

Date: 20071004

Docket: T-1526-07

Citation: 2007 FC 1020

BETWEEN:

RON CROWE

Plaintiff

and

THE ATTORNEY GENERAL OF CANADA, THE HONOURABLE CHIEF JUSTICE OF CANADA BEVERLY McLACHLIN, THE HONOURABLE JUSTICE CHARRON, THE HONOURABLE JUSTICE ROTHSTEIN OF THE SUPREME COURT OF CANADA, THE HONOURABLE CHIEF JUSTICE OF ONTARIO ROY McMURTRY, THE HONOURABLE JUSTICE FELDMAN, THE HONOURABLE JUSTICE LANG OF THE COURT OF APPEAL FOR ONTARIO, THE HONOURABLE MADAM JUSTICE JANET WILSON OF THE ONTARIO SUPERIOR COURT OF JUSTICE, THE HONOURABLE RICHARD SCOTT, CHIEF JUSTICE OF MANITOBA AND CHAIRPERSON OF THE JUDICIAL CONDUCT COMMITTEE OF THE CANADIAN JUDICIAL COUNCIL, (in their judicial and private capacities) THE CANADIAN JUDICIAL COUNCIL, THE MARITIME LIFE ASSURANCE COMPANY, now known as THE MANUFACTURERS LIFE INSURANCE COMPANY, MANULIFE FINANCIAL, DOMINIC D’ALESSANDRO, ARTHUR R. SAWCHUK, JOHN CASSADAY, LINO J. CELESTE, GAIL COOK-BENNETT, THOMAS P. D’AQUINO, RICHARD B. DE WOLFE, ROBERT E. DINEEN JR., PIERRE Y. DUCROS, ALLISTER P. GRAHAM, THOMAS E. KIERANS, LORNA R. MARSDEN, HUGH W. SLOAN JR., GORDON G. THIESSEN (in their corporate and private capacities), PAOLO GRECO

Defendants

REASONS FOR ORDER

HARRINGTON J.

[1] Mr. Crowe has parlayed the disputed settlement of an action in the Ontario Superior Court of Justice on a disability insurance policy to a \$5 billion dollar action in this Court against the underwriters, their directors and officers, his former attorney who represented him in the Ontario

action, various judges of the Ontario Superior Court of Justice, Ontario Court of Appeal, and Supreme Court of Canada, the Canadian Judicial Council (and its Chair) as well as the Attorney General on behalf of the Federal Crown. The underwriters, and the individuals associated with them, Mr. Crowe's former counsel, Paolo Greco, and the Attorney General of Canada have all moved this Court to have the action dismissed or, failing that, for lesser relief. Counsel appeared for the Canadian Judicial Council which had apparently refused to investigate Mr. Crowe's complaint about the conduct of the judges, as well as for the named judges with the exception of the three judges of the Supreme Court. He informed the Court that as he had just been recently retained, he had not had the opportunity to bring on his own motion, but supported the Attorney General.

[2] Following argument, I informed Mr. Crowe that I would be dismissing his action as against the moving parties, such dismissal only to take effect upon signing the appropriate orders and issuing written reasons.

[3] The Statement of Claim is some 62 pages in length. Mr. Crowe alleges that he became disabled in November 2003. He claimed long and short-term disability benefits from the underwriters whom I shall call Manulife. He alleges that Manulife failed, refused or neglected to pay him, and so he retained Mr. Greco to take action in the Ontario Superior Court of Justice. At a mandatory mediation session, he signed Minutes of Settlement, which called upon him to sign a Full and Final Release. He alleges that that release was contrary to what had been agreed at the mediation. This led to a motion by the underwriters for summary judgment and a cross-motion by Mr. Crowe for dismissal thereof. Madam Justice Wilson ordered that the motions "...proceed by

way of Summary Trial to determine whether the Plaintiff [Mr. Crowe] is bound by the settlement reached at the mediation.”

[4] According to Mr. Crowe, this means the issue would be decided on simplified procedures. Madam Justice Wilson could not order the trial of an issue by way of simplified procedure without his consent, which he had not given. He is of the view that her order presumptively assumes that a settlement exists in consequence of the minutes signed. Apparently, she thereby shielded Manulife and effectively granted it immunity from any claims which he may bring against it for extra-contractual, punitive and special damages in consequence of its improper conduct, tortious or otherwise. In so doing, Madam Justice Wilson acted in bad faith.

