

Federal Court



Cour fédérale

Date: 20141119

Docket: T-1951-13

Citation: 2014 FC 1090

Ottawa, Ontario, November 19, 2014

PRESENT: The Honourable Mr. Justice O'Keefe

BETWEEN:

LORENCE WILLIAM HUD

Plaintiff

and

ATTORNEY GENERAL OF CANADA

Defendant

REASONS FOR JUDGMENT AND JUDGMENT

[1] A Prothonotary struck out the plaintiff's statement of claim without leave to amend. The plaintiff now appeals for an order reversing that decision pursuant to subsection 51(1) of the *Federal Courts Rules*, SOR/98-106 [the Rules].

I. Background

[2] In 2010, a drainage referee prohibited Lorence Hud (the plaintiff) from interfering with the municipality of West Nipissing's attempts to repair a culvert on his property (see *West Nipissing v Hud* (27 August 2010), North Bay CV-10-4914 (ONSC)). This led to an assessment of costs against the plaintiff's property, but the plaintiff's attempts to challenge these matters in Ontario's Divisional Court and Superior Court of Justice mostly failed (see *West Nipissing v Hud*, 2011 ONSC 2095; *Hud v West Nipissing*, 2011 ONSC 6294, 90 MPLR (4th) 336).

[3] The statement of claim in this action largely focuses on events that happened afterwards. It alleges that the plaintiff tried to convince the Prime Minister of Canada and the Minister of Justice to intervene and quash what he calls the illegal courts, but both politicians refused to meet with him despite a written request from his representative Member of Parliament.

[4] Following this, he submits that the government then added to his property tax bill "Illegal Bills from that Illegal Canadian Court." As well, the Prime Minister's Office allegedly directed the Canadian Revenue Agency (CRA) to intimidate the plaintiff into abandoning his pursuit of justice by threatening to review his income tax return. The plaintiff also blames the Prime Minister for phone calls that he started receiving around the same time.

[5] The plaintiff claims that these actions violated his constitutional rights; negatively affected his mother's health; prevented him from receiving an award from the Society of Composers, Authors and Music Publishers of Canada and extinguished his desire to write music.

[6] He therefore asks this Court for relief that does the following seven things: (1) requires the defendant to stop government officials from harassing, threatening, intimidating and discriminating against him; (2) requires the defendant to quash the Ontario Courts' decisions against him; (3) constitutionally exempts him from Ontario's *Drainage Act*, RSO 1990, c D 17; (4) requires the defendant to stop government officials from demanding payment for the plaintiff's bills from the Court and his property taxes; (5) gives him \$28,000,000 in damages for defamation, torment, pain and suffering; (6) gives interest on that amount according to Ontario's *Courts of Justice Act*, RSO 1990, c C 43, sections 127 to 130; and (7) allows him his costs.

[7] Pursuant to subsection 221(1) of the Rules, the defendant moved for an order striking out the statement of claim without leave to amend.

II. Decision Under Appeal

[8] On February 10, 2014, the Prothonotary allowed the defendant's motion. After deciding that no oral hearing was necessary, she found the statement of claim was rambling, vague and often incoherent. Still, she identified the basic claims and held that none showed a cause of action for the following reasons:

1. The Federal Court has no power to set aside decisions of any of Ontario's courts and neither does the Prime Minister or the Justice Minister.
2. No elected official has any duty to meet with a citizen upon request.
3. Although the Federal Crown can be vicariously liable for torts committed by its servants or agents, the statement of claim was deficient of all material facts in that regard. Specifically, it did not give enough information to identify the persons

responsible for the alleged acts for which the Crown was vicariously liable.

Neither were the allegations of fraud or breach of trust sufficiently described.

Devoid of these details, the Prothonotary decided that the statement of claim was frivolous and vexatious.

[9] Consequently, the Prothonotary allowed the defendant's motion and awarded it costs of \$200.

III. Issues

[10] This case raises the following issues:

- A. What is the standard of review?
- B. Did the Prothonotary act unfairly?
- C. Does the statement of claim disclose a cause of action?
- D. Should costs be awarded?

IV. Plaintiff's Written Submissions

[11] The plaintiff is upset that the Prothonotary purportedly struck out his Charter rights arguments. He claims in his notice of motion that the Prothonotary illegitimately refused him an oral hearing and also offered no opportunity to respond to two exhibits the Crown filed after his last submissions were received. He argues that Ontario's courts have ignored him and prevented him from speaking in his own defence and he says that has to stop now that he has approached the "higher" courts.

