Federal Court  Cour fédérale

Date: 20240809

Docket: T-217-22

Citation: 2024 FC 1250

Ottawa, Ontario, August 9, 2024

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

R. MAXINE COLLINS

Plaintiff/Responding Party

and

THE ATTORNEY GENERAL OF CANADA

Defendant/Moving Party

ORDER AND REASONS

I. Overview

[1] The Attorney General of Canada [Defendant or AGC] brings this motion in writing pursuant to rule 369 of the *Federal Courts Rules*, SOR/98-106 [*Rules*] for an order:

a. removing the action from the operation of rules 294-299 of the *Rules*, to allow the AGC to bring a motion to strike;

b. directing that the Statement of Claim [SOC] be struck out in its entirety without leave to amend and that the action be dismissed;

c. alternatively, directing that the SOC be stuck in its entirety with leave to amend the named Defendant within 30 days;

d. granting costs in the amount of five hundred dollars ($500.00) to the AGC; and

e. such further and other relief as this Honourable Court may deem just and appropriate.

[2] R. Maxine Collins [Plaintiff or Ms. Collins] opposes the motion and requests an oral hearing.

[3] Having considered the parties' motion records carefully, including their written submissions, I find that the principal issue at stake on this motion – whether the Plaintiff properly named the AGC as the Defendant in this action that claims relief against Canada Post Corporation [Canada Post] or, more specifically, its employees – is a legal question. Resultingly, as explained below, I determine that an oral hearing is not warranted.

[4] As I also determine and explain, the action will be removed from the operation of rules 294-299 of the *Rules* (i.e. the simplified action rules) to draw this matter to conclusion. I find it is plain and obvious that the SOC discloses no reasonable cause of action against the AGC. The AGC's motion thus will be granted. The SOC will be struck without leave to amend.

[5] See Annex "A" for relevant legislative provisions.

II. Background

[6] The AGC's motion arises after four years of litigation punctuated with procedural complexity. Some of the more salient aspects of this matter's history are summarized below.

[7] In 2020, Ms. Collins, filed a statement of claim against Canada Post in Court File No. T-663-20. She also filed two motions, one for default judgment and the other to add evidence in support of the first motion. Both motions were dismissed on July 29, 2020. Justice Anne Marie McDonald determined there was no evidence that the statement of claim had been served on Canada Post. Further, Justice McDonald ordered the Plaintiff to refile the statement of claim in compliance with paragraph 171(a) of the *Rules*.

[8] In making this order, Justice McDonald observed that the claim was made "pursuant to 17(1), 2(d) and 48 of the *Federal Courts Act*." Because it was not an action against Her Majesty the Queen, however, Justice McDonald stated that section 48 of the *Federal Courts Act*, RSC 1985, c F-7, does not apply.

[9] In response to the July 29, 2020 order, Ms. Collins commenced the instant action as a simplified action, naming the Attorney General of Canada as the Defendant, instead of Canada Post. This is evident from the first sentence of the SOC which reads: "Pursuant to the Order of Justice McDonald issued July 29, 2020, on File T-663-20, the Plaintiff refiles the Statement of Claim filed June 22, 2020, for the purpose of correcting with respect to section 48 of the *Federal Courts Act*." Ms. Collins later discontinued the claim in Court File No. T-663-20 on consent.

[10] In brief, Ms. Collins alleges in the refiled SOC that Canada Post, through its employees, unlawfully has interfered with mail delivery; disclosed her personal information to third parties; and discriminated against her, resulting in asserted violations of sections 48-49 of the *Canada Post Corporation Act*, RSC 1985, c C-10 [*CPCA*], section 7 of the *Privacy Act*, RSC 1985, c P-21, and subsection 15(1) of the *Canadian Charter of Rights and Freedoms* respectively. She also claims that certain third parties influenced Canada Post personnel. Ms. Collins seeks declaratory and monetary relief solely against Canada Post.

[11] The AGC brought a motion to strike the SOC just a little over one month after the SOC was filed but outside the time for doing so under the simplified action rules. Consequently, Associate Judge Molgat dismissed the motion, noting also that the motion record was incomplete. Before Associate Judge Molgat took this step, Ms. Collins brought a motion under rule 210 for default judgment. Pursuant to rule 51, Ms. Collins also subsequently appealed Associate Judge Molgat's order dismissing the AGC's motion.

[12] Both of Ms. Collins' motions were dismissed: *Collins v Canada (Attorney General)*, 2023 FC 863 [*Collins FC 2023*]. She appealed the Court's order in *Collins FC 2023* to the Federal Court of Appeal, which in turn dismissed the appeal: *Collins v Canada (Attorney General)*, 2024 FCA 6 [*Collins FCA 2024 No. 2*]. The Federal Court of Appeal also dismissed the Plaintiff's motions for recusal (*Collins v Canada (Attorney General)*, 2024 FCA 5 [*Collins FCA 2024 No. 1*]) and reconsideration (unreported).

III. Issues

[13] Against the above backdrop and with regard to the parties' motion material, I determine that the issues on this motion are:

A. *Should an oral hearing be held?*

B. *Does the Notice of Motion violate rule 359 and subrule 47(2) by seeking "further and other relief"?*

C. *Should the allegations of systemic bias be considered?*

D. *Should the proceeding be removed from the operation of the simplified action rules?*

E. *Should the SOC be struck pursuant to rule 221?*

F. *Should leave be granted to amend the SOC?*

[14] The ensuing analysis deals with each issue in turn.

