Federal Court  Cour fédérale

Date: 20211018

Docket: T-130-21

Citation: 2021 FC 1095

Ottawa, Ontario, October 18, 2021

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

JOHN C. TURMEL

Plaintiff

and

HER MAJETY THE QUEEN

Defendant

ORDER AND REASONS

[1] The Plaintiff appeals the July 12, 2021 Order of Prothonotary Aylen, as she then was, striking his Statement of Claim in its entirety, without leave to amend and with costs.

I. The Claim

[2] Prothonotary Aylen describes the Plaintiff's claim as seeking "various forms of relief related to the federal Government's COVID-19 mitigation measures." The grounds asserted in

the 130 paragraph Statement of Claim allegedly warranting the relief sought, are the following actions of the World Health Organization [WHO] and Canada:

> 1) WHO's comparing the Covid 3.4% “Case Fatality Rate” CFR “Apple” not to Flu's known 10% CFR “Apple” but to the Flu's 100-times smaller 0.1% “Infection Fatality Rate” IFR “Orange” to exaggerate the threat of Covid death by a hundredfold;
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> 2) WHO's finding no documented asymptomatic transmission and Wuhan's finding zero transmission by 300 asymptomatics in 10 million tested shows the “Theory of Asymptomatic Transmission” behind masked social distanced lockdowns does not agree with experiment.
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> 3) Canada's 10,947 Covid deaths by Nov 15 2020 had 10,781 in Long-Term-Care and only 166 not in Long-Term-Care died; only 1 in 230,000 Canadians.
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> 4) restrictions on civil liberties to mitigate a virus with lethality hyped a hundredfold are an arbitrary, grossly disproportional, conscience-shocking violation of Charter rights resulting in an unwarranted toll in human degradation and impoverishment.

[3] The Plaintiff seeks the following relief:

> A) a Declaration pursuant to S.52(1) of the Canadian Charter of Rights and Freedoms (“the Charter”) that the Government of Canada's (“Canada”) Covid-mitigation restrictions are arbitrary and constitutionally unreasonable restrictions on the Charter S.2 right to freedom of peaceful assembly and association, S.6 right to mobility, S.7 right to life, liberty and security, S.8 right to be secure against unreasonable search or seizure, S.9 right to not to be arbitrarily detained or imprisoned, S.12 right to not be subjected to any cruel and unusual treatment or punishment not in accordance with the principles of fundamental justice and not saved by s.1 of the Charter.
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> B) an Order pursuant to S.24(1) of the Charter for an Injunction prohibiting any federal Covid-mitigation restrictions that are not imposed on the deadlier Flu; or
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> C) a permanent constitutional exemption from any Covid-mitigation restrictions;

> D) an Order for unspecified damages for pain and losses incurred by such unconstitutional restrictions on rights;
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> E) any Order abridging any time for service or amending any error or omission as to form or content which the Honourable Court may allow.

[4] Prothonotary Aylen found several deficiencies in the claim. At paragraph 25, she found with respect to the alleged *Charter* violations that "the Statement of Claim fails to plead the material facts to satisfy the essential elements of any of the specific *Charter* infringements alleged and does not allege or particularize how the Plaintiff's *Charter* rights have been infringement [*sic*]." At paragraph 28, she found that "the Statement of Claim contains bare assertions of *Charter* breaches without sufficient material facts to satisfy the criteria applicable to each of the *Charter* rights alleged to have been violated."

[5] She therefore concluded that the Statement of Claim discloses no cause of action.

[6] She also found at paragraph 29 that the Statement of Claim should be struck as an abuse of process "as it pleads bare assertions without the necessary material facts on which to base those assertions, such that the Defendant cannot know how to answer it, is replete with lengthy diatribes and makes scandalous and extreme allegations that are unsubstantiated, such as alleged cover-ups and conspiracies."

