

Federal Court



Cour fédérale

**Date: 20220120**

**Docket: T-26-22**

**Citation: 2022 FC 68**

**Vancouver, British Columbia, January 20, 2022**

**PRESENT: Mr. Justice McHaffie**

**BETWEEN:**

**MORRIS KLOS**

**Plaintiff**

**and**

**HER MAJESTY THE QUEEN**

**Defendant**

**ORDER AND REASONS**

I. Overview

[1] Morris Klos brings this motion for interlocutory relief in his action against Her Majesty the Queen. For the following reasons, the Court will grant some of the procedural relief sought by Mr. Klos. However, it is without jurisdiction to grant most of the orders he seeks. The motion must therefore be dismissed in large part.

## II. Factual and Procedural Context

[2] Some of the relevant procedural background is set out in a recent decision of the Federal Court of Appeal, and need not be repeated here: *Klos v Canada (Attorney General)*, 2021 FCA 238 [*Klos (FCA)*]. In brief, Mr. Klos has proceedings before the Federal Public Sector Labour Relations and Employment Board [FPSLREB] about his termination in September 2016 from his position with Correctional Services Canada [CSC]. In June 2020, Mr. Klos asked the FPSLREB for an order requiring CSC to stop withholding his pay. The FPSLREB denied that request: *Klos (FCA)* at para 3. Mr. Klos's application for judicial review of that denial was dismissed by the Federal Court of Appeal as premature: *Klos (FCA)* at paras 5–11. Mr. Klos has submitted a motion for reconsideration to the Federal Court of Appeal that has not yet been determined by that Court.

[3] In the interim, Mr. Klos filed a Statement of Claim in this Court, naming Her Majesty the Queen as Defendant. As drafted, the Statement of Claim largely alleges that the Treasury Board of Canada Secretariat, as well as certain individual public servants including counsel for the employer before the FPSLREB, have committed offences under the *Criminal Code*, RSC 1985, c C-46. The allegations of criminal conduct relate primarily, if not exclusively, to steps taken in the context of the FPSLREB hearing, which Mr. Klos contends caused or risked bodily harm to him in light of his cardiac condition, and which are alleged to constitute criminal negligence causing bodily harm, counselling of same, or uttering of threats. The most recent allegations relate to the mode and location of delivery of documents, although prior events are also raised. The Statement of Claim seeks a variety of declaratory relief, including relief related to the payment of past wages, to the extent not covered by orders of the Federal Court of Appeal.

III. Relief Sought on This Motion

[4] Mr. Klos's Notice of Motion seeks a number of orders. I will address these requests in accordance with the numbering in the Notice of Motion.

(1) Exemptions from paper filing and applicable fees

[5] This and other aspects of Mr. Klos's motion are premised on his current state of poverty. He is living in a vehicle without a fixed address, is relying on the goodwill of others for basic necessities, and is having medical and dental difficulties as a result. Mr. Klos highlights his cardiac condition, in which stressful situations can and have triggered cardiac events. He also refers to certain logistical issues that may interfere with his ability to pursue this action, such as difficulties with his personal printer, and more generally the costs of scanning and printing documents to proceed with the matter.

[6] Mr. Klos therefore seeks exemptions from certain requirements in the *Federal Courts Rules*, SOR/98-106 [*Rules*] regarding filing paper copies and filing fees. He also raises concerns about not having a physical address for service. The Defendant, appropriately, takes no position on these requests, recognizing that it is undesirable for logistical and cost issues to interfere with an impoverished plaintiff's ability to pursue their claim. Exercising my discretion under Rule 55 and applying the general principle under Rule 3, I address Mr. Klos's requests under this heading as follows.

- While Mr. Klos seeks an exemption from the requirement in Rule 71(5) to file paper copies of the Statement of Claim, it appears this has already been dealt with when the matter was commenced. No further order is necessary.
- In accordance with Rule 71.1(1)(b) and subparagraph 1(1)(a)(i) of Tariff A of the *Rules*, Mr. Klos paid the filing fee applicable to a claim filed under section 48 of the *Federal Courts Act*, RSC 1985, c F-7. That fee, while modest, is waived and shall be returned to Mr. Klos.
- With respect to other filing fees, as set out in Tariff A of the *Rules*:
  - (i) there are no filing fees in this Court to file a reply or to respond to a motion, so no waiver is necessary in respect of such fees;
  - (ii) there are also generally no filing fees to bring a motion, except for motions associated with extensions of time or for leave to commence a proceeding, which are not applicable, and motions for summary judgment or summary trial;
  - (iii) as this action is still in its very early stages, it is not the appropriate time to address waiver of a filing fee in association with a hypothetical motion for summary judgment or summary trial. If he intends to bring such a motion, Mr. Klos may request a waiver at the appropriate time, and may do so through informal request;
  - (iv) the same will apply to any fees pertaining to a requisition for a pre-trial conference.

