

CITATION: Elguindy v. Deputy Judge Aird, 2026 ONSC 3041
DIVISIONAL COURT FILE NO.: DC-25-00000120-0000
DATE: 2026-05-25

SUPERIOR COURT OF JUSTICE – ONTARIO
DIVISIONAL COURT

RE: ELGUINDY, Emad, Appellant

AND:

DEPUTY JUDGE AIRD, Sam, and the ONTARIO SMALL CLAIMS COURT,
Respondents

BEFORE: Trimble J.

COUNSEL: *SELF-REPRESENTED*, for the Applicant

ZARUM, Lara, of The Ministry of the Attorney General (MAG), for Deputy Judge
Aird and the Ontario Small Claims Court

HEARD at Brampton: 25 May 2026, by Video Conference

MOTION ENDORSEMENT

[1] Further to my 11 March 2026 Endorsement, four motions were before me today:

- a. Mr. Elguindy’s two motions, one for default determination of the Judicial Review Application as the Respondents filed no Notice of Appearance in the Application, and the second, staying the underlying action for which Judicial Review is sought, and seeking that the trial be held on an expedited basis; and
- b. The Respondent’s two motions, one to dismiss the Application in its entirety under s. 2.1.01, and one to dismiss Mr. Elguindy’s two motions under Rule 2.1.02.

Background

[2] Mr. Elguindy sued Lufthansa Airlines in the Burlington Small Claims Court, Action No. SC-24-611, in early 2024. The matter came to trial on 5 November 2025. At the trial, in his opening statement, Mr. Elguindy, without a proper motion record, said that the learned Deputy Judge had acted as the lawyer for the Defendant's lawyer in the past, and therefore should recuse himself. The Trial was adjourned and Mr. Elguindy was ordered to pay costs of \$2,000.00. Mr. Elguindy argued that the learned Deputy Judge's ruling prohibited the trial from continuing until the costs order was paid. The learned Deputy Judge ordered Mr. Elguindy to pay the costs before the matter came back for trial. He did not make the continuation of Mr. Elguindy's action contingent on the costs order being paid.

[3] Buy Notice of Application dated 7 November 2025, Mr. Elguindy sought Judicial Review of the learned Deputy Judge's ruling.

[4] The Ministry of the Attorney General appeared at a Case Management Conference advising that it was acting for the Deputy Judge and for the Ontario Small Claims Court, both of whom were named as Respondents in the Application.

[5] As indicated above, MAG did not file a Notice of Appearance in the Application. Instead, it brought its two motions under Rule 2.1.

[6] On 11 November 2025, Mr. Elguindy brought his motion to stay the Deputy Small Claims Court Judge's award of costs and on 14 January 2026, he brought his motion for default determination of his Application.

Result

[7] The Application is dismissed in its entirety as vexatious, frivolous, and an abuse of process, for the reasons set out herein. Because of that decision I need not address MAG's Rule 2.1.02 motion or Mr. Elguindy's two motions.

Preliminary Issue

[8] Mr. Elguindy argues that I should not hear MAG's two Rule 2.1 motions. He says that since MAG filed no Notice of Appearance in the Application, it has no right to bring any motions under Rule 2.1.

[9] Instead of responding to Mr. Elguindy's motion to stay the Small Claims Court action and for default determination of the Application, MAG brought its motions to dismiss Mr. Elguindy's motions and the Application in its entirety under Rule 2.1. MAG argues that Rule 2.1 does not require that a Statement of Defence to an Action or a Notice of Appearance in an Application is required before relief can be sought under that Rule. As to Mr. Elguindy's motions, MAG filed nothing and took no position.

[10] I dismiss Mr. Elguindy's preliminary issue.

[11] Rule 2.1 does not require the moving party to file a Statement of Defence in an Action or file a Notice of Appearance in an Application before seeking relief under Rule 2.1. Had the Rules Committee or Legislature intended this to be the case, they would have made it a prerequisite to bringing the motion as they did in Rule 20.01(3). As indicated below, Rule 2.1 is designed to provide an efficient summary process to weed out claims that are obviously frivolous, vexatious, or an abusive process. To require a moving party to have filed a notice of defence or a notice of Appearance would be contrary to that philosophy. The same philosophy suggests that where a number of motions are brought, one of which is brought under Rule 2.1, the Rule 2.1 motion should be determined first.

