Federal Court  Cour fédérale

Date: 20210712

Docket: T-130-21

Ottawa, Ontario, July 12, 2021

PRESENT: Case Management Judge Mandy Aylen

BETWEEN:

JOHN C. TURMEL

Plaintiff

and

HER MAJESTY THE QUEEN

Defendant

ORDER

[1] The Court is case managing a group of 74 actions in which the self-represented Plaintiffs seek various forms of relief related to the federal Government's COVID-19 mitigation measures. The Statements of Claim in each action are almost identical and based on a "kit claim" made available on the internet by John Turmel, the Plaintiff in this action. By Order dated April 8, 2021, the Court ordered that all other actions be stayed pending the final determination (by judgment or order) of this action and any appeal therefrom. Accordingly, at present, only T-130-21 is moving forward.

[2] In his Statement of Claim, the Plaintiff alleges that:

> 116. All of the world's elected politicians fell for the Apple-Orange Comparison and only Guinness Record never-elected-100-times politician John Turmel did not.
>
> 117. The Prime Minister and his Government have been duped by the most elementary trick in statistics, comparing apples to oranges to exaggerate the threat by a hundredfold, duped by an unproven theory of asymptomatic transmission of a virus with only 166 Canadians not in Long-Term-Care dying up to Nov. 15, 2020; a Population Fatality Rate for Canadians not in Long-Term-Care of a mere 0.00044%, 1 in 230,000.
>
> 118. Government-mandated COVID-Mitigation restrictions on civil rights imposed under such delusions are unconstitutionally per incuriam. Restrictions on civil liberties are not warranted for a COVID threat if they are not warranted for the tenfold deadlier Flu threat. The restrictions are focused on the long-shots with a 0.00044% (1/230,000) chance of death and not on those shorter shots in Long-Term-Care with 10,871/38M = 0.03% (1/3,300). A third of the Flu's 1/1000.

[3] The Statement of Claim makes extensive references to statistics comparing COVID-19 mortality rates to those of the flu, news reports and statements and reports made by the World Health Organization, Dr. Fauci, and the American Centers for Disease Control and Prevention [CDC].

[4] The Plaintiff alleges that there has been a "cover up" because actual deaths from COVID-19 do not match the exaggerated expected death rate, such that the Government has "fudged the statistical Cases and Fatalities data". The pleading refers to alleged changes by the CDC to its death certificate guidelines, setting PCR test kits with sensitivity cycles set too high in order to generate massive false positives and an effort by mainstream media to discredit HydroxyChloroQuine HCQ as a treatment alternative (as opposed to a "Bill Gates-funded Oxford Recovery HCQ test protocol that "was really murder on his patients"), which suppression of hopeful alternatives suggests "deliberate malevolence".

[5] The Plaintiff alleges that there has been "a general slaughter of unorthodox viewpoints on the internet", with various social media platforms like YouTube, Twitter and Facebook having instituted "draconian censorship policies". He pleads:

> 111. With the Apple-Orange amplification of the COVID threat by a hundredfold is exposed, Dr. Hodkinson, Dr. Bhakdi and many other doctors protesting the hoax are proven right and have been defamed by Big Brother at AP and Facebook. Too many doctors have avowed in public that COVID is a tame virus and the numbers back them up to expose the COVID 19 scamdemic.

[6] Under the heading "Lockdown Gain Does Not Justify Lockdown Pain", the Plaintiff pleads:

> 103. COVID-Mitigation restrictions include lockdowns & curfews, quarantines, mandatory masks, mandatory social distancing, mandatory vaccine, mandatory immunity card for public services. The debilitating effects of lockdowns on prisoners is well-documented even if the effects of home arrests are less so. Lockdowns have been a Canadian disaster regularly detailed in the news. It is hoped it should not take much to convince the court that suicides, murders, abuses, addictions, truancy, have all gone up under lockdown. Personal loss suffered not visiting relatives, time lost by line-ups at stores, higher prices to pay for protection measures, stress from the distress shown by many. Neighbours snitching on neighbours, friendships breaking over accusations of deniers putting alarmists at risk from the invisible plague by not obeying preventative measures seriously.

