Federal Court  Cour fédérale

**Date: 20140401**

**Docket: T-997-09**

**Citation: 2014 FC 307**

**Ottawa, Ontario, April 1, 2014**

**PRESENT: The Honourable Madam Justice Gleason**

**BETWEEN:**

**R. MAXINE COLLINS**

**Plaintiff**

**and**

**HER MAJESTY THE QUEEN**

**Defendant**

## REASONS FOR JUDGMENT AND JUDGMENT

[1] These are two motions for summary relief. The plaintiff, Ms. R. Maxine Collins, seeks summary judgment pursuant to Rules 213 to 215 of the *Federal Courts Rules*, SOR/98-106 [the Rules]. The defendant seeks summary trial and judgment in its favour pursuant to Rules 213 and 216 of the Rules.

[2] For the reasons below, I am dismissing the plaintiff's motion for summary judgment and granting the defendant's motion for summary trial. I have also determined that I will grant judgment in favour of the defendant, and this action is therefore dismissed, with costs.

**BACKGROUND**

[3] Ms. Collins was an employee of the Canada Revenue Agency [CRA] from November 2005 to November 2007, working in the Toronto West Tax Services Office [TWTSO]. She alleges that over the first half of 2006, her team leader, Rickaye Low, and several co-workers on her audit team made remarks with respect to personal bankruptcy. As she had previously undergone a personal bankruptcy, Ms. Collins interpreted these remarks to indicate that they had unlawfully accessed her personal tax information using CRA's systems, contrary to s. 241 of the *Income Tax Act*, RSC 1985, c 1 (5th Supp) [*Income Tax Act*]. She therefore made a request under the *Privacy Act*, RSC 1985, c P-21 for a list of all CRA employees who had accessed her personal tax information from January 1, 2005 to July 2006. The CRA complied with this request and provided a report showing all accesses to her file. The report and subsequent inquiries by the CRA disclosed that one CRA employee, Perry Zanetti, had indeed committed an unauthorised access to Ms. Collins' personal tax information. He was subsequently dismissed from the CRA for his conduct.

[4] However, Ms. Collins was not satisfied because Mr. Zanetti was not one of the members of her audit team at TWTSO and did not have any contact with her team. She was convinced that members of her audit team had also accessed her information. She requested that the CRA conduct an internal investigation into the matter. Jim Stathakos, Acting Assistant Director of TWTSO Audit, was tasked with investigating the complaint. The investigation determined that no TWTSO

employee other than Mr. Zanetti had accessed Ms. Collins' personal tax information without authority.

[5] Subsequently, Ms. Collins requested that an investigation into these matters be conducted by the Royal Canadian Mounted Police [RCMP], the Office of the Privacy Commissioner [OPC] and the Office of the Public Sector Integrity Commissioner [OPSIC]. None of these requests ultimately produced any final reports, and none revealed any additional evidence of unauthorised accesses beyond that of Mr. Zanetti.

[6] As a result of these investigations, Ms. Collins alleges that she began to experience workplace harassment. She sought transfers on multiple occasions to other branches within the CRA. She was offered a transfer to the office in London, Ontario, but she declined. She also turned down a position at the Toronto Centre call site. She did, however, accept a temporary lateral transfer to the CRA Appeals Division.

[7] Nonetheless, Ms. Collins alleges she continued to experience workplace harassment. On September 14, 2007, she became very upset and terminated a meeting with Anuradha Marisetti, the Director of TWTSO. On November 6, 2007, Ms. Collins tendered her resignation from the CRA.

**PROCEDURAL HISTORY**

[8] This proceeding has a lengthy and protracted procedural history.

[9] On June 23, 2009, Ms. Collins, representing herself, filed a Statement of Claim against the defendant for a proposed class proceeding, claiming misfeasance in public office, negligence, and violations of the *Canadian Charter of Rights and Freedoms*. The Court stayed the proceeding until she was represented by a solicitor, as is required for class proceedings under Rule 121 of the Rules. Her motion to appeal that Order was dismissed. She was granted leave to amend the Statement of Claim to bring the claim in her own right.

[10] On September 14, 2009, Ms. Collins filed her Amended Statement of Claim. The defendant subsequently brought a motion to strike the claim, and on March 5, 2010, my colleague, Justice Heneghan, struck the Amended Statement of Claim, finding that it disclosed no reasonable cause of action. On appeal, the Federal Court of Appeal dismissed the appeal but clarified Justice Heneghan's Order to specify that Ms. Collins had leave to re-amend her claim to plead only the tort of misfeasance in public office (see *Collins v R*, 2011 FCA 140, 201 ACWS (3d) 35).

