Federal Court  Cour fédérale

Date: 20091006

Docket: T-996-09

Citation: 2009 FC 1011

Montreal, Quebec, October 6, 2009

PRESENT: The Honourable Mr. Justice Mainville

BETWEEN:

GARY SAUVE
STEPHANE SAUVE

Plaintiffs

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA,
Royal Canadian Mounted Police (RCMP),
RCMP Commissioner Giuliano Zaccardelli (as he then was),
RCMP Commissioner Beverley Busson (as she then was),
RCMP Commissioner Wiliam J.S. Elliott (as he is now),
Louis Dorais (RCMP), RCMP members (not known at this time),
Jean Daniel Hacala (RCMP), Yves Bacon (RCMP),
Frank Richter (RCMP), RCMP Vets Net,
Honourable Gordon O'Connor, Minister of National Revenue,
Canada Revenue Agency, Sylvain Trottier (CRA), Anne Roland

Defendants

and

MONECO SOBECO

Party-to-Action

REASONS FOR ORDER AND ORDER

Introduction

[1] This order concerns a Motion submitted on behalf of all Defendants on August 17, 2009 and amended on September 4, 2009. The Amended Motion seeks an Order to strike out the entire statement of claim of the Plaintiffs, without leave to amend. In the event the Defendants are unsuccessful, they also seek various alternative reliefs, including striking out the minor child Stéphane Sauvé as a plaintiff and all other defendants save the Crown.

Background

[2] On October 24, 2008, the same Plaintiffs introduced a statement of claim bearing Federal Court file number T-1646-08 and which will be referred to herein as the 2008 statement of claim. Under that claim, the Plaintiffs were seeking against a group of Defendants $8,000,000 in damages under various sets of facts which are further reviewed below, as well as $500,000 in exemplary damages and $500,000 in punitive damages, pre-judgment and post-judgment interest as well as costs.

[3] The 2008 statement of claim has resulted in numerous and varied motions, some on behalf of the Defendants, some on behalf of the Plaintiffs. It would be tedious to review all of these various motions save two which are pertinent for the purposes of disposing of the present Motion.

[4] By Motion filed with the Court on June 5, 2009, the Defendants in the 2008 statement of claim sought an Order striking out that statement of claim in its entirety without leave to amend, and

alternatively striking out the minor child Stéphane Sauvé as a plaintiff and all other Defendants save the Crown.

[5] In response, the Plaintiffs submitted a Motion to stay the hearing of the Motion to strike the 2008 statement of claim.

[6] Both these Motions concerning the 2008 statement of claim were heard before Prothonotary Tabib on June 25, 2009. The Motion to stay was dismissed and the Motion to strike out was in large part granted. Prothonotary Tabib struck out all claims except those set out in paragraphs 83 to 98 of the 2008 statement of claim. In addition, Prothonotary Tabib dismissed the action on behalf of the minor child Stéphane Sauvé and struck him out as a party to the action. The action in its entirety was dismissed by Prothonotary Tabib as against all Defendants other than Her Majesty the Queen in Right of Canada.

[7] The Plaintiffs to the 2008 statement of claim originally sought to appeal the decision of Prothonotary Tabib not to grant the stay, but subsequently withdrew this appeal. Consequently the two Orders of Prothonotary Tabib concerning the 2008 statement of claim are final and binding.

[8] However, on June 22, 2009, three days prior to the scheduled hearing on both Motions in the 2008 statement of claim before Prothonotary Tabib, the Plaintiffs filed with the Court another statement of claim bearing number T-996-09. Under this claim, the Plaintiffs are also seeking $8,000,000 in damages under various sets of facts which are further reviewed below but which are

in large part similar to those set out under the 2008 statement of claim, as well as $500,000 in exemplary damages and $500,000 in punitive damages, pre-judgment and post-judgment interest as well as costs. The group of defendants is almost identical to the 2008 statement of claim, but with the addition of certain named RCMP Commissioners and RCMP employees as defendants. I will refer to the statement of claim bearing number T-996-09 as the 2009 statement of claim.

