Federal Court  Cour fédérale

Date: 20110916

Docket: T-1-10

Citation: 2011 FC 1074

Ottawa, Ontario, September 16, 2011

PRESENT: The Honourable Mr. Justice Crampton

BETWEEN:

GARY SAUVE

Plaintiff

and

HER MAJESTY THE QUEEN
IN RIGHT OF CANADA,
RCMP JACQUES LEMIEUX
AND OTHER RCMP OFFICERS
(KNOWN AT THIS TIME)

Defendants

REASONS FOR ORDER AND ORDER

[1] The Applicant, Gary Sauve, was a member of the Royal Canadian Mounted Police who was dismissed after he was convicted of two counts of criminal harassment involving his former spouse.

[2] Subsequent to his dismissal, Mr. Sauve initiated six actions in this Court. In those actions, some of which are ongoing, he made various claims against the Defendants with respect to, among other things, the events leading up to his convictions; the RCMP's suspension, surveillance and treatment of him; one or more conspiracies allegedly engaged in by unnamed members of the RCMP; and his treatment at the hands of the Sûreté du Québec.

[3] In April of this year, Prothonotary Aronovitch issued an Order striking out Mr. Sauve's statement of claim in its entirety and dismissing this action. After noting that Mr. Sauve had previously amended his statement of claim to remove approximately 75 paragraphs, following an Order granting security for costs in this action, she stated the following:

> The statement of claim as amended remains lengthy and often difficult to follow. Causes of action, where they are asserted are loosely if at all related to the facts alleged, and are often serially stated, as bald assertions, without any factual underpinning. Moreover though amended, the statement of claim still reiterates much that has been raised, considered and, in some instances struck out by this Court in the multiple parallel actions commenced by the plaintiff.

[4] Other key findings made by Prothonotary Aronovitch include the following:

i. The duty of care that Mr. Sauve claims was owed to him by the RCMP to prevent alleged abuses by the Sûreté du Québec, was simply baldly asserted without any factual underpinning.

ii. The claim that a representative of the RCMP made false and defamatory statements was contradicted by other information contained in Mr. Sauve's statement of claim.

iii. Mr. Sauve failed to plead any facts to support the claim that a representative of the RCMP threatened to commit an illegal act, and thereby committed the tort of intimidation.

iv. Mr. Sauve failed to plead any material facts, or to identify the individual or individuals involved, to support his claim that one or more members of the RCMP sent feces to a judge in Quebec in his name.

v. Nothing of what is minimally required to ground causes of action for malicious prosecution and for tortious conspiracy to injure had been pleaded by Mr. Sauve.

vi. Much of the remainder of Mr. Sauve's statement of claim consists of what may be described as a lengthy list of bald assertions and a variety of claims for damages, torts, and breaches of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982, being schedule B to the *Canada Act, 1982* (UK), 1982, c 11 (the "*Charter*") allegedly committed by the Defendants. Given that no material facts were pleaded in support of these claims, they were struck on the basis that they are immaterial, frivolous and vexatious.

[5] In addition, Prothonotary Aronovitch noted that Mr. Sauve had conceded that some of the claims made in his statement of claim, for example, relating to his suspension from the RCMP and his pay and benefits, "are meant only to provide context and are not the basis of any claim for damages." She added that, in any case, Mr. Sauve cannot otherwise rely on these allegations,

because identical ones have been struck out in two of the other actions that have been brought by him, namely T-1648-08 and T-996-09.

[6] By way of the present motion, Mr. Sauve is appealing the Order made by Prothonotary Aronovitch. In his Notice of Motion, Mr. Sauve requests, among other things:

i. an Order striking the Defendants' motion-to-strike in its entirety; and

ii. an Order restoring certain of the claims made in his statement of claim, or granting him leave to file a Fresh as Amended Statement of Claim.

[7] However, his lengthy written representations do not identify any particular errors that he believes were made by Prothonotary Aronovitch in granting the Defendants' motion to strike out his statement of claim. On a very generous reading, I am prepared to interpret his submissions as asserting that Prothonotary Aronovitch erred by, among other things:

i. concluding that he had failed to plead sufficient facts to support his various claims;

ii. determining that certain of his allegations should be struck out on the basis that they are either immaterial or frivolous and vexatious; and

iii. failing to permit him to make such amendments as might reasonably be made to disclose a proper case to be tried.

[8] For the reasons that follow, I have concluded that Mr. Sauve's statement of claim should be struck in its entirety. This motion will therefore be dismissed.

I. Overview

[9] In his statement of claim in the within action, Mr. Sauve seeks approximately $9 million in general, punitive and aggravated damages.

