

Federal Court



Cour fédérale

Date: 20211021

Docket: T-1415-20

Citation: 2021 FC 1112

Ottawa, Ontario, October 21, 2021

PRESENT: The Associate Chief Justice Gagné

BETWEEN:

**MAGNUM MACHINE LTD. carrying on
business as ALBERTA TACTICAL RIFLE
SUPPLY and RICHARD TIMMINS**

Plaintiffs

and

**HER MAJESTY THE QUEEN, F.A.
WILLIAM ETTER, MURRAY SMITH, KEN
DOBIE, JENNIFER HART-MACDONALD**

Defendants

ORDER AND REASONS

I. Overview

[1] The Court is seized with two motions that were heard together.

[2] The first is a motion by the Defendants to strike claims advanced in the Plaintiffs’

Amended Statement of Claim, without leave to amend. The Defendants seek::

- a. an Order striking the claims against the defendants, William Etter, Murray Smith, Jennifer Hart-MacDonald and Ken Dobie (“the Personal Defendants”) ... and resulting vicarious liability claims against Her Majesty the Queen, for damages for alleged misfeasance in public office by the Personal Defendants;
- b. an Order striking out other claims for damages, including:
 - i. damages claimed for alleged “*de facto* expropriation”, “statutory confiscation” or “regulatory taking”;
 - ii. damages claimed under section 24(1) of the *Charter of Rights and Freedoms*” (the “*Charter*”) for alleged violations of sections 7, 8, and 11(g) of the *Charter*;
 - iii. damages for alleged “interference with economic relations”;
 - iv. damages, if claimed, for breach of some duty of care.

[3] The second motion is brought by the Plaintiffs who seek:

- a. an Order removing the Attorney General of Canada as lawyer of record for the defendants ...
- b. an Order that each of the defendants ... have separate legal counsel;
- c. an Order prohibiting the Attorney General acting as lawyer for the Personal Defendants ...

[4] The grounds for the second motion are that there is a conflict of interest created by the Attorney General’s representation of the Personal Defendants. I will refer to the second motion as the Conflict Motion.

[5] For the following reasons, I am granting in part the Respondent’s Motion to Strike, as it pertains to a) damages claimed for alleged “*de facto* expropriation”, “statutory confiscation” or “regulatory taking”; b) damages claimed under section 24(1) 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*] for alleged violations of sections 7, 8, and 11(g); c) damages for alleged “interference with economic relations”; and, d) damages, if claimed, for breach of some duty of care. In addition, I am dismissing the Conflict Motion.

II. Facts

[6] On May 1, 2020, the Governor in Council [GIC] promulgated the *Regulations Amending the Regulations Prescribing Certain Firearms and Other Weapons, Components and Parts of Weapons, Accessories, Cartridge Magazines, Ammunition and Projectiles as Prohibited, Restricted or Non-Restricted*, SOR/2020-96 [Regulations] by way of Order in Council PC 2020-0298.

[7] The Regulations, made pursuant to subsection 117.15(1) of the *Criminal Code*, RSC 1985, c C-46, prescribed nine principal models of firearms as prohibited. It similarly prohibited “any variant or modified version” of the named prohibited firearms, which include both named and unnamed variants.

[8] Alongside the Regulations, the GIC made the *Order Declaring an Amnesty Period (2020)*, SOR/2020-97 [Amnesty Order]. The Amnesty Order created a two-year amnesty period for possession of the newly prohibited firearms.

[9] The Specialized Firearm Support Services of the Royal Canadian Mounted Police [RCMP] produces and publishes technical assessments of firearms not named in the Regulations, identifying whether such firearms are prohibited for being unnamed variants of the named prohibited firearms. The technical assessments are found in the Firearms Reference Table [FRT].

[10] The Plaintiffs learned that the RCMP assessed its “Modern Series” of firearms – the Modern Varmint, the Modern Hunter, and the Modern Sporter [the Modern Series] – as variants of prohibited firearms pursuant to the Regulations. In response, Magnum Machine Ltd. [Magnum] initially joined one of the files, jointly case managed by this Court, which sought judicial review of the Regulations.

