

FEDERAL COURT OF APPEAL

BETWEEN:

ARTHUR JACKES

Appellant
(Moving Party)

and

HER MAJESTY THE QUEEN

Respondent
(Responding Party)

RESPONDING MOTION RECORD OF THE RESPONDENT

June 4, 2019

ATTORNEY GENERAL OF CANADA

Department of Justice
Ontario Regional Office
120 Adelaide Street West
Suite # 400
Toronto, ON.
M5H 1T1
Fax: 416-952-4518

Per: Wendy Wright
Email: Wendy.Wright@justice.gc.ca
Tel: 647-256-0755

Lawyers for the Respondent, Her Majesty
the Queen

TO: The Administrator
Federal Court of Canada
180 Queen Street West
Suite 200
Toronto, Ontario
M5V 3L6

AND TO: **Arthur Jackes**
2175 Marine Drive
Suite 501
Oakville, Ontario
L6L 5L5
Email: stayalive2@hotmail.com

Appellant

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FEDERAL COURT OF APPEAL

BETWEEN:

ARTHUR JACKES

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(Responding Party)INDEX

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B.	Copy of Canada's Notice of Motion in <i>Jackes v HMQ</i> (T-1654-17) dated January 3, 2018.	
C.	Copy of Order of Brown J. striking the Statement of Claim in <i>Jackes v HMQ</i> , dated August 28, 2018	
D.	Copy of the appellant's Notice of Appeal in <i>Jackes v HMQ</i> (A-294-18) dated September 27, 2018.	
E.	Copy of the appellant's letter, dated March 13, 2019	
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TAB 1

A-294-18

FEDERAL COURT

B E T W E E N :

ARTHUR JACKES

Appellant
(Moving Party)

and

HER MAJESTY THE QUEEN

Respondent
(Responding Party)

AFFIDAVIT OF MARIA BARBIERI

I, MARIA BARBIERI, of the City of Vaughan, in the Province of Ontario, MAKE OATH AND SAY:

1. I am employed as a Legal Assistant to Wendy Wright, Counsel at the Ontario Regional Office of the Department of Justice. As such I have knowledge of the matters deposed to in this affidavit. Where my knowledge is based on information and belief I state the source of my knowledge and verily believe it to be true.
2. On October 31, 2017, the appellant filed a statement of claim. Attached hereto and marked as **Exhibit "A"** is true copy of the Statement of Claim in *Jackes v HMQ* (T-1654-17).
3. On January 3, 2018, Canada brought a motion to strike the claim. Attached hereto and marked as **Exhibit "B"** is true copy of Canada's Notice of Motion in *Jackes v HMQ* (T-1654-17) dated January 3, 2018.
4. On August 28, 2018, the case-management judge, the Honourable Mr. Justice Brown, granted Canada's motion and struck the claim without leave to amend.

Attached hereto and marked as **Exhibit "C"** is true copy of Order of Brown J. striking the Statement of Claim in *Jackes v HMQ*, dated August 28, 2018

5. On September 27, the appellant appealed Brown J.'s decision, seeking a hearing in Toronto. Attached hereto and marked as **Exhibit "D"** is true copy of the appellant's Notice of Appeal in *Jackes v HMQ* (A-294-18) dated September 27, 2018.

6. On March 12, 2019, the appellant sought to file a requisition for hearing and requested that his appeal be heard together with the Harris appeal. Attached hereto and marked as **Exhibit "E"** is true copy of the appellant's March 13, 2019 letter.

7. On March 15, 2019, Canada sent a letter to the Court highlighting that the deadline to file the Requisition for hearing had passed and opposing the appellant's request to have his appeal heard with the appeal of *Allan J Harris v Attorney General of Canada*, Court file No. A-258-18 ("Harris Appeal"). Attached hereto and marked as **Exhibit "F"** is true copy of Canada's March 15, 2019 letter.

8. On March 18, 2019, the appellant wrote to the Court responding to Canada's March 15, 2019 letter and restating his request to have his appeal heard together with the Harris appeal. Attached hereto and marked as **Exhibit "G"** is true copy of the appellant's March 18, 2019 letter.

9. By Direction dated April 1, 2019, the Court denied the appellant's request to have his appeal heard with the Harris appeal. In his Direction, Stratus J.A. indicated that if any of the appellants are seeking other relief, they should bring a formal motion in writing seeking relief. Attached hereto and marked as **Exhibit "H"** is true copy of Justice Stratus' Direction, dated April 1, 2019.

10. On April 8, 2019, the appellant served and filed a motion requesting that the hearing of his appeal be expedited to that of the Harris appeal. Attached hereto and marked as **Exhibit "I"** is true copy of the appellant's Notice of Motion and Written Representations both dated April 8, 2019.

11. The Respondent opposed this motion. Attached hereto and marked as **Exhibit “J”** is true copy of the Respondent’s Written Representations on the motion, dated April 17, 2019.
12. The appellant filed his Reply on the Motion on April 29, 2019. Attached hereto and marked as **Exhibit “K”** is true copy of the appellant’s Reply.
13. On May 13, 2019, Justice Gauthier dismissed the appellant’s motion to expedite his appeal and have it heard with the Harris appeal. Attached hereto and marked as **Exhibit “L”** is true copy of Justice Gauthier’s Order.
14. By letter dated May 17, 2019, the appellant requested Canada’s availability for the hearing of the appeal over the next 3 months. Attached hereto and marked as **Exhibit “M”** is true copy of the appellant’s May 17, 2019 letter.
15. On May 17, 2019, Canada responded to the appellant’s request highlighting that the deadline for the filing of the Requisition for his appeal had passed and that the appellant would need an extension of time from the Court. The letter stated counsel would provide her availabilities for hearing if the appellant successfully obtained an extension of time to file his requisition from the Court. Attached hereto and marked as **Exhibit “N”** is true copy of Canada’s May 17, 2019 letter.
16. The Harris Appeal has been set down for hearing by the Federal Court of Appeal on June 27, 2019. Attached hereto and marked as **Exhibit “O”** is true copy of the Order of the Court in *Allan Harris v Attorney General of Canada*, A-258-18, dated May 22, 2019.
17. I make this affidavit in support of Canada’s response to the appellant’s motion and for no other, or improper purpose.

SWORN before me at the City of
Toronto in the in the Province of
Ontario on June 4, 2019.



Commissioner for Taking Affidavits
(or as the case may be)

Adrienne Rice



MARIA BARBIERI

TAB A

File No: T-1654-17

Between:

FEDERAL COURT

This is Exhibit "A" mentioned and referred to in the affidavit of

Maria Barbieri

Sworn before me this 04th day of

June

A.D. 2019

A Commissioner for taking affidavits

Plaintiff

Arthur Jackes

ARTHUR JACKES

AND

Her Majesty The Queen

Defendant



STATEMENT OF CLAIM

(Pursuant to S.48 of the Federal Court Act)

FACTS

1. The Plaintiff seeks a declaration that delaying his application to amend Plaintiff's ACMPR permit Number MCR: 16335 for over 13 weeks by rejecting the originality of signatures in black ink and suggesting a new application be signed in blue ink when Licensed Producer Security Clearance Applicants are prohibited from using blue ink is an unconstitutional violation of the patient's S.7 Right to Life.

THE PARTIES

2. The Plaintiff is a person Possessing an ACMPR Production Permit Number MCR-16355.

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3. The Defendant, Her Majesty the Queen in Right of Canada, as represented by the Attorney General of Canada, is named as the representative of the Federal Government of Canada and the Minister of Health for Canada who is the Minister responsible for Health Canada and certain aspects of the Controlled Drugs and Substances Act including the Narcotic Control Regulations and the ACMPR.

BACKGROUND

4. On July 24, 2017, Plaintiff's Application to Amend his ACMPR permit to move his garden to a new site and register his Care-Giver as the Responsible Person to help him grow cannabis for medical purposes was received by Health Canada.

5. On Aug 22, 2017, Health Canada mailed back rejecting the application for want of original signatures.

6. The same day, Plaintiff mailed back his Application with a note beside each signature indicating it was original and a letter informing them he knew all pages had to be original.

7. On Oct 19, 2017, Health Canada again rejected his application with a letter stating:

Health Canada received and screened your application package to register for personal use or designated production under the Access to Cannabis for Medical Purposes Regulations (ACMPR). Your application package was found to be incomplete in the areas identified in the list below. We are returning, with this letter, your registration form and all supporting documents you provided with your form:

7

Section 3 Responsible Person - Signature must be original
Annex A

Section A2: Production Site Owner's Consent - Signature
must be original

Comments:

All the documents you submitted to Health Canada were
returned with this letter and no physical record was kept
by Health Canada. Should you wish to register, you will
need to submit a revised registration form and the
required supporting documents.