[10] Mr. Sauve's Fresh as Amended Statement of Claim, dated May 3, 2010 (the "statement of claim"), is almost 40 pages long, although many of the 160 paragraphs in that document have been struck through. After apparently reflecting upon Prothonotary Aronovitch's decision, he substantially streamlined that document by deleting a significant amount of material which pertained to: (i) his treatment at the hands of the Sûreté du Québec, (ii) the Defendants' alleged duty of care and vicarious liability for that treatment, (iii) the suspension of his pay and benefits, (iv) an ongoing RCMP disciplinary investigation, and (v) alleged harassment, invasion of privacy, recklessness, breach of fiduciary obligations, torture and abuse of process by the RCMP.

[11] He then presented a revised statement of claim (the "Streamlined Statement of Claim"), approximately 14 pages in length, during the hearing of this motion (the "Hearing"). The Defendants did not object to that document being submitted solely to assist the Court for the purposes of the Hearing. However they appropriately noted that (i) Mr. Sauve had neither sought nor obtained leave to amend his statement of claim, and (ii) their written and oral submissions had been prepared on the basis of the above-mentioned version of the document, dated May 3, 2010.

[12] According to Mr. Sauve, the allegations made in his Streamlined Statement of Claim are now confined to four distinct claims.

[13] The first claim (the “Subpoena Claim”) involves (i) a subpoena to appear in a court in Thetford Mines, Quebec, and (ii) a related affidavit sworn by the process server, stating that he had served the subpoena on Mr. Sauve. Mr. Sauve claims the RCMP knew that the subpoena was never served on him, knew that the process server’s affidavit was false, and falsely accused him of evading service.

[14] The second claim (the “Threats/Intimidation Claim”) involves allegations that RCMP Officer Jacques Lemieux threatened to personally arrest him and bring him to Quebec to face proceedings for failing to comply with the aforementioned subpoena.

[15] The third claim (the “Feces Claim”) involves an allegation that the RCMP, or unnamed representatives of the RCMP, sent feces to a judge in Quebec in his name.

[16] The fourth claim (the “Removal/Threats Claim”) involves allegations that he was removed from his cell at the Montreal Detention Center and brought before the Superintendent of that institution at the request of the RCMP.

[17] Mr. Sauve asserts various causes of action that are not particularized, arising out of the four abovementioned claims, including defamation, libel, slander, uttering threats, criminal harassment and intimidation, negligence, conspiracy and breach of a number of his rights under the *Charter*.

[18] Notwithstanding the assertion made by Mr. Sauve during the Hearing that he is now only pursuing the four above-mentioned claims, his Streamlined Statement of Claim continues to contain various other claims that will be briefly addressed in Part IV.B of these reasons.

II. The Relevant Rules and Principles on Motions to Strike

[19] The Defendants' motion to strike Mr. Sauve's statement of claim invokes Rules 174, 175 and 221 of the *Federal Courts Rules*, SOR/98-106, as amended (the "Rules").

[20] Rule 174 of the Rules requires that "[e]very pleading shall contain a concise statement of the material facts on which the party relies." However, a statement of claim that contains bare assertions, but no facts on which to base those assertions, discloses no cause of action (*Vojic v Canada (Minister of National Revenue)*, [1987] 2 CTC 203 (FCA)).

[21] Rule 175 permits a party to raise a point of law in a pleading. However, a conclusion of law pleaded without the requisite factual underpinning to support the legal conclusions asserted is defective, and may be struck out as an abuse of Court (*Merck & Co v Nu-Pharm Inc* (1999), 179 FTR 87, at para 29, aff'd (2000), 193 FTR 256).

[22] Rule 221 articulates this Court's jurisdiction on a motion-to-strike. For the purposes of this motion, the relevant provisions of Rule 221 are as follows:

Federal Courts Rules, SOR/98-106	*Règles des Cours fédérales*, DORS/98-106
Motion to Strike	Requête en radiation
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;
[…]	[…]
(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 accordingly.	Elle peut aussi ordonner que l'action soit rejetée ou qu'un jugement soit enregistré en conséquence.
[…]	[…]

[23] Rule 221(2) further provides that no evidence shall be heard on a motion for an order under Rule 221(1)(a). In short, the pleading must stand or fall on its own.

[24] A motion-to-strike will only be granted where it is "plain and obvious" that the statement of claim discloses no reasonable cause of action, assuming the facts alleged in the statement of claim to be true (*Hunt v Carey Canada Inc*, [1990] 2 SCR 959, at 980).

[25] In considering a motion-to-strike, the statement of claim should be read as generously as possible, in a manner that accommodates any inadequacies in the allegations that are merely the result of deficiencies in the drafting of the document (*Operation Dismantle Inc v Canada*, [1985] 1 SCR 441, at para 14). After reading the statement of claim in that manner, a determination must be made if the facts stated therein disclose a cause of action (*Sauve v Canada*, 2011 FCA 141, at para 8).

