

Federal Court



Cour fédérale

Date: 20211109

Docket: T-854-21

Citation: 2021 FC 1213

Ottawa, Ontario, November 9, 2021

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

KEENAN A. FEENEY

Plaintiff

and

HER MAJESTY THE QUEEN

Defendant

ORDER AND REASONS

I. Overview

[1] The Defendant Her Majesty the Queen [HMTQ] has brought a motion in writing pursuant to Rules 221(1) and 369 of the *Federal Courts Rules*, SOR/98-106 [Rules] for an Order:

- (a) striking the Statement of Claim of the Plaintiff Keenan A. Feeney in its entirety, without leave to amend;

- (b) declaring Mr. Feeney to be a vexatious litigant pursuant to s 40 of the *Federal Courts Act*, RSC 1985, c F-7; and
- (c) costs in the amount of \$1,500.00, payable forthwith.

[2] As required by s 40(2) of the *Federal Courts Act*, HMTQ has filed the written consent of the Attorney General of Canada's delegate to the vexatious litigant motion.

[3] Mr. Feeney is self-represented. According to his Statement of Claim:

The plaintiff claims he has been the victim of an intentional, malicious, and perverted course of justice, repeatedly violating his guaranteed constitutional rights by Crown and Court Actors, refusing the plaintiff's ability to seek justice for damages inflicted through a malicious attack to the plaintiff's character and reputation. Operating outside their judicial jurisdiction and legal authority, to circumvent and obstruct justice with an intellectually constructed process by Crown Actors, within the Court of Queens Bench of Alberta and the Alberta Court of Appeal.

[4] Mr. Feeney's claims are bereft of any chance of success, not least because the Federal Court lacks jurisdiction to entertain his allegations against Alberta judges and other public officials. His Statement of Claim must therefore be struck in its entirety, without leave to amend.

[5] Given his litigation history in Alberta and before this Court, Mr. Feeney is declared to be a vexatious litigant. As a result, he is barred from instituting new proceedings in this Court, whether acting on his own behalf or represented by another person, except by leave of the Court.

[6] With the exception of his application for judicial review of a decision by the Minister of Veterans Affairs respecting the reimbursement of education and childcare expenses (Court File No T-1515-20), all proceedings instituted by Mr. Feeney currently before this Court are stayed. The stay shall remain in place unless otherwise ordered or directed by this Court.

II. Motion to Strike Statement of Claim

[7] Rule 221(1) provides as follows:

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

(a) discloses no reasonable cause of action or defence, as the case may be,

(b) is immaterial or redundant,

(c) is scandalous, frivolous or vexatious,

(d) may prejudice or delay the fair trial of the action,

(e) constitutes a departure from a previous pleading, or

(f) is otherwise an abuse of the process of the Court,

and may order the action be dismissed or judgment entered accordingly.

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) qu'il ne révèle aucune cause d'action ou de défense valable;

(b) qu'il n'est pas pertinent ou qu'il est redondant;

(c) qu'il est scandaleux, frivole ou vexatoire;

(d) qu'il risque de nuire à l'instruction équitable de l'action ou de la retarder;

(e) qu'il diverge d'un acte de procédure antérieur;

(f) qu'il constitue autrement un abus de procédure.

Elle peut aussi ordonner que l'action soit rejetée ou qu'un jugement soit enregistré en conséquence.

[8] A statement of claim must contain a concise statement of the material facts on which the party relies and particulars of every allegation. These include particulars of any alleged misrepresentation, fraud, breach of trust, wilful default or undue influence, and particulars of any malice or fraudulent intention (Rules 174, 181).

[9] HMTQ maintains that the Statement of Claim is hopeless. It is argumentative, rests on bare assertions, and fails to plead sufficient material facts founding a reasonable cause of action. The allegations are so convoluted and bereft of material facts that it is impossible for HMTQ to respond meaningfully, or for this Court to regulate these proceedings.

[10] HMTQ also argues that the Statement of Claim is scandalous, frivolous and vexatious. It is replete with bald allegations and conclusions of bad faith, ill intent, and ulterior motives without an underlying factual basis, all of which is an abuse of process. The relief sought – \$25 million – is grossly excessive. Furthermore, the Statement of Claim is an improper collateral attack on matters that have already been adjudicated in other courts.

