Federal Court  Cour fédérale

Date: 20170621

Docket: T-120-17

Citation: 2017 FC 613

Ottawa, Ontario, June 21, 2017

PRESENT: The Honourable Mr. Justice Boswell

BETWEEN:

DAVID ROBINSON

Plaintiff

and

PARKS CANADA AGENCY

Defendant

ORDER AND REASONS

[1] The Plaintiff, David Robinson, is a former federal public servant who claims he was terminated without cause by the Defendant, Parks Canada Agency. In his Statement of Claim filed on January 24, 2017, he claims, among other things:

a. Retroactive increase to his salary from November 2014 to the date of his retirement, based on an ENG-06 position, with associated increases in his pension;

b. Damages equivalent to 24 months' salary;

c. Loss of future earning capacity/diminished future earning capacity;

d. Damages for tortious interference with an employment contract;

e. Damages for negligent misrepresentation;

f. General Damages in the amount of $50,000;

g. Damages for the loss of 8 years of bilingual bonus; and

h. Aggravated and Punitive Damages.

[2] Parks Canada has filed a motion seeking an Order striking out Mr. Robinson's Statement of Claim in its entirety, without leave to amend, and dismissing his action pursuant to Rule 221 of the *Federal Courts Rules*, SOR/98-106, for want of jurisdiction and on the basis that the Claim is an abuse of this Court's process.

I. Background

[3] Mr. Robinson commenced employment as a federal public servant on July 4, 1986, and with Parks Canada on July 3, 2007 in a senior management position. As a manager, he was an excluded employee without representation from a union. The terms and conditions of his employment were governed by verbal and written agreements, policy, and statute and regulations, including the *Public Service Labour Relations Act*, SC 2003, c 22, s 22 [*PSLRA*], and the *Parks Canada Agency Act*, SC 1998, c 31 [*PCAA*]. French language training was a condition of his employment and he undertook training between February and December 2008. However, the Agency called him back from language training prematurely for work purposes. Despite his requests for language training, Mr. Robinson says Parks Canada did not give him an opportunity to have his proficiency tested before deeming him non-proficient in French.

According to Mr. Robinson, Parks Canada's failure to provide him French language training affected his employment by denying him the bilingual bonus available to other employees.

[4] Mr. Robinson claims that on December 1, 2014, he was unconditionally appointed from an ENG-05 position to an ENG-06 position. In this position, Mr. Robinson managed national heritage and tourism projects and reported to Kalvin Mercer. Mr. Robinson says Mr. Mercer advised him that he would be compensated for the additional duties associated with the higher classification and that any language proficiency issues would be worked out. Mr. Robinson claims he was not compensated for the additional duties or the increased responsibility at the higher classification level. Mr. Robinson claims that on December 19, 2014, Mr. Mercer confirmed his preferred title for the new position, "Chief Engineer, Heritage and Tourism," and advised him that confirmation of his appointment came from Parks Canada's Chief Executive Officer. He also claims that his supervisor, Davina Brown, congratulated him on the CEO's endorsement of his new role.

[5] On December 23, 2014, Mr. Robinson says Mr. Mercer informed him of the process required to put him in a one year acting role for the ENG-06 position without competition based on individual merit, and on December 24, 2014, Mr. Mercer confirmed to Mr. Robinson that human resources templates and organizational charts referenced him in the ENG-06 position. On January 14, 2015, Mr. Robinson claims Ms. Brown advised him that the Executive Management Committee had decided to override Mr. Mercer's representations about the appointment process and to refer the new position to a competition. On January 18, 2015, Mr. Robinson claims he was

told he could no longer be appointed to the ENG-06 position and would have to apply for it through a competition.

[6] On February 16, 2015, Mr. Robinson says Ms. Brown advised him that he could return to his former ENG-05 position but he was later advised by her that his former position was no longer available. Mr. Robinson claims he was offered a lower status position with an ENG-05 classification after he was advised his former position had been eliminated. This position came with significantly fewer duties, less authority and responsibility, less of a supervisory role over other personnel, no private office, and no meaningful work. On April 22, 2015, Mr. Robinson says he applied for the ENG-06 position, as well as another ENG-06 position through a competition process. He was not interviewed for the position through the competition process and was advised that he was deemed unqualified for the position because he did not meet the language requirements. The other ENG-06 position ended up being filled without a competition. Mr. Robinson was again advised that he did not meet the language requirement for the position.

