

Case File # T-2147-23

FEDERAL COURT COUR FÉDÉRALE		D É P O S É
OCT 10 2023		
KADARA THOMPSON		
OTTAWA, ON		

FEDERAL COURT

BETWEEN:

Yeghia Kibalian

Applicant,

The Crown in the Right of His Majesty the King

Defendant

STATEMENT OF CLAIM - SECTION 48

47 Gloucester Street
Toronto, Ontario
M4Y 1L8

Federal Court - Ottawa

90 Sparks Street
Ottawa, Ontario

K1A 0H9

Yeghia Kibalian
Applicant

(Section 48)
FEDERAL COURT

Between

Yeghia Kibalian
Applicant

And

The Crown in right of His Majesty the King
Defendant

STATEMENT OF CLAIM

Crown Liability Enactment

Income Tax Enactment

Excise Enactment

Canadian Revenue Agency Enactment

Business incorporations Enactment

Statutory Instruments Enactment

Constitution Act 1867

Constitution Act 1982

Federal Courts Act

Facts

Material facts leading to the deposit of this application

1- This dispute between the parties is an ongoing dispute which commenced in 2010 and is presently still an unsettled matter.

2- After having read the income tax enactment, as a result of this understanding, the applicant refiled previously filed voluntary tax returns for the 2006-2009 tax years and separately filed the 2010 tax returns to reflect the same provisions offered to corporations and account for ALL expenses to be taken into consideration by way of a loss carry back request. This request was granted by the CRA

3- Subsequent to this the Applicant did file the 2011 voluntary income tax return (Currently under objection), the 2012 voluntary income tax return (Currently under objection) and the 2013 voluntary Income tax return filed and paid.

4- As a result of said filings the agent of his Majesty the CRA sent correspondence demanding information and "proof" regarding expenses and further demanded I answer a "questionnaire". The applicant challenged the officer's jurisdiction and demands.

5- The applicant believed that all the information needed to render a just decision on the file was already given and provided to his Majesties agent.

6- In 2014 after having received the notices of assessments from his Majesties agent for the years 2006 to 2010, the applicant took the position that said assessments were completely erroneous and a notice of objection was filed against the issued assessments.

7- In 2014 correspondence between the applicant and CRA officers took place asking for them to justify their statutory declarations over the matter and my personal obligation to accommodate the requests from the officers, which the applicant believes were exterior to the powers and duties granted to said officers under the income tax enactment.

8- In the year 2015 the agent of his Majesty the Cra denied all of the applicants objections. The position of the Cra was that the applicant failed to provide them with complete proof and the specific information requested of the applicant.

9- The applicant claims that the information requested as proof was not backed up by a statutory provision. When the applicant requested said proof of obligation to the officers demand they failed to provide me proof of their jurisdiction and authority, as it pertains to said requests. The Minister provided no facts or evidence to support the imposition of penalties.

10- The applicant was simply requesting statutory clarity and the operations of law contained within the statutory power as to why the officers had made such declarations against the applicant.

11- As a result of the communications between the party, or lack thereof, Cra adjusted the accounts and disallowed all expenses and losses. The applicant claims that said actions were not governed by a principle of justice, but were made from a personal decision barring any statutory covering for said decisions.

12- As a result of said actions the applicant was assessed "negligence penalty" for \$126,972.85 in addition to interest and arrears.

13- The applicant claims that no negligence took place and further believes that the officers of his Majesty have no statutory backing to inject such an amount against the applicant. All the more so that the applicant was voluntarily filing the income tax and acting with good faith.

14- *The applicant believes that the said negligence amounts, including all interest and arrears were added to the assessment in order to punish the applicant for his request for clarity concerning the officers actions, concerning the demands being made for additional information.*

15- *Sometime around September 2015, as a self represented individual, the applicant filed two Notices of Appeal with the Tax Court of Canada.*

FILE: 2015-4212(IT)G for (2010)

FILE: 2015-4213(IT)G for (2006-2009)

Statutory Provisions that were being relied in the appeal with the Tax Court included but was not limited to:

ITA Section 9, 18, 169, 248

Section 1 of the Bill of Rights

Section 2, 8, 15.1 of the Charter of Rights and Freedoms

16- *On December 23, 2015, the applicant received a legal warning and demand to pay an astronomical \$1,286,584.21 by the collections officer from CRA.*

17- *This amount which was being demanded of the applicant consisted of negligence amounts, interest and penalties, without statutory justification. The applicant claims that said correspondence was sent as a retaliation to the applicant having filed an objection within the tax court.*

18- *The applicant took the position that he would not file the 2015 tax return. The applicant felt that the officers of his Majesty were taking actions outside their jurisdiction and specifically levying amounts against the applicant which were statutory barred and further which were not statutory driven.*

19- *In 2016 a time table of dates were set along with requirements to have list of documents, discovery and examinations take place between the applicant and the counsel for his Majesties agent the Cra.*

20- *The applicant claims the council in their reply made claims that the applicant was relying on the "natural person theory" and alleged the applicant was implementing a "detax theory". The applicant fervently denies these allegations. The applicant claims that all and any position taken by the applicant against His majesty's agent were never motivated by said theories.*

21- *The Tax Court made an error in their time table and resulted in confusion between the Respondent and Appellant. As a result, the applicant requested an adjournment to give parties the opportunity to correctly satisfy the required steps as outlined by the court.*

22- *On April 5th 2017, the request for adjournment was set as 'sine die' and the applicant was ordered to pay \$7500.00 to the Respondent by the judge "E.P.Rossiter"*

23- *At this point, the applicant believed that the Tax Court was biased and acting prejudicial against the applicant, especially since it was the Tax Court that created the controversy by not setting a valid timetable between the parties.*

24- Within the communication between the Respondent's Counsel and the tax Court, the matter was referred to as "Fiscal Arbitrator's Group". The Tax Court revised the timetable and reissued the order for a second time to require the applicant to pay \$7500.00, despite the fact that it was the Judge that made an error. The respondent was encouraging and supporting the Judges error by attempting to blame the applicant for the timetable flaw. No explanation or reason for the cost was ever provided by the judge.

