Federal Court  Cour fédérale

Date: 20220426

Docket: T-325-22

Citation: 2022 FC 607

Toronto, Ontario, April 26, 2022

PRESENT: Case Management Judge Trent Horne

BETWEEN:

MR. RICHARD S. MITCHELL AKA DR. RICHARD STEVE MITCHELL, REV. RICHARD MITCHELL, AND RICHARD STEVEN MITCHELL

Plaintiff

and

ACADEMY OF LEARNING MISSISSAUGA – CAMPUS AND HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Defendants

JUDGMENT AND REASONS

I. Overview

[1] The defendants have brought motions to strike the statement of claim, without leave to amend. The statement of claim is frivolous and vexatious. It is an abuse of process. To the extent the plaintiff has a cause of action, the Federal Court does not have jurisdiction over it. The motions will therefore be granted.

II. The Statement of Claim

[2] The statement of claim is difficult to understand. It raises complaints against judges and registry staff of the Ontario Superior Court of Justice and the Court of Appeal for Ontario. It appears that the plaintiff had an appeal pending in the Court of Appeal for Ontario which was dismissed for delay. It is alleged that the dismissal constitutes disgraceful and unbecoming behaviour, as well as breaches of the *Criminal Code*, RSC 1985, c. C-46, the *Ontario Rules of Civil Procedure*, RRO 1990, Reg. 194, and the Constitution, which I understand to be the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 ("*Charter*").

[3] The misconduct of the Ontario courts is alleged to have been in collaboration with the administrative staff of Academy of Learning – Mississauga Campus ("AOL"). It is not at all apparent how the staff of AOL are alleged to have engaged in misconduct. There is a reference to a diploma in the statement of claim, and general references to fraud and crime.

III. Procedural History

[4] The statement of claim was issued on February 22, 2022. On February 28, 2022, the Chief Justice issued an order assigning me as the case management judge.

[5] The first case management conference was held on March 9, 2022. Both defendants indicated an intention to bring motions to strike in writing. The plaintiff also indicated an intention to move to strike the statement of defence filed by AOL. I directed that the motions to

strike would be determined first, and set a timetable for the exchange of motion materials. The timetable included an April 6, 2022 deadline for the plaintiff to file responding motion materials.

[6] The plaintiff strongly objected to this direction, particularly the order in which the motions would be heard. He made allegations of bias. My oral direction following the case management conference stated, in part, "to the extent the plaintiff objects to the hearing or disposition of the motions to strike on the basis of bias, or requests that I recuse myself from determining the motions, these issues may be addressed in the plaintiff's responding motion materials."

[7] The plaintiff wrote to the Court on March 15, 2022. The letter stated (*sic* throughout):

> Please be advised, that the Dr. Richard Steve Mitchell plaintiff, of Statement of Claim To The Defendant, of the Federal Court, carrying issues Federal Court file no # T-325-22, serve on all parties, pursuant the Federal Courts Rules (SOR/98-106) Section 133 (1), and 134, (The Federal Court Act, The Federal Court Rules of Procedures) the attached copy of the Appeal against the gross erred final favored bias (Order) of Justice Prothonotary Trent Horne.
>
> Please feel free to forthwith any additional information that you believe is suitable and relevant to the appeal, your inherent adversary Dr. Richard s. Mitchell.

[8] While this correspondence referred to an "attached copy of the appeal", nothing was attached to it.

[9] After the March 9, 2022 case conference I issued a direction, not an order. No appeal lies from a direction. When a party wishes to challenge a direction arising from a case management

conference, parties are at liberty to request, on motion, a formal order which sets out the substance of the direction (*Peak Innovations Inc v Simpson Strong-Tie Company, Inc*, 2011 FCA 81 at paras 1-4).

