

Federal Court



Cour fédérale

Date: 20250924

Docket: T-336-25

Citation: 2025 FC 1571

Ottawa, Ontario, September 24, 2025

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

DR STEPHEN FOX

Plaintiff

and

**HIS MAJESTY THE KING IN RIGHT OF CANADA
AS REPRESENTED BY THE ATTORNEY GENERAL OF CANADA**

Defendant

ORDER AND REASONS

I. Overview

[1] The Plaintiff Dr. Stephen Fox has commenced a civil action against the Defendant His Majesty the King, as represented by the Attorney General of Canada. Dr. Fox seeks damages and other relief arising from an alleged conspiracy among high-ranking government officials to prevent his attendance at his criminal trial in British Columbia, where he was convicted of voyeurism.

[2] The Defendant has brought a motion in writing pursuant to Rules 369(1) and 221(1) of the *Federal Court Rules*, SOR/98-106 [Rules] to strike Dr. Fox's Statement of Claim without leave to amend. In the alternative, the Defendant requests an extension of time in which to file a Statement of Defence.

[3] Dr. Fox opposes the motion, and requests an oral hearing and an opportunity to subpoena witnesses. As will become clear in the analysis that follows, this motion may be fairly disposed of in writing without personal appearance of the parties (*Philbert v Canada*, 2023 FC 1503 at para 10).

[4] Dr. Fox's civil action in this Court is an attempt to relitigate matters that have already been determined by other courts. This offends the integrity of the judicial process and is contrary to the interests of efficiency, finality and consistency, and amounts to an abuse of process. Dr. Fox's Statement of Claim must therefore be struck in its entirety without leave to amend.

I. Background

[5] Dr. Fox emigrated to Canada from the United Kingdom [UK] in 2014. He became a Canadian citizen in 2019. He had been a physician for several decades, and he opened a medical clinic in Cumberland, British Columbia.

[6] In March 2021, Dr. Fox was charged with voyeurism, extortion, and criminal harassment. He returned to the UK. His Canadian passport had been seized by the Canada Border Services Agency, but he was able to travel between the UK and Canada with a "special authorization to

travel” [SATT] granted by Immigration, Refugee and Citizenship Canada. This permitted him to attend the first phase of his criminal trial in British Columbia from April 11, 2023 to April 14, 2023.

[7] Dr. Fox did not return to Canada for the continuation of his trial in October 2023. The Provincial Court of British Columbia convicted him *in absentia* of voyeurism, contrary to s 162(1) of the *Criminal Code*, RSC, 1985, c C-46. The trial judge imposed a conditional discharge

[8] Dr. Fox claims that he was unable to attend the continuation of his criminal trial because he was placed on the list established under s 8 of the *Secure Air Travel Act*, SC 2015, c 20, s 11 [SATA], colloquially known as the “No Fly List”. He alleges that high-ranking government officials, including the Prime Minister of Canada and the Premier of British Columbia, conspired to prevent his attendance at his trial. He says the federal government added his name to the No Fly List to prevent him from exposing a sexual misconduct scandal involving healthcare professionals and law enforcement during the COVID-19 pandemic.

[9] Dr. Fox appealed his conviction. On December 19, 2024, the British Columbia Court of Appeal [BCCA] dismissed Dr. Fox’s applications for production of additional documents, holding as follows (*R v SF*, 2024 BCCA 413 [*SF*] at para 70-71):

We find that S.F. has failed to meet this low burden. The theory or line of reasoning advanced to support S.F.’s claim of likely relevance rests on the speculative, entirely unfounded, irrational belief that he was placed on the SATA list in order to prevent his return to Canada so that he would not expose some kind of COVID-19-related sex scandal.

Many of the key planks on which S.F. has constructed his theory are based on irrational and speculative interpretations of banal facts or events. [...]

[10] The Statement of Claim filed by Dr. Fox in this Court advances numerous causes of action, including breaches of ss 6, 7 and 11(d) of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [Charter], conspiracy, defamatory libel, and misfeasance in public office. The claim is premised on the same theory he advanced before the BCCA. He seeks \$39,593,000 in compensatory damages; the same amount in aggravated and punitive damages; declarations that his Charter rights were infringed; Charter damages; an order of *mandamus* compelling the Minister of Public Safety to give notice of his delisting from the SATA; and a referral of the matter to the Attorney General of Canada for further investigation and prosecution.

II. Issue

[11] The principal issue raised by this motion is whether Dr. Fox's civil action amounts to an abuse of process.

III. Analysis

[12] Rule 221(1) provides as follows:

Motion to strike

221 (1) On motion, the Court may, at any time, order that a pleading, or

Requête en radiation

221 (1) À tout moment, la Cour peut, sur requête, ordonner la

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,
- (b) is immaterial or redundant,
- (c) is scandalous, frivolous or vexatious,
- (d) may prejudice or delay the fair trial of the action,
- (e) constitutes a departure from a previous pleading, or
- (f) is otherwise an abuse of the process of the Court,

and may order the action be dismissed or judgment entered accordingly.

