

Federal Court



Cour fédérale

Date: 20240129

Docket: T-2147-23

Citation: 2024 FC 141

Ottawa, Ontario, January 29, 2024

PRESENT: The Hon. Mr. Justice Henry S. Brown

BETWEEN:

YEGHIA KIBALIAN

Plaintiff

and

THE CROWN IN THE RIGHT OF HIS MAJESTY THE KING

Defendant

ORDER AND REASONS

UPON MOTION by the Defendant under Rule 369 of the *Federal Courts Rules*, SOR/98-106 [*Federal Courts Rules*], for an Order striking the Plaintiff's Statement of Claim dated October 10, 2023 in its entirety pursuant to Rule 221 of the *Federal Courts Rules*, without leave to amend and dismissing the action, and to declare the Plaintiff a vexatious litigant pursuant to section 40 of the *Federal Courts Act*, (RSC, 1985, c F-7) [*Federal Courts Act*], and upon reading the pleadings and proceedings herein, noting that the Plaintiff did not file responding material going to the merits of the issues in the Defendant's motions against him the Court, but instead filed a motion for default judgment, which he improperly attempted to argue

ex parte and which was ordered deferred pending this Court's determination of the Defendant's motions;

AND UPON considering that the Statement of Claim is a matter of public record as are the detailed and helpful submissions of the Defendant, such that it is not necessary to refer to them except as herein;

AND UPON considering the Federal Court of Appeal's judgment in *Canada v Olumide*, 2017 FCA 42 in which Justice Stratas explains the purpose of vexatious litigant findings and the situations in which they may be made:

[19] The Federal Courts have finite resources that cannot be squandered. Every moment devoted to a vexatious litigant is a moment unavailable to a deserving litigant. The unrestricted access to courts by those whose access should be restricted affects the access of others who need and deserve it. Inaction on the former damages the latter.

[...]

[22] Section 40 is aimed at litigants who bring one or more proceedings that, whether intended or not, further improper purposes, such as inflicting damage or wreaking retribution upon the parties or the Court. Section 40 is also aimed at ungovernable litigants: those who flout procedural rules, ignore orders and directions of the Court, and relitigate previously-decided proceedings and motions.

AND UPON considering the oft-quoted case of *Meads v Meads*, 2012 ABQB 571 [*Meads*], per Rooke ACJ, dealing with litigants who employ "organized, pseudolegal commercial arguments" [OPCA] (such as those with which the Plaintiff's Statement of Claim is riddled), where the Alberta Court of Queen's Bench declared OPCA litigants a new category of

vexatious litigant, a proposition which this Court has adopted on many occasions, for example see *Osadchuk v Canada*, 2023 FCA 82 per Justice Locke:

[2] The present appeal relates to a decision of the Tax Court of Canada (in docket no. 2021-1118(IT)G, *per* Justice Robert J. Hogan) that granted the respondent's motion to strike an appeal before that court of notices of assessment concerning Mr. Osadchuk's 2009 and 2010 income tax returns. The Tax Court noted that Mr. Osadchuk made no arguments on the substance of the notices of assessment in issue, and instead argued that his rights as a human being under the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c. 11, s. 91(24), and the *International Covenant on Civil and Political Rights*, 19 December 1966, 999 U.N.T.S. 171, Can T.S. 1976 No. 47, were violated. The Tax Court agreed with the respondent's argument that it was plain and obvious that Mr. Osadchuk's appeal had no reasonable prospect of success. The Tax Court also found that Mr. Osadchuk's appeal was characteristic of what is called "Organized Pseudo-Legal Commercial Argument" as described in detail in the Alberta Court of Queen's Bench decision in *Meads v Meads* 2012 ABQB 571, [2012] A.J. No. 980.

AND UPON also considering ACJ Rooke's holding in *Meads* at paragraph 4:

[4] OPCA litigants do not express any stereotypic beliefs other than a general rejection of court and state authority; nor do they fall into any common social or professional association. Arguments and claims of this nature emerge in all kinds of legal proceedings and all levels of Courts and tribunals. This group is unified by:

1. a characteristic set of strategies (somewhat different by group) that they employ,
2. specific but irrelevant formalities and language which they appear to believe are (or portray as) significant, and
3. the commercial sources from which their ideas and materials originate.

This category of litigant shares one other critical characteristic: they will only honour state, regulatory, contract, family, fiduciary, equitable,

and criminal obligations if they feel like it. And typically, they don't.