Rule 2.01.1 Motion

The Law

[12] Rule 2.1 governs proceedings brought in the Superior Court of Justice, and by extension, the Divisional Court. This Rule provides a procedural means by which the court may screen out proceedings at their commencement which, on their face, are clearly frivolous, vexatious or abusive. Rule 2.1.01(3) provides its own procedure where the court calls on the plaintiff or applicant to provide their position in writing to oppose the notice, and if invited, for any responding

party to file responding submissions. The process laid out in Rule 2.1.01, applies equally to motions (see: Rule 2.1.02).

[13] The Rule provides for a process that is expeditious, while allowing all parties to be heard. At the same time, the process preserves the overarching discretion of the judge to deal summarily with a proceeding, particularly when considering matters of law.

[14] The court may stay or dismiss a proceeding if it is found to be frivolous, vexatious, or an abuse of process. The Rule is designed for the court to detect and dispose of cases that have no basis to engage the machinery of the judicial process of that court in the first place.

[15] The standard for applying this summary procedure under Rule 2.1 was addressed by the Court of Appeal in *Scaduto v. Law Society of Upper Canada*, 2015 ONCA 733 in the following way:

“Rule 2.1 is a relatively new Rule that came into force on July 1, 2014. The motion judge has decided a number of cases which have helped to delineate both the procedure and the test to be applied under the Rule: see *Gao v. Ontario (Workplace Safety and Insurance Board)*, 2014 ONSC 6100, 37 C.L.R. (4th) 1 (“Gao No. 1”); *Gao v. Ontario (Workplace Safety and Insurance Board)*, 2014 ONSC 6497, 37 C.L.R. (4th) 7 (“Gao No. 2”); *Raji v. Border Ladner Gervais LLP*, 2015 ONSC 801 (CanLII); and, *Covenoho v. Ceridian Canada*, 2015 ONSC 2468 (CanLII).

[16] Under this line of authority, the court recognized that the Rule should be interpreted and applied robustly so that a motion judge can effectively exercise his or her gatekeeping function to weed out litigation that is clearly frivolous, vexatious, or an abuse of process. However, the use of the Rule should be limited to the clearest of cases where the abusive nature of the proceeding is apparent on the face of the pleading and there is a basis in the pleadings to support the resort to the attenuated process.

[17] This approach is summarized in *Raji*, at paras. 8-9, as follows:

[R]ule 2.1 is not for close calls. Its availability is predicated on the abusive nature of the proceeding being apparent on the face of the pleadings themselves. No evidence is submitted on the motion.... [T]here are two conditions generally required for Rule 2.1 to be applied. First, the frivolous, vexatious, or abusive nature of the proceeding should be apparent on the face of the pleading as required by the Rule. Second, there should generally be a basis in the pleadings to

support the resort to the attenuated process of Rule 2.1.... This second requirement is not in the Rule and is not a fixed requirement. It strikes me as a guideline that reminds the court that there are other Rules available for the same subject matter and that resort to the attenuated process in Rule 2.1 should be justified in each case.

See also *Gao (No. 2)*, at paras. 11-18; and *Covenoho*, at paras. 6-7. We also recognize that the case law will develop as the Rule becomes more widely utilized.

[18] Under Rule 2.1.01, the court is called to exercise a “gatekeeper” function to “weed out” proceedings that are clearly frivolous, vexatious or an abuse of process. This determination can be made only if two requirements are met. First, the proceeding must appear to qualify under those grounds on its face. Second, there should be some reference in the originating pleading to support the decision to resort to the process under sub Rule (3). It is then for the gatekeeper to determine by the pleadings and the written submissions of the parties whether the proceeding is frivolous, vexatious or an abuse of the civil justice system.

[19] No evidence may be adduced under Rule 2.1.01(2) although the Court may review the reasons in the underlying proceeding, or the pleadings and reasons in the underlying or another proceeding (see: *Visic v Elia Assoc.*, 2020 ONCA 690).

[20] A judge cannot dismiss part of a pleading. S/he may only dismiss the proceeding or decline to do so (see: *Alampur v Avenel Non-Profit Housing Corp*, 2018 ONSC 3022).