25- It should be noted that the applicant believes the judge made a bias ruling, that failure to pay the amount, the judge would order to dismiss the appeal and in essence deny the applicant his fundamental right to be heard in court.

26- The applicant claims that the counsel for the Cra did not want to provide the responses during disclosure and examination due to the content and nature of said questions. It became clear to the applicant that CRA and the Minister did not want to or could not answer the questions put before them, which further reinforced what the applicant believed was simply a trespass against his rights by the Minister.

27- As a result of what appeared to be negligence on the behalf the Tax Court and their blatant prejudice against me, the applicant filed a Notice of Appeal with the Federal Court of Appeal.

28- December 2017, a series of Tax Court Judges had to reissue different court orders for various reasons including what appears to be negligence, errors and bias. It should be noted that the Respondent had intentionally misrepresented facts to support their position and encourage the judges to dismiss my appeal and justify the flawed actions of the judges. The applicant believes that this was bad faith used in the court.

29- In 2018, the pretrial steps in the Federal Court of Appeal took place

30- In 2019, during the month of May, the applicants appeal was heard by the Federal Court of Appeal and they agreed that the matter should be heard, and not summarily dismissed. Further that the amount of \$7500 was to be set aside and would be redetermined by the final outcome.

31- In 2020, Several notices were sent to officers including Tax Court Judges, to answer questions concerning Jurisdictional authority. No answers or responses were provided. It should be noted that no evidence was ever provided by the Minister or CRA to support their position but rather only allegations made against the applicant.

32- On November 25, a case management conference call was scheduled. the applicant did not appear as it became clear to me that the Tax Court was simply an administrative arm of CRA and was not going to uphold my rights nor protect me or my property.

33- The applicant claims that the tax court is a statutory court and not a court of inherent jurisdiction and therefore is lacking in its ability to hear the applicant's case due to the nature of the arguments brought forth by the applicant.

34- In 2021, several demands to file and demands to pay were issued by various CRA officers.

35- Again on January 12, 2021, a follow up case management conference call was scheduled by Tax Court and the applicant did not appear. The applicant did not appear not because he did not respect the court, but because at this point the applicant realized that the tax court lacked jurisdiction as it could not operate as a court of inherent jurisdiction as it pertains to fundamental rights. The judge dismissed the appeal with cost of \$2800.00

36- The applicant received demand notices to pay and several statements of accounts shortly after from CRA. Since the appeals were dismissed, CRA claims the amount of 1.2 Million is unchallenged and "not under objection" and therefore due in full.

37- Due to the applicants lack of understanding at the time, during the 2021 year: the applicant filed trespass claims against 7 agents for their trespass against me in Small Claims Court

Bob Hamilton: Commissioner for CRA

Doug Downey: Attorney General of Ontario and 5 other agents.

38- The small claims court also was unable to receive my case due to the fact that this court also operates strictly as a statutory court and not a court which exercises inherent jurisdiction.

39- Several notices were issued to CRA officers to state for the record that I am not resident in Canada "officer of Canada" nor an "agent", and all claims I made were being ignored. CRA's denial of my position was simply met with an escalation of damaging actions against me.

40- 2022 on June 29- CRA director of Collections filed a Certificate of with the Federal Court of Appeal. This certificate was registered against the applicant and reflected on the credit system, limiting my ability to use credit and carry out normal business functions.

41- The applicant claims that said actions had the instant affect of limiting and abridging the applicants right to earn, gain and pursue his living, which is contrary to his Majesties obligations.

42- The applicant claims that the powers granted to the Minister under the income tax act to levy a certificate against alleged amounts owed, equates to actions contrary to the principals of justice. The Minister is the only office granted such a right contrary to the charter of rights and freedoms.

43- The applicant claims that having said statutory right places a great responsibility on the minister to act responsible with such powers.

44- In 2023, sometime in January the Canada revenue Agency informed me they have placed "document general" effective as of November 14, 2022 and placed liens on 4 of my properties. This action immediately negated my right to work by interfering with the lenders that have mortgages on the properties and has compromised my ability to manage my properties.

45- On March 10, 2023 Notice by CRA Collection Officer Dina Melo:
Requirement to pay 100% of all payments:
TD Canada Trust
The Bank Of Nova Scotia
Canadian Imperial Bank of Commerce
Canadian Western Bank Group

46- This action to interfere with my banking has completely limited my ability to work in my field of choice. I have not been freely able to earn and pursue my living as such, I have had many hardships upon myself and my family and business.

47-The Applicant is seeking the administration of Justice, through the inherent jurisdiction of the federal Court. The applicant claims that he is entitled to be heard as this is a fundamental right extended to all men and women.