III. The Standard of Review

[26] The test applicable on an appeal of a discretionary order issued by a prothonotary is whether: (i) the questions raised in the motion are vital to the final issue of the case, or (ii) the order "is clearly wrong, in the sense that the exercise of discretion by the prothonotary was based upon a wrong principle or upon a misapprehension of the facts" (*Merck & Co Inc v Apotex Inc*, 2003 FCA 488, at para 19). More recently, the Federal Court of Appeal has stated that discretionary decisions of prothonotaries should stand unless intervention is warranted "to prevent undoubted injustices and to correct clear material errors" (*j2 Global Communications, Inc v Protus IP Solutions Inc*, 2009 FCA 41, at para 16). However, the latter qualification appears to have been made solely with respect to the second prong of the test set forth above, as the Court in that case agreed with the motions judge that the issue that had been raised was not vital to the final issue of the case (*j2 Global Communications*, above, at para 15). Based on a more recent decision rendered by the Federal Court of Appeal, it is clear that this Court is still obliged to conduct a *de novo* review of a prothonotary's decision in respect of a question that is vital to the final issue in the case (*Bristol-Myers Squibb Co v Apotex Inc*, 2011 FCA 34, at paras 6, 9).

[27] Given that Prothonotary Aronovitch struck Mr. Sauve's statement of claim in this action in its entirety, I am satisfied that the central question raised in this motion is vital to the final issue in this action. Therefore, I will conduct a *de novo* review of the issues that have been raised by the parties, other than those that Mr. Sauve stated he is no longer pursuing, as discussed in paragraph 10 above.

IV. Analysis

A. *Has Mr. Sauve failed to plead sufficient facts to support his claims?*

[28] Mr. Sauve submits that it is not "plain and obvious" that his claims disclose no reasonable cause of action and that he has failed to plead sufficient facts to support those claims. His specific submissions and claims in respect of each of the four principle claims that he continues to advance are addressed below.

i. The Subpoena Claim

[29] Mr. Sauve alleges that the RCMP knew that a process server had falsely sworn an affidavit stating that he had served Mr. Sauve, at 11:00 a.m. on October 3, 2006, with a subpoena to appear in a court in Quebec. He asserts that the RCMP was aware, from telephone wiretaps and physical surveillance that they had been conducting on him, that he was at a physiotherapy clinic, approximately one hour away, at that time. As a result, he submits that RCMP Officer Jacques Lemieux knew, when he accused him of "evading service," that this accusation was false and defamatory. He claims that he and his minor child sustained serious emotional and physical injuries as a result of the RCMP's false accusation and failure to take immediate and appropriate action.

[30] At the Hearing, Mr. Sauve stated that the RCMP's failure in this regard constituted (i) negligence and criminal negligence, because the RCMP showed wanton disregard for the lives or safety of he and his family, and (ii) a breach of his rights under section 7 of the *Charter*. He added that there were additional reasons why the RCMP knew about his appointment at his physiotherapy clinic, namely (i) that appointment was referred to in one or more court hearings

that were attended by RCMP Officer Gagnon, and (ii) the Defendants' counsel was provided with a schedule of his appointments at the physiotherapy clinic.

[31] In her decision granting the Defendants' motion to strike, Prothonotary Aronovitch stated that the elements of the tort of defamation could not be made out on the basis of the facts set forth in Mr. Sauve's statement of claim. I agree.

[32] As Prothonotary Aronovitch noted, a cause of action for the tort of defamation must be based on statements that are false. However, at paragraph 44 of his statement of claim, Mr. Sauve stated that he was found to have been in contempt of court for having failed to appear in response to the subpoena in question. In the face of this uncontested fact, I agree with Prothonotary Aronovitch's finding that the truth of the allegedly false and defamatory statements made by Officer Lemieux is borne out by Mr. Sauve's own pleadings.

[33] Moreover, the tort of defamation requires a demonstration of not only defamatory words spoken about the plaintiff by the defendant, but also a demonstration that the defendant published the words to a third person (*Hakim v Laidlaw Transit Ltd* (1997), 156 ACWS (3d) 585, at para 15). However, Mr. Sauve has not pleaded any facts whatsoever to support a claim that the alleged defamatory comments were communicated to anyone other than him and his legal counsel (*Vojic*, above).

[34] In addition, despite having had ample opportunity to do so, Mr. Sauve has not pleaded any facts in his statement of claim to support his bald assertion that, at the time that Officer Lemieux allegedly accused him of evading service, he knew that Mr. Sauve had not in fact been served with

the subpoena on October 3, 2006 and that Mr. Sauve had not otherwise attempted to evade service of the subpoena (*Vojic*, above).

[35] I turn now to the claims of negligence, criminal negligence and breaches of section 7 of the *Charter*, which were asserted by Mr. Sauve, during the Hearing. It is not possible, even on an extremely generous reading of his statement of claim, to link the reference to criminal negligence, which appears in a long list of baldly asserted claims and definitions provided at paragraph 86 of the statement of claim, to the allegations made much earlier in that document in respect of the Subpoena Claim. The same is true with respect to the reference to negligence, which is made at paragraphs 105 and 106, and the references to various sections of the *Charter*, which are made at paragraphs 123, 135, 142, 146, 154, 156 and 157 of the statement of claim (*Vojic*, above; *Merck & Co*, above).