[7] The Plaintiff submitted, in part, that these deficiencies, and the lack of evidence that he personally had been subjected to certain of the COVID-19 mitigation measures would be found in the more than 70 additional claims apparently based on a kit he made available online. The

Prothonotary held that the Plaintiff could not rely on facts applicable to other plaintiffs to support his own alleged *Charter* breaches.

II. Test on Appeal and Issue

[8] In *Hospira Healthcare Corp v Kennedy Institute of Rheumatology*, 2016 FCA 215, the Court of Appeal held that intervention by this Court on an appeal of a decision of a prothonotary is justified where a prothonotary has made an error of law, has exercised her discretion on wrong principles, or where has misapprehended the evidence such that there is a palpable and overriding error.

[9] The sole issue on this appeal is whether Prothonotary Aylen erred in striking the claim without leave to amend.

III. Discussion and Analysis

[10] In paragraph 2 of his submissions, the Plaintiff states: “In a motion to strike, no cause of action must be shown despite the facts in the claim being presumed to be provably true.” That is not correct. It has always been the case that when one considers the merits of a motion to strike, one presumes the facts as alleged to be true. The question one then addresses is whether the claim as written discloses any cause of action. Contrary to the Plaintiff’s submissions, this is precisely the approach taken by the Prothonotary.

[11] The Plaintiff argued that the absence of relevant facts would be overcome if and when the Court considered the similar facts alleged in the additional similar claims that were stayed by the Court pending disposition of this action. He suggested that this was an approach used in another matter by Justice Phelan in 2015. I believe that the Plaintiff may be referring to *John Doe v Canada*, 2015 FC 916; however, it was a proposed class action and was therefore subject to the Rules regarding class proceedings. These include requirements for notice to class members and that there be a representative plaintiff who would fairly represent the interests of the class. In the present case, not only has the Plaintiff not chosen to proceed as a class action, but he has actively encouraged the creation of individual lawsuits. In doing so, he and the other plaintiffs have denied themselves any strategic advantages of class proceedings, including the ability to rely on common fact between them.

[12] Regardless, the Order of this Court staying the other similar actions was upheld on appeal by Justice Favel (see *Ethier v Her Majesty the Queen* (May 7, 2021), T-171-21 (FC)). The Federal Court of Appeal dismissed a motion to extend time to appeal his decision, noting that "the applicant has failed to establish that his proposed appeal has any merit as he has failed to identify any relevant argument in support of setting aside the decision of the Federal Court": (*Ethier v Her Majesty the Queen* (August 9, 2021), 21-A-14 (FCA)). Therefore the procedure adopted by the Prothonotary is not an issue of any relevance.

[13] Much of the Plaintiff's oral submissions on this appeal were directed to his view that the data and statistics have been misinterpreted or exaggerated and this has led Canada to impose

measures breaching his *Charter* rights. He stated that had the Prothonotary accepted these "facts" as true, they did establish his cause of action.

[14] I agree with the submissions of Canada that the Prothonotary did indeed consider the statistics on which he relies: see paragraph 3 of her Reasons. However, she found that those facts were insufficient to establish that the Plaintiff's personal *Charter* rights were breached. At paragraph 25 of her Reasons, the Prothonotary sets out and analyzes each of the Plaintiff's alleged *Charter* breaches.

[15] Regarding section 2(c) of the *Charter*, the right of peaceful assembly, she writes: "the pleading does not identify a federal measure that has directly prevented the Plaintiff from peaceful assembly with others and what specific assembly the Plaintiff was prevented from undertaking."

[16] Regarding section 2(d) of the *Charter*, the right to freedom of association, she first sets out the activities protected by this section and then writes: "The pleading does not identify a federal measure that has directly prevented the Plaintiff from engaging in any of these activities, nor has the Plaintiff particularized any such activities that he was specifically prevented from engaging in."