[11] On July 7, 2011, Ms. Collins filed an Amended Amended Statement of Claim. In it, her principal allegation is against the CRA. She claims that employees of the CRA improperly accessed her taxpayer records without authorisation, in violation of s. 241 of the *Income Tax Act*. She alleges that the unauthorised access was unlawful, and that this information was used by CRA employees to harass and embarrass her, constituting misfeasance in public office.

[12] The Amended Amended Statement of Claim also makes allegations against members of the RCMP and employees the Department of Justice [DOJ], whom Ms. Collins alleges unlawfully disclosed her complaint to the RCMP to employees of the CRA, constituting a violation of

"informer privilege" amounting to targeted malice against a whistleblower. Ms. Collins further alleges that Wayne Watson, former Deputy Commissioner of OPSIC, committed misfeasance for refusing to open an investigation into her complaints about the CRA.

[13] On October 31, 2011, the defendant filed and served its Statement of Defence to the Amended Amended Statement of Claim, in which it denies that there has been any unlawful conduct on part of the CRA, the RCMP, the DOJ, OPSIC, or any of their employees, and that in any case, Ms. Collins has not suffered any damages arising from any such conduct. Ms. Collins filed a Reply on November 3, 2011.

[14] On December 13, 2011, Ms. Collins filed a Notice of Motion for summary judgment. On December 20, 2011, the defendant brought a motion for summary trial. The defendant filed a motion record in response to Ms. Collins' motion for summary judgment on January 11, 2012. By Order of January 23, 2012, my colleague, Justice Rennie, adjourned Ms. Collins' motion for summary judgment *sine die* and ordered that it would be heard at the same time as the defendant's motion for summary trial.

[15] On March 9, 2012, the defendant moved for the confidential filing of an affidavit of one of its affiants on the summary motions, namely Pierre Léveillé, Senior Investigator at the CRA, which would have attached as an exhibit an investigative report detailing the investigation into Ms. Collins' complaint. The defendant requested that the report be reviewable only by the Court and withheld from Ms. Collins because it contains confidential information and the defendant feared Ms. Collins would disseminate its contents to the public.

[16] By Order dated April 5, 2012, Prothonotary Aalto ordered that the Léveillé affidavit and the report annexed as an exhibit to it be filed on a confidential basis, but that Ms. Collins be served with a copy of the same after she signed a written undertaking not to make copies, publish or disseminate its contents in any way and not to use it except for the purposes of this action. Ms. Collins refused to sign such an undertaking. As a result, the investigative report has not been filed by the defendant. Rather, the defendant has filed the affidavits of Pierre Léveillé, Rob Coelho, Susan Pattison, and Jim Stathakos, some of which append the audit trials CRA generated as a result of Ms. Collins' complaint, and others of which summarise CRA's investigation. That investigation concluded that Mr. Zanetti was the only person who had accessed Ms. Collins' tax information without authorisation.

[17] At the hearing before me on September 26, 2013, Ms. Collins requested that she be permitted to make a private recording of the hearing. However, she indicated that her concerns with respect to obtaining a transcript of the hearing would be resolved if the Court ordered that copies of the official transcript be made available to both Ms. Collins and the defendant, and I made a ruling to that effect.

[18] Ms. Collins then raised two preliminary oral motions, the first one seeking a ruling that the defendant could not advance its motion for summary trial because it had made a motion to strike certain paragraphs of the Amended Amended Statement of Claim. I found that the defendant had in fact not brought a motion to strike any paragraphs of Ms. Collins' pleadings, and so dismissed the first motion.

[19] In her second oral motion, Ms. Collins argued that the defendant could not bring a motion for summary trial because it had not yet filed an affidavit of documents and examinations for discovery had not yet been conducted. I issued a second oral ruling and found that Rule 213 of the Rules does not require that discovery take place before a motion for summary relief can be heard. I therefore dismissed Ms. Collins second motion as well. A transcript of the reasons given orally on these two motions is attached as Appendix "A" to this judgment.

[20] Ms. Collins also raised preliminary objections to parts of the evidence tendered by the defendant. Specifically, she argued that various portions of the affidavits of Jim Stathakos, Pierre Léveillé, Susan Pattison, Rob Coelho, Rickaye Low, and Anuradha Marisetti were inadmissible. I adjourned the motions for summary relief because there was insufficient time to consider them on their merits, given the preliminary motions raised by Ms. Collins. By my Order of October 11, 2013, I held that certain portions of the affidavits of Pierre Léveillé, Rob Coelho, Jim Stathakos, and Anuradha Marisetti were inadmissible and would not be considered by me on the pending motions for summary relief.

