Most Negative Treatment: Application/Notice of Appeal
Most Recent Application/Notice of Appeal: Grenon v. Canada Revenue Agency | 2017 CarswellAlta 1714, 2017 CarswellAlta 1715 | (S.C.C., Sep 21, 2017)

2017 ABCA 96
Alberta Court of Appeal

Grenon v. Canada Revenue Agency

2017 CarswellAlta 493, 2017 ABCA 96, [2017] 6 W.W.R. 146, [2017] A.W.L.D. 1641, [2017] A.W.L.D. 1669, [2017] A.W.L.D. 1692, [2017] A.W.L.D. 1693, [2017] A.W.L.D. 1694, 2017 D.T.C. 5111, 276 A.C.W.S. (3d) 970, 36 C.C.L.T. (4th) 232, 49 Alta. L.R. (6th) 228

James T. Grenon (Appellant / Plaintiff) and Canada Revenue Agency, Attorney General for Canada, Scott Shelton, Gordon Lawrence, Derek Carroll, Gordon Ross, Helen Little, Andre Baril, Jane Doe, John Doe, Bruce Lo, Lizy Jacob and Judith Thain (Respondents / Defendants)

Barbara Lea Veldhuis, Frederica Schutz, Michelle Crighton JJ.A.

Heard: March 7, 2017
Judgment: March 27, 2017
Docket: Calgary Appeal 1601-0132-AC

Proceedings: reversing in part *Grenon v. Canada Revenue Agency* (2016), 2016 CarswellAlta 848, 2016 ABQB 260, 2016 D.T.C. 5061, 29 C.C.L.T. (4th) 122, 35 Alta. L.R. (6th) 139, [2016] 8 W.W.R. 795, C. Dario J. (Alta. Q.B.)

Counsel: B.C. Duguid, Q.C., L. Warner, for Appellant
C. Du, I. Wiebe, for Respondents

Subject: Civil Practice and Procedure; Contracts; Corporate and Commercial; Estates and Trusts; Tax — Miscellaneous; Torts
Related Abridgment Classifications
Civil practice and procedure
III Parties
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XVI.2.a Duty of care

Headnote

Torts --- Negligence — Duty and standard of care — Duty of care

Appellant was taxpayer who brought action against defendant Canada Revenue Agency (CRA) — CRA moved to have statement of claim struck, either for failure to disclose cause of action or lack of jurisdiction — CRA was successful in having taxpayer's claims struck, except for misfeasance claim which was stayed pending separate Tax Court proceedings — Taxpayer appealed from portion of judgment where claims were struck — Appeal allowed in part — Private law duty of care did not exist in taxpayer actions such as this one — Creation of duty of care would be against public policy — Test was properly applied by motions judge.

Torts --- Interference with contractual relations — Elements of tort — General principles

Appellant was taxpayer who brought action against defendant Canada Revenue Agency (CRA) — CRA moved to have statement of claim struck, either for failure to disclose cause of action or lack of jurisdiction — CRA was successful in having taxpayer's claims struck, except for misfeasance claim which was stayed pending separate Tax Court proceedings — Taxpayer appealed from portion of judgment where claims were struck — Appeal allowed in part — There was reasonable chance that taxpayer would have become liable, whether or not reassessments were issued — There was no breach of contract or interference with contractual relations, in this situation.

Torts --- Misfeasance in public office — Elements of tort

Appellant was taxpayer who brought action against defendant Canada Revenue Agency (CRA) — CRA moved to have statement of claim struck, either for failure to disclose cause of action or lack of jurisdiction — CRA was successful in having taxpayer's claims struck, except for misfeasance claim which was stayed pending separate Tax Court proceedings — Taxpayer appealed from portion of judgment where claims were struck — Appeal allowed in part — Private law duty of care did not exist in taxpayer actions such as this one — Creation of duty of care would be against public policy — Misfeasance claim involved matters within knowledge of Tax Court — Tax Court's decision would inform ultimate decision of Federal Court, so that staying of this portion of claim was proper remedy — Taxpayer could bring separate application to amend his claim.

