomes were in fact accrued.

15 The games in question were monitored by under cover officers on numerous occasions.

16 It is indicated that the premises were operated as a professional organized playing venue with all the paraphernalia such as blackjack tables, poker tables, chairs, playing tables, playing chips, cards, card dealing shoes, food, beverage, that there were monitors for taking cash and playing chips, a doorman, as well as camera and surveillance equipment. The Crown has indicated that they do not wish to rely upon any presumptions as set out under s. 198 of the Criminal Code.

17 The court heard evidence from Sergeant Joseph Fotia who at the relevant times was with the Ontario Provincial Police anti-gambling racket branch. Sergeant Fotia indicated that he attended the Baxter Road location on the 3rd of June 1992. At that time there were seven blackjack and one poker table. He cashed and received chips and proceeded to play blackjack. Sergeant Fotia testified that he noticed Mr. Turmel playing poker. He also described a big sign entitled Turmel Casion. He testified that he was asked to be the bank, and when he asked why, he was told that it was the rule. He testified you had to bank against the house once. He further added in his evidence that this was to circumvent the law. I should state for the record that I am unclear from Sergeant Fotia's evidence which was provided to the court whether this is something which was told to him at the point when he was told he had to be the bank, or whether this was a conclusion of the Sergeant. In any event, he also testified that there was a sign that patrons must be the banker.

18 Sergeant Fotia testified that he would tip the server and the dealer. He testified that on one occasion he made a point not to tip and he was not forced to do so. He testified at blackjack one usually tips if you win. His evidence was that he had a net loss of some fifteen hundred dollars on eight or nine visits.

19 Sergeant Fotia testified that he was reminded of a small casino in Nevada, that the game was very honest, "nothing bad about it" and that everyone seemed happy there.

20 He also visited the St. Laurent location on three occasions, the first on the 28th of January 1993. His evidence was that the operation was much bigger than at Baxter Road, a full-fledged casino with many employees, two games of blackjack and "hold 'em", a type of poker. He estimated that there were seventy-five to one hundred people in attendance. Sergeant Fotia's evidence is that it is very difficult to beat the house. In cross-examination he testified that the long term advantage was with the bank, and that if he had persisted in wanting to be the bank, they would have thought that he was a police officer. This is an assumption that I'm not prepared to make without there being evidence of his having attempted to do so.

21 Sergeant Fotia testified that at St. Laurent he did not see anyone bank. The Crown also heard from Ron Shefford, director general of the casino of Montreal. Mr. Shefford was also for eight years director of the casino in Manitoba, and until 1976, was with the Royal Canadian Mounted Police specifically in the area of illegal gambling. He gave evidence on the way in which casinos make money, the house advantage, specifically the player having to play before the house and as well as to the average level of skill not being very high.

22 He testified that in blackjack the house would keep on average fifteen percent of wagers. Mr. Shefford was shown the rules of Casion Turmel, one of which was described as "Ubank", and he agreed that his casion would not allow the players take a turn at being the bank. He also agreed that certain options of the Turmel rules such as "double-down", "split" and "insurance" would constitute an advantage to the player, qualified by Mr. Shefford as a skilled player. He indicated that the casion always has an advantage, but if players took advantage of the opportunities to be the bank, then there would not be an advantage. The Crown brought evidence of profits over a particular eighteen day period which were very substantial.

23 In fairness to Mr. Turmel, it may be completely unrepresentative of his success. Mr. Turmel has responded however that "if the purpose was to show that I made money, I admit I made money".

24 The Crown also called Harry Nesbitt with the Niagara Regional Police who described a meeting in February 1993 with Mr. Turmel and two associates as well as the mayor and executive officer of that city. This was in relation to a proposal to the city to open a casino at which meeting he recounts that the accused claimed income of three hundred twenty to four hundred thousand dollars per annum from a small operation.

25 I would like to thank both the Crown and Mr. Turmel for their efforts in narrowing the issues and the evidence which I understand from Mr. Marin and Mr. Turmel helped to reduce of the time very significantly. Although Mr. Turmel had the assistance of two counsel at trial, he had, up until the calling of evidence, represented himself from time to time. Much of the evidence called did not seem to relate to the issues which fall under the (b) section of 'the definition of "common gaming house" which is found under s. 197(1) of the Criminal Code. (b) provides as follows:

> (b) kept or used for the purpose of playing games (i) in which a bank is kept by one or more but not all the players, (ii) in which all or any portion of the bets on or proceeds from a game is paid, directly or indirectly, to the keeper of the place, (iii) in which, directly or indirectly, a fee is charged or paid by the players for the privilege of playing or participating in a game or using gaming equipment, or (iv) in which the chances of winning are not equally favourable to all persons who play the game, including the person, if any, who conducts the game;...

Were the Crown proceeding under s. (b), I would find that it has not been established beyond a reasonable doubt that there was a bank kept by one or more but not all the players or in which the chances of winning were not equally favourable to all, given the signs, rules and equal opportunity to be banker/dealer, or that the accused has been shown to fall under any of the other headings as set out under (b). If Sergeant Fotia, as discussed earlier, had pressed the issue, I might have come to a different conclusion.

26 Reference has been made to the decision of my brother judge, Judge Fontana, in R. v. Booth, an unreported decision from 1989 of the Ontario Court of Justice (Provincial Division) which decision I have read and agreed with. Were the Crown proceeding under (b), it follows that in accordance with the Booth decision, I would enter an acquittal based on the facts that are before me.

27 The Crown proceeds today on a different definition and that is the definition found under (a) which provides that a "common gaming house" means a place that is kept for gain to which persons resort for the purpose of playing games. If the charge against Mr. Turmel turns on the meaning of the word "gain", does gain include winnings?

28 The defence argues that it does not. The court was advised by Mr. Sagle on behalf of Mr. Turmel that there has never been a case where a Canadian court has interpreted gain as winnings. The defence contends that gambling is legal and it is not against the law to make money from gambling which the accused admits to.

29 The decision in R. v. Pilon, a 1920 decision of the Quebec Sessions of the Peace, indicates further:

> The Criminal Code does not prohibit the game itself whether it be a game of chance or a mixed game of chance and skill; it prohibits the game only when it is played in a common gaming house.

The defence as well argues that the decision in R. v. Dearborn, a decision of the Ontario Court of Justice (Provincial Division) delivered by my brother judge, Judge Foster, is not restricted to a determination of subsection (a). From page 8 of the transcript:

> Those are the allegations the Crown is relying on for this s. 201 guilty plea -- to keep a common gaming house on the basis of common gaming house definition of kept for gain for persons who resort for that purpose of playing games or other same similar mode in which the portion of the proceeds from the game would pay directly or indirectly to the keeper of the place -- both being Mr. Dearborn who benefitted from the rake from the poker game and from the edge of blackjack games.

The defence argued that in many cases gain has been interpreted by the courts and may be of assistance in the determination which the court must come to in respect of the charge against Mr. Turmel.

> In the present case, the activities of the appellant himself in providing the accommodation and facilities and selling the refreshments made the premises a common gaming house. It may be accurately said of him that he did, to some significant extent, participate in the promotion, organization and operation of the games of rummy and, accordingly, that he kept a common gaming house.

R. v. Karavasilis, 1980, 54, C.C.C., (2nd) 530 (Ont. C.A.), at 539, a decision of the Ontario Court of Appeal. This case is one of many where gain has been long established by some indirect activity such as the sale of refreshments. Similarly, a gain for refreshments has been held to be gain in R. v. Bertrand, 1918 (NSSC) 31, C.C.C. (3rd). Likewise the business of a tavern:

> The game contemplated by the proprietor int he present case was ordinary business profit to be derived from the operation of a tavern, a gain which nevertheless qualified the tavern as a "place that is kept for gain". However, that gain or loss was in no way dependent upon the chance involved in the sequence in which cards were dealt to the participants in the blackjack games nor on the skill of the dealers and the players participating in the game. Nor did the possible gain or loss relate to the playing of the game in which the participants were engaged in gaming or gambling within the meaning of those words as set forth in the authorities to which reference has been made.

R. v. Irwin, (1982) (Ont. C.A.) 1 C.C.C. (3d) 212 at 227.

30 And further, for the keeper of a saloon, the sale of cigars in The King v. Sala, (Yukon Territorial Court), 1907, 13

C.C.C., 198; the sale of food and coffee:

> On the other hand he also charged for the food as well as the refreshments and coffee. The appellant demands that the Crown prove that he made a profit. First, it is enough that the room was kept for the purpose of gain and it does not appear to me to be necessary that in the end there was a gain. The deficit incurred by a common gaming house does not absolve its owner of the offence committed.

R. v. LaFrancois, 1981 (Que. C.A.) 63 C.C.C. (2d) 380 at 383.

31 The defence argues that it is possible to have legally banked gains, and then suggests as a conclusion that winnings cannot be gain, which in my view respectfully does not address the issue posed by the definition under (a).

32 The defence relies as well upon the decision R. v. Jowe, British Columbia Court of Appeal, 1950, C.C.C., a decision at page 95 dealing with (b), not (a).

33 The defence contends that gambling is not illegal and that it is not against the law to make money from gambling, which as indicated, Mr. Turmel readily admits to. The defence here argues that because gambling is not illegal, that likewise the winnings from gambling should not face any criminal consequences. Firstly, it is important to remember that the Jowe decision dealt with (b), not with (a), and further, the issue in respect of (a) is the keeping for gain, not the winnings or the gains in themselves. Mr. Turmel is not facing charges as a result of any gain or earnings which he may have acquired, but rather as a result of the allegation of keeping a place for that purpose. The defence argues that gain has never been interpreted as gain from gambling. Given the evidence and admissions, if the place is kept for gain within the meaning of s. 197(1), then the offence is made out and the accused must be convicted.

34 The Crown argues that the court apply a common sense interpretation of the word gain, the plain meaning of the word itself. The Crown relies on the decision in R. v. Turmel, a decision from October 23, 1992 of the Honourable Jean-Pierre Bonin which coincidentally involved the same accused and involved a conviction of keeping for gain. On page 10 of his decision, the learned judge states:

> It seems clear to me that the premises were kept for the purpose of gain.

The defence argues however that the offence was not particularized as to s. 197(1), nor was the court directed as to that issue, and indeed it may not have been necessary for the learned judge to decide that particular issue given his findings with respect to (b), in particular banking.

35 I have to ask, is there any reasons why Parliament intended, as interpreted by our courts, to prohibit an indirect gain or profit through sales, et cetera, but allow a direct gain from gambling itself.

> No doubt where it is shown that gain is the real object of the keeping of the place, you have a case within s-s.(a). But, as I have said, no such case is made out here, and i think the argument based upon s-s. (b) fails also.

Bampton v. The King, 1932 (SCC) 58 C.C.C., 289 at 297.

36 In The King v. James at page 199, a decision of the Ontario Court of Appeal:

> The place in question was a room or place kept by the defendant, and it was a place to which persons resorted for the purpose of playing games, or a game, of chance. Was it kept by him for "gain"? The Act does not define the word, or limit its meaning to gain derived from the rental of the room or share of or interest in the stakes played for. In this respect the section is very different... "gain" is "that which is acquired or comes as a benefit, profit or advantage", and it may be derived indirectly as well as directly.

And further:

> The existence of the soccer club feature in the facts does not stand in the way of concluding that the appellant kept the premises for gain and that there is a necessary connection between steps taken by the appellant to further his purpose in keeping them for gain and the players resorting to them for the purpose of playing games.

This latter quote from R. v. Karavasilis at page 534.

37 Black's Law Dictionary defines "gain" as "profits; winnings; increment of value; difference between receipts and expenditures; pecuniary gain; difference between cost and sale price; appreciation in value or worth of securities or property".

38 The Crown suggests that if the intent of Parliament is to prevent indirect profit only as the defence urges, then one could run a casion for profit, but only run afoul of s. (a) if charging, for example, for parking or food or refreshments. In the "gain" cases set out by the defence, the court in my view was never called upon to define or limit or give parameters to the meaning of gain, but simply to determine whether those activities in question were included within the meaning of s-s. (a).

39 With respect, I think the example presented by Mr. Marin makes sense. Why would Parliament make it an offence to keep a place for profit derived indirectly from the business of gambling but not attach to profits made directly from winnings? It would not appear to be a significant distinction whether the income is direct or indirect. (The King v. James) R. v. Sala). What Parliament, I believe, was attempting to do by enacting (a) was to prohibit a place from being kept for the business of gambling, the commercial purpose of the activity.

40 An issue has been raised as to GST. There is a distinction to be made, but for the purpose of (a), in my view, the distinction is not with substance.

41 In relation to the argument of res judicata raised on the last day, I am satisfied that the defence cannot succeed. Whatever the determination with respect to the meaning of "kept for gain", I am satisfied that it is a distinct issue and question of law from the issues which were raised in the previous cases in R. v. Booth and R. v. Turmel, Ottawa. Further, in respect of R. v. Booth, the parties are not the same persons. Although from a reading of the transcript which was provided to me, Mr. Turmel was called in that case as the main Crown witness, he was not a litigant per se in the proceedings.

42 It would appear to me that a colon element in all of the cases to which the court has been referred in respect of (a), in part a requirement of commerciality, that is the phrase "kept for gain" being interpreted by the courts in the context of a business. (Bampton, Karavasilis, LaFrancois). It should not be a great surprise that there are no other cases on point simply because the very nature of their clandestine operations, other operators, unlike Mr. Turmel who operated openly, would be prosecuted on the basis of such evidence of indirect gain as was available to the authorities.

43 I conclude that this was a business, a commercial activity on a large scale. There is no evidence of any indirect gain or income whatsoever, only from the business of gambling directly.

44 There is no other reason for the places to have been kept other than to produce income. I conclude that gambling income does come within the meaning of (a), and I must conclude that the charge is proven, and there will be a finding of guilty.

R. v. Turmel, [1995] O.J. No. 1302

Ontario Judgments

Ontario Court of Justice (Provincial Division)

Ottawa, Ontario

P. Wright Prov. J.

March 31, 1995.

Information No. 93-18193

[1995] O.J. No. 1302 | 27 W.C.B. (2d) 262

Between Her Majesty the Queen, and John Turmel

(35 pp.)

Case Summary

Charge: S. 201(1), Criminal Code of Canada

Criminal law — Punishments — Forfeiture orders — Proceeds of crime — Sentencing — Sentence, particular offences — Keeping a common gaming house.

The accused was convicted of keeping a common gaming house. The offence yielded proceeds of $150,000 for the accused, which at the time of trial, had all been expended towards the operation of the casino. The accused had a criminal record which consisted entirely of related offences. Also before the court was a Crown application for an order of forfeiture of the proceeds of the offence.

HELD: The accused was given a suspended sentence with a three year probationary term.

The fact that the accused operated a clean gaming house was a mitigating factor on imposing sentence. The order of forfeiture sought by the Crown could not be properly granted, given that the funds involved had been spent. In such a situation, the objective of ensuring that the accused did not profit from his offence was not applicable. Also, the item sought to be forfeited was income, as opposed to property, as provided in section 462.37 of the Criminal Code.

Statutes, Regulations and Rules Cited:

Criminal Code, ss. 2, 55(1), 197(1), 199, 201(1), 462.37(1), 462.37(3).

Counsel

B. Dandyk, for the Crown. John Turmel, on his own behalf.

1 P. WRIGHT PROV. J. (orally): Mr. Turmel was convicted at trial of keeping a common gaming house pursuant to s. 201(1). The matter was put over at the request of the Crown following conviction for an investigation to be conducted to trace proceeds in bank accounts in furtherance of an Application for Forfeiture, which was to be brought pursuant to s. 462.37 of the Criminal Code. The matter was adjourned from time to time at the request of the Crown and with the consent of Mr. Turmel and, ultimately, on the 20th of March of this year, the court heard submissions with respect to the proceeds application and with respect to sentence. I propose today to deal with those two issues.

2 Firstly, with respect to the proceeds of crime application, the parties have agreed that there were proceeds of $150,000 from a casino operation. There is a further issue involving some $38,000, which was seized from various locations at the St. Laurent casino and as there may be issues of title, I intend to follow the suggestion of Mr. Dandyk that those proceeds be dealt with pursuant to an application pursuant to s. 199 of the Criminal Code.

3 Addressing, then, the Application of Forfeiture, s. 462.37(1) provides:

> "Subject to this section and sections 462.39 to 462.41, where an offender is convicted or discharged under section 736 of an enterprise crime offence and the court imposing sentence on the offender, on application of the Attorney General, is satisfied, on a balance of probabilities, that any property is proceeds of crime and that the enterprise crime offence was committed in relation to that property, the court shall order that the property be forfeited to Her Majesty to be disposed of as the Attorney General directs or otherwise dealt with in accordance with the law."

4 "Property" is defined under s.2 of the Criminal Code. The purpose of the provision, as I read it, is, simply put, to prevent offenders from profiting from their criminal activity by preventing them from keeping their ill-gotten gains. If property is identified as set out in the, subsection, then, it is mandatory that the property be forfeited.

5 Although sentencing was put over and the court has heard testimony that the investigation in total cost some $250,000, there is no evidence or suggestion of any property which would fit this provision or otherwise. No property has been located. There is no evidence of cash, stocks, securities, real estate, vehicles, boats. Nothing. Not one cent has been uncovered, which is exactly as Mr. Turmel stated would be the outcome to the court at the outset of the Crown request for the adjournment to pursue the investigation.

