Federal Court  Cour fédérale

Date: 20250409

Docket: T-138-19

Citation: 2025 FC 650

Ottawa, Ontario, April 9, 2025

PRESENT: Madam Justice McDonald

CLASS PROCEEDING

BETWEEN:

SYLVIE CORRIVEAU

Plaintiff

and

HIS MAJESTY THE KING

Defendant

ORDER AND REASONS

[1] On this Motion, the Defendant, Canada, seeks an Order pursuant to Rules 221 and 334.19 of the *Federal Court Rules*, SOR/98-106 [Rules] to strike out portions of the Statement of Claim and to amend the common issues. The underlying certified class proceeding claims that the

Royal Canadian Mounted Police [RMCP] is responsible in negligence for the misconduct of the designated physicians who conducted medical examinations as part of the RCMP employment application process. The RCMP application process (during the relevant time) included a medical examination by a designated physician to ensure fitness for duty.

I. Relevant background

[2] Relevant to this Motion is my Order of July 31, 2024, that the Plaintiff provide particulars on:

> a. the actions or procedures constituting "inappropriate and unnecessary" or "improper and invasive" procedures, including if and how these allegations are distinct from actions alleged to constitute sexual assault, assault, or battery;
>
> …
>
> e. the actions supporting an award for punitive damages, including:
>
> i. clarification as to whether the Plaintiff alleges abuse of power, bad faith, misfeasance of public office; and,
>
> ii. the particulars of the allegation that the RCMP acted knowingly and with intention.

[3] In response to this Order, on August 21, 2024, the Plaintiff served Canada with a 12-page document titled "Further Particulars Provided Pursuant to the Order of Justice McDonald, dated July 31, 2024" [*Particulars*].

[4] On this Motion Canada argues that the *Particulars* provided by the Plaintiff are deficient and they request that portions of the Statement of Claim be struck out and that the related common questions be amended.

[5] In their Notice of Motion, Canada seeks the following relief:

> 1. An order pursuant to Rule 221 of the *Federal Courts Rules* striking out the Plaintiff's claim for damages in relation to allegedly "inappropriate and unnecessary" and "improper and invasive" actions and/or procedures during Applicant's Examinations damages for failing to disclose a reasonable cause of action;
>
> 2. An Order pursuant to Rule 221 of the *Federal Courts Rules* striking out the Plaintiff's claim for punitive damages for failing to disclose a reasonable cause of action;
>
> 3. An Order pursuant to rule 334.19 of the *Federal Courts Rules* amending the Common Issues to delete "inappropriate and/or unnecessary procedures" from Common Issues 1 and 3 on the basis that the plaintiff has failed to demonstrate that there is some basis in fact for the court to conclude that non-sexual "inappropriate and/or unnecessary procedures" was a question or law or fact common to the class;
>
> 4. In the alternative, an Order pursuant to rule 334.19 of the *Federal Courts Rules* amending the Common Issues to delete Common Issue 6 on the basis that this claim fails disclose a reasonable cause of action; […]

II. Analysis

A. *Rule 221 relief to remove references to "inappropriate and unnecessary" and "improper and invasive" conduct*

[6] In their Notice of Motion at paragraph 1 (above), Canada asks the Court to strike portions of the Statement of Claim for damages in relation to "inappropriate and unnecessary" and "improper and invasive" actions. Despite this reference to "damages", it appears that Canada is in fact asking to strike all references in the Statement of Claim to "inappropriate and unnecessary" and "improper and invasive" conduct, and not just the references in relation to damages. I say that as the Statement of Claim does not address damages until paragraph 63 and onward yet Canada asks that the references in paragraphs: 1(b), 11, 24, 25, 58, 59, 60, 60(b), 60(h), 60(i), 60(j), 60(k), 60(l), 61(b), 61(h), 61(i), 61(j), 61(k), 61(l), 6, 7, 51, 68-70 be struck.

[7] That said, I will consider Canada's Motion as if they seek to strike all references in the Statement of Claim to "inappropriate and unnecessary" and "improper and invasive" actions whether pled in relation to damages or otherwise.

[8] In support of their Motion, Canada argues that the Plaintiff has failed to comply with the Order and has, thus, failed to provide sufficient particulars. Canada argues that it cannot properly defend itself against these claims because they are not properly particularized.