[36] Furthermore, Mr. Sauve has not pleaded any facts to support his bald assertion that the RCMP or any of its representatives "showed wanton or reckless disregard" for his or his minor child's life or safety. Similarly, he has not pleaded any facts that might support a claim that the Defendants owed a duty of care to him and breached that duty of care, or breached any sections of the *Charter*, by (i) failing to "take immediate and appropriate action" to address the allegedly false affidavit that was sworn by the person who stated that he had served the subpoena in question to him on October 3, 2006, (ii) failing to take steps to protect him and his family, and (iii) assuming a mandate to deliver documents to him in connection with his failure to appear in response to the subpoena, when they knew that he had never received the subpoena. In fact, there does not even appear to be any reference in his statement of claim to the allegedly false affidavit.

[37] Accordingly, I am satisfied that it is plain and obvious that the parts of Mr. Sauve's statement of claim which pertain to the Subpoena Claim disclose no reasonable cause of action and should therefore be struck in their entirety (*Vojic*, above).

ii. The Threats/Intimidation Claim

[38] During the Hearing, Mr. Sauve claimed that RCMP Officer Lemieux committed the torts of criminal harassment and intimidation, and breached his rights under section 7 of the *Charter*, when he threatened to (i) arrest him for evading service of documents related to his failure to appear in response to the above-mentioned subpoena, and (ii) take him forcefully to Quebec to address that failure to appear.

[39] However, there is nothing whatsoever in his statement of claim that links the discussion of these threats allegedly made by Officer Lemieux, which is provided at paragraphs 33 and 35 of the document, to the bald references to the torts of criminal harassment and intimidation, and various sections of the *Charter*, which are made at paragraphs 86, 98, 99, 123, 135, 142, 146, 149, 150, 154, 156 and 157 of that document. Even on a generous reading of his statement of claim, it is plain and obvious that Mr. Sauve has not pleaded sufficient material facts to support these three claimed causes of action (*Vojic*, above; *Merck & Co*, above).

[40] In an attempt to clarify the nature of his claim in respect of section 7 of the *Charter*, Mr. Sauve stated during the Hearing that the threat of being arrested, brought to Quebec, and being beaten and assaulted, threatened his mental and physical well being. In my view, these bald assertions, without more, are simply not sufficient to state a claim under section 7 of the *Charter*, particularly given (i) the fact that he was found to have been in contempt of court for

failing to appear in court in Quebec, as required by the subpoena in question, and (ii) the purely speculative nature of Mr. Sauve's fears of being beaten and assaulted while in custody.

[41] In support of his claims of intimidation and criminal harassment, Mr. Sauve asserted during the Hearing that Officer Lemieux's mandate was to simply serve him with documents related to his failure to appear in a Quebec Court in response to the subpoena. He maintained that this mandate did not extend to requesting permission from the Ottawa Police to take him to Quebec and then threatening to forcefully take him there. He added that an outstanding court Order in Ontario, which apparently prohibits him from traveling to Quebec except under certain conditions, states that one such condition is that an itinerary must be supplied to the Ottawa police. He alleged that no such itinerary was provided by Officer Lemieux.

[42] Even considering the additional facts provided by Mr. Sauve at the Hearing, it is plain and obvious that Mr. Sauve's allegations do not disclose a reasonable cause of action for intimidation or criminal harassment.

[43] Mr. Sauve has not provided any material facts to support his claim that it was not within Officer Lemieux's mandate to (i) arrest him for evading service of documents related to his failure to appear in response to the above-mentioned subpoena, and (ii) take him forcefully to Quebec to address that failure to appear. That claim is simply a bald assertion. More is required to support a claim of intimidation or criminal harassment against an RCMP officer, whose responsibility it is to enforce the law, who was lawfully attempting to serve Mr. Sauve with the above-mentioned documents, and who requested permission from the Ottawa Police to take him to Quebec, as specifically contemplated by an outstanding court order (*Liew v Canada*, 2010 FCA 160, at para 3). The fact that Officer Lemieux may have failed to supply an itinerary to the

Ottawa police, as allegedly required by the above-mentioned court Order, does not constitute criminal harassment or intimidation.

[44] A cause of action in intimidation must be supported by alleged facts that are capable of establishing that (i) a person threatened to commit an act or to use means unlawful against the interest of the threatened person, (ii) the threat caused the threatened person to do or refrain from doing something he or she was entitled to do, and (iii) the person making the threat intended to injure the threatened person (*Central Canada Potash Co v Saskatchewan*, [1979] 1 SCR 42, at para 81; *Poulos v Matovic* (1989), 47 CCLT 207, at para 10). The tort of intimidation does not arise where a defendant followed a course of action that he or she believed to be lawful, as was done by Officer Lemieux, who was attempting to enforce a subpoena (*Aristocrat Restaurants Ltd (cob Tony's East) v Ontario*, [2003] OJ No 5331?, at para 57). Mr. Sauve has failed to plead any facts that might reasonably support (i) the proposition that Officer Lemieux or any of the other defendants threatened to do anything other than enforce the law, (ii) the proposition that Mr. Sauve was lawfully entitled to refrain from attending court proceedings in Quebec to address his breach of the subpoena in question, or (iii) the proposition that Officer Lemieux intended to injure Mr. Sauve (*Vojic*, above).

