Federal Court  Cour fédérale

Date: 20210316

Docket: T-1471-15

Citation: 2021 FC 231

BETWEEN:

RYAN RICARDO RICHARDS

Plaintiff

and

HER MAJESTY THE QUEEN

Defendant

REASONS FOR ORDER

NORRIS J.

I. OVERVIEW

[1] By motion filed on February 17, 2021, the defendant Crown sought three Orders from the Court:

a) An Order under subsection 50(1) of the *Federal Courts Act*, RSC 1985, c F-7, staying the plaintiff's claims relating to times he spent in administrative segregation;

b) An Order also under subsection 50(1) staying the plaintiff's claims for relief under the *Canadian Charter of Rights and Freedoms*;

and

c) An Order under Rule 221(1)(a) of the *Federal Courts Rules*, SOR/98-107, striking out the plaintiff's claims of sexual harassment as disclosing no reasonable cause of action.

[2] On March 1, 2021, I dismissed the motion from the bench for brief oral reasons. As I indicated at that time, further written reasons would be provided. These are those reasons.

II. BACKGROUND

[3] The Crown is the defendant in an action brought by Ryan Ricardo Richards. Mr. Richards, who is self-represented, commenced the action in 2015.

[4] The central events underlying the action occurred in 2013 at Springhill Institution, a federal penitentiary. At the time, Mr. Richards was an inmate there serving a sentence of life imprisonment for second-degree murder. He alleges that he was subjected to an excessive use of force by the Emergency Response Team ("ERT") during an occurrence at Springhill. He also raises a number of other claims relating to his treatment while incarcerated at Springhill and at other federal penitentiaries in 2013 and 2014, including his placement in administrative segregation on different occasions. Broadly speaking, Mr. Richards alleges that he has been subjected to a course of unlawful treatment at the hands of the Correctional Service of Canada ("CSC") and certain of its employees, including breaches of his *Charter* rights.

[5] Mr. Richards had brought a second action against the Crown (Federal Court File No. T-1472-15) in which he raised similar allegations against the same parties. On the Crown's motion, on November 25, 2015, Prothonotary Morneau ordered that the two matters be consolidated under the present file number. Prothonotary Morneau also struck out a number of the claims in both statements of claim on the basis that Mr. Richards had failed to exhaust the administrative remedies available to him under the offender grievance process. Mr. Richards was directed to file an amended statement of claim in this matter, which he eventually did on June 24, 2016.

[6] In the present motion, the Crown does not seek to prevent Mr. Richards from pursuing his action in its entirety. Rather, it seeks to prune the pending trial of claims which it says are duplicative of claims pending elsewhere or which do not give rise to a reasonable cause of action. In the Crown's submission, this action should focus on Mr. Richards's allegation that he was subjected to an excessive use of force at Springhill in 2013.

[7] The trial in this matter is set to begin on March 15, 2021, and is expected to last for three weeks. I will be the trial judge.

III. ANALYSIS

A. *The Motion to Stay Certain Claims*

(1) The Governing Principles

[8] Subsection 50(1) of the *Federal Courts Act* states:

50(1) The Federal Court of Appeal or the Federal Court may, in its discretion, stay proceedings in any cause or matter	**50 (1)** La Cour d'appel fédérale et la Cour fédérale ont le pouvoir discrétionnaire de suspendre les procédures dans toute affaire :
(a) on the ground that the claim is being proceeded with in another court or jurisdiction; or	**a)** au motif que la demande est en instance devant un autre tribunal;
(b) where for any other reason it is in the interest of justice that the proceedings be stayed.	**b)** lorsque, pour quelque autre raison, l'intérêt de la justice l'exige.

[9] The nature and scope of the authority granted to the Federal Court under subsection 50(1) of the *Federal Courts Act* is not contested in the present motion. As the provision itself states, whether to stay a proceeding under subsection 50(1) is a discretionary determination. The Court has a broad discretion that should be exercised in favour of staying a proceeding only in the clearest of cases (*Rakuten Kobo Inc v Canada (Commissioner of Competition)*, 2017 FC 382 at paras 24-26). The guiding consideration is whether, in all of the circumstances, the interests of justice support staying the proceeding (*Mylan Pharmaceuticals ULC v AstraZeneca Canada, Inc*, 2011 FCA 312 at para 14). Importantly, a party seeking a stay under subsection 50(1) of the *Federal Courts Act* is not required to meet the familiar tripartite test set out in *RJR-MacDonald*

Inc v Canada (Attorney General), [1994] 1 SCR 311: see *Mylan Pharmaceuticals* at paras 5-6; *Sanchez v Canada (Citizenship and Immigration)*, 2014 FCA 19 at paras 7-8; and *Clayton v Canada (Attorney General)*, 2018 FCA 1 at paras 24-25.