[17] Regarding section 6 of the *Charter*, the right to move within Canada, and to enter and leave Canada, she writes: "While the pleading does refer to the federal pre-flight testing and 14-

day quarantine requirements, the Plaintiff has not alleged that he has personally been subject to any such measures."

[18] Regarding section 7 of the *Charter*, the right to life, liberty, and security of the person, she writes: "While the 14-day quarantine measure arguably engages an individual's liberty interest under section 7, the Statement of Claim does not plead that the Plaintiff has personally been subjected to that measure." She continues: "With respect to the Plaintiff's security of the person, the Statement of Claim pleads no material facts concerning any psychological impact of the federal COVID-19 measures on the Plaintiff, yet alone any serious and profound effects on the Plaintiff's psychological integrity" [emphasis in original]. She concludes: "I find that the Statement of Claim pleads no material facts capable of demonstrating that a federal COVID-19 measure deprives the Plaintiff of his section 7 rights, nor that any such deprivation is inconsistent with the principles of fundamental justice."

[19] Regarding section 8 of the *Charter*, the right to be secure against unreasonable search or seizure, she writes: "the Statement of Claim does not identify any federal COVID-19 measure that authorizes a search or seizure, nor does it plead that the Plaintiff himself has been subjected to any such search or seizure."

[20] Regarding section 9 of the *Charter*, the right to be free from arbitrary detention or imprisonment, she writes: "the Statement of Claim does not allege that the Plaintiff has been detained or imprisoned as a result of any federal COVID-19 measure, nor does the pleading

particularize how any specific federal COVID-19 measure amounts to significant physical or psychological restraint."

[21] Regarding section 12 of the *Charter*, the right to be free from any cruel or unusual treatment or punishment, she writes: "the Statement of Claim does not plead facts capable of demonstrating that any of the federal COVID-19 measures constitute punishment or treatment that is grossly disproportionate in the sense that it outrages standards of decency and are abhorrent or intolerable in society […]. Moreover, the Ontario Superior Court of Justice has held that a claim that quarantine is arbitrary detention or cruel and unusual punishment is frivolous and I agree with that finding [see *Canadian Constitution Foundation v Attorney General of Canada*, 2021 ONSC 2117 at para 39]."

[22] Having reviewed the Statement of Claim myself, I find that the observations of the Prothonotary regarding the lack of facts necessary to support these claims are accurate.

[23] Her decision that this claim fails to disclose a cause of action for the Plaintiff is reasonable on the facts and her observations on the law are correct.

[24] I further agree with the Prothonotary that the claim as drafted is an abuse of process. The Plaintiff pleads bare assertions but not the necessary material facts on which to base those assertions. It is, as she notes, "replete with lengthy diatribes and makes scandalous and extreme allegations that are unsubstantiated, such as alleged cover-ups and conspiracies."

[25] While a self-represented litigant may expect to be granted some leniency by a court, he must still draft a claim that discloses a cause of action to which the defendant can respond. This Statement of Claim falls well short of that requirement.

[26] For these reasons, the appeal is dismissed. Canada proposed that if successful, it be awarded costs of $500.00. In my view, that is more than a reasonable sum. Had more been sought, it would have been awarded.

ORDER IN T-130-21

THIS COURT ORDERS that the appeal is dismissed, and the Defendant is awarded costs in the amount of $500.00.

"Russel W. Zinn"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-130-21
STYLE OF CAUSE:	JOHN C TURMEL v HER MAJESTY THE QUEEN
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	SEPTEMBER 7, 2021
ORDER AND REASONS:	ZINN J.
DATED:	OCTOBER 18, 2021

APPEARANCES:

John C. Turmel	PLAINTIFF (ON HIS OWN BEHALF)
Benjamin Wong	FOR THE DEFENDANT

SOLICITORS OF RECORD:

- Nil -	SELF-REPRESENTED PLAINTIFF
Attorney General of Canada Department of Justice Canada Toronto, Ontario	FOR THE DEFENDANT