[45] As to criminal harassment, the only reference to this claim in Mr. Sauve's statement of claim is at subparagraph 86(l), where he simply reproduces section 264 of the *Criminal Code*, RSC 1985, c C-46 and states "criminal harassment constitutes the criminal offence of engaging in conduct that causes a person to fear for their safety or the safety of anyone known to them." What Mr. Sauve failed to add in that statement is that, subsection 264(1) requires, among other things, that the person engaging in the alleged harassment (i) do so "without lawful authority," (ii) know that

another person is harassed, or act in a manner that is reckless as to whether the other person is harassed, and (iii) engage in conduct referred to in subsection 264(2). Each category of conduct referred to the latter provision has an element of repeatedly doing something. Mr. Sauve has not pleaded material facts with respect to any of these things (*Vojic*, above).

[46] Likewise, it is plain and obvious that Mr. Sauve has not disclosed a reasonable cause of action in respect of his claim that Officer Lemieux breached a duty of care that was owed by him or the RCMP to Mr. Sauve, by failing to (i) provide the aforementioned itinerary to the Ottawa Police in support of his request, (ii) arrange for a vehicle, a hotel, expenses and other travel arrangements, (iii) address safety concerns based on past threats, and (iv) give appropriate consideration to the fact that he apparently is unable to travel long distances because of past injuries – a fact of which the RCMP apparently is aware. Mr. Sauve has not pleaded any material facts which might suggest how the RCMP's failure to do these things may have constituted a breach of a duty of care on the part of the RCMP (*Vojic*, above). I note that Justice Mactavish reached a similar conclusion with respect to the breach of duty of care that Mr. Sauve alleged in Action T-1752-06 (*Sauve v Canada*, 2010 FC 217, at para 15 ("*Sauve FC*")).

[47] Moreover, once again, there is no link in the statement of claim between the discussion of the facts claimed by Mr. Sauve, which appears at paragraphs 36 and 37 of his statement of claim (and was elaborated upon during the Hearing), and the disjointed discussion of the law on fiduciary duties and the duty of care he alleges was owed to him, which appears at paragraphs 125-129, 135, 154 and 157 of the document (*Merck & Co*, above).

[48] Given all of the foregoing, I am satisfied that the parts of Mr. Sauve's statement of claim which pertain to the Threats/Intimidation Claim should be struck in their entirety.

iii. The Feces Claim

[49] Mr. Sauve's asserts causes of action for defamation, conspiracy to injure and malicious prosecution based on (i) information that he allegedly received from RCMP Sgt. Mike Nibudek, to the effect that he was being formally accused by the RCMP of sending feces to a judge in Quebec, and (ii) his allegation that the RCMP commenced a disciplinary hearing against him under the *Royal Canadian Mountain Police Act*, RSC 1985, c R-10 in respect of this alleged conduct.

[50] In support of his cause of action for defamation, Mr. Sauve's statement of claim simply alleges that "the defendants/RCMP were intercepting the telephone lines of his minor child's residence at that time and would have known that the plaintiff did not send the Quebec judge shit." He then asserted that "[t]hese criminal accusations were fabricated evidence by the defendants/RCMP."

[51] At the Hearing, Mr. Sauve made additional allegations in support of his claim. Specifically, he alleged that the Defendant's statements regarding his sending of feces to a judge in Quebec "were published on paper and they were also sent via e-mails." When asked where this information was published and where these e-mails were sent, he replied "at their building, throughout their building," including "to work peers, people that I know, that I have worked with." When asked who he believed had published this information, sent these e-mails, or otherwise communicated this information, he was not able to identify anyone in particular.

[52] Even if I were prepared to grant leave to Mr. Sauve to amend his statement of claim to add these additional allegations, I am satisfied that it would remain plain and obvious that his pleading discloses no reasonable cause of action in respect of the Feces Claim, because he has failed to

identify (i) the specific person or persons he believes published the information in question, sent the alleged e-mails or otherwise communicated such information to one or more third parties, and (ii) any specific recipients of such published information, e-mails or other communications. That said, for the reasons discussed in Part IV.B below, I am not prepared to grant Mr. Sauve leave to amend the statement of claim to add the additional allegations that he has made.

