

Federal Court



Cour fédérale

Date: 20260312

Docket: T-2191-24

Citation: 2026 FC 335

Ottawa, Ontario, March 12, 2026

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

DARWIN YANCHAK

Plaintiff

and

HIS MAJESTY THE KING

Defendant

REASONS AND JUDGMENT

I. INTRODUCTION

[1] Mr. Darwin Yanchak (the “Plaintiff”) issued a Statement of Claim on August 21, 2024, seeking the recovery of \$16,061 that was collected by the Canada Revenue Agency (the “CRA”), as a result of garnishment proceedings. The collection action related to money paid to the

Plaintiff as benefits under the *Employment Insurance Act* S.C. 1996, c. 23 (the “Employment Insurance Act”).

[2] The Defendant filed a Defence on March 14, 2025, denying any liability for the claim. He also pleads that the claim is statute-barred, in light of section 68 of the *Department of Employment and Social Development* S.C. 2005, c. 34 and the provisions of the Employment Insurance Act.

[3] By a Notice of Motion dated March 14, 2025, submitted for consideration without personal appearance pursuant to Rule 369 of the *Federal Courts Rules*, SOR/98-106 (the “Rules”), His Majesty the King (the “Defendant”) seeks a Judgment, dismissing this action, with costs. The Defendant brings his Motion pursuant to Rule 215.

[4] The Defendant filed his motion on an *ex parte* basis. According to the Index of Recorded Entries, the motion was personally served upon the Plaintiff on March 12, 2025. An affidavit of service in that regard was filed on March 14, 2025.

[5] The Plaintiff did not respond to the motion.

II. BACKGROUND

[6] In support of his motion, the Defendant filed the affidavit of Ms. Deanne Field, Executive Director at Service Canada, a program that operates under the Department of Employment and

Social Development Canada (“ESDC”). Service Canada administers, among other things, the delivery of employment insurance benefits on behalf of the Employment Insurance Commission (the “Commission”).

[7] In her affidavit, affirmed on January 20, 2025, Ms. Field deposed about her review of the Plaintiff’s file. She addressed his application for benefits and subsequent developments following a determination that he was not entitled to the benefits in questions, including his access to the Social Security Tribunal (the “Tribunal”) seeking reconsideration of the non-entitlement decision.

[8] According to the affidavit of Ms. Field, the Plaintiff began receiving employment insurance benefits in May 2017. By a decision dated February 7, 2019, the Commission determined that following re-examination of his claim, he was ineligible for the amounts he had received. The Commission advised that a “Notice of Debt” would be sent to the Plaintiff with instructions about repayment.

[9] The Commission, in its decision, also imposed a penalty in the amount of \$1,993.00 for having made false statements in his claims for EI benefits. The Plaintiff was advised that he could seek reconsideration of the Commission’s decision within 30 days.

[10] The Notice of Debt was certified on August 20, 2024, in the amount of \$22,030.00, comprised of the following amounts:

- Penalty relative to overpayment: \$1,993.00
- Overpayment: \$ 5,430.00

- Overpayment: \$ 10, 631.00

- Overpayment: \$ 3, 985.00

The attestation certificate says that a Notice of Debt had been sent by mail and was received by the addressee.

[11] Exhibit D to the affidavit of Ms. Field is a copy of a letter dated October 6, 2021, addressed to the Plaintiff and sent by the CRA, advising that the CRA was responsible for collecting debts owed to ESDC and asking the Plaintiff to make contact.

[12] Exhibit G to the affidavit of Ms. Field is a copy of a letter dated January 23, 2023, addressed to the Plaintiff from the CRA, advising that a demand had been sent to Farm Boy Company Inc., requesting deduction of 30% of any money to be paid to him.

[13] The Plaintiff requested reconsideration of the Commission's ineligibility decision on January 24, 2023. By a decision dated June 22, 2023, the Commission denied the reconsideration request since it was not submitted within the permitted delay.

[14] By another decision dated June 23, 2023, the Commission denied the Plaintiff's request that the employment insurance overpayment in the amount of \$16,061.00 be "written off". It advised that the *Employment Insurance Regulations*, SOR/96-332 allowed a "write off" in certain conditions, including when the overpayment was not made as a result of an error or misrepresentation by an applicant. Those conditions did not apply in the Plaintiff's case.

[15] The Plaintiff appealed to the Tribunal, General Division on July 17, 2023 from the Commission's decision refusing his request for reconsideration.

[16] By a decision dated August 28, 2023, the Tribunal, General Division dismissed the Plaintiff's appeal relative to the negative reconsideration request.

