Federal Court Cour fédérale

Date: 20220414

Docket: T-1442-21

Citation: 2022 FC 545

Toronto, Ontario, April 14, 2022

PRESENT: Case Management Judge Trent Horne

SIMPLIFIED ACTION

BETWEEN:

RORY A. VAN SLUYTMAN

Plaintiff

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA, CANADA POST CORPORATION, COMMISSION OF COMPLAINTS FOR TELECOM-TELEVISION SERVICES, HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, OFFICE OF THE INDEPENDENT POLICE REVIEW DIRECTOR, BELL CANADA, TEKSAVVY SOLUTIONS INC., OVERGROWN HYDROPONICS, GREEN PLANET NUTRIENTS AND DUTCH NUTRIENT

Defendants

<u>JUDGMENT AND REASONS</u>

I. Overview

[1] Mr. Van Sluytman represents himself in these proceedings. His claim names 10 defendants. Several of the defendants have brought motions to strike, which were heard together in writing.

[2] For the reasons that follow, the motions are granted. To the extent the plaintiff has justiciable complaints against the defendants, an action in the Federal Court is not the forum to advance them.

II. The Statement of Claim

[3] The statement of claim ("Claim") is 268 pages long. It is repetitive, convoluted and unwieldy.

[4] As an overarching theme, the plaintiff claims that he has been bothered by the incompetence of the defendants, which he claims has contributed to his temporary capacity issue. The Claim sets out what is described as "seven separate grievances", which are labelled as "Events". It is alleged that all of the Events involve the Federal Crown, and that is the reason why the action was commenced in the Federal Court.

[5] In general, the Events are:

1. Delivery issues with Canada Post Corporation, and numerous complaints relating to mail delivery to the plaintiff's home in Gravenhurst, Ontario.

2. Issues with the Canada Revenue Agency relating to replacements for uncashed cheques.

3. Issues relating to advice and materials received from hydroponic stores.

4. Issues relating to obtaining a corporation profile report or similar document from Ontario's Ministry of Government and Consumer Services and Corporations Canada that was necessary to commence a proceeding in the Ontario courts.

5. Issues related to the plaintiff's internet connection, including complaints and numerous service calls.

6. Issues relating to legal proceedings commenced in the Ontario courts relating to an alleged assault by a peace officer in 2019.

7. Issues relating to service provided by the Federal Court, specifically the Registry, leading to the filing of this proceeding, including alleged shortcomings in guidance on how to move for a fee waiver.

III. <u>Law on Motions to Strike</u>

[6] Motions to strike are governed by Rule 221 of the *Federal Courts Rules*, SOR /98-106 ("Rules"):

Striking Out Pleadings	Radiation d'actes de procédure
Motion to strike	Requête en radiation

221 (1) On motion, the Court may, at any time, order that a pleading, or anything contained therein, be struck out, with or without leave to amend, on the ground that it	221 (1) À tout moment, la Cour peut, sur requête, ordonner la radiation de tout ou partie d’un acte de procédure, avec ou sans autorisation de le modifier, au motif, selon le cas :
(a) discloses no reasonable cause of action or defence, as the case may be,	a) qu’il ne révèle aucune cause d’action ou de défense valable;
(b) is immaterial or redundant,	b) qu’il n’est pas pertinent ou qu’il est redondant;
(c) is scandalous, frivolous or vexatious,	c) qu’il est scandaleux, frivole ou vexatoire;
(d) may prejudice or delay the fair trial of the action,	d) qu’il risque de nuire à l’instruction équitable de l’action ou de la retarder;
(e) constitutes a departure from a previous pleading, or	e) qu’il diverge d’un acte de procédure antérieur;
(f) is otherwise an abuse of the process of the Court,	f) qu’il constitue autrement un abus de procédure.
and may order the action be dismissed or judgment entered accordingly.	Elle peut aussi ordonner que l’action soit rejetée ou qu’un jugement soit enregistré en conséquence.
Evidence	Preuve
(2) No evidence shall be heard on a motion for an order under paragraph (1)(a).	(2) Aucune preuve n’est admissible dans le cadre d’une requête invoquant le motif visé à l’alinéa (1)a).

[7] The legal principles applying to motions to strike are well known. To strike a statement of claim it must be plain and obvious, assuming the facts pleaded to be true, that the pleading

discloses no reasonable cause of action. It needs to be plain and obvious that the action is certain to fail because it contains a radical defect (*R v Imperial Tobacco Canada Ltd*, 2011 SCC 42, [2011] 3 SCR 45 at para 17).

[8] It is incumbent upon a plaintiff to plead the facts which form the basis of his or her claim as well as the relief sought. These facts form the basis upon which the success of a claim is evaluated. A plaintiff must plead with sufficient details the constituent elements of each cause of action or legal ground raised (*Pelletier v Canada*, 2016 FC 1356 at paras 8 and 10).

[9] To disclose a reasonable cause of action, a claim must: (a) allege facts that are capable of giving rise to a cause of action; (b) disclose the nature of the action which is to be founded on those facts; and (c) indicate the relief sought, which must be of a type that the action could produce and the Court has jurisdiction to grant (*Oleynik v Canada (Attorney General)*, 2014 FC 896 at para 5).