6 Hindsight may be perfect. In fairness, it should be noted that if something had been located, then, the court would be in a position to make an order pursuant to 55. (1).

7 Subsection (3) of s. 462.37 provides:

> "Where a court is satisfied that an order of forfeiture under subsection (1) should be made in respect of any property of an offender, but that that property or any part thereof or interest therein cannot be made subject to such an order and, in particular,
>
> (a) cannot, on the exercise of due diligence, be located,
>
> (b) has been transferred to a third party,
>
> (c) is located outside Canada,
>
> (d) has been substantially diminished in value or rendered worthless, or
>
> (e) has been commingled with other property that cannot be divided without difficulty,

> the court may, instead of ordering that property or part thereof or interest therein to be forfeited pursuant to subsection (1), order the offender to pay a fine in an amount equal to the value of that property, part or interest."

8 "(a) Cannot, on the exercise of due diligence, be located", in my view, deals with those situations where property or assets have been hidden. There is no suggestion made that that is the case here.

9 "(b) Has been transferred to a third party," there is not evidence of anything having been transferred to other parties by way of a deed, draft, assignment or otherwise, and I will come back and address the specific Crown submission with respect to (b).

10 "(c) is located outside Canada," again, there is no suggestion of anything of value belonging to Mr. Turmel either in or outside of Canada.

11 "(d) Has been substantially diminished in value or rendered worthless," this section would seem to deal with those situations where an offender may have intentionally diminished in value or damaged property. There is no suggestion of this having taken place.

12 "(e) Has been commingled with other property that cannot be divided without difficulty," again, there is no suggestion of any property whatsoever. However, this provision would seem to deal with a situation where an accused person has property which would otherwise be available for forfeiture pursuant to ss. (1), but which has been combined with other property so as to prevent the Crown from tracing the proceeds of crime property. Again, there is no suggestion of any property.

13 The Crown argues that, with respect to (b), if, as Mr. Turmel suggests, the proceeds were spent on salaries, expenses and projects, that there has been a transfer, the Crown argues that transfer includes spending.

14 It may well be that spending could be considered as the transfer of cash to allow purchase of goods or services. The court has to determine whether it is the intent of parliament that spending be considered as synonymous with transfer as found under ss. (3)(b).

15 Osborne's Concise Law Dictionary Fifth Edition defines a transfer as:

> "The passage of a right from one person to another by virtue of an act done by the transferor with that intention as in the case of a conveyance or assignment by way of sale or gift ... ", etc.

Or:

> "by operation of law as in the case of forfeiture,
> bankruptcy, decent or intestacy. A transfer may be
> absolute or conditional by way of security."
>
> Black's Law Dictionary Revised

Fourth Edition:

> "to convey or remove from one place, person, et cetera, to another; pass or hand over from one to another specifically to make over the possession or control of as to transfer a title to land, sell or give."

16 I do not find assistance for the Crown's argument from these definitions. One common definition, in fact, as set out in both law dictionaries is the opposite, that is, sale.

17 When one looks at the examples in ss. (3), it is my view that all are actions of having placed property or an asset which is not in the possession or title of an accused beyond the power of the court to make a forfeiture order pursuant to ss. (1) or to confuse or hamper identification of property all acts to thwart what I perceive to be the intention of ss. (1). As well, therefore, the rule of ejusdem generis may be of interpretive assistance, again, bearing in mind that if the Crown were able to point to an asset, then, the court would order that it be forfeited.

18 If Mr. Turmel's proceeds from the casino were spent in the operation of the casino or otherwise, and there is no specific evidence as to where it went, did Parliament intend, in this situation, that the accused be liable to a fine for that amount, which the accused no longer has and the substantial minimum jail terms as a consequence of non-payment as set out in ss. (4)?

19 With the greatest of respect, as I read the legislation, as I have stated, I believe that the intent is to recover property and, thereby, take away the reason for the enterprise crime and that the in default is a disincentive to an offender to carry out those methods described under ss. (3) to place an asset away from the reach of the Crown. The legislation no doubt will have a substantial impact on the commercial motive for certain crimes so that offenders do not have properties waiting for them, when they get out of prison. I note as well that the legislation does not refer to income but to property.

20 In my view, we are faced with a situation not where the accused has property, or where the evidence discloses that the accused has hidden property, but, rather, funds apparently having been spent, as the accused contends. In such a situation, the objective of ensuring that the accused does not profit would not appear to be application, as there is no evidence that the accused has anything of value as a result of the activities.

21 Notwithstanding that through some creative interpretation spending might be considered by the Crown to involve an element of transfer, I am not at all convinced that it is the intent of Parliament that the two words be treated as synonymous. I come to this conclusion in reviewing the examples of other methods which an accused might employ as set out in ss. (3) and determining that spending is not an activity similar to those addressed by Parliament.

22 In attempting to interpret the intention of Parliament and the reason for the section, I have come to the conclusion, as I have stated, that it is to prevent an offender from profiting from the illegal activity.

23 In looking at the common, every day usage of the words, if one were to buy an item at a store, would one say, "I transferred $25 for such and such," or would one say, "I spent $25? " In considering the dictionary definitions as well, it does not appear that the word "transfer" should be equated with the word "spend."

24 I am satisfied that the intent of ss. (b) is to trace assets which have been removed by an accused with the intent of keeping control over the property and thereby avoiding a forfeiture order, possibly in the case, as it might be, of a transfer to a friend or relative, just as (c) addresses the situation of assets placed outside of the country.

25 I note that the Crown has not argued (e) dissipation, but, again, I do not think that in common usage spending and dissipation would be equating.

26 Finally, as criminal legislative must be interpreted strictly with the benefit going to the accused, if Parliament really intends that he accused be liable where money has been spent, then, Parliament should say so in clear language. If Parliament meant that "spent" or "squander" be included, then, it should say so.

27 There is no evidence of any property belonging to Mr. Turmel, a property which cannot be located, which has been transferred to a third party, is located outside of Canada, has been substantially diminished in value or rendered worthless or has been commingled with other property and, therefore, in my view, there can be no order of forfeiture and can be no fine pursuant to ss. (4).

28 I now propose to deal with the issue of sentence. Mr. Turmel was convicted at trial. He has a criminal record all

related entries. His most recent conviction resulted in a jail term of four months. This is a serious aggravating factor. The offence which is before the court is one which generated substantial revenues. From the agreed statement, the evidence is that the proceeds were $150,000, which Mr. Turmel tells the court was all spent. There is no evidence to dispute that assertion and, therefore, the explanation of the accused must be accepted. The amount, which i view as an aggravating factor, could well have been less if Mr. Turmel had been charged immediately, and I intent to address that point.

29 There are clear evils associated with gambling. It is well known that certain individuals are addicted to gambling and as a result have brought personal hardship and ruin upon themselves, their careers and their families. Further, gambling venues are thought to attract an unsavoury element. It is also known that governments are now involved in running casinos and other forms of gambling, which is permitted with a licence. The Court of Appeal considered this factor when raised as a defence in The Queen against Andriopolous, a decision rendered on the 17th of October, 1994, and as far as I am aware, as yet, unreported. The court stated:

> "The appellant's first two points merge into the assertion that changes in social attitudes indicate that gambling is no longer consider harmful to the public and thus Parliament's criminal law powers can no longer support the prohibition of these activities referred to in sections 201 and 202 of the Code.
>
> The essential fallacy of this proposition is in equating a lottery licensed, conducted and managed by a province to all forms of gaming and gambling. Simple gambling between individuals is not prohibited unless it involves enumerated games such as three card Monte. The business of organized gaming is the subject-matter of prohibitions, presumably, because it invites cheating and attracts other forms of criminal activity. There is no evidence that public perceptions of commercial gambling have changed or that it is any less criminal in nature than it has ever been."

30 Although the decision in the Ontario Court of Appeal dealt with a defence being raised, I take the comments as being equally applicable to discount an argument raised in this case, in particular government involvement as a mitigating factor. At one point in this country, there was prohibition with respect to alcohol. That prohibition has been lifted and although provincial governments are involved in the marketing and sale of alcohol, that fact does not mean that bootlegging of alcohol is not considered to be a serious matter.

31 On behalf of the accused, Mr. Turmel was co-operative. It should be noted that this matter proceeded largely by way of an agreed statement of fact in which the essential elements of the offence, but not the interpretation, were admitted by Mr. Turmel. This saved substantial court time and money. The Pre-Sentence Report which was prepared is a positive one. Mr. Turmel has been assessed as suitable for community service. I note as well in his favour that he has done significant community work as a volunteer for years following his previous order of community service. He has given to the community. It is apparent that he is sincere in his economic political causes, which might be viewed unkindly by some as out of the mainstream.

32 I attach great significance in my view to this as a test case. It is important to view the circumstances of the offence committed by Mr. Turmel in context. This context was brought out before the court in the process of the trial.

33 Two cases were decided in 1989 by the Ontario Court of Justice (Provincial Division) at Ottawa, R. v. Turmel, a decision of Regional Senior Judge Lennox and R. v. Booth, a decision of the Honourable Judge Fontana, in which Mr. Turmel was the principal crown witness. These decisions, in particular Booth, involved an interpretation of common gaming house as contained in s. 197(1), in particular the (b) definition, which provides as follows:

> "kept or used for the purpose of playing games
>
> * in which a bank is kept by one or more but not all of the players,
>
> **(19)** in which all or any portion of the bets on or proceeds from a game is paid, directly or indirectly, to the keeper of the place,

(6) in which, directly or indirectly, a fee is charged to or paid by the players for the privilege of playing or participating in a game or using gaming equipment, or

* in which the chances of winning are not equally favourable to all persons who play the game, including the person, if any, who conducts the game. ..."

34 From the decision of my brother Judge Fontana in Booth:

> "On the evidence alleged by the Crown, and accepting the testimony presented on behalf of the Crown and by Mr. Turmel, the operation on this occasion clearly does not fall into the first four categories, that is, a place kept for a game or for playing games where the bank is kept by one or more but not all of the players, where there is a rake-off to the house, as is mentioned in ss. (2), or where there is a fee charged. Clearly, none of those first four criteria apply. If the operation on this occasion is to be caught, it must be caught with respect to ss. (4). ..."

35 Which Judge Fontana went on to quote.

He then continued:

> "While there is a small advantage to the banker-dealer, nevertheless, that opportunity to be banker-dealer was available to all players who participated in the game. It may be that a person who more frequently finds himself in the position of banker plays more and develops greater skill. That is not what is being discussed here. The advantage that is derived to an individual by reason of his own skill and in playing the game in no way confers an unfair advantage as contemplated by the section."

36 As a result, Mr. Booth was acquitted.

37 Mr. Turmel formulated his rules for the game, filed with the court at the trial, entitled "U Bank." In February of 1992, Mr. Turmel attended at the Ottawa Police Headquarters and met there with senior members of the Ottawa Police Force, including inspector Gordon, Staff-Sergeant Zuriel, Sergeant Cleary and Detective Bradford. The purpose of the meeting was to discuss his intended opening of the casino at Baxter Road. The evidence at the trial was that, at this meeting, Mr. Turmel outlined the proposed operation of his games room and described the operation with the rules, including "U Bank," which ultimately would be the rules employed at both Baxter and St. Laurent. He indicated that he felt his method would place the operation of the blackjack game within the guidelines of the Criminal Code as everyone would have a chance to be the house and, therefore, everyone would have the same change. He advised the police that the poker game would be a no rake-off game and that the house would not be taking any profit from the game. He subsequently opened a small casino at Baxter Road. He did not in any way conduct, his business in hiding or surreptitiously. There was no effort to conceal or to go underground. It would appear that everything done by Mr. Turmel was open and above-board.

38 The Crown, at the trial, called Sergeant Joseph Fotia, who, at the relevant times, was with the Ontario Provincial. Police Anti-Gambling Racket Branch. Sergeant Fotia evidently has considerable expertise and knowledge in the area of gambling and casinos. He testified that he attended the Baxter Road location on the 3rd of June, 1992, and there was seven blackjack and one poker table. That he cashed, received his chips and played blackjack. He testified that he observed the accused playing poker. He also described a big sign entitled "Turmel Casino." His evidence was that there was no liquor, that the premises were very clean, that everything was free. His evidence was that there was a sign that patrons must be the banker. His evidence was that he visited the casino on some eight or nine occasions, dropping some fifteen hundred dollars. He testified that he was reminded of a small casino in Nevada, that the game was very honest, nothing bad about it, that everyone seemed happy there.

39 Sergeant Fotia also visited the St. Laurent location on three occasions, starting on the 28th of January, 1993. He described this operation as much bigger than the Baxter Road location, a fullfledge casino with many employees and estimated there were 75 to 100 people at the casino when he attended. This casino was operating on a large scale.

Both casinos had all of the trappings of a business, proper premises, equipment. There was a bus bringing people from Montreal. There were refreshments. There were bank accounts. There were employees. There were the withholding of taxes.

40 It is clear from the evidence, and that evidence is not disputed, that the operations of the accused were for a profit. The issues, as raised by the defence, was whether the (a) definition included profit from winnings at the game, as opposed to indirect profit.

41 The casinos, therefore, were operated with advance notice to the police, with their full knowledge, including undercover surveillance. In addition, during the relevant times, Mr. Turmel attended for a meeting with the mayor and executive officers of Niagara Falls, together with the Niagara Regional Police, with respect to a proposal to that city to open a casino in Niagara Falls.

42 It should be noted as well that at the trial, the court heard from Mr. Shefford, the director general of the casino in Montreal. He gave evidence, in particular, as to the way in which casinos make money, the house advantage and the average level of skill not being very high. When shown the rules of the Turmel Casino, Mr. Shefford agreed that the rules provided advantages to customers which would not be permitted at his casino. I conclude, from Mr. Shefford's evidence, that the public would have been at a lesser disadvantage at the Turmel Casino than at the Montreal casino.

43 I asked Detective Young, who was called by the Crown was a witness, why Mr. Turmel was permitted to carry on so many months with the knowledge of the authorities. I was advised that there was a shortage with respect to the availability of investigators with specific expertise, although we know that Sergeant Fotia attended the first casino. I was advised that there were not enough resources and that the casino was "fine tuned as to the legislation."

44 With respect, I take this as an indication of police uncertainty as to how to proceed. There is no evidence of any change in the operations of Mr. Turmel and I ask myself why a conclusion, which was not obvious to the police with all of their resources, should have been obvious to the accused.

45 By the time a decision was made to charge Mr. Turmel, included in the charges which were before the court, was one of keeping a common gaming, house. At the trial, the Crown argued that they would now be relying upon the (a) definition only, that is, kept for gain to which persons resort for the purpose of playing games. It must be remembered that the Booth case, which, presumably, was in the forefront of the thoughts of both Mr. Turmel and the investigators, dealt with (b).

46 At trial, the defence urged that gain has never been interpreted as gain from gambling and referred the court to a large number of cases that referred to decisions involving indirect gain, sale of sandwiches, cigars, et cetera.

47 The Crown advanced a novel approach to this type of prosecution. I agreed with that interpretation and Mr. Turmel was convicted.

48 Mr. Turmel was keenly aware of the prior decisions as they involved him. He was the accused in one case and the principal Crown witness in the other. He obtained legal opinions. He adapted his operation. He met with the police prior to commencing his operation and the police, I am satisfied, were at least in part addressing issues relating to the (b) definition of Booth as evidenced in the reply provided to the court that the casino was fine tuned as to the legislation.

49 Canadian courts have on occasion considered a test case as mitigating to sentence. In the decision of R. v. Stewart (No. 2), Ontario High Court of Justice, 45 O.R. (2d) 185, Mr. Justice Krever, at page 186:

> "It seems to me that it can reasonably be said that there was no reason, therefore, for the accuse to believe that his conduct could be characterized as criminal at the time he did the acts which were the subject of the charge and which formed the subject-matter of the agreed statement of facts. It is important to point out that

> throughout, the accused co-operated and it was possible to get to the heart of the matter and the legal issue involved directly because of the agreed statement of facts and as a result of that cooperation."

50 Accordingly, Mr. Justice Krever granted the accused in that case an absolute discharge.

51 In R. v. Horseman, a decision of the Supreme Court of Canada reported at 55 C.C.C. (3d) 353, the court had to consider the case of a native hunter who had been successful moose hunting, had returned to obtain the assistance of other members of his band to bring the moose out of the bush when he was confronted and charged by a grizzly bear. The hunter shot and killed the bear, skinned the bear and took the hide home. One year later, he found himself in financial difficulties and decided to sell the hide. He took steps to apply for and obtain a licence and subsequently sold the hide for $200. The court noted at page 371 of that decision:

> "There can be no doubt of the financial needs of the appellant nor of his good faith. He certainly made efforts to stay within the spirit of the law. Nevertheless, an information was laid against him in July 1984; charging him with trafficking in wildlife.

52 In maintaining the conviction, Mr. Justice Cory concluded at page 382 of that decision:

> "If it were not for the statutory requirement of a minimum fine, in the unique circumstances of this case, I would vary the sentence by waiving the payment of the minimum fine. Nevertheless, in light of the circumstances of the case and the time that has elapsed, I would order a stay of proceedings."

