

Federal Court



Cour fédérale

**Date: 20240319**

**Docket: T-2007-23**

**Citation: 2024 FC 443**

**Ottawa, Ontario, March 19, 2024**

**PRESENT: The Honourable Mr. Justice Gleeson**

**BETWEEN:**

**VERGIL WELCOME**

**Plaintiff**

**and**

**HIS MAJESTY THE KING IN RIGHT OF  
CANADA**

**Defendant**

**ORDER AND REASONS**

[1] The Attorney General of Canada brings this motion, on behalf of the Defendant, for an Order striking the Plaintiff's Statement of Claim [Claim], without leave to amend, and dismissing the action with costs pursuant to Rules 221(1)(a), (c), (f) and 359 of the *Federal Court Rules*, SOR/98-106 [the *Rules*]. Alternatively, the Defendant seeks an Order granting an extension of time to serve and file a Statement of Defence.

[2] Having reviewed and considered the parties' Motion Records and having heard the parties by way of Zoom videoconference on January 26, 2024, the motion is granted. My reasons follow.

I. The Statement of Claim

[3] In the Claim, the Plaintiff, who is self-represented, alleges he applied through an external appointment process for multiple positions at Library and Archives Canada [LAC]. He further alleges that he clearly met the essential education and experience requirements identified in the job posting.

[4] The Plaintiff reports that, after applying, he was included in the pool for further consideration, and that, on February 3, 2023, an email was sent to prospective hires, including the Plaintiff, inviting completion of a self-assessment test. The Plaintiff alleges the email went into a "junk folder." On February 13, 2023, the Plaintiff sent a reply providing constructive criticism to the effect that the manner in which the February 3 email was composed mimicked spam in that it began in French, which was not the official language in which the Plaintiff communicates.

[5] The Plaintiff submitted a second application and was again included in the pool but he reports the status of the application was later changed to "screened out."

[6] On April 13, 2023, the Plaintiff reports he emailed the Team Leader in human resources [HR] to express his concerns. The Plaintiff received a reply on April 17, 2023, where the Team

Leader indicated that their staff's emails are in accordance with the *Official Languages Act*, RSC 1985, c 31 (4th Supp) [*Official Languages Act*] and that the Plaintiff was qualified to be in the hiring pool.

[7] The Plaintiff alleges the Defendant engaged in libelous conduct and abuse of power within the context of the hiring process, which resulted in reputational harm and a lost financial opportunity. Specifically the Plaintiff alleges:

- A. The loss of the opportunity to compete fairly for a position at LAC due to the misconduct of Crown servants. The alleged misconduct includes defamatory libel, breach of trust and discrimination.
- B. Being subject to defamatory libel, as an act of retribution, after sending constructive criticism to a HR employee regarding the composition of an email they had sent to prospective hires. The Plaintiff alleges he was falsely labelled unqualified to be in the pool of prospective hires only after providing said feedback.
- C. The retribution constitutes a breach of trust by the HR employee as they abused their station as a federal civil servant in their interaction with a member of the public applying for a position with their employer.
- D. Having been subject to discrimination owing to the fact that the HR employee privileged their own rights under the *Official Languages Act* over those of the Plaintiff.

[8] The Plaintiff seeks the following damages:

- A. Compensatory general damages of \$4,100,000 for defamatory libel causing reputational harm and impeding the Plaintiff's ability to compete for jobs at LAC;
- B. Non-pecuniary damages of \$1,000,000 for discrimination in a hiring process at a federal employer due to the violation of the Plaintiff's language rights;
- C. Aggravated damages of \$300,000 for the Plaintiff's vexatious experience resulting in the Plaintiff's moral indignation due to a loss of faith in the federal civil service's ability, or willingness, to conduct itself in good faith and fair dealing when managing a hiring competition;
- D. Punitive damages of \$1,600,000 for the abhorrent act of a federal civil servant behaving in a retributive manner toward a member of the public, and the breach of trust by a public officer said act represents; and
- E. Any other relief that this Court may consider fair and equitable.

II. Issues

[9] The motion raises the following issues:

- A. Should the Claim be struck because it discloses no reasonable cause of action, is an abuse of process and raises no matter within the jurisdiction of the Court?
- B. If the answer to issue A is yes, are the defects in the Claim such that they cannot be cured by amendment?

III. Applicable Principles

A. *Pleadings*

[10] Rules 174 and 181(1) of the *Rules* set out the pertinent requirements for pleadings before the Court:

**Material facts**

**174** Every pleading shall contain a concise statement of the material facts on which the party relies, but shall not include evidence by which those facts are to be proved.