AND UPON considering Rule 221(1) of the *Federal Courts Rules* which permits the Court to strike a pleading that “discloses no reasonable cause of action” (subparagraph (a)), is “scandalous, frivolous or vexatious” (subparagraph (c)) or “is otherwise an abuse of the process of the Court” (subparagraph (f));

AND UPON concluding that the Defendant's motion record (comprising some 727 pages, including two affidavits and almost 90 exhibits) amply supports and confirms the Defendant's submissions that the Plaintiff's Statement of Claim should be struck without leave to amend, and further that the Plaintiff should be declared a vexatious litigant, all for the reasons summarized by the Defendant which, and with respect the Court substantially adopts in the following:

[1] The Statement of Claim asserts a “fundamental right” to choose to opt out of tax obligations. In my view, there is no such right. This is a classis OPCA claim and is meritless. In this connection, the Plaintiff seeks declaratory relief that sections of the *Income Tax Act*, RSC, 1985, c 1 (5th Supp) [*Income Tax Act*] are of no force and effect against him, a declaration that the outstanding assessments against him be declared inoperable and other relief to reverse collection action. These submissions are devoid of merit and it is plain and obvious they are doomed to fail.

[2] The Statement of Claim is also a challenge to the correctness of tax assessments for the 2006-2010 taxation years. That with respect is a matter within the exclusive jurisdiction of the

Tax Court of Canada [TCC] and in this respect as well and it is plain and obvious the litigation is doomed to fail.

[3] Further, the Statement of Claim alleges that the claim relates to a dispute “which commenced in 2010 and is presently still an unsettled matter.” However “the dispute” has already been determined. The Plaintiff is simply unsatisfied with the result and is quite improperly attempting to re-litigate it in this Court. This he cannot do and it is plain and obvious this action is doomed to fail.

[4] For example, the Plaintiff collaterally attacks a previous TCC decision dismissing his tax appeals for the 2006-2010 years by alleging that the Chief Justice of the TCC that considered his tax appeal was “negligent” and “biased against him”. On even a generous reading this claim is a misguided attempt to re-litigate the tax appeal that was dismissed in March 2021 that has no merit and it is plain and obvious they are doomed to fail.

[5] Further regarding the complaints related to collection action taken on the tax arrears from the 2006-2010 taxation years, this action is an almost identical action to the one the Plaintiff brought in this Court in 2021, which was dismissed December 8, 2021 on a Rule 221 motion. Therefore, it is plain and obvious this action is doomed to fail in this respect as well.

[6] The Court notes this Plaintiff brought 5 separate identical actions in the Superior Court (Small Claims) against each of Queen Elizabeth, Justin Trudeau (the Prime Minister of Canada), Chrystia Freeland (the Finance Minister of Canada and Deputy Prime Minister), Isida Ranxi

(DOJ counsel in the Tax Appeal in the TCC), Doug Downey (the Attorney General of Ontario) and Bob Hamilton (the Commissioner of the Canada Revenue Agency) alleging that the same collection action in respect of the 2006-2010 tax arrears was a “trespass.” A motion to strike the Bob Hamilton action was granted on May 20, 2022 as the action found vexatious with no prospect of success. This further supports my conclusion this action is doomed to fail. This also confirms in my view that the Applicant is a vexatious litigant. I say this because bringing a multitude of baseless lawsuits in different courts relating to the same issue is a hallmark of a vexatious litigant who should and in this case will be declared as such under subsection 40(1) of the *Federal Courts Act*.

[7] I also agree based on the foregoing and as discussed further that this Statement of Claim should be struck without leave to amend because it is clearly vexatious, an abuse of process and without merit. I am unable to see how an amendment would advance the Plaintiff’s vexatious and misguided efforts to endlessly re-litigate tax matters decided against him so long ago.

[8] In the Court’s view, the Plaintiff is once again seeking to re-litigate issues that were finally disposed of in previous proceedings before this Court, the TCC, and others.

[9] More specifically, in this case the Plaintiff (who erroneously persists in referring to himself as an applicant) commenced this action on October 12, 2023. As mentioned above, this Plaintiff started a similar action in this Court in 2021, which was dismissed December 8, 2021.

Associate Judge Aalto in his reasons dismissing that claim found:

At its heart the Claim appears to be a collateral attack on decisions of the TCC and the Canada Revenue Agency. While the details are

not entirely clear, it appears the Plaintiff was the subject of proceedings in the TCC and has disagreements regarding the outcome of those proceedings and collection steps taken against him. In one of the attachments to the Claim entitled “Action” several “agents of the Crown” are named including the Commissioner of the CRA; legal counsel for HMQ; the Chief Justice of the TCC; the Federal Finance Minister; the Prime Minister; the hearings coordinator of the TCC; the Assistant Commissioner of the CRA; the Ontario Attorney General, wrongly described as the AG of Canada.

[10] As noted above the Plaintiff himself pleads the dispute in issue in his 2023 action is the amounts attributable to his tax assessments for the 2006-2010 taxation years. He does not appear to accept that tax assessments are deemed valid and binding by operation of paragraph 152(8)5 of the *Income Tax Act* unless reversed on appeal as provided for in the Act.