From January 2015 to October 2015, Mr. Robinson claims he experienced isolation and withdrawal in the workplace, and his mental and physical health suffered as did his reputation. According to Mr. Robinson, the cumulative effects of the without cause termination of his ENG-06 position, the elimination of his former ENG-05 position, the reduction of responsibilities in his subsequent ENG-05 position, and his damaged reputation, negatively impacted his mental health and he went on sick leave on November 24, 2015. Mr. Robinson claims that due to the demeaning conditions, misrepresentations, and lack of good faith shown by the Agency, he informed Ms. Brown that he could not return to work. In a letter dated October 15, 2016, he submitted his resignation effective January 25, 2017.

[7] It was only after Mr. Robinson took steps to retire that he filed a grievance arising from the events alleged in his Statement of Claim. The grievance filed by Mr. Robinson on December 23, 2016, pursuant to the *PSLRA*, is based upon essentially the same events and allegations as contained in his Statement of Claim. On January 20, 2017, Mr. Robinson's legal counsel made submissions on his behalf at the first step grievance hearing, and on February 10, 2017, Mr. Robinson was informed his grievance was denied. With Parks Canada's consent, Mr. Robinson has suspended the hearing of the second and final level of his grievance pending the outcome of this motion.

II. Issues

[8] In the Plaintiff's view, this motion raises two issues: one, should the Court exercise its residual discretion to hear Mr. Robinson's claims; and two, does the Statement of Claim disclose no reasonable cause of action such that it should be dismissed? According to the Defendant, the sole issue to be determined is whether this Court should dismiss the claim for want of jurisdiction and defer to the internal processes set out in the *PSLRA* and the *PCAA* and, therefore, decline to exercise any residual jurisdiction it may have to entertain the claims as set out in the Statement of Claim.

[9] In my view, the determinative issue is whether subsection 236(3) of the *PSLRA* applies in view of the allegations contained in the Statement of Claim.

III. The Parties' Submissions

[10] The Defendant says the Plaintiff is an employee for purposes of Part 2 of the *PSLRA* which deals with grievances, and also under the *PCAA*. Any remedy he wishes to pursue regarding employment issues is, the Defendant states, governed by the *PSLRA*; specifically, sections 206, 207, 208, 209, 210, 211, 214, 225, 226, and 236. According to the Defendant, the provisions of the *PSLRA* and the regulations thereto, the terms and conditions of the Plaintiff s employment, section 13 of the *PCAA*, and Parks Canada's policies for staffing and for anti-harassment, constitute a comprehensive and exclusive statutory and administrative scheme for the resolution of employment-related disputes within Parks Canada. It would, in the Defendant's view, subvert these legislative and administrative schemes to permit the Plaintiff to have recourse to the courts for matters that are governed by the legislation, the terms and conditions of employment, and the applicable policies. The Defendant submits that the Plaintiff's claim should be dismissed for want of jurisdiction and as an abuse of the Court's process. The Defendant maintains that, even if this Court has jurisdiction, the exercise of such should be declined and the Statement of Claim struck out.

[11] The Plaintiff states that, in order for a claim to be dismissed under Rule 221, the Defendant must establish that the Statement of Claim discloses no reasonable cause of action. According to the Plaintiff, it is premature to dismiss the action at this point because the Defendant has not yet responded fully to his requests for disclosure. The Plaintiff further states that his action relates to termination of his employment for reasons unrelated to a breach of discipline or misconduct, such that this Court retains jurisdiction in view of subsection 236(3) of

the *PSLRA*. The Plaintiff claims he pursued the recourses available to him at his workplace when his promotion was taken away from him, and that he was repeatedly assured that all would be resolved and he would be made whole. The Plaintiff says this process had such a deleterious effect on his mental health that, by the time it was clear the Defendant's promises to resolve the matter were amounting to nothing, his health became such that he was unable to pursue any options under the *PSLRA*. A grievance under the *PSLRA* is not, the Plaintiff contends, his only option to obtain redress.

IV. Analysis

[12] The Plaintiff's specific claims as alleged in his Statement of Claim can be summarized as follows:

1. The Defendant appointed him unconditionally to an ENG-06 position on December 1, 2014, but never compensated him for the higher classification level.
2. The Defendant never provided him with French language training and subsequently denied him the bilingual bonus.
3. The Defendant later informed him he had to compete for the ENG-06 position and he was unfairly screened out of a competition for a second ENG-06 position.
4. After he was unsuccessful in obtaining the ENG-06 position, the Defendant informed him that his previous ENG-05 position had been eliminated, and he was offered a lower status ENG-05 position.
5. He was terminated without cause since all of the preceding events constituted a constructive or direct dismissal of his employment without cause.