(See Jurisprudence 1)

R. v. Dallaire, 2010 ONSC 715 (CanLII) Administration of Justice[34] Canadian courts have recognized a general inherent power to regulate the administration of justice In MacMillan Bloedel Ltd. v. Simpson, 1995 CanLII 57 (SCC), [1995] 4 S.C.R. 725, the Supreme Court laid out what it called the "contours and contents of the 'core' or 'inherent' jurisdiction of superior courts." The Court cited extensively from I.H. Jacob's "The Inherent Jurisdiction of the Court". Discussing the history of inherent jurisdiction, Jacob at pp. 25 and 27 states : the superior courts of common law have exercised the power which has come to be called "inherent jurisdiction" from the earliest times, and . . . the exercise of such power developed along two paths, namely, by way of punishment for contempt of court and of its process, and by way of regulating the practice of the court and preventing the abuse of its process.the jurisdiction to exercise these powers was derived, not from any statute or rule of law, but from the very nature of the court as a superior court of law, and for this reason such jurisdiction has been called "inherent."While inherent jurisdiction may be difficult to define, it is of paramount importance to the existence of a superior court. The full range of powers which comprise the inherent jurisdiction of a superior court are, together, its "essential character" or "immanent attribute

(See Jurisprudence 2)

THE SUPREME COURT OF CANADA S. 24(2) OF THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS HON. GERARD MITCHELL JANUARY 2014

Procedure [8] The charter itself contains no procedural directions. This led McIntyre J. in Mills to declare: The absence of jurisdictional provisions and directions in the charter confirms the view that the charter was not intended to turn the Canadian legal system upside down. What is required is that it be fitted into the existing scheme of Canadian legal procedures. There is no need for special procedures and rules to give it full and adequate effect.

48- The applicant claims that his natural rights, his absolute rights are being limited and abridged Contrary to section 7 of the charter of rights and freedoms and further through the actions of the Respondent as described herein by pointing to an internal domestic statutory law, again contrary to the rights expressed and enumerated in the Charter.

Natural law- A physical law of nature. A philosophical system of legal and moral principles purportedly deriving from a universalized conception of human nature or divine justice rather than from legislative or judicial action;

Natural right. A right that is conceived as part of natural law and that is therefore thought to exist independently of rights created by government or society, such as the right to life, liberty, and property.

Inalienable right- A right that cannot be transferred or surrendered, a natural right such as the right to own property.

Absolute right. 1. A right that belongs to every human being, such as the right of personal liberty; a natural right.

Fundamental law- The organic law that establishes the governing principles of a nation or state; esp" CONSTITUTIONAL LAW, - Also termed organic law; ground law, Cf. NATURAL LAW.

(See Jurisprudence 3)

Graham Garton, The Canadian Charter of Rights Decisions Digest, Justice Canada

Read as a whole, it appears that s. 7 was intended to confer protection on a singularly human level. A plain, common sense reading of the phrase "Everyone has the right to life, liberty and security of the person" serves to underline the human element involved; only human beings can enjoy these rights. "Everyone" then, must be read in light of the rest of the section and defined to exclude corporations and other artificial entities incapable of enjoying life, liberty or security of the person, and include only human beings.

(See Jurisprudence 4)

1988 CanLII 90 (SCC), [1988] 1 S.C.R. 30. The text of s. 7 provides that a deprivation by the state of an individual's right to life, liberty or security of the person will not violate the charter unless it contravenes the "principles of fundamental justice". Over the years since the Charter's inception, this Court has repeatedly been called upon to interpret that phrase, so as to determine in particular cases whether a Charter violation has, in fact, occurred. In the early days of Charter adjudication, questions arose as to whether the principles of fundamental justice included within their ambit a substantive element, in addition to the guarantees of natural justice or procedural fairness. That issue was conclusively settled by this Court in the Re B.C. Motor Vehicle Act, 81 (SCC), [1985] 2 S.C.R. 486, where all members of the panel seized of the case agreed that the principles of fundamental justice are not limited merely to rules of procedure but include as well a substantive component. This has meant that if deprivations of the rights to life, liberty and security of the person are to survive Charter scrutiny, they must be "fundamentally just" not only in terms of the process by which they are carried out but also in terms of the ends they seek to achieve, as measured against basic tenets of both our judicial system and our legal system more generally; see Re B.C. Motor Vehicle Act, at p. 512; Beare, supra; and Lyons, supra.

49- The Applicant claims that the Respondent through his representative, the deputy attorney general has failed in his responsibility as enumerated in the statutory instrument's enactment article 2 subsection c.

(see authority 1)

*Statutory Instruments Act
Examination*

3 (2) On receipt by the Clerk of the Privy Council of copies of a proposed regulation pursuant to subsection (1), the Clerk of the Privy Council, in consultation with the Deputy Minister of Justice, shall examine the proposed regulation to ensure that

(a) it is authorized by the statute pursuant to which it is to be made;

(b) it does not constitute an unusual or unexpected use of the authority pursuant to which it is to be made;

(c) it does not trespass unduly on existing rights and freedoms and is not, in any case, inconsistent with the purposes and provisions of the Canadian Charter of Rights and Freedoms and the Canadian Bill of Rights;

50- The Applicant claims that he has understood and declared that the income tax act is invalid against him, as the operations contained therein have produced a limitation and abridgment of the applicants natural rights.

