

Federal Court of Appeal



Cour d'appel fédérale

Date: 20241209

Docket: A-138-22

Citation: 2024 FCA 206

**CORAM: WEBB J.A.
RENNIE J.A.
LASKIN J.A.**

BETWEEN:

GARY CURTIS

Appellant

and

**THE MINISTER OF EMPLOYMENT, WORKFORCE
DEVELOPMENT AND DISABILITY INCLUSION,
EMPLOYMENT AND SOCIAL DEVELOPMENT CANADA, THE
MINISTER OF LABOUR, THE MINISTER OF JUSTICE,
ATTORNEY GENERAL OF CANADA and THE PRIME
MINISTER OF CANADA**

Respondents

Heard at Toronto, Ontario, on November 25, 2024.

Judgment delivered at Ottawa, Ontario, on December 9, 2024.

REASONS FOR JUDGMENT BY:

RENNIE J.A.

CONCURRED IN BY:

**WEBB J.A.
LASKIN J.A.**

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Respondents

REASONS FOR JUDGMENT

RENNIE J.A.

[1] This is an appeal from the decision of the Federal Court (*Curtis v. Canada (Employment, Workforce Development and Disability Inclusion)*), 2022 FC 826, per Elliot J. (Reasons)) striking the Amended Amended Statement of Claim (AASC) of the self-represented appellant (Mr.

Curtis) under Rules 221(1)(a), (c) and (f) of the *Federal Courts Rules*, S.O.R./98-106 (FCRs) without leave to amend. In the Federal Court, Mr. Curtis named the Bank of Nova Scotia (BNS), the President and CEO of BNS, the Attorney General of Canada (AGC) and several Ministers of the Crown as defendants.

[2] The background to these proceedings is set forth in detail in the decision of the Federal Court. Suffice to say that the appellant and his former employer, BNS, fell out over concerns about asserted mishandling of certain mortgage files. The appellant resigned his position with BNS. In a subsequent decision the Ontario Superior Court of Justice (*Gary Curtis v. Bank of Nova Scotia*, 2024 ONSC 2308), found that the BNS's assertion of misconduct on the part of the appellant was unfounded and awarded the appellant \$900,000 in damages for slander. The appellant also requested an investigation under the *Canada Labour Code*, R.S.C. 1985 c. L-2, which resulted in an order that BNS pay to the appellant salary that it had wrongfully withheld.

[3] Subsequent to filing his appeal to this Court, the appellant discontinued this appeal against the BNS defendants, and now only names the AGC, several Ministers, and the Prime Minister (collectively, the Crown) in his claim. However, the allegations in the AASC remain as they were before the Federal Court.

[4] The essence of the appellant's AASC is that the Crown is liable for numerous wrongs including negligence, misfeasance in public office and conspiracy. He also claims breaches of section 7, 12 and 15 of the *Charter of Rights and Freedoms* and seeks damages under section 24. The claim also alleges that the AGC is liable for the various failures of judges and federal

supervisory agencies, which thwarted the appellant's rights to "natural justice and to [his] day in court," (Reasons, at para. 10). Specifically, the appellant alleges that the Crown was "systematically negligent and unlawful in the funding, oversight, operation, supervision, control, maintenance and support of its agents and failed to put systems in place to prevent its Ministers and agents from blatantly disregarding the laws, procedure and rules set out by Canada under its Canada Labour Code, causing damages and breached the Plaintiff's Charter of Rights and Freedom," (Reasons, at para. 9). The claim also describes the failure of the respondent AGC to ensure adequate supervision and control of BNS and the Canadian Human Rights Commission. Mr. Curtis seeks \$30M in damages.

