Federal Court  Cour fédérale

Date: 20091201

Docket: T-95-08

Citation: 2009 FC 1233

Vancouver, British Columbia, December 1, 2009

PRESENT: **Roger R. Lafrenière, Esquire**
Prothonotary

BETWEEN:

JOHN FREDERICK CARTEN AND KAREN AUDREY GIBBS

Plaintiffs

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA, JEAN CHRETIEN,
EDDIE GOLDENBERG, SERGIO MARCHI, LLOYD AXWORTHY,
PIERRE PETTIGREW, JOHN MANLEY, BILL GRAHAM, JIM PETERSON,
PAUL MARTIN, DAVID EMERSON, TIM MURPHY,
HER MAJESTY THE QUEEN IN RIGHT OF BRITISH COLUMBIA,
MICHAEL HARCOURT, GLEN CLARK, UJJAL DOSANJH, GORDON CAMPBELL,
ATTORNEY GENERAL FOR CANADA,
ALLAN ROCK, ANNE MCLELLAN, MARTIN CAUCHON, IRWIN COTLER,
ATTORNEY GENERAL FOR BRITISH COLUMBIA,
COLIN GABLEMAN, GEOFF PLANT, WALLY OPPAL,
CANADIAN JUDICIAL COUNCIL, JEANNIE THOMAS, NORMAN SABOURIN,
ANTONIO LAMER, deceased, BEVERLEY MCLACHLIN,
ALLAN MCEACHERN, deceased, PATRICK DOHM, DONALD BRENNER,
BRYAN WILLIAMS, JEFFERY OLIPHANT, JOHN MORDEN, JOSEPH DAIGLE,
THEMIS PROGRAM MANAGEMENT AND CONSULTING LTD.,
THE LAW SOCIETY OF BRITISH COLUMBIA, THE LAW SOCIETY OF ALBERTA,
DAVID VICKERS, ROBERT EDWARDS, deceased, JOHN BOUCK, JAMES SHABBITS,
HOWARD SKIPP, CRYIL ROSS LANDER, RALPH HUTCHINSON,
MICHAEL HALFYARD, HARRY BOYLE, SID CLARK, ALLAN GOULD,
ROBERT METZGER, BRIAN KLAVER, JOHN MAJOR, JOHN HORN,
BARBARA ROMAINE, ADELE KENT, SAL LOVECCHIO, DONALD WILKINS,
ROY VICTOR DEYELL, TIMOTHY LEADEM, WILLIAM PEARCE,
LISA SHEUDROFF, ANN WILSON, RICHARD MEYERS, GILLIAN WALLACE,
MAUREEN MALONEY, BRENDA EDWARDS, STEPHEN OWEN, DON CHIASSON,
CRAIG JONES, JAMES MATTISON, MCCARTHY TETRAULT LLP,
HERMAN VAN OMMEN, STEVE KLINE, LANG MICHENER LLP,
THE CORPORATION OF THE CITY OF VICTORIA, JOHN DOE AND JANE DOE

Defendants

REASONS FOR ORDER AND ORDER

LAFRENIÈRE P.

[1] On January 21, 2008, the Plaintiffs, John Frederick Carten (Carten) and Karen Audrey Gibbs (Gibbs), commenced an action for compensatory and punitive damages against Her Majesty the Queen in Right of Canada (the Federal Crown), as the primary Defendant, and against a number of other Defendants alleged to be either officers, employees, agents, or sub-agents of the Federal Crown.

[2] The Statement of Claim alleges widespread conspiracy and collusion among those in power, including past, present, and deceased members of both the British Columbia and federal governments and the judiciary, to personally injure Carten and to protect allegedly secret information related to bulk water export policies of the Governments of Canada and British Columbia. The Plaintiffs claim that the Defendants committed various torts and statutory breaches calculated to cause them harm, including obstructing the course of justice in various legal proceedings involving the Plaintiffs and intermeddling in police investigations arising from complaints filed by Carten. The Plaintiffs further allege that the Defendants' actions had the effect of violating the Plaintiffs' rights as guaranteed by the *Charter of Rights and Freedoms* (*Charter*) and the *International Covenant of Political and Civil Rights* (*ICPCR).*

[3] The Defendants have moved to strike the Statement of Claim under Rule 221 of the *Federal Courts Rules* (*FCR)* on the grounds that the pleading does not disclose a reasonable cause of action (Rule 221(a)), that the allegations made by the Plaintiffs are scandalous, frivolous or vexatious

(Rule 221(c)), that the claims are beyond this Court's jurisdiction and the proceeding constitutes an abuse of process (Rule 221(f)).

[4] For the following reasons, I conclude that the Statement of Claim should be struck as against all the Defendants, without leave to amend.

Motions before the Court

[5] Six separate motions to strike were filed by the following moving parties:

(a) Her Majesty the Queen in Right of Canada, Jean Chrétien, Eddie Goldenberg, Sergio Marchi, Lloyd Axworthy, Pierre Pettigrew, John Manley, Bill Graham, Jim Peterson, Paul Martin, the Honourable David Emerson, Tim Murphy, the Attorney General of Canada, Allan Rock, Anne McLellan, Martin Cauchon and Irwin Cotler (Federal Crown Defendants);

(b) the Defendants, Michael Harcourt, Glen Clark, Ujjal Dosanjh, Gordon Campbell, Attorney General for British Columbia, Colin Gableman, Geoff Plant, Wally Oppal, Allan McEachern, deceased, Patrick Dohm, Donald Brenner, Bryan Williams, David Vickers, Robert Edwards, deceased, John Bouck, James Shabbits, Howard Skipp, Cyril Ross Lander, Ralph Hutchinson, deceased, Michael Halfyard, Harry Boyle, Sid Clark, deceased, Allan Gould, Robert Metzger, Brian Klaver, John Major, John Horn, Timothy Leadem, William Pearce, Lisa Shendroff, Ann Wilson, Richard Meyers, Gillian Wallace, Maureen Maloney, Brenda Edwards,