(See Jurisprudence 5)

Canada (Attorney General) v. Sam Lévy et Associés Inc., 2005 FC 171 (CanLII)

First, and most importantly, the Constitution is, under s. 52(1) of the Constitution Act, 1982, "the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect". The invalidity of a legislative provision inconsistent with the Charter does not arise from the fact of its being declared unconstitutional by a court, but from the operation of s. 52(1). Thus, in principle, such a provision is invalid from the moment it is enacted, and a judicial declaration to this effect is but one remedy amongst others to protect those whom it adversely affects

51- The Applicant claims that on March 23rd 1976 the defendants became accountable to ensure and provide a measure or an operation of law that provided for the applicants guaranteed fundamental rights as enumerated in the international covenants.

(See Jurisprudence 6)

Citation: Németh v. Canada (Justice), 2010 SCC 56, [2010] 3 S.C.R. 281340 I also accept, of course, that, *where possible, statutes should be interpreted in a way which makes their provisions consistent with Canada's international treaty obligations and principles of international law.*

(See Jurisprudence 7)

Divito v. Canada (Public Safety and Emergency Preparedness), 2013 SCC 47, [2013] 3 S.C.R. 157: 22-Canada's international obligations and relevant principles of international law are also instructive in defining the right. The content of Canada's international human rights obligations is, in my view, an important indicia of the meaning of "the full benefit of the Charter's protection". I believe that the Charter should generally be presumed to provide protection at least as great as that afforded by similar provisions in international human rights documents which Canada has ratified. [p. 349]

(See Jurisprudence 8)

Assn. v. British Columbia, 2007 SCC 27, [2007] 2 S.C.R. 391, McLachlin C.J. and LeBel J. confirmed that, "the Charter should be presumed to provide at least as great a level of protection as is found in the international human rights documents that Canada has ratified" (para. 70).

52- The applicant claims that the agent of His Majesty the CRA under false pretenses informed the applicant that contributions to the economic, cultural and social development of Canada

were an obligation on the applicant's behalf contrary to the applicant's natural rights and the Defendant's obligations. (see exhibit 1)

53- On several occasions the applicant received a notice to file an income tax statement from the agent of His Majesty, Declaring that the applicant's participation was obligatory. (see exhibit 2)

54- The applicant has been issued an assessment from His Majesties agent, which has been levied against the applicants natural wealth and resources. (see exhibit 3)

55- The applicant claims that the office of the Canadian revenue agency is for all purposes an agent of His Majesty and therefore has a legal obligation to not take any actions aimed at the destruction of Natural rights.

(see Authority 2)

Agent of Her Majesty article 4.2 The Agency is for all purposes an agent of Her Majesty in right of Canada.

56- The applicant claims that through several statutory laws as described herein, such as the income tax enactment and the Corporations enactment, the applicant is being forced to enter into recognition as a **prescribed person**, that being, a resident in Canada, contrary to the applicant's full legal capacity.

(see authority 3)

ICCPR Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

57- The applicant claims that these requests (demands) are contrary to the applicant's fundamental rights, and are actions aimed at the destruction of the applicant's rights, which is contrary to the defendant's international and domestic obligations.

(See Jurisprudence 9)

Health Services and Support – Facilities Subsector Bargaining Assn. v. British Columbia, 2007 SCC 27, [2007] 2 S.C.R. 391, McLachlin C.J. and LeBel J. confirmed that, “the Charter should be presumed to provide at least as great a level of protection as is found in the international human rights documents that Canada has ratified” (para. 70). This helps frame the interpretive scope of s. 6(1). [24] The international law inspiration for s. 6(1) of the Charter is generally considered to be art. 12 of the International Covenant on Civil and Political Rights

58- The applicant claims to possess the fundamental right to decide if the applicant will make contributions to the economic, social and cultural development of Canada based upon the principle of mutual benefit.

(see Authority 4)

International Covenant on Civil and Political Rights

Article 1-All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 1.2- All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

Article-47 Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

The usage of the word people here is referring to the capacity of inhabitant in his full legal capacity as a man and not as a class of person (statutory creation). The applicant claims that he is afforded the legal right to dispose of his wealth and resources without any obligation to a mode of system of taxation in operation for the mutual benefit of the public/society. This right can never be limited or abridged through domestic laws, through statutory instruments.

Black's law second edition - PEOPLE.

(see secondary law sources 1)

The word "people" may have various significations according to the connection in which it is used. When we speak of the rights of the people, or of the government of the people by law, or of the people as a non-political aggregate, we mean all the inhabitants of the state or nation, without distinction as to sex, age, or otherwise. But when reference is made to the people the repository of sovereignty, or as the source of governmental power, or to popular government, we are in fact speaking of that selected and limited class of citizens to whom the constitution accords the elective franchise and the right of participation in the offices of government.
Black, Const. Law

59- The applicant claims that His Majesty through his agent the CRA had the legal obligation to ensure the applicants natural rights were not limited or abridged.

(see Authority 5)

International Covenant on Civil and Political Rights

Article 2

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

60- The applicant claims that a withholding is being applied against his natural wealth and resources, contrary to his full legal capacity. The color of right is being drawn from a statutory power, the Respondent is pointing to an internal domestic law to justify the failure to perform its international obligation which the applicant claims is in breach of the constitution act of 1982 article 7 and 26.

(See Jurisprudence 10)

Zingre v. The Queen et al., [1981] 2 SCR 392 (Supreme Court of Canada). "Thus, ministers, agencies and administrative tribunals would have to be able to justify their actions by pointing to specific legislative authority in the same way that any citizen would have to be prepared to show that his or her acts were lawful. It is a recognized principle of international customary law that a state may not invoke the provisions of its internal law as justification for its failure to perform its

international obligations."

