SUPREME COURT OF NOVA SCOTIA

Citation: *Cormier v. Nova Scotia*, 2015 NSSC 352

Date: 2015-12-04
Docket: Port Hawkesbury, SPH No. 444422
Registry: Halifax

Between:

Adam Joseph Roger Cormier

Plaintiff

v.

Her Majesty the Queen in the Right of the Province of Nova Scotia as Represented by the Royal Canadian Mounted Police, The Crown, Legal Aid, Probation officers and Honourable Provincial Court Judges

Defendants

Judge: The Honourable Justice James L. Chipman

Heard: December 4, 2015, in Port Hawkesbury, Nova Scotia

Counsel: S. Bruce Outhouse, Q.C. and Justin E. Adams, for the Applicant/Defendant the Honourable Provincial Court Judges
Adam Joseph Roger Cormier, Respondent/Plaintiff

Orally by the Court:

Introduction

[1] The Defendants named as "Honourable Provincial Court Judges", Judge Laurel J. Halfpenny-MacQuarrie, Judge Richard J. MacKinnon and Judge Warren K. Zimmer (the "Provincial Court Judges") by Amended Notice of Motion filed November 24, 2015, move for an Order:

a) Striking the Plaintiff's Notice of Action and Statement of Claim pursuant to Civil Procedure Rule 13.03;

b) dismissing the Plaintiff's Notice of Action and Statement of Claim pursuant to Civil Procedure Rule 13.04; and

c) prohibiting the Plaintiff from filing any further claims against these Defendants, Judge Laurel J. Halfpenny-MacQuarrie, Judge Richard J. MacKinnon and Judge Warren K. Zimmer; their counsel in this proceeding; or any other judge of the Provincial and Family Court of Nova Scotia, pursuant to Civil Procedure Rule 88.02(1)(h) without the Plaintiff first obtaining leave from a justice of this Honourable Court.

[2] The Amended Notice of Motion is identical to the original Notice of Motion filed November 20, but for the change in time from 10:00 a.m. to 11:00 a.m. on today's date. In addition to filing the Notices, the Provincial Court Judges filed a brief, book of authorities, affidavit of one of their lawyers (Justin E. Adams, sworn November 19, 2015) and proposed Order.

[3] I find that the Plaintiff/Respondent was properly served with the aforementioned documents, but did not provide any responding materials. Today I heard oral argument from S. Bruce Outhouse, Q.C., on behalf of the Provincial Court Judges and from Mr. Cormier.

Background

[4] On October 16, 2015, Mr. Cormier filed the following:

a) Notice of Action naming various defendants, including the Provincial Court Judges;
b) Statement of Claim; and
c) Notice of Affidavit.

[5] On November 17, 2015, various parties filed Defences including the Provincial Court Judges who, later on the same date, filed an Amended Notice of Defence. The Amended Notice of Defence is identical to the earlier filed Notice of Defence but for a change to paragraph 6, wherein the Provincial Court Judges state that the Plaintiff's claims against them are barred by s.4A of the *Provincial Court Act* RSNS 1989, c.238 ("*PCA*").

[6] The Statement of Claim is replete with allegations including a list of 25 acts repeated for each of the named Defendants including the Provincial Court Judges. Among other things, the Statement of Claim alleges "Terrorism".

[7] In Mr. Adams' affidavit, he deposes as follows at paras.8, 9 and 10:

> 8. I am advised by Judge Laurel J. Halfpenny-MacQuarrie and do verily believe that any contact she has had with the Plaintiff has been limited to the performance of her judicial duties as a judge of the Provincial Court of Nova Scotia in relation to charges against the Plaintiff.
>
> 9. I am advised by Judge Richard J. MacKinnon and do verily believe that any contact he has had with the Plaintiff has been limited to the performance of his judicial duties as a judge of the Provincial Court of Nova Scotia in relation to charges against the Plaintiff.
>
> 10. I am advised by Judge Warren Zimmer and do verily believe that any contact he has had with the Plaintiff has been limited to the performance of his judicial duties as a judge of the Provincial Court of Nova Scotia in relation to charges against the Plaintiff.

