Federal Court  Cour fédérale

Date: 20190225

Docket: T-1705-18

Citation: 2019 FC 224

Ottawa, Ontario, February 25, 2019

PRESENT: The Honourable Mr. Justice Brown

BETWEEN:

JOHN CLAY TURNBULL

Plaintiff

and

HER MAJESTY THE QUEEN

Defendant

JUDGMENT AND REASONS

I. Introduction

[1] This is a motion by the Defendant for Orders striking the Plaintiff's Statement of Claim in its entirety pursuant to Rule 221 of the *Federal Courts Rules* SOR/98-106 [*Federal Courts Rules*] without leave to amend, dismissing the action, and for an award of $500.00 costs for this motion.

[2] The Defendant brings Her motion on the following bases: the claim does not disclose a cause of action against the Defendant, the Plaintiff pleads no material facts to support his allegations, and that the claim is scandalous, frivolous, or vexatious.

[3] The motion is brought pursuant to Rules 3, 174, and 221(1)(a), (c) of the *Federal Courts Rules*, which provide:

General Principle	**Principe général**
3 These Rules shall be interpreted and applied so as to secure the just, most expeditious and least expensive determination of every proceeding on its merits.	3 Les présentes règles sont interprétées et appliquées de façon à permettre d'apporter une solution au litige qui soit juste et la plus expéditive et économique possible.
Material facts	**Exposé des faits**
174 Every pleading shall contain a concise statement of the material facts on which the party relies, but shall not include evidence by which those facts are to be proved.	174 Tout acte de procédure contient un exposé concis des faits substantiels sur lesquels la partie se fonde; il ne comprend pas les moyens de preuve à l'appui de ces faits.
Motion to strike	**Requête en radiation**
221 (1) On motion, the Court may, at any time, order that a pleading, or anything contained therein, be struck out, with or without leave to amend, on the ground that it	221 (1) À tout moment, la Cour peut, sur requête, ordonner la radiation de tout ou partie d'un acte de procédure, avec ou sans autorisation de le modifier, au motif, selon le cas :
(a) discloses no reasonable cause of action or defence, as the case may be,	a) qu'il ne révèle aucune cause d'action ou de défense valable;
…	…

(c) is scandalous, frivolous or vexatious, [or]	c) qu'il est scandaleux, frivole ou vexatoire;
…	…
(f) is otherwise an abuse of the process of the Court,	f) qu'il constitue autrement un abus de procédure.
and may order the action be dismissed or judgment entered accordingly.	Elle peut aussi ordonner que l'action soit rejetée ou qu'un jugement soit enregistré en conséquence.

II. Statement of Claim

[4] The Plaintiff is prescribed to daily consume 20 g of raw cannabis to manage his chronic pain; and claims raw cannabis is non-psychoactive: para 1(d). He makes numerous sweeping claims concerning Bill C-45, *An Act respecting cannabis and to amend the Controlled Drugs and Substances Act, the Criminal Code and other Acts*, 1st Sess, 42nd Parl, 2017 (assented to 21 June 2018) and concerning Bill C-46 *An Act to amend the Criminal Code (offences relating to conveyances) and to make consequential amendments to other Acts*, 1st Sess, 42nd Parl, 2017 (assented to 21 June 2018), the motivation behind their enactment by Parliament, and consequences of their enactment. He also makes numerous allegations concerning public policy surrounding these legislative initiatives that, speaking generally, are designed to legalize and regulate the sale of marijuana in Canada (C-45) and to amend the provisions of the *Criminal Code* , RSC 1985, c C-46, respecting impaired driving (C-46).

[5] The Plaintiff's Statement of Claim alleges this legislation and related policies "are by design a crime against humanity" and a "double down on prohibition", which, by denying access to Hemp cannabidiol [CBD], prolongs the pain and suffering of Canadians with chronic illness and cancer.