[21] The merits of the motions were heard before me on November 21, 2013. Prior to arguing the merits, Ms. Collins again requested that she be permitted to record the proceedings using her personal recording device, notwithstanding the fact that at the hearing on September 26, 2013, I had already agreed to provide the parties with a copy of the transcript at no cost to them. I denied Ms. Collins' request to make a personal recording and directed the court reporter to provide both parties with a certified copy of the official transcript. A transcript of my oral ruling on this request is attached as Appendix "B" to this judgment.

**ANALYSIS**

***The tort of misfeasance in public office***

[22] Before discussing the issues raised by these motions for summary relief, it is useful to review the relevant law on the tort of misfeasance in public office.

[23] In *Odhavji Estate v Woodhouse*, 2003 SCC 69, [2003] 3 SCR 263 [*Odhavji*], Justice Iacobucci notes that the tort has two categories: "Category A involves conduct that is specifically intended to injure a person or class of persons [and] Category B involves a public officer who acts with knowledge both that she or he has no power to do the act complained of and that the act is likely to injure the plaintiff" (*Odhavji* at para 22). In each instance, misfeasance in public office involves a deliberate disregard of official duty coupled with knowledge that the misconduct is likely to injure the plaintiff. Thus, to make out the tort the plaintiff must prove two elements:

1. The public officer engaged in deliberate and unlawful conduct in his or her capacity as a public officer; and
2. The public officer was aware both that his or her conduct was unlawful and that it was likely to harm the plaintiff (*Odhavji* at para 23).

[24] To make out Category B misfeasance, both elements must be proven independently. To make out Category A, "the fact that the public officer has acted for the express purpose of harming the plaintiff is sufficient to satisfy each ingredient of the tort, owing to the fact that a public officer does not have the authority to exercise his or her powers for an improper purpose" (*Odhavji* at para 23). The plaintiff must also prove the requirements necessary for all torts, namely that the tortious

conduct was the legal cause of the injuries and that the injuries suffered are compensable in tort law (*Odhavji* at para 32).

[25] With this background in mind, I now turn to the merits of Ms. Collins' motion for summary judgment and the defendant's motion for summary trial.

**ISSUES**

[26] The issues on these motions for summary relief are:

1. Has the plaintiff established that there is no genuine issue for trial, such that summary judgment should be granted in her favour?
2. Has the defendant established that these proceedings are suitable for summary trial, and if so, should the Court grant judgment in its favour?

***Motion for summary judgment: Has the plaintiff established that there is no genuine issue for trial such that summary judgment should be granted in her favour?***

[27] For the reasons that follow, I find that Ms. Collins is not entitled to summary judgment. Her motion is accordingly dismissed.

Principles applicable to motions for summary judgment

[28] The relevant principles are well-established and not in dispute. Pursuant to Rule 213(1) of the Rules, a party may bring a motion for summary judgment on all or some of the issues raised in the pleadings at any time after the defendant has filed a defence but before the time and place for

trial have been fixed. The Court may grant a motion for summary judgment only if it is satisfied that there is no genuine issue for trial (see e.g. Rule 215(1) of the Rules; *Nautical Data International, Inc v C-Map USA Inc*, 2012 FC 300 at para 10, 407 FTR 175 [*Nautical Data*]; *Canada (Attorney General) v Lamenan*, 2008 SCC 14 at paras 10-11, [2008] 1 SCR 372 [*Lamenan*]; *Granville Shipping Co v Pegasus Lines Ltd SA*, [1996] 2 FC 853, 111 FTR 189 (TD) at para 8 [*Granville*]; *Premakumaran v Canada*, 2006 FCA 213 at para 8, 270 DLR (4th) 440 [*Premakumaran*]; *Society of Composers, Authors & Music Publishers of Canada v Maple Leaf Sports & Entertainment Ltd*, 2010 FC 731 at para 16, 191 ACWS (3d) 92 [*SOCAN*]).

[29] There is no determinative test to apply in granting summary judgment, but rather, the Court should ask whether the case is so doubtful, or so clearly without foundation, that it does not deserve consideration at trial (see e.g. *Nautical Data* at para 10; *Granville* at para 8; *Lamenan* at para 8).

[30] The Court's function on a motion for summary judgment is not to resolve issues of fact over which there is genuine dispute (*SOCAN* at paras 15 - 16). However, the Court may base its decision on the pleadings and evidence and is entitled to draw inferences from undisputed facts before the Court (*Lamenan* at para 11). The Court may also determine questions of fact and law if such determinations can be made from the material before it (*Granville* at para 8).

[31] The moving party has the burden of establishing that there is no genuine issue for trial and that it is therefore entitled to judgment. In this regard, the moving party is not required to prove all the facts of the case, but neither can it simply rely on bare allegations. The moving party must "put its best foot forward" so as to enable the Court to determine whether there is an issue that should go

to trial (*Lamenan* at para 11; see also *Trevor Nicholas Construction Co v Canada (Minister of Public Works)*, 2011 FC 70 at para 44, 328 DLR (4th) 665; *Paszkowski v Canada (Attorney General)*, 2006 FC 198 at para 38, 287 FTR 116). Indeed, the Court is entitled to assume that if the case were to go to trial, no additional evidence would be presented by the moving party (*Rude Native Inc v Tyrone T Resto Lounge*, 2010 FC 1278 at para 16, 195 ACWS (3d) 1128).

Submissions of the parties

[32] Ms. Collins argues that the defendant has not delivered a substantive defence, by which she means an alternative version of the facts which contradicts her own. Rather, the defendant has merely made denials. From this she infers that the defendant must not have any credible evidence to refute the facts she has alleged in her Amended Amended Statement of Claim. As such, she argues that those facts should be presumed to be true and accordingly make out the tort of misfeasance in public office.

[33] The defendant submits that its Statement of Defence is substantive and adequate, in that it denies all the substantive allegations made by Ms. Collins. It argues that there is no need for the defendant to present an alternative fact scenario, since the burden is on Ms. Collins to prove each of the allegations she has put forth. The defendant asserts that Ms. Collins has tendered no cogent evidence as to why she is entitled to judgment and thus that her motion for summary judgment should fail.

Disposition

[34] I agree with the defendant. The burden of proof rests on Ms. Collins to prove the allegations asserted in her pleadings. The defendant bears no burden to disprove those allegations, and there is nothing improper with a Statement of Defence composed of denials. A defendant need only plead alternative facts if it intends to prove those facts or if it asserts a positive defence (see e.g. Rule 183(b) of the Rules; *Sim v Canada* (1996), 112 FTR 147, 63 ACWS (3d) 425 (TD)). Ms. Collins has misapprehended the burden in a motion for summary judgment, which rests on the moving party, i.e. on Ms. Collins.

[35] The evidence adduced by Ms. Collins on this motion, which ought to be considered her best foot forward, comprises only of a brief affidavit sworn by her on December 13, 2011, with six exhibits. None of her evidence shows that a public officer engaged in deliberate and unlawful conduct in his or her capacity as a public officer. The defendant's evidence indicates that the only person who has been implicated in the unauthorised access of Ms. Collins' personal tax account information is Mr. Zanetti. It does not however demonstrate that such unauthorised access was "unlawful" within the meaning of the tort. Nor does it show that Mr. Zanetti was a "public officer", or if he was, that the impugned conduct was done in his capacity as a public officer. The evidence moreover fails to show that Mr. Zanetti was aware that his conduct would likely harm Ms. Collins. Further, there is no evidence whatsoever regarding wrongdoing by employees of the DOJ, the RCMP, OPSIC or Mr. Watson.

[36] In sum, the evidence falls far short of demonstrating that misfeasance in public office is so doubtlessly made out such that there is no genuine issue for trial. I find therefore that Ms. Collins' motion for summary judgment must be dismissed.

[37] In so holding, however, I do not find that there *is* a genuine issue for trial in this case, but rather only that Ms. Collins has failed to show the absence of one such that I should grant summary relief in her favour. The question of whether summary relief should be granted instead in the defendant's favour is the subject of the next section of these reasons.

***Motion for summary trial: Has the defendant established that this case is suitable for summary trial, and should the Court grant judgment in its favour?***

[38] For the reasons that follow, I find that the defendant has established that this case is suitable for summary trial, and further that it is entitled to judgment in its favour.

Principles applicable on summary trials

[39] The provisions related to summary trial were added to the Rules in 2009. The moving party bears the burden of demonstrating that a summary trial is appropriate (*Teva Canada Ltd v Wyeth LLC*, 2011 FC 1169 at para 35, 99 CPR (4th) 398, rev'd on other grounds in 2012 FCA 141, 431 NR 342).

[40] In deciding whether summary trial is appropriate, the judge may consider, among other things: the amount involved; the complexity of the matter; the cost of a conventional trial in relation to the amount involved; the course of the proceedings; whether the litigation is extensive; whether

credibility is a crucial factor; the urgency of the matter; whether the summary trial will involve a substantial risk of wasted time and effort; and whether the summary trial will result in litigating in slices (see e.g. *Bosa Estate v Canada*, 2013 FC 793 at para 22, 230 ACWS (3d) 425 [*Bosa*]; *Tremblay v Orio Canada Inc*, 2013 FC 109 at para 24, 230 ACWS (3d) 850 [*Tremblay*]).