[8] In Mr. Adams' affidavit, he includes a copy of an October 30, 2015 letter addressed to the Plaintiff along with a Notice of Discontinuance (Exhibit "D"). The letter, signed by Mr. Outhouse, reads as follows:

> We have been retained by the Chief Judge of the Provincial and Family Courts of Nova Scotia with respect to a Notice of Action and Statement of Claim that was filed by you with the Supreme Court of Nova Scotia on October 16, 2015. Those documents appear to make claims against Judge Laurel J. Halfpenny-MacQuarrie, Judge Richard J. MacKinnon and Judge Warren Zimmer, each of whom are judges of the Provincial and Family Courts of Nova Scotia.
>
> We have reviewed the documents and are satisfied that the claims contained therein are without merit and unsustainable in law because judges are immune from civil liability in relation to the performance of their duties. Consequently, we request that you discontinue your claims against each of the three judges.

> We have taken the liberty of preparing the enclosed Notice of Discontinuance which you can execute and file with the Supreme Court. You may wish to obtain advice from a lawyer before signing and we encourage you to do so. If the Discontinuance of your claims against the judges is filed by November 12, 2015, costs would not be sought against you and your claims against the judges would be at an end.
>
> If you do not file the signed Discontinuance by November 12, then we will bring a motion on behalf of the judges for summary judgement dismissing the claims against them. While costs on such a motion would be within the ultimate discretion of the presiding judge, costs to be paid by the losing party are generally calculated in accordance with Civil Procedure Rule 77 and the accompanying Tariffs, a copy of which is enclosed. Applying any of the Tariffs which might apply in this case (with claims totalling over $47,000,000.00), it is obvious the costs award against you could be significant.
>
> This matter can be resolved expeditiously without the need for a court motion to dismiss your claims against the judges. As indicated, you can do so by signing the enclosed Discontinuance and filing it with the Supreme Court of Nova Scotia by November 12,2015. Should you fail to do so, our instructions are to move for summary judgment dismissing your claims against the judges with costs payable by you. We trust that this will not be necessary.
>
> In the meantime, any further communications by you concerning this matter should be directed to the undersigned and not to Judges Halfpenny-MacQuarrie, MacKinnon and Zimmer or to any other member of the Court.

[9] For reasons which will become apparent, I find Mr. Outhouse's letter to be accurate in all respects, particularly where he says "…the claims contained therein [in the Statement of Claim] are without merit and unsustainable in law because judges are immune from civil liability in relation to the performance of their duties".

Issues

[10] The following issues arise on this motion:

1. Judicial immunity;
2. summary judgement; and
3. abuse of process.

Discussion, Analysis and Disposition

Issue 1 – Judicial Immunity

[11] The main issue on this motion is whether the Provincial Court Judges enjoy absolute immunity from civil suits when acting in a judicial capacity. Section 4A of the *PCA* reads as follows:

> **Immunity**
> 4A A judge has the same immunity from liability as a judge of the Supreme Court. 1992, c.16, s.23.

[12] Accordingly, judges appointed to the Provincial and Family Court of Nova Scotia are afforded the same immunity from liability as judges appointed to the Supreme (and Appeal) Courts of Nova Scotia.

[13] The principle of judicial immunity afforded to superior court judges was discussed at length by the Supreme Court of Canada in *Morier v. Rivard*, [1985] 2 SCR 716. Justice Chouinard described the history and scope of judicial immunity in the following terms:

> Immunity of Superior Court Judges
>
> 85. The immunity of superior court judges in Canada, including judges of the Quebec Superior Court, is inherited from English law.
>
> 86. In *Floyd and Barker* (1607), 12 Co. Rep. 23, the principle of judicial immunity was recognized on the following ground: "for this would tend to the scandal and subversion of all justice. And those who are the most sincere, would not be free from continual calumniations..." (at p. 25).
>
> 87. In *Garnett v. Ferrand* (1827), 6 B. & C. 611, there is the following passage at pp. 625-26:
>
>> This freedom from action and question at the suit of an individual is given by the law to the Judges, not so much for their own sake as for the sake of the public, and for the advancement of justice, that being free from actions they may be free in thought and independent in judgment, as all who are to administer justice ought to be.
>
> 88. In *Fray v. Blackburn* (1863), 3 B. & S. 576, it states at p. 578:
>
>> It is a principle of our law that no action will lie against a Judge of one of the superior Courts for a judicial act, though it be alleged to have been done

> maliciously and corruptly; . . . The public are deeply interested in this rule, which, indeed, exists for their benefit, and was established in order to secure the independence of the Judges, and prevent their being harassed by vexatious actions.