53 In reviewing sentence considerations, the court must consider various elements, firstly, the element of specific deterrence. There is a record for similar offences, which does not auger well. Mr. Turmel has told the court that now casinos are up and running and in operation, he will not participate again in this type of activity.

54 As an aside, I am not sure to the extent that Mr. Turmel initially understood the ruling of the court with respect to the interpretation of (a) and I have addressed that issue in responding to submissions and the application that it might have even, to a home if kept for the purpose of gain.

55 Mr. Turmel has given his word that he would abide by terms of probation and I am generally satisfied that probation would have the effect of deterring Mr. Turmel. I am satisfied that in consideration of all the circumstances, in all likelihood, incarceration is not necessary for specific deterrence.

56 I propose next to deal with the consideration of general deterrence. It is very important in passing sentence that the court give consideration and serious consideration to the effect that a sentence may have from deterring other persons from committing similar offences and that the public see that the laws of the land are enforced.

57 Rehabilitation is another consideration. It is not a factor here in the usual sense. Mr. Turmel seems to the court, with the greatest of respect, to be somewhat obsessed with gambling. I am not certain that any decision by this court could change that, although I am satisfied that it may modify his avenues of expression as in playing in licensed establishments.

58 The most important consideration is always the protection of the public and I would apply here the same comments which I made with respect to specific deterrence, in particular, in relation to Mr. Turmel. I note that Mr. Turmel is not a violent offender. There is no evidence he has ever assaulted anyone. His record consists entirely of related offences. There is no evidence that he was a dishonest person or that he has cheated anyone in the games. Indeed, the evidence before the court is that he ran a clean and a fair game. This may somewhat, in this specific fact situation, address the concerns properly expressed by the Court of Appeal in Andriopolous of cheating and other forms of criminal activity. The evidence of the Crown would suggest that, in this particular situation, these evils were not present.

59 If Mr. Turmel had acted in a surreptitious manner, if he had been underground, given his record, if he had not

operated in the open manner in which he proceeded, I would not hesitate to impose a jail term in the range suggested by Mr. Dandyk of 15 to 18 months, in particular, in light of the last sentence, the activity being carried out on a large scale and applying the step principle, all of which, in my view, would support a long sentence. The bare bones of this case call for jail. I agree on that basis one hundred per cent with the Crown. However, because of the aspects of this case as a trial case, the steps which Mr. Turmel took clearly to avoid breaking the law, including receiving written legal opinions, which have been provided to the court, in advising the police in advance, in operating openly for so many months, with the knowledge of the authorities, by being upfront in the way in which he conducted his defence, in particular, admitting the essential elements of the Crown's case and arguing the issue on a legal basis, in my view, all go to create a unique and unusual fact situation, one which I would expect would never arise again.

60 I have given very serious consideration to the crown request for a jail term and I have come to the conclusion, however, with some difficulty, that I am not satisfied that a jail term is required or, indeed, appropriate in these circumstances. I am not satisfied that a jail term is necessary for the protection of the public, notwithstanding society's concerns about illegal gambling or that specific or general deterrence or the rehabilitation of the accused call for his incarceration. I am not satisfied that, in this case, a jail term would advance any public purpose. Again, I am placing particular emphasis on the factors which mark this as a test case. I recognize that another court might well have come to a different conclusion and may yet come to a different conclusion.

61 I have to advise you, Mr. Turmel, that if you come back before the court for this type of offence, obviously, the considerations will be completely different.

62 Mr. Turmel asserts that he is now a pauper and there is no evidence to dispute that.

63 In my view, the appropriate disposition and that which I intended to impose is the granting of a suspended sentence.

64 Mr. Turmel, I am going to suspend the passing of sentence and place you on probation for a period of three years. The terms of probation are as follows: You will keep the peace and be of good behaviour, which means that you not commit any further criminal act and you will appear before the court when required to do so by the court. You will report forthwith today in person to a probation officer in this Region and thereafter; you will be under the supervision of a probation officer or person authorized by the probation office to assist in your supervision and you will report at such time and places as they may require. You will perform 200 hours of community service work under the supervision of a probation officer or designate. The work is to commence within 90 days of the date of commencement of this order and shall be completed at a rate of not less than ten hours per month and consecutive months and will be completed to the satisfaction of the supervisor of probation. You will not change your place of residence without, notifying your probation officer. You will not associate or communicate directly or indirectly with any person known to you to have a criminal record with any exceptions to be set out in writing by your probation officer. You will not be found in any place where there is gambling with cards or dice for money, unless you are in an establishment licensed for that purpose. I would point out that this provision recognizes that gambling is not illegal, but is specifically to reinforce and remove the likelihood of a recurrence of this type of offence and is for the purpose of enforcement and particularly, for specific deterrence.

65 There will be a victim fine surcharge of $2,500. There will be 24 months to pay.

P. WRIGHT PROV. J.

R. v. Turmel, [1996] O.J. No. 2835

Ontario Judgments

Ontario Court of Appeal

Toronto, Ontario

Finlayson, Abella and Austin JJ.A.

Heard: May 27, 1996.

Judgment: August 13, 1996.

No. C21516

[1996] O.J. No. 2835 | 92 O.A.C. 215 | 109 C.C.C. (3d) 162 | 32 W.C.B. (2d) 29

Between Her Majesty the Queen, respondent, and John C. Turmel, applicant

(35 pp.)

Case Summary

Criminal law — Gaming and betting — Common gaming houses — Gains, what constitute — Res judicata (multiple convictions for same subject matter precluded).

Appeal from conviction and sentence on a charge of keeping a common gaming house. The appellant, prior to this charge, had been acquitted of keeping a common gaming house, since his rules for Blackjack did not fall under the Code's definition. In the case on appeal, he was operating two facilities using the same Blackjack rules as before, and clearing well over $1 million per annum. He readily admitted that he met his payroll from his winnings as an accomplished gambler, but entered a plea of autrefois acquit, and claimed a right to res judicata. The judge of first instance changed the plea to not guilty, disallowed the defence of res judicata, and found the accused guilty. The appellant argued that winnings did not constitute gains under section 197(1)(a) of the Criminal Code.

HELD: Appeal dismissed.

Leave to appeal from sentencing allowed, and sentence varied. There was no error in the judge's interpretation of the law or the evidence. The matter before the two judges was not the same, even though the Blackjack rules were identical in all three locations. Res judicata and issue estoppel applied only when an issue had been clearly decided in a previous litigation. Multiple prosecutions under the same statute were permitted if each arose from a different physical act. The appellant's interpretation of the word gains in section 197(1)(a) was too narrow, and contemplated reading the word indirect into the statute. Limiting the section to indirect gains would only prohibit casinos from charging for drinks or parking, which was clearly contrary to the legislature's intention of restricting commercial gaming itself. A place was kept for gain when it was run as a commercial enterprise for profit. There was no distinction between indirect profit from sales and direct profit from winnings. The prohibition in the probation order on associating with persons with a prior criminal record was changed to those with a record for gambling.

Statutes, Regulations and Rules Cited:

Criminal Code, ss. 197(1)(a), 197(1)(b), 201(1), 201(2)(a), 201(2)(b), 607(1), 609(1), 609(1)(a).

Counsel

John C. Turmel, in person. Trevor Shaw, for the respondent.

The judgment of the Court was delivered by

FINLAYSON J.A.

1 On May 16, 1994, His Honour Judge Peter Wright of the Ontario Court of Justice (Provincial Division) convicted the appellant, following his plea of autrefois acquit, of keeping a common gaming house contrary to s. 201(1) of the Criminal Code. On March 31, 1995, the appellant received a suspended sentence and a three year term of probation. The terms of probation required inter alia that he perform 200 hours of community service, that he not communicate with any person known to him to have a criminal record with exceptions to be set out in writing by a probation officer, and that he not be found in any place where there is gambling with cards or dice for money except an establishment licensed for that purpose. The appellant was also ordered to pay a victim fine surcharge of $2,500 within 24 months. He appeals both conviction and sentence.

Applicable Provisions of the Criminal Code

(a) Provisions Relating to Gaming and Betting

2

* (1) Every one who keeps a common gaming house or common betting house is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.

(20) Every one who

(7) is found, without lawful excuse, in a common gaming house or common betting house, or

(8) as owner, landlord, lessor, tenant, occupier or agent, knowingly permits a place to be let or used for the purposes of a common gaming house or common betting house,is guilty of an offence punishable on summary conviction.

* (1) In this Part ...

"common gaming house" means a place that is

* kept for gain to which persons resort for the purpose of playing games, or
* kept or used for the purpose of playing games
* in which a bank is kept by one or more but not all of the players,
* in which all or any portion of the bets on or proceeds from a game is paid, directly or indirectly, to the keeper of the place,

* in which, directly or indirectly, a fee is charged to or paid by the players for the privilege of playing or participating in a game or using gaming equipment, or

* in which the chances of winning are not equally favourable to all persons who play the game, including the person, if any, who conducts the game;

* Provisions Relating to Special Pleas

3

c) An accused may plead the special pleas of

b) autrefois acquit,

b) autrefois convict, and

b) pardon. ...

c) The pleas of autrefois acquit, autrefois convict and pardon shall be disposed of by the judge without a jury before the accused is called on to plead further.

609(1) Where an issue on a plea of autrefois acquit or autrefois convict to a count is tried and it appears

d) that the matter on which the accused was given in charge on the former trial is the same in whole or in part as that on which it is proposed to give him in charge, and

d) that on the former trial, if all proper amendments had been made that might then have been made, he might have been convicted of all the offences of which he may be convicted on the count to which the plea of autrefois acquit or autrefois convict is pleaded,

the judge shall give judgment discharging the accused in respect of that count.

Issues

4 There are three issues in this appeal:

e) Whether the common law doctrine of double jeopardy, encompassing the special plea of autrefois acquit, was available to the appellant, either on the basis that a prior acquittal converted the appellant's operation of a gaming house into res judicata, or on the basis of the common law plea of issue estoppel.

e) Whether the appellant's winnings from the game of blackjack constitute a "gain" within the meaning of s. 197(1)(a) of the Code.

e) Whether the sentence was fit.

A detailed analysis of the proceedings before Wright P.C.J., and related proceedings, is necessary to understand the arguments on the first two issues.

Overview of the proceedings

5 The appellant was charged on July 21, 1993 with keeping common gaming houses, contrary to s. 201(1) of the Code, at two locations in Ottawa, one on Baxter Road ("Turmel's Games Room") and the other on St. Laurent Boulevard ("Casino Turmel"). The appellant's defence was that he had been acquitted, on April 7, 1989, of keeping a similar gaming operation at the Bayshore Hotel on Carling Avenue in Ottawa.

6 With respect to the Carling Avenue premises, in addition to charges being laid against the appellant for keeping a common gaming house contrary to s. 201(1) of the Code, charges were laid against four other individuals for being found in a common gaming house contrary to s. 201(2) of the Code. At the trial of the alleged "found-ins" before His

Honour Judge Fontana of the Ontario Court of Justice (Provincial Division), the appellant testified for the Crown as to the manner of operation of the game of blackjack. Fontana P.C.J. found that the Carling Avenue establishment was not a "common gaming house" within the meaning of s. 197(1) of the Code and acquitted the four accused (R. v. Booth April 3, 1989, unreported Ont. Ct. (Prov. Div.)). A few days later, the appellant was tried before His Honour Judge Lennox of the Ontario Court (Provincial Division) on the charge of keeping the Carling Avenue gaming house contrary to s. 201(1). Relying on the finding of Fontana P.C.J. at the trial of the "found-ins" that the Carling Avenue casino was not a "common gaming house" within the meaning of s. 197(1), Lennox P.C.J. acquitted the appellant of keeping the Carling Avenue casino (R. v. Turmel April 7, 1989, unreported Ont. Ct. (Prov. Div.)). The Crown did not appeal the acquittal in either case.

7 As noted earlier, in July, 1993 the Crown laid the instant charges against the appellant for keeping the gaming houses at St. Laurent Boulevard and Baxter Road. On the basis of his acquittal by Lennox P.C.J. on the Carling Avenue charge, the appellant entered a plea of autrefois acquit. The plea was struck by Wright P.C.J. and a plea of not guilty was entered on the appellant's behalf. On May 16, 1994 the appellant was convicted by Wright P.C.J. of keeping common gaming houses at Baxter Road and St. Laurent Boulevard contrary to s. 201(1) of the Code. It is from this conviction that the appellant appeals.

Proceedings Before Fontana P.C.J.

8 In the proceedings before Fontana P.C.J., entitled R. v. Booth, supra, four accused were charged with two counts each, the first count being that they were, without lawful excuse, in a common gaming house, contrary to s. 185(2)(a) [now s. 201(2)(a)] of the Code and the second count being that they were, without lawful excuse, in a common betting house, also contrary to s. 185(2)(a) of the Code. The four accused were found in the Bayshore Hotel on Carling Avenue in Ottawa, in a room rented by the appellant, where blackjack was played.

9 Fontana P.C.J. described the Bayshore Hotel premises on Carling Avenue and the mechanics of how blackjack was played there:

> The room in question was equipped with a certain minimal amount of gambling apparatus for the playing of cards, including decks of cards, a semi-circular green felt table, a shoe. Posters were prominently displayed in the room setting out the rules of the game. Mr. Turmel described the game as, "Atlantic Twenty-one" and throughout the course of evidence, the examination and cross-examination, reference was also made to the term "Black Jack." ...
>
> There were additional general rules which are, in my opinion, of consequence in this case, the first being that anyone could be the bank at any time. And attendant upon that, a player who wished to enter the game must be the bank at least once before playing, and that, presumably, was so the individual would know how to be the banker and deal from the shoe in order to exercise right and opportunity to be the banker at any time ... As Mr. Turmel indicated in his testimony, any player could be the banker all night as far as he was concerned. ...
>
> ... refreshments were available but there was no charge for them ... There was no fee to enter the game ... There was no percentage or "rake-off" by the house on the wagering that occurred ... if a player exercised his right to be a dealer, then that person played against him, that is Mr. Turmel, and not against the other players at the table. Those other players would then go to another game which would be played with an agent of Mr. Turmel at another table or perhaps play among themselves. Having regard to the criteria and the definition set out in the definition section, I do not consider this to be a consequential element in determining the lawfulness or the unlawfulness of the game.

10 The defence in Booth brought a motion for a directed verdict. Fontana P.C.J. granted the motion, and the charges were dismissed. In dismissing the charges, Fontana P.C.J. stated that s. 197(1) of the Code defines "common gaming house" in five ways. In s. 197(1)(a), "common gaming house" is defined as "a place that is kept for gain to which persons resort for the purpose of playing games". In s. 197(1)(b), "common gaming house" is defined in four other

ways according to the mechanics of how the game is played. Fontana P.C.J. found as follows:

> On the evidence alleged by the Crown, and accepting the testimony presented on behalf of the Crown by Mr. Turmel, the operation in this occasion clearly does not fall into the first four categories. That is: a place kept for gain or for playing games where the bank is kept by one or more but not all of the players; where there is a rake-off to the house as is mentioned in sub-subsection two; or where there is a fee charged. Clearly, none of those first four criteria apply. If the operation on this occasion is to be caught, it must be caught with respect to sub-subsection four which I quote:
>
> > "Kept or used for purposes of playing games in which the chances of winning are not equally favourable to all persons who play the game, including the person, if any, who conducts the game."

11 Fontana P.C.J. identified the main issue in Booth to be whether the chances of winning the game were equally favourable to all players. He decided that, on the mechanics of the game as played at the Bayshore Hotel on Carling Avenue, the chances of winning were equally favourable to all players:

> While there was a small advantage to the banker/dealer, nevertheless that opportunity to be banker/dealer was available to all players who participated in the game.
>
> The advantage that is derived to an individual by reason of his own skill and in playing the game, in no way confers an unfair advantage as contemplated by the Section.

12 The appellant is a skilled gambler who made large winnings at all his casinos. The issue before Wright P.C.J. at the appellant's trial on the Baxter Road and St. Laurent Boulevard charges was whether winnings count as "gains" within the meaning of s. 197(1)(a). The appellant argues that Fontana P.C.J. considered this issue at the trial of the found-ins when he stated that "the [Carling Avenue] operation ... clearly does not fall into the first four categories. That is: a place kept for gain ... " This passage is the basis for the appellant's submission that the principles of autrefois acquit, res judicata, and issue estoppel were applicable at his trial before Wright P.C.J.: he argues that Wright P.C.J. was bound to acquit him because the issue whether winnings are gains was decided in his favour by Fontana P.C.J., and later by Lennox P.C.J. who adopted the reasons of Fontana P.C.J.

Proceedings Before Lennox P.C.J.

13 In the proceedings before Lennox P.C.J., entitled R. v. Turmel, supra, the appellant was acquitted of keeping a common gaming house at the Bayshore Hotel on Carling Avenue contrary to s. 185(1) [now s. 201(1)] of the Code. Lennox P.C.J. explained the relationship between the Booth case and the case before him as follows:

> My brother Judge Fontana, a short time before I commenced that trial, heard a charge of being a found-in or found-ins, in a common gaming house at the same address between the same dates.
>
> I understand that it is common ground that the evidence called in the course of that proceeding for all practical purposes are identical to the present matter and that any argument that would have been advanced in this matter, was already advanced before His Honour Judge Fontana.