[53] With respect to Mr. Sauve's causes of action for conspiracy to injure and malicious prosecution, I adopt as my own the following observations made by Prothonotary Aronovitch in the endorsement to her order dated April 5, 2011:

> The plaintiff goes on to allege that the defendants "and those not known at this time" conspired to injure the plaintiff by sending excrement to a Quebec judge in order "to advance the defendants' disciplinary investigation", "to entrap and frame him", "to punish, intimidate", "to abuse and coerce him to stop suing them", "to incarcerate him at all costs", "to stop him from getting access to counsel", and "to cover up their past and present criminal behaviour". (paras 82-86)
>
> This is not a pleading of material facts but of miscommunication, misunderstanding and supposition, culminating in a very serious and bald allegation, without any basis in fact, or identification of the individual or individuals involved that, as I understand it, alleges that members of the RCMP would have sent excrement to a Quebec judge, in the plaintiff's name, as part of a conspiracy to injure the plaintiff.
>
> An action for tortuous [*sic*] conspiracy to injure requires, at the least, the identification of the parties to the conspiracy, and a pleading of their agreement to conspire to injure the plaintiff, as well as actual injury to the plaintiff resulting form the conspiracy. Nothing of what is minimally required to ground a cause of action for tortuous [*sic*] conspiracy to injure is pleaded.
>
> While it is not clear that malicious prosecution is alleged on the above facts, I come to the same conclusion as to the sufficiency of facts pleaded to support a cause of action for malicious prosecution. The allegations at paragraphs 78-86 and 91 must accordingly be

> struck as insufficient to support the causes of action ostensibly alleged as arising from those facts.

[54] A statement of claim in an action for tortious conspiracy must be supported by material facts with respect to the following:

i. the specific parties to the conspiracy and their relation to each other;

ii. the agreement between a defendant and one or more others;

iii. the precise purpose or objects on the conspiracy;

iv. the overt acts alleged to have been done in pursuance and furtherance of the conspiracy by each of the alleged conspirators; and

v. the injury and damage occasioned to the plaintiff by reason of the conspiracy (*Balanyk v University of Toronto* (1999), 1 CPR (4th) 300, at para 71).

[55] In the case at bar, it is plain and obvious that Mr. Sauve's statement of claim discloses no reasonable cause of action in respect of the tort of conspiracy to injure, because he has failed to identify the specific individuals who were party to the alleged conspiracy.

[56] Likewise, it is plain and obvious that his statement of claim discloses no reasonable cause of action for malicious prosecution, because he has failed to plead any material facts necessary to establish certain elements of that tort, including that the proceedings in question terminated in his favour, that they were initiated without reasonable cause, and that the Defendants were motivated by malice or a primary purpose other than carrying the law into effect (*Nelles v Her Majesty the Queen in right of Ontario*, [1989] 2 SCR 170, at para 42).

[57] Moreover, I agree with the Defendants that Mr. Sauve's claims with respect to malicious prosecution and conspiracy to injure should have been included in one of the prior actions that he initiated in this Court, namely Action T-996-09, which was filed on June 22, 2009. In short, in that action, Mr. Sauve made various claims, including specific claims with respect to conspiracy to injure and malicious prosecution, with respect to the same disciplinary hearing that is the subject of his malicious prosecution claim. Given that he alleges in his statement of claim in the within action that he was informed on March 14, 2008 that he was being accused of sending feces to a Quebec judge, he should have advanced, in Action T-996-09, the claims that he is now advancing in the case at bar. His attempt to split the case in this regard constitutes an abuse of process, and cannot be countenanced.

[58] Parenthetically, I should add for the record that at the Hearing, counsel for the Defendants clarified that the RCMP did not in fact conduct an investigation with respect to the particular allegation that Mr. Sauve had sent feces to a judge in Quebec. She stated that while there were rumours that Mr. Sauve had done this, the disciplinary hearing, which was focused on his being held in contempt of court, apparently firmly concluded that those were just rumours.

iv. The Removal/Threats Claim

[59] Mr. Sauve alleges that on March 3, 2008 the Defendants contacted the Superintendent of the Montreal Detention Centre (MDC) to request that they question Mr. Sauve on the RCMP's behalf. He states that later that day, he was removed from his segregated cell and brought before the Superintendent for that purpose. He claims that by making this request, the Defendants exposed his identity as an RCMP officer and exposed him to danger in the MDC, while also exposing his family to danger. He maintains that he did not know why the RCMP took such action, because he

immediately told the Superintendent that he would not answer any questions, and therefore was never questioned by the Superintendent. He asserts that, by placing him and his family in danger, the Defendants breached his and his family's rights under section 7 of the *Charter* and emotionally traumatized him and them.

[60] At the Hearing, Mr. Sauve conceded that he was escorted from his segregated cell to the Superintendent's office by officials at the MDC. Notwithstanding this, he maintains that he was at risk because "even if you are in an escort situation, there are numerous, numerous jumping and fights that go on in the hallways" of the MDC. However, no such material facts were pleaded in his statement of claim.

