Federal Court Cour fédérale

Date: 20201016

Dockets: T-1628-19
T-1692-19

Citation: 2020 FC 975

Ottawa, Ontario, October 16, 2020

PRESENT: Mr. Justice Sébastien Grammond

Docket: T-1628-19

BETWEEN:

CLINTON MAHONEY

Plaintiff

and

HER MAJESTY THE QUEEN

Defendant

Docket: T-1692-19

AND BETWEEN:

CLINTON MAHONEY

Plaintiff

and

HER MAJESTY THE QUEEN

Defendant

ORDER AND REASONS

[1] Over the last year, Mr. Mahoney instituted no less than nine proceedings before this Court, related to various events taking place in federal correctional institutions. The defendant now asks this Court to declare Mr. Mahoney a vexatious litigant and to strike the statements of claim in two actions. I am granting this motion. Mr. Mahoney's litigation conduct has been erratic and disruptive. It has only led to a significant waste of resources, without any benefit for the pursuit of justice. It is now necessary to subject Mr. Mahoney to a leave requirement if he wants to begin new proceedings. Moreover, I am striking the two statements of claim, as they show no reasonable cause of action and are frivolous, vexatious and an abuse of process.

I. Background

[2] Mr. Mahoney is an inmate in the federal penitentiary system. He is serving a life sentence. He was convicted in relation to two separate events that took place three days from each other, a few days before his 18th birthday. He was first convicted of manslaughter. After he began serving his sentence, he was convicted of first-degree murder. Shortly after his murder conviction, his security classification was increased from medium to maximum.

[3] Since his first conviction in 2013, Mr. Mahoney has spent time in institutions in several provinces. He was in administrative segregation (or "solitary confinement") on a number of occasions, sometimes for more than 15 days. In recent years, he spent time at Cowansville, Donnacona and Drummond institutions in Quebec. A few days before the hearing of this motion, he was transferred to Drumheller Institution in Alberta.

[4] Since September 2019, Mr. Mahoney has instituted a number of proceedings in this Court. These include the following proceedings that are now concluded:

- An application for habeas corpus and judicial review of his reclassification and transfer to Donnacona Institution (file T-1531-19); it was struck by my colleague Prothonotary Alexandra Steele because Mr. Mahoney had not yet exhausted his remedies in the internal grievance process; that decision was confirmed by my colleague Justice Peter G. Pamel: 2020 FC 289;

- Three actions for damages (files T-1636-19, T-1695-19 and T-1755-19) based on Mr. Mahoney's time spent in administrative segregation; he discontinued these actions after it was pointed out to him that he was a member of the class action certified in *Reddock v Canada (Attorney General)*, 2019 ONSC 5053 [*Reddock*];

- Another action for damages (file T-2011-19) with respect to his transfer to Donnacona Institution, which was cancelled by the registry as it was brought in violation of an order made by a prothonotary;

- An application for judicial review (file T-572-20) of a decision of the Parole Board of Canada refusing parole, which he discontinued a few days after the hearing of this motion.

[5] Mr. Mahoney also instituted two actions for damages that are the subject of the present motions to strike. The first one (file T-1628-19) relates to various events that took place at Donnacona Institution. The second one (file T-1692-19) relates to decisions made from 2014 to 2017 with respect to his security classification. I will provide more details about these actions when dealing with the motions to strike.

[6] Most recently, on September 8, 2020, after receiving a decision from the appeal division of the Parole Board, Mr. Mahoney brought an application for judicial review of that decision (file T-1078-20).

[7] The defendant brought a motion asking the Court to declare Mr. Mahoney a vexatious litigant, pursuant to section 40 of the *Federal Courts Act*, RSC 1985, c F-7 [the Act]. In the same motion, the defendant asks the Court to strike the actions in files T-1628-19 and T-1692-19, pursuant to rule 221 of the *Federal Court Rules*, SOR/98-106.

II. Vexatious Litigant

[8] I am granting the defendant's motion and declaring Mr. Mahoney a vexatious litigant. To explain why, I will first set out the applicable statutory provision and the manner in which it has been interpreted. I will then show why, despite his assurances to the contrary, Mr. Mahoney's conduct exhibits the hallmarks of vexatiousness.