[10] Paragraph 50(1)(a) of the Act deals with a specific example of when it may not be in the interests of justice to allow a proceeding to continue – namely, when the claim is being pursued in another court or jurisdiction. In theory, there are many reasons why permitting a claim to proceed in this Court when it is also being pursued in another court or jurisdiction could be contrary to the interests of justice: see *Canada (Attorney General) v Cold Lake First Nations*, 2015 FC 1197 at para 14. Without suggesting that this is an exhaustive list, it may be contrary to the interests of justice to allow a claim to proceed if it would be unduly burdensome to a defendant to have to defend more than one action seeking the same relief, if there is a risk of inconsistent factual findings or legal determinations, or if there is a risk of double compensation for the claimant. Permitting a duplicative claim to proceed can also be an inefficient or even wasteful use of limited judicial resources. On the other hand, if such factors are absent or they are insufficiently compelling in a given case, it may not be contrary to the interests of justice to permit a claim to proceed in this Court even though the same claim is being pursued elsewhere. It all depends on the circumstances of the case, including the relative proximity of the proceedings to a conclusion. This being a matter of broad discretion, there are no hard and fast rules.

[11] Further, as reflected in paragraph 50(1)(b), there being parallel proceedings in different courts or jurisdictions is not the only circumstance that can entail that it is not in the interests of

justice to allow a given proceeding to continue. For example, the temporary suspension of a proceeding pending some other event can be in the interests of justice because, in the long run, it will promote the just, most expeditious and least expensive determination of the proceeding (cf. Rule 3 of the *Federal Courts Rules*). Whether this is so in a given case will, of course, depend on the particular circumstances of that case: see, for instance, *Mylan Pharmaceuticals*, *Sanchez*, *Jensen v Samsung Electronics Co, Ltd*, 2019 FC 373, and *Jim Shot Both Sides v Canada*, 2020 FC 909, for examples of how the relevant factors are weighed and balanced.

(2) The Principles Applied

(a) *The Claims Relating to Administrative Segregation*

[12] The Crown submits that Mr. Richards's claims relating to his placement in administrative segregation are effectively being proceeded with in *Reddock v Canada (Attorney General)*, a class action pending in the Ontario Superior Court of Justice. That action was certified in June 2018 (i.e. well after Mr. Richards commenced the present action). The current state of that proceeding and two companion cases (*Brazeau v Canada (Attorney General)*, a class action concerning federal inmates with serious mental disorders who were placed in administrative segregation, and *Gallone c Procureur Général du Canada*, a class action concerning federal inmates in Quebec who were placed in administrative segregation) is summarized in *Brazeau v Canada (Attorney General)*, 2020 ONSC 7229. In brief, aggregate damage awards have been granted in the actions and notices will be provided advising class members of the process for seeking their individual share of the award as well as their entitlement to claim additional damages through an individual claims process. The Crown contends that since Mr. Richards has

not opted out of the *Reddock* proceeding (the deadline to do so absent leave of the Court was September 19, 2018), he is a member of the class and will be entitled to damages through that proceeding.

[13] For purposes of this motion, I am not persuaded that there is such overlap between the *Reddock* class action and the present action that it is in the interests of justice to stay those parts of this action that relate to Mr. Richards's placements in administrative segregation. I have reached this conclusion for the following reasons.

[14] First, membership in the *Reddock* class requires having been subjected to a period of *prolonged* administrative segregation. This is defined in the action as having been subjected to a period of administrative segregation of at least fifteen consecutive days. Mr. Richards's claim in the present action is based on four discrete placements in administrative segregation: 8 days at Springhill (September 25 to October 1, 2013); 43 days at Springhill (October 29 to December 12, 2013); 78 days at Atlantic Institution (January 21 to April 9, 2014); and 162 days at Dorchester Penitentiary (April 9 to September 22, 2014). While the latter three periods are of sufficient length to count as "prolonged" administrative segregation for purposes of membership in the *Reddock* class, the first is not.