[10] In any event, it is unclear what the plaintiff means when he refers to sections 133 and 134. This appears to refer to the Ontario *Courts of Justice Act*, RSO 1990, c. C.43, which relates to appeals. The *Courts of Justice Act* is provincial legislation that only applies to proceedings in the courts of Ontario. The applicable legislation and regulation for proceedings in the Federal Court is the *Federal Courts Act*, RSC 1985, c. F-7 ("*FCA*") and *Federal Courts Rules*, SOR /98-106 ("Rules").

[11] Even if my direction was subject to appeal, such an appeal must be made by motion to a judge of the Federal Court within 10 days (Rule 51). The plaintiff has not served and filed such a notice of motion, and is out of time to do so.

[12] The notice of motion served by AOL includes a request that the plaintiff be declared a vexatious litigant pursuant to section 40 of the *FCA*. The motion record did not include a consent from the Attorney General of Canada, which is required by subsection 40(2) of the *FCA*.

[13] Counsel for AOL wrote to the Court on March 29, 2022 and requested a further case management conference to receive directions with respect to amending its motion materials, particularly to include a consent from the Attorney General of Canada if and when obtained, and to set a new timetable for the motion.

[14] The plaintiff did not file any responding motion materials by the April 6, 2022 deadline, and did not request an extension of time to do so.

[15] I issued a further direction on April 11, 2022. The direction required the parties to provide mutually available dates for a case management conference. The direction also stated: "In the interim, the motions to strike are not adjourned, and will proceed unless otherwise directed. To ensure that the plaintiff is heard on the motions to strike, an extension of time to April 19, 2022 is granted for the plaintiff to file responding materials. If the plaintiff does not file responding motion materials by that date, the motions to strike will be determined on the basis of the materials filed by the defendants. If the plaintiff does serve and file responding motion materials, the deadline for any reply by the defendants is extended to April 26, 2022."

[16] In response to my direction, the plaintiff sent the following email to the Court and counsel for the parties (*sic* throughout):

> Please be informed that I Dr. Richard Steve Mitchell, the plaintiff, appellant will at no time entertain any form of activities that is dishonest and look and appears on its face as an act of treason, as well attack irregularity to the Rules of any court procedure within this nation, and or any other court jurisdiction globally, that is deliberate in a cohort manner with the intent to cause hardship, while frustrating the process, in an effort to protect domestic terrorists, against the civil libraty here in the nation of Canada, the former (Domminion of Canada).
>
> Therefore, on that note I will not be forthwithing any dates, however, what I am willing to move forward with is to submit an application to the Supreme Court, and any other action that will at least attempt to bring, and produce some form of Justice, in the best interest of the people.

[17] A case management conference was scheduled for April 21, 2022 at 1:00 pm. The plaintiff was given notice of the case management conference in advance, and dial-in particulars were sent to him. He did not attend.

[18] At the case management conference, counsel for AOL confirmed that the relief requested in the notice of motion to have the plaintiff declared a vexatious litigant was withdrawn, without prejudice to renewing the request once the consent of the Attorney General of Canada is in hand.

[19] As I indicated during the April 21, 2022 case management conference, the plaintiff has missed two deadlines to file responding motion materials, and has not asked for an extension of time to do so. The plaintiff elected not to participate in the second case management conference, notwithstanding having notice of it. I indicated that I would determine the motions to strike based on the materials filed by the defendants.

[20] The plaintiff sent further correspondence to the Registrar of the Supreme Court of Canada, copied to the Federal Court and others, on April 25, 2022. This letter stated (*sic* throughout):

> Please be advised, as to my brief and recent conversation with administration of the Supreme Court of Canada, I the appellant Dr. Richard Steve Mitchell plaintiff, of Statement of Claim To TheDefendant, of the Federal Court, carrying issued Federal Court file no # T-325-22, and who is named Richard Mitchell of the judgment of Case Management Judge Trent Horne dated March 09, 202, as of this day April 25, 2022, establishing with the both defendants, and the Supreme Court of Canada, That Pursuant to Rule 38, 18, 28, 35, 41, 56, 57, 97, of The Rules of the Supreme Court of Canada, an appeal is Appeal against the gross erred final favored bias prejudicial (Order) of Justice Prothonotary Trent Horne (Judge), is hereby served upon you.