[13] Each of the Plaintiff's claims outlined above constitute a matter which would be grievable pursuant to paragraph 208(1) (b) of the *PSLRA* because these alleged events or actions are "as a result of any occurrence or matter affecting his or her terms and conditions of employment." This paragraph is a broad provision that clearly encompasses and includes the Plaintiff's claims about his appointment to the ENG-06 position, his subsequent demotion to a lesser ENG-05 position, and denial of language training and a bilingual bonus.

[14] According to the jurisprudence, the courts have no jurisdiction over matters which are grievable under section 208 of the *PSLRA*. An employee subject to the *PSLRA*, even a former one such as the Plaintiff in the circumstances of this case, is statutorily barred from bringing an action for any acts or omissions giving rise to a dispute relating to his or her terms or conditions of employment by virtue of subsection 236(1). This subsection provides that: "The right of an employee to seek redress by way of grievance for any dispute relating to his or her terms or conditions of employment is in lieu of any right of action that the employee may have in relation to any act or omission giving rise to the dispute."

[15] In *Bron v Canada (Attorney General)*, 2010 ONCA 71, 315 DLR (4th) 46 [*Bron*], the Ontario Court of Appeal explained how subsection 236(1) explicitly ousts the court's jurisdiction:

> [29] Parliament can, subject to constitutional limitations that are not raised here, confer exclusive jurisdiction to determine certain disputes on a forum other than the courts. It will take clear language to achieve that result: *Pleau*, at p. 381. Section 236 is clear and unequivocal. Subject to the exception identified in s. 236(3), which has no application here, s. 236(1) declares that the right granted under the legislation to grieve any work related dispute is "in lieu of any right of action" that the employee may

> have in respect of the same matter. Section 236(2) expressly declares that the exclusivity of the grievance process identified in s. 236(1) operates whether or not the employee actually presents a grievance and "whether or not the grievance could be referred to adjudication". The result of the language used in ss. 236(1) and (2) is that a court no longer has any residual discretion to entertain a claim that is otherwise grievable under the legislation on the basis of an employee's inability to access third-party adjudication: see *Van Duyvenbode v. Canada*, [2007] O.J. No. 2716 (S.C.), at para. 17, aff'd without reference to this point, 2009 ONCA 11; *Hagal v. Canada*, [2009] F.C.J. No. 417 (T.D.), at para. 26, aff'd without reference to this point, 2009 FCA 364. While the residual discretion may exist if the grievance process could not provide an appropriate remedy, there is no suggestion in this case that it could not: see *Vaughan*, at para. 30. Assuming that to be the case, disputes that are grievable under the legislation must be determined using the grievance procedure.
>
> …
>
> [33] Like the motion judge (at para. 36), I am satisfied that s. 236 of the *PSLRA* explicitly ousts the jurisdiction of the court over claims that could be the subject of a grievance under s. 208 of that Act. On my review of the appellant's claim, there are no allegations of misconduct by the respondents that predate April 1, 2005, the date on which the *PSLRA* became the operative legislation. Section 236 applies to the entirety of the conduct underlying the appellant's claims. The motion judge properly held that the section excludes the claims from the jurisdiction of the Superior Court.

[16] The Federal Court of Appeal has also confirmed that section 236 ousts the court's jurisdiction, remarking in *Canada (Attorney General) v Amos*, 2011 FCA 38 at para 9, [2012] 4 FCR 67, that: "Section 236 ousts the Court's jurisdiction over disputes relating to employment." This Court has no jurisdiction, therefore, to hear any of the Plaintiff's claims which are grievable under paragraph 208(1) (b) of the *PSLRA*.

[17] In my view, the Plaintiff's claims that he was appointed to a position but never properly compensated, subsequently removed from that position to a lower ENG-05 position, and not provided bilingual training and denied a bilingual bonus, are beyond the Court's jurisdiction because they could be the subject of a grievance under paragraph 208(1) (b) of the *PSLRA*.

