

Federal Court



Cour fédérale

Date: 20231121

Docket: T-1791-23

Citation: 2023 FC 1542

Vancouver, British Columbia, November 21, 2023

PRESENT: The Honourable Mr. Justice Lafrenière

BETWEEN:

WINSTON E. GASKIN

Plaintiff

and

HIS MAJESTY THE KING

Defendant

ORDER AND REASONS

[1] Recent amendments to Rule 74 of the *Federal Courts Rules*, SOR/98-106 (*Rules*) empower the Court with new tools to manage dysfunctional or destructive conduct in litigation. By Order dated September 14, 2023 issued pursuant to the amended rule, the self-represented Plaintiff, Winston E. Gaskin, was required to serve and file written submissions to show cause why the Statement of Claim brought against the Defendant, His Majesty the King (Crown), should not be removed from the Court file (Show Cause Order).

[2] In accordance with procedural fairness, the Show Cause Order notified Mr. Gaskin that the Court apprehended that: (a) the allegations made in the Statement of Claim were rambling, making it difficult to ascertain what cause of action was being asserted; (b) the action was duplicative and/or touched on matters raised in another proceeding before this Court in Court Docket: T-353-22), as well as matters that are the subject of an appeal before the Federal Court of Appeal in Court Docket: A-194-23; and, (c) the pleading was on its face scandalous, frivolous, vexatious or clearly unfounded, or otherwise constituted an abuse of the Court's process.

[3] Mr. Gaskin was given an opportunity to make submissions; however, he failed to file written representations responsive to the issues raised in the Show Cause Order. The Crown was then invited to provide submissions to assist the Court in determining whether the Statement of Claim should be removed from the Court file pursuant to Rule 74(1).

[4] Having carefully read the Statement of Claim and considered the Crown's submissions, I conclude that the pleading lacks sufficient detail, or at all, to allow the Crown to respond to it adequately, such that it is inherently frivolous and vexatious. Moreover, the pleading constitutes at its core an abuse of this Court's process as it repeats and recycles allegations raised in other proceedings before this Court, which involve other parties, and which are subject to other orders or directions.

I. Facts

[5] Mr. Gaskin commenced the underlying action against the Crown on August 28, 2023 by way of Statement of Claim.

A. *Allegations in the Statement of Claim*

[6] At paragraph 1 of the Statement of Claim, there is reference to an application for judicial review in T-353-22 whereby Mr. Gaskin was seeking an order to quash or set aside a decision of the Canadian Human Rights Commission (CHRC) that declined to exercise its discretion under section 41(1)(e) of the *Canadian Human Rights Act* to deal with Mr. Gaskin's complaint of discrimination against Rogers Communications Inc. (Rogers). After setting out some procedural matters in that proceeding with which Mr. Gaskin takes issue, the pleading "proposes" at subparagraph 1(g) to amend the application for judicial review to be prosecuted as a class proceeding, to add parties to the application, to add additional details regarding the CHRC's decision, to seek additional relief in the application, including damages in the amount of \$40 million, and to amend the application to include references to various additional pieces of legislation and/or conventions, including, among others, the "*Maritime (sic) Liability Act*, *Alberta's Consumer Protection Act*, and the *United Nations Convention on the Rights of the Child*."

[7] The Statement of Claim states at paragraph 3 that Mr. Gaskin's complaint was inappropriately managed by the Commission and Rogers "as agents of the Crown." It then goes on at length to allege that "Defendants" violated a long list of federal and provincial statutes, including the *Admiralty Act (sic)*, the *Aeronautics Act*, the *Canada Gazette*, the *Canada Human Rights Act*, the *Canada Labour Code*, and the *Canada, US and Mexico Agreement*, to name a few.

[8] Paragraphs 12 and 13, reproduced below, are illustrative of the type of allegations made throughout the pleading:

12. The Plaintiff(s) seek relief under a number of statutes, regulations and rules of law which, it is alleged, they have routinely violated in order to deprive the defendants of remedy;

13. It is further alleged that in doing so the Defendants have developed, operated, guided, instructed and advanced a scheme in which they concealed and/or managed their conduct in such a manner as to circumvent justice in violation of the Canada Labour Code, Criminal Code and the Competition Act, in effect operating a criminal enterprise by virtue of their willful conduct, predatory behaviors and explicit disregard for the competition law, labor law and other statutes relevant to this matter.