[11] On September 11, 2020, Prothonotary Kathleen Ring struck another Statement of Claim filed by Mr. Feeney in Court File No T-272-20. Mr. Feeney’s Statement of Claim in that case contained numerous scurrilous and unsubstantiated allegations that concern the same factual circumstances as the present proceeding. Prothonotary Ring made the following observations respecting Mr. Feeney’s claims in the previous action (at para 2):

[Mr. Feeney] seeks damages in the amount of five (5) million dollars for negligence by “HMQ’s Actors”, nuisance, intentional infliction of emotional distress, and violations of the *Canadian*

Charter of Rights and Freedoms. The Statement of Claim is disjointed and difficult to follow. It is replete with argument, conclusory statements and allegations that appear to relate to an array of events including: (a) impugned conduct by the “Alberta Crown Prosecutors” in a criminal proceeding involving an allegation of perjury; (b) a “Civil Contempt” application under the Alberta Rules of Court; (c) a civil action filed by Mr. Feeney against the Calgary Police; (d) an investigation by the Alberta Law Society; and (e) a Notice of Constitutional Question filed by Mr. Feeney in a proceeding in the Court of Queen’s Bench of Alberta (Court File 1701-13254)

[12] In the Statement of Claim filed in this proceeding, Mr. Feeney again alleges negligence without pleading sufficient material facts. He makes numerous bald assertions. He has pleaded misrepresentation, fraud and fraudulent intent without providing particulars.

[13] Futhermore, there is nothing in the Statement of Claim that ties the allegations to the Crown in right of Canada. The pleading does not establish how Canada could be liable for the actions of Alberta judges and other public officials.

[14] For similar reasons to those provided by Prothonotary Ring in Court File No T-272-20, Mr. Feeney’s claims in this proceeding are bereft of any chance of success, not least because the Federal Court lacks jurisdiction to entertain his allegations against Alberta judges and other public officials. The Statement of Claim must therefore be struck in its entirety without leave to amend.

III. Vexatious Litigant Motion

[15] A finding of vexatiousness under s 40 of the *Federal Courts Act* may be based on the following non-exhaustive criteria: (a) engaging in vexatious and abusive behaviour; (b) instituting frivolous proceedings; (c) making scandalous and unsupported allegations against opposing parties; (d) re-litigating issues which have already been decided; (e) unsuccessfully appealing interlocutory and final decisions as a matter of course; (f) ignoring court orders and court rules; and, (g) refusing to pay outstanding cost awards (*Olumide v Canada*, 2016 FC 1106 at para 10).

[16] In *Simon v Canada (Attorney General)*, 2019 FCA 28 [*Simon*], the Federal Court of Appeal (*per* Stratas JA) held that a vexatious litigant declaration in another court deserves significant weight (at para 25). As the Alberta Court of Queen's Bench observed in *Unrau v National Dental Examining Board*, 2019 ABQB 283, vexatious litigants are prone to "forum shopping", often between a provincial superior court and the federal courts, either to evade court access restrictions or to re-litigate issues that have already been adjudicated in another jurisdiction (at paras 679-682).

[17] The Alberta Court of Appeal (*per* Khullar JA) has prohibited Mr. Feeney from instituting further proceedings in that Court without permission (*Feeney v Her Majesty the Queen in the Right of Alberta*, 2021 ABCA 255). The Alberta Court of Queen's Bench has imposed interim court access restrictions on Mr. Feeney pending the determination of outstanding vexatious litigant applications.

[18] In *Feeney v TD General Insurance Company*, 2021 ABQB 604, Associate Chief Justice John Rooke of the Alberta Court of Queen's Bench provided the following overview of Mr. Feeney's litigation history in that province (at paras 7-8):

The Court has made numerous unfavourable findings about Mr. Feeney's litigation conduct, how Mr. Feeney's litigation is hopeless and abusive, and how Mr. Feeney is an unmanageable, relentless, abusive litigant, see for example: *Feeney v Alberta*, 2020 ABQB 572, action struck out as an abuse of process 2020 ABQB 633; *Simon v Feeney*, 2020 ABQB 641; *Feeney v Simon*, 2020 ABQB 759; *Feeney v Simon*, 2021 ABQB 169.

Khullar JA in *Feeney v Her Majesty the Queen in the Right of Alberta*, 2021 ABCA 255 also made numerous unfavourable findings concerning Mr. Feeney's litigation conduct, including:

... there is no expectation that Mr Feeney will voluntarily change his litigation behaviour in this Court. There is no indication he recognizes there is anything wrong with it. ...

The problems caused by Mr Feeney's litigation misconduct are various. He has taken up a huge amount of time and resources of the Court and the parties. He has intimidated or attempted to intimidate Court staff in carrying out their duties and judges who have ruled against him. ...

[19] According to HMTQ, Mr. Feeney has commenced at least three actions in the Alberta Court of Queen's Bench (1701-13254, 1801-06777, 2002-10045), four appeals in the Alberta Court of Appeal (2001-0069AC, 2001-0171AC, 2001-0205AC, 2101-0075AC), and two actions in this Court (T-272-20, T-854-21), all arising from the same event: a civil contempt proceeding in which Mr. Feeney pleaded guilty. Mr. Feeney has also filed numerous ancillary applications and motions in the Alberta courts.

