Federal Court  Cour fédérale

Date: 20240410

Docket: T-1978-18

Citation: 2024 FC 571

Ottawa, Ontario, April 10, 2024

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

JOHNSON APANGU AZIGA

Plaintiff

and

HIS MAJESTY THE KING AS REPRESENTED BY THE ATTORNEY GENERAL OF CANADA

Defendant

JUDGMENT AND REASONS

I. Overview

[1] The Defendant has brought a Motion pursuant to Rule 369 of the *Federal Courts Rules*, SOR/98-106 [*Rules*], seeking summary judgment pursuant to Rules 213 to 215 of the *Rules*, dismissal of the Plaintiff's claim, and costs in the nominal amount of $500.

[2] The self represented Plaintiff is a federal inmate currently incarcerated at the Bath Institution in Bath, Ontario. He issued the Statement of Claim on November 15, 2018, pleading the Respondent breached a number of his rights under the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [*Charter*] by placing him:

A. in administrative segregation for more than 15 days on two occasions – at Millhaven Assessment Unit (August 24, 2011 to December 30, 2011) and at Kingston Penitentiary (December 30, 2011 to January 30, 2012); and

B. in "hypothetical solitary administrative segregation" for "122 or more" days between January 30, 2013 to September 27, 2013.

[3] The Plaintiff seeks damages in the amount of $10,000,000 and a series of declarations affirming that several of his *Charter* rights were violated.

[4] In seeking summary judgment, the Defendant submits the two-year limitation period established in section 4 of the Ontario *Limitations Act, 2002*, SO 2002, c 24, Schedule B [*Limitations Act*] applies. The alleged events occurred between 2011 and 2013. The claim, commenced in 2018, is therefore barred and there is no genuine issue requiring trial.

[5] The Plaintiff argues that the administrative segregation provisions within the *Corrections and Conditional Release Act*, SC 1992, c 20, were not held to be unconstitutional until 2017 and 2018, citing *Canadian Civil Liberties Association v Canada*, 2019 ONCA 243 and *British Columbia Civil Liberties Association v Canada (Attorney General)*, 2018 BCSC 62, appeal

allowed on other grounds, 2019 BCCA 228. He submits that the rights violations alleged were not discovered until 2017 and 2018, and that his circumstances also prevented the commencement of the proceedings within the limitation period. He submits the motion should be dismissed.

[6] I have concluded that section 4 of the *Limitations Act* is applicable, that the Plaintiff has failed to rebut the presumption that the claim was discovered at the time of the alleged injury, that the action was commenced after the expiry of the two-year limitation period prescribed at section 4 of the *Limitations Act*, and that on this basis there is no genuine issue for trial. The motion for summary judgment is granted. My reasons follow.

II. Background

[7] The *Reddock*, *Brazeau* and *Gallone* class proceedings (*Reddock v Canada (Attorney General)*, 2019 ONSC 5053 and *Brazeau v Canada (Attorney General)*, 2019 ONSC 1888, both rev'd in part 2020 ONCA 184 [*Brazeau*]; *Gallone c Procureur général du Canada*, 2017 QCCS 2138 [*Gallone*]) are three separate class proceedings [collectively, the "*RBG* class proceedings"], all commenced prior to the Plaintiff having issued the claim in this action. Each of the proceedings challenged the use of administrative segregation in federal correctional institutions administered by the Correctional Service Canada [CSC] and alleged that administrative segregation breached the *Charter* rights of the individuals subjected to it.

[8] On April 23, 2019, this action was stayed pending final disposition of the *RBG* class proceedings on the basis that those proceedings are grounded in allegations falling within the

same factual circumstances as those alleged in the Plaintiff's individual claim (April 23, 2019 Order of Justice Peter Annis). The individual claims process resulting from the *RBG* class proceedings concluded in November 2022 and the stay of proceedings was then lifted pursuant to the Court's January 16, 2023 Order.