89. In *Royal Aquarium and Summer and Winter Garden Society v. Parkinson*, [1892] 1 Q.B. 431, Lord Esher, M.R., wrote at p. 442:

> It is true that, in respect of statements made in the course of proceedings before a Court of justice, whether by judge, or counsel, or witnesses, there is an absolute immunity from liability to an action.

90. In *Halsbury's Laws of England*, 4th ed., vol. 1, 1973, at pp. 197 *et seq*., it is stated at Nos. 206 and 210:

> 206. Persons protected. Persons exercising judicial functions in a court are exempt from all civil liability whatsoever for anything done or said by them in their judicial capacity, nor can any action be brought against the Crown in respect of acts or omissions of persons discharging responsibilities of a judicial nature or in connection with the execution of judicial process.
>
> 210. Extent of protection. Wherever protection of the exercise of judicial powers applies, it is so absolute that no allegation that the acts or words complained of were done or spoken mala fide, maliciously, corruptly, or without reasonable or probable cause suffices to found an action. The protection does not, however, extend to acts purely extra-judicial or alien to the judicial duty of the defendant; and, therefore, if the words complained of are not uttered in the course of judicial proceedings, the defendant is not protected.
>
> The protection extends to all judges, juries, advocates, parties and witnesses, for words spoken or written in the course of a judicial inquiry and having any reference thereto, however remote.

91. H. Brun and G. Tremblay, *Droit constitutionnel* (1982), write at p. 514:

> [TRANSLATION]
>
> --*Immunity of judges*
>
> The primary aspect of the independence of the courts is negative: the judges will incur no civil liability when they act in their capacity as judges.
>
> This absolute immunity is a rule of the common law applicable to superior court judges even where bad faith has been alleged:

> see *Anderson* v.*Gorrie*, [1895] 1 Q.B. 668; *Bengle* v. *Weir*, (1929) 67 C.S. 289; *Lemieux* v. *Barbeau,* [1972] R.P. 357; and *Gabriel* v. *Langlois*, [1973] C.S. 659. In the case of these judges, it can be said that they are immunized for any act performed in the course of and in connection with their duties. On the other hand, it is clear that superior court judges are civilly liable for their purely personal acts, which have no connection with their legal responsibilities.

[14] In *Koita v. Toronto (Police Services Board)*, 2000 CanLII 22748 (ON SC), Justice Cameron recognized that immunity for judicial and quasi-judicial decision-makers is a constitutional principle which is closely connected to the concept of judicial independence.

[15] Whereas at one time judicial immunity was viewed as being tied to whether the decision-maker was acting within jurisdiction, more recent case law makes it clear that the immunity is absolute with respect to the performance of judicial functions.

[16] In *Baryluk (Wyrd Sisters) v. Campbell*, 2008 CanLII 55134 (ON SC), Justice Hackland reviewed juristic underpinnings for the immunity being absolute, as follows:

> [23] The doctrine of judicial immunity is expressly made applicable to case management masters by virtue of s. 82 of the *Courts of Justice Act,* R.S.O. 1990, c. C-43.
>
> [24] The immunity granted to individuals fulfilling judicial duties is an essential component of judicial independence. It is a well-established fundamental constitutional principle guaranteed by ss. 7 and 11(d) of the *Canadian Charter of Rights and Freedoms* and recognized as an unwritten constitutional principle. The Supreme Court of Canada has described judicial independence in *R. v. Valente,* 1985 CanLII 25 (SCC), [1985] 2 S.C.R. 673 at paragraph 15, as follows:
>
>> The word "independent" in s. 11(d) reflects or embodies the traditional constitutional value of judicial independence. As such, it connotes not merely a state of mind or attitude in the actual exercise of judicial functions, but a status or relationship to others, particularly to the executive branch of government that rests on objective conditions or guarantees.
>
> [25] The principle of judicial immunity ensures that judges are at liberty to exercise their functions with independence and without fear of consequences: "free in thought and independent in judgment". In this regard, the Quebec Court of Appeal in *Royer v. Mignault,* [1988] A.Q. No. 47 stated at 5-6:

