Date: 20061109

Docket: T-1696-06

Citation: 2006 FC 1353

Montreal, Quebec, November 9, 2006

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

PRADEEP KUMAR VERMA and
CAROLE ANN BROWN

Plaintiffs

and

HER MAJESTY THE QUEEN IN THE RIGHT OF CANADA
(as vicariously liable on behalf of Judicial Administrator of Federal Court of Canada,
Clerk of the Privy Council of Canada, Royal Canadian Mounted Police,
Attorney General of Canada, Registrar of Supreme Court of Canada,
Executive Director of Canadian Judicial Council and
Commissioner for Federal Judicial Affairs and
Her Excellence The Governor General of Canada)

Defendant

REASONS FOR ORDER AND ORDER

[1] On the one hand, these reasons deal with a deficient statement of claim, the defendants' motion to strike it, and the plaintiffs' efforts to save it. On the other, they also deal with access to justice and the jurisdiction of the Federal Court.

[2] The plaintiffs, who do not say in the statement of claim who they are, have in eighteen short paragraphs claimed $3 million from eight separate entities. It is alleged that the defendants have engaged in unspecified conduct which violates the *Canadian Charter of Rights and Freedoms*. Among other things, they are said to have a duty to dissuade the judiciary from misapplication of law, which they have breached; they have been contemptuous of Parliament and have conspired to unlawfully interfere with the appeal of unconstitutional orders made by judges of this Court without jurisdiction. The Attorney General is singled out for special treatment in that he "has failed to limit and instead profited from the unlawful conduct of the federally appointed judges who have engaged in a tortious conduct."

[3] It would seem that the matters are so evident that the plaintiffs need not give particulars.

[4] The plaintiffs are not represented by counsel.

THE MOTION TO DISMISS

[5] Not surprisingly, the defendants have moved to have the statement of claim struck for failing to disclose a cause of action. They assert five grounds.

[6] The first is that the plaintiff Pradeep Kumar Verma is a person under legal disability and can only be represented by the Public Guardian and Trustee of British Columbia.

[7] The second is that the plaintiff Carole Ann Brown is not a solicitor and cannot represent Dr. Verma. This implies that she does not have a cause of action in her own right.

[8] The third and fourth grounds, which can be treated together, are that the statement of claim does not contain material facts and particulars as required by the *Federal Courts Rules*.

[9] Finally, in addition to not disclosing a reasonable cause of action, the statement of claim is said to be scandalous, frivolous, and vexatious and is otherwise an abuse of process of the Court.

[10] The defendants also ask that their motion be dealt with in writing pursuant to rule 369, without the need to resort to oral argument.

THE PLAINTIFFS' REPLY

[11] The plaintiffs responded in two ways. First, they filed what they call "Plaintiffs Reply and Cross-Motion". They also purported to file an amended statement of claim. In their motion record, they request an oral hearing.

[12] I will first deal with plaintiffs' request that the matter be heard orally, the status of the amended statement of claim and the status of the cross-motion, before dealing with the defendants' motion to strike.

[13] Although as a general rule parties have the right to be heard, it does not follow that they have the right to make oral argument, as opposed to written argument. For example, applications for leave to appeal to the Supreme Court of Canada are in writing only, unless the Court orders otherwise. Our rule 369 permits the moving party to propose that the motion be decided on the basis of written representations. The respondent on that motion may object and in its written memorandum set out reasons why the motion should be heard orally. Having considered the

responding record, I am satisfied there are no reasons to justify an oral hearing, and so the defendants' motion to strike shall be dealt with in writing.

[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". It follows that a party cannot unilaterally amend a pleading which is subject to a motion to strike without leave of the Court. Consequently, 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. This is the most favourable treatment I could possibly give the plaintiffs. To the extent the 71 pages contained therein constitute a reply, they will be considered.

[15] As to the extent that the "cross-motion" is a separate motion, it cannot be dealt with until the defendants have an opportunity to respond thereto and, in any event, becomes moot as I am striking the statement of claim in its entirety without leave to amend.

FEDERAL COURT JURISDICTION

[16] Before turning to the motion to strike, the plaintiffs either do not understand, or choose not to understand, that the Federal Court has been established by Parliament pursuant to section 101 of the *Constitution Act* as an additional Court for the better administration of the laws of Canada. As a

Court of statutory jurisdiction, as opposed, say, to the Supreme Court of British Columbia, the Federal Court only has jurisdiction over the subject matter if the claim is one with respect to which Parliament has legislative competence, there is actual and existing federal law, and the administration thereof has been confided to it. (*ITO - International Terminal Operators Ltd. v. Miida Electronics Inc.*, [1986] 1 S.C.R. 752, [1986] S.C.J. No. 38 (QL)) For instance, although the federal Parliament has legislative authority with respect to criminal law and has enacted the *Criminal Code*, the administration of that Code has been left with the provincial courts. It is obvious that much of the claim is beyond the subject matter jurisdiction of this Court. Since the statement of claim, even as purportedly amended, is completely bereft of merit, it is not necessary to deal with this jurisdictional issue.

[17] I turn now to the defendants' allegations.

THE PLAINTIFF VERMA IS NOT PROPERLY REPRESENTED

[18] The general rule is that an individual may represent himself or herself in court proceedings. Rule 115 allows the Court to appoint somebody to represent a person who is under a legal disability. Unless otherwise ordered in special circumstances, rule 121 requires that the representative be a solicitor.