14 I am aware of the decision of Judge Fontana and of its result.

15 Lennox P.C.J. in Turmel adopted the reasons of Fontana P.C.J. in Booth with respect to the issue whether the Carling Avenue premises constituted a gaming house within the meaning of s. 197(1):

> In [Judge Fontana's] decision, essentially, as I understand it is that there was no evidence that there was, in fact, a gaming house being kept on the premises
>
> ...

> I would have difficulty, because of that finding, in rendering what would essentially be a contradictory verdict on what I understand to be, basically, the same facts ...
>
> I would propose, without further specific consideration, in view of the necessity, in my view, of avoiding contradictory decisions on the same matter on the same evidence, to follow the Ruling of Judge Fontana. ...
>
> In my view, it would be an error on my part at this point in time to consider delivering a contradictory verdict on what amounts to an argument at law, that being a complete absence of evidence. In those circumstances ... I propose, simply, to adopt the reasons, for the purposes of this trial, of Judge Fontana and the result.

16 Accordingly, Lennox P.C.J. allowed the defence motion for a directed verdict, and the charges against Turmel were dismissed.

Proceedings Before Wright P.C.J.

17 The proceedings before Wright P.C.J. are the subject matter of this appeal. Wright P.C.J. described the gambling operations at the St. Laurent Boulevard and Baxter Road locations as follows:

> Mr. Turmel had purchased and owned professional game playing tables at both premises. Food and non-alcoholic beverages were served to the patrons free of charge. The public was invited to attend at both premises for the purpose of playing blackjack with Mr. Turmel and his employees or poker with Mr. Turmel and other patrons. Mr. Turmel and his employees would act as cashiers.
>
> The Casino Turmel and Turmel's game room were attended for the purpose of playing games such as blackjack and poker, and the court was further advised that there was no fee required to enter the premises. A patron could buy into a game at two hundred dollars. Games were played with poker chips which were sold by cashiers in denominations of two dollars fifty cents to five hundred dollars. If a player chose to become dealer/banker for blackjack, the player would leave the table if there were more than one player present, or stay at the table and all the other players would leave the table. This player would then become the dealer/banker against Mr. Turmel or one of his employees. Patrons were not allowed to bank against other patrons
>
> ....
>
> It is indicated that the premises were operated as a professional organized playing venue with all the paraphernalia such as blackjack tables, poker tables, chairs, playing tables, playing chips, cards, card dealing shoes, food, beverage, that there were monitors for taking cash and playing chips, a doorman, as well as camera and surveillance equipment
>
> ...
>
> ... the operation [at the St. Laurent location] was much bigger than at Baxter Road, a full-fledged casino with many employees, two games of blackjack and "hole 'em" [sic], a type of poker. He [an undercover police officer] estimated that there were seventy-five to one hundred people in attendance.

18 The main issue before Wright P.C.J. was the proper interpretation of the definition of "common gaming house" in s. 197(1)(a) as "a place kept for gain". The blackjack rules at St. Laurent Boulevard and Baxter Road were designed to ensure the game fell outside the definitions of "common gaming house" in s. 197(1)(b): no player was prohibited from keeping the bank, no portion of the bets on or proceeds from the games were paid to the appellant, no fee was charged for the privilege of playing, and the odds of winning, assuming equal skill among players, were equally favourable to all. The parties agreed that the Crown had to prove that the Baxter Road and/or St. Laurent Boulevard premises were "kept for gain" within the meaning of s. 197(1)(a).

19 Wright P.C.J. proceeded on the premise that Fontana P.C.J. and Lennox P.C.J. decided whether the Carling Avenue casino was a "common gaming house" by considering s. 197(1)(b), but not s. 197(1)(a). Wright P.C.J. stated:

> Were the Crown proceeding under s. (b) [of s. 197(1) of the Code], I would find that it has not been established beyond a reasonable doubt that there was a bank kept by one or more but not all the players or in which the chances of winning were not equally favourable to all, given the signs, rules and equal opportunity to be banker/dealer, or that the accused has been shown to fall under any of the other headings as set out under (b).
>
> ...
>
> Were the Crown proceeding under (b), it follows that in accordance with the Booth decision, I would enter an acquittal based on the facts that are before me.
>
> The crown proceeds today on a different definition and that is the definition found under (a) which provides that a "common gaming house" means a place that is kept for gain to which persons resort for the purpose of playing games. If the charge against Mr. Turmel turns on the meaning of the word "gain", does gain include winnings?

20 The appellant Turmel assumes that by not charging players for food or drinks, or for the privilege of gambling, he kept his operations outside the s. 197(1)(a) definition of common gaming house as a place kept for gain. He states in his factum on appeal:

> As long as I didn't violate one of the four (b) definitions in the subset [i.e. s. 197(1)(b)] of illegal ways of winning chips out of the games by taking a rake-off from pots, charging a fee to play, excluding anyone from being the banker or having some advantage others did not have and as long as we didn't violate the (a) definition [i.e. s. 197(1)(a)] by playing where someone's cash register was gaining money, I was never perturbed when the police came in to my private halls to check out my games ... [Emphasis added.]

21 It is not disputed that the appellant is an exceptionally skilled professional gambler who supported his establishments and paid his employees out of his large winnings. Because he is exceptionally skilled, the rule prohibiting players from banking against anyone but him or an employee of his helped him make large winnings. But he argues his winnings are not "gains" within the meaning of s. 197(1)(a) because he earned them by skill, the odds being equally favourable to all players.

22 However, Wright P.C.J. interpreted "gain" in s. 197(1)(a) to include winnings:

> I concluded that this was a business, a commercial activity on a large scale. There is no evidence of any indirect gain or income whatsoever, only from the business of gambling directly.
>
> There is no other reason for the places to have been kept other than to produce income. I conclude that gambling income does come within the meaning of (a), and I must conclude that the charge is proven, and there will be a finding of guilty.

23 The appellant argues that his gambling operations at St. Laurent Boulevard and Baxter Road were the same as his operations at Carling Avenue impugned in the earlier decisions of Booth and Turmel. He contends that with no evidence of any change in the gambling operations, Wright P.C.J. was precluded from convicting him by interpreting the word "gain" in s. 197(1)(a) of the Code differently than did Fontana P.C.J. and Lennox P.C.J.

24 In rejecting the appellant's argument that the principle of res judicata applied to bar him from interpreting "gain" differently than did Lennox P.C.J. and Fontana P.C.J., Wright P.C.J. held as follows:

> In relation to the argument of res judicata raised on the last day, I am satisfied that the defence cannot succeed. Whatever the determination with respect to the meaning of "kept for gain", I am satisfied that it is a distinct issue and question of law from the issues which were raised in the previous cases in R. v. Booth and R. v. Turmel, Ottawa. Further, in respect of R. v. Booth, the parties are not the same persons.

Analysis

Issue (1) Whether the common law doctrine of double jeopardy, encompassing the special plea of autrefois acquit, was available to the appellant, either on the basis that a prior acquittal converted the appellant's operation of a gaming house into res judicata, or on the basis of the common law plea of issue estoppel.

25 The meaning of the plea of autrefois acquit is explained by Dickson J. for the Supreme Court of Canada in The Queen v. Riddle [1980] 1 S.C.R. 380 at p. 385:

> One of the fundamental rules of the criminal law is expressed in the maxim, nemo debet bis vexari pro una et eadam causa, no person shall be placed in jeopardy twice for the same matter. By the special plea of autrefois acquit, founded upon that maxim, the accused says simply that he has been previously acquitted of the offence with which he is now charged; that offence is res judicata, i.e. it has passed into a matter adjudged. A second prosecution is, therefore, not open. In the case at bar, the respondent says that the assault alleged in the first information has become converted into res judicata or judgment.
>
> The classic statement of the principle is found in Hawkins' Pleas of the Crown (1726), Bk. II, c. 35, p. 368:
>
> > That a man shall not be brought into danger of his life for one and the same offence more than once. From whence it is generally taken, by all the Books, as an undoubted consequence, that where a man is once found not guilty on an indictment or appeal free from error, and well commenced before any court which hath jurisdiction of the cause, he may by the common law in all cases whatsoever plead such acquittal in bar of any subsequent indictment or appeal for the same crime.
>
> In short, when a criminal charge has been once adjudicated by a court having jurisdiction, the adjudication is final and will be an answer to a later information founded on the same ground of complaint.

26 The appellant relies on two decisions to argue that the plea of autrefois acquit is available to him: R. v. Carrier (1951), 104 C.C.C. 75 (Q.K.B.) and City of Montreal v. Rothman Realty Ltd. (1963), 41 C.R. 372 (Mtl. Mun. Ct.). In Carrier, the appellant appealed his conviction of publishing false news contrary to s. 136 of the Code on the grounds that he had previously been acquitted of publishing a seditious libel contrary to s. 134 of the Code. The court, in overturning the conviction on the principle of autrefois acquit, found that although the appellant was charged with two different offences, because the impugned pamphlet was the same in both cases, the outcome of the seditious libel case was determinative for the purpose of deciding the false news case. The court stated at p. 84:

> In the first indictment it was said: "The document contains a seditious libel: and in the second it is said: "The document is of a nature to occasion injury or mischief to the public interest." This second charge forms part of what the Code calls "seditious offences". Nowhere does the Code define what is understood by the words "whereby injury or mischief is occasioned to any public interest". But read in the context the Court believes that if this document was not seditious it could not have the effect of causing, criminally, such injury or mischief to the established authority.

27 The court held that the applicability of the principle of autrefois acquit depends on whether the first matter on which the appellant was arraigned was the same, in whole or in part, as the second matter on which it is proposed to prosecute him. If, by making the necessary amendments to the indictment, the accused could have been convicted of the second charge, the principle applies and no prosecution should lie.

28 The appellant argues that in Carrier, the impugned pamphlet was the same on both indictments. The indictment in the seditious libel case could have included the false news charge: only the charge and the date and location

changed. In the case on appeal, the charge before Wright P.C.J. was the same as the charge before Lennox P.C.J.; as in Carrier, the date and location had changed. The appellant submits that the Carrier case should be taken to mean that changes in the date and location of an offence are insignificant, therefore, Wright P.C.J. should have applied the principle of autrefois acquit.

29 However, in Carrier, the content of the pamphlet was the most important part of both cases; Drouin J. of the Quebec Court of King's Bench applied the principle of autrefois acquit because the pamphlet in the false news case was identical to the pamphlet in the seditious libel case. Similarly, in City of Montreal v. Rothman Realty, supra, Lachapelle Mun. Ct. J. dismissed the charge of operating a rooming house on the grounds that the accused had previously been acquitted of the same charge in relation to the very same building. The appellant relies on Carrier and City of Montreal as precedents for his plea of autrefois acquit, but, on principle, these two cases are better reconciled as applications of the doctrine of stare decisis.

30 In the case under appeal, while it is true that the blackjack rules at the Baxter Road and St. Laurent Boulevard casinos appear to have been much the same as the blackjack rules at the Bayshore Hotel on Carling Avenue, it is clear from the reasons of Wright P.C.J. that the features of the premises at Baxter Road and St. Laurent Boulevard, including their size and location and the scope of the gaming operations as a whole, were important considerations in his conclusion that the premises constituted places "kept for gain". The appellant argues that Fontana P.C.J.'s finding that the Carling Avenue casino was not a "common gaming house" constituted a finding that blackjack, whenever played in accordance with the rules testified to by the appellant, will survive scrutiny under s. 197(1) of the Code. While not expressing himself in these terms, the appellant apparently treats the judgment of Fontana P.C.J. as a judgment in rem converted into a judgment in personam when adopted by Lennox P.C.J. The appellant submits that he can never be prosecuted for an offence arising out of the playing of blackjack as long as it is played in accordance with the "Turmel rules", on the grounds that his version of blackjack has been found not to contravene the Code. He arrives at this conclusion by arguing that Fontana P.C.J., in acquitting the found-ins in R. v. Booth, vindicated the appellant's version of the game; that Lennox P.C.J., in adopting Fontana P.C.J.'s judgment, acquitted the appellant because his version of blackjack did not constitute his premises a common gaming house. Accordingly, he submits, Wright P.C.J. erred in distinguishing the appellant's earlier acquittal by Lennox P.C.J. on the basis that the Crown introduced evidence not proffered in the earlier proceedings.

31 But that the Carling Street premises were not kept for gain is not determinative of whether the St. Laurent Boulevard or Baxter Road premises were kept for gain, even if the rules of blackjack were the same at all three casinos. That the findings of Fontana P.C.J. and Lennox P.C.J. might be persuasive before Wright P.C.J. does not mean those findings justify the special plea of autrefois acquit. In my view, the appellant's argument confuses autrefois acquit with the doctrine of stare decisis whereby Wright P.C.J.'s deliberations were constrained, but only to the extent he felt bound by judicial comity, to interpret the meaning of "gain" in s. 197(1)(a) in the same manner as his colleagues Fontanna P.C.J. and Lennox P.C.J. The plea of autrefois acquit was not applicable in the proceedings before Wright P.C.J., even accepting the appellant's assertion that Lennox P.C.J., in acquitting the appellant of the Carling Street gaming house charge, decided the issue whether winnings count as gains under s. 197(1)(a). Wright P.C.J. was entitled to reconsider that issue on new evidence because pursuant to s. 609(1)(a) of the Code, for the appellant's plea to succeed, "the matter on which [he] was given in charge" before Lennox P.C.J. must have been "the same in whole or in part" as the matter on which he was given in charge before Wright P.C.J.

32 The only evidence on our record is that the blackjack rules were largely the same at Carling Avenue, Baxter Road, and St. Laurent Boulevard. The appellant argues that this identity of rules grounds the plea of autrefois acquit: he argues that since blackjack was played the same way at all three premises, the acquittal with respect to one of the premises is determinative of his innocence of keeping a common gaming house at the other two premises. But if, despite the identity of the blackjack rules, the "matter" in the three cases is not the same, in whole or in part, within the meaning of s. 609(1)(a), then the appellant's plea must fail. The appellant was not on trial before Fontana P.C.J. and he cannot rely upon that judgment per se. He must rely upon the adoption of that judgment by Lennox P.C.J. to argue that the matter of his guilt on the charge of keeping a common gaming house at the Carling Avenue premises was the same as the matter before Wright P.C.J. of his guilt on the same charge at the Baxter Road and St. Laurent

Boulevard premises. But on authority, the "matter" before Lennox P.C.J. was not the same as that before Wright P.C.J. because the matters involved different factual transactions.

33 Ewaschuk, in Criminal Pleadings and Practice in Canada, 2d ed. (Aurora, Ontario: Canada Law Book, 1996), suggests at p. 14-13 that two matters are the same within the meaning of s. 609(1)(a) only when they arise from a single factual transaction:

> Questions for determination on the special pleas of autrefois acquit or autrefois convict are:
>
> c) whether the accused has previously been finally convicted or acquitted on the same factual transaction; [Emphasis added]

34 The "same factual transaction" means not two transactions having identical facts, but one transaction giving rise to multiple charges. For example, in R. v. Prince, [1986] 2 S.C.R. 480, the respondent was convicted of causing bodily harm to a pregnant woman by stabbing her in the abdomen. The respondent was later charged with manslaughter in respect of the child, who died after a premature birth. The respondent moved for a stay of the manslaughter proceedings on the basis of the principle in R. v. Kienapple, [1975] 1 S.C.R. 729. According to the Kienapple principle, an accused may not be prosecuted for two or more substantially similar offences if the offences arise from the same cause or matter. The issue in Prince was whether the Kienapple principle applied to bar the manslaughter proceedings. Dickson C.J. stated in Prince, at p. 491:

> It is elementary that Kienapple does not prohibit a multiplicity of convictions, each in respect of a different factual incident. Offenders have always been exposed to criminal liability for each occasion on which they have transgressed the law, and Kienapple does not purport to alter this perfectly sound principle. It is therefore a sine qua non for the operation of the rule against multiple convictions that the offences arise from the same transaction. [Emphasis added]

35 Consistent with this statement, Martin Friedland states as follows in Double Jeopardy (Oxford: Clarendon Press, 1969) at p. 213:

> Most courts agree that multiple convictions and punishments for violating the same statutory provision are permissible when each is brought about by a different physical act.

36 In Canadian Criminal Procedure, 4th ed. (Aurora, Ontario: Canada Law Book, 1984), Salhany states, at p. 252, that a plea of autrefois acquit is grounded, not in the similarity of the facts giving rise to multiple prosecutions, but in the similarity of the offences, arising out of a single transaction, on which an accused is prosecuted:

> It is provided under section 537(1) [now s. 609(1)] that if the "matter" of the earlier charge is the same in whole or in part as the later charge, and if the accused might have been convicted of all offences on the earlier charge (assuming that all proper amendments had been made that could have been made) of which he may be convicted on the later charge, a plea of autrefois convict or autrefois acquit is applicable. The term "matter" here refers to offences and not the facts. Accordingly, the true test is whether the two charges relate to offences which are similar and not whether the facts in both cases are similar. [Emphasis added]

37 What is clear, in my view, is that multiple prosecutions under the same statutory provision are permitted if each prosecution arises from a different physical act. An accused can be charged twice, for the same offence, if the charges arise from separate transactions. What is equally clear is that if an accused is convicted with respect to the first transaction, he or she cannot plead autrefois convict when charged with the second. What should be equally clear on principle is that if an accused is acquitted with respect to the first transaction, he or she cannot plead autrefois acquit when charged with the second. If the appellant Turmel had been convicted by Wright P.C.J. on the Baxter Road and St. Laurent Boulevard charges before being tried by Lennox P.C.J. on the Carling Avenue charges, an argument before Lennox P.C.J. of autrefois convict would surely have failed, since accused persons are answerable to society for each occasion on which they transgress the law. Since a prior conviction could not ground an argument

of autrefois convict on a later trial of the same charge arising from a new transgression, neither should a prior acquittal ground an argument of autrefois acquit on a later trial of the same charge arising from a new transaction. The pleas of autrefois convict and autrefois acquit should be treated as symmetrical: both pleas require that the previous verdict arise from the same transaction on which it is later purported to try the accused.

