Federal Court  Cour fédérale

Date: 20240216

Docket: T-79-22

Citation: 2024 FC 254

Ottawa, Ontario, February 16, 2024

PRESENT: Mr. Justice McHaffie

BETWEEN:

MEDHAT EL-NAKADY

Plaintiff

and

HIS MAJESTY THE KING

Defendant

ORDER AND REASONS

I. Overview

[1] The defendant, His Majesty the King [the Crown] moves to strike out the Statement of Claim of Medhat El-Nakady, asserting that the Federal Court has no jurisdiction over much of the claim, and that the remainder has no reasonable prospect of success. In response, Mr. El-Nakady moves for default judgment and for an order compelling the Crown to provide access to certain documents.

[2] For the reasons set out below, I will grant the Crown's motion in part. Paragraphs 1(A), 1(B), and 1(C) of the Statement of Claim are struck out, without leave to amend. These paragraphs effectively seek relief in respect of Mr. El-Nakady's tax assessments, and it is plain and obvious that such relief is in the jurisdiction of the Tax Court of Canada and not this Court. Paragraph 1(E) of the Statement of Claim is also struck out, without leave to amend, as it is plain and obvious that a claim based on a breach of the Taxpayer Bill of Rights published by the Canada Revenue Agency [CRA] discloses no reasonable cause of action.

[3] However, I am not satisfied that it is plain and obvious that paragraph 1(D) of the Statement of Claim, which claims compensation for financial hardship and emotional distress caused by CRA's lack of corrective action and unexplained delay, discloses no reasonable cause of action. It will not be struck. The allegations in paragraphs 2 to 11 are relevant to the relief claimed in paragraph 1(D) and will not be struck. The Crown shall have 30 days to file its Statement of Defence.

[4] Mr. El-Nakady's responding motion for default judgment and for production of certain documents is not well founded and will be dismissed.

[5] The Crown will have its costs of the motions in the total amount of $500.00, payable in any event of the cause.

II. Issues

[6] The parties' motions raise the following issues:

A. Should the Statement of Claim be struck, in whole or in part, for failure to disclose a reasonable cause of action within the jurisdiction of the Federal Court?

B. Should default judgment be granted against the Crown?

C. Should the Crown be ordered to produce information?

III. Analysis

A. *The Statement of Claim should be struck in part*

(1) The Statement of Claim and steps in the action

[7] Mr. El-Nakady is an employee of the Government of Canada. His action against the Crown arises from the assessment of his tax liability in 2017, when he was living in Ontario and working in Quebec. The Statement of Claim, issued on January 13, 2022, asserts that the CRA calculated his withheld tax from his T4 form, without accounting for the tax withholding set out on a Relevé 1 form. This resulted in a miscalculation of his tax owing.

[8] The Statement of Claim includes allegations that Mr. El-Nakady took numerous steps to explain and demonstrate the error, over the course of many years. It alleges the CRA promised refunds and a resolution, but did not meet its own deadline in doing so. It further alleges the

CRA's miscalculation, followed by its delayed response in solving the problem in a timely fashion, has turned Mr. El-Nakady's life "upside down."

[9] The relief Mr. El-Nakady seeks is set out at paragraph 1 of the Statement of Claim, which reads as follows:

> A) applying the correct tax withheld information from 2017 T4 and 2017 Relevé1 to adjust the plaintiff's CRA account accordingly;
>
> B) refunding the amount of $4888.80 (plus an interest of 5% monthly from 2017);
>
> C) refunding the amount of $4433.93 (plus an interest of 5% monthly from March 2021;
>
> D) $4000 lump sum payment as a compensation remedy for the financial hardship and the added emotional distress that have been caused and [aggravated] by CRA lack of corrective action and its undue and unexplained delay. CRA's lack of action and undue delay have been causing the plaintiff getting calls from CRA collection agency, dealing with very stressful and demanding collection calls from CRA, not having access to own refunds funds on a timely fashion and spending countless hours calling CRA call centers in hope of resolving the problem; and
>
> E) $2000 lump sum payment for CRA's failure in meetings its own published Taxpayers Bill of Rights. (Right to be treated fairly and Right to complete, accurate, clear, and timely information)[.]