[9] Rule 221 provides that the Court may, at any time, strike claims that disclose no reasonable cause of action, or are scandalous, frivolous or vexatious. The applicable considerations are summarized at paragraph 15 of *Harris v Canada*, 2018 FC 765 as follows:

> [15] The moving party bears the onus of meeting the test set out by the Supreme Court of Canada in *Hunt v Carey Canada Inc*, [1990] 2 SCR 959 [*Hunt*]: *Al Omani v Canada*, 2017 FC 786 per Roy J. at paras 12-16:
>
> > [12] The test to strike a claim under Rule 221 sets a high bar. First, it is assumed that the facts stated in the statement of claim can be proven. The Court must be satisfied that it is plain and obvious that the pleading discloses no reasonable cause of action assuming the facts pleaded are true: *R v Imperial Tobacco Canada Ltd.*, 2011 SCC 42, [2011] 3 SCR 45 at para 17; *Hunt v Carey Canada Inc*, [1990] 2 SCR 959 [*Hunt*] at p 980. The Defendant bears the onus of meeting this test: *Sivak v Canada*, 2012 FC 272, 406 FTR 115 [*Sivak*] at para 25.
> >
> > [13] In *Hunt*, the Supreme Court sided with the articulation of the rule in England to the effect that "if there is a chance that the plaintiff may succeed, then the plaintiff should not be "driven from the judgment seat" (p. 980). A high bar indeed to succeed on a motion to strike. Some chance of success will suffice or, as Justice Estey said in *Att. Gen. of Can. v Inuit Tapirisat et al*, [1980] 2 SCR 735, "(o)n a motion such as this a court should, of course, dismiss the action or strike out any claim made by the plaintiff only in plain and obvious cases and where the court is satisfied that "the case is beyond doubt"" (p.740).
> >
> > [14] To show a plaintiff has a reasonable cause of action, the statement of claim must plead material facts satisfying <u>every element</u> of the alleged causes of action: *Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227, 476 NR 219 [*Mancuso*] at para 19; *Benaissa v Canada (Attorney General)*, 2005 FC 1220 [*Benaissa*] at para 15. The plaintiff needs to explain the "who, when, where, how and what" giving rise to the Defendant's liability (*Mancuso*, para 19, *Baird v Canada*, 2006 FC 205 at paras 9-11, affirmed in 2007 FCA 48).

> [15] Thus, there appears to be a balance. On one hand, a chance of success is enough for the matter to proceed. On the other, the material facts must be pleaded in sufficient detail such that the cause of action may exist. The purpose of pleadings is to give notice to the opposing party and define the issues in such a way that it can understand how the facts support the various causes of action. As the Court of Appeal put it in *Mancuso*, "(i)t is fundamental to the trial process that a plaintiff plead material facts in sufficient detail to support the claim and relief sought" (para 16). The Plaintiffs note that pleadings can still proceed despite being "far from models of legal clarity" (*Manuge v Canada*, 2010 SCC 67, [2010] 3 SCR 672 at para 23). But it remains that adequate material facts must be pleaded. Parties cannot make broad allegations in their statement of claim in the hope of later going on a "fishing expedition" to discover the facts: *Kastner v Painblanc* (1994), 176 NR 68, 51 ACWS (3d) 428 (FCA) at p.2. [Emphasis in original.]

[10] As the moving party, Canada has the onus—and it is a high onus—to demonstrate that it is plain and obvious that the pleadings—the Statement of Claim and the *Particulars*—disclose no reasonable cause of action regarding the non-sexual tortious conduct alleged. In considering this, the Court is to assume that the facts contained in the pleadings are true and can be proven.

[11] The Statement of Claim in paragraph 1(b) claims that the Defendant is liable for the systemic negligence of its servants (designated physicians) for failing to provide a medical examination "…free of sexual assault and battery, and inappropriate and unnecessary procedures." The negligence claims are detailed in paragraphs 60-62 of the Statement of Claim.

[12] In the *Particulars* at paragraph 1, the Plaintiff details the non-sexual "inappropriate and unnecessary" or "improper and invasive" procedures, some of which are as follows:

- Examinations when class members were completely disrobed, partially disrobed, undergarments removed, and/or wearing a hospital gown;
- checking their reflexes and/or performing flexibility tests;
- requiring class members to walk back and forth across the examination room and/or walking in a circle around class members to “inspect” them;
- requiring class members to perform sit-ups, push-ups, and/or bend over and touch their toes;
- requiring class members to go on their hands and knees performing unnecessary prostate examinations on male class members, including young male class members;
- performing unnecessary and/or painful internal rectal and/or prostate examinations on male and female class members, including aggressive examinations causing cramps, tears, scratches, scrapes, hemorrhoids, bleeding, discharge, bruising, scarring and/or impacting class members’ ability to walk immediately and/or for multiple days;
- performing unnecessary and/or painful pelvic examinations on female class members, including aggressive examinations causing cramps, tears, scratches, scrapes, bleeding, discharge, bruising, scarring, and/or impacting class members’ ability to walk immediately and/or for multiple days;
- performing pelvic examinations on female class members without a speculum;
- performing pelvic examinations and/or Papanicolaou tests on female class members without swabs;