- Mr. Klos seeks an exemption from the requirement in Rule 72.2 to file paper copies of documents that have been filed electronically. I note that the requirement to do so only arises “if required by the Court.” The Federal Court has issued a practice notice regarding electronic filing stating that paper copies are *not* required for electronically filed documents that are paragraph numbered or page numbered and are 100 pages or less (or 500 pages or less and filed at least 5 clear business days before the hearing date). See the Notice issued by the Court entitled “Electronic Legal Service and Electronic Filing in the Federal Court”: [https://www.fct-cf.gc.ca/Content/assets/pdf/base/Annex\\_English.pdf](https://www.fct-cf.gc.ca/Content/assets/pdf/base/Annex_English.pdf). The page limits ensure the Registry is not overwhelmed by huge electronic documents, particularly those served at the last minute. Recognizing Mr. Klos’s request and circumstances, I will order that Mr. Klos is not required to file paper copies of documents on the same terms. If Mr. Klos seeks an exemption in respect of a larger document, this may be requested at the appropriate time. My order on this topic must necessarily be subject to any further order by the Court if a member of the Court concludes that paper copies of a document must be filed in the interests of justice.
- With respect to the concern about having a physical address for service, I will order that service may be effected by email, in accordance with certain conditions set out in my order below, which are consistent with the Notice referred to above.

(2) Permission to attend in person

[7] This request pertains to the mode of hearing. I addressed the request by direction in advance of the hearing and the hearing proceeded in accordance with that direction. I therefore do not need to address this request further.

(3) Declaration of the Plaintiff's right to pay from the date of termination

[8] The Court does not have jurisdiction to grant this relief for several reasons.

[9] As I have set out, Mr. Klos's right to receive pay in the period prior to his termination is a matter that is currently before the FPSLREB. Mr. Klos sought an interim order from the FPSLREB which was refused, and sought to challenge that refusal before the Federal Court of Appeal. The Federal Court of Appeal has exclusive jurisdiction to hear applications for judicial review in respect of the FPSLREB: *Federal Courts Act*, s 28(1)(i). As explained during the hearing, this exclusive jurisdiction includes not only requests for an injunction, but also requests for mandatory orders (*mandamus*) and declaratory relief, such as those sought by Mr. Klos. Such matters must be brought by way of application for judicial review: *Federal Courts Act*, ss 18(1), (3). This Court has no jurisdiction where the Federal Court of Appeal has jurisdiction: *Federal Courts Act*, s 28(3).

[10] In addition to it being outside the jurisdiction of the Federal Court by operation of section 28 of the *Federal Courts Act*, it would be inappropriate for this Court to grant an order when an effectively equivalent order has been sought, and rejected, by the Federal Court of

Appeal. Mr. Klos's motion for reconsideration to the Federal Court of Appeal is such that he is currently seeking essentially the same relief from both this Court and the Court of Appeal simultaneously. While I appreciate that Mr. Klos's situation has driven him to pursue every possible avenue of relief, this is not legally appropriate and cannot give the Federal Court jurisdiction.

[11] Mr. Klos refers to Rule 64, which provides that “[n]o proceeding is subject to challenge on the ground that only a declaratory order is sought, and the Court may make a binding declaration of right in a proceeding whether or not any consequential relief is or can be claimed” [emphasis added]. While Rule 64 provides that a Court may make a binding declaration of right, it may only do so in respect of matters where it has jurisdiction. In other words, while Rule 64 addresses the remedies the Court may grant in areas of its jurisdiction, it does not confer jurisdiction on the Court to grant declarations in any and all matters: see *Onion Lake Cree Nation v Canada*, 2017 FC 1049 at para 49.

[12] Taking it at its highest, and for present purposes reading it very liberally with a recognition that drafting deficiencies may stem from Mr. Klos being self-represented, the Statement of Claim might be viewed as asserting a civil claim for damages and other relief based on the various actions of Crown servants alleged to constitute offences under the *Criminal Code*. Such a claim might relate to damages arising specifically from the alleged conduct. However, it cannot cover a claim for wages themselves in light of section 236 of the *Federal Public Sector Labour Relations Act*, SC 2003, c 22, s 2, which provides that the right to file a grievance is “in lieu of any right of action that the employee may have in relation to any act or omission giving

rise to the dispute” [emphasis added]: *Green v Canada (Border Services Agency)*, 2018 FC 414 at paras 11–17.