A. *General Principles*

[9] Subsection 40(1) of the Act reads as follows:

40 (1) If the Federal Court of Appeal or the Federal Court is satisfied, on application, that a person has persistently instituted vexatious proceedings or has conducted a proceeding in a vexatious manner, it may order that no further proceedings be instituted by the person in that court or that a proceeding previously instituted by the person in that court not be continued, except by leave of that court.	**40** (1) La Cour d'appel fédérale ou la Cour fédérale, selon le cas, peut, si elle est convaincue par suite d'une requête qu'une personne a de façon persistante introduit des instances vexatoires devant elle ou y a agi de façon vexatoire au cours d'une instance, lui interdire d'engager d'autres instances devant elle ou de continuer devant elle une instance déjà engagée, sauf avec son autorisation.

[10] In *Canada v Olumide*, 2017 FCA 42, [2018] 2 FCR 328 [*Olumide*], Justice David Stratas of the Federal Court of Appeal explained the purpose of vexatious litigant declarations and the categories of situations in which such an order may be made:

> [19] The Federal Courts have finite resources that cannot be squandered. Every moment devoted to a vexatious litigant is a moment unavailable to a deserving litigant. The unrestricted access to courts by those whose access should be restricted affects the access of others who need and deserve it. Inaction on the former damages the latter.
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> […]
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> [22] Section 40 is aimed at litigants who bring one or more proceedings that, whether intended or not, further improper purposes, such as inflicting damage or wreaking retribution upon the parties or the Court. Section 40 is also aimed at ungovernable litigants: those who flout procedural rules, ignore orders and directions of the Court, and relitigate previously-decided proceedings and motions.

[11] There is no fixed set of criteria to define vexatiousness. The concept must be understood mainly by referring to the purposes of section 40: *Olumide*, at paragraphs 31–32. Nevertheless, courts have identified a number of "hallmarks" of vexatiousness. In *Canada (Procureur général) c Yodjeu*, 2019 CAF 178 at paragraph 18, Justice Yves de Montigny of the Federal Court of Appeal listed a number of these hallmarks:

> [TRANSLATION] filing frivolous and incoherent pleadings, asking for remedies outside the jurisdiction of the Court, unfounded allegations of improper behaviour on the part of the other party, its counsel or the Court, non-compliance with timetables and court rules, relitigation of issues already decided, failure to pay costs awarded against them.

[12] While a declaration that a litigant is vexatious imposes restrictions on access to the courts, it does not prevent the person from vindicating valid claims. In *Olumide*, at paragraph 27, Justice Stratas indicated that:

> A declaration that a litigant is vexatious does not bar the litigant's access to the courts. Rather, it only regulates the litigant's access to the courts: the litigant need only get leave before starting or continuing a proceeding.

B. *Application*

[13] Mr. Mahoney must be declared a vexatious litigant. During the last year, his actions have resulted in the squandering of this Court's resources, not to mention those of the defendant. He is effectively ungovernable, as this term is used in *Olumide*. The additional layer of regulation imposed on vexatious litigants is necessary to prevent Mr. Mahoney from causing further waste. Indeed, Mr. Mahoney exhibits several, although perhaps not all, of the hallmarks associated with vexatious litigants.

[14] The first and most striking aspect of his conduct is the sheer volume of proceedings that he has initiated – nine applications or actions in barely one year. To this we must add a large number of motions, amended pleadings and other documents that he has sought to file.

[15] Most of these proceedings have little substance. They are often couched in vague language and lack detail. One is at a loss to understand what the cause of action exactly is. They are often duplicative, as between themselves or with other existing processes, such as the institution's grievance process or the Parole Board. Some contain allegations of fraud or conspiracy that have no factual foundation whatsoever.

[16] In many cases, Mr. Mahoney has brought these proceedings in disregard of basic legal principles. For example, he brought applications for judicial review before exhausting his administrative remedies. For that reason, some of them have already been dismissed and he discontinued others. In addition, legal concepts and statutory provisions are brandished with little regard for their actual meaning or scope. For example, in an action related to events taking place in Quebec institutions, he alleges a breach of the common law duty of care and standard of care, instead of article 1457 of the *Civil Code of Québec*. Likewise, an action focusing on events taking place in Alberta is replete with references to Mr. Mahoney's rights under "sections 1 and 4 of the Charter," which appears to be a reference to Quebec's *Charter of Human Rights and Freedoms*, CQLR, c C-12 [the Quebec Charter], obviously inapplicable in Alberta. Long lists of provisions of the *Corrections and Conditional Release Act*, SC 1992, c 20, are mentioned, without any indication of how they might have been breached.

[17] Some of Mr. Mahoney's allegations may have merit. Claims for damages in respect of administrative segregation have been certified as class actions, in particular in *Reddock*. Since Mr. Mahoney is a member of the *Reddock* class (he did not opt out), however, he cannot bring an individual action for the same cause of action. To his credit, Mr. Mahoney agreed to discontinue these actions when this was pointed out to him. However, one fails to understand why he brought three separate actions, within less than a month, dealing with substantially the same cause of action.

[18] What is most striking is the manner in which Mr. Mahoney conducts his proceedings. The fast pace at which he files amendments, motions and other documents defies any logical understanding. It also forces the defendant to expend significant resources to answer these proceedings, often in total waste.

[19] A striking example is provided by Mr. Mahoney's application for judicial review in file T-572-20. Mr. Mahoney filed his application on May 12, 2020. The relief claimed includes several remedies that cannot be obtained by an application, including damages "in the range of 7–24 million," a reduction of his sentence and a pardon for his convictions. On June 1, 2020, he made a motion to transform the application into an action. On June 19, 2020, the respondent filed a motion to strike the application, because Mr. Mahoney failed to exhaust his administrative remedies. On August 20, 2020, Mr. Mahoney abandoned his June 1 motion and instead made a new motion to amend his application, apparently in an attempt to avoid the motion to strike. On August 25, 2020, my colleague Prothonotary Mandy Aylen directed that the motion to amend be held in abeyance until a decision is made on the motion to strike. The day before, Mr. Mahoney

had also filed a motion to consolidate files T-1695-19 and T-572-20. On August 28, 2020, he attempted to file a motion to appeal Prothonotary Aylen's directive. I directed the registry to refuse that motion for filing, as there are no appeals from directions. In the end, Mr. Mahoney filed a discontinuance on October 6, 2020. Thus, absolutely nothing was accomplished through this whirlwind of proceedings.

[20] A troublesome aspect of the case is Mr. Mahoney's tailoring of a generic affidavit after it had been sworn by a commissioner of oaths. After this was discovered, Mr. Mahoney argued that he was entitled to "take a shortcut" because it was difficult to find a commissioner of oaths at the penitentiary. Circumventing the rules in such a way is obviously unacceptable.

[21] The picture that emerges from all this is that Mr. Mahoney does not prepare his proceedings with due care. When faced with the dismissal of a proceeding, he responds with a variety of procedural tactics intended to keep the matter alive. He then withdraws the proceeding, only to begin a new one. This continuous flurry of litigation is in no one's interest. Court resources that could have been devoted to legitimate claims are wasted. Mr. Mahoney's legitimate claims, if he has any, have not been advanced in any significant manner. This has to stop.

[22] Mr. Mahoney, however, argues that he acted in good faith and that he is now more familiar with the rules and understands the proper manner of instituting proceedings. In his written submissions in response to this motion, dated August 27, 2020, he stated that he had no

intention to bring new proceedings. Thus, there would be no need for the additional layer of regulation provided by a vexatious litigant declaration.

[23] Yet, his subsequent behaviour contradicts his statements. On September 8, 2020, he brought a new application for judicial review in file T-1078-20. Moreover, at the hearing of this motion, he alluded to other proceedings he might introduce in the near future. This tends to show that despite his assurances, Mr. Mahoney is ungovernable. He must be declared a vexatious litigant.

