

Federal Court



Cour fédérale

Date: 20250630

Docket: T-265-24

Citation: 2025 FC 1167

Ottawa, Ontario, June 30, 2025

PRESENT: The Honourable Mr. Justice Duchesne

BETWEEN:

DARYOUSH ARFAEIAN

**Plaintiff/
Moving Party**

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**Defendant/
Responding Party**

ORDER AND REASONS

[1] On May 13, 2025, I made an Order requiring the Plaintiff and Moving Party (the Plaintiff) to serve and file his motion record in connection with his appeal pursuant to Rule 51 of the *Federal Courts Rules* (SOR/98-106) (the *Rules*) from a November 1, 2024, decision by Associate Judge Cotter (the Striking Order) by June 2, 2025. The Plaintiff complied with my Order and served and filed his motion record within the time fixed by my Order.

[2] The Respondent served and filed his responding record on June 20, 2025, in accordance with the timetable fixed by my Order. Despite having until June 27, 2025, to file any written representations in reply, the Plaintiff has failed to do so.

[3] Having considered the motion material filed, the Plaintiff's appeal is dismissed for the reasons that follow.

I. **Background**

[4] On November 5, 2012, the Plaintiff was issued a Notice to Appear at a hearing on November 20, 2012, before a Citizenship Judge in Toronto, Ontario. He did not appear for his hearing.

[5] On February 6, 2013, the Plaintiff was issued a Final Notice to Appear at a hearing in Toronto, Ontario, on February 20, 2013, before a Citizenship Judge. The Notice to Appear that had been sent to the Plaintiff's declared address was returned unclaimed by the Plaintiff. It seems that the Plaintiff did not appear at the hearing he had been summoned to.

[6] It appears from the GCMS notes contained in the record before the Court (on the motion determined on May 13, 2025) that the Plaintiff's failures to attend before a Citizenship Judge caused his file to be considered as abandoned as of May 13, 2013.

[7] Nearly 11 years passed before the Plaintiff took any steps before this Court. What happened during those 11 years is unknown to the Court.

[8] On February 12, 2024, the Plaintiff filed a Statement of Claim against the Minister of Citizenship and Immigration. The Defendant brought a motion pursuant to Rule 221 of the *Rules* for an Order striking the Plaintiff's Statement of Claim without leave to amend. The Plaintiff neither served nor filed a responding record to the Defendant's motion.

[9] On November 1, 2024, Associate Judge Cotter granted the Defendant's motion and struck the Plaintiff's Statement of Claim without leave to amend. At paragraph 15 of his decision, Associate Judge Cotter wrote:

[15] As the plaintiff did not file a responding motion record, the plaintiff has not made any submissions on this motion attempting to explain how the Claim discloses any reasonable causes of action. In any event, reading the Claim generously and assuming the facts alleged in it to be true, and considering the other applicable principles set out above regarding motions to strike for failing to disclose a reasonable cause of action, I am unable to identify any reasonable cause of action. I note that reading the Claim generously does not assist much in the analysis given that much of the Claim is difficult to follow or incomprehensible.

[10] Rule 51 of the *Rules* sets out that an order of an associate judge may be appealed by motion to a judge of the Federal Court. The Notice of Motion for the appeal motion must be served and filed within 10 days after the day on which the order under appeal was made. An order pursuant to Rule 8 of the *Rules* extending the time for an appeal is required if a party does not act within the 10 days provided by Rule 51.

[11] On January 14, 2025, the Plaintiff filed a motion for an order extending the time to appeal the Striking Order pursuant to Rule 51 of the *Rules*. The Court file reflects that the Plaintiff filed

an affidavit of service of his motion that shows that he had served the Defendant with his motion record on January 4, 2025.

[12] On January 24, 2025, the Defendant wrote to the Court and sought the Court's direction with respect to the filing deadline for its responding record to the Plaintiff's motion. The request for directions arose because the Defendant had been served with a Notice of Appeal from Associate Judge Cotter's order on November 7, 2024, and with different copies of motion records on December 4, 2024, and on January 4, 2025. The Defendant wrote that he understood that the Plaintiff's motion records were rejected by the Court for filing.

