

CANADA / JUDGMENT

Cannon v. Canada

2024 FC 1746

COURT

Federal Court

DECIDED

4 November 2024

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Cannon v. Canada

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Date

2024-11-04

Neutral citation

2024 FC 1746

File numbers

T-2040-24

Decision Content

Date: 20241104

Docket: T-2040-24

Citation No.: 2024 FC 1746

Ottawa, Ontario, November 04, 2024

PRESENT: The Honourable Mr. Justice Duchesne

BETWEEN:

RICHARD CANNON

Plaintiff

and

HIS MAJESTY THE KING IN RIGHT OF CANADA

Defendant

ORDER

- [1] The Defendant has brought a motion in writing pursuant to Rule 369 of the Federal Courts Rules, SOR/98-106 (the “Rules”) for an Order pursuant to Rules 221(1)(a) and (c) of the Rules striking out the Plaintiff’s Statement of Claim without leave to amend.
- [2] The September 23, 2024, Solicitor’s Certificate of Service in the Court file reflects that the Defendant validly served his motion record upon the Plaintiff through his solicitor of record by email on September 23, 2024. The time within which the Plaintiff could serve and file a respondent’s record pursuant to Rule 369(2) of the Rules has expired without the Plaintiff having filed a respondent’s record. The Court file does not reflect any motion by the Plaintiff, whether formal or informal, for an Order extending the time for him to serve and file a respondent’s record. The Defendant’s motion shall therefore proceed as an unopposed motion in writing pursuant to Rule 369(1) of the Rules.
- [3] For the reasons that follow the Defendant’s motion is granted, the Statement of Claim is struck without leave to amend and this proceeding is dismissed with costs payable to the Defendant.

I. The law applicable to a motion to strike [4] The law applicable to a motion to strike pursuant to Rule 221(1)(a) of the Rules is well established and was summarized by Justice Pentney in *Fitzpatrick v. Codiac Regional RCMP Force, District 12, and Her Majesty the Queen*, 2019 FC 1040, as follows:

- [13] Rule 221(1) of the Federal Courts Rules, SOR/98-106 [Rules], sets out the framework that applies to this motion:

Motion to strike

Requête en radiation

221 (1) On motion, the Court may, at any time, order that a pleading, or anything contained therein, be struck out, with or without leave to amend, on the ground that it

- (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,
- (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.

Evidence

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

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;
- 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.

Preuve

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

[14] As noted above, the law governing a motion to strike seeks to protect the interests of the plaintiff in having his or her “day in court,” while also taking into account the important interests in avoiding burdening the parties and the court system with claims that are doomed from the outset. In order to achieve this, the courts have developed an analytical approach and a series of tests that apply in considering a motion to strike.

[15] The test for a motion to strike sets a high bar for defendants, and the onus is on the defendant to satisfy the Court that it is plain and obvious that the pleading discloses no reasonable cause of action, even assuming the facts alleged in the statement of claim to be true: *R v Imperial Tobacco Canada Ltd*, 2011 SCC 42 at para 17; *Hunt v Carey Canada Inc*, 1990 CanLII 90 (SCC), [1990] 2 SCR 959 at p 980. Rule 221(2) reinforces this by providing that no evidence shall be heard on a motion. In view of this Rule, the further evidence submitted by the Plaintiff in his response to the motion to strike cannot be considered.

[16] The facts set out in the statement of claim must be accepted as true unless they are clearly not capable of proof or amount to mere speculation. The statement of claim must be read generously, and mere drafting deficiencies or using the wrong label for a cause of action will not be grounds to strike a statement of claim, particularly when it is drafted by a self-represented party.

