

Federal Court



Cour fédérale

Date: 20220606

Docket: T-871-20

Citation: 2022 FC 826

Ottawa, Ontario, June 6, 2022

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

GARY CURTIS

Plaintiff

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, THE PRIME MINISTER OF CANADA,
THE BANK OF NOVA SCOTIA, THE PRESIDENT AND CEO OF SCOTIA
MORTGAGE AUTHORITY OF THE BANK OF NOVA SCOTIA, THE
PRESIDENT AND CHIEF EXECUTIVE OFFICER OF THE BANK OF NOVA
SCOTIA AND THE BOARD OF DIRECTORS OF THE BANK OF NOVA SCOTIA

Defendants

JUDGMENT AND REASONS

I. Overview

[1] The Plaintiff, who is self-represented, was employed by the Defendant, the Bank of Nova Scotia (BNS) as a Mortgage Development Manager.

[2] According to a decision by Master C. Wiebe of the Ontario Superior Court of Justice (OSCJ) dated December 30, 2019, the Plaintiff resigned his position with BNS by letter dated April 30, 2012. Master Wiebe found that the resignation letter was written in response to BNS suspending the Plaintiff due to concerns about alleged fraudulent documents in 17 mortgage files that the Plaintiff had obtained for BNS.

[3] On August 5, 2020, the Plaintiff issued a Statement of Claim in this Court naming as defendants the Bank of Nova Scotia, the President and CEO of Scotia Mortgage Authority and of the Bank of Nova Scotia as well as the Attorney General of Canada and several Ministers of the Crown.

[4] For brevity, I will hereafter refer to all the parties named in the BNS style of cause as “the BNS”. Similarly I will refer to all the parties named in the AGC style of cause as “the AGC”.

[5] The statement of claim was amended on August 10, 2020.

[6] The statement of claim was amended again on September 4, 2020 by way of an Amended Amended Statement of Claim (AASC).

II. **The Motions to Strike**

[7] The BNS and the AGC each brought separate motions to strike the AASC.

[8] The grounds for each motion are essentially the same: the AASC does not disclose a reasonable cause of action as (1) this Court has no jurisdiction; (2) the allegations are scandalous, frivolous and vexatious and (3) the AASC is an abuse of process as set out in Rules 221(1) (a), (c) and (f).

III. Claims against the AGC

[9] The AASC seeks a declaration that the AGC and “Ministers, members and agents were negligent and continue to be systemically 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, procedures and rules as set out by Canada under its Canada Labour Code, causing damages and breached the Plaintiff’s Charter of Rights and Freedom (*sic*).”

[10] The Plaintiff also claims the AGC “abused their roles in public office by funding, oversight, operation, supervision, control, maintenance and support of the Federally appointed Ontario Superior Court Honourable Judges, Adjudicators, Federal Court Judges and the Canadian Human Rights Commission, which comprise a broken Judicial system, that has deliberately and recklessly denied the plaintiff access to justice through significant judicial injustice by breaching the Rules of Civil Procedure and denying the plaintiff natural justice and to day in court and caused him significant financial losses.”

[11] The Plaintiff claims that the AGC conspired with the BNS to deny the Plaintiff “his Charter of Rights, his right to employment in the banking sector in Canada.” It is alleged that the

Plaintiff, “Canadian Citizen was denied his right to employment due to the deliberate and reckless actions of these defendants.”

IV. **Claims against the BNS**

[12] In addition to the claim that the BNS conspired with the AGC, the Plaintiff claims that “the Bank of Nova Scotia (a federally regulated Bank in Canada) and its partners were negligent and operating outside the laws of Canada (and breached the Canada Labour *Code (sic)*), denied the plaintiff’s rights under the Canadian Charter of Rights and Freedoms, by denying his right to work in the banking sector in Canada for life (lifetime ban) and around the world. In addition the Bank of Nova Scotia breached its duty of honest contractual performance to the plaintiff.”

[13] It is also claimed that the BNS “breached the PIPEDA laws by unlawfully placing the plaintiff (*sic*) name on a bank crime watch list called the Bank Crimes Preventative Investigative Office (BCPIO) with the Canadian Bankers Association (CBA) for seven (7) years, which was done without his knowledge and consent and stopped the Plaintiff’s ability to work in the banking industry in Canada.”