[10] To show a plaintiff has a reasonable cause of action, the statement of claim must plead material facts satisfying every element of the alleged causes of action. The plaintiff needs to explain the "who, when, where, how and what" giving rise to the defendant's liability (*Al Omani v Canada*, 2017 FC 786 at para 14 ("*Al Omani*")).

[11] On a motion to strike, the pleadings must be read as generously as possible, erring on the side of permitting a novel but arguable claim to proceed to trial (*Atlantic Lottery Corp Inc v Babstock,* 2020 SCC 19 at para 19).

IV. Principles applicable to all motions

[12] Before turning the facts as they relate to the individual defendants, there are certain issues that are common to all motions.

A. *Affidavit evidence*

[13] For a motion to strike based on paragraph 221(1)(a), no evidence shall be heard (subrule 221(2)). I have not considered the affidavits filed by Her Majesty the Queen in Right of Ontario (HMQ Ontario) and the Office of the Independent Police Review Director (OIPRD), and the plaintiff in his responding motion record when considering whether the Claim should be struck. I have, however, considered this evidence when determining if leave to amend should be granted.

B. *Jurisdiction*

[14] The plaintiff's assertion (Claim, para 24) that the matter was brought in the Federal Court because the Events involve the Federal Crown illustrates the plaintiff's fundamental misunderstanding of the Federal Court's jurisdiction, the kinds of cases it can hear, the kind of orders it can make, and its place in the Canadian legal system.

[15] The Federal Court is not a court of last resort for parties who are dissatisfied with the outcome of provincial court proceedings. It does not have broad supervisory powers over businesses, provincial governments and agencies, or provincial law enforcement. Rather, the Federal Court is a statutory court with limited and specific jurisdiction.

[16] The essential requirements to support a finding of jurisdiction in the Federal Court are: 1) a statutory grant of jurisdiction by the federal Parliament; 2) an existing body of federal law which is essential to the disposition of the case which manages statutory grant of jurisdiction; and 3) the case being based on a law of Canada as the phrase is used in section 101 of the *Constitution Act*, 1867 (*ITO-International Terminal Operators Ltd v Miida Electronics Inc*, [1986] S.C.J. No. 38, [1986] 1 S.C.R. 752) (“*ITO*”)).

[17] As stated in *Windsor (City) v Canadian Transit Co*, 2016 SCC 54 at paras 25-26, before assessing whether the three-part test in *ITO* is met, the essential nature or character of the claim must be determined on a “realistic appreciation of the practical result sought by the claimant”. “Jurisdiction is not to be assessed in a piecemeal or issue-by-issue fashion.” The statement of claim should not be read blindly at its face meaning. Rather, the Court must “look beyond the words used, the facts alleged and the remedy sought and ensure…that the statement of claim is not a disguised attempt to reach before the Federal Court a result otherwise unreachable in that Court”.

C. *Rule 174*

[18] Rule 174 requires that pleadings contain a concise statement of material facts. There are four basic requirements of a pleading to comply with this rule:

(a) Every pleading must state facts and not merely conclusions of law or arguments;

(b) It must include material facts satisfying each element of the cause of action with sufficient particularity;

(c) It must state facts and not the evidence by which they are to be proven; and

(d) It must state facts concisely and in summary form.

(*Carten v Canada*, 2009 FC 1233 at para 36 ("*Carten*"))

[19] Pleadings play an important role in providing notice and defining the issues to be tried; 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 (*Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227 at para 16 ("*Mancuso*")).

[20] It is difficult to draw a bright line that identifies the level of detail that is required in a particular pleading. It is the role of a motions judge, looking at the pleading as a whole, to ensure that the pleading defines the issues with sufficient precision to make the pre-trial and trial proceedings both manageable and fair. A plaintiff must plead, in summary form but with sufficient detail, the constituent elements of each cause of action or legal ground raised (*Mancuso* at paras 18-19).

[21] This requirement should be known to the plaintiff. In *Van Sluytman v Orillia Soldiers' Memorial Hospital*, an action commenced by the plaintiff in the Ontario Superior Court of Justice, the Court held that Mr. Van Sluytman's "statement of claim [was] a rambling narrative style document detailing the many grievances purportedly suffered by the plaintiff" (2017 ONSC 692 at para 4). The Court held that the statement of claim was not a concise

statement of the material facts for the purposes of a rule analogous to Rule 174 in the Ontario Rules of Civil Procedure, and dismissed the claim. The Claim also suffers the same fatal defects.

[22] In *Carten*, prothonotary Lafrenière, as he then was, concluded:

> [37] The Plaintiffs' Statement of Claim breaches the rules of pleading in every respect. Instead of stating material facts establishing a reasonable cause of action, the Statement of Claim consists of bare assertions, bald statements, argument, and conclusions. The allegations in the Statement of Claim are so wide ranging and all encompassing as to be impossible to understand or respond to in any meaningful way. It is equally impossible to address in these reasons each and every deficiency in the Statement of Claim. My analysis will therefore focus on the main allegations made by the Plaintiffs.

[23] The same analysis and conclusion applies here. At 268 pages, the Claim is anything but a concise statement of facts. Paragraphs 28 and 29 of the Claim, described as an overview of the Events and the material facts that relate to them, respectively, comprise 175 pages. More importantly, the Claim fails to properly identify a cause of action. I have no doubt that the plaintiff feels frustrated and angry as a consequence of his dealings with the defendants. But frustration and anger alone, no matter if justified, do not give rise to a valid claim.