[41] Where the Court finds that a case is suitable for summary trial, then the Court should hear the case on the merits in the same motion (see e.g. *Bosa*; *Tremblay*).

Submissions of the parties

[42] The defendant argues that summary trial is appropriate in this case because the alleged misfeasance relates primarily to the alleged disclosure of Ms. Collins' personal tax information by Mr. Zanetti, and there is ample evidence on the record in relation to that event. The defendant moreover notes that Ms. Collins, for her part, has tendered what must be viewed as her best evidence, which can neither support her allegation of misfeasance nor prove compensable damages. Thus, given that the evidence of the defendant is uncontroverted (save for Ms. Collins' unsubstantiated allegations), the defendant submits that the Court is in a position to resolve this case by way of summary trial.

[43] On the merits of the summary trial, the defendant argues that it is clear that neither Category A nor Category B of the tort of misfeasance can be made out. The evidence shows that Mr. Zanetti did not disseminate Ms. Collins' personal tax information. Even if such information was disseminated, the evidence shows that Mr. Zanetti did not target Ms. Collins, held no animosity towards her and was not aware that this conduct was likely to injure her. In oral argument, the

defendant focused on the argument that Mr. Zanetti's admittedly unauthorised access was not the legal cause of Ms. Collins' alleged injuries. The defendant argues that to the extent Ms. Collins feels that her supervisors failed to adequately address the alleged workplace harassment she ought to seek redress via the grievance procedure and not in the courts.

[44] As concerns Ms. Collins' claims against the RCMP, counsel from the DOJ and Mr. Watson of OPSIC, the defendant argues they must fail because the Amended Amended Statement of Claim does not make out a cause of action against these individuals, and Ms. Collins has tendered no evidence of the alleged tortious conduct complained of in relation to them.

[45] Ms. Collins, for her part, attacks the admissibility of parts of the evidence submitted by the defendant. However, these evidentiary issues were resolved by my Order of October 11, 2013, and are therefore no longer live issues on the merits. As concerns Ms. Collins' objections to the confidential report of Mr. Léveillé, the defendant has not included it as part of Mr. Léveillé's affidavit, and so the issue is moot.

[46] Ms. Collins submits that this case is not suitable for summary trial because there are issues of credibility and because summary trial will cause litigation in slices since the defendant has not addressed the alleged breach of informer privilege by the RCMP and the DOJ or the alleged misfeasance by Mr. Watson.

[47] In oral argument, Ms. Collins disputed that Mr. Zanetti was the only person who accessed her account without authorisation, arguing that the audit reports to that effect had been edited. She

maintains that the only way to prove she is telling the truth is through discovery, and so summary trial is not appropriate.

Disposition

[48] A review of the relevant factors indicates that summary trial is suitable in this case. The amount involved is not a determinative factor one way or the other here. The matter is not overly complex because the law on misfeasance is well-established and the factual issues relevant to whether the tort has been made out are straight-forward in this case. In terms of the course of the proceedings and the extent of litigation, this proceeding has dragged on for many years and has yet to be decided on the merits; it would be in the interests of justice to resolve this case as expeditiously as possible, and this too favours summary trial. Credibility is not a crucial factor, as Ms. Collins has had the opportunity to conduct written cross-examinations of the defendant's affiants, and the answers provided do not give rise to any credibility concerns. Finally, summary trial would not risk wasting time and effort or result in litigation in slices, as Ms. Collins' motion for summary judgment was heard at the same time, so the record contains what should be considered the best foot forward of both parties.

[49] Ms. Collins argues that summary trial would deprive her of discovery and full cross-examination, through which she could potentially prove her version of events. However, this assertion is inconsistent with the fact that she brought a motion for summary judgment. Further, she did conduct written cross-examinations on four of the defendant's nine affiants, and could have requested further cross-examinations had she chosen to.

[50] Therefore, summary trial is suitable in this case.

[51] Turning, then, to the merits of the summary trial, itself, as already noted, to establish the tort of misfeasance in public office, Ms. Collins must prove the following elements:

1. A public officer engaged in deliberate and unlawful conduct in his or her capacity as a public officer;
2. That public officer was aware that his or her conduct was unlawful and that it was likely to harm the plaintiff;
3. Causation; and
4. Damages.

