CITATION: *Auguste v. Ottawa Police Services et al.*, 2024 ONSC 4956
OTTAWA COURT FILE NO.: CV-24-94389
DATE: 2024/09/09

SUPERIOR COURT OF JUSTICE – ONTARIO

RE: CHERRYL AUGUSTE, DAVORIIAN AUGUSTE, KEROME BROWN JR. AND AIDEN AUGUSTE

Plaintiffs

AND

OTTAWA POLICE SERVICE, THE OTTAWA POLICE SERVICES BOARD, THE ONTARIO ASSOCIATION OF POLICE SERVICE BOARDS (OAPSB), THE MINISTRY OF COMMUITY SAFETY AND CORRECTIONAL SERVICES, AND THE OFFICE OF THE INDEPENDENT POLICE REVIEW DIRECTOR (OIPRD)

Defendants

BEFORE: Madam Justice S. Corthorn

COUNSEL: Cherryl Auguste, self-represented

Mary Simms, for the defendants, Ottawa Police Service and Ottawa Police Services Board

Jonathan Glasenberg, for the defendants, His Majesty the King (incorrectly named as the Ministry of Community Safety and Correctional Services), and the Law Enforcement Complaints Agency (incorrectly named as the Office of the Independent Police Review Director)

HEARD: In Chambers

ENDORSEMENT

Introduction

[1] In a letter dated June 24, 2024, addressed to the Registrar of this court (the "provincial letter"), counsel for two of the named defendants requests the dismissal of the action against his clients. The request is made pursuant to r. 2.1.01 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 ("*Rules*"). The provincial letter came before the court on August 6, 2024.

[2] The author of the provincial letter represents (a) His Majesty the King (incorrectly named in the title of proceeding as the Ministry of Community Safety and Correctional Services, and hereinafter referred to as "HMK"), and (b) the Law Enforcement Complaints Agency (incorrectly named in the title of proceeding as the Office of the Independent Police Review Director, and hereinafter referred to as "LECA"). HMK and LECA are collectively referred to as "the provincial defendants".

[3] The author of the provincial letter requests that the action against the provincial defendants be dismissed because the statement of claim "lacks any factual basis for relief against HMK and the LECA." A copy of the statement of claim, issued on January 15, 2024 ("the Pleading"), is included with the provincial letter.

[4] The plaintiffs filed a single-page notice of motion dated August 25, 2024. The court's administrative staff brought that document to the court's attention. In their notice of motion, the plaintiffs request a "REMOVAL OF ORDER OF STAY"[1]. The plaintiffs request that their motion be heard orally.

[5] The plaintiffs state that the documentary evidence upon which they intend to rely on the return of their motion is "Email correspondence and witness testimony". The plaintiffs do not list any affidavit evidence or identify, by date or other description, any specific documents.

[6] In support of the relief they seek on their motion, the plaintiffs rely on the following grounds:

> 1. order was made without notice. 2. ensuring fairness in the legal process. 3.Was not properly notified. 4.Plaintiff never received notification until august 2024 regarding her case. 5.Plaintiff believe these actions taken unto this proceeding is discrimina tory to keep defendants from being held accountable. 6. plaintiff will provide amended complaint to fix issues within 30 Days of this fling 7. requesting order of stay be removed and this court proceeding be continued, with the court providing reasonable accommodations to plaintiff Cherryl Augus te who is a self-represent with disability asking the court for fairnes s 8. plaintiff is requesting court provide reasonable accommodation [2]

[7] The court is not aware of any documents filed by the plaintiffs subsequent to August 25, 2024.

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1 All uppercase letters, as in the original document.

2 For all passages quoted from the Pleading, the font, spelling, punctuation, and spacing appear as they do in the original document.

[8] I will first review the Pleading, and then the principles to be applied by the court when determining a request pursuant to r. 2.1.01. Thereafter, I apply those principles to the request made in the provincial letter.

The Statement of Claim

[9] The Pleading is 11 pages long, including the standard form language of Form 14A. The substantive portion of the plaintiffs' claims is found at pp. 2 and 4-10 of the Pleading.

[10] At p. 11, the plaintiffs identify that "EXHIBITS ARE INCLUDED IN ORGINAL COURT FILING". In the substantive text of the Pleading, there are no references to exhibits generally or to specific exhibits. If the plaintiffs filed exhibits with the court when the Pleading was issued, those exhibits are not before the court at this time.

