

Federal Court



Cour fédérale

**Date: 20110519**

**Docket: T-639-10**

**Citation: 2011 FC 582**

**Ottawa, Ontario, May 19, 2011**

**PRESENT: The Honourable Madam Justice Snider**

**BETWEEN:**

**ZOLTAN ANDREW SIMON**

**Plaintiff**

**and**

**HER MAJESTY THE QUEEN IN THE RIGHT  
OF CANADA**

**Defendant**

**REASONS FOR ORDER AND ORDER**

[1] Mr. Simon has commenced an action against Her Majesty the Queen in the Right of Canada (the Defendant). This is his second attempt to bring his action to the Federal Court; his first Statement of Claim was struck. At this time, the Defendant has brought a motion to strike the Amended Statement of Claim.

## **I. Background**

[2] The facts underlying both the original Statement of Claim and this Amended Statement of Claim are the same. They were set out in the decision of Justice Zinn in *Simon v. Her Majesty the Queen in the Right of Canada* 2010 FC 617, [2010] FCJ No 752 (QL) at paragraphs 2-6 [*Simon FC*]:

[2] In January 1999 the plaintiff sponsored Margarita Reyes, his then wife, and her two sons as permanent residents of Canada. He signed a sponsorship agreement with her whereby he undertook to provide her essential needs. He is adamant that he had no such agreement with Canada.

[3] In June 2000, she and her sons left him and they began to receive social assistance benefits from the Province of British Columbia. Mr. Simon was unaware of these payments or that the Province of British Columbia held him as their sponsor liable to repay them until some time in 2007.

[4] In 2008 and again in 2009 the Province of British Columbia garnisheed funds standing to his credit in his tax account with Revenue Canada.

[5] Mr. Simon has since remarried and he sought to sponsor his new family to come to Canada. That application was refused because Mr. Simon was found to be in default of his previous undertaking. That application was unsuccessfully appealed to the Immigration and Refugee Board of Canada, Immigration Appeal Division. This Court refused leave to judicially review that decision.

## **II. Judicial History**

[3] In *Simon FC*, above, Justice Zinn concluded that the Statement of Claim should be struck without leave to amend. His decision was based on his conclusion that Mr. Simon's claim did not

fall within the jurisdiction of the Federal Court. Justice Zinn awarded \$500.00 costs to the Defendant.

[4] Mr. Simon appealed to the Federal Court of Appeal. In *Simon v. Her Majesty the Queen in the Right of Canada*, 2011 FCA 6, 410 N.R. 374, the Court of Appeal allowed the appeal in part. While the Court of Appeal concluded that the Statement of Claim should be struck, it disagreed with Justice Zinn that the Federal Court did not have jurisdiction in all matters potentially raised by the Statement of Claim.

[5] The Court of Appeal agreed with Justice Zinn that large aspects of Mr. Simon's claim did not fall within the jurisdiction of the Federal Court. Specifically, the Court held that the Federal Court did not have jurisdiction to adjudicate upon the existence or extent of any liability owed by Mr. Simon to the Government of British Columbia in respect of social assistance benefits (paragraph 9). However, the Court of Appeal found one area that had been overlooked by Justice Zinn. As set out in paragraph 12:

[12] That said, in my view the Judge overlooked an important aspect of Mr. Simon's claim: whether the Canada Revenue Agency improperly paid monies owing to Mr. Simon under the *Income Tax Act* to the government of British Columbia, without any notice or explanation to Mr. Simon. There is no suggestion that any garnishment order issued from a court of competent jurisdiction. It may be that monies otherwise owing to Mr. Simon were applied to Mr. Simon's alleged sponsorship debt pursuant to subsection 164(2) of the *Income Tax Act*, R.S.C. 1985, (5th Supp.), c. 1. The propriety of the Canada Revenue Agency's treatment of monies otherwise owing to Mr. Simon unquestionably falls within the jurisdiction of the Federal Court. It follows, in my respectful view, that the Federal Court erred in law by concluding that none of the matters complained of by Mr. Simon fell within its jurisdiction.

[6] The Court of Appeal found that, although Justice Zinn was correct to strike the Statement of Claim, it is not plain and obvious that, if amended, Mr. Simon's claim that the Canada Revenue Agency erred in its treatment of monies he was otherwise entitled to would not disclose a reasonable cause of action. The result was that Mr. Simon was granted leave to amend his pleadings. The Amended Statement of Claim was Mr. Simon's effort to do so.

[7] In its decision, the Court of Appeal provided very precise and helpful advice to Mr. Simon, at paragraphs 17-20. Briefly stated, the Court advised that:

- failure to comply with all of the Rules of the Federal Court governing pleadings would likely lead to the claim being struck (paragraph 17);
- each constituent element of each cause of action must be pleaded with sufficient articularity a requirement that is not satisfied with a narrative of the events (paragraph 18);
- materials relating to the propriety of the claim to reimbursement advanced by authorities in British Columbia will not likely fall within the jurisdiction of the Federal Court (paragraph 19); and
- certain relief sought against federal entities may only be claimed through an application for judicial review (paragraph 20).

**III. Issues**

[8] The issue before me is whether Mr. Simon's Amended Statement of Claim, or parts of it should be struck.

**IV. Analysis**

[9] I have reviewed the Amended Statement of Claim very carefully. I have tried my best to discern any cause of action. I listened very closely to Mr. Simon's oral submissions on this motion to strike with a view to discovering the elements of his claim.