[9] The Respondent's submissions include a helpful summary of the eligibility requirements applicable to each of the three class proceedings:

> 13. In *Reddock v Canada (Attorney General)*, the class was defined to consist of all offenders in federal custody who were involuntarily subjected to prolonged (defined as more than 15 consecutive days) administrative segregation between November 1, 1992 onwards, and who were still alive on March 3, 2015. The class proceeding was certified on consent in a decision dated June 21, 2018. The Court applied a presumptive six-year limitation period to *Reddock* class members, resulting in a class period starting date of March 3, 2011.
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> 14. In *Brazeau v Canada (Attorney General)*, the class was defined to consist of offenders in federal custody between November 1, 1992 onwards who were placed in administrative segregation, were diagnosed with or suffered from serious mental illness, defined as "an Axis 1 Disorder (excluding substance use disorders) or Borderline Personality Disorder" and were still alive on July 20, 2013. The class proceeding was certified on consent by way of a decision dated December 14, 2016. Members of this class were excluded from the *Reddock* class. The Court applied a presumptive six-year limitation period to *Brazeau* class members, resulting in a class period starting date of July 20, 2009.
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> 15. *Gallone v Canada (Attorney General)* is a parallel class action brought by inmates in administrative segregation that proceeded in the Superior Court of Quebec.
>
> 16. The Individual Claims Period, during which class members could claim compensation, ran from September 7, 2021 to November 7, 2022. [Footnotes omitted; emphasis in original.]

III. Motions for summary judgment in the Federal Court

[10] Summary judgment in the Federal Court is governed by the provisions of Rules 213 to 215 of the *Rules*.

[11] The purpose of a summary judgment is to allow the Court to summarily dispense with cases which should not proceed to trial because there is no genuine issue to be tried.

[12] The values underlying the summary judgment process were identified by the Supreme Court of Canada [SCC] in *Hryniak v Mauldin*, 2014 SCC 7 [*Hryniak*] in the context of interpreting the Ontario *Rules of Civil Procedure*, RRO 1990, Reg 194. Although the SCC was not interpreting the *Rules*, the identified principles and goals of conserving judicial resources and improving access to justice while safeguarding the proper disposition of an action are of general application and underlie Rules 213 to 215 (*Hryniak* at para 35; see also *Manitoba v Canada*, 2015 FCA 57 at para 11).

[13] In *Milano Pizza Ltd v 6034799 Canada Inc*, 2018 FC 1112 at paragraphs 24-41 [*Milano Pizza*], Justice Anne Mactavish helpfully considered and reviewed Rules 213 to 215. Rule 215(1) provides that the Court shall grant summary judgment where "satisfied that there is no genuine issue for trial with respect to a claim or defence" (emphasis added) (*Milano Pizza* at para 111). In *Hryniak*, the SCC has described the circumstances where a Court may make such a determination:

> [49] There will be no genuine issue requiring a trial when the judge is able to reach a fair and just determination on the merits on

> a motion for summary judgment. This will be the case when the process (1) allows the judge to make the necessary findings of fact, (2) allows the judge to apply the law to the facts, and (3) is a proportionate, more expeditious and less expensive means to achieve a just result.

[14] The test on a motion for summary judgment is not whether a party cannot possibly succeed at trial; rather, it is whether the case is so doubtful that it does not deserve consideration by the trier of fact at a future trial (*Milano Pizza* at para 33, citing *Canada (Citizenship and Immigration) v Campbell*, 2014 FC 40 at para 14). The onus is on the party seeking summary judgment to establish the absence of a genuine issue for trial and that onus carries with it an evidentiary burden (*Collins v Canada*, 2015 FCA 281 at para 71).

[15] Rule 214 of the *Rules* requires the responding party to set out specific facts in their response to the motion and to adduce evidence showing that there is a genuine issue for trial (*CanMar Foods Ltd v TA Foods Ltd*, 2021 FCA 7 at para 27). The parties are required to put their best evidentiary foot forward and the Court is entitled to assume that no new evidence would be presented at trial (*Samson First Nation v Canada*, 2015 FC 836 at para 94, aff'd 2016 FCA 223 at paras 21, 24; *Kaska Dena Council v Canada*, 2018 FC 218 at para 23).

