

CANADA / JUDGMENT

Arfaeian v. Canada (Citizenship and Immigration)

2024 FC 1745

COURT

Federal Court

DECIDED

1 November 2024

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Arfaeian v. Canada (Citizenship and Immigration) Court (s) Database Federal Court Decisions
Date 2024-11-01 Neutral citation 2024 FC 1745 File numbers T-265-24 Decision Content Date:
20241101 Docket: T-265-24 Citation: 2024 FC 1745 Toronto, Ontario, November 1, 2024 PRESENT:
Associate Judge John C. Cotter BETWEEN: DARYOUSH ARFAEIAN Plaintiff and THE MINISTER
OF CITIZENSHIP AND IMMIGRATION Defendant JUDGMENT AND REASONS UPON MOTION by
the defendant, dated March 12, 2024, and filed March 13, 2024, made in writing pursuant to Rule
369 of the Federal Courts Rules for:

1. Striking the Plaintiff's Statement of Claim; or
 2. In the event that this motion is dismissed, an Order allowing the Defendant an extension of thirty (30) days in which to serve and file a Statement of Defence. AND UPON noting that the plaintiff was served on March 13, 2024, with the "DEFENDANT'S MOTION RECORD" [Defendant's Motion Record] as evidenced by the solicitor's certificate of service dated March 13, 2024, and as confirmed by the motion filed by the plaintiff which is discussed below in paragraph 2; AND UPON noting that the plaintiff has not filed a respondent's record as provided for in Rule 369 (2) (any reference in these Reasons to a Rule is to those in the Federal Courts Rules, SOR/98-106); AND UPON reviewing and considering the Defendant's Motion Record, including the statement of claim in this action [Claim] and the defendant's written representations dated March 12, 2024 [Defendant's Written Representations]; AND UPON considering: I. No responding record from the plaintiff [1] As noted above, the plaintiff was served with the Defendant's Motion Record on March 13, 2024.
- [2] The plaintiff subsequently submitted to the Registry a motion record for a motion by the plaintiff seeking various relief including to dismiss the defendant's motion. The plaintiff's motion record was the subject matter of my Direction dated April 19, 2024, a copy of which is attached as Appendix "A", which made clear that although the motion record of the plaintiff was being accepted for filing: "The Plaintiff's Motion Record is not a substitute for, and does not take the place of, a respondent's record in connection with Defendant's Motion to Strike. It is not being accepted as a response to the Defendant's Motion to Strike."

- [3] The plaintiff has not filed a respondent's record in respect of the defendant's motion to strike. II. Grounds asserted and applicable Rule [4] My analysis focuses on whether the Claim discloses a reasonable cause of action. Although the grounds set out in the notice of motion also assert that the Claim "is frivolous, vexatious and/or an abuse of the process of the Court", it is not necessary to consider these other grounds in light of my conclusion that the Claim does not disclose a reasonable cause of action. In any event, there are no meaningful submissions in the Defendant's Written Representations that the Claim is frivolous, vexatious or an abuse of process. The only reference in the written representations to this ground are: to simply refer to it as a ground in the overview in paragraph 1; and to assert in paragraph 19 that "this amounts to frivolous litigation" on the basis of a factual conclusion asserted by the defendant, namely that "the emotional distress the Plaintiff [sic] allegedly suffered was based on the Plaintiff's [sic] own actions, as he left the country for years on end and did not pursue his citizenship".
- [5] The applicable rule on a motion to strike is Rule 221 which provides that: Motion to strike Requête en radiation 221 (1) On motion, the Court may, at any time, order that a pleading, or anything contained therein, be struck out, with or without leave to amend, on the ground that it 221 (1) À tout moment, la Cour peut, sur requête, ordonner la radiation de tout ou partie d'un acte de procédure, avec ou sans autorisation de le modifier, au motif, selon le cas :
- (a) discloses no reasonable cause of action or defence, as the case may be,
 - a) qu'il ne révèle aucune cause d'action ou de défense valable;
 - (b) is immaterial or redundant,
 - b) qu'il n'est pas pertinent ou qu'il est redondant;
 - (c) is scandalous, frivolous or vexatious,
 - c) qu'il est scandaleux, frivole ou vexatoire;
 - (d) may prejudice or delay the fair trial of the action,
 - d) qu'il risque de nuire à l'instruction équitable de l'action ou de la retarder;
 - (e) constitutes a departure from a previous pleading, or
 - e) qu'il diverge d'un acte de procédure antérieur; and may order the action be dismissed or judgment entered accordingly. Elle peut aussi ordonner que l'action soit rejetée ou qu'un jugement soit enregistré en conséquence. Evidence Preuve
- (2) No evidence shall be heard on a motion for an order under paragraph (1)(a).

