Federal Court  Cour fédérale

Date: 20221220

Docket: T-1673-22

Citation: 2022 FC 1770

Ottawa, Ontario, December 20, 2022

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

ROMANE TOUMANI
SAURELLE TOUMANI

Plaintiffs / Applicants

and

CANADA REVENUE AGENCY
ONTARIO MINISTER OF EDUCATION

Defendants / Respondents

ORDER AND REASONS

[1] This is the motion of Romane Toumani and Saurelle Toumani, the Plaintiffs and Applicants herein, seeking to set aside the October 24, 2022 decision of Associate Judge Horne ordering that the Plaintiffs' Statement of Claim be struck out, without leave to amend [Order].

[2] For the reasons that follow, the motion is denied.

Background

[3] By way of their Statement of Claim, the Plaintiffs asserted, in essence, that Notices of Reassessment for the 2020 taxation year, issued to them by the Canada Revenue Agency [CRA], were in error. The Plaintiffs made various other allegations, including that they had reason to believe that the Ontario Minister of Education sought the CRA's support to collaboratively input falsified data in the Plaintiffs' presumed Ontario Teacher's Pensions Plan [OTPP] accounts – which pensions they say were effected without their consent – as an attempt to justify the York Catholic District School Board T4 slips, and that the Ontario Minister of Education has made use of his political authority to deprive the Plaintiffs of fundamental resources needed to pursue a career in the public education system and beyond. The Plaintiffs claimed financial damages in the amount of $500,000.

[4] On September 14, 2022, the CRA brought a motion seeking to have the Statement of Claim struck out without leave to amend [Motion to Strike]. The grounds for the motion being that the Statement of Claim did not disclose a reasonable cause of action and was an improper collateral attack on the correctness of the Plaintiffs' tax assessments.

[5] In response to the CRA's Motion to Strike, on September 20, 2022 the Plaintiffs brought a motion requesting that the Defendants be noted in default and default judgment entered against them [Default Motion].

[6] With respect to the Plaintiffs' Default Motion, the Associate Judge noted that default proceedings in the Federal Court are governed by Rule 210 of the *Federal Courts Rules*, SOR/98-106 [Rules]. Further, in a motion under Rule 210, the allegations in the statement of claim are not presumed to be true, as the Plaintiffs asserted, rather, they are treated as denied. The moving party must support the motion with affidavit evidence that establishes, on a balance of probabilities, the allegations contained in the statement of claim (referencing, for example, *Microsoft Corp v PC Village Co*, 2009 FC 401 at para 12 and *Monsanto Canada Inc v Van Verdegem*, 2013 FC 50 at para 2). The Associate Judge found that while the Plaintiffs included a series of documents in their default motion record, this was insufficient as there was no affidavit evidence.

[7] Further, and in any event, the Plaintiffs' Default Motion was not properly before him. The Associate Judge pointed out that the Statement of Claim was issued on August 15, 2022 and the CRA's Motion to Strike was served and filed on September 14, 2022. The Associate Judge found that it was appropriate for a party to bring a motion to strike before filing their defence (*Kornblum v Canada (Human Resources and Skills Development)*, 2010 FC 656 at para 30 [*Kornblum*]). Further, that when a party serves a notice of motion, the respondent to that motion may not bring a separate motion that affects the rights of the moving party (*Kornblum* at para 29). In its Motion to Strike, the CRA had asserted that the Statement of Claim did not disclose a reasonable cause of action, and was a collateral attack on the correctness of the Plaintiffs' tax assessments. The Associate Judge found that those issues had to be determined first. And, if having done so, it was determined that the Statement of Claim was not properly before the Federal Court, then this Court would have no jurisdiction to grant relief, whether by way of

default judgment or a trial on the merits. The Associate Judge held that the Plaintiffs could not avoid a determination of the CRA's Motion to Strike, or circumvent that motion, by moving for default judgment.

[8] And while, in their submissions the Plaintiffs had relied the summary judgment rules, particularly Rule 213, to argue that a motion to strike has no place at the pleadings stage, the Associate Judge noted that the CRA had not moved for summary judgment and, therefore, Rule 213 had no application. Moreover, Rule 221(1) states that a motion to strike may be brought at any time.

