

Federal Court



Cour fédérale

**Date: 20210621**

**Docket: T-216-20**

**Citation: 2021 FC 634**

**St. John's, Newfoundland and Labrador, June 21, 2021**

**PRESENT: The Honourable Madam Justice Heneghan**

**BETWEEN:**

**PAUL BURKE**

**Plaintiff**

**and**

**HER MAJESTY THE QUEEN**

**Defendant**

**ORDER AND REASONS**

[1] By a Statement of Claim issued on February 12, 2020, Mr. Paul Burke (the “Plaintiff”) commenced an action against Her Majesty the Queen (the “Defendant”) claiming \$50,000.00 in general damages.

[2] By a Notice of Motion filed on March 13, 2020, the Defendant moved to strike the Statement of Claim, pursuant to the *Federal Courts Rules*, S.O.R. 98/106 (the “Rules”). The Motion was submitted for consideration without personal appearance, pursuant to Rule 369.

[3] According to the Index of Recorded Entries, the Plaintiff was served with the Notice of Motion on March 12, 2020. By an undated letter received in the Registry of the Court in Vancouver, British Columbia on March 23, 2020, the Plaintiff sought an extension of six months within which to respond to the Defendant's Motion.

[4] By an Order of the Court, issued on April 8, 2020, the Plaintiff was granted an extension of thirty days after the lifting of the Suspension Period imposed after the commencement of the Covid-19 pandemic. The Suspension Period was lifted for the Court's operations in British Columbia effective June 15, 2020.

[5] The Plaintiff did not file any submissions in response to the Defendant's Motion.

[6] According to his Statement of Claim, the Plaintiff is an inmate in a federal correctional institution serving an indeterminate term as a sex offender. His statement of claim is 44 pages in length, with some numbered paragraphs and many unnumbered paragraphs.

[7] The Plaintiff complains, generally, of wrongful acts committed by the Correctional Service of Canada (the "CSC") about improper access to inmate information on a computer while he was incarcerated at Kingston Penitentiary.

[8] The Statement of Claim is 44 pages long. It is divided into parts, with headings and some numbered paragraphs, and unnumbered paragraphs.

- [9] Paragraphs 1 to 19, pages 3 to 5, set out a general background.
- [10] Paragraphs 20 to 27, are entitled “Facts”, page 6.
- [11] Paragraphs 27 to 33, page 7, are entitled “Statutory Breaches.”
- [12] Paragraphs 34 to 40, pages 8 and 9, are entitled “Case Law.”
- [13] Paragraphs 41 to 43, also on page 9, are entitled “Criminal Code Canada.”
- [14] Paragraphs 44 to 52, on pages 10 and 11, are entitled “Parole Hearing”, February 7<sup>th</sup>, 2018; (*sic*) “PBS/CSC.”
- [15] Paragraph 52 is followed by several unnumbered paragraphs on pages 11, 12 and 13.
- [16] Paragraphs 53 to 68 begin on page 13 and continue to page 15, and appear to be complaints about a Victim Impact Statement submitted by the Plaintiff’s former wife.
- [17] Paragraphs 69 to 78 appear on pages 16 and 17.
- [18] Unnumbered paragraphs begin on page 17 and continue to page 20. These paragraphs appear to address a proceeding before the Parole Board of Canada.

[19] Page 21 begins with an unnumbered paragraph and continues with paragraphs 79 to 90, on pages 21 and 22.

[20] Unnumbered paragraphs about “IPO Ron Mandziak” begin on page 23 and continue to page 25.

[21] Three unnumbered paragraphs appear on page 26 under the heading “The Plaintiff’s continued Detention Constitutes a Deprivation of Liberty Interests.”

[22] Page 26 also includes a paragraph under the heading “Residual Liberty Interests.”

[23] Page 27 begins with an unnumbered paragraph under the heading “PBC/SCS Violated the Plaintiff’s Parole hearing 02-7-2018.”

[24] Unnumbered paragraphs continue on page 27 through page 30 under the heading “Applicable Provisions to the Plaintiff’s Correctional Plan (CCRR and CCRA).”

[25] Unnumbered paragraphs are found at page 31 under the heading “Correctional Legislation: Criminal Code.”

[26] More unnumbered paragraphs follow on pages 32 to 35 under the heading “Day Parole Hearing February 7, 2018.”

[27] On page 35, there are two paragraphs under the heading “Security Classification.”

[28] Paragraphs 91 to 115 appear on pages 36 to 39 under the heading “Parole Hearings – 2009 & 2020.”

[29] Paragraphs 116 to 119 appear on page 39 under the heading “Jason Strijack MAI.”

