Ontario Court of Appeal reiterates judicial discretion to dismiss claims that are frivolous, vexatious and an abuse of process

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In *Sumner v. Ottawa (Police Services)*, 2023 ONCA 140, the Ontario Court of Appeal considered rule 2.1.01 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, which gives power to courts to dismiss a proceeding that appears on its face to be frivolous or vexatious or otherwise an abuse of the process of the court.

Claim background

The plaintiff, Sumner, brought a claim against the Ottawa Police Service (OPS) seeking:

1. injunctive relief to prohibit the OPS from interfering with Sumner's attempts to arrest Prime Minister Justin Trudeau;
2. an order requiring the OPS to "break down whatever door" the Prime Minister is behind to arrest him for extortion; and,
3. damages in tort resulting from the past failure of the OPS to arrest the Prime Minister, and because the OPS prevented Sumner from doing so himself.

Lower court's decision

The OPS was successful on their request to dismiss this action under rule 2.1.01.

In that decision, the motion judge relied on the well-established law that "in considering whether a claim ought to be struck under r. 2.1.01, the judge must read the statement of claim generously. They must assume that the assertions of fact are true unless they are obviously implausible or ridiculous…Drafting deficiencies may be overlooked and the plaintiff given the benefit of the doubt. This is particularly important if the plaintiff is self-represented."

The motion judge ultimately dismissed the action finding it to be frivolous, vexatious and an abuse of the court's process. The motion judge held that the applicant's action bore the hallmarks of vexatious litigation, including:

- bringing a proceeding "where no reasonable person would expect to obtain the relief sought";
- a pleading that recites bare assertions and legal conclusions and argument as opposed to allegations of fact; and
- a pleading that uses rhetorical questions, pseudo-legal jargon with no meaning in Canadian law, and "rambling discourse characterized by repetition and a pedantic failure to clarify".

Court of Appeal's decision

Generally, the Court of Appeal noted that a decision made under rule 2.1 is a discretionary decision and is entitled to deference. Such decisions may be set aside where the court misdirects itself or comes to a decision that amounts to injustice because it is so clearly wrong.

In the present case, the Court of Appeal upheld the motion judge's decision, finding no legal basis for interfering with the motion judge's exercise of discretion to dismiss the action. The Court of Appeal held that the motion judge had carefully applied the procedure and accurately set out the law and policy in rule 2.1.01, including reading and interpreting the statement of claim generously. The Court of Appeal agreed that, upon a generous reading of Sumner's statement of claim, the pleading bore hallmarks of frivolous and vexatious proceedings.

Key takeaways

This decision highlights the importance of precise pleadings that conform to the *Rules of Civil Procedure* governing form and content of pleadings. While pleadings, especially from self-represented litigants, will be read and interpreted generously, courts will exercise their discretion under rule 2.1.01 to dismiss actions that misuse or abuse the resources of the Ontario court system.

For more information, please reach out to the key contacts below.

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