- (2) Aucune preuve n'est admissible dans le cadre d'une requête invoquant le motif visé à l'alinéa (1)a). III. Defendant's affidavit evidence [6] The defendant has submitted affidavit evidence on this motion consisting mainly of documents relating to the plaintiff's citizenship application. However, the Defendant's Written Representations do not make any submissions regarding a basis upon which the Court can, or should, consider the defendant's affidavit evidence on this motion to strike.
- [7] Pursuant to Rule 221 (2) no evidence shall be considered on a motion for an order under paragraph (1)(a). Although there are limited exceptions to this prohibition, the defendant has not made any submissions on these exceptions.
- [8] In addition, while evidence may be considered on whether a statement of claim is frivolous, vexatious or an abuse of the process of the Court, as explained above, the defendant has not made any meaningful submissions on those grounds.
- [9] As a result, I have not considered the affidavit evidence submitted by the defendant in determining whether the Claim should be struck, with the exception of a copy of the statement of claim which was included as an exhibit to both of the affidavits filed by the defendants. I pause here to note that pleadings in an action in which a motion is brought can simply be included in the motion record without needing to be an exhibit to an affidavit (Rules 363 and 364(2)(f)). IV. The Claim [10] Although portions of the Claim are difficult to follow and somewhat incomprehensible, it appears to result from the plaintiff not obtaining Canadian citizenship.
- [11] It is useful to reproduce the relief sought in the Claim which is set out in paragraph 2 (the plaintiff is defined in the Claim as PT):
2. The PT submits that the below mentioned items are the Claims in question: Disclosure of reasonable causes of action:
- a) A declaration that the MCI is liable to PT for issuing of unfair and baseless decisions,
 - b) A declaration that the MCI is liable to PT for Offence, Contravene the Law and Violation of Rules under the Citizenship Act (R.S.C., 1985, c. C-29), the Criminal Code (RSC 1985, c C-46) and also under the Federal Courts Rules (SOR /98-106),
 - c) A declaration that the MCI is Unjustly Enriched and Breach of Trust by the acts and omissions pleaded herein under the Criminal Code (RSC 1985, c C-46),
 - d) Pre-judgment and post judgment interest pursuant to the Court of Justice Act (RSO 1990, c C.43) and the Criminal Code (RSC 1985, c C-46),

- e) Costs of this action along with its consequences on a substantial indemnity basis or to the extent that the compensations provide the full satisfaction of PT, f), Restoring the mental and psychological health of PT from damages caused by the negligence of the MCI in his inappropriate performance in providing services to PT as Citizenship applicant or, paying damages in the amount of 10 million dollars to PT under the Court of Justice Act (RSO 1990, c C.43) and the Negligence Act (RSO 1990, c N.1).
 - g) The PT is seeking compensable damages for inconvenience, loss of time, frustration, anxiety, mental distress and emotional upset arising of consequences and negative feedbacks mental caused by non- obtaining of the Canada Citizenship,
 - h) PT is pleading causes of this action within negligent, misrepresentation and negligence in public office pursuant to the Negligence Act (RSO 1990, c N.1) and the Criminal Code (RSC 1985, c C- 46), V. Analysis
- [12] The applicable principles on a motion to strike are aptly set out by Justice Pentney in *Fitzpatrick v Codiac Regional RCMP Force*, District 12, and *Her Majesty the Queen*, 2019 FC 1040:
- [14] As noted above, the law governing a motion to strike seeks to protect the interests of the plaintiff in having his or her “day in court,” while also taking into account the important interests in avoiding burdening the parties and the court system with claims that are doomed from the outset. In order to achieve this, the courts have developed an analytical approach and a series of tests that apply in considering a motion to strike.
- [15] The test for a motion to strike sets a high bar for defendants, and the onus is on the defendant to satisfy the Court that it is plain and obvious that the pleading discloses no reasonable cause of action, even assuming the facts alleged in the statement of claim to be true: *R v Imperial Tobacco Canada Ltd*, 2011 SCC 42 at para 17; *Hunt v Carey Canada Inc*, [1990] 2 SCR 959 at p 980. Rule 221 (2) reinforces this by providing that no evidence shall be heard on a motion. In view of this Rule, the further evidence submitted by the Plaintiff in his response to the motion to strike cannot be considered.
- [16] The facts set out in the statement of claim must be accepted as true unless they are clearly not capable of proof or amount to mere speculation. The statement of claim must be read generously, and mere drafting deficiencies or using the wrong label for a cause of action will not be grounds to strike a statement of claim, particularly when it is drafted by a self-represented party.
- [17] Further, the statement of claim must set out facts that support a cause of action – either a cause of action previously recognized in law, or one that the courts are prepared to consider. The mere fact that a cause of action may be novel or difficult to establish is not, in itself, a basis to strike a statement of claim. Related to this, the claim must set out facts that support each and every element of a statement of claim.