[17] On September 23, 2023, the Plaintiff sought leave to appeal to the Tribunal, Appeal Division of the Tribunal. Leave to appeal was granted on December 11, 2023.

[18] By a decision dated February 16, 2024, the Tribunal, Appeal Division found that the Tribunal, General Division had erred and remitted the matter to the Tribunal, General Division for redetermination by a different member.

[19] By a decision dated May 27, 2024, the Tribunal, General Division found that although the Commission had not acted "judicially" in making its reconsideration decision, the Plaintiff had not satisfied the factors to allow his reconsideration request.

[20] By a decision dated July 11, 2024, the Tribunal, Appeal Division denied the Plaintiff's application to appeal the decision of May 27, 2024.

[21] The Plaintiff filed his Statement of Claim on August 21, 2024. The Statement of Claim provides in part, as follows:

The plaintiff claims:

A, the Claim

I am seeking monetary compensation of \$16,061 and any interest and penalties that have incurred from date of occurrence

Relief Sought

Plaintiff asks for an appeal from decision from General Division dated May 27,2024, (GE-24-732) Decision date: July 11,2024, File number: AD-24-441

...

(6) The tribunal and CRA caused undo (sic) damages to plaintiff when they garnished his wage that took nearly half of net pay with little notice in Jan 2023 and continued to garnish wages until May2023 even though there was appeal submitted to the Unemployment Insurance in feb 2023.

III. DISCUSSION AND DISPOSITION

[22] The Defendant seeks the entry of summary judgment, pursuant to Rule 215 of the Rules, on the grounds that the Statement of Claim does not raise a genuine issue for trial. In particular, he submits that the claim is statute-barred, in light of the provisions of the *Employment Insurance Act, supra* and the *Department of Employment and Social Development Act, supra*. He argues that subsections 126(4), (5) and (7) of that statute allow the garnishment of wages until a debt is satisfied.

[23] The Statement of Claim seeks the recovery of \$16,061. As such, it is a “simplified action” within the scope of Rule 292. Pursuant to Rule 297, a motion for summary judgment may not be brought in a simplified action.

[24] Nonetheless, the Court enjoys discretion to depart from the strict application of the Rules. I refer to the decision in *1395804 Ontario Ltd. (Blackhawk's Reporter) v. Canada (Attorney General)*, 2021 FC 872 at paragraphs 20 and 21.

[25] The Defendant moves for summary judgment pursuant to Rule 215 of the Rules. Rule 215(1) provides as follows:

If no genuine issue for trial

215(1) If on a motion for summary judgment the Court is satisfied that there is no genuine issue for trial with respect to a claim or defence, the Court shall grant summary judgment accordingly.

Absence de véritable question litigieuse

215(1) Si, par suite d'une requête en jugement sommaire, la Cour est convaincue qu'il n'existe pas de véritable question litigieuse quant à une déclaration ou à une défense, elle rend un jugement sommaire en conséquence.

[26] The question upon a motion for summary judgment is whether the pleading raises a genuine issue for trial. In this case, the challenge is made to the Plaintiff's Statement of Claim.

[27] In *Canada (Citizenship and Immigration) v. Mahendran*, 2024 FC 30, Justice Southcott discussed the approach to be taken upon a motion for summary judgment as follows:

[21] Rule 215(1) of the Rules provides that the Court shall grant summary judgment where the Court is satisfied that there is no genuine issue for trial with respect to a claim or defence. The test on a motion for summary judgment is not whether a party cannot succeed at trial, but rather whether the case is clearly without foundation (*Canmar Foods* at para 24) or that the case is so doubtful that it does not deserve consideration by the trier of fact at a future trial (*Orij* at para 35; *Milano Pizza* at para 33; *Kaska Dena Council v Canada*, 2018 FC 218 at para 21; *Canmar Foods* at para 24). As such, claims that are clearly without foundation should not take up the time and incur the costs of a trial (*Orij* at para 35).

[22] Summary judgment can only be granted where the necessary facts to determine questions of fact and law are found in the

material before the Court (*AMR Technology Inc v Novopharm Limited*, 2008 FC 970 at para 6)...

[28] In paragraphs 2 and 8 of his Defence, the Defendant pleaded as follows:

The Defendant denies the allegations contained in the Statement of Claim (Claim) except as specifically admitted herein...

The AGC submits that this Claim is statute-barred under the Employment Insurance Act and the Department of Employment and Social Development Act due to the Plaintiff's failure to file an appeal or request for reconsideration within the time limits prescribed by law

[29] In his written submissions in support of the motion, the Defendant argues that the claim is “statute-barred” pursuant to section 68 of the *Department of Employment and Social Development Act, supra* and further, that the CRA did not improperly garnish the Plaintiff's wages.

[30] Section 68 of the *Department of Employment and Social Development Act, supra* provides as follows:

Decision final

68 The decision of the Tribunal on any application made or appeal brought under this Act is final and, except for judicial review under the Federal Courts Act, is not subject to appeal to or review by any court.

Décision définitive

68 La décision du Tribunal à l'égard d'une demande présentée ou d'un appel interjeté sous le régime de la présente loi est définitive et sans appel; elle peut cependant faire l'objet d'un contrôle judiciaire aux termes de la Loi sur les Cours fédérales.

[31] The Defendant said the following at paragraphs 23 and 24 of his written submissions filed in support of his motion:

23. Here, the Claim pleads that the “Plaintiff asks for an appeal”⁴² of SST-AD Decision #3 (where the SST-AD denied the Plaintiff leave to appeal SST-GD Decision #2 on July 11, 2024). Upon denying the Plaintiff leave, “the SST-AD is functus officio with respect to their decision under section 58 of the DESDA.”⁴³

24. Accordingly, the Plaintiff is statute-barred from appealing SST-AD Decision #3 by way of the Claim. Under section 68 of the DESDA, the proper path to challenge SST-AD Decision #3, including raising the errors alleged in the Claim that the SST made in respect of that decision, is to commence an application for judicial review. Indeed, the Plaintiff did so prior to filing the Claim (Federal Court File No.: T-2086- 24).⁴⁴

[32] With respect, what the Defendant calls “statute -barred” might be better described as a lack of jurisdiction.

[33] The Plaintiff pursued appeal options before the Tribunal. A final decision was made by the Tribunal, Appeal Division on May 27, 2024. The Plaintiff began an application for judicial review on August 9, 2024 in cause number T-2086-24. That application provides as follows:

This is an application for judicial review in respect of Canada Employment Insurance Commission July 1 1,2424

- Request to write off EI overpayment denied: resulting from voluntary leaving the job at 556735 ONTARIO INC.

Decision under appeal: General Division decision dated May 27,2024(GE-24-732)

Decision date: July 11,2024

File number: AD-24-441TAKE from the application, what he is looking to review.

The applicant makes application for: Write Off Employment Insurance Overpayment of \$16,061 The grounds for the application are: Paragraph56(IXeXiii) an error made on the record of employment by the employer, Employment was terminated by employer(556735 ONTARIO INC.) and falsely reported to

employment insurance commission as voluntary leaving the job.
No False Statement was made by Applicant about Leaving the Job

[34] The Plaintiff did not pursue the application for judicial review and filed a Notice of Discontinuance on October 3, 2024.

[35] A “time bar” is found in subsection 112(1) of the *Employment Insurance Act, supra* which provides as follows:

Reconsideration — Commission

112 (1) A claimant or other person who is the subject of a decision of the Commission, or the employer of the claimant, may make a request to the Commission in the prescribed form and manner for a reconsideration of that decision at any time within

(a) 30 days after the day on which a decision is communicated to them; or

(b) any further time that the Commission may allow.

Révision — Commission

112 (1) Quiconque fait l’objet d’une décision de la Commission, de même que tout employeur d’un prestataire faisant l’objet d’une telle décision, peut, dans les trente jours suivant la date où il en reçoit communication, ou dans le délai supplémentaire que la Commission peut accorder, et selon les modalités prévues par règlement, demander à la Commission de réviser sa décision.

[36] This provision establishes the delay within which a person may seek reconsideration of a decision of the Commission.

[37] The Plaintiff indeed sought reconsideration of the decision by which the Commission found him ineligible to receive certain benefits that had been paid to him and found that a debt now existed on the part of the Plaintiff in respect of those payments.

[38] However, the Plaintiff did not request reconsideration until January 24, 2023, well beyond the time limited to do so, that is thirty days.

[39] The Defendant raised the “statute-barred” argument in response to paragraph 1 of the Statement of Claim which provides as follows:

The plaintiff claims:

A, the Claim

I am seeking monetary compensation of \$16,061 and any interest and penalties that have incurred from date of occurrence

Relief Sought

Plaintiff asks for an appeal from decision from General Division dated May 27,2024, (GE-24-732) Decision date: July 11,2024, File number: AD-24-441

[40] In my opinion, that time bar and the failure to meet it are not relevant to the disposition of the Defendant’s motion.

