

CANADA / JUDGMENT

Best v. Racicot

2026 FC 632

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Federal Court

DECIDED

15 May 2026

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Best v. Racicot

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Decision Content

Date: 20260515

Docket: T-3600-24

Citation: 2026 FC 632

Montréal, Quebec, May 15, 2026

PRESENT: The Honourable Madam Justice Ferron

BETWEEN:

CASEY BEST

Plaintiff

and

LISA RACICOT, MELISSA FERGUSON, MELISSA ROSE, TAYLOR LAMBERT, DAN PERRY, TANYA CARMICHAEL, AMA B. BEECHAM, SAVANNAH GENTILE, JANINE CHOWN, TIM ANKERS, CHRIS GERMAIN, THE ATTORNEY GENERAL OF CANADA, HIS MAJESTY THE KING IN RIGHT OF CANADA, REPRESENTED BY THE ATTORNEY GENERAL OF CANADA

Defendants

REASONS AND JUDGMENT

I. Overview [1] On December 17, 2024, the Plaintiff, Casey Best, filed a Statement of Claim in the underlying Action. Mr. Best, who is incarcerated in a federal penitentiary, claims that “the [eleven] Defendants, or any one of them”, conspired against him. These Defendants are essentially the Attorney General of Canada [AGC] alongside a parole officer, corrections officers, other employees of the Correctional Service of Canada [CSC] and members of the Parole Board of Canada [PBC]. The Plaintiff submits that the Defendants:

i. Breached his rights under sections 7 and 15 of 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 [plethora of statements], by acting or failing to act in a manner that enabled the extension of his imprisonment;

ii. “[L]ibelously and slanderously defamed” him when they assessed his eligibility for parole by “stating and implying” that he presents an undue risk to society given the likelihood of reoffence, and by “making a plethora of statements, negative conjectures, implications and conclusions about [him] based on speculation, [outdated information], unproven allegations, unreliable sources” to portray him in a negative light;

iii. Violated what he identifies as paragraph 11(f) of the Criminal Code, RSC 1985, c C-46, by retrying him for the offences he had already been convicted of, and by inflicting further punishment upon him for those offences (this allegation seems to relate to paragraph 11f) of the Charter instead);

iv. Violated section 91 of the Corrections and Conditional Release Act, SC 1992, c 20, by retaliating against him for his use of the grievance process including by leading the other inmates to believe that his filing of a grievance caused a lockdown at the facility;

v. Coerced, extorted, verbally abused, discriminated and intentionally inflicted mental suffering on the Plaintiff;

vi. Ultimately “contributed to the [Parole Board of Canada]’s decision to deny the Plaintiff parole on October 24, 2023”.

- [2] On April 22, 2025, Associate Judge Crinson granted the Defendants' Motion to Strike [Motion to Strike], after concluding "that it is plain and obvious that [Plaintiff's Statement of Claim] discloses no reasonable cause of action", "since it fails to allege facts that are capable of giving rise to a cause of action against each defendant and fails to indicate for each defendant the nature of the action which is to be founded on those facts" [Order].
- [3] On June 3, 2025, Mr. Best filed a motion in writing pursuant to section 369 of the Federal Court Rules, SOR/98-106 [Rules], seeking an order extending the time to respond to the Defendant's Motion to Strike pursuant to section 8 of the Rules, or, in the alternative, setting aside the Order of Associate Judge Crinson dated April 22, 2025 [Motion]. The basis of the Plaintiff's Motion is that he had, in fact, filed an informal motion in form of a letter requesting an extension of time to respond to the Motion to Strike on April 2, 2025 [Informal Motion]. However, due to circumstances squarely outside of the Plaintiff's control, this Informal Motion was not brought to the attention of the Court before the Order granting the Motion to Strike was issued. The Registry simply failed to forward it to the Court in due course.
- [4] On May 20, 2025, Associate Judge Crinson acknowledged this unfortunate situation, but his directions nonetheless dismissed the Informal Motion "without prejudice to the Plaintiff bringing a formal motion for an extension of time or a request for reconsideration of the Order dated April 22, 2025".
- [5] The Plaintiff's Motion (of June 3, 2025), which is the one to be dealt with by the present Reasons and Judgment, is framed as 1) a formal motion for an extension of time to file a responding record to the Motion to Strike and 2) a motion to appeal the Order of Justice Crinson of April 22, 2025, pursuant to section 51 of the Rules, or in the alternative, have it be reconsidered pursuant to sections 397, or also alternatively, to have it varied pursuant to section 399 of the Rules. Given that the Motion was only filed on June 3, 2025, it was filed beyond the 10-day period provided by the Rules (sections 51, 397 and 399). Therefore, the Plaintiff also seeks 3) an extension of time to file his Motion.
- [6] Having considered the Plaintiff's motion record, including the affidavit of the Plaintiff sworn on May 6, 2025, as well as the exhibits enclosed, the Plaintiff's written submissions, and the Defendants' responding motion record, the Motion will be dismissed.