[16] Matters that engage serious issues of credibility should not be determined on a motion for summary judgment (*Milano Pizza* at para 37). However, this does not prevent the court from determining conflicts in the evidence on a summary judgment motion that do not engage questions of credibility (*Pelletier v Canada*, 2020 FC 1019 at para 68, citing *Granville Shipping Co v Pegasus Lines Ltd*, 1996 CanLII 4027 (FC)).

[17] It is also well settled that an expired limitation period is a basis for granting summary judgment (*Warner v Canada*, 2019 FC 329 at para 18, citing *Riva Stahl GmbH v Combined Atlantic Carriers GmbH*, [1999] FCJ No 762).

IV. Evidence

[18] On this motion, the Defendant relies on the Affidavit of Dylan Hart, a Department of Justice Paralegal assigned to the legal team handling the implementation of the *RBG* class proceedings.

[19] Mr. Hart affirms that *RBG* class members are or were inmates of penitentiaries operated by the CSC who had been placed in administrative segregation and met certain requirements. Class members were awarded judgment in the *RBG* class proceedings for aggregate damages arising from their placement in administrative segregation contrary to multiple sections of the *Charter*. The individual claims process opened in the *RBG* class actions on September 7, 2021 and the deadline to submit a claim expired on November 7, 2022.

[20] Mr. Hart further affirms that in the performance of his duties he has access to all information relating to federal inmates' administrative segregation placements.

[21] The Plaintiff, a federal offender, had experienced two placements in administrative segregation:

A. The period from August 24 to August 31, 2011 (eight (8) days) at Millhaven Institution; and

B. The period of December 30, 2011 to January 9, 2012 (eleven (11) days) at Kingston Penitentiary.

[22] Mr. Hart affirms that the Plaintiff did not submit a claim through the individual claims process before the November 7, 2022 claims deadline and that there is no type of segregation or practice called "hypothetical solitary administrative segregation" used within the CSC.

[23] The Plaintiff's responding motion record includes lengthy and repetitive written submissions and a series of numbered exhibits. Many of the numbered exhibits are referenced in the written submissions. Not all referenced exhibits are included in the motion record and it is not clear that all of the included exhibits have been referenced or cited in written submissions, the result being that the exhibits are neither identified nor described, the sequencing of the exhibits is not discernable, and much of the argument advanced in the written submissions lacks an evidentiary foundation. The Plaintiff's motion record does include an Affidavit as a marked exhibit (exhibit 359). The Affidavit states it was sworn in support of separate proceedings in the Ontario Court of Appeal seeking the admission of fresh evidence. It is not clear when the Affidavit was sworn. The Affidavit references this proceeding but is not directly responsive to the motion in either form or substance and is of little assistance.

V. Issue

[24] This Motion raises a single issue:

> Should the Court grant summary judgment and dismiss the claim because it is barred by the *Limitations Act* and as a result there is no genuine issue requiring trial?

VI. Analysis

A. *Applicable limitations period*

[25] Section 32 of the *Crown Liability and Proceedings Act*, RSC 1985, c C-50 [*CLPA*] is of application (*Brazeau* at paras 30-31), and states the following:

Provincial laws applicable	**Règles applicables**
32 Except as otherwise provided in this Act or in any other Act of Parliament, the laws relating to prescription and the limitation of actions in force in a province between subject and subject apply to any proceedings by or against the Crown in respect of any cause of action arising in that province, and proceedings by or against the Crown in respect of a cause of action arising otherwise than in a province shall be taken within six years after the cause of action arose.	**32** Sauf disposition contraire de la présente loi ou de toute autre loi fédérale, les règles de droit en matière de prescription qui, dans une province, régissent les rapports entre particuliers s'appliquent lors des poursuites auxquelles l'État est partie pour tout fait générateur survenu dans la province. Lorsque ce dernier survient ailleurs que dans une province, la procédure se prescrit par six ans.