[24] Finally, I note that, as required by subsection 40(2) of the Act, the Attorney General gave his consent to this motion.

III. Motions to Strike

[25] The defendant also asks the Court to strike the statements of claim in files T-1628-19 and T-1692-19 in their entirety.

A. *General Principles*

[26] Rule 221(1) of the *Federal Courts Rules*, SOR/98-106, provides that, on motion, the Court may strike out a pleading that "discloses no reasonable cause of action" (subparagraph (a)), is "scandalous, frivolous or vexatious" (subparagraph (c)) or "is otherwise an abuse of the process of the Court" (subparagraph (f)). Each of these grounds for striking out pleadings involves slightly different considerations.

[27] A pleading discloses "no reasonable cause of action" if the facts alleged, even if assumed to be true, do not establish a cause of action: *R v Imperial Tobacco Ltd*, 2011 SCC 42 at paragraph 22, [2011] 3 SCR 45 [*Imperial Tobacco*]. In other words, the plaintiff must allege all the facts that are necessary to prove a claim recognized at law. If a necessary element of the claim is missing, the pleading will be struck. Likewise, if the facts inescapably give rise to a valid defence, the claim will be struck as well: *Imperial Tobacco*, at paragraph 91. As the facts must be taken as true, no evidence is permitted beyond the statement of claim and its supporting documents: rule 221(2). Only facts must be taken as true; allegations that are argumentative or merely state legal conclusions can be disregarded: *Merchant Law Group v Canada Revenue Agency*, 2010 FCA 184 at paragraphs 34–35.

[28] Deciding whether a pleading is "scandalous, frivolous or vexatious" or an "abuse of process" involves a broader range of considerations than merely testing the validity of the legal syllogism that underpins the claim. Evidence may be received for that purpose. The fact that a plaintiff has been declared a vexatious litigant may be taken into consideration. There is, however, no rigid test for making the determination. As Justice Louis LeBel of the Supreme Court of Canada stated in *Behn v Moulton Contracting Ltd*, 2013 SCC 26 at paragraph 40, [2013] 2 SCR 227 [*Behn*], "abuse of process is unencumbered by specific requirements."

[29] For example, in *Van Sluytman v Muskoka (District Municipality)*, 2018 ONCA 32 at paragraph 9, the Ontario Court of Appeal held that statements of claim were properly struck as "frivolous or vexatious" on the following grounds:

> Simply put, the proceedings in question are facially frivolous and vexatious. The appellant's pleadings fail to contain any coherent

> narrative or a concise statement of the material facts in support of the wrongs sought to be alleged. Instead, they contain rambling discourse, impermissible attachments, grandiose complaints of injury and damages claims, and bald assertions that repeat similar, if not identical, allegations detailed in multiple other proceedings commenced by the appellant. On this ground alone, it was open to the application judges to dismiss the appellant's actions …

[30] Likewise, there is no closed list of situations in which a claim will be considered an abuse of process. For example, such situations includes resort to self-help remedies (*Behn*, at paragraph 42) and relitigation of issues previously decided (*Toronto (City) v CUPE, Local 79*, 2003 SCC 63, [2003] 3 SCR 77).

B. *Application to File T-1628-19*

[31] The initial statement of claim filed on September 27, 2019, alleges a series of events that took place mainly at Donnacona Institution in 2019. Mr. Mahoney alleges that one officer engaged in acts described as "acts of torture" or "abuses of power." The events alleged include the officer locking Mr. Mahoney in his cell during meal time, locking him in the corridor, refusing to respond to an emergency call and waving his flashlight at him. Mr. Mahoney also alleges that he was victim of a "conspiracy," apparently because officers altered his grievance forms. He also mentions that he was "fined and convicted for taking showers," that proper dental care was not provided, that his cell was searched and that a meeting with a lawyer was cancelled. He claims damages in the amount of $100,000.

[32] Particulars provided by Mr. Mahoney on October 17, 2019 and an "addendum" dated October 28, 2019 do not add much clarity. On November 2, 2019, Mr. Mahoney filed a "fresh as

amended statement of claim." It restates certain facts alleged in previous documents, although omitting others, and adds references to various statutory provisions or administrative policies that would have been breached.

[33] Even taking into account its various iterations, this statement of claim does not reveal a cause of action. It is simply a litany of complaints about a string of unrelated events. There is no obvious reason why these facts would constitute a fault giving rise to extracontractual liability or a breach of the rights guaranteed by the Quebec Charter, beyond the fact that Mr. Mahoney felt aggrieved by them. At the hearing of this motion, Mr. Mahoney offered no explanation in this regard.

[34] I agree that inmates retain their residual liberty: s 4(d) of the *Corrections and Conditional Release Act*. Nevertheless, a maximum-security penitentiary such as Donnacona Institution is a highly structured environment where daily life is subject to a wide array of rules. Even generously read, the statement of claim does not reveal anything beyond the normal enforcement of these rules.

[35] Therefore, the statement of claim does not disclose a reasonable cause of action and must be struck. In addition, it can be struck for being frivolous and vexatious, because it is simply an instance of Mr. Mahoney's overall vexatious litigation conduct.

[36] I have considered the possibility of striking out the statement of claim with leave to amend. I fail to see how an amendment could save the statement of claim. Moreover, Mr.

Mahoney has already had three occasions to amend his statement of claim, but he failed to state a reasonable cause of action. There is every reason to believe that granting leave to amend would simply allow the continuation of frivolous litigation.

C. *Application to File T-1692-19*

[37] The statement of claim in this action was filed on October 7, 2019. Mr. Mahoney alleges that he was wrongfully transferred from Drumheller Institution, a medium-security institution, to Edmonton Institution, a maximum-security institution. He says that his security classification was "miscalculated" and was based on an erroneous assessment of his escape risk and institutional adjustment or a "non-existent policy" to the effect that inmates convicted of murder must spend the first two years of their sentences in a maximum-security institution. He also alleges that "the respondent falsely accused Mahoney of being an instigator in a fight" in November 2013 and that he was "ganged up on, beat and stabbed at Prince Albert max." He also alleges a breach of his "Charter rights s. 1, 4," presumably a reference to the Quebec Charter. He claims $1,500,000 in damages.

[38] This statement of claim discloses no reasonable cause of action for the simple reason that it is statute-barred. The alleged facts took place in Alberta and in Saskatchewan. In these provinces, an action of this kind must be brought within two years of the facts giving rise to the cause of action: *Limitations Act*, RSA 2000, c L-12, s 3(1)(a); *Limitations Act*, SS 2004, c L-16.1, s 5. Thus, Mr. Mahoney cannot bring an action for facts that took place before October 7, 2017. Yet, all the facts alleged in the statement of claim took place before that date.

[39] In his written response to this motion, Mr. Mahoney argues that the claim is not statute-barred because he only learned of the "non-existence" of the "two-year rule" in January 2018, when reading a decision regarding a grievance he had filed. In this decision, the Assistant Commissioner of the Correctional Service of Canada states unequivocally that "there is no "2 year rule."" In spite of this, Mr. Mahoney's 2015 assessment for decision and 2016 decision sheet mentioned the rule. Thus, the Assistant Commissioner ordered the correction of the "inaccurate information" regarding the two-year rule in Mr. Mahoney's file.

[40] Whatever one might think of this equivocation regarding the "two-year rule," these circumstances do not have the effect of postponing the limitation periods established by provincial legislation. Mr. Mahoney does not allege that he was unaware of the decisions made regarding his security classification in 2014 or 2016. His statement of claim alleges other grounds for challenging his reclassification, which must have been apparent from the 2014 decision. At best, the 2018 grievance decision suggests an additional legal argument to challenge Mr. Mahoney's reclassification in 2014. This does not show that he could not discover his cause of action at that time: *Nova Scotia Home for Coloured Children v Milbury*, 2007 NSCA 52 at paragraph 27. Moreover, the 2018 grievance decision, when read in full, shows that Mr. Mahoney's reclassification was justified independently of the two-year rule. This undercuts any claim that Mr. Mahoney suffered any loss because of the application of a non-existent policy.

