

Federal Court



Cour fédérale

Date: 20221025

Docket: T-628-22

Citation: 2022 FC 1455

Ottawa, Ontario, October 25, 2022

PRESENT: The Honourable Madam Justice McVeigh

BETWEEN:

**HAIMANA ROMANA
SELF-REPRESENTED**

Plaintiff

and

**CANADIAN RADIO-TELEVISION AND
TELECOMMUNICATIONS COMMISSION AND
THE CANADIAN BROADCASTING CORPORATION**

Defendants

ORDER AND REASONS

I. Overview

[1] The Court is seized with two motions made in respect of the same Plaintiff that were heard together.

[2] The two Defendants in this action, the Canadian Radio-Television and Telecommunications Commission (the “CRTC”) and the Canadian Broadcasting Corporation (the “CBC”), have made similar requests for an Order on these motions.

[3] Both Defendants seek an Order striking out the Plaintiff’s Fresh as Re-Amended Statement of Claim filed on April 26, 2022, and striking all previously filed versions of the Statement of Claim in their entirety, without leave to amend, and dismissing the action. Both Defendants alternatively seek:

- a) an Order extending the time period for delivery of the Statement of Defence pursuant to Rule 8 of the *Federal Court Rules*, SOR/98-106 [Rules];
- b) the costs of the motion, CBC in the amount of \$3,073.60 and the CRTC in the amount of \$1,050.00; and
- c) such further and other relief as this Court may deem just.

[4] In its motion, the CRTC has also requested:

- a. an alternative Order pursuant to Rule 75(1) of the Rules, amending the claim to replace the CRTC as a Defendant with His Majesty the King (Court amended from Her Majesty the Queen); and
- b. an alternative Order pursuant Rule 8 of the Rules, extending the time period for the CRTC.

[5] The Plaintiff, Mr. Haimana Romana, is self-represented, although he indicated that he has received “legal advice” throughout these proceedings. Although both Defendants opposed the

Plaintiff's request for an oral hearing, an oral hearing was granted so that he could express his argument.

[6] The Plaintiff has a long running action against the CBC in the Manitoba Court of King's Bench (the "Manitoba Action"). There, the Plaintiff brought a motion for an injunction but was unsuccessful: *Romana v The Canadian Broadcasting Corporation et al*, 2017 MBQB 163 [Romana]. The trial of the Manitoba Action was delayed because of COVID-19. The trial was set for February 7, 2022, but is now set for April 24 through May 19, 2023.

[7] The Plaintiff filed the initial Statement of Claim in this matter on March 22, 2022. The matter has been case managed and several versions of the Amended Statement of Claim have been accepted for filing and one has not. The last was filed on April 26, 2022, as a Fresh as Re-Amended Statement of Claim.

[8] At the core of his claim are news stories published by the CBC relating to the Plaintiff. He has alleged various causes of action through several amended statement of claims. These claims include negligence, a request for an interlocutory injunction, and breaches of the *Television Broadcasting Regulations*, 1987, SOR/87-49 [the Regulations], amongst others.

II. Facts

[9] To understand the factual situation I have briefly set out some pertinent facts related to the claim sought to be struck by these motions.

[10] In the Fresh as Re-Amended Statement of Claim, the Plaintiff argues that the CRTC and CBC are in breach of the Regulations. However, the Plaintiff only argues that the CBC is in breach of s 5(1)(b) and (d) of the Regulations. Specifically, the Plaintiff argues the following breaches:

Paragraph of the Regulations	Basis
s 5(1)(b)	The new stories are contemptuous on the basis of race, national or ethnic origin, colour, age, and mental disability
s 5(1)(d)	<p>The CBC:</p> <ul style="list-style-type: none"> • forged documents to justify their news stories • made statements about the Plaintiff that are unquestionably false • deliberately fabricated peoples comments who were never interviewed in real life • fabricated emails • conspired to fabricate false testimony to corroborate evidence • published unquestionable falsehoods attributing statements to be factual which were not • lost or deleted material which was in their possession to deliberately avoid discovery to escape liability • orchestrated false release documents toward the Plaintiff to try to escape liability • omitted materials favourable to the Plaintiff, and denied interviews with persons that took place which would have turned the tide on the news stories in favour of the Plaintiff • submitted false transcripts of video materials and emails

