Federal Court  Cour fédérale

Date: 20100827

Docket: T-95-08

Citation: 2010 FC 857

Ottawa, Ontario, August 27, 2010

PRESENT: The Honourable Justice Johanne Gauthier

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 JUDGMENT AND JUDGMENT

[1] This is an appeal from Prothonotary Lafrenière's Order striking out the Statement of Claim as against all defendants, without leave to amend and dismissing the action, with costs to the defendants (other than Themis Program Management and Consulting Ltd. (Themis)). Plaintiffs also appeal the order dismissing their motion for default judgment against the defendant Themis.

[2] Mr. Carten and Mrs. Gibbs have gone through very difficult times financially and emotionally. It is also human nature to look for a reason for one's misfortunes and this may explain why they so strongly believe in the scenarios or theories set out in much detail in their 56 page Statement of Claim (311 paragraphs), the affidavit evidence filed in response to the defendants' motions to dismiss pursuant to paragraphs 221(a)(c) and (f) of the *Federal Courts Rules*, SOR 98-106 (the *Rules*) and the new evidence (more than 200 pages) they seek to introduce on this appeal.

[3] My role in this motion is not to determine whether sometimes reality can indeed be stranger than fiction, but rather to make a determination as to whether this action meets the various legal tests applicable in respect of the defendants' motion. Courts must only deal with pleadings that meet certain standards and with claims that have some foundation. Their powers only apply in respect of matters within their jurisdiction.

[4] I have considered very carefully all the evidence on the file[1] with an open mind, free of any interference or pressure from any third party and without fear for my personal health and safety.[2] Like Prothonotary Lafrenière, I have come to the conclusion that this appeal must be dismissed.

[5] Having spent much time combing through the evidence and reviewing the case law,[3] I came to realize that whatever reasons I write, however long and detailed they may be, they will never be sufficient to satisfy the plaintiffs who will no doubt be very disappointed and will likely conclude from this dismissal that I must also be part of the conspiracy referred to in their proceeding. I will thus be as concise as possible.

Background

[6] The plaintiffs are self-represented. However, Mr. Carten is an experienced lawyer[4] who practiced law in British Columbia from 1977 to 1999.

[7] The Statement of Claim contains many what Prothonotary Lafrenière described as allegations related to a widespread conspiracy, corruption, collusion and various torts and breaches of legal obligations by those in power including past, present and deceased member of both the British Columbia and the Federal Government and the judiciary, aimed at harming Mr. Carten and

[1] Including the new evidence, even if it was ultimately ruled inadmissible.
[2] Mr. Carten urged me to decide this matter as quickly as possible indicating that persons (including 9 judges) died in suspicious circumstances most certainly because of their involvement with his files and the allegations they contain.
[3] Mr. Carten reviewed more of the factual allegation and produced little case law and arguments in respect of the essential elements to be pleaded for all the torts he alleged.
[4] Mr. Carten has not been a member of the BC Bar since 1999.

Mrs. Gibbs, in order to protect alleged state and private secrets related to bulk water export policies of the governments of British Columbia and Canada.

[8] He summarized those claims in paragraphs 10 to 29 of his Order. The plaintiffs took no objection to his description. It is thus appropriate for me to simply adopt it. These paragraphs are included in Annex A to these reasons.[5] I note however that the September 1989 Agreement with Western Canada Water Enterprise Inc. (WCW) referred to in paragraph 13 of the Order is with the government of British Columbia, not with the Federal Crown.[6] I would also add that it appears that WCW filed for bankruptcy[7] sometime in 1993 (the year Mr. Carten instituted his law suit on behalf of Sun Belt Water Inc. (Sun Belt) and Snowcap Waters Ltd. (Snowcap) claiming compensation from "Her Majesty the Queen in Right of British Columbia" for business losses brought about by change in bulk water export policy in March 1991.

[9] Apart from the proceedings instituted in British Columbia on behalf of Sun Belt which were stayed[8] in 1997 because of Sun Belt's failure to file the amount of $27,800 as it was ordered to do for security for costs[9] and the filing of a Notice of Intent to Arbitrate pursuant to Chapter 11 of

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[5] I note that Prothonotary Lafrenière's order (para. 45) dealing with the false imprisonment allegation repeats the plaintiff's submission regarding his incarceration for 40 days; however, in Exhibit 44, para. 6 of the plaintiff's affidavit of June 23, 2008, Justice Taylor notes that Carten "did not spend other than a few days in custody and thereafter was released upon the electronic monitoring program."

[6] The main terms of this Agreement including the fact that WCW did not pay water charges on bulk water was disclosed to Mr. Carten's client Snowcap by a British Columbia public official as early as 1990 (exhibits 7 & 8 to the affidavit of June 23, 2008). The same summary of the term was used to brief the BC Cabinet in 1991 (exhibit 10).