[18] As to the Plaintiff's complaints and claims about the staffing process for the two ENG-06 positions, these too are beyond the Court's jurisdiction in view of subsection 208(2) of the *PSLRA* and the *Staffing Policies of the Parks Canada Agency* [*Staffing Policies*] established under paragraph 13(1) (b) of the *PCAA* which authorized the Parks Canada CEO to set staffing procedures and policies including policies related to termination of employment otherwise than for cause. Subsection 208(2) of the *PSLRA* provides that: "An employee may not present an individual grievance in respect of which an administrative procedure for redress is provided under any Act of Parliament, other than the *Canadian Human Rights Act*." The *Staffing Policies* include the use of alternate dispute resolution processes prior to accessing more formal processes in connection with an independent third party review; the grievance process under the *Staffing Policies* permits an individual involved in an open competition to file a complaint for all issues arising from the staffing process.

[19] Although grievances under the *Staffing Policies* are not subject to the *PSLRA*, and even though the Plaintiff is not time-barred from filing an action in this Court, the Court should decline any jurisdiction it may have to hear the Plaintiff's claims about the staffing process. I reach this conclusion for two main reasons. First, the Plaintiff did not avail himself of this administrative process to seek redress. Second, the Supreme Court of Canada in *Vaughan v*

Canada, 2005 SCC 11 at para 39, [2005] 1 SCR 146 [*Vaughan*] clearly stated that courts should not interfere with dispute resolution processes created through legislation:

> "… where Parliament has clearly created a scheme for dealing with labour disputes, as it has done in this case, courts should not jeopardize the comprehensive dispute resolution process contained in the legislation by permitting routine access to the courts. While the absence of independent third-party adjudication may in certain circumstances impact on the court's exercise of its residual discretion (as in the whistle-blower cases) the general rule of deference in matters arising out of labour relations should prevail."

A. *Does subsection 236(3) of the PSLRA apply in view of the allegations contained in the Statement of Claim?*

[20] Both parties cite and rely upon the Supreme Court of Canada's decision in *Vaughan*, a case where the Supreme Court determined that, while the *Public Service Staff Relations Act*, RSC 1985, c P-35 (now repealed) [*PSSRA*] did not oust the jurisdiction of the ordinary courts with respect to matters grievable but not arbitrable under the *PSSRA*, courts may refuse to exercise their discretion in order to avoid jeopardizing Parliament's comprehensive scheme for dealing with labour disputes. However, the *PSSRA* has since been repealed and replaced with the *PSLRA*, and subsequent cases have found that *Vaughan* must be read in light of the current legislation. For example, in *Bron*, the Ontario Court of Appeal noted that *Vaughan* concerned legislation which did not contain a provision similar to section 236 of the *PSLRA*:

> [28] The holding in *Vaughan* that the Superior Court retained a residual discretion to entertain a claim based on a grievable complaint turned on the language of the *PSSRA*, the legislation in force at the relevant time. The appellant's reliance on *Vaughan* assumes that the change in the statutory landscape, and particularly the enactment of s. 236 of the *PSLRA*, does not affect the basic holding in *Vaughan*. I think it does.

[21] In *Robichaud v Canada (Attorney General)*, 2013 NBCA 3 at para 3, 398 NBR (2d) 259 [*Robichaud*], the New Brunswick Court of Appeal pointedly remarked that section 236 "is Parliament's direct response to the common law principles articulated in [*Vaughan*]."

[22] One must view *Vaughan* with some caution because the *PSSRA* did not contain a provision analogous to section 236 of the *PSLRA* which provides that:

Disputes relating to employment	**Différend lié à l'emploi**
236 (1) The right of an employee to seek redress by way of grievance for any dispute relating to his or her terms or conditions of employment is in lieu of any right of action that the employee may have in relation to any act or omission giving rise to the dispute.	**236 (1)** Le droit de recours du fonctionnaire par voie de grief relativement à tout différend lié à ses conditions d'emploi remplace ses droits d'action en justice relativement aux faits — actions ou omissions — à l'origine du différend.
Application	**Application**
(2) Subsection (1) applies whether or not the employee avails himself or herself of the right to present a grievance in any particular case and whether or not the grievance could be referred to adjudication.	**(2)** Le paragraphe (1) s'applique que le fonctionnaire se prévale ou non de son droit de présenter un grief et qu'il soit possible ou non de soumettre le grief à l'arbitrage.
Exception	**Exception**
(3) Subsection (1) does not apply in respect of an employee of a separate agency that has not been designated under subsection 209(3) if the dispute relates to his or her termination of employment for any reason that does not relate	**(3)** Le paragraphe (1) ne s'applique pas au fonctionnaire d'un organisme distinct qui n'a pas été désigné au titre du paragraphe 209(3) si le différend porte sur le licenciement du fonctionnaire pour toute raison autre qu'un

to a breach of discipline or misconduct.	manquement à la discipline ou une inconduite.