[41] To the extent that the Plaintiff seems to plead breaches of the *Employment Insurance Act, supra*, and the *Department of Employment and Social Development Act, supra*, I refer to the decision of the Supreme Court of Canada in *The Queen (Canada) v. Saskatchewan Wheat Pool*, [1983] 1 S.C.R. 205. In that decision, at page 227, the Supreme Court rejected the idea of a free-standing right of action for alleged breach of a statute.

[42] The Plaintiff's Statement of Claim does not raise a "genuine issue" for trial on this allegation.

[43] The Defendant also argues that there is no genuine issue for trial with respect to the Plaintiff's claim that his wages were improperly garnished.

[44] It appears that the Plaintiff claims that the garnishment action was improper because that action was undertaken before he submitted his request to the Commission for reconsideration of his request about the decision made on February 7, 2019, that is the ineligibility decision.

[45] The Plaintiff did not seek reconsideration of the ineligibility decision until January 24, 2023. The CRA was not required to wait indefinitely before taking steps to recover the debt.

[46] I agree that no genuine issue for trial arises with respect to the garnishment of the Plaintiff's wages. Subsections 126 (4), (5) and (7) of the *Employment Insurance Act, supra* are relevant to this issue and provide as follows:

Garnishment

(4) If the Commission has knowledge or suspects that a person is or is about to become indebted or liable to make a payment to a person liable to make a payment under Part I, II or VII.1 or under subsection (7), it may, by a notice served personally or sent by a confirmed delivery service, require the first person to pay the money otherwise payable to the second person in whole or in part to the Receiver General on account of the second person's liability.

Saisie-arrêt

(4) Lorsque la Commission sait ou soupçonne qu'une personne doit ou va bientôt devoir payer une dette ou verser une somme à une autre personne tenue d'effectuer un versement en application de la partie I, II ou VII.1 ou au titre du paragraphe (7), elle peut, par un avis signifié à personne ou expédié par service de messagerie, exiger qu'elle verse au receveur général, pour imputation sur le versement en cause, tout ou partie des fonds qui devraient autrement être payés à cette autre personne.

(5) If the Commission has, under subsection (4), required an employer to pay to the Receiver General on account of an insured person's liability under Part I or II or an individual's liability under Part VII.1, money otherwise payable by the employer to the insured person or the individual, as the case may be, as remuneration,

(a) the requirement is applicable to all future payments by the employer to the insured person or individual, as the case may be, as remuneration until the liability under that Part is satisfied; and

(b) the employer shall make payments to the Receiver General out of each payment of remuneration of the amount that may be stipulated by the Commission in the notice mentioned in subsection (4).

Debt due to the Crown

(7) An amount not paid as required by a notice under subsection (4) or (5) is a debt due to Her Majesty.

(5) Lorsque, en vertu du paragraphe (4), la Commission a exigé qu'un employeur verse au receveur général, pour imputation sur une dette d'un assuré visée par la partie I ou II — ou sur une dette d'un particulier visée par la partie VII.1 — des fonds qui devraient autrement être payés par l'employeur à l'assuré ou au particulier, selon le cas, à titre de rémunération, cet avis vaut pour tous les versements de rémunération à faire ensuite par l'employeur à l'assuré ou au particulier jusqu'à extinction de la dette visée par la partie I ou II — ou de la dette du particulier visée par la partie VII.1 — et il a pour effet d'exiger le paiement au receveur général, par prélèvement sur chacun des versements de rémunération, de la somme que peut indiquer la Commission dans l'avis mentionné au paragraphe (4).

Manquement

(7) Lorsqu'une personne ne se conforme pas à l'avis donné au titre du paragraphe (4) ou (5), la somme qu'elle était tenue de verser au receveur général constitue une dette due à Sa Majesté.

[47] The affidavit of Ms. Field refers to “certification” of the debt. A copy of the certification is Exhibit C to her affidavit.

[48] There is no evidence that the garnishment action was irregular or wrong.

[49] In the result, there is no genuine issue for trial on any basis arising from the Plaintiff's Statement of Claim. The Defendant's motion will be granted, and judgment will be entered, striking out the action in its entirety.

IV. COSTS

[50] The Defendant seeks costs in the amount of \$3000.00.

[51] Pursuant to Rule 400(1), the Court has full discretion in the matter of costs:

Discretionary powers of Court

400 (1) The Court shall have full discretionary power over the amount and allocation of costs and the determination of by whom they are to be paid.

Pouvoir discrétionnaire de la Cour

400 (1) La Cour a le pouvoir discrétionnaire de déterminer le montant des dépens, de les répartir et de désigner les personnes qui doivent les payer.