[5] After a comprehensive review of the AASC, the judge concluded that the Court had no jurisdiction to entertain some of the allegations: in particular, that the Court did not have jurisdiction to inquire into alleged tortious conduct of judges, and that the *Bank Act*, S.C. 1991, c. 46, simply as federal legislation, did not confer jurisdiction on the Federal Court in respect of what she characterized as essentially "an employment matter" (Reasons, at paras. 72, 74). The judge also noted that, under the *Crown Liability and Proceedings Act*, R.S.C., 1985 c. C-50, there is no liability on the part of the Federal Crown for the conduct of anyone who is not a servant of the Crown. Further, in respect of Crown liability arising from the acts of its servants, the pleadings did not point to any particular conduct of any Crown servant said to have engaged in the asserted torts.

[6] The Federal Court also concluded that the claim was scandalous, vexatious and an abuse of process. The judge found that the AASC, some 80 pages in length, did not conform to Rule

174 of the FCRs, which requires that a statement of claim be a concise statement of the facts and issues. The judge also noted that the allegations of misrepresentation and breach of trust did not have the necessary particularity to allow the defendants to plead a defence. Rule 181 requires that certain allegations, such as misrepresentation and conspiracy, be pleaded with precision as to the parties and acts constituting the asserted torts.

[7] The judge also noted the mere assertions of judicial bias did not support a cause of action. The judge concluded that the AASC was “replete with bald allegations, strong assertions and unsubstantiated claims of negligence, followed by conclusions,” (Reasons, at para. 48). Applying established case law, the judge found that the essential requirement of a pleading – that it discloses who, what, when, and where, with sufficient particularity that a defendant can defend – were not met (Reasons, at para. 25).

[8] For Mr. Curtis to succeed on this appeal, he was required to demonstrate that there was a reviewable error in the Federal Court’s analysis of the jurisdictional and pleadings issues flowing from the AASC. No such error has been established, and I agree with the judge’s application of Rules 221(1)(a), (c) and (f).

[9] The appellant put considerable emphasis in the argument that the Federal Court judge erred in failing to grant him leave to amend, pointing to other cases where claims were struck, but leave to amend was permitted.

[10] The appellant included a fresh as amended statement of claim (FASC) in his responding materials in the Federal Court. Although not filed, Elliot J. accepted the FASC as an indication of how the appellant would proceed if granted leave. She found that the defects in the AASC were not cured by the FASC. Of note, in this Court Mr. Curtis asserted that he could “reorganize” the pleadings so that each cause of action would be supported by facts. Reorganization alone will not address the absence of material facts or particularity necessary to sustain the causes of action pled against the Crown defendants.

[11] Whether, at the end of the day, a party should be granted leave to amend a statement of claim to cure deficiencies is a discretionary decision. Appellate courts must be cautious when intervening in discretionary decisions, doing so only where it is established that the discretion was exercised in an abusive or unreasonable manner or if the judge misdirected him or herself on a point of law (*Law Society of Saskatchewan v. Abrametz* 2022 SCC 29, *Rona Inc. v. Canada (National Revenue)* 2017 FCA 118). Assessed against this standard, there is no reviewable error in the Federal Court’s decision.

[12] I would dismiss the appeal without costs.

“Donald J. Rennie”

J.A.

“I agree.

Wyman W. Webb J.A.”

“I agree.

J.B. Laskin J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-138-22

STYLE OF CAUSE: GARY CURTIS v. THE MINISTER OF EMPLOYMENT, WORKFORCE DEVELOPMENT AND DISABILITY INCLUSION, EMPLOYMENT AND SOCIAL DEVELOPMENT CANADA, THE MINISTER OF LABOUR, THE MINISTER OF JUSTICE, ATTORNEY GENERAL OF CANADA and THE PRIME MINISTER OF CANADA

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: NOVEMBER 25, 2024

REASONS FOR JUDGMENT BY: RENNIE J.A.

CONCURRED IN BY: WEBB J.A.
LASKIN J.A.

DATED: DECEMBER 9, 2024

APPEARANCES:

Gary Curtis ON HIS OWN BEHALF

Teza Lwin FOR THE RESPONDENTS

SOLICITORS OF RECORD:

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Deputy Attorney General of Canada