[7] According to the information provided by Mr. Carten, it appears that at that time 91% of the shareholders were American and they all lost their investment. Also, despite the alleged commercial advantage provided by the 1989 Agreement, it appears and Snowcap and Sun Belt won the contract with the State of California.

[8] After at least a first round of discovery.

[9] This was the amount set in the Order of the Court. Mr. Carten indicated that Sun Belt was possibly subject to further requests for security for costs.

NAFTA, which arbitration did not actually take place due to Sun Belt's lack of funds, Mr. Carten appears to have raised his conspiracy allegations against some of the defendants in many forums such as the Canadian Judicial Council[10] (CJC), the British Columbia Human Rights Tribunal (BCHRT),[11] the Law Society of British Columbia (LSBC) and the Law Society of Alberta (LSA). He filed complaints against the Royal Canadian Mounted Police (RCMP) and the Police of Victoria for failure to investigate his criminal complaints. He also wrote to many members of the House of Commons including the Prime Ministers of Canada and of British Columbia as well as various ministers of both governments, seeking political intervention in order to settle Sun Belt's claim, get the governments to investigate his allegations or for the CJC to investigate further the merits of his complaints. Finally, he also made similar allegations in the criminal proceedings instituted against him[12] as well as family proceedings involving him or Mrs. Gibbs.

[10] It is also worth noting that Aquasource Ltd. (Aquasource), another client of Mr. Carten (strategic counselling), bought much of the documentation of WCW from the Bankruptcy Trustee giving him access to inside information about this company.

[10] As indicated in the evidence and in para. 124 of the Statement of Claim, Mr. Carten filed many complaints with the CJC which were investigated at least up to 1999 (Exhibit 49, p. 219 of the Affidavit) and closed because the CJC found no basis for any action, the allegations of misconduct were found to be pure speculation unsupported by any evidence. After being advised that the CJC would no longer respond to communication from Mr. Carten based on conspiracy at all levels of the government and the judiciary, he continued to file complaints and write to officers and servants of the CJC.
[11] The complaints to the BCHRT were made against the Law Society of BC on the basis of discrimination based on political beliefs and disability – mental health issues.
[12] Apparently dismissed.

[11] As noted in one of the judgments filed in evidence by Mr. Carten (Exhibit 44 at para. 4), it appears that since 1996 Mr. Carten pretty much devoted all of his time to finding evidence supporting his theories and acting for Sun Belt.

[12] In light of the above, given that he worked many years on this matter, the Court can reasonably assume that he has put his best foot forward and referred to the very best evidence he has in answer to the defendants' motions to dismiss.

Preliminary matters

[13] I will refer to the defendants by using the same terminology as the parties and Prothonotary Lafrenière in his Order (Annex A). All the defendants except Themis filed a motion to dismiss.

[14] The Prothonotary who was case managing the file dealt with all the said motions, including that of the Judicial Defendants, even though as argued before me by Mr. Carten the said Judicial Defendants filed their Motion Record outside of the delay set out in the scheduling Order dated April 11, 2008.

[15] According to the letter filed with this motion, the defendants were seeking leave to file at that time indicating that not all those defendants had been served with the Statement of Claim by the deadline. At that time, there is no indication that Mr. Carten filed any objection to this request. He also did not file proof of service of the Statement of Claim on those defendants. A review of the

Court's file indicates that these parties were not yet before the Court when the April11 order was issued.

[16] Although Prothonotary Lafrenière does not deal expressly with this in his Order, it is clear that he accepted the filing of these documents. Given that he dealt with this motion on the merits, it can reasonably be implied that leave was granted if one was indeed necessary.

[17] In any event, the timing of the filing of the motion record is a technical breach[13] given that there is no time limitation applicable to such motions in the *Rules*. More importantly, considering that the motion raised among other things the absence of the Court's jurisdiction, it had to be dealt with at the first opportunity to avoid unnecessary cost and loss of time and effort by all concerned. Lack of jurisdiction is certainly a matter that the Court must raise *proprio motu* if there is any real question about it.[14]

[18] I also note that the plaintiffs made submissions to this Court in respect of the jurisdiction of the Court over the Judicial Defendants and were even granted permission to file additional material after the hearing in respect of the relationship between the judges and the federal Crown. Thus, the Court will deal with the merits of all six motions.

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[13] Like that of the plaintiffs who failed to file proof of service as directed by the *Federal Courts Rules*, SOR°98-106, R. 203(2).
[14] *AGIP S.p.A. v. Canada (Atomic Energy Control Board)*, [1979] 1 F.C. 190, 22 N.R. 39 (F.C.A.), at para. 4.