[9] The Associate Judge then addressed the CRA's Motion to Strike.

[10] He set out Rule 221 and the general legal principles applying to motions to strike, including that: it must be plain and obvious, assuming the facts pleaded to be true, that the pleading discloses no reasonable cause of action or that the action is certain to fail because it contains a radical defect (*R v Imperial Tobacco Canada Ltd*, 2011 SCC 42 at para 17); a plaintiff must plead the facts which form the basis of their claim with sufficient details of the constituent elements of each cause of action or legal ground raised (*Pelletier v Canada*, 2016 FC 1356 at paras 8, 10); to disclose a reasonable cause of action, a claim must: (a) allege facts that are capable of giving rise to a cause of action; (b) disclose the nature of the action which is to be founded on those facts; and (c) indicate the relief sought, which must be of a type that the action could produce and the court has jurisdiction to grant (*Oleynik v Canada (Attorney General)*, 2014 FC 896 at para 5); and, the plaintiff needs to explain the "who, when, where, how and

what" giving rise to the defendant's liability (*Al Omani v Canada*, 2017 FC 786 at para 14 [*Al Omani*]).

[11] Applying the principles to the matter before him, the Associate Justice noted that the essence of the Plaintiffs' claim was a dispute over their notices of assessment for the 2020 taxation year. They alleged that they received notices of assessment that showed a tax refund. Subsequently, they received notices of reassessment that showed a balance owing. The Plaintiffs alleged that the CRA deliberately overlooked the fact that the Plaintiffs' OTPP was put into effect without their consent (*i.e.* that the Plaintiffs never registered for any type of plan). The Statement of Claim also alleges that the Ontario Minister of Education sought the CRA's support to "collaboratively input falsified data" in an attempt to justify the content of T4 slips, and that there was a conspiracy between the York Catholic District School Board and the Ontario Minister of Education. The Plaintiffs asserted that they had been damaged by these "falsified tax deductions", and claimed $500,000.00 in "financial damages", plus interest and costs.

[12] The Associate Judge found that 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 (*Canada v Roitman*, 2006 FCA 266 at para 20). Therefore, to the extent the Plaintiffs wished to object to or challenge their 2020 notices of assessment, the Federal Court was not the forum for that complaint. Any challenge to a reassessment must be brought in the Tax Court of Canada. The Associate Judge

found that this was a fundamental matter of jurisdiction, not, as the Plaintiffs asserted, "misleading semantics".

[13] The Associate Judge also found that the allegations in the Statement of Claim relating to falsification of records and conspiracy were bald and unparticularized. Although the Plaintiffs claimed that they had "reason to believe" some sort of collaborative misconduct occurred, they did not provide details or particularize the reasons justifying such a belief. The Associate Judge found that making bald, conclusory allegations without any evidentiary foundation is an abuse of process (*Merchant Law Group v Canada Revenue Agency*, 2010 FCA 184 at para 34).

[14] Further, that allegations in a statement of claim may be struck as vexatious, under Rule 221(1)(c), where they are so deficient in material facts that the defendant does not know how to answer the claim and where they raise inflammatory attacks without supporting facts (*Carten v Canada*, 2009 FC 1233 at paras 64, 67; *Kisikawpimootewin v Canada*, 2004 FC 1426 at para 8). Bald allegations of bad faith, ulterior motives or *ultra vires* activities have been held to be both scandalous, frivolous and vexatious and an abuse of process (*Tomchin v Canada*, 2015 FC 402 at para 22).

[15] The Associate Judge concluded that it was plain and obvious that the allegations of falsified records and conspiracy in the Statement of Claim were conclusory allegations without any evidentiary foundation. The Statement of Claim in that respect was an abuse of process.

[16] The Associate Judge was satisfied that the Statement of Claim as against the CRA must be struck out.

[17] As to the Ontario Minister of Education, also named as a Defendant, the Ontario Minister had not filed a motion to strike, or a statement of defence. However, based on his prior reasons, the Associate Judge was satisfied that the Statement of Claim as against the Ontario Minster of Education should be struck on the Court's own motion.