- remaining present in the room while class members completely disrobed, partially disrobed, removed their bottoms, and/or donned a hospital gown;
- remaining present in the room while class members robed and/or got dressed;
- informing class members that their RCMP application would not be accepted if they did not consent to a breast, rectal, prostate and/or pelvic examination;
- lying on top of class members' torsos and/or legs and telling them to lift and/or push them;
- refusing class members' requests to have an attendant and/or chaperone present during their examination;
- slapping, hitting, pinching, flicking, pushing, and/or punching class members;
- performing medically and/or occupationally unnecessary procedures on class members, including but not limited to: asking questions about class members' sexual history and/or sexual preferences including, but not limited to, asking about their last sexual partner, when they lost their virginity, which gender(s) they have intercourse with, the types of penetration they have experienced, their preferred sexual position, and/or when their last sexual encounter was.

[13] Paragraph 2 of the *Particulars* notes:

> The conduct identified in paragraph 1 above may or may not constitute sexual assault, assault, and/or battery depending on the individual circumstances of each class member.

[14] Accepting as I must, that the facts pleaded are true, I cannot accept Canada's assertion that the *Particulars* are "devoid of any actual particulars". The core issue in this class

proceeding is the alleged conduct or misconduct of the doctors performing the mandatory medical examinations of male and female applicants seeking to join the RCMP. The conduct and actions of these doctors will have to be considered in the context of the examination itself. Such considerations will undoubtedly fall along a spectrum. This is not a binary assessment—the distinction between inappropriate conduct and sexual misconduct is not as clearly demarcated as Canada suggests. While sexual misconduct represents the most egregious form of alleged conduct and may be more readily identifiable, the distinction between conduct with sexual overtones and conduct without such overtones in the context of a medical examination may be subtle and subjective. In other words, whether a particular act during a medical examination is sexual in nature is not always clear-cut and can vary based on individual perception and experience.

[15] Based upon the *Particulars* provided, I am satisfied that the Plaintiff has identified the procedures of a non-sexual nature that may ultimately be found to be "inappropriate and unnecessary" or "improper and invasive" in the context of a medical examination for the purposes of joining the RCMP. Those findings can only be made with the benefit of the full evidentiary record. At this stage, for the purposes of determining whether the pleadings disclose a reasonable cause of action, the Court does not consider the evidence by which these allegations are to be proven. Indeed, I note Canada's objection to the Court considering the evidence of the Plaintiff's proposed expert witnesses at this stage.

[16] Canada's assertion that the "inappropriate and unnecessary" and "improper and invasive" conduct is not sufficiently pled and is without merit. While this class proceeding may involve an

assessment of conduct more broadly than Canada would prefer, that is irrelevant to the question of whether a reasonable cause of action has been pled by the Plaintiff.

[17] I am satisfied that the non-sexual claims of "inappropriate and unnecessary" or "improper and invasive" conduct have been sufficiently particularized and that Canada has not met its high burden to establish that the Statement of Claim and the *Particulars* do not disclose a reasonable cause of action on this issue.

[18] In this context, admissions by Canada in their Amended Statement of Defence are also worthy of note. At paragraphs 28 Canada pleads:

> 28. Canada admits that it is vicariously liable for the actions of Drs. MacDougall and Campbell to the extent of their liability to any class member for assault and battery, including sexual assault and battery that occurred during the Applicant's Examinations conducted by Drs. MacDougall or Campbell.

[19] To the extent that Canada has admitted vicarious liability for the "assault and battery" conduct of two doctors in their Defence, it may well be that the "inappropriate and unnecessary" and "improper and invasive" conduct, as alleged, may amount to "assault and battery". In any event, as noted above, these are matters that go to the evidence and are beyond the issues on this Motion. I highlight this to make the point that Canada has been aware that the misconduct claims go beyond sexual misconduct.

[20] In summary, I am satisfied that the Statement of Claim and the *Particulars* provide Canada with ample facts and details that are relied upon by the Plaintiff in support of the

negligence claims advanced. Canada cannot reasonably assert that it does not know the case to be met.

B. *Rule 221 of the Federal Courts Rules striking out the Plaintiff's claim for punitive damages*

[21] Canada also seeks to strike the claim for punitive damages also on the grounds that the Plaintiff has not provided sufficient particulars.