D. *The Charter*

[24] The Claim includes allegations that the plaintiff's rights under 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 (the "*Charter*"), have been infringed. Section 15 of the *Charter* (equality rights) is alleged to have been engaged as a consequence of the plaintiff's dealings with the Registry (Claim, page 217).

[25] The Claim does not include proper particulars of *Charter* violations. *Charter* actions do not trigger special rules on motions to strike; the requirement of pleading material facts still applies. The Supreme Court of Canada has defined in the case law the substantive content of each *Charter* right, and a plaintiff must plead sufficient material facts to satisfy the criteria applicable to the provision in question. This is no mere technicality, "rather, it is essential to the proper presentation of *Charter* issues" (*Mancuso* at para 21).

[26] While the Federal Court can be a "court of competent jurisdiction" as that phrase is used in section 24(1) of the *Charter* in certain circumstances, that does not mean that the Federal Court has jurisdiction over any and all *Charter* claims. Simply describing an event or a claim as a breach of a *Charter* right does not grant the Federal Court jurisdiction it does not otherwise have.

[27] Section 24(1) of the *Charter* provides that "anyone whose rights or freedoms, as guaranteed by this *Charter*, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances." A "court of competent jurisdiction" is one that possesses: (1) jurisdiction over the person; (2) jurisdiction over the subject matter; and (3) jurisdiction to grant the remedy. Only when a court or tribunal possesses all three attributes is it considered a "court of competent jurisdiction" for the purpose of ordering *Charter* relief (*R v 974649 Ontario Inc*, [2001] 3 SCR 575 at para 15). As set out in these reasons, the Federal Court does not have jurisdiction over the subject matter of the plaintiff's action. Therefore, the Federal Court is not a "court of competent jurisdiction" to adjudicate any of his claims based on the *Charter*.

E. *Negligence*

[28] In several instances, the plaintiff alleges that the defendants have been negligent, or have breached their duty of care to him.

[29] Claims grounded solely in the common law principles of negligence, independent of a cause of action over which the Court has jurisdiction, are beyond the jurisdiction of the Federal Court (*Kusugak v Northern Transportation Co*, 2004 FC 1696 at para 36 (“*Kusugak*”)).

[30] It is not enough to assert, baldly, conclusory phrases such as “deliberately or negligently” or “callous disregard”. Making bald, conclusory allegations without any evidentiary foundation is an abuse of process (*Merchant Law Group v Canada Revenue Agency*, 2010 FCA 184 at para 34).

V. The Motions to Strike

A. *TekSavvy Solutions Inc.*

[31] A significant portion of the Claim speaks to the plaintiff’s problems with his internet connection and service providers (Event 5).

[32] TekSavvy Solutions Inc. (“TekSavvy”) is an independent, competitive Internet Service Provider.

[33] The allegations against TekSavvy can be summarized as follows:

i. that TekSavvy has breached the "unwritten expectation of good business practices with good moral and conscience" (Claim, para 29(iii)(l));

ii. general allegations of TekSavvy's "incompetence" and complaints of its service quality (Claim, paras 28(v), 29(iii)(b), 116 and 121);

iii. that TekSavvy "breached [its] policy outlining [its] duty of care regarding the plaintiff's complaints of service issues" (Claim, para 123); and

iv. that TekSavvy was negligent "in not resolving the Plaintiff's complaints of internet problems […] in a timely manner or willingly without the plaintiff having to get ugly […]" (Claim, para 124).

[34] The plaintiff seeks monetary compensation from TekSavvy for the "emotional distress and unnecessary inconvenience to his life" (Claim, para 129) that he claims stemmed from these allegations.

[35] I agree with TekSavvy's submissions that these allegations do not disclose any reasonable cause of action within the jurisdiction of the Federal Court.

[36] None of the allegations disclose an identifiable cause of action, or facts which, if true, could support a cause of action. The plaintiff has not pointed to any breach of a statute; indeed, he concedes in the Claim that no such statute exists, stating: "there is no legislation addressing

the issues the plaintiff has brought in this action for the court to review" (Claim, para 29(iii)(c), page 106).

[37] The plaintiff uses the term "duty of care" in several allegations, suggesting the plaintiff may be invoking the tort of negligence. As set out above, as a statutory court, the Federal Court is without inherent jurisdiction. Any potential claim of negligence would be a common law cause of action, and would therefore be outside the jurisdiction of the Federal Court (*Kusugak*).

[38] While telecommunications is a federally regulated industry, absent any statutory authority conferring it, the Federal Court does not have original jurisdiction over common law claims simply because they involve telecommunications. Put another way, just because telecommunications is federally regulated does not mean that the Federal Court has jurisdiction over each and every complaint that somehow relates to telecommunications.

[39] Even if the Federal Court had jurisdiction over the plaintiff's claim, the facts disclosed in the Claim do not give rise to any cause of action in negligence. In order to support a cause of action in negligence, the plaintiff must show the existence of a duty of care (*Childs v Desormeaux*, 2006 SCC 18 at para 13) The provision of residential internet services by TekSavvy to the plaintiff can only be governed by a contract. The plaintiff has not pleaded any facts which demonstrate that TekSavvy had any duty of care beyond its obligations arising from any contract.