Stephen Owen, Don Chiasson, Craig Jones and James Mattison (BC Crown Defendants);

(c) the Canadian Judicial Council (CJC), Jeannie Thomas, Norman Sabourin, Antonio Lamer, deceased, Beverley McLachlin, Jeffery Oliphant, John Morden, Joseph Daigle, Barbara Romaine, Adele Kent, Sal LoVecchio, Donald Wilkins and Roy Victor Deyell (Judicial Defendants);

(d) the Law Society of British Columbia (LSBC), McCarthy Tetrault LLP (McCarthy Tetrault) and Herman Van Ommen;

(e) Lang Michener LLP (Lang Michener); and

(f) the Law Society of Alberta (LSA).

[6] The Plaintiffs brought a motion for default judgment as against Themis Program Management and Consulting Ltd. (Themis), the only Defendant that did not file a statement of defence or move to strike on a timely basis. The Plaintiffs' motion was adjourned because no evidence had been adduced to support their claim against Themis: *Chase Manhattan Corp. v. 3133559 Canada Inc.*, 2001 FCT 895. The Plaintiffs were granted leave to file additional affidavit evidence and supplementary written representations.

[7] Before the parties' motions could be disposed of, the Plaintiffs appealed the Order of the Chief Justice appointing a prothonotary as case management judge of the proceeding. Out of deference to the appeal process, the motions were held in abeyance pending a decision on the Plaintiffs' appeal. In the interim, Themis moved for leave to file its Statement of Defence.

[8] The Federal Court of Appeal dismissed the Plaintiffs' appeal on October 6, 2009. The Plaintiffs wrote to the Chief Justice of the Federal Court on October 7, 2009 to advise that they did not intend to appeal the decision of the Federal Court of Appeal and requested that directions be issued to the prothonotary to "forthwith deliver reasons for judgment in respect of the two matters that have been before [the Court] since July, 2008".

[9] I shall deal firstly with the motions to strike because, in my view, they materially affect consideration of the Plaintiffs' motion for default judgment against Themis and Themis' motion for extension of time to file a statement of defence. As stated earlier in these reasons, the Defendants have raised numerous grounds why the Statement of Claim should be struck without leave to amend. I propose to briefly review the allegations made in the Statement of Claim and the principles applicable on a motion to strike, and then deal with each of the four grounds in turn.

Claims Alleged in the Statement of Claim

[10] The Statement of Claim consists of 56 pages and contains 311 single-spaced paragraphs. For the purpose of these reasons, it is not necessary to examine in detail all of the allegations set out in the pleading. It should be remembered that on a motion under Rule 221(a), the facts set out in the

pleading are to be taken as true for the purpose of determining whether the claim discloses a reasonable cause of action.

[11] Carten was retained by Sun Belt Water Inc. (Sun Belt) and Snowcap Waters Ltd. (Snowcap) back in 1992 to act as legal counsel for a lawsuit claiming compensation for business losses relating to a change in bulk water export policy by the Her Majesty the Queen in Right of British Columbia (BC Crown). The proceedings were commenced in the Supreme Court of British Columbia (BCSC) in January 1993.

[12] According to the Plaintiffs, information came to their attention during the discovery process and as a result of private investigations conducted both during and after the conclusion of the BCSC proceedings. They claim to have uncovered evidence that employees and officers of the Federal Crown and BC Crown had been secretly conferring illegal favours to "friends of the former government", using a corporation called W.C.W. Western Canada Water Enterprises Ltd. (WCW). Carten was informed that WCW was organized by Chicago mafia families and that several members of the sitting House of Commons in Ottawa had been investors in WCW.

[13] The Plaintiffs allege that there exists a September 1989 Agreement between the Federal Crown and WCW that proves that these two parties conspired to circumvent the *Canada–United States Free Trade Agreement*, the *Water Act* and the *General Agreement on Tariffs and Trade*. The Agreement is said to have exempted WCW from paying *Water Act* charges in relation to bulk water.

[14] The pivotal allegations in the Statement of Claim are that individuals at the highest levels of the Federal Crown approved and participated in a strategy of fraud and concealment of fraud with other Defendants to personally injure Carten in order to protect the supposedly secret information. Dozens of individuals and entities are said to have collectively caused the Plaintiffs harm through various acts of misconduct and omission over a period spanning 15 years. The Statement of Claim is replete with allegations of conspiracies between various Defendants, including provincial court and superior court judges and members of the CJC (¶ 3, 32, 38, 46, 71, 75, 77, 78, 83, 84, 135, 148, 151, 176, 178, 180, 184, 185, 194, 206, 218, 219, 223, 229, 235, 239, 243, 244, 246, 252, 260, 261, 301 and 311), and "intermeddling" by the Defendants in various judicial, quasi-judicial and police investigations (¶ 4, 5, 6, 8, 12, 28, 32, 39, 40, 65, 66, 69, 71, 73, 135, 148, 151, 153, 157, 161,163, 168, 169, 170, 171, 174, 178, 184, 186, 194, 196, 213, 245, 269, 277, 278, 285, 286, 292 and 302).

[15] After the Snowcap litigation was resolved in July 1996 by a payment of $335,000.00, the Plaintiffs allege that the BC Crown withdrew from discussions to negotiate a settlement of Sun Belt's claim, despite representations that they would enter into good faith negotiations. The BC Crown Defendants are alleged to have resumed litigation and adopted a defensive strategy that involved a "fraud on the court". The allegations of misconduct include:

(a) the suppression of evidence, the concealment of documents, the use of false and perjured testimony, both on discovery and by way of false affidavits, and the making of false and misleading submissions to the presiding judge during interlocutory applications that took place in the Sun Belt proceedings;

(b) improper and secret influencing of judicial officers appointed to preside at various hearings in the Sun Belt proceedings; and

(c) a covert attack on Carten by improper and secret influencing of judicial officers in private family litigation involving Carten.

