Federal Court Cour fédérale

Date: 20160818

Docket: T-643-16

Citation: 2016 FC 943

[ENGLISH TRANSLATION]

Ottawa, Ontario, August 18, 2016

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

JEAN-PIERRE MARTIN SIBOMANA

Plaintiff

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA
HONOURABLE JOHN MCCALLUM
HONOURABLE RALPH GOODALE
FRANÇOIS JOBIDON
ÉMELIE AUDET
RAOUL DELCORDE
HUBERT ROISIN
PATRICK STEVENS

Defendants

ORDER AND REASONS

[1] This is a motion to strike under Rule 221 of the *Federal Courts Rules* (SOR/98-106). Alternative remedies are sought should the motion fail. The Attorney General would like to be able to serve and file his defence within a delay of 45 days of today's date; it is also requested that defendants McCallum, Goodale, Jobidon and Audet be removed as parties.

[2] The motion to strike cannot be granted. Moreover, the Attorney General must serve and file his defence within 30 days of the date of this order. The Honourable John McCallum and the Honourable Ralph Goodale are removed as parties to the action. That will not be the case for defendants Jobidon and Audet.

I. Background: The legal proceedings

[3] The plaintiff, Jean-Pierre Martin Sibomana, brought an action in his personal capacity on April 21, 2016. The action was substantially amended on May 23, 2016. The damages claimed were increased from $20,000,000 to $66,500,000. This is an action in extra-contractual civil liability seeking compensatory, punitive and exemplary damages. As I understand the conclusions sought, the plaintiff is claiming:

- $36,500,000 in damages for the refusal of his application for permanent residence by a visa officer in Buffalo on June 25, 2016;
- $25,000,000 for unlawful, unjustified, fraudulent and abusive criminal proceedings; misuse of his image; and misuse of three criminal charges; and
- $5,000,000 in damages under section 24 of the *Canadian Charter of Rights and Freedoms* for violations of sections 7, 8, 9, 10, 11, 12, 13 and 15 of the Charter.

[4] On May 25, 2016, the defendants represented by the Attorney General informed the Court that they intended to bring a motion to strike. At the same time, the Attorney General informed the Court that he represented the following parties: Her Majesty the Queen in right of Canada, the Honourable John McCallum, the Honourable Ralph Goodale, and agents François

Jobidon and Émelie Audet. The other defendants are all representatives of the Belgian government (Ambassador, Consul General and liaison officer for the Belgian police).

[5] On June 28, 2016, the plaintiff sought leave to bring a motion for summary judgment. By Direction issued on July 5, 2016, my colleague Madam Justice Sylvie Roussel denied leave to bring a motion for summary judgment because the defendant had not filed a defence (Rule 213).

[6] That same day, the Attorney General informed the Court that the motion to strike announced on May 25, 2016, would be filed on June 29, 2016. In it, he pointed out that the motion to strike ought to be made before a defence was filed and that the motion for summary judgment ought not to be disposed of until the motion to strike had been heard. It seems that the amended statement of claim was served on May 26, 2016.

[7] Nonetheless, on July 20, 2016, the plaintiff brought a motion for a default judgment on the basis of Rules 35, 202, 204, 210 and 298 of the *Federal Courts Rules*. That motion will be heard on August 25, 2016, at the General Sitting of this Court. Obviously, if the motion to strike is granted, or, alternatively, if the time to file the defence is extended, under Rule 210, the motion for a default judgment would become moot because the default can be remedied.

II. Motion to strike

[8] Clearly, the motion for a default judgment is not before me. I need only dispose of the motion to strike on the basis of the parties' written submissions. Therefore, I will consider only the arguments in that regard as presented by the Attorney General.