> Please feel free to forthwith any additional information that you believe is suitable and relevant to the appeal, your inherent adversary Dr. Richard S. Mitchell, a skilled, and trained in ADR, Victim Offender Dialogue, Victim Offender Mediation School - peers / employment / seniors, Community tribunals, and a certificated licensed Domestic violence Christian Advocate

[21] A notice of appeal was attached to this correspondence. I give this correspondence and notice of appeal no weight. A direction cannot be appealed at all, let alone directly to the Supreme Court of Canada. In any event, the plaintiff's fundamental complaint appears to be that I refused to hear his motion to strike AOL's statement of defence before the defendants' motions to strike the statement of claim. In my view, there is no good reason to do so; approaching the motions in that order would be contrary to the guiding principles of Rule 3. If the defendants' motions to strike are successful, whether a defence is on file or not is immaterial. If the motions to strike are unsuccessful and the matter is properly before the Court, that is the appropriate time to deal with existing and future pleadings.

IV. Law on Motions to Strike

[22] Motions to strike are governed by Rule 221:

Striking Out Pleadings	Radiation d'actes de procédure
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;
(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 accordingly.	Elle peut aussi ordonner que l'action soit rejetée ou qu'un jugement soit enregistré en conséquence.
Evidence	Preuve
(2) No evidence shall be heard on a motion for an order under paragraph (1)(a).	(2) Aucune preuve n'est admissible dans le cadre d'une requête invoquant le motif visé à l'alinéa (1)(a).

[23] The legal principles applying to motions to strike are well known. To strike a pleading, it must be plain and obvious, assuming the facts pleaded to be true, that the pleading discloses no reasonable cause of action. It needs to be plain and obvious that the action is certain to fail because it contains a radical defect (*R v Imperial Tobacco Canada Ltd*, 2011 SCC 42, [2011] 3 SCR 45 at para 17).

[24] It is incumbent upon a plaintiff to plead the facts which form the basis of his or her claim as well as the relief sought. These facts form the basis upon which the success of a claim is evaluated. A plaintiff must plead with sufficient details the constituent elements of each cause of action or legal ground raised (*Pelletier v Canada*, 2016 FC 1356 at paras 8 and 10).

[25] To disclose a reasonable cause of action, a claim must: (a) allege facts that are capable of giving rise to a cause of action; (b) disclose the nature of the action which is to be founded on those facts; and (c) indicate the relief sought, which must be of a type that the action could produce and the Court has jurisdiction to grant (*Oleynik v Canada (Attorney General)*, 2014 FC 896 at para 5).

[26] To show a plaintiff has a reasonable cause of action, the statement of claim must plead material facts satisfying every element of the alleged causes of action. The plaintiff needs to explain the "who, when, where, how and what" giving rise to the defendant's liability (*Al Omani v Canada*, 2017 FC 786 at para 14 ("*Al Omani*")).

[27] On a motion to strike, the pleadings must be read as generously as possible, erring on the side of permitting a novel but arguable claim to proceed to trial (*Atlantic Lottery Corp Inc v Babstock*, 2020 SCC 19 at para 19).

V. Rules of Pleading

[28] The statement of claim breaches the rules of pleading in every respect.

[29] Rule 174 requires that pleadings contain a concise statement of material facts. There are four basic requirements of a pleading to comply with this rule:

(a) Every pleading must state facts and not merely conclusions of law or arguments;

(b) It must include material facts satisfying each element of the cause of action with sufficient particularity;

(c) It must state facts and not the evidence by which they are to be proven; and

(d) It must state facts concisely and in summary form.

(*Carten v Canada*, 2009 FC 1233 at para 36 ("*Carten*"))

[30] Pleadings play an important role in providing notice and defining the issues to be tried; the Court and opposing parties cannot be left to speculate as to how the facts might be variously arranged to support various causes of action (*Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227 at para 16 ("*Mancuso*")).