[5] Likewise, the judges of the Ontario Court of Appeal who upheld her by refusing to grant leave to appeal, and the judges of the Supreme Court who refused an application for leave to appeal the decision of the Court of Appeal, were, among other things, knowingly complicit in this unjust enrichment of Manulife and maliciously and without cause removed his substantive right to be heard.

[6] In the same way, the Canadian Judicial Council conspired by refusing to act upon Mr. Crowe’s complaint against these judges.

[7] Furthermore, or so it is alleged, the Crown in Right of Canada has a vested interest in the enrichment of insurers such as Manulife and, together with the Canadian Judicial Council, “...wilfully refused or failed its responsibility to protect the inviolable constitutional and quasi-

constitutional rights not only of the plaintiff but of all Canadians, by enabling the Canadian judiciary under the rubric of immunity to purposefully subvert justice in order to effect the unjust enrichment of Manulife at the expense and the prejudice of the plaintiff and others.”

[8] Mr. Crowe seeks exemplary, punitive and special damages in the amount of \$5 billion dollars.

THE HEARING

[9] The hearing before me proceeded in two stages. As the Attorney General’s motion record had been filed later than the other two, Mr. Crowe had been given until the morning of the hearing to file his Memorandum in Reply. He did so, but expressed concern as to whether I would have sufficient time to consider it. Therefore, I decided to first proceed with the claims of Manulife and Mr. Greco.

Manulife and Mr. Greco

[10] I informed Mr. Crowe, who is self-represented, that if these motions were to have been decided on the basis of written representations alone, as per rule 369 of the *Federal Courts Rules*, I would have granted them on the grounds that the Federal Court lacked jurisdiction over the subject matter of the claims. Consequently, I invited him to first address the issues which I identified as follows.

[11] Under the *Constitution Act, 1867*, legislative authority is divided between the Parliament of Canada on the one hand, and the legislative assemblies of the provinces on the other. Under section

91, Parliament has exclusive jurisdiction with respect to such matters as the regulation of trade and commerce, navigation and shipping, bankruptcy, patents of invention and criminal law.

[12] On the other hand, section 92 gives the provincial legislatures exclusive jurisdiction to make laws in relation to, among other things, local works and undertakings and property and civil rights in the province.

[13] Furthermore, subsection 92(14) gives the provincial legislatures the right to make laws in relation to:

14. The Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts.

14. L'administration de la justice dans la province, y compris la création, le maintien et l'organisation de tribunaux de justice pour la province, ayant juridiction civile et criminelle, y compris la procédure en matières civiles dans ces tribunaux;

[14] These courts, such as the Ontario Superior Court of Justice, deal with all manner of disputes whether based on federal or provincial law, unless that jurisdiction is removed.

[15] However, by way of exception, section 101 of the Constitution goes on to provide:

101. The Parliament of Canada may, notwithstanding anything in this Act, from Time to Time provide for the Constitution, Maintenance, and Organization of a General Court of Appeal for

101. Le parlement du Canada pourra, nonobstant toute disposition contraire énoncée dans la présente loi, lorsque l'occasion le requerra, adopter des mesures à l'effet de créer, maintenir et organiser une

Canada, and for the Establishment of any additional Courts for the better Administration of the Laws of Canada.

cour générale d'appel pour le Canada, et établir des tribunaux additionnels pour la meilleure administration des lois du Canada.

[16] The Supreme Court of Canada is the general court of appeal. Parliament has established four additional courts for the better administration of the laws of Canada, the Tax Court of Canada, the Federal Court, the Federal Court of Appeal and the Court Martial Appeal Court of Canada.

[17] In order for the Federal Court to have jurisdiction:

- a. the matter in dispute must fall within a federal legislative class of subject;
- b. there must be actual and applicable federal law; and
- c. the administration of that law has to be confided upon it (*Quebec North Shore Paper Co. v. Canadian Pacific Ltd.*, [1977] 2 S.C.R. 1054; *ITO-International Terminal Operators Ltd. v. Miida Electronics Inc.*, [1986] 1 S.C.R. 752).