[16] The Plaintiffs allege that the BC and Federal Crowns improperly and secretly influenced judicial officers in litigation between Rain Coast Water Corp., formerly known as Aquasource Ltd. (Aquasource) and the BC Crown, in respect of an application by Aquasource under the BC *Freedom of Information and Protection of Privacy Act* and a claim by Aquasource for compensation arising from the change in bulk water export policy. By way of background, Aquasource made a request for information related to the decision to execute Order-In-Council 331 dated March 18, 1991. In response, the BC Crown released a redacted version of a document known as a Cabinet Submission in which several pages were severed or blacked out. Aquasource applied to have these pages released. Carten alleges the application was dismissed because agents of the Federal Crown intermeddled and conspired with various judges to render decisions preventing Aquasource from making full and proper pre-trial discovery. Carten claims that from 2000 to 2004, the BC Crown withheld documents in the Aquasource Bulk Water Export proceedings because they knew that Carten provided strategic advice to Aquasource and wanted to prevent him from gaining information that would be useful in the Sun Belt proceedings.

[17] The Plaintiffs also allege that the Federal Crown covertly attacked Gibbs by improper and secret influencing of judicial officers in private family litigation and private property litigation

involving Gibbs. The Plaintiffs claim that the Federal Crown appointed various judges to hear matters in the Gibbs' custody proceedings and conspired with them and influenced them to render unfavourable decisions to Gibbs and, by extension, to Carten himself. Carten alleges that Federal Crown agents intermeddled in Gibbs' private property proceedings, resulting in unfavourable decisions to Gibbs and himself. The Federal Crown agents are said to have done this with the intention of harming Gibbs because of her association with Carten.

[18] The Sun Belt proceedings were dismissed in 1999 by the BCSC. In November 1999, Sun Belt served a Notice of Claim and Demand for Arbitration under Chapter 11 of the *North American Free Trade Agreement* (NAFTA). The NAFTA proceedings have not moved forward due to lack of resources on the part of Sun Belt.

[19] Carten filed complaints with the RCMP and the Vancouver Police Department requesting a police investigation of improper conduct by public officials. The Plaintiffs claim that agents of the Federal Crown intermeddled with and obstructed the investigations in 2002 and 2005.

[20] The Federal Crown is alleged to have attempted to have Carten disbarred in order to hinder him from continuing to act for Sun Belt by employing its agents to intermeddle in the affairs of the Defendants, LSBC and LSA. At paragraph 100 of the Statement of Claim, the Plaintiffs state that "particulars of the misconduct of the [Federal Crown Defendants] are not fully known to the Plaintiffs and will become plain and evident upon completion of discovery procedures."

[21] The Plaintiffs claim that a number of superior court judges, including the Chief Justices of British Columbia and the Supreme Court of Canada, acted in breach of their duties in office and obstructed the course of justice in the Sun Belt proceedings and related litigation. The Plaintiffs allege that matters were rescheduled, judges were re-assigned, and orders were rendered against them as a result of actions of agents of the Federal Crown, who intermeddled with the judiciary.

[22] By way of example, the Plaintiffs claim at paragraph 71 of the Statement of Claim that agents of the Federal Crown conspired with a judge of the BCSC "to deliver reasons for judgment that were perverse and contrary to the law and that were intended to force Sun Belt to make general pre-trial disclosure of its evidence and arguments of law prior [to] completion of discovery procedures."

[23] Another example of judicial intermeddling relates to custody proceedings initiated by Gibbs' ex-husband in Alberta in 1995. The Plaintiffs claim that the Alberta Court should not have taken jurisdiction in the matter and that various decisions by the Alberta and BC Courts to the contrary are wrong. Carten alleges that agents of the Federal Crown intermeddled in the custody proceedings in order to prevent Gibbs from providing assistance to Carten in the Sun Belt proceedings.

[24] Carten complained to the CJC numerous times to investigate alleged misconduct of judges in the Sun Belt proceedings. Various members and employees of the CJC are alleged to have breached their duties by failing to investigate Carten's complaints and covering up wrongdoing and

illegal conduct. The conduct of the officers of the CJC are said to be "tantamount to obstruction of justice and a violation of the Criminal Code of Canada."

[25] Carten alleges that the LSBC acted contrary to its statutory duties and obligations by failing to investigate complaints filed by Carten against various lawyers representing the Federal and BC Crowns. The LSBC is alleged to have "corruptly and in breach of its statutory duties" required Carten to undergo a psychiatric assessment and adopted a strategy of "character assassination by psychiatry". The Plaintiffs claim that the LSBC secretly induced the LSA to intermeddle in a proceeding brought against Carten under the *Family Maintenance Enforcement Act* (FMEA) by covertly arranging to cancel the hearing on June 30, 2006. The Plaintiffs claim that the LSBC secretly persuaded the presiding judge in the FMEA proceeding to issue a court order preventing Carten from calling witnesses without the judge's consent.

[26] The Plaintiffs allege that agents of the LSA, as sub-agents of the Federal Crown, sent threatening letters to him in 1999 or 2000 as a result of a secret contact between the LSBC and the LSA. They claim that the LSA refused to investigate complaints made by Gibbs relating to lawyers who had represented her in Alberta. They further allege that the LSA sent two investigators in an attempt to carry out unlawful and improper investigation of Gibbs' personal residence in Calgary in 1999 or 2000.