> The purpose of the principle [immunity of judges] is not, of course, to protect the personal interests of judges, but rather to protect the public interest in an independent and impartial justice system. To this end, judges, in performing their judicial functions, must be able to do so without fear of a personal liability for what they say or do in their judicial capacities. Any errors they make may be corrected on appeal, (or judicial review, as the case may be), but they should not have to fear that they may be threatened by dissatisfied litigants, or others, with civil actions charging them with malice, bias, or excess of jurisdiction. A judge should not be subject to the influence of personal concerns, conscious or unconscious, when performing his judicial functions. [emphasis added]

[26] The cases have consistently held that actions against judges are to be struck out as disclosing no cause of action pursuant to the principle of judicial immunity: See *L.M.K. v. Ontario (Ministry of Community and Social Services),* [1996] O.J. No. 812 (Gen. Div.), *Kopyto v. Ontario Court of Justice (Provincial Division)*, [1995] O.J. No. 601 (Gen. Div.) at paragraphs 32-46 and 90-91, *Unterreiner v. Wilson,* (1982), 1982 CanLII 1814 (ON SC), 40 O.R. (2d) 197 (C.A.) at paragraphs 25 and 26, *Dyce v. Ontario*, [2007] O.J. No. 2142 (Sup. Ct.) at paragraph 23 and *Crowe v. Canada (Supreme Court, Judge)*[2007] F.C.J. No. 1570.

[27] I quote and respectfully adopt paragraph 20 of the defendants' factum which states:

> Finally, the courts have recognized that a Plaintiff cannot successfully circumvent judicial immunity by merely pleading bald allegations of misconduct including excess of jurisdiction, abuse of process, malice or bad faith. If the law were otherwise, it would render the immunity meaningless and impair judicial independence due to the threat of personal liability by the simple plea of malicious intent. (see *Pispidikis v. Scroggie*, 2002 CanLII 23209 (ON SC), [2002] O.J. No. 5081 at paras. 37-38; aff'd 2003 CanLII 27059 (ON CA), [2003] O.J. No. 4830 and *Morier v. Rivard, supra*.)

[28] A similar case to the present is *Tsai v. Klug*, 2005 CanLII 19788 (ON SC), [2005] O.J. No. 2889 in which a self represented plaintiff made allegations of conspiracy and case fixing against two judges of the Small Claims Court. He argued that the principle of judicial immunity did not extend to conduct that was deliberate, malicious or carried out in bad faith. Karakatsanis J. rejected this argument and held that while immunity does not extend to a judge's purely personal acts, there is an absolute immunity for acts done in the course of or in connection with their judicial duties. I quote paragraphs 6 and 7 of her reasons for judgment with which I respectfully concur:

> 6. In *Morier v. Rivard*, 1985 CanLII 26 (SCC), [1985] 2 S.C.R. 716 at 737 ff, the Supreme Court of Canada considered whether judicial immunity extended to acts that may be without or in excess of jurisdiction. The Supreme Court of Canada held that the civil immunity of Superior Court Judges in Ontario and Quebec was absolute. While the immunity does not extend to purely personal acts, judges are however immune for any acts done in the course of or in connection with their legal duties, even if the acts are malicious or *mal fides*. The Court cites with approval a number of old English cases. At page 737:
>
>> In *Fray v. Blackburn* (1863), 3B. & S. 576, it states at p. 578: It is a principle of our law that no action will lie against a Judge of one of the superior Courts for a judicial act, though it be alleged to have been done maliciously and corruptly… The public are deeply interested in this rule, which, indeed, exists for their benefit, and was established in order to secure the independence of the Judges and prevent their being harassed by vexatious actions.
>
> 7. The plaintiff's submission that an illegal act cannot be part of judges' duties and therefore cannot be the subject of civil immunity is, at first blush, logical. However, all suits against judges in relation to their cases would necessarily allege that they have acted improperly – either negligently, outside their jurisdiction, maliciously or even illegally. The civil immunity is absolute for any acts related to or in connection with their judicial capacity – whether they are proper judicial actions or not. The immunity relates to civil liability only. The right to be tried by an independent and impartial tribunal is an integral part of the fundamental justice protected by s. 7 of the *Charter*. The constitutional protection is there to ensure that judges can perform their duties independently, impartially and free from concern that they will be personally sued for unpopular decisions.