V. **Claims against both the AGC and the BNS**

[14] The Plaintiff asserted that both Defendants breached his “rights under the Canadian Human Rights Act and his Charter of Rights and Freedoms causing him severe damages and injuries when they systematically violated and continue to violate [his] rights and freedoms

under sections 7, 12 and 15 Charter of Rights and Freedoms in a way that is not demonstrably justified in a free and democratic society pursuant to section 1 of the Charter.”

[15] The Plaintiff made four claims pursuant to section 24(1) of the *Charter*.

[16] The first claim is that the Defendants violated and continue to violate his rights and freedoms under sections 7, 12 and 15 of the *Charter* by “deliberately barring his right to make a fundamental choice of working in the banking sector in Canada for life.”

[17] The second claim is that they violated and continue to violate his rights and freedoms under sections 7, 12 and 15 of the *Charter* “to procedurally and substantively fair, impartial and open process, contrary to the rules of law and fundamental justice, while subjecting the plaintiff to cruel and unreasonable treatment, causing prolonged intolerable suffering on the plaintiff.”

[18] The third claim is that the Defendants “have unlawfully discriminated against the plaintiff contrary to section 15 of the Charter because he is black when he was denied his right to equal treatment and a fair and just process under the law.”

[19] The fourth claim is that the Defendants “are liable to the plaintiff for damages by breaching sections 7, 12 and 15 of the Charter” by their actions “and the conduct of Ontario Superior Court Judges, by breaching their duties and denying the plaintiff justice causing the plaintiff significant financial, emotion (sic) and mental injuries and damages.”

VI. **Damages Claimed**

[20] The Plaintiff seeks from the AGC and the BNS the sum of \$30 million as damages or compensation for:

1. Misfeasance (Abuse) of Public Office;
2. Breach of the *Canadian Human Rights Act*;
3. Negligence and/or negligent investigation and/or negligent supervision and training;
4. Breach of Section 7, 8, 9, 10, 11, 12 and 14 of the *Canadian Human Rights Act*;
5. Breach of the *Personal Information Protection and Electronic Documents Act (PIPEDA)*;
6. Breach of Sections 7, 12, and 15 of the Charter of Rights and Freedom (sic);
7. Lawful and/or Unlawful Means Conspiracy;
8. Loss and Damages suffered as a result of the Intentional Infliction of Emotional Distress, Mental Anguish, Psychological suffering and injury to reputation and career, loss of income, injury to dignity and loss of enjoyment of life;
9. Breach of Duty of Honest Contractual Performance and/or Breach of Duty of Honest Performance;
10. Breach of the *Canada Labour Code*.

[21] In addition to the claim for \$30 million, the Plaintiff seeks from the BNS and the AGC:

1. Punitive and exemplary damages in the amount of \$10 million;
2. Special Damages for Wages Loss of Earnings Capacity (sic);
3. Pre-judgment and post-judgment interest pursuant to the Federal Court (sic) Act, R.S.C., 1985, c. F-7;
4. Cost of this action on substantial indemnity scale or in an amount that provides full indemnity;

5. Cost of notice and of administering the plan of distribution of the recovery in this action, plus applicable taxes, pursuant to Rule 334.38 of the Federal Court (*sic*) Rules, and
6. Such further and other relief as the Honourable Court deems just and appropriate in all the circumstances.

[22] I would observe at this point that the costs sought under Rule 334.38 are not available to the Plaintiff as the rule only applies to a Class Action, which the AASC is not.

VII. **The Principles Applying to a Motion to Strike**

[23] Motions to strike are governed by Rule 221:

Motion to Strike	Requête en radiation
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	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) discloses no reasonable cause of action or defence, as the case may be,	a) qu'il ne révèle aucune cause d'action ou de défense valable;
(b) is immaterial or redundant,	b) qu'il n'est pas pertinent ou qu'il est redondant;
(c) is scandalous, frivolous or vexatious,	c) qu'il est scandaleux, frivole ou vexatoire;
(d) may prejudice or delay the fair trial of the action,	d) qu'il risque de nuire à l'instruction équitable de l'action ou de la retarder;
(e) constitutes a departure from a previous pleading, or	e) qu'il diverge d'un acte de procédure antérieur;
(f) is otherwise an abuse of the process of the Court,	

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

Evidence

(2) No evidence shall be heard on a motion for an order under paragraph (1)(a).

f) qu'il constitue autrement un abus de procédure.