[7] With respect to the Plaintiff's alleged *Charter* breaches, paragraph 104 of the Statement of Claim pleads:

> Such restrictions on civil liberties to mitigate a sham-virus are an arbitrary, grossly disproportional, conscience-shocking violation of the Charter Section 2 right to freedom of peaceful assembly and association is gone, s.6 right to mobility, s.7 right to life, liberty and security, s.8 right to be secure against unreasonable search or seizure, s.9 right to not to be arbitrarily detained or imprisoned, s.12 right to not be subjected to any cruel or unusual treatment or

> punishment, not in accordance with the principles of fundamental justice.

[8] The Statement of Claim refers to the Ontario government's declaration of a provincial emergency and a "Stay-at-Home Order" issued under the provincial *Emergency Management and Civil Protection Act* and a statement made by Prime Minister Trudeau describing the requirements for international travelers arriving by air to produce a negative COVID-19 test before entering Canada, for all travelers to quarantine upon entering Canada and the potential for fines and prison time for not following these requirements. In issuing these COVID-19 measures, the Plaintiff pleads that government has been "fooled by an Apple-Orange comparison" and that the Prime Minister has been duped.

[9] The Statement of Claim goes on to ask "Who did it?!", questioning "what kind of evil cabal would use global media and medical establishments to hype a mini-virus a hundredfold with an Apple-Orange comparison into an imaginary plague to convince a gullible world into shutting down life-support systems and imposing famine on a quarter billion people and innumerable woes on many hundreds of millions more? Why condemn so many to death on a cross of hype? Qui bono? Who benefits?" The Plaintiff responds to his questions by pleading that "Personal Protection Equipment producers, Skip-the-Dishes delivery come to mind but vaccine companies seem to have most to gain by an exaggerated scamdemic".

[10] The Plaintiff pleads that vaccine promotion has the hallmarks of a "scam" and that some people would prefer alternatives to vaccines, such as "drinking the water of your own cistern", vitamins and supplements.

[11] Based on the foregoing, the Plaintiff seeks the following relief:

A. A declaration pursuant to section 52(1) of the *Canadian Charter of Rights and Freedoms* that the Government of Canada's COVID-mitigation restrictions are arbitrary and constitutionally unreasonable restrictions on the *Charter* section 2 right to freedom of peaceful assembly and association, section 6 right to mobility, section 7 right to life, liberty and security, section 8 right to be secure against unreasonable search or seizure, section 9 right to not be arbitrarily detained or imprisoned, section 12 right to not be subjected to any cruel and unusual treatment or punishment not in accordance with the principles of fundamental justice and not saved by section 1 of the *Charter*;

B. An order pursuant to section 24(1) of the *Charter* for an injunction prohibiting any federal COVID-mitigation restrictions that are not imposed on the deadlier Flu;

C. A permanent constitutional exemption from any COVID-mitigation restrictions;

D. An order for an appropriate and just remedy for damages incurred by such unconstitutional restrictions on rights for pain and losses, including the:

   i. Stress and concern suffered;

   ii. Family and friend connections damaged;

   iii. Inconvenience and time lost in line-ups; and

   iv. Higher expected prices for COVID Mitigation Measures; and

E. An order abridging the time for service or amending any error or omission as to form or content which the Honourable Court may allow.

[12] The Defendants have brought the present motion seeking:

A. An order striking the claim without leave to amend;

B. In the alternative, an order requiring the Plaintiff to provide security for costs in the amount of $11,350.00 and not take any further steps in the action until security for costs is provided;

C. The costs of the motion and of the action; and

D. Such further and other relief as this Honourable Court may allow.

[13] The Defendant seeks to strike the Statement of Claim on the basis that: (i) this Court lacks jurisdiction in relation to any provincial or municipal COVID-19 measures; (ii) to the extent that the claim targets federal COVID-19 measures, the Plaintiff has not pleaded that he was affected by these measures; (iii) the pleading discloses no reasonable cause of action; and (iv) the pleading is frivolous and vexatious. In the alternative, the Defendant seeks an order for security for costs on the basis that the Defendant has six orders for costs against the Plaintiff in other proceedings which remain unpaid, the claim is frivolous and vexatious and there is reason to believe that the Plaintiff will have insufficient assets available to pay the Defendant's costs.