**Particulars**

**181 (1)** A pleading shall contain particulars of every allegation contained therein, including

(a) particulars of any alleged misrepresentation, fraud, breach of trust, wilful default or undue influence; and

(b) particulars of any alleged state of mind of a person, including any alleged mental disorder or disability, malice or fraudulent intention.

**Exposé des faits**

**174** Tout acte de procédure contient un exposé concis des faits substantiels sur lesquels la partie se fonde; il ne comprend pas les moyens de preuve à l'appui de ces faits.

**Précisions**

**181 (1)** L'acte de procédure contient des précisions sur chaque allégation, notamment :

a) des précisions sur les fausses déclarations, fraudes, abus de confiance, manquements délibérés ou influences indues reprochés;

b) des précisions sur toute allégation portant sur l'état mental d'une personne, tel un déséquilibre mental, une incapacité mentale ou une intention malicieuse ou frauduleuse.

[11] Pleadings must clearly set out the issues between the parties and give fair notice to the opposing party of the case they have to meet (*Sivak v Canada*, 2012 FC 272 at para 11; *Van Sluytman v Canada*, 2022 FC 545 at para 19 [*Van Sluytman*]).

[12] Pleadings must disclose a reasonable cause of action. To do so, pleadings must (1) allege facts that are capable of giving rise to a cause of action; (2) disclose the nature of the action which is to be founded on those facts; and (3) indicate the relief sought, which must be of a type that the action could produce and the Court has jurisdiction to grant (*Van Sluytman* at para 9, citing *Oleynik v Canada (Attorney General)*, 2014 FC 896 at para 5; *Bérubé v Canada*, 2009 FC 43 at para 24, aff'd 2010 FCA 276).

#### B. *Motion to strike*

[13] The circumstances in which a pleading may be struck are set out in Rule 221 of the *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,
- (b)** is immaterial or redundant,
- (c)** is scandalous, frivolous or vexatious,

##### **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;
- b)** qu'il n'est pas pertinent ou qu'il est redondant;

(d) may prejudice or delay the fair trial of the action,

(e) constitutes a departure from a previous pleading, or

(f) is otherwise an abuse of the process of the Court, and may order the action be dismissed or judgment entered accordingly.

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

d) qu'il risque de nuire à l'instruction équitable de l'action ou de la retarder;

e) qu'il diverge d'un acte de procédure antérieur;

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.

### **Evidence**

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

### **Preuve**

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

[14] In considering whether to grant a motion to strike, the Court must balance both the interest of the plaintiff in getting their “day in court” and the interest of not burdening the parties and the court system with claims that are doomed to fail from the outset (*Fitzpatrick v Codiack Regional RCMP Force, District 12*, 2019 FC 1040 at para 14; *Bounpraseuth v Canada*, 2023 FC 1220 at para 8 [*Bounpraseuth*]). With these considerations in mind, courts must proceed with care when deciding on such motions (*R v Imperial Tobacco Canada Ltd*, 2011 SCC 42 at para 21 [*Imperial Tobacco*]).

[15] As I set out at paragraph 11 of *Bounpraseuth*, the following principles are relevant in considering a motion to strike:

- A. The moving party bears the burden of demonstrating that the claim has no reasonable chance of succeeding (*Imperial Tobacco* at para 25);

- B. Where it is alleged that the claim discloses no cause of action, the Court must assume that the facts pled are true (*Rebello v Canada (Justice)*, 2023 FCA 67 at para 4, citing *Imperial Tobacco* at para 17);
- C. A pleading must disclose material facts, rather than bald allegations. As stated in *Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227 at para 19 [*Mancuso*], “[t]he plaintiff must plead, in summary form but with sufficient detail, the constituent elements of each cause of action or legal ground raised. The pleading must tell the defendant who, when, where, how and what gave rise to its liability” (see also *Mancuso* at para 16);
- D. A plaintiff must plead the facts relied upon in advancing a claim. A plaintiff cannot rely on the possibility that new facts may come to light as the case advances. The facts as pled are the basis upon which the claim’s possibility of success is to be evaluated (*Imperial Tobacco* at para 22);
- E. Allegations based on assumptions and speculation, bare allegations, factual allegations that are scandalous, frivolous or vexatious, or legal submissions dressed up as factual allegations need not be accepted as true or accepted at face value (*Templanza v Canada*, 2021 FC 689 at para 14, citing *Carten v Canada*, 2009 FC 1233 at para 31); and
- F. A statement of claim is to be read in a generous manner to accommodate mere drafting deficiencies, particularly when it has been drafted by a self-represented litigant (*Operation Dismantle v The Queen*, 1985 CanLII 74 (SCC) at paras 14, 94; *Watts v Canada (Revenue Agency)*, 2019 FC 1321 at paras 14-15; *Lauer v Canada*