[27] The Plaintiffs allege that the Federal Crown intermeddled in the operations of Themis and induced the company to take aggressive, abusive and illegal actions against Carten, including garnishment proceedings in relation to accumulated child support arrears payable by Carten,

suspension of his driving license, and engaging in a campaign of fraudulent defamation against Carten by advising government officials in Alberta that Carten had a history of violence.

[28] The specific allegations against Lang Michener are contained at paragraphs 292 to 295 of the Statement of Claim. The Plaintiffs claim that Lang Michener intermeddled in Carten's solicitor-client relationship with Sun Belt, that the law firm was secretly acting as agent of the Federal Crown and that it disclosed private information obtained from Carten and Sun Belt to unidentified third parties, in breach of Lang Michener's professional duties.

[29] Carten states that, in 1997, McCarthy Tetrault agreed to prepare a legal opinion on the possibility of initiating NAFTA proceedings with respect to Sun Belt. In doing so, they misconducted themselves because they had a conflict of interest due to their previous work for WCW and the Federal Crown, and their failure to disclose the conflict. They further breached their professional obligations when McCarthy Tetrault partner, Van Ommen, accepted a retainer from the LSBC in Carten's 2005 application for LSBC re-entry even though Carten had previously been a client. The Plaintiffs further claim that Van Ommen induced a psychiatrist to write a letter that stated Carten may suffer from an "unrecognized and untreated major mental disorder".

Principles Applicable on a Motion to Strike

[30] On a motion to strike out a pleading under Rule 221(a) of the *FCR*, the applicable test is whether it is "plain and obvious" that the claim discloses no reasonable cause of action: see *Hunt v. Carey*, 1990 CanLII 90 (S.C.C.), [1990] 2 S.C.R. 959, [1990] S.C.J. No. 93 at paragraph 32 (QL). The fact that the claim is a novel or difficult one is not a sufficient ground to strike the claim. The

burden on the defendant is very high and the Court should exercise its discretion to strike only in the clearest of cases. The pleading should be read generously with allowance for inadequacies due to drafting deficiencies.

[31] On a motion to strike a pleading on the grounds that it does not disclose a reasonable cause of action, those allegations that are capable of being proved must be taken as true: *Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959. This rule does not apply, however, to allegations based on assumptions and speculation: *Operation Dismantle Inc. v. The Queen* (1985), 18 D.L.R. (4th) 481 (S.C.C.) at 486-487 and 490-491. Moreover, the Court need not accept at face value bare allegations, factual allegations which may be regarded as scandalous, frivolous or vexatious, or legal submissions dressed up as factual allegations.

Whether the Statement of Claim Discloses No Reasonable Cause of Action

[32] As a preliminary observation, Rule 221(2) of the *FCR* provides that no evidence shall be heard on a motion for an order under paragraph (1)(a). Consequently, the affidavit of John Carten sworn June 23, 2008, was not considered for the purpose of determining whether the Statement of Claim fails to disclose a reasonable cause of action.

[33] At paragraph 3 of the Statement of Claim, the Plaintiffs provide an overview of their claim as follows:

> "…the Defendants caused harm to the Plaintiffs by acting in violation of the principles of tort law including the torts of abuse of office, conspiracy, wrongful imprisonment, intentional infliction of mental suffering, intentional interference with economic relations, intentional violation of privacy rights, fraud, deceit, concealment of fraud by public office holder and a strategy of fraud on the court and its officers.."

[34] Typical examples of allegations of misconduct by the Defendants can be found in Part 5 of the Statement of Claim entitled “INTERMEDDLING WITH THE JUDICIARY - CARTEN PROCEEDINGS”. The allegations at paragraphs 196 to 207 are reproduced below in their entirety to illustrate the manner in which the claims are pleaded.

> 196. The [Plaintiff’s] claim that agents of GovCan intermeddled in the [functionning] of the independent judiciary in Carten's private [matrimnial] proceedings.
>
> 197. In or about February 1996, Vickers, a former Deputy Attorney General with AGBC agreed, in breach of his duties in office, with agents of GovCan to preside and a pre trial conference [invloving] Carten and his wife as part of the strategy to destroy the forward motion in the Sun Belt Proceedings by undermining Sun Belt's legal counsel, Carten.
>
> 198. In May 1996, agents of GovCan appointed the Defendant, Robert Edwards, deceased, herein "Edwards", a former Deputy Attorney General [wth] AGBC during the period from 1989 to 1993 to preside at a hearing of certain issues between Carten and his ex-wife as a continuation of GovCan strategy to destroy the forward motion in the Water Exprot Proceedings by undermining Sun Belt's legal counsel, Carten.
>
> 199. The Plaintiffs claim that agents of GovCan or agents of GovBC, acting without authority of GovCan, secretly influenced Edwards, a GovCan officer, to mis-conduct himself in office and deliver reasons for judgment that were contrary to the established law in order to deny Sun Belt full and normal discovery process that would have [asssited] Sun [belt] to prove that GovBC bulk water export policies and GovBC favours for WCW were contrary to the GATT and the Canada US Free Trade Agreement.
>
> 200. In or about June 1998, agents of GovCan, appointed the Defendant, Sid Clark, herein Sid Clark, to preside at a hearing of an application by AGBC to set aside subpoenas issued by Carten to compel Shendroff, Clark and Dosanjh to appear as witnesses at a [heaing]
>
> 201. The Plaintiffs claim that agents of GovCan secretly influenced Sid Clark to mis-conduct himself in office and deliver reasons for judgment that were contrary to the established law in order to deny Carten the right to make full answer and [defence]
>
> 202. In or about June of 1998, agents of GovCan, appointed the Defendant Harry Boyle, herein "Boyle", to preside at a hearing of an appeal by Carten of the decision of Sid Clark hereinbefore referred to.