[13] I therefore conclude that the Federal Court does not have jurisdiction to grant the binding declaration regarding the right to pay requested by Mr. Klos.

(4) Binding declaration of the right to a fair hearing

[14] Again referring to Rule 64, Mr. Klos seeks a binding declaration of his right to a fair hearing before the FPSLREB, and a declaration that any contrary decision is contrary to the decision of the Supreme Court of Canada in *Cardinal v Director of Kent Institution*, [1985] 2 SCR 643.

[15] Even if such a declaration were appropriate or necessary, which I question, a declaration pertaining to the conduct of an administrative hearing before the FPSLREB is a matter within the exclusive jurisdiction of the Federal Court of Appeal pursuant to paragraph 28(1)(i) of the *Federal Courts Act* for the reasons explained above. This Court has no jurisdiction: *Federal Courts Act*, s 28(3).

(5) Binding declaration of the Plaintiff’s right to engage in diversion of this matter’s alleged offences under section 141 of the *Criminal Code*

[16] Mr. Klos points to section 4 of the *Federal Courts Act*, which continues the Federal Court “as an additional court of law, equity and admiralty in and for Canada, for the better administration of the laws of Canada and as a superior court of record having civil and criminal



jurisdiction” [emphasis added]. While section 4 of the *Federal Courts Act* recognizes the Federal Court as a superior court of record having criminal jurisdiction, this does not constitute a grant of jurisdiction over all criminal matters to this Court: *Harkat, Re*, 2004 FC 1717 at para 19, citing *Commonwealth of Puerto Rico v Hernandez*, [1975] 1 SCR 228 at pp 232–233. To the contrary, this Court has held that the criminal jurisdiction referred to in section 4 “is not a general criminal jurisdiction” and section 4 “does not automatically give the Federal Court any limited or workable criminal jurisdiction”: *Letourneau v Clearbrook Iron Works Ltd*, 2005 FC 333 at paras 5, 15.

[17] Notably, section 2 of the *Criminal Code* defines the term “superior court of criminal jurisdiction” for purposes of the *Criminal Code* to mean the superior courts and courts of appeal of the provinces and does *not* include the Federal Court. The Federal Court is therefore not a “superior court of criminal jurisdiction” for the general purposes of the *Criminal Code*. While the Federal Court and Federal Court of Appeal have jurisdiction under certain sections of the *Criminal Code* (see, *e.g.*, sections 83.05, 83.13–83.14, 462.48), these sections have no application in the current case.

[18] Thus, even leaving aside whether Mr. Klos can assert a “right to engage in diversion” of the offences alleged, which seems highly questionable given the text of section 141, this Court has no jurisdiction to issue any orders or declarations in respect of diversion under section 141 of the *Criminal Code*.

(6) Injunctive paid leave

[19] Under this heading, Mr. Klos also seeks injunctive relief and monetary remedies relating to pay stemming from his employment. For the reasons I have outlined above, the Federal Court does not have jurisdiction to issue such an injunction.

[20] Mr. Klos refers to section 44 of the *Federal Courts Act*, which gives the Federal Court the power to grant *mandamus*, an injunction or an order for specific performance “in all cases in which it appears to the court to be just or convenient to do so.” Again, however, while this section gives the Court the power to grant certain remedies in areas of its jurisdiction, it does not confer jurisdiction on the Court to grant such remedies in any and every case or circumstance simply because the Court considers it “just or convenient.” It certainly does not give the Court jurisdiction in matters where jurisdiction has expressly been taken away by other statutory provisions, such as section 28 of the *Federal Courts Act* or section 236 of the *Federal Public Sector Labour Relations Act*.

[21] During oral submissions, Mr. Klos in essence made a request for any form of order or injunction that might grant him some form of monetary relief within the Court’s jurisdiction that would allow him to have money to continue living and continue this action and/or the proceedings before the FPSLREB. I cannot do so, for two reasons.

[22] First, as explained during the hearing, the Court’s role is to review and assess matters brought before it by parties. It does not and cannot give legal advice. While the Court can and

should ensure that self-represented parties are not at an unfair disadvantage, and can explain matters such as the Court's jurisdiction and processes, the Court cannot simply search through a record to try to find grounds or arguments that might assist a party, even where that party is not represented by counsel.

