

Federal Court of Appeal



Cour d'appel fédérale

Date: 20220606

Docket: A-39-22

Citation: 2022 FCA 102

**CORAM: DE MONTIGNY J.A.
GLEASON J.A.
LOCKE J.A.**

BETWEEN:

BERNARD FIEDERER

Appellant

and

**ATTORNEY GENERAL OF CANADA, MARC GIROUX
and CANADIAN JUDICIAL COUNCIL**

Respondents

Dealt with in writing without appearance of parties.

Judgment delivered at Ottawa, Ontario, on June 6, 2022.

**REASONS FOR JUDGMENT BY:
CONCURRED IN BY:**

**GLEASON J.A.
DE MONTIGNY J.A.
LOCKE J.A.**

Federal Court of Appeal



Cour d'appel fédérale

Date: 20220606

Docket: A-39-22

Citation: 2022 FCA 102

**CORAM: DE MONTIGNY J.A.
GLEASON J.A.
LOCKE J.A.**

BETWEEN:

BERNARD FIEDERER

Appellant

and

**ATTORNEY GENERAL OF CANADA, MARC GIROUX
and CANADIAN JUDICIAL COUNCIL**

Respondents

REASONS FOR JUDGMENT

GLEASON J.A.

[1] The respondents, Marc Giroux and the Canadian Judicial Council (collectively, the moving parties), have moved for an order summarily dismissing this appeal, asserting that it is bereft of any possibility of success. I agree, and for the reasons that follow would dismiss this appeal, with costs.

[2] A bit of background is necessary for context.

[3] The appellant commenced an action in the Federal Court, seeking \$475,000.00 in damages from the respondents, arising from what he alleged was the gross negligence of Mr. Giroux in dismissing complaints that the appellant had made to the Canadian Judicial Council (the CJC) against several judges of the Quebec Superior Court and Quebec Court of Appeal.

[4] Those complaints appear to have been related to the dismissal of an action that the appellant brought in Quebec against a notary and the *Fonds d'assurance responsabilité professionnelle de la chambre des notaires du Québec*. The Quebec Superior Court dismissed the appellant's action because it was prescribed and without legal foundation (*Fiederer c. Litvack*, 2018 QCCS 3796 at para. 7). The appellant appealed and the Quebec Court of Appeal summarily dismissed his appeal, finding it had no reasonable chance of success and was abusive (*Fiederer c. Litvack*, 2018 QCCA 2012). The appellant sought revocation of that decision, and the Quebec Court of Appeal dismissed his application for revocation (*Fiederer c. Litvack*, 2019 QCCA 681). The appellant then sought to have the revocation decision revoked. The Quebec Court of Appeal dismissed his second application for revocation and declared the appellant to be a vexatious litigant (*Fiederer c. Litvack*, 2019 QCCA 1095).

[5] In respect of the litigation before the Federal Court, the moving parties brought a motion to strike the appellant's claim under rule 221(1) of the *Federal Courts Rules*, S.O.R./98-106.

[6] In the judgment under appeal (*Fiederer v. Canada (Attorney General)*, 2022 FC 48), the Federal Court (*per* Grammond, J.) struck the appellant’s claim in its entirety, without leave to amend, finding that the claim disclosed no reasonable cause of action. More specifically, the Federal Court held that the CJC, a body created by the *Judges Act*, R.S.C. 1985, c. J-1, benefits from immunity against liability in tort or for extra-contractual liability in dealing with complaints filed against judges, unless the CJC acts in bad faith, and that Mr. Giroux benefits from such immunity when performing his duties as Executive Director of the CJC. As the appellant’s Statement of Claim raised no allegation of bad faith, the Federal Court found that the appellant’s claim disclosed no cause of action. Given this finding, it was not necessary for the Federal Court to address the motion of the Attorney General to be removed as a defendant by reason of having been improperly named.

[7] The appellant has appealed the Federal Court’s judgment to this Court. In his Notice of Appeal, the appellant appears to allege that the Federal Court erred in finding that his Statement of Claim did not allege bad faith. I see no possibility of such argument having any hope of success, and therefore would summarily dismiss this appeal.

[8] By virtue of this Court’s plenary power to regulate the litigation before it, this Court may summarily dismiss an appeal, either upon motion from a respondent or on its own initiative, if the appeal is “doomed to fail owing to a fatal flaw or the absence of any merit” (*Bernard v. Canada (Attorney General)*, 2019 FCA 144 at para. 10; see also *Dugré v. Canada (Attorney General)*, 2021 FCA 8 at paras. 22-23 [*Dugré*]). Indeed, allowing an appeal that is doomed to fail to remain on the roll, “... waste[s] judicial resources and impair[s] access to justice for those

who have a meritorious case...” as the Chief Justice of this Court noted recently in *Dugré* at paragraph 22.

[9] In the decision under appeal, the Federal Court set out the correct legal principle that the CJC and its employees, acting in the scope of their duties, benefit from immunity from suit in tort or for extra-contractual liability, unless they act in bad faith when dealing with a complaint (*Ernst v. Alberta Energy Regulator*, 2017 SCC 1, [2017] 1 S.C.R. 3 at paras. 50-51, 115-120, 171; *Taylor v. Canada (Attorney General)*, 2000 CanLII 17120 (FCA), [2000] 3 FC 298 at paras. 30-39 & 41; *Sirroos v. Moore*, [1974] 3 All ER 776 (C.A) at p. 785; and *Morier v. Rivard*, 1985 CanLII 26 (SCC), [1985] 2 S.C.R. 716 at p. 737-45; *Edwards v. Law Society of Upper Canada*, 2001 SCC 80 at para. 6). Therefore, the Federal Court’s decision does not contain any error of law.

[10] Nor did the Federal Court commit a palpable and overriding error in concluding that the appellant’s Statement of Claim does not allege bad faith. Neither the fact of the CJC’s refusal to investigate the appellant’s complaints nor the appellant’s allegations of negligence equate to bad faith. Moreover, as this Court noted in *Merchant Law Group v. Canada Revenue Agency*, 2010 FCA 184 at paragraph. 34:

[34] ... When pleading bad faith or abuse of power, it is not enough to assert, baldly, conclusory phrases such as “deliberately or negligently,” “callous disregard,” or “by fraud and theft did steal”: *Zundel v. Canada*, 2005 FC 1612, 144 A.C.W.S. (3d) 635; *Vojic v. Canada (M.N.R.)*, [1987] 2 C.T.C. 203, 87 D.T.C. 5384 (F.C.A.). “The bare assertion of a conclusion upon which the court is called upon to pronounce is not an allegation of material fact”: *Canadian Olympic Association v. USA Hockey, Inc.* (1997), 74 C.P.R. (3d) 348, 72 A.C.W.S. (3d) 346 (F.C.T.D.). Making bald, conclusory allegations without any evidentiary foundation is an abuse of process: *AstraZeneca Canada Inc. v. Novopharm*

Limited, 2010 FCA 112 at paragraph 5. If the requirement of pleading material facts did not exist in Rule 174 or if courts did not enforce it according to its terms, parties would be able to make the broadest, most sweeping allegations without evidence and embark upon a fishing expedition. As this Court has said, “an action at law is not a fishing expedition and a plaintiff who starts proceedings simply in the hope that something will turn up abuses the court’s process”: *Kastner v. Painblanc* (1994), 58 C.P.R. (3d) 502, 176 N.R. 68 at paragraph 4 (F.C.A.).

[11] Therefore, this appeal is doomed to fail. I would accordingly dismiss it, with costs.

“Mary J.L. Gleason”

J.A.

“I agree.

Yves de Montigny J.A.”

“I agree.

George R. Locke J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-39-22

STYLE OF CAUSE: BERNARD FIEDERER v.
ATTORNEY GENERAL OF
CANADA, MARC GIROUX and
CANADIAN JUDICIAL
COUNCIL

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR JUDGMENT BY: GLEASON J.A.

CONCURRED IN BY: DE MONTIGNY J.A.
LOCKE J.A.

DATED: JUNE 6, 2022

WRITTEN REPRESENTATIONS BY:

Bernard Fiederer FOR THE APPELLANT

Annie Flamand
Pascal-Catherine Guay FOR THE RESPONDENTS,
ATTORNEY GENERAL OF
CANADA

Mathieu Piché-Messier
Nadia Effendi
Amanda Afeich FOR THE RESPONDENT,
CANADIAN JUDICIAL
COUNCIL and MARC GIROUX

SOLICITORS OF RECORD:

A. François Daigle
Deputy Attorney General of Canada FOR THE RESPONDENT,
ATTORNEY GENERAL OF
CANADA

Borden Ladner Gervais LLP
Montreal, Quebec FOR THE RESPONDENTS,
CANADIAN JUDICIAL
COUNCIL and MARC GIROUX