Section 2 Application Information

Additional Comments:

As discussed by phone on October 19 and 20, the
application that has been submitted is inadmissible as the
signatures in Section 3 and Section 2 have been deemed to
not be original. Applicant has been informed that
submission of a new application would result in the
application being treated at a higher priority. Applicant
was informed that, while not mandatory, it is our
recommendation he use a blue ball-point pen when filling
out the application to minimize disagreement as to the
veracity of the signatures. As acknowledgment of the
expense of postage, a pre-paid envelope has been attached
to be used for submission of the medical document and
newly-filled application form.

8. The Instructions for Completion of Security Clearance Form
Under the Access to Cannabis for Medical Purposes Regulations
(ACMPR) makes it mandatory not to use blue ink:

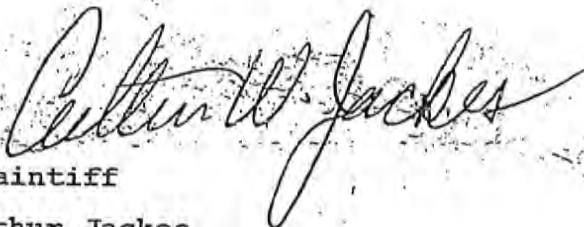
1.2 This form is to be completed using an automated system
or printed in block letter format in black ink.

9. Jeff and Colleen Harris both had their applications accepted in black ink.

10. Plaintiff is presently complying to get his new application signed in blue ink and retains the original application.

The Plaintiff proposes this action be tried in the City of Toronto, Province of Ontario.

Dated at Oakville on *OCTOBER 31*, 2017.


Plaintiff

Arthur Jackes

501-2175 Marine Dr.

Oakville, ON, L6L5L5

Tel: 289-834-4334 Fax: 905-827-5471

E: artjackes@outlook.com

9

File No: _____

FEDERAL COURT

BETWEEN:

ARTHUR JACKES

Plaintiff

and

Her Majesty The Queen

Defendant

STATEMENT OF CLAIM

(Pursuant to S.48 of
the Federal Court Act)

For the Plaintiff:

Arthur Jackes

501-2175 Marine Dr.

Oakville, ON, L6L5L5

Tel: 289-834-4334

E: huhoreally@me.com

SERVICE ADMITTED ON

NOV 01 2017

ON BEHALF OF THE
DEPUTY ATTORNEY GENERAL OF CANADA
[signature]

By: _____
Department of Justice, Ontario Regional Office

I HEREBY CERTIFY that the foregoing document is a true copy of
the original issued out of / filed in the Court on the _____

day of DEC 31 2017 A.D. 20__

Dated this _____ day of _____ 20__

AGENT DU GROSSE

REGISTRAR GENERAL

AGENT DU GROSSE

TAB B

T-1654-17

FEDERAL COURT

BETWEEN:

ARTHUR JACKES

Plaintiff

and

HER MAJESTY THE QUEEN

Defendant

NOTICE OF MOTION

TAKE NOTICE THAT the Defendant will make a motion to the Court on in writing pursuant to Rule 369 of the *Federal Courts Rules*.

This is Exhibit "B" mentioned and referred to in the affidavit of

Maria Barbieri
Sworn before me this 4th day of

June A.D. 2019

A Commissioner for taking affidavits

Adam Rice

THE MOTION IS FOR:

1. An order striking this proceeding, without leave to amend;
2. The costs of this motion and of the proceedings; and
3. Such further and other relief as this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:


1. Since August 2017, more than 28 self-represented plaintiffs have commenced virtually identical claims in the Federal Court;
2. These claims are based on "kits" downloaded from the website of John Turmel, and are hereinafter referred to as the "Turmel Kits" claims;
3. The "Turmel Kit" claims are being collectively case-managed by his Honour Justice Brown;

4. His Honour Justice Brown selected the Plaintiff Allan J. Harris as lead plaintiff and his claim to be the case;
5. His Honour Justice Brown ordered that this claim proceed on the same timetable as the Harris claim;
6. It is plain and obvious that the claim fails to disclose a reasonable cause of action;
7. The claim is scandalous, frivolous and vexatious;
8. Although the Plaintiff broadly alleges that the rejection rejecting his application for to amend his Access to Cannabis for Medical Purposes Regulations ("ACMPR") Production Permit by rejecting the originality of signatures in black ink and requiring that he re-submit his application in blue violated his rights to Life under section 7 of the *Canadian Charter of Rights and Freedoms*, the pleadings do not contain any facts concerning the plaintiffs' personal circumstances or capable of supporting the constitutional violations alleged;
9. *Federal Courts Rules*, SOR/98-106, Rules 3, 4, 221, and 369;
10. *Access to Cannabis for Medical Purposes Regulations*, SOR 2016/230 s. 3, 22, 30, 174, 176-177;
11. *Controlled Drugs and Substances Act*, S.C. 1996, c. 19, s. 56(1);
12. Such other and further grounds as counsel may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion

1. None.

January 3, 2018


Wendy Wright

ATTORNEY GENERAL OF CANADA

Department of Justice
Ontario Regional Office
The Exchange Tower
130 King Street West
Suite 3400, Box 36
Toronto, Ontario
M5X 1K6
Fax: 416-973-0809

Per: Wendy Wright
Tel: 416-973-0084
Email:

Solicitor for the Defendant
File: 9234699

TO: The Administrator
Federal Court of Canada
180 Queen Street West
Suite 200
Toronto, Ontario
M5V 3L6

AND Arthur Jackes
TO: 501-2175 Marine Dr.
Oakville Ontario
L6L 5L5

Self-Represented Plaintiff

TAB C

Federal Court



Cour fédérale

Date: 20180828

Docket: T-1654-17

Citation: 2018 FC 867

Ottawa, Ontario, August 28, 2018

PRESENT: The Honourable Mr. Justice Brown

BETWEEN:

ARTHUR JACKES

This is Exhibit "C" mentioned and referred to in the affidavit of

Maria Barbieri

Sworn before me this 4th day of

June

A.D. 2019

A Commissioner for taking affidavits

Plaintiff

and

HER MAJESTY THE QUEEN

Defendant

JUDGMENT

UPON motion by counsel for the Defendant in writing pursuant to the provisions of Rule 369 of the *Federal Courts Rules*, SOR/98-106 for an order striking this proceeding without leave to amend, together with costs or such further and other relief as may seem just;

AND UPON reading the pleadings and proceedings herein including the memorandum of argument filed by the Defendant and written correspondence received from the Plaintiff;

AND CONSIDERING that the Plaintiff seeks a declaration that “by rejecting the originality of signatures in black ink and suggesting a new application be signed in blue ink when Licensed Producer Security Clearance applicants are prohibited from using blue ink is an unconstitutional violation of the patient's S. 7 Right to Life”;

AND CONSIDERING the Plaintiff only alleges, which allegations must be accepted as true, that he applied to register for personal use or designated production under the *Access to Cannabis for Medical Purposes Regulations*, SOR/2016-230 [ACMPR], which application was returned to him because the signature was deemed not to be original, that thereafter the Plaintiff was informed that submission of a new application would result in the application being treated at a higher priority and that it was recommended to him that he use a blue ball-point pen when filling out the application to minimize disagreement as to the veracity of the signatures, but that the instructions for completing the relevant Health Canada form made it mandatory to complete the form in black ink, not blue ink;

AND CONSIDERING that section 7 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982*, c 11 *Charter* “does not protect against insignificant or ‘trivial’ limitations of rights” per *Cunningham v Canada*, [1993] 2 SCR 143 at 151, recently applied by this Court in *Johnson v Canada (AG)*, 2018 FC 582 at para 37;

AND BEING OF THE VIEW that the recommendation made to the Plaintiff that he use a blue ball-point pen was, in the first place, only a suggestion and not a requirement, and that it is

plain and obvious this suggestion did not constitute a violation of *Charter*-protected rights, and if it did, such violation would be trivial such that it is plain and obvious that the Plaintiff has no chance of success;

AND UPON considering that as a consequence this action should therefore be dismissed;

AND ALSO BEING OF THE VIEW that no purpose would be served in granting leave to amend a pleading such as this;

THEREFORE THE JUDGMENT OF THE COURT is that:

1. This action is dismissed without leave to amend.
2. There is no order as to costs.

"Henry S. Brown"

Judge

TAB D

File No: _____

FCC: T-1564-17

T-1654-17

FEDERAL COURT OF APPEAL

BETWEEN:

Arthur Jackes

And

Her Majesty The Queen

Appellant

Respondent



NOTICE OF APPEAL

Pursuant to Rule 337

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the appellant. The relief claimed by the appellant appears on the following page.

THIS APPEAL will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court directs otherwise, the place of hearing will be as requested by the appellant. The appellant requests that this appeal be heard at Toronto.