[12] The plaintiff then attacks the original injunction by the drainage referee, saying it should not have been permanent since the work being conducted was only for one day. In his view, that incident morphed into an all-out war against him directed by the highest levels of government and the defendant's attempts to gloss over the whole culvert incident are proof of its complicity. He argues that the Prothonotary must have been biased since she ignored these facts entirely. He then compares the defendant's arguments to an "amateurish pseudo-legal juggling act" full of red herrings and he begs this Court not to be fooled.

V. Defendant's Written Submissions

[13] The defendant admits that the Court owes no deference to the Prothonotary's decision, but that it should be upheld because she was right. Specifically, statements of claim should be struck out if it is plain and obvious that the action cannot succeed and the defendant says that test has been met.

[14] The defendant points out that the Federal Court's jurisdiction is limited and it does not extend to most of what the plaintiff alleges. Indeed, orders of a drainage referee in Ontario can only be appealed to the Divisional Court of that province and any further appeal would go to Ontario's Court of Appeal. Nothing in the *Drainage Act* gives any role to the Federal Court whatsoever, so neither the claim for reversing that order nor for a constitutional exemption from that Act has any jurisdictional foundation. The defendant says the same is true of the Prime Minister and the Minister of Justice.

[15] Similarly, the defendant says that the provinces are constitutionally responsible for property taxes and nothing in any of Ontario's legislation regarding that gives any jurisdiction to the Federal Court.

[16] As such, the only claim remaining is the one for \$28,000,000 in damages for "Defamation, Torment, Pain and Suffering". For this, the defendant says that the Prothonotary was right to observe that it is not supported by any material facts. Indeed, entirely absent from the statement of claim are any details about any of the events alleged, such as time, date, location, the identities of any individuals responsible or what duties were breached.

[17] Indeed, the defendant says that "torment" is no known cause of action at all and for defamation, the actual words alleged to be defamatory must be pleaded. Moreover, neither the Prime Minister nor the Minister of Justice had any duty to meet with the plaintiff, so refusing to do so cannot create a cause of action. Beyond that, letters from the CRA about the plaintiff's taxes are completely irrelevant to the actions alleged.

[18] Finally, the defendant notes that the exhibits A and B about which the plaintiff complains were just FedEx receipts showing that the plaintiff was served with the notice of the motion to strike. They were purely procedural and had no bearing on the merits of the motion.

[19] The defendant asks for costs.

VI. Analysis and Decision

A. *Issue 1 - What is the standard of review?*

[20] A Prothonotary's order should not be disturbed unless: (a) the question raised in the motion is vital to the case; or (b) the order is clearly wrong (see *Sanofi-Aventis Canada Inc v Teva Canada Ltd*, 2014 FCA 65 at paragraph 10, [2014] FCJ No 254; *ZI Pompey Industrie v ECU-Line NV*, 2003 SCC 27 at paragraph 18, [2003] 1 SCR 450). Here, the order entirely defeated the plaintiff's case, so the question in the motion is certainly vital to the final issues of the case. As such, I will not defer to the Prothonotary's conclusions and I will review the matter *de novo*.

B. *Issue 2 - Did the Prothonotary act unfairly?*

[21] The plaintiff submits that the Prothonotary denied him both an oral hearing and an opportunity to respond to an affidavit filed by the defendant. Whatever the merits of those complaints, they are irrelevant. The plaintiff had an oral hearing this time and an opportunity to challenge those exhibits. Since no deference is owed to the Prothonotary, any unfairness at that time is cured by the procedure followed now.

C. *Issue 3 - Does the statement of claim disclose a cause of action?*

[22] Subsection 221(1) of the Rules allows the Court to strike out pleadings for a number of reasons. Most relevant among them, a statement of claim can be struck out for failing to disclose

a reasonable cause of action (Rule 221(1)(a)) or for being scandalous, frivolous, or vexatious (Rule 221(1)(c)).

[23] For the first, a statement of claim discloses a reasonable cause of action so long as it is not plain and obvious that the action will fail. When considering this, all facts pleaded that could possibly be proven must be assumed to be true (see *R v Imperial Tobacco Canada Ltd*, 2011 SCC 42 at paragraphs 17 and 22, [2011] 3 SCR 45 [*Imperial Tobacco*]; *Canada v O'Dwyer*, 2013 FCA 200 at paragraph 7, 449 NR 285).

[24] For the second, a statement of claim can be vexatious or frivolous if it is so factually deficient that the defendant cannot know how to answer and the Court would be unable to manage the proceedings (see *Simon v Canada*, 2011 FCA 6 at paragraph 9, 410 NR 374 [*Simon*]; *Kisikawpimootewin v Canada*, 2004 FC 1426 at paragraph 8, [2004] FCJ No 1709).