[13] On January 29, 2025 (corrected and amended on February 20, 2025), Madam Justice Saint-Fleur issued an Order that granted the Plaintiff's motion for an extension of time to serve his motion record for his motion to appeal the Striking Order to January 14, 2025, and extended the time for the Defendant to serve and file his motion record responding to motion to appeal within 30 days of January 29, 2025. The Defendant served his responding record on February 13, 2025. The Plaintiff served and filed his written representations in reply pursuant to Rule 369(3) on February 17, 2025.

[14] On February 21, 2025, Justice Saint-Fleur issued a direction whereby the Plaintiff was to serve and file a motion record that complied with the *Rules*. The Plaintiff did not file any motion record for the purposes of appealing from the Striking Order following Justice Saint-Fleur's January 29, 2025, Order and February 21, 2025, direction.

[15] The Plaintiff finally filed his motion record in support his appeal on June 2, 2025.

II. **The Striking Order**

[16] Associate Judge Cotter's Striking Order reflects that the Defendant had made a motion in writing pursuant to Rule 369 of the *Rules* for an order that struck the Plaintiff's Statement of Claim. The Plaintiff did not file any responding record to the motion brought. Accordingly, Associate Judge Cotter considered the Defendant's motion record, the Plaintiff's Statement of Claim and the Defendant's written representations in determining whether the Defendant's motion should be granted.

[17] Associate Judge Cotter's analysis considered whether, as set out in the Defendant's notice of motion, the Plaintiff's Statement of Claim disclosed a reasonable cause of action pursuant to Rule 221(1)(a) of the *Rules*. The Defendant had submitted affidavit evidence in support of his motion which was disregarded by Associate Judge Cotter pursuant to Rule 221(2) of the *Rules* except for its filing of the Plaintiff's Statement of Claim as an exhibit on the motion. Associate Judge Cotter noted that the Plaintiff's Statement of Claim was admissible pursuant to Rule 364(2)(f) of the *Rules* and was not required to be adduced into evidence on the motion through an affidavit.

[18] Associate Judge Cotter noted that portions of the Statement of Claim were difficult to follow and somewhat incomprehensible. He reproduced and considered the relief sought by the Plaintiff as set out in paragraph 2 of his Statement of Claim which explicitly set out his causes of action under the heading "Disclosure of reasonable causes of action".

[19] Associate Judge Cotter identified the principles applicable to a motion to strike as summarized by Justice Pentney in *Fitzpatrick v Codiac Regional RCMP Force, District 12, and Her Majesty the Queen*, 2019 FC 1040, at paras 14 to 20, by Justice Gleeson in *Bounpraseuth v. Canada*, 2023 FC 1220 and in *Welcome v. Canada*, 2024 FC 443, at paras 11 and 12. He then applied those principles and concluded as follows:

[15] As the plaintiff did not file a responding motion record, the plaintiff has not made any submissions on this motion attempting to explain how the Claim discloses any reasonable causes of action. In any event, reading the Claim generously and assuming the facts alleged in it to be true, and considering the other applicable principles set out above regarding motions to strike for failing to disclose a reasonable cause of action, I am unable to identify any reasonable cause of action. I note that reading the Claim generously does not assist much in the analysis given that much of the Claim is difficult to follow or incomprehensible.

[16] In order to strike a pleading without leave to amend, the defect must be one that cannot be cured by amendment (*Collins v. Canada*, 2011 FCA 140, at para 26; *Simon v. Canada*, 2011 FCA 6 at para 8). The defects in the Claim which have resulted in it being struck are not ones that can be cured by amendment.

[20] Associate Judge Cotter concluded that the Plaintiff's Statement of Claim should be struck without leave to amend because it did not disclose a reasonable cause of action.

