

Federal Court



Cour fédérale

Date: 20210122

**Dockets: T-2071-19
T-2086-19**

Citation: 2021 FC 75

Ottawa, Ontario, January 22, 2021

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

KRISTIN ERNEST HUTTON

Plaintiff

and

**THE ATTORNEY GENERAL FOR
CANADA, HER MAJESTY THE QUEEN**

Defendants

ORDER AND REASONS

I. Overview

[1] The Defendant Attorney General of Canada [AGC] has brought motions to strike the Statements of Claim filed in Court File Nos T-2071-19 and T-2086-19, without leave to amend. The Plaintiff in both actions is Kristin Ernest Hutton, a lawyer and a member of the Law Society of Ontario.

[2] The Law Society of Ontario is currently examining Mr. Hutton's capacity to practice law, following a complaint by counsel for a Defendant in one of the many proceedings he has commenced in this Court. On November 10, 2020, the Law Society ordered that Mr. Hutton undergo a psychiatric evaluation. Mr. Hutton says he is appealing this order.

[3] In addition to the civil actions in Court File Nos T-268-17, T-2071-19 and T-2086-19, Mr. Hutton has also filed an application for judicial review of a decision by the former Office of the Communications Security Establishment [CSE] Commissioner respecting his complaint regarding certain alleged activities of the CSE (Court File No T-1143-19). All of these proceedings arise from the same unfortunate circumstances.

[4] In *Hutton v Sayat*, 2020 FC 1183 [*Hutton #4*], Justice Richard Mosley described the unfortunate circumstances as follows (at paras 1-2):

[...] the underlying action is an extraordinary farrago of claims in which the Plaintiff purports to be the target of surveillance by Canada's security agencies, his work associates and friends including two former romantic partners. His efforts to pursue those claims against the named individual defendants are, in this Judge's view, a form of harassment.

The claims against all of the Defendants have no apparent basis in reality and are predicated on delusions. [...]

[5] Justice Mosley continued (at para 7);

In the underlying action, the Plaintiff alleged that Ms. Ria Sayat and Ms. Lynn Duhaime, two of the Plaintiff's former romantic partners, as well as many other friends and colleagues, are servants

or agents of the Federal Crown who pursued relationships with him for the purpose of establishing and maintaining cover stories related to intelligence work, to monitor, report upon and manipulate his activities and/or to recruit him. In another action before the Court, in Court file T-2086-19, the Plaintiff has alleged that his own father and several other former romantic partners are part of the conspiracy against him.

[6] Court File No T-268-17 is currently case-managed by Prothonotary Mandy Ayles. On June 29, 2018, she granted, in part, a motion by the Defendants in that action to strike Mr. Hutton's Fresh as Amended Statement of Claim [*Hutton #1*]. Prothonotary Ayles struck numerous claims without leave to amend (at para 37):

With respect to whether the Plaintiff should be granted leave to amend the Proposed Amended Pleading to remedy this deficiency, at the hearing of the motion, I asked the Plaintiff what further amendments he proposed to make to the entirety of the Proposed Amended Pleading were leave to amend granted. He advised that the proposed amendments would be in relation to the declaratory relief sought and confirmed that he was not seeking leave to amend to plead any additional material facts. Accordingly, leave will not be granted to amend this claim against Ms. Sayat.

[7] Prothonotary Ayles applied the same reasoning to strike claims against the following individuals without leave to amend: Gary Gibbs (para 59); Peter Mitchell (para 61); Chris Ritchie (para 63); Shannon Fitzpatrick (para 65); and Johns and Janes Doe (para 67). She also held that Mr. Hutton had failed to plead sufficient material facts to support several other allegations contained in the Statement of Claim. These too were struck without leave to amend (*Hutton #1* at paras 68-78).

[8] Mr. Hutton appealed Prothonotary Aylen's ruling in *Hutton #1*. The appeal was dismissed by Justice Patrick Gleeson in an amended decision dated July 11, 2019 (*Hutton v Sayat*, 2019 FC 799 [*Hutton #2*]). With respect to Prothonotary Aylen's decision to strike certain claims without leave to amend, Justice Gleeson ruled as follows (*Hutton #2* at para 13):

The Prothonotary addressed the question of whether, in striking the claims, leave to amend should be granted. She declined to do so. She noted that in the course of the oral hearing, she had asked Mr. Hutton's counsel what further amendments he proposed to make to the entirety of the proposed amended pleading if leave to amend were granted. Counsel had advised that further proposed amendments would be in relation to the declaratory relief sought and that leave to amend to plead any additional material facts would not be sought. This basis was relied upon for refusing leave to amend throughout.

[9] Justice Gleeson continued (at para 29):

In refusing leave to amend the pleadings, the Prothonotary turned her mind to the issue of amendment in the course of hearing oral submissions. Mr. Hutton's counsel expressly advised that any amendment would not address material facts, and he has provided no explanation before this Court as to why he should be allowed to resile from this statement. In addition, it is evident upon a review of the history of this matter that ample opportunity to amend was available and Mr. Hutton has taken advantage of these opportunities to put his best foot forward. Subrule 221(1) provides that "[o]n motion, the Court may, at any time, order that a pleading, or anything contained therein, be struck out, with or without leave to amend." [...]. The Prothonotary was under no obligation to grant leave to amend on these facts.