> [29] The motion judge's decision in *Tsai v. Klug* was upheld by our Court of Appeal, see (2006), 2006 CanLII 4942 (ON CA), 207 O.A.C. 225.

[17] *Baryluk (Wyrd Sisters)* was followed in two recent Ontario cases, *Collins v. Canada (Attorney General)*, 2010 ONSC 6542 (CanLII) and *Bérbué v. Lajoie et al.*, 2010 ONSC 1677.

[18] That judges enjoy an absolute immunity was accepted by the British Columbia superior courts (see *Gonzales v. Ministry of Attorney General*, 2009 BCSC 639 and *HMTQ v. Rudolf*, 2010 BCSC 565) and by the Alberta superior courts (see *Jordan v. Nation*, 2013 ABCA 117).

[19] The principle of judicial immunity has also been applied by our Court of Appeal. In *Future Inns Canada Inc. v. Nova Scotia (Labour Relations Board)*, 1999 NSCA 94, an employer commenced an action against the Labour Relations Board and its members alleging that they were not impartial and acted with malice and bad faith when they ordered the employer to reinstate five employees and compensate them for lost wages. The Board and the individual members applied under Rule (1972) 14.25 to strike out the statement of claim. The application was dismissed by the Chambers judge and the Board and the individual members appealed.

[20] The Court of Appeal allowed the appeal with respect to the Board and the members of the hearing panel and held that Rule (1972) 14.25 was the appropriate procedure for an application to strike out a statement of claim where the law was clear and no additional evidence was required to resolve the issues raised. The Court referred to *Rivard* and held that the absolute immunity of superior courts judges extended to the Board members. Specifically, Justice Pugsley stated:

> [79] Although the majority in *Rivard* concluded that the appellants in that case "had the necessary jurisdiction to conduct an inquiry and to submit a report" (745), Justice Chouinard reviewed the scope of the immunity under the case law and authorities, at p. 737-738.
>
> [80] For example, in the case of *Fray v. Blackburn* (1863) 122 E.R. 217, Crompton, J., stated at p. 217:
>
>> It is a principle of our law that no action will lie against a judge of one of the superior courts for a judicial act, though it be alleged to have been done maliciously and corruptly. ... (emphasis added)
>
> […]
>
> [84] A review of the statement of claim filed by Future Inns leads me to the conclusion that the claims advanced against the individual appellants, and the claim advanced against the Board, arise out of actions taken within their respective "judicial capacities", and, as a result, those actions are protected by the immunity granted by Statute.

[21] Similarly, in *Saunders v. Hendry*, 1999 CanLII 2547 (NS SC), the plaintiff commenced an action against a probate judge alleging malicious conduct. The defendant applied under Rule (1972) 14.25 to strike out the statement of claim. Justice Goodfellow referred to *Rivard* and *Future Inns* and ordered that the statement of claim be struck out.

[22] Given the *PCA* and common law, it is clear that an action commenced against a judge of the Nova Scotia Provincial and Family Court (when he or she is acting in their judicial capacity) is absolutely barred by the principle of judicial immunity. On the basis of the evidence before me, I find the Provincial Court Judges were at all times acting within their judicial capacity. Accordingly, the Plaintiff's claim against the Provincial Court Judges is without foundation and must be struck.

Issue 2 – Summary Judgment

[23] Civil Procedure Rule 13.03(1) reads:

> **13.03 (1)** A judge must set aside a statement of claim, or a statement of defence, that is deficient in any of the following ways:
>
> (a) it discloses no cause of action or basis for a defence or contest;
> (b) it makes a claim based on a cause of action in the exclusive jurisdiction of another court;
> (c) it otherwise makes a claim, or sets up a defence or ground of contest, that is clearly unsustainable when the pleading is read on its own.