[25] In this case, the Prothonotary found that striking out the statement of claim is justified on either ground and I agree.

[26] To begin, the plaintiff attached a number of documents to his statement of claim and also filed an affidavit supporting his appeal. Pursuant to Rules 174 and 221(2), these documents cannot be considered when assessing the statement of claim. Even if the statement of claim was not otherwise deficient, all the exhibits must be struck. With respect to the tape recordings relied upon by the plaintiff, these would not be admissible as they do not appear to be part of the record that was before the Prothonotary.

[27] Most of the materials filed by the plaintiff indicate a fundamental misunderstanding of the courts of this country. First, he repeatedly refers to Ontario's Superior Court of Justice as an illegal court, but it is not. Rather, it has constitutional status ensured by section 96 of the *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, reprinted in RSC 1985, App II, No 5 [the *Constitution*].

[28] Generally, what the plaintiff appears to mean is that the orders against him were issued illegally because he did not have notice of the initial proceeding. However, even if the order should not have been issued, that does not make the court itself illegal.

[29] Further, the plaintiff's belief that the Federal Court is "higher" than Ontario's courts and could review their orders is wrong. Rather, the Federal Court is technically an inferior court created by Parliament pursuant to section 101 of the *Constitution*. This means that it has no power to do anything unless it is lawfully granted that power by Parliament (see *ITO-Int'l Terminal Operators v Miida Electronics*, [1986] 1 SCR 752, 28 DLR (4th) 641). Here, Parliament has enacted no statute that purports to allow the Federal Court to review orders of Ontario's Court of the Drainage Referee, Divisional Court or Superior Court of Justice and it would likely be unconstitutional if it had. For the same reasons, this Court cannot entertain any challenge to the constitutionality of the *Drainage Act* or to the plaintiff's property tax.

[30] Further, the plaintiff's belief that the Prime Minister or the federal Minister of Justice has any power to overturn those courts' decisions is unfounded. The courts of this country are

independent and the executive branch of government cannot simply reverse a judge's decision with which it disagrees.

[31] The plaintiff also claims that the Prime Minister and the Minister of Justice refused to meet with him. While this could potentially be the subject of judicial review in this Court if either had any duty to meet with the plaintiff, it is plain and obvious that neither did. Further, his claim that this breaches his right to "equal representation" under section 3 of 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]*, is completely unjustified. Section 3 only grants rights to vote and to qualify for membership in legislative bodies. The Prothonotary rightly dismissed this claim.

[32] Indeed, all of the plaintiff's claims that his *Charter* rights have been breached are bare assertions or based on claims that cannot be adjudicated by this Court. None have any merit.

[33] As such, the only claims remaining are those for torts allegedly committed by agents working for the Prime Minister. These are claims over which this Court could conceivably have jurisdiction (see *Federal Courts Act*, RSC 1985, c F-7, subsection 17(1), paragraph 17(2)(d); *Crown Liability and Proceedings Act*, RSC 1985, c C-50, paragraph 3(b)(i)).

[34] In this regard, the statement of claim is too confusing to identify with any certainty what torts are being alleged, but as I see it the plaintiff claims three:

1. The injunction against him is defamatory and prevented him from receiving an award;
2. The Prime Minister's Office has directed agents to harass the plaintiff by making phone calls; and
3. The Prime Minister's Office has directed the CRA to intimidate him by demanding payment of taxes and threatening to review his tax returns.

[35] I agree with the defendant that the facts necessary to sustain these allegations have not been pleaded.

[36] Even assuming that a Court order could ever be defamatory (which is doubtful), the federal government is in no way responsible for publishing the injunction and so would not be liable for it. Beyond that, the plaintiff failed to identify any published statement by the defendant that could be considered defamatory (see *Grant v Torstar Corp*, 2009 SCC 61 at paragraph 28, [2009] 3 SCR 640). As such, the statement of claim cannot support that allegation (see *Djukic v Canada (Attorney General)*, 2001 FCT 714 at paragraph 9, [2001] FCJ No 1037).

[37] As for the ominous phone calls, it is unclear whether there even exists a tort of harassment in Canadian law (see *Brazeau v Canada (Attorney General)*, 2012 FC 648 at paragraph 54, [2012] FCJ No 1489). That said, its novelty should not alone defeat it.