[9] As noted above, by Motion of August 17, 2009 and amended on September 4, 2009, the Defendants seek to strike out the entire 2009 statement of claim.

[10] On August 26, 2009, the Plaintiffs filed a Motion to amend the 2009 statement of claim. They also filed on September 2, 2009 an amended statement of claim. Upon directions from the Court, the Plaintiffs filed on September 8, 2009 a new version of their amended statement of claim identifying those amendments they were seeking to make.

[11] Both the Motion to strike of the Defendants and the Motion to amend of the Plaintiffs in regard to the 2009 statement of claim were heard by the undersigned on September 10, 2009.

[12] These Reasons concern only the Motion to strike of the Defendants.

Self-represented Litigants

[13] The Plaintiffs are both self-represented.

[14] The Canadian Judicial Council adopted in September of 2006 a *Statement of Principles on Self-represented Litigants and Accused Persons* ("Statement"). The Statement explicitly indicates it is advisory in nature and not intended as a code of conduct.

[15] The Statement notes that the various judicial authorities each have a responsibility to ensure that self-represented persons are provided with fair access and equal treatment before the courts. Consequently, all aspects of the court process should be as much as possible, open, transparent, clearly defined, simple, convenient and accommodating (Statement, Principle A.1). Moreover, self-represented persons should not be denied relief on the basis of a minor or easily rectified deficiency in their case (Statement, Principle B.2). Judges should ensure that procedural and evidentiary rules are not used to unjustly hinder the legal interests of self-represented persons (Statement, Principle C.2 for the Judiciary).

[16] However, self-represented persons, like all other litigants, are subject to the provisions whereby courts maintain control of their proceedings and procedures. In the same manner as with other litigants, self-represented persons may be treated as vexatious or abusive where the administration of justice requires it. The ability of judges to promote access may be affected by the actions of self-represented litigants themselves (Statement, B.4 Commentary).

Minor child as Plaintiff

[17] Plaintiff Stéphane Sauvé is a minor. Rule 121 of the *Federal Courts Rules* is clear:

121. Unless the Court in special circumstances orders otherwise,	**121.** La partie qui n'a pas la capacité d'ester en justice ou

a party who is under a legal disability or who acts or seeks to act in a representative capacity, including in a representative proceeding or a class proceeding, shall be represented by a solicitor.	qui agit ou demande à agir en qualité de représentant, notamment dans une instance par représentation ou dans un recours collectif, se fait représenter par un avocat à moins que la Cour, en raison de circonstances particulières, n'en ordonne autrement.

[18] I would have considered providing time for the minor child's father, Gary Sauvé, to seek to have a proper representative appointed for his son pursuant to Rule 115 of the *Federal Courts Rules* for the purposes of allowing the Court to exercise its discretion to waive the requirement under Rule 121. However, the actions of the Plaintiffs in the 2008 statement of claim must be taken into account in determining the exercise of my discretion in this matter. Indeed identical issues were raised in those proceedings and the Plaintiffs were provided ample opportunity to have a proper representative appointed to the minor child. This was the subject of an Order from Justice Hansen dated June 12, 2009 in the 2008 proceedings. As already noted, the ability of judges to promote access to the courts may be affected by the actions of self-represented litigants themselves. In this case I see no reason to exercise my discretion.

[19] Consequently, the action is dismissed in regard to the Plaintiff Stéphane Sauvé.

[20] All references to Stéphane Sauvé in the 2009 statement of claim are thus struck out, including more particularly the words "and Stéphane Sauvé" in paragraph 1, paragraphs 3, 41, 68, 82, 90, and 145 in their entirety, the words "and the plaintiff minor did not see or talk to his father

for 5 months" in paragraph 17, the words "and his minor child (plaintiff minor)" in paragraphs 27, 28, 35, 42, 44, 49, 53, 87, the second sentence of paragraph 61, the words "the other a minor child" in paragraph 62, the last sentence of paragraph 66, and the last sentence of paragraph 89.