[23] Second, such an order would effectively be an interim order for the advanced payment of damages, before any determination of the liability of the Defendant for such damages. The *Rules* do not provide for such a payment. Even if this Court has jurisdiction to make such an interim award, for example by allusion to the law in British Columbia on “tort advance” or to the rules of procedure in provinces which provide for such an interim payment, essential pre-requisites such as consent of the defendant or a finding of liability are not present here. The basic principle is that a defendant is not liable for damages, and is not required to pay them, until they have been found liable. I see no basis in this case to part from this principle.

[24] Similarly, to the extent Mr. Klos's request may be taken as a request for an advanced costs award, the circumstances for such a “rare and exceptional” award are not made out: *Little Sisters Book and Art Emporium v Canada (Commissioner of Customs and Revenue)*, 2007 SCC 2 at paras 37–42.

[25] I therefore conclude the Court does not have jurisdiction to grant Mr. Klos's request for injunctive paid leave.

(7) Swearing of informations under section 504 of the *Criminal Code*

[26] Mr. Klos has prepared informations in respect of the alleged criminal acts of “Treasury Board Secretariat of Canada (Correctional Service Canada)” and certain public servants including counsel for the employer before the FPSLREB. The informations appear to coincide with the allegations of criminal acts in the Statement of Claim.

[27] Section 504 of the *Criminal Code* provides that “[a]ny one who, on reasonable grounds, believes that a person has committed an indictable offence may lay an information in writing and under oath before a justice [...]” Mr. Klos was under the impression that as a judge of the Federal Court bearing the title “Justice,” I fell within the scope of the term “justice” used in section 504 and that he could swear his informations before me.

[28] As the Defendant pointed out at the hearing, the term “justice” is defined in section 2 of the *Criminal Code* as “a justice of the peace or a provincial court judge [...]” and does not include a judge of the Federal Court. I am not a “justice” within the meaning of section 504 of the *Criminal Code*. I have no jurisdiction in respect of this request for relief.

(8) Directions for process on proposed indictments

[29] For the reasons I have set out above regarding the Federal Court’s jurisdiction in criminal matters, the Court has no jurisdiction to give any directions regarding the process for criminal indictments. While Rule 54 permits a person to bring a motion for directions, such directions must pertain to “the procedure to be followed under these Rules” [emphasis added]. The *Rules*

govern procedure in proceedings before this Court; they do not govern criminal procedure. Rule 54 gives no jurisdiction to give directions regarding matters under the *Criminal Code*.

(9) Other relief

[30] Mr. Klos requested at the hearing that he be permitted to withdraw two pages of his Motion Record. These pages contain sensitive personal information and Mr. Klos realized they were not relevant to his motion. The Defendant did not object to the request and I will exercise the Court's discretion to permit that withdrawal.

IV. Conclusion

[31] For the foregoing reasons, the Court has no jurisdiction to grant the relief requested at items (3) through (8) of Mr. Klos's Notice of Motion and these aspects of the motion are dismissed. Some procedural relief will be provided in respect of items (1) and (9) in the Notice of Motion. This relief is set out in the order below. Item (2) of the Notice of Motion requires no further order in light of my direction prior to the hearing.

[32] The Court appreciates the difficult circumstances Mr. Klos is in, both with respect to his financial difficulties and his health. However, these circumstances do not and cannot give the Court jurisdiction it does not have, nor permit the Court to make free standing orders of payment by the Crown or any of its departments.

[33] Although Mr. Klos was largely unsuccessful on his motion, the Defendant made no request for costs. No costs are awarded.

V. Additional Reasons

[34] After writing the foregoing and while it was being prepared for issuance, the Federal Court Registry received another filing from Mr. Klos, dated January 20, 2022. The filing purports to be several things, including a supplementary authority referring to section 468 of the *Criminal Code*; a request to admit in accordance with Rule 255; a request for a further declaration; and a request for “immediate, *ex parte*, section 141 *Criminal Code* diversion of the defendant’s indictable offence committed before the Court,” namely an allegation that counsel for the Defendant counseled the Court to commit criminal negligence causing bodily harm, presumably through their submissions to the Court in response to the Plaintiff’s motion. This filing must be rejected in no uncertain terms, for several reasons.

[35] First, it is not appropriate to file further supplementary submissions after a hearing without leave of the Court. Second, while section 468 of the *Criminal Code* states that “[e]very superior court of criminal jurisdiction has jurisdiction to try an indictable offence,” as I have explained above at paragraph [17], the term “superior court of criminal jurisdiction” is defined in section 2 of the *Criminal Code* to mean the superior courts and courts of appeal of the provinces and does not include the Federal Court. This Court has no jurisdiction under section 468 of the *Criminal Code*. Third, a request to admit under Rule 255 provides that a party may request another party to “admit a fact or the authenticity of a document.” The jurisdiction of the Federal Court in criminal matters is a legal matter that is not a “fact or the authenticity of a

document” that can be admitted by a party, such that the purported request to admit is improper. For clarity, the Defendant is under no obligation to respond to this purported request to admit.