[11] His attempts to reverse the assessments on appeal failed and the assessed amounts were certified in this Court. The collection action taken by obtaining those certificates and registering them against his properties, in addition to the delivery of statutory garnishment are simply collection action authorized by statute. Those collection proceedings have already been unsuccessfully challenged in litigation in this Court and others. All of this further persuades me that the Plaintiff is simply a vexatious litigant who should and will be so declared.

[12] The Plaintiff’s claim against Bob Hamilton for “fraudulent misrepresentation” regarding Canada Revenue Agency efforts to collect the 2006-2010 tax arrears was struck as disclosing no reasonable cause of action, scandalous, frivolous or vexatious, and “plain and obvious that the claim is bereft of any chance of success.” This further persuades me the Plaintiff is simply a

vexatious litigant who should and will be so declared. Notably in this respect the Deputy Judge determined:

... the Plaintiff shows contempt for court process when he fails to appear before those courts for case management sessions. In addition, the Plaintiff does not come into this Court with clean hands in that he failed to pay court costs ordered against him in those proceedings in excess of \$10,000. Finally, for each event he fails on in Court, he follows up with more actions filed or delivers his own version of judgments against the Crown in made-up forms intended to be legally binding.

[13] Additionally, this Court per Justice Walker found in her 2022 decision on a motion by the Plaintiff for an extension of time to appeal Associate Judge Aalto's dismissal of his 2021 Claim, that "the appeal has no merit." Justice Walker also determined the relief the Plaintiff seeks in his Statement of Claim "was based on his contention he is a citizen of Heaven and is not bound by Canadian law." Justice Walker concluded there, as I do here, that the Plaintiff has failed to disclose a reasonable cause of action.

[14] It is also relevant and uncontested that the Plaintiff has not paid any of the costs ordered against him by any of the courts, namely, the \$10,300 in relation to his TCC appeals, \$1,000 in relation to his previous Federal Court claim, and \$500 in relation to his Ontario court matters. Presently, his costs owing to the Crown from these various court proceedings initiated by him are \$11,800.

[15] The pleading in this action are also vexatious on its face. In my respectful opinion, none of the asserted claims disclose a reasonable cause of action. This is a classic case of pseudo-legal claims.

[16] In my respectful view, this action in its components and in its totality is doomed to fail. Like the 2021 Claim, and the multitude of claims brought in the Superior Court (Small Claims) this claim is vexatious, has no merit and will be struck.

[17] I am also persuaded the Plaintiff is and therefore should be declared a vexatious litigant.

[18] The Defendant seeks costs and I see no reason why costs should not follow the event, and in my discretion will assess reasonable costs at \$1,000.00 and will order the Plaintiff to pay \$1,000.00 as all inclusive costs to the Defendant forthwith, having considered and found this is an appropriate case in which to order payment forthwith.

ORDER in T-2147-23

THIS COURT ORDERS that:

1. The Statement of Claim dated October 10, 2023, is struck in its entirety pursuant to Rule 221 of the *Federal Courts Rules*, without leave to amend, and the action is dismissed.
2. The Plaintiff, Yeghia Kibalian, a.k.a Yeghia E. Kibalian, a.k.a. Yeghia Elias Kibalian, a.k.a. Elias Kibalian, a.k.a. Elias Yeghia Kibalian, and or any variation thereof that refers to the Plaintiff in this proceeding, is hereby declared a vexatious litigant pursuant to subsection 40(1) of the *Federal Courts Act*.
3. That no further proceedings may be instituted or continued in this Court by Yeghia Kibalian, a.k.a Yeghia E. Kibalian, a.k.a. Yeghia Elias Kibalian, a.k.a. Elias Kibalian, a.k.a. Elias Yeghia Kibalian, and or any variation thereof that refers to the Plaintiff in this proceeding, nor by any person or entity for on their behalf, except with leave of the Court.
4. The Plaintiff shall pay the Defendant the sum of \$1,000.00 as all inclusive costs forthwith.

“Henry S. Brown”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2147-23

STYLE OF CAUSE: YEGHIA KIBALIAN v THE CROWN IN THE RIGHT
OF HIS MAJESTY THE KING

**MOTION TO STRIKE AND DECLARE THE PLAINTIFF A VEXATIOUS LITIGANT
CONSIDERED AT OTTAWA, ONTARIO PURSUANT TO RULES 221 AND 369 OF
THE *FEDERAL COURTS RULES***

ORDER AND REASONS: BROWN J

DATED: JANUARY 29, 2024

WRITTEN SUBMISSIONS BY:

Yeghia Kibalian

FOR THE PLAINTIFF
ON HIS OWN BEHALF

Sarah Mackenzie
Wendy J. Linden

FOR THE DEFENDANT

SOLICITORS OF RECORD:

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FOR THE DEFENDANT