	<p>lost vital video material, voice recording of participants in the news stories</p> <ul style="list-style-type: none"> • broadcast fabricated voices of persons who they claimed were recorded interviews of a person which is false and then lost the tape • denied interviewing specific persons for their news stories, when in fact they had; • used false pictures with false claims • knowingly used false evidence given by witness testimony to justify the news stories
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[11] Paragraph 5(1)(b) and 5(1)(d) of the Regulations state:

5 (1) A licensee shall not broadcast
(a) anything in contravention of the law;
(b) any abusive comment or abusive pictorial representation that, when taken in context, tends to or is likely to expose an individual or a group or class of individuals to hatred or contempt on the basis of race, national or ethnic origin, colour, religion, sex, sexual orientation, age or mental or physical disability;
(c) any obscene or profane language or pictorial representation; or
(d) any false or misleading news.

5 (1) Il est interdit au titulaire de diffuser :
a) quoi que ce soit qui est contraire à la loi;
b) des propos offensants ou des images offensantes qui, pris dans leur contexte, risquent d'exposer une personne ou un groupe ou une classe de personnes à la haine ou au mépris pour des motifs fondés sur la race, l'origine nationale ou ethnique, la couleur, la religion, le sexe, l'orientation sexuelle, l'âge ou la déficience physique ou mentale;
c) tout langage ou toute image obscènes ou blasphématoires;
d) toute nouvelle fausse ou trompeuse.

[12] The Plaintiff also argues both Defendants were negligent to him and his family, outlining the duty of care and standard of care owed. There is no mention of causation or damages, although he does state that it was “reasonably foreseeable that [he] would suffer damages...”

[13] The Plaintiff relies extensively on discovery evidence from the Manitoba Action as *prima facie* evidence of false and misleading news of racist broadcasts. He asks the Court to admit the

Manitoba Action discovery evidence because it is in the interest of justice and it proves the Plaintiff's claim.

[14] The Plaintiff requests this Court order the CRTC to re-assess the licensing renewal of the CBC until the CBC complies with ss 5(1)(a) – (d) of the Regulations. The Plaintiff also requests an order requiring CBC to remove the News Stories. He asks for an interlocutory injunction to “enjoin the CRTC from renewing the CBC license on 31 August, 2022 until the irreparable harm is removed.”

[15] The Plaintiff states that he is protected under s 12(1) and s 15(1) of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being schedule B to the *Canada Act 1982 (UK)*, c 11[the *Charter*]. He also states that the CBC is not protected by s 2(b) of the *Charter*. It is unclear what aspect of his claim these *Charter* assertions relate to.

[16] The CRTC seeks to have this motion granted on the grounds that:

- a) it is plain and obvious that the claim discloses no reasonable cause of action;
- b) the claim is an abuse of process;
- c) the claim includes evidence which is impermissible in a pleading;
- d) this Court does not have jurisdiction to grant an injunction as sought by the Plaintiff; and
- e) additional grounds, which I will not deal with.

[17] CBC's grounds are similar but are made for slightly different reasons. As well, CBC indicates the claim is out of time and statute-barred, both under the *Federal Courts Act*, RSC

1985, c F-7 [the Act] and the Manitoba *Limitations Act*, CCSM c L150. The CBC also highlights that this action and its claims are duplicative of File No CI 15-01-86736 in the Manitoba Court of King’s Bench, as well duplicative of an injunction that was heard, ruled on, and rejected by that court.

III. Analysis

A. *The Applicable Law*

[18] Rule 221(1)(a) of the Rules allows a claim to be struck in its entirety if it discloses no reasonable cause of action:

Motion to strike

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: (a) discloses no reasonable cause of action or defence, as the case may be, (b) is immaterial or redundant, (c) is scandalous, frivolous or vexatious, (d) may prejudice or delay the fair trial of the action, (e) constitutes a departure from a previous pleading, or (f) is otherwise an abuse of the process of the Court, and may order the action be dismissed or judgment entered accordingly.

[Emphasis added]

Requête en radiation

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) qu’il ne révèle aucune cause d’action ou de défense valable; b) qu’il n’est pas pertinent ou qu’il est redondant; c) qu’il est scandaleux, frivole ou vexatoire; d) qu’il risque de nuire à l’instruction équitable de l’action ou de la retarder; e) qu’il diverge d’un acte de procédure antérieur; f) qu’il constitue autrement un abus de procédure. Elle peut aussi ordonner que l’action soit rejetée ou qu’un jugement soit enregistré en conséquence.