[18] The CRA's notice of motion requested "an order that the statement of claim be struck out, without leave to amend" and was not limited to the claims against the CRA. The Plaintiffs were on notice that the entirety of the Statement of Claim was being challenged on the CRA's motion, and had an opportunity to be heard.

[19] The Associate Judge stated that the guiding principles of the Rules are set out in Rule 3, which requires that the Rules be interpreted and applied so as to secure the just, most expeditious and least expensive determination of every proceeding on its merits, with consideration being given to the principle of proportionality. Because it was plain and obvious that the Statement of Claim did not disclose a cause of action that is within the jurisdiction of the Federal Court, requiring the Ontario Minister of Education to bring a motion to strike, which would inevitably be granted, would be a waste of resources.

[20] Finally, the Associate Judge addressed whether the Statement of Claim should be struck out without leave to amend. He noted that if a statement of claim shows a scintilla of a cause of

action, then it will not be struck out if it can be cured by amendment (*Al Omani* at paras 32-35). However, he was not persuaded that the Statement of Claim showed a scintilla of a cause of action against any of the Defendants.

[21] He pointed out that any challenge by the Plaintiffs to their 2020 notices of assessment must be brought in the Tax Court of Canada and that this could not be overcome by the Plaintiffs with better drafting.

[22] As for the allegations of falsifying records and conspiracy, these were made without any factual foundation in the Statement of Claim. The Plaintiffs had an opportunity to demonstrate in their responding motion materials how their claims for falsifying records and conspiracy could be particularized, and made no effort to do so. The Associate Judge concluded that the allegations of falsifying records and conspiracy were baseless, and that the Plaintiffs were unwilling or unable to draft a statement of claim that set out a cause of action over which the Federal Court had jurisdiction, and that was properly particularized.

[23] The Associate Judge therefore struck out the Statement of Claim without leave to amend.

Plaintiffs' Current Motion

[24] The Plaintiffs now bring this motion seeking to set aside the Order and to have default judgment against the Defendants/Respondents [Appeal Motion]. While not referenced by the Plaintiffs, appeals of orders of Associates Judges (formerly called prothonotaries) are to be brought by motion, pursuant to Rule 51.

[25] The basis for this relief is said by the Plaintiffs to rest on four grounds.

[26] First, that there was no “reasonable inference” to justify the striking of the Statement of Claim. According to the Plaintiffs, “Associate Judges, nor the Court should speak in the name of a party for best practices of the profession”. The submission appears to be that because the Ontario Minister of Education did not file a statement of defence, they admitted all allegations against them, and the time for filing a defence has now passed. As to the CRA, the Plaintiffs submit that a motion to strike has no place at the pleadings stage of a proceeding.

[27] Second, the Associate Judge should not have doubted the jurisdiction of the Federal Court with respect to the Statement of Claim. Instead, jurisdiction of the Motion to Strike should have been questioned. The Plaintiffs assert that the CRA is relying on misleading semantics to transfer the case to the Tax Court of Canada. They say that the CRA’s Motion to Strike referred to the Tax Court of Canada and that it was not clear from the document in which Court the motion would be brought.

[28] Third, that there was nothing to prevent default judgment being entered upon failure to take action or provide a defence during pleadings. As the Defendants did not file statements of defense or an intention to respond, the Plaintiffs ask that the Court grant them default judgment, referencing Rules 204(1)(a), 204.1, 204(2), and 210(1).

[29] Finally, that that evidence was provided in their Default Motion record, other than affidavit evidence of the Statement of Claim. The Plaintiffs appear to take the position that

service of the Statement of Claim on the Defendants, as Ministers of the Crown, was effected by the Federal Court Registry and, therefore, "the Federal Court had already included affidavit evidence in the Applicants' court file to note the Respondents in default without having to request proof of service".

Analysis

Preliminary Issue – Service on Ontario

[30] As a preliminary matter, I will address the issue of service on the Ontario Minister of Education of the Plaintiffs' Appeal Motion and the Statement of Claim.