Analysis

[21] As indicated above, the onus is on the moving Respondent to show that, on the face of the pleading alone, the proceeding is clearly frivolous, vexatious, and/or an abuse of process. Once the Respondent has met this burden, the onus shifts to the responding Applicant to show that the proceeding is not.

[22] I dismiss this Application, in its entirety under Rule 2.1.02 as frivolous, vexatious, and an abuse of process (particularly the latter) for two reasons.

[23] First, the Application is improperly framed. The parties to any Judicial Review proceeding are the parties the proceeding, the decision in which is sought to be reviewed (see: *DF v Human*

Rights Tribunal of Ontario, 2012 ONSC 1530 at para 27). This is equally true for Judicial Review of interlocutory orders of the Small Claims Court. The Applicant has not named the civil Defendant in his Small Claims Action.

[24] Second, it is improper to name the judge as a party to a Judicial Review Application. On Judicial Review from a tribunal decision, for example, the court has held that an individual tribunal member should not be named in the Judicial Review (see: *Heath-Engel v Seneca College*, 2022 ONSC 4338 at para 14).

[25] Further, a judge is exempt from civil liability in the course of anything done or said by him in his judicial capacity (see: *Rahman v Koehnen*, 2025 ONSC 6580, at para. 9). Judicial immunity is quite broad. Even where a judge's acts or words complained of are alleged to have been spoken in bad faith, maliciously, corruptly, or without reasonable or probable cause, they are not actionable: *Morier and Boily v. Rivard*, 1985 CanLII 26 (SCC), [1985] 2 SCR 716; *McPherson v. Campbell*, 2019 NSCA 23, at para. 24; *Salasel v. Cuthbertson*, 2015 ONCA 115, at para. 35; *McIntosh v. Shore*, 2024 ONSC 1767.

[26] Judges speak through their reasons and cannot be compelled to explain their reasons (see: *AH v. CYFS*, 2024 NLSC 146 at para 6, citing *Mackeigan v Hickman*, 1989 CanLII 40 (SCC)).

[27] Mr. Elguindy argues that s. 9(2) of the *Judicial Review Procedure Act*, RSO 1990, c J.1, permits an Applicant on Judicial Review to name the Deputy Judge of the Small Claims Court as a party to a Judicial Review proceeding.

[28] Section 9(2), it does not make it mandatory that the decision maker be named. That choice is the decision maker's, not the Applicant's or the Court's (see: *Ontario Provincial Police v MacDonald*, 2009 ONCA 805 at paras 20 and 22; *Ontario (Children's Lawyer) v. Ontario (Information and Privacy Commissioner)*(2005), (2005), 75 O.R. (3d) 309 (C.A.) at para. 26 (C.A.).

[29] The *JRPA* does not apply to an Application to review of a decision of a Deputy Small Claims Court Judge. Mr. Elguindy pointed to no other authority, or statutory or legislative

provision that stands for this proposition. Further, the fact that in another action in which he sought review of an interim decision of a Deputy Small Claims Court Judge Mr. Elguindy styled his Application with the names of the parties to the underlying action and did not name in the Deputy Judge, indicates that he is aware of the proper procedure.

[30] Based on the foregoing, MAG's Rule 2.1.01 motion to dismiss the Application in its entirety as being frivolous, vexatious, and an abuse of process, is allowed. The Application is dismissed.

[31] Given this decision, there is no need to decide Mr. Elguindy's two motions or MAG's motion under Rule 2.1.02 that those motions be dismissed.

Costs

[32] MAG, on behalf of the learned Deputy Small Claims Court Judge and the Small Claims Court are successful in this proceeding.

[33] I will decide who shall pay whom costs based solely on written submissions not to exceed two double spaced, typewritten pages, excluding Bills of Costs and Offers. MAG's submissions are to be served and filed by 4:00 p.m., 8 June 2026 and Mr. Elguindy's by 4:00 p.m., 22 June 2026. There will be no right of rely.

Trimble J.

Date: May 25, 2026

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BETWEEN:

ELGUINDY, Emad

Self-Represented

AND:

DEPUTY JUDGE AIRD, Sam

ZARUM, Lara, for The Ministry of the Attorney
General (MAG)

ENDORSEMENT

Trimble, J.