II. Analysis A. The content of the Motion and procedural issues [7] First, the Plaintiff submits that the Order granting the Motion to Strike should be reconsidered because it was accidentally rendered after his Informal Motion had been filed but without considering it and therefore rendered without having the benefit of his response. He submits that this falls within the meaning of subparagraph 397(1)b) of the Rules, since "a matter that should have been dealt with has been overlooked or accidentally omitted", and that this omission was made by the Court.

- [8] When it comes to reconsideration under section 397 of the Rules, both parties agree that the question here is whether "a matter that should have been dealt with has been overlooked or accidentally omitted" within the meaning of subparagraph 397(1)b) of the Rules and that the

omission must have been made by the Court, rather than the moving party. However, the parties disagree on the following: while the Plaintiff proposes that the Registry's omission to transfer his motion to the member of the Court seized of the Motion to Strike in due course led to the "omission" of a "matter" by the Court, the Defendants claim that the reasons given in the Order do not show that the Associate Judge omitted or overlooked anything. Instead, they contend that the Plaintiff is trying to cure his own failure to file his responding motion record in due course and add that "Rule 397(1)(b) cannot be invoked where there is no ambiguity or uncertainty as to what the original order meant or where there is nothing about the order that is incomplete or unreasonable to cause one to think it had been made inadvertently" (citing *South Yukon Forest Corporation v Canada*, 2006 FCA 34 [South Yukon] at paras 39-41). However, *South Yukon* is not determinative. Contrary to the Defendants' submission, it does not appear to stand for the general principle that there needs to be some sort of uncertainty or ambiguity in the Order before reconsideration can be entertained.

[9] The Plaintiff instead relies on *Campbell River Harbour Authority v Acor (Vessel)*, 2010 FC 844 [Campbell River]; *Canada (Citizenship and Immigration) v Aziz*, 2011 FCA 18 [Aziz], drawing an analogy with cases where a judge failed to give one party the opportunity to make submissions. These cases are not helpful either because Associate Judge Crinson did not fail to give Mr. Best the opportunity to make submissions. Instead, the learned Associate Judge had the Motion to Strike put before him for determination after the deadline for Mr. Best to reply had expired. Due to the Registry's mistake, Associate Judge Crinson had no way of knowing, and no reason to believe, that Mr. Best had indeed sought an extension. Associate Judge Crinson was therefore entitled to proceed on the assumption that Mr. Best had not replied.

[10] In fact, Mr. Best proposes that a judge's failure to give a party an opportunity to make submissions before they render a decision "is a matter that might give the Plaintiff a basis for seeking reconsideration or a variation of the order under appeal". Hence, secondly or alternatively, he submits that the Order should, also because of the failure to take into account his Informal Motion, be set aside pursuant to section 399(2)a) of the Rules which provides that orders can be varied "by reason of a matter that arose or was discovered subsequent to the making of the order".

[11] Regarding variation of the Order, the Defendants refer to *Ayangma v Canada*, 2003 FCA 382, where the Federal Court of Appeal wrote the following:

[2] Rule 399(2)(a) authorizes the Court to vary or set aside an order:

"by reason of a matter that arose or was discovered subsequent to the making of the order."

[3] The jurisprudence establishes three conditions which must be satisfied before the Court will intervene:

1- the newly discovered information must be a "matter" with the meaning of the Rule;

2- the "matter" must not be one which was discoverable prior to the making of the order by the exercise of due diligence; and

3- the "matter" must be something which would have a determining influence on the decision in question.

