Federal Court  Cour fédérale

Date: 20250303

Docket: T-3238-24

Citation: 2025 FC 393

Vancouver, British Columbia, March 3, 2025

PRESENT: Madam Associate Judge Kathleen Ring

BETWEEN:

ROGER BENNETT

Plaintiff

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Defendant

JUDGMENT

[1] The two motions presently before the Court reflect a situation that occasionally unfolds at the pleadings stage. The Defendant, the Minister of Public Safety and Emergency Preparedness [the "Minister"], brought a motion for an Order striking out the Statement of Claim issued on November 25, 2024 [the "2024 Claim"] in its entirety, without leave to amend, pursuant to Rule 221(1) of the *Federal Courts Rules* [*Rules*].

[2] In response, the self-represented Plaintiff, Roger Bennett [Mr. Bennett], brought a cross-motion for leave to amend the 2024 Claim to correct errors in the style of cause identified

by the Minister, and to amend the body of the 2024 Claim. He also submitted an Amended Statement of Claim for filing [the "Proposed Amended Claim"].

[3] The Minister submits that the 2024 Claim should be struck out on the basis that it constitutes an abuse of process, as it is an attempt to re-litigate a previous claim brought by Mr. Bennett against the Minister in Court File No. T-354-21 [the "2021 Claim"] and dismissed by the Court. The Minister also argues that the 2024 Claim is scandalous, frivolous, and vexatious, and it discloses no reasonable cause of action against the Minister. In the alternative, the Minister seeks an Order amending the style of cause and extending the deadline for the Minister to file a Statement of Defence. The Minister also objects to the filing of the Proposed Amended Claim.

[4] Mr. Bennett opposes the motion to strike. He submits that the 2024 Claim is a "new and legitimate Claim" involving a violation of the *Canadian Charter of Rights and Freedoms*, being Part I of the *Constitution Act, 1982*, Schedule B, *Canada Act 1982*, 1982, c. 11 (U.K.) [R.S.C., 1985, Appendix II, No. 44] [the "*Charter*"] stemming from an incident in 2024, and the 2024 Claim refers to new evidence not pled in the 2021 Claim. Mr. Bennett states that his cross-motion to amend is intended to rectify some errors made in the 2024 Claim.

[5] The issues to be decided on the two motions will be addressed in the following order:

(a) Should the Proposed Amended Claim be accepted for filing?

(b) In what sequence should the Court dispose of the two motions?

(c) Should the style of cause be amended?

(d) Should the 2024 Claim be struck as an abuse of the Court's process?

(e) Should the 2024 Claim be struck for failing to disclose a reasonable cause of action?

(f) If the Claim is struck, should Mr. Bennett be granted leave to file an amended 2024 Claim?

(g) Should Mr. Bennett's cross-motion to amend the 2024 Claim be granted?

[6] For the reasons that follow, the Proposed Amended Claim is rejected for filing. The 2024 Claim is struck without leave to amend, and Mr. Bennett's motion to amend is dismissed as moot.

I. The 2024 Claim

[7] In his 2024 Claim, Mr. Bennett alleges that border agents with the Canada Border Services Agency [CBSA] seized a used motorhome that he purchased in the United States. He was told by the border agents that he "failed to declare it upon crossing the Border at Emerson on July 5th, 2019". He brought an unsuccessful appeal to the "Recourse Directorate".

[8] The 2024 Claim states that Mr. Bennett subsequently filed the 2021 Claim against the Minister. The Minister disclosed "10 Video segments" of Mr. Bennett crossing the border as part of the Minister's disclosure of documents on the 2021 Claim. Mr. Bennett asserts that the videos clear him of any wrongdoing. However, he pleads that the Minister was successful in getting his case dismissed, and therefore the video evidence was kept "suppressed" from the Court.

[9] The 2024 Claim also asserts that in August 2024, Mr. Bennett sent emails to the Minister's lawyer stating that "since the Court is over regarding this matter, and since you know by the

Evidence that I am innocent of doing anything wrong, would the Minister now consider doing the right thing and return my property to me". Mr. Bennett says that he received no response, except for a further $2,000.00 fee.

[10] Mr. Bennett seeks a declaration that he did not contravene section 12 of the "Canada Customs Importation Act", an Order requiring the Minister to return Mr. Bennett's motorhome in same condition as seized, and damages for alleged violation of his rights under the *Canadian Bill of Rights*, SC 1960, c 44, and sections 7 and 8 of the *Charter*.

[11] The 2024 Claim concludes by stating that the audio/video file is "critical to Charter Violation Claim", and that it can be located on the social platform "X" under the name: RogerBenne3358.

