

Federal Court of Appeal



Cour d'appel fédérale

Date: 20211008

Docket: A-207-20

Citation: 2021 FCA 198

**CORAM: PELLETIER J.A.
GAUTHIER J.A.
LOCKE J.A.**

BETWEEN:

CONNIE BRAUER

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard by online video conference hosted by the Registry on September 15, 2021.

Judgment delivered at Ottawa, Ontario, on October 8, 2021.

REASONS FOR JUDGMENT BY:

PELLETIER J.A.

CONCURRED IN BY:

**GAUTHIER J.A.
LOCKE J.A.**

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REASONS FOR JUDGMENT

PELLETIER J.A.

[1] Ms. Connie Brauer, the appellant, filed a statement of claim in the Federal Court requesting an immediate injunction banning all abortions in Canada and an immediate end to the funding of abortions in Canada. She initially requested financial compensation “as the judge deems fit”, and then later amended her claim to add a request for \$500 million in punitive damages.

[2] Ms. Brauer claims that Canada is engaging in “Mass Genocide” and that allowing abortions is a violation of section 7 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982, c. 11* (Charter). She also claims, among other things, numerous violations of international law, including article 3 of the *Universal Declaration of Human Rights*, G.A. Res. 217A (III), UNGAOR, 3rd Sess., Supp. No. 13, U.N. Doc. A/810 (1948) 71 and articles I-VIII of the *Convention on the Prevention and Punishment of the Crime of Genocide*, 9 December 1948, 78 U.N.T.S. 277 (entered into force 12 January 1951).

[3] In her material filed in this Court, Ms. Brauer made additional requests including protection from discrimination for people who are anti-abortion and orders stopping the sale of baby body parts. Her notice of appeal, which reproduces her original statement of claim, also contains more allegations such as “each day thousands more innocent, preborn babies are tortured in Canada and put to death”. These allegations are unsupported by any material facts, but both the notice of appeal and the memorandum of fact and law have printouts of websites such as Wikipedia.org and actionlife.org attached. To the extent that Ms. Brauer relies upon these as evidence of her allegations, they are new evidence for which leave has not been obtained pursuant to Rule 351 of the *Federal Courts Rules*, SOR/98-106, and, therefore, will not be taken into account.

[4] The claims were unsuccessful at the courts below due to deficient pleadings, and I find no errors in that analysis. For that reason, I would dismiss this appeal.

I. Judicial History

[5] The Crown filed a motion to strike Ms. Brauer's claim that was first heard by a prothonotary of the Federal Court. The Crown argued that the statement of claim should be struck because it failed to disclose a reasonable cause of action and was scandalous and vexatious, pursuant to Rules 221(1)(a) and (c) of the *Federal Courts Rules*:

Motion to strike

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

(a) discloses no reasonable cause of action or defence, as the case may be,

...

(c) is scandalous, frivolous or vexatious,

...

and may order the action be dismissed or judgment entered accordingly.

Requête en radiation

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) qu'il ne révèle aucune cause d'action ou de défense valable;

...

c) qu'il est scandaleux, frivole ou vexatoire;

...

Elle peut aussi ordonner que l'action soit rejetée ou qu'un jugement soit enregistré en conséquence.

[6] The Prothonotary agreed with the Crown, observing that the pleadings had no material facts, and struck the claim without leave to amend. Regarding the Charter issue, the Prothonotary further observed that Ms. Brauer failed to address the question of her standing to bring her claim, a necessary step in Charter litigation: *Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45, [2012] 2 S.C.R. 524 at para. 1.

[7] This order was appealed to the Federal Court, whose decision is reported as 2020 FC 828. The Federal Court identified three grounds of appeal being advanced by Ms. Brauer at paragraph 20 of its reasons:

... (1) the Amended Statement of Claim allegations are “precise, clear and reasonable” and they are not scandalous or vexatious; (2) Rule 221(1) does not apply and she had the right to amend her Amended Statement of Claim without leave pursuant to Rule 200; and (3) on the merits, she argues that immediate action is needed to halt abortions in Canada, which she argues are unlawful and unconstitutional because they are contrary to section 7 of the *Charter*.

[8] The Federal Court acknowledged that although self-represented parties are generally treated with some flexibility, they are still required to follow the rules of pleadings. They must plead material facts that disclose a cause of action and the pleadings cannot be so broad and sweeping as to be vexatious, scandalous, and impossible to understand (at paras. 26-37).