[26] Section 32 of the *CLPA* provides that an action is subject to the provincial laws of the province in which the action arose relating to prescription and the limitation of actions. However, where a cause of action arises otherwise than in a province, proceedings shall be taken within six years after the cause of action arose. The term "otherwise than in a province" has been interpreted to include actions arising in more than one province or a combination of provinces (*Brazeau* at para 32).

[27] The *RBG* class proceedings were subject to the six-year limitation period as the causes of action in those matters arose in more than one province (*Brazeau* at paras 32-34).

[28] In this case, the Plaintiff alleges, and the evidence establishes, he was placed in administrative segregation in federal correctional institutions located in Ontario: Millhaven Institution and Kingston Penitentiary. The cause of action arises wholly in Ontario and therefore Ontario legislation, the *Limitations Act*, is of application.

B. *Is the claim statute barred?*

[29] Section 4 of the *Limitations Act* states that:

Basic limitation period	**Délai de prescription de base**
4 Unless this Act provides otherwise, a proceeding shall not be commenced in respect of a claim after the second anniversary of the day on which the claim was discovered.	**4** Sauf disposition contraire de la présente loi, aucune instance relative à une réclamation ne peut être introduite après le deuxième anniversaire du jour où sont découverts les faits qui ont donné naissance à la réclamation.

[30] Section 5 of the *Limitations Act* details when a claim is “discovered”, providing:

Discovery	**Découverte des faits**
5 (1) A claim is discovered on the earlier of,	**5** (1) Les faits qui ont donné naissance à la réclamation sont découverts celui des jours suivants qui est antérieur aux autres :

(a) the day on which the person with the claim first knew,

(i) that the injury, loss or damage had occurred,

(ii) that the injury, loss or damage was caused by or contributed to by an act or omission,

(iii) that the act or omission was that of the person against whom the claim is made, and

(iv) that, having regard to the nature of the injury, loss or damage, a proceeding would be an appropriate means to seek to remedy it; and

(b) the day on which a reasonable person with the abilities and in the circumstances of the person with the claim first ought to have known of the matters referred to in clause (a).

a) le jour où le titulaire du droit de réclamation a appris les faits suivants :

(i) les préjudices, les pertes ou les dommages sont survenus,

(ii) les préjudices, les pertes ou les dommages ont été causés entièrement ou en partie par un acte ou une omission,

(iii) l'acte ou l'omission est le fait de la personne contre laquelle est faite la réclamation,

(iv) étant donné la nature des préjudices, des pertes ou des dommages, l'introduction d'une instance serait un moyen approprié de tenter d'obtenir réparation;

b) le jour où toute personne raisonnable possédant les mêmes capacités et se trouvant dans la même situation que le titulaire du droit de réclamation aurait dû apprendre les faits visés à l'alinéa a).

Presumption

(2) A person with a claim shall be presumed to have known of the matters referred to in clause (1) (a) on the day the act or omission on which the claim is based took place, unless the contrary is proved.

Présomption

(2) À moins de preuve du contraire, le titulaire du droit de réclamation est présumé avoir appris les faits visés à l'alinéa (1) a) le jour où a eu lieu l'acte ou l'omission qui a donné naissance à la réclamation.

[31] Section 5(2) of the *Limitations Act* provides that, unless proven to the contrary, a person advancing a claim is presumed to have discovered that claim on the day the act or omission giving rise to the injury occurred.

[32] The second anniversary of the acts or omissions underlying the Plaintiff's causes of action significantly predates the issuance of the Statement of Claim on November 15, 2018. To be clear, this is so with respect to the two periods of administrative segregation and the period of "hypothetical solitary administrative segregation" the Plaintiff alleges he was subjected to between January 30, 2013 to September 27, 2013.