*Mr. Zanetti's unauthorised access*

[52] Mr. Stathakos' investigation involved generation of audit trails by the Internal Affairs and Fraud Prevention Division [IAD] of the CRA of the accesses made to Ms. Collins' tax information [the IAD Audit Trails], which are appendixed as Exhibit "A" to the affidavit of Susan Pattison. This provides a record of CRA employees who accessed Ms. Collins' tax information over the relevant period. The evidence indicates that among the hundreds of accesses to Ms. Collins' tax information, the only one that was unauthorised by someone at TWTSO was done by Mr. Zanetti (Pattison affidavit at Exhibit "C"; Coelho affidavit at para 9; Stathakos affidavit at para 13). The IAD Audit Trails indicate that Mr. Zanetti accessed Ms. Collins' account on June 12, 2005 from between 1:35 pm and 1:41 pm.

[53] Concerning these unauthorised accesses, Mr. Zanetti deposed that for a period of time while he was an employee of the CRA, he would look up the tax records of colleagues and other taxpayers "as an exercise in curiosity" (Zanetti affidavit at para 7). He testifies that he knew this was contrary to CRA policy and that he therefore did so in secret and did not share this information with anyone (Zanetti affidavit at para 9). With regard to his unauthorised access to Ms. Collins' tax information, Mr. Zanetti states at para 10 of his affidavit that he does not remember accessing her account in particular and does not recall any specific information he saw, such as any information about bankruptcy. At para 15 he indicates he did not disseminate any information about Ms. Collins to anyone. This point is corroborated at para 15 of the affidavit of Jim Stathakos, who was responsible for the investigation into Mr. Zanetti's conduct. As Ms. Collins chose not to cross-examine Mr. Zanetti on his affidavit, his evidence is unchallenged.

[54] The evidence thus indicates that Mr. Zanetti was for a time engaged in a process of accessing taxpayers' records out of curiosity (a practice for which he was dismissed), but that he did not especially target Ms. Collins, does not even remember specifically accessing her information, did not retain any information he may have learned about her and did not disseminate any information about her to anyone else. I find that Mr. Zanetti was therefore not aware that his conduct was likely to harm Ms. Collins. Thus, as against Mr. Zanetti, the second element of the tort is not met in respect of Category B misfeasance. Category A misfeasance is likewise not made out as the evidence fails to demonstrate that Mr. Zanetti acted with the express purpose of harming Ms. Collins. Rather, he was motivated by curiosity, and his unchallenged evidence shows he had no animosity towards Ms. Collins (Zanetti affidavit at para 11).

*Other CRA employees*

[55] Ms. Collins alleges that members of her audit team at TWTSO, including possibly Mr. Low, also made unauthorised accesses to her personal tax information. However, this allegation is not borne out by the evidence. Mr. Low deposes that although he and Ms. Collins had a difficult professional relationship at times, he at no time accessed her personal tax information, did not receive any personal information about her from other CRA employees and has never had any contact with Mr. Zanetti (Low affidavit at paras 8, 11-12, 14-15). Nothing in his written cross-examination challenges these assertions. There is likewise no evidence that any other member of TWTSO, including any other members of Ms. Collins' audit team, engaged in unauthorised access to Ms. Collins' personal tax information. The extent of Ms. Collins' evidence is that she overheard her colleagues making remarks about personal bankruptcy generally. This falls completely short of establishing that they even knew of Ms. Collins' former bankruptcy and in no way indicates they improperly accessed her tax information in violation of s. 241 of the *Income Tax Act*.

[56] Ms. Collins submits that the IAD Audit Trails were edited to protect the CRA. However, there is no evidence of this.

[57] Ms. Collins also attacks the CRA's investigation into the IAD Audit Trails on the basis that the investigation was restricted in geographical scope to Toronto-based offices and argues that unauthorised accesses could have taken place outside those geographical limits. However, the IAD Audit Trails do show the names of CRA employees who accessed Ms. Collins' file from outside the Toronto area. And Ms. Collins has filed no evidence to show that any CRA employee, other than Mr. Zanetti, accessed her file inappropriately.

[58] I therefore find that, in respect of CRA employees other than Mr. Zanetti, the first element of the tort of misfeasance in public office is not made out, as there is not a shred of evidence to indicate any unauthorised access to Ms. Collins' personal tax information by anyone other than Mr. Zanetti. Ms. Collins' hope that she might perhaps discover such evidence were this case to proceed to discovery is an insufficient basis for refraining from granting the defendant's motion.

*The RCMP, the DOJ, and Mr. Watson*

[59] Ms. Collins alleges that the RCMP and the DOJ violated "informer privilege" by disclosing her complaint publicly, but there is no evidence of this in the record. Her allegation that Mr. Watson delayed and ultimately failed to make a decision with respect to her complaint to OPSIC is likewise without factual foundation in the evidence. Therefore, as against these individuals, the first element of the tort is not met.

*Causation and damages*

[60] Having found that no person committed the elements of the tort of misfeasance in public office against Ms. Collins, it is unnecessary for me to address issues of causation and damages. That said, I agree with the defendant that Ms. Collins has also failed to establish that Mr. Zanetti's conduct (or that of anyone else) was the legal cause of any injury she claims to have suffered.

[61] Ms. Collins contends that the cause which led to an intolerable workplace is not limited to the one unauthorised access by Mr. Zanetti. Rather, she claims she has also been wronged by Mr. Low, who gave her a poor score in one aspect of her performance reviews, by her former colleagues, whom she alleges also accessed her information and harassed her, and by management

at TWTSO, who allegedly failed to properly investigate her complaints, put a stop to the harassment, or properly accommodate her. Cumulatively, she argues, these events comprise the causal link leading to her forced resignation.

[62] However, the evidence does not bear out this version of events. First, there is no evidence that Mr. Low's performance review was given in bad faith. Second, as discussed above, there is no evidence that any of Ms. Collins' colleagues at TWTSO (other than Mr. Zanetti) accessed her personal information or harassed her. And third, there is no evidence that management at TWTSO was remiss in their duties in any way. In fact, the evidence shows that management conducted an extensive investigation into the alleged unauthorised access of her personal information and made several attempts to accommodate Ms. Collins' requests for a transfer. Further, as the defendant points out, such complaints should properly be addressed via the appropriate grievance process, as Ms. Collins' allegations are in the nature of a workplace dispute.

[63] On a related note, I also have some doubt as to whether rank and file employees of the CRA may constitute "public officers" within the meaning of the tort of misfeasance in public office. However, this point was not argued before me, and I need not address it to dispose of this motion.

[64] Ms. Collins has thus failed to establish that the defendant or any government servant committed the tort of misfeasance in public office. I therefore grant judgment on summary trial in favour of the defendant.

**CONCLUSION**

[65] In light of the above, I dismiss the plaintiff's motion for summary judgment and grant judgment in favour of the defendant on summary trial. The defendant seeks costs and is entitled to them, calculated in accordance with the mid-range of Column III of Tariff B to the Rules.

## JUDGMENT

**THIS COURT'S JUDGMENT is that**:

1. The plaintiff's motion for summary judgment is dismissed;
2. The defendant's motion for summary trial is granted;
3. This action is dismissed; and
4. The defendant is entitled to its costs in accordance with the mid-range of Column III of Tariff B to the Rules.

"Mary J.L. Gleason"
Judge

**Appendix "A"**

Excerpt from transcript of hearing for *Maxine Collins v Her Majesty the Queen*, T-997-09

September 26, 2013

Page 33, line 15 - Page 35, line 19

RULING:

THE COURT: As I understand it, the plaintiff has made two oral motions that the defendant has consented should be dealt with by me in a preliminary fashion.

The first motion seeks a ruling that the defendant cannot advance its motion for summary trial because it has made a motion to strike certain paragraphs of the Statement of Claim, and the plaintiff asserts that this prevents it from bringing its motion for summary trial and, therefore, that her summary judgment motion must be heard in priority to the motion for summary trial. However, no such motion to strike has been made, nor is any such motion pending.

Therefore, for purposes of both the motion for summary judgment and the motion for summary trial, the pleadings must be taken as filed and the entirety of the plaintiff's Statement of Claim is before the Court. It follows that this first motion made by the plaintiff must be dismissed as there is no motion to strike any part of her claim that is pending.

Insofar as concerns the second motion, the plaintiff argues that the defendant should be prevented from bringing a motion for summary trial because the defendant has not filed an Affidavit of Documents and because examinations for discovery have not been conducted.

Under Rule 213 of the Federal Court Rules, however, it is clear that a motion for summary trial may be brought at any time after the Statement of Defence has been filed and before the time and place for trial have been fixed. There is, therefore, no obligation that discoveries take place before a summary trial motion can be made and heard.

The case law cited by the plaintiff, namely, the decision in the Aecon case that the plaintiff referred to in her submissions, which is a 2010 decision of the Ontario Court of Appeal, Aecon Buildings v. Stephenson Engineering Limited, 2010 ONCA 898, is not relevant to this issue. That case deals with the situation where an agreement was not disclosed prior to the hearing of the summary judgment motion. That is not the situation here. The defendant's evidence has been in the plaintiff's hands for months.

The second motion will, accordingly, also be dismissed. That said, the fact that there has been no discovery may well be a relevant factor for consideration by me on the merits of these motions in determining whether or not it's appropriate that summary judgment be awarded or that a summary trial be conducted. Therefore, the plaintiff is well able to argue this issue in her defence to the motions on the merits.