[11] On October 30, 2020, the Plaintiffs received a letter from the Office of the Chief Firearms Officer [CFO] reminding the Plaintiffs that the Regulations resulted in certain restricted and non-restricted firearms being reclassified to be prohibited firearms. The letter also recounted a recent telephone conversation between the Plaintiff Richard Timmins – founder and president of Magnum, and a member of the staff at the CFO – where Mr. Timmins said the Plaintiffs intended to continue to sell the Modern Series firearms as non-restricted, notwithstanding that they were newly prohibited. The reason for this was that they were not specifically listed in the Regulations but simply added to the FRT, which is “an administrative document and therefore an opinion only.” The letter then goes on to state that the Modern Series firearms, while not specifically listed in the Regulations, were assessed by the RCMP and identified as variants of the firearms of the designs commonly known as the M16, AR-10 and AR-15 rifles, as per paragraph 87 of the Regulations. The CFO thus concludes that the Modern Series firearms were

prohibited as of May 1, 2020. They require the Plaintiffs to stop manufacturing, advertising and selling the Modern Series firearms and to provide a complete record of all firearms sold and delivered by the Plaintiffs since May 1, 2020 to the CFO, no later than November 10, 2020. The letter reminded the Plaintiffs that whoever bought a Modern Series firearm after May 1, 2020 would not be covered by the Amnesty Order and therefore would be subject to criminal liability.

[12] As a result of receiving the October 30, 2020 letter, the Plaintiffs discontinued their application for judicial review and subsequently commenced this action.

[13] In support of their action, the Plaintiffs argue that William Etter and Murray Smith committed the tort of misfeasance in public office because, in their capacity as members of the RCMP, they exceeded their authority by re-designating the Modern Series firearms as prohibited. They further argue that Ken Dobie and Jennifer Hart-MacDonald committed the tort of misfeasance in public office because, in their respective capacities as Firearms Officer and Chief Firearms Officer, they exceeded their authority by demanding that the Plaintiffs cease the sale, manufacture and advertisement of Modern Series firearms.

[14] In general, the misfeasance claims stem from the Defendants' respective roles in participating in and communicating the re-designation of the Modern Series firearms.

[15] The Plaintiffs also seek damages for "statutory confiscation" or "regulatory taking", "interference with economic relations", and a breach of the duty of care. Mr. Timmins further

seeks damages claimed under section 24(1) of the *Charter* for alleged violations of sections 7, 8, and 11(g).

III. Issues

[16] The Defendants' Motion to Strike raises the following issues:

- A. *Should the claims against the Personal Defendants for misfeasance in public office be struck on the grounds that they disclose no reasonable cause of action, are frivolous and vexatious, and are an abuse of process?*
- B. *Should the claims for additional or alternative damages be struck?*

[17] The Plaintiffs' Conflict Motion raises the following issue:

- A. *Is there a conflict of interest between Her Majesty the Queen and the Personal Defendants and, if so, should the latter be compelled to retain separate counsel?*

IV. Analysis

- A. *Should the claims against the Personal Defendants for misfeasance in public office be struck on the grounds that they disclose no reasonable cause of action, are frivolous and vexatious, and are an abuse of process?*

[18] The Defendants submit the Plaintiffs' Amended Statement of Claim does not plead facts that satisfy the elements of the asserted causes of action, and therefore it is plain and obvious that they cannot succeed. As a result, it should be struck (*Hunt v Carey Canada Inc.*, [1990] 2 SCR 959 at 980; *Sivak v Canada*, 2012 FC 272 at para 91). For a claim of misfeasance in particular,

failure to particularize the allegations is fatal (*Merchant Law Group v Canada Revenue Agency*, 2010 FCA 184 at paras 34-35 [*Merchant*]).

[19] The Defendants argue that: 1) the Plaintiffs have not pled any material facts to show that the Personal Defendants acted out of malicious intent to injure the Plaintiffs; 2) to the contrary, the Plaintiffs plead facts showing that the Personal Defendants' actions aligned with their assigned responsibilities; and, 3) the Plaintiffs rely on bald, pejorative statements, contrary to the jurisprudence (see *Merchant* at para 34).