[20] The current proceeding is a transparent attempt to re-litigate the allegations struck in Court File No T-272-20 and previously adjudicated in Mr. Feeney's protracted disputes before the Alberta courts. It is both vexatious and abusive.

[21] Mr. Feeney's action in Court File No T-19-20 concerned the reimbursement of education and childcare expenses. The Defendant moved for summary judgment on the ground that the Statement of Claim failed to disclose a reasonable cause of action, and was a veiled application for judicial review. Mr. Feeney discontinued the action, but then promptly commenced two new proceedings with respect to the same subject matter: an application for judicial review (Court File No T-1515-20) and a second action (Court File No T-275-21). These two proceedings have been referred for case management by Prothonotary Catherine Coughlan.

[22] The action concerning the reimbursement of education and childcare expenses (Court File No T-275-21) is a transparent attempt to revive the action that was discontinued in response to HMTQ's objection that it was a veiled application for judicial review. However, it is unclear from HMTQ's written representations whether the Crown considers Mr. Feeney's application for judicial review in Court File No T-1515-20 to be similarly vexatious or abusive. If the Minister of Veterans Affairs wishes to make this argument before the case management judge assigned to that proceeding, he is at liberty to do so.

[23] Given his litigation history in Alberta and before this Court, I am satisfied that Mr. Feeney is a vexatious litigant. He has repeatedly commenced unmeritorious actions, and he has routinely sought to re-litigate matters that have been decided previously.

[24] The words of Justice David Stratas of the Federal Court of Appeal in *Canada v Olumide*, 2017 FCA 42 [*Olumide FCA*] are apt in this case (at paras 18-19):

As community property, courts allow unrestricted access by default: anyone with standing can start a proceeding. But those who misuse unrestricted access in a damaging way must be restrained. In this way, courts are no different from other community properties like public parks, libraries, community halls and museums.

The Federal Courts have finite resources that cannot be squandered. Every moment devoted to a vexatious litigant is a moment unavailable to a deserving litigant. The unrestricted access to courts by those whose access should be restricted affects the access of others who need and deserve it. Inaction on the former damages the latter.

[25] HMTQ asks that the declaration of Mr. Feeney's vexatiousness also prevent him from taking further steps in all matters currently before this Court, except with leave to continue the proceedings. This was the effect of the declaration of vexatiousness in both *Simon* and *Olumide FCA*. With the exception of the application for judicial review in Court File No T-1515-20, I see no reason why the same result should not obtain here.

IV. Conclusion

[26] The Statement of Claim in Court File No T-854-21 is struck in its entirety without leave to amend.

[27] Mr. Feeney is declared to be a vexatious litigant pursuant to s 40 of the *Federal Courts Act*. As a result, he is barred from instituting new proceedings in this Court, whether acting on his own behalf or represented by another person, except by leave of the Court.

[28] With the exception of the application for judicial review in Court File No T-1515-20, which has been referred for case management, all proceedings instituted by Mr. Feeney currently before this Court are stayed. The stay shall remain in place unless otherwise ordered or directed by this Court.

[29] HMTQ's request for costs in the all-inclusive amount of \$1,500.00 represents a modest contribution towards Mr. Feeney's wasteful consumption of judicial resources, and is granted.

ORDER

THIS COURT ORDERS that:

1. The Statement of Claim in Court File No T-854-21 is struck in its entirety without leave to amend.
2. Keenan A. Feeney is declared to be a vexatious litigant pursuant to s 40 of the *Federal Courts Act*, RSC 1985, c F-7. Mr. Feeney is barred from instituting new proceedings in this Court, whether acting on his own behalf or represented by another person, except by leave of the Court.
3. With the exception of the application for judicial review in Court File No T-1515-20, which has been referred for case management, all proceedings instituted by Mr. Feeney currently before this Court are stayed. The stay shall remain in place unless otherwise ordered or directed by this Court.
4. Costs are awarded to Her Majesty the Queen in right of Canada in the all-inclusive amount of \$1,500.00, payable by Mr. Feeney forthwith.

"Simon Fothergill"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-854-21

STYLE OF CAUSE: KEENAN A. FEENEY v HER MAJESTY THE QUEEN

MOTION IN WRITING PURSUANT TO RULES 221(1) AND 369 OF THE *FEDERAL COURTS RULES*

ORDER AND REASONS: FOTHERGILL J.

DATED: NOVEMBER 9, 2021

WRITTEN SUBMISSIONS BY:

Keenan A. Feeney
(on his own behalf)

FOR THE PLAINTIFF

Keelan Sinnott

FOR THE DEFENDANT

SOLICITORS OF RECORD:

Attorney General of Canada
Edmonton, Alberta

FOR THE DEFENDANT