IF YOU WISH TO OPPOSE THIS APPEAL, to receive notice of any step in the appeal or to be served with any documents in the appeal, you or a solicitor acting for you must prepare a

A-294-18
This is Exhibit "D" mentioned and referred to in the affidavit of *Maria Barbieri*
Sworn before me this *4th* day of *June* A.D. 20 *19*
A Commissioner for taking affidavits
Al. H.

notice of appearance in Form 341 prescribed by the Federal Courts Rules and serve it on the appellant's solicitor, or where the appellant is self-represented, on the appellant, WITHIN 10 DAYS of being served with this notice of appeal.

IF YOU INTEND TO SEEK A DIFFERENT DISPOSITION of the order appealed from, you must serve and file a notice of cross-appeal in Form 341 prescribed by the Federal Courts Rules instead of serving and filing a notice of appearance.

Copies of the Federal Courts Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPEAL, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date: SEP 27 2018

Issued by:  SHERRI ALLY
REGISTRY OFFICER
AGENT DU GREFFE
(Registry Officer)

Address of local office: 180 Queen St. W. Toronto

TO: Attorney General for Canada
3400-130 King St. W, Toronto.

APPEAL

1. THE APPELLANT APPEALS to the Federal Court of Appeal from the Aug 28 2018 Order of Federal Court Justice Brown in the motion in T-1564-17.
2. Plaintiff sought a declaration that delaying his application to amend Plaintiff's ACMPR permit Number MCR: 16335 for over 13 weeks by rejecting the originality of signatures in black ink and suggesting a new application be signed in blue ink when Licensed Producer Security Clearance Applicants are prohibited from using blue ink is an unconstitutional violation of the patient's S.7 Right to Life.
3. Appellant's Ex. A was a copy of the Application to Amend his ACMPR permit MCR-16355.
which was twice rejected.
4. Appellant's Ex. B was the Health Canada response rejecting the application for alleged lack of original signatures.
5. Appellant's Ex. C was his return letter explaining he knew all pages had to be original with a note beside each signature indicating it was original.
6. Appellant's Ex. D was the Health Canada response again rejecting the application for alleged lack of original signatures and the suggestion that the disagreement as to the veracity of the signatures could be minimized by using a pen with blue ink.
7. Appellant's Ex. E was from the Health Canada web page "Instructions for Completion of Security Clearance Form Under the Access to Cannabis for Medical Purposes Regulations (ACMPR) which mandated using black ink.

8. Appellant's Ex. F was a post by Jeff Harris stating on Oct 26 at 12:17PM his and his wife's applications had been accepted in black ink.

9. On Aug 28 2018, the Court ruled:

AND CONSIDERING the Plaintiff only alleges, which allegations must be accepted as true, that he applied to register for personal use or designated production under the ACMPR, which application was returned to him because the signature was deemed not to be original, that thereafter, the Plaintiff was informed that submission of a new application would result in the application being treated at a higher priority and that it was recommended to him that he use a blue ball-point pen when filling out the application to minimize disagreement as to the veracity of the signatures, but that the instructions for completing the relevant Health Canada form made it mandatory to complete the form in black ink, not blue ink;

AND CONSIDERING that section 7 of the Charter, Part I of the Constitutional Act, 1982, being Schedule B to the Canada Act 1982 (UK) 1982, c 11 Charter "does not protect against insignificant or trivial limitations of rights" per *Cunningham v. Canada* [1993] 2 SCR 143 at 151, recently applied by this Court in *Johnson v. Canada* (AG) 2018 FC 582 at para. 37;

AND BEING OF THE VIEW that the recommendation made to the Plaintiff that he use a blue ball-point pen was, in the first place, only a suggestion and not a requirement, and that it is plain and obvious this suggestion did not constitute a violation of Charter-protected rights, and if it did, such violation would be trivial such that it is plain and obvious that the Plaintiff has no chance of success,

THEREFORE, THE JUDGMENT OF THE COURT is that:

1. This action is dismissed without leave to amend.
2. There is no order as to costs.

10. THE APPELLANT ASKS THAT the ruling be overturned and the Statement of Claim for damages from rejection on a false basis be returned for adjudication below.

THE GROUNDS OF THE APPEAL are that the violation of rights was not due the suggestion Appellant use blue ink but due to the delay caused by the improper rejection of original signatures as not original. Health Canada has also rejected original signatures from other applicants including Donald Cote and Nicole Van Edig. It's a sleazy way to stall patients getting their medicine and the court let them get away with it. Having a medical permit delayed over 3 months on false premises with penal sanctions looming is not a trivial violation of the patient's rights.

Dated at Oakville, Ontario on Sep 27 2018



For the Appellant

Arthur Jackes

501-2175 Marine Dr.

Oakville, Ontario, L6L 5L5

289-834-4334

stayalive2@hotmail.com

For the Respondent:

Attorney General for Canada

3400-130 King St. W, Toronto.

File No: _____

FCC: T-1564-17

FEDERAL COURT OF APPEAL

BETWEEN

Arthur Jackes

Appellant

and

Attorney General of Canada

Respondent



h:ao

NOTICE OF APPEAL

For the Appellant:

Arthur Jackes

501-2175 Marine Dr.

Oakville, Ontario, L6L 5L5

289-834-4334

styalive2@hotmail.com

TAB E

Arthur Jackes
501-2175 Marine Dr. Oakville, Ontario, L6L 5L5
289-834-4334 stayalive2@hotmail.com

Tuesday March 12 2019
VIA FACSIMILE

Court Administrator:
Federal Court of Appeal
180 Queen St. W. #200 Toronto, ON, M5V 3L6
Fax: 416-973-2154

RECEIVED
MAR 12 2019
DEPARTMENT OF JUSTICE
TORONTO

RE: Jackes v. HMTQ No: A-294-18

In the Requisition for hearing - Appeal in Allan J. Harris
v. HMQ A-258-18, the Defendant Canada wrote:

In addition to the present appeal, the Court is currently seized of Her Majesty The Queen v. Igor Mozajko, Court File No. A-339-18 (the "Mozajko appeal") which raises similar issues. Canada proposes that these appeals be heard separately as the present appeal is farther advanced and the parties have requested hearings in different cities (Vancouver and Toronto, respectively) owing to the locations of the self-represented plaintiffs. However, Canada wishes to call the Court's attention to the similar issues in the event the Court wishes to consider this in scheduling or assigning a panel to hear these matters.
Yours truly, Jon Bricker

Could you bring it to the court's attention that I am also one of the plaintiffs below for whom Allan J. Harris is Lead Plaintiff and will be arguing issues raised in my appeal.

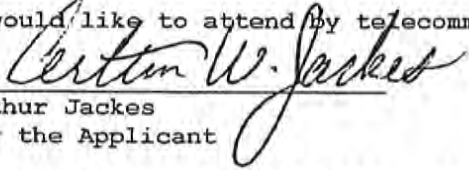
My claim is for damages due to delay by rejection on a false premise of original signatures. Harris' appeal speaks for others claiming damages from delay due to improper rejection as "not original" signatures and I would like my appeal seeking to get me back with them to be heard with them.

The Harris appeal is only slightly more advanced than mine though with all our Memoranda having been filed, I am filing my Requisition for Hearing - Appeal too.

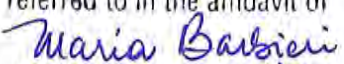

Given Harris will be raising the issues I am raising, I would ask that my appeal be heard at the same time as the Harris appeal.

Assigning a second panel in Toronto to hear arguments he will be raising in Vancouver would be a waste of time and resources.

I would like to attend by telecommunication.


Arthur Jackes
For the Applicant

CC: Jon Bricker Fax: 416-973-0809

This is Exhibit "E" mentioned and referred to in the affidavit of

Sworn before me this 4th day of
June A.D. 2019
A Commissioner for taking affidavits


File No: A-294-18

FCC: T-1654-17

FEDERAL COURT OF APPEAL

BETWEEN:

Arthur Jackes

Appellant

And

Her Majesty The Queen

Respondent

REQUISITION FOR HEARING - APPEAL

THE APPELLANT REQUESTS that a date be set for the hearing of this appeal with that of Harris in A-258-18 in Vancouver.

THE APPELLANT CONFIRMS THAT:

1. The requirements of subsection 356(1) and (5) of the Federal Court Rules have been complied with.
2. There is no requirement to serve a notice of constitutional question under s.56 of the Federal Court Act in this appeal.
3. The hearing should be held in Toronto or video or teleconference from Vancouver.
4. The hearing of my issue should last no longer than 15 minutes.
5. The representatives of all parties to the appeal are:

a) on behalf of the appellant, Arthur Jackes
Arthur Jackes
501-2175 Marine Dr.
Oakville, Ontario, L6L 5L5
289-834-4334

b) on behalf of the respondent: Jon Bricker at
Attorney General for Canada
400-120 Adelaide St. W,
Toronto. M5H 1T1
Tel: 647-256-7473 FAX 416-973-809

6. Parties are available any time between March 1 and June
30 except: March 1-22, April 4-12, 8, 25-26, May 3, 6-15-22,
June 3-14

7. The hearing will be in English

Dated at Oakville, Ontario on March 12 2019



For the Appellant
Arthur Jackes
501-2175 Marine Dr.
Oakville, Ontario, L6L 5L5
289-834-4334

For the Respondent:
Jon Bricker/ Wendy Wright
Attorney General for Canada
400-120 Adelaide St. W, Toronto.