[20] The Plaintiffs' submissions are lengthy. Their submissions exceed the 30-page limit as stipulated in the *Federal Courts Rules*, SOR/98-106 (Rule 70(4)). Out of the 56 pages submitted by the Plaintiffs, 29 are dedicated to the background and the misfeasance allegations. I will briefly summarize the misfeasance arguments.

[21] The essence of the Plaintiffs' submissions are that the Defendants' actions – participating in and communicating the re-designation of the Modern Series firearms – caused financial harm to Magnum and stripped the Plaintiffs of the privileges associated with licensure. The Defendants did so knowing their actions were beyond the scope of legislated duties, knowing they did not have the authority to determine whether the Modern Series firearms were prohibited, and knowing they could not act on a mere opinion to demand the Plaintiffs' compliance. The FRT has no empowering statute and there is no evidence that the CFO is empowered to act on the basis of FRT opinions; in particular, it does not have the jurisdiction or power to stop the fulfilment of sales contracts.

[22] The Plaintiffs also specifically raise a point of disagreement with the Defendants. The Plaintiffs maintain that past FRT entries disclose that the AR-10 firearm model was restricted prior to May 1, 2020 although the Defendants say that it was not. The Plaintiffs allege that the misfeasance occurred when the Personal Defendants ignored the prior status of the AR-10 firearm model, and when they newly assessed the Modern Series as a variant to the AR-10.

[23] The starting place for this analysis is Rule 221 of the *Federal Courts Rules*:

<p>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</p>	<p>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 :</p>
<p>(a) discloses no reasonable cause of action or defence, as the case may be,</p>	<p>a) qu'il ne révèle aucune cause d'action ou de défense valable;</p>
<p>(b) is immaterial or redundant,</p>	<p>b) qu'il n'est pas pertinent ou qu'il est redondant;</p>
<p>(c) is scandalous, frivolous or vexatious,</p>	<p>c) qu'il est scandaleux, frivole ou vexatoire;</p>
<p>(d) may prejudice or delay the fair trial of the action,</p>	<p>d) qu'il risque de nuire à l'instruction équitable de l'action ou de la retarder;</p>
<p>(e) constitutes a departure from a previous pleading, or</p>	<p>e) qu'il diverge d'un acte de procédure antérieur;</p>
<p>(f) is otherwise an abuse of the process of the Court,</p>	<p>f) qu'il constitue autrement un abus de procédure.</p>
<p>and may order the action be dismissed or judgment entered accordingly.</p>	<p>Elle peut aussi ordonner que l'action soit rejetée ou qu'un</p>

jugement soit enregistré en
conséquence.

[24] It is plain and obvious that a claim discloses no reasonable cause of action when the plaintiff fails to plead “sufficient material facts” (see *Merchant* at paras 30-34; *Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227 at paras 16-20). This requirement is particularly relevant to the tort of misfeasance in public office because a plaintiff cannot rely on bald conclusions to allege abuses of power and bad faith (*Merchant* at para 34).

[25] However, the Supreme Court of Canada has cautioned, “The test [for a Motion to Strike] is a stringent one. The facts are to be taken as pleaded. When so taken, the question that must then be determined is whether there it is ‘plain and obvious’ that the action must fail. It is only if the statement of claim is certain to fail because it contains a ‘radical defect’ that the plaintiff should be driven from the judgment” (*Odhavji Estate v Woodhouse*, 2003 SCC 69 at para 15 [*Odhavji*]).

[26] The tort of misfeasance in public office was very recently restated by the Supreme Court of Canada in *Ontario (Attorney General) v Clark*, 2021 SCC 18:

[22] The elements and proper scope of the tort of misfeasance are not disputed in this appeal. A successful misfeasance claim requires the plaintiff to establish that the public official engaged in deliberate and unlawful conduct in his or her capacity as a public official, and that the official was aware that the conduct was unlawful and likely to harm the plaintiff (*Odhavji Estate v Woodhouse*, [2003] 3 S.C.R. 263, at para. 23, per Iacobucci J.).

