Federal Court  Cour fédérale

Date: 20251003

Docket: T-1731-25

Citation: 2025 FC 1633

Toronto, Ontario, October 3, 2025

PRESENT: Associate Judge John C. Cotter

BETWEEN:

NICHOLAS PAUL WITTEK KRAUSE

Plaintiff

and

ROYAL BANK OF CANADA

Defendant

JUDGMENT AND REASONS

UPON motion in writing, dated August 15, 2025, brought on behalf of the defendant, pursuant to Rule 369 of the *Federal Courts Rules* for:

1. An Order pursuant to Rule 221(1)(a) striking out the Statement of Claim in its entirety and without leave to amend for want of jurisdiction; and

2. An Order granting the Defendant its costs for this motion.

3. In the alternative to 1 and 2, an Order pursuant to Rule 8(1) extending the Defendant's time to serve and file its statement

> of defence under Rule 204(1) for a period of 14 days from the date of decision on this Motion.

AND UPON considering the defendant's motion record dated August 15, 2025, and filed on that date, including the statement of claim issued May 23, 2025 [Claim];

AND UPON considering the defendant's solicitor's certificate of service which indicates that the defendant's motion record was served on the plaintiff by email on August 15, 2025;

AND UPON considering the Plaintiff's Motion (defined and discussed below);

AND UPON considering:

[1] Although the plaintiff was served with the defendant's motion record, the plaintiff did not file a respondent's motion record within the time provided for in Rule 369(2) (any reference in this Order to a Rule is to those in the *Federal Courts Rules*, SOR/98-106 [*Rules*]), nor did the plaintiff seek an extension of the deadline to do so. Instead, on September 15, 2025, the plaintiff submitted a notice of motion for filing dated September 2, 2025. The notice of motion indicates that "THE MOTION IS FOR default claim of case" [Plaintiff's Motion].

[2] The Registry sought Directions as to whether the Plaintiff's Motion could be accepted for filing as it did not appear to comply with the *Rules*, which it does not (e.g., it does not comply with Rules 359 and 360). However, although it was unnecessary to do so, I have considered the submissions in the Plaintiff's Motion as if they were proper written representations in response to the defendant's motion. As a result, it shall be accepted for filing for that purpose, effective on the date it was submitted to the Registry, but no action will be taken by the Court in connection

with the deficient motion by the plaintiff. For the reasons explained below, even if the Plaintiff's Motion for default judgment were considered, it would not assist the plaintiff and would have no impact on the outcome of this motion.

I. The Claim

[3] Reproduced below is the entirety of the body of the Claim:

> The plaintiff claims:
>
> · 1. Refund for Bounced Rent Payments for Withdrawing for Account about 5K
>
> · 2. Refund for Lost Visa and Payments on it minus Visa Fees about 11.7K
>
> · 3. 100K for lost Funds from RBC
>
> · 4. Punitive Damages for Lying to the Ombudsman for Banking Complaints and any other Bank Act Violations

II. Applicable Rule and Test

[4] As noted above, the defendant seeks to strike out the Claim pursuant to Rule 221(1)(a) on the basis that the Court lacks jurisdiction over the Claim. The applicable provisions of Rule 221 provide 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;
[…]	[…]
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).

[5] The Federal Court of Appeal in *Brink v Canada*, 2024 FCA 43 stated the following regarding the general principles on a motion to strike out a statement of claim under Rule 221(1)(a) on the basis that it does not disclose a reasonable cause of action:

> [43] […] a statement of claim should not be struck unless it is plain and obvious that the action cannot succeed, assuming the facts pleaded in the statement of claim to be true: *Hunt v. Carey Canada Inc.*, 1990 [1990] 2 S.C.R. 959, [1990] S.C.J. No. 93 at 980; *Pro-Sys Consultants Ltd. v. Microsoft Corporation*, 2013 SCC 57 at para. 63. In other words, the claim must have no reasonable prospect of success: *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42 at para. 17.
>
> [44] The onus is on the party who seeks to establish that a pleading fails to disclose a reasonable cause of action: *La Rose v. Canada*, 2023 FCA 241 at para. 19; *Edell v. Canada*, 2010 FCA 26 at para. 5. The threshold that a plaintiff must meet to establish that a claim discloses a reasonable cause of action is a low one: *Brake v. Canada (Attorney General)*, 2019 FCA 274 at para. 70.
>
> [45] Pleadings must, moreover, be read generously, in a manner that accommodates any inadequacies in the allegations that are merely the result of deficiencies in the drafting of the document: see *Operation Dismantle Inc. v. The Queen*, 1985 [1985] 1 S.C.R. 441, [1985] S.C.J. No. 22 at 451.