[15] Second, membership in the *Reddock* class also requires having been placed in administrative segregation *involuntarily*. I expect that it will be a live issue in this case whether significant periods of time Mr. Richards spent in administrative segregation were as a result of voluntary or involuntary placements. The Crown contends in its defence that the placements in

administrative segregation at Atlantic and Dorchester were *voluntary*. If this were the case, then Mr. Richards would not be entitled to damages for those placements as a *Reddock* class member. It would not be in the interests of justice to stay these parts of the claim on the basis that Mr. Richards is entitled to damages as a *Reddock* class member only for it to turn out that he is not because the Crown (which must be presumed to be indivisible for these purposes) successfully advances the argument that those placements were voluntary.

[16] In fairness, I note that the Crown is not contesting the findings of fact made by the Nova Scotia Supreme Court when it granted Mr. Richards's application for *habeas corpus*: see *Richards v Springhill Institution*, 2014 NSSC 121; aff'd *Springhill Institution v Richards*, 2015 NSCA 40. As I understand the sequence of events, Mr. Richards filed his application for *habeas corpus* on November 26, 2013, while he was being held in administrative segregation at Springhill. One element of the application was a challenge to the lawfulness of a change of his security classification from medium to maximum. This change in his classification resulted in Mr. Richards's transfer from Springhill to Atlantic Institution on December 12, 2013, notwithstanding the pending *habeas corpus* application. The decision granting the application for *habeas corpus*, which was released on April 2, 2014, resulted in Mr. Richards's transfer from Atlantic Institution to Dorchester Penitentiary. He had been in administrative segregation in Atlantic and he continued in administrative segregation in Dorchester. While the Crown is not contesting the findings of the Nova Scotia Supreme Court, the implications of those findings for Mr. Richards's entitlement to further relief are yet to be determined. This Court will be at least as well-positioned as the *Reddock* Court, if not better, to make this determination.

[17] In short, whether and to what extent there is a risk of inconsistent findings as between this Court and the *Reddock* class action or a risk of double compensation simply cannot be determined at this stage. Importantly, there is no suggestion that, should these risks actually materialize in the future, they cannot be managed appropriately in the interests of justice, either by this Court or in the context of the *Reddock* class action.

[18] Third, in this action, Mr. Richards alleges an ongoing course of unlawful conduct on the part of CSC and its employees. While this conduct spans approximately two years and is alleged to have occurred at several different correctional institutions, it is all part of a single narrative, according to Mr. Richards. It would be unfair to Mr. Richards in the presentation of his case to break that narrative up into discrete pieces and then require him to litigate them in different courts. Allowing him to present his case in a single narrative within the temporal bounds identified in the Amended Statement of Claim will not prejudice the Crown; in fact, it may well help the Crown to put certain events in context. It will also ensure that this Court is in the best position to make the necessary findings of fact in relation to all the periods of time Mr. Richards spent in administrative segregation, including whether those placements were voluntary or involuntary.

[19] Finally, while it is true that Mr. Richards has not opted out of the *Reddock* class, it is also true that he has not engaged with that class proceeding in any way up to the present time. By contrast, he has engaged fully with the present action and he is anxious to proceed. The Court and the parties are ready to proceed with the trial of this action now. The interests of justice include providing timely access to justice for litigants.

(b) *The Charter Claims*

[20] In the present action, Mr. Richards claims that his rights guaranteed by sections 2, 7, 9, 10, 12 and 15 of the *Charter* were infringed by CSC and its employees and that he is entitled to a remedy for this. The Crown submits that there is "considerable overlap" between this action and Mr. Richards's February 17, 2015, complaint to the Canadian Human Rights Commission about the conduct of CSC and its employees. This complaint has been referred to the Canadian Human Rights Tribunal ("CHRT") for adjudication. While the Crown does not object to proceeding with Mr. Richards's tort-based claims in relation to the incident with the ERT at Springhill in 2013, it seeks a stay of all *Charter*-based claims relating to that incident and to the other events pled in the Amended Statement of Claim, at least until the CHRT has completed its work.