[31] I note here in passing that in the motion record filed on behalf of His Majesty in Right of Ontario in response to the Appeal Motion, it is submitted that His Majesty the King in Right of Ontario [Ontario] is improperly named as the "Ontario Minister of Education". Further, that Ontario requests that the Plaintiffs' Appeal Motion, which seeks to set aside the Order, be dismissed and that the Order be upheld.

[32] In its responding motion record, Ontario has included the affidavit of Ms. Amanda Benson, Acting File Assignment and Case Management Coordinator with the Ministry of the Attorney General, Crown Law Office – Civil [CLOC], sworn on October 20, 2022. Ms. Benson deposes that CLOC keeps a computerized case file database in which a record is made upon receipt of the first notice of intention to commence a claim, the statement of claim, application or

other document relating to a given legal proceeding. The database includes the name of the plaintiff and the nature of the initial document received.

[33] On or around September 1, 2022, CLOC became aware of the Plaintiff's claim when a courtesy copy of the Statement of Claim was received from the CRA. However, searches of the database have disclosed no record of the Plaintiffs serving CLOC with the Statement of Claim or with notice that they intended to commence an action, as is required by s 15 and s 18 of the *Crown Liability and Proceedings Act*, 2019, SO 2019, c. 7 [*CLPA*].

[34] With respect to service of the Statement of Claim, Ontario submits that it was never served.

[35] While the Plaintiffs assert that they served Ontario when they filed the Statement of Claim with Registry of the Federal Court of Canada, Ontario points out that Rule 133 states that "personal service of an originating document on the Crown, the Attorney General of Canada or any other Minister of the Crown is effected by filing the original and two paper copies of it at the Registry". The "Crown" as described in Rule 133(1) and in the *Federal Courts Act*, RSC 1985, c F-7 refers only the Federal Crown – Canada – and not to the Provincial Crown – Ontario. Rule 127(1) requires that an originating document shall be served personally on any party that is not the Federal Crown, the Attorney General of Canada or any other Minister of the Federal Crown. Ontario is not the Federal Crown, the Attorney General of Canada or any other Minister of the Federal Crown.

[36] Ontario further submits that s 15 of *CLPA* stipulates that a document that is to be served personally on the Provincial Crown shall be served by leaving a copy of the document with an employee of the Provincial Crown at the Crown Law Office (Civil Law) of the Ministry of the Attorney General. The only copy of the Statement of Claim that was received by Ontario was one that was sent to it as a courtesy by Canada. As such, Ontario was not required to respond to the Statement of Claim or to any subsequent proceeding.

[37] In my view, it is beyond question that service as effected pursuant to Rule 133 of the Rules applies only to personal service of an originating document on the Federal Crown, that is, Canada. Conversely, the *CLPA* applies to service on the Ontario Crown. This is clear from the relevant portions of the respective pieces of legislation set out below:

Federal Courts Act, *RSC 1985, c F-7*

> ***2(1) Definitions***
> *In this Act*
> *...*
> *Crown means Her Majesty in right of Canada*
>
> …..

Federal Courts Rules, SOR/98-106

> ***Personal service of originating document on the Crown***
>
> ***133 (1)*** *Personal service of an originating document on the Crown, the Attorney General of Canada or any other Minister of the Crown is effected by filing the original and two paper copies of it at the Registry.*
>
> ***Copy to Deputy Attorney General***
>
> ***(2)*** *The Administrator shall forthwith transmit a certified copy of an originating document filed under subsection (1)*

(a) *where it was filed at the principal office of the Registry, to the office of the Deputy Attorney General of Canada in Ottawa; and*

(b) *where it was filed at a local office, to the Director of the regional office of the Department of Justice referred to in subsection 4(2) of the* Crown Liability and Proceedings (Provincial Court) Regulations.

When service is effective

(3) *Service under subsection (1) is effective at the time the document is filed.*

Crown Liability and Proceedings Act, 2019*, SO 2019, c 7, Sched 17 (Ontario)*

Definitions

1 *(1) In this Act,*

"Crown" means the Crown in right of Ontario; ("Couronne")

……

Service on the Crown

15 *A document to be served personally on the Crown in a proceeding to which it is a party shall be served by leaving a copy of the document with an employee of the Crown at the Crown Law Office (Civil Law) of the Ministry of the Attorney General.*

…..