[9] At paragraph 55, Mr. Gaskin seeks damages against the Crown in the amount of \$39.4 million “and up to \$56.07MM with consideration for other individuals,” plus interest and “exclusive of any other damages” that this Court may allow.

B. *Other Proceedings before this Court*

[10] The litigation in T-353-22 that is specifically referred to at paragraph 1 of the Statement of Claim is a matter of public record found on the records of the Court and can properly be considered in disposing of the present matter.

[11] Upon reviewing the entries in the Court’s Proceedings Management System, I note that:

(a) the application in T-353-22 was dismissed without leave to amend or refile by Order of Associate Judge Catherine Coughlan on April 14, 2023; (b) Mr. Gaskin’s request for an extension of time to serve and file a motion appealing the said Order was denied by Justice

Patrick Gleeson on July 18, 2023; and (c) Mr. Gaskin appealed the Order of Justice Gleeson on August 14, 2023 in A-194-23.

[12] The Court is also entitled to take into account records and processes of other proceedings brought by Mr. Gaskin in this Court: *British Columbia (Attorney General) v Malik*, 2011 SCC 18 at paras 38, 46-47. After all, the Court does not operate in a vacuum.

[13] On August 21, 2023, Mr. Gaskin filed a Statement of Claim in T-1902-23. He openly admits at page 9 of the pleading that “the facts in [the] matter are related to the facts in Federal Court file T-353-22.” Among other things, the Statement of Claim seeks leave: (a) to amend the application to a class proceeding; (b) to add parties to the application, including Mr. Gaskin “as himself, as class representative and as sole surviving shareholder of Standard Land Company Inc.,” subsidiaries of Rogers, and Rogers’ directors, agents, officers, affiliates and assigns; and (c) to amend the application to include references to documentary exhibits that were not before the Commission when it made its decision.

II. Issues

[14] The only issue to be determined is whether the Statement of Claim in the case at bar should be removed from the file and the proceeding accordingly terminated.

III. Law

[15] Rule 74 provides follows:

Removal of documents	Retrait de documents
74 (1) Subject to subsection (2), the Court may, at any time, order that a document be removed from the Court file if the document	74 (1) Sous réserve du paragraphe (2), la Cour peut, à tout moment, ordonner que soient retirés du dossier de la Cour :
(a) was not filed in accordance with these Rules, an order of the Court or an Act of Parliament;	a) les documents qui n'ont pas été déposés en conformité avec les présentes règles, une ordonnance de la Cour ou une loi fédérale;
(b) is scandalous, frivolous, vexatious or clearly unfounded; or	b) les documents qui sont scandaleux, frivoles, vexatoires ou manifestement mal fondés;
(c) is otherwise an abuse of the process of the Court.	c) les documents qui constituent autrement un abus de procédure.
Opportunity to make submissions	Occasion de présenter des observations
(2) The Court may only make an order under subsection (1) if all interested parties have been given an opportunity to make submissions.	(2) La Cour ne peut rendre une ordonnance en vertu du paragraphe (1) que si elle a donné aux parties intéressées l'occasion de présenter leurs observations.

[16] By way of background, Rule 74 was amended following recommendations made in a report submitted by a subcommittee to the Rules Committee over a decade ago, on October 16, 2012: see Canada Gazette, Part I, Vol 155, No 15 (April 10, 2021). According to the report, public consultations revealed a broad consensus that certain parties sometimes make excessive or disproportionate use of rights under the *Rules*. These excesses include the use of procedures to delay cases and the adoption of behaviours disproportionate to the objective of achieving an expeditious, just and cost-effective judicial decision. Such proceedings often languish in the

justice system, wasting limited judicial resources. Self-represented litigants often bring multiple proceedings and motions for the same matter. They also sometimes initiate proceedings that clearly have no chance of success. Consequently, it became evident that decision-makers needed new tools to regulate proceedings.

[17] Prior to the amendments, Rule 74 allowed the Court to order, on its own initiative, that a document could be removed from the Court file if it had not been filed in accordance with the *Rules*, an order of the Court, or an Act of Parliament, but only after all interested parties had been given an opportunity to be heard.