II. Should the Proposed Amended 2024 Claim be Accepted for Filing?

[12] On January 27, 2025, five (5) days after Mr. Bennett filed his cross-motion to the amend the 2024 Claim, he served the Proposed Amended Claim on counsel for the Minister pursuant to Rule 200 of the *Rules* and submitted it for filing with the Court Registry. The Proposed Amended Claim corrects errors in the style of cause, removes factual allegations under the heading "History Facts", revises the more current facts, and removes the reference to the video evidence.

[13] The Minister submits that the Court should not accept the Proposed Amended Claim for filing prior to making its determination of the Minister's motion to strike the 2024 Claim without leave to amend, as a party cannot unilaterally amend a pleading that is subject to a motion to strike.

[14] In reply, Mr. Bennett reiterates that he can properly file the Proposed Amended Claim under Rule 200 because the Minister has not yet filed a responding pleading to the 2024 Claim.

[15] Given the parties' opposing positions on the Proposed Amended Claim, the Registry referred the document to the Court for directions as to filing.

[16] I agree with the Minister that the Registry should not accept the Proposed Amended Claim for filing as such, given that a motion to strike is outstanding. Although Rule 200 permits a party to amend its pleading, as of right, at any time before a party has pleaded to it, this Court has held that Rule 200 does not apply to a pleading that is subject to a motion to strike, and that leave to amend is required: *Mohr v. National Hockey League*, 2021 FC 488 at paras 18 and 19, citing *Verma v. Canada*, 2006 FC 1353 at para 14 [*Verma*].

[17] In *Verma*, as in this case, the plaintiff responded to a motion to strike by attempting to file an amended statement of claim. Justice Harrington directed the Registry not to accept the proposed amended pleading for filing:

> [14] The plaintiffs have attempted to shore up the deficiencies of their statement of claim by purportedly filing an amended statement of claim. Although rule 200 provides that a party may amend a pleading without leave before the other party has pleaded thereto, and although a motion to strike may not be a pleading as such, rule 200 must be read together with rule 221, the rule invoked by the defendants in their motion for an order that the statement of claim be struck. If the Court decides to grant the motion, it may strike out the statement of claim "with or without leave to amend". <u>It follows that a party cannot unilaterally amend a pleading which is subject to a motion to strike without leave of the Court</u>. Consequently, <u>I direct the registry not to accept the amended statement of claim as such, but rather to bundle it together as part of the plaintiffs' reply and cross-motion</u>. This is the most favourable treatment I could possibly give the plaintiffs…
> [my emphasis]

[18] Secondly, this Court has endorsed the principle from *Bruce v. John Northway & Son Ltd*., [1962] OWN 150 [*Bruce*], that after service of a notice of motion, any act done by a party which affects the rights of the moving party will be ignored by the Court. A moving party's rights (in this case the Minister) cannot be defeated or prejudiced by a subsequent step taken by a responding party: *Kornblum v. Canada (Human Resources and Skills Development)*, 2010 FC 656 at para 29; *Viiv Healthcare Company v. Gilead Sciences Canada, Inc*, 2020 FC 11 at para 26. If the Court were to accept Mr. Bennett's Proposed Amended Claim for filing at this juncture, it would effectively defeat the Minister's motion to strike the 2024 Claim without leave to amend, contrary to the principle in *Bruce*.

[19] Accordingly, I direct that the Registry shall not accept Mr. Bennett's Proposed Amended Claim for filing. Rather, the Registry is instructed to "receive" the document, and the Court will treat it as comprising part of Mr. Bennett's responding motion record to the Minister's motion to strike. This is consistent with the Federal Court of Appeal's teachings that a proposed amended pleading may be considered by the Court on a motion to strike, in determining whether the deficiencies in the existing pleading can be remedied by amendment: *Paradis Honey Ltd. v. Canada*, 2015 FCA 89 at para 80.

III. In what Sequence Should the Court Dispose of the two Motions?

[20] In response to the Minister's motion to strike, Mr. Bennett also filed a cross-motion for leave to amend the 2024 Claim. This practice should be discouraged. The proper way to respond to a motion to strike a pleading is to serve and file a responding motion record, which may include a request for leave to amend the Statement of Claim.

[21] Having regard to the principle in *Bruce*, and its underlying rationale, I will dispose of the Minister's motion to strike first. In doing so, however, I will take into account Mr. Bennett's submissions on his motion to amend, insofar as his submissions may be relevant to the issues raised on the Minister's motion to strike.

