

Federal Court



Cour fédérale

Date: 20161122

Docket: T-1520-16

Citation: 2016 FC 1291

Ottawa, Ontario, November 22, 2016

PRESENT: Madam Prothonotary Mireille Tabib

BETWEEN:

**PETTY OFFICER 2ND CLASS DAVID G. MAXIM
(MR. DAVID G. MAXIM)
SERVICE NO. D59 209 575
INTELLIGENCE OPERATOR
INTELLIGENCE BRANCH MEMBERSHIP NO. 414
CANADIAN ARMED FORCES**

Plaintiff

and

**THE CANADIAN ARMED FORCES;
THE DEPARTMENT OF NATIONAL DEFENCE
(DND) WITH ELECTED AND FORMERLY
ELECTED OFFICIALS: INCLUDING DND
CIVILIANS, THE DND OMBUDSMAN AND:
CURRENT AND FORMER MINISTERS (MND) OF
DEFENCE);
THE CANADIAN HUMAN RIGHTS COMMISSION
(CHRC);
THE COMMUNICATIONS SECURITY
ESTABLISHMENT (CSE) AND THE US NATIONAL
SECURITY AGENCY (NSA) AND THE CSE
OVERSIGHT, THE OFFICE OF THE
COMMISSIONER OF CSE;
THE OTTAWA POLICE SERVICE (OPS) AND CITY
OF OTTAWA, THE ONTARIO PROVINCIAL
POLICE (OPP);
THE OTTAWA HOSPITAL WITH THE OTTAWA**

**HOSPITAL MOBILE CRISIS TEAM-UNIT;
THE MILITARY POLICE COMPLAINTS
COMMISSION AND; CURRENT AND FORMER
MINISTER(S) OF JUSTICE (MOJ); THE PRE-
OCTOBER 2015 FEDERAL ELECTION
PARLIAMENT AND SENATE AND THE POST-2015
PARLIAMENT AND SENATE OF CANADA**

Defendants

ORDER AND REASONS

[1] The Court is seized of four motions, brought by Her Majesty the Queen, on behalf of the Defendants named as the Canadian Armed Forces, the Department of National Defence, the Communications Security Establishment, the current and former Minister(s) of Defence and the current and former Minister(s) of Justice, by the Human Rights Commission, by the Military Police Complaints Commission and by the City of Ottawa on behalf of the Defendants named as the Ottawa Police Service, the City of Ottawa and the individually named constables of the Ottawa Police Service.

[2] All motions seek to strike the Plaintiff's Statement of Claim, in whole or in part, as concerns the particular Defendants on behalf of which they are brought.

[3] The Plaintiff has submitted for filing documents that purport to respond to each of the four motions. None of the documents were accompanied by proof of their service on the Defendants and none of these documents could properly be filed. I have briefly reviewed the submissions contained in these documents to ascertain whether they appeared to contain

submissions that might be of assistance to the Court in determining the motions, or submissions that that might help salvage any part of the Statement of Claim. Had I found any merit to the proposed submissions, I might have allowed the Plaintiff a chance to serve same on the Defendants and to file them in response to the motion. I found no apparent merit to the proposed submissions in response, and have accordingly not allowed them to be filed.

[4] The Statement of Claim is 36 pages long, written single-spaced. It broadly asserts that the Plaintiff was wrongfully dismissed from the Canadian Armed Forces for being a Christian and seeks a wide range of remedies, from reinstatement of the Plaintiff in the Canadian Armed Forces to monetary damages, as well as orders that the Plaintiff be exonerated from defamatory allegations, that certain documents be destroyed and that disciplinary hearings be convened, amongst many others. The Statement of Claim itself explains that it is taken against such a multiplicity of defendants for such a multiplicity of remedies because they “were and are involved in the production exchange of false information, libel, and defamatory libel with the DND-CAF who are federal, all directly related to the Claim of Wrongful Dismissal from the CAF for being a Christian. They are all connected and related.”

[5] The Statement of Claim sets out “facts” that are allegedly already established or proven, lists of “applicable laws, rules, regulations, policies”, and rambling arguments combining these “facts”, references to similar or confirmatory incidents, reference to evidence that allegedly exists in the Plaintiff’s or the Defendants’ possession, and broad conclusions that should be derived from these. However, the “facts” alleged to have been proven or established are not simple allegations of basic material facts, such as the date on which the Plaintiff might have

joined the Canadian Forces, the date on which he was discharged, or the date on which a particular statement was made, by whom and in what way, but broad conclusions such as “[the Plaintiff] was illegally and wrongfully dismissed from the Canadian Armed Forces (CAF) For Being a Born Again Christian”.