- [17] Further, the statement of claim must set out facts that support a cause of action – either a cause of action previously recognized in law, or one that the courts are prepared to consider. The mere fact that a cause of action may be novel or difficult to establish is not, in itself, a basis to strike a statement of claim. Related to this, the claim must set out facts that support each and every element of a statement of claim.
- [18] As explained by Justice Roy in *Al Omani v Canada*, 2017 FC 786 at para 17 [Al Omani], “[a] modicum of story-telling is required.” The law requires, however, a very particular type of story to be set out in a statement of claim – one which describes the events which are alleged to have harmed the plaintiff, focused only on the “material facts,” and set out in sufficient detail that the defendant (and the Court) will know what the specific allegations are based on, and that they support the specific elements of the various causes of action alleged to be the basis of the claim.
- [19] The Court generally shows flexibility when a party is self-represented, but this does not exempt the party from complying with the rules set out above: *Barkley v Canada*, 2014 FC 39 at para 17. The reason for this is simple – it is not fair to a defendant to have to respond to claims that are not explained in sufficient detail for them to understand what the claim is based on, or to have to deal with claims based on unsupported assumptions or speculation. Neither is it fair to the Court that will have to ensure that the hearing is done in a fair and efficient manner. A court would have difficulty ruling that a particular piece of evidence was or was not relevant, for example, if the claim is speculative or not clear. This will inevitably lead to “fishing expeditions” by a party seeking to discover the facts needed to support their claims, as well as to unmanageable trials that continue far longer than is appropriate as both sides try to deal with a vague or ever-changing set of assertions.
- [20] A degree of flexibility is needed to allow parties to represent themselves and to have access to the justice system; but flexibility cannot trump the ultimate demands of justice and fairness for all parties, and that is what the Rules and the principles set out in the cases seek to ensure.
- [5] Rule 221(1)(c) is concerned with whether a pleading or anything contained therein is scandalous, frivolous or vexatious. A pleading that is scandalous, frivolous, or vexatious, has been described as follows in *Specialized Desanders Inc. v. Enercorp Sand Solutions Inc.*, 2018 FC 689 (CanLII) at para 43:
- “A scandalous, vexatious or frivolous action may not only be one in which the claimant can present no rational argument, based upon the evidence or law, in support of the claim, but also may be an action in which the pleadings are so deficient in factual material that the defendant cannot know how to answer, and a court will be unable to regulate the proceedings, is an action without reasonable cause, which will not lead to a practical result.”*
- [6] A pleading is also scandalous, frivolous, or vexatious when it, as in *Steiner v R*, 1996 CanLII 3869 (FC), “[...] improperly casts a derogatory light on someone, with respect to their moral character. A claim is frivolous where it is of little weight or importance or for which there is

no rational argument based upon the evidence or law in support of the claim. A vexatious proceeding is one that is begun maliciously or without a probable cause, or one which will not lead to any practical result” (Zhao-Jie v. TD Waterhouse Canada Inc., 2024 FC 261 (CanLII) at para 7; Sauve v. Canada, 2010 FC 217 (CanLII) at para 38).

- [7] Justice Pentney’s summary of the applicable rules on a motion to strike as reproduced above can be expanded upon with respect to the notion of pleading material facts. Rule 174 of the Rules requires that a pleading contain a concise statement of the material facts on which the party relies without pleading the evidence by which those facts are to be proved. What constitutes a material fact is determined in light of the cause of action and the relief sought. A plaintiff must plead the constituent elements of each cause of action or legal ground raised in summary form but with sufficient detail. The pleading must tell the defendant who, when, where, how and what gave rise to its liability (Mancuso v. Canada (National Health and Welfare, 2015 FCA 227 (CanLII) at paras 17 to 19).
- [8] Although the applicable Rule and the origins of the Court’s power to strike a pleading differ in light of whether the underlying proceeding is an application or an action, the core of the Court’s approach to allegations contained in the pleading is unchanged. Allegations of fact that are patently ridiculous, incapable of proof, based on assumptions or speculations, inconsistent with common sense, are vague generalizations, or otherwise not supported by any other material particulars or pleaded facts are not to be considered as true for the purposes of the Courts analysis on a motion to strike. They are bald statements or assertions that are to be given no weight because they are conclusions upon which the Court is called upon to pronounce itself; they are not allegations of material fact (Empire Company Limited v. Attorney General of Canada, 2024 FC 810, at paras 22 and 23). They may also serve as the basis upon which the Court may find that a pleading is an abuse of process (Merchant Law Group v Canada Revenue Agency, 2010 FCA 184 at para 34).
- [9] Pleadings that assert bald conclusions of law are not proper. Pursuant to Rule 175 of the Rules, a conclusion of law may be pleaded, but the material facts to give rise to such a conclusion must be pleaded elsewhere in the pleading. Doing otherwise may be an abuse of process (Merchant Law Group v Canada Revenue Agency, 2010 FCA 184 at para 34).