[23] The unlawful conduct anchoring a misfeasance claim typically falls into one of three categories, namely an act in excess of the public official’s powers, an exercise of a power for an improper purpose, or a breach of a statutory duty (*Odhavji*, at para. 24). The minimum requirement of subjective awareness has been described

as “subjective recklessness” or “conscious disregard” for the lawfulness of the conduct and the consequences to the plaintiff (*Odhavji*, at paras. 25 and 29; *Powder Mountain Resorts Ltd. v. British Columbia* (2001), 94 B.C.L.R. (3d) 14 (C.A.), at para. 7; *Three Rivers District Council v. Bank of England* (No. 3) (2000), [2003] 2 A.C. 1 (H.L.), at pp. 194-95, per Lord Steyn).

[27] In summary, the elements of the tort of misfeasance in public office are: 1) the tortfeasor engaged in deliberate and unlawful conduct in his or her capacity as a public official; and, 2) the tortfeasor knew his or her conduct was unlawful and that their conduct was likely to injure the plaintiff.

[28] For greater clarity on the mental element of this tort, the Supreme Court in *Odhavji* provided useful guidance:

22 What then are the essential ingredients of the tort, at least insofar as it is necessary to determine the issues that arise on the pleadings in this case? In *Three Rivers*, the House of Lords held that the tort of misfeasance in a public office can arise in one of two ways, what I shall call Category A and Category B. Category A involves conduct that is specifically intended to injure a person or class of persons. Category B involves a public officer who acts with knowledge both that she or he has no power to do the act complained of and that the act is likely to injure the plaintiff. This understanding of the tort has been endorsed by a number of Canadian courts: see for example *Powder Mountain Resorts*, *supra*; *Alberta (Minister of Public Works, Supply and Services)* (C.A.), *supra*; and *Granite Power Corp. v. Ontario*, [2002] O.J. No. 2188 (QL) (S.C.J.). It is important, however, to recall that the two categories merely represent two different ways in which a public officer can commit the tort; in each instance, the plaintiff must prove each of the tort’s constituent elements. It is thus necessary to consider the elements that are common to each form of the tort.

23 In my view, there are two such elements. First, the public officer must have engaged in deliberate and unlawful conduct in his or her capacity as a public officer. Second, the public officer must have been aware both that his or her conduct was unlawful

and that it was likely to harm the plaintiff. What distinguishes one form of misfeasance in a public office from the other is the manner in which the plaintiff proves each ingredient of the tort. In Category B, the plaintiff must prove the two ingredients of the tort independently of one another. In Category A, the fact that the public officer has acted for the express purpose of harming the plaintiff is sufficient to satisfy each ingredient of the tort, owing to the fact that a public officer does not have the authority to exercise his or her powers for an improper purpose, such as deliberately harming a member of the public. In each instance, the tort involves deliberate disregard of official duty coupled with knowledge that the misconduct is likely to injure the plaintiff.

[29] The Plaintiffs identify the unlawful actions of Murray Smith and William Etter at paragraphs 8-10 of their Amended Statement of Claim:

8. Section 117.15 (2) [of the *Criminal Code*] does not allow the Governor General in Council to delegate the specifying of particular firearms as prohibited to a person in the employment position of Murray Smith or William Etter.

9. The [Regulation] does not authorize or empower the SFSS or RCMP to create, specify or prescribe prohibited firearms under [the Regulation].

10. The acts of doing so by William Etter and Murray Smith, the SFSS and the RCMP are ultra vires.

[30] At paragraph 11, the Plaintiffs go on to state that the Defendants William Etter and Murray Smith knew that re-designating the Modern Series firearms as a variant of the AR-10, and therefore prohibited, would harm the Plaintiffs. The Plaintiffs detail the harm at paragraphs 93-98, and it amounts mostly to financial harm.