61- The applicant claims that the respondent has levied an amount against his personal property, by forcing the applicant to take recognition as a prescribed person under the income tax enactment, despite the applicant's contrary indication.

62- The applicant claims despite numerous interactions and communications with the respondent, The respondent continues to limit and abridge the applicant's full legal capacity, contrary to the charter of rights and freedoms. The applicant claims that the agent of His Majesty is taking actions aimed at the destruction of the applicant's fundamental rights.

63- The Applicant claims that due to this failure, The applicant has suffered a limitation and abridgement of his full legal capacity and has suffered damage in tort through the Respondents actions

(See Jurisprudence 11)

Sarnelli v. Fraietta (1981), 28 A.R. 482 (Q.B. Master). The plaintiff must first establish a cause of action. Once he has done that, the question then becomes - what kind of relief is appropriate?

64- The applicant claims that his section 7 and 26 rights as enumerated in the constitution act of 1982 have been restricted contrary to the principals of fundamental justice.

(see Jurisprudence 12)

Reference re ss. 193 and 195.1(1)(C) of the criminal code (Man.), [1990] 1 SCR 1123, 1990 CanLII 105 (SCC)

On page 42 of the judgment- **It is important to note that the onus is on the person bringing the challenge to demonstrate not only the restriction of the rights but also that the state has not abided by the principles of fundamental justice.**

65- The applicant claims that through **several enactments** the applicant is losing his full legal capacity and being placed into a class of persons which is governed by statutory powers. The enactments are forcing a withholding charge against the applicant's wealth and resources. The applicant claims that the said enactments **are changing his legal capacity before the Respondent** to a class of person designated an officer holding an office in the Federal juristic unit designated Canada. The applicant believes **that this is a breach of his charter rights** without a principle of justice to justify the limitation or restriction upon his full legal capacity.

(see Jurisprudence 13)

Thompson Newspapers Ltd. v. Canada (Director of Investigation and Research, Restrictive Trade Practices Commission While individuals as a rule **have full legal capacity by the operation of law alone**, artificial persons are creatures of the state and enjoy civil rights and powers only upon the approval of statutory authorities. **he individual may stand upon his constitutional rights** He owes no duty to the State, since he receives nothing there from, beyond the protection of his life and property. **His rights are such as existed by the law of the land long antecedent to the organization of the State, and can only be taken from him by due process of law, and in**

accordance with the Constitution. He owes nothing to the public so long as he does not trespass upon their rights.

66- The Applicant claims that the powers to levy a withholding tax operates strictly within the Corporate Body designated Canada and strictly upon a prescribed persons.

(See Authority 6)

Constitution act of Canada 1867 Article 91- It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order, and good Government of Canada The raising of Money by any Mode or system of Taxation.

(See Jurisprudence 14)

Supreme Court of Canada Re: Authority of Parliament in relation to the Upper House, [1980] 1 S.C.R. 54 Date: 1979-12-21 Further, although s. 91 gave the Queen the power, with the advice and consent of the Senate and the House of Commons, to alter the "Constitution of Canada" except in certain expressly designated areas, it does not confer a power to amend the B.N.A. Act. The word "Canada" in s. 91 does not refer to Canada as a geographical unit but refers to the juristic federal unit.

(See authority 7)

GOVERNOR GENERAL ENACTMENT Corporation sole Article 2 of the enactment -The Governor General of Canada or other chief executive officer or administrator carrying on the Government of Canada on behalf and in the name of the Sovereign, by whatever title designated, is a corporation sole

67- The respondent is attempting to designate the applicant a resident in Canada according to the statutory power designated the income tax enactment. The respondent is forcing the applicant into recognition as a statutory creature that being "resident". As such thereby requiring that a withholding be applied against natural wealth and my resources.

(See authority 8)

Income tax Act Part 1 Tax payable by persons resident in Canada Article 2.1 An income tax shall be paid, as required by this Act, on the taxable income for each taxation year of every person resident in Canada at any time in the year.

(See Jurisprudence 15)

Thomson v. Minister of National Revenue, [1946] SCR 209, 1946 CanLII 1 (SCC)[Page 220] Residents are taxed, not Canadians; but residents within the meaning of the Act.

68- The applicant claims that the Respondent has allowed the creation of statutory instruments which breach the principles of justice as it pertains to contributions.

69- The applicant claims that through the subsequent statutory instrument designated the income tax enactment, the applicant is being considered a resident in the Juristic federal Unit designated Canada, operating under the designation of officer in an office of Canada which is contrary to his Charter Rights.

(See Authority 9)

Part 1 Tax payable by persons resident in Canada An income tax shall be paid, as required by this Act, on the taxable income for each taxation year of every person resident in Canada at any time in the year.

(see Jurisprudence 16)

Zingre v. The Queen et al., [1981] 2 SCR 392 (Supreme Court of Canada). "Thus, ministers, agencies and administrative

tribunals would have to be able to justify their actions by pointing to specific legislative authority in the same way that any citizen would have to be prepared to show that his or her acts were lawful. It is a recognized principle of international customary law that a state may not invoke the provisions of its internal law as justification for its failure to perform its international obligations."