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

Preuve

(2) Aucune preuve n'est admissible dans le cadre d'une requête invoquant le motif visé à l'alinéa (1)a).

[24] Rule 174 governs the content of pleadings. It requires that “every pleading shall contain a precise statement of the material facts on which the party relies, but shall not include evidence by which these facts are to be proved.”

[25] Rule 181 requires that a pleading contain particulars of every allegation including particulars of any alleged misrepresentation, fraud, breach of trust, will for default or undue influence as well as particulars of any alleged state of mind of a person.

[26] In *Premakumaran v Canada*, 2003 FCT 635, Prothonotary Hargave, when considering a motion to strike, cited Master Sandler in *Copland v Commodore Business Machines Ltd* 52 OR (2d) 586 who described the difference between “material facts” and the concepts of “evidence” and “particulars” this way at page 588:

In between the concept of “material facts” and the concept of “evidence”, is the concept of “particulars”. These are additional bits of information, or data, or detail, that flesh out the “material facts”, but they are not so detailed as to amount to “evidence”.

[27] There are several fundamental principles to keep in mind when determining whether to grant a Motion to Strike.

[28] Firstly, the statement of claim should be read “as generously as possible to accommodate any inadequacies in the form of the allegations which are merely the result of drafting deficiencies”: *Operation Dismantle Inc v The Queen*, [1985] 1 SCR 441 at 451 [*Operation Dismantle*].

[29] Secondly, the test on a motion to strike is whether it is plain and obvious, assuming the facts pleaded to be true, unless they are manifestly incapable of being proven, that the pleading discloses no reasonable cause of action, or that the claim has no reasonable prospect of success. The claimant is to clearly plead the facts upon which they rely in making their claim: *R v Imperial Tobacco Canada Ltd*, 2011 SCC 42 at paras 17 and 22.

[30] The two principal functions of pleadings are to clearly define the issues between litigants and to give fair notice of the case which has to be met by the other side: *Sivak v Canada*, 2012 FC 272, at para 11.

[31] Having said that, the threshold to strike a claim is high and the matter should be allowed to proceed to trial where a reasonable prospect of success exists. The Court should consider whether the pleading may be reasonably amended to disclose a claim that is not doomed to fail: *Atlantic Lottery Corp Inc v Babstock*, 2020 SCC 19, at para 90.

VIII. **The AGC Motion**

[32] The AGC motion seeks to have the AASC struck in its entirety, without leave to amend, with costs. If that is not granted then the AGC seeks an extension of the deadline for service and filing of their Statement of Defence to 60 days from the date of the Court's order.

[33] The AGC notes that this action is mainly a dispute between the Plaintiff and the BNS and the Plaintiff alleges that the AGC did not stop the BNS from violating federal laws.

[34] The AGC submits that the AASC should be struck for three reasons. It does not contain a reasonable cause of action against the AGC. The AGS states that, as a whole, the AASC is scandalous and vexatious and the claims stated are an abuse of process.

[35] As discussed later, the AGC relies on the *Crown Liability and Proceedings Act* RSC 1985, c C-50 and the *Federal Courts Rules*, specifically Rules 3, 174, 181, 221(1)(a), 221(1)(c), 221(1)(f) to show there is no reasonable cause of action against the AGC.

[36] Turning to whether the AASC is scandalous, frivolous and vexatious the position of the AGC is that the whole AASC is frivolous and vexatious for two reasons: (1) It is deficient in relevant material facts to the point that the AGC cannot know how to answer; (2) It is overly long, unwieldly and repetitive.

[37] The AGC submits that the AASC also violates the requirement in Rule 174 that a pleading contain a concise statement of the material facts on which the Plaintiff relies.

[38] The AASC is 80 pages in length. It contains 423 paragraphs. In my view, that is the opposite of concise. It is simply not possible to refer to every allegation made by the Plaintiff. For the most part, the issues raised by the Plaintiff are roughly the same throughout AASC.

[39] The AGC submits that the AASC fails to plead, in sufficient detail, the material facts necessary to satisfy every element of the alleged causes of action. Referring to Rule 174, the AGC states the AASC is missing relevant facts describing the “who, when, where, how and what” which are necessary to enable the AGC to understand the issues, know which facts relate to which issue and discern the legal basis upon which the Plaintiff claims the AGC is liable to him: *Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227, at paras 16, and 19

[40] The Plaintiff submits that as the AGC “has failed to provide sworn affidavit of (*sic*) evidence to support their arguments of abuse of process and frivolous and vexatious, so their meritless arguments should be disregarded and dismissed, and the claim should proceed to trial.”