IV. Should the Style of Cause be Amended?

[22] The Minister submits that he is incorrectly named in the style of cause, and Mr. Bennett is incorrectly referred to as the "Appellant" rather than the "Plaintiff". Mr. Bennett concedes that these errors in the style of cause require correction.

[23] Although the Minister only seeks an amendment to the style of cause "in the alternative", if the 2024 Claim is not struck, I am of the view that obvious errors in the style of cause should be rectified, irrespective of the outcome of the Minister's motion to strike. Accordingly, this Order will amend the style of cause to refer to the Minister as the "Minister of Public Safety and Emergency Preparedness" and to describe Mr. Bennett as the "Plaintiff".

V. Should the 2024 Claim be Struck as an Abuse of Process?

[24] Rule 221(f) provides that the Court may strike out a claim at any time on the ground that the claim is an abuse of the process of the Court. The doctrine of abuse of process engages the inherent power of the Court to prevent the misuse of its procedure in a way that would be unfair to a party to the litigation or otherwise bring the administration of justice into disrepute: *Toronto (City) v C.U.P.E., Local 79*, 2003 SCC 63 at paras 35-55 [*C.U.P.E.*]; *Janssen Inc. v. Apotex Inc.*, 2023 FCA 253 at paras 10 to 14 [*Janssen*].

[25] Abuse of process is a flexible doctrine that allows the Court to dismiss proceedings that are attempts to re-litigate the same dispute but may not necessarily fall within the strict limits of the doctrines of *res judicata* or collateral attack. It is well-established that the commencement by a party of more than one proceeding in the same jurisdiction against the same defendant in relation to the same dispute is an abuse of process: *C.U.P.E.* at para 37.

[26] The doctrine of abuse of process by re-litigation operates, in part, to avoid inconsistent court decisions regarding the same dispute and protects the principle of finality in litigation. It also preserves the courts' and the litigants' resources and ensures that a defendant is not "twice vexed by the same cause": *Janssen* at para 11.

[27] In this case, the Minister argues that the 2024 Claim constitutes an abuse of process and should be struck out pursuant to Rule 221(1)(f) of the *Rules*, because Mr. Bennett is re-litigating the 2021 Claim brought by him against the Minister. This Court dismissed the 2021 Claim for delay due to Mr. Bennett's failure to comply with the orders and directions of this Court, and that decision was upheld on appeal: *Bennett v Minister of Public Safety and Emergency Preparedness*, Court Files Nos. T-354-21 (February 21, 2023, unreported, Coughlan, A.J.); *Bennett v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2023 FC 761; *Bennett v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2024 FCA 97.

[28] Mr. Bennett submits that the 2024 Claim is different from the 2021 Claim. He says that the 2024 Claim is framed as a *Charter* challenge whereas the 2021 Claim was not. Moreover, the 2024 Claim pleads new facts, entitled "Most Recent Facts", describing how he sent emails to the Minister's lawyer in August 2024 asking her to reconsider the matter and return the motorhome to him, and that the only response was "a further $2000. Fee" [*sic*]. Further, the 2024 Claim refers to

new video evidence that Mr. Bennett urges the Court to review, and which he alleges to be accessible on his account on the social media platform known as "X".

[29] Insofar as Mr. Bennett relies on the new video evidence as a basis for distinguishing the 2024 Claim from the 2021 Claim, that argument must fail for several reasons. First, the reference to the video evidence in the 2024 Claim is an impermissible pleading. Rule 174 explicitly states that it is improper to plead evidence, as opposed to material facts. Moreover, Mr. Bennett is pleading evidence that he obtained through the discovery process in another proceeding, thus ostensibly in contravention of the implied undertaking rule.

[30] Second, by his own admission, Mr. Bennett received disclosure of the video evidence in March 2022, as part of the Minister's document production in the prior proceeding (see page 5 of the 2024 Claim). In other words, the video evidence is evidence that was available when the 2021 Claim was being litigated. Mr. Bennett had ample opportunity to rely upon the video evidence in the context of his 2021 Claim, but instead he neglected to prosecute that Claim in a timely manner, leading to its dismissal by the Court.

[31] The alleged "new" factual allegation on the bottom of page 6 of the 2024 Claim (*i.e.*, that he sent emails to the Minister's lawyer in August 2024 requesting reconsideration of the matter and return of the motorhome), standing on its own, does not attract any independent culpability on the part of the Minister. As such, it does not distinguish the 2024 Claim from the 2021 Claim in a substantive way.