[10] Mr. Hutton commenced the present actions (Court File Nos T-2071-19 and T-2086-19) on December 23, 2019 and December 24, 2019 respectively. During the hearing of the AGC's

motions to strike both Statements of Claim, Mr. Hutton candidly admitted that he would have preferred to amend his pleading in Court File No T-268-17, but he considered this possibility to be foreclosed by Prothonotary Ayles' ruling in *Hutton #1* and Justice Gleeson's ruling in *Hutton #2*. In response to questions from the Court, Mr. Hutton was unable to identify anything in the new pleadings that could not have been the subject of a motion to amend his pleading in Court File No T-268-17, if this were permitted.

[11] For the reasons that follow, the Statements of Claim in Court File Nos T-2071-19 and T-2086-19 are obvious and egregious attempts to circumvent Prothonotary Ayles' ruling in *Hutton #1* and Justice Gleeson's ruling in *Hutton #2*. They constitute an abuse of this Court's process, and must be struck in their entirety without leave to amend.

II. Issue

[12] The sole issue raised by these motions to strike is whether the Statements of Claim filed in Court File Nos T-2071-19 and T-2086-19 are an abuse of this Court's process.

III. Analysis

[13] In Court File No T-2071-19, Mr. Hutton seeks declarations that Robert Hutton, Gary W. Gibbs, Michelle Gibbs, Peter Mitchell, Charlotte Freeman-Shaw, Rega Chang, Elke Jessen, Ria Sayat, Stephanie Lynn Duhaime, Chris Ritchie, Shannon Fitzpatrick, Rhys Jenkins and Bob Scott Ryan are now, or have previously been, undisclosed intelligence agents working on behalf

of the Crown. Mr. Hutton alleges that his rights under ss 7, 9, 12 and 15 of the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982, c 11 [Charter]*, have been violated by the Crown's refusal to confirm this claim. He says that this refusal adversely affects his ability to pursue his legal rights in Court File Nos T-268-17 and T-1143-19, as well as the ongoing examination by the Law Society of Ontario regarding his capacity. He seeks aggravated, exemplary and punitive damages in the amount of \$2 million.

[14] In Court File No T-2086-19, Mr. Hutton seeks declarations that the actions of Crown employees have infringed his rights under ss 7, 8, 9, 12 and 15 of the *Charter*, that the AGC is in breach of fiduciary and constitutional duties owed to him, and that concurrently holding employment as a lawyer in Ontario and as “an active undisclosed servant or agent of the security apparatus” contravenes s 71 of the Ontario *Courts of Justice Act*, RSO 1990, c C-43. Mr. Hutton alleges assault, battery, violations of ss 7, 8, 9, and 15 of the *Charter*, spoliation and misfeasance in public office. He seeks an order in the nature of *mandamus* respecting the production of documents, damages in the amount of \$3 million, and aggravated, exemplary and punitive damages in the amount of \$2 million.

[15] In *Hutton #1*, Prothonotary Aylen struck the following claims in Court File No T-268-17 without leave to amend:

- (a) the claim of unlawful interception, modification, recording and destruction of personal transmissions and digital and real property in violation of Mr. Hutton's s 8 *Charter* rights against all Defendants;

- (b) the claims of intentional and negligent misrepresentation and related breach of Mr. Hutton's ss 2 and 7 *Charter* rights against Ms. Sayat;
- (c) the claim that any of the Defendants were negligent in their monitoring and/or security screening of Mr. Hutton;
- (d) the claim of breach of Mr. Hutton's right to life, liberty and security of the person and for breach of freedom of thought, belief, opinion and expression, including freedom of the press and other media communications pursuant to ss 2 and 7 of the *Charter* against all Defendants;
- (e) all claims related to the conduct of Gary Gibbs, Peter Mitchell, Chris Ritchie and Shannon Fitzpatrick;
- (f) all claims related to the conduct of any John Doe or Jane Doe;
- (g) the claim of defamation against Ms. Sayat related to an anonymous message sent to Mr. Hutton's father; and
- (h) the claim of defamation against Ms. Duhaime.

[16] On July 16, 2018, the Plaintiff filed a further Amended Statement of Claim, in which he reasserted his allegations of covert security operations against him, as well as several other

claims that had been struck by Prothonotary Ayles. On July 18, 2019, Prothonotary Ayles declined to consider a further motion to strike, but directed as follows:

[...] my Order dated July 30, 2018 stands and various claims asserted by the Plaintiff remain struck as set out therein, regardless of the state of his Amended Statement of Claim. The prohibition on any further proceedings to challenge the Plaintiff's pleading at this time is therefore without prejudice to the substantive rights of the Defendants should the Plaintiff's Amended Statement of Claim fail to comply with my Order.