27

File No: A-294-18

FCC: T-1654-17

FEDERAL COURT OF APPEAL

BETWEEN

Arthur Jackes

Appellant

and

Attorney General of Canada

Respondent

REQUISITION FOR HEARING

- APPEAL -

For the Appellant:

Arthur Jackes

501-2175 Marine Dr.

Oakville, Ontario, L6L 5L5

289-834-4334

stayalive2@hotmail.com

TAB F



Department of Justice
Canada

Ontario Regional Office
120 Adelaide Street West, Suite #400
Toronto, Ontario
M5H 1T1

Ministère de la Justice
Canada

Bureau régional de l'Ontario
120, rue Adelaide Ouest, pièce 400
Toronto, Ontario
M5H 1T1

Tel: 647-256-0577
Fax: (416) 973-0809
Email: Wendy.Wright@justice.gc.ca

Our File: 10092540
Notre dossier:

March 15, 2019

VIA FACSIMILE

Federal Court of Appeal
Registries of the Federal Courts
180 Queen Street West
Suite 200
Toronto, Ontario
M5V 3L6

This is Exhibit "F" mentioned and
referred to in the affidavit of
Maria Barbieri
Sworn before me this 4th day of
June A.D. 2019
A Commissioner for taking affidavits
Shirley Rice

To Whom It May Concern:

**Re: JACKES, Arthur v Her Majesty the Queen,
Court File No.: A-294-18**

I am writing on behalf of the respondent, Her Majesty the Queen in Right of Canada ("Canada"), to respond to the appellant's letter and Requisition for Hearing dated March 12, 2019.

The deadline to file a Requisition for Hearing has passed and the appellant has not brought a motion for an extension of time. The Requisition provided by the appellant also purports to provide a list of dates when the parties are available to participate in a hearing of this matter. The appellant did not consult me with respect to this list and I can advise that it does not accurately reflect my availability. Canada requests that the appellant's Requisition not be accepted for filing in these circumstances.

Canada also requests that this appeal not be heard together with *Allan J Harris v Attorney General of Canada*, Court File No. A-258-18 ("Harris appeal"), as proposed by the appellant in his letter. While the appellant's claim is being collectively case-managed with the Harris claim in Federal Court, the appeals are from distinct decisions of the case-management judge and concern different issues. The appellants have also requested hearings in different cities (Toronto and Vancouver, respectively). Canada submits that the appropriate course in these circumstances is for the appeals to continue separately. However, if the appellant feels that a decision in the Harris appeal would assist the parties or the Court in the present appeal, Canada would consent to an adjournment of the present appeal pending the outcome of the Harris appeal.

- 2 -

Yours truly,



per Wendy Wright
Counsel
National Litigation Sector

c.c. Arthur Jackes (via email)
Allan J. Harris (via email)

TAB G

Arthur Jackes
501-2175 Marine Dr.
Oakville, Ontario, L6L 5L5
289-834-4334
stayalive2@hotmail.com

March 18 2019

VIA FACSIMILE

Court Administrator:
Federal Court of Appeal
Registries of the Federal Courts
180 Queen St. W. #200
Toronto, ON, M5V 3L6
Fax: 416-973-2154

Re: JACKES, Arthur, v. HMTQ No: A-294-18

The Respondent Canada wrote in a March 15 2019 letter:

CR: I am writing to respond to the appellant's letter and Requisition for Hearing dated March 12 2019. The deadline to file a Requisition for Hearing has passed and the appellant has not brought a motion for an extension of time.

The Clerk refused to file the Requisition late. An extension of time may be sought. The point is that both appeals are at the Requisition for Hearing stage. It would seem a waste of resources to have a second panel deal with the same issue again.

CR: The Requisition provided by the Appellant also purports to provide a list of dates when the parties are available to participate in a hearing of this matter. The appellant did not consult me with respect to this and I can advise that it does not accurately reflect my availability.

It is the same list of available dates submitted by the Crown in their own Harris hearing Requisition. Since I seek to be heard with Harris, I submitted the very same dates. May the Crown explain why the available dates for Harris would not be available for me.

CR: Canada requests that the appellant's Requisition not be accepted for filing in these circumstances.

If the Court does not expedite the hearing of my appeal to the Harris appeal, I will ask for an extension of time to requisition a hearing with another list of available dates. Since both our appeals are at the stage of requisitioning a date for hearing, it makes even more sense they be heard by one panel and not two.

This is Exhibit "G" mentioned and referred to in the affidavit of *Maria Barbieri*
Sworn before me this *4th* day of *June* A.D. 20 *19*
A Commissioner for taking affidavits
[Signature]

CR: Canada also requests that this appeal not be heard together with Allan J. Harris v. HMTQ No: A-258-218 ("Harris appeal"), as proposed by the appellant in his letter. While the appellant's claim is being collectively case-managed with the Harris claim in Federal Court, the appeals are from distinct decisions of the case-management judge and concern different issues.

There are no different issues. My case concerns only one issue in common with some of the plaintiffs led by Harris. As Donald Cote seeks damages for delay from wrong rejections of original signatures 4 times over 8 months, I seek damages for delay for the same reason over 3 months. So they are different decisions concerning the same issue.

CR: The appellants have also requested hearings in different cities (Toronto and Vancouver, respectively).

Or attend by teleconference. There is no need to open a courtroom unless the hundreds of plaintiffs below can attend.

CR: Canada submits that the appropriate course in these circumstances is for the appeals to continue separately. However, if the appellant feels that a decision in the Harris appeal would assist the parties or the Court in the present appeal, Canada would consent to an adjournment of the present appeal pending the outcome of the Harris appeal.

If the Crown does not succeed in striking Cote's claim for 8 months damages due to false rejection, my claim for 3 months damages should be allowed to proceed too.



Arthur Jackes
For the Appellant

CC: Jon Bricker Fax: 416-973-0809
For the Respondent

TAB H

Federal Court of Appeal



Cour d'appel fédérale

TO : Judicial Administrator

FROM : Stratas J.A.

DATE : April 1, 2019

RE : *Arthur Jackes v. Her Majesty the Queen* (A-294-18), *Allen J. Harris v. AGC* (A-258-18), and *Her Majesty the Queen v. Igor Mozajko* (A-339-18)

DIRECTION

Three appeals have been placed before the Court for direction. This direction shall be sent to all the parties in the three appeals and shall be placed in each of the three files.

The Court notes the different parties and the different first-instance decisions involved. The facts vary among the files. The Court also notes that the appeals are likely to be heard at different locations. Finally, the appeals are at different stages of progress.

All of this leads the Court to the view that the files should proceed separately and be heard separately. To the extent a ruling in one file affects another later file, this can be brought to the attention of the Court through submissions made at the hearing in the later file.

There are no other motions presently before the Court. But some of the correspondence suggests some relief is desired by some. If a party wishes some relief, it should now file a formal motion in writing seeking that relief.

File A-258-18 is now ready for hearing; a requisition for hearing has been filed. A hearing date in file A-258-18 should now be set notwithstanding the existence of the other files.

"DS"

This is Exhibit "H" mentioned and referred to in the affidavit of

Maria Barbieri

Sworn before me this 4th day of

June

A.D. 20 19

A Commissioner for taking affidavits

Adam Lee

TAB I

Court File No.: A-294-18

FEDERAL COURT OF APPEAL

BETWEEN:

ARTHUR JACKES

Appellant

and

HER MAJESTY THE QUEEN

Respondent

MOTION RECORD

For the Appellant
Arthur Jackes
501-2175 Marine Dr.
Oakville, Ontario, L6L 5L5
289-834-4334
stayalive2@hotmail.com

For the Respondent:
Attorney General for Canada
120 Adelaide St. W.
Toronto, ON, M5H 1T1
Jon Bricker

This is Exhibit "I" mentioned and
referred to in the affidavit of
Maria Barbieri
Sworn before me this *4th* day of
June A.D. 20*19*
A Commissioner for taking affidavits
Adam Rice

Table of Contents

Notice of Motion..... (3)

No Affidavit of Facts not in the file

No transcripts

Written Representations..... (5)

Court File No.: A-294-18

FEDERAL COURT OF APPEAL

BETWEEN:

ARTHUR JACKES

Appellant

and

HER MAJESTY THE QUEEN

Respondent

NOTICE OF MOTION

(Pursuant to Rule 369)

TAKE NOTICE that the Appellant will make a motion to the court on the basis of written representations for an order that the hearing of my appeal be expedited to that of Allan J. Harris A-258-18.

THE GROUNDS FOR THE MOTION are that

- 1) Harris represented me as lead plaintiff for over 300 plaintiffs below and his appeal is further advanced than mine and will raise the same issues as mine.
- 2) a separate appeal would waste resources.