> [46] Motions judges should not delve into the merits of a plaintiff's argument, but should, rather, consider whether the plaintiff should be precluded from advancing the argument at all: *Salna v. Voltage Pictures*, LLC, 2021 FCA 176 at para. 77. Recognizing that the law is not static, motions judges must also err on the side of permitting novel, but arguable claims to proceed to trial: *R. v. Imperial Tobacco*, above at paras. 19-25; *Mohr v. National Hockey League*, 2022 FCA 145 at para. 48, leave to appeal to SCC refused, 40426 (20 April 2023).
>
> [47] That said, it must also be recognized that there is a cost to access to justice in allowing cases that have no substance to proceed. The diversion of scarce judicial resources to such cases diverts time away from potentially meritorious cases that require attention: *Mohr*, above at para. 50; *Coote v. Lawyers' Professional Indemnity Company*, 2013 FCA 143 at para. 13.

[6] The Court assumes that the facts alleged in the Claim are true on a motion to strike such as this. It does not assume that legal assertions are true (*Lafrenière v Canada (Attorney General)*, 2020 FCA 110 at para 53).

[7] Justice Pentney considered the application of the principles on a motion to strike where the plaintiff is self-represented in *Fitzpatrick v Codiac Regional RCMP Force, District 12*, 2019 FC 1040 and explained:

> [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.

[8] As stated by Justice Gleeson in *Welcome v Canada*, 2024 FC 443:

> [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).

[9] Rule 221(1)(a) may be applied if it is plain and obvious that the Federal Court lacks jurisdiction to hear a matter (*Sierah v Canada (Citizenship and Immigration)*, 2025 FC 452, at paras 15 and 16; *Sokolowska v Canada*, 2005 FCA 29 at para 15).

[10] As stated by Justice Woods in *Berenguer v Sata Internacional - Azores Airlines, SA*, 2023 FCA 176, at para 34 "The jurisdiction of the Federal Court is statutory. As such, the statutory basis for jurisdiction must be identified". In the same decision, Justice Woods summarized the test for the Federal Court's jurisdiction as follows:

> [29] The scope of the Federal Court's jurisdiction has been considered by the Supreme Court in several decisions. The most relevant in this appeal are *Quebec North Shore Paper Co. v. Canadian Pacific Ltd.* (1976), [1977] 2 S.C.R. 1054, 9 N.R. 191 [*Quebec North Shore*]; *McNamara Construction (Western) Ltd. v. The Queen*, [1977] 2 S.C.R. 654; *Rhine v. The Queen*, [1980] 2 S.C.R. 442 [*Rhine*]; *ITO-Int'l Terminal Operators v. Miida*

> *Electronics*, [1986] 1 S.C.R. 752 at p. 766, 28 D.L.R. (4th) 641 [*ITO*]; and, most recently, *Windsor*.
>
> [30] I would also note two decisions of this Court which provide a good summary of the relevant law: *Peter G. White Management Ltd. v. Canada (Minister of Canadian Heritage)*, 2006 FCA 190 [*Peter G. White*] and *744185 Ontario Incorporated v. Canada*, 2020 FCA 1 [*Air Muskoka*].
>
> [31] As a result of this jurisprudence, the following principles are well established:
>
> > (a) Jurisdiction is subject to a three part test commonly known as the ITO test: (1) Does a statute grant jurisdiction to the Court? (2) Is there an existing body of federal law that nourishes the grant of jurisdiction and is essential to the disposition of the case? (3) Is the case based on a valid law of Canada (*ITO*).
> >
> > (b) For purposes of applying step 1 of the ITO test to s. 23 of the Federal Courts Act, the action must be created or recognized under federal law (*Windsor*).
> >
> > (c) For purposes of applying step 2 of the ITO test to a breach of contract claim, the test may be satisfied if there is a sufficiently detailed federal regulatory scheme that applies to the contract (*Rhine*).
>
> [32] The *Windsor* decision adds a further principle but it is not controversial in this case. The majority in *Windsor* cautioned that the ITO test is to be applied to the "essential nature of the claim" regardless of how the claim is framed in the pleading. In this case, it is clear that the claim as framed in the pleading is the same as the claim's essential nature. The claim is for breach of contract.