These two motions are hereby dismissed. As there are no other preliminary matters, we'll proceed now to hear the argument on the two motions.

**Appendix "B"**

Excerpt from transcript of hearing for *Maxine Collins v Her Majesty the Queen*, T-997-09

November 21, 2013

Page 13, line 1 - Page 16, line 24

THE COURT: I have considered your request and I am not going to allow you to tape record this proceeding. My recollection and my review of the transcript of the previous day is that the matter had been sorted out to your satisfaction through my decision to have a transcript provided, at no cost to you, to yourself and a copy as well to counsel for the defendant and a copy for the Court, and in my view, that provides a more than adequate solution to the need for there to be a transcript.

The practice of the Ontario Court is to not typically provide a transcript to parties, and so in those circumstances, the allowance for recording may well be something that makes sense. Where, however, there's a transcript, I do not see the need to have a second recording.

If, in your review of the transcript, you are of the opinion that some portion of it is inaccurate, I would direct you to follow what the practice is, where counsel are dealing with a transcript in a proceeding, and that is to communicate with counsel for the other side, see if you and he can agree as to what the transcript should say, and then make a joint submission to the reporter who would make a correction.

Reporters do do their very best, in my experience, to try and produce accurate transcripts, but it's inevitable that there may be a word here or there that is subject to a typo, something that one of us doesn't articulate as clearly as we should, we drop our voice at the end of sentences, et cetera, and that's the practice for having the transcript corrected.

I do have a certified version of the transcript that was filed with me, and if you have not been provided with a certified transcript, I will direct the reporting company to correct that and provide you with a certified copy, and at this point

forward, in terms of provision of transcripts, we should all be receiving certified copies.

MS. COLLINS: Your Honour, I'm not willing to accept the copy that I received as having been certified by the court reporter unless I'm given an opportunity to review it with the court reporter and it's been the position of the court reporting company that I will not have access to this lady directly, so therein lies my problem that --

THE COURT: Well, what I've directed, Ms. Collins, is that they provide you with a certified copy. Whether you're willing to accept that as being certified or not is a matter for you in your own judgment to decide, but you will be provided with a copy that is certified by the court reporter in accordance with normal practice as being accurate, and if, after that, you have an issue, I've directed what I believe the proper procedure should be for correcting any issues with the transcript, and that is the way that we're going to proceed.

MS. COLLINS: Well, the matter is before the, or will be before the Federal Court of Appeal very shortly because I have filed and I'm -- I have served Mr. Sims with a motion record asking the Court for directions as to what I am to do with a motion of -- with a transcript that I am not prepared to file as evidence of what -- of the proceeding that took place, because it is -- it does not accurately reflect it. I'm not impugning the court reporter in any way. I don't believe that that is the transcript that she prepared from the hearing.

Another issue is -- that I have brought to the attention of other court reporting companies is that I have in my possession a subpoena that was issued by the Ontario Court to the court reporter in the case of ASAP, that they were to come to court and they were to bring with them the original recording and the

original transcript that was prepared by them.

So any court reporter who is willing to put certification to a transcript that she could end up being subpoenaed into court to testify under oath as to the accuracy of it, I really think it is -- it is deplorable for court reporting companies to put court reporters in that situation.

If they want to engage in whatever little game they're engaging in, they should leave the court reporters out of it, and again, Your Honour, at this point, I would ask, please, that you sign the endorsement that I provided, saying that permission is not granted and then let us just get on with the motions that we're here to hear today.

THE COURT: I am not going to sign the endorsement, Ms. Collins. I have given you an oral ruling. I will, however, reduce this ruling to writing in my final decision on these matters so that there will be a written recording of it.

MS. COLLINS: Okay.

THE COURT: You have my ruling and –

MS. COLLINS: Okay.

THE COURT: -- let's proceed with the next issue, please.

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** T-997-09

**STYLE OF CAUSE:** R. MAXINE COLLINS v HER MAJESTY THE QUEEN

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** SEPTEMBER 26, 2013 AND NOVEMBER 21, 2013

**REASONS FOR JUDGMENT AND JUDGMENT:** GLEASON J.

**DATED:** APRIL 1, 2014

**APPEARANCES:**

| | |
|---|---|
| R. Maxine Collins | SELF-REPRESENTED |
| Michael Sims | FOR THE DEFENDANT |

**SOLICITORS OF RECORD:**

| | |
|---|---|
| R. Maxine Collins<br>Self-Represented<br>Toronto, Ontario | SELF-REPRESENTED |
| William F. Pentney<br>Deputy Attorney General of Canada<br>Ottawa, Ontario | FOR THE DEFENDANT |