[11] On page 2 of the Pleading, the plaintiffs set out their prayer for relief. Form 14A directs the plaintiffs to state "the precise relief claimed". In response to that direction, the plaintiffs describe the relief claimed as follows:

> *(Discrimination by public bodies, a breach of the Charter rights, human rights law violation, Police misconduct, Police malpractice, the Police Services Act violation, The Canadian Human Rights Act of 1977 Violation, Excessive Force on vunerable person, Retaliatory practices, Unethical practices, Criminal harassment, a breach of the Code of Conduct, The Canadian Human Rights Act Violation.)*

[12] At p. 10, the plaintiffs set out the damages they are seeking. In total, the plaintiffs are seeking five hundred million dollars ($500,000,000) in damages, broken down as follows:

- $400,000,000 for non-pecuniary damages for pain and suffering and "such other and further relief as the Court deems equitable and just";
- $50,000,000 in punitive damages for the wrongful action committed against the plaintiffs; and
- $50,000,000 in aggravated damages for the humiliation and suffering "caused by an action."

[13] The plaintiffs are Cherryl Auguste and her three children. The Pleading does not include any information as to the ages and dates of birth of the children. The children are not identified as minors and do not have a litigation guardian. It is unclear whether any of the children have reached the age of majority.

[14] The substantive allegations in the Pleading are challenging to decipher. The plaintiffs appear to allege that Cherryl Auguste was illegally detained by members of the Ottawa Police Service ("OPS") on a date in October 2022. The specific date on which the alleged illegal detention occurred is not identified.

[15] The alleged illegal detention is the starting point for the claims advanced. The allegations include that,

- Ms. Auguste was detained and handcuffed in front of her children, before being placed in a police cruiser;
- Ms. Auguste was transported by members of the OPS to a hospital, where her detention was continued. While at the hospital, Ms. Auguste's arms and legs were chained to a bed;
- While Ms. Auguste remained in handcuffs, members of the OPS failed to respond to Ms. Auguste's complaint of numbness in her hands, with the result that Ms. Auguste suffered an injury to her right fourth (smallest) finger; and
- Members of the OPS recorded Ms. Auguste while her arms and legs were chained to the hospital bed, and laughed at her while she remained in that state.

[16] More generally the plaintiffs allege that as "minorities and black newcomers" to Canada (in 2017), they have experienced and continue to experience one or more of abuse, discrimination, racial profiling and other forms of misconduct by members of the OPS. The plaintiffs allege that Ms. Auguste's detention was carried out specifically in response to an earlier complaint made by Ms. Auguste that she was the subject of discrimination by members of the OPS.

[17] In the Pleading, the plaintiffs identify that, following her October 2022 detention, Ms. Auguste initiated several proceedings. Those proceedings appear to include the following proceedings:

- "human rights complaints" (the forum(s) in which the complaints were made is not identified);
- "multiple complaints" with the LECA (and the LECA doing "nothing to change the behaviors of the officers"); and
- the "filing of a lawsuit", which appears to predate the Pleading. The particulars of that lawsuit are not included in the Pleading.

[18] In a section of the Pleading titled, "PROCEDURAL BACKGROUNDS", the plaintiffs allege that "Plaintiffs exhausted her Equal. Rights complaints".

[19] The statutes and regulations to which the plaintiffs refer in the Pleading include the *Canadian Charter of Rights and Freedom*, the *Canadian Bill of Rights*, the *Title Act*, and the *Police Services Act*.

[20] The only specific reference to the provincial defendants appears in para. 7, in a section of the Pleading titled "PARTIES". The plaintiffs therein describe the defendants as follows:

> 7. Defendant Ottawa police is a municipal government organization operating under the laws. Defendant The Ottawa Services Board governs the Ottawa police. Defendant The Ontario Association of Police Service Boards (OAPSB) is police governance in Ontario. Defendant The Ministry of Community Safety and Correctional Services is responsible for law enforcement services in Ontario. This includes the local and provincial police force Ottawa Police. Defendant The Office of the Independent Police Review Director (OIPRD), is an arms-length agency of the Ontario Ministry of the Attorney General, and process complaints against the Ottawa police

[21] Before determining the provincial defendants' request under r. 2.1.01, I first review the substantive test and procedure under that rule.

The Substantive Test Under r. 2.1.01

[22] Rule 2.1 establishes streamlined procedures that permit the court to fairly, and in a just manner, resolve a particular category of disputes in a timely, proportionate, and affordable way.