[24] Rule 13.03(2) requires that a judge must grant summary judgment when a pleading is set aside, in whole or in part, as context requires. The threshold for dismissal of a pleading is whether it is "plain and obvious" that the pleading, when read on its own, is "certain to fail".

[25] The test to be applied under Rule 13.03 was set out by Justice LeBlanc in *Bank of Montreal v. Ross*, 2011 NSSC 359, where he wrote:

> [27] The test on a motion to strike remains the same under the new Rules (*Body Shop Canada Ltd.* v. *Dawn Carson Enterprises Ltd.,* 2010 NSSC 25). The test is whether assuming that the facts as stated in the Statement of Defence can be proven, is it "plain and obvious" that the defendants' Defence and Counterclaim is "certain to fail" or "absolutely unsustainable" (*Hunt* v. *Carey Canada Inc.,* [1990] 2 SCR 959; *Cape Breton (Regional Municipality)* v. *Nova Scotia (Attorney General)*, 2009 NSCA 44).

[26] Mr. Cormier's Statement of Claim pleads no material facts. Rather, it contains a list of 25 acts that the Plaintiff attributes to each of the individual Defendants. When I scrutinize the pleading, I find that it contains not a single material fact concerning the underlying allegations against any of the Provincial Court Judges. Accordingly, having regard to the test, no cause of action is

disclosed within the Statement of Claim. In the result, the impugned paragraphs shall be set aside in accordance with Rule 13.03(2).

[27] I would add that when I review this matter in the context of Rule 13.04, I am similarly prepared to grant summary judgment based on the evidence adduced on this motion.

Issue 3 – Abuse of Process

[28] As part of the relief sought, the Provincial Court Judges' request an "anti-suit" injunction prohibiting the Plaintiff from filing any further claims against them, their counsel or other judges of the Provincial and Family Court of Nova Scotia, without the Plaintiff first obtaining leave from a justice of the Supreme Court of Nova Scotia. In their brief at pp.14, 15, the Applicants make the following argument in support of this request:

> 46. While the Plaintiffs motives for commencing this litigation are not entirely clear, many of the documents on file bear the hallmarks or "fingerprint motifs" of an Organized Pseudolegal Commercial Argument litigant ("OPCA litigant"). The OPCA litigant phenomenon and common practices were helpfully described in detail by Associate Chief Justice Rooke in *Meads v. Meads*, 2012 ABQB 571, which was referred to by our Court of Appeal in *Tapper v. Nova Scotia (Attorney General)*, 2015 NSCA 92.
>
> 47. While it is appreciated that the Plaintiff has not been a vexatious litigant in the sense of being involved in protracted or repetitious legal proceedings, it is our respectful submission that the Plaintiffs conduct in suing the Honourable Judges is virtually unprecedented and is deserving of a strong rebuke from this Court. While the relief sought is not frequently invoked, we say that this approach is consistent with that espoused by Justice Saunders in Macdonald v. First National Financial GP Corporation, 2013 NSCA 60 to stop egregious conduct.
>
> 48. The limited authorities on the issue are clear that the mere threat to file a legal claim against a judge acting in his or her judicial capacity can amount to criminal contempt and civil contempt. Furthermore, it has been held that the actual delivery of documents (i.e. a fee list) to a member of the judiciary can be viewed as the commission of the *Criminal Code* offence (s.423.1) of intimidating a justice system participant: see paras. 195-200 of *Fearn v. Canada Customs*, infra.
>
> 49. In this case, the Plaintiff has taken the unprecedented step of commencing a civil action to influence the outcome of offences before the Provincial and Family Court of Nova Scotia. As grounds of relief, the Plaintiffs Statement of Claim

> seeks damages [see paras. 2 to 4 of Exhibit "A"], recovery on a fee schedule for various items [see para. Y[5] of Exhibit "A"], along with a variety of injunctions.
>
> 50. In many ways, this case has parallels to the conduct of an OPCA litigant in the Alberta Queen's Bench decision of *Fearn: v Canada Customs*, 2014 ABQB 114. In that case, the litigant (Fearn) filed an application in the Alberta superior court seeking to enjoin and hinder the prosecution of offences against him that were before the Alberta provincial court. Justice Tilleman exhaustively examined the types of conduct routinely engaged in by OPCA litigants and the specific conduct of Fearn in seeking to enjoin the prosecution of the provincial court offences.
>
> 51. As noted by Justice Tilleman's reasoning at paras. 147 — 150 in *Fearn*, the distinction between criminal and civil contempt is tied to whether the impugned conduct is a public activity aimed at "...interfering with the proper administration of justice..." or would ". . .tend to depreciate the authority of the court..." in contrast to other conduct which is more limited.