[14] The Plaintiff opposes the motion in its entirety.

[15] For the reasons that follow, the Defendant's motion is granted and the Statement of Claim is hereby struck, without leave to amend.

Motion to Strike

[16] The threshold for striking out a statement of claim is high. A statement of claim will only be struck out where it is plain and obvious that the pleading should be struck on the basis of one of the grounds detailed in Rule 221(1).

[17] In the case of a Rule 221(1)(a) motion, the Court will only strike a statement of claim where it is plain and obvious that the pleading discloses no reasonable cause of action. In making that assessment, the material facts pleaded must be taken as true, unless the allegations are based on assumption and speculation. If a statement of claim contains bare assertions without material facts upon which to base those assertions, then it discloses no cause of action and is liable to be struck. However, if there is any doubt as to whether a cause of action can succeed, the matter should be left for a decision of the trial judge [see *Operation Dismantle Inc v Canada*, [1985] 1 SCR 441 at paras 7-8, 27; *R v Imperial Tobacco Canada Ltd*, 2011 SCC 42 at para 17].

[18] It is fundamental to the trial process that a plaintiff plead material facts in sufficient detail to support the claim and relief sought. In order to disclose a reasonable cause of action, a statement of claim must plead each constituent element of every cause of action with sufficient particularity and each allegation must be supported by material facts. Pleadings play an important role in providing notice and defining the issues to be tried, so as to inform the defendant "who, when, where, how and what gave rise to its liability". The Court and opposing parties cannot be left to speculate as to how the facts might be variously arranged to support various causes of action.

Viewing the pleadings as a whole and considering all the circumstances, the Court must ensure that the issues are defined with sufficient precision to make the proceedings "manageable and fair" [see *Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227 at para 16-17, 19; *Al Omani v Canada*, 2017 FC 786 at para 17; *Simon v Canada*, 2011 FCA 6 at para 18; *Enercorp Sand Solutions Inc v Specialized Desanders Inc.*, 2018 FCA 215 at paras. 36-37].

[19] The Federal Court of Appeal recognized at paragraph 17 of *Mancuso* that:

> The latter part of this requirement – sufficient material facts – is the foundation of a proper pleading. If a court allowed parties to plead bald allegations of fact, or mere conclusory statements of law, the pleadings would fail to perform their role in identifying the issues. The proper pleading of a statement of claim is necessary for a defendant to prepare a statement of defence. Material facts frame the discovery process and allow counsel to advise their clients, to prepare their case and to map a trial strategy. Importantly, the pleadings establish the parameters of relevancy of evidence at discovery and trial. [emphasis added]

[20] The Federal Court of Appeal has confirmed that there are no separate rules of pleadings for *Charter* cases. The requirement of materials facts applies to pleadings of *Charter* infringement as it does to causes of action rooted in the common law. The substantive content of each *Charter* right has been clearly defined by the decisions of the Supreme Court of Canada and a plaintiff must plead sufficient material facts to satisfy the criteria applicable to the provisions in question. This is not a technicality, but rather is essential to the proper presentation of *Charter* issues [see *Mancuso, supra* at para 25; *MacKay v Manitoba*, [1989] 2 SCR 357].

[21] Moreover, a plaintiff may not rely on facts applicable to other individuals to support an alleged infringement of the plaintiff's *Charter* rights [see *Harris v Canada (Attorney General)*, 2019 FCA 232 at para 22].