[32] While Mr. Bennett has repackaged the 2024 Claim as a *Charter* claim on this second go-around, at its core, the 2024 Claim remains an action for the return of his motorhome based on the

alleged wrongful seizure of that property by CBSA border agents in July 2019. Simply re-engineering the claim to seek to re-litigate, on a different legal basis, an action based on the same core facts, and seeking the same relief as in a previously determined proceeding, is an abuse of process: *Jazz Air LP v. Toronto Port Authority*, 2007 FC 114 at para 27; *Bernath v. Canada*, 2005 FC 1232 at para 21.

[33] Moreover, the *Charter* claims were evidently within Mr. Bennett's contemplation when the 2021 Claim was still in litigation. In the Order dismissing the 2021 Claim, Associate Judge Coughlan observed that Mr. Bennett "advised of his intention to amend his Statement of Claim to add Charter breaches" during a case management conference on June 27, 2022. Despite having been granted ample time by the Court to bring a motion to amend, Mr. Bennett failed to do so. Almost two (2) years after the dismissal of the 2021 Claim, Mr. Bennett is now seeking a "do over" of his prior claim by adding a *Charter* challenge to his 2024 Claim.

[34] Having reviewed the 2021 Claim filed by Mr. Bennett and compared it to the 2024 Claim presently before the Court, I conclude that Mr. Bennett is attempting to re-litigate essentially the same dispute (alleged unlawful seizure of his motorhome by CBSA in July 2019) against the same Defendant (the Minister). In both claims, Mr. Bennett asserts that he is innocent of any wrongdoing, and that the motorhome was unlawfully seized by the CBSA in July 2019. The relief sought in both claims is virtually identical, including the return of the seized motorhome. Accordingly, I conclude that the 2024 Claim should be struck as an abuse of process by re-litigation.

[35] This is sufficient to dispose of the Minister's motion. However, for the sake of completeness, I propose to also address the Minister's argument that the 2024 Claim should be struck because it fails to disclose a reasonable cause of action.

VI. Does the 2024 Claim Disclose a Reasonable Cause of Action?

[36] The Court may strike a claim if it discloses no reasonable cause of action. No evidence shall be heard on a motion to strike brought on this basis: Rules 221(1)(a) and 221(2).

[37] The stringent test for striking out a claim on this basis is whether, assuming that the facts pleaded to be true, it is "plain and obvious" that the pleaded claims disclose no reasonable cause of action. Another way of putting the test is that the claim has no reasonable prospect of success: *Hunt v. Carey Canada Inc.*, [1990] 2 SCR 959 at para 36; *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42 at para 17, [2011] 3 SCR 45.

[38] The Statement of Claim is to be read "as generously as possible and to accommodate any inadequacies in the form of the allegations which are merely the result of drafting deficiencies": *Operation Dismantle v. The Queen* [1985] 1 SCR 441 at paras 14 and 27.

[39] A statement of claim may be struck out as disclosing no reasonable cause of action where bare conclusions are set out without a supporting factual basis. The specific requirement to plead material facts is embodied in Rule 174 of the *Rules*, which provides that a statement of claim "shall contain a concise statement of the material facts on which the party relies".

[40] What constitutes a material fact is determined in light of the cause of action and the damages sought to be recovered. A plaintiff must plead, in summary form but with sufficient detail,

the constituent elements of each cause of action or legal ground raised. The pleading must tell the defendant who, when, where, how and what gave rise to its liability. The Court and opposing parties cannot be left to speculate as to how the facts might be variously arranged to support various causes of action: *Mancuso v. Canada (National Health and Welfare)*, 2015 FCA 227 at paras 16 and 19 [*Mancuso*].

[41] The Supreme Court of Canada has defined the substantive content of each *Charter* right in the case law, and a plaintiff who relies on the *Charter* must plead sufficient material facts to satisfy the criteria applicable to the provision in question: *Mancuso*, para 21. *Charter* cases cannot be considered in a factual vacuum: *Mackay v. Manitoba*, [1989] 2 SCR 357 at pages 361-362.

[42] In this case, the Minister submits that the 2024 Claim should be struck out on the basis that Mr. Bennett makes bald, conclusory allegations of *Charter* violations without pleading the required material facts to establish any reasonable cause of action.

[43] I agree. Mr. Bennett has not pled sufficient materials facts to substantiate a cause of action based on a violation of the *Charter*. Instead, the 2024 Claim baldly alleges a "Violation of *Charter* Rights" and cites the *Canadian Bill of Rights* and sections 1, 7, 8, and 24(1) of the *Charter*. Similarly, page 6 of the 2024 Claim sets out a bare assertion that section 8 of the *Charter* "guarantees no illegal Seizures", and that "[m]y property was seized by way of false pretences, and I was labelled as Guilty without due process of law".