[6] The Plaintiff alleges "criminal intent" on the part of the Government of Canada and particularly Health Canada, a department thereof, constituting "genocide".

[7] The Plaintiff says roadside saliva tests and blood tests are prejudicial to the judgment of police officers and based on inconclusive science, because they can only determine the level of THC but not whether the THC consumed is psychoactive: para 1(e). The Plaintiff claims the current "Saliva roadside test is a media propaganda machine for the pharmaceutical industry to mislead the Public and Re-stigmatize Cannabis as a Narcotic": para 1(f).

[8] He alleges Health Canada failed to conduct certain cannabis clinic trials "deliberately to protect the CANCER INDUSTRY for the Pharmaceutical companies": para 2(b). The Plaintiff claims, "This is not just a Crime Against Humanity but Genocide": para 2(b). Furthermore, the Plaintiff claims every American state that legalizes recreational Cannabis has stopped their medical Cannabis research funding: para 1(g). The Plaintiff claims the Canadian government has known since 1974 that THC kills cancer cells without harming normal cells: 2(b). The pharmaceutical industry has acquired nearly all of Canada's federal cannabis producers and prevents the development of any cannabis medicine that threatens the cancer industry: para 1(g).

In this connection, the Plaintiff states that “The word Genocide or Crimes Against Humanity comes to mind”: at para 1(g).

[9] The Plaintiff claims Health Canada and Public Health and Safety is “allowing the presence of mold in a product that is destined for human consumption”; Bill C-45 is also insisting on this, says the Plaintiff, which “will neutralize or Kill all medicinal Cannabinoids in the Cannabis”: paras 2(a), 1(k). The Plaintiff claims “the Pharmaceutical industry needs to develop an illness caused by cannabis to discredit this whole food medicine and make false claims that Cannabis is bad for you”: para 1(k).

[10] The Plaintiff claims Health Canada “has decided again to make CBD a Narcotic to prevent reasonable public access to this whole food medicine. This could be criminal intent”: para 2(b). The Plaintiff claims there is no proof of CBD ever causing psychosis or harming/causing death to any individual: para 2(b). The Plaintiff concludes “this classification for CBD is designed to prolong people’s pain and suffering by forcing all clinical trials down the long path of getting a dangerous drug approved, instead of treating CBD as a non-dangerous mineral ...”: para 2(b). In this connection, the Plaintiff submits Bills C-45 and C-46 are by design a crime against humanity: para 1(a).

[11] Additionally, the Plaintiff claims Bill C-45 gives international cannabis producers importing licenses to federal Canadian cannabis companies that operate in Columbia and Mexico - countries that have not legalized cannabis - allowing international investors from foreign countries to invest in Canadian cannabis companies opening facilities in countries where

cannabis is illegal: para 3(a). The Plaintiff claims, "[T]hese are just criminals with very Smart lawyers!": para 3(a).

[12] As a result of the foregoing, the Plaintiff claims he is ultimately unemployable because of inability to drive or walk to work for fear of arrest due to impaired driving or public intoxication: para 4(a). He claims his unemployable status due to inability to drive (inconclusive roadside tests) and walk (public intoxication) to work in Saskatchewan; cost of legal defence, loss of income, and humiliation of being arrested for impaired driving, which will ultimately damage his life and reputation: para 4(a). The Plaintiff claims many Canadians enduring chronic pain will undergo suffering and possible death due to lack of knowledge on how to treat their cancer or illness with cannabis or Hemp CBD Oil: para 4(a).

[13] The Plaintiff additionally claims various infringements of the *Canadian Charter of Rights and Freedoms*, s 7, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [*Charter*]. However, none are specified in his Statement of Claim.

[14] For the reasons that follow, I am granting the Defendant's motion and striking the Plaintiff's Statement of Claim without leave to amend, but I do so without costs. The Statement of Claim offends the rules of pleadings generally, and with respect to some paragraphs, it offends multiple rules of pleadings. It is beyond redemption. Therefore the action will be dismissed.