[9] Motions to strike are not readily granted, because this is about access to justice. So the facts pleaded are taken as true, without there being a need to add other facts based on assumption or speculation; it needs to be plain and obvious that the action is certain to fail because it contains a radical defect (*Hunt v. Carey Canada Inc.*, [1990] 2 SCR 959; *Odhavji Estate v. Woodhouse*, 2003 SCC 69, [2003] 3 SCR 263). The Court should not unduly blame the plaintiff for his poorly written statement of claim either, especially since he is acting alone, without the assistance of counsel.

[10] The onus of proof on the party moving to strike is a heavy one. The discretion to strike out pleadings should only be exercised in plain and obvious cases. In their work entitled *Recours et procédure devant les Cours fédérales* (LexisNexis Canada Inc., 2013), Letarte, Veilleux, LeBlanc and Rouillard-Labbé provided a brief description of the task facing the moving party:

> [TRANSLATION]
>
> The moving party, therefore, has the onus of establishing that the success of the motion is inevitable because the opposing party's pleading—even if the facts alleged therein are taken as true—is certain to fail at trial because it contains a radical defect.[220]
>
> [Emphasis added.]

This seems consistent with the test set out by the Federal Court of Appeal based on Rule 221 in *Prentice v. Canada*, 2005 FCA 395, [2006] 3 FCR 135:

> [23] A motion to strike a pleading under paragraph 221(1)(a) of the *Federal Courts Rules* [SOR/98-106, r. 1 (as am. by SOR/2004-283, s. 2)] on the ground that it discloses no reasonable cause of action will be allowed only if, assuming the facts alleged in the statement of claim to be true, the judge concludes that the outcome of the case is "plain and obvious" or "beyond reasonable doubt" (see *Hunt v. Carey Canada Inc.*, 1990 CanLII 90 (SCC), [1990] 2 S.C.R. 959, Wilson J. at page 980). It is clear from what

> Madam Justice Wilson said that the power to strike out pleadings must be exercised with considerable caution and reluctance and that neither the length or complexity of the issues nor the novelty of the cause of action should prevent a plaintiff from proceeding with his or her action.

[11] The task facing the defendants is not made easier where the statement of claim is wordy, full of exaggeration and not organized, whether chronologically or by topic. But that is not the issue. The length and complexification of the otherwise relatively simple issues raised by the plaintiff are not sufficient to justify dismissing the action. Indeed, it appears that despite the quality of the statement of claim filed on May 23, 2016, the defendants understood the gist of the allegations in this action, because they chose certain elements of the statement of claim to challenge them. The defendants would have done well to provide a more complete picture of the allegations made in the statement of claim. Instead, they discussed episodes. Therefore, it is only those episodes that can be addressed in this motion to strike. I will deal with these in turn.

[12] On June 25, 2010, the plaintiff's application for permanent residence was refused because he was supposedly inadmissible to Canada for a theft committed in Belgium. The plaintiff claims that there was no such theft and that he was never informed of the inadmissibility decision or the reasons for said decision. As a result, he could not seek judicial review of the decision and suffered harmful consequences for several years.

[13] The defendants argue in their motion to strike that the plaintiff is wrong, putting forward facts that strike me as new and as elements that would be raised in defence to the action. The plaintiff alleges malice and bad faith, saying that the decision was made unfairly and unlawfully

(statement of claim, paragraph 21). According to him, the Canadian officials failed to exercise diligence, which caused him significant problems (statement of claim, paragraphs 27–28).

