

Rene Joly v. Pelletier and others, [1999] O.J. No. 1728 [QL], 1999 CarswellOnt 1587, 1999 WL 33187845 (Carswell) (Ontario Superior Court of Justice, Court File Nos. 99-CV-166273 and 99-CV-167339, May 16, 1999)

[para1] EPSTEIN J.-- This endorsement relates to a series of motions brought on behalf of a number of the defendants in two related actions commenced in this Court by the plaintiff, Rene Joly. The moving parties seek orders striking out the Statements of Claim and thereby dismissing the actions on the grounds that the pleadings disclose no cause of action (rule 21.01(3)(b)) or are frivolous or vexatious or an abuse of the process of the Court (rule 25.11).

[para2] Mr. Joly's claims in these two actions, and in several others not currently before me, all centre on his firm assertion that he is not a human being; rather a martian. As I understand them, the nature of his complaints against the numerous defendants who include a number of doctors, medical facilities and government agencies is that they have conspired with the American government in its attempts to eliminate him and have otherwise taken various steps to interfere with his ability to establish himself and live freely as a martian.

[para3] As indicated, there are two actions before me. At the beginning of the hearing Mr. Joly advised me that he has recently commenced a third action against, among others, the Central Intelligence Agency, President Clinton and the Honourable Anne McClellan for interfering with his D.N.A. test results that prove that he is, in fact, not human.

[para4] Given the related issues in the three actions brought in this Court, I ordered that the three proceedings be consolidated. All parties consented to this order. An order will issue to this effect. Unfortunately, I failed to note the action number of the third action affected by this order.

[para5] As another preliminary matter, I should indicate that given the unusual nature of the plaintiff's claims, a discussion took place at the beginning of argument as to whether I should order that a hearing be conducted pursuant to the provisions of rule 7 of the Rules of Civil procedure for a determination as to whether the plaintiff was in a position properly to represent his interests on the motions or whether a litigation guardian should be appointed. As a result of this issue having been raised, I arranged for a reporter to record the proceedings and the plaintiff agreed to testify under oath and answer certain questions posed by Mr. Novak, counsel who appeared on behalf of a number of the defendants. At the conclusion of this form of hearing and having considered the submissions made, I determined that there was no reason to delay the argument of the motions. I made the observation that in every respect Mr. Joly properly conducted himself before the Court. He presented himself as polite, articulate, intelligent and appeared to understand completely the issues before the Court and the consequences should I grant the relief sought. There was nothing before me, other than the uniqueness of the pleadings in question, for me, on my own volition, to adjourn, pending a hearing to determine if Mr. Joly is under some form of disability. This observation, the fact that no one was really urging me to adjourn and the costs to all concerned of having these proceedings protracted, factored into my decision to proceed.

[para6] Finally, I add that at the request of the parties, leave was granted to adduce evidence at the hearing. Both Mr. Novak and Mr. Joly presented evidence to the Court in support of their submissions.

[para7] The crux of the various arguments advanced orally and in the written material is that Mr. Joly's claims disclose no cause of action and are otherwise frivolous, vexatious and an abuse of the process of the Court. It was also argued that the tort of conspiracy was not properly pleaded and that no damages have been identified or claimed. It was further pointed out that several of the defendants are not legal entities and are not capable of being sued.

[para8] Mr. Joly, in a well prepared, thoughtful argument submitted that he had evidence of falsification of records and related wrongdoing. On the pivotal point of Mr. Joly's being in fact a martian Mr. Joly advised me that the only reason he was not now able to satisfy the Court that he is a martian, not a human, is due to the falsification of his D.N.A. test results by the Americans.

[para9] The authorities relied upon by the moving parties are well known. On a motion to strike out a pleading, the Court must accept the facts as alleged in the Statement of Claim as proven unless they are patently ridiculous and incapable of proof and must read the Statement of Claim generously with allowance for inadequacies due to drafting deficiencies. See *Nash v. The Queen in Right of Ontario* (1995), 27 O.R. (3d) 1 (C.A.). Perhaps the leading case is that of *Carey Canada Inc. v. Hunt et al.* (1009) 74 D.L.R. (4) 321 (S.C.C) in which the test in Canada is described as assuming that the facts as stated in the Statement of Claim can be proved, the Court must be satisfied that it is "plain and obvious" that the plaintiff's statement of claim discloses no reasonable cause of action.

[para10] Concerning rule 25.11, the Court will dismiss or stay an action as being frivolous, vexatious or abusive only in the clearest cases where it is plain and obvious the case cannot succeed. The decision in *Steiner v. Canada* [1996] F.C.J. No.1 1356 (Fed. T.D.) makes it clear that if a pleading does not present a rational argument, either on the evidence or in law, in support of the claim, and casts unreasonable aspersions is frivolous.

[para11] In my opinion there are at least two reasons why the two Statements of Claim in question ought to be struck and the actions dismissed.

1. Neither pleading discloses a cause of action. While conspiracy to do harm to someone is the basis of many actions in this Court there is a fundamental flaw in the position of Mr. Joly. Rule 1.03 defines plaintiff as "a person who commences an action". The New Shorter Oxford English Dictionary defines person as "an individual human being". Section 29 of the Interpretation Act provides that a person includes a corporation. It follows that if the plaintiff is not a person in that he is neither a human being nor a corporation, he cannot be a plaintiff as contemplated by the Rules of Civil Procedure. The entire basis of Mr. Joly's actions is that he is a martian, not a human being. There is certainly no suggestion that he is a corporation. I conclude therefore, that Mr. Joly, on his pleading as drafted, has no status before the Court.
2. In respect to the motions brought under rule 25.11 I am of the view that the test has been passed in the circumstances of this case. In other words, I am satisfied that the claims are frivolous and vexatious and constitute an abuse of the process of this Court. In addition to the fact that the tort of conspiracy has not been remotely properly pleaded, no damages have been claimed and many of the defendants are not even legal entities capable of being sued. More importantly, with all respect to Mr. Joly and his perception of reality, these actions are patently ridiculous and should not be allowed to continue as they utilize scarce public resources not to mention the time and money of the numerous defendants who have been forced to defend these actions.

[para12] In the circumstances I have come to the conclusion that the moving parties are entitled to the relief requested. The Statements of Claim in both actions are struck and the actions are dismissed.

[para13] The defendants are entitled to their costs of the actions but it would seem to be that the defence has likely incurred little if any costs in defending the actions. The moving parties are certainly entitled to their costs of the motions, if demanded. If the parties require any assistance with respect to the resolution of costs, they may arrange a conference call through the assistance of my secretary.

EPSTEIN J.