[31] The Plaintiffs' claim of misfeasance against Jennifer Hart-MacDonald and Ken Dobie is most clearly set out at paragraph 14 of the Amended Statement of Claim:

14. Jennifer Hart-MacDonald [*sic*] and Ken Dobie acted in misfeasance of their roles as public officers in respect of the plaintiff ATRS by making inquiries and conducting communications that lead to and includes delivering a letter dated October 30, 2020 which demanded and instructed [ATRS] to cease manufacturing, deliver records in respect of the [Modern] Series of Firearms because in their opinion those firearms are now prohibited as indicated in the changed [FRT]. In taking the position that the FRT categorizing the [Modern] Series Firearms as prohibited they acted unlawfully in excess of their power and duties under the Firearms Act and Criminal Code and the regulations therein. The further particulars are found herein.

[32] The Plaintiffs rely on the same position that the RCMP does not have the authority to prohibit firearms, and as a result, the Defendants Jennifer Hart-MacDonald and Ken Dobie committed misfeasance in public office by relying on RCMP characterizations to demand compliance, as seen in the October 30, 2020 letter.

[33] While I agree with the Defendants that the Amended Statement of Claim is, at times, confusing and hard to follow, that is not sufficient to strike the claim. In my view, paragraphs 8-10 and 14 sufficiently set out the basic elements of the tort of misfeasance in public office. That is, the Plaintiffs allege that the Defendants had no authority to re-designate firearms pursuant to the *Criminal Code*, the *Regulations* or the *Firearms Act*, but they did so unlawfully and then acted upon those designations, knowing they were not authoritative, to demand compliance from the Plaintiffs. In addition, the Defendants Murray Smith and William Etter acted illegally when they identified the Modern Series as a variant of the AR-10, when previous assessments stated they were not. The Personal Defendants had knowledge this would, at least, financially injure the Plaintiffs whose business relied on the Modern Series firearms.

[34] At this stage, it is not important whether this argument is strong or accurate. In addition, the ongoing debate about the classification of the AR-10 before May 1, 2020 would be better suited to trial. I am of the view that the Plaintiffs have set out basic elements satisfying Category B of the tort of misfeasance – knowingly unlawful actions that would injure the plaintiffs – and as a result, their claims of misfeasance should not be struck at this point.

[35] However, dismissing the Motion to Strike is not an endorsement of the Plaintiffs' claims and, as cautioned by the Supreme Court of Canada in *Odjavhi*, “[t]he plaintiffs may well face an uphill battle, but they should not be deprived of the opportunity to prove each of the constituent elements of the tort” (*Odjavhi* at para 42).

B. *Should the claims for additional or alternative damages be struck?*

[36] In my view, the Court can quickly dispose of the claim of intentional interference with economic relations. This tort was described by the Supreme Court of Canada as, “the intentional infliction of economic injury on C (the plaintiff) by A (the defendant)’s use of unlawful means against B (the third party)” (*AI Enterprises Ltd v Bram Enterprises Ltd*, 2014 SCC 12 at para 23). The Amended Statement of Claim at paragraphs 102-104 does not describe the constituent elements of the tort. The Plaintiffs’ claim in those paragraphs amounts to saying that the Defendants interfered with the Plaintiffs’ economic relations by jeopardizing their contracts of sale for firearms prepaid before May 1, 2020. That allegation does not satisfy the elements of intentional interference with economic relations and this Court can strike damages claimed for this tort. In addition, the parties informed the Court that, since the Plaintiffs issued their

Statement of Claims, they settled their dispute regarding the firearms that were ordered, paid for, and manufactured before May 1, 2020.

[37] In my view, the Defendants are also correct that the Plaintiffs have failed to effectively plead the components of *de facto* expropriation.

[38] The expropriation claims are stated in paragraphs 100-101 of the Amended Statement of Claim. The Plaintiffs allege that they are being deprived of their property because the Modern Series firearms are now prohibited and the Plaintiffs cannot use them for sport shooting or hunting. The Plaintiffs further argue that the Defendants receive a benefit, being, “now these firearms are not available for use to kill the greatest number of people in the shortest time.”

[39] Expropriation as seen in *Manitoba Fisheries v The Queen*, [1979] 1 SCR 101 [*Manitoba Fisheries*], occurred because the Manitoba Fisheries lost an asset which was effectively gained by a federal corporation (*Mariner Real Estate Ltd. v. Nova Scotia (Attorney General)*, 1999 NSCA 98 at para 97; *Manitoba Fisheries* at p 110). For the purposes of a Motion to Strike, I agree that the Plaintiffs set out facts to support that they were deprived of their property, the Modern Series firearms, because they can no longer use their firearms except in the limited capacity prescribed by the Amnesty Order. However, the Plaintiffs did not successfully identify facts to support the conclusion that the government acquired an asset as a result of the Plaintiffs’ loss. Stating that the firearms are no longer available for illegal purposes – i.e. mass shootings – is not an asset the government acquired; it was the stated public purpose of the Regulations as seen in the accompanying Regulatory Impact Analysis Statement.

[40] I also agree the Plaintiffs' *Charter* claims should be struck. As stated in *Mancuso*, above:

[21] There are no separate rules of pleadings for Charter cases. The requirement of material facts applies to pleadings of Charter infringement as it does to causes of action rooted in the common law. The Supreme Court of Canada has defined in the case law the substantive content of each Charter right, and a plaintiff must plead sufficient material facts to satisfy the criteria applicable to the provision in question. This is no mere technicality, "rather, it is essential to the proper presentation of Charter issues": *Mackay v Manitoba*, [1989] 2 S.C.R. 357 at p. 361.

[41] Section 11 creates rights for "any person charged with an offence." It is inapplicable in this matter because the Plaintiffs were not charged with any offence.

[42] Section 8 states that, "[e]veryone has the right to be secure against unreasonable search or seizure." Section 8 rights are violated when an act constitutes a search or seizure that violates an individual's reasonable expectation of privacy; and, the search or seizure must be unreasonable (*R v Jones*, 2017 SCC 60 at para 11).

[43] Section 7 states that, "[e]veryone 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." Section 7 rights are violated when one incurs a deprivation of life, liberty and/or the security of the person and the deprivation was not in accordance with the principles of fundamental justice (*Charkaoui v Canada (Citizenship and Immigration)*, 2007 SCC 9 at para 12).

[44] In their Amended Statement of Claim, the Plaintiffs do not make clear arguments referring to either section 7 or 8 of the *Charter*. In fact, sections 7 and 8 are only referred to

explicitly at paragraph 1 (where the Plaintiffs claim damages for *Charter* violations), at paragraph 128 (where the Plaintiffs merely state their rights were violated), and at paragraph 152 (the last paragraph, where the Plaintiffs list their pleadings). The Plaintiffs do not identify any searches or seizures that they suffered. Further still, the Plaintiffs do not identify which right they were deprived of by virtue of the Regulations or the Defendants' actions. The words "life", "liberty" or "security" do not appear in the Amended Statement of Claim. Nor do any facts that would amount to a description of the deprivation of those rights.

[45] Instead, between paragraphs 129-136 of the Amended Statement of Claim, the Plaintiffs emphasize fears of future criminality because they possess prohibited firearms. Those fears are speculative and they are not material facts capable of supporting their *Charter* claims.

[46] Ultimately, the *Charter* claims must be struck because the Plaintiffs failed to plead sufficient material facts, so it is plain and obvious they do not give rise to a reasonable cause of action.

[47] Finally, I also agree that any claim of negligence made by the Plaintiffs should be struck. Although the Plaintiffs do not use the word negligence in their Amended Statement of Claim, they state that the Defendants have a duty of care at paragraph 122.

[48] Reading paragraph 122 very generously, my understanding is that a duty of care arose because of the reliance that firearm owners have on the FRT and firearm related legislation. Paragraphs 123-125 emphasize the fact that the Plaintiffs were not notified of the change to the

status of the Modern Series firearms and that the Defendants were obligated to provide notice. I infer that these paragraphs were intended to describe a standard of care and a breach because they followed the paragraph referencing a duty of care. The injury described throughout the Amended Statement of Claim is largely financial: the loss of the Modern Series firearm business.

[49] There are therefore notable gaps in the negligence claim, if one exists. It is not remotely clear, upon reading the Amended Statement of Claim, how failing to notify the Plaintiffs – of the Regulations and the RCMP FRT additions – was a but for cause of the Plaintiff’s injury. Moreover, this claim is ill defined. As stated by Justice Rennie in *Mancuso* at paragraph 19, “[t]he pleading must tell the defendant who, when, where, how and what gave rise to its liability.” In my view, the negligence claim is too unclear and it lacks detail. It does not convey the necessary information to the Defendants and it should be struck.

[50] The Plaintiffs’ submissions in their Responding Motion Record appear to argue a different basis for the negligence claim – one that looks similar to their misfeasance allegations. However, the test on a Motion to Strike is whether the Amended Statement of Claim discloses a reasonable cause of action. In my view, it does not.

C. *Is there a conflict of interest between Her Majesty the Queen and the Personal Defendants and, if so, should the latter be compelled to retain separate counsel?*

[51] The Plaintiffs submit that a conflict is created because the various Defendants are on opposite sides of the dispute about the changes made to the FRT and the status of firearms as the result of the Regulations.

[52] Specifically, in the October 30, 2020 letter, Ken Dobie and Jennifer Hart-MacDonald told the Plaintiffs not to complete sale orders made before the Regulations were promulgated. However, Her Majesty the Queen stated the opposite. Further, Ken Dobie and Jennifer Hart-MacDonald acted upon the FRT to order the Plaintiffs' compliance despite the position of Murray Smith, William Etter, and Her Majesty the Queen that the FRT is not law. Similarly, Ken Dobie and Jennifer Hart-MacDonald requested the names of customers who purchased firearms, a requirement not made by Her Majesty the Queen. The Plaintiffs allege that liability is different for the Personal Defendants as a result of these actions. The Defendants may even have claims against each other.

[53] The Plaintiffs make further conflict allegations that depend on different courses of action that individual Defendants may take.

[54] According to the Plaintiffs, these issues are compounded by the fact that Murray Smith and the Attorney General have asserted Cabinet Privilege confidentiality in the ongoing applications for judicial review of the Regulations. As a result, they will not be able to share relevant information with the other Defendants. The Defendants are therefore prejudiced by having the same representation.

[55] First, the Court notes that the Plaintiffs have brought this motion before even receiving the Statement of Defence. In my view, this motion can be quickly disposed of on the basis that it is speculative. The Plaintiffs have purported to identify the various positions of the Defendants and the ways in which they conflict with each other. However, the Defendants have not

submitted a Statement of Defence; the Plaintiffs have no way of knowing how they will plead. The alleged conflicts amongst the Defendants support the Plaintiffs' own understanding of the facts. The Defendants are entitled to take a different view in their Statement of Defence. Until a Statement of Defence is filed, this motion is premature.

V. Conclusion

[56] For the above reasons, I am dismissing the Conflict Motion with costs. I am also dismissing the Motion to Strike the claims for misfeasance, but I am granting it in part with respect to the additional or alternative claims for damages. Considering this mitigated result, there will be no costs on the Motion to Strike.

ORDER in T-1415-20

THIS COURT ORDERS that:

1. The Defendants' Motion to Strike is granted in part;
2. The claims for a) damages for alleged "*de facto* expropriation", "statutory confiscation" or "regulatory taking"; b) damages under section 24(1) of the *Canadian Charter of Rights and Freedoms* for alleged violations of sections 7, 8, and 11(g); c) damages for alleged "interference with economic relations"; and d) damages for breach of some duty of care are struck, without leave to amend;
3. There is no costs on the Motion to Strike;
4. The Plaintiffs' Conflict Motion is dismissed;
5. Costs for \$1,000.00 all-inclusive are due to the Defendants on the Conflict Motion.

"Jocelyne Gagné"

Associate Chief Justice

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1415-20

STYLE OF CAUSE: MAGNUM MACHINE LTD. CARRYING ON
BUSINESS AS ALBERTA TACTICAL RIFLE
SUPPLY AND RICHARD TIMMINS v HER MAJESTY
THE QUEEN, F.A. WILLIAM ETTER, MURRAY
SMITH, KEN DOBIE, JENNIFER HART-
MACDONALD

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: JUNE 29, 2021

ORDER AND REASONS: GAGNÉ A.C.J.

DATED: OCTOBER 21, 2021

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