[38] However, the Prothonotary dismissed both the second and third allegations on the basis that Rule 174 requires that all material facts be pleaded. For allegations of vicarious liability, this

should include enough information to identify the specific servant responsible. While this does not have to be by name, the pleading must give at least enough information that the defendant could adequately investigate (see *Merchant Law Group v Canada (Revenue Agency)*, 2010 FCA 184 at paragraph 38, 321 DLR (4th) 301). I agree with the Prothonotary that simply assigning responsibility to the Prime Minister's Office or to the CRA is not nearly specific enough. The statement of claim is therefore deficient and violates Rules 174 and 181.

[39] Finally, I agree with the Prothonotary's decision to deny the plaintiff leave to amend his statement of claim. Rule 221(1) authorizes this whenever no amendment could cure the defects in the statement of claim (see *Simon* at paragraph 8). That is the case here. The plaintiff only suspects the Prime Minister's Office because the phone calls and the CRA's letter started happening after he sent a letter threatening to sue the Prime Minister if he did not meet with him within 30 days. That is a completely unreasonable speculation and it is clear that the plaintiff would not know who to identify even if given leave to amend his statement of claim. As such, the Prothonotary was right not to allow him that opportunity.

[40] Because of my findings above, the plaintiff's appeal (motion) must be dismissed. The Prothonotary's order was correct and I would come to the same conclusions.

D. *Issue 4 - Should costs be awarded?*

[41] The defendant asked for costs in an amount fixed by the Court pursuant to Rule 400(1). As well, the defendant relies on Rule 400(3)(k)(i), which suggests that I consider whether any step in the proceeding was improper, vexatious or unnecessary.

[42] Although the statement of claim likely vexed the defendant, I believe the plaintiff actually believes that he has been aggrieved. I do not believe that the plaintiff has a desire to abuse the processes of this Court. As such, I would not enhance the costs award against him.

[43] Further, the defendant used the arguments it made before the Prothonotary in its brief. For that work, it has already received its costs from the Prothonotary. Still, the defendant did need to prepare for and attend a hearing in this Court. In light of that, I am of the view that an award of \$300 would be appropriate.

[44] I would therefore dismiss the appeal (motion) and award the defendant its costs in the amount of \$300.

JUDGMENT

THIS COURT'S JUDGMENT is that the plaintiff's appeal is dismissed with costs in the amount of \$300 to the defendant.

"John A. O'Keefe"

Judge

ANNEXRelevant Provisions***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***

2. Everyone has the following fundamental freedoms:	2. Chacun a les libertés fondamentales suivantes :
...	...
(d) freedom of association.	d) liberté d'association.
...	...
3. Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein.	3. Tout citoyen canadien a le droit de vote et est éligible aux élections législatives fédérales ou provinciales.
...	...
7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.	7. Chacun a droit à la vie, à la liberté et à la sécurité de sa personne; il ne peut être porté atteinte à ce droit qu'en conformité avec les principes de justice fondamentale.
8. Everyone has the right to be secure against unreasonable search or seizure.	8. Chacun a droit à la protection contre les fouilles, les perquisitions ou les saisies abusives.
...	...
11. Any person charged with an offence has the right	11. Tout inculpé a le droit :
...	...
(d) to be presumed innocent until proven guilty according to law in a fair and public	d) d'être présumé innocent tant qu'il n'est pas déclaré coupable, conformément à la

hearing by an independent and impartial tribunal;

loi, par un tribunal indépendant et impartial à l'issue d'un procès public et équitable;

Constitution Act, 1867(UK), 30 and 31 Vict, c 3, reprinted in RSC 1985, App II, No 5

96. The Governor General shall appoint the Judges of the Superior, District, and County Courts in each Province, except those of the Courts of Probate in Nova Scotia and New Brunswick.

96. Le gouverneur-général nommera les juges des cours supérieures, de district et de comté dans chaque province, sauf ceux des cours de vérification dans la Nouvelle-Écosse et le Nouveau-Brunswick.

...

...

101. The Parliament of Canada may, notwithstanding anything in this Act, from Time to Time provide for the Constitution, Maintenance, and Organization of a General Court of Appeal for Canada, and for the Establishment of any additional Courts for the better Administration of the Laws of Canada.

101. Le parlement du Canada pourra, nonobstant toute disposition contraire énoncée dans la présente loi, lorsque l'occasion le requerra, adopter des mesures à l'effet de créer, maintenir et organiser une cour générale d'appel pour le Canada, et établir des tribunaux additionnels pour la meilleure administration des lois du Canada.

Crown Liability and Proceedings Act, RSC 1985, c C-50

3. The Crown is liable for the damages for which, if it were a person, it would be liable

3. En matière de responsabilité, l'État est assimilé à une personne pour :

...

...