[14] The main ground for the motion to strike is that the appropriate remedy is judicial review, for which an extension can be obtained (memorandum of fact and law, paragraph 26). For the defendants, an action cannot seek the review of a refusal and grant a permanent resident visa. This argument ignores the Supreme Court of Canada's decision in *Canada (Attorney General) v. TeleZone Inc.*, 2010 SCC 10, [2010] 3 SCR 585 [*TeleZone*] and especially the decisions in *Parrish & Heimbecker Ltd. v. Canada (Agriculture and Agri-Food)*, 2010 SCC 64, [2010] 3 SCR 639 [*Parrish & Heimbecker*] and *Nu-Pharm Inc. v. Canada (Attorney General)*, 2010 SCC 65, [2010] 3 SCR 648 [*Nu-Pharm*], where the Supreme Court relied on *TeleZone*. In *TeleZone*, the action was commenced in Superior Court, and it was argued that the plaintiff ought to have first proceeded by way of judicial review in Federal Court, since it was challenging a decision of the Minister of Industry Canada. But in the other two cases, the plaintiff had brought an action in Federal Court without first seeking judicial review of the administrative decision that gave rise to the action. The bifurcation between the Superior Court and the Federal Court was no longer an issue. In all three cases, the Court found that there was nothing requiring the plaintiff to pursue a private law remedy by way of judicial review.

[15] The plaintiff is, of course, displeased with the administrative decision, and certainly complains that he could not seek judicial review because he did not know about his inadmissibility. But he is now seeking the extra-contractual civil liability of the government agents who supposedly mishandled his case, arguing, for instance, that they hid the decision from him. His statement of claim goes far beyond complaining of an unreasonable decision in

the administrative law sense. The only issue is whether the statement of claim discloses a cause of action, assuming the facts pleaded to be true. It is not plain and obvious that there is no cause of action, and discretion should be exercised in favour of the plaintiff. The plaintiff did not have to first proceed by way of judicial review, and the facts pleaded give rise to an action. This in no way suggests that the facts can be proven, or that, even if they are proven, an actionable wrong was committed, because one or more defences can be offered and accepted.

[16] The second series of allegations relate to defendant Jobidon's handling of a work permit application, which resulted in an exclusion order on November 11, 2011, that was judicially reviewed in July 2012.

[17] Despite Rule 221(2), the defendants cite facts from a successful application for judicial review by the plaintiff (*Sibomana v. Canada (Citizenship and Immigration)*, 2012 FC 853). In that judicial review decision, certain facts were presented as they were known at the time, and the defendants are now relying on these facts to try to explain and justify the decision to issue an exclusion order. The application for judicial review was allowed, quashing the exclusion order issued against the plaintiff by Mr. Jobidon, a delegate of the Minister.

[18] The defendants are attempting to make questionable use of the judicial review decision in a motion to strike. They rely on passages from the decision to argue that what the official did was justified. As for the claim that Mr. Jobidon was abusive during the November 11, 2011 meeting, the Attorney General submits that this should have been raised in the 2012 judicial review. It is argued that the order merely flows from legislation. Essentially, defendant Jobidon was only doing his job.

[19] Therefore, the defendants seem to be relying on this decision to challenge the merits of the allegations even though they are taken as true. The defendants are right that there needs to be a demonstration of bad faith, wilful negligence, unlawful conduct or actions deliberately inconsistent with the performance of statutory duties (memorandum of fact and law, paragraph 53). But the defendants' complaint is that [TRANSLATION] "such demonstration has not been made and cannot be made in a vexatious manner as in the present case." There are no articulations or arguments supporting this assertion. It is true that such demonstration has not been made, but it was not expected at this stage of a motion to strike. As for the plaintiff's allegations of bad faith, unlawful conduct, wilful negligence and actions inconsistent with duties, they are a lot more exaggerated than they are vexatious. The plaintiff may be facing a very difficult task, but that is not enough at this stage to strike his statement of claim. Hard facts must be proven, but it is too early for the plaintiff to do this.

[20] The defendants would also like the allegations surrounding the plaintiff's detention in June 2013 to be struck out. The plaintiff was arrested at the Québec City airport on returning from Paris. After being detained for a few days, he was released under conditions. Here, too, the defendants challenge the merits of the action on the basis of extrinsic evidence, namely the notes of the defendant, Émelie Audet. Based on her notes, they argue that Ms. Audet had two reasons to arrest and detain the plaintiff. Supposedly the plaintiff was evading an inquiry and possible removal and was inadmissible to Canada. It would seem that this is the same inadmissibility referred to earlier, where the exclusion order resulted in the refusal of the plaintiff's application for permanent residence in June 2010. This inadmissibility was eventually discussed before the Immigration Division, which found on July 25, 2013, that the plaintiff's inadmissibility was inappropriate because, according to the Immigration Division, there was no correspondence

between the Belgian offence and a Canadian offence. The Immigration Division found that the plaintiff was [TRANSLATION] "not subject to the allegations under paragraph 36(2)(c) contained in the [inadmissibility] report."

