Federal Court  Cour fédérale

Date: 20211118

Docket: T-115-21

Citation: 2021 FC 1256

Toronto, Ontario, November 18, 2021

PRESENT: Mr. Justice Diner

BETWEEN:

SIMON JAMES ELLIOTT

Plaintiff

and

HER MAJESTY THE QUEEN
(THE ATTORNEY GENERAL OF CANADA)
AND
(THE CORRECTIONAL SERVICE OF CANADA)
AND
(THE NATIONAL PAROLE BOARD OF CANADA)
AND
(THE ROYAL CANADIAN MOUNTED POLICE)

Defendants

JUDGMENT AND REASONS

I. Overview

[1] This is an appeal of Prothonotary Aalto's September 27, 2021 Order (the Decision) striking the Plaintiff's (also referred to as the Appellant) statement of claim (the Claim) without leave to amend. After a review of the materials submitted in support of his appeal, I find that the

Plaintiff has not demonstrated an error warranting the Court's intervention for the reasons that follow.

II. Factual and legal background

[2] The Plaintiff, in his claim, made numerous allegations spanning the course of approximately 10 years of his incarceration in various correctional institutions across Canada, seeking damages of $9.35 million, for various alleged wrongdoings of Correctional Service of Canada (CSC) staff at those institutions. The Claim is replete with argument, and allegations of bad faith and malice.

[3] In his Decision, Prothonotary Aalto found that the Claim did not comply with the *Federal Courts Rules,* SOR/98-106 [the *Rules*], as a result of being "prolix, repetitive, unfocused, and argumentative" (Decision at p 2). He also noted that it was "hard to distinguish facts from argument in many of the convoluted paragraphs" of the Claim (Decision at p 5).

[4] Having found the Claim to be a "a convoluted, conspiratorial web that generally complains about the Plaintiff's arrest and conviction, periods of incarceration, difficulties obtaining parole, and various other matters already adjudicated in other courts" (Decision at p 2), the Prothonotary went on to cite a summary of the Claim's primary allegations including:

- Manipulating and falsifying data and records;
- Subjection to biased and sexist treatment, and false accusations;
- Withholding and damaging personal property, and tampering with e-mail;
- Exposure to asbestos and toxic mould;

- Planting annoying inmates in nearby cells; and
- Wrongful arrest by Winnipeg Police.

[5] The Prothonotary then summarized the key issue before him at page 4 of the Decision, as follows:

> The only part of the Claim that resembles a pleading of a cause of action is contained in the handwritten portion of the Claim wherein the Plaintiff claims severe negligence and malice; false imprisonment; Charter breaches; and a personal injury claim. The issue for determination is, that in light of the many deficiencies in the Claim, are these allegations sufficient to overcome the test on a motion to strike?

[6] After reviewing this background, the Prothonotary noted that the test to be satisfied in a motion to strike is whether the Claim is bereft of any chance of success or discloses no reasonable cause of action (*R v Imperial Tobacco Canada Ltd.*, 2011 SCC 42; *Hunt v Carey Canada Inc*, [1990] 2 SCR 959; 74 DLR (4th) 321).

[7] After outlining two of the key rules with respect to proper pleadings (Rules 173 and 174), including that allegations in pleadings shall be set out in separate paragraphs, containing a concise statement of the material facts on which the party relies, the Prothonotary provided excerpts of but two of the many non-compliant paragraphs found in the Claim, which failed to comply with Rules 173 and 174, and more notably, failed to set out the elements of any cause of action clearly and concisely (*Collins v Canada*, 2011 FCA 140 [*Collins*] at para 33; *Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227 [*Mancuso*] at paras 21-24). The Prothonotary also noted that pleading a narrative of what happened does not achieve the requirements of a pleading (*Collins* at para 33).

[8] The Prothonotary concluded that, "the Claim is so deficient that it must be struck. It is virtually impossible for the Defendants to know precisely the case they have to meet and to be able to plead to what is a shotgun pleading outlining everything and anything in the Plaintiff's interaction with staff of the correctional facilities where he spent time" (Decision at p 6).

[9] The Prothonotary also addressed a second issue, namely whether the Plaintiff should be granted leave to amend the Claim and, if so, whether he should be required to post security for costs. He wrote at page 7 of the Decision:

> The causes of action noted above lack material facts and their constituent elements. For example, there is no cause of action known as severe negligence and malice. The particulars of severe negligence and malice at page 35 and following of the Claim at first blush have the aura of a negligence claim but on closer examination are simply bald allegations of correctional staff acting "maliciously". There are no material facts as to how the Defendants acted maliciously.

[10] Similarly, the Prothonotary found that the Appellant's "bald allegations" do not support any claim of false imprisonment or a related *Charter* breach, concluding that even with the most generous readings, the Claim does not pass the threshold of pleading any reasonable cause of action. The Prothonotary thus refused leave to amend, without costs.

[11] The Appellant challenges the findings of the Prothonotary. Essentially, the Appellant argues that he respected and satisfied the relevant *Rules* (173, 175(1), and 181), and "raised many points of law in several of the paragraphs", that his Claim was "lawful", and without referring to any type of evidence, pointed to "continued acts of malice by the defendant and its agents" (Appellant's Motion Record at p 7). The Appellant also submits that he properly

followed the formatting requirements of the Claim. He seeks the setting aside of the Prothonotary's Order, such that he can move forward with his original Claim, or in the alternative be permitted to amend it.