[29] Counsel for the Provincial Court Judges continues in his brief, commending the decision of Chief Justice Dickson, *B.C.G.E.U. v. British Columbia (Attorney General)*, [1988] 2 SCR 214, where he explained the concept of criminal contempt as follows, beginning at p. 234:

> An intent to bring a court or judge into contempt is not an essential element of the offence of contempt of court. That was decided in *R. v. Hill* (1976), 73 D.L.R. (3d) 621 (B.C.C.A.) McIntyre J.A., speaking for a unanimous court said at p. 629:
>
> > Even, however, if the cases could not be distinguished on their facts, it is my opinion that an intent to bring a Court or Judge into contempt is not an essential ingredient of this offence. In Canada the proposition stated in R. v. Gray, [1900] 2 Q.B. 36 at p. 40, by Lord Russell of Killowen has been accepted. He said:
> >
> > > Any act done or writing published calculated to bring a Court or a judge of the Court into contempt, or to lower his authority, is a contempt of Court. That is one class of contempt. Further, any act done or writing published calculated to obstruct or interfere with the due course of justice or the lawful process of the Courts is a contempt of Court.
> >
> > These words have received the approval of the Supreme Court of Canada in *Poje et al. v. A -G. B.C.* (1953), 1953 CanLII 34 (SCC), 105 C.C.C. 311, [1953] 2 D.L.R. 785, [1953] 1 S.C.R. 516, and in *Re Duncan* (1957), 1957 CanLII 90 (SCC), 11 D.L.R. (2d) 616, [1958] S.C.R. 41. In my view, they express the law as it now stands in this country.

> The word "calculated" as used here is not synonymous with the word "intended". The meaning it bears in this context is found in the Shorter Oxford English dictionary as fitted, suited, apt: see Glanville Williams *Criminal Law: General Part*, 2d ed. (1961), p. 66.
>
> See also *R. v. Froese* (1980), 1980 CanLII 428 (BC CA), 23 B.C.L.R. 181 (B.C.C.A.)

C. J. Miller, *Contempt of Court* (1976), lists the principal heads of criminal contempt as follows:

> 1. contempt in the face of the court which involves disruptive or disrespectful behaviour in the courtroom;
>
> 2. contempt through infringing the *sub judice* rule which involves conduct likely to influence the outcome of a trial;
>
> 3. scandalizing a court or a justice;
>
> 4. victimizing jurors, witnesses and other persons after the conclusion of the proceedings; and
>
> 5. publicizing judicial proceedings.

In addition, Miller includes a residual category of contempt offences in which he lumps the following: obstructing persons officially connected with the court or its process, interference with persons under the special protective jurisdiction of the court, breach of duty by persons officially connected with the court or its process, forging, altering or abusing the process of the court, divulging the confidences of the jury room, preventing access by the public to courts of law, service of process in the precinct of the court, and disclosing the identity of witnesses.

[30] When I review the pleading filed by the Plaintiff, I come to the emphatic conclusion that it ought to be known that the claim is certain to fail. If Mr. Cormier had any doubt about this, Mr. Outhouse's October 30, 2015 letter should have set the record straight. In the result, I am left with the overriding conclusion that the filing of the pleading (and the failure to file the Notice of Discontinuance) was for a malicious or ulterior purpose.

[31] In *Fiander v. Mills*, 2015 NLCA 31, the Newfoundland and Labrador Court of Appeal found that the filing of a baseless claim is an abuse of process. On behalf of an unanimous Court, Chief Justice Green stated:

> [35] The filing of an obviously baseless claim for an ulterior purpose, i.e. for a purpose other than for the legitimate vindication of legal rights, such as to delay or disrupt proper legal proceedings or to inflict unnecessary cost on other parties, can constitute abuse of process. As this Court said in *Anstey v. St. John's (City)*, 2014 NLCA 35 (CanLII) at paragraph 65, it generally involves "the requirement that the legal process be involved for a collateral and improper purpose and involve an overt act or threat in furtherance of an illegitimate purpose."

[32] Given my finding of the Plaintiff's abuse of process, I am prepared to invoke Rule 88.02(1), which reads:

> **Remedies for abuse**
> 88.02 (1) A judge who is satisfied that a process of the court is abused may provide a remedy that is likely to control the abuse, including any of the following:
>
> (a) an order for dismissal or judgment;
> (b) a permanent stay of a proceeding, or of the prosecution of a claim in a proceeding;
> (c) a conditional stay of a proceeding, or of the prosecution of a claim in a proceeding;
> (d) an order to indemnify each other party for losses resulting from the abuse;
> (e) an order striking or amending a pleading;
> (f) an order expunging an affidavit or other court document or requiring it to be sealed;
> (g) an injunction preventing a party from taking a step in a proceeding, such as making a motion for a stated kind of order, without permission of a judge;
> (h) any other injunction that tends to prevent further abuse.
> [Emphasis added.]

[33] In *Tupper v. Nova Scotia (Attorney General)*, 2015 NSCA 92, Chief Justice MacDonald noted that Rule 88.02 represents a codification of the Courts' inherent jurisdiction to control its process. On behalf of an unanimous Appeal Court, the Chief Justice held:

> [25] This actually codifies the Courts' long held inherent jurisdiction to control its own process. My colleague Justice Saunders in *Halifax (Regional Municipality) v. Ofume*, 2003 NSCA 110 explains this authority:
>
> > [40] …In the instant case the discretion exercised by Justice MacAdam derives from the Court's inherent jurisdiction to control its own proceedings. I see this control as fundamental to a court that derives its power and existence not from statute but from the Constitution. The operation of the court is a necessary function of our society. The inherent jurisdiction which helps to maintain the efficiency and fairness of such a

> court is something far greater than the jurisdiction to correct substantive problems, as was considered in *Baxter*. The inherent jurisdiction exercised by the Chambers judge here is the kind of jurisdiction spoken of by Lord Morris in *Connelly***,** supra, quoted in *Montreal Trust Co., supra*, which gives rise to the "powers which are necessary to enable [a court] to act effectively".

[26] See also *Ontario v. Criminal Lawyers' Association of Ontario*, 2013 SCC 43 at para.12 and 26 and *National Bank Financial Ltd. v. Barthe Estate*, 2015 NSCA 47 at para.176 to 180.

[27] Yet, as Mr. Merrick succinctly explained in his factum, s. 45B does not replace our inherent jurisdiction. Instead, I agree that the two work hand in hand:

> 21. There is considerable authority to support the principle that both this Court and the Nova Scotia Supreme Court have an inherent authority to declare a litigant to be vexatious (see for example the submission of the Respondent Judgment Recovery (N.S.) Ltd. at p. 14 ff of their factum). That inherent jurisdiction would be the basis for *Civil Procedure Rule 88.*
>
> 22. It is submitted that inherent jurisdiction includes the jurisdiction to impose terms or conditions necessary to achieve the objective of restricting the actions of a litigant that are found to be vexatious.
>
> 23. In addition to the inherent jurisdiction, both Courts have also been granted jurisdiction pursuant to section *45B of the Judicature Act.*
>
> 24. It is submitted that the two sources of jurisdiction are to be read as cumulative. To the extent one may be broader in scope, that broader scope is to be given effect.

[34] In the result, I am prepared to exercise my inherent jurisdiction and impose terms necessary to achieve the objective of restricting the actions of the Plaintiff, which I find to be vexatious. Accordingly, in addition to granting summary judgment (both on the pleadings and evidence), I hereby grant an injunction prohibiting the Plaintiff from bringing further action against the Provincial Court Judges, their counsel, or any other judges of the Provincial and Family Court of Nova Scotia, without first obtaining leave to commence such action or actions from this Honourable Court. I find this step necessary to achieve the objective of preventing any further abuse of this Court's process.

[35] As the Provincial Court Judges did not seek costs, I will exercise restraint and decline, this time, to award costs against the Plaintiff/Respondent.

Chipman, J.