203. The Plaintiffs claims that agents of GovCan secretly influenced Boyle to mis-conduct himself in office and deliver reasons for judgment that were contrary to the established law in order to deny Carten the right to make full answer and [defence]

204. In or about August 1998, agents of GovCan, appointed the Defendant, Donald Brenner, herein "Brenner" to preside at a hearing of an application by Carten's ex-wife to [incease] the quantum of child support.

205. The Plaintiffs claims that agents of GovCan secretly influenced Brenner to mis-conduct himself in office and deliver reasons for judgment that were contrary to the established law in order to cause further financial hardship for Carten so he would be unable to [contiue] to act for Sun Belt in the Sun Belt Proceedings.

206. In or about October 1998, agents of GovCan, conspired with the Defendant, Robert Metzger, then the Chief judge of the Provincial Court of British Columbia, herein "Metzger" to [appointed] the Defendant, Allan Gould, herein "Gould" to preside at a hearing of an application by AGBC and Themis in relation to accumulated arrears of child support owing by Carten.

207. The Plaintiffs [claims] that agents of GovCan secretly influenced Gould to mis-conduct himself in office and deliver reasons for judgment that were contrary to the established law in order to imprison Carten and further hinder his ability to continue to act for Sun Belt in the Sun Belt Proceedings.

208. In or about March 2000, Carten complained to Metzger that Gould had misconducted himself and asked for an investigation but Metzger, in breach of his duties, refused to carry out a competent investigation of Gould and covered up for Gould. In June of 2000, agents of GovCan rewarded Metzger with a promotion to a position as judge of Supreme Court of British Columbia.

209. In or about September 2001, agents of GovCan, appointed James Taylor, a former long term employee of AGBC and an officer of GovCan, to preside at a hearing of an application by Carten to reduce the quantum of child support to comply with the Parliamentary Guidelines and cancel arrears of child support.

210. Taylor was appointed to judicial office by Chretien in 1995 and had also been a law partner with Hutchinson, Shabbits and Horn.

211. The Plaintiffs claims that agents of GovCan secretly influenced Taylor to mis-conduct himself in office and deliver reasons for judgment that were contrary to the established law in order to prevent Carten from continuing his work for Sun Belt and to prevent Carten from further exposing the criminality behind the arrangements between WCW and GovBC which involved members or former members of the House of Commons and officers of GovCan.

> 212. In addition, the Plaintiff claims that Taylor, as agent for GovCan, seized himself of Carten's file so that Taylor would be in a position to block any application by Carten for relief and further carry out the objective of agents for GovCan of preventing Carten from exposing their criminal conduct.

[35] Rule 174 of the *FCR* requires that every pleading must contain a concise statement of the material facts on which the party relies. Rule 181 provides that a pleading must also contain particulars of every allegation contained therein. Rule 182 states that every statement of claim must specify the nature of damages claimed.

[36] These rules impose an obligation on a plaintiff to plead material facts that disclose a reasonable cause of action, which can be broken down into four basic requirements: (a) every pleading must state facts and not merely conclusions of law; (b) it must include material facts; (c) it must state facts and not the evidence by which they are to be proved; and (d) it must state facts concisely in a summary form.

[37] The Plaintiffs' Statement of Claim breaches the rules of pleading in every respect. Instead of stating material facts establishing a reasonable cause of action, the Statement of Claim consists of bare assertions, bald statements, argument, and conclusions. The allegations in the Statement of Claim are so wide ranging and all encompassing as to be impossible to understand or respond to in any meaningful way. It is equally impossible to address in these reasons each and every deficiency in the Statement of Claim. My analysis will therefore focus on the main allegations made by the Plaintiffs.

Agency

[38] Subsection 17(5)(b) of the *Federal Courts Act* confers jurisdiction on the Federal Court where a claim involves agents of the Federal Crown. Whether or not an agency relationship arises out of the factual context is a matter of law.

[39] Although the Plaintiffs have alleged generally that a number of Defendants were acting as agents or sub-agents of the Federal Crown, there are no material facts or any facts or particulars to support such a relationship. An allegation of the bare conclusion of law is a bad pleading: *Paradis v. Vaillancourt et al.*, [1943] O.W.N. 359. I can find nothing in the Statement of Claim which, if proven, would establish that the Defendants, either in their collective official role or individually, were acting as officers, servants or agents of the Crown.

[40] No facts are pleaded by the Plaintiffs so as to support the conclusion of law alleged that the Judicial Defendants, BC Crown Defendants, LSBC, LSA, Defendant law firms, or Themis were agents or sub-agents of the Federal Crown. Consequently, the pleading insofar as it alleges an agency relationship as a basis for the Plaintiffs' claim is deficient. The claims against the Defendants, other than the Federal Crown Defendants, cannot stand because they are based on an improper pleading that they were acting as an agent or sub-agent for the Federal Crown without detailing the facts giving rise to an agency relationship.

Intermeddling

[41] At paragraph 196, the Plaintiffs allege that agents of the Federal Crown intermeddled in the functioning of the independent judiciary in Carten's private matrimonial proceeding. The Plaintiffs

make similar allegations elsewhere in the Statement of Claim that Federal Crown agents influenced judges to misconduct themselves and to issue decisions contrary to the law with the intention of personally injuring the Plaintiffs (¶ 65, 71, 77, 78, 135, 176-179, 184, 199, 201, 203, 205, 207, 211, 229, 234 and 237).

[42] The plea of intermeddling is deficient since it is not a cause of action known at law. Even if such a cause of action existed, the Plaintiffs offer no facts to make out a case of judicial tampering, other than the existence of a proceeding, vague allegations of "intermeddling" by unknown persons, and the subsequent disposition of the proceeding. The connection between the disposition of the various proceedings and the alleged wrongdoing is merely unprovable speculation.