Judges and courts --- Jurisdiction — Exchequer and Federal Courts — General principles

Appellant was taxpayer who brought action against defendant Canada Revenue Agency (CRA) — CRA moved to have statement of claim struck, either for failure to disclose cause of action or lack of jurisdiction — CRA was successful in having taxpayer's claims struck, except for misfeasance claim which was stayed pending separate Tax Court proceedings — Taxpayer appealed from portion of judgment where claims were struck — Appeal allowed in part — Motions judge properly struck paragraphs from claim, that were related to matters within Federal Court's jurisdiction — Matters that were within Tax Court's jurisdiction were premature, but in circumstances were not to be struck.

Civil practice and procedure --- Parties — Standing

Appellant was taxpayer who brought action against defendant Canada Revenue Agency (CRA) — CRA moved to have statement of claim struck, either for failure to disclose cause of action or lack of jurisdiction — CRA was successful in having taxpayer's claims struck, except for misfeasance claim which was stayed pending separate Tax Court proceedings — Taxpayer appealed from portion of judgment where claims were struck — Appeal allowed in part — Private law duty of care did not exist in taxpayer actions such as this one — Creation of duty of care would be against public policy — Test was properly applied by motions judge — Motions judge did err in finding that taxpayer was not proper party to bring action, involving trust — Any deficiencies in this pleading could be cured by amendment.

Table of Authorities

Cases considered:

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Bram Enterprises Ltd. v. A.I. Enterprises Ltd. (2014), 2014 SCC 12, 2014 CarswellNB 17, 2014 CarswellNB 18, 366 D.L.R. (4th) 573, 2014 CSC 12, 453 N.R. 273, 48 C.P.C. (7th) 227, 1079 A.P.R. 1, 416 N.B.R. (2d) 1, 21 B.L.R. (5th) 173, (sub nom. *A.I. Enterprises Ltd. v. Bram Enterprises Ltd.*) [2014] 1 S.C.R. 177, 7 C.C.L.T. (4th) 1 (S.C.C.) — considered

Canada (Attorney General) v. TeleZone Inc. (2010), 2010 SCC 62, 2010 CarswellOnt 9657, 2010 CarswellOnt 9658, 96 C.L.R. (3d) 1, 13 Admin. L.R. (5th) 24, 56 C.E.L.R. (3d) 1, 327 D.L.R. (4th) 527, 410 N.R. 1, (sub nom. *TeleZone Inc. v. Canada (Attorney General)*) 273 O.A.C. 1, [2010] 3 S.C.R. 585, (sub nom. *TeleZone Inc. v. Canada (Attorney General)*) 108 O.R. (3d) 239 (S.C.C.) — distinguished

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Ernst v. EnCana Corp. (2014), 2014 ABCA 285, 2014 CarswellAlta 1588, 85 C.E.L.R. (3d) 39, [2014] 11 W.W.R. 496, 75 Admin. L.R. (5th) 162, 580 A.R. 341, 620 W.A.C. 341, 12 C.C.L.T. (4th) 274, 319 C.R.R. (2d) 309, 2 Alta. L.R. (6th) 293 (Alta. C.A.) — referred to

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Statutes considered:

Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11

Generally — referred to

Code civil du Québec, L.Q. 1991, c. 64

art. 7 — considered

Income Tax Act, R.S.C. 1985, c. 1 (5th Supp.)

Generally — referred to

s. 159(2) — considered

s. 162 — considered

s. 225.2 — referred to

s. 231 — referred to

s. 239 — referred to

Rules considered:

Alberta Rules of Court, Alta. Reg. 124/2010

Generally — referred to

R. 1.2(2)(a) — considered

R. 1.2(2)(b) — considered

R. 3.68(2)(b) — considered

R. 3.68(4)(b) — considered

APPEAL by taxpayer, from judgment reported at *Grenon v. Canada Revenue Agency* (2016), 2016 ABQB 260, 2016 CarswellAlta 848, 35 Alta. L.R. (6th) 139, [2016] 8 W.W.R. 795, 29 C.C.L.T. (4th) 122, 2016 D.T.C. 5061 (Alta. Q.B.), dismissing majority of statement of claim against respondent Canada Revenue Agency.

***Per curiam*:**

Introduction and Background

1 The appellant appeals from a decision striking all causes of action from the statement of claim except the appellant's misfeasance of public office claim which the chambers judge stayed pending the outcome of proceedings in the Tax Court of Canada. The appellant, a taxpayer and annuitant of two RRSP trusts, issued the statement of claim against the respondents with whom he had been, and continues to be, engaged in a protracted taxation dispute. The respondents are the Canada Revenue Agency ("CRA") and certain of its personnel who were involved in different capacities in an audit involving the appellant and the RRSP trusts. At the time this appeal was argued, the validity of certain tax assessments made against the appellant — and which ultimately are the genesis of his various complaints against the respondents — was still before the Tax Court of Canada.

2 The respondents applied pursuant to rule 3.68(b) of the *Alberta Rules of Court* to strike certain parts of the appellant's statement of claim on the grounds that the statement of claim either failed to disclose a cause of action for the matters alleged or, further, because they dealt with issues that were within the exclusive jurisdiction of the Tax Court and the Federal Court of Canada.

Standard of Review

3 There is no dispute between the parties regarding the standard of review.

4 Whether a pleading discloses a cause of action is a question of law reviewable on a correctness standard. However, the assessment of the facts, his or her application of the law to those facts, and the ultimate determination as to whether summary resolution is appropriate are all entitled to deference: *Hryniak v. Mauldin*, 2014 SCC 7 (S.C.C.) at paras 81-4, [2014] 1 S.C.R. 87 (S.C.C.); *Amack v. Yu*, 2015 ABCA 147 (Alta. C.A.) at para 27. The decision to strike a claim is discretionary and subject to the reasonableness standard of review: *Nammo v. Canada*, 2015 ABCA 389 at para 7, 609 A.R. 189 (Alta. C.A.); *Lameman v. Alberta*, 2013 ABCA 148 at para 11, 553 A.R. 44 (Alta. C.A.).

The test for striking a claim

5 Rule 3.68(2)(b) permits a Court to strike out all or any part of a claim where the pleading discloses no reasonable claim in the sense that there is no reasonable prospect the claim will succeed.

6 When applying the test under r 3.68(2)(b), the Court must accept the allegations of fact as true except to the extent the allegations are based on assumptions or speculations or where they are patently ridiculous or incapable of proof. Moreover, the Court must err on the side of generosity in applying the test and permit novel, but arguable, actions to proceed: *Knight v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42 at paras 19-21, [2011] 3 S.C.R. 45 (S.C.C.); *Ernst v. EnCana Corp.*, 2014 ABCA 285 at para 14, 580 A.R. 341 (Alta. C.A.), aff'd 2017 SCC 1 (S.C.C.).

7 That is consistent with the underlying philosophy of the *Alberta Rules of Court*, including that the rules are intended to be used to identify the real issues in dispute and to facilitate the quickest means of resolving a claim at the least expense: r 1.2(2)(a) and (b). The appellant generally concedes that the chambers judge correctly stated the test for striking out pleadings but argues that she misapplied it in several respects.

Did the chambers judge err when she struck claims in negligence?

8 The primary thrust of the appellant's argument on appeal is directed towards the decision to strike the negligence claim on the basis that a *prima facie* duty of care does not exist between the appellant and the respondents. There are two prongs to this argument. The appellant argues first that, while this is an evolving area of the law, it is not a novel claim *per se* since existing jurisprudence has now recognized the duty of care in such circumstances. As such, he argues that the chambers judge need not have applied the *Cooper-Anns* test at all, but should simply have allowed the claim to proceed and erred in not doing so.

9 Alternatively, having regard to the *Cooper-Anns* test, the appellant argues that, even if case law had not previously recognized an analogous duty, his interactions with the respondents in this case gave rise to an arguable duty of care. That duty should not, he says, be limited by any external policy considerations which, in any event, are best left for the full evidentiary record that is available at trial.

10 In our view, the first argument overreaches the existing jurisprudence while the second argument is based on several flawed analogies. As such, neither argument has merit. Each will be addressed in turn.

11 The appellant emphasizes two decisions where a duty of care was found to exist between the CRA and Canadian taxpayers: *Québec (Agence du revenu) c. Groupe Enico inc.*, 2016 QCCA 76 (C.A. Que.) and the trial decision in *Leroux v. Canada Revenue Agency*, 2014 BCSC 720, [2014] B.C.J. No. 780 (B.C. S.C.) (*Leroux Trial decision*). Neither case assists the appellant's argument on this point.

12 *Groupe Enico inc.* turned on the duty of good faith required under s 7 of Québec's *Civil Code* and, as the chambers judge concluded, is correctly distinguishable from the present case where there is no such statutory duty imposed on the CRA by the *Income Tax Act* ("*ITA*").

13 As for *Leroux* the trial judge conceded that a private law duty of care had not been recognized in circumstances analogous to the relationship between CRA and various taxpayers, and "in each case the Court refused to create one": *Leroux Trial decision* at para 300. He then, however, went on to find a duty of care by distinguishing those cases on the basis that "the reasoning in each of the cases was informed by the respective pleadings and the nature of the claims. None involved huge penalties". In our view, creating a duty based on the size of a monetary penalty provides insufficient footing — and bad policy — upon which to ground a private law duty of care. And a duty owed to all raises the spectre of indeterminate liability and other policy considerations discussed below.

14 The remaining cases provided involve applications to strike out such actions at the pleadings stage. Foremost among those decisions that did not strike are *Leroux v. Canada Revenue Agency*, 2012 BCCA 63, [2012] B.C.J. No. 235 (B.C. C.A.) (*Leroux Chambers decision*) and *McCreight v. Canada (Attorney General)*, 2013 ONCA 483, [2013] O.J. No. 3263 (Ont. C.A.). Conversely, other cases did strike: *783783 Alberta Ltd. v. Canada (Attorney General)*, 2010 ABCA 226, 482 A.R. 136 (Alta. C.A.); *Scheuer v. R.*, 2016 FCA 7, 480 N.R. 263 (F.C.A.); *Foote v. Canada (Attorney General)*, 2011 BCSC 1062, [2011] B.C.J. No. 1500 (B.C. S.C. [In Chambers]).

15 None of the striking cases is determinative of this question. The chambers judge correctly considered and distinguished the *Leroux Trial decision* and *Groupe Enico inc.* and was correct to apply the *Cooper-Anns* test, to which we now turn.

16 In several cases starting with *Cooper v. Hobart*, the Supreme Court of Canada has clarified the test for determining whether a private law duty of care ought to be extended in novel situations: *Cooper v. Hobart*, 2001 SCC 79, [2001] 3 S.C.R. 537 (S.C.C.); *Anns v. Merton London Borough Council* (1977), [1978] A.C. 728 (U.K. H.L.). Under the first stage, the question is not simply whether the circumstances pleaded disclose foreseeability of harm, but rather whether there is proximity sufficient to establish a *prima facie* duty of care. At that stage, the relationship between the parties is considered as are questions of policy "in the broad sense of that word": *Cooper* at para 30. The second stage asks whether, notwithstanding the proximity between the parties, there are any *residual* policy considerations which ought to negate or limit that duty of care.

17 In the regulatory context, the weight of authority is that a regulator does not owe a private law duty of care to plaintiffs who might be damaged by activities of regulated parties. Generally speaking, there is insufficient foreseeability and proximity to establish a private law duty of care in those situations. Even where a sufficiently proximate relationship is found, strong policy considerations militate against extending negligence to reach those situations: *Cooper*; *Edwards v. Law Society of Upper Canada*, 2001 SCC 80, [2001] 3 S.C.R. 562 (S.C.C.); *Knight v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42, [2011] 3 S.C.R. 45 (S.C.C.); *783783 Alberta Ltd. v. Canada (Attorney General)*, 2010 ABCA 226, 482 A.R. 136 (Alta. C.A.); *Los Angeles Salad Co. v. Canadian Food Inspection Agency*, 2013 BCCA 34, 40 B.C.L.R. (5th) 213 (B.C. C.A.); *Ernst v. EnCana Corp.*, 2014 ABCA 285, 580 A.R. 341 (Alta. C.A.) aff'd *Ernst v. Alberta Energy Regulator*, 2017 SCC 1, [2017] S.C.J. No. 1 (S.C.C.).

18 In the context of the CRA and the *ITA*, those policy considerations are grounded in the purposes of the *ITA*:

> ...The income tax system relies on self-reporting by taxpayers and the *Income Tax Act* gives the Minister and his delegates broad powers in supervising the scheme of assessing and auditing taxpayers. CRA and taxpayers have opposing interests. The relationship is not one where CRA auditors should be responsible for protecting taxpayers from losses arising from their assessments. In these circumstances, policy considerations would militate against a finding of proximity between CRA and individual taxpayers: see *783783 Alberta Ltd.*, [2010] A.J. No. 783, at paras. 45-46; *Syl Apps Secure Treatment Centre v. B.D.*, 2007 SCC 38 at para. 32.
>
> (*Leighton v. Canada (Attorney General)*, 2012 BCSC 961 at para 54, [2012] B.C.J. No. 1354 (B.C. S.C.))

19 Against that, however, the appellant argues that the CRA's targeted and intensive activities towards him repeatedly brought them and the appellant into direct contact and into the sphere of legal proximity. The appellant emphasizes that the *ITA* gives the CRA enormous powers which include the ability to search, seize and lay criminal charges (s 231, 239), the ability to freeze taxpayer's assets without notice (s 225.2), and the discretion to impose substantial penalties and interest (s 162). He argues that the CRA is authorized to "bring the full coercive power of the state to bear upon the taxpayer" and "engages the taxpayer's property interests, reputation, and sometimes personal freedom".

20 The appellant's argument is intended to squeeze the regulatory context of the CRA's audit authority into an exceptional circumstances such as those in *Hill v. Hamilton-Wentworth (Regional Municipality) Police Services Board*, 2007 SCC 41, [2007] 3 S.C.R. 129 (S.C.C.) where a private law duty of care was found to exist between police officers and a suspect identified for investigation and who was subsequently charged with an offence. To that end, the appellant argues that the chambers judge erred by distinguishing *Leroux* (Trial and Chambers decisions) and *McCreight* and in not giving full vigour to the *Hill v. Hamilton-Wentworth (Regional Municipality) Police Services Board* decision.

21 With respect, we disagree.

22 *Hill v. Hamilton-Wentworth (Regional Municipality) Police Services Board* does not assist the appellant beyond confirming the point that a government actor, exercising its powers under a statute with a public purpose, may bring itself into a relationship of proximity through its specific dealings with a plaintiff, a point not contested in this appeal or by this Court. *Hill v. Hamilton-Wentworth (Regional Municipality) Police Services Board* involved an exceptional set of circumstances. Moreover, there were particular considerations relevant to proximity and policy applicable to the

relationship in that case which are not present here. Those included the likelihood of imprisonment, the legal duties owed by the police under the *Charter*, and the importance of balancing the need for police to be able to investigate effectively with the protection of the fundamental rights of a suspect or accused person.

23 In *McCreight*, individual accountants faced charges under both the *ITA* and the *Criminal Code*. Relying on *Leroux* and *Hill v. Hamilton-Wentworth (Regional Municipality) Police Services Board*, the Court concluded that it was "not plain and obvious that a CRA investigator owes no such duty when operating under *ITA* provisions that attract criminal sanction and under the *Criminal Code*": *McCreight* at paras 60-62.

24 To the extent that *McCreight* involves the possibility of criminal sanction, the case is distinguishable and more analogous to the criminal investigation at issue in *Hill v. Hamilton-Wentworth (Regional Municipality) Police Services Board* than to the audit functions of the CRA. In our view, the chambers judge was correct to reach that conclusion. To the extent that the appellant argues *McCreight* purports to extend negligence beyond criminal investigations and further into the regulatory context to recognize an audit by the CRA under the *ITA* triggers a private law duty of care, we decline to follow it.

25 In our view, it is plain and obvious that an action in negligence cannot succeed. It is clear that, because of the inherently adverse relationship between auditors who are exercising a statutory function and taxpayers, a finding of sufficient proximity to ground a private law duty of care does not exist. The chambers judge correctly applied the *Cooper-Anns* test and considered foreseeability and proximity to reach the same conclusion. Not only is her decision entitled to deference, the chambers judge could have gone further to conclude that public policy considerations also militate against finding the existence of a *prima facie* duty of care in this case.

26 It is important to reiterate that questions of policy are relevant considerations at the first stage of the test. Part of the appellant's complaint is that the chambers judge did not perform a discrete analysis under both parts of *Cooper-Anns*. Rather, she referred to the foreseeability and proximity branch of the test at para 71, but only in a generalized way and in the context of her analysis of the cases provided to her by the parties. Doing so is not wrong in principle. Provided the proper balancing of the factors relevant to a duty of care is done, it may not make any practical difference where the policy issues are considered: *Cooper* at paras 25-28. The two stages are simply a means to an end and are not a formulaic exercise: "The important thing is that in deciding whether a duty of care lies, all relevant concerns should be considered": *Hill v. Hamilton-Wentworth (Regional Municipality) Police Services Board* at para 31. The chambers judge properly balanced the factors as part of her analysis and correctly struck the claim.

Did the chambers judge err in striking the claim for interference with contractual relations and knowing assistance in a breach of fiduciary duty?

27 The appellant argues that the chambers judge misinterpreted certain sections of the *ITA* and that her erroneous interpretation grounded her decision to strike the claim for interference with the appellant's contractual and fiduciary relationships with the RRSP trustees.

28 The essence of this tort is the "intentional infliction of economic harm by unlawful means" where "unlawful means" is conduct that would be actionable by the third party if the third party had suffered a loss: *Bram Enterprises Ltd. v. A.I. Enterprises Ltd.*, 2014 SCC 12, [2014] S.C.J. No. 12 (S.C.C.).

29 The appellant argues that he had no tax liability at the time the CRA interfered with the instructions he had earlier provided to the trust to move certain monies out of the trust for other purposes.

30 It is significant that the appellant and the trust were both being audited when the first proposal letter was issued. The chambers judge correctly concluded that both the trust and the appellant could "reasonably be expected to become liable" under the *ITA* whether or not reassessments had been issued. Assuming, without deciding that the chambers judge wrongly interpreted the deeming provisions in s 158(2) of the *ITA*, that error would not affect her conclusion that the clear meaning of s 159(2) of the *ITA* exposes the trustee to personal liability for amounts the taxpayer might reasonably

be expected to be liable, if the trustee distributes funds without first obtaining a clearance certificate. As an entity that is being audited, the trust has a legal obligation to comply with the relevant provisions of the *ITA* notwithstanding its relationship with the beneficiary of the trust. The chambers judge correctly struck those paragraphs in the statement of claim relevant to inducing breach of contract and knowing assistance in the breach of fiduciary duty.

Did the chambers judge err in striking the claim for the tort of abuse of process?

31 At its core, the appellant, in his statement of claim, complains that CRA used the provisions of the *ITA* to pressure him into paying taxes that he had no obligation to pay.

32 There is ample authority that supports the chambers judge's conclusion that the appellant's claim on the facts alleged is not sufficient to ground the tort of abuse of process.

33 The chambers judge recognized that the tort is to be narrowly construed and that bad faith or bad intentions will not be sufficient to ground the claim. In our view, the chambers judge correctly found that the improper objective had to be collateral to the legal proceedings themselves and correctly found that the appellant did not plead a definite act or threat in furtherance of some collateral or objective motive. Accordingly, she did not err in striking the paragraphs she did on that basis.

Did the chambers judge incorrectly conclude that certain claims should be struck because they are within the exclusive jurisdiction either of the Tax Court of Canada or the Federal Court of Canada?

34 The appellant argues that the decision to strike various claims on jurisdictional grounds ignores the jurisdiction of the Alberta Court of Queen's Bench to interpret the *ITA* where it is necessary in order to adjudicate a private claim that is within its jurisdiction. In that sense, the appellant argues the federal matters are merely ancillary to the private law claim.

35 The appellant also argues that the chambers judge erred in striking certain paragraphs from the statement of claim on the grounds they are within the exclusive jurisdiction of the Federal Court to control its own process.

36 As regards the proceedings in the Tax Court, the chambers judge correctly concluded that the appellant's claim regarding the validity of the reassessments is not ancillary to the proceedings in this Court. Rather, on the face of the pleadings, the validity of the assessments is an essential element of the appellant's claims. In our view, she properly considered and distinguished *Canada (Attorney General) v. TeleZone Inc.*, 2010 SCC 62, [2010] S.C.J. No. 62 (S.C.C.) wherein the validity of the assessment was conceded and applied *Johnson v. Minister of National Revenue*, 2015 FCA 51, 469 N.R. 326 (F.C.A.), *Johnson v. R.*, 2015 FCA 52, 470 N.R. 183 (F.C.A.) and *Roitman v. R.*, 2006 FCA 266, [2006] F.C.J. No. 1177 (F.C.A.). In *Roitman*, in particular, the Court found that the allegation of abuse depended on a finding that could only be made by the Tax Court, namely that the assessment was invalid.

37 The chambers judge observed that the allegations in the statement of claim were at best premature, but in all of the circumstances decided to strike them from the pleading. Her findings and the exercise of her discretion are entitled to deference.

38 Regarding the abuse of the Federal Court process, the chambers judge is correct that the Federal Court, notwithstanding it is a statutory Court, is still entitled to control its own process, including that of addressing the manner in which litigants use the Court's resources: *AB Hassle v. Apotex Inc.*, 2005 FC 234, [2005] 4 F.C.R. 229 (F.C.) and *Tractor Supply Co. of Texas L.P. v. TSC Stores L.P.*, 2009 FC 154, 341 F.T.R. 157 (Eng.) (F.C.), aff'd 2009 FCA 352, 399 N.R. 1 (F.C.A.). Accordingly, the chambers judge correctly struck the paragraphs she did on that basis.

Did the chambers judge err in concluding the appellant was not the proper party to sue on the trust's behalf?

39 The appellant argues the chambers judge erred in striking out certain paragraphs in the statement of claim relating to the RRSP trust on the grounds the appellant was not the proper party to bring the action. The appellant also objects to the chambers judge having referred to case law not provided to her by the parties in making that decision.

40 Regarding the second argument, it is apparent from the record that the respondents raised this issue and the appellant challenged the applicability of the rule in *Foss v. Harbottle* (1843), 67 E.R. 189 (Eng. V.-C.) to a trust. Neither party provided any authority to support or refute the applicability of the rule.

41 There is nothing improper in the chambers judge having considered the arguments, including any existing authorities, on the issue raised where the chambers judge in doing so does not raise any new issues that were not addressed by the parties. In doing so, she did not fall into a *Mian* error: *R. v. Mian*, 2014 SCC 54, [2014] 2 S.C.R. 689 (S.C.C.).

