Federal Court  Cour fédérale

Date: 20200817

Docket: T-1739-19

Citation: 2020 FC 828

Ottawa, Ontario, August 17, 2020

PRESENT: Mr. Justice Pentney

BETWEEN:

CONNIE BRAUER

Plaintiff

and

HER MAJESTY THE QUEEN

Defendant

JUDGMENT AND REASONS

I. Introduction

[1] The Plaintiff, Connie Brauer, appeals the Order of Prothonotary Steele dated June 25, 2020, that struck her Amended Statement of Claim. She argues that the decision should be overturned, and requests other relief, including the enforcement of "an immediate injunction against all abortions in Canada" and an immediate end to all government funding of abortions.

[2] The Defendant argues that the order striking out the Amended Statement of Claim should be upheld, because it is based on the proper application of the law to the facts.

[3] Having carefully considered the submissions of the parties, I am dismissing the appeal for the reasons that follow.

II. Background

[4] The Plaintiff, who represents herself, filed a Statement of Claim on October 23, 2019, and an Amended Statement of Claim on November 4, 2019. The only change in the Amended Statement of Claim was an additional request for financial relief. The Amended Statement of Claim is quoted in the decision under appeal. It includes the following allegations:

> 1. That the Government of Canada is engaged in Mass Genocide by allowing mothers and abortion doctors to abort their unborn babies.
>
> 2. That the Government is enabling this Genocide by allowing unrestricted abortions in Canada at any time until delivery.
>
> 3. That these babies are being tortured and killed while in the womb and during live births, partial births or thereafter.
>
> 4. That the Government of Canada not only allows abortions, the killing of human beings, but demands that all members of the Liberal Party by PM Trudeau, support the mass killing of human beings or they are out.
>
> 5. That any dissent or Pro Life in this matter be cause for dismissal in the Government and the Party. Other Parties in the House of Commons follow suit.
>
> 6. That any and all protest for the life of these babies is not allowed by government on or near abortion clinics.
>
> 7. That Government funding is denied to groups who are Pro Life. 400 Groups denied Canada Summer Job Grants by Trudeau.

> 8. That abortion is a violation under The Guaranteed Canadian Charter of Rights and Freedoms.
>
> 9. Genocide is understood by most to be the gravest crime against humanity it is possible to commit. It is the mass extermination of a whole group of people, an attempt to wipe them out of existence.
>
> 10. Abortion violates the UN Declaration of Human Rights.

[5] The Defendant brought a motion for an order striking out the Amended Statement of Claim without leave to amend, pursuant to Rule 221(1)(a) and (c) of the *Federal Courts Rules*, SOR/98-106 [*Rules*], and, in the alternative, for an order granting an extension of time to file its Statement of Defence. The motion was dealt with in writing pursuant to Rule 369, and the Plaintiff filed submissions in response to the Defendant's motion.

III. Decision under Appeal

[6] On June 25, 2020, Prothonotary Steele granted the Defendant's motion, and issued an Order granting the motion to strike without leave to amend, dismissing the action, and granting costs to the Defendant (the Order).

[7] After summarizing the applicable law regarding motions to strike under Rule 221(1), the Prothonotary turned to an analysis of the Amended Statement of Claim, considering first whether it should be struck pursuant to Rule 221(a) or (c), and then whether leave should be granted to further amend it.

[8] The Prothonotary found that the Amended Statement of Claim should be struck because "[e]ven generously read, it is impossible to discern what, if anything, the Defendant has done

which would have caused injury and loss to the Plaintiff" (Order at para 13). The Prothonotary found that most of the Plaintiff's claims were bare assertions and conclusory statements that failed to set out the necessary material facts, which the Prothonotary described as the "who, when, where, how and what" of the claims against the Defendant (Order at paras 13(b)-(c)). In the absence of such facts, the Amended Statement of Claim did not set out any readily identifiable causes of action. In a similar way, the claims under the *Canadian Charter of Rights and Freedoms*, s 7, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act, 1982* (UK), 1982 c 11 [*Charter*] were deficient because they did not provide the material facts that are necessary to find a breach of the *Charter* (Order at para 13).