[41] The AGC arguments are based on the AASC, the Rules and existing jurisprudence. No affidavit is required to support these arguments.

[42] The Plaintiff also submits that “there were sufficient facts that servants of the Defendants deliberately engaged in abuse of power in discharging their duties, which was done

to deliberately harm and injure the plaintiff.” Similar statements are made with respect to the various claims of *Charter* breaches, misfeasance, negligence and conspiracy.

[43] When pleading bad faith or abuse of power, it is not enough to assert, baldly, conclusory phrases such as "deliberately or negligently," "callous disregard," or "by fraud and theft did steal": *Merchant Law Group v Canada Revenue Agency*, 2010 FCA 184 [*Merchant Law*] at para 34.

[44] The Plaintiff states throughout his written submissions that there are enough material facts for the AGC to answer and file a defence. However, the Plaintiff did not draw the Court's attention to such facts. For example, with respect to the *Charter* claims against the AGC, the Plaintiff's position is that he disagrees with the AGC. The Plaintiff states that “there are sufficient material facts for the defendants to answer and file a defence, for Charter breaches in section 7, 12 and 15, which the Attorney General (“Crown”), is liable to the plaintiff for damaged (*sic*) and injuries he suffered from the Charter damages.”

[45] With respect to the alleged torts committed by the various Ministers and the AGC, the Plaintiff has failed to plead, the three essential elements of a tort: (1) an intention to injure the Plaintiff; (2) interference with another's method of gaining its livelihood or business by unlawful or illegal means; and (3) economic loss caused thereby: *Carten v Canada*, 2009 FC 1233, [*Carten*] at para 43.

[46] The tort of misfeasance in public office, alleged against the AGC, requires that the allegations of the individual's state of mind be particularized: *Odhavji Estate v Woodhouse*, 2003 SCC 69 at para 32; *Al Omani v Canada*, 2017 FC 786 at para 51. Rule 181 then requires particularization of allegations of "breach of trust," "wilful default," "state of mind of a person," "malice" or "fraudulent intention." There are no such particulars in the AASC.

[47] The claim of conspiracy requires identification of the parties, their relationship to one another, and the conspiratorial acts involved: *Lauer v Canada (Attorney General)*, 2017 FCA 74 at para 24. It must be pleaded with clarity. The Plaintiff has failed to so plead.

[48] My review of the AASC indicates it is replete with bald allegations, strong assertions and unsubstantiated claims of negligence, followed by conclusions. For example, at paragraph 26 the Plaintiff states that "the Defendants deliberately and recklessly denied the plaintiff of (*sic*) his Charter of Rights and Freedoms to work in banking and financial (*sic*) industry in Canada . . . BNS was allowed to violate the Labour Relations Act (*sic*) in Canada without being held accountable by the Ministry of Labour".

[49] Contrary to rule 174 and rule 181, these and all the other alleged *Charter* violations do not provide material facts or particulars. As such, the claims do not disclose a reasonable cause of action.

[50] The Plaintiff uses defamatory language in reference to Ministers of the Crown and Judges. For example, paragraphs 40 and 41 of the AASC state, amongst other allegations, that

Madam Justice Heneghan “abused her role, by suppressing the evidence that confirmed the Bank’s violation and instead stated false facts when she wrote that the Bank of Nova Scotia had proven fraud, while she was aware that the opposite was true, that there was **no finding of fraud**. (*sic*)”.

[51] The AASC goes on to make similar statements about Justice Dow of the OSCJ and Justices Hoy, Simmons and Lauwers of the Ontario Court of Appeal saying they “all abused their roles . . . by ruling outside jurisdiction going against the laws of the ONCA and the SCC, to assist Justice Dow who made numerous orders outside his jurisdiction and the laws of the court, by denied (*sic*) the plaintiff access to justice to have his matter heard on the merits. These Judges acted in bad faith to assist Andrew Pinto to become a Superior Court Judge.”