II. The Statement of Claim [10] The Plaintiff’s Statement of Claim is a brief 16 paragraphs with a repetitive prayer for relief at its paragraph 1, as follows:

1. The plaintiff claims:
 - a. Compensatory damages for intentional infliction of emotional harm, for false imprisonment and for the negligence of the Defendant’s servants as evidenced by the Corrections and Conditional Release Act S.C. 1992 c.20 (the CCRA) in the amount of \$50,000;

- b. Compensation under the Canadian Charter of Rights and Freedoms, s 2, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11 a. (the Charter) for the defendant's servant's breach of the Plaintiff's right freedom of association in the amount of \$50,000;
- c. Compensation in the amount of \$50,000 in punitive damages arising from the defendant's servants' arrogant and wilful breach of their duty to care to protect the inmate Plaintiff against harm as set out herein.
- d. Compensation in the amount of \$100,000 for deliberate infliction of emotional harm, for false imprisonment and for breach of the Plaintiff's freedom of association under s.2 of the Charter based on an on-going illegal practice of harassment of inmates who are in romantic relationships with staff members or agents working for, or providing services for, the Correctional Service.
- e. Pre-judgment and post-judgment interest pursuant to the Federal Court Act, R.S.C. 1985, c F-7;
- d. His costs in this action on a substantial indemnity basis.

Facts and Pleadings

- 2. The Plaintiff, a resident of Bath Institution, a medium security facility operated by the servant of the Defendant, the Correctional Service of Canada, was an acquaintance of Ms. Natalie Doreen ("Natalie"), an employee of the Defendant. Natalie's contract ended July 13 and when she was leaving she gave Ric her number and he called and they then started a more personal relationship. Prior to that they made sure to keep things professional and respected all rules respecting staff-inmate interactions.
- 3. There was nothing inappropriate or contrary to institutional rules about the couples' conduct during this relationship other than it not being deemed appropriate by the defendant's servants.
- 4. In the alternative, there was nothing inappropriate in this relationship that justified the sanctions imposed against the Plaintiff or prevented alternative measures being taken to address the purport improprieties involved in the relationship.
- 5. CSC did a communication intercept of a phone call between the Plaintiff and Natalie on or about July 21-23, 2023 well after Natalie's contract ended.
- 5. The Plaintiff was involuntarily transferred to Collins Bay Institution, an institution with more restrictive conditions of confinement on or about July 13, 2023, where he has continued to be harassed and denied visits with both Ms. Doreen and Ms. Angela Dennison, a close friend. There was no reason to effect this transfer under law or regulation.

6. In particular the misconduct violated his right of association with the ladies pursuant to s.2 of the Charter.
7. The conduct of the defendant's servants in denying him association with the ladies and in involuntarily transferring him to an institution with more restrictive conditions of confinement constitute false imprisonment.
- 8 Mistreatment and ostracization of participants in inmate-staff is a practice among CSC staff with a long history. It is based on no legal or policy basis. It is simple bias, the harbinger of a baseless custodial culture that has existed for many years, without remedy from prison managers and to the great detriment of inmates and their romantic partners.
9. Plaintiff is an indigenous offender and when his spiritual bundle was packed up for transfer staff did not follow their own regulations in respecting the content, and they admitted this in their response to Plaintiff's grievance. They put his effects in a garbage bag!
10. Staff added a Staff Safety Alert to Plaintiff's file and raised all security scores.
11. Because of this staff has ostracized Plaintiff and made it seem like the staff are in danger from him. He has no institutional charges and has completed his program. Also because of this.

Alert no halfway houses will accept him.