[22] Paragraphs 68-70 of the Statement of Claim detail the punitive damages claim. The *Particulars* at paragraphs 3(a) through (k) detail the grounds for the punitive damages claim. For illustration, I will highlight only some of the particulars outlined:

> d. At least as of 1989, when the Plaintiff and two other women reported Dr. John MacDougall to the RCMP, Canada knew or ought to have known that its policies governing Applicant's Examinations, and the training, hiring and/or supervision of Designated Physicians, if any, were inadequate. Yet, Canada did not take any steps to remedy its Applicant's Examination process, change its training, hiring and/or supervision of Designated Physicians, establish a complaints process for pre-employment misconduct, or take any other steps to prevent that harm;
>
> e. At least as of 1989, following the Plaintiff's complaint, Canada knew that Dr. MacDougall had performed inappropriate and/or unnecessary procedures in at least three Applicant's Examinations. Canada failed to internally investigate Dr. MacDougall, despite advising the Plaintiff and two other complainants that it would;
>
> f. Canada attempted to retroactively justify its failure to investigate Dr. MacDougall on the basis that it needed statements from the Plaintiff and two other complainants, despite already possessing their statements from the

> Metropolitan Toronto Police. Furthermore, Canada never communicated to the complainants that it needed further statements, never followed up with any of the complainants, and never informed the complainants that the investigation was terminated;
>
> …
>
> i. As of at least 2018, Canada knew the names of at least five other Designated Physicians accused of misconduct during Applicant's Examinations in Ontario. Canada did not investigate these Designated Physicians and did not take any meaningful and/or consistent steps to address the complaints, and continued to direct class members to attend before these Designated Physicians without any intervention or any form of supervision, oversight, and/or chaperoning;
>
> j. As of at least 2019, Canada knew that at least 150 class members had complained about Dr. Campbell and at least 32 class members had complained about Dr. MacDougall, either to the RCMP directly or to local police forces. Canada also knew several class members had complained about Dr. Campbell in the past, including in or around November 1990; […]

[23] On a motion to strike, the Court must accept these particulars as true and capable of being proven. These particulars outline the facts relied upon by the Plaintiff in support of her claim for punitive damages. It is not the role of the Court on this Motion to consider the evidence in support of these allegations but only the facts provided.

[24] Based upon the facts provided, I am satisfied that the *Particulars* provided are sufficient and that Canada has not otherwise established any basis upon which the Court should strike out these pleadings.

C. *Rule 334.19 – common issues*

[25] In their Motion, Canada also seeks an Order pursuant to Rule 334.19 to amend the common issues to delete references to "inappropriate and/or unnecessary procedures" from Common Issues 1 and 3 and to delete Common Issue 6 relating to punitive damages.

[26] The common issues Canada seeks to amend are as follows:

> Negligence
>
> 1. Did the RCMP, through its agents, servants and employees owe a duty or duties of care tothe plaintiff and other Class Members to take reasonable steps to provide an Applicant's Examination free of inappropriate and/or unnecessary procedures, assault and battery, including sexual assault and sexual battery?
>
> …
>
> 3. If yes, is the Crown vicariously liable for the failure of its agents, servants and employees at the RCMP to take reasonable steps to provide an Applicant's Examination free of inappropriate and/or unnecessary procedures, assault and battery, including sexual assaultand sexual battery?
>
> …
>
> Damages
>
> 6. Does the RCMP's conduct through its servants, agents or employees justify an award of aggravated, exemplary, and/or punitive damages? If so, to whom and in what amount?

[27] These common issues relate directly to the pleadings that Canada sought to have struck as addressed above. As I am not granting Canada's Motion to strike the pleadings, I am likewise not granting their related request to amend the Common Issues.

III. Conclusion

[28] The Motion is dismissed.

ORDER IN T-138-19

THIS COURT ORDERS that the Defendant's Motion is dismissed.

"Ann Marie McDonald"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-138-19
STYLE OF CAUSE:	CORRIVEAU V HIS MAJESTY THE KING
MOTION IN WRITING PURSUANT TO RULE 369 OF THE FEDERAL COURTS RULES CONSIDERED AT:	OTTAWA, ONTARIO
ORDER AND REASONS:	MCDONALD J.
DATED:	APRIL 9, 2025

WRITTEN REPRESENTATIONS BY:

Won J. Kim P.C. Megan B. McPhee	FOR THE PLAINTIFF
Bruce Hughson Deborah Babiuk-Gibson Wendy Wright David Shiroky Christine Williams Holly Hargreaves	FOR THE DEFENDANT

SOLICITORS OF RECORD:

Kim Spencer McPhee Barristers P.C. Toronto, Ontario	FOR THE PLAINTIFF
Attorney General of Canada Edmonton, Alberta	FOR THE DEFENDANT