- [4] We are not persuaded that the "matter" referred to in Rule 399 ("faits nouveaux" in the French version of the text) refers to jurisprudence. In *Metro Can Construction Ltd. v. Canada*, 2001 FCA 227 (CanLII), [2001] F.C.J. No. 1075 (F.C.A.), this Court decided that subsequent jurisprudence of our Court or of a higher Court does not constitute a "matter" that arose subsequently to the making of the order, within the meaning of Rule 399(2). Notwithstanding the decision of the Federal Court - Trial Division (as it then was) in *Jhaji v. Canada* (Minister of Employment and Immigration), 1995 CanLII 3583 (FC), [1995] 2 F.C. 369, it follows from this that jurisprudence existing at the time of the order cannot be a matter that arose subsequent to the decision. To hold otherwise would deprive all judgments of finality and would invite litigants to research their case after judgment was rendered.
- [12] The Defendants propose to approach the "matter" as being the deadline set for the filing of the Plaintiff's motion record in response to the Motion to Strike. They submit that "[a]n applicant discovering a missed deadline or a filing error does not constitute a "new matter" within the meaning of Rule 399(2)(a)" (citing *Collins v Canada*, 2011 FCA 171 [Collins] at para 12; *Bergman v Canada* (Minister of Citizenship and Immigration), 2006 FC 1082 [Bergman] at paras 10-14; *Ismael v Canada* (Citizenship and Immigration), 2018 FC 1191 [Ismael] at para 37). According to the Defendant, this Motion is but an attempt to obtain the variance of the Order based on the Plaintiff's own failure to meet the deadline to file his response.
- [13] With all due respect, the circumstances discussed in *Collins*, *Bergman* and *Ismael* can all be easily distinguished from the case at. In all three cases, the deadlines were missed by litigants -or by their counsel-, none ever discusses the case where the Registry failed to put a motion before the Court. It should be noted that, while the Plaintiff obviously failed to file his motion record responding to the Motion to Strike within the allocated timeline, he did file his Informal Motion seeking an extension of time before that deadline had passed.
- [14] The Defendant's submissions that this deadline was not a new "matter" or that it could have been "discovered" by the Plaintiff if he had exercised due diligence, fail to grapple with the specific facts of this case. First, nothing in the record suggests that Mr. Best was unaware that the applicable deadline was ten days. He filed his Information Motion seeking an extension within that time frame. Second, it is clear from the Plaintiff's submissions that the new "matter" allegedly justifying reconsideration is the fact that his Informal Motion was not before the Associate Judge. The Defendants do not mount a rebuttal to the idea that this could be considered a new matter under section 399 of the Rules, but the jurisprudence cited by Mr. Best does not suffice to settle the question either.

- [15] Thirdly, and also alternatively, Mr. Best submits that the Order granting the Motion to Strike should be quashed on appeal pursuant to section 51 of the Rules, again, because the Order was issued without any consideration to his reply.
- [16] As for his request for an extension of time to commence his Motion (for reconsideration or variance or appeal of the Order), the Plaintiff asks for leniency by referring to (1) the Statement of Principles on Self-represented Litigants and Accused Persons established by the Canadian Judicial Council endorsed by the Supreme Court of Canada in *Pintea v Johns*, 2017 SCC 23 [Pintea] (at para 4); and (2) excerpts from a report by the Standing Senate Committee on Human Rights that discuss hurdles to access to justice for federally sentenced prisoners.
- [17] The same arguments for leniency are submitted regarding his request for the extension of time to file his reply motion record to the Motion to Strike. He further mentions that he consented to giving the AGC extra time (by not filing for default judgment) when they sought an extension of time claiming they needed it to secure a mandate to represent all the Defendants, and prepare a “response to his claim” (an expression Mr. Best understood to be a reference to an incoming statement of defence, which was ultimately never filed since the AGC instead proceeded with the Motion to Strike).
- [18] However, it should be noted that his reply motion record is still not part of the Court’s record. The Plaintiff -and his father who communicated by email with the Registry on his behalf on several occasions - has repeatedly explained he has had a hard time filing documents with the Court. On June 6, 2025, the Plaintiff’s father wrote to the Registry stating that an employee at the facility where his son is housed “has attempted to fax the ‘reply to the defendant’s response to the motions to appeal’ several time (at least 19 times) but has been unsuccessful”. He further explained that the Plaintiff would therefore send his reply “via Express Post as soon as possible along with failed fax logs”. However, this Express Post was never received. In fact, in July 2025, a Justice of this Court asked the Registry to follow-up with the Plaintiff (through his father) and the Defendants to validate this Express Post delivery. As of May 14, 2026, the Registry had not received anything, and they had not heard back from the Plaintiff or his father.
- [19] The Court accepts the premise that communication with litigants who are imprisoned in carceral institutions can be more difficult. For example, the Court’s docket shows that the Plaintiff’s affidavit of service, confirming that his Statement of Claim had been served on the Defendants, was received no less than 11 times on the same day. Still, even if the Court was to reconsider, vary, or quash on appeal the Order granting the Motion to Strike, the Court cannot adjudicate the Motion to Strike without having access to the Plaintiff’s responding record, which has yet to be filed a year after the filing of the Motion. This is a substantial issue.