[31] The statement of claim alleges fraud. Rule 181 imposes a higher standard of pleading for causes of action that involve malice, fraud, breach of trust, or other wilful misrepresentations. When pleading bad faith or abuse of power, it is not enough to assert, baldly, conclusory phrases such as "deliberately or negligently," "callous disregard," or "by fraud and theft did steal". Making bald, conclusory allegations without any evidentiary foundation is an abuse of process (*Merchant Law Group v Canada (Revenue Agency)*, 2010 FCA 184 at paras 34 and 35).

[32] The statement of claim does not meet any of these requirements. It can be struck on that basis alone.

VI. Jurisdiction

[33] The Federal Court is not a court of last resort for parties who are dissatisfied with the outcome of other court proceedings. It does not have broad supervisory powers over provincial courts or educational institutions. Rather, the Federal Court is a statutory court with limited and specific jurisdiction.

[34] The essential requirements to support a finding of jurisdiction in the Federal Court are: 1) a statutory grant of jurisdiction by the federal Parliament; 2) an existing body of federal law which is essential to the disposition of the case which manages statutory grant of jurisdiction; and 3) the case being based on a law of Canada as the phrase is used in section 101 of the *Constitution Act*, 1867 (*ITO-International Terminal Operators Ltd v Miida Electronics Inc*, [1986] S.C.J. No. 38, [1986] 1 S.C.R. 752) ("*ITO*")).

[35] As stated in *Windsor (City) v Canadian Transit Co*, 2016 SCC 54 at paras 25-26, before assessing whether the three-part test in *ITO* is met, the essential nature or character of the claim must be determined on a "realistic appreciation of the practical result sought by the claimant". "Jurisdiction is not to be assessed in a piecemeal or issue-by-issue fashion." The statement of claim should not be read blindly at its face meaning. Rather, the Court must "look beyond the words used, the facts alleged and the remedy sought and ensure…that the statement of claim is

not a disguised attempt to reach before the Federal Court a result otherwise unreachable in that Court".

[36] The statement of claim describes certain events as *actus reus* and *mens rea*, suggesting alleged breaches of the *Criminal Code*. In *R in right of Canada v Saskatchewan Wheat Pool*, [1983] 1 S.C.R. 205, the Supreme Court of Canada stated that there is no nominate tort based on the breach of a statutory provision alone (pages 225-226). An alleged breach of the *Criminal Code* does not provide a civil cause of action over which the Federal Court has jurisdiction. As such, it is plain and obvious that the plaintiff does not have a civil cause of action in the Federal Court based on any alleged breach of the *Criminal Code*.

[37] The statement of claim appears to be largely based on allegations of judicial misconduct. In addition to the doctrine of judicial immunity that applies to judges acting in the course of their judicial duties, which cannot be circumvented by merely pleading bald allegations of misconduct (*Carten* at paras 48-51), to the extent the plaintiff is dissatisfied with the outcome of any court proceeding, the remedy is to pursue avenues of appeal, not to commence a lawsuit in this Court. Such allegations are vexatious, disclose no reasonable cause of action, and are an abuse of process.

[38] In addition to judges, the statement of claim alleges misconduct by registrars of the Ontario courts. Even if registrars are not protected by judicial immunity, the actions of the "Crown" would be Her Majesty the Queen in Right of Ontario, not Her Majesty the Queen in Right of Canada. The provincial Crown may not be sued in the Federal Court due, in part, to the

principle of Crown immunity. More specifically, subsections 17(1) and (2) of the *FCA*, which provide for suits against the Crown in the Federal Court, do not apply to the provincial Crown because the "Crown" is defined in section 2 of the *FCA* as meaning Her Majesty in Right of Canada (*Saskatchewan (Attorney General) v Pasqua First Nation*, 2016 FCA 133 at para 50, leave to SCC refused [2016] SCCA No 283).