[10] Upon receipt of the Statement of Claim, the Crown sought particulars of the relief sought in paragraph 1, including what the $4,888.80 and $4,433.93 amounts represented, and how they were calculated. By order dated September 19, 2023, Associate Judge Molgat ordered Mr. El-Nakady to provide particulars of paragraphs 1(B) and 1(C) of the Statement of Claim, and

required the Crown to serve its Statement of Defence within 30 days of those particulars being provided.

[11] Mr. El-Nakady provided particulars on October 13, 2023. Those particulars state that the amount of $4,888.80 represents the refund amounts that should have been paid for the 2017, 2018, and 2019 tax years if the CRA had applied the correct amount of withholding from April 2017, plus a small amount paid by Mr. El-Nakady to the Crown in connection with collection. The $4,433.93 amount is stated to represent additional amounts owing from Mr. El-Nakady's 2021 tax refund, had the CRA applied the correct tax withheld in the prior years.

[12] The particulars also state that in February 2022, after commencement of this action, the CRA issued a reassessment of the 2017 year, applying the correct tax withheld amount, and issuing a refund. However, Mr. El-Nakady asserts that CRA issued only a partial refund; did not return all funds that had been held back between 2018 and 2020; did not issue appropriate interest; and did not explain the lengthy delay in correcting the error from 2017.

[13] After receiving these particulars, and after a case management conference with the undersigned, who had been assigned as case management judge in the interim, the Crown served its motion record in respect of its motion to strike the Statement of Claim.

(2) Preliminary issue: timing of the motion to strike

[14] Mr. El-Nakady's response to the Crown's motion contends that the Crown did not challenge the Federal Court's jurisdiction in its earlier motion for particulars. Without making

the argument directly, it appears Mr. El-Nakady is suggesting that the Crown's motion is improper or lacks merit because the jurisdictional issue was not raised earlier.

[15] I cannot agree. As Associate Judge Molgat noted in her order, the Crown's earlier motion for particulars was expressly based on concerns about this Court's jurisdiction. In describing the Crown's arguments on that motion, Associate Judge Molgat stated that "[g]iven the exclusive jurisdiction of the Tax Court of Canada to determine the correctness of tax assessments, the Defendant submits that a concise statement of material facts in accordance with Rule 174 is central as it is necessary to determine whether the Federal Court is the appropriate forum" [emphasis added]. In other words, the Crown's request for particulars was directly tied to the question of jurisdiction and the need to know the details of the matter to assess the Court's jurisdiction.

[16] As discussed further below, the Crown's motion was brought in accordance with this Court's scheduling order dated November 8, 2023. I cannot conclude that the timing of the motion to strike, or the fact that the Court sought particulars before bringing that motion, affects either the Crown's ability to bring the motion or the merits of the motion.

(3) Principles on a motion to strike

[17] Rule 221(1)(a) of the *Federal Courts Rules*, SOR/98-106, provides that the Court may order that a pleading be struck out, with or without leave to amend, where it discloses no reasonable cause of action. The principles to apply on a motion to strike out a statement of claim under Rule 221(1)(a) are well established:

- as a general rule, no evidence is to be heard on a motion to strike under Rule 221(1)(a), although evidence relevant to the jurisdiction of the Court may be filed: *Federal Courts Rules*, Rule 221(2); *Berenguer v Sata Internacional – Azores Airlines, SA*, 2023 FCA 176 at para 26; *Hodgson v Ermineskin Indian Band No 942*, 2000 CanLII 15066 (FC) at paras 9–10, both citing *MIL Davie Inc v Société d'Exploitation et de Développement d'Hibernia Ltée*, 1998 CanLII 7789 (FCA) at paras 7–8;

- the allegations in the statement of claim are to be taken as true unless they are patently ridiculous or incapable of proof: *Canada v Scheuer*, 2016 FCA 7 at paras 12(i), 19; *R v Imperial Tobacco Canada Ltd*, 2011 SCC 42 at paras 22–24;