- [20] Furthermore, the way in which the different motions were included in Mr. Best's record is not proper. That said, given the complex procedural context described above and the fact that the Plaintiff is a self-represented litigant, the Court will accept to consider them as if they were properly before it. This is what the Defendants suggested when they wrote that they "take no issue with both the extension and substantive motion being considered together and invites [sic] the Court to evaluate the merit of the underlying motion in determining whether to grant an extension to allow that motion to be filed", and the Court agrees.
- [21] The Defendants plead that the issue of whether an extension of time to commence the appeal or seek a reconsideration or a variance is determinative. If no extension of time is granted, then the Motion is not properly before the Court and should not be entertained because, as long as the Order granting the Motion to Strike stands, the doctrine of *functus officio* applies.
- [22] According to the AGC, no extension of time is warranted here because Mr. Best has not proven his continued intention to contest the Order and his Motion is, in any event, devoid of merit. In the alternative, the AGC claims that, should an extension of time be granted, the Motion must still fail, be it under section 397 of the Rules (which deals with reconsideration) or under section 399 (which deals with variance) because "relief, under either rule, is not applicable or appropriate". Last, they propose that if the Plaintiff "takes issue with the April 22 Order, the appropriate recourse is to seek an appeal, pursuant to Rule 51 of the Federal Courts Rules". However, they submit that an appeal was not part of the reliefs sought by the Plaintiff.
- [23] The Court disagrees. This appeal is mentioned in the Plaintiff's notice of motion and is discussed in his written representations. From a holistic review of the record, it is clear that Mr. Best continuously intended to explore and plead either that the Order be reconsidered (pursuant to section 397 of the Rules), or that it be varied (pursuant to section 399 of the Rules), or that it be quashed on appeal (pursuant to section 51 of the Rules).

III. Analysis [24] First of all, the Court is well acquainted with and intends to abide by the Statement of Principles on Self-represented Litigants and Accused Persons established by the Canadian Judicial Council and endorsed by the Supreme Court of Canada in *Pintea* (at para 4), which the Plaintiff cites. This Court relied upon and applied these principles in *Belisle v Canada (Attorney General)*, 2025 FC 1370 (see paras 31-47). The Court further recognizes that inmates face specific barriers in accessing the courts. However, this does not mean that the law, including the Rules as concerns procedure, do not apply to self-represented litigants. These Rules apply to everyone (*Davis v Canada (Royal Canadian Mounted Police)*, 2024 FCA 115 [Davis] at para 53), inmates included (see *MacDonald v Canada (Attorney General)*, 2017 FC 2 at para 30 cited in *Davis* at para 53).

[25] Second, the Defendants are correct in proposing that the issue of whether an extension of time to commence the appeal (or seek a reconsideration or a variance) is determinative. If no extension of time is granted, then the Motion is not properly before the Court and cannot be considered. As long as the Order granting the Motion to Strike stands, the doctrine of *functus officio* applies and no judge of this Court can issue a decision contradicting what one of their colleagues has decided.