[Emphase ajoutée]

[19] A claim will only be struck under Rule 221(1)(a) of the Rules if it is “plain and obvious” the claim discloses no reasonable cause of action, or has no reasonable prospective of success:

Condon v Canada, 2015 FCA 159 at paragraph 12, citing *R v Imperial Tobacco Canada Ltd*, 2011 SCC 42 at paragraph 17.

[20] Rules 174, 181 and 182 of the Rules impose an obligation to plead, in a concise manner, material facts in support of every alleged cause of action, as well as the nature of the damages (*Jones v Kemball*, 2012 FC 27 at para 5). Rule 174 states:

Material facts

174 Every pleading shall contain a concise statement of the material facts on which the party relies, but shall not include evidence by which those facts are to be proved.

Exposé des faits

174 Tout acte de procédure contient un exposé concis des faits substantiels sur lesquels la partie se fonde; il ne comprend pas les moyens de preuve à l'appui de ces faits.

[21] In *Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227, the Federal Court of Appeal emphasized the importance of courts enforcing the requirements for pleadings:

[16] It is fundamental to the trial process that **a plaintiff plead material facts in sufficient detail to support the claim and relief sought**. As the judge noted “pleadings play an important role in providing notice and defining the issues to be tried and that 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.”

[17] The latter part of this requirement – **sufficient material facts – is the foundation of a proper pleading. If a court allowed parties to plead bald allegations of fact, or mere conclusory statements of law, the pleadings would fail to perform their role in identifying the issues**. The proper pleading of a statement of claim is necessary for a defendant to prepare a statement of defence. Material facts frame the discovery process and allow counsel to advise their clients, to prepare their case and to map a trial strategy. Importantly, the pleadings establish the parameters of relevancy of evidence at discovery and trial.

[Emphasis added]

B. *Self-Represented Litigants*

[22] While it is of course important that a plaintiff plead material facts to support the claim and relief sought, it is necessary to consider the factual circumstances here. The Plaintiff is a self-represented litigant, though experienced, navigating the judicial system and that bears consideration.

[23] The Plaintiff relies on the Canadian Judicial Council *Statement of Principles on Self-represented Litigants and Accused Persons* (2006) that was endorsed by the Supreme Court of Canada in *Pintea v Johns*, 2017 SCC 23 at paragraph 4. The statement explains that self-represented persons are generally uninformed about their rights and the consequences of choosing the options available to them. Court procedures can be complex, confusing, and intimidating to self-represented litigants.

[24] On this point, the Plaintiff has been granted several amendments as well as having a Court appointed case manager. The Plaintiff is a very well spoken man whose issues are personal to him and he desperately wants the remedies he is seeking. He has been very cooperative and respectful to the Court. It is apparent with the trial taking place in the Manitoba Court of King's Bench in April that he will have his "day in Court", which is extremely important to this litigant.

C. *Paragraph 221(1)(a) – No reasonable Cause of Action.*

[25] The Defendants both claim that the pleading should be struck as there is no reasonable cause of action. Briefly, I will summarize the arguments of the Defendants.

[26] The CBC argues that the claim fails to plead a cause of action that is recognized in law. The pleading of the breach of Regulations is insufficient for a civil cause of action. As well, the CBC alleges that the claim fails even after all the amendments to plead the requirements of a claim in negligence.

[27] The CBC indicates that the Federal Court has no jurisdiction to hear the claim in negligence for which there is no statutory grant of jurisdiction and no established federal body of case law.

[28] The CRTC asks for the Fresh as Re-Amended Statement of Claim to be struck given that it does not allege any specific wrongdoing against the CRTC. The most recent version of the Statement of Claim is amended to only make an allegation of negligence against the CRTC, with no material facts to ground a cause against the CRTC. The CRTC points to the Plaintiff's conclusory statements and lack of material facts in support of its motion.

[29] Although the Fresh as Re-Amended Statement of Claim states that the CRTC has breached the Regulations, the claim does not set out how the Regulations apply to the CRTC or how it has breached any obligations imposed on them by the Regulations. Finally, there are no material facts as to why the Plaintiff may be entitled to the punitive damages he seeks against CRTC. The CRTC objects to the Plaintiff providing evidence from the Manitoba Action. More importantly, none of this evidence relates to the CRTC, given it is not a party in the Manitoba Action.