[9] The Federal Court dismissed the appeal, finding no error in the Prothonotary’s decision to strike the claim without leave to amend. On the Charter issue, the Federal Court said the lack of material facts was particularly problematic, since allegations of Charter breaches cannot be determined in a factual vacuum (at para. 33).

[10] Ms. Brauer now appeals to this Court. Her notice of appeal does not identify specific errors in the Federal Court’s decision, but does respond to its findings by claiming that her cause of action is to protect lives and that it is immoral to consider her claims scandalous or vexatious. Her memorandum repeats, in various ways, her claim that by allowing abortions to be performed, Canada is illegally killing babies. She also again raises the issue of abortions being a violation of section 7 of the Charter.

II. Standard of Review

[11] The issue before this Court is whether the Federal Court erred in declining to intervene in the Prothonotary's decision to strike the statement of claim without leave to amend. This Court may do so if there is an error of law (either free standing or an extricable element of a question of mixed fact and law) or a palpable and overriding error of fact or mixed fact and law (*Hospira Healthcare Corporation v. Kennedy Institute of Rheumatology*, 2016 FCA 215, [2017] 1 F.C.R. 331 at paras. 66-79).

III. Analysis

[12] I can find no error in the Federal Court decision, nor has Ms. Brauer identified one. The statement of claim contained only bare assertions and conclusory statements, not material facts. The Prothonotary concluded on that basis that Ms. Brauer's claim was obscure and confused and had no reasonable chance of success.

[13] Ms. Brauer's memorandum of fact and law, and her oral representations to us, consisted largely of a recitation of the allegations contained in her statement of claim. In the last paragraphs of her memorandum, Ms. Brauer signals her discontent with the decisions of the Federal Court:

46. That the previous judges, in this case, have failed to protect these [aborted] babies.

47. That the previous judges, in this case, have attempted to deny the Appellant's right to Freedom of Expression Sect 2B of the Charter.

48. That the previous judges, in this case, have attempted to deny the Appellant's right to file and be heard on a moral, human rights issue, a life and death issue, that is for the greater good of all humans in Canada.

49. That the previous judges, in this case, have attempted to deny the Appellant's right to Amend her Statement of Claim without leave as allowed by Federal Court Rules, **200** Notwithstanding rules 75 and 76, a party may, without leave, amend any of its pleadings at any time before another party has pleaded thereto or on the filing of the written consent of the other parties.

50. That the judges are attempting to dismiss the Appellant's Amended Statement of Claim based on Civil Procedure Rule 221(1) which is not in effect. No evidence proving otherwise has been submitted by the Defendant.

51. The Appellant's Cause of Action is saving the lives of millions of babies.

52. That the Appellant maintains her right to her Amended Statement of Claim and a hearing and that it should not be struck. The Claim should remain in force.

53. The Appellant has a legal and moral right to litigate for the murdered babies. No one else will.

[14] It is apparent from these passages that Ms. Brauer seeks to advance a moral objective and insists that the legal system is bound to permit her to do so. Ms. Brauer has the right to seek to advance her objective but if she wishes to use the courts to do so, she must comply with the Rules and the applicable substantive law. Ms. Brauer does not have an unqualified right to rely on defective pleadings and the striking of those pleadings does not, in any way, abridge Ms. Brauer's constitutional and procedural rights.

[15] As for the Charter, in Ms. Brauer's case, the failure to address, let alone satisfy, the test for public interest standing is fatal to her ability to be heard on these issues.

IV. Conclusion

[16] Ms. Brauer has failed to persuade me that the Federal Court erred in coming to the conclusions it did. I find that her pleadings disclose no reasonable cause of action and are scandalous and vexatious. I would therefore dismiss the appeal with costs set at \$1,000.

"J.D. Denis Pelletier"

J.A.

"I agree.

Johanne Gauthier J.A. "

"I agree.

George R. Locke J.A. "

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-207-20

STYLE OF CAUSE: CONNIE BRAUER v. HER
MAJESTY THE QUEEN

PLACE OF HEARING: HEARD BY ONLINE VIDEO
CONFERENCE HOSTED BY
THE REGISTRY

DATE OF HEARING: SEPTEMBER 15, 2021

REASONS FOR JUDGMENT BY: PELLETIER J.A.

CONCURRED IN BY: GAUTHIER J.A.
LOCKE J.A.

DATED: OCTOBER 8, 2021

APPEARANCES:

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(ON HER OWN BEHALF)

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