[22] In the case of a Rule 221(1)(c) or (f) motion, a pleading will be struck as being scandalous, frivolous or vexatious or an abuse of process where the claim is so clearly futile that it has not the slightest chance of succeeding [see *Apotex Inc v Syntex Pharmaceuticals International Ltd*, 2005 FC 1310 at para 33]. A statement of claim containing bare assertions but no facts on which to base those assertions discloses no reasonable cause of action and may also be struck as an abuse of process. Bare assertions of conclusions that the Court is called upon to pronounce are not allegations of material fact, and making bald conclusory allegations without any evidentiary foundation constitutes an abuse of process [see *Merchant Law Group v Canada Revenue Agency*, 2010 FCA 184 at para 34; *Mancuso* at paras 17 and 27].

[23] On a motion to strike, a pleading must be read as generously as possible with a view to accommodating any inadequacies in the allegations [see *Condon v Canada*, 2015 FCA 159].

[24] With respect to the Defendant's assertion that this Court lacks jurisdiction to grant relief in respect of the non-federal COVID-19 measures identified, generally or specifically, in the Statement of Claim, the Plaintiff acknowledged in his responding motion record that non-federal COVID-19 measures are "beyond this Court's jurisdiction" and that he was content to focus on the federal COVID-19 measures. In that regard, this is consistent with the prayer for relief in the Statement of Claim which specifically seeks relief in relation to federal COVID-19 measures. As such, I find that the Statement of Claim, as properly construed, does not seek to challenge non-federal COVID-19 measures and thus cannot be struck on that basis.

[25] The Plaintiff asserts that the federal COVID-19 measures infringe his section 2(c) and (d), 6, 7, 8, 9 and 12 *Charter* rights and are not saved by section 1 of the *Charter*. However, I find that the Statement of Claim fails to plead the material facts to satisfy the essential elements of any of

the specific *Charter* infringements alleged and does not allege or particularize how the Plaintiff's *Charter* rights have been infringement. Specifically:

A. With respect to section 2(c), the pleading does not identify a federal measure that has directly prevented the Plaintiff from peaceful assembly with others and what specific assembly the Plaintiff was prevented from undertaking [see *Roach v Canada*, [1994] FCJ No 33 at para 51].

B. Section 2(d) of the *Charter* protects three classes of activities: (i) the right to join with others and form associations; (ii) the right to join with others in the pursuit of other constitutional rights; and (iii) the right to join with others to meet on more equal terms the power or strength of other groups or entities [see *Mounted Police Association of Ontario v Canada (Attorney General)*, 2015 SCC 1 at para 66]. The pleading does not identify a federal measure that has directly prevented the Plaintiff from engaging in any of these activities, nor has the Plaintiff particularized any such activities that he was specifically prevented from engaging in.

C. Section 6 of the *Charter* contains two sets of mobility rights. Pursuant to section 6(1), every Canadian citizen has the right to enter, remain in and leave Canada and pursuant to section 6(2) to 6(4), every Canadian citizen and permanent resident has the right to move in, live in and work in any province subject to certain limitations [see *Divito v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 47 at para. 17]. While the pleading does refer to the federal pre-flight testing and 14-day quarantine requirements, the Plaintiff has not alleged that he has personally been subject to any such measures.

D. Section 7 of the *Charter* provides that the state cannot deny a person's right to life, liberty or security of the person, except in accordance with the principles of fundamental justice [see *Bedford v Canada (Attorney General)*, 2013 SCC 72 at para 58]. While the 14-day quarantine measure arguably engages an individual's liberty interest under section 7, the Statement of Claim does not plead that the Plaintiff has personally been subjected to that measure. With respect to the Plaintiff's security of the person, the Statement of Claim pleads no material facts concerning any psychological impact of the federal COVID-19 measures on the Plaintiff, yet alone any serious and profound effects on the Plaintiff's psychological integrity [see *Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44 at para 81]. I find that the Statement of Claim pleads no material facts capable of demonstrating that a federal COVID-19 measure deprives the Plaintiff of his section 7 rights, nor that any such deprivation is inconsistent with the principles of fundamental justice.