[43] To the extent that the Plaintiffs' claim is based on intentional economic interference, I conclude that it has not been made out, as three essential elements of the tort must be plead with particularity: see *Canada Steamship Lines Inc. v. Elliott*, 2006 FC 609; *Lineal Group Inc. v. Atlantis Canadian Distributors Inc.* (1998), 42 O.R. (3d) 157 (Ont. CA). The elements are:

1. an intention to injure the plaintiff;
2. interference with another's method of gaining its livelihood or business by unlawful or illegal means; and
3. economic loss caused thereby.

[44] The allegations are simply not capable of supporting a claim of intentional economic interference. In particular, the requisite intention and economic loss have not been pleaded.

Unlawful Imprisonment

[45] At paragraph 207 of the Statement of Claim, the Plaintiffs allege that agents of the Federal Crown secretly influenced a judge to deliver unlawful reasons for judgment in order to imprison Carten. Similar allegations are made at paragraph 32 where the Plaintiffs allege that the BC Crown, acting as agent for the Federal Crown, "intermeddled and conspired" with certain judges and other employees of the BC Crown and Themis "to deny Carten the fundamental right to call witnesses and to unlawfully imprison Carten in jail for 40 days."

[46] False imprisonment is the intentional confinement or restriction of a person, contrary to his or her will, and is done without lawful authority or justification. To succeed in an action for false imprisonment, the defendant's conduct must be intentional and it must cause the confinement. Second, the plaintiff's confinement must be total. Third, the detainee's compliance with the defendant's demands must be without his or her consent. Finally, even if the above three elements are present, the imprisonment is only wrongful if the defendant's intentional conduct is unlawful or unauthorized.

[47] On the facts as pleaded, Carten's imprisonment was not brought about by the direct act of any Defendant, but was caused by the intervention of the judicial process: *Foth v. O'Hara et al*, (1958), 24 W.W.R. 533 (Alta. S.C.). There are no facts pleaded regarding the nature of Carten's confinement, or his lack of consent. Further, the allegation that the imprisonment was unlawful is a conclusion, not a fact.

Judicial Immunity

[48] The Plaintiffs acknowledge that the doctrine of judicial immunity applies to all judges acting in the course of their judicial duties: *Morier and Boily v. Rivard*, [1985] 2 S.C.R. 716 (*Morier*). They submit, however, that if they can prove that the named judges were acting as agents for the executive branch of government, contrary to their oaths of office, and they are punished with an appropriate award in punitive damages, such a result will send a strong message to the executive branch of government and the judiciary that they both have the obligation to preserve and protect the principle of judicial independence. The Plaintiffs maintain that if a judge takes a bribe, submits to blackmail, or agrees to render a decision that he or she knows is not in compliance with the law, the party has a right to redress in the courts.

[49] There are no allegations of bribery or blackmail in the Statement of Claim. Accordingly, the only issue to be determined is whether judicial immunity does not apply in circumstances where a judge knowingly renders a decision contrary to the law. In *Morier*, the Supreme Court of Canada concluded that so long as a judge completes his or her work in the honest belief that the matter is within his or her jurisdiction, then the judge cannot be held liable for his or her actions, even if acting out of malice. The Plaintiffs have failed to plead any material facts that any of the judges who rendered unfavourable decisions were not acting judicially and knowing that they had no jurisdiction to act.

[50] Judicial immunity cannot be circumvented by merely pleading bald allegations of misconduct: *Baryluk (Wyrd Sisters) v. Campbell*, 2008 CanLII 55134 (ON S.C.). The same should apply to bare assertions that judges were acting as agents of the Federal Crown. Judges should not

be placed in the position of having to defend the manner in which they have discharged their judicial duties in subsequent legal proceedings commenced by disaffected litigants. The proper recourse is an appeal of the decision, not an action against the judicial officer.

[51] I adopt and make mine the conclusion of Mr. Justice Hackland when he stated in *Baryluk* that: "..there is no air of reality and indeed no basis whatsoever on any material facts pleaded or by way of information otherwise put before this Court, to justify the [Plaintiffs'] scurrilous allegations…" On the facts as pleaded, no reasonable cause of action is disclosed as against any of the judges named as Defendants.

Conspiracy

[52] The Plaintiffs' attempt to buttress their allegations of misconduct by alleging various conspiracies between the Defendants. An allegation of conspiracy consists of an imputation of misconduct and dishonesty and must be pleaded with special particularity and care: *Pellikaan v. Canada*, 2002 FCT 221 (CanLII), [2002] 4 F.C. 169 (*Pellikan*). In *Canada Cement LaFarge Ltd. v. British Columbia Lightweight Aggregate Ltd*., [1983] 1 S.C.R. 452 at pp. 471-472, the Supreme Court of Canada concluded that the tort of conspiracy is made out if:

(a) whether the means used by the defendants are lawful or unlawful, the predominant purpose of the defendants' conduct is to cause injury to the plaintiff; or,

(b) where the conduct of the defendants is unlawful, the conduct is directed towards the plaintiff (alone or together with others), and the defendants should know in the circumstances that injury to the plaintiff is likely to and does result.

[53] The Statement of Claim fails to set out the circumstances of the alleged conspiracies, the identity of some of the alleged conspirators and, more importantly, the existence of an agreement between any of the Defendants to injure the Plaintiffs. Nor are there any allegations specifying the nature of the damages claimed, or any causal connection between the damages and the alleged actions of the Defendants.

Misconduct in Office and Breach of Duty

[54] In Part 3E of the Statement of Claim (paragraphs 123 to 151), it is alleged that Carten complained 21 times to the CJC that some judges of the SCBC had acted inappropriately between 1998 and 2007. The Plaintiffs claim that various officers and members of the CJC refused to carry out investigations or dismissed complaints with the express purpose of injuring the Plaintiffs and protecting government secrets. According to the Plaintiffs, the failure to properly investigate the complaints amounted to misconduct in office, and a breach of duty. It is also alleged that the Judicial Defendants conspired with members of the judiciary in order to co-ordinate judicial attacks on the Plaintiffs by influencing the outcome of legal proceedings.

[55] A failure to investigate a complaint is not a cause of action known at law. In any event, subsection 63(1) of the *Judges Act*, R.S.C. 1985, c. J-1 expressly provides that the CJC is not

required to investigate any complaint, except by order of the Minister of Justice. Moreover, there are no material facts linking the failure to investigate any loss suffered by the Plaintiffs.

[56] Other allegations of lying, concealment and fraud against the Judicial Defendants consist of bare assertions unsupported by any material facts and are not linked to damages suffered by the Plaintiffs.

[57] The same can be said about allegations against McCarthy Tetrault and Van Ommen. The mere fact that McCarthy Tetrault may have been in a conflict of interest by acting for Sun Belt in 1997, despite having previously acted for WCW, does not disclose a reasonable cause of action. First, the Plaintiffs do not have any standing to complain about the alleged conflict of interest. Second, there is no link between the alleged misconduct and the damages claimed by the Plaintiffs.

[58] Stripped of the allegations against other Defendants, it is clear and beyond doubt that the Plaintiffs cannot succeed against the Federal Crown, for there is no independent cause of action against it.

Whether the Federal Court Lacks Jurisdiction

[59] The moving parties submit that the Federal Court does not have jurisdiction over the Plaintiffs' claim. The Plaintiffs respond that this Court has jurisdiction to deal with cases involving the better administration of the laws of Canada, including the *Charter* and the *ICPCR*. The Plaintiffs claim that their constitutional rights have been violated by corrupt judicial officers of the British Columbia and Alberta superior courts and that those courts are not competent to hear this

case. The Plaintiffs submit that the only court in Canada that is competent to hear the case is the Federal Court.

[60] I do not agree with the Plaintiffs that the Federal Court somehow acquires jurisdiction by default. In order to found jurisdiction in this Court, a three-part test must be met: *ITO-International Terminal Operators Ltd. v. Miida Electronics Inc.* 1986 CanLII 91 (S.C.C.), [1986] 1 S.C.R. 752. First, there must be a statutory grant of jurisdiction by the federal Parliament. Second, there must be an existing body of federal law which is essential to the disposition of the case and which nourishes the statutory grant of jurisdiction. Third, the law on which the case is based must be "a law of Canada" as the phrase is used in s. 101 of the *Constitution Act*, 1867.

[61] This Court clearly does not have jurisdiction over the Defendants, except for the Federal Crown Defendants (assuming, of course, that a reasonable cause of action is disclosed). Broad and unsubstantiated allegations that the Defendants were acting as agents of the Federal Crown does not confer jurisdiction on this Court.

[62] In addition, section 86 of the British Columbia *Legal Profession Ac*t, SBC 1998, c. 9 protects the LSBC from liability for anything done or not done in good faith. Section 115(1) of the Alberta *Legal Professions Act*, RSA 2000, c. L-8 states that no action lies against the LSA, a person who conducts an investigation of a member lawyer, or a person acting on the instructions of the LSA or a person conducting an investigation in respect of anything done by any of them in good faith.

Whether the Allegations Made by the Plaintiffs are Scandalous, Frivolous and Vexatious

[63] In determining whether a claim should be struck as disclosing no reasonable cause of action, the test is whether, assuming the plaintiff proves everything alleged in his claim, there is nevertheless no reasonable chance of success. Striking out an entire claim on the ground that it is frivolous, vexatious or an abuse of process of the Court under Rule 221(1)(c) is based on an entirely different footing. Instead of considering merely the adequacy of the pleadings to support a reasonable cause of action, it may involve an assessment of the merits of the claim, and the motives of the plaintiff in bringing it.

[64] In *Pellikan*, the late Prothonotary John Hargarve concluded that a proceeding which the Court would have difficulty controlling could be struck on the grounds that it is vexatious. He stated:

> Where a statement of claim is exceedingly general and bereft of specifics so as to present the defendant from either proper investigation or proper response, it may well be struck out … such statements of claim (are) fundamentally vexatious for they reveal insufficient facts to demonstrate the basis for the claim, thus making it impossible for the defendant to answer the claim or, indeed for a court to regulate the proceedings. Such a general and all encompassing statement of claim that is so bereft of particulars that a defendant would be unable to draft an answer, is fundamentally vexatious and will not lead to any practical result.

[65] The Plaintiffs' Statement of Claim is overly long and asserts broad conspiracies by dozens of individuals and intentional and dishonest wrongs against the Plaintiffs personally and the Canadian public generally. The allegations begin with the assumption that a conspiracy exists among the members of the Canadian and British Columbia governments and the judiciary to personally injure the Plaintiffs.

[66] The factual matrix of each case should be considered broadly, employing a common sense approach. The Court's challenge is to look beyond how a claim is legally framed in order to determine its essential character.

[67] The pleading makes numerous unfounded allegations against the judiciary, those holding public office and others implicated in a conspiracy so broad and so complete that, if there were any truth to it, would result is a complete failure of the justice system in Canada. It is apparent, on the face of the pleading, that the Plaintiffs disagree with the results of several judicial decisions. The Plaintiffs leap to the conclusion that all those connected to any negative decision, even peripherally, must necessarily be involved in a wide ranging conspiracy against him. A pleading that contains unfounded and inflammatory attacks on the integrity of a party, and speculative and unsupported allegations of defamation will be struck as scandalous and vexatious.

[68] In my view, the Statement of Claim as a whole, lacks rationality is ill-founded, and fundamentally vexatious. The Plaintiffs are, in essence, challenging and attempting to re-litigate decisions rendered by various courts and administrative tribunals. These decisions could have been appealed and cannot now be attacked collaterally.

Whether the Proceeding Constitutes an Abuse of Process

[69] Repeated attempts to litigate the same dispute by naming slightly different parties, or applying in different capacities and relying on somewhat different statutory provisions, may also constitute an abuse of process: *Black v. Creditors of The Estate NsC Diesel Power Inc.* (2000), 183 F.T.R. 301 (FCTD).

[70] The Statement of Claim includes allegations that are very similar to allegations previously considered and dismissed by the BCSC. In *Carten v. Canada (Attorney General)*, 2008 BCSC 7, Mr. Justice Curtis described Carten's claim as follows:

> Mr. Carten who once practised as a lawyer on Vancouver Island has accumulated child support arrears in excess of $325,000 under a divorce order. His petition alleges that, as a result of his representation of two companies seeking compensation for business losses brought about by changes the Province of British Columbia made in its bulk water export policy, the Attorney General of British Columbia, (and others) intermeddled in his divorce proceedings, attempted to have him disbarred, appointed "regime-friendly judges" to make unfavourable rulings and influences the judges of the Provincial Court of British Columbia to the extent that that court should be prohibited from any further dealings with his case. The complete particulars of Mr. Carten's claim are set out in detail in the Petition.

[71] Carten's petition named the following parties as defendants: Her Majesty the Queen in Right of Canada, the Attorney General for Canada, Her Majesty the Queen in Right of the Province of British Columbia, the Attorney General for British Columbia, the Director of Family Maintenance Enforcement Program, Themis Program Management and Consulting Limited, the Law Society of British Columbia, Kavia Carten, Tim McGee, Allan Gould, John Horn and Brian Klaver. The proceeding was dismissed on the grounds that no reasonable claim was disclosed against any of the named defendants.

[72] It is clear that the Plaintiffs are now trying to re-litigate many of the same issues raised and dismissed in Carten's BCSC action. Pleadings that are designed to use the judicial process for an improper purpose are an abuse of process. This would include harassment and oppression of parties by multifarious proceedings, the re-litigation of issues previously decided and the litigation of matters that have been concluded.

[73] I adopt and make mine the following eloquent submissions of counsel for the BC Crown Defendants:

> 93. Section 17(1) of the Federal Courts Act clearly establishes that the Federal Court has jurisdiction only over matters where relief is sought against the Federal Crown. The Plaintiffs have not plead any material facts that any of the Provincial Defendants were acting as an agent of the Federal Crown. The allegations, as set out by the Plaintiffs, that the actions of the Federal Crown and various Provincial Defendants are so intertwined that they confer jurisdiction on the Federal Court would be well beyond the intentions of the Section 17 of the Federal Courts Act. The Plaintiffs rely on presumption and theories to conclude that the Federal and Provincial Crown acted in collusion to cause harm to the Plaintiffs. Even if this were fact, which is specifically denied, it would not create jurisdiction. The Federal Crown was never a party to any of the litigation matters involving the Plaintiffs, nor was there any issues related to those litigations which fell under statutes which would provide jurisdiction. The mere fact that the Federal Crown appoints judicial officers to the Supreme Court of British Columbia does not accord the Plaintiffs the ability to commence an action in the Federal Court.
>
> 94. At their core, the allegations of wrongdoing contained in the Statement of Claim are a theoretical construct of the Plaintiffs and are without any basis in material fact. The mortar that binds this construct is the Provincial Defendants lawful exercise of legal and professional obligations that run contrary to the wishes, views and perceptions of the Plaintiffs. To the Plaintiffs, the refusal of the various Provincial Defendants to adapt their position and view stands as the material fact that underpins the allegations; non compliance with the Plaintiff is itself evidence of conspiracy, collusion, fraud and wrongdoing. This approach is presumptive and is, at the very least, an abuse of process contrary to Rule 221(1)(f) of the *Federal Courts Rules*, 1998 and is scandalous, frivolous and vexatious contrary to Rule 221(1)(c) of the *Federal Courts Rules*, 1998.

Conclusion

[74] For the reasons above, I conclude that the Statement of Claim should be struck out and the action dismissed, with costs. The Plaintiffs have not offered any amendments that would cure the radical defect in the pleading. Leave to amend is therefore denied.

[75] In light of the dismissal of the action, the Plaintiffs' motion for default judgment and Themis' motion for extension of time to file a statement of defence have been rendered moot. The two motions will accordingly be dismissed, without costs.

ORDER

THIS COURT ORDERS that:

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

2. The action is dismissed, with costs payable by the Plaintiffs to the Defendants, other than the Defendant, Themis Program Management and Consulting Ltd.

3. The Plaintiffs' motion for default judgment against the Defendant, Themis Program Management and Consulting Ltd., is dismissed.

4. The motion on behalf of the Defendant, Themis Program Management and Consulting Ltd., for an extension of time to serve and file a statement of defence is dismissed.

"Roger R. Lafrenière"
Prothonotary

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-95-08
STYLE OF CAUSE:	JOHN FREDERICK CARTEN AND KAREN AUDREY GIBBS v. HER MAJESTY THE QUEEN IN RIGHT OF CANADA and Others

MOTIONS IN WRITING CONSIDERED AT VANCOUVER, BRITISH COLUMBIA, PURSUANT TO RULE 369

REASONS FOR ORDER AND ORDER:	LAFRENIÈRE P.
DATED:	December 1, 2009

WRITTEN REPRESENTATIONS BY:

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