Notice of claim for damages required

18 *(1) No proceeding that includes a claim for damages may be brought against the Crown unless, at least 60 days before the commencement of the proceeding, the claimant serves on the Crown, in accordance with section 15, notice of the claim containing sufficient particulars to identify the occasion out of which the claim arose.*

…..

Failure to give notice

(6) For greater certainty, failure to give notice of a claim as required by this section renders a proceeding brought without such

> *notice a nullity in respect of the claim, from the time the proceeding is brought.*

[38] It is also clear from the Plaintiffs' submissions, as well as a letter that they sent to the Registry on November 21, 2022, that they take the position that by filing the Statement of Claim and the motion record for their Appeal Motion with the Federal Court Registry, that they effected service not only the Federal Crown (Canada/CRA) but also on the Ontario Minister of Education (Ontario). They are in error.

[39] In that regard, on November 21, 2022, Associate Judge Aalto directed that the Defendants/Respondents' responding motion records be accepted for filing and that any issue as to service could be raised with the hearings Judge. In response, by a letter of same date, the Plaintiffs asserted that the direction failed to provide grounds for accepting the filing of the Defendants motion records and "[a]s such, this oral direction shall be deemed inadmissible". The Plaintiffs reminded the Court that a judge must be assigned to the motion and asked that an "updated oral direction be issued by the appointed Judge to take into account the Plaintiffs' letters dated November 21, 2022".

[40] I would first observe that it is not open to parties to a proceeding to deem directions of this Court to be inadmissible.

[41] Moreover, an "updated oral direction" is not appropriate.

[42] I have considered the Plaintiffs' submissions as to service on Ontario and find that neither service of the Statement of Claim nor of the Plaintiffs' Appeal Motion were effected in accordance with the Ontario *CLPA* and, therefore, service was not effective.

[43] Thus, while the Associate Judge ultimately concluded that it was plain and obvious that the Statement of Claim did not disclose a cause of action and that requiring Ontario to bring a motion to strike would be a waste of resources, I add that given my finding that the Plaintiffs did not effect service of the Statement of Claim on Ontario, the remedy of default judgment was not available to them in any event.

[44] With respect to service of the Plaintiffs' Appeal Motion, the Plaintiffs have filed an Affidavit of Service stating that on November 2, 2022, they served the CRA and the Ontario Minister of Education with the motion record by "mailing documents to the Respondents' solicitor at the Department of Justice Canada".

[45] This is not effective service on Ontario.

[46] In a November 16, 2022 letter to the Registry, Ontario advised that it had only became aware of the Appeal Motion when counsel for Ontario spoke with the Registry on November 14, 2022 and it was at that time that Ontario first received a copy of the Plaintiffs' Appeal Motion record. Ontario stated that it was its position that Ontario was not out of time to serve and file a responding motion record (and it anticipated service on the Plaintiffs to become effective on November 17, 2022, as the responding motion record had been sent for service). Given that

service of the Plaintiffs' Appeal Motion record had not been effected on Ontario, as required under Rule 364 of the Rules, Ontario's position was that the 10-day period within which to serve and file a responding motion record, as set out in Rule 365, had not been triggered.

[47] I would first note that the Appeal Motion was brought in writing, pursuant to Rule 369. Pursuant to Rule 369(2), a respondent has 10 days within which to file a responding motion record. In any event, to the extent that the Plaintiffs continue to object to the filing of Ontario's responding motion record, I find that Ontario's motion record was appropriately filed. In the absence of effective service of the Appeal Motion on Ontario, the delay period was not triggered. However, Ontario effectively elected to waive the *CLPA* service requirements and effected service of its responding motion record within 10 days of becoming aware of and being provided with a copy of the Plaintiffs' Appeal Motion record by the Registry.