[6] The Plaintiff appears to proceed from the belief that because the Defendants allegedly “have [his] case and situation in their databases and in or in paper copies, both. That the Defendants have the majority of the same evidence that proves [his] case and will be presented to Court as an established fact”, the Statement of Claim does not have to set out the detailed particularized facts upon which the cause of action might be founded. The Plaintiff’s belief is ill-founded.

[7] The *Federal Courts Rules* require a Statement of Claim to state, in a succinct manner, every material fact necessary to establish the cause of action, not merely broad conclusions, and not the evidence by which the facts are to be proven. A Statement of Claim that fails to contain the required material facts makes it impossible for the defendants to answer the claim or for the Court to regulate the proceedings. Such statements of claim are vexatious and an abuse of process and are to be struck (see for example *Baird v Canada*, 2006 FC 205 and *Mountain Prison (Inmates) v Canada*, (1998) 146 FTR 265).

[8] For that reason alone, the Statement of Claim should be struck without leave to amend.

[9] I note, in addition, that the Statement of Claim on its face seeks relief that is not available in an action: orders, including injunctions, mandamus or declaratory relief against federal boards, commissions or other tribunals. It also seeks to implead provincial or municipal authorities who are not subject to the jurisdiction of the Court, and entities that are not juridical entities capable of being sued, such as the Military Police Complaints Commission. Even if there were, amongst the vast scope of the Statement of Claim, specific factual circumstances that might conceivably, if properly particularized, give rise to a recognizable cause of action over which the Federal Court has jurisdiction, the Statement of Claim is inextricably directed against so many clearly improper defendants and seeks so many obviously unavailable remedies that it is impossible to amend it so as to yield a manageable, recognizable claim.

[10] The Statement of Claim, as a whole, must be struck without leave to amend.

[11] Costs were sought by, and will be granted in favour of, the Defendants in all motions except the Military Police Complaints Commission, who did not seek its costs.

ORDER

THIS COURT ORDERS that:

1. The Statement of Claim is hereby struck, in its entirety, without leave to amend.
2. Costs shall be paid by the Plaintiff as follows:
 - a) to the Human Rights Commission, in the amount of \$500;
 - b) to the Ottawa Police Service and the City of Ottawa, in the amount of \$500
 - c) to Her Majesty the Queen, in the amount of \$500.

"Mireille Tabib"

Prothonotary

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1520-16

STYLE OF CAUSE: PETTY OFFICER 2ND CLASS DAVID G. MAXIM
(MR. DAVID G. MAXIM) SERVICE NO. D59 209 575
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THE DND OMBUDSMAN AND; CURRENT AND
FORMER MINISTERS (MND) OF DEFENCE ET AL

ORDER AND REASONS: TABIB P.

DATED: NOVEMBER 22, 2016

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

WRITTEN REPRESENTATIONS BY:

Mr. David G. Maxim FOR THE PLAINTIFF

Ms. Heather Burnett FOR THE DEFENDANT
ONTARIO PROVINCIAL POLICE

Ms. Sarah Jiwan FOR THE DEFENDANT
DEPARTMENT OF JUSTICE CANADA

Mr. Jeremy Wright FOR THE DEFENDANT
CITY OF OTTAWA

Mr. David Goetz FOR THE DEFENDANT
MILITARY POLICE COMPLAINTS COMMISSION

Mr. Daniel Poulin FOR THE DEFENDANT
CANADIAN HUMAN RIGHTS COMMISSION

SOLICITORS OF RECORD:

Mr. David G. Maxim
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FOR THE PLAINTIFF

Attorney General for Ontario
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FOR THE DEFENDANT
ATTORNEY GENERAL FOR ONTARIO

William F. Pentney
Deputy Attorney General of
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Ottawa, Ontario

FOR THE DEFENDANT
HER MAJESTY THE QUEEN

City of Ottawa
Legal Department
Ottawa, Ontario

FOR THE DEFENDANT
CITY OF OTTAWA

Military Police Complaints
Commission
Ottawa, Ontario

FOR THE DEFENDANT
MILITARY POLICE COMPLAINTS COMMISSION

Canadian Human Rights
Commission
Legal Services Division
Human Rights Protection
Ottawa, Ontario

FOR THE DEFENDANT
CANADIAN HUMAN RIGHTS COMMISSION