Federal Court Cour fédérale

Date: 20250825

Docket: T-631-25

Citation: 2025 FC 1413

Ottawa, Ontario, August 25, 2025

PRESENT: The Honourable Madam Justice Furlanetto

BETWEEN:

JAMES SIPOS

Plaintiff

and

HIS MAJESTY THE KING

Defendant

ORDER AND REASONS

I. Overview

[1] The Defendant, His Majesty the King, brings this motion under Rules 221 and 369 of the *Federal Courts Rules*, SOR/98-106 [*Rules*] for an Order striking the Statement of Claim [Claim], without leave to amend, as an abuse of process and for disclosing no reasonable cause of action.

[2] The Plaintiff is a self-represented inmate at Joyceville Institution [Joyceville]. In the underlying proceeding, he requests the repair and return of his personal computer, which he asserts was damaged by the Defendant during his transfer from Bath Institution [Bath] to Joyceville, and which the Assistant Warden, Operations [AWO] and Deputy Warden of Joyceville [DW] refused to send for repair. He also requests compensatory damages for alleged breach of contract in the amount of $500 and punitive damages in the amount of $1,500, with reference to an earlier settlement agreement involving a predecessor personal computer.

[3] The Defendant asserts that the Claim is premature as the Plaintiff has not exhausted the internal grievance process available under sections 90 and 91 of the *Corrections and Conditional Release Act*, SC 1992, c 20 [*CCRA*], and sections 74 to 82 of the *Corrections and Conditional Release Regulations*, SOR/92-620 [*CCRR*]. The Defendant notes that the Plaintiff has already sought compensation for damage done to his personal computer by filing a successful claim against the Crown [CAC] pursuant to Commissioner's Directive 234: Claims for Staff Personal Effects and Inmate Personal Effects and the Offender Accident Compensation Program [Directive 234] and has been offered $200 for the claimed damage. The Defendant further asserts that the Claim fails to plead material facts and sufficient particulars to support a claim for breach of contract.

[4] For the reasons set out below, I find that the Claim is premature and must be struck as an abuse of process and for failure to disclose a reasonable cause of action.

II. Analysis

[5] Rule 221 of the *Rules* provides the Court with jurisdiction to strike a statement of claim where, amongst other reasons, it discloses no reasonable cause of action or is an abuse of the process of the Court.

[6] The law relating to motions to strike is well settled. A claim will be struck only in the clearest of cases. On a motion to strike a claim as an abuse of process or on the basis that it has no reasonable cause of action, the moving party must establish that it is "plain and obvious" that the claim should not proceed: *R v Imperial Tobacco Canada Ltd.*, 2011 SCC 42 [*Imperial Tobacco*] at para 17; *Hunt v Carey Canada Inc*, [1990] 2 SCR 959 at p 980. A motion to strike has been described as a "valuable housekeeping measure essential to effective and fair litigation": *Sivak v Canada*, 2012 FC 272 [*Sivak*] at para 15; *Imperial Tobacco* at paras 17 and 19.

[7] In determining whether to strike a claim, the allegations of fact in the statement of claim must be taken as true, unless patently ridiculous or incapable of proof: *Imperial Tobacco* at para 24; *Scheuer v Canada* 2016 FCA 7 at para 12. While the Court will show flexibility towards a person who is self-represented, this does not exempt a self-represented litigant from complying with the requirements for pleading set out in the *Rules*: *Brauer v Canada*, 2020 FC 828 at paras 30-31.

[8] In this case, the Claim pleads the following factual background:

- The Plaintiff purchased the computer at issue pursuant to a Settlement Agreement from 2016 relating to an earlier action between the Plaintiff and Correctional Service Canada [CSC] involving the destruction of a computer system and peripherals [2016 Agreement].

- On June 19, 2024, the Plaintiff transferred from Bath to Joyceville. During CSC's transfer of the Plaintiff's personal belongings, the Plaintiff's personal computer was damaged.

- On August 9, 2024, upon arrival at Joyceville, the Plaintiff's computer was sent to an Information Management Systems officer [Officer] for compliance inspection. The Officer advised the Plaintiff that the computer was not working properly and that it could not be inspected and reissued to the Plaintiff. He further advised the Plaintiff to make a request to the AWO to send the computer out for repair.

- On August 12, 2024, the Plaintiff filed a request with the AWO to have his computer sent to an authorized computer dealer for diagnostics and repair at the Plaintiff's expense. The request was denied with the AWO allegedly citing changes to the inmate-owned computer policy and recommending that the Plaintiff file a CAC against Bath.

- On October 6, 2024, the Plaintiff filed a supplementary request with the AWO for approval to repair his computer, citing the terms and conditions of the 2016 Agreement and an earlier version of the policy. The request was again refused with the AWO citing to Annex B of Commissioner's Directive 566-12, 2023-20-

30 [Directive 566-12] which is asserted to prohibit repair of inmate-owned computers. Subsequent requests made in October and November 2024 were similarly refused.

