

Court File No.: CV-22-00683933-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N :

ROCCO GALATI

Plaintiff

- and -

SHARON GREENE, THE DIRECTOR OF INTAKE AND RESOLUTION
THE LAW SOCIETY OF ONTARIO (“LSO”)

Defendants

MOTION RECORD (MOTION TO STRIKE)

November 21, 2022

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TAB 1

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**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

ROCCO GALATI

Plaintiff / Respondent

- and -

**SHARON GREENE, THE DIRECTOR OF INTAKE AND RESOLUTION
THE LAW SOCIETY OF ONTARIO (“LSO”)**

Defendants / Moving Parties

**NOTICE OF MOTION (MOTION TO STRIKE)
(Returnable on September 21, 2023)**

The Defendants Sharon Green, The Director of Intake and Resolution and The Law Society of Ontario (“LSO”) will make a motion to a judge, returnable on September 21, 2023, at 393 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard:

- in writing under subrule 37.12.1(1) because it is on consent or unopposed or made without notice;
- in writing as an opposed motion under subrule 37.12.1(4);
- orally.

THE MOTION IS FOR:

- (a) an Order striking out and/or dismissing the Plaintiff’s Statement of Claim, without leave to amend, on the basis that:

- (i) the claim, in whole or in part, discloses no reasonable cause of action pursuant to Rule 21.01(1)(b) of the *Rules of Civil Procedure*, RRO 1990, Reg 194 (“*Rules*”);
 - (ii) the claim, in whole or in part, is barred pursuant to section 9 of the *Law Society Act*, RSO 1990, c L.8 (“*LSA*”);
 - (iii) the claim, in whole or in part, fails to plead full particulars in support of allegations of bad faith, contrary to Rule 25.06(8) of the *Rules*; and/or
 - (iv) the claim, in whole or in part, fails to plead material facts in support of each alleged cause of action, contrary to Rule 25.06(1) of the *Rules*;
 - (v) the claim, in whole or in part, is scandalous, frivolous or vexatious, contrary to Rule 25.11(b) of the *Rules*;
- (b) in the alternative, an Order dismissing and/or staying the action on the ground that this Court lacks jurisdiction over the subject matter of the claim, pursuant to Rule 21.01(3)(a) of the *Rules*;
- (c) costs of this motion; and
- (d) such further and other relief as this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

Parties

- (a) The Plaintiff, Rocco Galati, is a lawyer practicing in Toronto, Ontario and duly licensed by the Law Society of Ontario.

- (b) The Defendant, Law Society of Ontario (“LSO”), is a regulatory body continued under s. 2 of the *LSA* with a mandate to govern Ontario lawyers and paralegals in the public interest.
- (c) The Defendant, Sharon Greene, is an Intake and Resolution Counsel with the LSO.
- (d) The Defendant, the Director of Intake Resolution, is an employee with the LSO.

Background

- (e) In his Statement of Claim, the Plaintiff pleads that he and one of his associates have been the subject of nine complaints to the LSO over the past two years. Eight of the complaints were against the Plaintiff and one was against his associate.
- (f) With respect to six of the nine complaints, the LSO closed their file without requiring a response. The Plaintiff pleads that the LSO required him to respond to three complaints. The Plaintiff further pleads that eight of the nine complaints have been dismissed.
- (g) The Plaintiff’s claim challenges decisions by the LSO to notify him of the nine complaints against him, and to require a response in respect of three complaints. The Plaintiff claims that he suffered damages as a result of the LSO’s conduct in notifying him of complaints and, in three instances, requiring him to respond.

- (h) The Plaintiff has framed his claim against the Defendants in conspiracy (paras 59-62), abuse of process (paras 63-66), interference with economic interest (paras 67-68), breach of fiduciary duty (para 69), negligence / negligent investigation (para 70), intimidation (paras 71-73), and breach of sections 7 and 15 of the *Charter of Rights and Freedoms* (the “*Charter*”) (para 74).
- (i) The Plaintiff has also challenged the constitutionality of section 49.3 of the *Law Society Act* based on sections 7 and 9 of the *Charter* (paras 76-77).

Immunity under the *Law Society Act*

- (j) The Plaintiff’s claims are barred by section 9 of the *LSA*, which provides statutory immunity for the LSO and its officials in respect of actions taken in good faith.
- (k) For each pleaded cause of action, the Plaintiff has either failed to plead bad faith, or failed to plead full particulars in support of allegations of bad faith contrary to Rule 25.06(8) of the *Rules*. The result in both cases is that the claims are barred by section 9 of the *LSA*.

No reasonable cause of action

- (l) Each of the Plaintiff’s claims:
 - (i) disclose no reasonable cause of action contrary to Rule 21.01(1)(b),
 - (ii) fail to adequately plead material facts contrary Rule 25.06(1),
 - (iii) fail to adequately plead full particulars of bad faith contrary to Rule 25.06(8), and/or

(iv) is scandalous, frivolous or vexatious contrary to Rule 25.11(b).

Conspiracy (paras 59-62)

- (m) The Plaintiff's conspiracy claim is directed primarily against non-party defendants in a related action brought by the Plaintiff and attached as Schedule "B" to this claim. The Defendants in this claim are described as "duped co-conspirators".
- (n) The conspiracy claim fails to adequately plead bad faith and is therefore barred by section 9 of the *LSA*. The Plaintiff has also failed to plead the requisite elements of the tort of conspiracy and/or failed to plead material facts in support of each element.

Abuse of process (paras 63-66)

- (o) The primary target of the Plaintiff's abuse of process claim is again the non-party defendants in the related claim, with the Defendants in this claim alleged to have "magnified and augmented" an abuse of process committed by others.
- (p) The Plaintiff's claim that the Defendants are liable for "augmenting" an abuse of process committed by others discloses no reasonable cause of action. The Plaintiff fails to adequately plead bad faith in support of his abuse of process claim, let alone full particulars in support of such an allegation. The Plaintiff has also failed to adequately plead the requisite elements of the tort.

Interference with economic interest (paras 67-68)

- (q) The claim of “interference with economic interest”, also known as interference with economic relations, discloses no reasonable cause of action. The claim does not adequately plead the requisite elements of the tort or material facts in support. The tort plainly has no application to the circumstances of this claim.

Breach of fiduciary duty (para 69)

- (r) The Plaintiff’s fiduciary duty claim discloses no reasonable cause of action. Even if the facts pleaded are accepted as true for the purposes of this motion, they do not establish the existence of a fiduciary duty owed by the LSO to the Plaintiff, or the breach of any such duty. The fiduciary duty claim also fails to adequately plead bad faith.

Negligence / negligent investigation (para 70)

- (s) The Plaintiff’s pleading of negligence and/or negligent investigation is plainly barred by the immunity provision in section 9 of the *LSA*. A claim of negligence is not a claim of bad faith. Moreover, the Plaintiff has failed to plead material facts in support of his negligence claim.

Intimidation (paras 71-73)

- (t) The claim of intimidation discloses no reasonable cause of action. The material facts pleaded under the heading of “intimidation” do not satisfy the elements of the tort of intimidation and do not amount to pleadings of bad faith, let alone full particulars of bad faith.

Breach of sections 7 and 15 of the Charter of Rights and Freedoms (para 74)

- (u) The Plaintiff's claims that the LSO, through its conduct in notifying the Plaintiff of complaints against him and in requiring him to respond to some of those complaints, violated his *Charter* rights to life, liberty and security of the person (section 7) and to equality (section 15), disclose no reasonable cause of action. These claims are advanced in a single paragraph towards the end of the claim (para 74). The Plaintiff fails to adequately plead requisite elements of the *Charter* provisions or material facts in support, making it impossible for the Defendants to respond to the alleged *Charter* violations.

Constitutional challenge to section 49.3 of the Law Society Act (paras 75-77)

- (v) The Plaintiff's challenge to the constitutionality of section 49.3 of the *LSA* under sections 7 and 8 of the *Charter* similarly discloses no reasonable cause of action. *Charter* claims cannot be adjudicated in a factual vacuum. The Plaintiff has advanced his challenge to the constitutionality of the LSO's investigative powers in three short paragraphs towards the end of the Statement of Claim (paras 75-77), without adequate material facts pleaded in support.
- (w) The Plaintiff has failed to serve a Notice of Constitutional Question pursuant to section 109 of the *Courts of Justice Act*, RSO 1990, c C.43.

Jurisdiction

- (x) The substance of the Plaintiff's claim is a challenge to the LSO's exercise of its statutory powers under section 49.3 of the *LSA*. Pursuant to the *Judicial Review*

Procedure Act, R.S.O. 1990, C. J.1 (“*JRPA*”), including sections 1 and 6, the Divisional Court has exclusive jurisdiction over legal challenges made to the exercise of a statutory power. Although the Plaintiff has framed his claim in tort, the substance of the claim is a judicial review to the exercise of a statutory power. Accordingly, this Court lacks jurisdiction to hear the Plaintiff’s claim. The claim should be stayed or dismissed under Rule 21.01(3)(a).

- (y) *Rules of Civil Procedure*, RRO 1990, Reg 194, including Rules 21.01(1)(b), 21.01(3)(a), 25.06(1), 25.06(8) and 25.11(b);
- (z) *Law Society Act*, R.S.O. 1990, c L.8, including sections 9 and 49.3;
- (aa) *Judicial Review Procedure Act*, R.S.O. 1990, C. J.1, including sections 1 and 6;
- (bb) Such further and other grounds as counsel may advise and this Honourable Court permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) the Statement of Claim issued July 12, 2022; and
- (b) such further and other material as counsel may advise and this Honourable Court permit.

September 6, 2022

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**JUSTICE GREENE, THE DIRECTOR OF
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Defendants

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