[30] On pages 40, and 41, in unnumbered paragraphs under the heading “The Grounds for the Plaintiff’s Claim are”, the Plaintiff purports to set out the basis of his claim. The first two unnumbered paragraphs read as follows:

The Corrections and Conditional Release Act, S.C. 1993, C-20 mandates the Correctional Service of Canada to relevant information (*sic*) concerning the offender and the index offence. However, section 24(1) provides that the Service “shall take all reasonable steps to insure (*sic*) that any information about an offender that it uses is as accurate, up to date and complete as possible.

IPO Ron Mandziak ordered Tara Wilson a program facilitator to insure (*sic*) that the plaintiff repeat the maintenance sessions. Mandziak ordered Wilson a day prior to his departure on a 3 month holiday, (timeline). His order resulted in the plaintiff failing the sessions and his sentence being extended by years as confirmed by the parole board.

[31] On pages 42 and 43, the Plaintiff sets out his view as to the appropriate quantum of damages.

[32] The Defendant argues that the Plaintiff's Statement of Claim discloses no cause of action and should be struck, without leave to amend, pursuant to Rule 221(1) of the Rules. That Rule provides as follows:

**Motion to strike**

**221 (1)** On motion, the Court may, at any time, order that a pleading, or anything contained therein, be struck out, with or without leave to amend, on the ground that it

(a) discloses no reasonable cause of action or defence, as the case may be,

(b) is immaterial or redundant,

(c) is scandalous, frivolous or vexatious,

(d) may prejudice or delay the fair trial of the action,

(e) constitutes a departure from a previous pleading, or

(f) is otherwise an abuse of the process of the Court,

and may order the action be dismissed or judgment entered accordingly.

**Requête en radiation**

**221 (1)** À tout moment, la Cour peut, sur requête, ordonner la radiation de tout ou partie d'un acte de procédure, avec ou sans autorisation de le modifier, au motif, selon le cas :

a) qu'il ne révèle aucune cause d'action ou de défense valable;

b) qu'il n'est pas pertinent ou qu'il est redondant;

c) qu'il est scandaleux, frivole ou vexatoire;

d) qu'il risque de nuire à l'instruction équitable de l'action ou de la retarder;

e) qu'il diverge d'un acte de procédure antérieur;

f) qu'il constitue autrement un abus de procédure.

Elle peut aussi ordonner que l'action soit rejetée ou qu'un jugement soit enregistré en conséquence.

[33] The Plaintiff brings his action as a Simplified action, pursuant to Rule 292. Although generally motions are only entertained in a Simplified action during a pre-trial conference, Rule

298(2) of the Rules allows a defendant to bring a motion to strike on the grounds of no reasonable cause of action, prior to the filing of a Defence. That is the situation here.

[34] In a motion to strike on the grounds that the Statement of Claim discloses no reasonable cause of action, pursuant to Rule 221(1)(a) of the Rules, no evidence can be submitted; see Rule 221(2). The Court is to accept that the allegations that are capable of being proven, are true; see *Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959. That principle does not apply to allegations based on speculation and assumptions; see *Operation Dismantle Inc. v. The Queen* (1985), 18 D.L.R. (4th) 481 (S.C.C.) at pages 486-487 and 490-491.

[35] In the present case, the Defendant argues that the Plaintiff has failed to plead material facts to establish a cause of action in negligence for unauthorized access to a computer in 1999; to support a cause of action against the Parole Board of Canada for alleged procedural unfairness at hearings in 2009-10 and in February 2018; for an implied claim for misfeasance in public office; for alleged irregularities in the conduct of parole hearings in 2009, 2010 and 2018; and for a claim for damages pursuant to the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c. 11 (the “Charter”).

[36] The Plaintiff’s Statement of Claim is disjointed and unorganized. More to the point, it does not clearly disclose facts which can support a cause of action. The Defendant has tried to discern the possible causes of action that might be in the contemplation of the Plaintiff. It is not

the role of an opposing party or of the Court to search for a cause of action if one, or more, do not arise from the allegations set forth in a statement of claim.

[37] Insofar as the Plaintiff tries to ground an action upon breach of a statute, the allegations must fail. There is no such thing as a right of action for breach of legislation, as discussed by the Supreme Court of Canada in *Canada v. Saskatchewan Wheat Pool*, [1983] 1 S.C.R. 205 at page 225 as follows:

For all of the above reasons I would be adverse to the recognition in Canada of a nominate tort of statutory breach. Breach of statute, where it has an effect upon civil liability, should be considered in the context of the general law of negligence. Negligence and its common law duty of care have become pervasive enough to serve the purpose invoked for the existence of the action for statutory breach.