[10] Mr. Simon's Amended Statement of Claim is lengthy and incomprehensible. He has not heeded the advice of the Court of Appeal. It suffers from all of the defects identified by the Court of Appeal. More specifically:

1. Contrary to Rule 174, of the *Federal Courts Rules*, SOR/98-106, the statement of claim does not contain a concise statement of the material facts on which Mr. Simon relies.
2. Contrary to Rule 174, the statement of claim extensively pleads evidence.
3. Contrary to Rule 221(1)(a), the statement of claim does not disclose a reasonable cause of action.

4. Contrary to Rule 221(1)(c), the statement of claim is frivolous or vexatious because it is so deficient that the Defendant could not know how to answer the claim.
  
5. Finally, while a party may raise any point of law in a pleading (Rule 175), a statement of claim cannot consist of legal argument. The extensive legal submissions contained in the statement of claim violate Rule 174 because Mr. Simon's submissions, including the extensive references to case law and hypothetical cases, are not concise statements of material fact.

[11] As with the original Statement of Claim, most aspects of this Amended Statement of Claim do not fall within the jurisdiction of the Federal Court. Even though the wording may be different in the revised pleading, the key element of Mr. Simon's complaint is the liability owed by him to the government of British Columbia in respect of social assistance benefits received by his first wife. As described in the Amended Statement of Claim, the foundation of his argument is that he does not believe that there is any enforceable contract agreement between him and the BC government. In pith and substance, this claim is one against the BC Provincial Crown, even though the actual garnishment was made by the Defendant. Any complaints about the actions of the Federal Crown appear to be ancillary to his main allegations against the BC government.

[12] The Federal Court of Appeal suggested that Mr. Simon might have a claim (or grounds to bring an application for judicial review) against the Canada Revenue Agency (CRA) in respect of how it carried out the garnishee. Can I extract any reasonable cause of action against the Defendant

– the Federal Crown – from this Amended Statement of Claim, in respect of this possible claim? I cannot.

[13] With respect to a potential claim against CRA, the Amended Statement of Claim makes a number of references to the CRA. However, none of these references, in my view, clearly identifies a cause of action. The closest that I can come to finding that any cause of action is pleaded against CRA is the general statement in Paragraph 20, where Mr. Simon states that:

This whole controversial situation has been created or made possible by the negligence of the Defendant and its public servants involved. The main aspect of this Statement of Claim is related to the actions and particularly the omissions of the CRA and the Ministry of Citizenship and Immigration, between 2007 and present. These federal authorities have been repeatedly contacted by the plaintiff between those years, without success. Every federal civil servant of the Defendant involved kept claiming that the whole procedure had been fair and legally correct, without any error or omission on their behalf, thus shifting the controversies, responsibilities and jurisdiction solely to the plaintiff and/or to British Columbia. [Emphasis added.]

[14] The first problem is that this general accusation is against both the CRA and the “Ministry of Citizenship and Immigration”. Is Mr. Simon’s reference to the Minister of Citizenship and Immigration another collateral attack on the refusal of the sponsorship application for his second wife? Further, what “actions” and what “omissions” is he complaining about? How could any defendant defend against such claims? It is plain and obvious, in my view, that the Amended Statement of Claim does not disclose a reasonable cause of action against the Defendant in respect of the actions of the CRA.

[15] Moreover, while he denies that he is attempting to bring a collateral attack on the refusal of the Visa Officer to allow him to sponsor his second wife, the pleadings before me raise that issue squarely.

[16] During his submissions on this motion to strike, Mr. Simon disclosed that he had commenced an action against the Federal Government and the Government of British Columbia (as well as a third party) in the Supreme Court of British Columbia. He advised the Court that he has discontinued that action. I do not know why.

[17] This is Mr. Simon's third attempt to bring this action (twice in our Court and once in the Supreme Court of British Columbia). Mr. Simon has had every opportunity to amend his pleadings. He has ignored the coaching offered by the Federal Court of Appeal and has brought an Amended Statement of Claim which does not comply with the *Federal Courts Rules*. In spite of the gentle suggestion from the Court of Appeal that he would be well advised to seek legal advice (at paragraph 18), Mr. Simon has not done so. In the circumstances, I would strike the Amended Statement of Claim without leave to amend.

## **V. Costs**

[18] In his response to this motion, the Respondent stated that he was seeking an Order "to reverse the charge of \$500.00 for costs payable to the defendant Crown" in *Simon FC*, above. This request should have been brought to the Court of Appeal. I have no authority to reverse the order of Justice Zinn.



[19] With respect to this motion, I would award costs to the Defendant in the amount of \$500.00.

**ORDER**

**THIS COURT ORDERS that :**

1. the Amended Statement of Claim filed in this action is struck, without leave to amend; and
  
2. the Defendant is awarded its costs fixed at \$500.00, inclusive of fees, disbursements and taxes.

“Judith A. Snider”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-639-10

**STYLE OF CAUSE:** ZOLTAN ANDREW SIMON v.  
HER MAJESTY THE QUEEN  
IN RIGHT OF CANADA

**PLACE OF HEARING:** EDMONTON, ALBERTA

**DATE OF HEARING:** APRIL 18, 2011

**REASONS FOR ORDER:** SNIDER J.

**DATED:** MAY 19, 2011

**APPEARANCES:**

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(ON HIS OWN BEHALF)

Wendy Bridges

FOR THE DEFENDANT

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