[40] The Federal Court does not have jurisdiction to adjudicate a matter that is in essence one of breach of contract between private parties (*McCain Foods Limited v J.R. Simplot Company*, 2021 FCA 4 at para 63; see also *Netbored Inc v Avery Holdings Inc*, 2005 FC 490 at para 24).

[41] I have reviewed the 30-page reply filed by the plaintiff in response to TekSavvy's statement of defence. Like the Claim, it is not compliant with Rule 174, and does not include a concise statement of material facts. TekSavvy's statement of defence (among other things) denies that the Federal Court has jurisdiction over the Claim. The plaintiff's reply does not engage this substantively, rather states that "there is nothing at the Federal Court site explaining the limits of the Federal Court's jurisdiction regarding the public wanting to commence an action to request a review for monetary compensation of grievances" (page 23, para 4(v)(g)). There is nothing in the reply that would lead to a conclusion that the Federal Court has jurisdiction over the plaintiff's complaints as against TekSavvy.

[42] I am therefore satisfied that it is plain and obvious that the plaintiff's claim as against TekSavvy is outside the jurisdiction of the Federal Court, and must be struck.

B. *Bell Canada*

[43] Bell Canada is a corporation that provides telecommunication services to customers across Canada.

[44] Bell Canada is implicated in Event 5 only – complaints that the plaintiff had issues with his internet connection. He was not satisfied with the responses of Bell and Teksavvy, so he

complained to the Commission of Complaints for Telecom-Television Services (“CCTS”). The Claim seeks damages of $2,500 for emotional distress and unnecessary inconvenience, and declaratory relief, including a declaration that Bell Canada was negligent.

[45] In essence, the plaintiff’s claim against Bell is the same as the one against TekSavvy, and suffers from the same fatal defects. Whether the plaintiff’s claim against Bell is best described as a customer service complaint or breach of contract, the result is the same as TekSavvy: it is plain and obvious that the plaintiff’s claim as against Bell Canada is outside the jurisdiction of the Federal Court, and must be struck.

C. *CCTS*

[46] CCTS is an independent organization created with a mandate to resolve complaints from individual and small business retailer customers.

[47] The allegations against the CCTS relate only to Event 5, the plaintiff’s difficulties with his internet connection. He was not satisfied with the responses of Bell and TekSavvy, so he complained to the CCTS. The plaintiff was not satisfied with the CCTS’ resolution of his complaint, mainly because he says its mandate is too narrow. As a result, he included the CCTS in the Claim.

[48] Specifically, the allegations against the CCTS are that it is “nothing but an incompetent provision allowed to thrive by the HMQRC, regarding the plaintiff’s need to have an authority address the issues of Bell and Tek” (Claim, para 120); and that it breached its duty of care when

not addressing the issues of how TekSavvy mishandled the plaintiff's complaints (Claim, para 126). The plaintiff requests damages of an amount no less than $1,000 for the CCTS' alleged incompetent handling of his September 10, 2020 complaints relating to his internet connection problems (Claim, para 131).

[49] To the extent the plaintiff's claim against CCTS includes allegations of negligence, it suffers the same fatal flaws as the claims as against TekSavvy and Bell.

[50] It may be that the CCTS is a "federal board, commission or other tribunal" as that term is used in in subsection 18.1(2) of the *Federal Courts Act*, RSC 1985, c. F-7 ("*FCA*"), and that a decision of the CCTS is subject to judicial review. I make no finding on this point as it is not necessary to resolve for the purposes of this motion. I also make no finding as to whether any new challenge by the plaintiff relating to a past decision of the CCTS is out of time.

[51] Even if the plaintiff can challenge a decision of the CCTS by way of judicial review, such a proceeding must be brought by way of application, not action (subrule 300(a)). In any event, even if a decision of the CCTS may be the subject of an application for judicial review, damages cannot be awarded in an application for judicial review (*Philipps* v *Canada (Librarian and Archivist)*, 2006 FC 1378 at para 71).

[52] I agree with the submissions of the CCTS that the essential character of the proceeding against it is a claim for judicial review with only a thin pretense to a private wrong (*Leone v Canada*, 2021 FC 409 at para 22).

[53] It is therefore plain and obvious that the claim as against CCTS must be struck.

D. *Canada Post Corporation*

[54] I agree with the submissions of Canada Post Corporation ("CPC") that the nature of the plaintiff's claim against it is unclear, but appear to be:

(a) that the mailboxes at the plaintiff's residential apartment building were not suitable for mail delivery, that CPC should have directed the owners of his apartment building on how to repair their mailboxes, and that any alleged issues the plaintiff had with CPC were resolved as of July of 2020 (Claim, paras 10 (page 8), 36 to 38 (pages 198-201), and 70 to 77 (pages 219-223));

(b) that the plaintiff's alleged issues with CPC were resolved; that the mailboxes at the plaintiff's apartment building were repaired; and that there was "corruption and confusion" by CPC employees (Claim, paragraph 28 (pages 18-19)); and

(c) that CPC did not provide the plaintiff with the contact information for the sender of a package that the plaintiff was to receive; that the plaintiff did not know what was missing from his online shopping orders (Claim, paragraphs 70 to 77 (pages 219-223)).

[55] No specific claim for damages is made against CPC. The monetary claim against it appears to be based on general frustration and alleged incompetence.