III. Analysis

[11] Reading the Claim generously, and considering the submissions in the Plaintiff's Motion, and considering the applicable principles regarding the jurisdiction of the Federal Court and

motions to strike noted above, I am unable to identify any basis for jurisdiction. Given the nature of the claims asserted in the Claim, I find it unnecessary to engage in a more formulaic analysis on the issue of jurisdiction (*Van Sluytman v Canada*, 2022 FC 545 at para 17; *Collins v Canada (Attorney General)*, 2024 FC 1250 at para 41, aff'd 2025 FCA 108).

[12] In any event, even though the Claim is extremely brief, and lacking in particulars, the essential nature of the Claim is an action based on the relationship between the plaintiff and the defendant bank. Such a claim is not within the jurisdiction of the Federal Court. As stated by Justice Zinn in *Katz v Bank of Nova Scotia*, 2009 FC 328:

> [11] In my view, there is nothing in the *Bank Act* that grants this Court jurisdiction over a claim by an account-holder for breach of contract, negligence, breach of confidentiality or other tortuous conduct of the sort alleged in the claim filed by the plaintiffs.
>
> [12] The plaintiffs' claims are essentially claims grounded in property and civil rights against a party other than the Crown and are thus within the jurisdiction of the Ontario Superior Court of Justice. The Federal Court has no jurisdiction over these claims.
>
> […]
>
> [14] Merely because the defendant is federal work business or undertaking does not, without more, provide a basis for this Court's jurisdiction: See *Gracey v. Canadian Broadcasting Corp.* (T.D.), 1990 CanLII 13051 (FC), [1991] 1 F.C. 739. Jurisdiction must be found in either the *Federal Courts Act* or elsewhere in federal legislation specifically granting this Court jurisdiction. The plaintiffs have been unable to point to any provision either in the *Federal Courts Act* or elsewhere granting jurisdiction to this Court over the claims being advanced.

[13] See also: *Fotinov v Royal Bank of Canada*, 2014 FCA 70 at paras 5 and 6; *Dalfen v Bank of Montreal*, 2016 FC 869 at paras 29 to 34; and *Lépine c Banque nationale du Canada*, 2024 CF 298 at para 6.

IV. Discussion regarding additional materials

A. *Plaintiff's Motion*

[14] The Plaintiff's Motion is for "default claim of case". I take this to mean that it is a motion for default judgment. Even if this were a proper motion for default judgment in compliance with the *Rules*, which it is not, it would have no impact on the outcome of the defendant's motion for the following non-exhaustive list of reasons:

A. The defendant's motion is timely. According to the plaintiff's affidavit of service sworn September 15, 2025, and filed on that date (which was not included with the Plaintiff's Motion), the Claim was served on the defendant on July 17, 2025. Leaving aside any issues the defendant may have with service, even if the Claim were properly served on that date, the deadline to serve and file a statement of defence would have been Monday, August 18, 2025. The defendant filed its motion before then, namely on Friday, August 15, 2025. In any event, as per Rule 221, a motion to strike may be brought at any time (unless there is some other principle engaged which would preclude such a motion, which is not the current situation).