[19] I must next deal with the defendant's objection to the filing of new evidence. As mentioned earlier, the plaintiffs filed new evidence[15] which according to them proves that the misconduct of the defendants is ongoing, torturous, conspirational and criminal and speaks to matters that are pertinent to the jurisdiction of the Court. According to Mr. Carten's representations at the hearing, most of this information came into his possession or deals with events that took place after the date set up by Prothonotary Lafrenière for the filing of his evidence.

[20] The defendant disputes this, stating that the vast majority of the documents deal with events or information available well before that date. As to other facts or information, they are simply scandalous and gratuitous allegations that can be of no assistance to the Court and in fact prejudice many of the defendants. I will only refer to a few examples, such as the allegations of another attempt by Themis to influence a judge through the use of Freemasonry sign language, another judge's misconduct for which the allegation appears to be based solely on the fact that the judge exhibited the body language of a person who is ashamed of herself and failed to make eye contact. The documentation includes another bold allegation that, on the whole, the judges named by the BC Prime Minister Campbell were chosen on the basis that they could be bribed or manipulated. This included appointing pedophile judges who could easily be manipulated. In that respect, Mr. Carten in his affidavit insinuates that a deceased judge could be linked to the kidnapping or disappearance of a child based mostly on the fact that the said judge would have rented a white van and a white

[15] Affidavit of Karen Audrey Gibbs sworn December 7, 2009 and two affidavits of John Frederick Carten respectively sworn on December 7, 2009 and January 4, 2010.

van was seen in the area of the disappearance. There is no indication that this even occurred at the same time.[16]

[21] At the hearing the plaintiffs confirmed that in their view the original evidence filed before the Prothonotary (affidavit of Mr. Carten dated June 23, 2008) should be sufficient to allow the appeal and dismiss the defendants' motions.

[22] The Court cannot see how these new matters are pertinent to the jurisdiction issue given that they are of similar nature to allegations and evidence already produced in respect of the tortuous, conspirational or criminal behaviour referred to in the Statement of Claim. It does not add much to what is actually pleaded.

[23] Generally, an appeal of a Prothonotary's Order is to be decided based on what was before that decision maker; no new evidence is admitted; *James River Corporation v. Hallmark Cards Inc.* [1997] 72 C.P.R. (3d) 157 (F.C.T.D.). Exceptionally, new evidence may be admissible in circumstances where: it could not have been made available earlier; it will serve the interests of justice; it will assist the Court; and it will not seriously prejudice the other side (*Mazhero v. Canada (Insutrial Relations Board)* (2002) 292 N.R. 187 (F.C.A.); *Graham v. Canada*, 2007 FC 210 at para. 12; *Sanbiford v. Canada*, 2007 FC 225).

[16] Mr. Carten in an e-mail to Themis and Maximus Canada Inc.'s counsel notes that he destroyed that judge and could similarly destroy Themis (p.62 of plaintiff's Motion Record; Exhibit 5, plaintiff's affidavit of 24 November, 2009).

[24] As mentioned, I reviewed the new evidence to assess whether it could have any impact whatsoever on the merits of this appeal. I have concluded that it does not. I am thus persuaded that it is not in the interests of justice and would not assist the Court to admit any of this evidence at this stage. This is not one of the exceptional cases referred to above.

Analysis

[25] It is agreed that Court should review the matter *de novo* given that the issues raised in the various motions to dismiss are vital to the final issue of the case (*Canada v. Aqua-Gem Investment Ltd.* [1993] 2 F.C. 425, 1993 F.C.J. No. 103 (F.C.A.); *Merck & Co. Inc. v. Apotex Inc.* 2003 FCA 488, [2004] 2 F.C.R. 459; *Z.I. Pompey Industrie v. ECU-Line N.V.*, 2003 SCC 27, [2003] S.C.J. No. 23).

[26] It is thus not necessary to deal with any of the alleged errors in the Order of Prothonotary Lafrenière. As suggested by the plaintiffs, the Court treated their comments in that respect as arguments on the merits of the motions to dismiss *per se.*

[27] The relevant provisions of the *Federal Courts Act* and *Federal Courts Rules* are reproduced in Annex B.

[28] The tests applicable to a motion to dismiss under Rule 221(a), (c) and (f) are well established and can be briefly summarized as follows.

[29] With respect to the absence of a reasonable cause of action, as enunciated by the Supreme Court of Canada in *Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959, it must be plain and obvious that the plaintiffs have no chance of success because their Statement of Claim discloses no reasonable cause of action. In that respect, the Statement of Claim must be read as generously as possible and must accommodate any inadequacy in the allegations that are clearly the result of deficiencies in the drafting of the document (*Operation Dismantle Inc. v. Canada*, [1985] 1 S.C.R. 441, at para. 14). While factual allegations that are capable of being proven are to be taken as true, allegations based on assumptions and speculations are not.

[30] A cause of action cannot lie on assumptions (*Chavali v. Canada*, 2001 FCT 268, 2002 F.T.R. 166, at para. 21; *Vojic v. Canada*, [1987] 2 C.T.C. 203, 87 D.T.C. 5384 (F.C.A.)).