38 I have not found an authority in which the principle of double jeopardy is expressed in these terms, but on principle, it appears to me that the pleas of autrefois acquit and autrefois convict are the two sides of the double jeopardy coin. Both an acquittal and a conviction terminate the proceedings, and subject to remedies on appeal, each verdict is final and binding as between the citizen and the state. But the verdicts cover transactions past, not future. They do not preclude, per se, other prosecutions. Both a convicted and acquitted person may be prosecuted if he or she later transgresses. The acquitted citizen is in no better position than a convicted one if he or she should later break the law. This does not mean an accused is without remedy if he or she feels a prosecution following an acquittal amounts to harassment. As I have indicated, the court may rely on stare decisis to grant relief and, in a proper case, the remedy of a stay for abuse of process is available both at common law and under the Canadian Charter of Rights and Freedoms.

39 The final obstacle to the appellant's double jeopardy argument is that there is some ambiguity whether Fontana P.C.J. and Lennox P.C.J. turned their minds directly to the issue whether winnings count as gains within the meaning of s. 197(1)(a). This ambiguity must be resolved in favour of the respondent Crown because the principles of res judicata and issue estoppel apply only when an issue was clearly decided in a previous litigation. In R. v. Van Rassel, [1990] 1 S.C.R. 225, the Supreme Court of Canada rejected the respondent's argument of issue estoppel, at p. 238-239:

> The rule that a court should not rule on an issue that has already been decided by another court is a fundamental principle of our system of justice. The fact that a matter has already been the subject of a judicial decision may raise an estoppel against the party seeking to relitigate the matter. This is the principle of issue estoppel, and it too is related to the principle of res judicata. Issue estoppel is recognized in Canadian criminal law: Gushue v. The Queen, [1980] 1 S.C.R. 798.
>
> The respondent suggests that issue estoppel could not apply with respect to a foreign criminal judgment since the parties involved are not the same. It will not be necessary to decide this point since it is well established that the principle applies only in circumstances where it is clear from the facts that the question has already been decided. Laskin C.J. wrote in Gushue, at 807:
>
> > I am of opinion that the question of issue estoppel in respect of the robbery conviction is put to rest by the following statement, which I adopt, in Friedland, Double Jeopardy (1969), at p. 134:
> >
> > > ... The possibility or even the probability that the jury found in the accused's favour on a particular issue is not enough. A finding on the relevant issue must be the only rational explanation of the verdict of the jury.

40 Similarly, Salhany in Canadian Criminal Procedure, supra, states at p. 255:

> Before issue estoppel can apply, the court must be satisfied that the issue sought to be estopped has been clearly and unequivocally decided by the court in the first proceeding as a fundamental step in the logic of the decision.

Issue (2) Whether the winnings from the game of blackjack constitute "gain" within the meaning of s. 197(1)(a) of the Code.

Additional facts respecting this issue

41 During the period covered in the information, the appellant kept the alleged gaming houses at Baxter Road and St. Laurent Boulevard. The scale of the gambling operations at these locations necessitated the employment of

dealers, cashiers, and runners. At the St. Laurent Boulevard operation, which an undercover officer described as "a full fledged casino", 18 to 20 uniformed employees were observed serving an estimated 75 to 100 customers. At the Baxter Road location, the officer saw seven blackjack tables, five of which were observed in operation at one time. The appellant admitted having 100 employees and monthly wage costs of $175,000 in January of 1993. Business was so good that eventually, the St. Laurent Boulevard casino operated 24 hours a day.

42 The appellant made expenditures on advertising in print and by mail; on free bus transportation of patrons from Montreal; on the provision of free food and drink; and on video surveillance equipment. In an 18-day period covered by a police audit, over $26,000 was spent on promotions and $5,800 on food provided free to customers. The rent at the Baxter site was $500 per week and at St. Laurent Boulevard $2,500 per week.

43 The appellant earned impressive revenues. In October 1992, the appellant stated that his net revenue from the Baxter operation was $20,000 to $30,000 per month. For January 1993, the appellant claimed gross revenue from his Ottawa casino of $600,000. He made between $350,000 and $450,000 per year from gambling.

44 In his statement to police, the appellant's former general manager, Donald Cribbie, described the bonuses he received as a percentage of the casino profits. He conservatively estimated yearly profits of the combined operation at $1,000,000. A forensic audit over an 18-day period confirmed that weekly earnings after salary expenses were close to $25,000.

45 The appellant's rules for blackjack provided that the role of the "bank" would be rotated to the players. Expert evidence was led that there is an "edge" associated with being the bank because hands that "go bust" [over 21] are forfeited to the bank and because the bank always plays last. While the player does have certain options not available to the bank, such as insurance and doubling down, the party holding the bank still has a theoretical edge of 0.88 percent - assuming players are using the optimum strategy. In practice, given the varied level of skill among players, the average industry "drop" in favour of the house is 15 percent. Only if each player can be the bank half of the time is the edge shared equally between the house and the players.

46 The evidence was that the bank did not rotate from the house to the players in an equal manner, but only in a restricted manner that did not confer on the customers the full advantages that go with being the bank: the players could only be the bank against one player, namely the house (Mr. Turmel or one of his employees), not against a number of other players, which deprived the players of an advantage normally associated with being the bank; Turmel's rules obliged each player to be bank only once in the evening, not fifty percent of the time; and the rules in question were only loosely enforced and the undercover officer who took the stand only infrequently observed a customer being the bank.

47 Given the volume of gambling at issue in this case, the edge in practice retained by the house helped create substantial revenues for the appellant. Between $1,500 and $24,000 an hour was being wagered at the appellant's blackjack tables. Donald Cribbie stated:

> The casino makes its money from the Blackjack tables. It's what pays the bills. If you take out the Blackjack tables you wouldn't make money. If you don't make money the casino wouldn't be there.

Analysis

48 The appellant took no issue with any of the above evidence. Indeed he proclaimed in this court that he was running the games to make "winnings", as he preferred to style his gains. While the evidence and the argument focused on the game of blackjack, the appellant readily conceded that he made money from all the card games played at his casinos. He was successful in consistently winning because he was an exceptional card player and, he argued, his "winnings" did not constitute "gains" under s. 197(1)(a) of the Code. In his submission, so long as the operation of his casinos avoided the four pitfalls of s. 197(1)(b), he was committing no offence by being a winner because the Code proscribes indirect gains but not direct gains from the playing of the games themselves. He likened his

operations to a situation where a person invites friends over for a game of poker, provides refreshments (free), and ends up with most of the pots.

49 I agree with the Crown that the appellant's interpretation of s. 197(1)(a) is much too narrow. It contemplates reading into s. 197(1)(a) the word "indirect" to modify "gain". It would exclude "profit" from these business operations called casinos. It is quite true that almost all of the published judgments deal with convictions respecting infractions of the four subsections to s. 197(1)(b), but as the Crown points out, this is because historically that is the simplest method of prosecuting a keeper of a gaming house. I cannot accept that an operation of the magnitude of that described in the evidence before us does not constitute keeping a common gaming house for gain. If the appellant's argument is valid, prosecutions could only succeed under s. 197(1)(b) where that specified conduct can be identified. The appellant's comparison between his operations and friendly poker games is of little assistance. There comes a point where a game ceases to be friendly and becomes commercial gambling, an activity prohibited by Parliament. I agree with the following statement from the factum of the Crown:

> By restricting s. 197(a) to indirect gains only, the gaming provisions of the Code would be read down to mere prohibitions on casinos charging for drinks or parking. This would be contrary to the clear objective of the provision which is to restrict commercial gaming itself.

50 This statement appears to be supported by authority, limited as it is on this specific point. In Rockert et al. v. The Queen, [1978] 2 S.C.R. 704 the trial judge convicted the appellants of unlawfully keeping a common gaming house contrary to s. 185(1) [now s. 201(1)] of the Code. The Ontario Court of Appeal dismissed the appellants' appeal. The issue before the Supreme Court of Canada was whether the term "common gaming house" in s. 179 [now s. 197] of the Code could be interpreted to permit a conviction where the premises in question were used for gaming on only one occasion.

51 The majority of the Supreme Court reversed the Court of Appeal and overturned the convictions, holding in part that a business purpose test should not be imported into s. 179(1)(b) of the Code because a business purpose test was already contained in s. 179(1)(a). Estey J., writing for the majority, made clear that the test whether a place is "kept for gain" is a business purpose test. He stated at p. 707:

> It is unreasonable, in my opinion, to import a business purpose test into the second definition in the face of the express words employed by Parliament in the immediately preceding portion of the definition which imports the closely related notion of gain. That requirement has for many years been interpreted loosely as "kept for business purposes" ...

52 Estey J.'s insistence that s. 179(1)(a) contains a business purpose test suggests that a place is "kept for gain" within the meaning of the section when the place is run as a commercial enterprise for profit. There is no distinction drawn in the Code or in the analysis of Estey J. between profit made indirectly from sales and profit made directly from winnings.

53 The appellants in Di Pietro v. The Queen, [1986] 1 S.C.R. 250 were convicted of keeping a common gaming house contrary to s. 185 [now s. 201] of the Code. The appellants owned an establishment called "Corrado Billiards" where pool and cards were played and refreshments were sold. Customarily, the loser of the Italian card game of "scalaforti" would purchase coffee for the other players. The Ontario Court of Appeal dismissed the appellants' appeal from conviction. The Supreme Court of Canada reversed the Court of Appeal and overturned the convictions, holding that wagering, or the chance to win or lose money or money's-worth, was a necessary element of the offence of gaming, but the custom whereby the loser bought the winners' refreshments did not satisfy the wagering requirement.

54 Referring to the definition of common gaming house, Lamer J., for the majority, stated at p. 258 that the first two requirements of the definition, keeping a place and making a gain, were satisfied because "the appellants admitted that they are the proprietors of Corrado Billiards and that they profit from this undertaking". "Profit from this undertaking" is a broad phrase that does not, unless read down, suggest that profit must be made indirectly from the sale of refreshments but not directly from the playing of the game.

55 Consistent with the principles of statutory interpretation set out by the Supreme Court of Canada in R. v. McIntosh, [1995] 1 S.C.R. 686, I see no reason to read down the plain meaning of s. 197(1)(a) so as to interpret "gain" to include indirect gains but not direct winnings.

Disposition on conviction appeal

56 For the reasons given with respect to issues (1) and (2), I would dismiss the appeal against conviction. The plea of autrefois acquit was not available and Wright P.C.J. was not bound by precedent to find that the appellant's version of blackjack was legal. He was also correct in his finding that the "casinos" in question were common gaming houses as being places kept for gain to which persons resorted for the purpose of gaming.

b) Whether the sentence was fit.

57 The appellant was given a suspended sentenced and three years probation. He was ordered to pay a victim fine surcharge of $2,500 and to perform 200 hours of community service. He was prohibited from patronizing unlicensed gambling establishments and from associating with persons with criminal records.

58 On an application to stay the sentence pending appeal, this court, on September 8, 1995, affirmed the terms of probation with the following variations: the prohibition on patronizing unlicensed gambling establishments was varied to a prohibition on illegal gambling, and the prohibition on associating with persons with criminal records was varied to a prohibition on associating with persons with records for gambling.

59 In sentencing the appellant, Wright P.C.J. considered the following aggravating factors: the appellant's related criminal record, his recent 4-month jail sentence for gambling, the size of his proceeds from gambling, the evils of unregulated gambling in general, and the need for general deterrence. He considered the following mitigating factors: the appellant's co-operative attitude during the investigation and trial, his substantial volunteer and community work, his pledge not to set up other casinos, the fact that he is not a dishonest or violent individual, and the fact that this was a test case on the issue whether winnings count as gains under s. 197(1)(a) of the Code.

60 In this court, the appellant submits that the issues in this case are novel and his prosecution should be treated as a test case. I think the case is novel. On the other hand, the appellant was treated leniently. An operation of this nature could easily have attracted a custodial term, especially given that the appellant has previously been sentenced to jail for gambling. The sentence imposed by Wright P.C.J. properly reflects the mitigating factors. I am satisfied that the magnitude of the operation justifies the sentence imposed and that Wright P.C.J. committed no error in principle. I would revise the sentence only to the extent of giving effect to the changes to the probation order made by this court on September 8, 1995.

61 Accordingly, I would grant leave to appeal sentence and allow the appeal to this limited extent.

FINLAYSON J.A.
ABELLA J.A. -- I agree.
AUSTIN J.A. -- I agree.

R. v. Turmel, [1996] S.C.C.A. No. 530

Supreme Court of Canada Rulings on Applications for Leave to Appeal and Other Motions

Supreme Court of Canada

Record created: October 31, 1996.

File No.: 25610

[1996] S.C.C.A. No. 530

John C. Turmel v. Her Majesty The Queen

Appeal From:

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Case Summary

Status:

Application for leave to appeal dismissed (without reasons) February 20, 1997.

Catchwords:

Criminal law — Keeping a common gaming house — Defence — Autrefois Acquit — Whether the trial judge's interpretation of s. 197(1)(a) of the Criminal Code was correct — Whether the Applicant's conviction was barred by the doctrine of autrefois acquit since he was acquitted of similar activities in the past — Whether the sentence was proper.

Counsel

John C. Turmel, for the motion. Trevor Shaw (Attorney General of Ontario), contra.

Chronology:

1. Application for leave to appeal:
   FILED: October 31, 1996. S.C.C. Bulletin, 1996, p. 1957.

   SUBMITTED TO THE COURT: December 13, 1996. S.C.C.

   Bulletin, 1997, p. 14.

   DISMISSED: February 20, 1997 (without reasons). S.C.C.

   Bulletin, 1997, p. 354.

   Before: L'Heureux-Dubé, Sopinka and Iacobucci JJ.

The application for an extension of time is granted. The motion for stay of execution and the application for leave to appeal are dismissed.

Procedural History:

Judgment at first instance: Conviction: keeping a common gaming house; Sentence: 3 years probation, 200 hours community service, victim fine surcharge of $2,500. Ontario Court of Justice (Provincial Division), P. Wright Prov. J., May 16, 1994.

[1994] O.J. No. 2406.

Judgment on appeal: Probation order varied.

Ontario Court of Appeal, Lacourcière, Labrosse and

Austin JJ.A., September 8, 1995.

[1995] O.J. No. 2683.

Judgment on appeal: Conviction appeal dismissed; sentence

appeal allowed to give effect to order made September

8, 1995.

Ontario Court of Appeal, Finlayson, Abella and Austin

JJ.A., August 13, 1996.

92 O.A.C. 215; 109 C.C.C. (3d) 162; [1996] O.J. No. 2835.

THIS IS EXHIBIT "15" mentioned and referred to in the affidavit of LISA MINAROVICH SWORN before me by affiant in the City of Brampton, in the Regional Municipality of Peel, in the City of Toronto in the Province of Ontario this 31st day of MAY, 2022 in accordance with O. Reg. 431/20.

A COMMISSIONER FOR TAKING AFFIDAVITS

Turmel v. CBC (Dragons' Den), [2010] O.J. No. 4077

Ontario Judgments

Ontario Superior Court of Justice

Brantford, Ontario

T.R. Lofchik J.

Heard: August 12, 2010.

Judgment: September 27, 2010.

Court File No. CV-10-48

[2010] O.J. No. 4077 | 2010 ONSC 5318 | 193 A.C.W.S. (3d) 1026 | 2010 CarswellOnt 7204

Between John C. Turmel, Plaintiff, and CBC (Dragons' Den), Defendant

(35 paras.)

Case Summary

Civil litigation — Civil procedure — Disposition without trial — Dismissal of action — Action unfounded in law — Judgments and orders — Summary judgments — To dismiss action — Application by the defendant for summary judgment to dismiss the plaintiff's defamation action allowed — Plaintiff failed to deliver notice of his defamation claim as required by statute — His failure to plead or to establish a genuine issue requiring trial regarding any other cause of action entitled the defendant to summary judgment.

Tort law — Defamation — Practice — Application by the defendant for summary judgment to dismiss the plaintiff's defamation action allowed — Plaintiff failed to deliver notice of his defamation claim as required by statute — His failure to plead or to establish a genuine issue requiring trial regarding any other cause of action entitled the defendant to summary judgment.

Application by the CBC for summary judgment to dismiss the defamation action of Turmel. Turmel sued for defamation because the CBC broadcast an excerpt of his appearance on a show that portrayed him negatively. In the show participants pitched business proposals to a panel of Canadian business persons known as the 'Dragons'. The Dragons offered advice and investment financing to participants based on their assessments of the financial soundness and viability of the proposals. Turmel's proposal was not received positively. When he commenced the action he did not deliver notice of his claim as required by s. 5(1) of the Libel and Slander Act.

HELD: Application allowed.