[44] Mr. Bennett submits that "what propagated this Claim" was that "I asked DOJ (by way of e-mails) to return my property since they know for sure that I am not guilty of any wrongdoing.

They refused; therefore, I say my Charter Rights are being violated because they are depriving me of the right to enjoy my property without good reason" (written representations, para 16).

[45] To the extent that Mr. Bennett relies on the factual allegations pled at the bottom of page 6 of the 2024 Claim, under the heading "Most Recent Facts", as establishing the material facts to support his *Charter* claim, it is woefully inadequate. While a self-represented litigant such as Mr. Bennett may expect to be granted some leniency by the Court, he must still draft a claim that discloses a cause of action to which the Minister can respond: *Turmel v. Canada*, 2021 FC 1095 at para 25.

[46] Even on the most generous of readings, I find that Mr. Bennett has not pled, or factually substantiated, the essential elements of any cause of action based on a violation of the *Charter*, nor any other cause of action or legal ground raised in the 2024 Claim. Accordingly, it is plain and obvious that the 2024 Claim must be struck because it fails to disclose a reasonable cause of action against the Minister.

[47] For these reasons, I conclude that the Minister's motion to strike should be granted. The 2024 Claim is an abuse of process. Furthermore, it is plain and obvious that the 2024 Claim discloses no reasonable cause of action against the Minister.

VII. The Claim should be Struck Out Without Leave to Amend

[48] After determining that the 2024 Claim will be struck, I am required by Rule 221 to consider whether to permit Mr. Bennett to file an amended 2024 Claim. The test for granting leave to amend is whether the defects in the claim can potentially be cured by amendment: *Simon v. Canada*, 2011 FCA 6 at paras 8 and 14.

[49] In this case, Mr. Bennett has proposed amendments to the 2024 Claim by way of his Proposed Amended Claim. The effect of the proposed amendments is to eviscerate the 2024 Claim, so that the only factual allegations that remain are those relating to Mr. Bennett's emails to the Minister's lawyer in August 2024 seeking a return of his motorhome, and that he received no response. In other words, Mr. Bennett's proposed amendments are devoid of material facts to establish any reasonable cause of action.

[50] In light of my determination that the 2024 Claim is an abuse of process, and having considered the scanty factual allegations set out in the Proposed Amended Claim, I am not satisfied that the defects are curable. Accordingly, I conclude that the 2024 Claim should be struck out, without leave to amend.

VIII. Should Mr. Bennett's Cross-Motion to Amend the 2024 Claim be Granted?

[51] In light of my disposition of the Minister's motion, Mr. Bennett's motion to amend the 2024 Claim becomes moot, as I am striking the 2024 Claim in its entirety without leave to amend.

IX. Conclusion

[52] For the foregoing reasons, I conclude that the Minister's motion is granted, and Mr. Bennett's motion is dismissed as moot.

[53] As for costs of the motion, the Minister seeks costs in the amount of $1,260.00. I see no reason to deviate from the general rule that the successful party is entitled to an award of costs. Costs are hereby fixed in favour of the Minister in the amount of $1,260.00, inclusive of disbursements and taxes.

THIS COURT'S JUDGMENT is that:

1. The Registry shall reject the Proposed Amended Claim tendered on January 27, 2025 by Mr. Bennett for filing as such. Instead, the Registry is instructed to stamp the document as "Received", and to treat it as forming part of Mr. Bennett's responding motion record to the Minister's motion to strike.

2. The style of cause in the 2024 Claim is amended, with immediate effect, to correct the name of the Defendant to be the "Minister of Public Safety and Emergency Preparedness", and to describe Mr. Bennett as the "Plaintiff" instead of the "Appellant".

3. The Minister's motion to strike is granted.

4. The Statement of Claim is struck out, without leave to amend.

5. The action is dismissed.

6. Mr. Bennett shall pay to the Minister his costs of the motion, hereby fixed in the amount of $1,260.00, inclusive of disbursements and taxes, payable to the Receiver General for Canada.

"Kathleen Ring"
Associate Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-3238-24
STYLE OF CAUSE:	ROGER BENNETT v THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

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

JUDGMENT:	RING A.J.
DATED:	MARCH 3, 2025

WRITTEN REPRESENTATIONS BY:

Roger Bennett	FOR THE PLAINTIFF (ON HIS OWN BEHALF)
Margaret Girard	FOR THE DEFENDANT

SOLICITORS OF RECORD:

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