[23] The parties maintain in view of the principles enunciated in *Vaughan* that the Court retains a residual discretion in appropriate cases to intervene and exercise its jurisdiction to hear labour disputes even in the face of a comprehensive legislative and administrative scheme for dealing with such a dispute. The Plaintiff contends that his termination did not relate to a breach of discipline or misconduct but, rather, was a non-disciplinary or constructive termination of his employment which brings the matter within subsection 236(3); and in view of *Vaughan* the Court should not strike his Statement of Claim and should assume jurisdiction to hear the Claim. In contrast, the Defendant submits that even when the right of an action is based on subsection 236(3), the Court has discretion to decline to exercise jurisdiction to entertain a termination claim, and the *Vaughan* principles guide the Court in determining whether it should defer to the comprehensive schemes established by Parliament and decline to exercise jurisdiction.

[24] In *Robichaud*, the New Brunswick Court of Appeal observed (at para 12) that "s. 236(3) contemplates situations in which an employee who is dismissed for cause (e.g. poor performance) will have a right to sue for wrongful dismissal, provided that person falls within a narrow category identified in s. 236(3)". In *Haroun v Canada (National Research Council)*, 2015 FC 1168, 263 ACWS (3d) 5 [*Haroun*], this Court found that subsection 236(3) allowed a former employee of the National Research Council (which, like Parks Canada, is a separate agency not designated under subsection 209(3)), whose employment was terminated for non-disciplinary reasons, to pursue a civil action for wrongful dismissal. The Court in *Haroun* observed that:

> [9] …the purpose of subsection 236(3) is to preserve a common law right of action for employees of undesignated separate agencies in relation to performance-based terminations. In the face of the clear language used and the gravity of the consequences of termination, it cannot be that Parliament intended that employees like Mr. Haroun be limited to the option of pursuing a restrictive internal grievance with no right to independent adjudication. Indeed, there is no reason to think that Parliament intended to deprive separate agency employees of the right to the independent assessment of the merits of their performance-based terminations.

[25] Since *Vaughan*, Parliament, by enacting subsection 236(3) of the *PSLRA*, has accepted that certain employees can seek recourse through the courts, *provided* that "the dispute relates to his or her termination of employment for any reason that does not relate to a breach of discipline or misconduct." Although the Plaintiff claims that termination of his employment was not related to a breach of discipline or misconduct, the Court must nonetheless determine the essential character of the dispute in view of the factual context in which it arises and the breadth of the legislative scheme for resolving labour disputes (see: *Weber v. Ontario Hydro*, [1995] 2 SCR 929 at paras 56, 57 & 63, 125 DLR (4th) 583; and *Vaughan* at para 39).

[26] In this case, the Plaintiff's claim - that various events during his employment with Parks Canada cumulatively resulted in a constructive or direct dismissal of his employment without cause - is a collateral attempt to attack various decisions and events which are or were otherwise grievable under the *PSLRA* or Parks Canada's *Staffing Policies*. In my view, each and all of the Plaintiff's claims pertain to occurrences or matters affecting his employment with the Defendant, and the legislative and administrative avenues for redress available to the Plaintiff in this case would be undermined if the Statement of Claim is not struck and the Plaintiff's complaints be allowed to proceed in this Court. Indeed, the second stage of the Plaintiff's grievance has been

suspended pending the determination of this motion; that grievance process should be permitted to continue to its ultimate outcome. There is no suggestion in this case that the grievance process could not provide an appropriate remedy to redress the Plaintiff's complaints.

[27] Before concluding, it must be noted that the Plaintiff's reliance upon *Haroun* is misguided. In that case, Mr. Haroun had been hired for a two-year appointment with the National Research Council, a non-designated separate agency like Parks Canada, but his employment was terminated fourteen months early due to performance-based reasons and, consequently, he (unlike the Plaintiff in this case who resigned and retired) had no recourse to independent adjudication through the grievance process. His right to adjudication under paragraph 209(1) (b) of the *PSLRA* was limited to disciplinary actions involving termination, demotion, suspension or financial penalty. Although Mr. Haroun filed a grievance regarding termination of his appointment, it was dismissed and he subsequently filed a Statement of Claim. On a motion for the determination of a preliminary question of law as to whether Mr. Haroun's action could proceed, the Court observed that performance-based terminations of employees of non-designated separate agencies are among the only types of terminations in the public service not referable to third-party adjudication at the conclusion of the grievance process. Absent recourse to the courts under subsection 236(3), the Court in *Haroun* noted that these employees would have no right to independent adjudication on the merits of their termination and, thus, the Court allowed Mr. Haroun to pursue his claim by way of action under subsection 236(3). In this case, the Plaintiff resigned and retired and did not meaningfully engage the schemes for resolution of workplace disputes available to him when the alleged events occurred; had he done so, the

Defendant would have had an opportunity to respond to the disputes and take any necessary corrective steps as intended by these schemes.