42 Regarding the first argument, the appellant argues that because the chambers judge recognized that the law respecting a beneficiary's authority to sue for wrongs related to a trust is unsettled and further that it may be difficult to differentiate independent losses from derivative losses, the claim ought to have been allowed to proceed as any deficiencies in the pleading could be cured by way of amendment. We agree that it can be inferred from the statement of claim that Mr. Grenon is the sole annuitant of the trust and that Mr. Grenon is alleging that the trust failed in its obligation to protect the trust property. The latter allegation is one of the recognized exceptions that could allow an annuitant to sue for losses occasioned by the trust. The chambers judge erred in principle in striking claims related to the trust or stemming from the reassessment of the trust.

Did the chambers judge err in staying the misfeasance claim?

43 The chambers judge's decision to stay the misfeasance in public office claim involves the exercise of judicial discretion. This Court will not interfere in the chambers judge's decision to stay the remaining portions of the claim unless it is clearly wrong such that it amounts to an injustice, the judge has misapprehended the facts or made an error in principle: *UCANU Manufacturing Corp. v. Graham Construction and Engineering Inc.*, 2015 ABCA 22 (Alta. C.A.) at para 6; *Alberta Treasury Branches v. Leahy*, 2000 ABCA 61 at para 10, 250 A.R. 327 (Alta. C.A.).

44 The chambers judge observed that much of the appellant's claim of misfeasance in public office is grounded in the invalidity of the assessment (given the alleged capricious use of CRA's taxing authority and the perversion of Court processes). There is no dispute that the validity of a tax assessment is within the exclusive jurisdiction of the Tax Court of Canada. A finding by the Tax Court regarding the validity of the assessment will necessarily inform the allegations of invalidity in the statement of claim and the chambers judge was, therefore, not clearly wrong to stay certain paragraphs on the basis that a finding by the Tax Court as to the validity of the assessments would be a necessary, but not sufficient, pre-condition to a finding of misfeasance.

Did the chambers judge err in incorrectly striking certain paragraphs without first considering their relevance to the misfeasance claim?

45 Finally, the appellant argues the chambers judge erred by striking certain paragraphs without considering whether they were still relevant to the misfeasance claim. The appellant argues that the consequence of the chambers judge's decision is that a disjointed statement of claim now remains.

46 It is a fair observation that the chambers judge did not consider whether the paragraphs she intended to strike from the statement of claim in relation to the other causes of action were nevertheless still relevant to the appellant's claim for misfeasance before deciding to strike them from the statement of claim.

47 The tort of misfeasance in public office requires proof of a deliberate and unlawful act by an individual engaged in public office that is intended to injure. Some of the paragraphs the chambers judge correctly struck engage the conduct and comportment of CRA that might be relevant to the issue of intention on the misfeasance claim. However, several of the paragraphs plead conclusions which are of course improper in a statement of claim.

48 The chambers judge concluded that the paragraphs that are specifically referenced in the statement of claim under the heading "Misfeasance in Public Office" are sufficient to ground such a claim and it would be inappropriate for this Court to decide, on appeal, what paragraphs are uniquely associated with the claims that are correctly struck.

49 The appellant has the right to apply to amend the statement of claim. Amendments may well be necessary when the ramifications of the chambers judge's decision can be seen more clearly. In addition, the respondents may be entitled to seek further and better particulars of the claim the appellant advances once the consequences of the chambers judge's decision are known.

50 Moreover, apart from an oblique reference to paragraph 59 in the context of misfeasance, abuse of process, interfering with contractual relations and negligence, neither party advanced any arguments on the relevance or irrelevance of the allegations in the statement of claim to more than one cause of action. It would be inappropriate for this Court to engage in a further review of the statement of claim before the parties themselves considered the need for amendment.

51 For all of those reasons, the chambers judge was not wrong when she failed to revisit the paragraphs she correctly struck from the statement of claim after upholding, but staying, the misfeasance claim.

Conclusion

52 For the reasons stated, except to the extent the chambers judge concluded that the appellant was not the proper party to sue on behalf of the trust, the appeal is dismissed.

Appeal allowed in part.