[9] In addition, the Prothonotary concluded that there were no material facts pleaded to support a claim of punitive or compensatory damages, and found that these damages claims could not stand in the absence of an underlying cause of action or an actionable wrong on the part of the Defendant (Order at paras 13(g)-(h)). The claim for injunctive relief was barred under subsection 22(1) of the *Crown Liability and Proceedings Act*, RSC 1985, c C-50 (Order at para 13(f)).

[10] Based on these conclusions, the Prothonotary found that it was plain and obvious that the Amended Statement of Claim had no chance of success, and therefore should be struck (Order at para 14). The decision continues: "[t]he amended statement of claim is also vexatious in law in that not only is it devoid of material facts, but the allegations are also obscure and confused. I therefore conclude that the Defendant has discharged its burden under Rules 221(1)(a) and (c)" (Order at paras 14-15).

[11] Turning to the second question, whether leave to amend the Amended Statement of Claim should be granted, the Prothonotary concluded that it should not, noting that the Plaintiff had not proposed any amendments to address the deficiencies identified in the Defendant's motion to strike (Order at para 18). She found that the Plaintiff's submissions "further obfuscate an already obscure and deficient pleading" (Order at para 19). The Plaintiff reiterated allegations of breaches of section 7 and proposed to add further *Charter* claims alleging breaches of section 2, because of restrictions placed on those who speak out against abortion and access to abortion clinics, including steps taken by federal political parties (Order at para 20).

[12] The Prothonotary noted that the Plaintiff had not addressed the issue of whether she had the necessary standing to pursue her *Charter* claims, whether based on her direct and personal interests, or on a public interest basis. Further, she found the Plaintiff had failed to set out the necessary material facts to allow the Court to assess the alleged breaches (Order at para 20).

[13] The Prothonotary therefore concluded that "given the radical defects in the Plaintiff's amended statement of claim and in the absence of any proposed amendments, the Court is not satisfied that the defects are curable such that leave to amend is denied" (Order at para 24).

[14] For all of these reasons, the Defendant's motion was granted, and the Amended Statement of Claim was struck in its entirety without leave to amend, the Plaintiff's action was dismissed, and the Plaintiff was ordered to pay costs in the amount of $500 to the Defendant (Order at paras 25, 31).

IV. Issues and Standard of Review

[15] The Plaintiff's appeal asks for the Order to be quashed, and that various immediate orders be enforced, relating to stopping abortions, halting government funding for such services both in Canada and abroad, and seeking punitive damages in the amount of $500 million, plus unspecified financial compensation.

[16] This is an appeal of a discretionary decision by a Prothonotary, pursuant to Rule 51. The Federal Court of Appeal has long confirmed that the usual appellate standard of review applies, as summarized in *Maximova v Canada (Attorney General)*, 2017 FCA 230 at paragraph 4 [*Maximova*]:

> Since this Court's decision in *Hospira Healthcare Corp. v. Kennedy Institute of Rheumatology*, 2016 FCA 215, 402 D.L.R. (4th) 497 (*Hospira*), it is well-established that the Court may only interfere with a discretionary decision of a prothonotary if the prothonotary made an error of law or a palpable and overriding error regarding a question of fact or mixed fact and law: *Hospira* at paras. 64-65, 79.

[17] In a recent decision, *Lill v Canada (Attorney General)*, 2020 FC 551 at para 24, Justice Denis Gascon explained that the "palpable and overriding error" standard is highly deferential, noting that it has been said that in order to meet this standard "it is not enough to pull at leaves and branches and leave the tree standing. The entire tree must fall" (citing Stratas J.A. in *Mahjoub v Canada (Citizenship and Immigration)*, 2017 FCA 157 at para 61). Gascon J. continued at paragraph 25: "[a] palpable and overriding error has also been described by the FCA as an error that is obvious, plainly seen and apparent, the effect of which is to vitiate the integrity of the reasons (*Madison Pacific Properties Inc v Canada*, 2019 FCA 19 at para 26;

Maximova at para 5).” He also noted that the Supreme Court of Canada echoed these principles in *Salomon v Matte‑Thompson*, 2019 SCC 14.

[18] These principles guide my analysis of the Plaintiff’s arguments on this appeal.