[30] The Plaintiff has claimed numerous causes of action and the Court must review them to determine whether the Plaintiff has properly pled each of the alleged actions with sufficient material facts.

[31] The Plaintiff states that the cause of action toward the CBC and the CRTC is negligence. He argues the same basis for both of the negligence claims. The Plaintiff submits that both Defendants owed him a common law duty of care to make enquiries of the CBC regarding any news stories or litigation. The Plaintiff submits the same for the standard of care. There are no further submissions on the elements of negligence.

[32] I agree with the CRTC that simply stating that the cause of action against the Defendants is negligence does not actually establish a cause of action for negligence. The Federal Court of Appeal has been clear that conclusory statements and bald assertions do not establish a reasonable cause of action: *Merchant Law Group v Canada Revenue Agency*, 2010 FCA 184 at paragraph 34. In order to establish a cause of action these statements must be backed up, or at the very least supported, by material facts. The Fresh as Re-Amended Statement of Claim does not include the material facts that could ground a valid cause of action for negligence against the CRTC nor the CBC. The Plaintiff does not even wish to use the discovery process against the CRTC. I find this telling of the actual duplication of the process proceeding to trial in the Manitoba Action because the focus is only on the CBC. There is nothing to establish a breach, nor are the material elements of a negligence claim established.

[33] Accordingly, the negligence claim against the CBC and CRTC discloses no reasonable cause of action. I turn next to the claimed breach of the Regulations.

[34] It is unclear how the CRTC relates to these asserted breaches. The Regulations do not impose any obligations on the CRTC, or apply to the CRTC at all. The Regulations impose requirements on licensees themselves, not the CRTC. There cannot be any harm resulting from the actions or inactions of the CRTC due to breaches of the Regulations.

[35] Although the Plaintiff alleges negligence against the CRTC, his claim really amounts to a request for administrative review. The Federal Court does not have jurisdiction to deal with such a claim. The Federal Court of Appeal has exclusive jurisdiction for judicial reviews in relation to the CRTC, per s 28(c) of the Act, and thus the injunction sought as well.

[36] I agree with the CBC that there is no civil cause of action for breach of the *Broadcasting Act*, SC 1991, c 11 [Broadcasting Act], nor the Regulations. There is no statutory entitlement in the Broadcasting Act, nor in the Regulations, which would entitle the Plaintiff to bring such an action for the alleged breaches.

[37] The Plaintiff cannot succeed on his arguments relating to the breaches of the Regulations.

[38] Finally, the Plaintiff asks for an order requiring the CRTC to re-assess the licensing renewal of the CBC. I agree with the CRTC that this amounts to a challenge of an administrative action. There is therefore no reasonable cause of action.

[39] I note that, in his Reply, the Plaintiff conceded that his allegation of negligence against the CRTC is “out of the question.” I agree with the CRTC that he also admits that, were it not for his attempt to convert the claim into an application for judicial review, he would have discontinued the Claim. In light of these concessions and the fact that this Court does not have jurisdiction to hear an action or application related to the CRTC, this claim must fail.

[40] Even reading the pleadings with a generous interpretation and in light of the Statement on Self-Represented Litigants, I find that the Plaintiff’s claim cannot succeed. Therefore, the Plaintiff’s Claim and all previous claims should be struck in their entirety without leave to amend any further.

[41] Even if I am wrong concerning there being any causes of actions under Rule 221(1)(a) this matter could be struck under Rule 222(1)(b) as being redundant or Rule 221(1)(f) as an abuse of process.

[42] The Plaintiff has a duplicative action against the CBC in Manitoba that will commence in the near future. The Plaintiff has been candid in saying he brought the Federal Court action when the Manitoba Action was taking too long to progress to trial. The major difference is that he has added CTRC to the Federal Court Action. In this action, the Manitoba Action cross-examinations are used as evidence in the Federal Court Action because the Plaintiff argues he has no alternative to prove his case as the parties are not giving the evidence to him.

[43] As set out above, there is no cause of action against the CRTC, so though they are not a party in the Manitoba Action, the action is still duplicative with the same subject matter. The injunctive relief sought in this matter against the CRTC is the same as was refused in the Manitoba Action injunctive motion against the CBC. That injunction sought to have the newspaper stories be removed: see *Romana* at paragraph 3. Accordingly, this is clearly a collateral attack on a matter already decided by another court, which has been refused.