[21] Apparently, the charges revolve around the "purchase" of razor blades in Belgium. The plaintiff allegedly opened a box of razor blades in some establishment to see if they would fit his razor. The instructions in Dutch only complicated matters. I note that the statement of claim also mentions other charges, but the defendants did not address them.

[22] Again, the defendants are attempting to argue that the action is unfounded in fact (memorandum of fact and law, paragraph 68 *et seq.*) Obviously, if the facts alleged cannot be proven, the plaintiff's action will be dismissed. But what the defendants needed to establish to be successful in their motion to strike is that there is no cause of action even if the facts taken as true are proven. There is a radical defect. With respect, that is not what the defendants did. Instead, they sought to challenge the facts taken as true by presenting other facts, arguing that the action would fail. According to them, Ms. Audet [TRANSLATION] "acted in accordance with the law and had legitimate concerns after interviewing the plaintiff" (memorandum of fact and law, paragraph 72). This does not satisfy the test to strike. The defences that the defendants could raise will come later. In *Parrish & Heimbecker* and *Nu-Pharm*, the Supreme Court noted that defences could be raised, but that it would have to be done at trial (paragraph 20 in *Parrish & Heimbecker* and paragraph 19 in *Nu-Pharm*). The motions to strike were dismissed.

[23] I would add, however, that the defendants were right to point out that the plaintiff was not acquitted in Canada, that no criminal charges were misused. The Canadian proceedings mentioned in the statement of claim are all administrative in nature. The Immigration Division did not acquit the plaintiff, nor did the Federal Court comment on the actions of the Minister's delegate. At most, the Court noted in the judicial review decision that "the Minister's delegate does not appear to have considered this provision of the IRPA or to have made a distinction between these two intentions." The plaintiff will have to establish the alleged wrongs if this matter makes it to trial.

[24] Lastly, the defendants raise the application of the treaty between Canada and Belgium on mutual legal assistance in criminal matters. According to them, the treaty does not apply in this case.

[25] This part of the motion to strike faces the same issue as the previous three. After this Court had set aside the inadmissibility decision rendered by the Minister's delegate (defendant Jobidon), the latter apparently sought to find out what Belgian police had on file concerning the theft and the plaintiff's fingerprints. I note that in the July 5, 2012 decision, this Court referred the matter back to a different delegate for redetermination, as is the practice. So when Mr. Jobidon contacted Mr. Stevens, a liaison officer for Belgian police, on October 2, 2012, it was well after the July 5 judicial decision.

[26] The defendants describe Mr. Jobidon's motivation as innocent, whereas the plaintiff essentially alleges bad faith, malice, and actions inconsistent with statutory duties. The inquiry made on October 2 supposedly resulted, on October 8, 2012, in what the plaintiff claims are

three false allegations. Moreover, the plaintiff claims that his image was misused in order to harm him in addition to the three false criminal charges. He seems to be making a connection between the investigation commenced maliciously in October 2012 and his airport arrest and four-day stint in custody in June 2013. The plaintiff specifically claims that some of the defendants hounded him.

[27] To claim that Mr. Jobidon or Ms. Audet were only doing their job is part of the defence to the action, not of a motion to strike where the facts are taken as true. To claim, as the defendants do, that the plaintiff's personal information was used lawfully (memorandum of fact and law, paragraph 82) is not much better. That remains to be proven. Whether or not a treaty between Belgium and Canada applies is immaterial.