Dated at Oakville on Monday April 8 2019.



For the Appellant

Arthur Jackes

501-2175 Marine Dr. Oakville, Ontario, L6L 5L5

289-834-4334 stayalive2@hotmail.com

For the Respondent:

Attorney General for Canada Jon Bricker

Court File No.: A-294-18

FEDERAL COURT OF APPEAL

BETWEEN

Arthur Jackes
Appellant

and

Her Majesty The Queen
Respondent

NOTICE OF MOTION

For the Appellant:
Arthur Jackes
501-2175 Marine Dr.
Oakville, Ontario, L6L 5L5
289-834-4334
stayalive2@hotmail.com

Court File No.: A-294-18

FEDERAL COURT OF APPEAL

BETWEEN:

ARTHUR JACKES

Appellant

and

HER MAJESTY THE QUEEN

Respondent

WRITTEN REPRESENTATIONS

1. In the Requisition for hearing - Appeal in Allan J. Harris v. HMQ A-258-18, the Defendant Canada wrote:

In addition to the present appeal, the Court is currently seized of Her Majesty The Queen v. Igor Mozajko, Court File No. A-339-18 (the "Mozajko appeal") which raises similar issues. Canada proposes that these appeals be heard separately as the present appeal is farther advanced and the parties have requested hearings in different cities (Vancouver and Toronto, respectively) owing to the locations of the self-represented plaintiffs. However, Canada wishes to call the Court's attention to the similar issues in the event the Court wishes to consider this in scheduling or assigning a panel to hear these matters.

Yours truly, Jon Bricker

2. I was also one of over 300 plaintiffs below for whom Allan J. Harris is Lead Plaintiff who will be arguing the issue raised in my appeal. My claim is for damages due to delay by rejection on a false premises of "not original signatures." Harris' appeal speaks for others claiming damages from delay due to improper rejection as "not original signatures" and I would like my appeal seeking to get me back with them to be heard with them.

3. The Harris appeal is only slightly more advanced than mine though with all our Memoranda having been filed, I am ready to file my Requisition for Hearing - Appeal too. With an opportunity to be heard, I am prepared to accept the decision handed down on the issues that apply to Harris's plaintiffs and would ask that my appeal be heard at the same time as the Harris appeal.

4. Assigning a second panel in Toronto to hear arguments he will be raising in Vancouver would be a waste of time and resources.

5. Merely adjourning my appeal until after that of Harris does not give me the opportunity to be heard by the Harris judges who would bind my fate.

6. Appellant seeks an order his appeal be expedited to be electronically heard with that of Allan J. Harris A-258-18.

Dated at Oakville on April 8 2019.



Arthur Jackes

501-2175 Marine Dr.

Oakville, Ontario, L6L 5L5

289-834-4334

stayalive2@hotmail.com

For the Appellant

Attorney General for Canada

120 Adelaide St. W.

Toronto, ON, M5H 1T1

Jon Bricker

For the Respondent:

Court File No.: A-294-18

FEDERAL COURT OF APPEAL

BETWEEN

Arthur Jackes

Appellant

and

Her Majesty The Queen

Respondent

WRITTEN REPRESENTATIONS

For the Appellant:

Arthur Jackes

501-2175 Marine Dr.

Oakville, Ontario, L6L 5L5

289-834-4334

stayalive2@hotmail.com

Court File No.: A-294-18

FEDERAL COURT OF APPEAL

BETWEEN

Arthur Jackes

Appellant

and

Her Majesty The Queen

Respondent

MOTION RECORD

For the Appellant:

Arthur Jackes

501-2175 Marine Dr.

Oakville, Ontario, L6L 5L5

289-834-4334

stayalive2@hotmail.com

TAB J

A-294-18

FEDERAL COURT OF APPEAL

BETWEEN:

ARTHUR JACKES

This is Exhibit "J" mentioned and
referred to in the affidavit of

Appellant

Maria Barbieri

and

Sworn before me this 4th day of

June A.D. 2019

A Commissioner for taking affidavits

HER MAJESTY THE QUEEN

Ali Razi

Respondent

**WRITTEN REPRESENTATIONS OF THE RESPONDENT,
HER MAJESTY THE QUEEN IN RIGHT OF CANADA**

1. The respondent, Her Majesty the Queen in Right of Canada ("Canada"), asks that the appellant's motion be dismissed. The motion requests that this matter be heard together with *Allan J. Harris v Attorney General of Canada* (Court File No A-258-18). However, the central issue in this appeal is distinct from the issue in the Harris appeal. In addition, the appellant has not filed his requisition for hearing or moved to extend the time for doing so, such that the Harris appeal may be unnecessarily delayed if the matters were heard together.

PART I – FACTS

A. THE JACKES CLAIM AND APPEAL

2. The appellant filed his statement of claim on October 31, 2017 (the "Jackes claim"). The claim alleged that the appellant applied to amend his registration to produce cannabis for medical purposes, but that Health Canada rejected his application as it included non-original signatures.¹ The claim sought a declaration "that delaying his

¹ Statement of Claim in *Jackes v HMQ* (T-1654-17), paras 2-7, **Respondent's Motion Record ("RMR")**, Tab 1, p 1-3

application ... for over 13 weeks by rejecting the originality of signatures in black ink and suggesting a new application be signed in blue ink when Licensed Producer Security Clearance Applicants are prohibited from using blue ink is an unconstitutional violation of the patient's s. 7 Right to Life."² No other relief was sought.

3. Canada brought a motion to strike the Jackes claim. By order dated August 28, 2018, the case-management judge in Federal Court, the Honourable Mr. Justice Brown, granted Canada's motion and struck the Jackes claim without leave to amend. The claim was struck on the grounds that it was plain and obvious that the rejection of the appellant's application by Health Canada, and the suggestion he re-submit using blue ink, was at most a trivial violation of his Charter rights.³

4. The appellant now appeals the decision to strike his claim. The Notice of Appeal requests that the appeal be heard in Toronto.⁴ The appellant has filed an appeal book and the parties have filed the required memoranda of fact and law. However, the appellant failed to serve and file his requisition for hearing, which was due on February 25, 2019.⁵

B. THE HARRIS CLAIM AND APPEAL

5. In addition to the Jackes claim, Brown J. is currently case-managing more than 250 other claims related to access to medical cannabis. The other claims – which are based on a "kit" downloaded from the website of medical cannabis activist John Turmel – allege that general processing times for registration to produce cannabis for personal medical use, and Health Canada's former approach to calculating the period of registration, are unconstitutional.⁶

² *Ibid*, para 1, RMR, Tab 1, p 1

³ Order of Brown J. in *Jackes v HMQ*, dated August 28, 2018, RMR, Tab 2, p 7-9

⁴ Notice of Appeal in *Jackes v HMQ* (A-294-18), RMR, Tab 3, p 10

⁵ *Federal Courts Rules*, SOR/98-106, s 347(1) ("*Federal Courts Rules*")

⁶ Amended Statement of Claim in *Harris v HMQ* (T-1379-17), paras 1A, 1B, RMR, Tab 5, p 17-18

6. Brown J. has designated *Allan J. Harris v HMQ* (T-1379) (the “Harris claim”) as the lead claim among this group of claims, and has stayed the other claims pending determination of the Harris claim.⁷ However, as noted above, the Jackes claim was not stayed, and proceeded in parallel with the Harris claim.⁸

7. Canada brought a motion to strike the Harris claim. By Order and Reasons dated July 20, 2018, the Federal Court partially granted Canada’s motion. Brown J. declined to strike the portion of the Harris claim concerning the processing time for registration, but struck the portion concerning the period of registration, without leave to amend.⁹

8. Mr. Harris has appealed this decision, and Canada has cross-appealed (the “Harris appeal”).¹⁰ The parties have completed all steps in the Harris appeal and are awaiting a hearing date. At Mr. Harris’ request, the Harris appeal will be heard in Vancouver.¹¹ Brown J. has ordered that the other 250-plus claims in Federal Court will remain stayed pending the Harris appeal.¹²

C. APPEAL SCHEDULING

9. In a series of recent letters to the Court, Mr. Jackes requested that this appeal be heard together with the Harris appeal. By Direction dated April 1, 2019, the Court

⁷ Order of Brown J. in *Harris v HMQ*, dated November 24, 2017, paras 3-5, **RMR, Tab 6, p 26**; Order of Brown J. in *Harris v HMQ* and *Jackes v HMQ*, dated December 11, 2017, paras 3-5, **RMR, Tab 7, p 28**. Although Brown J. designated the Harris claim as the lead claim, he has not authorized Mr. Harris to represent the other plaintiffs as the appellant suggests in his Notice of Motion, and Rules 119 and 121 preclude Mr. Harris from doing so.