E. With respect to the section 8 allegation, the Statement of Claim does not identify any federal COVID-19 measure that authorizes a search or seizure, nor does it plead that the Plaintiff himself has been subjected to any such search or seizure.

F. With respect to the section 9 allegation, the Statement of Claim does not allege that the Plaintiff has been detained or imprisoned as a result of any federal COVID-19 measure, nor does the pleading particularize how any specific federal COVID-19 measure amounts to significant physical or psychological restraint [see *R v Le*, 2019 SCC 34 at para 27].

G. With respect to the section 12 allegations, the Statement of Claim does not plead facts capable of demonstrating that any of the federal COVID-19 measures constitute punishment or treatment that is grossly disproportionate in the sense that it outrages standards of decency and are abhorrent or intolerable in society [see *R v Lloyd*, 2016 SCC 13 at para 24]. Moreover, the Ontario Superior Court of Justice has held that a claim that quarantine is arbitrary detention or cruel and unusual punishment is frivolous and I agree with that finding [see *Canadian Constitution Foundation v Attorney General of Canada*, 2021 ONSC 2117 at para 39].

[26] The Plaintiff asserts that it is premature to provide facts at this stage of the proceeding as the pleadings are not yet closed and that the necessary facts will be provided in due course when the parties present their evidence. This is incorrect. The Plaintiff appears to conflate facts, with evidence. The Plaintiff must plead, in his Statement of Claim, the material facts in sufficient detail to support the claims and relief sought. It is the proof of those facts through evidence that occurs after the close of pleadings. Where the necessary material facts are absent (as is the case here), the Statement of Claim will be struck before the close of pleadings.

[27] The Plaintiff admitted in his responding motion materials that he "may not exemplify all of the woes cited, but I'd bet some of the other 76 plaintiffs whose actions are stayed do". However, as detailed above, the Plaintiff may not rely on facts applicable to other plaintiffs to support his *Charter* breach allegations.

[28] I find that the Statement of Claim contains bare assertions of *Charter* breaches without sufficient material facts to satisfy the criteria applicable to each of the *Charter* rights alleged to

have been violated. As a result, the Statement of Claim discloses no cause of action and shall be struck.

[29] Moreover, I find that the Statement of Claim should also be struck as an abuse of process as it pleads bare assertions without the necessary material facts on which to base those assertions, such that the Defendant cannot know how to answer it, is replete with lengthy diatribes and makes scandalous and extreme allegations that are unsubstantiated, such as alleged cover-ups and conspiracies.

[30] Given the nature of the deficiencies and given that the Plaintiff has not suggested that his pleading could be cured by way of amendment (to the contrary, the Plaintiff acknowledged in his responding motion materials that many of his *Charter* rights at issue have not in fact been engaged as a result of any federal COVID-19 measures), I am satisfied that the defects in the pleading are such that the Statement of Claim cannot be cured by amendment [see *Collins v Canada*, 2011 FCA 140 at para 26]. Accordingly, I decline to exercise my discretion to grant the Plaintiff leave to amend his Statement of Claim.

Motion for Security for Costs

[31] As I have determined that the Statement of Claim should be struck without leave to amend, I need not make a determination in relation to the Defendant's alternative request for an order for security for costs. That said, had I been required to do so, I would have been inclined to grant an order for security for costs in the amount sought by the Defendant in light of the Plaintiff's numerous unpaid cost awards and the absence of any demonstration of impecuniosity by the Plaintiff.

Costs

[32] The Defendant having been successful on this motion, I find that the Defendant is entitled to its costs of the motion and of the underlying proceeding. The Defendant seeks costs fixed in the amount of $1,000.00, which quantum I find to be reasonable. In that regard, I would note that the Plaintiff did not dispute the quantum of costs sought by the Defendant in his responding motion record.

THIS COURT ORDERS that:

1. The Statement of Claim is hereby struck in its entirety.

2. The Plaintiff shall pay to the Defendant their costs of the motion and the action, fixed in the amount of $1,000.00, inclusive of disbursements and taxes.

"Mandy Aylen"
Case Management Judge