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;
- b) qu'il n'est pas pertinent ou qu'il est redondant;
- c) qu'il est scandaleux, frivole ou vexatoire;
- d) qu'il risque de nuire à l'instruction équitable de l'action ou de la retarder;
- e) qu'il diverge d'un acte de procédure antérieur;
- 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.

[13] Abuse of process under Rule 221(1)(f) engages the inherent power of the Court to prevent the misuse of its procedure (*Toronto (City) v CUPE, Local 79*, 2003 SCC 63 [*CUPE*] at para 37). The doctrine is flexible and unencumbered by specific requirements, and in this respect differs from *res judicata* and issue estoppel (*Law Society of Saskatchewan v Abrametz*, 2022 SCC 29 at para 35). Its primary focus is on preserving the integrity of the Court's adjudicative functions, and less on the interests of the parties (*CUPE* at para 43). Courts have applied the abuse of process doctrine to preclude relitigation when it would be contrary to the principles of judicial economy, consistency, finality and integrity of the administration of justice (*CUPE* at para 37).

[14] Dr. Fox is attempting to relitigate issues that have previously been determined by the BCCA. In his motion before the BCCA, Dr. Fox sought documentation relating to his alleged placement on the No Fly List, as well as documentation that was supposedly withheld from him concerning the alleged COVID-19-related sex scandal. The BCCA ruled as follows (*SF* at para 69):

We accept that in order to meet the relevance threshold, S.F. is not required to prove anything. Nor is he required to show that production of the materials will lead to a successful fresh evidence application. Rather, S.F. is required to identify a rational basis or line of reasoning pursuant to which the materials would assist him in prosecuting his appeal, by assisting him in advancing a fresh evidence application that stands a reasonable chance of success.
[Emphasis added]

[15] This was a low bar for Dr. Fox to meet, and he failed to do so. The BCCA concluded that Dr. Fox relied on mere “conjecture and speculation” in asserting that his name was on the No Fly List, and there was no evidence of the alleged conspiracy (*SF* at para 119).

[16] In reaching its conclusion, the BCCA conducted a thorough review of Dr. Fox’s evidence (*SF* at paras 43, 70-75) and affidavits filed by the Attorney General of Canada (*SF* at paras 44-52). The BCCA concluded that Dr. Fox’s theories could be traced to a generic “pop-up” message he received on the WestJet website. Any WestJet customer who clicked on the same link would receive the same pop-up message; this did not mean that Dr. Fox was on the No Fly List. Nor did Dr. Fox’s inability to submit a SATT application demonstrate that he was on the No Fly List, because the SATT authorization process is independent of the listing process under the SATA.

[17] The BCCA found that subsequent communications between Dr. Fox and Global Affairs' Emergency Watch and Response Centre, WestJet, and Public Safety Canada offered no support for his theories. The BCCA noted that a person would not know about their placement on the No Fly List until they attempted to check in for a flight, which Dr. Fox never did.

[18] Dr. Fox's Statement of Claim relies on the same arguments and interpretation of events he put before the BCCA. In his response to the present motion, Dr. Fox seeks to rely on one additional document that allegedly shows WestJet's coding of his flight, which he says is further proof of his inclusion on the No Fly List. The coding reads as follows:

H-RISK MGNT/ACCEPT///69EA8061-2B5D-4056-AF34-
52C152097C01

[19] In *CUPE*, the Supreme Court acknowledged that new evidence, previously unavailable, may demand relitigation of an issue where it conclusively impeaches the original result (*CUPE* at para 52). Here, the new document presented by Dr. Fox adds nothing material to the evidence previously canvassed and rejected by the BCCA.

[20] Dr. Fox's responding motion record is a collateral attack on the conclusions reached by the BCCA. Dr. Fox claims that its ruling was "flawed, unreasonable, and ultimately injudicious". The doctrine of abuse of process is intended to precisely prevent this scenario. If Dr. Fox is dissatisfied with the decision of the BCCA, his recourse is an appeal rather than a new action in this Court.

[21] Dr. Fox's Statement of Claim must be struck in its entirety. His attempt to relitigate matters previously determined by other courts amounts to an abuse of process. There is no amendment that can cure this defect (*Collins v Canada*, 2011 FCA 140 at para 26).

[22] The Defendant seeks costs in the amount of \$500. The Defendant has been wholly successful in this motion, and the amount requested falls within the range this Court has previously found reasonable for a motion to strike in comparable cases.

IV. Conclusion

[23] The Statement of Claim is struck in its entirety, without leave to amend.

[24] Costs are awarded to the Defendant in the all-inclusive amount of \$500.

ORDER

THIS COURT ORDERS that:

1. The Statement of Claim is struck in its entirety, without leave to amend.
2. Costs are awarded to the Defendant in the all-inclusive amount of \$500.

"Simon Fothergill"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-336-25

STYLE OF CAUSE: DR STEPHEN FOX v HIS MAJESTY THE KING IN
RIGHT OF CANADA AS REPRESENTED BY THE
ATTORNEY GENERAL OF CANADA

MOTION TO STRIKE PURSUANT TO RULE 369

DATED: SEPTEMBER 24, 2025

WRITTEN SUBMISSIONS BY:

Dr. Stephen Fox

FOR THE PLAINTIFF

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FOR THE DEFENDANT

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