[41] I am mindful that limitations issues should not be decided on a motion to strike if they raise disputed issues of fact: *Christensen v Roman Catholic Archbishop of Québec*, 2010 SCC

44, [2010] 2 SCR 694. However, the facts are not in dispute in this case and the matter can be decided on the record.

[42] Thus, Mr. Mahoney's statement of claim does not show a reasonable cause of action and must be struck. In any event, the statement of claim is also frivolous and vexatious and an abuse of process. It forms part of a series of proceedings that I have found to be vexatious. It seeks to relitigate issues that were the subject of a final grievance decision. Mr. Mahoney did not apply for judicial review of that decision. He now makes what the Ontario Court of Appeal called a "grandiose damage claim." To borrow Justice LeBel's words in *Behn*, at paragraph 42, letting this action follow its course would "bring the administration of justice into disrepute."

[43] I have considered the possibility of striking out the statement of claim with leave to amend. As the claim is statute-barred, there is simply no way of amending it to state a reasonable cause of action.

D. *Application to File T-1078-20*

[44] When the defendant filed this motion, Mr. Mahoney had not yet brought his application in file T-1078-20. The defendant did not bring a motion to strike the application. At the hearing of this motion, counsel for the defendant suggested that I could terminate this application as part of my decision on the vexatious litigant motion. I decline to do so. A declaration that a person is a vexatious litigant does not necessarily terminate all litigation initiated by the person. The respondent did not explain on what grounds this application should be dismissed and, as a result, Mr. Mahoney did not have the opportunity to respond. It is preferable, in these circumstances, to

let the application stand. The respondent is at liberty to bring a motion to strike the application if it believes that there are grounds for doing so.

IV. Disposition and Costs

[45] For the foregoing reasons, I am allowing the defendant's motion to declare Mr. Mahoney a vexatious litigant and to strike the statements of claim in files T-1628-19 and T-1692-19, without leave to amend.

[46] The defendant is asking for its costs in a lump sum of $500. I agree that it is appropriate to order Mr. Mahoney to pay the costs of this motion. Costs awards provide the prevailing party with a degree of indemnification for the legal costs it expended to defend its case and serve as an incentive to make prudent use of scarce judicial resources: *British Columbia (Minister of Forests) v Okanagan Indian Band*, 2003 SCC 71, [2003] 3 SCR 371. Five hundred dollars is a minimal amount in comparison to what the defendant must have expended to respond to Mr. Mahoney's frivolous claims during the last year. I can only hope that it will remind Mr. Mahoney and others who would be tempted to emulate his conduct that pursuing vexatious litigation comes at a cost.

ORDER in T-1628-19 and T-1692-19

THIS COURT DECLARES AND ORDERS that:

1. The defendant's motion is allowed;
2. Mr. Clinton Mahoney is a vexatious litigant pursuant to section 40 of the *Federal Courts Act*, RSC 1985, c F-7;
3. The statement of claim in action T-1628-19 is struck out, without leave to amend, and the action is dismissed;
4. The statement of claim in action T-1692-19 is struck out, without leave to amend, and the action is dismissed;
5. Mr. Clinton Mahoney may not commence proceedings of any kind before the Federal Court without the authorization of the Court;
6. This order does not affect the proceedings in File T-1078-20;
7. Mr. Clinton Mahoney is condemned to pay the defendant its costs fixed in the lump sump amount of $500.

"Sébastien Grammond"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKETS:	T-1628-19 AND T-1692-19
STYLE OF CAUSE:	CLINTON MAHONEY v HER MAJESTY THE QUEEN
PLACE OF HEARING:	HEARD BY VIDEOCONFERENCE BETWEEN OTTAWA, ONTARIO, MONTREAL, QUEBEC AND DRUMHELLER, ALBERTA
DATE OF HEARING:	OCTOBER 1, 2020
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DATED:	OCTOBER 16, 2020

APPEARANCES:

Clinton Mahoney	FOR THE PLAINTIFF (ON HIS OWN BEHALF)
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