

Federal Court



Cour fédérale

Date: 20220513

Docket: T-30-22

Citation: 2022 FC 722

Vancouver, British Columbia, May 13, 2022

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

**JOSEPH ALAIN THERIAULT
(SELF REPRESENTED LITIGANT)**

Plaintiff

and

**HER MAJESTY THE QUEEN
AS REPRESENTED BY THE ATTORNEY
GENERAL OF CANADA,
MINISTRY OF PUBLIC SAFETY &
SOLICITOR GENERAL
ROAD SAFETY BC
CROWN CORPORATIONS
MINISTRY OF TRANSPORTATION AND
INFRASTRUCTURE
INSURANCE CORPORATION OF BRITISH
COLUMBIA
CROWN CORPORATIONS
ROYAL CANADIAN MOUNTED POLICE
(RCMP)
THE CIVILIAN REVIEW AND
COMPLAINTS COMMISSION FOR RCMP**

Defendants

REASONS AND ORDER

I. Overview

[1] By way of motion pursuant to Rule 51 of the *Federal Courts Rules*, SOR/98-106 [the Rules], Mr. Joseph Alain Theriault, the Plaintiff, appeals the March 7, 2022 Judgment of Prothonotary Kathleen Ring striking out the Plaintiff's Statement of Claim without leave to amend. Mr. Theriault represents himself.

[2] The Plaintiff seeks an Order:

- A. Overturning the March 7, 2022 Judgment;
- B. Reinstating the action in its entirety; and
- C. Finding the Defendants to be non-compliant with the Rules, having failed to respond to the Statement of Claim within the period prescribed.

[3] Having considered the motion records filed by the Plaintiff and the Attorney General of Canada, representing the Federal Crown Defendants [Federal Crown], the Appeal is dismissed for the reasons that follow.

II. Background

[4] On January 6, 2022, the Plaintiff filed a Statement of Claim [Claim] alleging various instances of illegal conduct, breaches of his rights and torts committed by various police officers. The Plaintiff sought relief against the named multiple Defendants, including general and special damages.

[5] The Claim appears to flow from the allegedly wrongful actions of a member of the Royal Canadian Mounted Police [RCMP] in stopping a vehicle operated by the Plaintiff in Merritt, BC, in 2016. The vehicle stop resulted in the RCMP Officer administering a breathalyser test and seizing the Plaintiff's driver's licence and motor vehicle.

[6] The Attorney General of Canada brought a motion in writing on behalf of Her Majesty the Queen on February 16, 2022, seeking an Order striking the Claim. Prothonotary Kathleen Ring granted the motion, struck the Claim without leave to amend and awarded fixed costs to the Federal Crown.

III. Standard of Review

[7] As stated by the Federal Court of Appeal in *Hospira Healthcare Corp v Kennedy Institute of Rheumatology*, 2016 FCA 215, the standard of review on an appeal of a discretionary decision of a Prothonotary is correctness for questions of law. The standard of review is palpable and overriding error for questions of fact and questions of mixed fact and law for which there are no extricable questions of law: *Housen v Nikolaisen*, 2002 SCC 33 at paras 8, 10, 36.

[8] Justice Denis Gascon noted in *Lessard-Gauvin v Canada (Attorney General)*, 2020 FC 730, that the “palpable and overriding error” standard is a highly deferential standard:

[43] The FCA has repeatedly declared that the “palpable and overriding error” standard is a “highly deferential standard” (*Figueroa v Canada (Public Safety and Emergency Preparedness)*, 2019 FCA 12 at para 3; *Montana v Canada (National Revenue)*, 2017 FCA 194 at para 3; *1395804 Ontario Ltd (Blacklock's Reporter) v Canada (Attorney General)*, 2017 FCA 185 at para 3; *NOV Downhole Eurasia Limited v TLL Oilfield Consulting Ltd*,

2017 FCA 32 at para 7; *Revcon Oilfield Constructors Incorporated v Canada (National Revenue)*, 2017 FCA 22 at para 2). This is a heavy burden for an applicant to meet. As Justice Stratas metaphorically stated in *Mahjoub v Canada (Citizenship and Immigration)*, 2017 FCA 157 [*Mahjoub*] and in *Canada v South Yukon Forest Corporation*, 2012 FCA 165 [*South Yukon*], in order to meet this standard “it is not enough to pull at leaves and branches and leave the tree standing. The entire tree must fall” (*Mahjoub* at para 61; *South Yukon* at para 46), cited with approval by the SCC in *Benhaim v St-Germain*, 2016 SCC 48 [*Benhaim*] at para 38). [Emphasis added.]

IV. Analysis

[9] In bringing this motion, the Plaintiff does not clearly detail the basis for the Appeal.

[10] The Plaintiff articulates his disagreement with Prothonotary Ring’s factual conclusions and her assessment of the claims. He asserts the Prothonotary erred in law when addressing questions of jurisdiction. He reiterates his myriad of claims of misconduct and rights breaches by various police officers, the RCMP, the Civilian Review and Complaints Commission and ministries within the Government of British Columbia.

[11] Mr. Theriault argues that because he is a self-represented litigant the Prothonotary was required to take a “large and liberal” view of the arguments he advanced on the Claim. He also encourages the Court to take a similar view in addressing this motion.

