

Federal Court



Cour fédérale

**Date: 20230530**

**Docket: T-268-21**

**Citation: 2023 FC 752**

**Ottawa, Ontario, May 30, 2023**

**PRESENT: The Honourable Madam Justice Rochester**

**BETWEEN:**

**CHRISTOPHER LILL**

**Plaintiff**

**and**

**HIS MAJESTY THE KING**

**Defendant**

**ORDER AND REASONS**

I. Overview

[1] The Plaintiff, Christopher Lill, is currently serving a life sentence for first-degree murder with no eligibility for parole for 25 years. The Plaintiff commenced the present proceedings following a decision by the Correctional Service of Canada [CSC] to increase the Plaintiff's security classification and transfer him from a minimum-security institution to a medium-security institution in Cowansville. In his Amended Statement of Claim, the Plaintiff alleges that

the transfer was arbitrary, unlawful, punitive, unjustified, unreasonable and in breach of his *Charter* rights. The Plaintiff claims damages, including punitive damages.

[2] The Defendant brought the present motion to strike the Statement of Claim pursuant to Rule 221 of the *Federal Courts Rules*, SOR/98 106 [Rules] on the basis that the claim discloses no reasonable cause of action and is an abuse of process. The Defendant highlights that the Plaintiff previously challenged his transfer by way of an application to the Superior Court of Québec for *habeas corpus* with *certiorari* in aid. The Superior Court, in a judgment dated March 9, 2021, rejected the Plaintiff's application, concluding that the decision to transfer the Plaintiff was lawful, reasonable, and complied with all the requirements of procedural fairness (*Lill c Service correctionnel du Canada (Établissement Cowansville)*, 2021 QCCS 751 [*Lill*]).

[3] The Defendant submits that given that the Superior Court concluded that the decision to transfer the Plaintiff was reasonable and complied with the requirements of procedural fairness, that same decision cannot now be unreasonable, unlawful, procedurally unfair or constitute a breach of the Plaintiff's *Charter* rights. The Defendant pleads that the Superior Court has ruled on these issues, the judgment is final, and as such, the Amended Statement of Claim must be struck.

[4] The Plaintiff submits that the present action for damages is not an abuse of process because it is a different procedural vehicle from the Plaintiff's application to the Superior Court. The Plaintiff highlights that in an application for *habeas corpus* the process is summary, while in a trial the matter will be fully ventilated. The Plaintiff pleads that the claim is not deficient on the

basis that much will be proven at the trial. As such, it is premature to strike the Amended Statement of Claim. The Plaintiff submits that neither *lis pendens* nor issue estoppel apply. Finally, the Plaintiff submits that the Defendant is in bad faith by bringing the present motion and seeking to prevent the Plaintiff from exercising his rights to obtain compensation.

[5] The Defendant's position is that although a different procedural vehicle was used, this does not detract from the fact that the Superior Court ruled on the issues of reasonableness and procedural fairness. The Defendant submits that one cannot now seek to attack the Superior Court's decision. The Defendant denies that the present motion is in bad faith and notes that it consented to the Plaintiff's request to amend the Statement of Claim in order to provide him with an opportunity to cure the defects.

[6] Having considered the parties' submissions, and for the reasons that follow, the Defendant's motion to strike the Statement of Claim is granted. I agree with the Defendant that the basis of the present action is the decision to increase the Plaintiff's security classification and transfer him to the institution in Cowansville. The decision by the CSC was considered by the Superior Court after a hearing lasting several days that included witness evidence, and was found to be reasonable and lawful. The present action seeks to re-litigate the issues decided by the Superior Court and thus, it would be an abuse of process to permit the action to continue in this Court.

## II. Analysis

[7] The Defendant moves to have the Statement of Claim struck on the basis of Rules 221(1)(a) and (f) of the Rules. Pursuant to paragraph 221(1)(a), this 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 discloses no reasonable cause of action. In order to do so, the Court must find that it is “plain and obvious” that the pleading discloses no reasonable cause of action (*R v Imperial Tobacco Canada Ltd*, 2011 SCC 42 at para 17 [*Imperial*]; *Hunt v Carey Canada Inc*, 1990 CanLII 90 (SCC), [1990] 2 SCR 959 at p 980 [*Hunt*]).