70- The applicant claims the only a person who is resident in Canada can be considered to have taxable income for the year. The Canada being referred to within the ITA is the Corporation Canada and not to the territory or land mass. The federal income tax enactment is declaring that the applicant is incorporated into the corporation of Canada as a class of person, a prescribed person, designated an officer of Canada.

71- The applicant claims that in order to render the applicant a person resident in Canada several enactments are operating in conjunction with one another. The income tax act and the Ontario Corporations act are producing an operation of law which is forcing me to operate in an office of Canada as an officer thereby being resident in Canada . The Ontario Business Corporations Act is forcing individuals to enter into recognition as this prescribed person.

(See Authority 10)

Ontario Business Corporations Act

Directors 115. (1) Subject to any unanimous shareholder agreement, the directors shall manage or supervise the management of the business and affairs of a corporation. Board of directors(2) A corporation shall have a board of directors which shall consist of, Ontario Business Corporations Act "director" means a person occupying the position of director of a corporation by whatever name called, and "directors" and "board of directors" include a single director.

72- The applicant claims that if you own a corporation then you are the director of it or if you are part of the executive powers voted into the position of authority then you are a director and in both capacities you are operating an office in Canada as an officer of Canada. This enactment this statutory power is also limiting and abridging charter rights by creating an article of law that forces those who come looking for work into a class of person, into operating as an officer in an office of Canada. Employees of the corporations by operation of law are forced to become officers of Canada operating an office in Canada.

(See Authority 11)

Business Corporations Act
Officers

133. Subject to the articles, the by-laws or any unanimous shareholder agreement,

(a) the directors may designate the offices of the corporation, appoint officers, specify their duties and delegate to them powers to manage the business and affairs of the corporation,

73- The applicant claims that the income tax enactment is producing an operation of law wherein with anyone appointed into a representative capacity, or anyone operating as a director for a corporate body is by color of law rendered an officer operating in an office of Canada.

(See Authority 12)

Income tax enactment Definition office means the position of an individual entitling the individual to a fixed or ascertainable stipend or remuneration and includes a judicial office, the office of a minister of the Crown, the office of a member of the Senate or House of Commons of Canada, a member of a legislative assembly or a member of a legislative or executive council and any other office, the incumbent of which is elected by popular vote or is elected or appointed in a representative capacity and also

includes the position of a corporation director, and officer means a person holding such an office.

74- *The applicant claims that under the income tax act to be employed means to perform the duties contained within these offices.*

(See Authority 13)

“employed” means performing the duties of an office or employment;

75- *The applicant claims to be employed means that you are operating in one of these capacities. The applicant claims that anyone appointed into a representative capacity according to the income tax enactment is considered employed and thereby is operating in an office of Canada.*

(See Authority 14)

Definition in the income tax act

Judicial office

Minister of the crown

Member of the Senate

Member of the house of Commons

Member of the legislative or executive power

A Member/person in a position of executive council and any other office

Any other office which the position is voted for

any other office, the incumbent of which is appointed in a representative capacity

Director of a corporation

Under the ITA enactment that a Director of a corporation is considered to be an office of Canada, any position that is appointed into a position in a corporate body is also considered an office in Canada. We further see that the persons operating in those positions are then designated officers of Canada.

76- *The applicant further claims that the business corporations act of Ontario produces the same operation of law.*

(See Authority 15)

Under the Business Corporations Act

“officer” means an officer designated under section 133 and includes the chair of the board of directors, a vice-chair of the board of directors, the president, a vice-president, the secretary, an assistant secretary, the treasurer, an assistant treasurer and the general manager of a corporation, and any other individual designated an officer of a corporation by by-law or by resolution of the directors or any other individual who performs functions for a corporation similar to those normally performed by an individual occupying any such office.

77- *The applicant claims that under the income tax enactment to be considered an employee equates to being an officer. By color of law an employee is rendered a particular class of person, that being an officer.*

(See Authority 16)

definition in the income tax act "employee" **includes officer**;

78- The applicant claims that upon being forced into said capacity of officer, the enactment further renders any consideration gained from such employment as an officers remuneration.

(See Authority 17)

"employer", **in relation to an officer**, means the person **from whom the officer receives the officer's remuneration**;

"employment" means the position of an individual in the service of some other person (including Her Majesty or a foreign state or sovereign) and "servant" or "employee" means a person holding such a position;

79- The applicant claims that since the enactment is designating and classifying the applicant as an officer operating an office in Canada, **the applicant is thereby made resident in Canada and further to this the applicant is designated a prescribed person for the purpose of withholding**, Contrary to the applicants full legal capacity.

(See Authority 18)

Income tax act

Withholding

153. (1) **Every person paying** at any time in a taxation year

(a) **salary, wages or other remuneration**, other than amounts described in subsection 115(2.3) or 212(5.1),

shall deduct or withhold from the payment the amount determined in accordance with prescribed rules and shall, at the prescribed time, remit that amount to the Receiver General on account of the payee's tax for the year under this Part or Part XI.3, as the case may be, and, **where at that prescribed time the person is a prescribed person, the remittance shall be made to the account of the Receiver General at a designated financial institution.**

80- The applicant claims that the income tax enactment is abundantly clear that the only person subject to a withholding tax is a prescribed person. This prescribed person is an officer operating in an office of Canada. The prescribed person is declared to be carrying on business within Canada. To be resident in Canada means to be carrying on business in the corporate body and not to be physically located on the territory Canada

(See Jurisprudence 17)

Supreme Court of Canada

Canada Life v. CIBC, [1979] 2 S.C.R. 669 Date: 1979-05-22

"The narrow question before us is whether or not the Bank is a **person resident in Canada** within the meaning of s.25(1)(b) when the reference to the Bank on the cheques is to the Agency in New York".