[12] There is little merit to this Appeal.

[13] In granting the motion to strike, Prothonotary Ring first identified the types of relief being sought, detailed the wide-ranging allegations and accurately described the Claim as being lengthy, repetitive and unwieldy. She noted the Plaintiff had been served with the Federal Crown's motion record seeking to strike the Claim but he did not file a responding motion record.

[14] In concluding the Claim disclosed no reasonable cause of action under Rule 221(1)(a) of the Rules, Prothonotary Ring identified the applicable test and the underlying principles:

- A. To strike a claim on the basis it discloses no reasonable cause of action, it must be plain and obvious that the claim discloses no reasonable cause of action or has no reasonable prospect of success (*Hunt v Carey Canada Inc*, [1990] 2 SCR 959 at para 36 [*Hunt*]; *R v Imperial Tobacco Canada Ltd*, 2011 SCC 42 at para 17);
- B. All facts plead must be accepted as provided unless patently ridiculous or incapable of proof: *Hunt* at paras 33 and 34; *Edell v Canada*, 2010 FCA 26 at para 5; *Operation Dismantle v The Queen* (1985), 18 DLR (4th) 481 (SCC) at 486-487 and 490-491 [*Operation Dismantle*]);
- C. The statement of claim is to be read generously and in a manner that accommodates drafting deficiencies (*Operation Dismantle* at para 14);
- D. That to disclose a cause of action the pleading must (1) allege facts capable of giving rise to the action; (2) disclose the nature of the action; and (3) indicate the relief sought – the statement of claim is to contain a concise statement of the material facts to be relied upon but not the evidence by which the facts are to be

proved (*Oleynik v Canada (Attorney General)*, 2014 FC 896 at para 5; Rule 174 of the Rules);

- E. What constitutes a material fact is to be determined by the cause of action and the relief sought. The pleading must disclose to the defendant the who, when, where, how and what, that give rise to the claimed liability – a narrative of what happened and when will rarely suffice and neither the court nor opposing parties are to be left to speculate as to how the facts support various causes of action (*Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227 at para 19; *Simon v Canada*, 2011 FCA 6 at para 18).

[15] Applying the above, Prothonotary Ring found the Claim consisted of a lengthy and argumentative narrative, random aspects of assorted legal concepts and conclusions brought together in a disjointed manner. Deficiencies with the tort and negligence claims were noted, as was the absence of material facts to support the alleged rights breaches. The Court's lack of jurisdiction over actions against the Provincial Crown and over key aspects of the subject matter of the claims were also identified. The Prothonotary found the claim to be scandalous, frivolous and vexatious under Rule 221(1)(a), the proceeding so ill defined that the Federal Crown was prevented from answering it.

[16] In bringing this motion, the Plaintiff alleges errors of law but does not define or address those errors in any meaningful way. He expresses disagreement with the Prothonotary's findings of fact and mixed fact and law, but his submissions fall well short of meeting the heavy burden of demonstrating palpable and overriding error.

[17] The Plaintiff correctly submits the courts generally show some leniency when determining if the Claim of a self-represented litigant is sufficient to allow another party to respond. The Prothonotary expressly recognized this but then concluded, on even a generous reading, that the Claim was so deficient it was to be struck.

[18] I too am mindful that the Plaintiff is self-represented. However, the flexibility and openness often shown self-represented litigants does not exempt the Plaintiff from his obligation of demonstrating an error warranting intervention on this Appeal. I agree with the Prothonotary; a generous reading of the Claim is not enough to remedy its deficiencies, nor is it evident the defects can be cured through amendment.

[19] The Plaintiff's Appeal must be dismissed.

[20] The Federal Crown seeks a lump sum award of costs. Recognizing that the motion required a written response by the Respondent, I award costs in favour of the Federal Crown in the amount of \$200.

ORDER IN T-30-22

THIS COURT ORDERS that:

1. The Appeal is dismissed.
2. The Plaintiff shall pay costs to the Crown in the fixed amount of \$200.00 inclusive of all disbursements and taxes.

"Patrick Gleeson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-30-22

STYLE OF CAUSE: JOSEPH ALAIN THERIAULT (SELF REPRESENTED LITIGANT) v HER MAJESTY THE QUEEN AS REPRESENTED BY THE ATTORNEY GENERAL OF CANADA, MINISTRY OF PUBLIC SAFETY & SOLICITOR GENERAL ROAD SAFETY BC CROWN CORPORATIONS MINISTRY OF TRANSPORTATION AND INFRASTRUCTURE INSURANCE CORPORATION OF BRITISH COLUMBIA CROWN CORPORATIONS ROYAL CANADIAN MOUNTED POLICE (RCMP) THE CIVILIAN REVIEW AND COMPLAINTS COMMISSION FOR RCMP

**MOTION IN WRITING CONSIDERED AT VANCOUVER, BRITISH COLUMBIA
PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES***

ORDER AND REASONS: GLEESON J.

DATED: MAY 13, 2022

WRITTEN REPRESENTATIONS BY:

Joseph Alain Theriault

FOR THE PLAINTIFF
(ON HIS OWN BEHALF)

Rupinder K. Gosal

FOR THE DEFENDANTS

SOLICITORS OF RECORD:

Attorney General of Canada
Vancouver, British Columbia

FOR THE DEFENDANTS