Federal Court  Cour fédérale

Date: 20260514

Docket: T-1146-25

Ottawa, Ontario, May 14, 2026

PRESENT: Case Management Judge Catharine Moore

BETWEEN:

CANADIAN WOMEN'S SEX-BASED RIGHTS

Plaintiff

and

HIS MAJESTY THE KING

Defendant

ORDER AND REASONS

[1] The Defendant, His Majesty the King in right of Canada ("the Crown), brings this motion pursuant to Rule 221(1)(a)(c) and (f) of the *Federal Courts Rules* [SOR/98-106], seeking an Order striking out the Plaintiff's Statement of Claim without leave to amend or, in the alternative, extending the time for its defence as well as its costs. The Plaintiff, Canadian Women's Sex-based Rights ("CAWSBAR"), opposes the motion. CAWSBAR also seeks public interest standing and that issue will be determined in a separate decision. The underlying claim relates to the constitutionality of CD-100, a Commissioner's Directive issued by Corrections Services Canada ("CSC") relating to the placement of gender diverse inmates.

[2] The Crown relies on the Affidavit of Neha Joaquin, a senior paralegal at the Department of Justice who exhibits a copy of the Crown's request for particulars and the Plaintiff's Response.

[3] The Crown argues that the claim is entirely devoid of material fact and ought to be struck without leave to amend. Further, it says that the deficiencies cannot be cured with an amendment, as the Plaintiff admits that it will need to establish through discovery the majority of the required information.

[4] The Crown relies on Rule 181 to argue that the Statement of Claim is required to contain particulars of every allegation contained therein and asserts that the Plaintiff cannot supplement its insufficient pleadings through particulars. It stresses the importance of a factual matrix in the context of Charter challenges.

[5] The Crown submits that, while the claim pleads that female inmates were assaulted and harassed as a result of the policy, it does not set out sufficient particulars. Specifically, the Crown alleges that the claim does not provide "the Court with the tools necessary to fully answer the following fundamental questions":

a. When did the alleged events take place?
b. In which institutions?
c. How did they happen?
d. What policies concerning transfers were applicable at the time?
e. Who was the victim or the perpetrator?
f. Were the assaults known or unknown to the Crown?
g. What incidents preceded the assaults?
h. How did the Crown respond? or
i. Are there any other circumstances?

[6] For its part, the Defendant argues that the Statement of Claim is sufficient. It relies on the Affidavit of Ashley Sexton, who exhibits the Commissioner's Directive in issue. The Defendant also asserts, and the Crown accepts, that the particulars form part of the claim. Finally, the Defendant submits that, if the Court were to find the claim deficient, leave to amend ought to be granted.

[7] In reply, the Crown argues that CAWSBAR must identify, with more specificity which parts of the policy is alleged to be overbroad and must provide more details about, for example, individuals who the Defendant alleges are improperly placed in mothers' programs. The Crown raised concerns that this should not become an evolving claim and, further, the claim should be limited to incidents that the Defendants are aware of and not include unknown events.

[8] The principles applicable on a motion to strike are well-settled. The Court's authority to strike out pleadings comes from Rule 221(1) of the *Rules*:

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	**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) discloses no reasonable cause of action or defence, as the case may be,	**a)** qu'il ne révèle aucune cause d'action ou de défense valable;
(b) is immaterial or redundant,	**b)** qu'il n'est pas pertinent ou qu'il est redondant;
(c) is scandalous, frivolous or vexatious,	**c)** qu'il est scandaleux, frivole ou vexatoire;

(d) may prejudice or delay the fair trial of the action,	**d)** qu'il risque de nuire à l'instruction équitable de l'action ou de la retarder;
(e) constitutes a departure from a previous pleading, or	**e)** qu'il diverge d'un acte de procédure antérieur;
(f) is otherwise an abuse of the process of the Court,	**f)** qu'il constitue autrement un abus de procédure.
and may order the action be dismissed or judgment entered accordingly.	Elle peut aussi ordonner que l'action soit rejetée ou qu'un jugement soit enregistré en conséquence.
Evidence	**Preuve**
(2) No evidence shall be heard on a motion for an order under paragraph (1)(a).	**(2)** Aucune preuve n'est admissible dans le cadre d'une requête invoquant le motif visé à l'alinéa (1)a).

[9] On a motion to strike, the pleading must be read generously and in a way that accommodates drafting deficiencies: *Mohr v National Hockey League*, 2022 FCA 145 at para 48; *Brink v Canada*, 2024 FCA 43 at para 45. As a matter of fairness, a pleading must disclose all constituent elements of the claim so as to allow the defendant(s) to know the case against them and respond.

[10] A pleading that discloses no reasonable cause of action is one that is doomed to fail and has no reasonable prospect of success. It must be plain and obvious that the pleading or claim cannot succeed: *R v Imperial Tobacco Canada Ltd*., 2011 SCC 42 at para 17. Though statements of fact capable of proof contained in pleadings must be taken as true for the purpose of the analysis, this does not require the Court to accept bald allegations, meaning those based on assumption and/or speculation. Such allegations, by their very nature, cannot be proven through the adduction of evidence: *Operation Dismantle v The Queen*, 1985 CanLII 74 (SCC) at para 27.