[44] Given all the issues and damages against the CBC are the same, this pleading can be categorized as duplicative, and even, an abuse of process. This action appears to be an attempt at a second front to keep the pressure on the first front—the Manitoba Action.

[45] There is no need to deal with the other grounds presented by the Defendants as these are determinative.

D. *No Further Leave to Amend*

[46] The Plaintiff has had several attempts at amending his Statement of Claim and has not been successful. It is plain and obvious that any further amendments will not be successful.

[47] At the hearing, the Plaintiff argued that he should be able to continue to amend his statement of claims as many times as he wants to because the Rules allow him to. However, further amendments to pleadings must disclose a reasonable cause of action. The Plaintiff's case is not salvageable with further amendments. As noted, the Plaintiff has a mirror case advancing to trial, so he will suffer minimal prejudice, if at all, to his access to justice.

E. *Conversion*

[48] In the CRTC's motion, it noted that "an objection to a decision, order, assessment, or action by the CRTC must be made by way of application for leave to appeal or application for judicial review to the Federal Court of Appeal." In Reply to the CRTC's motion, the Plaintiff stated that judicial review is the correct venue and asked this Court to convert his Fresh as Re-Amended Statement of Claim into an application for judicial review.

[49] Conversion is not available in the circumstances.

[50] Subsection 18.4(2) of the Act, does permit conversion of a judicial review into an action. However, this is not applicable to the circumstances here. Conversion of an action into an application may occur pursuant to Rule 57 of the Rules. It is clear that Rule 57 has previously been used to convert an action into an application: see *Sander Holdings Ltd v Canada (Minister of Agriculture)*, 2006 FC 327 at paragraph 27. Rule 57 states:

Wrong originating document

57 An originating document shall not be set aside only on the ground that a different originating document should have been used.

Non-annulation de l'acte introductif d'instance

57 La Cour n'annule pas un acte introductif d'instance au seul motif que l'instance aurait dû être introduite par un autre acte introductif d'instance.

[51] However, this power does not apply to applications which originate in the Federal Court of Appeal. Conversion pursuant to Rule 57 of the Rules does not cure the basis of claim against the CRTC and it is therefore unnecessary to consider whether conversion should occur. This Court is without jurisdiction to convert the claim into an application for judicial review at the Federal Court of Appeal.

[52] There is nothing further in the Plaintiff's submissions that could reasonably ground his arguments against the CBC and the CRTC. There is no legal foundation to his submissions.

IV. Conclusion

[53] Having found the Plaintiff's Claim and all previous claims should be struck in their entirety without leave to amend, I will grant the Defendants' motion for that relief.

V. Costs

[54] The CBC filed a bill of costs in the amount of \$3,073.60 based on the calculations in Tariff B, Column IV.

[55] The Attorney General sought costs in the amount of \$1,050.00 without disbursements.

[56] Considering the Plaintiff is self-represented and did concede some points when the legal challenges in his claim were pointed out to him, as well as his impecunious state, I will award lump sum costs (inclusive of fees and disbursements) against the Plaintiff in the amount of \$200.00 to the CBC and \$200.00 (inclusive of fees and disbursements) to the CRTC payable forthwith.

ORDER IN T-628-22

THIS COURT ORDERS that:

1. That all the Statements of Claim filed are struck without leave to amend;
2. Costs are ordered in the lump sum inclusive of fees and disbursements in the amount of \$200.00 to the CBC and in the amount of \$200.00 to the CRTC to be paid by the Plaintiff forthwith.

“Glennys L. McVeigh”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-628-22

STYLE OF CAUSE: ROMANA V CANADIAN RADIO-TELEVISION AND
TELECOMMUNICATIONS COMMISSION ET AL

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: AUGUST 15, 2022

ORDER AND REASONS: MCVEIGH J.

DATED: OCTOBER 25, 2022

APPEARANCES:

Haimana Romana	FOR THE PLAINTIFF, ON HER OWN BEHALF
Keith McCullough	FOR THE DEFENDANT, CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION
Ryann Atkins	FOR THE DEFENDANT, THE CANADIAN BROADCASTING CORPORATION

SOLICITORS OF RECORD:

STOCKWOODS LLP Barristers Toronto, Ontario	FOR THE DEFENDANT, THE CANADIAN BROADCASTING CORPORATION
Attorney General of Canada Winnipeg, Manitoba	FOR THE DEFENDANT, CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION