

CITATION: Aboagye v. Ontario, 2025 ONSC 4950
COURT FILE NO.: CV-24-724607
DATE: 2025 08 28

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: FRANCIS ABOAGYE, *Plaintiff*

- and -

HIS MAJESTY THE KING IN RIGHT OF ONTARIO, *Defendant*

BEFORE: Associate Justice Todd Robinson

APPEARING: F. Aboagye, *in person*

B. Fragomeni, *for the defendant*

HEARD: April 11 and May 28, 2025

REASONS FOR DECISION
(Leave to Continue Proceeding against the Crown)

[1] Francis Aboagye brings this motion seeking leave to continue this action, if required, under s. 17(2) of the *Crown Liability and Proceedings Act, 2019*, SO 2019, c 7, Sched 17 (the “CLPA”). His Majesty the King in Right of Ontario (“HMK”) has taken the position the claim is one caught by the automatic stay in s. 17(1) of the CLPA, such that this action may only proceed with leave of the court. Mr. Aboagye disagrees, but has brought the motion in any event.

[2] The action arises from events dating back to 2006. It is evident from Mr. Aboagye’s materials and submissions that the last 20 years have been quite difficult for him. In this action, Mr. Aboagye alleges that HMK is directly responsible for intentionally fabricating a document that falsely identified him as a criminal and then distributing it to police services throughout Ontario. If this action proceeds, Mr. Aboagye intends to pursue a position that HMK’s actions led to the loss of his job, loss of his marriage, loss of custody and access to his children, isolation, emotional, physical and mental distress, loss of liberty, reputation and dignity, and false imprisonment, among other losses, and that HMK spends upwards of \$1 million per year following and surveilling him.

[3] Although Mr. Aboagye has put forward reasonable arguments for why his claim is not caught by the automatic stay in s. 17(1) of the CLPA, the statement of claim is, in my view, clearly rooted in alleged bad faith conduct by HMK that is argued to give rise to tortious liability. I accordingly find that the automatic stay applies. Having considered the evidence tendered by

Mr. Aboagye, I further find that he has failed to meet his onus for obtaining leave to continue this proceeding. I am accordingly dismissing the motion.

ANALYSIS

[4] The automatic stay and leave requirement at issue are set out in s. 17 of the *CLPA*. The pertinent portions of that section for this motion are as follows:

Proceedings re misfeasance, bad faith

17 (1) This section applies to proceedings brought against the Crown or an officer or employee of the Crown that include a claim in respect of a tort of misfeasance in public office or a tort based on bad faith respecting anything done in the exercise or intended exercise of the officer or employee's powers or the performance or intended performance of the officer or employee's duties or functions.

Leave to proceed required, automatic stay

(2) A proceeding to which this section applies [...] may proceed only with leave of the court and, unless and until leave is granted, is deemed to have been stayed in respect of all claims in that proceeding from the time that it is brought.

Documents on motion for leave

(3) On a motion for leave under subsection (2), the claimant shall [...] serve on the defendant and file with the court,

(a) an affidavit, or such other document as may be prescribed, setting out a concise statement of the material facts on which the claimant intends to rely; and

(b) an affidavit of documents, or such other document as may be prescribed, disclosing, to the full extent of the claimant's knowledge, information and belief, all documents relevant to any matter in issue in the proceeding that are or have been in the claimant's possession, control or power.

Response by defendant

(4) On a motion for leave under subsection (2), the defendant may serve on the claimant and file an affidavit, or such other document as may be prescribed, setting out a concise statement of the material facts on which the defendant intends to rely for the defence, but is not required to do so.

[...]

Requirements for leave

(7) The court shall not grant leave unless it is satisfied that,

(a) the proceeding is being brought in good faith; and

(b) there is a reasonable possibility that the claim described in subsection (1) would be resolved in the claimant's favour.

[5] As set out in s. 17(11) of the *CLPA*, HMK is entitled to waive the leave requirement, but has not done so for Mr. Aboagye's claim. Mr. Aboagye must accordingly satisfy me that his claim is not subject to the automatic stay in s. 17(1) or meet the evidentiary and legal requirements for obtaining leave to continue the action.

[6] Mr. Aboagye's primary position is that his claim, in whole or at least in part, is not captured by the automatic stay in s. 17(1) and that leave is not required to pursue it. I disagree.

