

COURT OF APPEAL FOR ONTARIO

CITATION: Froom v. Ontario (Attorney General), 2018 ONCA 627

DATE: 20180710

DOCKET: C65031

Epstein, Lauwers and van Rensburg JJ.A.

BETWEEN

David Froom

Plaintiff (Appellant)

and

Attorney General (Ontario), ~~Ministry of the Attorney General,~~
Her Majesty the Queen in Right of Ontario

Defendants (Respondents)

David Froom, appearing in person

Sarah Kromkamp, for the respondents

Heard and released orally: June 29, 2018

On appeal from the order of Justice Benjamin T. Glustein of the Superior Court of Justice, dated January 31, 2018.

REASONS FOR DECISION

[1] The appellant, David Froom, appeals from the motion judge's order striking out his statement of claim in this action against the Attorney General of Ontario and Her Majesty the Queen in Right of Ontario, (the "Crown"), without leave to amend, arising out of his interactions with certain Crown employees during a failed attempt to initiate a private prosecution. Mr. Froom claimed damages based on

inter alia, breach of statute, negligence, abuse of process, misfeasance in public office, invasion of privacy and harassment.

[2] The root of Mr. Froom's complaint is that the Crown allegedly instructed a court reporter to provide him with a false transcript, and that Crown employees refused to assist him with his complaint related to the transcript and misrepresented that the transcript was accurate.

[3] The Crown moved under r. 21 for an order striking the statement of claim on the bases that it is obvious the claim could not succeed.

[4] The motion judge held that claims against the Attorney General could not succeed, as the Attorney General is a Minister of the Crown and cannot be held vicariously liable for the *tortious* conduct of other Crown servants. The motion judge also concluded that the individual claims against the Crown had no merit. The motion judge therefore held that it was plain and obvious that Mr. Froom's claim disclosed no reasonable cause of action and could not be cured by amendment.

[5] Mr. Froom appeals on a number of bases. We do not accept his arguments. The motion judge individually considered and rejected each of Mr. Froom's claims. He applied the appropriate test to a motion under r. 21. Mr. Froom has identified no error in the motion judge's analysis. We see no reason to interfere with his

conclusions. We also agree with the two points the Crown set out in her factum and adopt her language as follows:

77. At the core of the Appellant's Claim is an attempt to re-litigate issues that arose in the context of his appeal of the Application Judge's ruling. This was an application seeking to overturn a decision of a Justice of the Peace declining to issue a private information against a lawyer defending parties to another proceeding that the Appellant has initiated.

78. Ultimately, the Appellant's concerns about obtaining an unedited transcript were addressed pursuant to the order Justice Pardu. To the extent that improper judicial editing of the transcript occurred, this could have been dealt with by the Appellant as a ground of appeal in his appeal of the Application Judge's ruling. Instead, he chose to abandon that appeal. More than a year later, he commenced this civil action for damages based principally on his interactions with the Respondents in the context of his abandoned appeal.

[6] And finally, we note the comments the Crown made at para. 6 of her factum as follows:

6. The Motion Judge correctly held that the CTSP Manual does not order court transcriptionists to falsify court documents as alleged. To the contrary, it allows them to modify the certification page when there is judicial editing of a transcript, to reflect the court's supervising role over its records. The Motion Judge found that this is a policy that supports judicial independence while ensuring that parties are advised by a transcriptionist of discrepancies based on judicial editing. The CTSP Manual and Ministry staff's adherence to this policy cannot ground an action in tort against the Respondents.

[7] For these reasons the appeal is dismissed, as is Mr. Froom's request for leave to appeal costs. Costs to the Crown in the amount of \$5,000, all in, if demanded.

"Gloria Epstein J.A."

"P. Lauwers J.A."

"K. van Rensburg J.A."