(See Authority 19)

Excise Tax Act

Residence of corporation

(3) For the purposes of this section, every **corporation carrying on business in Canada shall be deemed to be a person resident in Canada**.

81- The applicant claims that a person can carry on business, **be resident in Canada but the physical location of the corporation is located exterior to the territory of Canada** as indicated in the above mentioned Supreme court judgment. To be resident does not refer to a geographical location but to an incorporation into a corporate body.

82- The applicant claims that subsequent to this the Supreme court made it clear that the designation resident, its definition must be taken from the context of the enactment.

(See Jurisprudence 18)

The Supreme Court of Canada in *Thompson v. Minister of National Revenue* [1946] S.C.R. 209, "Nationality is not an ingredient for the purpose of the Act. **Residents are taxed, not Canadians; but residents within the meaning of the Act.**

83- The applicant claims I am not **resident in Canada**. I do not accept to be classified or designated as an officer of Canada, through the operations of law described herein. The right to stand on this ground is guaranteed to me through the charter. I do not wish to play the role of a class of person, a prescribed person who is resident in Canada, in order to have a duty to a statutory instrument.

84- The applicant claims that since the applicant is not an Officer of Canada and subsequently not employed as defined within the enactments, the applicant has no obligation to exercise any privilege associated with the Social insurance number and have no taxable income. It is only an officer of Canada that must present or use such a card. This is why participation in the social insurance program is voluntary according to the social insurance application form, (a federal enactment), **box 13** where it clearly states, "**participation is voluntary**" However through the enactment officers of Canada are forced to subscribe to the program.

(See Authority 20)

Income Tax Enactment

Social Insurance Number

237 (1) Every individual (other than a trust) who was **resident or employed in Canada** at any time in a taxation year and who files a return of income under Part I for the year, or in respect of whom an information return is to be made by a person pursuant to a regulation made under paragraph 221(1)(d), shall,

(a) on or before the first day of February of the year immediately following the year for which the return of income is filed, or

(b) **within 15 days after the individual is requested by the person to provide his Social Insurance Number, apply to the Canada Employment Insurance Commission in prescribed form and manner for the assignment to the individual of a Social Insurance Number** unless the individual has previously been assigned, or made application to be assigned, a Social Insurance Number

85- The applicant claims that If you own a corporation then you are the director of it, or if you are part of the executive powers voted into the position of authority then you are a director and in both capacities you are operating an office in Canada as an officer of Canada. This enactment this statutory power is limiting and abridging charter rights by creating an article of law that forces those who are exercising their right to work into a class of person, as a prescribed person, into operating as an officer in an office of Canada, thereby causing them to become resident in Canada.

86- The applicant claims that to define his full legal capacity before the court as it pertains to this specific right it is necessary to look into the international treaties to which Canada is party to. This is the foundational source concerning the full legal capacity that the applicant is able to stand under. The applicant claims that International law provides the natural right to freely use wealth and resources that are earned without any obligations to a society based upon the principle of mutual benefit. The ITA is providing and producing a measure contrary to this natural right and contrary to the Constitution act of Canada 1982 article 7 and 26.

87- The applicant claims that the income tax enactment only makes provision for deductions against taxable income of a prescribed person and taxable income is remuneration received while operating in an Office or Employment. This issue was already dealt with and the legal ground brought forth through the Exchequer court of Canada was as follows,

(See Jurisprudence 19)

Fullerton v. Minister of National Revenue – Exchequer Court of Canada, MacLean, J. November 2, 1938 At pg. 525
“The English authorities to which I was referred seem to decide that if the sum in question is received by the taxpayer in virtue of his office, even if the payment is made voluntarily, the same is taxable, but if it is a gift, a gratuity, a payment personal to the taxpayer and not his office, a payment in respect of the cessation of his office, it is not taxable as a profit or gain of the office, because it is not “income” received from the office.”

“The test as to whether payments of the nature in question here are taxable is frequently put in this way: Was the payment made to the subject in virtue of his office? If it were it is taxable, but otherwise it is not taxable as “income”.

At pg. 528 “The appropriate statute defines what is “income”, for income tax purposes, and one cannot give to “income” a meaning contrary to that given by the state. It is to the real nature of the payment that the taxing authorities, and the courts, in cases of this kind, must look”.

88- The applicant claims that failure to render the applicant resident in Canada through said statutory powers, removes the respondent's ability to force a withholding. The applicant further claims that by forcing said recognition upon him, Canada is in breach of its international obligations. Earned income is clearly defined as remuneration for an officer operating in an office of Canada.