[52] The Plaintiff’s position is that the Judges and Ministers he named as abusing their public offices were guilty of misfeasance in public office. Misfeasance is a tort that requires a particular state of mind. For example, a deliberate conduct which the Judge or Minister knew to be inconsistent with the obligations of their office. Rule 181 requires particulars of each element of this tort: *Merchant Law* at para 35.

[53] Instead of providing particulars of the state of mind of the Judges and the Ministers, the Plaintiff repeatedly pleads that they “abused [their] role” or “[their] power” or “were negligent” and were “deliberately operating outside their jurisdiction”. The relevant facts and particulars are missing.

[54] In any event, the mere fact that the Federal Crown appointed the Judges does not give the Plaintiff the ability to commence an action in the Federal Court: *Carten* at para 73.

[55] The Federal Court of Appeal has determined that this Court, as a statutory court, has received no grant of jurisdiction from Parliament giving the Court jurisdiction over the tortuous conduct of judges: *Crowe v Canada (Attorney General)*, 2008 FCA 298 at para 18. Without jurisdiction, the Plaintiff's allegations against the various named judges cannot be determined in the Federal Court. The result is that there is no reasonable cause of action against these Judges in this Court. There is also no grant of jurisdiction over the tortuous conduct of Ministers of the Crown.

[56] Paragraphs 20 to 22 of the AASC identify the AGC parties and state that each of them - the various Ministers and the AGC - are liable to the Plaintiff for torts committed by their employees regarding either employment, violations of the Canada Labour Code (*CLC*) and/or breaches of the Plaintiff's *Charter* rights. The Prime Minister is not alleged to have committed a tort but he is said to be liable to the Plaintiff for breach of his *Charter* rights.

[57] Under paragraph 3(b)(i) of the *Crown Liability and Proceedings Act*, RSC 1985, c C-50 (*CLPA*), the Crown is vicariously liable for the damages in respect of a tort committed by a servant of the Crown. The Prime Minister is not the Crown and therefore is not vicariously liable to the Plaintiff for any breach of the Plaintiff's *Charter* rights.

[58] The Plaintiff has failed to identify which specific Crown servant or servants were involved in any of the claimed wrongful activities. As a result, without an alleged tort, committed by an identified Crown servant for which the Crown is vicariously liable, the claim does not disclose a reasonable cause of action: *Swarath v Canada*, 2014 FC 75, at para 10.

[59] The Plaintiff alleges breaches of the *Canadian Human Rights Act*, RSC 1985, c H-6 (*CHRA*) and a breach by the Canadian Human Rights Commission (*CHRC*). The Plaintiff claims the Minister of Justice and the Attorney General of Canada are liable to him for these breaches. There is also an allegation that a senior employee of the *CHRC* deliberately assigned an unqualified person to investigate his complaint.

[60] The thrust of this claim appears to be that, after six years, the *CHRC* dismissed the Plaintiff's claim against the Bank of Nova Scotia without performing an investigation into the termination of his employment which he refers to as "the multiple violations of BNS under the Code, as outlined in the plaintiff (*sic*) amended Complaint filed July 12, 2017."

[61] The allegations against the Minister of Justice and the Attorney General of Canada are that they failed to put policies, procedures and systems in place to prevent the *CHRC* "from performing the same section 40/41 Objection reports over and over, thereby delaying the complaint from moving forward for over six years and counting." The result is said to be that the Plaintiff suffered severe damages, injuries, loss of income, loss of employment, interest or banking career reputation for which the Justice Minister and the Attorney General of Canada are responsible.

[62] Particulars of the damages claimed are lacking, once again making it impossible for the AGC to know the case to be met or to craft a defence to the allegations.

[63] While allegations that are capable of being proven are to be taken as true, this rule does not require that allegations based on assumptions and speculation must be taken as true; it is not necessary to accept at face value bare allegations or factual allegations which may be regarded as scandalous, frivolous or vexatious, or legal submissions dressed up as factual allegations:

Committee for Monetary and Economic Reform v Canada, 2014 FC 380, at para 48.

[64] The AASC is prolix and repetitive. It does not provide the essential facts grounding the causes of action. This alone is a sufficient basis to strike the AASC as not disclosing a reasonable cause of action. It is also a sufficient basis to strike the Plaintiff's claim as being "scandalous, frivolous or vexatious" within the meaning of Rule 221(1)(c) of the Rules. A pleading replete with bare allegations and mere conclusory statements of law, will normally also amount to a scandalous, frivolous or vexatious pleading: *Pelletier v Canada*, 2016 FC 1356 [*Pelletier*] at para 23.