- as particulars form part of the pleadings, any particulars provided should be considered in assessing a motion to strike, but the plaintiff cannot rely on the possibility of providing further particulars to save an insufficient pleading: *Bosum v Canada*, 2004 FC 842 at para 7; *Living Sky Water Solutions Corp v ICF Pty Ltd*, 2018 FC 876 at para 10; *Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227 at para 20;

- the statement of claim must be read generously in favour of the plaintiff, with allowance for drafting deficiencies: *Scheuer* at para 12(iii);

- at the same time, the statement of claim is not to be blindly read at its face meaning, but considered with respect to the true nature of the claim: *Canada v Roitman*, 2006 FCA 266 at paras 16, 24, citing *Prentice v Canada*, 2005 FCA 395 at para 24;

- the moving party must show it is “plain and obvious” that the statement of claim discloses no cause of action or, put another way, that the claim has “no reasonable prospect of success”: *Scheuer* at para 11; *Imperial Tobacco* at para 17;

- to strike a claim for lack of jurisdiction, it must be “plain and obvious” the Federal Court lacks jurisdiction: *Roitman* at para 15; *Berenguer* at paras 22–26;

- a statement of claim should not be struck merely because the claim it raises is novel: *Scheuer* at para 12(ii); *Imperial Tobacco* at para 21.

(4) Relief claimed in paragraph 1(A)

[18] In paragraph 1(A), Mr. El-Nakady seeks to have the Crown apply “the correct tax withheld information from 2017 T4 and 2017 Relevé1 to adjust the plaintiff’s CRA account accordingly.” The Crown argues that this ground of relief relates to Mr. El-Nakady’s 2017 tax assessment. It argues the Tax Court of Canada has exclusive jurisdiction to hear appeals of a tax assessment, and that this Court therefore does not have jurisdiction over this ground of relief.

[19] Assessing the jurisdiction of this Court in respect of income tax matters involves the consideration of provisions of the *Income Tax Act*, RSC 1985, c 1 (5th Supp), the *Tax Court of Canada Act*, RSC 1985, c T-2, and the *Federal Courts Act*, RSC 1985, c F-7.

[20] Subsection 152(8) of the *Income Tax Act* provides that an assessment is deemed to be valid and binding notwithstanding any error, defect or omission in it “subject to being varied or vacated on an objection or appeal under this Part and subject to a reassessment.”

Subsection 165(1) provides that a taxpayer who objects to an assessment can serve a notice of objection. Subsection 169(1) then provides that a taxpayer who has served a notice of objection may appeal to the Tax Court of Canada to have the assessment vacated or varied.

[21] Subsection 12(1) of the *Tax Court of Canada Act* provides that the Tax Court of Canada has "exclusive original jurisdiction to hear and determine references and appeals to the Court on matters arising under," among other statutes, the *Income Tax Act*. The Tax Court of Canada is thus given *exclusive* jurisdiction to hear appeals in respect of an assessment.

[22] Section 18 of the *Federal Courts Act* provides the Federal Court with exclusive original jurisdiction to hear and determine applications for relief in the nature of the writs of *certiorari*, prohibition, *mandamus*, or *quo warranto*, or to issue injunctions or prohibitions against any federal board, commission, or other tribunal, which relief may only be obtained on an application for judicial review under section 18.1. However, this general grant of jurisdiction is limited by section 18.5 of the *Federal Courts Act*, which provides that if a statute provides for an appeal to the Tax Court of Canada of a decision of a federal board, commission, or other tribunal, then the Federal Court cannot review, restrain, set aside, or otherwise deal with the decision, except in accordance with the statute.

