

Federal Court of Appeal



Cour d'appel fédérale

Date: 20231115

Docket: A-200-23

Citation: 2023 FCA 223

**CORAM: WEBB J.A.
MACTAVISH J.A.
ROUSSEL J.A.**

BETWEEN:

KIERAN DEVINE

Appellant

and

HIS MAJESTY THE KING

Respondent

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on November 15, 2023.

REASONS FOR ORDER BY:

WEBB J.A.

CONCURRED IN BY:

**MACTAVISH J.A.
ROUSSEL J.A.**

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REASONS FOR ORDER

WEBB J.A.

[1] This is a motion to either quash Mr. Devine's appeal or strike his notice of appeal.

[2] Mr. Devine filed a Statement of Claim in the Federal Court. Associate Judge Tabib, by Order dated January 25, 2023, struck the Statement of Claim, without leave to amend, on the basis that:

The Statement of Claim here is but a succession of vague, nebulous complaints against how various municipal, provincial and federal governments authorities and administrations have generally treated or mistreated the Plaintiff over the course of his life. It is replete with inflammatory statements as to how the government and its “staff” break laws, act with ulterior motives, are “habitual liars”, falsify records and are stacked with white supremacists all without any foundation in relevant factual allegations.

It is plain and obvious that the Statement of Claim is so deficient in material facts that it cannot succeed and must be struck. The Plaintiff in his response has provided what the [*sic*] considers to be additional fact “evidence” sufficient to ground a cause of action. The Plaintiff’s submissions, however, are devoid of sufficient details to identify a particular date, person of wrongful conduct that would give rise to a recognizable cause of action. To the extent any specific act of misconduct can be discerned, they are attributable to provincial authorities, over which this Court has no jurisdiction. I am satisfied that leave to amend ought not be granted.

[3] Mr. Devine then brought a motion to extend the time to appeal the Order of Associate Judge Tabib. This motion was dismissed by Justice Walker by Order dated June 28, 2023.

In dismissing this motion, Justice Walker stated:

[9] I have reviewed Mr. Devine’s Statement of Claim. I agree with Associate Judge Tabib that the Statement of Claim sets out a long list of “vague, nebulous complaints against how various municipal, provincial and federal governments[,] authorities and administrations have generally treated or mistreated the Plaintiff over the course of his life”. I also agree that the Statement of Claim, and Mr. Devine’s motion materials, contain inflammatory statements that the Defendant, the federal government and its personnel, including Court staff, break the law, act with ulterior motives, and are liars and white supremacists. Mr. Devine alleges that Court staff have knowingly misled him due to the alleged “special relationship” with the Defendant.

[10] The Statement of Claim does not assert the constituent elements of any cause of action, including that of a Constitutional challenge, nor does it contain material facts that support Mr. Devine’s allegations against all levels of Canadian governments and their respective personnel (Rule 174; *Turmel v Canada*, 2022 FC 732 at para 18). Associate Judge Tabib made no error, whether palpable or

overriding, in striking the Statement of Claim without leave to amend in accordance with Rule 221(1)(a).

[4] Mr. Devine filed a notice of appeal in this Court in relation to the Order of Justice Walker dismissing his motion for an extension of time to appeal the Order of Associate Judge Tabib. The Crown brought a motion for an order either quashing this appeal or striking the notice of appeal. The motion record was filed on September 22, 2023. Mr. Devine has not responded to this Motion Record.

[5] In *Zhou v. Canada (Citizenship and Immigration)*, 2013 FCA 194 this Court confirmed, in paragraph 2, that a Notice of Appeal can be struck where this Court:

has no jurisdiction over the appeal, where the appeal manifestly lacks substance as to bring it within the character of a vexatious proceeding, where the appeal serves no practical purpose, or where it is “plain and obvious” that the appeal has no chance of success: *Sellathurai v. Canada (Minister of Public Security)*, at paras. 7-8; *Arif v. Canada (Citizenship and Immigration)*, 2010 FCA 157, 321 D.L.R. (4th) 760 at para. 9.

[6] In his Notice of Appeal Mr. Devine summarizes his grounds of appeal as follows:

9. As a Matter of Fact and Law; there really is only **one question of error**, for the Canadian **Federal Court of Appeal to Decide**.

Either the Plaintiff, Kieran Devine; is a Human Being whose total rights must be afforded respected and protected; from The Defendants and all of its staff consistently. Including that of its Honorable Courts and its administrative staff.

Or the Canadian Federal Court of Appeal would agree with Federal Court and the defendants (Canada) Claim. The Plaintiff doesn't use his freedoms correctly and fails to exist properly; and thus, by way of the Fine UK traditional "Wink Wink" mentality, is stripped of all Rights and Privileges normally granted to, Disabled Indigenous Human Beings members of the Public under The Rules of Court, numerous Provincial and Federal Canadian laws; along with many other applicable and ratified international agreements signed by the Government of Canada and its staff.

[7] Mr. Devine unfortunately does not identify any grounds for his appeal that can be addressed by this Court. It is therefore plain and obvious that his appeal has no chance of success and his appeal serves no practical purpose.

[8] As I result, I would grant the Crown's motion and strike the Notice of Appeal. I would fix costs in the amount of \$250.

"Wyman W. Webb"

J.A.

"I agree.

Anne L. Mactavish J.A."

"I agree.

Sylvie E. Roussel J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-200-23

STYLE OF CAUSE: KIERAN DEVINE v.
HIS MAJESTY THE KING

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY: WEBB J.A.

CONCURRED IN BY: MACTAVISH J.A.
ROUSSEL J.A.

DATED: NOVEMBER 15, 2023

WRITTEN REPRESENTATIONS BY:

Sean Stynes
Yamen Fadel

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Shalene Curtis-Micallef
Deputy Attorney General of Canada

FOR THE RESPONDENT