[65] The AASC contains vituperative language. It is scandalous, frivolous and vexatious as that phrase is understood in the jurisprudence. It is replete with bald assertions and allegations but is scant on particulars. Making bald, conclusory allegations without any evidentiary foundation is an abuse of process: *AstraZeneca Canada Inc v Novopharm Limited*, 2010 FCA 112 at para 5.

IX. **For all the foregoing reasons, the Plaintiff has not satisfied me that there is a reasonable cause of action against the AGC**
The BNS Motion

[66] There is significant overlap between the individual claims made against the AGC and the BNS. The Plaintiff claims that they each breached the *Charter* as well as federal statutes including the *CLC*, the *PIPEDA* and the *CHRA*.

[67] The BNS argues that all of the claims asserted against it are outside the jurisdiction of this Court.

[68] The test for determining the jurisdiction of the Court was affirmed in *Windsor (City) v Canadian Transit Co*, 2016 SCC 54 (*Windsor*). For this Court to have jurisdiction there are three essential requirements, all of which must be established. They are set out at paragraph 24 of *Windsor*:

1. There must be a statutory grant of jurisdiction by the federal Parliament;
2. There must be an existing body of federal law which is essential to the disposition of the case and which nourishes the statutory grant of jurisdiction;
3. The law on which the case is based must be “a law of Canada” as the phrase is used in section 101 of the *Constitution Act, 1867*.

[69] The reason for these requirements is that the Federal Court is constitutionally limited to administering “the laws of Canada”. To ensure the Court does not overstep the limited role it has been given to determine whether a given claim meets all three requirements, the Court must first characterize the claim to determine its essential nature on a realistic appreciation of the practical result sought by the claimant. The “statement of claim is not to be blindly read at its face

meaning”. The Court must “look beyond the words used, the facts alleged and the remedy sought and ensure . . . that the statement of claim is not a disguised attempt to reach before the Federal Court a result otherwise unreachable in that Court”: *Windsor* para 26 (internal citations omitted).

[70] Although the *Bank Act* is Federal legislation which provides exclusive jurisdiction over banking, that does not, on its own, ground a finding of jurisdiction for this Court. The relevant issue is whether the claim that is advanced relies to an essential extent upon federal law. It is the nature of the claim and not of the undertaking involved that is relevant: *744185 Ontario Inc v Canada*, 2020 FCA 1, commonly referred to as *Air Muskoka*, at para 54.

[71] In the AASC under “the nature of the action”, the Plaintiff alleges that “the Defendants deliberately and recklessly denied the plaintiff of (*sic*) his Charter of (*sic*) Rights and Freedoms to work in (*sic*) banking and financial industry within Canada, when BNS’ (*sic*) abused its power and status, through its operation of an employment system that is broken”. The Plaintiff states that BNS was allowed to deny him “his right to employment in the banking industry in Canada, for life by imposing a **lifetime ban** (*sic*) against the Plaintiff’s career.” It is plain and obvious that the focus of the claim is the Plaintiff’s former employment with the BNS and the practical result sought is to be compensated for losing that employment.

[72] The Plaintiff first pursued the BNS under the *CLC*. The complaint to the CHRC centred on his dismissal/resignation from the Bank of Nova Scotia. One of the claims against the BNS is the failure to pay the Plaintiff wages. A significant claim against the BNS is the Plaintiff was

forced to resign. It is clear that the essential nature of the AASC is an employment matter between an employer and their former employee.

[73] There is no doubt that the Plaintiff's case against the BNS is grounded in the loss of his job with the bank. He states that when the BNS put his name on a criminal watch list, known as SIFT ALERT, which is maintained by the CBA Bank Crime Prevention and Investigation Office (BCPIO), he was prevented - for life - from working in the banking industry.

[74] The Plaintiff believes that the *Bank Act*, as federal legislation, provides jurisdiction to this Court with respect to his loss of employment with the Bank. However, neither the *Bank Act* nor any other federal legislation, including the *Federal Courts Act*, or the *CLC*, or the *CHRA*, grants jurisdiction to the Federal Court to hear employment claims at first instance.