(*Attorney General*), 2017 FCA 74 at para 22). However, the flexibility a court is prepared to extend to a self-represented litigant does not exempt the litigant from the requirement to plead sufficient material facts in support of a claim (*Mancuso* at paras 16-17; *Zbarsky v Canada*, 2022 FC 195 at para 15; *Brauer v Canada*, 2021 FCA 198 at para 14).

#### IV. Analysis

##### A. *Position of the Parties*

[16] The Defendant argues the Claim is premised on improper evidence, bare allegations and fails to plead material facts to substantiate the claims advanced. The Defendant also argues that, in alleging breach of trust and defamatory libel, the Plaintiff has alleged criminal misconduct over which the Court lacks jurisdiction. The Defendant further submits the Court should decline to exercise its jurisdiction with respect to the allegations of misconduct and discrimination in the appointment process because the *Public Service Employment Act*, SC 2003, c 22, ss 12, 13 [PSEA] provides a recourse mechanism established to address those allegations, a mechanism the Plaintiff has not yet engaged.

[17] The Plaintiff opposes the motion arguing that the Defendant's failure to file a timely defence has prejudiced the Plaintiff's ability to discover and inspect documents to support the facts alleged. The Plaintiff submits that his reliance on terminology describing criminal misconduct in advancing the breach of trust and defamatory libel claims reflects the fact that the

Plaintiff is self-represented, can be addressed by way of amendment and does not justify the striking of the claim.

B. *Jurisdiction*

[18] A statement of claim may be struck pursuant to Rule 221(1)(a) where it is plain and obvious that the Federal Court lacks jurisdiction to hear a matter ((*Lam v Law Society of Ontario*, 2024 FC 265 at para 14, citing *Berenguer v Sata Internacional - Azores Airlines, SA*, 2023 FCA 176 at paras 26 and 34).

[19] In this case, the Plaintiff's allegations of criminal misconduct can be readily addressed and remedied by way of amendment and do not justify the striking of the claim.

[20] However, the core dispute raised in the Claim is one that falls within the scope of the complainant mechanism created by Parliament under the *PSEA*. Pursuant to section 66 of the *PSEA*, the Public Service Commission is mandated to investigate any external appointment process and is provided broad remedial powers where the Commission is satisfied that circumstances, including improper conduct, affected the selection of a person:

**External appointments**

**66** The Commission may investigate any external appointment process and, if it is satisfied that the appointment was not made or proposed to be made on the basis of merit, or that there was an error, an omission or improper conduct that affected

**Nominations externes**

**66** La Commission peut mener une enquête sur tout processus de nomination externe; si elle est convaincue que la nomination ou la proposition de nomination n'a pas été fondée sur le mérite ou qu'une erreur, une omission ou une conduite irrégulière a

the selection of the person appointed or proposed for appointment, the Commission may	influé sur le choix de la personne nommée ou dont la nomination est proposée, la Commission peut :
(a) revoke the appointment or not make the appointment, as the case may be; and	a) révoquer la nomination ou ne pas faire la nomination, selon le cas;
(b) take any corrective action that it considers appropriate.	b) prendre les mesures correctives qu'elle estime indiquées.

[21] The Supreme Court of Canada teaches, “where Parliament has clearly created a scheme for dealing with labour disputes...courts should not jeopardize the comprehensive dispute resolution process contained in the legislation by permitting routine access to the courts” (*Vaughn v Canada*, 2005 SCC 11 at para 39 [*Vaughn*]). Although the Supreme Court acknowledges that the courts retain a residual discretion to exercise jurisdiction, the general rule of deference should prevail (*Vaughn* at para 39).

[22] The Plaintiff argues that, as a Black Plaintiff, he should not be required to pursue the recourse established by Parliament, citing “challenges with systemic discrimination” within the public service and relying on a number of publicly reported situations in support of this assertion. In addition, the Plaintiff argues the protracted nature of proceedings before Parliamentary mandated decision-makers renders the *PSEA* complaint process inadequate and cites the Defendant’s failure to proactively engage the process or recommend the Plaintiff do so.