[23] In at least three decisions, the Court of Appeal for Ontario highlights that dismissal of an action under r. 2.1.01 is a blunt instrument, reserved for the clearest of cases: *Scaduto v. The Law Society of Upper Canada*, 2015 ONCA 733, 343 O.A.C. 87, leave to appeal refused, [2015] S.C.C.A. No. 488; *Khan v. Krylov & Company LLP*, 2017 ONCA 625, 138 O.R. (3d) 581; and *Khan v. Law Society of Ontario*, 2020 ONCA 320, 446 D.L.R. (4th) 575, leave to appeal to S.C.C. refused, 39321 (January 28, 2021). At para. 15 of *Khan v. Law Society*, the Court cautioned judges regarding reliance on r. 2.1.01:

> We reiterate that judges should be cautious about allowing parties to have recourse to r. 2.1 except where it is plain and obvious on the face of the pleading that the action is frivolous, vexatious or an abuse of process. There are many other remedies provided for in the *Rules of Civil Procedure* by which parties can deal with cases that are not clear on the face of the pleading.

[24] The principles to be applied by a judge considering a requisition under r. 2.1.01 include, but are not limited to, the following principles:

- The statement of claim must be read generously. Drafting deficiencies may be overlooked and the plaintiff given the benefit of the doubt if it appears that the action might be viable;

- "[R]ule 2.1 is not for close calls. Its availability is predicated on the abusive nature of the proceeding being apparent on the face of the pleadings themselves": *Raji v. Borden Ladner Gervais LLP*, 2015 ONSC 801, at para. 9;

- An action should be dismissed under r. 2.1 only if "the frivolous, vexatious, or abusive nature of the proceeding [is] apparent on the face of the pleading [and there is] a basis in the pleadings to support the resort to the attenuated process of rule 2.1" : *Raji*, at para. 9;

- The procedure under r. 2.1.01 should not be used as a substitute for a pleadings motion; and

- The procedure is intended to serve the purpose of "nipping in the bud actions which are frivolous and vexatious in order to protect the parties opposite from inappropriate costs and to protect the court from misallocation of scarce resources": *Markowa v. Adamson Cosmetic Facial Surgery Inc.*, 2014 ONSC 6664, at para. 3.

[25] By applying the above principles, the court fulfils its role as a gatekeeper of the justice system. In *Lochner v. Ontario Civilian Police Commission*, 2020 ONCA 720, at para. 21, Pepall J.A. says, "Abusive litigants should be screened out of the system so that parties with true justiciable disputes may have them adjudicated by the courts."

[26] To determine whether an action may be characterized as "vexatious, frivolous or an abuse of the court" under r. 2.1.01, the court may consider the criteria developed for applications pursuant to s. 140 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 ("*CJA*"). Alternatively, the court may consider the typical characteristics of the form and content of an action brought by a "querulous litigant" as reviewed by Myers J. in *Gao v. Ontario WSIB*, 2014 ONSC 6497, 37 C.L.R. (4th) 7, at para. 15.

[27] At para. 9 in *Gao*, Myers J. referred to the definition in Black's Law Dictionary of "frivolous": "Lacking a legal basis or legal merit; not serious; not reasonably purposeful": quoting from *Currie v. Halton Regional Police Services Board* (2003), 179 O.A.C. 67, 233 D.L.R. (4th) 657, at para. 14.

[28] Care is to be taken, however, not to dismiss an action out of hand simply because the plaintiff has either difficulty communicating their claim or has previously engaged in unsuccessful litigation. See *Gao*, at para. 18:

> It should be borne in mind … that even a vexatious litigant can have a legitimate complaint. It is not uncommon for there to be a real issue at the heart of a vexatious litigant's case. The problem is often that the litigant either cannot properly communicate the concern or, more typically, cannot accept that the law may not provide the remedy sought despite the unfairness felt by the litigant. While rule 2.1 should be applied robustly to bring an early end to vexatious proceedings, the matters should not be considered lightly or dismissively.

[29] In *Scaduto, Khan v. Krylov,* and *Khan v. Law Society,* the Court of Appeal endorsed the approach taken to r. 2.1.01 in *Gao* and *Raji.*

The Procedure Under r. 2.1.01

[30] Under r. 2.1.01(6), the judge considering a request for dismissal of an action under r. 2.1.01(1) may seek written submissions from the parties. When doing so, the court follows the procedure set out in r. 2.1.01(3). Where further submissions would serve no purpose, the judge may waive the requirement for them.