[48] Ontario also submits that there is no basis for the Court to set aside the Order. Ontario states that the setting aside or varying of an order is governed by Rule 399 and that none of the criteria set in that Rule have application to this matter. I agree that Rule 399 has no application in these circumstances. However, the Plaintiffs do not explicitly rely on Rule 399. They are also self-represented. While they use the terminology of varying or setting aside the Order, in effect, they seek to appeal it, which is governed by Rule 51.

Did the Associate Judge Err?

[49] The standard of review applicable to the appeal of a discretionary decision of an associate judge is the appellate standard of "palpable and overriding error", as identified in *Housen v*

Nikolaisen, 2002 SCC 33 for questions of fact, or mixed fact and law. Questions of law, and mixed questions where there is an extricable question of law, are to be reviewed on the standard of correctness (*Hospira Healthcare Corporation v Kennedy Institute of Rheumatology*, 2016 FCA 215 at para 79; *Worldspan Marine Inc. v Sargeant III*, 2021 FCA 130 at para 48; *Canada (Attorney General) v Iris Technologies Inc*., 2021 FCA 244 at para 33).

[50] The palpable and overriding error standard of review is highly deferential. “Palpable” means an obvious error. However even if an error is palpable, the judgment below does not necessarily fall. The error must also be overriding. An overriding error is one that goes to the very core of the outcome of the case (*South Yukon Forest Corp v R*, 2012 FCA 165 at para 46; *Mahjoub v Canada (Citizenship and Immigration)*, 2017 FCA 157 [*Mahjoub*] at paras 61-64; *Imperial Manufacturing Group Inc. v Décor Grates Inc*, 2015 FCA 100 at paras 40-41; see also *NCS Multistage Inc. v Kobold Corporation*, 2021 FC 1395 at paras 32-33).

[51] I agree with the CRA that in their submissions the Plaintiffs have not clearly identified any error on the part of the Associate Judge. In the main, they instead seek to re-litigate the arguments that they made in their motion seeking default judgment.

[52] Specifically, I find as follows:

- The Plaintiffs assert that their motion for default judgment was appropriate, even when the CRA had already filed is Motion to Strike. However, as set out above, the Associate Judge found, relying on *Kornblum*, that a motion to strike can be brought prior to filing a statement of defence and that such a motion cannot be

circumvented by moving for default judgment. As the CRA submits, the Plaintiffs do not identify any contrary legal principal and have not explained how the Associate Judge's reliance on *Kornblum* was misplaced. I note that the Plaintiffs simply re-assert that the Defendants/Respondents did not file statements of defence or a notice of intention to proceed, pursuant to Rules 204(1)(a), 2041, 204(2), and that the Plaintiffs were therefore entitled to bring a motion for default judgement, pursuant to Rule 210(1). They accordingly submit that this Court should grant that judgment. The Plaintiffs do not engage with the Associate Judge's findings and do not identify any error in that regard;

- The Plaintiffs assert that striking of the Statement of Claim was not justified because Ontario had failed to file a statement of defence within the prescribed period and, with respect to the CRA, because a motion to strike has no place in the pleading stage of a proceeding. However, the Associate Judge found that Rule 221(1) permits the Court "at any time" to order that a pleading be struck out, with or without leave to amend, on the grounds set out, including that the statement of claim discloses no reasonable cause of action. Further, because he had found that it was plain and obvious that the Statement of Claim did not disclose a cause of action that was within the jurisdiction of this Court, requiring Ontario to bring a motion to strike, which would inevitably be granted, would be a waste of resources. Although Ontario had not filed a motion to strike or a statement of defence, the Associate Judge was satisfied that the Statement of Claim as against Ontario should be struck on the Court's own motion. The Plaintiffs do not identify any error with respect to these findings;

- The Associate Judge found that when a motion for default judgment is brought under Rule 210, the moving party must support the motion with affidavit evidence establishing the allegations in the statement of claim; however, the Plaintiffs had failed to do so. The CRA submits that no affidavits were attached to the Plaintiffs' Default Motion and the only affidavits filed are affidavits of service. The Plaintiffs do not dispute that they failed to provide affidavit evidence in support of their Default Motion, rather, their only submission is to assert that service was effected by filing the Default Motion with the Registry. In my view, the Plaintiffs confuse Rule 210(3), which requires that motions for default judgment be supported with affidavit evidence, with the Rule 146(1)(a) which allows service of a document to be proven by an affidavit of service. The Applicants have also not identified any error on the part of the Associate Judge with respect to his finding;