[8] My colleagues Justice Patrick Gleeson and Associate Judge Kathleen Ring have recently summarized the applicable test and the underlying principles with respect to a finding that a Statement of Claim discloses no reasonable cause of action (*Theriault v Canada (Attorney General)*, 2022 FC 722 at para 14):

- A. To strike a claim on the basis it discloses no reasonable cause of action, it must be plain and obvious that the claim discloses no reasonable cause of action or has no reasonable prospect of success (*Hunt v Carey Canada Inc*, [1990] 2 SCR 959 at para 36 [*Hunt*]; *R v Imperial Tobacco Canada Ltd*, 2011 SCC 42 at para 17);
- B. All facts plead must be accepted as provided unless patently ridiculous or incapable of proof: *Hunt* at paras 33 and 34; *Edell v Canada*, 2010 FCA 26 at para 5; *Operation Dismantle v The Queen (1985)*, 1985 CanLII 74 (SCC), 18 DLR (4th) 481 (SCC) at 486-487 and 490-491 [*Operation Dismantle*]);
- C. The statement of claim is to be read generously and in a manner that accommodates drafting deficiencies (*Operation Dismantle* at para 14);

- D. That to disclose a cause of action the pleading must (1) allege facts capable of giving rise to the action; (2) disclose the nature of the action; and (3) indicate the relief sought – the statement of claim is to contain a concise statement of the material facts to be relied upon but not the evidence by which the facts are to be proved (*Oleynik v Canada (Attorney General)*, 2014 FC 896 at para 5; Rule 174 of the Rules);
- E. What constitutes a material fact is to be determined by the cause of action and the relief sought. The pleading must disclose to the defendant the who, when, where, how and what, that give rise to the claimed liability – a narrative of what happened and when will rarely suffice and neither the court nor opposing parties are to be left to speculate as to how the facts support various causes of action (*Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227 at para 19; *Simon v Canada*, 2011 FCA 6 at para 18).

[9] The doctrine of abuse of process is contained in Rule 221(1)(f). Pursuant to paragraph (f), this 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 is otherwise an abuse of the process of the Court. Under Rule 221(1)(f), the Court has a wider discretion to decide whether the claim is an abuse of process and may receive evidence in this regard (*Quinn v Canada*, 2021 FC 1302 at para 16).

[10] Repeated attempts to litigate essentially the same dispute constitutes an abuse of the process of the Court. In *Toronto (City) v CUPE, Local 79*, 2003 SCC 63 at paragraph 37 [CUPE], the Supreme Court of Canada explains the use of the abuse of process doctrine to preclude relitigation:

Canadian courts have applied the doctrine of abuse of process to preclude relitigation in circumstances where the strict requirements of issue estoppel (typically the privity/mutuality requirements) are not met, but where allowing the litigation to proceed would nonetheless violate such principles as judicial economy,

consistency, finality and the integrity of the administration of justice.

[11] The Federal Court of Appeal has described the doctrine of abuse of process as follows in *Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227 [*Mancuso*]:

[40] Abuse of process, in contrast, is a residual and discretionary doctrine of broad application and scope, which bars the relitigation of issues. It is directed to preventing relitigation of the same issues and the attendant mischief of inconsistent decisions by different courts which, in turn, would undermine the doctrines of finality and respect for the administration of justice. It is thus a more flexible doctrine than collateral attack. It permits a judge to bar relitigation of a criminal conviction in a different forum, as was the case in *CUPE*.

[12] The Defendant's position is based on the decision of the Superior Court and is two-fold. First, the Defendant submits that there is no fault given the decision of the Superior Court and as such, without a fault there can be no liability pursuant to article 1457 of the *Civil Code of Québec*. Consequently, the Amended Statement of Claim discloses no reasonable cause of action. Second, the Plaintiff's action in damages effectively mirrors the Plaintiff's application for *habeas corpus* such that to continue the present action after the Superior Court's decision was rendered constitutes an abuse of process.

[13] The Superior Court's decision is the basis of both the Defendant's arguments. The decision arose as a result of the Plaintiff's motion for *habeas corpus* in which he sought a declaration that the decision to increase his security classification and transfer him to Cowansville, a medium-security institution, was arbitrary and unlawful.