III. History and basis of right to medical marijuana

[15] I outlined the following history and basis of the right to medical marijuana in *Harris v Canada*, 2018 FC 765 [*Harris*] at paras 11–12:

> [11] The right to possess and cultivate marijuana for medical purposes has been litigated in Canada for almost two decades. A brief overview of this history is provided by Phelan J. of this Court in *Allard v Canada*, 2016 FC 236, from which I take the following:
>
> > 1 This is a *Charter* challenge to the current medical marihuana regime under the *Marihuana for Medical Purposes Regulations*, SOR/2013-119 [MMPR] brought by four individuals. It is important to bear in mind what this litigation is about, and equally, what it is not about.
> >
> > 2 This case is not about the legalization of marihuana generally or the liberalization of its recreational or life-style use. Nor is it about the commercialization of marihuana for such purposes.
> >
> > 3 This case is about the access to marihuana for medical purposes by persons who are ill, including those suffering severe pain, and/or life-threatening neurological conditions. Such persons also encompass those in the very last stages of their life.
> >
> > 4 This is another decision in a line of cases starting with *R v Parker*, (2000) 49 OR (3d) 481, 188 DLR (4th) 385 (ONCA) [*Parker*], and culminating in *R v Smith*, 2015 SCC 34, [2015] 2 SCR 602 [*Smith*], that have examined, often with a critical eye, the efforts of government to regulate the use of marihuana for medical purposes and the various barriers and impediments to accessing this necessary drug.
> >
> > 5 Like other cases, this most recent attempt at restricting access founders on the shoals of the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11 [the *Charter*], particularly s 7, and is not saved by s 1.

> 1. The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.
>
> 1. La Charte canadienne des droits et libertés garantit les droits et libertés qui y sont énoncés. Ils ne peuvent être restreints que par une règle de droit, dans des limites qui soient raisonnables et dont la justification puisse se démontrer dans le cadre d'une société libre et démocratique.
>
> 7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.
>
> 7. Chacun a droit à la vie, à la liberté et à la sécurité de sa personne; il ne peut être porté atteinte à ce droit qu'en conformité avec les principes de justice fondamentale.
>
> 6. The Court has concluded that the Plaintiffs' liberty and security interest are engaged by the access restrictions imposed by the MMPR and that the access restrictions have not been proven to be in accordance with the principles of fundamental justice.

[12] Suffice it to say that the right to access marijuana and cannabis for medical purposes is guaranteed by the *Charter*, an undoubted legal matter having been decided by this Court, the Supreme Court of Canada, and as well, by Superior Courts in the provinces. In addition, the right of access to marijuana and other cannabis products for medical purposes is a right conferred upon individuals, on application, by the Governor in Council in subordinate legislation, i.e., regulations issued pursuant to the relevant legislation.

IV. Issues

[16] The Defendant asks this Court to strike the Statement of Claim because it discloses no reasonable cause of action (Rule 221(1)(a)) and because it is scandalous, frivolous or vexatious (Rule 221(1)(c)).

[17] This Defendant also submits the Court should deny the Plaintiff's leave to amend the Statement of Claim, the whole with costs of $500.00.

V. Law on a motion to strike

[18] In *Harris*, above, the Court stated the following law on a motion to strike at paras 13–18:

> [13] The law in relation to motions to strike is set out below.
>
> [14] In *Lee v Canada*, 2018 FC 504, at para 7, Heneghan J stated the following in respect of the test for motions to strike:
>
> > The test upon a motion to strike a pleading is set out in the decision in *Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959, that is whether it is plain and obvious that the pleading discloses no reasonable cause of action According to the decision in *Bérubé v. Canada (2009)*, [2009 FC 43] at paragraph 24, a claim must show the following three elements in order to disclose a reasonable cause of action
> >
> > i. Allege facts that are capable of giving rise to a cause of action
> >
> > ii. Indicate the nature of the action which is to be founded on those facts, and
> >
> > iii. Indicate the relief sought, which must be of a type that the action could produce and that the court has jurisdiction to grant