Res judicata

[21] The Defendants argue *res judicata*. They state that since Prothonotary Tabib rejected all claims save those set out in paragraphs 83 to 98 of the 2008 statement of claim, and since these claims are identical in their essential elements to those set out in the 2009 statement of claim, the later should be struck out in its entirety.

[22] I am not convinced that a clear case of *res judicata* has been made out here. As noted by the Supreme Court of Canada in *Danyluk v. Ainsworth Technologies*, [2001] 2 S.C.R. 460, at paragraphs. 20, 24 and 25:

> 20. The law has developed a number of techniques to prevent abuse of the decision-making process. One of the oldest is the doctrine estoppel *per rem judicatem* with its roots in Roman law, the idea that a dispute once judged with finality is not subject to relitigation: *Farwell v. The Queen* (1894), 22 S.C.R. 553, at p. 558; *Angle v. Minister of National Revenue*, [1975] 2 S.C.R. 248, at pp. 267-68. The bar extends both to the cause of action thus adjudicated (variously referred to as claim or cause of action or action estoppel), as well as precluding relitigation of the constituent issues or material facts necessarily embraced therein (usually called issue estoppel): G. S. Holmested and G. D. Watson, *Ontario Civil Procedure* (loose-leaf), vol. 3 Supp., at 21§17 *et seq*. Another aspect of the judicial policy favouring finality is the rule against collateral attack, i.e., that a judicial order pronounced by a court of competent jurisdiction should not be brought into question in subsequent proceedings except those provided by law for the express purpose of attacking it: *Wilson v. The Queen*, [1983] 2 S.C.R. 594; *R. v. Litchfield*, [1993] 4 S.C.R. 333; *R. v. Sarson*, [1996] 2 S.C.R. 223.[…]

24. Issue estoppel was more particularly defined by Middleton J.A. of the Ontario Court of Appeal in *McIntosh v. Parent*, [1924] 4 D.L.R. 420, at p. 422:

When a question is litigated, the judgment of the Court is a final determination as between the parties and their privies. Any right, question, or fact distinctly put in issue and directly determined by a Court of competent jurisdiction as a ground of recovery, or as an answer to a claim set up, cannot be re-tried in a subsequent suit between the same parties or their privies, though for a different cause of action. The right, question, or fact, once determined, must, as between them, be taken to be conclusively established so long as the judgment remains. [Emphasis added.]

This statement was adopted by Laskin J. (later C.J.), dissenting in *Angle*, *supra*, at pp. 267-68. This description of the issues subject to estoppel ("[a]ny right, question or fact distinctly put in issue and directly determined") is more stringent than the formulation in some of the older cases for cause of action estoppel (e.g., "all matters which were, or might properly have been, brought into litigation", *Farwell*, *supra*, at p. 558). Dickson J. (later C.J.), speaking for the majority in *Angle*, *supra*, at p. 255, subscribed to the more stringent definition for the purpose of issue estoppel. "It will not suffice" he said, "if the question arose collaterally or incidentally in the earlier proceedings or is one which must be inferred by argument from the judgment." The question out of which the estoppel is said to arise must have been "fundamental to the decision arrived at" in the earlier proceeding. In other words, as discussed below, the estoppel extends to the material facts and the conclusions of law or of mixed fact and law ("the questions") that were necessarily (even if not explicitly) determined in the earlier proceedings.

25. The preconditions to the operation of issue estoppel were set out by Dickson J. in *Angle*, *supra*, at p. 254:

(1) that the same question has been decided;

(2) that the judicial decision which is said to create the estoppel was final; and,

(3) that the parties to the judicial decision or their privies were the same persons as the parties to the proceedings in which the estoppel is raised or their privies.

[23] In light of the *Danyluk* decision, I am not convinced that an Order made on the basis of a Motion to strike has all the prerequisites required to argue cause of action estoppel or issue estoppel. Moreover, in this case the defendants to the 2009 statement of claim and to the 2008 statement of claim are not all identical. However, I need not decide this matter since I am, in any event, of the view that most of the 2009 statement of claim should be struck out as an abuse of process.