[52] Rule 400(3) identifies factors that the Court may consider in awarding costs. Rules 403

(k), (ii) and (o) are relevant to the Defendant’s request for costs and provide as follow:

(k) whether any step in the proceeding was

...

(ii) taken through negligence, mistake or excessive caution;

...

(o) any other matter that it considers relevant.

k) la question de savoir si une mesure prise au cours de l’instance, selon le cas :

...

(ii) a été entreprise de manière négligente, par erreur ou avec trop de circonspection;

...

o) toute autre question qu’elle juge pertinente.

[53] In my opinion, the Defendant unnecessarily raised a preliminary objection about his identification, saying the following at paragraph 18 of the written representations:

The style of cause should be amended to remove “His Majesty the King”.

The sole and proper defendant in this proceeding is the “Attorney General of Canada”

[54] Subsection 23(1) of the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50

provides as follows:

Taking of proceedings against Crown

23 (1) Proceedings against the Crown may be taken in the name of the Attorney General of Canada or, in the case of an agency of the Crown against which proceedings are by an Act of Parliament authorized to be taken in the name of the agency, in the name of that agency.

Exercice des poursuites visant l'État

23 (1) Les poursuites visant l'État peuvent être exercées contre le procureur général du Canada ou, lorsqu'elles visent un organisme mandataire de l'État, contre cet organisme si la législation fédérale le permet.

[55] That statute defines “Crown” as follows:

Definitions

2 In this Act,

Crown means Her Majesty in right of Canada

Définitions

2 Les définitions qui suivent s'appliquent à la présente loi.

[56] The *Federal Courts Act*, R.S.C. 1985, c. F-7 defines “Crown” as follows:

Definitions

2 (1) In this Act,

Crown means Her Majesty in right of Canada

Définitions

2(1) Les définitions qui suivent s'appliquent à la présente loi.

[57] The objection raised by the Defendant was unnecessary.

[58] Second, the Defendant filed a motion for summary judgment when the same object could have been pursued by a motion pursuant to Rule 221(1)(a) or Rule 221(1)(e), that is a motion to strike the statement of claim for failing to disclose a reasonable cause of action or as vexatious.

The Defendant’s motion materials are lengthy and give no hint as to why that option was not chosen.

[59] A motion to strike, pursuant to Rule 221(1) can be made at any time. A motion for summary judgment can be made only after a defence is filed. Indeed, the Index of Record Entries shows that the Defendant moved for summary judgment before filing his defence and by an Order issued on February 21, 2025, Associate Judge Crinson found the motion to be premature.

[60] In his Defence, the Defendant raised the issue of vexatiousness at paragraph 9, as follows:

The AGC further submits that the Claim is frivolous and an abuse of the court’s process as it seeks to relitigate matters already adjudicated by the Social Security Tribunal and which are the subject of a judicial review currently before this Court in File No. T-2086-24.

[61] The motion and motion record show “excessive caution” on the part of the Defendant.

[62] Rule 3 of the Rules sets out the “guiding” principle for proceedings in the Federal Courts, as follows:

General principle

3 These Rules shall be interpreted and applied

(a) so as to secure the just, most expeditious and least expensive outcome of every proceeding; and

(b) with consideration being given to the principle of proportionality, including consideration of the proceeding’s complexity,

Principe général

3 Les présentes règles sont interprétées et appliquées :

a) de façon à permettre d’apporter une solution au litige qui soit juste et la plus expéditive et économique possible;

b) compte tenu du principe de proportionnalité, notamment de la complexité

the importance of the issues involved and the amount in dispute. de l'instance ainsi que de l'importance des questions et de la somme en litige.

[63] The Defendant was entitled to take steps to resolve the Plaintiff's action. In my opinion, he did not choose the "most expeditious" way to achieve that goal.

[64] Although the motion will be granted and summary judgment will be entered striking out the Plaintiff's action, in the exercise of my discretion, no costs will be awarded to the Defendant for the reasons given above.

JUDGMENT IN T-2191-24

THIS COURT'S JUDGMENT is that the motion for summary judgment is granted in favour of the Defendant and the action is struck out, no Order as to costs.

“E. Heneghan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2191-24

STYLE OF CAUSE: DARWIN YANCHAK v. HIS MAJESTY THE KING

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

REASONS AND JUDGMENT: HENEGHAN J.

DATED: MARCH 12, 2026

WRITTEN REPRESENTATIONS BY:

Eric Peterson
Adrian Zita-Bennett

FOR THE DEFENDANT

SOLICITORS OF RECORD:

Attorney General of Canada
Toronto, Ontario

FOR THE DEFENDANT