[56] Section 17 of the *FCA* gives the Federal Court concurrent jurisdiction where relief is sought against the Crown. But this does not end the inquiry. The Court's jurisdiction only applies to the Crown *eo nomine* (*i.e.* by that name), and not to a statutory corporation acting as an agent for the Crown (*Committee for Monetary and Economic Reform v Canada*, 2014 FC 380 at paras 87-88; affirmed 2015 FCA 20).

[57] Specifically in respect of CPC, this Court has determined that while CPC is a Crown corporation, it is not the Crown *per se*; it is an agent of the Crown. Subsections 17(1), 17(2), and section 48 of the *FCA* cannot be considered statutory grants of jurisdiction against CPC (*Lavigne v Canada Post Corporation*, 2006 FC 1345 paras 44-49 ("*Lavigne*")).

[58] The Court in *Lavigne* struck out the plaintiff's pleading for want of jurisdiction. There is no alternative but to reach the same conclusion here. It is plain and obvious that the plaintiff's claim as against CPC is not within the jurisdiction of the Federal Court, and must be struck.

E. *Her Majesty the Queen in Right of Ontario and Office of the Independent Police Review Director*

[59] The plaintiff's allegations in the Claim pertaining to HMQ Ontario and the OIPRD relate to an interaction that he had with an Ontario Provincial Police ("OPP") officer on November 21, 2019, and his related complaint to the OIPRD.

[60] I agree with these defendants that there is no statutory grant of jurisdiction by the federal Parliament for HMQ Ontario and OIPRD, nor is there a body of federal law which nourishes a

grant of federal jurisdiction. The laws on which the plaintiff's case against HMQ Ontario and the OIPRD are based are those of the Province of Ontario.

[61] As for alleged misconduct by an OPP officer, see *Tonner v Lowry*, 2016 FC 230 at para 27, *Legere v Canada*, 2003 FC 869 at para 11 and *Templanza v Canada*, 2021 FC 689 at para 20 regarding this Court's lack of jurisdiction over provincial and municipal police officers.

[62] HMQ Ontario and OIPRD also assert that the Claim is a nullity because the plaintiff has failed to provide notice of the Claim, required by section 18 of *Crown Liability and Proceedings Act*, 2019, SO 2019, c 7. For the purposes of this motion, whether the plaintiff gave proper notice is immaterial; the Federal Court does not have jurisdiction over the Claim as it relates to HMQ Ontario and OIPRD. Even if the proper notice had been given, the claim would still be struck for want of jurisdiction.

F. *Her Majesty the Queen in Right of Canada*

[63] I agree with the submissions of Her Majesty the Queen in Right of Canada ("HMQ Canada") as it relates to each Event described in the Claim:

(a) Event #1. The Claim alleges that mail was not being delivered to the plaintiff and CPC took too long to address the issue. The plaintiff seeks damages against the Federal Crown for negligence for allowing incompetence at CPC. The plaintiff fails to plead any particulars to demonstrate how a negligence claim could be made out against the Federal Crown for the alleged incompetence of unnamed employees at CPC. The Claim merely makes a bald assertion of negligence against the Federal

Crown without any evidentiary foundation, relevant material facts, or engagement with the requisite elements of the cause of action. The Claim against the Federal Crown with respect to Event #1 fails to disclose a reasonable cause of action and is an abuse of process.

(b) Event #2. The Claim alleges that the plaintiff amassed unused cheques from the Canada Revenue Agency ("CRA") dating back to 2006 and, upon the plaintiff's request, the CRA was only able to replace some of the unused cheques. The Claim alleges that the CRA maintains poor records and that a CRA employee engaged in a "cover up". The plaintiff seeks damages for negligence for not appointing a better Minister and Member of Parliament; incompetent record keeping; and not sufficiently dealing with the plaintiff's unused cheques. If the plaintiff is unhappy with his Member of Parliament, his remedy is at the ballot box, not before this Court. The Claim fails to disclose a reasonable cause of action in this regard. The plaintiff's claims with respect to his unused cheques span a period of 16 years. Implicit in the plaintiff's allegations is an admission that the CRA properly issued the plaintiff cheques over the 16-year period, but that he elected not to cash them. The plaintiff further admits that the CRA was nevertheless able to re-issue many of the uncashed cheques. As for the unspecified cheques that the CRA was allegedly unable to replace, the plaintiff has failed to provide the necessary material facts and particulars. The plaintiff also invokes negligence without engaging with the constituent elements. The Federal Crown does not owe the plaintiff a duty of care under the circumstances. Even if the Federal Crown did owe a duty of care, the standard was not breached based on the facts alleged. The plaintiff also alleges that

the CRA engaged in a "cover up". The Claim does not name the CRA employee(s) that he alleges acted in bad faith. The plaintiff merely makes bald allegations, which is both scandalous, frivolous and vexatious, and an abuse of process.