IV. Analysis

A. *No oral hearing*

[15] In support of her request for an oral hearing, Ms. Collins points to her earlier action under Court File No. T-663-20 in respect of which Canada Post's counsel "scheduled an oral hearing on the motion to strike." She also mentions the fact that the Court has not considered the issue yet. The Plaintiff further relies on this Court's order in *Collins v Canada Post Corporation*, 2020 FC 969 [*Collins FC 2020*] at paras 31-33. In addition, Ms. Collins describes several outstanding issues including the AGC's default status and allegations of systemic bias.

[16] I agree with the AGC that the Plaintiff's reasons for requesting an oral hearing are insufficient. I am unaware of the context or reasons why an oral hearing was scheduled in Court File No. T-663-20. None has been provided by Ms. Collins. In addition, the Court often is called upon to determine issues in writing, including complex issues, that it previously has not addressed. Further, I note that paragraphs 31-33 in *Collins FC 2020* deal with the reluctance of Ms. Collins to participate in a case management conference. The latter is not analogous or parallel to a motion in writing under rule 369 and, in my view, cannot be relied on for guidance as to whether the Court should schedule an oral hearing under subrule 369(4).

[17] Ms. Collins' written submissions also appear to take issue with the Court's order in *Collins FC 2023* as it relates to the interpretation of rules 221 and 298, and the interaction between these two rules. The Federal Court of Appeal concluded, however, that the Court made no reversible error in this regard: *Collins FCA 2024 No. 2*, above at para 10. It is not open to Ms. Collins to revisit these determinations on this motion.

[18] I acknowledge Ms. Collins' belief that as a self-represented litigant her arguments are not being considered. She provides no basis for this assertion, however. Indeed, decisions of this Court and the Federal Court of Appeal where Ms. Collins is a party demonstrate the opposite conclusion. As *Collins FCA 2024 No. 1* notes (at para 12), "[t] here is a strong presumption that judges will obey their judicial oaths and act impartially." I add this includes considering a party's material and submissions carefully without bias or prejudgment.

[19] Further, perceived defects, such as "gaps, imprecise wording or phrases that may seem wrong when read literally and in isolation," often are indicative of the result of the judicial officer's distillation and synthesizing of data into reasons, whether brief or otherwise, as opposed to reversible errors: *Millennium Pharmaceuticals Inc v Teva Canada Limited*, 2019 FCA 273 at para 9.

[20] In the end, I find that the issues on this motion are well defined in the parties' written material, thus obviating the need for an oral hearing. Ms. Collins' submissions acknowledge that the motion involves legal questions ("the first step in addressing the Defendant's motion is to decide the relevant questions of law"). In other words, I consider the motion apt for disposition in writing. In keeping with the principles enunciated in rule 3, including proportionality, I thus decline the Plaintiff's request for an oral hearing: *Bernard v Canada (Attorney General)*, 2019 FCA 144 at para 14; *Sibomana v Canada*, 2016 FC 943 [*Sibomana*] at para 8.

B. *No violation of rule 359 and subrule 47(2) by seeking "further and other relief"*

[21] I cannot agree with Ms. Collins' contention that these specific rules operate to preclude a party from seeking "further and other relief." Parties routinely request "such further and other relief" as the Court may deem appropriate. As well, this Court previously has held that "the Court has the jurisdiction to control the proceedings before it and to dispense with the Rules in appropriate circumstances[; …i]ts powers include acting on its own motion" [citations omitted]: *In re motion for reconsideration of the Court's Order in Peshdary v AGC (2018)*, 2020 FC 137 at para 17.

C. *Systemic bias allegations cannot be considered on this motion*

[22] The same issue arises here as in *Collins FCA 2024 No. 2* where the Federal Court of Appeal notes (at para 12) "that the Appellant has not followed the proper procedural channels to raise a systemic discrimination claim[; t]herefore, this Court cannot rule on this claim."

[23] On the present motion, the Court is limited to the grounds invoked by the AGC in the Notice of Motion, which are whether the proceeding should be removed from the operation of the simplified action rules and whether SOC should be struck: *Arora v Canada (Minister of Citizenship and Immigration)*, 2001 CanLII 22038 (FC) at para 9. I turn to these issues next.

D. *Proceeding will be removed from simplified action rules*

[24] Ms. Collins argues that rule 292 is mandatory and cannot be overridden by rule 385. She submits that this relief should be denied because it does not have the purpose of moving an otherwise simplified action forward. For this proposition, Ms. Collins relies on the Court's decision in *DE Rodwell Investigative Services Ltd v Enoch Cree Nation Indian Band*, 2003 FCT 509 (CanLII) [*DE Rodwell*]. I do not agree on both counts.

[25] First, rule 292 is prefaced with the words, "Unless the Court orders otherwise." It is inherent in the rule itself that the Court has discretion to order that an action not proceed under the simplified action rules. Further, paragraph 298(3)(a) of the *Rules* specifically provides that a motion may be brought at any time to remove an action from the operation of rules 294-299. It is the converse of paragraph 292(d) which permits the Court, on motion, to order that an action be

conducted as a simplified action. Notwithstanding these particular rules, the Federal Court of Appeal guides that subrule 385(1) operates alongside rules 53 and 55. This means that a case management judge, who has very broad powers, "can vary any Rules in the *Federal Courts Rules*, dispense with compliance with them, make additional orders that are just, and attach terms to any orders": *Mazhero v Fox*, 2014 FCA 219 at para 3.