[11] A pleading can also be struck on the basis that it is scandalous, frivolous, or vexatious. This Court has adopted this description of such pleadings in *Carten v Canada*, 2010 FC 857 at para 34 ["Carten"], citing *Steiner v Canada*, [1996] FCJ No 1356:

> A scandalous pleading includes one which improperly casts a derogatory light on someone, with respect to their moral character. A claim is a frivolous one 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.

[12] As stated in *kisikawpimootewin v Canada*, 2004 FC 1426, citing *Ceminchuk* v. *Canada*, [1995] F.C.J. No. 914 failure to plead sufficient material facts such that a defendant cannot know the case against them might also render a pleading scandalous, frivolous, or vexatious:

> 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.

[13] Pleadings can also be struck on the basis that they constitute an abuse of process. Abuse of process is a flexible concept with no rigid requirements. The underlying rationale is that Courts must be able to protect their processes and the administration of justice. For example, bald allegations of bad faith or fraud are both scandalous, frivolous, and vexatious as well as an abuse of process.

[14] Abuse of process has been described by the Supreme Court of Canada ("SCC") in *Saskatchewan (Environment) v Métis Nation – Saskatchewan*, 2025 SCC 4 as follows:

> [33] The doctrine of abuse of process is concerned with the administration of justice and fairness (*Behn*, at para. 41). The doctrine engages the inherent power of the court to prevent misuse of its proceedings in a way that would be manifestly unfair to a party or would in some way bring the administration of justice into disrepute *(Toronto (City) v. C.U.P.E.*, Local 79, 2003 SCC 63, [2003] 3 S.C.R. 77, at para. 37; *Behn*, at para. 39; *Abrametz*, at para. 33).

[15] If the Court determines that the claim should be struck, it must consider whether leave to amend should be granted. The test for whether leave to amend ought to be granted is set out in *Michel v Canada (Attorney General of Canada),* 2025 FCA 58:

> [79]…if there is a justiciable claim that can be advanced by a party, they should be granted leave to amend their pleadings to make such a claim in the event their pleading is struck for want of necessary material facts…

[16] I am also directed to *Al Omani v Canada* 2017 FC 786, wherein Justice Roy found that striking without leave to amend is a power that must be exercised with caution.

[17] I turn first to a consideration of the Statement of Claim and the particulars.

[18] Essentially, the claim alleges that CD-100 is unconstitutional as it permits "Trans-Identifying Biological Male Inmates" to be housed in women's prisons or institutions. The claim defines "Trans" or "Trans-identifying" as "a person who identifies with a Gender that does not correspond with their Biological Sex."

[19] It is important to note at the outset that the claim is only directed at violations of sections 7, 12 and 15 of the *Charter* and sections 1(a) and (b) and 2(b) of the *Canadian Bill of Rights*. It does not advance claims in negligence, breach of fiduciary duty or any other tort, nor does it seek damages, but only that the policy be declared of no force and effect. In addition to a declaration that CD-100 be construed and applied as to not authorize infringements of the *Bill of Rights*, two alternative declarations are sought:

> a. a declaration pursuant to section 52(1) of the *Constitution Act*, 1982 or section 24(1) of the *Charter* that CD-100 violates the section 7, 12, and 15 *Charter* protected rights of Female Inmates, as described herein, by its policy of allowing Trans-identifying Male Inmates into Female Prisons, and that it is therefore void and of no force or effect;
>
> b. in the alternative, a declaration pursuant to section 52(1) of the *Constitution Act*, 1982 or section 24(1) of the *Charter* that CD-100 violates the section 7, 12, and 15 Charter protected rights of Female Inmates, as described herein, by its policy of allowing Trans-identifying Male Inmates with fully intact male genitalia into Female Prisons, and that it is therefore void and of no force or effect;

[20] The claim begins by asserting that male and female inmates exhibit distinct behavioural patterns; for example, female inmates are substantially less likely to have been convicted of serious violent crimes than male inmates.

[21] It asserts that female inmates are a marginalized and vulnerable group. Further, the claim alleges that "Trans-Identifying Male Inmates exhibit the behavioural disposition of their biological sex rather than that of their chosen gender" and that the number of individuals identifying as transgender has increased significantly in recent years.

[22] The claim goes on to describe the transfer of male inmates to female institutions by tracing the regulatory history leading up to CD-100. Briefly, prior to 2017, the CSC did not permit transfers of preoperative male inmates into women's prisons under any circumstances. After 2017, the *Corrections and Conditional Release Act* was amended to include respect for "gender identity and expression" in its Guiding Principles, and an Interim Policy Bulletin ("IPB") was published permitting the transfer of trans-identifying biological males into women's prisons. In 2022, IPB 584 was replaced with CD-100. CD-100 creates a presumption of placement in accordance with gender identity and expression; however, if there are overriding health or safety concerns that cannot be resolved, the offender will be placed in "a site that better aligns with their current sex (i.e., anatomy)".