[23] The Plaintiff’s subjective view that the *PSEA* complaint mechanism will be unfair or inefficient is not sufficient to justify the application by this Court of any residual discretion to

exercise jurisdiction in light of the Supreme Court’s clear and binding guidance set out above. Nor does any failure on the part of the Defendant to bring the *PSEA* process to the Plaintiff’s attention justify the exercise of that discretion. In this regard, Justice Binnie’s conclusions in *Vaughn* are of equal application here: “The [Plaintiff] ought to have proceeded with the remedies granted by Parliament... It was not open to him to ignore [that] scheme and litigate his claim... in the courts...” (*Vaughn* at para 42).

C. *The Claim fails to disclose a reasonable cause of action and is scandalous, frivolous or vexatious*

[24] Although the Claim must be struck on the basis of jurisdiction alone, I am also of the view that the Plaintiff’s failure to plead material facts to establish the elements of the individual causes of action pled also justifies the striking of the Claim. The Claim simply does not plead material facts in support of a cause of action in defamation or breach of trust, or arising from a violation of the Plaintiff’s language rights under either the *Official Languages Act*, 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]*, or the *Charter of Human Rights and Freedoms*, CQLR c C-12 [*Quebec Charter*].

[25] For example, the defamation pleading relies on facts pled at paras 10 and 11 of the Claim. The defamatory words are identified as the Defendant’s annotation on the Plaintiff’s file to the effect that the Plaintiff had been “screened out.” It is pled that this annotation means the application “[did] not meet the requirements identified for [the] job opportunity.” The Plaintiff

pleads at paragraph 11 of the Claim that the application was so labeled to punish the Plaintiff and that the action is retributive.

[26] Facts are not pled in support of any of these allegations. Instead, the Plaintiff relies on speculation and conjecture to allege that the words are defamatory and that the label was applied for reasons of punishment and retribution. In submissions, the Plaintiff does not take issue with the Defendant's view that the claims as pled are speculative but instead submits that facts supportive of the conjecture and speculation may be revealed as the litigation progresses. This is not sufficient. On a motion to strike, the Court must rely on the material facts pled (*Imperial Tobacco* at para 22).

[27] Pleadings that advance bald allegations of bad faith and ulterior motives are also "scandalous, frivolous and vexatious" and may be struck on that basis (Rule 221(1)(c) of the *Rules*; *Tomchin v Canada*, 2015 FC 402 at para 22, citing *Merchant Law Group v Canada Revenue Agency*, 2010 FCA 184 at paras 34-35).

[28] The Plaintiff's claims, as they relate to the *Charter*, the *Official Languages Act* and the *Quebec Charter*, similarly must fail. Facts are not pled to establish the breaches alleged, notably a breach of section 20 of the *Charter* or a right to damages pursuant to section 24(1) of the *Charter*.

D. *Should the Plaintiff be granted leave to amend?*

[29] When a claim is struck, Rule 221 of the *Rules* requires that the Court consider whether leave is to be granted to amend the claim. To refuse leave to amend, the defects in the pleading must be such that they cannot be cured by way of amendment (*Simon v Canada*, 2011 FCA 6 at paras 8, 14).

[30] In this instance, the Claim will be struck without leave to amend for two reasons. First, the absence of jurisdiction is a defect that cannot be cured by way of amendment. Second, the Plaintiff was asked in the course of oral submissions if he was in a position to plead additional facts – he advised he was not.

V. Conclusion

[31] The Claim is struck without leave to amend.

[32] In keeping with the general principle, the Defendant, as the successful party, shall have their costs. The Defendant seeks costs in the fixed amount of \$700. Having considered the issues raised and the complexity of the matter, I am satisfied that \$500, inclusive of all disbursements and taxes, is an appropriate amount.

**ORDER IN T-2007-23**

**THIS COURT ORDERS that:**

1. The motion to strike the Statement of Claim without leave to amend is granted.
  
2. The Defendant is awarded \$500.00 in costs, inclusive of all disbursements and taxes.

“Patrick Gleeson”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-2007-23

**STYLE OF CAUSE:** VERGIL WELCOME v HIS MAJESTY THE KING IN  
RIGHT OF CANADA

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** JANUARY 26, 2024

**ORDER AND REASONS:** GLEESON J.

**DATED:** MARCH 19, 2024

**APPEARANCES:**

Vergil Welcome

FOR THE PLAINTIFF  
(ON HIS OWN BEHALF)

Arielle Maler

FOR THE DEFENDANT

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