A. The nature of the Motion: reconsideration, variance or quashing on appeal [26] Much of the Defendant's arguments is a challenge on the nature of the Motion filed by the Plaintiff. The Defendants first suggest that the Motion did not contemplate an appeal. They then blame Mr. Best for focusing on the avenue of a reconsideration and claim that he should have gone with an appeal. However, the directions that Associate Judge Crinson issued on May 20, 2025 (once he became aware of the fact that the Registry had failed to put Mr. Best's Informal Motion before him in due course), specifically reserved the Plaintiff's right to file a "request for reconsideration" and a "formal motion for an extension of time", without mentioning the possibility of an appeal. There is no reason to fault this self-represented Plaintiff for his failure to grasp whether his Motion ought to be one to reconsider, vary or to appeal, when a judge of this Court suggested that reconsideration might be the proper avenue.

[27] The Court agrees with the Defendants that reconsiderations and variances are exceptional remedies rather than the means by which a Court can revisit the substance of its decision, essentially because they offend the finality of judgments, a cornerstone of our legal system (*Janssen Inc v Abbvie Corporation*, 2014 FCA 176 at paras 35-36; *Collins v Canada*, 2011 FCA 171 at para 12; *Tanczos v Canada (Attorney General)*, 2024 FC 626 [Tanczos] at paras 11-12; *TMR Energy Ltd v State Property Fund of Ukraine*, 2005 FCA 28 at para 32).

[28] After having reviewed the parties' submissions on both motions for reconsideration under section 397 of the Rules and variance under section 399 of the Rules, the Court is not convinced that either of these avenues could not have been considered given the specific circumstances of the present matter. However, given the Defendants' suggestion that an appeal was most proper, the Court will entertain the Motion as if it were a motion to appeal the Order. In any event, it does not impact the end result of the present judgment.

[29] That said, while appeals of the discretionary orders of an Associate Judge might not be as extraordinary as reconsideration or variance, the threshold applicable is also high. Appeals can only be disturbed "where (a) they are clearly wrong, in the sense that the exercise of discretion was based upon a wrong principle or a misapprehension of the facts, or (b) in making them, the [Associate Judge] improperly exercised his or her discretion on a question vital to the final issue of the case" as the Supreme Court explained in *ZI Pompey Industrie v ECU-Line NV*, 2003 SCC 27 at paragraph 18 (cited approvingly and applied in *Moudgill v Canada*, 2014 FCA 90 at paras 7-8; *Canada (The Attorney General) v Aéroports de Montréal*, 2016 FC 775 at para 19).

B. The extension of time is denied [30] The test for a motion for an extension of time under section 8 of the Rules requires the moving party (here, the Plaintiff) to demonstrate a) a continuing intention to pursue the proceeding; b) that the Action has some merit; c) that no prejudice to the Defendants arises from the delay; and d) that a reasonable explanation for the delay exists (*Greenblue Urban North America Inc v Deeproot Green Infrastructure, LLC*, 2024 FCA 19 [Greenblue] at para 6; *Canada (Attorney General) v Larkman*, 2012 FCA 204 [Larkman] at para 61; *Canada (Attorney General) v Hennelly*, 1999 CanLII 8190 (FCA) [Hennelly] at para 3). The burden is on the Plaintiff to prove each of these elements (*Greenblue* at para 6; *Virdi v Canada (Minister of National Revenue)*, 2006 FCA 38 at para 2).