(c) Event #3. The Claim alleges that hydroponic shops provided the plaintiff with confusing and/or inaccurate directions for how to use their products, both verbally in-store and on the product labels. The plaintiff seeks damages against the Federal Crown for negligence for allowing the stores and product labels to provide inaccurate information. The plaintiff suggests that the Federal Crown would somehow be liable for verbal instructions provided to the plaintiff by unnamed employees at private hydroponic stores, or for difficulties experienced by the plaintiff in understanding labels of unspecified goods. In doing so, the plaintiff has asserted that the Federal Crown was negligent without pointing to any specific actions or setting out any relevant material facts. By merely asserting "negligence" as a conclusion, the plaintiff has failed to identify any government action that would give rise to a cause of action, nor does he engage with the elements of the causes of action pleaded. The Federal Crown does not owe the plaintiff a duty of care based on the facts alleged. The Claim as it relates to this event does not disclose a reasonable cause of action and is scandalous, frivolous and vexatious.

(d) Event #4. The plaintiff seeks damages against the Federal Crown for negligence for not providing the plaintiff with a corporation's profile report upon request. The Claim fails to supply any relevant material facts. The plaintiff has again asserted "negligence" without particularizing the claim or engaging with the elements of the

test. The Claim fails to disclose a reasonable cause of action and is scandalous, frivolous and vexatious.

(e) Event #5. The plaintiff alleges that Bell Canada and/or TekSavvy incorrectly installed the plaintiff's internet. The plaintiff admits that the issue has been addressed, but took too long and was not investigated by CCTS. There does not appear to be any allegations with respect to this event that relate to the Federal Crown. CCTS is a corporation independent of the Federal Crown.

(f) Event #6. The Claim alleges misconduct against the OPP and takes issue with a subsequent investigation by the OIPRD. The plaintiff seeks damages against the Federal Crown for negligence and for seeking and receiving a vexatious litigant order against the plaintiff pursuant to section 140 of the *Ontario Courts of Justice Act*, RSO 1990, c. C.43. The allegations with respect to this event are of a provincial nature and do not to relate to the Federal Crown. However, the plaintiff appears to take issue with, or challenge, the vexatious litigant order made against him in the Ontario Superior Court of Justice. This Court does not have the jurisdiction to review that order. By raising the vexatious litigant order before the Federal Court, the plaintiff either seeks re-litigation or a collateral attack, both of which are an abuse of process.

(g) Event #7. The Claim alleges that the Federal Court's staff and website did not sufficiently assist the plaintiff with his motion record relating to a request for a fee waiver. The plaintiff seeks damages against the Federal Crown for negligence for not providing adequate direction on the Federal Court website, and for the hiring of

> incompetent staff. The plaintiff fails to provide any particulars or engage with the test for negligence. The Federal Crown does not owe the plaintiff a duty of care based on the alleged facts and, even if such a duty exists, the Federal Crown did not breach the requisite standard. This event is merely a narrative set out by the plaintiff; it does not satisfy the rules of pleading, and does not disclose a reasonable cause of action.

[64] Judicial officers of the Federal Court and members of the Registry cannot offer legal advice to parties. The reason for this is self-evident: the Court must remain completely impartial and neutral (*Olumide v Canada*, 2016 FCA 287).

[65] Registry Officers may attempt to assist litigants with simple administrative steps relating to process and procedure, but cannot provide legal advice to litigants, actual or potential (*Ralph Thom v Her Majesty The Queen*, 2007 FCA 249 at para 14).

[66] In his responding motion materials, the plaintiff indicates that he relies on the Court to sort out any misunderstanding and unreasonable expectations that have been brought to his attention by the defendants, and to allow him to continue with his action. He also asks for direction as to where to take his grievances. While I sympathize with persons who are not lawyers facing the sometimes difficult task of navigating an unfamiliar process, I am bound by legislation and earlier decisions of the courts relating to the jurisdiction of the Federal Court. These rules apply equally to everyone, regardless of their familiarity with the Court's jurisdiction and rules of procedure. I cannot permit the action to continue based only on abstract

considerations of fairness. I also cannot provide the plaintiff, or anyone else, advice or guidance on how or where to advance a lawsuit.

[67] For the above reasons, the claims as against HMQ Canada disclose no justiciable cause of action in the Federal Court, and must be struck.

VI. Leave to Amend

[68] Striking a pleading without leave to amend is a power that must be exercised with caution. If a statement of claim shows a scintilla of a cause of action, it will not be struck out if it can be cured by amendment (*Al Omani* at paras 32-35).

[69] For the reasons that follow, leave to amend will be denied.

[70] In determining whether leave to amend should be granted, I have considered the fact that the plaintiff is self-represented. I am not holding the Claim and the plaintiff's motion materials to the standard regularly expected with documents prepared by experienced counsel. More importantly, I have attempted to read past the challenging manner in which the Claim was drafted to assess whether it reveals anything that could possibly be a genuine cause of action.

[71] As for Event #5, the problems with the plaintiff's internet connection, I do not see any way that the plaintiff's claims as against TekSavvy and Bell Canada could be described as anything other than customer service complaints and claims for breach of contract, or any way that such claims could be presented in a manner that would be within the jurisdiction of the

Federal Court. The claims against TekSavvy and Bell Canada will therefore be struck without leave to amend.

[72] As for CCTS, and for the reasons set out above, the only possible recourse against any decision relating to the plaintiff's complaints regarding his internet service is an application for judicial review. I do not see any way that the plaintiff could amend the Claim to sustain an action as against CCTS. The claims against CCTS will therefore be struck without leave to amend.