(b) in any other province, in respect of

b) dans les autres provinces :

(i) a tort committed by a servant of the Crown, or

(i) les délits civils commis par ses préposés,

(ii) a breach of duty attaching to the ownership, occupation, possession or control of

(ii) les manquements aux obligations liées à la propriété, à l'occupation, à la possession

property.

ou à la garde de biens.

...

...

10. No proceedings lie against the Crown by virtue of subparagraph 3(a)(i) or (b)(i) in respect of any act or omission of a servant of the Crown unless the act or omission would, apart from the provisions of this Act, have given rise to a cause of action for liability against that servant or the servant's personal representative or succession.

10. L'État ne peut être poursuivi, sur le fondement des sous-alinéas 3a)(i) ou b)(i), pour les actes ou omissions de ses préposés que lorsqu'il y a lieu en l'occurrence, compte non tenu de la présente loi, à une action en responsabilité contre leur auteur, ses représentants personnels ou sa succession.

Federal Courts Act, RSC 1985, c F-7

17. (1) Except as otherwise provided in this Act or any other Act of Parliament, the Federal Court has concurrent original jurisdiction in all cases in which relief is claimed against the Crown.

17. (1) Sauf disposition contraire de la présente loi ou de toute autre loi fédérale, la Cour fédérale a compétence concurrente, en première instance, dans les cas de demande de réparation contre la Couronne.

(2) Without restricting the generality of subsection (1), the Federal Court has concurrent original jurisdiction, except as otherwise provided, in all cases in which

(2) Elle a notamment compétence concurrente en première instance, sauf disposition contraire, dans les cas de demande motivés par :

...

...

(d) the claim is for damages under the *Crown Liability and Proceedings Act*.

d) une demande en dommages-intérêts formée au titre de la *Loi sur la responsabilité civile de l'État et le contentieux administratif*.

Federal Courts Rules, SOR/98-106

51. (1) An order of a prothonotary may be appealed

51. (1) L'ordonnance du protonotaire peut être portée en

by a motion to a judge of the Federal Court.

appel par voie de requête présentée à un juge de la Cour fédérale.

...

...

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.

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.

...

...

181. (1) A pleading shall contain particulars of every allegation contained therein, including

181. (1) L'acte de procédure contient des précisions sur chaque allégation, notamment :

(a) particulars of any alleged misrepresentation, fraud, breach of trust, wilful default or undue influence; and

a) des précisions sur les fausses déclarations, fraudes, abus de confiance, manquements délibérés ou influences indues reprochés;

(b) particulars of any alleged state of mind of a person, including any alleged mental disorder or disability, malice or fraudulent intention.

b) des précisions sur toute allégation portant sur l'état mental d'une personne, tel un déséquilibre mental, une incapacité mentale ou une intention malicieuse ou frauduleuse.

...

...

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.

(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).

...

...

400. (1) The Court shall have full discretionary power over the amount and allocation of costs and the determination of by whom they are to be paid. 400. (1) La Cour a le pouvoir discrétionnaire de déterminer le montant des dépens, de les répartir et de désigner les personnes qui doivent les payer.

(2) Costs may be awarded to or against the Crown. (2) Les dépens peuvent être adjugés à la Couronne ou contre elle.

(3) In exercising its discretion under subsection (1), the Court may consider (3) Dans l'exercice de son pouvoir discrétionnaire en application du paragraphe (1), la Cour peut tenir compte de l'un ou l'autre des facteurs suivants :

...

...

(k) whether any step in the proceeding was

k) la question de savoir si une mesure prise au cours de l'instance, selon le cas :

(i) improper, vexatious or unnecessary, or

(i) était inappropriée, vexatoire ou inutile,

(ii) taken through negligence, mistake or excessive caution;

(ii) a été entreprise de manière négligente, par erreur ou avec trop de circonspection;

...

...

401. (1) The Court may award costs of a motion in an amount fixed by the Court.

401. (1) La Cour peut adjuger les dépens afférents à une requête selon le montant qu'elle fixe.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1951-13

STYLE OF CAUSE: LORENCE WILLIAM HUD v
ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: MAY 20, 2014

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'KEEFE J.

DATED: NOVEMBER 19, 2014

APPEARANCES:

Lorence William Hud

FOR THE PLAINTIFF
SELF-REPRESENTED

Kirk Shannon

FOR THE DEFENDANT

SOLICITORS OF RECORD:

Lorence William Hud
North Bay, Ontario

FOR THE PLAINTIFF
SELF-REPRESENTED

William F. Pentney
Deputy Attorney General of
Canada
Ottawa, Ontario

FOR THE DEFENDANT