[38] In order to obtain a remedy for any alleged statutory breach, the Plaintiff must establish a breach of the common law duty of care. The criteria for advancing a claim in negligence against the Defendant was addressed in *Childs et al v. Desormeaux*, [2006] 1 S.C.R. 643 when the Supreme Court of Canada stated the Canadian view of the “*Anns*” test for determining whether a duty of care is made out as follows:

- 1) is there “a sufficiently close relationship between the parties” or “proximity” to justify imposition of a duty and, if so,
- 2) are there policy considerations which ought to negative or limit the scope of the duty, the class of persons to whom it is owed or the damages to which breach may give rise.

[39] No facts are pleaded to support a cause of action in negligence relative to the alleged incident in 1999, about access to a computer that allegedly contained sensitive information about



the Plaintiff, nor about the alleged breach of statutory duty. The Plaintiff does not identify a common law duty of care in support of any implied claim for negligence.

[40] The Defendant addresses the cause of action of misfeasance in public office, although this allegation is not clearly raised in the Plaintiff's Statement of Claim.

[41] The test for a claim for misfeasance in public office is set out in *Odhavji Estate v. Woodhouse*, [2003] 3 S.C.R. 263 at pages 23, 32, as follows:

- a. The public officer engaged in deliberate and unlawful conduct in his or her capacity as a public officer;
- b. The public officer was aware that his or her conduct was unlawful;
- c. The public officer was aware that his or her conduct was likely to cause harm to the Plaintiff;
- d. The tortious conduct was the cause of the Plaintiff's loss or injury; and
- e. The Plaintiff suffered compensable loss as a result of such conduct.

[42] The Plaintiff does not plead any material facts to support any element of this tort. There is no plea that would allow a Court to conclude that any public officer, for whom the Defendant would be responsible, knowingly committed any unlawful act, with knowledge that the Plaintiff would suffer injury. There is no basis to entertain a claim for misfeasance in public office.

[43] Insofar as the Plaintiff advances a claim against the Parole Board of Canada, or the CSC, these claims must fail since there is no right of action for breach of a statute, as mentioned above.

[44] I note that the Defendant also argues that the Plaintiff is time-barred from advancing any of the claim that she discerns from the Statement of Claim.

[45] Pursuant to subsection 39(1) of the *Federal Courts Act*, R.S.C. 1985, c. F-7, provincial limitation periods apply to causes of action arising within a province in respect of any cause of action arising in a province, where a limitation period is not otherwise identified.

[46] The Statement of Claim refers to an incident with a CSC-owned computer that the Plaintiff learned about in August 1999. The alleged incident happened in Ontario. According to the former *Ontario Limitations Act*, R.S.O. 1990, c L. 15, the time for bringing an action is a maximum of 2 years. That time period is long expired.

[47] A claim for Charter damages cannot be entertained in the absence of an evidentiary foundation; see the decision in *MacKay v. Manitoba*, [1989] 2 S.C.R. 357 and *Danson v. Ontario (Attorney General)* (1987), 60 O.R. (2d) 676 (C.A.).

[48] I am satisfied that the Defendant's objections to the Plaintiff's Statement of Claim are well grounded. I agree that the Statement of Claim discloses no cause of action and should be struck out, in its entirety, without leave to amend.

[49] The Defendant seeks costs in the amount of \$300.00, if successful upon her motion.

[50] Pursuant to the discretion afforded by Rule 400 of the Rules, that costs lie wholly within the discretion of the Court, I award costs to the Defendant in the amount of \$250.00.

**ORDER in T-216-20**

**THIS COURT'S ORDER is that** the Plaintiff's Statement of Claim be struck out, in its entirety, without leave to amend, and costs to the Defendant in the amount of \$250.00.

"E. Heneghan"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-216-20

**STYLE OF CAUSE:** PAUL BURKE v. HER MAJESTY THE QUEEN

**MOTION IN WRITING CONSIDERED AT ST. JOHN'S, NEWFOUNDLAND AND  
LABRADOR PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES***

**ORDER AND REASONS:** HENEGHAN J.

**DATED:** JUNE 21, 2021

**WRITTEN REPRESENTATIONS BY:**

No written representations from  
the Plaintiff

FOR THE PLAINTIFF(ON HIS OWN BEHALF)

Courtenay Landsiedel

FOR THE DEFENDANT

**SOLICITORS OF RECORD:**

Attorney General of Canada  
Vancouver, British Columbia

FOR THE DEFENDANT