[73] As for HMQ Ontario and the OIPRD, on or around February 4, 2021, the Ontario Ministry of the Attorney General received a notice of application from the plaintiff, seeking leave to commence an action in the Ontario Superior Court of Justice. The plaintiff sought to commence an action against HMQ Ontario pertaining to an interaction that he had with an OPP officer on November 21, 2019, and his subsequent complaint to the OIPRD.

[74] Justice Leibovich dismissed the plaintiff's application by way of an endorsement dated March 15, 2021 (*Van Sluytman v Her Majesty the Queen in Right of Ontario*, 2021 ONSC 1947). Justice Leibovich observed that the OIPRD had concluded that "there is nothing to indicate that the police acted in a manner that would amount to misconduct as prescribed by the *Police Services Act*," and further expressed concern that the plaintiff may seek to re-argue some of the historical issues that resulted in him being declared a vexatious litigant (paras 4-5).

[75] On or around December 22, 2021, the Ministry of the Attorney General received the Claim. The Claim as against HMQ Ontario and OIPRD pertains to the same November 21, 2019

interaction with an OPP officer, and subsequent complaint to the OIPRD, as his previous leave application to the Ontario Superior Court of Justice.

[76] On January 7, 2022, counsel for HMQ Ontario and OIPRD sent a letter to the plaintiff, advising of various deficiencies in the Claim. The plaintiff was advised that, should HMQ Ontario and OIPRD be forced to proceed with a motion to strike, and should they be successful on that motion, they would seek their costs.

[77] On January 22, 2022, counsel for HMQ Ontario and OIPRD received a reply letter from the plaintiff, wherein he refused to discontinue the Claim against HMQ Ontario and OIPRD.

[78] In his responding motion materials, including a lengthy affidavit, the plaintiff places emphasis on the lack of resources made available to self-represented litigants by the Ontario Superior Court of Justice. The Federal Court does not have supervisory jurisdiction over provincial courts, and no ability to order or direct another court as to what resources should be made available to the public.

[79] In addition to the Federal Court's lack of jurisdiction over provincial police officers described above, it is apparent that the plaintiff is seeking to re-litigate the same matters that were dismissed by the order of Justice Leibovich. This is an abuse of process. I fail to see how the plaintiff's claims as against HMQ Ontario and OIPRD could be re-cast in a way that was not abusive, and within the jurisdiction of the Federal Court. The claims against HMQ Ontario and OIPRD will therefore be struck without leave to amend.

[80] The defendants have relied on the fact that the plaintiff has been determined to be a vexatious litigant by the Ontario Superior Court of Justice (*Van Sluytman v Muskoka (District Municipality)*, 2018 ONCA 32). It is asserted that this action was brought in the Federal Court to circumvent the vexatious litigant order in Ontario.

[81] For TekSavvy, Bell Canada, CCTS, HMQ Ontario, and OIPRD this is certainly relevant to costs.

[82] As for HMQ Canada, the Claim does give the impression that the plaintiff is looking for any connection to the Federal Crown, no matter how tangential, to justify commencing the proceeding in the Federal Court.

[83] I see no manner in which the plaintiff could properly draft a pleading that would require HMQ Canada to respond to an action for “allowing the incompetence of Canada Post”; bear responsibility for how hydroponic stores sell their goods; provide a corporation profile report; the installation or maintenance of the plaintiff’s internet service; or actions or inactions of HMQ Ontario and OIPRD.

[84] As for the services provided by the Court to the public, the plaintiff’s affidavit in response to the motion directs invective to staff at the Federal Court Registry, including that direction he received was “purposely incompetently explained by government to confuse the public, deterring them from attempting any legal proceeding self-represented” (para 24); and that there was a lack of “professional courtesy by the court of how and where I should be taking my

grievances" (para 26). Even if these angry and confrontational allegations are presumed to be true, they are not actionable.

[85] I note that, before filing the Claim, the plaintiff moved for a fee waiver. That request was assigned Court file no. 21-T-24. In that matter, prothonotary Aalto issued an order on September 20, 2021 which rebuked the plaintiff for his interactions with the Registry:

> It is also to be noted that the Plaintiff has called the registry of the Court regularly and that members of the Court's registry have found the Plaintiff's tone to be intimidating, aggressive and abusive in nature. The Court must protect the members of the Court's registry from abusive and harassing calls. It is obvious that the Plaintiff uses email. Therefore, all communications between the Plaintiff and the Court registry will take place by email unless it is a Court hearing. Further, given the Plaintiff's conduct and number of motions, this is a case which must be controlled by the Court and an order will issue that this case be specially managed.

[86] The only matter remaining that involves HMQ Canada is Event #2, relating to replacement of unspecified cheques from CRA. Why the plaintiff did not cash certain cheques from CRA over a period of years is unknown, but does not matter. There is no allegation that the cheques were not properly delivered in the first instance. It is difficult to see what duty of care may apply in these circumstances, or how a negligence claim could be properly advanced. Even if the decision not to provide a replacement cheque is subject to oversight by the courts, it is not at all apparent how this could be the subject of an action in the Federal Court, as opposed to an application for judicial review after all options within CRA had been exhausted (assuming the Tax Court of Canada would not have jurisdiction over the issue in any event).

[87] The claims as against HMQ Canada will therefore be struck, without leave to amend.

VII. Hydroponic Defendants

[88] Overgrown Hydroponics, Green Planet Nutrients, and Dutch Nutrient have not filed a motion to strike, nor have they filed statements of defence. Based on the above, I am satisfied that the Claim as against these defendants should be struck on the Court's own motion.

