

COURT OF APPEAL FOR ONTARIO

CITATION: Berentschot v. Ontario, 2026 ONCA 444

DATE: 20260619

DOCKET: COA-25-CV-1275

Tulloch C.J.O., Lauwers and Miller JJ.A.

BETWEEN

Michelle Lorainne Berentschot

Appellant

and

Charles Philip Arthur George Mountbatten-Windsor, as His Majesty the King in Right of Ontario, as represented by; Arif Virani, as The Attorney General of Canada, Doug Downey, as The Attorney General of Ontario and on behalf of the men or women as, agents of the Crown, and Patricia DeGuire, as Chief Commissioner of Ontario Human Rights Commission

Respondents

Michelle Lorainne Berentschot, acting in person

Sara Badawi, for the respondents Attorney General of Ontario and the Ontario Human Rights Commission

Emmett Bisbee, for the respondent Attorney General of Canada

Heard: June 10, 2026

On appeal from the order of Justice Clyde Smith of the Superior Court of Justice, dated May 22, 2025.

REASONS FOR DECISION

A. OVERVIEW

[1] The appellant appeals from the order of the motion judge dismissing her action pursuant to r. 2.1.01 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, on the basis that it was frivolous, vexatious, and an abuse of the process of the court.

[2] The proceeding arises from federal public-health measures that were in force during the COVID-19 pandemic. The appellant alleges that, upon her return to Canada on August 5, 2022, she was subjected to mandatory border requirements, including PCR (“polymerase chain reaction”) testing and the use of the ArriveCan application. After refusing to comply with certain requirements, she was charged under the *Contraventions Act*, S.C. 1992, c. 47, although the charge was apparently later withdrawn. She subsequently pursued complaints through a number of administrative and political channels before commencing this action in November 2024.

[3] In her statement of claim, the appellant alleged violations of the *Canadian Charter of Rights and Freedoms* and of various principles of international law. She sought extensive declaratory relief and other remedies, including damages in the amount of \$366,000,000.

[4] The motion judge concluded that the pleading was incoherent, failed to plead material facts capable of supporting a recognized cause of action, and

disclosed no viable legal claim against Ontario. He, therefore, dismissed the action pursuant to r. 2.1.01.

[5] For the reasons that follow, we see no basis to interfere with that decision.

B. THE APPELLANT'S POSITION

[6] The appellant, who represented herself both below and on appeal, advances four principal arguments.

[7] First, she submits that r. 2.1.01 is intended to be used only in the clearest of cases and cannot properly be invoked where a proceeding raises constitutional issues requiring adjudication on the merits.

[8] Second, she argues that the motion judge exceeded the limited scope of r. 2.1.01 by effectively determining that her claim disclosed no reasonable cause of action and was destined to fail. In her submission, such determinations fall within rr. 20 and 21 and require the procedural protections associated with those rules.

[9] Third, she submits that she should have been given the opportunity to amend her pleading to remedy any deficiencies. She contends that dismissal without leave to amend was inconsistent with principles of procedural fairness and deprived her of an effective remedy under s. 24(1) of the *Charter*.

[10] Fourth, she challenges the constitutionality of s. 17 of the *Crown Liability and Proceedings Act, 2019*, S.O. 2019, c. 7, Sched. 17 ("CLPA"), arguing that it impermissibly restricts access to constitutional remedies against the Crown.

C. ANALYSIS

[11] We are not persuaded by any of the appellant's submissions.

[12] A decision under r. 2.1.01 is discretionary and attracts appellate deference. Intervention is warranted only where the motion judge acted on an error in principle, misapprehended the applicable legal framework, or reached a result that is clearly wrong: *Fabrikant v. Kelly*, 2023 ONCA 579, at para. 3.

[13] The appellant has not demonstrated any such error.

[14] The appellant's first and second grounds of appeal rest on the proposition that the assertion of *Charter* rights places a proceeding beyond the reach of r. 2.1.01. That proposition is unsupported by the jurisprudence.

[15] The court's authority to control its own process is not displaced when a litigant makes a constitutional claim: *Ahmed v. Ontario (Attorney General)*, 2021 ONCA 427; *Joshi v. Ontario*, 2019 ONSC 2444.

[16] Nor did the motion judge improperly convert the r. 2.1.01 process into a determination under rr. 20 or 21. His conclusion that the action was incapable of success flowed directly from his review of the pleading. He found that the statement of claim failed to set out coherent material facts, failed to identify a legally recognizable cause of action against Ontario, and consisted largely of broad assertions unsupported by particulars. Those conclusions were open to him on the record before the court.

[17] Rule 2.1.01 exists to permit the summary dismissal of proceedings that, on their face, constitute an abuse of process. The motion judge's analysis remained well within the proper scope of the rule.

[18] We also reject the appellant's submission that the motion judge was required to grant leave to amend.

[19] The procedural requirements of r. 2.1.01 were followed. The appellant received notice of the court's concerns and was afforded an opportunity to make written submissions. She availed herself of that opportunity. The motion judge considered those submissions and concluded that they reiterated the allegations advanced in the claim without addressing its fundamental deficiencies.

[20] Although leave to amend may be appropriate where a viable cause of action could potentially be pleaded, a motion judge is not required to permit amendment where the proceeding is incapable of being transformed into a sustainable claim. It was open to the motion judge to conclude that this was such a case, and that no useful purpose would be served by granting leave to amend in this case.

[21] The appellant's constitutional challenge to s. 17 of the *CLPA* and, to the extent advanced, to r. 2.1.01 itself cannot succeed. We note that this court has previously upheld the constitutionality of s. 17 of the *CLPA*: *Poorkid Investments Inc. v. Ontario (Solicitor General)*, 2023 ONCA 172, 479 D.L.R. (4th) 469, leave to appeal refused, [2023] S.C.C.A. No. 188.

[22] In any event, the constitutionality of s. 17 of the *CLPA* is not engaged by this appeal. Ontario did not invoke that provision to block this action. Because the action was dismissed pursuant to r. 2.1.01, the validity of s. 17 has no bearing on the correctness of the order under appeal.

[23] Further, these constitutional arguments were not raised before the motion judge. No Notice of Constitutional Question was served as required by s. 109 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43. Section 109(2) precludes the granting of constitutional relief in the absence of such notice.

[24] Moreover, there is no evidentiary record capable of supporting constitutional adjudication. Constitutional challenges generally require a proper factual foundation, particularly where legislation is alleged to be invalid or unconstitutional: *Guindon v. Canada*, 2015 SCC 41, [2015] 3 S.C.R. 3, at paras. 20-23.

[25] Finally, the appellant seeks various forms of declaratory and systemic relief that were not identified in her Notice of Appeal. Such relief is not properly before the court absent leave under r. 61.08(3). No such leave was sought or obtained.

[26] We acknowledge the appellant's submissions about the challenges faced by self-represented litigants in navigating the justice system. However, those challenges cannot provide a basis for appellate intervention where the order under appeal discloses no legal error.

D. DISPOSITION

[27] The motion judge committed no reviewable error. His conclusion that the action was frivolous, vexatious, and an abuse of process was fully supported by the record and falls squarely within the ambit of r. 2.1.01.

[28] Accordingly, the appeal is dismissed.

[29] The respondents seek no costs. In the circumstances, no costs are awarded.

“M. Tulloch C.J.O.”
“P. Lauwers J.A.”
“B.W. Miller J.A.”