- [31] A decision to grant or refuse an extension of time is discretionary and the above-mentioned factors are not determinative. It is also not absolutely necessary for all four factors to be resolved in the applicant's favour for the Court to grant an extension of time (see *Whitefish Lake First Nation v Grey*, 2019 FCA 275 [Whitefish] at para 3; *Larkman* at para 62). These factors are nonetheless helpful to determine whether the granting of an extension is in the interest of justice, which is the overarching question (*Whitefish* at para 3; *Larkman* at para 62).
- [32] The Hennelly framework and the principles laid out above apply to the question of whether the Court should entertain a motion to appeal filed beyond the 10-day window provided for in section 51 of the Rules (see e.g. *Petre v Canada (Royal Canadian Mounted Police)*, 2024 FC 1768 at paras 1, 47-48), just as they apply to other types of extensions of time.
- [33] In the circumstances of the case at bar, the Court is convinced that the Plaintiff had a continuing intention to challenge the Order and that a reasonable explanation for the delay exists. The Defendants are correct in stating that "it is not enough to cite general alleged restrictions on incarcerated individuals' access to resources". Ideally, Mr. Best should have articulated the reasons for his delay in filing the appeal in detail, with specificity, explaining how the limitations on his access to resources that result from his incarceration and his issues in reaching the outside world impacted this specific filing. However, the record is still clear, and the Court accepts his submissions on these points.
- [34] The Defendants are also correct in stating that the fact that Mr. Best is a self-represented inmate "does not grant him additional rights or afford him different timelines or procedures in this Court." (citing *Scheuneman v Canada*, 2003 FCT 37 at para 4; *Tanczos* at paras 20-21). That said, this is not a case where ignorance of the law is used as an excuse to ignore rules of procedure. The reasons provided for the short delay in the present matter are reasonable.
- [35] Although the Defendants claim that Mr. Best does not "indicate[s] that he had a continuing intention to pursue such a motion" nor provides sufficient evidence to prove it, the Court notes that both Mr. Best's affidavit and his written representations are dated May 6, 2025, so they were signed just four days after the ten-day window had closed. Further, Mr. Best indicated in his affidavit that he became aware of the Order granting the Motion to Strike only on April 29, 2025, the day his parents received it, given that he had asked that all

communications be addressed to their home rather than the penitentiary. He served his Motion on the Defendants on May 14, 2025. Given the well-documented issues that Mr. Best has had in filing documents with the Registry of this Court and in serving documents, the delay between those dates and the date on which the record was eventually filed (June 3, 2025) should not be held against him. This delay is reasonably explained by the allegation that Mr. Best simply did not know that the Order had been rendered.

- [36] Regarding whether entertaining this late appeal would cause prejudice to the Defendants, the AGC relies on 1) the public interest in the finality of decisions, which Canadian Courts have repeatedly highlighted (see e.g. *Cossy v Canada Post Corporation*, 2021 FC 559 at para 21; *Clinique Sherbrooke inc v His Majesty the King*, 2023 FC 1755 at para 36) and 2) the fact that the individual Defendants will be personally prejudiced if the action is re-opened.
- [37] Although Mr. Best did not build his representations around the Hennelly factors, given the conclusions laid out above regarding the short and reasonable delay at play here, the Court is not convinced that these considerations justify preventing the Plaintiff from contesting Order granting the Motion to Strike which, as a result of an error of the Registry, was made without consideration for the Informal Motion he had managed to file in due course.
- [38] All that being said, and even if three of the four Hennelly factors are found to weigh in his favour, the Court is far from convinced that granting the Motion would be in the best interest of justice. The Plaintiff does not articulate any ground supporting his Motion other than the fact that the Order was made before his Informal Motion was put before the decision maker. This is not sufficient.
- [39] First, even assuming that the Informal Motion would have been considered by Associate Judge Crinson, had it been brought before him in due course, the Defendants correctly note that this Informal Motion did not meet the requirements for an informal request for interlocutory relief set out in paragraph 41 of the Federal Court's Amended Consolidated General Practice Guidelines (in their then applicable version dated December 20, 2023). Given that the AGC had not given its consent, AJ Crinson would have had to deny the Informal Motion. In fact, this is exactly what Associate Judge Crinson indicated in his direction of May 20, 2025.
- [40] Given that this is the only submission that the Plaintiff pleads to support the Motion, it is clearly insufficient.
- [41] Second, as previously mentioned, the threshold is high when it comes to the appeal of the discretionary order of an Associate Judge. The Plaintiff did not allege any ground of appeal that would meet this high threshold. For instance, he did not allege that Associate Judge Crinson based his decision on a wrong principle, that he misapprehended the facts, or that he was acting outside his jurisdiction. Furthermore, after reviewing the matter, the Court has not found any basis on which it could find that Associate Judge Crinson made such mistakes that it would warrant an appeal.

[42] Therefore, the Motion regarding the extension of time to commence the appeal of the Order granting the Motion to Strike (or to seek a reconsideration or a variance of that Order) is dismissed.