[23] The Federal Court of Appeal set out the effect of these provisions clearly in its 2006 decision in *Roitman*:

> Subsection 152(8) of the *Income Tax Act* deems an assessment to be valid and binding unless varied or vacated in accordance with the appeal process under the Act. The Tax Court has exclusive jurisdiction to determine the correctness of tax assessments. This

> exclusive jurisdiction is established by a combination of ss. 152(8) and 169 of the *Income Tax Act*, s. 12 of the *Tax Court of Canada Act* and ss. 18, 18.1 and 18.5 of the *Federal Courts Act*.
>
> It is settled law that the Federal Court does not have jurisdiction to award damages or grant any other relief that is sought on the basis of an invalid reassessment of tax unless the reassessment has been overturned by the Tax Court. To do so would be to permit a collateral attack on the correctness of an assessment. […]
>
> [Emphasis added; citations omitted; *Roitman* at paras 19–20.]

[24] The Court of Appeal in *Roitman* went on to reiterate its earlier finding that section 18.5 of the *Federal Courts Act* "should be interpreted, as far as possible, to preclude parallel proceedings in the Federal Court and the Tax Court of Canada in respect of substantially the same underlying issue": *Roitman* at para 22, citing *Walker v Canada*, 2005 FCA 393 at para 13. Thus, the legal efficacy of an assessment or reassessment can only be challenged in the Tax Court of Canada: *Roitman* at para 22; *Walker* at para 13; *Toumani v Canada (Revenue Agency)*, 2022 FC 1770 at paras 11–12, 20–23, 52.

[25] Mr. El-Nakady also raises section 17 of the *Federal Courts Act*, which gives this Court concurrent original jurisdiction "in all cases in which relief is claimed against the Crown." It is plain and obvious that this section does not give this Court jurisdiction over the relief in paragraph 1(A). Section 17 must be read in conjunction with sections 18 and 18.1. The Federal Court of Appeal has confirmed that where, as here, the relief claimed effectively seeks review of a decision or order of a "federal board, commission or other tribunal," such relief must be claimed on an application for judicial review under sections 18 and 18.1 of the *Federal Courts Act*: *Brake v Canada (Attorney General)*, 2019 FCA 274 at paras 23–26. The limitations on

judicial review set out in section 18.5—which preclude judicial review where an appeal lies to the Tax Court of Canada—thus apply.

[26] I also note that Mr. El-Nakady's reliance on subsection 17(4) of the *Federal Courts Act* is misplaced. That subsection provides that the Federal Court has concurrent original jurisdiction in proceedings "to determine disputes in which the Crown is or may be under an obligation and in respect of which there are or may be conflicting claims." This subsection gives the Court jurisdiction where two or more other parties each assert rights in an obligation owed by the Crown, *i.e.*, "conflicting claims": *Roberts v Canada*, 1989 CanLII 122 (SCC), [1989] 1 SCR 322 at pp 335–336. That is not the case here, and the subsection has no application.

[27] On the basis of the foregoing provisions and the Federal Court of Appeal's clear pronouncements, it is plain and obvious that this Court does not have jurisdiction to grant the relief requested in paragraph 1(A) of the Statement of Claim. While Mr. El-Nakady asserts that his claim is not attacking the accuracy of tax assessments or reassessments, his request that the Court require the Crown to apply the "correct tax withheld information" and "adjust [his] CRA account accordingly" plainly challenges his tax assessment. Such a challenge cannot be brought before this Court.

(5) Relief claimed in paragraphs 1(B) and 1(C)

[28] I reach the same conclusion with respect to the relief set out at paragraphs 1(B) and 1(C) of the Statement of Claim. These paragraphs seek refunds that, according to the particulars Mr. El-Nakady provided, are amounts that should have been paid had the CRA withheld the

correct amount from the 2017 tax year. I agree with the Crown that these requests for relief flow directly from the issue of the correctness of Mr. El-Nakady's tax assessment for the 2017 year, and the resulting correctness of his tax assessments for subsequent years.

[29] In my view, the jurisdictional issue is not affected by the fact that these paragraphs effectively claim the payment of money, since such payments are said to be due and owing only in connection with the correction of the underlying tax assessments. As the Court of Appeal stated in *Roitman*, this Court does not have jurisdiction to award damages on the basis of an invalid reassessment of tax unless the reassessment has been overturned by the Tax Court, since this would permit a collateral attack on the reassessment: *Roitman* at para 20.