[33] The claim is therefore statute barred unless the Plaintiff has rebutted the presumption that the alleged dates of administrative segregation are the dates on which the claims were discovered.

[34] The Plaintiff argues that exceptional circumstances prevented him from initiating his claim within the limitation period or prevented the discovery of the claims. He cites the environment in Kingston Penitentiary; the lack of, or inadequate access to, legal and library services; the Defendant's failure to provide mandated orientation sessions upon placement in or transfer to a new institution between 2011 and 2018; the loss of legal material; and his physical and mental health as having prevented him from pursuing this claim. He further cites his involvement in other legal matters, matters that competed for the meagre resources available to him. He submits subtle forms of discrimination, prejudice, bias and stereotyping together with a fear of reprisals should he pursue a claim or otherwise assert his rights outside the inmate

complaint and grievance process prevented him from discovering and pursuing the claim. He also asserts that a February 2018 posting of legal notices by counsel representing the plaintiffs in the *RBG* class proceedings at Bath Institution caused him to discover that his rights had been violated.

[35] There is a dearth of evidence supporting the assertions made by the Plaintiff. The most compelling of the arguments advanced is the Plaintiff's assertion that it was the 2018 notice posted at Bath Institution relating to the class proceedings that allowed him to discover that administrative segregation amounted to a violation of rights and that a remedy could be sought. Paragraph four of the Plaintiff's submissions does make reference to the notices and suggests a link between accessing the notices and a realization by the Plaintiff of "wrongs done", triggering research to determine if a remedy could be sought. A letter dated January 19, 2018 is cited by the Plaintiff. However, the letter is not included as part of the motion record. I also note that among the exhibits included in the Plaintiff's responding record is an offender complaint initiated by the Plaintiff in October 2012. The complaint addresses segregation and hypothetical segregation (Plaintiff's Responding Motion Record at pages 139-159, marked as Exhibit #392) suggesting the Plaintiff's claims were discoverable at the relevant times in 2011, 2012 and 2013.

[36] The evidence simply is not sufficient to rebut the presumption that the Plaintiff discovered the claim at the time he was subject to administrative segregation in 2011 and 2012, and "hypothetical solitary administrative segregation" in 2013.

VII. Costs

[37] The Defendant seeks costs in the nominal amount of $500. I am satisfied that a nominal costs award is warranted. However, having taken into account the Plaintiff's circumstances, I am of the view that a nominal award of $250 is appropriate.

VIII. Conclusion

[38] In concluding, I note the Plaintiff's submissions address the following: (1) the Defendant's view that the alleged period of "hypothetical solitary administrative segregation" cannot give rise to a cause of action against the CSC, and (2) the issue of mitigation. In determining the motion, it has not been necessary to consider or determine either of these issues, and I have not.

[39] The Plaintiff's claims are barred by operation of section 32 of the *CLPA* and section 4 of the *Limitations Act*. The Statement of Claim therefore discloses no genuine issue for trial. A summary judgment is granted.

JUDGMENT in T-1978-18

THIS COURT'S JUDGMENT is that:

1. The motion for summary judgment is granted.

2. The Plaintiff's action is dismissed in its entirety.

3. The Defendant shall have costs in the all inclusive amount of $250.

"Patrick Gleeson"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1978-18
STYLE OF CAUSE:	JOHNSON APANGU AZIGA v HIS MAJESTY THE KING AS REPRESENTED BY THE ATTORNEY GENERAL OF CANADA

MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO, PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES*

JUDGMENT AND REASONS:	GLEESON J.
DATED:	APRIL 10, 2024

WRITTEN REPRESENTATIONS BY:

Johnson Apangu Aziga	FOR THE PLAINTIFF (ON HIS OWN BEHALF)
Monisha Ambwani	FOR THE DEFENDANT

SOLICITORS OF RECORD:

Attorney General of Canada Toronto, Ontario	FOR THE DEFENDANT