[15] The moving party bears the onus of meeting the test set out by the Supreme Court of Canada in *Hunt v Carey Canada Inc*, [1990] 2 SCR 959 [*Hunt*]: *Al Omani v Canada*, 2017 FC 786 per Roy J. at paras 12-16:

> [12] The test to strike a claim under Rule 221 sets a high bar. First, it is assumed that the facts stated in the statement of claim can be proven. The Court must be satisfied that it is plain and obvious that the pleading discloses no reasonable cause of action assuming the facts pleaded are true: *R v Imperial Tobacco Canada Ltd.*, 2011 SCC 42, [2011] 3 SCR 45 at para 17; *Hunt v Carey Canada Inc*, [1990] 2 SCR 959 [*Hunt*] at p 980. The Defendant bears the onus of meeting this test: *Sivak v Canada*, 2012 FC 272, 406 FTR 115 [*Sivak*] at para 25.
>
> [13] In *Hunt*, the Supreme Court sided with the articulation of the rule in England to the effect that "if there is a chance that the plaintiff may succeed, then the plaintiff should not be "driven from the judgment seat" (p. 980). A high bar indeed to succeed on a motion to strike. Some chance of success will suffice or, as Justice Estey said in *Att. Gen. of Can. v Inuit Tapirisat et al*, [1980] 2 SCR 735, "(o)n a motion such as this a court should, of course, dismiss the action or strike out any claim made by the plaintiff only in plain and obvious cases and where the court is satisfied that "the case is beyond doubt" (p.740).
>
> [14] To show a plaintiff has a reasonable cause of action, the statement of claim must plead material facts satisfying every element of the alleged causes of action: *Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227, 476 NR 219 [*Mancuso*] at para 19; *Benaissa v Canada (Attorney General)*, 2005 FC 1220 [*Benaissa*] at para 15. The plaintiff needs to explain the "who, when, where, how and what" giving rise to the Defendant's liability (*Mancuso*, para 19, *Baird v Canada*, 2006 FC 205 at paras 9-11, affirmed in 2007 FCA 48).
>
> [15] Thus, there appears to be a balance. On one hand, a chance of success is enough for the matter to proceed. On the other, the material facts must be pleaded in sufficient detail such that the cause of

> action may exist. The purpose of pleadings is to give notice to the opposing party and define the issues in such a way that it can understand how the facts support the various causes of action. As the Court of Appeal put it in *Mancuso*, "(i)t is fundamental to the trial process that a plaintiff plead material facts in sufficient detail to support the claim and relief sought" (para 16). The Plaintiffs note that pleadings can still proceed despite being "far from models of legal clarity" (*Manuge v Canada*, 2010 SCC 67, [2010] 3 SCR 672 at para 23). But it remains that adequate material facts must be pleaded. Parties cannot make broad allegations in their statement of claim in the hope of later going on a "fishing expedition" to discover the facts: *Kastner v Painblanc* (1994), 176 NR 68, 51 ACWS (3d) 428 (FCA) at p.2.

[16] On motions to strike, no evidence outside the pleadings may be considered (except in limited instances that do not apply here). This is expressly enacted by Rule 221(2) and confirmed by the authorities: *Pelletier v Canada*, 2016 FC 1356 [*Pelletier*] per Leblanc J. at para 6:

> [6] As is well-settled too, no evidence outside the pleadings may be considered on such motions and although allegations that are capable of being proven must be taken as true, the same does not apply to pleadings which are based on assumptions and speculation and to those that are incapable of proof (*Imperial Tobacco*, at para 22; *Operation Dismantle v The Queen*, [1985] 1 SCR 441, at p. 455 [*Operation Dismantle*]; *AstraZeneca Canada Inc. v Novopharm Ltd.*, 2009 FC 1209 at paras 10-12).

[17] In *Pelletier*, Leblanc J. also stated that while a Statement of Claim must be read as generously as possible with a view to accommodating any inadequacies due to drafting deficiencies, the claimant must plead the facts upon which he makes his claim and is not entitled to rely on the possibility of new facts turning up as the case progresses:

> [7] In this regard, while the Statement of Claim must be read as generously as possible with a view to accommodating any inadequacies due to drafting deficiencies (*Operation Dismantle*, at p. 451), it is

> incumbent on the claimant to clearly plead the facts at the basis of its claim:
>
> > [22] […] It is incumbent on the claimant to clearly plead the facts upon which it relies in making its claim. A claimant is not entitled to rely on the possibility that new facts may turn up as the case progresses. The claimant may not be in a position to prove the facts pleaded at the time of the motion. It may only hope to be able to prove them. But plead them it must. The facts pleaded are the firm basis upon which the possibility of success of the claim must be evaluated. If they are not pleaded, the exercise cannot be properly conducted". (*Imperial Tobacco*) *(My emphasis)*

[18] In *Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227, the Federal Court of Appeal said at paras 16-17 that plaintiffs must plead material facts in sufficient detail to support the claim and relief sought:

> [16] It is fundamental to the trial process that a plaintiff plead material facts in sufficient detail to support the claim and relief sought. As the judge noted "pleadings play an important role in providing notice and defining the issues to be tried and that the Court and opposing parties cannot be left to speculate as to how the facts might be variously arranged to support various causes of action."

[19] In addition, a plaintiff must plead each constituent element of the cause of action with sufficient particularity: *Collins v Canada*, 2011 FCA 140, per Dawson JA at para 33. Rule 174 requires "a modicum of story-telling", and pleadings must explain the "who, when, where, how and what" that make a defendant liable: *Al Omani v Canada*, 2017 FC 786, per Roy J at paras 17, 14. A defendant should not be left to speculate "as to how the facts might be variously arranged to support various causes of action": *Mancuso v Canada (National Health and Welfare)*, 2015

FCA 227, per Rennie JA [*Mancuso*] at para 16. The requirement to plead material facts is essential and applies to all claims: *Mancuso* at paras 20–21.

VI. Analysis

A. *Issue 1 – Whether the Court should strike the Statement of Claim*

[20] The Defendant submits the Statement of Claim is an improper pleading that should be struck on one or more of the Rule 221 grounds. The Plaintiff submits the Court should not strike his Statement of Claim, because it is verifiable through factual allegations based on Bills C-45 and C-46 and a review of his exhibits; as noted below the exhibits are not properly before the Court and will not be considered. The Plaintiff also submits he has fulfilled the requirements of Rule 174: the "who" being three Ministers who colluded with the Canadian Medical Association to allow inconsistent provincial public education and misdirect medical cannabis research to prolong people's pain and suffering, the "when" being the legalization of recreational cannabis on October 17, 2018, the "how" being to approve roadside testing and blood devices, which are scientifically inaccurate, and the "what" being the violation of the Plaintiff's *Charter* rights and freedoms, subject to unlawful prosecution, namely: legal rights under sections 6(2)(b), 7, 8, 9, 10(c), and 12; and that the defendant asks to violate his subsection 15(2)(1) rights.

[21] This first issue will be divided into two sections: where there is a reasonable cause of action, and where the Claim is scandalous, frivolous, or vexatious.

i. Rule 221(1)(a): Whether the Claim should be struck because it discloses no reasonable cause of action

[22] Rule 221(1)(a) of the *Federal Courts Rules* provides:

Motion to strike	**Requête en radiation**
221(1) On motion, the Court may, at any time, order that a pleading, or anything contained therein, be struck out, with or without leave to amend, on the ground that it	221 (1) À tout moment, la Cour peut, sur requête, ordonner la radiation de tout ou partie d'un acte de procédure, avec ou sans autorisation de le modifier, au motif, selon le cas :
(a) discloses no reasonable cause of action or defence, as the case may be,	a) qu'il ne révèle aucune cause d'action ou de défense valable;
…	…

[23] The Defendant submits the Plaintiff's claim plainly and obviously fails to disclose a cause of action against Canada. The Supreme Court of Canada in *Hunt v Carey Canada Inc*, [1990] 2 SCR 959, per Wilson J set out the test in this leading decision at page 980:

> The question therefore ... is whether it is "plain and obvious" that the plaintiff's claims ... disclose no reasonable cause of action or whether the plaintiff has presented a case that is "fit to be tried" ....

[24] Pleading conclusions or bald allegations is not sufficient to demonstrate a reasonable cause of action: *Mancuso* at paras 16–20. Pleadings should be struck if they are "based on assumptions and speculations," per Gauthier J, as she then was, in *Carten v Canada*, 2010 FC 857 [*Carten*] at para 29:

> [29] With respect to the absence of a reasonable cause of action, as enunciated by the Supreme Court of Canada in *Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959, it must be plain and obvious that the plaintiffs have no chance of success because their Statement of Claim discloses no reasonable cause of action. In that respect, the Statement of Claim must be read as generously as possible and must accommodate any inadequacy in the allegations that are clearly the result of deficiencies in the drafting of the document (*Operation Dismantle Inc. v. Canada*, [1985] 1 S.C.R. 441, at para. 14). <u>While factual allegations that are capable of being proven are to be taken as true, allegations based on assumptions and speculations are not</u>.
>
> [Emphasis added.]

[25] In addition there is no reasonable cause of action where no reasonable remedy is sought: *Weiten v Canada* (1994), [1995] 1 CTC 25 (Fed Ct (App Div)), per Stone JA at paras 3–4. In my respectful view, that is the case here. The Plaintiff does not seek damages, declarations, or relief of any kind in his Statement of Claim. This deficiency requires the Court to strike the Statement of Claim.

[26] In this connection, I note the Plaintiff says that he has an amended statement of claim that will cure the defects in his Statement of Claim at least in this respect. In my respectful view, on this point the Plaintiff cannot succeed. He has not brought a motion to file an amended statement of claim. Nor has he filed an affidavit in support of such a motion. Most importantly, he has not provided the Court with his proposed amended Statement of Claim. The Plaintiff cannot answer defective pleadings with an unsupported allegation that he has an amended statement of claim somewhere which he has not sought permission of the Court to file. It is obvious the Court must see a draft of any such amended pleadings before the Court may accept an argument to this

effect. Here, the Plaintiff has failed in his obligation to bring forward an amended document for the Court to consider.

[27] The Plaintiff's first and second Claims are: "1. Criminal Intent to cause Injury" and "2. Criminal Negligence causing Injury." In my view these Claims do not disclose a reasonable cause of action. The Plaintiff brings these Claims to the wrong forum. Therefore, it is "plain and obvious" Claims 1 and 2 will fail and they are not "fit to be tried": *Hunt* at 980. If he is of the view that crimes have been committed, he must take them to those responsible for the investigation of criminal activity, that is, to the police. I do not see this Court as the place to determine criminal liability as the Applicant asserts. Accordingly, Claims 1 and 2 are struck.

[28] Paragraphs 1(a) to (l), and 2(a) to (d), which I take as amplification of Claims 1 and 2 must also be struck. Paragraph 1(a) alleges a crime against humanity and is essentially contains political complaints about the two pieces of legislation. Paragraphs 1(b) and (c) are much the same alleging in addition collusion between the government and the Pharmaceutical industry and the medical profession. They do not constitute proper pleadings in support of either Claim 1 or 2 and will be struck. Paragraphs 1(e) and (f) are complaints concerning roadside and saliva testing which, according to the Plaintiff is a form of media propaganda machine for the pharmaceutical industry; they are not proper pleadings and will be struck. Paragraph 1(g) refers to cannabis research in the US in respect of which funding stopped upon legalization; this is referred to as genocide and a crime against humanity as coming to mind. Again these are not proper pleading and will be struck.

[29] Paragraphs 1(k) and 2(b) to (c) complain about clinical research and the presence of mold in cannabis. Again they contain a series of allegations that do not constitute proper pleading and will be struck.

[30] The Applicant's third Claim is "3. Broken campaign promise to take the criminals and children Out of the Cannabis industry." I was not presented with jurisprudence supporting the proposition that breach of a campaign promise or promises by a federal politician may be the subject of an action against the Defendant. In my view there is no merit in such proposition and it is "plain and obvious" the Claim discloses no reasonable cause of action, and Claim 3 will be struck. Paragraphs 3(a) to (b) relate to who are to receive licences and the lack of "accredited" education plans; they are not proper pleadings and will be struck.

[31] The Plaintiff's fourth Claim is for "Personal Injury." The Plaintiff's allegation is that the injuries he suffers are caused by the actions of Parliament and policy makers as set out in the balance of his Statement of Claim. Because I am striking those allegations, this Claim must be struck along with the related pleadings in paragraphs 1(d), 1(h), and 4(a).

[32] I note the Plaintiff in his responding materials has filed a number of documents purporting to support his position both in his Statement of Claim and in his response. As noted already, this is not allowed, as no evidence is permitted on this sort of motion. Therefore this material will not be considered and paragraph 1(j) must accordingly be struck.

ii. Rule 221(1)(c): Whether the Claim should be struck because it is scandalous, frivolous or vexatious

[33] Rule 221(1)(c) of the *Federal Courts Rules* provides:

Motion to strike	**Requête en radiation**
221 (1) On motion, the Court may, at any time, order that a pleading, or anything contained therein, be struck out, with or without leave to amend, on the ground that it	221 (1) À tout moment, la Cour peut, sur requête, ordonner la radiation de tout ou partie d'un acte de procédure, avec ou sans autorisation de le modifier, au motif, selon le cas :
…	…
(c) is scandalous, frivolous or vexatious,	c) qu'il est scandaleux, frivole ou vexatoire;
…	…

[34] The Defendant submits the Plaintiff's claim is scandalous, frivolous, and vexatious. A scandalous pleading "improperly casts a derogatory light on someone, with little respect to their moral character": *Carten* at para 34, citing *Steiner v R*, 122 FTR 187, per Hargrave, Prothonotary. A frivolous pleading "is of little weight or importance ... [showing] no rational argument based upon the evidence or law in support of the claim"; and a vexatious pleading "is begun maliciously or without probable cause, or [none that] ... will lead to any practical result": *Carten* at para 34.

[35] In my view the Defendant correctly submits that the Applicant's Statement of Claim makes improper bald and unfounded allegations of bad faith and criminality on the part of the Government of Canada, and against others who are not parties to this litigation. Allegations of

genocide, criminal negligence causing injury, and crime against humanity are casually tossed about in these pleadings by the Plaintiff, who in my view at least, does so without a scintilla of material facts in their support: *Federal Courts Rules*, Rule 174. The Plaintiff's unhappiness with the two bills and related policies are insufficient to permit him to come to this this Court asking it to determine the rightness or wrongness of his opinions. For these reasons also, paragraphs 1(b), (c), (g), (k), 2(a), (b), (c), and 3(a) must be struck: they are scandalous and vexatious.

[36] Likewise, the Plaintiff's derogatory attacks on Health Canada (part of the Executive Government of Canada), the pharmaceutical industry, and the Canadian Medical Association, neither of which are parties in this case, are not only advanced without sufficient material facts, but scandalous and vexatious. For these reasons also, paragraphs 1(b) to (c) will be struck.

[37] The Plaintiff's complaint regarding roadside testing is another example of bald allegations and conclusions, which are not permitted such that paragraphs 1(e), (f) and (i) of the Statement of Claim will be struck. The assertion that the use of saliva roadside testing is "a media propaganda machine for the pharmaceutical industry to mislead the public", and etc., is again not only unsupported by material facts, but constitutes in my view a frivolous and vexations attack on non-parties: paragraphs 1(e) to (f) will be struck for this reason also.

[38] The Plaintiff's references to genocide and crimes against humanity in relation to funding for medical research into cannabis is likewise scandalous and vexations, which is another basis on which paragraph 1(g) will be struck.

[39] The Plaintiff's allegations respecting mold in recreational cannabis not only lack material facts, but in my respectful view are also scandalous and vexatious in alleging the pharmaceutical industry "needs to develop an illness caused by Cannabis to discredit this whole food medicine and make false claims that Cannabis is bad for you": paragraph 1(k) will be struck. The same may be said for the pleadings in paragraph 2(b) relating to "criminal intent" and, once again, "not just a Crime Against Humanity but Genocide": that claim will be struck. The allegations in paragraph 3(a) concerning "criminals with very Smart lawyers" must be struck for the same reasons.

B. *Issue 2 – This Court should deny the Plaintiff leave to amend the Statement of Claim*

[40] In view of my conclusions above, the Statement of Claim will be struck almost in its entirety.

[41] The issue arises whether the Plaintiff should be given leave to amend this Statement of Claim. The test for whether to grant leave to Amend a Statement of Claim is set out in *Simon v Canada*, 2011 FCA 6, per Dawson JA at para 8, which holds that striking a Statement of Claim without leave to amend is appropriate where the pleading "is not curable by amendment."

[42] In words that I find appropriate for this Statement of Claim, the Federal Court of Appeal in *Baird v Canada*, 2007 FCA 48, per Létourneau JA, affirming *Baird v Canada*, 2006 FC 205, per Lemieux J, cited by *Pelletier v Canada*, 2016 FC 1356, per LeBlanc J at para 28, affirmed a decision to refuse leave to amend because the Statement of Claim was "beyond redemption and amendments are simply not possible": at para 3. I adopt that finding and apply it in this case.

[43] The problems with the Statement of Claim, including (1) the Plaintiff's frivolous and vexatious and repeated allegation that government and private sector actions including legislation duly passed by the Parliament of Canada, constitute "crimes against humanity" and "genocide," (2) its lack of material facts, coupled with the Plaintiff's (3) utter failure to disclose any reasonable cause of action, go to its very root and cannot be saved. It is beyond redemption. As noted, the Court is striking virtually every paragraph from the Statement of Claim. What little is left cannot stand alone.

[44] Therefore in my view the action as a whole must be dismissed.

VII. Conclusion

[45] For the reasons above, the Statement of Claim will be struck in its entirety without leave to amend, and the action will be dismissed.

VIII. Costs

[46] The Defendant seeks costs of $500.00. The Plaintiff did not object to the quantum, but neither did the Plaintiff seek costs against the Defendant if he succeeded on this motion. Indeed the Plaintiff said if he was not successful he would pay that amount to the Defendant and file a new Statement of Claim. In my view this is not a case for costs.

JUDGMENT in T-1705-18

THIS COURT'S JUDGMENT is that:

1. The Plaintiff's Statement of Claim is struck in its entirety without leave to amend.
2. This action is dismissed.
3. There is no order as to costs.

"Henry S. Brown"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1705-18
STYLE OF CAUSE:	JOHN CLAY TURNBULL v HER MAJESTY THE QUEEN

MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES*

JUDGMENT AND REASONS:	BROWN J.
DATED:	FEBRUARY 25, 2019

WRITTEN REPRESENTATIONS BY:

John Clay Turnbull	FOR THE APPLICANT
Dorian Simonneaux	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada, Vancouver, BC	FOR THE RESPONDENT