⁸ Order of Brown J. in *Harris v HMQ*, dated December 11, 2017, para 5, **RMR, Tab 7, p 28**

⁹ Order of Brown J. in *Harris v HMQ*, dated July 20, 2018, paras 2, 37, 40-41, 44, 54-56, **RMR, Tab 8, p 32, 45-47, 49-50**

¹⁰ Notice of Appeal and Notice of Cross-Appeal in *Harris v AGC* (A-258-18), **RMR, Tabs 9-10, p 53-67**

¹¹ Notice of Appeal in *Harris v AGC*, p 1, **RMR, Tab 9, p 53**

¹² Order of Brown J. in *Harris v HMQ*, dated October 12, 2018, paras 1, 3-4 **RMR, Tab 11, p 69-70**

denied this request and directed that the Registry proceed to schedule only the Harris appeal as it is ready for hearing. Stratas J.A. observed that the other appeals involved different plaintiffs, different first-instance decisions, were likely to be heard in different locations and were at different stages of progress. To the extent that a ruling in one appeal affected the other, Stratas J.A. observed that this could be brought to the attention of the panel hearing the later appeal. He also directed any party desiring procedural relief to file a formal motion in writing.¹³

PART II – ISSUES

10. The issue in this motion is whether the Jackes appeal should be heard together with the Harris appeal. Canada submits that the appeals should not be heard together. The legal and factual issues in the appeals are distinct, and the appellant has not filed a requisition for hearing and is out of time to do so.

PART III – SUBMISSIONS

11. Rule 105 of the *Federal Courts Rules* provides that the Court may order that two or more proceedings be heard together.¹⁴ This remedy may be appropriate where two or more matters are factually and legally related.¹⁵ With respect to the similar remedy of consolidation, the Federal Court has held that relevant factors may also include the stage of the proceedings, whether either party would be prejudiced, and whether it would promote the expeditious and inexpensive determination of the matters on their merits.¹⁶

12. In the current case, the central legal issue is distinct and narrow. The appellant sought a declaration that the rejection of his amendment application by Health Canada for want of original signatures, and the resulting delay in granting the requested

¹³ Direction of Stratas J.A. in *Jackes v HMQ*, dated April 1, 2019, **RMR, Tab 4, p 16**

¹⁴ *Federal Courts Rules*, s 105(a)

¹⁵ *Janssen Inc v Abbvie Corp*, 2014 FCA 176, para 7, **Respondent's Book of Authorities ("RBOA"), Tab 1**

¹⁶ *Sanofi-Aventis Canada Inc v Novopharm Ltd*, 2009 FC 1285, paras 8, 9, 11, 15, 16, **RBOA, Tab 2**; *Garford Pty Ltd v Villgren*, 2004 FC 1550, para 13, **RBOA, Tab 3**

amendments, is unconstitutional. He makes no allegations related to processing times generally, nor does he seek relief in that regard.

13. In addition, the appellant failed to file a requisition for hearing. He has not sought an extension of time to do so, and has not provided any explanation for the delay. To the extent that the Court requires the appellant to seek an extension to file his requisition, this would unnecessarily delay the Harris appeal, as well as the more than 250 claims that are currently stayed in Federal Court pending that appeal.

PART IV – ORDER SOUGHT

14. Canada requests that the motion be dismissed, with costs. Canada requests that costs be fixed at \$500, inclusive of disbursements, in accordance with the Bill of Costs filed together with Canada's motion record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated at Toronto this April 17, 2019



ATTORNEY GENERAL OF CANADA

Department of Justice
Ontario Regional Office
120 Adelaide Street West, Suite 400
Toronto, Ontario M5H 1T1

Per: Andrea Bourke / Jon Bricker
Tel: (647) 256-7471 / (647) 256-7473
Email: Andrea.Bourke@justice.gc.ca /
Jon.Bricker@justice.gc.ca

Solicitor for the Respondent, Her Majesty the
Queen

TO: THE ADMINISTRATOR
Federal Court of Appeal
180 Queen Street West

Suite 200
Toronto, Ontario
M5V 3L6

AND TO: ARTHUR JACKES
2175 Marine Drive
Suite 501
Oakville, Ontario
L6L 5L5
Email: stayalive2@hotmail.com

Appellant

TAB K

Court File No.: A-294-18

FEDERAL COURT OF APPEAL

BETWEEN:

ARTHUR JACKES

and

HER MAJESTY THE QUEEN

Respondent

This is Exhibit "K" mentioned and referred to in the affidavit of *Maria Barbieri*
Sworn before me this *4th* day of *June* A.D. 20*19*
A Commissioner for taking affidavits

Alan Lee
Appellant

REPLY

1. Respondent argues that Appellant seeking an extension of time to file a Requisition for Hearing with the Harris appeal (A-258-18) would unnecessarily delay that appeal, as well as the more than 250 claims that are currently stayed in Federal Court pending that appeal.

2. The extension of time to file my own Requisition will be done but not if this requisition to be slated with Harris is granted.

3. The Crown does not oppose the appeal of Igor Mozajko (A-339-18) being heard with Harris should the Court permit the Harris memorandum to be used for both appeals.

4. I have my own memorandum on the same issue covered in Harris ready to go and since Harris represents others with the same issue as mine, we should be heard together.

5. It would be a waste of party and judicial resources not to deal with the same issue for all sets of facts.

6. Respondent should not be awarded costs for having opposed a motion to save party and judicial resources.

Dated at Oakville on Monday April 29 2019.



For the Appellant

Arthur Jackes

501-2175 Marine Dr.

Oakville, Ontario, L6L 5L5

289-834-4334

stayalive2@hotmail.com

For the Respondent:

Attorney General for Canada

120 Adelaide St. W.

Toronto, ON, M5H 1T1

Jon Bricker

Court File No.: A-294-18

FEDERAL COURT OF APPEAL

BETWEEN

Arthur Jackes
Appellant

and

Her Majesty The Queen
Respondent

REPLY

For the Appellant:
Arthur Jackes
501-2175 Marine Dr.
Oakville, Ontario, L6L 5L5
289-834-4334
stayalive2@hotmail.com

TAB L

Federal Court of Appeal



Cour d'appel fédérale

Date: 20190513

Docket: A-294-18

Ottawa, Ontario, May 13, 2019

Present: GAUTHIER J.A.

BETWEEN:

This is Exhibit "L" mentioned and
referred to in the affidavit of

Maria Barbieri
Sworn before me this *4th* day of
June A.D. 20*19*
A Commissioner for taking affidavits

Arthur Jackes
ARTHUR JACKES

Appellant

and

HER MAJESTY THE QUEEN

Respondent

ORDER

UPON the appellant's motion made in writing requesting that the appeal be expedited and set down for hearing, together with the appeal in *Allan Harris v. Attorney General of Canada* (A-258-18);

HAVING reviewed the materials filed by the parties, including the reply filed late by the appellant;

UPON considering the direction of Stratas J.A. dated April 1, 2019, and that the appeal in A-258-18 will be heard in Vancouver during the week of June 24, 2019;

UPON noting that the explanations provided by Mr. Jackes do not add anything significant in respect of the concerns raised by Stratas J.A. when he issued his direction on April 1, 2019;

UPON considering that at this stage, no Requisition for a Hearing has been filed in the present appeal. Thus, it is not even clear if Mr. Jackes is available that week. I have carefully reviewed the two decisions that are the subject of both appeals and reviewed the files' history before the Federal Court, as set out in the respondent's responding record. It is clear that Mr. Jackes always insisted to proceed on his own, contrary to the many other files where the applicants were willing to have their proceedings stayed, while Mr. Harris' application, the lead file, proceeded. In fact, the Appellant expressly requested to be heard before the Federal Court;

UPON determining that, like Stratas J.A., I am not satisfied that this appeal should be expedited and set for a hearing together with A-258-18. The Court is not satisfied that these appeals, which were filed at different locations, and involve different issues, even if related, should be heard together or one after the other;

THIS COURT ORDERS that the motion is dismissed.

"Johanne Gauthier"

J.A.

TAB M

Wright, Wendy

From: WORK OF ART <StayAlive2@hotmail.com>
Sent: Friday, May 17, 2019 12:57 PM
To: Wright, Wendy
Subject: What Dates are you NOT available to hear my appeal in the next 3 months?
Attachments: deliarlr.pdf; ATT00001.txt

This is Exhibit "M" mentioned and
referred to in the affidavit of

Maria Barbieri

Sworn before me this *4th* day of

June A.D. 20*19*

A Commissioner for taking affidavits

Alvin Ricci

Arthur Jackes
501-2175 Marine Dr.
Oakville, Ontario, L6L 5L5
289-834-4334 stayalive2@hotmail.com

May 17 17 2019

Wendy Wright
Attorney General for Canada
400-120 Adelaide St. W,
Toronto. M5H 1T1
wendy.wright@justice.gc.ca

Dear Ms. Wright:

Re: File No: A-294-18

Could you please inform me what dates you would not be available for the hearing of my appeal over the next 3 months.