[26] Second, in my view, *DE Rodwell* is distinguishable from the issue presently before me. In *DE Rodwell*, the defendants sought to remove the proceeding from the simplified action rules to pursue summary judgment which was prohibited by reason of rule 297. The Prothonotary determined that doing so was not essential to advancing the proceeding. I add that there have been decisions of this Court in the years subsequent to *DE Rodwell* where the Court has granted motions to remove an action from the simplified action rules so that summary judgment could be pursued. See, for example, *Source Enterprise Ltd v Canada (Public Safety and Emergency Preparedness)*, 2012 FC 966; *Lepage v Canada*, 2017 FC 1136.

[27] In any event, the Prothonotary correctly noted (at para 2) that, "[i]n each case removal from the ambit of the simplified action rules depends upon the circumstances and is discretionary" [emphasis added]. A motion to strike a claim is essential to whether an action will proceed at all or in part and, as also noted by the Prothonotary (at para 2), such a motion should be entertained prior to the pre-trial conference. He noted the same thing in his earlier decision on which he relied in *DE Rodwell*, namely, *Grinshpun v University of British Columbia*, 1999 CanLII 9154 (FC) [*Grinshpun*]. In particular, the Prothonotary observed in *Grinshpun* (at para 6), and I agree, that a want of cause of action is basic to any proceeding.

[28] Ms. Collins argues that the Defendant is not bringing the matter forward (which would be permissible in her view) but seeks to end the matter entirely before the Plaintiff has presented evidence (which is impermissible according to Ms. Collins). In other words, she draws a distinction between instances where she is entitled to bring evidence (as in the case of a motion for summary judgment) and where she is not (on a motion to strike).

[29] Motions to strike, however, *must* be considered without evidence. There is a high threshold to succeed on a motion to strike. The facts are assumed to be true, meaning that if Ms. Collins cannot succeed against a motion to strike, then logically she also would not succeed against a motion for summary judgment. Giving Ms. Collins an opportunity to present evidence, as she advocates, would lead in this instance to a waste of scarce court resources, in my view, and would be contrary to the principles described in rule 3 that the *Rules* be interpreted and applied to secure the just, most expeditious and least expensive outcome, bearing in mind proportionality.

E. *SOC will be struck pursuant to rule 221*

[30] The AGC argues the SOC could be struck under paragraphs 221(1)(a), (c) and (f) of the *Rules*. While I find that the determinative issue is whether the SOC discloses a reasonable cause of action, which in my view it does not, I briefly consider paragraphs 221(1)(c) and 221(1)(f) for completeness.

(1) Paragraph 221(1)(a) of the *Rules*

[31] Generally, a statement of claim will be struck only if it is plain and obvious, assuming the pleaded facts are true (unless they are manifestly incapable of being proven), that the claim discloses no reasonable cause of action or is lacking any reasonable chance of success in the context of the applicable law and the litigation process: *R v Imperial Tobacco Canada Ltd*, 2011 SCC 42 [*Imperial Tobacco*] at paras 17, 21-22 and 25. *Imperial Tobacco* guides (at para 21) that this valuable tool must be used with care; the approach must be generous, erring on the side of allowing a novel but arguable claim to proceed to trial. That said, the principle that pleaded facts are to be taken as true does not apply to allegations based on speculation and assumptions: *Burke v Canada*, 2021 FC 634 at para 34.

[32] To succeed here, the AGC must establish that the SOC is "so clearly improper as to be bereft of any possibility of success," i.e. that it is so fatally flawed it strikes at the heart of the Court's ability to entertain it: *Canada (National Revenue) v JP Morgan Asset Management (Canada) Inc*, 2013 FCA 250 at para 47 [*JP Morgan*]; *Murphy v Canada (Attorney General)*, 2022 FC 146 at para 9. The focus is on the real essence of the SOC, read holistically and taking the pleaded facts as true: *Oleynik v Canada (Attorney General)*, 2023 FC 303 at para 6, aff'd 2023 FCA 162.

[33] In essence, the SOC entails an action against Canada Post or, more specifically, its employees who are unnamed. It avers in the first paragraph that the SOC is filed, pursuant to Justice McDonald's July 29, 2020 order on Court File No. T-663-20, "for the purpose of

correcting with respect to section 48 of the Federal Courts Act." Further, the SOC states that, pursuant to subsection 23(1) of the *Crown Liability and Proceedings Act*, RSC 1985, c C-50, the AGC is the correct Defendant because the *CPCA* "does not contain a provision authorizing proceedings to be taken in the name of the agency." The SOC also states that, pursuant to paragraph 5(d) of the *Department of Justice Act*, RSC 1985, c J-2, the AGC "shall represent in this action." The pleading next claims that the "within action against Canada Post Corporation is pursuant to 17(1), and 2(d) of the *Federal Courts Act*, 24(1), subsection 15(1) of the *Charter of Rights and Freedoms*, and 7 of the *Privacy Act*."

[34] The SOC continues with details of the asserted "acts of misfeasance in public office by employees of Canada Post who must have been aware both that his or her conduct was unlawful and that it was likely to harm the Plaintiff through interfering with postal services including those related to litigation." According to the SOC, Canada Post did not benefit from these acts, was not a party to them or a person of interest, nor did Canada Post have an independent motive, unlike its employees. Rather, the SOC alleges that "employees of Canada Post discriminated against the Plaintiff as a Federal Government Whistleblower in July 2006."

[35] The SOC describes the Plaintiff's presumption that Canada Post would not interfere in mail delivery at the request of a corporation or private practice law firm. It does allege, however, that there are certain named and unnamed third parties who have a litigation or other interest in discrediting the Plaintiff and are capable of influencing Canada Post personnel directly or indirectly.