[43] Although the Court is functus officio, in order to do justice between the parties and as suggested by the AGC, the Court will briefly discuss the merits of the Motion.

C. The merits of the Motion [44] The law regarding motions to strike was summarized by the Federal Court of Appeal in *Davis* at paragraph 58 and following:

[58] The case law tells us that a statement of claim should not be struck unless it is plain and obvious that the action cannot succeed, assuming the facts pleaded in the statement of claim to be true: *Hunt v. Carey Canada Inc.*, 1990 CanLII 90 (SCC), [1990] 2 S.C.R. 959, [1990] S.C.J. No. 93 at 980; *Pro-Sys Consultants Ltd. v. Microsoft Corporation*, 2013 SCC 57 at para. 63. In other words, the claim must have no reasonable prospect of success: *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42 at para. 21.

[59] The threshold that a plaintiff must meet to establish that a claim discloses a reasonable cause of action is a low one: *Brake v. Canada (Attorney General)*, 2019 FCA 274 at para. 70. A claim must, moreover, be read generously, in a manner that accommodates any inadequacies in the allegations that are merely the result of deficiencies in the drafting of the document: see *Operation Dismantle Inc. v. The Queen*, 1985 CanLII 74 (SCC), [1985] 1 S.C.R. 441, [1985] S.C.J. No. 22 at 451.

[60] Judges should refrain from delving into the merits of a plaintiff's argument on a Motion to Strike, but should, rather, consider whether the plaintiff should be precluded from advancing the argument at all: *Salna v. Voltage Pictures, LLC*, 2021 FCA 176 at para. 77. Recognizing that the law is not static, judges must also err on the side of permitting novel, but arguable claims to proceed to trial: *R. v. Imperial Tobacco*, above at paras. 19-25; *Mohr v. National Hockey League*, 2022 FCA 145 at para. 48, leave to appeal to SCC refused, 40426 (20 April 2023).

[61] That said, it must also be recognized that there is a cost to access to justice in allowing cases that have no substance to proceed. The diversion of scarce judicial resources to such cases diverts time away from potentially meritorious cases that require attention: *Mohr*, above at para. 50; *Coote v. Lawyers' Professional Indemnity Company*, 2013 FCA 143 at para. 13.

[45] The Court acknowledges that the process before the Federal Court has not been as smooth as it should have been, including due to inadvertent omissions committed by the Court's overworked and overflowed Registry. The frustration that this situation can create is understandable.

[46] However, having reviewed the Plaintiff's Statement of Claim, the Court finds that Associate Judge Crinson did not err when he concluded:

it is plain and obvious that the pleading discloses no reasonable cause of action and fails to establish a reasonable cause of action since it fails to allege facts that are capable of giving rise to a cause of action against each defendant and fails to indicate for each defendant the nature of the action which is to be founded on those facts.

- [47] This is true even when the claims are read generously and those “inadequacies in the allegations that are merely the result of deficiencies in the drafting of the document” are ignored. It is simply impossible to surmount the fact that the allegations are not clearly particularized as against every individually named Defendant. Sections 174 and 181 of the Rules provide that pleadings must “contain a concise statement of the material facts on which the party relies” and “particulars of every allegation” they contain, especially those allegations that relate to fraud or claim that a person acted with a specific state of mind including malice. The goal of these rules is to ensure that Defendants know of the “who, when, where, how and what” so they can prepare their defence (see *Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227 at paras 17-20). In *Merchant Law Group v Canada Revenue Agency*, 2010 FCA 18, the Federal Court of Appeal confirmed again that “[w]hen 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”” (at para 34). As explained in *Brink v Canada*, 2024 FCA 43 [Brink] at paragraph 58: “Plaintiffs can neither file inadequate pleadings and rely on defendants to request particulars, nor supplement insufficient pleadings to make them sufficient through particulars”.
- [48] In the case at bar, Mr. Best notably claims that “[t]he Defendants, or any one of them, “abused their position of power over (him) to harm (him)”, that they “libelously and slanderously defamed (him)”, “caused harm (to him) directly; through complicity; and through conspiracy” but also “through negligence” and “through intentional actions”. He also alleges that the Defendants “or any one of them” “fulfilled their required duties with malicious compliance” and “intentionally inflicted mental suffering (on him)”. He clearly imparts a specific state of mind to the eleven individuals whom he identifies (or at least some of them). The allegations relate to incredibly grave misconduct and while particulars are given regarding the specific actions or omissions of some of the Defendants, the allegations made against each of them vary widely. It is therefore unclear which causes of action attaches to which Defendant exactly. Further, the allegedly slanderous and libellous statements attributed to both CSC personnel and members of the PBC are not listed. Furthermore, regarding some of the other Defendants, the only allegations found in the statement of claim concern their role within the Correctional Service of Canada. Their alleged wrongdoings are never identified. Last, there is no allegation articulating how the alleged conspiracy came to be, who was involved in it, how it worked and what each co-conspirator did. In this regard, although the factual context is notably different, the situation is essentially the same as in *Jensen v Samsung Electronics Co Ltd*, 2023 FCA 89 [Jensen] where the Federal Court of Appeal reaffirmed that “conspiracy allegations must be particularized with respect to the acts alleged against each of the co-conspirators” (see paras

