Federal Court  Cour fédérale

Date: 20121214

Docket: T-1336-12

Citation: 2012 FC 1478

Ottawa, Ontario, December 14, 2012

PRESENT: The Honourable Mr. Justice Hughes

BETWEEN:

TERRANCE ("TERRY") TEW

Plaintiff

and

HER MAJESTY THE QUEEN

Defendant

REASONS FOR ORDER AND ORDER

[1] The Defendant Her Majesty the Queen as represented by the Department of Justice has brought a motion to strike the Statement of Claim herein without leave to amend, with costs.

[2] The Plaintiff is self-represented. He is an inmate of Warkworth Institution, a medium security institution administered by the Correctional Service of Canada. He has commenced an action by a Statement of Claim dated 1st day of July, 2012 claiming declaratory relief in a number of respects: an accounting of what he describes as a multi-billion dollar budget presently assigned to Correctional Services Canada, solicitor/client costs, or similar and other relief. An Amended

Statement of Claim claims similar relief, plus claiming a view of Unit 5 of Warkworth Institute and an accounting of the "multi-million-dollar budget presently assigned (to) Warkworth Institute"; and an accounting of all room and board deductions made by the Defendant. That Amended Claim was filed August 1, 2012. I will consider the motion to be directed against the Amended Claim.

[3] The motion is brought under Rule 221(1), subrules a), c) and f). An affidavit of Rachel Doran is filed in support of the motion. I will disregard this affidavit, first because no affidavit can be filed in respect of subrule a); second, because Ms. Doran appears as a solicitor of record for the Defendant and Rule 82 precludes the use of such an affidavit without leave and no reason for giving leave has been shown; third, the affidavit simply gives hearsay evidence. No reason has been shown why the person having knowledge could not have provided the information directly.

[4] The action and relief sought, to use the words of the Plaintiff at paragraph 126 of his memorandum, is focused squarely on the issue of double-bunking. The Plaintiff, it appears, was – at least for some period of time – required to share a cell with another inmate.

[5] With respect to the declaratory relief sought, the *Federal Courts Act*, RSC 1985, c. F-7, subsections 18(1) (a) and 18.1(1), together with *Federal Courts Rules* 300 and following, require that proceedings seeking declaratory relief shall be proceeded with by way of an application, not an action. Section 18.4(2) provides that the Court may convert an application to an action, but not the other way around. An application is to be commenced by a Notice of Application supported by affidavit evidence. The respondent may appear and file its affidavit evidence in response. Cross-examination may take place. Written memoranda are exchanged, and the matter is set down for a

hearing. The proceeding is much simpler and quicker than an action. Therefore, in seeking declaratory relief, the Plaintiff, who would be described as an Applicant, should proceed by way of an application. I will not prejudice the Plaintiff/Applicant if he were to file an application as far as date of instituting proceedings; I would deem the date to be July 1, 2012, the date of the original Statement of Claim, if the application is filed forthwith. The Application would have to be properly constituted and claim proper relief.

[6] As to the other relief claimed - accounting of various kinds - the Plaintiff has made bald assertions as to multi-million dollar budgets assigned to Correctional Services Canada and Warkworth Institute. No support for that assertion has been given. The Plaintiff has not asserted that there is any duty toward him to provide such an accounting, nor has the Plaintiff provided a proper foundation to establish that there is a public interest, represented by him, in providing such an accounting.

[7] As to an accounting of room and board deductions respecting the Defendant, he has not established that he has a right to such accounting; or if he does, that he asked for it and was provided no reasonable excuse for not providing it. The same pertains to a request for a view of certain premises within Warkworth Institute.