[18] In recent years, the Federal Court of Appeal held that the combined effect of Rule 74 (as it then was), Rule 4 (the gap rule), and Rule 55, alongside its plenary powers, granted the Court jurisdiction to summarily dismiss a proceeding that is abusive of the Court's process: *Cooté v Canada (Human Rights Commission)*, 2021 FCA 150 at paras 16-18; *Dugré v Canada (Attorney General)*, 2021 FCA 8 at paras 19-21.

[19] With the addition of paragraphs (b) and (c) to Rule 74(1), this Court can now order that a document be removed from the court record on additional grounds, similar to those applicable to motions to strike found at paragraphs (c) and (f) of Rule 221(1). Moreover, by replacing the words "to be heard" with "to make submissions" in Rule 74(2), it is clearly intended that the matter of removal of a document would normally be addressed in writing, with the onus placed equally on all parties, and not necessarily by making oral submissions in court at an in-person hearing.

[20] These amendments came into effect on January 13, 2022.

IV. Analysis

A. *The Claim is scandalous, frivolous or vexatious, and clearly unfounded*

[21] In *Ceminchuk v Canada*, [1995] FCJ No 914 at paragraph 10 (QL), Prothonotary John Hargrave described what is meant by a scandalous, vexatious or frivolous pleading:

[10] A scandalous, vexatious or frivolous action may not only be one in which the claimant can present no rational argument, based upon the evidence or law, in support of the claim, but also may be an action in which the pleadings are so deficient in factual material that the defendant cannot know how to answer, and a court will be unable to regulate the proceedings. It is an action without reasonable cause, which will not lead to a practical result.

[22] Rules 174, 181 and 182 impose an obligation on a plaintiff to plead, in a concise manner, material facts that disclose a reasonable cause of action, as well as the nature of the damages.

The claim must provide more than bare allegations of rights or obligations. Rather, it must provide a complete cause of action in an intelligible form by setting out the necessary facts giving rise to the alleged rights or obligations: *Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227 at paras 16-20.

[23] While a pleading should be read generously, it cannot stand if it does not set out the material facts supporting the essential elements of a cause of action. Further, allegations of fact may only be assumed true if capable of proof via evidence adducible at trial, and allegations of fact based on assumption and speculation need not be taken as true: *Operation Dismantle v The Queen*, [1985] 1 SCR 441 at para 27.

[24] In addition a claim must “indicate the relief sought, which must be of a type which the action could produce and the court has jurisdiction to grant”: *Zbarsky v Canada*, 2022 FC 195 at para 13, relying on *Bérubé v Canada*, 2009 FC 43 at para 24, aff’d 2010 FCA 276.

[25] Those requirements are not met here. The Statement of Claim is a rambling document replete with disjointed and conclusory statements. Even with a very generous reading of the Statement of Claim, the nature of the matters proposed to be determined in this action is entirely unclear given the pleading’s unfocused narrative and muddled legal foundation.

[26] By way of example, there are variable claims made relating to the case management and processes of T-353-22. However, none of the remedies sought by Mr. Gaskin in relation to the said proceeding are available in a separate action. In any event, they would serve no useful purpose as the application was dismissed even before Mr. Gaskin commenced the present action.

[27] There are also various complaints of unfair trade practices, micro-aggressions, breach of contract, breach of copyright, criminal activity, and alleged breaches of several sections of the *Canadian Charter of Rights and Freedoms*. However, the Statement of Claim lacks a description of the alleged underlying facts, in other words the “who, where, when, and what”, necessary to ground a cause of action against the Crown.

[28] More fatal to Mr. Gaskin’s case is that the pleading lacks any material facts tying the allegations of wrongdoing to the Crown or his servants, which is an essential element for a claim against the federal Crown: *Crown Liability and Proceedings Act*, RSC 1985, c C-50, s 3, 10. It is

alleged that the Commission, Rogers, “and others” are all agents of the Crown. However, whether a relationship is one of agent and principal must be factually pled and the pleading fails to do so. Moreover, while certain individuals are specifically named as co-defendants in the pleading itself, no employment or other relationship to the Crown is identified. As a result, the Statement of Claim is so deficient in material facts that the Crown cannot know the case it needs to meet, and is thus unable to plead intelligently to it: *Ksikawpimootewin v Canada*, 2004 FC 1426 at paras 8-9; *Kakuev v Canada*, 2022 FC 1721 at para 17.