B. Even if the defendant was in default, there is no basis upon which to grant default judgment. Default judgment is not automatic when a defendant is in default. A plaintiff must establish that they are entitled to the judgment sought. There are several components to this. One is evidence. A plaintiff bears the onus, and must lead evidence that establishes, on a balance of probabilities, the claims set out in its statement of claim and its entitlement to the relief it requests (*NuWave Industries Inc v*

Trennen Industries Ltd, 2020 FC 867 at para 16). The plaintiff has not provided any evidence in support of its motion. In addition, and of significance, as the Claim is not within the jurisdiction of the Federal Court, it is not possible for the plaintiff to establish entitlement to judgment in this Court.

C. Even if the plaintiff had a motion for default judgment properly before the Court (which the plaintiff does not), as per Rule 210(4)(b), the Court can dismiss an action on a motion for default judgment. The court may dismiss the action where it is plain and obvious, as it is in this case, that a statement of claim discloses no reasonable cause of action (*Alam v Bieber*, 2024 FC 499 at para 37).

[15] The principles set out immediately above in subparagraphs b) and c) make it clear that the issue of whether the Court has jurisdiction is key part of the analysis regardless of whether the Court is considering a motion to strike out a statement of claim on the basis of a lack of jurisdiction, or considering a motion for default judgment. If there is no jurisdiction, the Court can dismiss the action. In other words, a motion for default judgment in a situation such as this is not a “gotcha” opportunity for the plaintiff. As the Claim fails to disclose a cause of action, a motion for default judgment will not overcome that fatal flaw.

B. *Defendant’s Letter*

[16] I note that a letter dated September 12, 2025, was submitted on behalf of the defendant. The letter “seeks direction from the Court as to next steps with respect to the disposition of the Motion to Strike, which, being jurisdictional in nature, should be determined prior to any further

steps being taken." To the extent that this is a request for relief, it does not meet the requirements for an informal request for interlocutory relief set out in paragraphs 41 and 42 of *Amended Consolidated General Practice Guidelines* dated June 20, 2025. To the extent that this letter is putting forward a position on one or both of the motions, a letter is not the appropriate means to do so. As a result, I have not considered that letter in disposing of the defendant's motion.

V. Conclusion and Costs

[17] The Claim will be struck out pursuant to Rule 221(1)(a).

[18] 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). A statement of claim that shows a scintilla of a cause of action will not be struck out if it can be cured by amendment; but "there must be that scintilla" (*Al Omani v Canada*, 2017 FC 786 at paras 33-35).

[19] The essential defect in the Claim is a lack of jurisdiction. That is not a defect that can be cured by amendment. As a result, the Claim will be struck out without leave to amend.

[20] Associate Judge Duchesne (as he then was), dismissed the action in *Suss v Canada*, 2024 FC 137 pursuant to Rule 168, as it was impossible for the plaintiff in that case to continue the proceeding given Associate Judge Duschene's order (see para 59). Similarly, I dismiss this proceeding pursuant to Rule 168, as it is not possible for the plaintiff to continue the action once the Claim has been struck out without leave to amend.

[21] The defendant requested costs, although did not request a specific amount or make any submissions on quantum. Having regard to Rules 400 and 401(1), including the factors articulated in Rule 400(3), and Tariff B, and having regard to the success of the defendant on this motion, costs are awarded to the defendant, fixed in the total amount of $1,000, to be paid by the plaintiff.

JUDGMENT in T-1731-25

THIS COURT'S JUDGMENT is that:

1. The Plaintiff's Motion shall be accepted for filing effective September 15, 2025, but no action will be taken by the Court in connection with that motion.

2. The statement of claim is struck out, without leave to amend, and the action is dismissed.

3. Costs are awarded to the defendant, fixed in the amount of $1,000, to be paid by the plaintiff to the defendant.

"John C. Cotter"
Associate Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1731-25
STYLE OF CAUSE:	NICHOLAS PAUL WITTEK KRAUSE v ROYAL BANK OF CANADA

MATTER CONSIDERED AT TORONTO, ONTARIO WITHOUT PERSONAL APPEARANCE OF THE PARTIES

JUDGMENT AND REASONS:	COTTER A.J.
DATED:	OCTOBER 3, 2025

WRITTEN SUBMISSIONS BY:

Nicholas Paul Wittek Krause	FOR THE PLAINTIFF
Duncan C. Boswell John J. Wilson	FOR THE DEFENDANT

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