[14] In its overview, the Superior Court describes the decision at issue, being to increase the Plaintiff's security classification and transfer him to the institution at Cowansville, and the Plaintiff's allegations that the decision is unreasonable and is not based on reliable or complete evidence (*Lill* at paras 2-3). The Superior Court heard testimonial evidence from the Plaintiff, in support of his motion. Witness evidence was also provided by Diane Allard, who is the "gestionnaire d'évaluation et d'intervention au Centre fédéral" and forms part of the management, and who had interacted with the Plaintiff on numerous occasions. I note that the Plaintiff raises his interactions with Ms. Allard in his Statement of Claim.

[15] The Superior Court, after having reviewed the documentary evidence, the testimonial evidence, and the parties' arguments, denied the Plaintiff's motion. The Superior Court concluded that the decision at issue was lawful and reasonable (*Lill* at para 40). The Superior Court found that the Plaintiff's testimony in fact reinforced the reasonable nature of the decision given the security concerns and the fact that the Plaintiff was in constant conflict with the correctional officers (*Lill* at para 43). The Superior Court further found that the decision makers took into account the Plaintiff's aboriginal social history and complied with the requirements of procedural fairness (*Lill* at paras 41-42).

[16] The Plaintiff's motion before the Superior Court was filed on February 2, 2021, and amended on February 18, 2021. The Statement of Claim in the present action is dated February 12, 2021, and was filed on February 16, 2021. As noted above, following the Superior Court's decision rendered March 9, 2021, the Defendant provided the Plaintiff with an

opportunity to amend his Statement of Claim. The Amended Statement of Claim was filed on October 5, 2021.

[17] Having carefully considered the arguments of both parties, the authorities on which they relied, the contents of the Plaintiff's motion in the Superior Court dated February 18, 2021, the Superior Court decision, and the contents of the Amended Statement of Claim, I am satisfied that the Amended Statement of Claim should be struck on the basis of paragraphs 221(1)(a) and (f), as it discloses no reasonable cause of action and is an abuse of process.

[18] The Plaintiff's Amended Statement of Claim seeks damages alleged to have resulted from the decision to transfer him to the medium-security institution. When compared side by side, the Plaintiff's motion before the Superior Court and the Amended Statement of Claim contain close to 30 paragraphs that are either identical or substantially similar. The Plaintiff's Amended Reply, dated November 10, 2021, at paragraph 82, clearly states that the action concerns the increase in the Plaintiff's security classification and his placement in a medium-security institution. In fact, at paragraph 80, the Plaintiff introduces the Context section (paragraphs 80 through 82) with a reminder of what is really at issue in the litigation. In paragraph 81, the Plaintiff states that the information relied upon to authorize his transfer and increase his security classification was not in conformity with the applicable laws, policies, and directives.

[19] Read holistically, the Plaintiff is seeking to re-litigate the same issues, which in my view, given the Superior Court's findings, is abusive and not in the interests of justice. It is an abuse of



process to re-litigate essentially the same dispute when earlier attempts have failed (*Oleynik v Canada (Attorney General)*, 2014 FC 896 at para 23).

[20] I am not persuaded by the Plaintiff's argument that his action does not constitute an abuse of process on the basis that it is a different procedural vehicle from the one used before the Superior Court. The fact that one uses a different procedural vehicle from the first proceeding does not insulate one from the doctrine against re-litigation. In *Almacén v Canada*, 2016 FCA 296 [*Almacén*], the Federal Court of Appeal considered an appeal from a decision to strike a statement of claim that sought to re-litigate a decision that was the subject of a prior application for leave and judicial review. The first instance judge had concluded that the action was an abuse of process as it "is simply an attempt to re-litigate the reasonableness of the H&C decision, and the Court has already dealt with the reasonableness of that decision" (*Almacén* at para 4). The Federal Court of Appeal concluded that the doctrine against re-litigation applied and that the first instance judge did not commit a reviewable error.