[29] Indeed, the Statement of Claim was apparently drafted by Mr. Gaskin to mirror allegations made in a different proceeding, T-1902-23. The Crown was undoubtedly substituted as the Defendant in the present case in a vain attempt to make the claim fall within this Court’s statutory jurisdiction.

[30] For the above reasons, I conclude that the Statement of Claim is fundamentally scandalous, frivolous, and vexatious.

B. *The Claim is an abuse of the Court’s processes*

[31] An abusive action is a proceeding that misuses the Court’s procedure and one that “can lead to no possible good, one in which defendants are dragged through long and expensive litigation for no possible benefit”: *Yearsley* at para 14.

[32] The doctrine of abuse of process is premised on the idea of respect for, and ensuring the integrity of, the administration of justice. It allows a court to dismiss proceedings which are

attempts to re-litigate the same dispute but may not necessarily fall within the strict limits of the doctrines of *res judicata* or collateral attack. The doctrine operates, in part, to avoid inconsistent determinations and to ensure finality in litigation: *Toronto (City) v C.U.P.E., Local 79*, 2003 SCC 63 at paras 35-55. Courts have an inherent and residual discretion to limit or terminate proceedings that are unfair to the extent of being contrary to the interests of justice. That is the case here.

[33] While Mr. Gaskin may have named the Crown as the Defendant in this action where he has not done so previously in another proceeding, it remains that the Statement of Claim repeats essentially the same allegations raised elsewhere. Indeed, Mr. Gaskin notes at subsection 1(g)(xi) of the statement of claim in T-1902-23 that “the facts here are the same as those in the record for FC file T-353-22 and FCA file A-194-23”.

[34] Mr. Gaskin seeks to have this Court manage the proceeding in T-353-22 through this proceeding, which is an impermissible collateral attack on the decisions of Associate Judge Coughlan and Justice Gleeson in that proceeding, an inherently abusive step and ultimately a moot point. The Statement of Claim is also duplicative of an outstanding proceeding before this Court against other defendants in T-1902-23.

[35] For the above reasons, I conclude that the present action is quintessentially abusive.

V. Costs

[36] The Crown submits that addressing the radical deficiencies in the Statement of Claim and the abusive nature of the proceeding has been an unnecessary drain on the resources of the Court and of the Crown and that an award of costs is appropriate to serve as a deterrent for such conduct.

[37] While the general rule is that costs should follow the event, I am not prepared at this time to award a fixed amount of costs in favour of the Crown. The discrete issue before me was whether the Statement of Claim should be removed from the Court file. Since the matter of costs was not raised in the Show Cause Order, Mr. Gaskin should be provided an opportunity to make brief submissions before the matter of costs is adjudicated.

VI. Conclusion

[38] To the extent the Statement of Claim can be understood, it raises a series of allegations clearly directed towards other parties and not the Crown. I am satisfied that there is no possible amendment that could save the pleading.

[39] The pleading is indicative of continued problematic and misguided proceedings by Mr. Gaskin before this Court. The time has come to bring this litigation to an end.

ORDER IN T-1791-23

THIS COURT ORDERS that:

1. The Statement of Claim shall be removed from the Court file.
2. The action is dismissed in its entirety, without leave to amend or refile.
3. The Plaintiff shall no later than November 29, 2023, serve and file written representations not exceeding three pages in length, limited to responding to paragraph 22 of the Defendant's written submissions on costs.
4. The Registry shall send a copy of this Order and Reasons to counsel for the defendants in T-1902-23.

"Roger R. Lafrenière"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1791-23

STYLE OF CAUSE: WINSTON E. GASKIN v HIS MAJESTY THE KING

**MOTION CONSIDERED AT VANCOUVER, BRITISH COLUMBIA PURSUANT TO
RULE 74 OF THE *FEDERAL COURTS RULES***

ORDER AND REASONS: LAFRENIÈRE J.

DATED: NOVEMBER 21, 2023

WRITTEN REPRESENTATIONS BY:

Robert Drummond

FOR THE DEFENDANT

SOLICITORS OF RECORD:

Attorney General of Canada
Edmonton, Alberta

FOR THE DEFENDANT