[17] Mr. Hutton subsequently brought a motion in Court File No T-268-17 respecting the adequacy of the Defendant's production, which was dismissed in its entirety on June 17, 2020 [*Hutton #3*]. Prothonotary Ayles ruled, *inter alia*, that Mr. Hutton was seeking to circumvent her order in *Hutton #1* by seeking production of documents that related to individuals against whom claims had been struck previously (*Hutton #3* at para 75). An appeal of this order resulted in Justice Mosley's ruling in *Hutton #4*.

[18] It is unnecessary in these reasons to conduct a detailed examination of whether the Statements of Claim filed in Court File Nos T-2071-19 and T-2086-19 disclose no reasonable causes of action, or are scandalous, frivolous and vexatious. Nor is it necessary to consider in depth whether they are barred by the doctrine of *res judicata*. While I agree with the AGC's submissions that the Statements of Claim should be struck, in whole or in part, on these bases, a more fundamental reason to strike the pleadings is that they constitute an abuse of this Court's process.

[19] In the present actions, Mr. Hutton repeats the same speculative assertions regarding individuals whom he believes to be undisclosed security agents of the Crown. While the claims are framed in slightly different ways, additional individuals are identified, and new relief is sought, the claims relate to the same subject-matter as those advanced in Court File No T-268-17. Some of those claims have been struck without leave to amend, while others have been permitted to continue.

[20] Where the strict requirements of issue estoppel are not met, the Court retains a discretion to apply the doctrine of abuse of process to preclude litigation that would violate the principles of judicial economy, consistency, finality, and the integrity of the justice system. It is “a flexible doctrine unencumbered by the specific requirements of concepts such as issue estoppel” (*Toronto (City) v CUPE Local 79*, 2003 SCC 63 [*CUPE*] at para 37; *Maynes v Allen-Vanguard Technologies Inc*, 2011 ONCA 125 at para 38). The concern expressed by the Supreme Court of Canada in *CUPE* regarding non-mutual issue estoppel does not arise here, as the Plaintiff and the AGC are also parties in Court File No T-268-17.

[21] The Federal Court of Appeal has recognized that a court has an inherent discretion to terminate litigation at the preliminary stage in order to prevent abusive proceedings that bring the administration of justice into disrepute. The doctrine of abuse of process is focused on the integrity of the adjudicative process, and does not take into account the parties’ interests, their motives or their designation as plaintiff or defendant (*Timm v Canada*, 2014 FCA 8 at paras 30-31, citing *CUPE* at paras 43, 45-49 and 51). Here, the present actions are an obvious and

egregious attempt to circumvent Prothonotary Aylen's and Justice Gleeson's rulings in *Hutton #1* and *Hutton #2*.

[22] As Justice Mosley observed in *obiter* in *Hutton #4* (at paras 52-53):

This is one of six actions and applications for judicial review that the Plaintiff has filed in the Federal Court since 2017. All of them have required the expenditure of public funds and judicial resources as well as those of the Defendants and Respondents. The Court does not lightly point to what appears to be delusional behaviour, but it has to be concerned when there is no realistic basis for the proceedings brought by the Plaintiff. [...]

The amount of time [...] on the part of the judicial officers and court staff is difficult to estimate but it is significant, and is a cost borne by the taxpayers.

[23] Mr. Hutton is free to pursue his claims in Court File No T-268-17, and he will ultimately have his day in court. If he believes that he should be given the opportunity to amend his pleading to advance further allegations or seek additional relief against the same Defendants arising from the same general circumstances, he may make his case before Prothonotary Aylen in that proceeding.

IV. Costs

[24] The AGC seeks elevated costs against Mr. Hutton, in light of his repeated efforts to circumvent and undermine Prothonotary Aylen's case-management of Court File No T-268-17. The AGC seeks lump sum costs in the all-inclusive amount for \$2,500.00 in each of the present

actions, for a total of \$5,000.00. This is a modest contribution to the actual costs borne by taxpayers as a result of Mr. Hutton's abusive pleadings, and costs will be awarded as requested.

V. Conclusion

[25] The Statements of Claim in Court File Nos T-2071-19 and T-2086-19 are struck in their entirety, without leave to amend.

[26] Costs are awarded to the AGC in both proceedings in the lump sum, all-inclusive amount of \$5,000.00, payable by Mr. Hutton forthwith.

ORDER

THIS COURT ORDERS that:

1. The Statements of Claim in Court File Nos T-2071-19 and T-2086-19 are struck in their entirety, without leave to amend.
2. Costs are awarded to the Defendant Attorney General of Canada in both proceedings in the lump sum, all-inclusive amount of \$5,000.00, payable by Mr. Hutton forthwith.

"Simon Fothergill"
Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKETS: T-2071-19
T-2086-19

STYLE OF CAUSE: KRISTIN ERNEST HUTTON v THE ATTORNEY
GENERAL FOR CANADA, HER MAJESTY THE
QUEEN

PLACE OF HEARING: HELD BY VIDEOCONFERENCE BETWEEN
OTTAWA AND TORONTO, ONTARIO

DATE OF HEARING: JANUARY 19, 2021

ORDER AND REASONS: FOTHERGILL J.

DATED: JANUARY 22, 2021

APPEARANCES:

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(on his own behalf)

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