V. Analysis

[19] The Plaintiff’s submissions repeat many of the arguments that she advanced before the Prothonotary regarding the merits of her claim, including assertions about the number of abortions in Canada, the definition of genocide, steps taken by the Prime Minister to deny funding to certain groups, and other matters. These are arguments about the merits of her claim but from them it is possible to distill her answers to the findings of the Prothonotary, which in turn form the basis for her appeal. I have carefully reviewed the Plaintiff’s submissions, with a view to understanding the basis of her appeal, in particular since she has not followed the usual format for such submissions. The following represents a summary based on a generous reading of the Plaintiff’s submissions.

[20] The Plaintiff’s grounds of appeal can be grouped into three elements: (1) the Amended Statement of Claim allegations are “precise, clear and reasonable” and they are not scandalous or vexatious; (2) Rule 221(1) does not apply and she had the right to amend her Amended Statement of Claim without leave pursuant to Rule 200; and (3) on the merits, she argues that immediate action is needed to halt abortions in Canada, which she argues are unlawful and unconstitutional because they are contrary to section 7 of the *Charter*.

[21] First, the Plaintiff argues that her claim is precise and clear. She appears to argue that the "who, when, where, how and what" of her claim is that unknown or unnamed government authorities are allowing unknown or unnamed others to perform abortions across Canada, and these procedures are supported, at least in part, by government funds. She argues this denies the rights of the unborn children, as well as the fathers of these children, which constitutes a violation of sections 7 (right to life) and 15 (equality rights) of the *Charter*. The Plaintiff submits it also constitutes a crime and amounts to genocide, as that term is defined in the United Nations *Convention on the Prevention and Punishment of the Crime of Genocide*, 9 December 1948, 78 UNTS 277 (entered into force 12 January 1951). The Plaintiff complains about the lack of available evidence and information about abortion in Canada and argues that "[w]e need a court ordered police investigation to find out everything" (Plaintiff's Written Representations at para 11). She also argues that federal political leaders have made it clear that they will not re-open the abortion debate in Canada, and that they take steps to limit debate or prevent candidates from running if they have a different point of view.

[22] One difficulty with all of this is that the Plaintiff has not identified the errors she alleges were committed by the Prothonotary, other than repeating the arguments she submitted previously. Another is that she does not address the law governing appeals under Rule 51, nor does she attempt to demonstrate how the Prothonotary made palpable and overriding errors.

[23] As noted above, the decision of the Prothonotary to strike the Amended Statement of Claim was an exercise of discretion pursuant to Rule 221(1). The applicable standard of review is that "discretionary orders of prothonotaries should only be interfered with when such decisions are incorrect in law or are based on a palpable and overriding error in regard to the facts"

(*Hospira Healthcare Corporation v Kennedy Institute of Rheumatology*, 2016 FCA 215 at paras 64-69). A palpable and overriding error is an error that is both obvious and apparent, "the effect of which is to vitiate the integrity of the reasons" (*Maximova* at para 5). To succeed on her appeal, the Plaintiff must demonstrate that the Prothonotary made this type of error.

[24] I am not persuaded that the Prothonotary committed any palpable and overriding error, as those terms have been defined in binding decisions from the Federal Court of Appeal and the Supreme Court of Canada.

[25] The decision under appeal correctly applies the appropriate legal principles regarding a motion to strike pursuant to Rule 221(1). The law governing a motion to strike seeks to protect the interests of the plaintiff in having his or her "day in court," while also taking into account the important interests in avoiding burdening the parties and the court system with claims that are doomed from the outset. In order to achieve this, the courts have developed an analytical approach and a series of tests that apply in considering a motion to strike.

[26] The test for a motion to strike sets a high bar for defendants. The onus is on the defendant to satisfy the Court that it is plain and obvious that the pleading discloses no reasonable cause of action, even assuming the facts alleged in the statement of claim to be true (*Hunt v Carey Canada Inc*, [1990] 2 SCR 959 at p 980). Rule 221(2) reinforces this by providing that no evidence shall be heard on a motion. In view of this Rule, the further evidence submitted by the Plaintiff in this appeal cannot be considered.