[28] In my opinion, the four parts of the defendants' motion to strike all suffer from the same flaw. Rather than raise a lack of a cause of action or a radical defect, they indicate that the defendants will have defences to raise, such as that the plaintiff will not be able to prove those facts still taken as true at this stage, or that the facts, once they are known, will give a complete defence to the allegations of bad faith, malice, and so on. I cannot accede to these arguments to strike.

[29] The statement of claim is at times difficult to follow, and needlessly flowery language is used in making allegations of bad faith, malice and unlawful motivation. I suspect that once the factual background has been sorted out, we will see that it is relatively simple. Two questions will arise: can the plaintiff prove the alleged facts, and can a defence in fact and in law be raised? Eventually, the plaintiff will have to prove his damages if he succeeds in his claim of the

defendants' extra-contractual liability. The motion to strike, as presented by the defendants, is short; rather than establish a lack of a cause of action, the defendants indicate that if the action proceeds, it will not succeed. At this stage of the proceedings, that it not the test that must be applied.

III. Pleading for another

[30] The defendants argue that the plaintiff cannot plead for another. In this case, the action was brought by the plaintiff alone. His wife and children have not commenced an action. In any event, Rule 119 provides that an individual may act in person, as is the case here, but an individual who does not act in person must be represented by a solicitor. Such individual cannot be represented by a lay person. This rule applies to spouses (*Giagnocavo v. Canada* (1995), 189 NR 225 (FCA)).

[31] Despite the fact that the plaintiff refers to his family in his statement of claim, it is not part of the action brought by Mr. Sibomana. Therefore, any finding in favour of the plaintiff's wife or any of his children is of no effect. Even if the plaintiff's family suffered damages from the defendants' actions, the affected persons would have had to be parties to the action. Only those findings about a plaintiff validly before the Court may be allowed. The more drastic remedy to strike (*Parmar v. MCI* (2000), 12 Imm LR (3rd) 178) is not justified, because other individuals have not constituted themselves plaintiffs as Mr. Sibomana has. The action stands, but only in regards to the plaintiff and those findings that affect the plaintiff.

IV. Striking the ministers as defendants

[32] The defendants claim that the two ministers named as defendants should be struck from this action. They are correct. Almost 25 years ago, Mr. Justice Deneault of this Court summarized the state of the law as follows in *Cairns v. Farm Credit Corp.*, [1992] 2 FC 115, at page 120:

> The plaintiffs have named the Honourable William McKnight as a defendant in this action. A Minister of the Crown cannot be sued in his representative capacity, nor can he be sued in his personal capacity unless the allegations against him relate to acts done in his personal capacity (*Air India Flight 182 Disaster Claimants v. Air India* (1987), 62 O.R. (2d) 130 (H.C.)). As the plaintiffs have made no claims against the Minister relating to actions done in his personal capacity, the Honourable William McKnight must be struck as a party to the action.

Mr. Justice Russell held the same in *Mancuso v. Canada (National Health and Welfare)*, 2014 FC 708, at paragraph 18. That certainly does not mean that a minister cannot be sued at all. But if a minister is included, his or her liability will be engaged only for those wrongs committed in the performance of his or her duties (*Peter G. White Management Ltd. v. Canada (Minister of Canadian Heritage)*, 2006 FCA 190, [2007] 2 FCR 475, at paragraph 44 [*Peter G. White Management Ltd.*]). In this case, there are no allegations against the two ministers relating to acts done in their personal capacity. All the alleged wrongs were committed by agents and occurred long before the ministers were appointed when Cabinet was formed after the October 2015 elections.

[33] Therefore, the two ministers will be struck as parties to the action.

V. Striking François Jobidon and Émelie Audet as defendants

[34] The defendants would also like defendants Jobidon and Audet to be struck as parties to the action. There is no dispute that this Court has jurisdiction to deal with an action against Her Majesty the Queen in right of Canada (section 48 of the *Federal Courts Act*). What is in dispute is the Court's jurisdiction to deal with an action against an officer, servant or agent of the Crown for wrongs committed in the performance of his or her duties (subsection 17(5)(b) of the *Federal Courts Act*).