[19] The defendants have provided information from the solicitor representing the Public Guardian and Trustee of British Columbia. The solicitor attaches two earlier letters she wrote to the Federal Court in November 2002 and November 2004 with respect to other proceedings taken in the name of Dr. Verma and Ms. Brown. It appears that the Public Guardian and Trustee is the

Committee of the affairs of Dr. Verma, by certificate of incapability dated 14 November 2001, which unfortunately is not in the material before me. Under the *Patients Property Act of British Columbia* only the committee of the patient may bring an action on behalf of the patient. Ms. Brown is not the committee.

[20] Civil rights are a provincial matter under our Constitution. It follows therefore that the action was irregularly taken. However as the record on this point is not perfect, as the certificate of incapability was not provided, and as there are other grounds on which the statement of claim is subject to dismissal, there is no need to pursue this matter further. The Public Guardian and Trustee informally intervened in these proceedings in order to point out that Dr. Verma's situation has not changed.

[21] In the circumstances, it is not necessary to deal with the vague allegations on behalf of the plaintiffs that the British Columbia law is unconstitutional and that the federal government should be appointing a solicitor to act for Dr. Verma.

STATUS OF CAROLE ANN BROWN

[22] Although the original statement of claim does not indicate Ms. Brown's interest in the matter, the proposed amended statement of claim and the motion material clearly indicate that she has taken up Dr. Verma's cause. She does not have a cause of action of her own. The defendants have provided ample evidence that she is not a solicitor and she cannot purport to act for Dr. Verma by naming herself as a plaintiff.

LACK OF MATERIAL FACTS AND PARTICULARS

[23] Rules 171 and following require a party to allege material facts with sufficient particularity to allow the other party to respond. I add that a court is unable to change the *status quo* unless it understands what a party is talking about. The plaintiffs do not see it that way. In their reply record they say, among many other things, that the requirement to provide particulars has been fulfilled because:

> The torts are strict liability torts imposing the duty on the defendant to provide the factual matrix as defence given that mere alleging these offences is sufficient to switch the onus of supplying evidence to the defendants…
>
> …And the failure on the part of the defendants to be able to obtain the regularly relevant particulars is the result of own misconduct of taking every possible step to cause serious breakdowns in communication.

[24] What does this mean? I do not know.

[25] The proposed amended statement of claim breaks down into various parts, and sub-parts. It is alleged that the defendants:

i. Have violated mandatory constitutional guarantees;

ii. Have wrongfully or unlawfully excluded the claimants from court proceedings;

iii. Conspired to an unauthorized amendment of the Constitution of Canada by this wrongful or unlawful exclusion;

iv. Have committed the tort of misfeasance in public office through unconstitutional discrimination or an egregious breach of the doctrine of legitimate expectations;

v. Have colluded with the judiciary to perpetrate covert expropriation without compensation;

vi. Have furthered a conspiracy by the provincial attorneys generals, human rights tribunals and colleges of physicians and surgeons, to perpetrate common law and other torts; and

vii. Have assisted the Public Guardian and Trustee of British Columbia with high fiduciary breaches and perpetrating criminal offences.

[26] It would seem that the plaintiff Verma was a doctor subject to police investigation, and that the defendants have failed to control the judges in British Columbia, Ontario, Alberta, the Federal Court and Federal Court of Appeal (which I might add in itself would be unconstitutional).

[27] The proposed amended statement of claim has twenty-five conclusions. The amount of damages has gone up from $3 million to more than $105 million. They also seek a declaration to the effect that I cannot do what I am doing now, which is to consider a motion to strike the claim pursuant to rule 221:

> Given that such an order would in itself be actionable as wrongful covert expropriation of the property rights of a beneficiary of the Crown and a breach of high fiduciary duty amounting to secret commission producing constructive trust…

[28] I am satisfied that the statement of claim, even as purportedly amended, is bereft of material facts and particulars, and is incomprehensible. It cannot be saved.

FAILURE TO DISCLOSE A CAUSE OF ACTION

[29] The statement of claim, even as purportedly amended, does not disclose a cause of action and unquestionably constitutes an abuse of process.

[30] I strike out the statement of claim in its entirety, without leave to amend, and dismiss the action.

[31] As the statement has been struck, the cross-motion becomes moot. However since the statement of claim was struck out on the pleadings, and not after a hearing on the merits, there is nothing preventing the plaintiffs from filing a fresh action. The record indicates that the plaintiffs have already been declared vexatious litigators in British Columbia. If fresh proceedings are instituted, the Attorney General of Canada may wish to consider section 40 of the *Federal Courts Act.*

ORDER

THIS COURT ORDERS that the statement of claim is struck in its entirety, without leave to amend, and that the action is dismissed. There shall be no order as to costs.

"Sean Harrington"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE:	PRADEEP KUMAR VERMA and CAROLE ANN BROWN v. HER MAJESTY THE QUEEN IN THE RIGHT OF CANADA (as vicariously liable on behalf of Judicial Administrator of Federal Court of Canada, Clerk of the Privy Council of Canada, Royal Canadian Mounted Police, Attorney General of Canada, Registrar of Supreme Court of Canada, Executive Director of Canadian Judicial Council and Commissioner for Federal Judicial Affairs and Her Excellence The Governor General of Canada)

CONSIDERED IN WRITING PURSUANT TO RULE 369 AT MONTREAL, QUEBEC

REASONS FOR ORDER AND ORDER BY:	HARRINGTON J.
DATED:	November 9, 2006

WRITTEN SUBMISSIONS BY:

Carole Ann Brown (self-represented)	FOR THE PLAINTIFFS
Sarah Frost	FOR THE DEFENDANTS
Catharine Herb-Kelly, Q.C.	FOR THE PUBLIC GUARDIAN AND TRUSTEE OF BRITISH COLUMBIA

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