[27] The facts set out in the statement of claim must be accepted as true unless they are clearly not capable of proof or amount to mere speculation. The statement of claim must be read

generously, and mere drafting deficiencies or using the wrong label for a cause of action will not be grounds to strike a statement of claim, particularly when it is drafted by a self-represented party.

[28] Further, the statement of claim must set out facts that support a cause of action – either a cause of action previously recognized in law, or one that the courts are prepared to consider. The mere fact that a cause of action may be novel or difficult to establish is not, in itself, a basis to strike a statement of claim.

[29] Related to this, the claim must set out material facts that support each and every element of a statement of claim. As explained by Justice Yvan Roy in *Al Omani v Canada*, 2017 FC 786 at para 17, "[a] modicum of story-telling is required." The law requires, however, a very particular type of story to be set out in a statement of claim; it must describe the events that are alleged to have harmed the plaintiff, focusing only on the "material facts." The claim must also set out sufficient detail to support the specific elements of the various causes of action alleged and to allow the defendant (and the Court) to know the basis of the specific allegations.

[30] The Court generally shows flexibility when a party is self-represented, but this does not exempt the party from complying with the rules set out above (*Barkley v Canada*, 2014 FC 39 at para 18). The reason for this is simple – it is not fair to a defendant to have to respond to claims that are not explained in sufficient detail for them to understand what the claim is based on, or to have to deal with claims based on unsupported assumptions or speculation. Neither is it fair to the Court that will have to ensure that the hearing is conducted in a fair and efficient manner. Allowing vague or speculative claims to proceed would inevitably lead to "fishing expeditions" by a party seeking to discover the facts needed to support their claims, as well as to

unmanageable hearings that continue far longer than is appropriate as both sides try to deal with a vague or ever-changing set of assertions.

[31] A degree of flexibility is needed to allow parties to represent themselves and to have access to the justice system; however, flexibility cannot trump the ultimate demands of justice and fairness for all parties, and that is what the *Rules* and the principles set out in the cases seek to ensure.

[32] In this case, the Prothonotary applied these legal principles to the Plaintiff's claims, and found that they did not meet the test. I can find no error in this analysis. It is unclear what specific facts support the Plaintiff's claims; her pleadings refer only to general information about the number of abortions performed in Canada, how much government funding goes towards these services, and general statements about steps taken by various organizations, including political parties and leaders. In addition, the pleading refers to various definitions, statutory provisions and material taken from various sources, but these do not amount to "material facts" as that term is understood in the law.

[33] Even giving the pleading a generous interpretation, it is not clear who is alleged to be permitting abortions to occur, or what specific facts support the Plaintiff's claims about the current Prime Minister or the leaders of other federal parties. Without any description of these sorts of facts, it is impossible to assess whether, or on what basis, the Plaintiff would have standing to pursue her claims in court, or whether, or how any of, these claims relate to a cause of action, or what remedies might flow from the alleged breaches. It would not be fair to the Defendant to have to try to defend against such claims or to try to supplement the missing factual elements. It would also not be possible for the Court to deal with a case based on the absence of

material facts, and in view of the nature of the wrongs that are alleged. This is particularly true in respect of the *Charter* allegations that cannot be determined in a factual vacuum.

[34] All of these problems support the conclusion that the Plaintiff's Amended Statement of Claim should be struck on the basis of Rule 221(1), and the binding jurisprudence on this point that is summarized above.

[35] The Plaintiff objects to the use of the term "scandalous and vexatious." She argues that the Prothonotary's conclusion that her Amended Statement of Claim is scandalous and vexatious is "[a]n insult without benefit of evidence" (Plaintiff's Notice of Motion at p 4). She submits that her efforts to save the lives of unborn babies is not scandalous and vexatious, but rather "[i]t is the cause of action" (Plaintiff's Notice of Motion at p 4).

[36] It must be understood that the term "scandalous and vexatious" is not a comment about the Plaintiff, but rather the use of a legal term that has been developed to describe legal pleadings that are not possible to understand or to connect to a claim of wrongdoing that the law either recognizes or is prepared to consider (see *Tomchin v Canada*, 2015 FC 402; *kisikawpimootewin v Canada*, 2004 FC 1426).