[75] It is plain and obvious that this Court lacks jurisdiction to hear this action against the BNS. It is also plain and obvious, as set out in these Reasons, that the Plaintiff failed to comply with Rules 174, 181, 221(a),(c) and (f). In the result there is no reasonable cause of action.

X. **The Fresh as Amended Statement of Claim**

[76] Shortly after the hearing of this motion, the Plaintiff submitted a Fresh as Amended Statement of Claim (FASC) to the Registry of the Court. It was not filed at the time this motion was heard. The Plaintiff included the unfiled FASC in his motion materials and argued at the hearing that the FASC, not the AASC, should be considered because it was in the materials. The Plaintiff submitted that meant the FASC was "before the Court". I rejected that premise at the

hearing and do so again. A pleading is a document that is filed: Rule 171. A proceeding against the Crown is instituted by filing in the Registry the original and two copies of the originating document together with a filing fee of \$2.00: *Federal Courts Act*, section 48.

[77] During the hearing of these motions it was discussed with the Plaintiff that if he was unsuccessful, he would not be permitted to file a new claim relying on any of the grounds already found in the AASC or any previously filed Statement of Claim in this matter. Although it is not actually “before me”, the Plaintiff indicated, and I accept, that the FASC shows his intention of how he would amend his Statement of Claim.

[78] In determining whether the Plaintiff will be permitted to amend the AASC I have therefore considered whether the defects in the AASC might be cured by the FASC.

[79] The Plaintiff stated that the FASC is restricted to his claims under the *CLC* and the *CHRA* and he had removed all the other claims. I have found that the Federal Court has no jurisdiction at first instance under either the *CLC* or the *CHRA* therefore, those claims in the FASC are not within the jurisdiction of this Court and, as amendments, they do not cure the defects in the AASC.

[80] I note that in addition to the *CLC* and the *CHRA* claims, the Plaintiff maintains in the FASC his claim that his *Charter* rights were violated by a conspiracy between the AGC and the BNS. The Defendants remain the AGC, with the addition of Her Majesty the Queen in Right of Canada, and the BNS but without any of the personal defendants named in the AASC. Claims

under the *Charter* only apply to government action: *Hill v Church of Scientology of Toronto*, [1995] 2 SCR 1130, at para 68. The *Charter* claims in the FASC therefore disclose no reasonable cause of action against the *BNS* and, as amendments, they do not cure the defects in the AASC.

[81] I find that the proposed amendments in the FASC do not show there is a valid claim against either of the Defendants.

XI. **Conclusion**

[82] While allegations that are capable of being proven are to be taken as true, this rule does not require that allegations based on assumptions and speculation must be taken as true; it is not necessary to accept at face value bare allegations or factual allegations which may be regarded as scandalous, frivolous or vexatious, or legal submissions dressed up as factual allegations: *Committee for Monetary and Economic Reform v Canada*, 2014 FC 380, at para 48, citing *Operation Dismantle* at para 27 and *Carten*, at para 31.

[83] The Plaintiff has failed to show there is a reasonable cause of action against either of the two Defendants. The Plaintiff also failed to show that this Court has jurisdiction over any of the matters concerning the *BNS* or in tort against any of the Judges and Ministers.

[84] For all the reasons set out above, each motion is granted.

[85] The actions against the *BNS* and *AGC* are dismissed and the AASC is struck, in its entirety, without leave to amend.

[86] Costs are granted to each Defendant.

[87] The BNS claims costs of \$3400, all inclusive.

[88] The AGC claims \$500 total costs.

JUDGMENT in T-871-20

THIS COURT ORDERS that:

1. The AASC is struck, in its entirety, without leave to amend.
2. The actions against the BNS and the AGC are dismissed.
3. Costs to the BNS in the amount of \$3400, all inclusive.
4. Costs to the AGC in the amount of \$500, all inclusive.

"E. Susan Elliott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-871-20

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, THE
PRIME MINISTER OF CANADA, THE BANK OF
NOVA SCOTIA, THE PRESIDENT AND CEO OF
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SCOTIA AND THE BOARD OF DIRECTORS OF THE
BANK OF NOVA SCOTIA

PLACE OF HEARING: HELD BY WAY OF VIDEOCONFERENCE

DATE OF HEARING: JULY 22, 2021

JUDGMENT AND REASONS: ELLIOTT J.

DATED: JUNE 6, 2022

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ON HIS OWN BEHALF

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