[24] The first paragraph of Rule 221 of the *Federal Courts Rules* provides for the following:

221. (1) On motion, the Court may, at any time, order that a pleading, or anything contained therein, be struck out, with or without leave to amend, on the ground that it,	**221.** (1) À tout moment, la Cour peut, sur requête, ordonner la radiation de tout ou partie d'un acte de procédure, avec ou sans autorisation de le modifier, au motif, selon le cas :
(*a*) discloses no reasonable cause of action or defence, as the case may be,	*a*) qu'il ne révèle aucune cause d'action ou de défense valable;
(*b*) is immaterial or redundant,	*b*) qu'il n'est pas pertinent ou qu'il est redondant;
(*c*) is scandalous, frivolous or vexatious,	*c*) qu'il est scandaleux, frivole ou vexatoire;
(*d*) may prejudice or delay the fair trial of the action,	*d*) qu'il risque de nuire à l'instruction équitable de l'action ou de la retarder;
(*e*) constitutes a departure from a previous pleading, or	*e*) qu'il diverge d'un acte de procédure antérieur;
(*f*) is otherwise an abuse of the process of the Court,	*f*) qu'il constitue autrement un abus de procédure.
and may order the action be dismissed or judgment entered	Elle peut aussi ordonner que l'action soit rejetée ou qu'un

accordingly.	jugement soit enregistré en conséquence.

[25] The 2009 statement of claim was filed with the Court just three days prior to the hearing before Prothonotary Tabib concerning the Motion to strike the 2008 statement of claim. In addition, the issues raised in both the 2008 and 2009 statements of claim are, in many aspects, almost identical. I have no reservations finding that the 2009 proceedings were in part brought forward by the Plaintiff as a pre-emptive measure to counter a potential decision by Prothonotary Tabib unfavourable to the Plaintiff. In these circumstances, I am of the view that the issues in the 2009 statement of claim, which are identical or similar to the issues set out in the 2008 statement of claim, should be stricken out as an abuse of this Court's process.

[26] Though I understand that the Court must be accommodating and flexible with self-represented litigants, this is not a case of a mistaken minor procedural error. Circumventing the process of the Court by multiplying claims on the same issues is not a minor procedural error. The Plaintiff may not be represented, but common sense dictates that it is improper to file claims anew in order to avoid a potential adverse decision.

[27] The 2008 statement of claim concerns various issues which can be regrouped under five headings:

a. Paragraphs 12 to 39 of the 2008 statement of claim concern letters received by the Plaintiff and signed by Mr. Sylvain Trottier, and employee of the Canada Revenue Agency ("CRA"). These letters seek clarification of the Plaintiff's marital status for

certain tax purposes, including GST credits. The Plaintiff claims that these letters were the result of a conspiracy by the Crown and the Royal Canadian Mounted Police to "send the CRA after the Plaintiff" because he was suing them in an unrelated civil matter.

b. Paragraphs 40 to 65 of the 2008 statement of claim relate to the Plaintiff's loss of benefits under the RCMP Life Insurance Plan and the alleged failures of the Defendants to take measures in order to preserve the Plaintiff's coverage;

c. Paragraphs 66 to 82 of the 2008 statement of claim concern allegations that the Crown contacted a third party who had previously harassed and threatened the Plaintiff, and this resulted in damages since the concerned third party wrote letters and made harassing phone calls to the Plaintiff.

d. Paragraphs 83 to 100 of the 2008 statement of claim relates to internet postings concerning the Plaintiff and made on the RCMP Vets Net site maintained by Mr. Frank Richter, an active or former RCMP employee.

e. Paragraphs 101 to 118 concern claims relating to the alleged unlawful posting of the Plaintiff's address by the administrative services of the Supreme Court of Canada.

[28] After having reviewed carefully the 2009 statement of claim, I come to the conclusion that paragraphs 24, 25, 40, 45, 46, 56, 58 to 61 as well as paragraphs 91 to 146 concern essentially the same issues as those set out in the 2008 statement of claim. Consequently these paragraphs are struck out from the 2009 statement of claim.

[29] Since the claims concerning Frank Richter, RCMP Vets Net, the Honourable Gordon O'Connor, Minister of National Revenue, the Canada Revenue Agency, Sylvain Trottier and Anne Roland are consequently no longer part of the 2009 statement of claim, they are struck out as parties defendant to this action. As a consequence thereof paragraphs 13 to 16 are also struck out from the 2009 statement of claim.

The claim related to an abusive surveillance operation

[30] Much of the remaining paragraphs of the 2009 statement of claim concern issues related to an alleged unlawful or abusive surveillance operation being conducted against the Plaintiff by the RCMP and certain of its employees. These issues were not directly raised in the 2008 statement of claim.

[31] The Plaintiff refers to alleged illegal detentions accompanied by alleged ill treatment at the hands of the RCMP. He also indicates that he is or was the subject of an abusive surveillance operation by the RCMP involving video surveillance at or near his residence, wiretaps, following the Plaintiff, attempting to entrap the Plaintiff, etc.

[32] Though the remaining paragraphs are drafted in an unusual and somewhat confused style, I am not prepared to strike these claims as a whole on this Motion. These claims concern serious allegations of misconduct and of questionable practices by our national police force, and at this point in the proceedings, without the benefit of having a defence to these claims before me, it would be inappropriate to simply strike them out on the simple basis of this Motion.

[33] However, I do strike out the following paragraphs as either disclosing no reasonable cause of action or being immaterial or redundant:

a. Paragraphs 19 and 20, since they simply reproduce or refer to dictionary definitions;

b. Paragraphs 30 to 34 and 36, which refer to labour dispute matters and other legal proceedings and which are therefore immaterial;

c. Paragraphs 38, 39, 48 to 55 and 57, which refer to various legal principles or dictionary definitions which are immaterial or redundant;

d. Paragraph 67, which concerns the Plaintiff's former life partner who is not a party to the action.

e. Paragraphs 75 to 89 which refer to various international instruments and extraneous issues which are of little or no bearing on the claim.

The RCMP and other named defendants

[34] The Defendants also argue that the RCMP and the other named defendants should be struck from the 2009 statement of claim on the basis that the Federal Court does not have jurisdiction over claims made against these defendants.

[35] The Defendants argue that claims against individual Crown servants and officers must be supported by an existing and applicable federal law if this Court is to have jurisdiction: *ITO-Int'l Terminator Operators v. Miida Electronics*, [1986] 1 S.C.R. 752, at p. 766, *Canada v. Smith*, 2002 FCA 348. Since the law of negligence is provincial and not federal, and since the alleged torts do not depend upon a detailed statutory framework of statutory law, the Court should decline jurisdiction over the named defendants: *Pacific Western Airlines Ltd. v. Canada*, [1979] 2 F.C. 476 (T.D.), paragraphs 24-25, aff'd [1980] 2 F.C. 511; *Oag v. Canada*, [1987] 2 F.C. 511 (C.A.); *Canada v. Smith*, 2002 FCA 348, at paragraphs 12, 14, 18. It is however conceded that the claims could proceed in this Court, but against the Crown only.

[36] The legal issue related to the inclusion or exclusion of named RCMP officers to these proceedings is somewhat more complex. I do not believe this issue is as clear or simple as the Defendants state, particularly in light of *Canada v. Smith*, 2002 FCA 348. I do not however intend to make any judicial pronouncement on the legal issue raised.

[37] In this case, the statement of claim makes no specific reference to any of the named defendant RCMP officers. It does not contain sufficient facts or arguments in order to sustain at this stage of these proceedings any conclusions against any of the named RCMP officers. In addition, I find no reason to sustain as a defendant "RCMP members (not known at this time)".

[38] Consequently, at this time, with the record before me, I find no reason to include as defendants named or unknown RCMP officers and these defendants are consequently struck out from the action. As a result thereof, paragraphs 9 to 12 are also struck out from the 2009 statement of claim. I make this finding based on the specific terms of the 2009 statement of claim before me and not on the basis of any overriding legal principle.