[28] It should also be noted that this case is akin to that of *Robichaud*, where two employees sued for constructive dismissal after their employer, the Correctional Service of Canada, refused to undertake a formal investigation into the merits of an unsigned complaint of harassment and misconduct leveled against the employees by other employees because the complaint failed to meet the requirements of the relevant policy. Neither employee attempted to grieve the employer's failure to conduct a formal investigation into the allegations leveled against them with a view to establishing their innocence or guilt. In response to the lawsuits, the employer brought a motion for an order dismissing or staying the actions on the ground the court lacked the jurisdiction to try the actions. A motion judge dismissed the employer's motion, but the Court of Appeal of New Brunswick allowed the appeal and set aside the motion judge's order, stating that:

> [16] … it is important to remember that s. 236(1) provides that if an employee can grieve that employee cannot sue, even if the employee opts not to grieve and even though the grievance is not of a kind that is subject to third-party adjudication. Hence, you cannot argue that a grievance procedure, which does not provide for third-party adjudication, does not provide an adequate remedy. Section 236(1) expressly eliminates that argument. At the same time, it is equally clear that a grievance will never measure up to the right to sue, where the remedy being sought is framed in "damages". At the end of the day, it is important to realize that the parties do not have to go to trial to adduce evidence as to what is or is not an adequate remedy...

V. Conclusion

[29] The Supreme Court of Canada, in *R v Imperial Tobacco*, 2011 SCC 42, [2011] 3 SCR 45, reiterated the applicable test on a motion to strike:

> [17] … A claim will only be struck if it is plain and obvious, assuming the facts pleaded to be true, that the pleading discloses no reasonable cause of action: *Odhavji Estate v. Woodhouse*, 2003 SCC 69, [2003] 3 S.C.R. 263, at para. 15; *Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959, at p. 980. Another way of putting the test is that the claim has no reasonable prospect of success. Where a reasonable prospect of success exists, the matter should be allowed to proceed to trial: [citations omitted]

[30] In my view, for the reasons stated above, it is plain and obvious that the Plaintiff's Statement of Claim discloses no reasonable cause of action. Nor is the Claim one with a reasonable prospect of success such that it should be allowed to proceed to trial. The circumstances of this case do not suggest that the remedies available to the Plaintiff through the *PSLRA* and *Staffing Policies* are so inadequate as to warrant the Court's exercise of any residual discretion it may have to allow the Claim to proceed. The Statement of Claim is, therefore, struck in its entirety, without leave to amend, and the Plaintiff's action is dismissed.

[31] The Defendant shall have its costs of this motion, including its disbursements and any applicable taxes, in such amounts as may be agreed to by the Parties. If they are unable to agree as to the amount of such costs and disbursements and any applicable taxes thereon within 20 days of the date of this order, either party shall thereafter be at liberty to apply for an assessment of costs in accordance with the *Federal Courts Rules*.

ORDER in T-120-17

THIS COURT ORDERS, for the reasons stated above, that:

1. the Defendant's motion for an Order striking out the Plaintiff's Statement of Claim in its entirety, without leave to amend, and dismissing his action pursuant to Rule 221 of the *Federal Courts Rules*, SOR/98-106, is allowed;

2. the Plaintiff's Statement of Claim is struck out in its entirety, without leave to amend, and the Plaintiff's action is dismissed pursuant to Rule 221; and

3. the Defendant shall have its costs of this motion, including its disbursements and any applicable taxes, in such amounts as may be agreed to by the Parties. If they are unable to agree as to the amount of such costs and disbursements and any applicable taxes thereon within 20 days of the date of this order, either party shall thereafter be at liberty to apply for an assessment of costs in accordance with the *Federal Courts Rules*.

"Keith M. Boswell"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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DATE OF HEARING:	MAY 10, 2017
ORDER AND REASONS:	BOSWELL J.
DATED:	JUNE 21, 2017

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