  As to the Plaintiffs' assertion that the CRA "is relying on misleading semantics to transfer the case to the Tax Court of Canada", it is entirely unclear to me what point is being made here. The same assertion was made in the notice of motion filed by the Plaintiffs with respect to their Default Motion. Canada submits that its notice of motion seeking to strike the Statement of Claim mistakenly refers to the "Tax Court of Canada" in the style of cause but that the correct Federal Court file number was identified and the motion was properly filed in the Federal Court. Canada submits that a typographical error is not a ground for allowing the Plaintiffs' motion seeking to set aside the Order. To the extent that the Plaintiffs are relying on an error in the style of cause of the notice of motion in the CRA's

> Motion to Strike, the motion record correctly identified the Federal Court and it is clear that the matter was heard and decided by the Federal Court. Indeed, the Plaintiffs filed their Default Motion in the Federal Court in response to the Motion to Strike. More substantively, the Associate Judge found 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. In that regard, to the extent the Plaintiffs wished to object to or challenge their 2020 notices of assessment, the Federal Court is not the forum for that complaint. Any challenge to a reassessment must be brought in the Tax Court of Canada. The Associate Judge found that this is "a fundamental matter of jurisdiction", not, as the Plaintiffs asserted before him, and do so again before me, "misleading semantics". The Plaintiffs do not identify any error in that finding, nor is one apparent to me.

[53] As the Plaintiffs have not established a palpable and overriding error on the part of the Associate Judge, this motion to set aside his Order striking out their Statement of Claim, without leave to amend, is dismissed.

Costs

[54] Both Defendants sought costs but neither made submissions as to quantum.

[55] Pursuant to Rule 400(1), the Court has full discretionary power over the amount and allocation of costs and the determination of by whom they are to be paid. In exercising that

discretion the Court may consider the factors set out in Rule 400(3), which include: the result of the proceeding; the importance and complexity of the issues; whether the public interest in having the proceeding litigated justifies a particular award of costs; any conduct of a party that tended to shorten or unnecessarily lengthen the duration of the proceeding; and, any other matter that the Court considers relevant. The Court may fix all or part of any costs by reference to Tariff B and may award a lump sum in lieu of, or in addition to, any assessed costs (Rule 400(4)).

[56] In this matter, I am of the view that an award costs to the Respondents/Defendants, as the successful parties, based on Column III of Tariff B is appropriate (Rule 407).

ORDER IN T-1673-22

THIS COURT'S JUDGMENT is that

1. The Plaintiffs/Applicants' motion to set aside Associate Judge Horne's Order striking out their Statement of Claim, without leave to amend, is dismissed; and
2. The Defendants/Respondents shall each have their costs based on Column III of Tariff B (Rule 407).

"Cecily Y. Strickland"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1673-22
STYLE OF CAUSE:	ROMANE TOUMANI, SAURELLE TOUMANI v CANADA REVENUE AGENCY, ONTARIO MINISTER OF EDUCATION

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

ORDER AND REASONS:	STRICKLAND J.
DATED:	DECEMBER 20, 2022

APPEARANCES:

Romane Toumani Saurelle Toumani	FOR THE PLAINTIFFS / APPLICANTS (ON THEIR OWN BEHALF)
Shayna Levine-Poch	FOR THE DEFEDANTS / RESPONDENTS (HIS MAJESTY THE KING IN RIGHT OF ONTARIO)
Nancy Arnold Christopher Ware	FOR THE DEFENDANTS / RESPONDENTS (CANADA REVENUE AGENCY)

SOLICITORS OF RECORD:

His Majesty the King in Right of Ontario Toronto, Ontario	FOR THE DEFEDANTS / RESPONDENTS (HIS MAJESTY THE KING IN RIGHT OF ONTARIO)
Attorney General of Canada Department of Justice Canada Toronto, Ontario	FOR THE DEFENDANTS / RESPONDENTS (CANADA REVENUE AGENCY)