(See Authority 21)

(A) The Income War Tax Act 1940-41 Chp. 18 section 4 states the following under the definition of 'earned income'. ()

Paragraphs (m) and (n) of section two of the said Act, as enacted by section three of chapter forty of the statutes of 1935, are

repealed and the following substituted therefor:-

'earned income' means salary, wages, fees, bonuses, pensions, superannuation allowances, retiring allowances, gratuities, honoraria, and the income from any office or employment of profit held by any person, and any income derived by a person in the carrying on or exercise by such person of a trade, vocation or calling, either alone or, in the case of a partnership, as a partner actively engaged in the conduct of the business thereof, and includes indemnities or other remuneration paid to members of Dominion, provincial or territorial legislative bodies or municipal councils, but shall not include income derived by way of rents or royalties”;

(B) The “Office or Employment” is a term used to identify the position of an individual. This is enumerated in the Members of Parliament Retirement Allowances Act:

“federal position” means

(a) an office or employment the salary, fees or other compensation for which is paid in whole or in part out of the Consolidated Revenue Fund or out of monies appropriated by Parliament, and

(b) an office or employment in a departmental corporation or Crown corporation as defined respectively in sections 2 and 83 of the Financial Administration Act;

(C) Examples of Federal Position - office or employment of profit

- Security of Information Act:

Article 20. Subject to section 21, the Security of Information Act applies and shall be construed as applying in respect of a designated state as though

(a) a reference in that Act to “office under Her Majesty” included any office or employment in or under any department or branch of the government of a designated state;

(D) Canadian Security Intelligence Service Act:

OATH OF SECRECY

I swear that I will not, without due authority, disclose or make known to any person any information acquired by me by reason of the duties performed by me on behalf of or under the direction of the Canadian Security Intelligence Service or by reason of any office or employment held by me pursuant to the Canadian Security Intelligence Service Act. So help me God.

(E) Criminal Code of Canada: Public office vacated for conviction (see authorities 24)

Article 750. (1) Where a person is convicted of an indictable offense for which the person is sentenced to imprisonment for two years or more and holds, at the time that person is convicted, an office under the Crown or other public employment, the office or employment forthwith becomes vacant.

(F) Financial Administration Act: *Idem*, where bribes offered or accepted

Article 81. Every person who:

(a) promises, offers or gives any bribe to any officer or any person acting in any office or employment connected with the collection, management or disbursement of public money, with intent....

(G) Public Service Employment Act:

Carrying out functions

Article 91. Members shall not accept or hold any office or employment or carry on any activity inconsistent with their functions, and full-time members shall devote the whole of their time to the performance of their functions.

4(F) Royal Canadian Mounted Police External Review Committee Security and Confidentiality Regulations:

OATH OF SECRECY – Affirmation of Secrecy

I, solemnly affirm that I will not, without due authority, disclose or make known to any person not legally entitled thereto any information acquired by me by reason of the duties performed by me on behalf of or under the direction of the Royal Canadian Mounted Police External Review Committee or by reason of any office or employment held by me

pursuant to the Royal Canadian Mounted Police Act.

89-The applicant claims that the covenant and subsequently the charter clearly indicates that I cannot be forced to make contributions towards the economic, social or cultural development of a society based upon the principles of mutual benefit

90- The applicant claims that the Respondent has allowed the creation of statutory instruments which breach the principles of justice as it pertains to contributions

91- The applicant claims that through the subsequent statutory instrument designated the income tax enactment, is being considered a resident in the Juristic federal Unit designated Canada, operating under the designation of officer of Canada which is contrary to Natural Rights.

92- The applicant claims not to be a resident in Canada and not doing business in Canada, thereby is not to be classified or designated as an officer of Canada. The right to stand on this ground is guaranteed to me through the charter. The applicant will not and refuses to play the role of a class of person, the prescribed person who is resident in Canada in order to have as duty to a statutory instrument.

93- The applicant claims the respondent has breached fundamental rights and freedoms through these enactments. The applicant has been forced into a legal recognition as Officer of Canada (prescribed person) to subsequently declare that the applicant now has what is defined as taxable income under the enactment. The respondent is withholding against the applicant's natural wealth and resources in order to force contributions to the economic, social and cultural development of Canada and the provinces through this designation.

94-The applicant claims not to be an Officer of Canada and subsequently not employed as defined within the income tax enactment. The applicant has no obligation to exercise any privilege associated with the Social insurance number and has no taxable income. It is only an officer of Canada that must present or use such a card as a mechanism to withhold contrary to international law and the charter of rights and freedoms

Relief Sought

The plaintiff therefore claims as follows:

- To immediately provide a temporary injunction against the Defendant, ordering them to cease from interfering with the applicants fundamental right to work, the right to earn, gain and pursue a living, by the removal of all certificates placed against the properties in question and the applicants bank accounts, until this matter can be heard through the court's inherent jurisdiction.*

- *To declare that certain provisions of the Income tax enactment are of no force or effect against the applicant.*
- *To declare that the applicant should not be and will not be subjected to any withholding as enumerated in section 153 of the income tax act.*
- *To declare section 2.1 and section 153 of the income tax act is of no force or effect upon the applicant.*
- *To declare that the applicant can not be forced into the position of an officer operating in an office of Canada, thereby being resident in Canada as brought forth in the income tax act.*
- *To declare that His Majesty's agent the Canadian Revenue Agency cease and desist from contacting the applicant.*
- *To declare that any outstanding amounts owed through an issued assessment be declared inoperable against the applicant and to cancel any requirements to pay.*
- *To order the removal of any encumbrances or liens placed upon the personal property of the applicant by the respondent.*
- *To award the applicant 6 million dollars, which is a representation of the loss of earnings, the time loss value of all security that the applicant was made to forcibly contribute to the social, economic and cultural development of the respondent.*

Date:

OCTOBER 6th,
2023



(Signature) (PER SE)

FEDERAL COURT

BETWEEN:

Yeghia Kibalian

Applicant ,

and

The Crown in the right of His Majesty the King

Defendant ,

STATEMENT OF CLAIM - SECTION 48

Yeghia Kibalian

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