[31] The Federal Court of Appeal in *MIL Davie Inc. v. Hibernia Management and Development Co.*, (1998) 226 N.R. 369, 85 C.P.R. (3d) 320 made it clear that there is a distinction between a motion to strike out for want of jurisdiction and other motions to strike for want of a reasonable cause of action, affidavit evidence being admissible to determine if there are jurisdictional facts or allegations of facts supporting an attribution of jurisdiction. Thus, in respect of the defendants' (other than the Federal Crown Defendants) argument of lack of jurisdiction, the Court will look at the pleadings as well as the affidavit evidence filed by Mr. Carten in response to the motions. Similarly, this evidence must be taken into account in respect of the motions under Rule 221(c) and (f).

[32] The test under Rule 221(c) is as stringent as the one applicable to Rule 221(a). In *Creaghan Estate v. Canada* [1972] F.C. 732 (T.D.) Justice Pratte described it as follows:[17]

> (3) Finally, in my view, a statement of claim should not be ordered to be struck out on the ground that it is vexatious, frivolous or an abuse of the process of the Court, for the sole reason that in the opinion of the presiding judge, plaintiff's action should be dismissed. In my opinion, a presiding judge should not make such an order unless it be obvious that the plaintiff's action is so clearly futile that it has not the slightest chance of succeeding, whoever the judge may be before whom the case could be tried. It is only in such a situation that the plaintiff should be deprived of the opportunity of having "his day in Court".

[33] The term vexatious has been used in the jurisprudence to describe claims that do not sufficiently reveal the facts on which a plaintiff bases its cause of action, such as that it is impossible for a defendant to answer it or for a Court to regulate the proceedings, *Murray v. Canada*, 21 N.R. 230, 1978 F.C.J. No. 406 (QL) (F.C.A.) at para. 10.

[34] Prothonotary Hargrave also defined the terms "scandalous, frivolous and vexatious" as follows in *Steiner v. Canada*, [1996] F.C.J. No.1356:

> **16** A scandalous pleading includes one which improperly casts a derogatory light on someone, with respect to their moral character. A claim is a frivolous one where it is of little weight or importance or for which there is no rational argument based upon the evidence or law in support of the claim. A vexatious proceeding is one that is begun maliciously or without a probable cause, or one which will not lead to any practical result.

[17] He was dealing with the former rule 419(1)(a) which is the predecessor and reads exactly as rule 221(1)(a).

(see also *Kisikawpimootewin v. Canada* [2004] F.C.J. No. 1709 (T.D.) at paras. 8-9).

[35] The following comments of Justice Henry in *Re Lang, Michener et al v. Fabian et al*, [1987] 59 O.R. (2d) 353 at para. 19, are also relevant and useful here:

> d) it is a general characteristic of vexatious proceedings that grounds and issues raised tend to be rolled forward into subsequent actions and repeated and supplemented, often with actions brought against the lawyers who have acted for or against the litigant in earlier proceedings;
>
> e) in determining whether proceedings are vexatious, the court must look at the whole history of the matter and not just whether there was originally a good cause of action.

[36] As to the doctrine of abuse of process, it was recently discussed by the Supreme Court of Canada in *Toronto City v. CUPE Local 79*, 2003 S.C.C. 63, [2003] 3 S.C.R. 77, at para. 37, in the following terms:

> a. In the context that interests us here, the doctrine of abuse of process engages "the inherent power of the court to prevent the misuse of its procedure, in a way that would ... bring the administration of justice into disrepute" (*Canam Enterprises Inc. v. Coles* (2000), 51 O.R. (3d) 481 (C.A.), at para. 55, per Goudge J.A., dissenting (approved [2002] 3 S.C.R. 307, 2002 SCC 63)). Goudge J.A. expanded on that concept in the following terms at paras. 55-56:
>
> > The doctrine of abuse of process engages the inherent power of the court to prevent the misuse of its procedure, in a way that would be manifestly unfair to a party to the litigation before it or would in some other way bring the administration of justice into

> disrepute. It is a flexible doctrine unencumbered by the specific requirements of concepts such as issue estoppel. See *House of Spring Gardens Ltd. v. Waite*, [1990] 3 W.L.R. 347 at p. 358, [1990] 2 All E.R. 990 (C.A.).
>
> One circumstance in which abuse of process has been applied is where the litigation before the court is found to be in essence an attempt to relitigate a claim which the court has already determined. [Emphasis added.]

> As Goudge J.A.'s comments indicate, Canadian courts have applied the doctrine of abuse of process to preclude relitigation in circumstances where the strict requirements of issue estoppel (typically the privity/mutuality requirements) are not met, but where allowing the litigation to proceed would nonetheless violate such principles as judicial economy, consistency, finality and the integrity of the administration of justice.