Art Jackes

TAB N

Wright, Wendy

From: Wright, Wendy
Sent: Friday, May 17, 2019 3:18 PM
To: 'WORK OF ART'
Cc: Barbieri, Maria
Subject: RE: What Dates are you NOT available to hear my appeal in the next 3 months?
Attachments: JACKES - Request for availability - May 17, 2019.pdf

Good Afternoon Mr. Jackes,

Please see the attached letter.

Yours Truly,

Wendy Wright
 Counsel | Avocat
 National Litigation Sector | Secteur national du contentieux Department of Justice Canada | Ministère de la Justice
 Canada Ontario Regional Office | Bureau régional de l'Ontario
 120 Adelaide Street West
 Suite #400
 Toronto, Ontario M5H 1T1
 Tel.: 647-256-0577
 Fax: 416-952-4518
 wendy.wright@justice.gc.ca
 Government of Canada | Gouvernement du Canada

We have moved! Please update your records accordingly. P Thank you for thinking of the environment before printing this email I Merci de penser à l'environnement avant d'imprimer ce courriel CONFIDENTIALITY NOTICE: The contents of this electronic mail message are confidential and strictly reserved for the sole use of its intended recipients. This message may contain information protected by the solicitor-client privilege. If you receive this message in error, please notify the sender immediately and delete the original message as well as all copies. Any disclosure, copying, distribution or reliance on the contents of the information is strictly prohibited. Thank you.

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-----Original Message-----

From: WORK OF ART <StayAlive2@hotmail.com>
 Sent: Friday, May 17, 2019 12:57 PM
 To: Wright, Wendy <Wendy.Wright@justice.gc.ca>
 Subject: What Dates are you NOT available to hear my appeal in the next 3 months?

This is Exhibit "N" mentioned and referred to in the affidavit of

Maria Barbieri

Sworn before me this 4th day of

June

A.D. 2019

A Commissioner for taking affidavits

Alvin Rice



Department of Justice
Canada

Ontario Regional Office
120 Adelaide Street West
Suite #400
Toronto, Ontario
M5H 1T1

Ministère de la Justice
Canada

Bureau régional de l'Ontario
120, rue Adelaide Ouest, pièce 400
Toronto, Ontario
M5H 1T1

Tel: 647-256-0577
Fax: 416-973-0809
Email:

Our File: 10057057
Notre dossier:

May 17, 2019

VIA EMAIL - STAYALIVE2@HOTMAIL.COM

Arthur Jackes
2175 Marine Drive
Suite 501
Oakville, Ontario
L6L 5L5

Dear Sir:

Re: **JACKES, Arthur v. Her Majesty the Queen (9321391) APPEAL 1**
Court File No.: A-294-18

I received your email from earlier today where you requested the dates which I would not be available for the hearing of your appeal.

I note that the deadline to file the requisition for a hearing of the appeal has passed. It is my understanding the Court will not accept a requisition unless you first seek an extension of time to file the Requisition.

In the event that the Court grants you an extension of time, I will provide you with my availability for hearing at that time.

Yours truly,

Wendy Wright
Counsel
National Litigation Sector

TAB 0

Federal Court of Appeal



Cour d'appel fédérale

Date: 20190522

Docket: A-258-18

Ottawa, Ontario, May 22, 2019.

This is Exhibit "0" mentioned and
referred to in the affidavit of

Maria Barbieri
Sworn before me this *4th* day of
June A.D. 20*19*

BETWEEN:

A Commissioner for taking affidavits

Allan J. Harris

ALLAN J. HARRIS

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

ORDER

The Appeal and the Cross-Appeal are set down for hearing at the Pacific Centre, 701 West Georgia Street, 6th Floor, Vancouver, British Columbia, commencing at 9:30 a.m., on Thursday, June 27, 2019, for a duration not to exceed three hours.

"Danielle Lanteigne"

 Judicial Administrator

TAB 2

A-294-18

FEDERAL COURT OF APPEAL

BETWEEN:

ARTHUR JACKESAppellant
(Moving Party)

and

HER MAJESTY THE QUEENRespondent
(Responding Party)**RESPONDENT'S WRITTEN REPRESENTATIONS**

(Appellant's Motion for an Extension of time to file a requisition for hearing)

PART I – STATEMENT OF FACTS**A. OVERVIEW**

1. This motion should be dismissed. The appellant has failed to satisfy the test for an extension of time to file his requisition for hearing and the interests of justice in this case do not warrant an extension.

2. However, in the event the appellant is permitted to file a late requisition, his request that the appeal be heard with the already scheduled appeal of *Allan J Harris v Attorney General of Canada*, Court file No. A-258-18 (the "Harris appeal") should be dismissed. This Court has previously refused that relief and the appellant has provided no basis for revisiting that conclusion.

B. THE JACKES CLAIM AND APPEAL

3. The appellant filed a statement of claim on October 31, 2017. The claim alleged that the appellant applied to amend his registration to produce cannabis for medical

purposes, but that Health Canada rejected his application as it included non-original signatures.¹ The sole relief sought was a declaration “that delaying his application...for over 13 weeks by rejecting the originality of signatures in black ink and suggesting a new application be signed in blue ink when Licensed Producer Security Clearance Applicants are prohibited from using blue ink is an unconstitutional violation of the patient’s s. 7 Right to Life.”²

4. Canada brought a motion to strike the claim. By order dated August 28, 2018, the case-management judge, the Honourable Mr. Justice Brown, granted Canada’s motion and struck the claim without leave to amend. Brown J. found that it was plain and obvious that the claim did not disclose a cause of action, as the rejection of the appellant’s application by Health Canada and suggestion that he re-submit an application using blue ink, was at most a trivial violation of his Charter rights.³

5. The appellant appealed Brown J.’s decision, seeking a hearing in Toronto.⁴ The appellant filed an appeal book and the parties filed the required memoranda of fact and law. However, the appellant failed to serve and file his requisition for hearing by the February 25, 2019, deadline.⁵

6. On March 13, 2019, the appellant sought to file a late requisition for hearing and a request that his appeal be heard together with the Harris appeal, which arises from a separate motion to strike another claim that is also being case-managed by

¹ Statement of Claim in *Jackes v HMQ* (T-1654-17), ¶ 2-7, Exhibit A to the Affidavit of Maria Barbieri, sworn, May 30, 2019 (“Barbieri Affidavit”), **Respondent’s Motion Record (“RMR”), Tab 1A, p 5-8**

² *Ibid*, para 1, **RMR, Tab 1, p 1**

³ Order of Brown J. in *Jackes v HMQ*, dated August 28, 2018, Exhibit C to the Barbieri Affidavit, **RMR, Tab 2C, p 15-17**

⁴ Notice of Appeal in *Jackes v HMQ* (A-294-18), Exhibit D to the Barbieri Affidavit, **RMR, Tab 2D, p 18-19**

⁵ *Federal Courts Rules*, SOR/98-106, s 347(1) (“*Federal Courts Rules*”)

Brown J.⁶ As the Harris appeal will be heard in Vancouver, the appellant proposed that he attend by teleconference.

7. Canada responded to this correspondence on March 15, 2019. In respect of the requisition, Canada noted that it was out of time and that the appellant had not sought an extension. Canada also noted that it had not been consulted on the proposed hearing dates listed in the requisition. Regarding the request to have the matter heard with the Harris appeal, Canada opposed that relief, noting the Harris appeal arose from a different Federal Court decision and that the appeals were to be heard in different cities.⁷

8. The appellant's late requisition was not accepted for filing.⁸ By Direction dated April 1, 2019, this Court also denied the appellant's request, and a similar request by the respondent to another appeal, to have their appeals heard with the Harris appeal. Stratas J.A. observed that the appeals involve different plaintiffs, different first-instance decisions, were likely to be heard in different locations and were at different stages of progress. To the extent that a ruling in one appeal affected the others, Stratas J.A. observed that this could be brought to the attention of the panel hearing the later appeal. He directed any party desiring procedural relief to file a formal motion in writing.⁹

⁶ Appellant's letter dated March 12, 2019, Exhibit E to the Barbieri Affidavit, **RMR, Tab 2E p 24**

⁷ Canada's letter dated March 15, 2019, Exhibit F to the Barbieri Affidavit, **RMR, Tab 2F p 28-29**

⁸ Appellant's letter, dated March 18, 2019, Exhibit G to the Barbieri Affidavit, **RMR, Tab 2G p 30-31**

⁹ Direction of Stratas J.A. in *Jackes v HMQ*, dated April 1, 2019, Exhibit H to the Barbieri Affidavit **RMR, Tab 2H, p 32**

9. On April 8, 2019, the appellant served and filed a motion in writing requesting that his appeal be expedited and heard with the Harris appeal.¹⁰ The appellant did not seek an extension of time to file the late requisition for hearing. Canada opposed this motion.¹¹