- On December 13, 2024, the Plaintiff filed a CAC seeking $200 for the repair of his personal computer. The CAC was “upheld” on January 15, 2025, resulting in the Plaintiff being offered $200 in compensation.

- On February 3, 2025, the Plaintiff filed an additional request with the AWO seeking to disburse $200 of his own funds for the diagnosis and repair of his computer.

- On February 5, 2025, the AWO and DW refused to send the computer out for service on the basis that Directive 566-12 does not allow for the repair of inmate-owned computers, the 2016 Agreement was not relevant, and the transfer negated any obligation to return the computer.

[9] The Plaintiff alleges that the 2016 Agreement was based on the earlier version of Directive 566-12 that allowed inmates who had approved personal computers prior to October 2002 to retain their equipment and to have it repaired until they are released from the institution, or they are in violation of the Inmate Statement of Consent to Abide by the Conditions Governing Inmate Owned Computers [CSC/SCC 2022 2016].

[10] The Plaintiff alleges that the Defendant was negligent in failing to minimize the risk of damage to the Plaintiff’s computer system and that the damage caused to the Plaintiff’s computer

system constitutes negligent breach of the duty of care owed to the Plaintiff. The Plaintiff further alleges that the Defendant caused injury, loss and damage to the Plaintiff by repeating the same conduct that was at issue in the prior action brought by the Plaintiff in 2016 (Court File No. T-343-16). The Plaintiff alleges that he is entitled to the immediate repair and return of his computer in view of the 2016 Agreement and the earlier version of Directive 566-12 in place at that time (Annex D of Commissioner's Directive 566-12, 2016). He asserts that the Defendant's actions constitute a breach of the 2016 Agreement.

[11] The Plaintiff further claims that the Defendant is in breach of a modified version of CSC/SCC 2022 2016 which he signed in consideration of the 2016 Agreement. He claims that the terms of the CSC/SCC 2022 2016 allow him to repair, service, or upgrade his computer at his expense.

[12] The Plaintiff alleges that the Defendant breached a duty of good faith and acted contrary to the provisions of the *CCRA* and *CCRR*.

[13] It is well established that absent exceptional circumstances a party cannot proceed to the Court until all available and effective remedies in an administrative process are exhausted: *CB Powell Limited v Canada (Border Services Agency)*, 2010 FCA 61 [*CB Powell*] at paras 30-31. This principle applies for both applications for judicial review and for actions where adequate alternative remedies could be obtained through administrative processes: *TPG Technology Consulting Ltd v Canada*, 2014 FC 933 at paras 96-97; aff'd 2016 FCA 279.

[14] In determining whether an issue is one that may be grieved, what matters is the essence of the claim made and not the way the claim is characterized in the Statement of Claim. It does not matter if a plaintiff alleges breach or various tort claims; one must instead look to the essential character of the dispute to determine if it raises a matter that could have been the subject of a grievance: *Adelberg v Canada*, 2024 FCA 106 at para 56.

[15] In this case, the Plaintiff seeks both the return and repair of his computer, as well as declaratory relief and damages relating to the Defendant's handling of the Plaintiff's computer during transport from Bath to Joyceville and afterwards. The Defendant asserts that the return and repair of the Plaintiff's computer is at the heart of the Plaintiff's Claim and calls into question the AWO/DW's interpretation of Directive 566-12, which is a grievable issue. The Plaintiff does not dispute that the grievance process was available to him, nor that the interpretation and applicability of Directive 566-12 (and its predecessor version) are central to his Claim. However, he relies on *Canada (Attorney General) v TeleZone Inc*, 2010 SCC 62 [*TeleZone*] to argue that exceptional circumstances apply, providing a choice over the procedure to pursue. He asserts that the 2016 Agreement is relevant and that the events leading to the 2016 Agreement establish that the grievance process is inadequate. He asserts that he is entitled to the Court's determination on whether Directive 566-12 shields the Defendant from liability for negligence, breach of contract, detinue, failing to act fairly and to repair and return his property.

[16] As a preliminary matter, I do not agree that *TeleZone* extends as far as the Plaintiff proposes as this would result in precisely what *CB Powell* guards against, namely interference with the decision-making responsibilities delegated to administrative decision-makers. *TeleZone*

dealt with the doctrine of collateral attack and the jurisdiction of the provincial superior court to deal with a claim in the absence of a prior judicial review in the Federal Court, not the doctrine of exhaustion of administrative processes and the issue of prematurity. In my view, *CB Powell* sets out the governing principles.

[17] As noted by the Plaintiff in his Claim, the *CCRA* and *CCRR* provide provisions which address the role and responsibilities of the CSC relating to the care and custody of inmates, including the protection of their permitted personal effects (section 84 of the *CCRR*). Pursuant to sections 97 and 98 of the *CCRA*, the Commissioner of Corrections is authorized to issue directives relating to the management of the CSC and the principles that guide their purpose.