[30] I note that in the present case, the particulars provided by Mr. El-Nakady specify that subsequent to the commencement of this action, the CRA has in fact reassessed his 2017 tax year, recognizing the correct amount of total income tax deducted for that year, reversing arrears interest previously charged, and paying refund interest. To the extent Mr. El-Nakady disputes these amounts, this remains a challenge to his tax reassessment, which is in the purview of the Tax Court of Canada and not this Court.

(6) Relief claimed in paragraph 1(D)

[31] Paragraph 1(D) of the Statement of Claim seeks a $4,000 payment as a "compensation remedy" for financial hardship and emotional distress resulting from the delay in CRA correcting the issue related to the taxes withheld in 2017.

[32] The Crown does not contend that the Court has no jurisdiction to hear this claim. Rather, it argues the claim has no reasonable prospect of success since it is not supported by material facts beyond the general assertion that Mr. El-Nakady's life has been turned "upside down." It cites the Ontario Court of Appeal's decision in *Ceballos* for the proposition that intentional torts must meet a "stringent standard of particularity" and must be pleaded with "clarity and precision": *Ceballos v DCL International Inc*, 2018 ONCA 49 at para 12, citing *Lysko v Braley*, 2006 CanLII 11846 (ON CA) at para 144.

[33] It is unclear that Mr. El-Nakady's claim for compensation is based on an intentional tort such as those described in *Ceballos* and *Lysko*, as opposed to being grounded in negligence or another basis of Crown liability. In any event, given the high standard on a motion to strike, and the principle that a claim must be read generously in favour of the plaintiff with allowance for drafting deficiencies, I am not satisfied it is plain and obvious that this aspect of Mr. El-Nakady's claim has no reasonable prospect of success. While Mr. El-Nakady may ultimately have difficulty demonstrating either financial hardship arising from the 2017 assessment for which the Crown ought to be liable or compensable emotional distress, the Crown has not persuaded me it is plain and obvious that the claim cannot succeed.

[34] In this regard, I note that the Crown's primary ground of challenge is a lack of particularity in the claim. However, Associate Judge Molgat stated in her order that "other than regarding subparagraphs 1B) and 1C) of the Claim, the [Crown] has not identified what they view as deficiencies in the pleading in relation to material facts or the constituent elements of any cause of action asserted." While a plaintiff cannot rely on the possibility of future particulars

to save a deficient claim, I conclude in the circumstances that the Crown's inability to identify what they view as deficiencies in relation to material facts at the time of its particulars motion is relevant to its current assertion that the claim must fail because it is insufficiently particularized.

[35] As noted above, the Federal Court of Appeal has held that the Federal Court does not have jurisdiction to award damages or grant any other relief that is sought on the basis of an invalid reassessment of tax unless the reassessment has been overturned by the Tax Court: *Roitman* at para 20. In the present case, Mr. El-Nakady's claim for damages relates to the original 2017 assessment and the CRA's conduct in delaying the correction of it. While the 2017 assessment has not been overturned by the Tax Court, it has been reassessed by the CRA itself. Further, the relief sought in paragraph 1(D) relates not to the automatic consequences of the reassessment, as in paragraphs 1(B) and 1(C), but to damages arising from the conduct of the CRA in its handling of the matter. In the circumstances, I do not consider it plain and obvious that the rule in *Roitman* precludes Mr. El-Nakady's claim for damages.

[36] I will therefore not strike paragraph 1(D) of the Statement of Claim.

(7) Relief claimed in paragraph 1(E)

[37] Paragraph 1(E) of the Statement of Claim seeks compensation for the CRA's failure to meet its published guideline entitled "Taxpayer Bill of Rights Guide: Understanding your rights as a taxpayer" [Taxpayer Bill of Rights]. I agree with the Crown that this paragraph discloses no reasonable cause of action. The Taxpayer Bill of Rights is a guide and pledge of service quality, with no force of law, and no effect on the *Income Tax Act*: *Johnson v The Queen*, 2022 TCC 31

at para 25. As stated in the Taxpayer Bill of Rights itself, it sets out the process through which each right is protected, which may include the ability to file reviews or appeals; complain to the Commissioner of Official Languages, the Information Commissioner of Canada, or the Privacy Commissioner of Canada; or follow the CRA Service Complaint process.