10. On May 12, 2019, this Court dismissed the appellant's motion. Gauthier J. found that the concerns raised by Stratas J.A. in his April 1, 2019, Direction remained, and that the Court was unsatisfied that the appeals, which were filed at different locations and involved different issues, should be heard together.¹²

11. By letter dated May 17, 2019, the appellant requested Canada's availability for the hearing of the appeal.¹³ On May 17, 2019, Canada responded to the appellant, once again indicating that the deadline to file a requisition for hearing had passed and that the appellant would need an extension of time from the Court. Counsel indicated that she would provide her availability for an appeal hearing if the appellant successfully obtained an extension.¹⁴

12. On May 22, 2019, the Court directed that the Harris appeal be heard on June 27, 2019, in Vancouver.¹⁵ On May 27, 2019, the appellant brought the current

¹⁰ Appellant's Motion Record, dated April 8, 2019, Exhibit I to the Barbieri Affidavit **RMR, Tab 2I, p 33-41**

¹¹ Respondent's Written Representations on the Appellant's Motion, Exhibit J to the Barbieri Affidavit **RMR, Tab 2J, p 42-47**

¹² Order of Justice Gauthier, in *Jackes v. HMQ*, dated May 13, 2019, Exhibit L to the Barbieri Affidavit, **RMR, Tab 2L, p 51-52**

¹³ Appellant's letter, dated May 17, 2019, Exhibit M to the Barbieri Affidavit, **RMR, Tab 2M, p 54**

¹⁴ Canada's letter, dated May 17, 2019, Exhibit N to the Barbieri Affidavit, **RMR, Tab 2N, p 56**

¹⁵ Order in *Allan J Harris v Attorney General of Canada*, (A-258-18), dated May 22, 2019, Exhibit O to the Barbieri Affidavit, **RMR, Tab 2O, p 57**

motion seeking, for the first time, an extension of time to file his requisition and seeking, once again, to have his appeal heard with the Harris appeal.¹⁶

PART II – POINTS IN ISSUE

13. The issues in this motion are:

- (a) whether the appellant should be granted an extension of time to file his requisition for hearing; and
- (b) if this Court grants an extension, whether the appeal should be heard together with the Harris appeal.

PART III – SUBMISSIONS

14. The request for an extension of time should be denied as the appellant has not established that the interests of justice require an extension. However, in the event this Court grants an extension, this appeal should not be heard with the Harris appeal. There is no reason to depart from this Court's two prior decisions denying that relief.

A. NO EXTENSION OF TIME SHOULD BE GRANTED

15. In deciding whether to grant an extension of time, the Court must consider: (i) whether there has been a continuing intention to pursue the appeal; (ii) whether the appeal has some merit; (iii) whether any prejudice arises from the delay; and (iv) whether there is a reasonable explanation for the delay.¹⁷ This four-part test is conjunctive. If the appellant fails to establish one of the four parts, granting an extension of time is not in the interests of justice.¹⁸

¹⁶ Appellant's Notice of Motion, **Appellant's Motion Record**, p 3.

¹⁷ *Canada (Attorney General) v Hennelly*, [1999] FCJ No 846 (*Hennelly*), at ¶ 3.

¹⁸ *Huang v Canada (Public Safety and Emergency Preparedness)*, 2015 FC 28, ¶ 76

16. In the current case, the appellant has not demonstrated that the appeal has merit, nor has he explained the delay in filing a requisition for hearing. As such, the interests of justice do not require an extension. The appellant's request should be dismissed.

1) The appeal lacks merit

17. Brown J. properly struck the appellant's claim. Brown J. concluded that the alleged state action – the rejection of the plaintiff's application to amend his registration to produce cannabis, and the suggestion that he submit a new application signed in blue ink – did not violate section 7, or if it did, that any violation was trivial.¹⁹ The appellant has not identified, let alone established, a reviewable error in this conclusion and there is no merit to his appeal.

2) No explanation for the delay

18. The requisition for a hearing was due on February 25, 2019. The appellant first sought to file a requisition on March 13, 2019. No explanation for this delay was provided. Notwithstanding that his March 13, 2019, requisition for hearing was rejected, and Canada's stated position on March 15, 2019, that the appellant must move to extend the time for filing a requisition, the appellant did not seek an extension of time in his April 8, 2019, motion. He delayed in bringing the present motion until May 17, 2019. No explanation for this delay has been provided. An extension is not appropriate in these circumstances.

B. IN THE ALTERNATIVE, THE REQUEST FOR A JOINT HEARING SHOULD BE DISMISSED

19. In the event this Court grants an extension of time, the appellant's request that his appeal be heard with the Harris appeal should be dismissed. The appellant has suggested that he attend the Harris appeal, which is scheduled to proceed on June 27, 2019, in Vancouver, by telephone.

¹⁹ Order of Brown J. in *Jackes v HMQ*, dated August 28, 2018, Exhibit C to the Barbieri Affidavit, **RMR, Tab 2C, p 17**

20. Two prior requests by the appellant to have his appeal heard with the Harris appeal have been dismissed. In the first decision, Stratas J.A. noted that the Harris appeal was ready for hearing, that the various appeals before him were at different stages, were likely to be heard in different places, and involved different issues. In the second, Gauthier J. was not satisfied that the appeals should be heard together. Gauthier J. noted that the appellant had “always insisted to proceed on his own, contrary to the many other files where the applicants were willing to have their proceedings stayed, while Mr. Harris’ application, the lead file, proceeded. In fact, the appellant expressly requested to be heard before the Federal Court.”²⁰

21. There are no new circumstances that would warrant a departure from the Court’s earlier decisions. Moreover, while Canada has filed its book of statutes, regulations and authorities in the Harris appeal, the parties have not done so in the present appeal, and the deadline for them to do so if this appeal were to be heard with the Harris appeal has now passed.²¹ The appellant’s request to have his appeal heard with the Harris appeal should be dismissed.

PART IV – ORDER SOUGHT

22. Canada requests an order dismissing both the motion and this appeal, both with costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated at Toronto this June 6, 2019.



Of Counsel for the Respondent

ATTORNEY GENERAL OF CANADA

²⁰ Order of Justice Gauthier, *supra* note 12 at ¶ 6.

²¹ *Federal Courts Rules*, s 348(1),(2)

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PART V – LIST OF AUTHORITIES

1. *Canada (Attorney General) v Hennelly*, [1999] F.C.J. No. 846
2. *Huang v Canada (Public Safety and Emergency Preparedness)*, 2015 FC 28

PART VI – STATUTES AND REGULATIONS

<i>Federal Courts Rules (SOR/98-106)</i>	<i>Règles des Cours fédérales (DORS/98-106)</i>
<p>347 (1) Within 20 days after service of the respondent's memorandum of fact and law or 20 days after the expiration of the time for service of the respondent's memorandum of fact and law, whichever is the earlier, an appellant shall serve and file a requisition in Form 347 requesting that a date be set for the hearing of the appeal</p>	<p>347 (1) Dans les 20 jours après avoir reçu signification du mémoire de l'intimé ou dans les 20 jours suivant l'expiration du délai de signification de ce mémoire, selon celui de ces délais qui est antérieur à l'autre, l'appellant signifie et dépose une demande d'audience, établie selon la formule 347, afin qu'une date soit fixée pour l'audition de l'appel.</p>
<p>348 (1) Subject to subsection (2), at least 30 days before the hearing date, the parties shall file</p> <ul style="list-style-type: none"> ○ (a) if the appeal is brought in the Federal Court, an electronic copy of or three paper copies of a joint book of statutes, regulations and authorities; and ○ (b) if the appeal is brought in the Federal Court of Appeal, an electronic copy of or five paper copies of a joint book of statutes, regulations and authorities. <p>(2) If the parties cannot agree on a joint book of statutes, regulations and authorities, they shall file separate books in lieu thereof, without reproducing documents included in the book of another party.</p>	<p>348 (1) Sous réserve du paragraphe (2), au moins 30 jours avant la date de l'audition de l'appel, les parties déposent :</p> <ul style="list-style-type: none"> ○ a) une copie électronique ou trois copies papier du cahier conjoint des lois, règlements, jurisprudence et doctrine, s'il s'agit d'un appel devant la Cour fédérale; ○ b) une copie électronique ou cinq copies papier du cahier conjoint des lois, règlements, jurisprudence et doctrine, s'il s'agit d'un appel devant la Cour d'appel fédérale. <p>(2) Si les parties ne peuvent s'entendre sur un cahier conjoint, elles déposent chacune un cahier distinct des lois, règlements, jurisprudence et doctrine, en évitant toutefois de reproduire les documents déjà compris dans le cahier d'une autre partie.</p>

ARTHUR JACKES

AND
Appellant
(Moving Party)

HER MAJESTY THE QUEEN

Respondent
(Responding Party)

FEDERAL COURT OF APPEAL

RESPONDING MOTION RECORD OF THE RESPONDENT

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