- [18] As explained by Justice Roy in *Al Omani v Canada*, 2017 FC 786 at para 17 [Al Omani], “[a] modicum of story-telling is required.” The law requires, however, a very particular type of story to be set out in a statement of claim – one which describes the events which are alleged to have harmed the plaintiff, focused only on the “material facts,” and set out in sufficient detail that the defendant (and the Court) will know what the specific allegations are based on, and that they support the specific elements of the various causes of action alleged to be the basis of the claim.
- [19] The Court generally shows flexibility when a party is self-represented, but this does not exempt the party from complying with the rules set out above: *Barkley v Canada*, 2014 FC 39 at para 17. The reason for this is simple – it is not fair to a defendant to have to respond to claims that are not explained in sufficient detail for them to understand what the claim is based on, or to have to deal with claims based on unsupported assumptions or speculation. Neither is it fair to the Court that will have to ensure that the hearing is done in a fair and efficient manner. A court would have difficulty ruling that a particular piece of evidence was or was not relevant, for example, if the claim is speculative or not clear. This will inevitably lead to “fishing expeditions” by a party seeking to discover the facts needed to support their claims, as well as to unmanageable trials that continue far longer than is appropriate as both sides try to deal with a vague or ever-changing set of assertions.
- [20] A degree of flexibility is needed to allow parties to represent themselves and to have access to the justice system; but flexibility cannot trump the ultimate demands of justice and fairness for all parties, and that is what the Rules and the principles set out in the cases seek to ensure.
- [13] As stated by Justice Gleeson in *Welcome v. Canada*, 2024 FC 443:
- [11] Pleadings must clearly set out the issues between the parties and give fair notice to the opposing party of the case they have to meet (*Sivak v Canada*, 2012 FC 272 at para 11; *Van Sluytman v Canada*, 2022 FC 545 at para 19 [Van Sluytman]).
- [12] Pleadings must disclose a reasonable cause of action. To do so, pleadings must (1) allege facts that are capable of giving rise to a cause of action; (2) disclose the nature of the action which is to be founded on those facts; and (3) indicate the relief sought, which must be of a type that the action could produce and the Court has jurisdiction to grant (*Van Sluytman* at para 9, citing *Oleynik v Canada (Attorney General)*, 2014 FC 896 at para 5; *Bérubé v Canada*, 2009 FC 43 at para 24, *aff’d* 2010 FCA 276).
- [14] In *Bounpraseuth v. Canada*, 2023 FC 1220, Justice Gleeson summarized the relevant principles when considering a motion to strike as: A. The moving party bears the burden of demonstrating that the claim has no reasonable chance of succeeding (*Imperial Tobacco* at para 25); B. Where it is alleged that the claim discloses no cause of action, the Court must assume that the facts pled are true (*Rebello v Canada (Justice)*, 2023 FCA 67 at para 4, citing *Imperial Tobacco* at para 17); C. A pleading must disclose material facts, rather than bald allegations. As stated in *Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227 at

para 19 [Mancuso], “[t]he plaintiff must plead, in summary form but with sufficient detail, the constituent elements of each cause of action or legal ground raised” (see also Mancuso at para 16); D. A plaintiff must plead the facts relied upon in advancing a claim. A plaintiff cannot rely on the possibility that new facts may come to light as the case advances. The facts as pled are the basis upon which the claim’s possibility of success is to be evaluated (Imperial Tobacco at para 22); E. Allegations based on assumptions and speculation, bare allegations, factual allegations that are scandalous, frivolous or vexatious, or legal submissions dressed up as factual allegations need not be accepted as true or accepted at face value (Templanza v Canada, 2021 FC 689, at para 14, citing Carten v Canada, 2009 FC 1233 at para 31); and F. A statement of claim is to be read in a generous manner to accommodate mere drafting deficiencies, particularly when it has been drafted by a self-represented litigant (Operation Dismantle v The Queen, 1985 CanLII 74 (SCC), [1985] 1 SCR 441 at paras 14, 94; Watts v Canada (Revenue Agency), 2019 FC 1321 at paras 14-15; Lauer v Canada (Attorney General), 2017 FCA 74 at para 22). However, the flexibility a court is prepared to extend to a self-represented litigant does not exempt the litigant from the requirement to plead sufficient material facts in support of a claim (Mancuso at paras 16-17; Zbarsky v Canada, 2022 FC 195 at para 15; Brauer v Canada, 2021 FCA 198 at para 14).

