

Federal Court



Cour fédérale

**Date: 20241011**

**Docket: T-1786-24**

**Citation: 2024 FC 1622**

**Toronto, Ontario, October 11, 2024**

**PRESENT: The Honourable Justice Battista**

**BETWEEN:**

**KANIZ FATEMA**

**Plaintiff**

**and**

**D.B. HIGA**

**Defendant**

**JUDGMENT AND REASONS**

I. Overview

[1] The Plaintiff appeals an order of Madam Associate Judge Kathleen Ring (Decision) striking the Plaintiff's statement of claim in its entirety without leave to amend, pursuant to Rule 221(1) of the *Federal Courts Rules*, SOR/98-106 [Rules]. The Plaintiff makes this motion under Rules 51, 397(1)(a)–(b), and 221(1).

[2] The Plaintiff makes a number of arguments in support of this motion and seeks over \$100,000 in damages and costs, as well as an order to have the Defendant, an Assistant Chief

Justice of the Alberta Court of Justice (ACJ), review a decision he made and an order to have the RCMP investigate a police report in Ontario.

[3] I have reviewed the Plaintiff's materials, and I am sympathetic to the life circumstances that have led to her grievances. I am sensitive to the fact that she is representing herself before this Court.

[4] However, this appeal must be dismissed due to the absence of any error in Associate Judge Ring's decision that warrants intervention.

## II. Background

[5] These proceedings follow a series of decisions in the ACJ. By way of decision dated March 24, 2023, the Defendant stayed the Plaintiff's claim, finding that it should not be heard in Alberta, noting that the incident happened in Ontario, the parties carried on business in Ontario, the defendants were in Ontario, and the cause of action arose in Ontario. In a decision dated December 8, 2023, a different Justice of the ACJ dismissed the Plaintiff's claim to have the stay order removed.

[6] Following Associate Judge Ring's decision, the Plaintiff filed a statement of claim against the Defendant in this Court on July 16, 2024. In a decision dated September 5, 2024, Associate Judge Ring struck the Plaintiff's statement of claim for the following reasons: (1) the Court had no jurisdiction over the claim; (2) the claim disclosed no reasonable cause of action; and (3) the claim was an abuse of process. She did not provide leave to amend the statement of claim given her first finding.

### III. Procedural Issues

[7] Rule 397 is not the vehicle to grant this motion as alleged in the Plaintiff's notice of motion. Only the judge or two out of three judges on a panel who made the decision may reconsider their decision (*Canada v MacDonald*, 2021 FCA 6 at para 17). The Rule is meant "to correct small oversights, such as an inconsistency between the order and the reasons (Rule 397(1)(a)), the failure of the Court to deal with something that was put to it (Rule 397(1)(b)), and clerical mistakes, errors or omissions in the order (Rule 397(2))" (*Yeager v Day*, 2013 FCA 258 at para 9). None of these criteria apply to this matter. Associate Judge Ring is not the presiding Justice on this motion. And the Plaintiff is seeking an appeal, not the correction of minor mistakes.

[8] Moreover, Rule 221(1) is also not the vehicle for this motion. This pertains to striking out claims, not judgments. The Decision is not something that is captured by this Rule.

[9] Finally, a motion to be determined in writing is brought pursuant to Rule 369(1) of the Rules. The Plaintiff's motion does not appear to be brought pursuant to this Rule.

[10] Nevertheless, given the Plaintiff's circumstances and status as a self-represented litigant, the Court is prepared to overlook the above procedural deficiencies in order to achieve the just, most expeditious outcome for the parties (Rules, s 3).

### IV. Issue and Standard of Review

[11] The sole issue in this motion is whether the Decision should be set aside. The Court considers whether Associate Judge Ring committed "palpable and overriding errors" on questions of fact or questions of mixed fact and law (*Toumani v Canada (Revenue Agency)*, 2022 FC 1770

[*Toumani*] at para 49 [citation omitted]). It also considers whether she was correct on questions of law (*Toumani* at para 49 [citations omitted]).

[12] A palpable error is an obvious error; an overriding one that “goes to the very core of the outcome of the case” (*Canada v South Yukon Forest Corporation*, 2012 FCA 165 at para 46). Determining whether any questions of law were answered correctly sees the Court make its own determination on such questions (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 54).

## V. Analysis

[13] In this motion, the Plaintiff submits that the Decision violates the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982, c 11 [Charter]*, failed to address matters that should have been addressed, was based on assumptions and speculations, is biased, and misread her materials.

### A. *Charter claims*

[14] The Plaintiff argues that Associate Judge Ring failed to apply the *Charter*, breached the *Charter*, and that the Defendant breached the Plaintiff’s *Charter* rights.

[15] Associate Judge Ring found that it was plain and obvious the Federal Court lacked jurisdiction to entertain the claim that the Defendant breached the Plaintiff’s *Charter* rights. I see no error in this analysis. The Plaintiff said that a government decision breached her *Charter* rights, rather than legislation. Subsection 24(1) of the *Charter* would therefore apply, rather than section 52 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), c 11 (Canada (Attorney General) v PHS Community Services Society*, 2011 SCC 44 at para 144). For a court to

be able to give a remedy under section 24 of the *Charter*, it must be of “competent jurisdiction.” This requires that the court have: “(1) jurisdiction over the person; (2) jurisdiction over the subject matter; and (3) jurisdiction to grant the remedy” (*R v 974649 Ontario Inc*, 2001 SCC 81 at para 15). This Court does not have jurisdiction over claims about a judge’s misconduct when acting in their judicial capacity and “any action against the judge must be brought in the provincial superior court” (*Crowe v Canada (Attorney General)*, 2008 FCA 298 [*Crowe*] at para 18).

[16] Associate Judge Ring applied these principles to the Plaintiff’s statement of claim. It was an application of binding appellate law to the facts of the case. Whether or not there were merits to the substance of the Plaintiff’s *Charter* claims, Associate Judge Ring made no mistake in finding she did not have jurisdiction to hear them. This equally applies to the Plaintiff’s allegations that Associate Judge Ring herself, with her decision, breached the Plaintiff’s *Charter* rights. There is nothing in the record that would support this contention, despite the sympathetic nature of the Plaintiff’s alleged misfortunes.

B. *Overlooked matters*

[17] The Plaintiff argues that the Decision did not address these misfortunes. However, Associate Judge Ring did not have jurisdiction to address them. There is no error in this conclusion.

[18] The Plaintiff also argues that Associate Judge Ring erroneously concluded that the Plaintiff had not appealed the stay decision. She provides a Notice of Appeal to state that she had appealed it.

[19] This Notice of Appeal was filed April 19, 2023, to the Court of King’s Bench in Alberta. The ACJ rendered an order dismissing the Plaintiff’s application on December 8, 2023. The court

file number is the same in the Notice and order. It thus appears the matter underlying the appeal was disposed of. In any event, it is unclear if this Notice was before Associate Judge Ring and her finding that the Plaintiff could have appealed the stay order was not, in my view and in any event, relevant to the abuse of process finding.

[20] Finally, the Plaintiff submits that Associate Judge Ring erred in applying *Crowe*. I cannot agree. The holding in *Crowe* is clear: actions against a provincial court justice must be brought in that province. The Plaintiff's action for misconduct against the Defendant cannot be heard in this Court.

C. *Bias and misconduct*

[21] The Plaintiff submits that Associate Judge Ring was biased, considered the Plaintiff to be an "ignorant" self-represented litigant, and that the Defendant filed a motion record with false and misleading information.

[22] Allegations of bias against a judge must be grounded in "cogent evidence" (*Collins v Canada*, 2024 FCA 5 at para 13 [citations omitted]). There is no such evidence in the Plaintiff's record to support a finding of bias against Associate Judge Ring.

[23] Furthermore, judges have absolute immunity for actions done in their official duties (*Williams v Payette*, 2019 FC 800 at para 53). Associate Judge Ring applied this principle in finding no basis for a claim against the Defendant. There is therefore no error in this finding. There is also no evidence to support that the Defendant filed a "motion record with false and misleading information."

[24] Finally, the Plaintiff's arguments that Associate Judge Ring saw the Plaintiff as "ignorant," citing two paragraphs from the decision finding the Plaintiff had not pleaded facts disclosing a cause of action. However, this is standard practice for striking out a claim under Rule 221(1), which says that the Court may strike out a pleading if it "discloses no reasonable cause of action." Associate Judge Ring did not characterize the Plaintiff in the manner suggested.

VI. Conclusion

[25] The Plaintiff has not shown that Associate Judge Ring committed errors in the Decision. The appeal of her order pursuant to Rule 51(1) is dismissed.

[26] The Court has discretionary power in awarding costs (Rules, s 400(1)). I do not award costs against the Plaintiff in this motion given that the Defendant did not accrue costs in responding to it and given the sympathetic nature of the Plaintiff's circumstances.

**JUDGMENT in T-1786-24**

**THIS COURT'S JUDGMENT is that:**

1. The appeal of the order of Associate Judge Kathleen Ring is dismissed without costs.

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"Michael Battista"

Judge



**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-1786-24

**STYLE OF CAUSE:** KANIZ FATEMA v D.B. HIGA

**MOTION MADE IN WRITING PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES*, SOR/98-106, CONSIDERED AT TORONTO, ONTARIO**

**JUDGMENT AND REASONS:** BATTISTA J.

**DATED:** OCTOBER 11, 2024

**WRITTEN SUBMISSIONS BY:**

Kaniz Fatema

FOR THE PLAINTIFF  
(ON HER OWN BEHALF)