[39] The basis for the action against AOL is unclear, but presumably has something to do with the plaintiff's enrolment as a student. To the extent the plaintiff's complaint against AOL can be described as a breach of contract, the Federal Court lacks jurisdiction to determine purely contractual matters between private parties (*Salt Canada Inc v Baker*, 2020 FCA 127 at para 45). If the complaint is grounded in a common law tort, the Federal Court equally lacks jurisdiction (*Sealand Marine Electronics Sales and Services Ltd v M/V Inuksuk I (Ship)*, 2021 FC 887 at para 139).

[40] To the extent the plaintiff is alleging a breach of his *Charter* rights, what rights are engaged and how they have been breached is unknown.

[41] *Charter* actions do not trigger special rules on motions to strike; the requirement of pleading material facts still applies. The Supreme Court of Canada has defined in the case law the substantive content of each *Charter* right, and a plaintiff must plead sufficient material facts to satisfy the criteria applicable to the provision in question. This is no mere technicality, "rather, it is essential to the proper presentation of Charter issues" (*Mancuso* at para 21).

[42] While the Federal Court can be a "court of competent jurisdiction" as that phrase is used in section 24(1) of the *Charter* in certain circumstances, that does not mean that the Federal Court has jurisdiction over any and all *Charter* claims. Simply describing an event or a claim as a breach of a *Charter* right does not grant the Federal Court jurisdiction it does not otherwise have.

[43] Section 24(1) of the *Charter* provides that "anyone whose rights or freedoms, as guaranteed by this *Charter*, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances." A "court of competent jurisdiction" is one that possesses: (1) jurisdiction over the person; (2) jurisdiction over the subject matter; and (3) jurisdiction to grant the remedy. Only when a court or tribunal possesses all three attributes is it considered a "court of competent jurisdiction" for the purpose of ordering *Charter* relief (*R v 974649 Ontario Inc*, [2001] 3 SCR 575 at para 15). There is nothing in the statement of claim that could lead to a conclusion that the Federal Court is a court of competent jurisdiction for the plaintiff's allegations.

[44] For the above reasons, it is plain and obvious that the Federal Court does not have jurisdiction over the plaintiff's claim. It must be struck.

[45] Her Majesty the Queen in Right of Ontario also moves to strike the claim as a nullity because the plaintiff did not comply with subsection 18(1) of the *Crown Liability and Proceedings Act, 2019*, SO 2019, c7 Sch 17. This section requires a claimant to provide notice of

an action containing sufficient particulars to identify the occasion out of which the claim arose at least 60 days before the commencement of the action. The plaintiff did not provide such notice. This is, however, immaterial for the purposes of this motion. Even if proper notice had been given, the Federal Court would still be without jurisdiction over the subject matter of the plaintiff's claim, and the statement of claim would still be struck.

VII. Leave to Amend

[46] Striking a pleading without leave to amend is a power that must be exercised with caution. If a statement of claim shows a scintilla of a cause of action, it will not be struck out if it can be cured by amendment (*Al Omani* at paras 32-35).

[47] In determining whether leave to amend should be granted, I have considered the fact that the plaintiff is self-represented. I have attempted to read past the challenging manner in which the statement of claim was drafted to assess whether it reveals anything that could possibly be a genuine cause of action.

[48] For a motion to strike based on paragraph 221(1)(a), no evidence shall be heard (subrule 221(2)). I did not consider the affidavits filed by the defendants when determining whether the statement of claim should be struck, but will consider that evidence when determining if leave to amend should be granted.

[49] The motion materials filed by AOL include an affidavit of Sunita Vyas, a director of 1527611 Ontario Inc, a company incorporated pursuant to the laws of the province of Ontario

and carrying on business as Academy of Learning Career College. Ms. Vyas was not cross-examined. The facts that follow were taken from her affidavit and the exhibits attached to it.