[38] While the Taxpayer Bill of Rights provides information to taxpayers on their rights under the *Income Tax Act* and other statutes, I agree with the Crown that an alleged failure to comply with its description of taxpayers' "right to be treated […] fairly" and "right to complete, accurate, clear, and timely information" can create no new and independent ground for Crown liability: *Uni-Jet Industrial Pipe Ltd v Canada (Attorney General)*, 2001 MBCA 40 at para 37. Mr. El-Nakady appears to concede this to be the case, concurring that the Taxpayer Bill of Rights is a "misleading document" since it styles itself as a "Bill of Rights," yet it "can't be enforced in any legal way" and "provides nothing in the way of a substantive legal remedy."

[39] I conclude that Mr. El-Nakady's claim based on an asserted breach of the Taxpayer Bill of Rights discloses no reasonable cause of action and should be struck.

(8) Conclusion

[40] For the foregoing reasons, I conclude that paragraphs 1(A), (B), (C), and (E) of the Statement of Claim should be struck for failing to disclose a reasonable cause of action within the jurisdiction of the Federal Court. As the flaws in these paragraphs cannot be cured by redrafting or amendment, they will be struck without leave to amend: *Toumani* at paras 20–23, 53.

[41] Paragraph 1(D) will not be struck. As the remaining paragraphs of the Statement of Claim are arguably relevant to the surviving claim in paragraph 1(D), they will not be struck.

B. *Default judgment will not be granted*

[42] In response to the Crown's motion, Mr. El-Nakady brought his own motion for default judgment. He asserts the Crown has failed to file a Statement of Defence in accordance with Associate Judge Molgat's order, which required a Statement of Defence within 30 days of particulars being provided. The Crown's motion to strike was filed on November 16, 2023, which was 34 days after he provided particulars in response to that order.

[43] There is no merit to Mr. El-Nakady's motion for default judgment. This Court has held that where a defendant responds to a statement of claim through a motion to strike, including one based on Rule 221(a) and the jurisdiction of the Federal Court, such a motion cannot be circumvented by moving for default judgment: *Toumani* at paras 7, 52, citing *Kornblum v Canada (Human Resources and Skills Development)*, 2010 FC 656 at paras 29–30. Further, Rule 298(2) specifically provides that in simplified actions, a motion to object to the jurisdiction of the Court or to strike a statement of claim may be brought within the time for the service and filing of a statement of defence. While Associate Judge Molgat's order extended the time for filing the Crown's Statement of Defence, it did not preclude a motion to strike.

[44] The Crown advised the Court and Mr. El-Nakady of its intention to bring such a motion well before the expiry of the 30-day period. A schedule for the Crown's motion was discussed at a case conference Mr. El-Nakady attended, and the Court issued an order on November 8, 2023,

setting out a schedule that required the Crown to file its motion record by November 16, 2023. The Crown served and filed its motion record on November 16, 2023, in compliance with the Court's order.

[45] In such circumstances, Mr. El-Nakady's motion for default judgment is unfounded and will be dismissed. The Crown will be given an opportunity to defend the remaining claim of Mr. El-Nakady, and will be given 30 days in which to file its Statement of Defence.

[46] I note that, in any event, Rule 210(3) of the *Federal Courts Rules* requires a plaintiff moving for default judgment to file affidavit evidence establishing not only the service of their statement of claim, but their right to judgment: *Toumani* at paras 6, 52, citing *Microsoft Corp v PC Village Co*, 2009 FC 401 at para 12. Mr. El-Nakady has filed no such evidence, and in particular has filed no evidence establishing the facts alleged in the Statement of Claim or the damages claimed to be suffered. This would be a separate basis to dismiss Mr. El-Nakady's motion for default judgment, even if it had been properly brought.

C. *There is no basis to order the Crown to produce the requested documents*

[47] Mr. El-Nakady's motion in response to the Crown's motion also seeks an order compelling the Crown to (i) provide access to certain information he requested pursuant to the *Privacy Act*, RSC 1985, c P-21; and (ii) produce the results of the "Internal Affairs and Fraud Control Division at CRA" further to a reprisal complaint he filed with the CRA in January 2022.

[48] I agree with the Crown that neither of these requests for production is well founded. With respect to the first, the *Privacy Act* provides that an individual who has been refused access to personal information can complain to the Privacy Commissioner: *Privacy Act*, ss 12, 16, 29. An individual who has been refused or denied access may only apply to the Federal Court if they have first complained to, and received a report from, the Privacy Commissioner: *Privacy Act*, s 41; *Sandiford v Canada (Attorney General)*, 2023 FC 1711 at para 11, citing *Statham v Canadian Broadcasting Corporation*, 2010 FCA 315 at para 64. There is no evidence before the Court that Mr. El-Nakady has complained to, or received a report from, the Privacy Commissioner, and he has not, in any event, brought an application under section 41 of the *Privacy Act*. There is no basis on which to order the Crown to provide access to documents requested under the *Privacy Act* in the context of this action, beyond the usual rules governing production of documents.

[49] To the extent that any documents that might be responsive to the *Privacy Act* request are relevant to the issues in the action, on which the Court makes no ruling, they will be produced in accordance with the *Federal Courts Rules* governing documentary disclosure and production. Those rules set out procedures and time frames in which the parties will be required to disclose all relevant documents in their possession, power, and control. As pleadings have not yet closed, the time for doing so has not yet arisen. Mr. El-Nakady has provided no basis for the Court to order production of documents outside the ordinary course of the *Rules*.

[50] With respect to the second request for production, the reprisal complaint Mr. El-Nakady refers to states that he is “now suspecting” that the delays on the part of the CRA in handling his

2017 tax return related to an earlier court action he filed in August 2014, and are the result of the deliberate conduct of a CRA employee involved in the earlier proceeding. No such allegation is made in the Statement of Claim. In any case, to the extent that any such documents are relevant to allegations raised in the Statement of Claim, they will be produced in the ordinary course.

[51] I therefore conclude there is no basis for the Court to make the production orders sought by Mr. El-Nakady. His motion will therefore be dismissed.

IV. Conclusion

[52] For the foregoing reasons, the Crown's motion is allowed in part. Paragraphs 1(A), 1(B), 1(C), and 1(E) of the Statement of Claim are struck, without leave to amend. The Crown shall serve and file its Statement of Defence within 30 days of the date of this Order. Mr. El-Nakady's responding motion is dismissed.

[53] Each party requested its costs of this motion. Although the Crown did not succeed in striking Mr. El-Nakady's claim in its entirety, it was predominantly successful on the motion. Considering the context, the matters at issue, the modest complexity of the questions raised on the motions, the Crown's limited response to Mr. El-Nakady's motion, and the factors in Rule 400(3)(a), (b), (c), and (g), I conclude that the Crown should have its costs of these motions, fixed at the inclusive amount of $500.00, payable in any event of the cause.

ORDER IN T-79-22

THIS COURT ORDERS that

1. The defendant's motion is allowed in part. Paragraphs 1(A), 1(B), 1(C), and 1(E) of the Statement of Claim are struck out, without leave to amend.
2. The defendant shall file its Statement of Defence within 30 days of the date of this Order.
3. The plaintiff's motion brought in response to the defendant's motion is dismissed.
4. The plaintiff shall pay to the defendant the sum of $500.00 as costs of these motions, payable in any event of the cause.

"Nicholas McHaffie"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-79-22
STYLE OF CAUSE:	MEDHAT EL-NAKADY v HIS MAJESTY THE KING

MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES*

ORDER AND REASONS:	MCHAFFIE J.
DATED:	FEBRUARY 15, 2024

WRITTEN REPRESENTATIONS BY:

Medhat El-Nakady	ON HIS OWN BEHALF
Amanda De Bruyne	FOR THE DEFENDANT

SOLICITORS OF RECORD:

Attorney General of Canada Ottawa, Ontario	FOR THE DEFENDANT