[18] Section 90 of the *CCRA* provides for a grievance procedure "for fairly and expeditiously resolving offender grievances on matters within the jurisdiction of the Commissioner." Every offender has access to the offender grievance procedure (section 91 of the *CCRA*). Subsection 74(1) of the *CCRR* clarifies that the grievance procedure is available when an offender is "dissatisfied with an action or decision by a staff member." The purpose of the grievance process is to "support the fair and expeditious resolution of offender complaints and grievances at the lowest possible level in a manner that is consistent with the law": Commissioner's Directive 081: Offender Complaints and Grievances, June 28, 2019.

[19] I agree with the Defendant that the interpretation and applicability of Directive 566-12, and its predecessor language, falls directly within the bailiwick of the grievance process, as does the determination of whether the 2016 Agreement is relevant to the handling of the Plaintiff's

current computer. Although the Plaintiff structures his claim in tort, his claim for damages is premised on the interpretation of Directive 566-12 and the obligations of the CSC under the *CCRA* and *CCRR*. The allegations of breach of contract are similarly premised on whether the 2016 Agreement has any application to the facts in issue and to the CSC's obligations. All of these issues can be dealt with through a grievance of the AWO/DW's February 5, 2025 refusal.

[20] In *Blair v Canada (Attorney General)*, 2022 FC 957 [*Blair*] at paragraph 46, Associate Justice Duchesne (as he then was) described the limited types of exceptional circumstances that allow a party to bypass an administrative process:

> [46] Exceptional circumstances have been generally described as being, "cases of emergency, evident inadequacy in the procedure, or where physical or mental harm is caused to an inmate" (*Rose v Canada (Attorney General)*, 2011 FC 1495 at para 35; *Marleau v Canada (Attorney General)*, 2011 FC 1149 at para 34; *Gates v Canada (Attorney General)*, 2007 FC 1058, 316 FTR 82 at para 26). This list of exceptional circumstances is not exhaustive. Very few circumstances qualify as "exceptional" and the threshold for exceptionality is high. Concerns about procedural fairness or bias, the presence of an important legal or constitutional issue, or the fact that all parties have consented to early recourse to the courts are not exceptional circumstances allowing parties to bypass an administrative process, as long as that process allows the issues to be raised and an effective remedy to be granted (*C.B. Powell*, s*upra*, at paragraph 33).

[21] However, none of these circumstances apply here.

[22] While the Plaintiff seeks to rely on reports, including from the Office of the Correctional Investigator which critique the grievance system to suggest that the grievance system is inadequate, reference to these reports alone is not sufficient to bypass the grievance process. Indeed, similar arguments were recently raised and rejected in *Ritch v Canada (Attorney*

General), 2022 FC 1462 [*Ritch*] at paragraphs 23-26. As emphasized in *Ritch*, the CSC internal grievance system is an adequate alternative remedy that must be exhausted before an applicant can seek judicial review (at para 26; see also *Blair* at para 44).

[23] I likewise do not find the materials filed relating to the prior experience of the Plaintiff in connection with his grievance leading to the judicial review in T-343-16 to be sufficient to suggest an inadequacy in the grievance process overall. To the contrary, while the process took some time, it led to the 2016 Agreement, which the Plaintiff described as resulting in a satisfactory resolution for the issues that were in play at that time. The Plaintiff has not established how the 2016 Agreement would render the grievance process irrelevant and inadequate to address the new facts in issue.

[24] In my view, the Plaintiff has not demonstrated that there are exceptional circumstances that would justify the Court setting aside the principle of judicial non-interference to allow the Claim to proceed before it has gone through the CSC internal grievance process.

[25] As highlighted by the Defendant, with respect to the Plaintiff's claim for damages, the Plaintiff has also brought a CAC for the damage to his computer system pursuant to Directive 234, in which he was offered the requested $200 in compensation. Although the Plaintiff suggests that he was induced to file the claim on the premise that if it was upheld, the CSC would repair the Plaintiff's computer, it is my view that this allegation is again a matter that can be grieved and that a separate claim for damages absent grievance of the issue would be inappropriate and an abuse of process.

[26] For all these reasons, the Claim shall be struck as premature without leave to amend.

[27] As no claim for costs was requested, none shall be awarded.

ORDER IN T-631-25

THIS COURT ORDERS that:

1. The motion is granted, and the Statement of Claim is struck without leave to amend.

2. There shall be no costs awarded on this motion.

"Angela Furlanetto"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-631-25
STYLE OF CAUSE:	JAMES SIPOS v HIS MAJESTY THE KING
ORDER AND REASONS:	FURLANETTO J.
DATED:	AUGUST 25, 2025

MOTION IN WRITING CONSIDERED IN OTTAWA, ONTARIO PURSUANT TO RULES 210 AND 369 OF THE *FEDERAL COURTS RULES.*

WRITTEN SUBMISSIONS BY:

James Sipos	FOR THE PLAINTIFF (ON HIS OWN BEHALF)
Leah Jamieson	FOR THE DEFENDANT

SOLICITORS OF RECORD:

Deputy Attorney General of Canada Ottawa, Ontario	FOR THE DEFENDANT