- [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. VI. Conclusion
- [17] Accordingly, the statement of claim is struck out without leave to amend.
- [18] The defendant did not seek costs and as a result, none are granted. JUDGMENT in T-265-24 THIS COURT’S JUDGMENT is that the motion to strike out the statement of claim is granted, and the statement of claim is struck out in its entirety without leave to amend. blank "John C. Cotter" blank Associate Judge FEDERAL COURT SOLICITORS OF RECORD DOCKET: T-265-24 STYLE OF CAUSE: DARYOUSH ARFAEIAN v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION MATTER CONSIDERED AT TORONTO, ONTARIO WITHOUT PERSONAL APPEARANCE OF THE PARTIES JUDGMENT AND REASONS: COTTER A.J. DATED: NOVEMBER 1, 2024 WRITTEN SUBMISSIONS BY: Nadine Silverman For The Defendant SOLICITORS OF RECORD: Shalene Curtis-Micallef Deputy Attorney General of Canada Ottawa, Ontario For The Defendant APPENDIX “A” 180 Queen Street West Toronto, Ontario M5V 3L6 April 19th, 2024 VIA E-MAIL Daryoush Arfaeian EMAIL : eracorreption@gmail.com

Nadine Silverman EMAIL : Nadine.Silverman@justice.gc.ca RE: T-265-24 DARYOUSH
ARFAEIAN v. MCI

Please be advised of the following oral directions of Associate Judge Cotter dated April 19th, 2024: “The Registry forwarded the following documents to the Court seeking directions as to whether they may be accepted for filing: a) ‘Plaintiff’s Motion Record’ in respect of a notice of motion dated April 9, 2024 (Plaintiff’s Notice of Motion), for the following relief (emphasis in original): ‘1. Accepting the statement of claim as the originating document that was raised based on the Acts supported by the Honorable parliament, The leave to produce evidences pages 166, 167 and 168 existing in Notice of Motion Dated March 12, 2024 that are submitted on behalf the Defendant, Dismiss the motion submitted on March 12, 2024 by the defendant (regarding the two issues raised under Relief matter within Notice of Motion and failure to accept the defense of the Defendant) due to the submission of the Defense out of the legal stipulated time and pursuant, The issuance of the default judgment against defendant on the statement of claim or, The leave to examine the Defendant by way of a Written Examination,’ b) the plaintiff’s affidavit of service in connection with the Plaintiff’s Motion Record; and c) a letter from respondent’s counsel dated April 10, 2024 (‘Letter’), in connection with the Plaintiff’s Motion Record. The Court notes that there is currently pending a motion to strike the statement of claim filed by the defendant on March 13, 2024 (‘Defendant’s Motion to Strike’), which was filed well in advance of the Plaintiff’s Motion Record being submitted to the Registry. The Court also notes that in connection with the Defendant’s Motion to Strike, the plaintiff has not served a respondent’s record as required by Rule 369(2) of the Federal Courts Rules, and instead, attempted to file the Plaintiff’s Motion Record seeking, among other things, to dismiss the defendant’s motion (see paragraph 3 of the relief sought in the Plaintiff’s Notice of Motion). The Plaintiff’s Motion Record, and the related affidavit of service, may be accepted for filing, subject to the following: The Plaintiff’s Motion Record is not a substitute for, and does not take the place of, a respondent’s record in connection with Defendant’s Motion to Strike. It is not being accepted as a response to the Defendant’s Motion to Strike. The defendant is not required to respond at this time to the Plaintiff’s Motion Record. Pending any further Direction or Order, the timing for responding motion materials, if any, and on what portions of the relief sought in the Plaintiff’s Notice of Motion, will be determined by the Court, if necessary, after the Defendant’s Motion to Strike has been decided. Regarding the Letter, it shall not be accepted for filing. If the defendant wishes to respond to the Plaintiff’s Motion Record, the defendant is required to serve and file a respondent’s record pursuant to Rule 369(2) of the Federal Court Rules. To state what may be obvious, the Letter is not a respondent’s record. The Letter also does not fall within the parameters of an informal request for interlocutory relief as set out in paragraphs 40 and 41 of the Amended Consolidated General Practice Guidelines dated December 20, 2023.” Issued by; Alexander Campanile Registry Officer – Toronto Rule 369 Team

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