III. **The Appeal**

[21] The Plaintiff's ground of appeal is that the Defendant's motion to strike should have been dismissed because his evidence, exhibits and arguments demonstrate that the Defendant's motion is "baseless, flimsy and improper".

[22] The Plaintiff has filed a notice of motion that includes a list of 11 documents. He has produced his own affidavit dated April 11, 2024, without exhibits. He has also produced an

“affidavit of exhibits” dated December 10, 2024, that attaches 9 exhibits in accordance with Rule 80(3) of the *Rules*.

[23] The Plaintiff argues the facts set out in his affidavit and in the exhibits he has filed through his affidavit of exhibits and argues that the Minister of Citizenship and Immigration had improperly closed his file in 2013 because he had not abandoned his citizenship application. Rather, he had not received the notices that had been sent to him. On this basis, the 2013 decision that he had abandoned his citizenship application was unlawful and irrational.

[24] He also argues that the IRCC personnel who dealt with his matter previously were negligent and engaged in misfeasance because they did not accept his arguments and evidence.

[25] Finally, he argues that the Minister of Citizenship and Immigration has been unjustly enriched because he says he paid more than \$ 80,000 and that he has suffered damages as a result that are compensable pursuant to the *Negligence Act*.

IV. **Analysis**

[26] It is a well established general rule that an appeal from an order of an associate judge is to be decided on the material that was before the associate judge when they made the order (*Onischuk v Canada (Revenue Agency)*, 2021 FC 486 at para 9, citing *Shaw v Canada*, 2010 FC 577 at para 8 and *Papequash v Brass*, 2018 FC 325 at para 10). New evidence may be exceptionally admitted where: (1) it could not have been made available earlier; (2) its admission will serve the interests of justice; (3) the evidence will assist the Court; and (4) its admission will

not severely prejudice the other side (*David Suzuki Foundation v Canada (Health)*, 2018 FC 379 at para 37) (*Canjura v. Canada (Attorney General)*, 2021 FC 1022, at para 12).

[27] None of the Applicant's evidence as submitted on this appeal was before Associate Judge Cotter at the time of the Defendant's motion to strike. The Plaintiff has not filed a motion to admit new evidence on this appeal. The affidavit and other evidence he has submitted is therefore inadmissible on this appeal.

[28] The Plaintiff alleges that the *Citizenship Act* was violated by the Minister of Citizenship and Immigration. The Plaintiff seeks to justify the basis of his claims while conflating provincial legislation with the *Criminal Code*. He argues and relies on principles of judicial review while seeking damages on equitable and common law principles. He tries to explain his 11 years of inaction. He argues that his action has a reasonable chance of success based on his appreciation of the facts he has alleged.

[29] Throughout, however, the Plaintiff fails to allege or identify any error made by Associate Judge Cotter in the Striking Order.

[30] As there is no error identified, this appeal must be dismissed as wholly without merit.

V. **Conclusion**

[31] The Plaintiff's appeal from the Striking Order is dismissed.

[32] As it is not possible for the Plaintiff to continue this proceeding in light of Striking Order and in light of this Order, this proceeding will be dismissed pursuant to Rule 168 of the *Rules*.

ORDER in T-265-24

THIS COURT ORDERS that:

1. The Plaintiff's appeal from Associate Judge Cotter's Order dated November 1, 2024, is dismissed.
2. This proceeding is dismissed pursuant to Rule 168 of the *Rules*.
3. The whole, without costs.

"Benoit M. Duchesne"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-265-24

STYLE OF CAUSE: DARYOUSH ARFAEIAN v. MCI

ORDER AND REASONS: DUCHESNE, J.

DATED: JUNE 30, 2025

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

WRITTEN SUBMISSIONS BY:

Daryoush Arfaeian

FOR THE PLAINTIFF
(self-represented)

Nadine Silverman

FOR THE DEFENDANT

SOLICITORS OF RECORD:

Attorney General of Canada
Toronto, Ontario

FOR THE DEFENDANT