The notice under s. 5(1) was mandatory. Lack of such notice was a complete bar to Turmel's action and justified summary judgment in favour of the CBC. Turmel's Statement of Claim did not satisfy the notice requirement. The purpose of the notice was to call attention to the publisher to the alleged defamatory matter and to allow the publisher an opportunity, if appropriate, to apologize or to issue a correction before the matter proceeded to litigation. Due to the failure to provide notice there was no genuine issue that required a trial in respect of any claim for defamation. Turmel could also not maintain a claim for breach of contract because he did not plead it in his Statement of Claim. Even if this claim was made out there was no genuine issue for trial as the consent that Turmel signed before he appeared on the show barred the breach of contract claim.

Statutes, Regulations and Rules Cited:

Libel and Slander Act, R.S.O. 1990, c. L.12, s. 5(1)

Ontario Rules of Civil Procedure, Rule 20.04(2)(a), Rule 20.04(2.1)

Counsel

John C. Turmel, Self-represented.

Andrea Gonsalves, for the Defendant.

REASONS FOR JUDGMENT

T.R. LOFCHIK J.

1 When someone in show business is about to go on stage, well wishers invite them to "break a leg". In the course of appearing on the CBC's television show "Dragons' Den" the plaintiff was invited to "burst into flames" and he is not happy.

2 The producers of the show decided, in their discretion, to include excerpts of Mr. Turmel's appearance on the show in a one minute segment that was broadcast on the January 13, 2010 episode of the Dragons' Den. In the segment broadcast, the panel of Dragons was, to say the least, not kind to Mr. Turmel, one member of the panel having told him she had no idea what he was talking about, another invited him to burst into flames, and a third told him he was "blowing air up a dead horse's ass".

3 Mr. Turmel became aware of the broadcast on January 13, 2010. He commenced this action for defamation on January 20, 2010 without delivering a notice of his claim as required by the Libel and Slander Act. Upon examining the statement of claim, one might also glean the suggestion of a claim for breach of contract.

4 The defendant brings this motion for summary judgment seeking dismissal of the plaintiff's action.

FACTS

5 The Dragons' Den is a CBC television program in which start-up entrepreneurs (the "Participants") pitch business proposals to a panel of Canadian business persons, known as the Dragons. The Dragons offer advice, endorsement and/or investment financing to Participants based on their assessments of the financial soundness and viability of the Proposals. The Dragons' Den is broadcast from the CBC broadcast centre in Toronto and distributed to CBC television stations across the country.

6 Producers of the Dragons Den select individuals to participate in tapings for the Program, based on their judgments as to which proposals and/or Participants might contribute to the Program's public interest, its entertainment value, or both.

7 On May 27, 2009, Richard Maerov, a Dragons' Den producer, contacted Mr. Turmel and invited him to attend at a taping to pitch a business proposal to the Dragons. Mr. Maerov did not know what business projects Mr. Turmel might be working on, but he explained that Mr. Turmel had "a unique background in public speaking skill that might be interesting for the show".

8 Mr. Turmel agreed to participate in a taping and advised Mr. Maerov that he would pitch "world-wide interest-free time-based banking". Mr. Turmel had never seen an episode of the Dragons' Den. Although Mr. Maerov suggested that he might find out about the show and watch past episodes over the internet, Mr. Turmel chose not to do so before his taping.

9 Prior to his taping, Mr. Turmel received a copy of the Dragons' Den Contestant Guide, 2009. The Dragons' Den producers send the Contestant Guide to all Participants before they attend a taping. Mr. Turmel understood that he was to read the Contestant Guide carefully. He reviewed the Guide before attending his taping. The Contestant Guide advised Mr. Turmel of the following:

(a) There is no guarantee that a Participant will appear in an episode of the Dragons' den;

(b) Anything that is discussed on camera can be broadcast on the show;

(c) Further details about the rules of the Dragons' Den can be found in the Consent and Release form, which Participants must read and sign;

(d) Presenting to the Dragons does not guarantee that a Participant will receive an investment;

(e) Participants are responsible for understanding all the rules and regulations of the Dragons' Den;

(f) Participants should convey information about their Proposals to the Dragons in an easy to understand manner; and

(g) A pitch may take on a life of its own - anything goes.

10 Mr. Turmel arrived at the CBC studio in Toronto around midday on May 31, 2009. A Dragons Den staff member handed Mr. Turmel a copy of the Consent and Release (the "Consent") and told him to read it carefully. Mr. Turmel was required to sign the Consent if he wanted to participate in the taping.

11 Mr. Turmel did not indicate to anyone that he had concerns or questions about the Consent. He provided detailed information where he was requested on the form to do so, and he signed the Consent directly under a sentence that reads:

> I AGREE TO THE CONDITIONS SET OUT ABOVE AND THAT ALL THE INFORMATION GIVEN IN THIS FORM MAY BE USED IN THE PROGRAM AT THE PRODUCER'S SOLE DISCRETION.

12 The Consent contained the clauses set out in Exhibit "A" annexed to these reasons.

13 Mr. Turmel pitched a business proposal seeking a $100,000 investment from the Dragons to start up a local currency system for Brantford, Ontario, based on poker chips. As can be understood from reviewing the videotape, Mr. Turmel's fifteen minute pitch left the Dragons very confused. The Dragons did not give Mr. Turmel the investment he sought.

14 Portions of Mr. Turmel's pitch aired on an episode of the Dragons' Den on January 13, 2010 (the "Broadcast"). The Broadcast was approximately one minute long. It conveyed to the viewers that Mr. Turmel's pitch was confusing and difficult to follow. It informed the public that if one is not clear in explaining a business proposal, one will not likely receive investment in it.

15 As stated above, the treatment of Mr. Turmel by the Dragons in the broadcast segment was not kind.

16 Mr. Turmel became aware of the Broadcast during the evening of January 13, 2010, or early in the morning of January 14th. On January 20, 2010, Mr. Turmel commenced this action against the CBC on a self-represented basis alleging that the Broadcast "damaged and defamed" him. He did not serve any notice of claim before commencing the action, or thereafter within six weeks of the Broadcast.

17 The defendant brings this motion for summary judgment dismissing the plaintiff's action pursuant to Rule 20 of the Rules of Civil Procedure.

18 Subrule 20.04(2)(a) of the Rules of Civil Procedure requires the court to grant summary Judgment on motion where it is satisfied "there is no genuine issue requiring a trial with respect to a claim or defence".

19 Subrule 20.04(2.1) specifically authorizes the court, in the exercise of its authority, to weigh the evidence, evaluate the credibility of a deponent, and draw any reasonable inference from the evidence when determining whether there is a genuine issue requiring trial "unless it is in the interest of justice for such powers to be exercised only at a trial".

20 As the responding party, Mr. Turmel, may not simply restate mere allegations contained in his pleadings. He must set out in affidavit material coherent evidence of specific facts showing that there is a genuine issue regarding a trial. It is not sufficient to say that more and better evidence will or might be available at trial. While there is an onus on the moving party to establish that there is no genuine issue requiring a trial, the case law also establishes that the respondent must "lead trump or risk losing".

21 Where a plaintiff complains about a broadcast from a station in Ontario, s. 5(1) of the Libel and Slander Act applies and provides as follows:

> No action for libel in a newspaper or in a broadcast lies unless the plaintiff has, within six weeks after the alleged libel has come to the plaintiff's knowledge, given to the defendant notice in writing, specifying the matter complained of, which shall be served in the same manner as a statement of claim or by delivering it to a grown-up person at the chief office of the defendant.

22 Mr. Turmel knew about the Broadcast within hours of it airing on January 13, 2010. He has admitted that he did not give CBC notice in writing of the matter complained of within six weeks of that date, or at all.

23 The notice prescribed in s. 5(1) is mandatory. Lack of notice in accordance with s. 5(1) is a complete bar to Mr. Turmel's action and justifies summary judgment in favour of CBC.

> *Frisina v. Southam Press Ltd.* (1981), 33 O.R. (2d) 287 (C.A.) at p. 2 (QL), CBC's Book of Authorities, Tab 2
>
> *Misir v. Toronto Star Newspapers Ltd.,* [1997] O.J. No. 4960 (C.A.) at para. 13, CBC's Book of Authorities, Tab 3

24 It is settled in Ontario that the statement of claim does not constitute notice under s. 5(1) of the Libel and Slander Act. The purpose of the notice requirement is to call the attention of the publisher to the alleged defamatory matter and allow the publisher an opportunity, if it deems it appropriate, to apologize or issue a correction before the matter proceeds to litigation. The Court of Appeal has held that "[i]t is not a reasonable view of what the legislation contemplates to say that the alleged wrongdoer has every opportunity to apologize in the midst of litigation after receipt of the statement of claim".

> *Janssen-Ortho Inc. v. Amgen Canada Inc.*, [2005] O.J. No. 2265 (C.A.), at paras. 43-44, CBC's Book of Authorities, Tab 4

Stuarts Furniture & Appliances v. No. Frills Appliances & T.V. Ltd. (1982), 40 O.R. (2d) 52 (C.A.) at p. 53, CBC's Book of Authorities, Tab 5

Grossman v. CFTO-TV Ltd. (1982), 39 O.R. (2d) 498 (C.A.) at p. 5 (QL), CBC's Book of Authorities, Tab 6

25 Since Mr. Turmel has failed to comply with the mandatory notice provisions in the Act, his action for defamation cannot be maintained. There is no genuine issue requiring a trial in respect of any claim for defamation.

26 Mr. Turmel has not pleaded breach of contract in his statement of claim. In response to CBC's motion, Mr. Turmel gave evidence that he also intended to allege breach of contract by CBC. That pleading is not properly made out, but even if it were there would be no genuine issue for trial as the Consent executed by Mr. Turmel would be a bar to such a claim.

27 When asked in cross-examination about the terms of the contract he alleges were breached by CBC, Mr. Turmel answered that CBC had an obligation to broadcast his pitch for "local cash buy-in banking". However, he then agreed that CBC made no promise and had no obligation to broadcast his pitch at all, that the producers had full discretion to broadcast all, some or none of his pitch, and that they could edit, cut, alter, rearrange, adapt, dub or otherwise revise his pitch if they did decide to broadcast it.

28 The only contract between Mr. Turmel and CBC is the Consent. Mr. Turmel has not tendered evidence that there was any other contract or agreement between the parties. The obligation which Mr. Turmel alleges CBC breached is not only not in fact a term of the Consent (or of any contract between CBC and Mr. Turmel), it is expressly contradicted by the Consent's written terms.

29 During argument on the motion, Mr. Turmel attempted to argue that the Consent he signed was unconscionable as the edited version of his pitch shown misrepresents what he said.

30 While Mr. Turmel may view the editing of the segment which was broadcast by the CBC as unconscionable, there is nothing unconscionable about the Consent which he signed. Its substantive terms are not unfair nor is the Consent improvident for Mr. Turmel. There was no special relationship between the parties, nor any inequality of bargaining power when it was signed. In assessing the circumstances in which the contract was made, the following facts are significant:

* The Contestant Guide, which Mr. Turmel received before he attended for the taping, advised Mr. Turmel that the complete rules of the program were set out in the Consent;
* Dragons' Den staff told Mr. Turmel to read the Consent carefully before signing it;
* Mr. Turmel had adequate time to review the Consent before his taping;
* He had opportunity to ask questions about the contract and to have it reviewed by a lawyer providing independent legal advice. He signed the Consent without asking any questions or raising any concerns;
* He made a calculated decision to sign the contract in order to participate in a taping and receive the opportunity to ask the Dragons for a $100,000 investment in his Proposal. He received what he expected.

31 It is not open to Mr. Turmel to sue CBC on a bargain it never made. As such, even if he has pleaded breach of contract, it does not raise any genuine issue for trial.

32 As a result of Mr. Turmel's failure to deliver notice of his defamation claim as required by statute, and his failure to plead or establish a genuine issue requiring trial with respect to any other cause of action, the defendant is entitled to summary judgment dismissing Mr. Turmel's claim in its entirety. The action is therefore dismissed.

33 The defendant is entitled to the costs of the action and I have been requested to fix those costs.

34 Counsel claims $9,307 as counsel fee, the bulk in which is 50 hours in connection with the motion for summary judgment. This in my view is excessive given the nature of the case when considering what a party might reasonably expect to pay by way of costs.

35 I fix the costs of the defendant payable by the plaintiff as follows:

Counsel fee - $6,500 plus $325 G.S.T.	$6,825.00
Disbursements - $605.04 plus $23 G.S.T.	$ 628.04

Total:	$7,453.04

T.R. LOFCHIK J.

End of Document

Turmel v. CBC (Dragons' Den), [2011] O.J. No. 1816

Ontario Judgments

Ontario Superior Court of Justice

H.S. Arrell J.

Heard: March 17, 2011.

Judgment: April 19, 2011.

Court File No. CV-699-2010

[2011] O.J. No. 1816 | 2011 ONSC 2400 | 201 A.C.W.S. (3d) 112 | 2011 CarswellOnt 2634

Between John C. Turmel, Plaintiff, and CBC (Dragons' Den), Defendant

(15 paras.)

Case Summary

Civil litigation — Civil procedure — Judgments and orders — Summary judgments — No triable issue — To dismiss action — Estoppel — Estoppel by record (res judicata) — Cause of action — Res judicata as a bar to subsequent proceedings — Motion by C.B.C. for summary judgment dismissing Turmel's action against it for damages for defamation and breach of contract allowed — C.B.C. broadcast excerpt of Turmel's appearance on Dragons' Den show that portrayed him negatively — Panel did not accept Turmel's proposal and made disparaging comments about him — Turmel's first defamation action dismissed — He brought second action when C.B.C. re-broadcast episode — No genuine issue for trial — Turmel's signed consent was complete bar to action — No defamatory words in episode — Action also barred under doctrine of res judicata.

Contracts — Performance and discharge — Discharge by agreement — Releases — Motion by C.B.C. for summary judgment dismissing Turmel's action against it for damages for defamation and breach of contract allowed — C.B.C. broadcast excerpt of Turmel's appearance on Dragons' Den show that portrayed him negatively — Panel did not accept Turmel's proposal and made disparaging comments about him — Turmel's first defamation action dismissed — He brought second action when C.B.C. re-broadcast episode — No genuine issue for trial — Turmel's signed consent was complete bar to action — No defamatory words in episode — Action also barred under doctrine of res judicata.

Tort law — Defamation — Defences — Consent — Motion by C.B.C. for summary judgment dismissing Turmel's action against it for damages for defamation and breach of contract allowed — C.B.C. broadcast excerpt of Turmel's appearance on Dragons' Den show that portrayed him negatively — Panel did not accept Turmel's proposal and made disparaging comments about him — Turmel's first defamation action dismissed — He brought second action when C.B.C. re-broadcast episode — No genuine issue for trial — Turmel's signed consent was complete bar to action — No defamatory words in episode — Action also barred under doctrine of res judicata.

Motion by C.B.C. for summary judgment dismissing Turmel's action against it for damages for defamation and breach of contract. The Dragons' Den was a C.B.C. television program in which start-up entrepreneurs pitched business proposals to a panel of Canadian business people, known as the Dragons. Turmel agreed to participate in a taping of the show. Prior to the taping, Turmel signed a Consent and Release, which made it clear that

C.B.C. had sole and exclusive rights to the taping and to edit and use it in any way or anytime it wished. By signing the consent, Turmel further agreed he might have been portrayed in "...disparaging, defamatory, embarrassing or of an otherwise unfavourable nature which may expose [him] to public ridicule, humiliation or condemnation." Turmel also agreed not to sue for any loss or damage no matter how caused. Turmel pitched a business proposal seeking a $100,000 investment from the Dragons to start up a local currency system for Brantford, Ontario, based on poker chips. Turmel's 15-minute pitch left the Dragons confused. The producers of the show decided, in their discretion, to include excerpts of Turmel's appearance on the show in a one-minute segment that was broadcast on the January 13, 2010 episode of the Dragons' Den. In the segment, one member of the Dragons' panel told Turmel she had no idea what he was talking about, another invited him to burst into flames, and a third told him he was "blowing air up a dead horse's ass." The Dragons did not give Turmel the investment he sought. Turmel brought an action for defamation against C.B.C. on January 20, 2010. C.B.C. brought a successful motion for summary judgment dismissing Turmel's action. C.B.C. re-broadcast the episode involving Turmel on August 4, 2010 and also made it available to the public on its website. On November 12, 2010, Turmel brought a second action against C.B.C. for damages for breach of contract and for libel and slander.

HELD: Motion allowed and action dismissed.

There was no genuine issue for trial. Turmel fully understood, read and accepted the consent, which was a complete bar to the action. There were no words in the transcript of the episode that were capable of slander or libel. The conclusion of the Dragons that Turmel's pitch made no sense to them was not libel or slander. Furthermore, the action was barred under the doctrine of res judicata. The facts of both cases were identical and there were no new issues. The judge in the first action dealt with breach of contract as if pleaded and found no genuine issue for trial. He also found the consent to be a complete bar.

Statutes, Regulations and Rules Cited:

Libel and Slander Act, R.S.O. 1990, c. L.12, s. 5(1)

Court Summary:

Issues dealt with as identified by the Judge releasing the decision:

* The plaintiff was offended by the way he was portrayed on the Dragon's Den. Justice Lofchik in an extremely well reasoned decision dismissed his claim. CBC re-aired the program so he sued again fixing his pleadings somewhat in light of Justice Lofchik's decision. He still cannot be successful because of the consent signed, no libel or slander and Res Judicata.