[61] Even if I were to agree to grant leave to Mr. Sauve to amend his statement of claim to include these additional material facts, I am satisfied that it would remain plain and obvious that his statement of claim still would not disclose a reasonable cause of action under section 7 or other provisions of the *Charter*, in respect of the Removal/Threats Claim. In short, Mr. Sauve has not pleaded any material facts that might in any way suggest that the RCMP was aware, or ought to have been aware, when they requested the Superintendent to pose questions to him on their behalf, that he or his family might be placed in any danger whatsoever (*Vojic*, above). Indeed, it is not immediately apparent how the RCMP could have reasonably acted otherwise than it did.

[62] The Defendants take the position that Mr. Sauve's Release/Detention Claims should be struck from his statement of claim in the within action because they are the subject of Action T-1752-06. During the Hearing, Mr. Sauve conceded that his Release/Detention Claims are indeed similar to some of the claims advanced in T-1752-06. However, he stated that the Release/Detention Claims are based on events that he alleges occurred on March 3, 2008, well after he commenced the

action in T-1752-06. The Defendants do not appear to have addressed this particular point in their written or oral submissions.

[63] As discussed in Justice Mactavish's decision, the release from detention claims made in T-1752-06 concern an allegation that, on or about November 30, 2004, the Defendants caused damages to Mr. Sauve by serving a subpoena to him while he was incarcerated and by removing him out of segregation to attend the courthouse in Ottawa to testify as a police officer, for and on behalf of the RCMP and the Ottawa police services, with respect to a criminal case involving organized crime (*Sauve FC*, above, at paras 40-43). Those are very different facts than what are alleged in the within action. Nevertheless, in my view, it would have been more appropriate for Mr. Sauve to have sought leave to amend his statement of claim in T-1752-06 to include in that action the Release/Detention Claims being advanced in the within action, than to include them in the within action, provided that it was not too late for him to do so. That said, given the conclusion reached at paragraph 61 above, it is not necessary to say anything further about this particular submission by the Defendant.

B. *Are certain of Mr. Sauve's claims immaterial, frivolous or vexatious?*

[64] Notwithstanding the assertions made by Mr. Sauve during the Hearing that he is now only pursuing claims in respect of the four claims addressed at Parts IV.A(i)-(iv) above, respectively, his Streamlined Statement of Claim continues to contain other claims.

[65] During the Hearing, Mr. Sauve clarified that at least some of those claims were solely included in the statement of claim, or are now solely relied upon, to provide a contextual "background" for the four claims he continues to pursue. Claims falling into this category include the claims that he made with respect to (i) the Sûreté du Québec and the RCMP's liability, or

vicarious liability, for actions of the Sûreté du Québec, (ii) the failure of the RCMP to pay certain pay and benefits that he believes are owed to him, and (iii) alleged wrongful surveillance of him by the RCMP. Material relating to these three categories of claims was deleted from the Streamlined Statement of Claim, and was not addressed by Mr. Sauve during the Hearing, other than when he confirmed that he is no longer pursuing those claims. As a consequence, the Defendants only made passing reference to those claims in their oral submissions.

[66] Other claims asserted in Mr. Sauve's statement of claim, which were deleted from the Streamlined Statement of Claim, pertain to abuse of process, harassment, invasion of privacy, recklessness, the infliction of mental/emotional distress, torture and the harm suffered by his former spouse. This material will be struck from the statement of claim because (i) it was deleted from the streamlined statement of claim, (ii) it was not addressed by Mr. Sauve or, to any significant degree by the Defendants, during the Hearing, and, in any event, (iii) I am satisfied that it is plain and obvious that these asserted claims do not disclose any reasonable cause of action (*Vojic*, above; *Merck & Co*, above).

[67] The Streamlined Statement of Claim appears to continue to assert other claims, for example, at paragraphs 86, 123, 135, 142, 152, 154, 156 and 160. The "claims" made in paragraph 86 consist of a long list of baldly asserted claims, followed by two pages of legal definitions. No supporting material facts are provided in respect of any of these claims, as required by Rule 174. The same is true with respect to the claims made in the other paragraphs identified in the first sentence of this paragraph. Although Rule 175 permits a party to raise any point of law in a pleading, that does not in any way alleviate a party's responsibility to plead material facts in support of all causes of action that the party has advanced. This is necessary to permit opposing parties to defend the claim.

[68] Accordingly, I agree with Prothonotary Aronovitch's determination that it is plain and obvious that the claims referenced in the immediately preceding paragraph should be struck on the ground that they are frivolous and vexatious (*Vojic*, above; *Merck & Co*, above).

C. *Should Mr. Sauve be granted an opportunity to amend his statement of claim?*

[69] Mr. Sauve submitted that he should be provided with an opportunity to amend his statement of claim by making "such amendments as might reasonably be made [to disclose] a proper case to be tried." In this regard, he relied on *Hunt v Carey*, above. However, that case did not address the issue of when it might be appropriate to grant a plaintiff an opportunity to amend his or her statement of claim.

[70] Mr. Sauve also relied on statements made in *Hamel v Brunelle*, [1977] 1 SCR 147, regarding the legislator's true intention to facilitate, rather than to end prematurely, the normal advancement of cases, based on inadequate pleadings. However, the legislation in question in that case was the *Civil Code of Quebec*, SQ 1991, c 64. Moreover, contrary to the situation in the case at bar, the Respondent in that case was not able to identify any valid reason for refusing to permit the amendment.