[7] The original iteration of Mr. Aboagye's statement of claim expressly pleaded misfeasance in public office, which is consistent with much of the alleged conduct set out in the statement of claim. Mr. Aboagye's affidavit sets out that "misfeasance" ought to have read "malfeasance", but regardless he has sought to withdraw that pleaded claim by amending the statement of claim to delete it as a cause of action in the paragraphs outlining relief being sought. The balance of his statement of claim remains unchanged.

[8] HMK argues that the substance of the claim as pleaded remains a claim for misfeasance in public office, including allegations of false imprisonment. There is merit to that argument, but I have decided that I need not address it. I am satisfied that the second trigger in s. 17(1) of the *CLPA* is engaged, namely whether the torts relied upon by Mr. Aboagye are based on bad faith respecting anything done by HMK or its employees and agents in the exercise or intended exercise of their powers or the performance or intended performance of their duties or functions.

[9] In my view, the core position underlying each of Mr. Aboagye's pleaded claims is that HMK and those for whom it is responsible at law acted in bad faith towards him. I need not go through every allegation in the lengthy amended statement of claim. The pleaded facts underlying Mr. Aboagye's claim include allegations that:

- (a) he has "experienced an unprecedented life crisis arising from a document confirmed to be in possession of the Ministry of the Solicitor General that purports to show that [Mr. Aboagye] is a criminal and placed under law enforcement" (para. 2);
- (b) he was "viciously profiled, followed, harassed, and intimidated unabated [...] thereby making him a life-long prisoner" (para. 4);
- (c) he is unable to obtain employment "due to vicious enforcement" by police of the "document" (para. 5);
- (d) his *Charter* rights an "all aspects of his human rights" have been breached by HMK (para. 9);
- (e) HMK is liable "for the wrongful or negligent acts and omissions of employees and agents of the Ministry of the Solicitor General", which is alleged to have provided "representations" to Mr. Aboagye indicating that he "is in their system as a convicted criminal", which is stated to imply that HMK "has illegally and without justification, placed the plaintiff, a law-abiding citizen, in their records as a convicted criminal without showing him his crimes, charges, and denying him his constitution rights to defend himself in the court of law" (paras. 12-15);

- (f) HMK has “demonstrated excessive abuse of power and total disregard for 'Rule of Law', by fabricating criminal documents to frame the plaintiff, place him under law enforcement, waste enormous tax-payers money to hire several security personnel to track, follow, harass, provoke, and intimidate him unabated” (para. 23); and
- (g) The Ministry of the Solicitor General “willfully placed [him] in the system as a criminal without [his] knowledge or consent”, “willfully misled [him] in his effort to obtain the document”, and that he is “still feeling the harm caused by the document including being followed by Police and security personnel across the country (para. 100 – unmarked).

[10] Mr. Aboagye’s statement of claim details various incidents occurring between 2006 and 2018 in which he was stopped, followed, and harassed by police or unidentified security personnel. It also outlines the various impacts that he has suffered in his personal life, including losing his job, his spouse, and his community supports, as well as emotion, mental, and physical health impacts.

[11] It is clear from Mr. Aboagye’s pleading that the claim against HMK is based on the impacts of the “document” said to be created by or in the possession of HMK. Based on Mr. Aboagye’s submissions, his claim at its core is that HMK intentionally fabricated the document and shared it with police services and the public to harm him. In my view, his claim is clearly based on intentional, bad faith conduct.

[12] Notably, the document is specifically alleged in the statement of claim to be “in the possession of the Defendants [sic]” and “absolutely FRAUDULENT, RACISM and HATRED driven, and ILLEGALLY put together with malicious and WILLFUL intent” (para. 3). Mr. Aboagye also asserts that the document was “stumbled upon” by a legal aid lawyer and that it “confirmed that Peel Police had stopped [him] from working” (para. 78). He further asserts that the document “was willfully placed in the system to falsely make [Mr. Aboagye] a prisoner and restraint him without legal authority or justification” (para. 17) and that the document exists “due to criminal act meant to intentionally restrict [Mr. Aboagye’s] movement within Canada without Legal Authority, Justification, or the plaintiff’s permission” (para. 18).

[13] I have considered Mr. Aboagye’s written submissions seeking to distinguish his claims from the ambit of s. 17(1) of the *CLPA*. They are unconvincing. Given the foregoing, I struggle to see how his claims are based on anything other than bad faith by HMK and its employees and agents (ignoring for a moment that a connection between HMK and the police and other individuals discussed in the statement of claim is not clearly pleaded).

[14] I have been provided with no case law supporting that a “tort based on bad faith” means that bad faith must be a requisite element of the tort. Mills J. has observed that, for the stay to apply, “the claims must be founded on bad faith in the exercise of their powers or the execution of their duties”: *Phixaykoun v. Ontario*, 2024 ONSC 3860 at para. 11. In my view, the legislative intent is to capture claims against the Crown that are factually rooted in bad faith conduct, rather than bad faith being a requisite element of a tort relied upon.

[15] Unfortunately, Mr. Aboagye’s oral submissions also did not assist him in convincing me that his claims are not captured by s. 17(1) of the *CLPA* or, as discussed below, that leave should be granted to pursue them. I found his submissions difficult to follow. They were not directed to whether the automatic stay in s. 17(2) applied to his claims or the evidence supporting those claims. Instead, they were largely focused on the failure of various police agencies to disclose relevant and responsive general occurrence and incident reports to him, despite court orders to do so. These incidents are argued to have been at the behest of HMK, although there is no evidence of that.

[16] The entire tenor of Mr. Aboagye’s statement of claim is one of bad faith conduct against him that has resulted in significant and wide-reaching impacts on his life. His submissions on this motion also support that his claim is rooted in bad faith. In my view, the entire claim is squarely captured by the automatic stay in s. 17(2) of the *CLPA*. Accordingly, it falls to Mr. Aboagye to convince me that the stay should be lifted.

[17] As set out in s. 17(7) of the *CLPA*, I am only to grant leave if I am satisfied that both (a) the proceeding is being brought in good faith, and (b) there is a reasonable possibility that the claim would be resolved in the claimant’s favour. The purpose of this test was discussed by Mills J. in *Phixaykoun v. Ontario, supra*, at para. 12, as follows:

This test was enacted to screen out lawsuits pursued with an ulterior motive, known as “strike suits”, where a plaintiff commences a civil action to harass or to generate negative publicity for a defendant, with the primary intention to extort a financial settlement. The test is also intended to screen out negligence claims that for tactical reasons have been pleaded with allegations of bad faith.

[18] Albeit dealing with language in the *Securities Act*, the Supreme Court of Canada discussed requirements for demonstrating a “reasonable possibility of success” in *Theratechnologies Inc. v. 121851 Canada Inc.*, 2015 SCC 18, at para. 39, as follows (emphasis added):

A case with a reasonable possibility of success requires the claimant to offer both a plausible analysis of the applicable legislative provisions, and some credible evidence in support of the claim. This approach, in my view, best realizes the legislative intent of the screening mechanism: to ensure that cases with little chance of success — and the time and expense they impose — are avoided. I agree with the Court of Appeal, however, that the authorization stage under s. 225.4 should not be treated as a mini-trial. A full analysis of the evidence is unnecessary. If the goal of the screening mechanism is to prevent costly strike suits and litigation with little chance of success, it follows that the evidentiary requirements should not be so onerous as to essentially replicate the demands of a trial. To impose such a requirement would undermine the objective of the screening mechanism, which is to protect reporting issuers from unsubstantiated strike suits and costly unmeritorious litigation. What is required is sufficient evidence to persuade the court that there is a reasonable possibility that the action will be resolved in the claimant’s favour.

[19] HMK argues that I should apply the same requirements as set out in *Theratechnologies* to the similar language under s. 17 of the *CLPA*. I agree. I find no principled basis to do otherwise. That approach makes eminent sense and is consistent with existing case law under s. 17. It follows that, on this motion, Mr. Aboagye bears the burden of tendering sufficient credible evidence and

a plausible legal argument to persuade me that he has a reasonable possibility of succeeding at trial. However, the evidentiary threshold on this motion is lower than it would be at trial.

[20] In support of a motion for leave, a plaintiff must comply with s. 17(3) of the *CLPA*, which requires two things:

- (a) an affidavit setting out a concise statement of the material facts on which the claimant intends to rely; and
- (b) an affidavit of documents disclosing to the full extent of the claimant's knowledge, information and belief, all documents relevant to any matter in issue in the proceeding that are or have been in the claimant's possession, control or power.

[21] My task on this motion is to decide, based on and accepting the material facts in Mr. Aboagye's affidavit and with reference to the documents he has produced, whether there is a reasonable possibility of success at trial. Case law confirms that bald allegations are not sufficient to support or establish a reasonable possibility of success. Material facts sufficient to support the essential elements of asserted torts must be outlined in the affidavit: *Yadeta v. The Regional Municipality of Peel Police Services Board*, 2023 ONSC 6387 at paras. 40-41.

[22] Mr. Aboagye has tendered a brief 3-page affidavit with hundreds of pages of supporting documents, although no affidavit of documents has been prepared. The documents are appended both to his affidavit and his factum. Per the language of s. 17(3) of the *CLPA*, I am entitled to presume that his affidavit sets out all material facts on which he intends to rely and that the documents tendered are all of the documents that he has relevant to all matters in issue.

[23] More than half of Mr. Aboagye's affidavit focuses on procedural steps leading to this motion. It does not set out any "concise statement" of material facts relied upon in support of the claim against HMK. Notably, the affidavit uses hyperbolic language and does not tie any of the alleged conduct to tortious actions by HMK or those for whom in law it is responsible. I have been given insufficient material facts in the affidavit on which to find that there is a reasonable possibility that the claim would be resolved in Mr. Aboagye's favour.

[24] Moreover, documents referenced in his affidavit do not appear to support the statements made in related paragraphs. There are numerous examples that have been well articulated by HMK in both its written and oral submissions.

[25] One such example arises from paras. 4-5 of his affidavit, in which Mr. Aboagye sets out that HMK has "secretly and unlawfully placed [him] in the system as a convicted criminal" and that "information in the possession of the Ministry of the Solicitor General, has been placed in Law Enforcement systems across Canada according to Port Hope Police Chief Bryan Wood." The correlating exhibit is an affidavit of Police Chief Wood, which explains two records management systems used by police forces: the Ontario Police Technology Information Cooperative (OPTIC) and the Niche Records Management System (Niche RMS). Otherwise, the affidavit essentially sets out information about the Port Hope Police Service's access to two general occurrence reports that relate to Mr. Aboagye, one of which was from another police service. There is nothing in the affidavit supporting that any documents exist that record Mr. Aboagye as a criminal.

[26] Significantly, there is no credible evidence from Mr. Aboagye in the record before me that the “document” referenced throughout the statement of claim and underpinning his claim exists. Conversely, there is sworn evidence before me on this motion Karla Turnkey, a program analyst with the Risk Management Section at the Ontario Provincial Police, that she conducted search of the Niche RMS for records relating to Mr. Aboagye and found no occurrences involving a criminal investigation or criminal charges associated with him. She found only one occurrence report that understand was previously produced, but which importantly contains nothing supporting Mr. Aboagye’s allegations that he has been identified as a criminal in police records.

[27] During oral submissions, Mr. Aboagye sought to respond to Ms. Turnkey’s affidavit by submitting an affidavit of Melissa Brazeau sworn in 2017. Ms. Brazeau was, at the time of swearing the affidavit, an administrative clerk working with the Hawkesbury detachment of the Ontario Provincial Police. The affidavit is not in Mr. Aboagye’s motion materials, but that does not really matter. It does not assist Mr. Aboagye on this motion. I do not agree that the affidavit, which deals with a records search, supports that Ms. Turnkey’s affidavit is intentionally inaccurate or misleading. It also does not support any viable claim against HMK for the various law enforcement and other incidents that underpin the claim.

[28] There are also numerous bald and unsubstantiated allegations in Mr. Aboagye’s affidavit. One such example is found at para. 10 of the affidavit, in which Mr. Aboagye states unequivocally, “PEEL police has confirmed to me that I am indeed, being followed by police everyday throughout the country due to a never-ending investigation they cannot explain.” Mr. Aboagye does not identify the person with the Peel Regional Police from whom that information was purportedly obtained. I have been directed to no document that supports the bald allegation.

[29] During oral submissions, Mr. Aboagye identified several witnesses who he says will substantiate his allegations. Neither the witnesses nor the evidence that they are expected to tender are identified in Mr. Aboagye’s affidavit. The requirement of s. 17(3) of the *CLPA* is to set out the basis for the claim in the supporting affidavit. Importantly, s. 17(4) permits HMK to file responding materials, which it cannot meaningfully do that if evidence is only tendered orally at a motion hearing. I accordingly give Mr. Aboagye’s oral evidence on available witnesses no weight in my decision. It would be procedurally unfair to consider it.

[30] Mr. Aboagye has further failed to clearly articulate the specific actionable torts on which he relies in his claim against HMK. I have been provided with no meaningful legal analysis supporting a reasonable possibility of HMK being found liable. Mr. Aboagye has put forward some law in support of certain torts he seems to be pursuing, but has not explained how material facts would reasonably be applied within the ambit of the law to support HMK’s liability at trial.

[31] With respect to alleged damages, Mr. Aboagye has put forward little more than bald allegations to support them. Alleged loss of employment is not particularized or documented. Mr. Aboagye’s health concerns are not addressed in his affidavit, let alone their connection to the alleged tortious conduct of HMK. Alleged fabrication of criminal records is unsubstantiated, including his asserted classification as a sex offender and “likely” racism or a personal grudge against him. Specific alleged breaches of his *Charter* rights are only generally discussed in Mr. Aboagye’s factum, but are based on bald allegations.

[32] In HMK's responding factum, requisite elements of various torts seemingly being pursued by Mr. Aboagye have been set out and reviewed, such as false imprisonment, systemic negligence, and intentional infliction of mental suffering. I need not go through each of them in any detail. I agree that material facts necessary to establish actionable tortious conduct by HMK have not been sufficiently plead in the statement of claim and, moreover, are not set out in Mr. Aboagye's evidence on this motion. I have no basis to find a reasonable possibility of success in favour of Mr. Aboagye on any of them. To the extent that Mr. Aboagye is seeking damages for harassment, the Court of Appeal has held that there is no tort of harassment in Ontario: *Merrifield v. Canada (Attorney General)*, 2019 ONCA 205 at paras. 42-43 and 105. Obstruction of justice is also not a civil cause of action: *Larbi v. Addeo*, 2020 ONSC 7269 at para. 5(b); *Markowa v. Adamson Cosmetic Facial Surgery Inc.*, 2014 ONSC 6664 at para. 10.

[33] HMK also points to a limitations issue with Mr. Aboagye's claim. The underlying events all occurred well over two years prior to this claim being commenced. HMK submits that the claim is barred by ss. 4-5 of the *Limitations Act, 2002*, SO 2002, c 24, Sched B. HMK has advanced convincing arguments in support of its position.

[34] Notably, at para. 75 of the amended statement of claim, Mr. Aboagye specifically pleads that, on August 19, 2016, he was provided with an affidavit confirming the existence of the alleged "criminal document which was responsible for his job dismissals". Substantially similar allegations to those pleaded in the statement of claim in this action were also previously advanced by Mr. Aboagye in two prior proceedings: one commenced in 2018 naming the Ministry of Community Safety and Correctional Services and a second commenced in 2018 against Her Majesty the Queen in Right of Ontario. Both of those actions were discontinued by Mr. Aboagye, but the similarities between those prior claims against the Crown and the current claim support that Mr. Aboagye was aware of the material facts supporting his claim by 2018. I agree with HMK that discoverability of the claim and impact of the *Limitations Act, 2002* is a further factor bearing on Mr. Aboagye's reasonable possibility of success. However, he did not address those issues in either his written or oral argument.

[35] As already noted above, Mr. Aboagye's oral submissions were difficult to follow in terms of how the various documents he has tendered support a reasonable possibility of success at trial. Mr. Aboagye's arguments rely on inferences and assumptions that are not reasonably drawn from the limited evidence he has tendered.

[36] For these reasons, I find that Mr. Aboagye has not met his onus of establishing a reasonable possibility that the claims advanced in this action will be resolved in his favour. Looking at the evidentiary record before me as a whole, and considering the parties' submissions, there is simply no cogent evidence supporting a tenable argument that HMK created or maintains any document identifying Mr. Aboagye as a criminal or that HMK intentionally distributed it. On the record before me, I am unable to find that Mr. Aboagye has a reasonable possibility of succeeding against HMK at trial.

[37] Since the foregoing is sufficient to dismiss the motion, I need not address the parties' arguments on whether Mr. Aboagye has commenced this proceeding in good faith.

[38] Although I am dismissing the motion, nothing in this decision should be construed as being dismissive of the challenges that Mr. Aboagye has faced over the years. It may be of little consequence to Mr. Aboagye given the result, but regardless of who is or may be responsible, I have tremendous sympathy for the significant and wide-reaching hardships and difficulties that he has endured in his life over the last 20 years.

DISPOSITION

[39] For the foregoing reasons, I find that the automatic stay in s. 17(2) of the *CLPA* applies and leave to continue this proceeding is required. Since I am not satisfied that the record supports a reasonable possibility of success, I deny leave for Mr. Aboagye to continue the action. Pursuant to s. 17(10)(a), this proceeding is thereby rendered a nullity. In accordance with s. 17(8), each party shall bear their own costs of the motion.

[40] The motion is accordingly dismissed, without costs.

ASSOCIATE JUSTICE TODD ROBINSON

DATE: August 28, 2025