Counsel

John C. Turmel, Plaintiff: self represented.

Andrea Gonsalves, for the Defendant.

JUDGMENT

H.S. ARRELL J.

Introduction:

1 The plaintiff accepted an invitation to appear on C.B.C.'s Dragons' Den. He has taken offence to the way the program was edited, aired and his treatment by the "Dragons". The plaintiff has therefore sued C.B.C. for defamation and breach of contract. C.B.C. has brought this summary judgment motion seeking a dismissal of the law suit.

Facts:

2 The plaintiff was contacted on May 27, 2009 by C.B.C. and invited to attend a taping of Dragons' Den and pitch a proposal. He did so on May 31, 2009. A portion was broadcast on January 13, 2010 and on January 20, 2010 the plaintiff commenced his first law suit.

3 Mr. Justice Lofchik heard a summary judgment motion by the defendant for dismissal of that law suit on August 12, 2010.

4 He released his reasons for granting summary judgment and dismissing the law suit of the plaintiff on September 27, 2010, [2010] O.J. No. 4077, with costs.

5 The defendant saw fit to rebroadcast the January 13, 2010 episode involving the plaintiff on August 4, 2010 and also made it available to the public on the C.B.C.'s website.

6 The plaintiff commenced this law suit on November 12, 2010, seeking a judgment for breach of contract and for libel and slander.

7 The facts of this case are set out accurately and in detail in the judgment of Mr. Justice Lofchik. I find those facts to be the facts in the case currently at bar. The only addition to those facts are the second airing and web posting of the one minute episode. The plaintiff has specifically sued for breach of contract in this law suit. Mr. Justice Lofchik found as a fact that there was no such pleading in the first law suit. As well the plaintiff gave notice under the Libel and Slander Act, R.S.O. 1990, c. L. 12 within the appropriate time required by s. 5(1) after the second airing of the episode. He had given no such notice before issuing the first statement of claim which Justice Lofchik held to be fatal.

Analysis:

8 The defence argues that the second law suit is *Res Judicata* as the issues on identical facts have already been determined by Justice Lofchik. It is further argued that the consent is a complete bar and in any event there was no libel or slander.

9 The plaintiff argues the facts are different as there was a second publication, notice was given regarding that second publication and in any event there was a breach of contract in that the pertinent parts of the taping were not aired.

10 Mr. Justice Lofchik dealt in detail with the consent and I agree with his findings. He also concluded that even if the plaintiff had pleaded breach of contract there would still have been no genuine issue for trial because the consent

was a complete bar. I agree. The consent, which I find the plaintiff fully understood, read and accepted makes it abundantly clear that C.B.C. had sole and exclusive rights to the taping and to edit and use it in any way or anytime it wished.

11 The plaintiff further agreed by signing the consent that he may well be portrayed in "... disparaging, defamatory, embarrassing or of an otherwise unfavourable nature which may expose me to public ridicule, humiliation or condemnation". The plaintiff also agreed pursuant to paragraph 27 of the consent not to sue for any loss or damage no matter how caused.

12 I find that there is no evidence that the consent and release were not entered into freely, voluntarily and with full knowledge and understanding of the plaintiff. No evidence has been led that it was in any way unconscionable and like Justice Lofchik I find as a fact it was not. As such it is a complete bar to this law suit and there is no genuine issue for trial.

13 I have reviewed in detail the transcript of the episode that the plaintiff complains defamed him. There are no words in that transcript that are capable of slander or libel. Indeed the plaintiff argued before me that the real defamation is the editing down to 57 seconds and the public not seeing the full pitch is the libel and slander. I disagree. The public saw and heard only the 57 seconds. The conclusion of the Dragons that the pitch they heard made no sense to them is not libel or slander.

14 The final issue is that of *Res Judicata*. C.B.C. argues this matter has already been dealt with in its entirety by Justice Lofchik. The plaintiff urges me to find the facts are different in the case at bar because he pleaded breach of contract and gave notice under the Act. I disagree. The facts of both cases are identical. Justice Lofchik dealt with breach of contract as if pleaded and found no genuine issue for trial. He also found the consent to be a complete bar. I have come to the same conclusion. I find there are no new facts or new issues. The action should be dismissed under the doctrine of *Res Judicata*.

Conclusion:

15 For all of the reasons given I find there is no genuine issue for trial and this action is dismissed. The parties agreed that costs should follow the cause and I should assess them. I have reviewed the costs outline of the defendant. I fix costs at $7,500.00 inclusive of taxes and disbursements.

H.S. ARRELL J.

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Turmel v. CBC (Dragons' Den), [2011] O.J. No. 3231

Ontario Judgments

Ontario Court of Appeal

Toronto, Ontario

D.H. Doherty, J.I. Laskin and J.M. Simmons JJ.A.

Heard: July 12, 2011.

Judgment: July 13, 2011.

Dockets: C53732, C52849

[2011] O.J. No. 3231 | 2011 ONCA 519 | 204 A.C.W.S. (3d) 204 | 2011 CarswellOnt 6250

Between John C. Turmel, Plaintiff (Appellant), and CBC (Dragons' Den), Defendant (Respondent)

(4 paras.)

Case Summary

Appeal From:

On appeal from the judgment of Justice Thomas R. Lofchik of the Superior Court of Justice, dated September 27, 2010 (C52849) and the judgment of Justice Harrison S. Arrell of the Superior Court of Justice, dated April 19, 2011 (C53732).

Counsel

John C. Turmel, acting in person.

M. Philip Tunley and Paul Saguil, for the respondent.

APPEAL BOOK ENDORSEMENT

The following judgment was delivered by

THE COURT

1 The appellant voluntarily agreed to go on the show. In order to do so, he was required to and did sign a consent. Paragraph 27 of the consent precluded the two actions he commenced.

2 The only issue on the appeal is whether it would be unconscionable for the court to give effect to the terms of the consent. We are of the view that it would not be unconscionable.

3 The Contestant Guide alerted the appellant to read the consent for the detailed rules about the show. Before the taping, the appellant was given ample time to read the consent and was free to ask for more time to review it. He did not ask for more time and signed the consent without expressing any concern about its terms.

4 Therefore, this appeal and the appeal in file C52849 are dismissed. Costs of this and the companion appeal to the respondent in the amount of $3,500, inclusive of disbursements and applicable taxes.

End of Document

Turmel v. CBC (Dragons' Den), [2011] S.C.C.A. No. 425

Supreme Court of Canada Rulings on Applications for Leave to Appeal and Other Motions

Supreme Court of Canada

Record created: September 29, 2011.

Record updated: December 8, 2011.

File No.: 34482

[2011] S.C.C.A. No. 425 | [2011] C.S.C.R. no 425

John C. Turmel v. CBC (Dragons' Den)

Appeal From:

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Case Summary

Status:

Application for leave to appeal dismissed with costs (without reasons) December 8, 2011.

Catchwords:

Torts — Libel and slander — Consent — Applicant signing consent prior to taping of a television show — Edited version later broadcast on two occasions and posted on respondent's website — Whether consent trumps original offer to appear on show — Whether consent was obtained under unconscionable duress - Whether consent improperly includes exculpatory clause for defamation — Whether first tort may be raised in the second action under the Libel and Slander Act, R.S.O. 1990, c. L-12 — Whether rebroadcast required a new consent

Case Summary:

In 2009, Mr. Turmel was contacted by one of the producers of the CBC television show, Dragon's Den, to pitch a business proposal to the panel of Canadian business people, who offer advice and financing to participants based on their assessment of the financial viability of the proposals. Mr. Turmel agreed to participate in a taping of the show. In advance, he was given a contestant guidebook to review that advised the contestant of some of the rules and that there was a consent form to read and sign. Prior to taping, Mr. Turmel was given the consent form and he signed it without asking any questions. Mr. Turmel pitched a proposal seeking a $100,000 investment from the Dragons to start up a local currency system in Brantford, Ontario. He did not get the investment. In January 2010, the CBC aired a one minute segment of Mr. Turmel's pitch that conveyed the message that his pitch was confusing. A week later, Mr. Turmel commenced an action against the CBC for defamation. He did not serve a notice of claim before commencing the action or within six weeks of the broadcast in accordance with s. 5(1) of the Libel and Slander Act. The CBC obtained an order for summary judgment and the action was dismissed. In August, 2010, the same segment was rebroadcast and Mr. Turmel brought a second action for breach of contract and defamation. On this occasion, he did provide the CBC with a notice of

action. The CBC brought a motion for summary judgment.

Counsel

John C. Turmel, for the motion.

Philip Tunley (Stockwoods LLP), contra.

Chronology:

1. Application for leave to appeal:
FILED: September 29, 2011. S.C.C. Bulletin, 2011, p. 1468.
SUBMITTED TO THE COURT: November 7, 2011. S.C.C. Bulletin, 2011, p. 1644.
DISMISSED WITH COSTS: December 8, 2011 (without reasons). S.C.C. Bulletin, 2011, p. 1854.
Before: Deschamps, Fish and Karakatsanis JJ.

Procedural History:

Judgment at first instance: Respondent's motion for summary judgment granted.
Ontario Superior Court of Justice, Lofchik J., September 27, 2010.
2010 ONSC 5318.

Judgment at first instance: Respondent's motion for summary judgment granted.
Ontario Superior Court of Justice, Arrell J., April 19, 2011.
2011 ONSC 2400.

Judgment on appeal: Appeals dismissed.
Court of Appeal for Ontario, Doherty, Laskin and Simmons JJ.A., July 12, 2011.
2011 ONCA 519; [2011] O.J. No. 3231.

THIS IS EXHIBIT "16" mentioned and referred to in the affidavit of LISA MINAROVICH SWORN before me by affiant in the City of Brampton, in the Regional Municipality of Peel, in the City of Toronto in the Province of Ontario this 31st day of MAY, 2022 in accordance with O. Reg. 431/20.

A COMMISSIONER FOR TAKING AFFIDAVITS

R. v. Turmel, [2002] Q.J. No. 2609

Jugements du Québec

Quebec Superior Court

District of Hull

Pierre Isabelle J.

Heard: July 9, 2002.

Oral judgment: July 12, 2002.

No. 550-01-003994-011

[2002] Q.J. No. 2609 | J.E. 2002-1751 | 2002 CanLII 8289 | REJB 2002-32815

Between John C. Turmel, defendant-applicant, and The Queen, plaintiff-respondent, and Attorney General of Quebec and Attorney General of Canada, mis en cause

(47 paras.)

Case Summary

Civil rights — Canadian Charter of Rights and Freedoms — Practice — Standing.

Motion by the accused, Turmel, for a declaration of unconstitutionality of the Controlled Drugs and Substances Act. Turmel was charged with contempt for failing to respect a publication ban under section 10(2) of the Criminal Code. He posted an Internet news report on the use of marijuana as medication in violation of a publication ban imposed during the hearing of another case where an accused was charged under the Act. Turmel sought a declaration that the Controlled Drugs and Substances Act violated section 7 of the Canadian Charter of Rights and Freedoms.

HELD: Motion dismissed.

Turmel did not have standing to challenge the constitutionality of the Act since he was not at risk of conviction. The publication ban was not pronounced under the Act and the contempt of court charge was not related to the act.

Statutes, Regulations and Rules Cited:

Canadian Charter of rights and freedoms, 1982, ss. 7, 24. Code of Civil Procedure, s. 95. Controlled Drugs and Substances Act, S.C. 1996, c. C-19. Criminal Code, ss. 10(2), 318.2(b).

Counsel

John C. Turmel, representing himself. Anouk Desaulniers and Martin Côté, for the plaintiff-respondent's.

REASONS FOR JUDGMENT

PIERRE ISABELLE J. (Orally)

1 The defendant-applicant John C. Turmel is charged with the following accusation:

> "Le ou vers le 7 novembre 2001, à Hull, district de Hull, a commis un outrage au tribunal en ne respectant pas une ordonnance de non-publication, commettant ainsi l'infraction sommaire prévue à l'article 10(2) du Code criminel."

2 A plea of not guilty has been entered.

3 The Defendant-Applicant filed a motion for declaration of unconstitutionality of the Controlled Drugs and Substances Act (LC. 1996 C-19) pursuant to section 24 and 7 of the Canadian Charter of Rights and Freedoms.

4 In his motion John C. Turmel alleges that he was charged with contempt of Court for posting an internet news report on the 7th of November 2001 in violation of a publication ban imposed by justice Jean-Pierre Plouffe during the hearing of the case of The Queen v Raymond Turmel, [2001] J.Q. no 5875. In that instance, Raymond Turmel was charged under the Controlled Drugs and Substances Act.

5 The present motion raises the question of the validity of this Act.

6 The arguments proposed by the Defendant-Applicant in his motion refer to the consequences of the prohibition of marijuana as medication for Canadian citizens in general but more precisely for Donald Appleby and all those who died.

7 The motion for declaration of unconstitutionality gives no indication as to the violation of the Defendant's right according to the Canadian Charter of Rights and Freedoms except in its conclusion.

8 Pursuant to article 95 of the Code of civil procedure of the province of Québec, the Applicant filed a notice of his intent to the Attorney General of Québec and Canada.

9 In this notice he informed both Attorney Generals of his intent to ask this Court to declare the prohibition of marijuana in the Controlled Drugs and Substances Act unconstitutional and of no force or effect.

10 He also asked for a direct verdict of acquittal on the basis that prohibition of medicine in section 318.2b) is a violation of his rights and all Canadians' rights to life under section 7.

11 According to article 95 of the Code of Civil procedure a party invoking the violation of one of the Charter's sections as the basis for having a law or a by-law declared unconstitutional must specify in his notice the provision that he is invoking to support his argument.

12 After a review of his notice sent in conformity with article 95 of the Code of Civil procedure, the Court concludes that John C. Turmel restricted himself to plead a violation of section 7 of the Canadian Charter of Rights and Freedoms.

13 This section reads as follows:

> "7. [Life, liberty and security of person.] Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice."

14 He is seeking the remedy provided for in section 24 of the Canadian Charter of Rights and Freedoms that reads as follows:

> "24.(1) [Enforcement of guaranteed rights and freedoms.] Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.
>
> * [Exclusion of evidence bringing administration of justice into disrepute.] Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute."

15 Before the Court hears evidence on the Applicant's motion, the Queen and the Attorney General of Canada proposed a motion to dismiss the Applicant's motion on the grounds that he has no standing to challenge the constitutionality of the law since he does not risk a conviction under that law, and therefore has no legal interest in this matter.

16 The Attorney General of Canada also pleads that only the person whose rights under the Charter have been infringed upon can apply for remedy.

17 The Supreme Court of Canada in the case of R. v. Morgentaler[1] gives an indication of what is required from an accused to be able to challenge the constitutionality of a law. The Chief justice of the Supreme Court at the time, the honourable Dixon writes the following passage concerning the question of legal interest of a party. It reads as follows:

> "As an aside, I should note that the appellants have standing to challenge an unconstitutional law if they are liable to conviction for an offence under that law even though the unconstitutional effects are not directed at the appellants per se: R. v. Big M. Drug Mart Ltd., [1985] 1 R.C.S. 295, at p. 313. ..."

18 This decision refers to the case of R. v Big M. Drug Mart Ltd.[2], which provides some guidelines as to who may contest the validity of an Act. The Court writes the following passages on page 313 of that decision:

> "Standing and jurisdiction to challenge the validity of a law pursuant to which one is being prosecuted is the same regardless of whether that challenge is with respect to ss. 91 and 92 of the Constitution Act, 1867 or with respect to the limits imposed on the legislatures by the Constitution Act, 1982.
>
> Section 24(1) sets out a remedy for individuals (whether real persons or artificial ones such as corporations) whose rights under the Charter have been infringed."

19 And the Court adds:

> "The undoubted corollary to be drawn from this principle is that no one can be convicted of an offence under an unconstitutional law. The respondent did not come to court voluntarily as an interested citizen asking for a prerogative declaration that a statute is unconstitutional. If it had been engaged in such "public interest litigation" it would have had to fulfil the status requirements laid down by this Court in the trilogy of "standing" cases (Thorson v. Attorney General of Canada, [1975] 1 S.C.R. 138, Nova Scotia Board of

> Censors v. McNeil, [1976] 2 S.C.R. 265, Minister of Justice of Canada v. Borowski, [1981] 2 S.C.R. 575) but that was not the reason for its appearance in Court.
>
> Any accused, whether corporate or individual, may defend a criminal charge by arguing that the law under which the charge is brought is constitutionally invalid. Big M. is urging that the law under which it has been charged is inconsistent with s. 2(a) of the Charter and by reason of s. 52 of the Constitution Act., 1982, it is of no force or effect."

20 In the three cases referred to in the previous decision, Thorson, McNeil and Borowski, the Supreme Court has established a test to determine whether a person has a legal interest in challenging the constitutionality of a law if not charged under it.

21 First there is a difference between a debate in a matter of public interest and one in a matter of private interest. The accusation of a criminal contempt of Court constitutes a direct and public violation against the dignity and the authority of the judicial system. Therefore, an accusation of such nature is a matter of public interest.