[23] CAWSBAR alleges that the standard of self-identification does not adequately respond to the risk that male offenders have taken and will continue to take advantage of CD-100 to gain access to vulnerable women. It alleges that it is very rare for CSC to involuntarily transfer a trans-identifying male inmate back to a men's prison, no matter the nature of their misconduct or crimes perpetuated on female inmates.

[24] The claim continues by describing the harms suffered by female inmates at the hands of trans-identifying male inmates, including rape and sexual assault, harassment, assault causing physical and psychological impacts, as well as negatively impacting prison programming. CAWSBAR specifically notes that it also relies on further particulars of harm as may be discovered throughout the course of the action.

[25] Following, the claim sets out the particular violations of the *Charter and Bill of Rights* that are alleged, circling back to specifics set out in preceding paragraphs.

[26] The Defendant sought particulars, asking for more details of the claim. In argument, both parties largely focused on the particulars relating to specifics of the harms alleged, for example:

> For each alleged incident of physical assault, you are referring to in this paragraph, please list:
>
> (a) who was the female inmate that was physically assaulted?
>
> (b) who was the "Trans-identifying Male Inmate" that physically assaulted the female inmate?
>
> (c) what year and month the physical assault took place?
>
> (d) in which institution did the physical assault take place?
>
> (e) whether the physical assault was reported to institution staff? and
>
> (f) what the institution's response was?

[27] CAWSBAR provided responses to each of the questions with, by its own admission, varying degrees of detail. In response to the question set out above, six incidents were described, one with responses to all the sub-questions but all with names of the victim and aggressor as well as the institution where the assault incident is alleged to have taken place. A similar question about sexual harassment was answered with descriptions of thirty-two incidents.

[28] In the Crown's written argument, it stated that the details in the particulars needed to be "expanded on and incorporated into the Claim"; however, during the hearing, both parties agreed that particulars formed part of the claim and could be referred to as part of the motion materials.

[29] Having carefully considered the arguments and evidence before me and particularly the Statement of Claim, itself, I find that it is not plain and obvious that the claim cannot succeed. Neither do I find that it is frivolous or an abuse of process.

[30] As noted, this is not a tort claim for damages but a claim seeking declaratory relief based on *Charter and Bill of Rights* violations. It is trite to say that what constitutes an appropriate level of material fact in one case would not be sufficient in another. Rule 174 of the *Rules* cautions against pleading the evidence by which the material facts will be established, and I find that accepting the arguments of the Crown would stray into requiring that the Plaintiff provides the evidence by which it intends to prove the unconstitutionality of the policy. To be clear, I do not suggest that the request for particulars was improper given the breadth of the Crown's activities in the corrections context; however, the means by which the alleged negative impacts of the policy will be proven is not a matter that has to be pleaded.

[31] The Crown takes issue with the paragraph 49 of the Statement of Claim:

> CAWSBAR relies on such further particulars of harm as may be discovered throughout the course of this action.

[32] I do not find that this is fatal, or that it amounts to the defect the Supreme Court of Canada commented on in *R v. Imperial Tobacco Canada Ltd,* 2011 SCC 42 at 22. The paragraph seems to me akin to the standard pleading usually found in the prayer for relief that more of what has already been pleaded may be discovered as the case progresses.

[33] I find that the essential elements of the claim have been pleaded. Further, it is not plain and obvious that there is no legal basis for the claim. While I make no findings about the underlying legal merits, I do find that it is not plain and obvious that policies concerning detention conditions could not violate Charter rights or that a claim for such violations has not been properly pleaded.

[34] Similarly, the pleading is not scandalous, pursuant the definition provided in *Carten*, at para 34. It does raise issues of significant weight, considering the impugned allegations of Charter violations, and the possibility of a rational argument connecting the facts as pleaded and the potential violations. It is not vexatious in that there could be a practical result from the claim (aka a change in the policy), and accepting the facts as pleaded there is no reason to conclude that it was brought vexatiously or without any basis.

[35] Finally, I find that the Crown has been adequately informed of the case it must meet. While further information may help the Crown prepare its defence, enough of the alleged incidents are sufficiently clear in the particulars that the Crown can understand how the Policy is impugned by the Plaintiffs and prepare accordingly.

[36] If I had been convinced that the claim should be struck because of a lack of insufficient material facts, I would have granted leave to amend, as I find that there is a justiciable claim which can be advanced. The Crown argues that because it gave CAWSBAR the opportunity to amend its claim, which opportunity CAWSBAR refused, I should infer that CAWSBAR "cannot fix the deficiencies in their Claim with an amendment." I decline to make this inference.

THIS COURT ORDERS that:

1. The motion is dismissed.

2. The Plaintiff shall have its costs in any event of the cause.

"Catharine Moore"
Associate Judge