[36] The SOC claims that "Canada Post has delayed and obstructed the Plaintiff's mail delivery [to the Supreme Court of Canada] with respect to time sensitive litigation documents" as early as 2011. The SOC also alleges that, among other incidents implicating Canada Post or its personnel, Canada Post shared the Plaintiff's personal information, including a change of address, with a third party. The SOC levels a pattern of harassment against Canada Post.

[37] I add that, in addition to the asserted whistleblowing, the root of the current proceeding (leaving aside the alleged late delivery to the Supreme Court of Canada), is landlord and tenant disputes involving air quality in rental units and the Plaintiff's efforts to obtain, service, and use carbon dioxide [CO2] and nitrogen dioxide [NO2] monitors. Canada Post or its employees are implicated in the SOC in a cascade of events described in detail related to the landlord and tenant disputes and the CO2 and NO2 monitors.

[38] Most of the declaratory and monetary relief Ms. Collins seeks in this action names Canada Post specifically. Ms. Collins also seeks costs of the action, as well as a monthly sum "for each month after leaving Ontario that the Plaintiff has been deprived of the security of the person." None of the relief names the Crown specifically.

[39] Starting with the relief sought for having left Ontario, I determine it is plain and obvious that that claim has no chance of success before the Federal Court because it is, in effect, a disguised attempt to achieve before this Court a result that otherwise is unachievable.

[40] The SOC describes (at paragraph 35) that Ms. Collins left Ontario because she feared "alleged harassment by landlords [who] would continue without any protection before the LTB [Landlord and Tenant Board] under the *Residential Tenancies Act*." The SOC fails to provide any material facts from which I can conclude that the Federal Court has the requisite jurisdiction to entertain such a claim, given that, at the very least, the admitted cause of the Plaintiff's departure from Ontario is not the Defendant nor Canada Post. I add that the Plaintiff's conclusion (at paragraph 51 of the SOC) that government lawyers were involved is wholly speculative and lacking any reasonable foundation to ground a claim against the AGC. On this point, I agree with the AGC.

[41] Consequently, I find it unnecessary in respect of this specific relief claimed (concerning the Plaintiff's move from Ontario) to engage in a more formulaic *ITO* analysis of the Court's jurisdiction. (See, for example, this Court's decision in *Van Sluytman v Canada*, 2022 FC 545 [*Van Sluytman*] at paragraphs 16-17, citing *ITO-International Terminal Operators Ltd v Miida Electronics Inc*, 1986 CanLII 91 (SCC) [*ITO*] and *Windsor (City) v Canadian Transit Co*, 2016 SCC 54, respectively.) As noted in *Van Sluytman* (at para 15), the Federal Court "does not have broad supervisory powers over businesses, provincial governments and agencies, or provincial law enforcement[; r]ather, the Federal Court is a statutory court with limited and specific jurisdiction."

[42] I turn next to a consideration of the remaining relief sought against Canada Post in the context of the Federal Court's jurisdiction, as derived in large measure from the *Federal Courts Act* and applicable jurisprudence.

[43] As a starting point, I note that, contrary to the Plaintiff's submissions, subsections 17(1) and (2) and section 48 of the *Federal Courts Act* do not apply to Canada Post. These provisions apply only to the Crown *eo nomine*, or "under that name": *Lavigne v Canada Post Corporation*, 2006 FC 1345 at paras 44-49, aff'd 2007 FCA 123 [*Lavigne*]; *Van Sluytman*, above at para 57.

[44] *Lavigne* draws a distinction between an action under section 17 of the *Federal Courts Act* and a judicial review under section 18.1. While Canada Post falls within the definition of a "federal board, commission or tribunal" (pursuant to subsection 2(1) of the *Federal Courts Act*) whose decisions can be reviewed judicially, section 17 is more restrictive and contemplates relief only against the Federal Crown: *Lavigne*, above at paras 45-46, citing *Varnam v Canada (Minister of National Health and Welfare)*, 1988 CanLII 9346 (FCA).

[45] Recent cases of this Court confirm that by virtue of section 17 of the *Federal Courts Act*, the Court's jurisdiction applies only to the Crown *eo nominee* (i.e. by that name), and not to a statutory corporation acting as an agent for the Crown, including Canada Post: *Van Sluytman*, above at paras 56-58; *Albert v Canada Post Corporation*, 2024 FC 420 [*Albert*] at para 52.

[46] Both *Van Sluytman* and *Albert* refer to this Court's decision in *Committee for Monetary and Economic Reform v Canada*, 2014 FC 380 at paras 87-88; aff'd 2015 FCA 20, which in turn relies on the Federal Court of Appeal decision in *Rasmussen v Breau*, 1986 CanLII 6851 (FCA) [*Breau*], for the above proposition about the Court's jurisdiction in respect of the Crown.

[47] The decision in *Breau* refers to yet another decision of the Federal Court of Appeal issued contemporaneously with *Breau*, namely, *Brière v Canada Mortgage and Housing Corporation*, 1986 CanLII 6895 (FCA) [*Brière*]. *Brière* holds that section 17 of the *Federal Courts Act* (formerly, the *Federal Court Act*) does not authorize an action against an agency of the Crown but only against the Crown *eo nomine*.

[48] Further, *Brière* holds that a Crown corporation can be found liable, not only for its own wrongful acts but also for those of its servants or employees who are not Crown servants. Like the *Canada Housing and Mortgage Corporation Act* that was in issue in *Brière*, the *CPCA* here provides (sections 12 and 13) that Canada Post may employ officers and employees who are deemed not to be employed in the federal public administration (i.e. they are not Crown servants), except for a narrow, inapplicable exception described in subsection 13(4).

[49] In addition, the Federal Court of Appeal has determined that the *CPCA* "removed employment in the Post Office from the public service": *Canada Post Corp v CUPW*, 1987 CanLII 8970 (FCA). As the authors of the *Federal Courts Practice* (Toronto: Carswell, 2024) observe at §1:3, "[i]n the situation of actions alleging vicarious liability for the torts of a Crown agent corporation's employees where a statute provides that they are not servants of the Crown, the Crown agent corporation can only be sued in the appropriate provincial court."

[50] The Court of Queen's Bench of Alberta (as it then was, now the Court of King's Bench of Alberta), notes that the *CPCA* does not provide expressly that Canada Post can sue or be sued: *Thomas v Canada (Attorney General)*, 2006 ABQB 730 [*Thomas*] at para 20. I do not accept Ms.

Collins' contention, however, that this means Canada Post cannot sue or be sued in its own name. As the Court in *Thomas* further notes (at para 20), there also is no declaration stating that the corporation cannot sue or be sued. I also do not take the July 29, 2020 order of Justice McDonald as meaning that Canada Post cannot be sued in its own name.

[51] Subsection 16(1) of the *CPCA* states that "in carrying out its object and duties under this Act, the Corporation has the capacity, and subject to this Act, the rights, powers and privileges of a natural person." As observed in *Thomas* (at para 26), "Canada Post Corporation is an incorporated entity that is capable of litigating in its own name. There are numerous examples where it has done so. Canada Post Corporation has even been involved in litigation against the Attorney General of Canada."

[52] While the court in *Thomas* acknowledges that Canada Post could be represented by the AGC by virtue of its status as a Crown agent, the court nonetheless was "reluctant to accept the proposition that the Attorney General can represent Canada Post without their direction or consent[; …] Canada Post is operated as a separate entity from the Crown": *Thomas*, above at para 23.

[53] As this Court previously has held, "[a]lthough Parliament was not overly zealous in clarifying Canada Post's occasional role as agent, it does not seem reasonable to me to draw a general conclusion to the effect that Canada Post is at all times an agent of the [Crown]" [emphasis added]: *Transport Ronado Inc v Canada*, 2007 FC 166 at para 45. In my view, this determination is consistent with the Federal Court of Appeal's findings in *Brière*. Further, it is

seemingly reinforced by section 24 of the *CPCA* which provides that Canada Post may enter into contracts with the Crown as though it were not an agent of the Crown.

[54] Absent material facts that aver to wrongdoing on the part of the Crown specifically, I conclude that the SOC as pleaded has no possibility of success against the AGC. Similarly to Associate Judge Horne's determination in *Van Sluytman* (at para 83), I am not persuaded that the Plaintiff before me could draft a pleading, based on the asserted facts taken as true, in any manner that would require the AGC, whether in his own right or on behalf of the Crown, to respond to an action for the alleged wrongful acts of Canada Post or, more particularly, Canada Post's employees who are not Crown servants.

(2) Paragraphs 221(1)(c) and (f) of the *Rules*

[55] That said, while I am satisfied that the action is frivolous and vexatious, I am not persuaded that it is otherwise an abuse of process, as argued by the AGC.

[56] Here, I ascribe to the words "frivolous" and "vexatious" the meaning of a proceeding that lacks, as pleaded, a reasonable cause of action in this Court: *kisikawpimootewin v Canada*, 2004 FC 1426 at para 8, citing *Ceminchuk* v *Canada*, [1995] F.C.J. No. 914 at para 10. This meaning is consistent, in my view, with my determination above regarding paragraph 221(a) of the *Rules* and, thus, supports the conclusion that the action is frivolous and vexatious.

[57] The AGC submits that the claim is frivolous and an abuse of process because the SOC was refiled naming a different defendant, with the earlier action discontinued on consent. In

other words, Ms. Collins took these steps without complying in the earlier action with paragraph 171(a) of the *Rules*, as ordered by Justice McDonald. The AGC, however, has not provided any cases holding that a claim, such as a subsequent or refiled claim that names a different defendant, is an abuse of process. Further, I am not persuaded that the issues of *res judicata* or issue estoppel apply here, as submitted by the AGC, when there was no final decision by the Court in the earlier action.

[58] The AGC states that there is "no rational argument to support the naming of the AGC." As the above reasons show, however, the principal-agent relationship is complicated. A self-represented litigant, acting alone and without the assistance of counsel, should not be blamed unduly for the state of the claim: *Sibomana*, above at para 9.

[59] Ms. Collins argues that the Notice of Motion did not provide supporting grounds for the allegation that the SOC was frivolous, vexatious, or an abuse of process. I note that on page 3 of the Notice of Motion, the Defendant claims that "[t]he Statement of Claim is frivolous and an abuse of process." While elaboration is lacking, this is not a case where the Notice of Motion does not raise the issues at all; in fact it does. Further, the AGC's written representations in the motion record provide details. In my view, nothing turns on the state of the Notice of Motion insofar as these issues are concerned.

F. *No leave to amend the SOC*

[60] As alluded above in paragraph 54 of these reasons, I determine that an amendment would not cure the issues with the SOC. The facts as pleaded simply do not disclose a cause of action

against the Crown, or the AGC on behalf of the Crown, neither of which can be vicariously liable for the acts of Canada Post's employees. Further, there is no allegation that Canada Post has authorized or given consent to the AGC to act on its behalf. The decision in *Geophysical Service Inc v Canada*, 2018 FC 670, which involves a claim alleging that Crown servants had acted beyond the scope of their authority, is thus distinguishable.

V. Conclusion

[61] For the above reasons, the AGC's motion will be allowed and the SOC will be struck without leave to amend. The Plaintiff asserts that she can sue the AGC as the principal of Canada Post, a Crown corporation. Canada Post, however, routinely conducts its own affairs and can be sued in its own name. Further, the AGC, either on his own behalf or on behalf of the Crown, cannot be sued for vicarious liability stemming from the actions of Canada Post's employees, because the employees are not Crown servants. Accordingly, the SOC does not disclose a reasonable cause of action against the AGC and does not involve, in any manner, a claim against the Crown *eo nomine*.

VI. Costs

[62] The AGC has requested costs for this motion. Relying on my discretion pursuant to rule 400, I award the AGC the lump sum costs in the amount of $500 payable by the Plaintiff.

ORDER in T-217-22

THIS COURT ORDERS AND ADJUDGES that:

1. The Defendant's motion is granted.
2. The action is removed from the operation of rules 292-294 of the *Federal Courts Rules*, SOR/98-106.
3. The Statement of Claim is struck without leave to amend.
4. The Plaintiff shall pay costs of $500.00 to the Defendant.

"Janet M. Fuhrer"
Judge

Annex "A": Relevant Provisions

***Federal Courts Act*, RSC 1985, c F-7.**
***Loi sur les Cours fédérales*, LRC 1985, ch F-7.**

Relief against the Crown	**Réparation contre la Couronne**
17 (1) Except as otherwise provided in this Act or any other Act of Parliament, the Federal Court has concurrent original jurisdiction in all cases in which relief is claimed against the Crown.	**17 (1)** Sauf disposition contraire de la présente loi ou de toute autre loi fédérale, la Cour fédérale a compétence concurrente, en première instance, dans les cas de demande de réparation contre la Couronne.
Cases	**Motifs**
(2) Without restricting the generality of subsection (1), the Federal Court has concurrent original jurisdiction, except as otherwise provided, in all cases in which	**(2)** Elle a notamment compétence concurrente en première instance, sauf disposition contraire, dans les cas de demande motivés par :
(a) the land, goods or money of any person is in the possession of the Crown;	**a)** la possession par la Couronne de terres, biens ou sommes d'argent appartenant à autrui;
(b) the claim arises out of a contract entered into by or on behalf of the Crown;	**b)** un contrat conclu par ou pour la Couronne;
(c) there is a claim against the Crown for injurious affection; or	**c)** un trouble de jouissance dont la Couronne se rend coupable;
(d) the claim is for damages under the Crown Liability and Proceedings Act.	**d)** une demande en dommages-intérêts formée au titre de la Loi sur la responsabilité civile de l'État et le contentieux administratif.
[…]	[…]
Relief in favour of Crown or against officer	**Actions en réparation**
(5) The Federal Court has concurrent original jurisdiction	**(5)** Elle a compétence concurrente, en première instance, dans les actions en réparation intentées :
(a) in proceedings of a civil nature in which the Crown or the Attorney General of Canada claims relief; and	**a)** au civil par la Couronne ou le procureur général du Canada;
(b) in proceedings in which relief is sought against any person for anything done or omitted to be done in the performance of the duties of that person as an officer, servant or agent of the Crown.	**b)** contre un fonctionnaire, préposé ou mandataire de la Couronne pour des faits — actes ou omissions — survenus dans le cadre de ses fonctions.

How proceeding against Crown instituted **48 (1)** A proceeding against the Crown shall be instituted by filing in the Registry of the Federal Court the original and two copies of a document that may be in the form set out in the schedule and by payment of the sum of $2 as a filing fee. **Procedure for filing originating document** **(2)** The original and two copies of the originating document may be filed as required by subsection (1) by being forwarded, together with a remittance for the filing fee, by registered mail addressed to "The Registry, The Federal Court, Ottawa, Canada".	**Acte introductif d'instance contre la Couronne** **48 (1)** Pour entamer une procédure contre la Couronne, il faut déposer au greffe de la Cour fédérale l'original et deux copies de l'acte introductif d'instance, qui peut suivre le modèle établi à l'annexe, et acquitter la somme de deux dollars comme droit correspondant. **Procédure de dépôt** **(2)** Les deux formalités prévues au paragraphe (1) peuvent s'effectuer par courrier recommandé expédié à l'adresse suivante : Greffe de la Cour fédérale, Ottawa, Canada.

***Federal Courts Rules*, SOR/98-106.**
***Règles des Cours fédérales*, DORS/98-106.**

General principle **3** These Rules shall be interpreted and applied **(a)** so as to secure the just, most expeditious and least expensive outcome of every proceeding; and **(b)** with consideration being given to the principle of proportionality, including consideration of the proceeding's complexity, the importance of the issues involved and the amount in dispute.	**Principe général** **3** Les présentes règles sont interprétées et appliquées : **a)** de façon à permettre d'apporter une solution au litige qui soit juste et la plus expéditive et économique possible; **b)** compte tenu du principe de proportionnalité, notamment de la complexité de l'instance ainsi que de l'importance des questions et de la somme en litige.
Discretionary powers **47 (1)** Unless otherwise provided by these Rules, if these Rules grant a discretionary power to the Court, a judge or prothonotary has jurisdiction to exercise that power on his or her own initiative or on motion. **Exercise of powers on motion**	**Pouvoir discrétionnaire** **47 (1)** Sauf disposition contraire des présentes règles, le juge et le protonotaire ont compétence pour exercer, sur requête ou de leur propre initiative, tout pouvoir discrétionnaire conféré à la Cour par celles-ci. **Pouvoirs exercés sur requête**

(2) Where these Rules provide that powers of the Court are to be exercised on motion, they may be exercised only on the bringing of a motion.	**(2)** Dans les cas où les présentes règles prévoient l'exercice d'un pouvoir discrétionnaire sur requête, la Cour ne peut exercer ce pouvoir que sur requête.
Pleadings **171** The following pleadings may be filed: **(a)** in respect of an action, **(i)** a statement of claim, in Form 171A, **(ii)** a statement of defence, in Form 171B, and **(iii)** a reply, in Form 171C;	**Actes de procédure** **171** Les actes de procédure suivants peuvent être déposés : **a)** dans le cas d'une action : **(i)** la déclaration, établie selon la formule 171A, **(ii)** la défense, établie selon la formule 171B, **(iii)** la réponse, établie selon la formule 171C;
Motion to strike **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, […] **(c)** is scandalous, frivolous or vexatious, […] **(f)** is otherwise an abuse of the process of the Court, and may order the action be dismissed or judgment entered accordingly.	**Requête en radiation** **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; […] **c)** qu'il est scandaleux, frivole ou vexatoire; […] **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.
Where mandatory **292** Unless the Court orders otherwise, rules 294 to 299 apply to any action in which **(a)** each claim is exclusively for monetary relief in an amount not exceeding $100,000, exclusive of interest and costs; **(b)** in respect of an action in rem claiming monetary relief, no amount claimed,	**Application** **292** Sauf ordonnance contraire de la Cour, les règles 294 à 299 s'appliquent à toute action dans laquelle : **a)** chaque réclamation vise exclusivement une réparation pécuniaire d'au plus 100 000 $, intérêts et dépens non compris; **b)** s'il s'agit d'une action réelle visant en outre une réparation pécuniaire, chaque

exclusive of interest and costs, exceeds $50,000; **(c)** the parties agree that the action is to be conducted as a simplified action; or **(d)** on motion, the Court orders that the action be conducted as a simplified action.	réclamation est d'au plus 50 000 $, intérêts et dépens non compris; **c)** les parties conviennent de procéder par voie d'action simplifiée; **d)** la Cour, sur requête, ordonne de procéder par voie d'action simplifiée.
Motions prior to pre-trial conference **298 (1)** Subject to subsections (2) and (3), a motion in a simplified action shall be returnable only at a pre-trial conference conducted in accordance with rules 258 to 267. **Exception** **(2)** A motion may be brought, within the time set out in rule 204 for the service and filing of a statement of defence, **(a)** to object to the jurisdiction of the Court; or **(b)** to strike a statement of claim, on the ground that it discloses no reasonable cause of action. **Exception** **(3)** A motion may be brought at any time **(a)** to remove an action from the operation of rules 294 to 299; **(b)** for the release of arrested property in an action *in rem*; or **(c)** for a default judgment.	**Aucune requête avant la conférence préparatoire** **298 (1)** Sous réserve des paragraphes (2) et (3), dans une action simplifiée les requêtes ne peuvent être présentées qu'à la conférence préparatoire à l'instruction tenue conformément aux règles 258 à 267. **Autres requêtes** **(2)** Une requête peut être présentée dans le délai prévu à la règle 204 pour la signification et le dépôt de la défense : **a)** soit pour contester la compétence de la Cour; **b)** soit pour faire radier une déclaration au motif qu'elle ne révèle aucune cause d'action valable. **Exception** **(3)** Peuvent être présentées à tout moment : **a)** une requête visant à exclure l'action de l'application des règles 294 à 299; **b)** une requête pour obtenir la mainlevée d'une saisie de biens dans une action réelle; **c)** une requête pour obtenir un jugement par défaut.
Motions in writing **369 (1)** A party may, in a notice of motion, request that the motion be decided on the basis of written representations. **Request for oral hearing** **(2)** A respondent to a motion brought in accordance with subsection (1) shall serve and file a respondent's record within 10 days	**Procédure de requête écrite** **369 (1)** Le requérant peut, dans l'avis de requête, demander que la décision à l'égard de la requête soit prise uniquement sur la base de ses prétentions écrites. **Demande d'audience** **(2)** L'intimé signifie et dépose son dossier de réponse dans les 10 jours suivant la signification visée à la règle 364 et, s'il

after being served under rule 364 and, if the respondent objects to disposition of the motion in writing, indicate in its written representations or memorandum of fact and law the reasons why the motion should not be disposed of in writing.	demande l'audition de la requête, inclut une mention à cet effet, accompagnée des raisons justifiant l'audition, dans ses prétentions écrites ou son mémoire des faits et du droit.
Reply **(3)** A moving party may serve and file written representations in reply within four days after being served with a respondent's record under subsection (2).	**Réponse du requérant** **(3)** Le requérant peut signifier et déposer des prétentions écrites en réponse au dossier de réponse dans les quatre jours après en avoir reçu signification.
Disposition of motion **(4)** On the filing of a reply under subsection (3) or on the expiration of the period allowed for a reply, the Court may dispose of a motion in writing or fix a time and place for an oral hearing of the motion.	**Décision** **(4)** Dès le dépôt de la réponse visée au paragraphe (3) ou dès l'expiration du délai prévu à cette fin, la Cour peut statuer sur la requête par écrit ou fixer les date, heure et lieu de l'audition de la requête.
Powers of case management judge or prothonotary **385 (1)** Unless the Court directs otherwise, a case management judge or a prothonotary assigned under paragraph 383(c) shall deal with all matters that arise prior to the trial or hearing of a specially managed proceeding and may **(a)** give any directions or make any orders that are necessary for the just, most expeditious and least expensive outcome of the proceeding; **(b)** notwithstanding any period provided for in these Rules, fix the period for completion of subsequent steps in the proceeding; **(c)** fix and conduct any dispute resolution or pre-trial conferences that he or she considers necessary; and	**Pouvoirs du juge ou du protonotaire responsable de la gestion de l'instance** **385 (1)** Sauf directives contraires de la Cour, le juge responsable de la gestion de l'instance ou le protonotaire visé à l'alinéa 383c) tranche toutes les questions qui sont soulevées avant l'instruction de l'instance à gestion spéciale et peut : **a)** donner toute directive ou rendre toute ordonnance nécessaires pour permettre d'apporter une solution au litige qui soit juste et la plus expéditive et économique possible; **b)** sans égard aux délais prévus par les présentes règles, fixer les délais applicables aux mesures à entreprendre subséquemment dans l'instance; **c)** organiser et tenir les conférences de règlement des litiges et les conférences préparatoires à l'instruction qu'il estime nécessaires;

(d) subject to subsection 50(1), hear and determine all motions arising prior to the assignment of a hearing date.	**d)** sous réserve du paragraphe 50(1), entendre les requêtes présentées avant que la date d'instruction soit fixée et statuer sur celles-ci.

***Canada Post Corporation Act*, RSC 1985, c C-10.**
***Loi sur la Société canadienne des postes*, LRC 1985, ch C-10.**

Officers and employees **12** The Corporation may employ such officers and employees and may engage the services of such agents, advisers and consultants as it considers necessary for the proper conduct of its business, and may fix the terms and conditions of their employment or engagement, as the case may be, and pay their remuneration.	**Personnel** **12** La Société peut employer le personnel et retenir les services des mandataires, conseillers et experts qu'elle estime nécessaires à l'exercice de ses activités; elle peut en outre fixer les conditions d'emploi ou de prestation de services correspondantes et verser les rémunérations afférentes.
Presumption **13 (1)** Except as provided in subsections (2) and (4), every person employed or engaged pursuant to section 12 is deemed not to be employed in the federal public administration.	**Présomption** **13 (1)** Sous réserve des paragraphes (2) et (4), les personnes engagées aux termes de l'article 12 sont réputées ne pas faire partie de l'administration publique fédérale.
Powers of Corporation **16 (1)** In carrying out its objects and duties under this Act, the Corporation has the capacity, and subject to this Act, the rights, powers and privileges of a natural person.	**Pouvoirs de la Société** **16 (1)** Dans l'exécution de sa mission et l'exercice de ses fonctions, la Société a, sous réserve des autres dispositions de la présente loi, la capacité d'une personne physique.
Contracts **24** The Corporation may enter into contracts with Her Majesty as though it were not an agent of Her Majesty.	**Contrats** **24** La Société peut conclure des contrats avec Sa Majesté comme si elle n'en était pas le mandataire.

***Crown Liability and Proceedings Act*, RSC 1985, c C-50.**
***Loi sur la responsabilité civile de l'État et le contentieux administratif*, LRC 1985, ch C-50.**

Liability **3** The Crown is liable for the damages for which, if it were a person, it would be liable	**Responsabilité** **3** En matière de responsabilité, l'État est assimilé à une personne pour :

[…] **(b)** in any other province, in respect of **(i)** a tort committed by a servant of the Crown, or **(ii)** a breach of duty attaching to the ownership, occupation, possession or control of property.	[…] **b)** dans les autres provinces : **(i)** les délits civils commis par ses préposés, **(ii)** les manquements aux obligations liées à la propriété, à l'occupation, à la possession ou à la garde de biens.
Taking of proceedings against Crown **23 (1)** Proceedings against the Crown may be taken in the name of the Attorney General of Canada or, in the case of an agency of the Crown against which proceedings are by an Act of Parliament authorized to be taken in the name of the agency, in the name of that agency.	**Exercice des poursuites visant l'État** **23 (1)** Les poursuites visant l'État peuvent être exercées contre le procureur général du Canada ou, lorsqu'elles visent un organisme mandataire de l'État, contre cet organisme si la législation fédérale le permet.

***Department of Justice Act*, RSC 1985, c J-2).**
***Loi sur le ministère de la Justice*, LRC 1985, ch J-2.**

Powers, duties and functions of Attorney General **5** The Attorney General of Canada […] **(d)** shall have the regulation and conduct of all litigation for or against the Crown or any department, in respect of any subject within the authority or jurisdiction of Canada; and	**Attributions** **5** Les attributions du procureur général du Canada sont les suivantes : […] **d)** il est chargé des intérêts de la Couronne et des ministères dans tout litige où ils sont parties et portant sur des matières de compétence fédérale;

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-217-22
STYLE OF CAUSE:	R. MAXINE COLLINS v ATTORNEY GENERAL OF CANADA

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

ORDER AND REASONS:	FUHRER J.
DATED:	AUGUST 9, 2024

APPEARANCES:

R. Maxine Collins	FOR THE PLAINTIFF (ON THEIR OWN BEHALF)
Narin Sideq	FOR THE DEFENDANT

SOLICITORS OF RECORD:

Attorney General of Canada Toronto, Ontario	FOR THE DEFENDANT