[31] As observed by the Court of Appeal in *Khan v. Law Society,* at para. 8, "if, after requesting submissions from the plaintiff as to why the action should not be dismissed under r. 2.1, the court feels it necessary to seek submissions from the defendants (who are seeking the dismissal), the fact that these additional submissions are needed ought to be a good indication that the situation is not one of those clearest of cases where the Rule should be invoked."

[32] The court's decisions on requests pursuant to r. 2.1.01 are intended to be made in a summary manner and may, in the court's discretion, be made without written submissions: see *Ahmed v. Ontario (Attorney General),* 2021 ONCA 427, at para. 7; and *Amikwabi v. Pope Francis*, 2022 ONCA 236, at para. 2.

Analysis

[33] Judges determining a request under r. 2.1.01 must "allow generously for drafting deficiencies and recognize that there may be a core complaint which is quite properly recognized as legitimate even if the proceeding itself is frivolously brought or carried out and ought to be dismissed": *Gao*, at para. 18.

[34] Before considering the substance of the plaintiffs' claims against the provincial defendants, I first consider the form of the Pleading. There are deficiencies in the form of the Pleading. For example, the Pleading does not comply with the requirements stipulated in r. 25.06 of the *Rules*. The paragraphs are not sequentially numbered. The Pleading includes evidence and extraneous information; it is not limited to material facts.

[35] I leave aside the deficiencies in form and turn to the substance of the plaintiffs' claims. I find that, on its face, the Pleading exhibits many of the hallmarks of vexatious and frivolous litigation.

[36] As an example of those hallmarks, the Pleading includes allegations of broad and sweeping violation of fundamental rights. On the fourth page of the Pleading, the allegations include reference to the plaintiffs' "experience of being racially profiled, being victims of Discrimination by public bodies, a breach of the Charter rights, human rights law violation, […and] unethical practice". The Pleading is replete with similar allegations.

[37] As another example of a hallmark of a frivolous and vexatious pleading, I find that the substantive allegations, when read in their entirety, are repetitive and rambling: *Fleischhaker v. Royal Ottawa Health Care Group and Attwood*, 2020 ONSC 980. The allegations include repetitive references to a failure on the part of the LECA to take meaningful steps in response to Ms. Auguste's complaint and filing.

[38] Allowing generously for drafting deficiencies, I find that the core complaint of the plaintiffs in the matter now before the court is as to their historical and ongoing treatment by members of the OPS. I find that, under the guise of their core complaint, the plaintiffs are attempting to re-litigate matters that have already been the subject of multiple proceedings.

[39] I also find that the plaintiffs' claims for damages are secondary to and advanced under the guise of their core complaint. For example, on the fourth page of the Pleading, the plaintiffs explain why they commenced the action:

> Due to the abuse we have expierence here as minorities and black newcomers at the hands of The police department in Ottawa we are filing this legal action our rights have been violated continuously even after we complaint we want to send a strong message to the police force to not intentionally harm black women, to not prey on black women as a whole. To never harm another black women again intentionally.

[40] On the fifth page of the Pleading, the plaintiffs allege that "The Ottawa police have these practices that target and harmed black newcomers here in Ottawa. We personally experienced it and we are sending a clear message that enough is enough to stop targeting and intentionally harming black mothers in Canada."

[41] Read generously, the Pleading includes mention of causes of action that are justiciable in law. Those causes of action do not, however, relate to the claims against the provincial defendants. In any event, the mention of causes of action that are justiciable in law does not assist the plaintiffs regarding their claims against the provincial defendants.

[42] I make no finding as to the significance of the mention of causes of action that are justiciable in law in relation to the claims against the remaining defendants.

Conclusion

[43] The claims against the provincial defendants lack a legal basis, lack merit, and are not reasonably purposeful. My findings with respect to the claims against the provincial defendants are not a matter of a close call.

[44] No purpose would be served by requiring written submissions and I waive the requirement for them.

[45] The court has the benefit of the plaintiffs' notice of motion. I apply the general principle stipulated in r. 1.04(1) and, by giving the *Rules of Civil Procedure* a liberal construction, treat the contents of the plaintiffs' notice of motion as written submissions – albeit unsolicited submissions – for the purpose of r. 2.1.01. Nothing in the plaintiffs' notice of motion persuades me that the claims against the provincial defendants require a pleading motion.

[46] The plaintiffs' claims against the provincial defendants are dismissed. There shall be no costs associated with the provincial defendants' r. 2.1.01 request.

Date: September 9, 2024

Madam Justice S. Corthorn

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ENDORSEMENT

Madam Justice Sylvia Corthorn

Released: September 9, 2024