[39] Furthermore, the RCMP is a police force for Canada (s. 3 of the *Royal Canadian Mounted Police Act*, R.S.C., 1985, c. R-10) answerable to the Minister of Public Safety and Emergency Preparedness (s. 5 of the *Department of Pubic Safety and Emergency Preparedness Act,* S.C. 2005, c. 10). Consequently actions seeking monetary compensation against the RCMP should be instituted against the Crown (*Dixon v. Deacon Morgan McEwen Easson*, [1989] B.C.J. No. 1471, 62 D.L.R. (4th) 175, 38 B.C.L.R. (2d) 318); *Pearson v. Beazley*, [1989] O.J. No. 1792, 1 T.T.R. 209); *McFarlane v. Holmberg*, [1992] B.C.J. No. 167; *Cooper v. Canada (Royal Canadian Mounted Police),* [2001] B.C.J. No. 2729; 2001 BCSC 1788, at paragraph 48. In addition, I find no reason to include as defendants former or current commissioners of the RCMP. The statement of claim makes no reference to any specific behaviour of any Commissioner, and moreover, the vicarious liability of Commissioners in regard to RCMP officers is questionable (*Munro v. Canada,* 11 O.R. (3d) 1;

[1992] O.J. 2453; *Dix v. Canada*, [2001] A.J. No. 410; 2001 ABQB 256, at paragraphs 12-13). Consequently the RCMP and the defendants designated as RCMP Commissioners Zaccardelli, Busson and Elliot are struck out as defendants in the action. As a result thereof, paragraphs 5 to 8 are also struck out from the 2009 statement of claim.

Case management

[40] Counsel for the Defendants requested at the hearing that should the Court maintain any part of the 2009 statement of claim, then the case should be subject to court supervised management concurrently with the issues remaining in the 2008 statement of claim . The Plaintiff did not object to this request.

[41] I am of the view that a special case management is required here for the proper administration of justice in light of the limited resources of this Court. Moreover, case management activities should be considered in appropriate cases involving self-represented litigants, and here is such a case.

[42] I thus agree with counsel for the Defendants that both this action T-996-09 and the statement of claim bearing number T-1646-08 should continue as specially managed proceedings, and I so order pursuant to Rule 384 of the *Federal Courts Rules*.

ORDER

THIS COURT ORDERS that:

1. The Motion is granted in part.
2. The action on behalf of Stéphane Sauvé is hereby dismissed and Stéphane Sauvé is hereby struck out as a party to this action.
3. All defendants except Her Majesty the Queen in Right of Canada are struck out as parties to the action.
4. All paragraphs contained in the statement of claim are struck out from the action, to the exception of paragraphs 1, 4, 17, 18, 21 to 23, 26 to 29, 35, 37, 42 to 44, 47, 62 to 66, 69 to 74, 147 and 148. All references to Stéphane Sauvé (as the "plaintiff minor" or otherwise) in these remaining paragraphs are also struck out.
5. This case under file number T-996-09 and the case involving the same parties under file number T-1646-08 are continued as specially managed proceedings.
6. The time within which the Defendant may serve and file a statement of defence to the remaining parts of the statement of claim is extended to 30 days from the date of this Order or to such other time as may by varied by the case management judge or prothonotary who is appointed to specially manage the proceedings.
7. Costs on this Motion shall be in the cause.

"Robert M. Mainville"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-996-09
STYLE OF CAUSE:	GARY SAUVE ET AL v. HER MAJESTY THE QUEEN ET AL
PLACE OF HEARING:	Ottawa, Ontario
DATE OF HEARING:	September 10, 2009
REASONS FOR ORDER AND ORDER:	Mainville J.
DATED:	October 6, 2009

APPEARANCES:

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Agnieska Zagorska	FOR THE DEFENDANTS

SOLICITORS OF RECORD:

Nil	FOR THE PLAINTIFF
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