[18] By way of example, I referred to criminal law as a federal legislative class of subject. There is actual federal law, the *Criminal Code*. However, the administration of that law has not been given to the Federal Court on either an exclusive or concurrent basis, and so rests with the provincial courts. The *Bankruptcy Act* is another example.

[19] Turning specifically to the claim against Manulife, and its officers and directors, irrespective of whether it is framed in contract, tort or otherwise, it relates to a policy of insurance. Insurance is matter of property and civil rights in the province (*Citizens Insurance Co. of Canada v. Parsons*

(1881), 7 App. Cas. 96 and *Zavarovalna Skupnost Triglav (Insurance Community Triglav Ltd.) v. Terrasses Jewellers Inc.*, [1983] 1 S.C.R. 283).

[20] As regards his claim against his former lawyer Mr. Greco, Mr. Greco has been authorized to practice by the Law Society of Upper Canada, and was acting in an Ontario action. As in the case of *Manulife*, I doubted that the claim related to any matter with respect to which Parliament could legislate.

[21] Mr. Crowe was unable to establish that the cause of action fell within a federal legislative class of subject. He referred to several statutes such as the *Canadian Charter of Rights and Freedoms* found in the *Constitution Act, 1982*, the *Canadian Bill of Rights* and the *Office of Superintendent of Financial Institutions Act*. The only act which clothes the Federal Court with any jurisdiction is the latter, which provides that persons who are found by the Superintendent to have committed a violation considered to be serious or very serious have the right to appeal to the Federal Court. Although that Act applies to companies to which the *Insurance Company Act* applies, it is not applicable relevant to Mr. Crowe's alleged cause of action and does not nourish the Federal Court's jurisdiction. Mr. Crowe is wrong in his assumption that the Federal Court has jurisdiction to administer federal statutes at large. That jurisdiction must be specifically confided to it.

[22] Mr. Crowe has the overall theory that even if the Federal Court would not otherwise have jurisdiction, since he is unable to obtain justice in the Ontario courts, the Federal Court may assume jurisdiction. This suggestion is completely meritless.

[23] Consequently, the Statements of Claim are struck, without leave to amend, and the action is dismissed as against these defendants because the Federal Court lacks jurisdiction over the subject matter. That being said, it was not necessary to consider other allegations they advanced, such as the claim being scandalous, frivolous, vexatious and an abuse of process of the Court.

[24] The Court then adjourned to consider Mr. Crowe's written Memorandum of Fact and Law in reply to that of the Attorney General.

ACTION AGAINST THE ATTORNEY GENERAL

[25] The action against the Attorney General is actually one against the Crown in Right of Canada. The Attorney General was named pursuant to subsection 23(1) of the *Crown Liability and Proceedings Act*. Section 48 of the *Federal Courts Act* in effect provides that in an action against the Crown, the defendant should be "Her Majesty the Queen". However, nothing turns on this possible irregularity.

[26] There appear to be two bases for Mr. Crowe's assertions that the Crown is liable. One is as guardian of the Constitution and protector of the people, the Crown is personally liable to him. The second is that it is vicariously liable for the actions of the judges who have decided against him.

[27] Section 17 of the *Federal Courts Act* specifically gives this Court concurrent original jurisdiction in all cases in which relief is claimed against the Crown. However, it must be recalled that the Crown is not liable in tort in common law (Hogg, *Constitutional Law of Canada*, loose-leaf edition, chapter 10.7 & ff). The only liability which could possibly be imposed in this case derives

from the *Crown Liability and Proceedings Act* by which the Crown is liable for torts committed by its servants.

[28] In order for the Crown to be liable, two conditions must be met: a) someone else must be liable in tort; and b) that someone else must be a Crown servant.

[29] Mr. Crowe had much to say about judicial immunity. He alleges that Madam Justice Wilson and the other judges did not simply get it wrong; they all maliciously and purposefully subverted justice in order to unjustly enrich Manulife at his expense.

[30] Irrespective of the state of the law as regards judicial immunity, judges simply are not servants of the Crown. The Crown exercises virtually no control over judges. Judicial independence from the Crown is a fundamental principle of our democracy (*Reference re: Remuneration of Judges of the Provincial Court of Prince Edward Island*, [1997] 3 S.C.R. 3 at paragraphs 82-109).

[31] It follows that even if the astounding allegations in the Statement of Claim are true, the action shall be dismissed as against the Crown on the ground that it discloses no reasonable cause of action. Again, in reaching this conclusion, it is not necessary to consider whether the Statement of Claim is scandalous, frivolous, vexatious or otherwise an abuse of process of the Court.

CANADIAN JUDICIAL COUNCIL ET AL.

[32] Even though the Canadian Judicial Council and the judges had not filed a motion, their counsel suggested that the Attorney General's motion was sufficiently broad and called for the

striking of the Statement of Claim against all defendants. However, since counsel for the Attorney General stated that he had no mandate from the Canadian Judicial Council or any judge, and indeed given that judges are not servants of the Crown, I was not prepared to dismiss the action against named parties who had not so moved. Indeed, it is not clear if they have even been served, or at least validly served.

[33] I was then invited on my own motion to strike the action on the grounds that even if the judges could possibly be liable, this Court had no jurisdiction over the subject matter of the claim. While I am convinced that I could move so as regards the judges, based on the decision of the Supreme Court in *Wire Rope Industries of Canada (1966) Ltd. v. B.C. Marine Shipbuilders Ltd. et al.*, [1981] 1 S.C.R. 363, I certainly would not do so without giving Mr. Crowe ample notice.

[34] Furthermore, as regards the Canadian Judicial Council, this Court has jurisdiction to consider its decisions by way of judicial review. Although it could be said the proceedings against it are faulty in that an action has been taken rather than an application for judicial review pursuant to rule 300 and following (*Canada v. Grenier*, 2005 FCA 348, [2006] 2 F.C.R. 287), it is possible for such “faulty” actions to be stayed, rather than dismissed (*Momi v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 738, [2007] 2 F.C.R. 291).

COSTS

[35] Although some of the parties had originally sought costs on a substantial indemnity basis, come the hearing Manulife proposed lump sum costs of \$1,000, and the other two parties \$500.

Since these parties could have taxed more under the default provision of Tariff B, Column III, these proposals were more than reasonable, and shall be granted.

[36] As a result of the orders accompanying these reasons, the style of cause shall now read:

RON CROWE

Plaintiff

and

**THE HONOURABLE CHIEF JUSTICE OF CANADA BEVERLY McLACHLIN,
THE HONOURABLE JUSTICE CHARRON, THE HONOURABLE JUSTICE
ROTHSTEIN OF THE SUPREME COURT OF CANADA, THE HONOURABLE CHIEF
JUSTICE OF ONTARIO ROY McMURTRY, THE HONOURABLE JUSTICE FELDMAN,
THE HONOURABLE JUSTICE LANG OF THE COURT OF APPEAL FOR ONTARIO,
THE HONOURABLE MADAM JUSTICE JANET WILSON OF THE ONTARIO
SUPERIOR COURT OF JUSTICE, THE HONOURABLE RICHARD SCOTT,
CHIEF JUSTICE OF MANITOBA AND CHAIRPERSON OF THE JUDICIAL CONDUCT
COMMITTEE OF THE CANADIAN JUDICIAL COUNCIL (in their judicial and private
capacities) AND THE CANADIAN JUDICIAL COUNCIL**

Defendants

“Sean Harrington”

Judge

Montréal, Quebec
October 4, 2007

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1526-07

STYLE: *Ron Crowe v. The Attorney General of Canada et al.*

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: September 26, 2007

REASONS FOR ORDER: HARRINGTON J.

DATED: October 4, 2007

APPEARANCES:

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Mr. Martin Mason FOR THE DEFENDANT CANADIAN JUDICIAL
COUNCIL ET AL

Mr. Michael Birley FOR THE DEFENDANT MANULIFE
Ms. Anna-Marie Musson INSURANCE COMPANY ET AL

Ms. Sandi Smith FOR THE DEFENDANT PAOLO GRECO

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