12. Staff has wrongly made accusations about Plaintiff's conduct toward Ms. Dennison. They have written in his reports that he is abusive and controlling towards her. CSC has never spoken to Ms. Dennison about these reports and their claims are not true!
13. Because of all of this staff are trying to make subject the Plaintiff to an intense supervision order when he is released. They are making him seem like a womanizer.
14. To sanction the attitudes and actions leading to this staff behaviour and to deter further misconduct this Honourable Court should imposed punitive damages in this matter.
10. The Defendant is vicariously liable for the misconduct of his servants (CSC staff) committed in the exercise of their duties and functions.

All of which is respectfully submitted.

The Plaintiff proposes that the matter be tried in Ottawa.

III. Analysis [11] The Defendant has not filed any affidavit evidence on this motion although it was open to him to file affidavit evidence in support of his Rule 221(1)(c) arguments that the Plaintiff's claims is scandalous, frivolous or vexatious. The Court's analysis must therefore proceed on the basis of the pleading itself without more.

- [12] The Defendant argues that none of the Plaintiff's four pleaded causes of action constitute reasonable causes of action pursuant to Rule 221(1)(a) of the Rules because the pleading is, contrary to Rule 174, devoid of the material facts necessary to ground any of the causes of action advanced.
- [13] The Plaintiff's asserted causes of action are:
- (1) breach of his right to freedom of association pursuant to paragraph 2(d) of the Charter;
 - (2) false imprisonment;
 - (3) intentional infliction of emotional harm; and,
 - (4) negligence.
- [14] Each of these alleged causes of action will be considered in light of the allegations contained in the pleading and the requirements of pleading applicable to each.
- a) Breach of the freedom of association [15] The Plaintiff argues that the Defendant's actions through Correctional Services Canada (the "CSC"), specifically the act of involuntarily transferring him from the Bath medium security institution in Millhaven, Ontario, some 25 or so kilometers from Kingston, Ontario, to the Collins Bay Institution, another medium security institution in Kingston, Ontario, violated his alleged subsection 2(d) Charter right of freedom of association by unlawfully violating his right of association with two women with whom he has personal relationships.
- [16] The Defendant argues that the Ontario Court of Appeal decision in *Mussani v. College of Physicians and Surgeons of Ontario*, 2004 CanLII 48653 (ON CA) ("*Mussani*") is dispositive of the claim advanced and establishes that the Plaintiff's cause of action is unfounded in law, regardless of the paucity of material facts alleged. I agree with the Defendant.
- [17] The Ontario Court of Appeal held at para 107 in *Mussani* that:
- [107] Section 2(d) is designed to promote social interaction and collective action of a mostly public nature, however. It has not been applied to protect intimate personal relationships. See, for example, *Catholic Children's Aid Society of Metropolitan Toronto v. S. (T.)* (1989), 1989 CanLII 259 (ON CA), 69 O.R. (2d) 189, [1989] O.J. No. 754 (C.A.), at pp. 203-04 O.R. (access to child by birth parents after adoption); *R. v. S. (M.)*, 1996 CanLII 17945 (BC CA), [1996] B.C.J. No. 2302, 111 C.C.C. (3d) 467, (C.A.), at p. 474 C.C.C. (sexual relations between parent and child); *R. v. Skinner*, 1990 CanLII 107 (SCC), [1990] 1 S.C.R. 1235, [1990] S.C.J. No. 51 (soliciting prostitution); *Horbias and Horbias v. Minister of Employment and Immigration* (1985), 1985 CanLII 5559 (FC), 22 D.L.R. (4th) 600, [1985] 2 F.C. 359 (T.D.) (the right of spouses to cohabit); *Gray v. Canada (Minister of Manpower and Immigration)*, [1985] F.C.J. No. 407 (T.D.) (the right to marry). In my view, s. 2(d) does not protect the right of a health professional to have sexual intercourse with a patient. (the emphasis is mine)

- [18] The specific issue before the Court in *Mussani* was whether a medical doctor's right to have sexual intercourse with a patient was captured by subsection 2(d) of the Charter. As reflected above, the Court held that the freedom of association protected by subsection 2(d) Charter does not apply to interpersonal relationships. This principle from *Mussani* is applicable here and is consistent with the Supreme Court of Canada's decision in *Dunmore v. Ontario (Attorney General)*, 2001 SCC 94 at paras 15 and 57, that subsection 2(d) of the Charter is meant to protect and advance the collection action of individuals in pursuit of their common goals and for public purposes, not for personal relationships.
- [19] The Plaintiff's claims based on subsection 2(d) of the Charter therefore fails to disclose a reasonable cause of action.
- b) False Imprisonment [20] The Plaintiff's claims for damages for false imprisonment are alleged to arise from "The conduct of the defendant's servants in denying him association with the ladies and in involuntarily transferring him to an institution with more restrictive conditions of confinement constitute false imprisonment". The matter of the Plaintiff's association with women in a personal relationship was dealt with above and need not be revisited under the heading of false imprisonment.
- [21] The tort of false imprisonment is comprised of three constituent elements: 1) the restriction of the plaintiff's movement; 2) against the plaintiff's will; and 3) that the restriction by the defendant was intentional. If the Plaintiff establishes these elements, then the onus shifts to the Defendant to justify his actions (*Hermiz v. Canada*, 2013 FC 288 at para 90).
- [22] The Plaintiff's allegations of false imprisonment are bald and conclusory statements that do not meet the Rule 174 and Rule 181(1)(b) requirements to plead material facts and particulars sufficient to tell the Defendant the who, when, where, how and what that gives rise to his alleged liability for false imprisonment (*Mancuso v. Canada (National Health and Welfare)*, 2015 FCA 227 (CanLII) at paras 17 to 19; *Empire Company Limited v. Attorney General of Canada*, 2024 FC 810 at paras 22 and 23; *Merchant Law Group v Canada Revenue Agency* 2010 FCA 184 at para 34). The baldness of the statements leads to the conclusion that the Court is not to consider the allegation as true for the purposes of the analysis on a motion to strike or to give the allegation any weight in determining whether a reasonable cause of action is pleaded.
- [23] As the pleading fails to allege sufficient material facts or particulars to support the alleged intentional cause of action of false imprisonment, the Court must conclude pursuant to Rule 221(1)(a) that the Plaintiff has not pleaded a reasonable cause of action in false imprisonment.
- c) Intentional infliction of emotional harm [24] The Plaintiff seeks compensatory damages for the intentional infliction of emotional harm. The emotional harm is pleaded as arising from an ongoing illegal practice of harassment of inmates who are in romantic relationships with staff members or agents working for, or providing services for, the CSC. The Plaintiff's allegation in support of this claim is contained at paragraph 8 of his pleading and reads, in

its entirety: “Mistreatment and ostracization of participants in inmate-staff is a practice among CSC staff with a long history. It is based on no legal or policy basis. It is simple bias, the harbinger of a baseless custodial culture that has existed for many years, without remedy from prison managers and to the great detriment of inmates and their romantic partners.”