[89] The allegations in the Claim against these defendants relate to the plaintiff's purchases of liquid nutrient products for growing marijuana, and a claim that the directions posted on the labels of these products are false and misleading.

[90] Like the allegations relating to the plaintiff's internet connection, these allegations are, at best, a customer service complaint. For the claims as against these defendants, there is no: 1) statutory grant of jurisdiction by the federal Parliament; 2) existing body of federal law which is essential to the disposition of the case which manages statutory grant of jurisdiction; and 3) case being based on a law of Canada as the phrase is used in section 101 of the *Constitution Act*, 1867. It is plain and obvious that the Federal Court has no jurisdiction over this aspect of the Claim, and that the claim could not be amended to articulate a cause of action against these defendants that is within the Court's jurisdiction.

[91] The guiding principles of the Rules are set out in Rule 3, which requires that the Rules be interpreted and applied so as to secure the just, most expeditious and least expensive determination of every proceeding on its merits. As set out above, it is plain and obvious that the Federal Court has no jurisdiction over any of the matters raised in the plaintiff's claim. Requiring

Overgrown Hydroponics, Green Planet Nutrients, and Dutch Nutrient to bring motions to strike, which would inevitably be granted, would be a waste of resources.

VIII. Costs

[92] The Court has full discretionary power over the amount and allocation of costs (Rule 400(1)).

[93] The defendants were entirely successful on the motions.

[94] Bell and TekSavvy did not request costs, so none will be awarded.

[95] CCTS' notice of motion did not request costs, but costs of $1,000.00 were requested in its written representations. Since a request for costs was not set out in the notice of motion, no costs will be awarded.

[96] In their notices of motion, HMQ Ontario/OIPRD, HMQ Canada and CPC requested costs.

[97] In both his materials requesting a fee waiver to commence this action, and in his responding materials to the motions to strike, the plaintiff emphasized his low income. In these circumstances, costs should be approached with a hesitation to impose an award that is, in effect, punitive. Further, a costs award should not create an obstacle to a person advancing meritorious claims.

[98] At the same time, relevant factors in the costs analysis include whether a step was improper or unnecessary (paragraph 400(3)(k)(i). Costs awards can also be used to regulate proceedings and deter misconduct (*Brace v Canada*, 2021 FCA 136 at para 18).

[99] The plaintiff has been the beneficiary of several “no costs” orders. This includes the order of Justice Leibovich described above (2021 ONSC 1947), and the order of the Court of Appeal for Ontario upholding the vexatious litigant order (2018 ONCA 32).

[100] In this Court, the plaintiff commenced a series of applications against the Canadian Mental Health Association – Muskoka Parry Sound Branch in 2016 (Court file nos. T-663-16; T-665-16; T-666-16; and T-667-16). By order dated September 14, 2016, prothonotary Milczynski struck the notices of application for want of jurisdiction. The respondents sought substantial indemnity costs, but none were awarded.

[101] Whether or not the plaintiff filed the Claim in the Federal Court to avoid the consequences of the vexatious litigant order in Ontario, I cannot conclude that it would be appropriate to make no award of costs. The length and nature of the Claim required the moving defendants to spend considerable resources on these motions. The plaintiff has had numerous proceedings struck, which did not deter the commencement of the Claim. Some award of costs is therefore warranted. To do otherwise may encourage the plaintiff, and similarly situated persons, to file further proceedings that stand no prospect of success, with an assumption or expectation that there will be no adverse financial consequences.

[102] Each of HMQ Ontario/OIPRD, HMQ Canada and CPC will be awarded costs of $100.00. This amount is far less that what would be awarded under the Tariff, but also recognizes the plaintiff’s financial circumstances.

JUDGMENT in T-1442-21

THIS COURT'S JUDGMENT is that:

1. The statement of claim is hereby struck, without leave to amend.

2. The plaintiff shall forthwith pay costs of $100.00 to Her Majesty the Queen in Right of Ontario and the Office of the Independent Police Review Director.

3. The plaintiff shall forthwith pay costs of $100.00 to Her Majesty the Queen in Right of Canada.

4. The plaintiff shall forthwith pay costs of $100.00 to Canada Post Corporation.

"Trent Horne"

Case Management Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1442-21
STYLE OF CAUSE:	RORY A. VAN SLUYTMAN v HER MAJESTY THE QUEEN IN RIGHT OF CANADA, ET AL

MATTER CONSIDERED AT TORONTO, ONTARIO WITHOUT PERSONAL APPEARANCE OF THE PARTIES

JUDGMENT AND REASONS:	CASE MANAGEMENT JUDGE TRENT HORNE
DATED:	APRIL 14, 2022

WRITTEN SUBMISSIONS BY:

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Andy Kaplan-Myrth Jessica Rutledge	FOR THE DEFENDANT TEKSAVVY SOLUTIONS INC.
Christina Persad	FOR THE DEFENDANT CANADA POST CORPORATION
Christian Breukelman	FOR THE DEFENDANT COMMISSION OF COMPLAINTS FOR TELECOM-TELEVISION SERVICES
Alex Redinger	FOR THE DEFENDANTS HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO OFFICE OF THE INDEPENDENT POLICE REVIEW DIRECTOR
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