

PRACTICE

EVIDENCE

Expert evidence — Appeal from Prothonotary's order striking in its entirety expert report tendered by plaintiff in support of his action against Crown for damages — Plaintiff, Canadian citizen, escaping from Mexican prison, arrested in Canada — Government of Canada agreeing to his extradition to Mexico to face criminal prosecution on charges of escape, manslaughter upon assurances that all reasonable precautions would be taken to ensure his safety in Mexico — Plaintiff returned to same prison from which he escaped — Claiming he was tortured by prison guards upon his arrival — Submitting that Crown responsible for alleged acts of torture since it did not put any mechanisms or procedures in place to ensure Mexico would respect diplomatic assurances — Plaintiff filing into evidence report by international law and human rights professor — Prothonotary striking report on basis that its essential character legal opinion on international law as it applies to facts of case — Stating that international law cannot be object of expert evidence because it is within expertise, experience of Court — Also concluding that report opining directly on plaintiff's case — Whether Prothonotary making reviewable error in striking report — No authoritative legal position in Canada on whether or not judges to take judicial notice of international law, on admissibility of expertise on international law — Prothonotary's determination that expert evidence on international law inadmissible because judges must take judicial notice of international law could be said to be legal error — That conclusion not the law in Canada — Such matters still decided on case-by-case basis — However, Prothonotary providing second legal ground justifying report's inadmissibility — Prothonotary making no legal error in determining that expert evidence providing legal conclusions inadmissible because unnecessary — Applying law to facts purview of lawyers to plead, judge to decide — Plaintiff's argument that legal conclusion in report not dispositive of issue to be determined at trial not convincing — Prothonotary's ultimate decision to strike report at preliminary stage before trial, in its entirety, proper exercise of his discretion as case manager herein — Here, this discretionary power not exercised in abusive, unreasonable or non-judicial manner — Permissible to strike evidence prior to hearing to allow hearing to proceed in a more timely, orderly fashion or where evidence clearly irrelevant or otherwise inadmissible — Motion dismissed.

BOILY V. CANADA (T-541-10, 2017 FC 1021, Gagné J., judgment dated November 9, 2017, 18 p.)