[71] In addition, Mr. Sauve relied on *Pringle v London City Police Force*, [1997] OJ No 1834 (OCA). However, there is nothing in that decision which assists him. In short, in finding that the Respondents' motion to dismiss the claims in that case was premature in respect of one of the Respondents, the Court noted that the sole basis for dismissing the motion was that it was out of time. The Court further noted that no statement of defence had been filed, the limitation period had not been pleaded, and it was not clear when the limitation period had started to run.

[72] At the Hearing, Mr. Sauve referred to the *Statement of Principles on Self-represented Litigants and Accused Persons*, adopted by the Canadian Judicial Council in September 2006. In this regard, Mr. Sauve quoted the following Principles from that Statement:

> A.1 Access to justice for self-represented persons requires all aspects of the court process to be, as much as possible, open, transparent, clearly defined, simple, convenient and accommodating.
>
> B.2 Judges and court administrators should do whatever is possible to provide a fair and impartial process and prevent an unfair disadvantage to self represented persons.
>
> C.3 Judges should ensure that procedural and evidentiary rules are not used to unjustly hinder the legal interests of self-represented persons.

[73] That said, it is relevant to note that commentary B.2 of the Statement provides that "[j]udges must exercise diligence in ensuring that the law is applied in an even-handed way to all, regardless of representation." In addition, Principle C.4 of the Statement provides that "[j]udges and court administrators have no obligation to assist a self represented persons who is disrespectful, frivolous, unreasonable, vexatious, abusive, or making no reasonable effort to prepare their own case." Moreover, Principle C.2 for Self-represented Persons states that "[s]elf-represented persons are expected to prepare their own case."

[74] For the reasons discussed in Part IV.A of this decision, Mr. Sauve has fallen well short of his obligation to prepare his own case. Notwithstanding the additional opportunities he has had, both before Prothonotary Aronovitch and in the Hearing before me, to provide even the minimum material facts to disclose a reasonable cause of action, he has continued to fail to do so. During the Hearing, Mr. Sauve was pressed repeatedly to provide such facts, and was unable to do so, (i) even

though he acknowledged that he was in some cases relying on bald assertions, (ii) even after I pressed him on a number of points, and (iii) even after I explicitly asked him what amendments he would like to make. He simply responded that he would like to add unspecified particulars to the particulars that he provided at the Hearing, with respect to each of his four claims. In my view, this does not constitute a reasonable effort on Mr. Sauve's part to prepare and articulate his own case.

[75] As noted at various points in Part IV.A of these reasons, it would remain plain and obvious to me that Mr. Sauve's statement of claim discloses no reasonable cause of action, even if leave were granted to allow him to amend that document to include the additional material facts disclosed at the Hearing. In this regard, Mr. Sauve's statement of claim would continue to fall well short of providing the Defendants with even the minimum material facts, and with a sufficient link between those facts and the causes of action alleged, to permit the Defendants to defend the statement of claim.

[76] For all of the foregoing reasons, I am satisfied that it would not be appropriate to grant leave to Mr. Sauve to amend his statement of claim.

V. The Appropriate Parties to this Action

[77] Given my determination that Mr. Sauve's statement of claim should be struck in its entirety, it is not necessary to address the Defendants' submissions that this Court does not have jurisdiction over the claims made against RCMP Officer Jacques Lemieux and "other RCMP members (not known at this time)."

VI. Conclusion

[78] For the reasons provided above, I am satisfied that it is plain and obvious that Mr. Sauve's statement of claim:

i. discloses no reasonable cause of action; and

ii. as discussed in Part IV.B of these reasons, advances certain claims that are immaterial, frivolous or vexatious.

[79] Mr. Sauve's statement of claim will therefore be struck in its entirety.

ORDER

THIS COURT ORDERS as follows:

1. The present motion is dismissed.

2. Prothonotary Aronovitch's decision to strike the Plaintiff's statement of claim in its entirety is upheld.

3. The within action is dismissed with costs to the Defendants in the requested amount of $1,700, which has been determined by reference to Column 3 of Tariff B of the Rules.

"Paul S. Crampton"

_____

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1-10
	GARY SAUVE v HER MAJESTY THE QUEEN IN RIGHT OF CANADA et al
PLACE OF HEARING:	Ottawa, Ontario
DATE OF HEARING:	May 19, 2011
REASONS FOR ORDER AND ORDER:	Crampton J.
DATED:	September 16, 2011

APPEARANCES:

Gary Sauve	SELF-REPRESENTED PLAINTIFF
Deric MacKenzie-Feder Abigail Martinez	FOR THE DEFENDANTS

SOLICITOR OF RECORD:

Myles J. Kirvan Deputy Attorney General of Canada	FOR THE DEFENDANTS