- [25] A claim for damages for the intentional infliction of emotional distress requires the Plaintiff to allege and establish that CSC engaged in: (1) flagrant or outrageous conduct; (2) calculated to produce harm; (3) resulting in a visible and provable illness (*Ahluwalia v. Ahluwalia*, 2023 ONCA 476 (CanLII), at para 69; *Prinzo v. Baycrest Centre for Geriatric Care* (2002), 2002 CanLII 45005 (ON CA). The Plaintiff has not pleaded which conduct he claims has occurred with any specificity, has pleaded that neither of the identified women he has interpersonal relationships with are CSC staff at the relevant time, and has not alleged that he has suffered any provable illness, or the details of any such alleged illness, as a result of any particularly pleaded conduct.
- [26] As was the case with the Plaintiff’s claim for damages arising from false imprisonment, the pleading does not set out material facts in support of the claim for damages for the intentional infliction of emotional distress advanced and as is required by Rule 174 of the Rules (*Mancuso v. Canada* (National Health and Welfare, 2015 FCA 227 (CanLII) at paras 17 to 19; *Empire Company Limited v. Attorney General of Canada*, 2024 FC 810 at paras 22 and 23; *Merchant Law Group v Canada Revenue Agency*, 2010 FCA 184 at para 34).
- [27] The Court must conclude pursuant to Rule 221(1)(a) that the Plaintiff has not pleaded a reasonable cause of action with respect to his claim for damages arising from the intentional infliction of emotional distress.
- d) Negligence [28] In *Clements v. Clements*, 2012 SCC 32, the Supreme Court of Canada wrote at para 7 that “[r]ecovery in negligence presupposes a relationship between the plaintiff and defendant based on the existence of a duty of care — a defendant who is at fault and a plaintiff who has been injured by that fault. If the defendant breaches this duty and thereby causes injury to the plaintiff, the law “corrects” the deficiency in the relationship by requiring the defendant to compensate the plaintiff for the injury suffered.”
- [29] The elements of the tort of negligence are: (1) that the defendant owed the plaintiff a duty of care; (2) that the defendant’s conduct breached the standard of care; (3) that the plaintiff sustained damage; and (4) that the damage was caused, in fact and in law, by the defendant’s breach. To satisfy the element of damage, the loss sought to be recovered must be the result of an interference with a legally cognizable right (*1688782 Ontario Inc. v. Maple Leaf Foods Inc.*, 2020 SCC 35 (CanLII), [2020] 3 SCR 504 at para 18).
- [30] The Plaintiff’s claim of negligence is asserted by the inclusion of the word “negligence” in paragraph 1(a) of the pleading but is not particularized in any further detail at any point elsewhere in the pleading.

[31] The elements of a claim in negligence have not been pleaded and no material facts have been pleaded in support of or in connection with a claim in negligence that could be sufficient to meet the minimum material fact requirements of pleading pursuant to Rule 174 of the Rules. On this basis, it is plain and obvious that the Plaintiff has not pleaded a reasonable cause of action in negligence.

IV. Leave to Amend [32] In *Al Omani v. Canada*, 2017 FC 786, at paragraph 34, Justice Roy of this Court wrote eloquently that, “The case law teaches that a pleading will not be struck out without leave to amend unless there is no scintilla of a cause of action (*McMillan v Canada*, (1996) 108 FTR 32 [McMillan] and *Sivak*). But there must be that scintilla. As Associate Chief Justice Jerome put it in *McMillan*, “[t]he burden on the applicant under R. 419 (1)(a) is heavy one since portions of the pleadings will only be struck out if it is clear that the claim cannot be amended to show a proper cause of action.”

[33] The Plaintiff’s pleading in this instance does not set out a trace or a scintilla of a sustainable cause of action that may be saved by an amendment. Leave to amend the existing pleading will therefore not be granted.

V. Conclusion [34] The Plaintiff’s pleading does not plead a reasonable cause of action. The pleading shall therefore be struck out pursuant to Rule 221(1)(a) of the Rules, without leave to amend and the proceeding shall be dismissed as a result.

THIS COURT ORDERS that:

1. The Defendant’s motion is granted.
2. The Plaintiff’s statement of claim is struck out in its entirety pursuant to Rule 221(1)(a) of the Rules, without leave to amend.
3. This proceeding is dismissed pursuant to Rule 168 of the Rules.
4. The Plaintiff shall pay the Defendant his costs of this motion which I hereby fix pursuant to Rule 400 of the Rules at \$ 500.00, all inclusive.

Lank

“Benoit M. Duchesne”

Blank

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:

T-2040-24

STYLE OF CAUSE:

RICHARD CANNON v HIS MAJESTY IN RIGHT OF CANADA

PLACE OF HEARING:

OTTAWA, ONTARIO (IN WRITING)

DATE OF HEARING:

NOVEMBER 04, 2024

REASONS FOR JUDGMENT AND JUDGMENT:

B.M. DUCHESNE J.

DATED:

NOVEMBER 04, 2024

SOLICITORS OF RECORD:

J. Todd Sloan Kanata, Ontario

For The plaintiff

Blake Van Santen Attorney General of Canada Ottawa, Ontario

For The defendant

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Prepared on 25 October 2026 · Esheria