[21] I accept that there appears to be significant overlap between the material facts pled by Mr. Richards in relation to the alleged infringements of his *Charter* rights and his complaint under the *Canadian Human Rights Act*, RSC 1985, c H-6 ("*CHRA*"). It appears that both concern precisely the same series of events at Springhill and elsewhere in 2013 and 2014. Further, there are clear similarities between some of the *Charter* claims in this case and the human rights complaint (e.g. the allegations of infringements of sections 2(a) and 15(1) of the *Charter*, on the one hand, and the allegations of discrimination on the basis of race and religion, on the other). Nevertheless, essentially for two reasons, the Crown has not persuaded me to exercise my discretion to stay any of Mr. Richards's *Charter* claims.

[22] First, to engage paragraph 50(1)(a) of the *Federal Courts Act*, it must be the case that Mr. Richards is pursuing the same (or, at least, a very similar) claim in this Court and in another court or jurisdiction (the provision speaks simply of "the claim"/"*la demande*"). In this Court, Mr. Richards alleges infringements of his rights under the *Charter* and is seeking remedies under subsection 24(1) of the *Charter* for those infringements. Before the CHRT, on the other hand, he alleges that he suffered discriminatory treatment at the hands of CSC and certain of its employees as prohibited by the *CHRA* and, further, that he is entitled to remedies from the CHRT as provided for under the *CHRA*. Even if, as appears to be the case, all of Mr. Richards's claims relate to the same set of factual circumstances, legally the claims before this Court are entirely distinct from those before the CHRT. Crucially, unlike the Court, it is not the role of the CHRT to determine whether the conduct of CSC or any of its employees infringed Mr. Richards's rights under the *Charter*. Rather, it is to determine whether the complaint of discrimination made under the *CHRA* is substantiated and, if it is, to provide an appropriate remedy: see *CHRA*, section 53. Conversely, it is not the role of this Court to determine whether the complaints under the *CHRA* are substantiated or not. It should also be noted that some of Mr. Richards's *Charter* claims (e.g. with respect to sections 7 and 12) do not overlap much, if at all, with his human rights complaint, even though they do all relate to the same set of factual circumstances.

[23] Since this is sufficient to dispose of the Crown's submission in relation to paragraph 50(1)(a) of the *Federal Courts Act*, if is not necessary to determine whether, even if there was sufficient legal overlap between the claims, it is the case that a complaint pending

before the CHRT is, for purposes of paragraph 50(1)(a), a claim that is being proceeded with "in another […] jurisdiction," as the Crown contends.

[24] Second, looking at the matter more broadly under paragraph 50(1)(b) of the *Federal Courts Act*, the Crown has not persuaded me that there is any other basis for finding that it is in the interests of justice to stay Mr. Richards's claims for *Charter* remedies.

[25] I accept that there can be situations where the Court should await the determination of a party's entitlement to administrative remedies before adjudicating upon a claim that has been brought before the Court by way of an action, even if, strictly speaking, the claims are not the same. The Crown does not suggest that Mr. Richards was *required* to proceed before the CHRT before coming to Court with his *Charter* claims; in other words, it does not suggest that something analogous to the doctrine of remedial exhaustion in judicial review proceedings applies to these claims (cf. *Strickland v Canada (Attorney General)*, 2015 SCC 37, [2015] 2 SCR 713, at paras 40-45). Rather, the Crown submits that, having chosen to engage parallel processes in relation to the same events, Mr. Richards has triggered concerns that animate subsection 50(1) of the *Federal Courts Act.* The Crown submits that it will be prejudiced if it has to defend against *Charter* claims in this action at the same time as it is a party to the proceeding before the CHRT, that there is a risk of inconsistent findings, that limited judicial resources will be wasted if these claims proceed now, and that there is a risk of double compensation for Mr. Richards.

[26] I am not persuaded that these concerns are sufficiently compelling in the present case to warrant a stay of this part of Mr. Richards's claim.

[27] The Crown has not put forward any evidence as to the status of the proceedings before the CHRT. While counsel for the Crown in the present action are not counsel for CSC in the human rights complaint, presumably this evidence would have been readily available from their colleagues with the Department of Justice who are acting for CSC (or even from CSC itself). On the other hand, we do know that this Court is ready to proceed with a trial now. There is no basis for me to conclude that the Court will be squandering its limited resources on matters that have already been determined by the CHRT or that will be determined by that body in the near future.