[37] In this case, the absence of specific allegations combined with the broad and sweeping nature of the claims, as well as the use of terms such as "genocide," support the Prothonotary's findings. On this point, I would adopt the findings of Justice Henry Brown in *Turnbull v Canada*, 2019 FC 224 at para 35: "[a]llegations of genocide, criminal negligence causing injury, and crime against humanity are casually tossed about in these pleadings by the Plaintiff, who in my view at least, does so without a scintilla of material facts in their support." The Plaintiff has

made very serious legal claims, and the law rightly requires that such assertions be backed up with reference to specifics and not based on mere assertions or generalities.

[38] There is no basis to overturn the Prothonotary's finding that the Plaintiff's pleadings were scandalous and vexatious, pursuant to Rule 221(1)(c).

[39] I also disagree with the Plaintiff's argument that this finding was made without any supporting evidence. As noted earlier, the Prothonotary did not require any evidence that the Amended Statement of Claim met the legal definition of a scandalous and vexatious pleading. This is a legal determination that is made in the absence of any other evidence, and involves a consideration of the words the Plaintiff used to describe her claim. That is precisely what the Prothonotary did in the decision under appeal.

[40] In addition, there is no merit to the Plaintiff's claim that the Prothonotary erred in not allowing her to further amend her Amended Statement of Claim. The Plaintiff argues that she did not require leave to amend, and that the Prothonotary erred on this basis. I am not persuaded.

[41] The Defendant's motion to strike the Amended Statement of Claim was properly founded on Rule 221(1), and that is how the Prothonotary treated it. She did not deny the Plaintiff the opportunity to amend her claim; rather, she examined the amended claim and struck it, for the reasons set out earlier. Under Rule 221(1), the Prothonotary was required to consider whether the claim should be "struck out, with or without leave to amend…" and that is precisely what was done.

[42] To the extent this submission by the Plaintiff expresses the basis for her appeal in relation to the Prothonotary's conclusion that leave to amend should be denied, I am also not persuaded

that any palpable or overriding error was committed. On this point, it is sufficient to note that the decision to strike the Amended Statement of Claim was not because of some technical failing in the pleading such as the absence of a particular vital fact. Rather, it was because of the absence of material facts relating to all aspects of the claim. The Prothonotary correctly concluded that the problems she had identified with the pleading could not be repaired, and therefore she denied leave to amend the pleadings. I can find no error in this conclusion.

VI. Conclusion

[43] For all of these reasons, I am dismissing this appeal. The Plaintiff has not demonstrated that the Prothonotary made a palpable and overriding error in striking the Plaintiff's Amended Statement of Claim or in denying leave to further amend it, and I have not found any such error in the record.

[44] The Defendant seeks its costs in the appeal, in the amount of $750. In the usual case, the unsuccessful party is ordered to contribute to the costs of the other party, under the tariff established by the *Rules*. Although this is not always ordered in cases where individuals represent themselves, in this particular case I am cognizant of the nature of the proceeding, the fact that the Plaintiff has previous experience in this Court, and that she has nevertheless taken up the Defendant's and the Court's resources pursuing an appeal that has been unsuccessful.

[45] Considering all of the relevant factors, and in exercise of my discretion under Rule 400, I order the Plaintiff to pay to the Defendant all-inclusive costs in the amount of $500, payable forthwith.

JUDGMENT in T-1739-19

THIS COURT'S JUDGMENT is that:

1. The appeal is dismissed.

2. The Plaintiff shall pay the Defendant all-inclusive costs in the amount of $500, payable forthwith.

"William F. Pentney"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1739-19
STYLE OF CAUSE:	CONNIE BRAUER v HER MAJESTY THE QUEEN
MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO PURSUANT TO RULE 369 OF THE *FEDERAL COURT RULES,* SOR/98-106	
JUDGMENT AND REASONS:	PENTNEY J.
DATED:	AUGUST 17, 2020

APPEARANCES:

Connie Brauer	FOR THE PLAINTIFF ON HER OWN BEHALF
Amy Smeltzer	FOR THE DEFENDANT

SOLICITORS OF RECORD:

Attorney General of Canada Halifax, Nova Scotia	FOR THE DEFENDANT