III. Analysis

[12] A prothonotary's decision to strike is a discretionary ruling (*Moore v Canada*, 2020 FC 27 at paras 39-40 and 43-44, citing *Amos v Canada*, 2017 FCA 213 at para 27 and *Ducap v Canada (Attorney General)*, 2017 FC 320 at paras 25-26), subject to the standard of review set out in *Hospira Healthcare Corp v Kennedy Institute of Rheumatology*, 2016 FCA 215 at paras 28, 65, and 79 [*Hospira*].

[13] *Hospira* held that questions of fact and questions of mixed fact and law are reviewable on a standard of palpable and overriding error, whereas questions of law and questions of mixed fact and law, where there is an extricable legal principle at issue, will be reviewed on the standard of correctness (*Pfizer Canada Inc v Amgen Inc*, 2019 FCA 249 at para 36).

[14] After considering both parties' submissions in this motion, I cannot agree that any reviewable errors were made.

[15] Here, I find that the Prothonotary made neither an error of fact, nor one of law. The Appellant's position that he raised many points of law and adequately set out the alleged malice, does not address the reasons of the Prothonotary, or identify how they might be erroneous and instead simply disagrees with them. The Appellant provides no legal basis or authority to ground

a finding that the Prothonotary erred in a manner that would warrant appellate intervention. Instead, the Appellant simply reasserts that his Claim was procedurally sound, raising legitimate causes of action, and that the Prothonotary erred, but he fails to point out where or how any errors were made. The Appellant's disagreement with the Prothonotary's conclusion does not disclose a reviewable error.

[16] In my view, the Prothonotary was correct to point out that the Appellant failed to comply with the formalities of the *Rules* by clearly and concisely setting out the constituent elements of a cause of action. Rather, the allegations were indecipherable and verbose: the Prothonotary had every reason to describe them as "prolix, repetitive, unfocused and argumentative".

[17] Furthermore, the Prothonotary correctly pointed out that the Claim must be bereft of any chance of success and disclose no reasonable cause of action in order to be struck. He applied this standard to the Appellant's Claim and found that it discloses no reasonable cause of action and is bereft of any possibility of success.

[18] I agree with Prothonotary Aalto's assessment of the claim. The Appellant simply provides a litany of complaints, spanning over a decade, without sufficient particulars underlying any valid cause of action. The pleading relies on conclusory statements asserting malice, bad faith, various torts, and *Charter* breaches, without the necessary supporting material facts. As the Federal Courts have noted, pleadings of misrepresentation, fraud, malice, or fraudulent intent must provide particulars of each and every allegation; bald allegations of bad faith do not suffice

(*Merchant Law Group v Canada (Revenue Agency)*, 2010 FCA 184 at paras 34-35; *Tomchin v Canada*, 2015 FC 402 at paras 22 and 39).

[19] Here, due to the lack of particulars pleaded, the Defendants cannot know the precise case to meet. As the Court of Appeal noted in paragraph 16 of *Mancuso*, "[i]t is fundamental to the trial process that a plaintiff plead material facts in sufficient detail to support the claim and relief sought" and "the Court and opposing parties cannot be left to speculate as to how the facts might be variously arranged to support various causes of action".

[20] Additionally, I agree with Prothonotary Aalto that within its convoluted narrative, the Claim also refers to other actions and proceedings. This Court cannot collaterally reverse or overturn decisions that have been made in such other proceedings (see *Hardy Estate v Canada*, 2015 FC 1151 at para 75). The Appellant's Claim was an invitation to do so; allowing it to proceed would have constituted an abuse of process, offending the rule against collateral attacks.

[21] In sum, I find no error in the Prothonotary's decision, which he properly struck without leave to amend. The deficiencies were beyond remedy by amendment.

[22] Finally, the Defendants request costs of $750, which they contend are reasonable under column III of Tariff B of the *Rules*. They rely on *Martinez v Canada*, 2020 FCA 150, for the principle that being self-represented or impecunious does not shield a litigant from a costs award. They argue that such costs should be awarded due to "the unnecessary appeal of the September

Order", given that the "Plaintiff has simply demonstrated his disagreement with the September Order rather than any error with it".

[23] Taking all the circumstances into account, I will order costs in the amount of $250.

JUDGMENT in T-115-21

THIS COURT'S JUDGMENT is that:

1. The appeal is dismissed.

2. The Plaintiff shall pay costs to the Defendants in the amount of $250.

"Alan S. Diner"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-115-21
STYLE OF CAUSE:	ELLIOTT v HER MAJESTY THE QUEEN ET AL.

MOTION MADE IN WRITING PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES*, SOR 98-106, CONSIDERED AT TORONTO, ONTARIO.

JUDGMENT AND REASONS:	DINER J.
DATED:	NOVEMBER 18, 2021

APPEARANCES:

Simon James Elliott	FOR THE PLAINTIFF (ON HIS OWN BEHALF)
Keelan Sinnott	FOR THE DEFENDANTS

SOLICITORS OF RECORD:

Attorney General of Canada Edmonton, Alberta	FOR THE DEFENDANTS