

FEDERAL COURT OF CANADA

BETWEEN:

Radu Hociung

Plaintiff

and

**Minister of Public Safety and Emergency Preparedness
and
Canada Border Services Agency
and
Her Majesty the Queen in Right of Canada**

Defendants

**LETTER TO THE COURT
Re: REASSIGNMENT OF CASE MANAGEMENT JUDGE**

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TO:

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Federal Court of Canada
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Honourable Court,

I am writing to respectfully request reassignment of this case to a different case management judge, and will further explain the grounds for this request.

Also, I would like to request the case be reviewed pursuant Federal Court Rule 97, and default judgement be entered (rule 97(d)), or the Defendant be ordered to answer the Written Examination Questions (rule 97(b)), as the Court deems just.

History of the case (only dates relevant to this request)

On July 19, 2016, the Defendant was served Written Examination for Discovery questions.

On August 30, 2016, almost a year ago, the Plaintiff requested the Court to place this case under Case Management, due to the fact that the Defendant was refusing to answer the Written Examination for Discovery.

On August 30, 2016, the Plaintiff sent a copy of the request for Case Management to the Defendant at 11:04am EST

On August 30, 2016, at 11:35am, the Defendant served the Plaintiff by email a Motion Record to Strike the Statement of Claim in its Entirety. Given the timing of this motion, it is clear the defendant had the motion prepared in advance and was waiting for the opportune time to submit it.

On September 21, 2016, the request for Case Management was granted, and the motion to strike was denied.

On November 9, 2016, Mr. Prothonotary Kevin Aalto was assigned as Case Management

Judge.

On December 22, 2016, a case management teleconference was held, and dates were set for the both Plaintiff and Defendant discoveries to occur. The Defendant was ordered to answer the Written Examination by January 31st, 2017

On January 31, 2017, at 14:08 EST, the Defendant delivered by fax partial answers to the Written Examination, in which only 20 of the 40 questions were answered completely (see attached). Ie, the partial answers were delivered the last possible moment, giving the appearance of compliance with the December 22 order to answer.

On February 2 and February 7, 2017, the Plaintiff requested the Defendant to answer the remaining questions or properly make objections in the form prescribed by Federal Court Rules 94, 95 and/or 99 (attached)

On March 1, 2017, the day before the second scheduled Case Management Schedule, the Defendant entered a written motion for Summary Judgement. The text of the motion is nearly identical to the unsuccessful motion to Strike the Statement of Claim he had submitted on August 30, 2016. The Defendant also requested that Mr. Aalto suspend Case Management until his motion is decided.

On March 2, 2017, a second and final Case Management Conference was held, where the plaintiff requested in writing that the Defendant be ordered to answer the Examination questions pursuant Rule 97. Mr. Aalto declined to apply Rule 97, and granted the Defendant's request to suspend Case Management.

Grounds for request to reassign Case Management Judge

The case has not progressed at all in the 6 months since Mr. Aalto became Case

Management judge (November 9, 2016 to the present, June 12, 2017). The Defendant was refusing to answer the Discovery questions, and is still refusing to this day.

Even though the criteria for executing Rule 97 of the Federal Court are met (a person fails to answer proper discovery questions within 30 days), and the Plaintiff requested Mr. Aalto to execute this rule, Mr. Aalto refused at the March 2, 2017 conference, justifying his decision by saying the motion for summary judgement must be first dealt with.

The Federal Court Rules on discovery do not provide for such a delay to discovery in case the party being discovered files motions.

The timing of the Defendant's motions, the fact that his motion is nearly identical to the unsuccessful motion he made 7 months prior, and his explicit request to Mr. Aalto that case management be suspended show that he is only interested in delaying discovery as much as possible.

At the March 2, 2017 case management conference, Mr. Aalto discussed the facts of the case, and offered his opinion that the case would not be successful, even though he admitted he had not seen the evidence (the response to the summary judgement motion was filed 20 days later, and included 70 documents as evidence, totalling 652 pages). He also advised the Plaintiff that he would not be wise to pursue the organized crime and fraud claims made in the proposed Amended Statement of Claim. His opinion and advice constitutes legal advice, and is not appropriate for Mr. Alto to give to a party.

However, at the March 2, 2017 conference, Mr. Aalto refused to consider moving the case along towards trial by dealing the the long overdue Discovery answers.

Furthermore, when asked to guide the discovery process along, Mr. Aalto recommended to the Plaintiff that he should make a motion seeking to compel the Defendant to provide answers to Discovery. There is no Federal Court Rule that would allow such a motion; on the contrary, Rule 97 provides that the Court may make an order to answer solely based on establishing a failure to answer a proper question, without any motion needed.

The Defendant is clearly willing to abuse process by filing frivolous motions instead of Discovery answers, and claims that the motions must be decided first, before Discovery can continue. However, Mr. Aalto, whose role is to see past these shenanigans, chooses to allow the Defendant's game.

In his role as Case Management Judge, Mr. Aalto's responsibility does not include fact-finding, which he is keen to perform, but does include managing the proceeding, which he declined to do.

Specifically, the Case Management Judge's powers, according to Federal Court Rule 385(a), are to give directions necessary for the just, most expeditious and least expensive determination of the proceeding, which Mr. Aalto refused to exercise.

At the March 2nd CMC, Mr. Alto declined to schedule a subsequent CMC. Combined with the fact that contact from the parties with Mr. Aalto is not permitted by the Registry, this leaves the case in a state of effective suspension. The plaintiff has no way to move this case forward, and no tools to persuade the Defendant to fulfill his obligations with respect to discovery.

As long as the Defendant is able to manipulate Mr. Aalto into not triggering rule 97, this case will never reach trial.

The motion game played by the Defendant is prejudicial to the Plaintiff, as two key Government witnesses are nearing retirement. At the present rate of progress, these witnesses will likely retire before the case reaches trial. Also, given that these witnesses are also accused of fraud, they would have every incentive to retire out of the country, eg. Florida, as many Canadians do. This would make the case very difficult for the Plaintiff to prove.

For all these reasons, in the Plaintiff's opinion, Mr. Aalto is ineffective as a Case Management Judge, and a more seasoned Case Management Judge should be assigned to this case.

Sincerely,

A handwritten signature in black ink, appearing to read 'R Hociung', with a stylized, cursive script.

Radu Hociung

Plaintiff