[36] Finally, and most importantly, there is absolutely no justification for the allegation of criminal conduct on the part of counsel for the Defendant. Such an allegation is wholly improper. I have refrained above from commenting on the substance of Mr. Klos’s allegations of criminal conduct on the part of other counsel, since the Federal Court does not have jurisdiction in criminal matters and the merits of the allegations in the Statement of Claim are not before me. However, the current allegation pertains to an allegation arising from the conduct of a hearing before this Court, and requires comment. Making an allegation of criminal conduct is a serious matter. It may be that Mr. Klos considers there are valid grounds to assert that submissions by a lawyer to the Court might constitute criminal conduct because of the impact he feels they or the Court’s decision may have on him. He is entirely incorrect, legally and factually. Counsel for the Defendant made appropriate submissions, and even undertook efforts in those submissions to ensure that uncontroversial legal matters were explained to and understood by Mr. Klos. This is entirely appropriate, particularly in the context of an unrepresented party.

[37] To be clear: a party making unjustified allegations of criminal conduct on the part of counsel for making legal submissions, even if those submissions are adverse to the party, undermines their own case, and such conduct may be considered frivolous and vexatious, and an abuse of process of the Court: *Vasiliou v Hallett et al*, 2015 ONSC 3997 at para 2. Such conduct by a litigant before this Court is not acceptable.

[38] Mr. Klos has requested an appearance at the next general sittings to swear informations. For the reasons above, this Court and its judges have no jurisdiction to attend to the swearing of criminal informations. There is therefore no basis for the requested appearance and it is not permitted.



**ORDER IN T-26-22**

**THIS COURT ORDERS that**

1. The filing fee applicable to the within claim is waived and shall be returned to the Plaintiff by the Registry.
2. No order is made with respect to waiving any future filing fees that may be applicable, such as for a motion for summary judgment, motion for summary trial, or pre-trial conference, without prejudice to the Plaintiff's ability to request an order waiving such fees at the appropriate time, which request may be made through informal written motion.
3. Subject to further order of the Court, the Plaintiff will not be required to file paper copies of any document that is filed electronically, is paragraph numbered or page numbered, and is:
  - a. 100 pages or less including attachments; or
  - b. 500 pages or less including attachments *and* filed 5 clear business days before any applicable hearing date.
4. Service on the Plaintiff may be effected by email at the address set out on his Motion Record. The Plaintiff shall confirm receipt of emails when received, shall ensure he maintains access to this email address, and shall ensure the email address is monitored so he is aware of any documents served.
5. The Defendant shall advise the Plaintiff within 10 days of an email address at which the Plaintiff may serve documents on the Defendant. Service on the Defendant may be effected by email at the address provided. The Defendant shall confirm receipt of emails when received.

6. If any issues arise with respect to electronic service pursuant to the foregoing, the parties or either of them may seek directions or further order.
7. The Plaintiff shall advise the Defendant and the Court if there is any change to the email address referred to above or to his current telephone number or any inability to access either.
8. The Plaintiff is relieved of the obligation to provide a physical address for service, and the obligation to list such address for service on documents.
9. If and when the Plaintiff obtains a fixed address, he shall advise the Court and this shall be his address for service, although electronic service will remain available.
10. The Plaintiff is granted leave to withdraw pages 58 and 59 of his Motion Record. The Registry shall remove these pages from any copy of the Motion Record in the Court file.
11. In all other respects, the motion is dismissed.
12. No relief is granted in respect of the Plaintiff's document filed January 20, 2022, and the Plaintiff's request to attend at the next general sitting in Vancouver for the purpose of swearing informations is denied.
13. There is no order as to costs.

“Nicholas McHaffie”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-26-22

**STYLE OF CAUSE:** MORRIS KLOS v HER MAJESTY THE QUEEN

**PLACE OF HEARING:** VANCOUVER, BRITISH COLUMBIA (THE  
DEFENDANT APPEARING BY VIDECONFERENCE)

**DATE OF HEARING:** JANUARY 18, 2022

**JUDGMENT AND REASONS:** MCHAFFIE J.

**DATED:** JANUARY 20, 2022

**APPEARANCES:**

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Rory Makosz FOR THE DEFENDANT

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