[28] It must also be said that the Crown raises its concerns very late in the day given that both the action in this Court and the human rights complaint date from 2015.

[29] Further, while the wide-ranging nature of Mr. Richards's *Charter* claims in his Amended Statement of Claim may pose certain challenges, this Court cannot shirk its duty to adjudicate fairly matters that are properly before it, even if an administrative body is also examining related matters.

[30] Finally, the risks of inconsistent findings or double compensation that the Crown relies upon are entirely speculative at this time. Perhaps more to the point, since this Court is ready to proceed, any such risks are better managed in the future by the CHRT in light of this Court's determinations and in accordance with that body's responsibilities and the proceedings before it. In the meantime, it is this Court's responsibility to ensure the fair and timely adjudication of Mr. Richards's claims under the *Charter*. This is in Mr. Richards's interest, in the Crown's interest, and in the public's interest. Further delay would not be in the interests of justice.

B. *The Motion to Strike the Sexual Harassment Claims*

(1) The Governing Principles

[31] The general principles governing a motion to strike a claim or a part thereof are not in dispute.

[32] Rule 221(1)(a) of the *Federal Courts Rules* provides that, on motion, the Court may order that a pleading or anything contained therein be struck out, with or without leave to amend, on the ground that it discloses no reasonable cause of action or defence, as the case may be.

[33] A pleading must contain a concise statement of the material facts on which the party relies: see Rule 174 of the *Federal Courts Rules*. According to Rule 175, a party "may raise any point of law in a pleading." Importantly, a plaintiff does not need to plead the particular legal label associated with a cause of action, nor will a claim be struck out just because the plaintiff chose the wrong label. Instead, on a motion to strike a claim under Rule 221(1)(a), the focus will be on whether the allegations of material facts in the statement of claim, construed generously, give rise to a cause of action. See *Paradis Honey Ltd v Canada*, 2015 FCA 89 at paras 113-14. The importance of taking a generous approach to pleadings is especially pronounced when, as is the case here, the plaintiff is self-represented and does not have legal training: see *Dean v ICCRC*, 2020 ONSC 2486 at para 22, and *Asghar v Toronto Police Services Board*, 2019 ONCA 479 at paras 23-25.

(2) The Principles Applied

[34] The Crown has moved to strike Mr. Richards's claim of sexual harassment on the basis that the law recognizes no such tort. I accept the Crown's submission that persuasive authority has held that harassment is not a distinct cause of action: see *Merrifield v Canada (Attorney General)*, 2019 ONCA 205 (application for leave to appeal to the Supreme Court of Canada dismissed September 19, 2019); see also *McLean v McLean*, 2019 SKCA 15 at paras 103-05. (In fairness to Mr. Richards, these authorities post-date the commencement of his action.) Nevertheless, I am satisfied that the material facts pled by Mr. Richards in relation to an incident at Springhill in 2013 (see paragraph 51(viii) of the Amended Statement of Claim) are capable of supporting the torts of assault, sexual assault, and intentional infliction of mental suffering. Similarly, I am satisfied that the material facts pled by Mr. Richards in relation to his treatment while segregated at Dorchester in 2014 (see paragraphs 36 and 51(vii) of the Amended Statement of Claim) are capable of supporting the tort of intentional infliction of mental suffering. As a result, even if Mr. Richards applied the wrong legal label to the material facts he has pled in this regard, those facts are capable of supporting a reasonable cause of action. There is therefore no basis to strike them from the Amended Statement of Claim.

IV. CONCLUSION

[35] For these reasons, together with those delivered orally on March 1, 2021, the Crown's motion is dismissed.

"John Norris"
Judge

Ottawa, Ontario
March 16, 2021

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1471-15
STYLE OF CAUSE:	RYAN RICARDO RICHARDS v HER MAJESTY THE QUEEN

HEARING HELD BY VIDEOCONFERENCE ON MARCH 1, 2021 FROM OTTAWA, ONTARIO (COURT), COWANSVILLE, QUEBEC (PLAINTIFF), AND HALIFAX, NOVA SCOTIA (DEFENDANT)

REASONS FOR ORDER:	NORRIS J.
DATED:	MARCH 16, 2021

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