[35] The argument is that this Court has jurisdiction only if there is an existing body of federal law which is essential to the disposition of the case and which nourishes the statutory grant of jurisdiction. The issue is knowing what is the body of law that is sufficient to ground this Court's jurisdiction.

[36] In *Peter G. White Management Ltd.*, the Federal Court noted that the fragmentation of litigation arising from a common factual matrix was apt to be wasteful of public and private resources and to work injustice (paragraph 79). This would be the case if the plaintiff could sue the Crown in this Court but had to bring an action against the agents in provincial superior court. I am not unmindful of the fact that the Crown is liable for damages caused by its agents (section 3 of the *Crown Liability and Proceedings Act*, RSC 1985, c. C-50) and that it is unnecessary for the agents to be parties to the action in order for the action to proceed in this Court. But should they be excluded?

[37] The defendants rely exclusively on two decisions of prothonotaries (*Robinson v. Canada*, [1996] 2 FCR 624 [*Robinson*]; *Leblanc v. Canada*, 2003 FCT 776) and the decision of Russell J. in *Beima v. Macpherson*, 2015 FC 1368 [*Beima*]). The Court did not have the benefit of the arguments of the plaintiff, who is not represented by counsel, and the defendants' arguments were poorly articulated.

[38] However, there is case law from the Federal Court of Appeal concerning this Court's jurisdiction that strikes me as more liberal. In *Beima*, the Federal Court relied heavily on *Stephens v. Canada*, [1982] CTC 138 [*Stephens*], a decision rendered by the Federal Court of Appeal before the Supreme Court of Canada established requirements for determining Federal Court jurisdiction, including an existing body of federal law (*ITO-Int'l Terminal Operators v. Miida Electronics*, [1986] 1 SCR 752). In *Peter G. White Management Ltd.*, the Federal Court of Appeal noted that *Stephens* was often contrasted with *Oag v. Canada*, [1987] 2 FC 511 (FCA), and in particular for our purposes *Kigowa v. Canada*, [1990] 1 FC 804, at paragraph 76 [*Kigowa*].

[39] In *Robinson*, Prothonotary Hargrave distinguished the situation before him from *Oag* and *Kigowa*. In the present case, the situation is not readily distinguishable from *Oag* and *Kigowa*. In *Leblanc*, Prothonotary Tabib simply mentioned two decisions.

[40] In *Kigowa*, the action was based on the claim that the plaintiff had been unlawfully arrested and detained by an immigration officer. The Court of Appeal found that the Federal Court had jurisdiction:

> Section 103(2) of the *Immigration Act* not only defines the authority of immigration officers and others to arrest and detain aliens in Canada for purposes of that Act; it sets the limit on their right to be at liberty in Canada while awaiting an inquiry or removal, as the case may be. It is federal law which, in the cause of action pleaded here, is the law upon which the respondent's case is based, is essential to its disposition and which also nourishes the grant of jurisdiction by s. 17(5) of the *Federal Court Act.*
>
> pp. 816-817

[41] In *Oag*, an inmate in a penitentiary claimed that his parole had been unlawfully revoked by the Chair of the National Parole Board. His right to be at liberty was the creation of federal legislation. An action could be brought in Federal Court.

[42] The allegations in that case seem somewhat similar to those made against defendants Audet and Jobidon. Ms. Audet arrested and detained the plaintiff under immigration law upon his return to Canada. Mr. Jobidon was a Minister's delegate tasked with determining whether the plaintiff was inadmissible to Canada under immigration law. Each of these situations is seriously circumscribed by immigration law.

[43] The defendants did not seek to explain how the situation before me has no connection to a body of federal law sufficient to ground this Court's jurisdiction; they merely referred to certain decisions without discussing case law from the Federal Court of Appeal. That is not enough.