22 The three stage test established by the Supreme Court of Canada in Thorson, McNeil and Borowski was used again in Canada v Canadian Council of Churches[3]. The Court explains the test as follows:

> "Three aspects of the claim must be considered when public interest standing is sought. First, is there a serious issue raised as to the invalidity of legislation in question? Second, has it been established that the plaintiff is directly affected by the legislation or, if not, does the plaintiff have a genuine interest in its validity? Third, is there another reasonable and effective way to bring the issue before the Court?"

23 But the Court adds:

> "Recognition of the need to grant public interest standing, whether because of the importance of public rights or the need to conform with the Constitution Act, 1982, in some circumstances does not amount to a blanket approval to grant standing to all who wish to litigate an issue. A balance must be struck between ensuring access to the courts and preserving judicial resources. The courts must not be allowed to become hopelessly overburdened as a result of the unnecessary proliferation of marginal or redundant suits brought by well-meaning organizations pursuing their own particular cases.

24 Therefore, when involved in a public interest litigation as in the present matter, the Applicant has to demonstrate that he is directly touched by the law or that he has a real interest in its validity.

25 Although the Supreme Court has allowed citizens to intervene in constitutional debates as in the case of McNeil, this general interest of a person is recognized only if the petitioner shows a certain interest in the matter.

26 The only question arising from the present debate is whether John C. Turmel is directly affected by the Controlled Drugs and Substances Act or if not, if he has a genuine interest in its validity.

27 In the present matter, the accused is not charged under the Controlled Drugs and Substances Act.

28 The publication ban order rendered by the honourable Jean-Pierre Plouffe during the trial of Raymond Turmel was not pronounced under the Controlled Drugs and Substances Act.

29 John C. Turmel is accused of contempt of Court and that charge is not related in any way to the Controlled Drugs and Substances Act.

30 By his own admission, the Applicant is challenging the validity of the Act "in case he needs marijuana for health reasons in the future".

31 In the present matter, there is no relation between the accusation pending and the Controlled Drugs and Substances Act challenged by the Applicant.

32 Therefore, John c. Turmel is not directly affected by the Controlled Drugs and Substances Act.

33 Does the applicant have a genuine interest in the validity of the Controlled Drugs and Substances Act? He could, if he argues that the Law under which he has been charged is unconstitutional, but this is not the case.

34 Can he use that same argument to defend himself against the charge of contempt of Court?

35 It is my opinion that whether or not the Controlled Drugs and Substances Act is valid is not a defence opened to the accused on a contempt of court charge simply because it is not related to this accusation.

36 On a charge of contempt of Court, the Court will have to decide if the accused voluntarily breeched the publication ban rendered by power given to the judges by the authority of the Criminal Code and not by the Act challenged.

37 At trial on the charge laid against him, John C. Turmel will be able to give an explanation as to why he did not respect the publication ban. Whether the Controlled Drugs and Substances Act is invalid will have no effect on his pretentions.

38 The only personal interest of the accused in the present constitutional matter is one that is potential, very uncertain and far from being direct or real.

39 It was determined by the Court of Appeal of Québec in Syndicat des employés de l'hôpital St-Michel Archange c. Québec (Procureur Général)[4] and by the Supreme Court in the case of Canada (Commission des droits de la personne) c. Canadian Liberty Net[5], that a judgment not well founded in law is not a defence against a contempt of Court charge.

40 This reasoning is simple to accept since a citizen has to obey the Court order rendered in a trial.

41 I therefore come to the conclusion that the accused has no legal interest to challenge the constitution of the Controlled Drugs and Substances Act.

42 The Court also adds that the second argument brought forward by the Attorney General would lead to the same conclusion.

43 The Supreme Court of Canada in the case of Edwards v. R.[6] decided that the remedy contained in section 24(1) or 24(2) of the Charter only applies to the person whose rights have been infringed upon by the non respect of the Charter. Justice Corey, referring to the position adopted by justice J. Wilson in R. v. Rahey[7] quotes:

> "I want to stress the following. An application for relief under section 24(1) can only be made by a person whose right under section 11b) has been infringed. This is clear from the opening words of section 24(1)."

44 It was decided in the case of R. v Big M Drug Mart Ltd.[8] that an accused can only seek the remedy provided for if the law under which he is accused contravenes with the Charter of Rights.

45 In the present matter, since John C. Turmel has no legal interest in challenging the validity of the Controlled Drugs and Substances Act and since he was not affected by it, he cannot seek remedy since his own personal right has not been infringed by this law.

46 FOR THESE REASONS, THE COURT:

47 DISMISSES the motion for declaration of unconstitutionality of the Controlled Drugs and Substances Act;

PIERRE ISABELLE J.

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1 R. c. Morgentaler, [1988] 1 R.C.S. 30.

2 R. v. Big M. Drug Mart Ltd., [1985] 1 R.C.S. 295, p. 313.

3 Canada v. Canadian Council of Churches, [1992] 1 S.C.R. 236.

4 Syndicat des employés de l'hôpital St-Michel Archange c. Québec (Procureur Général), [1977] C.A. 537.

5 Canada (Commission des droits de la personne) c. Canadian Liberty Net, [1998] 1 RCS 626.

6 Edwards v, R., [1996] 1 R.C.S. 128.

7 [1987] 1 R.C.S. 588, p. 619.

8 Op. cit. note 2.

End of Document

R. v. Turmel, [2002] Q.J. No. 10737

Jugements du Québec

Quebec Superior Court

District of Hull

The Honourable Pierre Isabelle, J.S.C.

Oral Judgment: September 27, 2002.

No.: 550-01-003994-011

[2002] Q.J. No. 10737 | 2002 CanLII 13794

THE QUEEN, Plaintiff v. JOHN C. TURMEL, Accused and ATTORNEY GENERAL OF QUEBEC, ATTORNEY GENERAL OF CANADA, Mis en cause

(44 paras.)

Counsel

Me Stéphane Godri, Me Martin Côté, Plaintiff's Attorneys.

Mr. John Turmel, represents himself.

JUDGMENT RENDERED ORALLY

ON SEPTEMBER 27TH 2002

1 John C. Turmel is charged with the following accusation:

> "On or about November 7, 2001 in Hull, district of Hull, did commit a contempt of court by not respecting a publication ban, committing thereby the offence punishable by summary conviction provided by section 9 of the criminal code."

2 Evidence shows that on the 6th of November 2001 the honourable Jean-Pierre Plouffe rendered a judgment banning publication of evidence on pre-trial motions presented in the case of Raymond Turmel accused of producing cannabis contrary to section 7.1.2(b) of the Control Drugs and Substance Act and of having in his possession for the purpose of trafficking cannabis, therefore contravening to section 5.2.3(a) of the same act.

3 The ordinance rendered on the 6th of November 2001 reads as follows:

> "39. Accordingly, the Court is ordering a publication ban on the evidence that will be heard during the presentation of the present motion. That order, however will only last until the jury has been empanelled and the trial has started."

4 The motives upon which this decision is based are given by the judge in paragraphs 36, 37 and 38 of his decision. These paragraphs read as follows:

* Attached to his motion, Mr. Turmel gives a one page summary of the evidence he intends to introduce during the presentation of the present motion. It is a mixture of expert and ordinary witnesses, whose proposed evidence relate to topics associated with the medical use of marijuana.

(16) In the Court's view, that type of evidence, if publicized, could potentially have the effect of destroying the prospective jurors' indifference between the Crown and the Accused.

(3) There is accordingly, in the Court's view, a real and an important risk to the fairness of the trial. In such a case, the Court is of the opinion that freedom of expression and freedom of the press must yield to a fair and public hearing by an independent and impartial tribunal. However, this impairment of the freedom of expression and of the press should be as minimal as possible."

5 The accused John C. Turmel was present in the Court room when the honourable Jean-Pierre Plouffe rendered his decision concerning the publication ban of evidence on pre-trial motions.

6 On the 7th of November 2001, John C. Turmel published on several web sites and USENET boards information concerning the evidence presented in Court.

7 The accused also distributed this information by E-mail to various groups.

8 Following the discovery of these publications, the Queen then charged the accused with contempt of Court for the non respect of the publication ban rendered on the 6th of November 2001.

9 Although the accused pleaded not guilty to the criminal offence of contempt of Court, he admits certain facts submitted to the Court by the Queen in a document which reads as follows:

"1. On November 6th 2001, the honourable Jean-Pierre Plouffe J.C.S. ordered a publication ban in a file concerning the defendant's brother Raymond Turmel (550-01-002240-002), said copy of the judges decision being filed as P-2;

* The defendant knowingly violated the said publication ban on November 7th, 2001 by posting information revealed in court in his brother's file and subject to the above-mentioned publication ban, on several web sites and USENET boards and also by distributing it by e-mail to various groups, an example of such posting being filed as P-3;

* On November 7th, 2001, the defendant admitted in the presence of many witnesses including Stéphane Lamoureux, "I got excited this is bigger than Walkerton";

* The defendant readily admitted to the above-mentioned behaviour in a signed letter entitled "APOLOGY TO THE COURT AND THE CROWN" dated November 8th, 2001, copy of the said letter being filed as P-4;

* The parties agree that if this court proceeded to hear all of the Crown's evidence concerning the defendant's above-mentioned behaviour, it would conclude that all the requisite elements of an ex facie contempt of court are present."

10 In order to find the accused guilty of contempt of Court committed out of the face of the Court, the Queen must follow the criteria cited by the honourable judge McLachlin in the case of *CSC United Nurses of Alberta c. Alberta (Procureur Général)*[1].

"To establish criminal contempt the Crown must prove that the accused defied or disobeyed a court order in a public way (the actus reus), with intent, knowledge or recklessness as to the fact that the public

> disobedience will tend to depreciate the authority of the court (the mens rea). The Crown must prove these elements beyond a reasonable doubt. As in other criminal offences, however, the necessary mens rea may be inferred from the circumstances. An open and public defiance of a court order will tend to depreciate the authority of the court. Therefore when it is clear the accused must have known his or her act of defiance will be public, it may be inferred that he or she was at least reckless as to whether the authority of the court would be brought into contempt. On the other hand, if the circumstances leave a reasonable doubt as to whether the breach was or should be expected to have this public quality, then the necessary mens rea would not be present and the accused would be acquitted, even if the matter in fact became public. While publicity is required for the offence, a civil contempt is not converted to a criminal contempt merely because it attracts publicity, as the union contends, but rather because it constitutes a public act of defiance of the court in circumstances where the accused knew, intended or was reckless as to the fact that the act would publicly bring the court into contempt."

11 The elements of the infraction of contempt of Court must always be proven beyond reasonable doubt.

12 If the Queen fails to prove beyond the reasonable doubt the breach of the "sub jutice" as for example, publication of material likely to interfere with the fair trial of the case, the accused must be acquitted.

13 But if the Queen is successful in proving the elements of the offence and the criminal intent of the accused, then the burden of proof is reversed and the accused must show just cause for his actions.

14 The admissions filed by the Crown at trial with the consent of the accused prove beyond a reasonable doubt that he publicly disobeyed a court order intending to interfere with the due process of a trial or with the intent to depreciate the authority of the Court. In the case of *R. c. Barker*,[2] the Court of Appeal writes the following:

> "However, where there may not have been a guilty intent but the behaviour is clearly likely to bring disrespect on the court, or the behaviour is negligently or recklessly such behaviour could constitute contempt."

15 In the case of *R. c. Rivard*[3] the Quebec Court of Appeal comes to the following conclusions:

> "Appellant intended to and did write and publish respectively the impugned article; that is the intent, the mens required; actual intent to interfere with the course of justice is not required."

16 In the case of *B.C.G.E.U. c. P.G. de la C.-B.*[4] the Supreme Court of Canada decided that the mens rea of the infraction was proven beyond reasonable doubt if the accused had the intention to discredit the administration of the justice or that he was imprudent on this subject and the result was therefore predictable and the consequences of his action were imminent and constituted a real and important danger to the administration of the justice.

17 It is therefore the Court's opinion that the admission deposited as evidence in the present case shows beyond reasonable doubt that John C. Turmel committed a contempt of Court. He published certain information concerning the evidence presented in Court on pre-trial motions contrary to the ordinance of the 6th of November 2001 with the intent to depreciate the authority of the Court. He acted in such an imprudent manner that it was easily foreseen that there was a real and important danger to interfere with the due process of justice.

18 Therefore, the onus rests on the defendant to demonstrate that he was without fault or was guided by an honest mistake of facts. The accused must therefore give a reasonable explanation as to his conduct which can permit the Court to acquit him from the accusation of contempt of Court.

19 The accused justifies his non respect of the publication ban by the fact that Health Canada is creating a genocide by not allowing certain persons to use marijuana for medical purposes. His defence is one of necessity. Preventing someone's death warranted the publication of the information.

20 Marc Paquette testified that even though his medical condition is serious, Health Canada had him wait a long time before exempting him under the law. Although he now consumes marijuana for medical purposes, he admits that his situation is stressful since he had to obtain nine more exemptions since March 2000. Health Canada is creating an injustice in asking him to justify his medical condition.

21 Johnny Dupuis testifies that he filed for an exemption in February 2000 and has yet to receive permission from Health Canada which requires additional medical evidence.

22 Cindy Cripps-Prawak, Director at Health Canada is responsible for the program granting permission to consume marijuana for health reasons. She testifies that the department has 94 files concerning claimants who are no longer reachable.

23 On the 6th November 2001, Mrs. Cripps-Prawak testified for the first time on the number of persons who applied under the law. At that time, she mentioned that Health Canada has 94 "dormant" files [i.e.] meaning inactive.

24 John C. Turmel testifies that he concluded from that information that these 94 applicants were deceased. He then believed that this situation created an urgency to act rapidly in order to avoid more deaths. He therefore published the information for different groups even though he knew the existence of the publication ban.

25 The common law defence of necessity is preserved by section 8(3) of the *Criminal code*. The criteria for such a defence were clearly established by the Supreme Court of Canada in the case of *R. c. Morgentaler*[5] and repeated in the case of *R. c. Perka*[6]. It was more recently used in the case of *Robert William Latimer c. Her Majesty The Queen*[7].

26 The three elements of the necessity defence are the following:

* There must be an imminent peril or danger.
* The accused must have had no reasonable legal alternative to the course of action he or she undertook.
* There must be proportionality between the harm inflicted and the harm avoided.

27 If anyone of these three elements are not established, the defence of necessity cannot stand.

28 The Supreme Court of Canada has established in the case of *R. c. Morgentaler*[8] that the imminent peril or danger is defined as "clear and imminent peril".

29 In short, the disaster must be imminent or harm unavoidable and near. It is not enough that the peril is foreseeable or likely. It must be on the verge of transpiring and virtually certain to occur. (*The Queen c. Latimer, par. 29*). In *Perka* justice Dickson expresses himself as follows:

> "At a minimum the situation must be so emergent and the peril must be so pressing that normal humane instincts cry out for action and make a council of patients unreasonable."

30 In the present matter, if people are dying without using marijuana, it is not because of the bureaucracy at Health Canada but mainly because their medical condition has worsened.

31 There was no evidence presented to the Court that the lack of action by Health Canada is responsible for the death of any applicants.

32 Therefore, the Court cannot conclude that the first element has been proven.

33 The second requirement for necessity is that there must be no reasonable legal alternative to disobeying the law.

34 *Perka* proposed three questions at page 251 and 252:

* Given that the accused had to act, could he nevertheless realistically had acted to avoid the peril or prevent the harm, without breaking the law?
* Was there a legal way out?
* If there was a reasonable legal alternative to break the law then there is no necessity.

35 In the present case, the information published by the defendant could have waited after the expiration of the publication ban. The accused benefited from other legal means to force Health Canada to grant permission to use marijuana for medical purposes.

36 The requirement for necessity involves a realistic appreciation of the alternatives opened to a person. John C. Turmel testified that he was involved as a resource person helping patients seeking an exemption prescribed by law.

37 Therefore, the accused knew of other legal means to attack the procedure set forth by Health Canada. Having personal knowledge what procedure could be instituted against Health Canada, he had no excuse and was under no obligation to publish this information contrary to the publication ban.

38 The third requirement is that there be proportionality between the harm inflicted and the harm avoided. The harm inflicted must not be disproportionate to the harm the accused sought to avoid (*R. c. Perka p. 252*).

39 It is more important to maintain the integrity of the judicial system and not to depreciate the authority of the Court by not respecting a Court order than to publish some general information on "dormant" files which could have been obtained through other means.

40 The publication of statistics on files kept by Health Canada in the course of a trial before jury and after a publication ban has been ordered, is disproportionate with the objectives of the accused.

41 The information published could not have saved life.

42 Moreover, it was decided in the case *MacMillan Bloedel Ltd. c. Simpsons*[9] that the defence of necessity is not available to an accused charged with violating a Court order. The necessity defence cannot operate to excuse conduct which has been specifically enjoined.

43 The defence of necessity is only available to those whose wrongful acts are committed under pressure which no reasonable person could withstand. In the present case, there was no imminent peril to the accused himself and his personal belief that people were dying because of the bureaucracy of Health Canada, has no air of reality.

44 Therefore, the Court concludes that the accused did not give a reasonable explanation as to his conduct and the Court finds him guilty as charged.

PIERRE ISABELLE, J.S.C.

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1 [1992] 1 R.C.S. 901, p. 933.

2 [1980] 4 W.W.R. 202, (C.A. Alberta).

3 [1984] R.D.J. 571 (C.A. Québec).

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