[37] Also, in *Painblanc v. Kastner*, (1994) 176 N.R. 68, the Federal Court of Appeal found that a plaintiff who starts proceedings simply in the hope that something will turn up (fishing expedition) can be struck out as an abuse of process. In *Bashi v. Canada*, 2004 FC 80, [2004] F.C.J. No. 95 (T.D.), as well as in *Mountain Prison Inmates v. Canada*, (1998) F.C.J. No. 573 (T.D.) and in *Yearsley v. Canada*, (2001) F.C.J. No. 1078 (T.D.), Prothonotary Hargrave reviewed various cases before finding that pleadings that are vague or confusing or contain many different allegations so that it would be impossible for a Court to regulate a trial of the matter constitute an abuse of the system.

[38] I will now proceed to apply these tests to the present case. I will deal first with the motions of the Non-Federal Crown Defendants for they all involve an issue of jurisdiction whereas that of the Federal Defendants does not.

[39] Mr. Carten argued that the Federal Court should assume jurisdiction because he has nowhere else to go given that the plaintiffs have lost faith in the British Columbia Provincial Court system. But at the hearing, he did not seriously dispute that the Court must apply the test set out by the Supreme Court of Canada in *ITO – International Terminal Operators Ltd. v. Miida Electronics Inc. et al*, [1986] 1 S.C.R. 752, at para. 11, to determine if the Federal Court has jurisdiction over a person or a subject matter.

[40] It is trite law that this Court has no jurisdiction by default. The parties and even the Court cannot agree to a grant of jurisdiction where Parliament has not done so.[18] The jurisdiction of the Court must be assessed for each defendant as if he or she had been sued independently of the Federal Crown.

[41] Having sprinkled throughout the Statement of Claim's bold assertions that the Non-Federal Crown Defendants acted as agents or sub-agents of the Canadian government, Mr. Carten relies on subparagraph 17(5)(*b*) of the *Federal Courts Act* as the statutory grant of jurisdiction supporting his claim against the Non-Federal Crown Defendants.

[42] Pursuant to this provision, the Federal Court has concurrent original jurisdiction

> "in proceedings in which relief is sought against any person for anything done or omitted to be done **in the performance of the**

[18] Justice Rothstein in *Sparvier v. Cowessess Indian Band #73*, [1994] 1 C.N.L.R. 182 (F.C.T.D.) at para. 10.

> **duties of that person as an officer, servant or agent of the Crown**."

(my emphasis)

[43] In 1992, paragraph 17(5)(*b*) (formerly paragraph 17(4)(*b*)) only referred to officer and servant of the Crown but was already construed to include the agents of the Crown as was the case for the word "servant" under the *Crown Liability and Proceedings Act*, R.S., 1985, c. C-50. The word "agent" was thus added in the amendments which came into force in 1992 to clarify the situation. As noted by the Federal Court of Appeal in *Fédération Franco-Ténoise v. Canada*, 2001 FCA 220; [2001] F.C.J. No. 1093 (F.C.A.), at para. 70, paragraph 17(5)(*b*) of the *Federal Courts Act* "by its very language refers to the *Crown Liability and Proceeding Act*".

[44] Although at the hearing, Mr. Carten argued on behalf of the plaintiffs that members of the Canadian Judiciary were "officers of the King" and therefore of the Federal Crown, he noted that this point was moot given that the individual judges were sued in their capacity as "agents of the Crown". This, in his view, is enough to distinguish the recent situation from the one in *Crowe v. Canada (Attorney General et al)* 2008 FCA 298; [2008] F.C.J. No. 1473 where the Federal Court of Appeal held that it was clear and obvious that members of the Canadian Judiciary are not "servants of the Crown" and that this Court has no jurisdiction to grant any relief against them.[19]

[45] Although the plaintiffs recognize that the Canadian government is not normally involved in the daily administration of justice and of the courts across Canada, they speculate that it intervenes

[19] Of note, the first instance judge in *Crowe* raised the issue of jurisdiction *proprio motu* and his order was upheld on appeal.

in cases of interest through the Chief Justice of the Supreme Court of Canada who sits as a member of the Privy Council and who has access to the Chief Justices of the various courts across Canada (paragraph 64 of the plaintiffs' submissions to Prothonotary Lafrenière).

[46] No real explanation or detailed theory was put forth as to how the Canadian government would "control" elected members of the British Columbia government including various Prime Ministers and Ministers, the Office of the Attorney General, let alone private law firms such McCarthy Tétrault and Lang Michener.

[47] It has not been argued nor is there any allegations to the effect that any of the Non-Federal Crown Defendants (especially the law societies) are declared by statute to be acting as Federal Crown agents, nor that anything in the legislation makes them directly subject to a level of control and supervision from the executive branch of the Canadian government that would meet the control test discussed in P. Hogg and P. Monahan, *Liabilities of the Crown*,3d.(Carswell, 2000) at pp. 334 and following. In fact, the Court is satisfied that none of the defendants would meet the control test set out by the Supreme Court of Canada in *Northern Pipeline Agency v. Perehinec*, [1983] 2 S.C.R. 513, pp. 519 to 521. The concept of "agent of the Crown" in the *Crown Liability and Proceedings Act* as well as in subsection 17(5) of the *Federal Courts Act* requires a *de jure* control as opposed to a *de facto* control.

[48] Moreover, even if the Court were to accept although, it is in my view contrary to the law as it stands now, that paragraph 17(5)(*b*) could include a *de facto* agent of the Crown, the Court is not

satisfied that there are any material facts or a scintilla of evidence[20] supporting such an allegation here. I am not prepared to conclude, as suggested by the plaintiffs, that they have provided a sufficient factual motion on which a reasonable trier of fact could infer that all the Non-Federal Crown Defendants (including Themis[21]) were acting on behalf of the Canadian government as alleged in the Statement of Claim.

[49] Like Prothonotary Lafrenière the Court has concluded that there is no statutory grant of jurisdiction in respect of any of the Non-Federal Crown Defendants. Thus, the Court concludes that it is clear and obvious that the plaintiffs' claim fails against all these defendants for want of jurisdiction.

[50] That said, I will only deal briefly with a few other issues raised in these defendant's motions.

[51] With respect to the Judicial Defendants' motion, the decision of the CJC in respect of complaints received by them (see for example paras. 125, 137 – 139, 150 of the Statement of Claim) are decisions of "a federal board, commission or other tribunal" reviewable under section 18 of the *Federal Courts Act*. This Court is bound by the Federal Court of Appeal's decisions which

[20] Even if one were to adopt the conspirational view of the world proposed by Mr. Carten, the fact that only the BC Crown was a defendant in the Sun Belt proceedings, instituted in BC where allegedly "fraud on the Court" was performed, as well as the fact that the story starts with a contract with the BC Crown (WCW), then with legislation and policy changes of the BC government, all point to a conspiracy led or controlled by the BC Crown rather than the Federal Crown.

[21] See my comments re: my duty to consider this issue *proprio motu*.

clearly state that this Court cannot entertain collateral attacks on reviewable decisions until and unless they have been reviewed and set aside (see *Crowe* above, paras. 20-21).

[52] As to the attack on the judicial independence of the individual judges and plaintiffs' allegation that judicial immunity[22] − that is, that judges cannot be asked to explain their decisions other than through their reasons − does not apply; it requires more than conjecture[23] by a losing party that the decisions must have been influenced and/or intermeddled by someone such as the Federal Crown.

[53] One cannot bypass the principle that when one is not satisfied with a judgment on the ground that the result or reasons are contrary to the law, such decision can only be challenged by way of an appeal, simply by stating that one has lost faith in the whole Provincial judiciary system.

[54] The Court is persuaded that the claims against all the Judicial Defendants should also be dismissed as scandalous, frivolous or vexatious.

[55] In fact, having considered the matter very carefully, I am convinced that these claims against all the defendants (except the BC Crown and the Federal Crown Defendants) must be dismissed as scandalous, frivolous and vexatious.

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[22] *MacKeigan v. Hickman*, [1989] 2 S.C.R. 796; *Valente v. The Queen*, [1985] 2 S.C.R. 673; *Beauregard v. Canada*, [1986] 2 S.C.R. 56.
[23] *Baryluk (Wyrd Sisters) v. Campbell*, 2008 CanLII 55134 (ON S.C.).

[56] Insofar as the BC Crown Defendants are concerned, the BC Crown is still a defendant in the action of Sun Belt that has been stayed, the Court feels that it is best not to comment on the merits of the claim *per se* for the allegation of "fraud on the Court" in that proceeding may still be relevant to such an action.

[57] Turning now to the Federal Crown Defendants, as mentioned the allegations linking actions of the other defendants to the Federal Crown on the basis of a *de facto* agency are not supported by a scintilla of evidence. And I generally agree with the comments of Prothonotary Lafrenière win respect of "Agency" (paras. 38 to 40). This means that there are very few[24] allegations left to support the claim against the Federal Crown Defendants particularly the individual officers and servants named in the Statement of Claim. Again, having very carefully considered all those allegations and the evidence provided, the Court must conclude once again that the claim is purely speculative and hypothetical. It is not supported by a scintilla of evidence and present no rational argument based on the evidence. The Court thus agrees with these defendants that it must be dismissed pursuant to Rule 221(1)(c).

[58] In the circumstances, it is not necessary to deal with the motion for default judgment of Mr. Carten. Like Prothonotary Lafrenière, the Court feels that this motion is moot.

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[24] For example, refusal of a Minister to meet with Mr. Carten, refusal of the Minister of Justice to require the CJC to investigate Mr. Carten's complaint, negative comments (the nature of which not known to the plaintiffs at the moment) in a meeting with officials of the US government, failure to settle or make offers of settlement to Sun Belt in further to the filing of the notice of intent to file an arbitration under Chapter 11 of NAFTA, failure to be transparent and provide documentation in anticipation of settlement discussions and before the actual start of the said arbitration proceedings, allegations that officers or civil servants of the Federal Crown would have invested in WCW or would have made representations in Mexico on behalf of WCW, etc.

[59] The appeal is dismissed with costs. Each defendant shall be entitled to a lump sum of $750.00 (all inclusive).

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the appeal is dismissed with costs. Each defendant shall be entitled to a lump sum of $750.00 (all inclusive).

"Johanne Gauthier"
Judge

ANNEX A

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] …
[2] …
[3] …
[4] …

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] …
[7] …
[8] …
[9] …

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".

[…]

ANNEX B

***Federal Courts Act,* R.S.C. 1985, c. F-7**

Relief against the Crown 17. (1) Except as otherwise provided in this Act or any other Act of Parliament, the Federal Court has concurrent original jurisdiction in all cases in which relief is claimed against the Crown. Cases (2) Without restricting the generality of subsection (1), the Federal Court has concurrent original jurisdiction, except as otherwise provided, in all cases in which (a) the land, goods or money of any person is in the possession of the Crown; (b) the claim arises out of a contract entered into by or on behalf of the Crown; (c) there is a claim against the Crown for injurious affection; or (d) the claim is for damages under the Crown Liability and Proceedings Act. Crown and subject: consent to jurisdiction (3) The Federal Court has exclusive original jurisdiction to hear and determine the following matters: (a) the amount to be paid if the Crown and any person have agreed in writing that the	Réparation contre la Couronne 17. (1) Sauf disposition contraire de la présente loi ou de toute autre loi fédérale, la Cour fédérale a compétence concurrente, en première instance, dans les cas de demande de réparation contre la Couronne. Motifs (2) Elle a notamment compétence concurrente en première instance, sauf disposition contraire, dans les cas de demande motivés par : a) la possession par la Couronne de terres, biens ou sommes d'argent appartenant à autrui; b) un contrat conclu par ou pour la Couronne; c) un trouble de jouissance dont la Couronne se rend coupable; d) une demande en dommages-intérêts formée au titre de la Loi sur la responsabilité civile de l'État et le contentieux administratif. Conventions écrites attributives de compétence (3) Elle a compétence exclusive, en première instance, pour les questions suivantes : a) le paiement d'une somme dont le montant est à déterminer, aux termes d'une

Crown or that person shall pay an amount to be determined by the Federal Court, the Federal Court — Trial Division or the Exchequer Court of Canada; and

(b) any question of law, fact or mixed law and fact that the Crown and any person have agreed in writing shall be determined by the Federal Court, the Federal Court — Trial Division or the Exchequer Court of Canada.

Conflicting claims against Crown

(4) The Federal Court has concurrent original jurisdiction to hear and determine proceedings to determine disputes in which the Crown is or may be under an obligation and in respect of which there are or may be conflicting claims.

Relief in favour of Crown or against officer

(5) The Federal Court has concurrent original jurisdiction

(a) in proceedings of a civil nature in which the Crown or the Attorney General of Canada claims relief; and

(b) in proceedings in which relief is sought against any person for anything done or omitted to be done in the performance of the duties of that person as an officer, servant or agent of the Crown.

convention écrite à laquelle la Couronne est partie, par la Cour fédérale — ou l'ancienne Cour de l'Échiquier du Canada — ou par la Section de première instance de la Cour fédérale;

b) toute question de droit, de fait ou mixte à trancher, aux termes d'une convention écrite à laquelle la Couronne est partie, par la Cour fédérale — ou l'ancienne Cour de l'Échiquier du Canada — ou par la Section de première instance de la Cour fédérale.

Demandes contradictoires contre la Couronne

(4) Elle a compétence concurrente, en première instance, dans les procédures visant à régler les différends mettant en cause la Couronne à propos d'une obligation réelle ou éventuelle pouvant faire l'objet de demandes contradictoires.

Actions en réparation

(5) Elle a compétence concurrente, en première instance, dans les actions en réparation intentées :

a) au civil par la Couronne ou le procureur général du Canada;

b) contre un fonctionnaire, préposé ou mandataire de la Couronne pour des faits — actes ou omissions — survenus dans le cadre de ses fonctions.

***Federal Courts Rules*, SOR°98-106**

Material facts
174. Every pleading shall contain a concise statement of the material facts on which the party relies, but shall not include evidence by which those facts are to be proved.

Particulars
181. (1) A pleading shall contain particulars of every allegation contained therein, including
(a) particulars of any alleged misrepresentation, fraud, breach of trust, wilful default or undue influence; and
(b) particulars of any alleged state of mind of a person, including any alleged mental disorder or disability, malice or fraudulent intention.
Further and better particulars
(2) On motion, the Court may order a party to serve and file further and better particulars of any allegation in its pleading

Claims to be specified
182. Every statement of claim, counterclaim and third party claim shall specify
(a) the nature of any damages claimed;
(b) where monetary relief is claimed, whether the amount claimed, exclusive of interest and costs, exceeds $50,000;
(c) the value of any property sought to be recovered;
(d) any other specific relief

Exposé des faits
174. Tout acte de procédure contient un exposé concis des faits substantiels sur lesquels la partie se fonde; il ne comprend pas les moyens de preuve à l'appui de ces faits.
Précisions
181. (1) L'acte de procédure contient des précisions sur chaque allégation, notamment :
a) des précisions sur les fausses déclarations, fraudes, abus de confiance, manquements délibérés ou influences indues reprochés;
b) des précisions sur toute allégation portant sur l'état mental d'une personne, tel un déséquilibre mental, une incapacité mentale ou une intention malicieuse ou frauduleuse.
Précisions supplémentaires
(2) La Cour peut, sur requête, ordonner à une partie de signifier et de déposer des précisions supplémentaires sur toute allégation figurant dans l'un de ses actes de procédure.
Contenu
182. La déclaration, la demande reconventionnelle et la mise en cause contiennent les renseignements suivants :
a) la nature des dommages-intérêts demandés;
b) lorsqu'une réparation pécuniaire est réclamée, une mention indiquant si le montant demandé excède 50 000 $,

being claimed, other than costs; and
(e) whether the action is being proceeded with as a simplified action.

Motion to strike
221. (1) On motion, the Court may, at any time, order that a pleading, or 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.
Evidence
(2) No evidence shall be heard on a motion for an order under paragraph (1)(a).

intérêts et dépens non compris;
c) la valeur des biens réclamés;
d) toute autre réparation demandée, à l'exclusion des dépens;
e) le cas échéant, une mention portant que l'action est poursuivie en tant qu'action simplifiée.

Requête en radiation
221. (1) À tout moment, la Cour peut, sur requête, ordonner la 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.
Preuve
(2) Aucune preuve n'est admissible dans le cadre d'une requête invoquant le motif visé à l'alinéa (1)a).

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-95-08
STYLE OF CAUSE:	JOHN FREDERICK CARTEN AND KAREN AUDREY GIBBS v. HER MAJESTY THE QUEEN ET AL
PLACE OF HEARING:	Vancouver, BC
DATE OF HEARING:	April 20, 2010
REASONS FOR ORDER:	GAUTHIER J.
DATED:	August 27, 2010

APPEARANCES:

Mr. John Frederick Carten	FOR THE PLAINTIFFS
Ms. Lisa Riddle	FOR THE FEDERAL CROWN DEFENDANTS
Mr. Hugh Gwillim	FOR THE PROVINCIAL CROWN DEFENDANTS
Mr. Bruce Comba	FOR THE DEFENDANT, THE LAW SOCIETY OF ALBERTA
Mr. Michael G. Armstrong	FOR THE DEFENDANTS, THE LAW SOCIETY OF BRITISH COLUMBIA, McCARTHY TETRAULT LLP
Ms. Jaye Hooper	FOR THE DEFENDANT, LANG MICHENER LLP
Mr. Martin W. Mason	FOR THE CANADIAN JUDICIAL COUNCIL AND THE JUDICIAL DEFENDANTS
Ms. Laura Cundari	FOR THE DEFENDANT, THEMIS PROGRAM MANAGEMENT AND CONSULTING LTD.

SOLICITORS OF RECORD:

Department of Justice Vancouver, British Columbia	FOR THE FEDERAL CROWN DEFENDANTS
Ministry of Attorney General Victoria, British Columbia	FOR THE PROVINCIAL CROWN DEFENDANTS
Emery Jamieson LLP Edmonton, Alberta	FOR THE DEFENDANT, THE LAW SOCIETY OF ALBERTA
Armstrong Simpson Vancouver, British Columbia	FOR THE DEFENDANTS, THE LAW SOCIETY OF BRITISH COLUMBIA, McCARTHY TETRAULT LLP
Williams McEnery Ottawa, Ontario	FOR THE DEFENDANT, LANG MICHENER LLP
Gowling Lafleur Henderson LLP Ottawa, Ontario	FOR THE JUDICIAL DEFENDANTS
Blake Cassels & Graydon LLP Vancouver, B.C.	FOR THE DEFENDANT, THEMIS PROGRAM MANAGEMENT AND CONSULTING LTD.