59-64). Many allegations set forth represent the kind of “bald allegations of conclusions” that our jurisprudence has routinely distinguished from the allegations of material facts required by the Rules (see e.g. Brink at paras 52-58; Jensen at paras 16, 38, 47-49). The Motion would therefore have also been dismissed on the merits.

D. Costs [49] The Defendants seek costs on this Motion, without specifying a quantum. They argue that the Plaintiff’s “non-compliance and inappropriate attempts to cure that non-compliance has unduly complicated this matter and strained the Court’s resources by needlessly occupying its valuable time. It is unduly burdensome for the [Defendants] to have to respond to this Motion, which is in effect several motions rolled into one, particularly where, as here, the [Plaintiff]’s materials are significantly deficient.” Although the Plaintiff’s Motion does indeed include many motions submitted together, and although his record is deficient in some regards, the Court exercises its discretion to deny any costs (s 400(1) of the Rules (Auburn v Canada (Attorney General), 2025 FC 785 at para 61; Lalonde v Canada (Revenue Agency), 2023 FC 41 at para 97; Hu v Canada (Attorney General), 2023 FC 1590 at para 36, aff’d 2024 FCA 215; Showers v Canada (Attorney General), 2022 FC 1183 at para 32).

[50] Amongst the considerations justifying this decision regarding costs, the Court notes that (1) although the Defendants exerted a large amount of time and energy to attempt to prove that this case was not proper for a motion for reconsideration, they failed to acknowledge that Associate Judge Crinson had himself suggested that such a motion could be the proper avenue; (2) the Defendants did not identify any decision in which Canadian Courts found that the failure to consider a motion filled in due course cannot give rise to a motion for reconsideration under section 397 of the Rules or a motion for variance under section 399 of the Rules when it is caused by circumstances outside the moving party’s control and, in fact, this is far from obvious; (3) although his Action was bound to fail, the positions Mr. Best has taken since the beginning of the proceeding -especially when he accepted not to file for default judgment, at the AGC’s express request- suggests he was intent to make his case without abusing the process.

JUDGMENT in T-3600-24

THIS COURT’S JUDGMENT is that :

1.The Plaintiff’s motion for an extension of time to commence his appeal, and for a reconsideration, a variance, or a quashing of the Order dated April 22, 2025, is dismissed.

2.No costs are awarded.

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“Danielle Ferron”

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Judge

FEDERAL COURT

SOLICITORS OF RECORD

Docket:

T-3600-24

STYLE OF CAUSE:

CASEY BEST v. LISA RACICOT ET AL.

MOTION IN WRITING CONSIDERED AT MONTRÉAL, QUÉBEC PURSUANT TO RULE 369 OF THE
FEDERAL COURTS RULES

reasons and JUDGMENT:

FERRON J.

DATED:

MAY 15, 2026

WRITTEN REPRESENTATIONS BY:

Casey Best

ON HIS OWN BEHALF

Andrew Eyer

Rahemah Siddiqui

For The Defendants

SOLICITORS OF RECORD:

Attorney general of Canada

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For The defendants

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Prepared on 24 October 2026 · Esheria