[8] The Plaintiff's pleading and argument presented by him on this motion indicate that he has made some study of some of the law applicable to this area, but he has not expressed himself in a composed fashion free of rhetoric or aspersions or unwarranted personal attacks on the

government's lawyers. I repeat what I recently wrote in *Brazeau et al v Her Majesty the Queen*, 2012 FC 1300 at paragraphs 7, 12 and 13:

> *7 I start with noting that none of the Plaintiffs are lawyers. At paragraph 6 of their Memorandum of Argument, they state that they "...are not legally trained and must prepare and argue their case without the assistance/advice of counsel...". Nonetheless, a reading of the Claim and other materials provided by the Plaintiffs demonstrates that considerable time and effort has been expended by one or more of them in conducting some sort of legal research into the matter. Therein lies one of the problems encountered by self-represented litigants such as the Plaintiffs. Legal training involves more than just reading materials and copying from precedents. It requires a thorough knowledge of the law and how it is practised, and the exercise of experienced judgment in determining, for instance, whether a claim should be made to the Courts or to some other person or tribunal; how that claim fits within the principles of law; and how that claim is to be set forth properly in the relevant documents in which a claim is submitted. While many people can wield a knife, not all are surgeons. While many people can read Rules of Practice and legal texts, not all are barristers or solicitors. It takes not only knowledge, but thorough knowledge, exercised through experienced judgment to get it right.*
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> *12 The Rules of this Court, including Rule 174, require a pleading to contain a concise statement of the material facts. Simply to conclude, for example, that barber services were not provided, or that library services were inadequate; or that access to sunlight was not provided, is insufficient. What happened, when, and where; who was involved must be clearly and precisely set out. What is the standard required by law? How did the Defendant's servants fall short of that standard? All of this is required of a proper pleading.*
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> *13 Should the Court be involved at this time? There are more appropriate resources through which anger and frustration can be worked out. There are resources through which inadequate services can be identified and redressed. These include mediation and grievance procedures. The Plaintiffs in their amended Record, paragraph 17, set out a long list of reference numbers, presumably identifying grievance procedures that have been initiated. While in some circumstances, the Court has permitted an action to proceed*

> *notwithstanding the availability or pursuit of a grievance process, the more usual and more desirable procedure is that a proper grievance or grievances should be fairly pursued and determined before the Court is asked to address the situation.*

[9] The Plaintiff should seek the advice and assistance of a competent lawyer. Legal Aid and other services are available if he cannot otherwise afford a lawyer. It is dangerous for a litigant to be self-represented in matters of this kind. The resources of the Court are limited and should be accessed only after mature and thoughtful consideration aided by professional legal advice. The Courts are not a forum for venting anger or frustration, nor a playground for those exercising newfound lawyerlike skills.

[10] Accordingly, I will strike out the Amended Statement of Claim without leave to amend; however, also without prejudice to the commencement of an application limited to declaratory relief. That application, if commenced within forty-five (45) days may, for limitations purposes, be deemed to have been filed July 1, 2012. This is not to preclude any challenge to the propriety of any application filed. The advice of a competent lawyer should be obtained and followed.

[11] I will not award costs to any party.

ORDER

FOR THE REASONS PROVIDED:

THIS COURT ORDERS that:

1. The motion is granted. The Amended Statement of Claim is struck out without leave to amend; however, without prejudice to the commencement of an application on terms as set out in the Reasons; and

2. No order as to costs.

"Roger T. Hughes"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1336-12
STYLE OF CAUSE:	TERRANCE ("TERRY") TEW v. HER MAJESTY THE QUEEN

MOTION IN WRITING CONSIDERED AT TORONTO, ONTARIO PURSUANT TO RULE 369

REASONS FOR ORDER AND ORDER:	HUGHES J.
DATED:	December 14, 2012

WRITTEN REPRESENTATIONS BY:

Terrance Tew	FOR THE PLAINTIFF (ON HIS OWN BEHALF)
Karen Watt	FOR THE DEFENDANT

SOLICITORS OF RECORD:

Terrance Tew (self-represented) Campbellford, Ontario	FOR THE PLAINTIFF (ON HIS OWN BEHALF)
William F. Pentney Deputy Attorney General of Canada	FOR THE DEFENDANT