[21] In *Mancuso*, the Federal Court of Appeal underscored that the doctrine of abuse of process, which bars the re-litigation of issues, is flexible and contemplates different forums, including criminal and civil proceedings:

[41] The relief sought by the appellants is different in this action from that in the BC and Alberta proceedings. Here, damages are sought for an alleged unconstitutional search and for torts claimed to have been committed in the execution of the search. In the provincial courts, what was sought was the exclusion of the evidence obtained in the search at a criminal trial. These differences preclude the application of the doctrine of collateral attack. Abuse of process, however, remains available; indeed, contrary to the appellants' first and second arguments, abuse of

process explicitly contemplates a different judicial forum and relief sought. ...

[45] ... The difference of forum and relief do not preclude the claim from being abusive.

[22] In *Dufresne v Canada*, 2013 FC 263 [*Dufresne*], Justice Scott considered a very similar case to the one at issue, where a motion for *habeas corpus* was filed before the Superior Court and the plaintiff filed an action for damages against the Crown. Justice Scott concluded that the Superior Court's declaration that the decision at issue was lawful meant that the statement of claim disclosed no reasonable cause of action (*Dufresne* at para 43). In addition, Justice Scott further concluded that permitting the matter to proceed would not be in the interests of justice on the basis that the plaintiff was seeking to re-litigate based on the same facts when a court had already considered the matter and rendered a decision disposing of it (at paras 44-45). Consequently, Justice Scott struck the statement of claim.

[23] In none of the above three cases did the fact that different procedural vehicles or forums were involved preclude the courts from striking the statements of claim on the basis of abuse of process and the doctrine against re-litigation. In fact, the Federal Court of Appeal in *Mancuso* highlighted the objective of maintaining respect for the administration of justice and the desire for comity and mutual respect between jurisdictions (para 43). Moreover, I find *Dufresne* to be analogous to the matter at hand and a persuasive authority. I agree with Justice Scott's reasoning that where the Superior Court has considered the reasonableness and lawfulness of a decision and disposed of a motion for *habeas corpus*, it is not in the interests of justice to permit a plaintiff to re-litigate the issue based on the same facts and challenging the same decision. Accordingly, the Amended Statement of Claim shall be struck on the basis of Rule 221(1)(f).

[24] In addition, the Plaintiff's action for damages is based on allegations that the decision to transfer him and increase his security classification was unlawful, unjustified, unreasonable, punitive and in breach of his *Charter* rights. Given the Superior Court's decision that the decision was reasonable and lawful, the Plaintiff's claim "has no reasonable prospect of success" (*Imperial* at para 17). A necessary element of the claim, the fault, is absent. In view of the facts set out in the Amended Statement of Claim and the remedies sought in respect of the decision to transfer the Plaintiff, I find that his pleading discloses "no reasonable cause of action" within the meaning of Rule 221(1)(a).

[25] The Plaintiff has also alleged that by bringing the present motion to strike, the Defendant has acted in bad faith and in an abusive manner. I find no merit in these allegations. The Defendant permitted the Plaintiff to amend his Statement of Claim following the Superior Court's decision in order to seek to cure the deficiencies. Even if I had not concluded that the Amended Statement of Claim should be struck, there is nothing in the present file that would support the Plaintiff's allegations in this regard.

### III. Conclusion

[26] For the foregoing reasons, the Defendant's motion to strike the Amended Statement of Claim is granted. Pursuant to Rule 221(1)(a), the Amended Statement of Claim discloses no reasonable cause of action, and pursuant to Rule 221(1)(f) it is an abuse of process in that it is an attempt to re-litigate issues conclusively decided by the Superior Court in *Lill*.

[27] The Plaintiff's Amended Statement of Claim is struck in its entirety without leave to amend. The Defendant seeks costs. Considering the facts of the matter, and my discretion pursuant to Rule 400 of the Rules, costs in the amount of \$750.00 should be awarded to the Defendant.

**ORDER in T-268-21**

**THIS COURT ORDERS that:**

1. The Defendant's motion to strike is granted.
2. The Plaintiff's Amended Statement of Claim is struck out in its entirety without leave to amend.
3. The action is dismissed.
4. Costs in the amount of \$750.00 are awarded to the Defendant.

“Vanessa Rochester”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-268-21

**STYLE OF CAUSE:** CHRISTOPHER LILL v HIS MAJESTY THE KING

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

**DATE OF HEARING:** DECEMBER 13, 2022

**ORDER AND REASONS:** ROCHESTER J.

**DATED:** MAY 30 2023

**APPEARANCES:**

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