[44] The defendants are of the view that [TRANSLATION] "it is appropriate to strike the defendants from the action" (memorandum of fact and law, paragraph 100). In the absence of argument by an adverse party, and in light of case law from the Federal Court of Appeal that was

neither cited nor commented on by the defendants, I, however, find it appropriate not to strike the defendants from the action. The defendants are faced with case law from the Federal Court of Appeal that they did not address; indeed, *Peter G. White Management Ltd.*, which was decided after the two prothonotary decisions relied on by the defendants, not only endorses *Oag* and *Kigowa* but also appears to go beyond *Oag* and *Kigowa* in that the lease at issue was not even the creation of federal legislation. According to the Court of Appeal, it is enough that leases are granted pursuant to federal legislation, and "the lessee's rights thereby created are defined in the lease by reference to the requirements of the applicable federal legislation and to the exercise of discretion under federal regulations" (paragraph 77).

[45] Lastly, I note that the Federal Court of Appeal has, again recently, relied on *Peter G. White Management Ltd.* and summarized the *ratio decidendi* of the decision:

> 40 […] the Supreme Court held that the Federal Court could deal with an action to enforce contractual promises -- a matter governed by provincial law -- to repay loans made under and affected by federal statutes. Finally, in *Peter G. White Management Ltd. v. Canada (Minister of Canadian Heritage)*, 2006 FCA 190, [2007] 2 F.C.R. 475, this Court held that the Federal Courts could deal with common law torts, matters of provincial law, where they were "in pith and substance" based on federal law or informed by it and where there was a "detailed [federal] statutory framework."
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> (*Canadian Transit Co. v. Windsor (City)*, 2015 FCA 88, [2016] 1 FCR 265)

[46] Since the onus rests on the defendants and they did not address case law from the Court of Appeal, they have not satisfied the Court that federal law does not play a sufficient role and that, as a result, Mr. Jobidon and Ms. Audet should be struck from this action. A clearer, more

persuasive demonstration was necessary. It is not plain and obvious that the action against these two defendants is certain to fail owing to a lack of jurisdiction.

[47] I have considered the arguments raised by the defendants. It would be imprudent of me to draw any inferences regarding the merits of this action as instituted. It is worth pointing out that for the purposes of the motion to strike, the facts are assumed to be both true and provable. They may turn out to be different once put in context or contradicted by other facts. The defendants may have a defence in law. But at this stage, they have not satisfied the onus which rested upon them and it is on this basis that the motion to strike is dismissed; however, the Honourable John McCallum and the Honourable Ralph Goodale are struck from the action.

ORDER

THIS COURT'S JUDGMENT is that:

1. The motion to strike is dismissed;
2. The defendants have 30 days from the date of this order to serve and file their defence to the action;
3. The Honourable John McCallum and the Honourable Ralph Goodale are struck as defendants, and the style of cause of the action is amended accordingly;
4. All references to the remedies alleged in the statement of claim in favour of any person other than the plaintiff are struck because the plaintiff is not authorized to act on behalf of another;
5. With costs and fees to which an unrepresented party may be entitled.

"Yvan Roy"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-643-16
STYLE OF CAUSE:	JEAN-PIERRE MARTIN SIBOMANA v HER MAJESTY THE QUEEN IN RIGHT OF CANADA, HONOURABLE JOHN MCCALLUM, HONOURABLE RALPH GOODALE, FRANÇOIS JOBIDON, EMÉLIE AUDET, RAOUL DELCORDE, HUBERT ROISIN, PATRICK STEVENS
REASONS FOR ORDER AND ORDER:	ROY J.
DATED:	AUGUST 18, 2016

SOLICITORS OF RECORD:

None	FOR THE PLAINTIFF
Daniel Latulippe Counsel Montréal, Quebec	FOR THE DEFENDANTS