[50] AOL is a private college licensed by the Ministry of Education. The plaintiff was enrolled in the Immigration Consultant Program at the Mississauga campus of AOL from about September 2020 to February 2021. He was removed from the program for non-payment of tuition fees.

[51] After his removal, the plaintiff issued a statement of claim in the Ontario Superior Court of Justice. Like the statement of claim in this matter, the Ontario claim is difficult to understand. It appears to allege wrongdoing related to his student loans. It also references *Criminal Code* offences, including extortion and extortion with a firearm. The claim sought $150,000.00 in damages and “earned diploma of immigration consultant”. AOL defended the claim, and counterclaimed for $7,690.00 in unpaid tuition fees.

[52] On September 13, 2021, counsel for AOL wrote to the Registrar of the Ontario Superior Court of Justice, requesting an order dismissing the action under subrules 2.1.0l(l) and 2.l.02(l) of the *Ontario Rules of Civil Procedure* on the basis that it was frivolous, vexatious or otherwise an abuse of the process of the Court. Justice Bird ordered that the action be dismissed on October 25, 2021.

[53] On November 25, 2021, the plaintiff filed an appeal to the Court of Appeal for Ontario. The appeal was dismissed with costs as a consequence of the plaintiff's failure to perfect the appeal and cure the default.

[54] The essential nature of the plaintiff's claim is a dispute with AOL over tuition payments and entitlement to a diploma, and dissatisfaction with the way the courts ruled in his proceedings in Ontario. To the extent any of these claims are justiciable, the Federal Court has no jurisdiction over them. It is therefore plain and obvious that the statement of claim cannot be amended to advance a valid cause of action against the defendants in the Federal Court. The statement of claim will therefore be struck without leave to amend.

VIII. Costs

[55] The Court has full discretionary power over the amount and allocation of costs (subrule 400(1)).

[56] This action is frivolous and vexatious. It is an abuse of the Court's process. The plaintiff had every opportunity to respond to the defendants' motions, and demonstrate a good faith or reasonable basis to commence a claim the Federal Court, or a basis upon which it could be amended. He chose not to. This gives the distinct impression that the statement of claim was filed to cause embarrassment, inconvenience and expense for the defendants, not to pursue a reasonable cause of action.

[57] I will therefore award costs to each defendant in the amount of $1,600.00. This is determined with reference to the high end of Column V of the Tariff: an uncontested motion (item 4; 6 units), preparation for two case conferences (item 10; 1 unit for each case conference), and attendance at two case conferences (item 11; 1 unit for each case conference).

JUDGMENT in T-325-22

THIS COURT'S JUDGMENT is that:

1. The statement of claim is struck, without leave to amend.

2. Each defendant is awarded costs of $1,600.00, payable forthwith.

"Trent Horne"

Case Management Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-325-22
STYLE OF CAUSE:	MR. RICHARD S. MITCHELL AKA, DR. RICHARD STEVE MITCHELL, REV. RICHARD MITCHELL, AND, RICHARD STEVEN MITCHELL v ACADEMY OF LEARNING MISSISSAUGA – CAMPUS AND HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

MATTER CONSIDERED AT TORONTO, ONTARIO WITHOUT PERSONAL APPEARANCE OF THE PARTIES

JUDGMENT AND REASONS:	CASE MANAGEMENT JUDGE TRENT HORNE
DATED:	APRIL 26, 2022

WRITTEN REPRESENTATIONS BY:

Maxym Artemenko	FOR THE DEFENDANT ACADEMY OF LEARNING MISSISSAUGA – CAMPUS
Insiyah Kanjee	FOR THE DEFENDANT HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

SOLICITORS OF RECORD:

Wolfson Law Professional Corporation Barristers and Solicitors Toronto, Ontario	FOR THE DEFENDANT ACADEMY OF LEARNING MISSISSAUGA – CAMPUS
Attorney General for Ontario, Crown Law Office-Civil Toronto, Ontario	FOR THE DEFENDANT HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO