



[2022] 2 F.C.R. D-18

**PRACTICE**

PLEADINGS

*Motion to Strike*

Appeal from Federal Court order (2021 FC 192) striking out appellant's action in damages against respondents because having no reasonable prospect of success, frivolous, vexatious — Appellant, acting on own behalf, brought action in Federal Court against respondents for torts, breaches of various sorts allegedly committed by number of Ontario Crown actors, including Premier of Ontario, federally appointed Superior Court justices — Asserting that respondents liable for financially supporting those provincial Crown, court actors — Alleging that respondents' impugned conduct amounting to, *inter alia*, breach of statutory duties, neglect of duties — Respondents brought motion in writing pursuant to *Federal Courts Rules*, SOR/98-106, rr. 221(1)(a),(c), 369 seeking order striking statement of claim in its entirety, without leave to amend — Oral hearing convened for motion by videoconference — When hearing began, appellant had not yet joined videoconference — Hearing proceeding without appellant — Federal Court Judge noticed interruptions during hearing, but did not understand they were appellant's attempts to join videoconference — Concluded that appellant should have been aware of Court's policy that videoconference hearings locked once commenced, that participants expected to join remote hearings 30 minutes prior to hearing — Appellant claiming procedural fairness denied by not being able to make oral submissions at videoconference hearing — Appeal could not succeed — Federal Court did consider fact that appellant did not participate in videoconference hearing but concluded that appellant author of own misfortunes — Situation faced by appellant raising some concerns, given appellant's clear intention to participate in hearing, various attempts to join videoconference — Failure to accommodate appellant during videoconference hearing, despite appellant's clear attempts to join videoconference somewhat troubling — Safe to say that what happened on that day would have been different in an in-person setting — Here, no accommodation given, decision to proceed with only one party present, while other knocking on door, so to speak, concerning — More appropriate course of action would probably have been to suspend hearing to allow appellant to participate — That said, this breach not justifying setting aside of impugned order since outcome of respondents' motion to strike statement of claim inevitable — Futile to remit matter to Federal Court so as to allow appellant to make oral submissions in response to respondents' motion — Statement of claim so deficient in material facts that respondents could not respond to it — Provincial public officials, federally appointed provincial judges cannot engage, by their conduct, liability of Federal Crown — Defects in statement of claim not curable, Federal Court entitled to strike it without leave to amend — Appeal dismissed.

REBELLO V. CANADA (JUSTICE) (A-93-21, 2023 FCA 67, LeBlanc J.A., reasons for judgment dated March 23, 2023, 11 pp.)