

Federal Court



Cour fédérale

Date: 20211022

Docket: T-1734-18

Citation: 2021 FC 1126

[ENGLISH TRANSLATION]

Ottawa, Ontario, October 22, 2021

PRESENT: The Honourable Mr. Justice Lafrenière

BETWEEN:

PAUL HUGENS DENIS

Plaintiff

and

HER MAJESTY THE QUEEN

Defendant

JUDGMENT AND REASONS

I. Overview

[1] In September 2018, the plaintiff, Paul Hugens Denis, filed a statement of claim against the Attorney General of Canada [AGC], whom he holds responsible for what he alleges to be misconduct on the part of certain employees of Correctional Service Canada [CSC] and from whom he seeks payment of general damages, as well as punitive and exemplary damages.

[2] Mr. Denis was at all relevant times in this litigation subject to the regime prescribed by the *Corrections and Conditional Release Act*, SC 1992, c 20 [the Act], including as a long-term offender subject to a long-term supervision order [LTSO] pursuant to subsection 753.3(1) of the *Criminal Code*, RSC 1985, c C-46.

[3] Mr. Denis alleges that two CSC employees, Stephanie Dufour, a parole officer [PO], and Carl Madore, Ms. Dufour's manager, committed the following misconduct against him when his long-term supervision was suspended on February 18, 2016:

- 1) The employees gathered evidence in violation of his right against unreasonable search and his right to counsel, which are provided for in section 8 and subsection 10(b) of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c 11 [the Charter];
- 2) He was arbitrarily detained and unlawfully arrested by the employees, who did not inform him of the reasons for his arrest, and despite the protection offered by sections 7 and 9, and subsection 10(a) of the Charter; and
- 3) The employees acted in an insulting, abusive, malicious and oppressive manner, increasing his feelings of distress, humiliation, indignation and anxiety.

II. Style of cause

[4] Before considering these allegations in depth, a preliminary question relating to the style of cause must be decided.

[5] The AGC was named as a defendant. However, proceedings in this Court against the Crown in the form of an action for an offence committed by one of its officials must be taken against Her Majesty the Queen: *Vancouver Island Peace Society v Canada*, [1994] 1 FC 102,

appeal dismissed [1995] 179 NR 106 (FCA). Accordingly, the style of cause is amended to substitute Her Majesty the Queen as the defendant. This amendment is effective immediately.

III. Federal correctional system

[6] To put the facts in context, it is useful to briefly summarize how the federal correctional system works and the conditional release of a long-term offender.

[7] The federal correctional system consists of CSC, the Parole Board of Canada [PBC] and the Office of the Correctional Investigator, which is not involved in this litigation.

[8] The Act provides the legislative basis for CSC (Part I) and the PBC (Part II). It sets out their respective responsibilities and the principles that should guide their actions and provides definitions and rules for the application of conditional release, as well as security rules for high-risk offenders.

[9] The purpose of the Act is to contribute to the maintenance of a just, peaceful and safe society by balancing the enforcement of sentences imposed by the courts, the rehabilitation of offenders and their reintegration into society as law-abiding citizens.

[10] CSC is responsible for administering sentences of two years or more imposed by the courts, managing correctional facilities and supervising offenders on conditional release in the community. The head of CSC is the Commissioner, who reports to the Minister of Public Safety

Canada. The Act provides for discretionary authority under directives from the Commissioner. The directives must, however, respect the parameters of the Charter and the Act.

[11] The PBC is an independent administrative tribunal that, as part of the Canadian criminal justice system, makes decisions on conditional releases and record suspensions and makes recommendations on clemency. It is headed by a chairperson.

[12] CSC operates 14 Community Correctional Centres [CCCs] across the country, aimed at providing a structured living environment and careful supervision to offenders on conditional release. The actions that CSC representatives and POs can take in supervising a long-term offender are found in the *Criminal Code* and the Act.

[13] A CCC is similar to a minimum security penitentiary in the community because it provides a structured living environment with 24-hour supervision in the living areas. Security rounds and searches of individuals and rooms are conducted on a regular basis, and all incoming items are monitored.

[14] Offenders residing in the CCC are kept on a strict schedule, with each entry and exit recorded in a logbook. They are also required to inform the commissionaires of all their movements so that their PO can monitor their activities at all times.

[15] In order to ensure the offender's compliance with the terms of the LTSO, administrative and criminal mechanisms are in place to control and limit the residual liberty of the offender supervised under an LTSO.

[16] First, subsection 134.2(1) of the Act provides that an offender shall comply with any direction given to him or her by his or her PO, a member of the PBC, or a person designated by name or position by the Chairperson of the PBC or the Commissioner for the purpose of preventing a breach of the conditions imposed or protecting society. In addition, subsection 753.3(1) of the *Criminal Code* provides that an offender who, without reasonable excuse, fails or refuses to comply with an LTSO to which he or she is subject is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.

[17] In the event of non-compliance with a condition of the LTSO, the offender's supervision in the community may be suspended by CSC and the offender may be re-incarcerated for up to 90 days. In such cases, a suspension of release warrant is issued. A post-suspension interview will follow to inform the offender of the reasons for the suspension and give the offender an opportunity to explain his or her conduct.

[18] Finally, if the CSC decides not to rescind the suspension, the case may be referred to the PBC for review. The CSC then sends the PBC an "Assessment for Decision", the non-confidential elements of which are communicated to the offender. The offender may then make written submissions and request a face-to-face meeting with the PBC.

[19] Once the matter is referred to the PBC, it will review the matter and, prior to the expiration of the 90-day maximum period, may either rescind the suspension if it is of the opinion that the risk of reoffending before the expiration of the 90-day period is not high, or recommend that an information be laid charging the offender with an offence under section 753.3 of the *Criminal Code*, if it is of the opinion that no supervision program can adequately protect society from the risk of reoffending and that, to all appearances, the conditions of supervision have not been complied with.

[20] Where the PBC recommends criminal prosecution, the recommendation is forwarded to the Attorney General of the province where the breach of supervision was found. The presumption of innocence and the burden of proof applicable in criminal matters apply to such a prosecution, if any.

[21] The PBC's decision to uphold a suspension and, if appropriate, to recommend the filing of criminal charges may be appealed to the PBC's appellate division. This appeal may itself be subject to judicial review by this Court.

[22] Subsection 134.1(3) of the Act specifies that it is the responsibility of the PBC to establish the specific conditions of the LTSO. These conditions are in addition to the general conditions set out in subsection 161(1) of the *Corrections and Conditional Release Regulations*, SOR/92-620, which apply with necessary modifications.

IV. Facts

[23] The trial was conducted virtually through the Zoom platform. I heard the testimony of three witnesses, Mr. Denis, Ms. Dufour and Mr. Madore.

[24] Mr. Denis testified about his experience as a conditionally released offender under LTSO assigned to a residence at CCC Sherbrooke, as well as the events that led to his release being suspended in February 2016.

[25] Ms. Dufour testified about her role as a PO at CCC Sherbrooke, as well as her interactions with Mr. Denis. She also presented her version of the discussions she had with Mr. Denis on February 17 and 18, 2016, as well as with Mr. Madore, before and after the suspension warrant was issued.

[26] Mr. Madore testified more generally about the legislative and functional framework within which CCC Sherbrooke and its employees operate, specifically the powers of POs and the responsibilities of offenders. He also testified about his involvement in the events of February 18, 2016, including the decision to issue the suspension warrant.

[27] Despite the large number of documents presented at the hearing and three full days of testimony, there is little dispute as to the facts giving rise to this dispute. The testimony differed primarily on only two issues: whether Mr. Denis gave his free and informed consent to Ms. Dufour's request to log on to Facebook and access his account, which he described as a

[TRANSLATION] “warrantless search”; and whether Ms. Dufour was at fault for continuing to collect evidence after Mr. Denis’s non-compliance with the supervision conditions was confirmed, in violation of his right against unreasonable searches and his right to counsel.

[28] The facts can be summarized as follows.

[29] On February 19, 2014, Denis was found guilty of assault causing bodily harm for stabbing a person who owed him money.

[30] On December 1, 2014, he received a sentence of 10 months and 15 days in connection with this conviction by Justice Geneviève Graton of the Court of Quebec. He was then declared a long-term offender, with the Court imposing an LTSO: *Hugens Denis v The Queen*, CQ, file 500-01-087657-133, December 1, 2014.

[31] Before declaring Mr. Denis a long-term offender, Justice Graton reviewed his already extensive criminal history, as well as his record of having been released on parole on several occasions and of having violated his conditions. She noted Mr. Denis’s past contradictory statements about his criminal history, his lack of self-criticism and the high risk of violent recidivism.

[32] A psychological report on the subject of Mr. Denis’s possible reintegration into the community led Justice Graton to conclude that [TRANSLATION] “his occupations and his budget should be given special attention in view of his anti-social values, the danger associated with his

idleness and his attraction to luxury, and even the sense of panic associated with his financial difficulties” and that his case warrants [TRANSLATION] “a tight framework and very strict conditions, non-compliance with which implies immediate consequences”.

[33] On June 29, 2015, Mr. Denis signed a certificate of release in which he attested to understanding and agreeing to the conditions imposed by the LTSO. In addition to a condition of residence at CCC Sherbrooke, located in downtown Montréal, Mr. Denis must abide by a curfew; avoid all drug and alcohol use; and avoid any non-incident association with individuals he knows or has reason to believe have a criminal record, or who were involved in criminal activity or street gangs. Many of these conditions were already familiar to him.

[34] Mr. Madore explained in his testimony that the CCC Sherbrooke Case Management Team [CMT] comprises the POs and their manager. Collaboration and transparency between an offender and a PO are key elements in verifying compliance with LTSO conditions.

[TRANSLATION]

Collaboration is very important in supervision. In fact, within the first twenty-four hours of an offender’s release, there is a process that begins called the intake interview process. The process is detailed in Commissioner’s Directive 715-1. In a simple way, this process is the meeting between the parole officer and the offender, and the officer explains . . . , he reviews with the offender his special conditions, his usual or automatic conditions He also reviews with him the decision of the Parole Board and the justifications for the conditions that have been imposed. He will explain to him, among other things, the minimum frequency with which they will have to meet.

. . .

Moreover, on the certificate of release we can see there is a passage before the special conditions where it is clearly indicated there that collaboration and compliance with the special conditions are expected.

[35] The long-term supervision certificate issued on January 29, 2016, and the intervention notes about Mr. Denis from the Offender Management System intervention system from February 18, 2016, through September 29, 2016, which reiterate the importance of collaboration, corroborate Mr. Madore's testimony.

[36] On August 4, 2015, Mr. Denis was apprehended and recommitted to custody for the first time when he allegedly engaged in intimidating behavior towards various interveners at CCC Sherbrooke. He regained his freedom on October 15, 2015, signing a new release certificate detailing the conditions to which he was subject. As part of his LTSO, the PBC imposed a special condition on Mr. Denis to promptly inform his PO of any changes in his domestic or financial circumstances.

[37] Thereafter, Mr. Denis met with Ms. Dufour approximately once a week during scheduled meetings at CCC Sherbrooke. During these meetings, Mr. Denis was required to provide all documents and information requested by Ms. Dufour regarding his release conditions.

[38] In February 2016, Mr. Denis held two 40-hour per week jobs, at La Socca restaurant [La Socca] and at Zuo Modern Canada [Zuo]. In addition to these scheduled meetings, Ms. Dufour also made impromptu visits to his work sites.

[39] In early February, Mr. Denis met with his boss at Zuo's to discuss the possibility of taking out a \$1,500 loan. According to Mr. Denis, this discussion took place either one or two weeks before he signed the loan agreement on February 16, 2016. He returned to the employer

the next morning to pick up the cheque. After cashing the cheque at the Money Mart, Mr. Denis spent the money he received to pay his spouse's phone bill and to help her with her rent.

[40] Mr. Denis turned in the loan receipt to the CCC on February 17, 2016, but did not discuss it with anyone. The receipt indicated that he had taken out a \$1,500 loan the day before at an interest rate of 24% payable on demand.

[41] On February 18, 2016, Ms. Dufour called Mr. Denis into her office to discuss the circumstances surrounding the loan. When questioned about it, Mr. Denis admitted that he had received the loan and deliberately not discussed it with her because he [TRANSLATION] "did not want to have a debate about it." Mr. Denis explained that he had done so because he feared that Ms. Dufour would prevent him from taking out the loan.

[42] Mr. Denis insists that there had been no change in his financial situation that required disclosure when he signed the loan agreement. He argues that he complied with the condition to disclose the change without delay.

[43] Mr. Denis admits that he did not communicate his intention to take out a loan to Ms. Dufour prior to his meeting with her on February 18. He also agrees that there is no indication in the contemporaneous records of comings and goings at CCC Sherbrooke for the day of February 17 that he intended to pick up a loan cheque at Zuo's or go to the Money Mart.

[44] The evidence shows that Mr. Denis could have notified Ms. Dufour of the situation at any time on February 16, by reaching her by cellphone and, if she was unavailable, by leaving a message with a commissionaire or contacting another CSC representative. He could also have met Ms. Dufour in person before leaving the CCC on the morning of February 17.

[45] In light of the explanations provided by Mr. Denis, Ms. Dufour left her office to meet with her manager, Mr. Madore, in order to decide whether Mr. Denis had violated his condition to disclose any change in his financial situation without delay.

[46] Mr. Madore decided that Mr. Denis's admission that he avoided discussing the loan or the debt incurred with Ms. Dufour before spending the money is a determining factor in finding a breach of his standard condition. However, after considering the various risk factors, Mr. Madore decided that Mr. Denis's release would not be suspended for this breach, but that further verification should be made with employer Zuo. Mr. Denis would also have to submit a budget to Ms. Dufour to show how he would pay off this new debt as well as his other debts totaling approximately \$3,000.

[47] Ms. Dufour returned to her office to inform Mr. Denis of Mr. Madore's decision. Afterwards, the discussion turned to Mr. Denis's request to purchase a smart phone.

[48] This was not the first request Mr. Denis had made in this regard. More than six requests had been denied in the previous weeks because Mr. Denis did not have a job or the financial means to afford a cellphone.

[49] Ms. Dufour indicated to Mr. Denis that she was willing to authorize his request, but that Mr. Denis first needed to calculate how to pay his debts. She told him that once the application is officially approved, certain constraints would be attached to it taking into account his non-association condition, including the monitoring of his calls and text message records, and access to his social network accounts, if any.

[50] When Ms. Dufour asked Mr. Denis about his presence on social networks, he stated that he has a Facebook account. He told her that he considers the monitoring of his account to be excessive since he is not in a position to know if someone on Facebook has a criminal record and that he was not about to start asking them.

[51] The two witnesses did not agree on what to do next.

[52] Mr. Denis says he was pressured by Ms. Dufour to give her access to his Facebook account. He says he asked twice why she wanted him to enter his password. According to him, she simply replied, [TRANSLATION] "I am your officer, and I am asking you." Mr. Denis states that they never talked about Ms. Dufour's communications on her Facebook account. Instead, he was asked to leave the room at that point.

[53] On the other hand, Ms. Dufour states that she explained to Mr. Denis the importance of having access to his Facebook account [TRANSLATION] "because a contact is a contact whether on Facebook or in person". She states that she asked him if she could go on the site to see whom he was talking to.

[54] Ms. Dufour claims that Mr. Denis answered [TRANSLATION] “yes” without hesitation. Mr. Denis then entered his email address and password to access his Facebook account. Furthermore, Ms. Dufour states that Mr. Denis was present when she accessed the Facebook page, offering real-time explanations about the problematic Facebook communications.

[55] Ms. Dufour testified that she became aware of two conversations in which Mr. Denis had sent and/or received Facebook messages from inmates or ex-inmates. Mr. Denis allegedly asked one of them to send him his telephone number. This individual replied: [TRANSLATION] “out in four months — I’ll reach out as soon as I clear out”. In the other conversation, Mr. Denis reportedly wrote to another individual, [TRANSLATION] “You’re out buddy?” and the individual replied, [TRANSLATION] “Yup been 8 months”.

[56] Ms. Dufour testified that she sought explanations from Mr. Denis. He replied that he had not had these conversations himself, explaining that he was not the only one who knew his login information or had access to his Facebook account. He informed Ms. Dufour that in any case, he did not believe that he could violate her conditions by having conversations on Facebook.

[57] According to Ms. Dufour, this is when she asked Mr. Denis to leave her office and wait in the hallway. Ms. Dufour consulted with Mr. Madore again, this time about the Facebook messages.

[58] Mr. Madore agreed to issue a warrant to suspend Mr. Denis’s LTSO, apprehend him and recommit him to custody, based on an alleged breach of his non-association condition. The warrant, issued under section 135.1 of the Act, contemplated a referral to the PBC for decision.

The CMT then contacted the Service de Police de la Ville de Montréal [SPVM] to apprehend Mr. Denis.

[59] Ms. Dufour stated that she returned to her office to meet with Mr. Denis while waiting for the SPVM to arrive. According to Ms. Dufour, she did not inform him of the breach of condition, the issuance of the warrant by the CMT, or the imminent arrival of the SPVM, for security reasons. A few minutes later, Mr. Denis was apprehended when the police arrived and subsequently recommitted to custody.

[60] Following the arrest, Mr. Madore and Ms. Dufour considered whether there would be an opportunity to rescind the suspension rather than refer the case to the PBC. On March 3, 2016, Ms. Dufour and one of her colleagues called Mr. Denis to discuss the events. Following the review of the file, the CMT recommended that the PBC file an information with the Director of Criminal and Penal Prosecutions of Quebec [DCPPQ], charging Mr. Denis with the offence contemplated by subsection 753.3(1) of the *Criminal Code*.

[61] On April 8, 2016, the PBC accepted the CMT's recommendation that an information be filed with the DCPPQ. Mr. Denis is not appealing that decision. A DCPPQ prosecutor then filed a criminal charge against Mr. Denis under subsection 753.3(1) of the *Criminal Code*.

[62] Mr. Denis's release hearing took place on May 20, 2016. He was released on bail on May 26, 2016, and released on September 29, 2016.

V. Issues

[63] The questions to be decided are the following:

- (1) Did the members of the CMT violate one of Mr. Denis's Charter rights?
- (2) Did the members of the CMT act in an insulting, abusive, malicious and oppressive manner towards Mr. Denis?
- (3) If so, is there a causal link between the violation or conduct and the damages claimed?
- (4) If so, what is the amount of damages to which Mr. Denis is entitled?

VI. Analysis

[64] In order to succeed in this case, it was up to Mr. Denis to prove on the balance of probabilities that his claims were correct. Not only did he have to establish that his rights had been violated, but he also had to show that he had suffered damages as a result of a fault on the part of CSC's employees. For the following reasons, I conclude that he failed to meet his burden.

A. *Credibility of witnesses*

[65] As acknowledged by each party's respective counsel, it comes down to a question of the credibility of the testimony given, particularly regarding the events of February 18, 2016, when Mr. Denis requested permission from his PO to obtain a cellphone. Ms. Dufour responded to the request by stating that she would allow it subject to verification of Mr. Denis's income, as well

as his call records and social media accounts. She asked him about his social networking presence and learned that he had a Facebook account. According to Ms. Dufour, Mr. Denis accepted, without hesitation, her request for access to his Facebook account to verify his social contacts.

[66] Mr. Denis claims that he did not provide true informed consent. Instead, Ms. Dufour allegedly pressured him to log into Facebook using his username and password. Furthermore, he insists that the search of his Facebook account was conducted in his absence. This version of events is denied by Ms. Dufour.

[67] Faced with conflicting versions of the events in dispute, I must assess the reliability and credibility of these two witnesses by looking at the evidence as a whole.

[68] I have no reason to doubt Ms. Dufour's testimony. She testified about the facts that occurred in a clear and coherent manner on each of the disputed points. Despite the time that elapsed between the events and her testimony, it is in a spontaneous, precise and chronological manner that she reported the facts that occurred. Her version is frequently corroborated by contemporary notes and even the testimony of Mr. Denis himself.

[69] At no time did Ms. Dufour seek to condemn Mr. Denis. On the contrary, she reported his comments and reactions in a neutral and impartial manner. Moreover, her version has remained the same over time; she does not contradict herself. I therefore consider Ms. Dufour's account reliable and trustworthy.

[70] As for Mr. Denis, there are several reasons to doubt the reliability and accuracy of his testimony.

[71] First of all, Mr. Denis's evidence is based solely on his testimony, which is not corroborated in any way.

[72] Second, Mr. Denis did not bother to closely examine the pleadings and exhibits in the record before testifying. As a result, his testimony was vague, imprecise, defensive and full of memory gaps, contradictions and implausibilities.

[73] In the best-case scenario, Mr. Denis's testimony can be explained by the normal effect of the passage of time on memory. His memory of some of the basic details that he emphasized during his examination in chief and that are central to his action were often lacking during his cross-examination, particularly when he was confronted with evidence that made his version of events implausible with respect to his comings and goings and interactions on February 16, 17 and 18, 2016.

[74] Third, Mr. Denis has an interest in giving a version that is favourable to him. While this factor alone does not disqualify his testimony in its entirety, it does suggest to me that his testimony should be taken with great caution, especially when it relates to the very facts that form the basis of his claim. In other words, he may have good reason to lie.

[75] Fourth, despite clear and repeated directives over the years, Mr. Denis's continued justification of his restrictive and self-serving interpretation of the scope of his LTSO's standard and special conditions, his blame game, and his minimization of responsibility for the Facebook communications identified by Ms. Dufour, undermines his credibility.

[76] For these reasons, when the evidence is contradictory, I prefer Ms. Dufour's version of events.

B. *Did the members of the CMT violate Mr. Denis's Charter right?*

[77] Mr. Denis claims that the CSC employees gathered evidence establishing his breach of the supervision conditions by denying him his right against unreasonable search or seizure under section 8 of the Charter, and his right to retain and instruct counsel without delay under paragraph 10(b) of the Charter. In addition, Ms. Dufour allegedly continued to question him after the warrant was issued and to browse the Facebook account until the SPVM arrived.

[78] There is overwhelming evidence that Mr. Denis voluntarily and knowingly gave Ms. Dufour access to his Facebook account, presumably in the hope of obtaining a cellphone and without considering that his Facebook communications would reveal contacts with criminalized individuals.

[79] The context in which the request to access the Facebook account was made cannot be ignored. Cellphones are controlled property in CCC that offenders cannot possess or use except

with permission from a PO. At the February 18, 2016 meeting, this was the seventh time Mr. Denis had requested permission for a cellphone.

[80] Mr. Denis admitted in cross-examination that before entering his username and password, Ms. Dufour was looking to see if any of his Facebook friends had criminal records, and if he used Facebook to communicate with them. Mr. Denis responded that he had too many Facebook friends to begin reviewing them to determine if any of them had a possible criminal record.

[81] I find that Mr. Denis was well aware that a verification of his Facebook account would be required before his request could be authorized. Although he found this requirement excessive, the choice to acquiesce to Ms. Dufour's request was his. The evidence establishes that it was Mr. Denis's full cooperation that allowed Ms. Dufour access to her Facebook account.

[82] In conclusion, I do not believe Mr. Denis's version that Ms. Dufour forced him to give her access to his Facebook account. During his testimony, Mr. Denis himself acknowledged that Ms. Dufour addressed him politely, saying: [TRANSLATION] "OK, I would like you to log in, please". This is not a case of coercion by Ms. Dufour towards Mr. Denis, but a simple follow-up to his request, which he accepted without reservation.

[83] In my view, there is no factual basis to support Mr. Denis's Charter allegations. The evidence shows that Mr. Denis gave free and informed consent for Ms. Dufour to check his Facebook account. She was acting within the scope of her duties, in a reasonable manner and in good faith.

[84] Moreover, the testimonies lead me to believe that Mr. Denis, despite his denials, voluntarily remained in Ms. Dufour's office to answer her questions for about fifteen minutes.

[85] The evidence shows that Mr. Denis agreed to collaborate with Ms. Dufour in all her endeavours. His testimony clearly establishes that he was desperate to obtain a cellphone. In this case, Mr. Denis was neither arrested nor detained. In fact, he was free to move about and could leave Ms. Dufour's office as he pleased.

[86] I conclude that Ms. Dufour had a duty to verify compliance with the standard and special conditions having just learned that Mr. Denis was using a social network. Mr. Denis surely knew that a lack of transparency would not be productive, either for his cellphone application or for his supervision in general.

[87] Moreover, if Mr. Denis had refused to collaborate with Ms. Dufour, preventing her from verifying compliance with certain conditions, this lack of transparency would have had consequences anyway.

[88] A search or seizure conducted with consent is not a "search or seizure" under the Charter. In this case, there is no question of an unreasonable search or a situation requiring the assistance of counsel, since Mr. Denis's free consent amounts to a waiver of his section 8 Charter rights, even if he had a reasonable expectation of privacy in the circumstances, which he did not.

[89] As was well expressed by the Supreme Court of Canada in *Weatherall v Canada (Attorney General)*, [1993] 2 SCR 872, at page 877:

Imprisonment necessarily entails surveillance, searching and scrutiny. A prison cell is expected to be exposed and to require observation. The frisk search, the count and the wind are all practices necessary in a penitentiary for the security of the institution, the public and indeed the prisoners themselves. A substantially reduced level of privacy is present in this setting and a prisoner thus cannot hold a reasonable expectation of privacy with respect to these practices. This conclusion is unaffected by the fact that the practices at times may be conducted by female guards. There being no reasonable expectation of privacy, s. 8 of the *Charter* is not called into play; nor is s. 7 implicated.

[90] Mr. Denis's lawyer claims that his client was detained from the moment Ms. Dufour returned from her meeting with Mr. Madore and informed him that he would be arrested. She argues that instead of advising Mr. Denis of the reason for his detention and of his right to contact a lawyer, Ms. Dufour used a ploy to interfere with his rights. Furthermore, she claims that when Mr. Denis was brought back to Ms. Dufour's office, Ms. Dufour continued to ask him questions about his Facebook contacts in violation of his right to silence.

[91] The argument raised by Mr. Denis's counsel, however, is not supported by the evidence. Ms. Dufour testified that she had no recollection of interviewing Mr. Denis when he returned to his office. As for Mr. Denis, he confirmed that Ms. Dufour only informed him that she had reviewed the Facebook conversations with her manager and that his release was going to be suspended. He then said that he was stunned, that there was no discussion with Ms. Dufour, and that the police arrived shortly thereafter to arrest him.

[92] The exercise of a decision-making authority must be based on reliable and verifiable evidence. Moreover, it is well established that Charter decisions should not be made in a factual vacuum: *Mackay v Manitoba*, [1989] 2 SCR 357 at 361 and 262.

[93] In the absence of specific, clear, concrete and convincing facts, Mr. Denis did not meet his burden of establishing a violation of any Charter right or the harm he claims to suffer.

C. *Did the members of the CMT act in an insulting, abusive, malicious and oppressive manner towards Mr. Denis?*

[94] Mr. Denis also alleges that the CSC employees acted improperly towards him. However, I see nothing in the conduct of either Ms. Dufour or Mr. Madore that would constitute improper conduct and give rise to liability in this regard.

[95] On the contrary, the evidence shows that both employees were always courteous and respectful towards Mr. Denis. For example, Ms. Dufour found that Mr. Denis had violated his condition to disclose any changes in his financial situation without delay. The CMT still decided that Mr. Denis's release would not be suspended for this breach after considering the various risk factors. Ms. Dufour was also open to his request for a cellphone.

D. *Is there a causal link between the violation or conduct and the damages claimed?*

[96] In view of the above conclusions, it is not necessary to dwell on the other issues raised by Mr. Denis.

[97] However, I would note that Mr. Denis was recommitted to custody following his LTSO suspension and that the suspension was extended on April 8, 2016, solely as a result of the PBC's decision. Since members of the PBC are immune from liability for acts performed in good faith in the performance of their duties, and given the absence of allegations that any member of the PBC acted in bad faith, Mr. Denis cannot claim damages from the defendant for his incarceration for the period following April 8, 2016.

[98] Furthermore, there is no indication that any of the defendant's employees interfered with the criminal process. Therefore, the defendant cannot be held liable for any damages in connection with his indictment or detention by the provincial authorities.

VII. Conclusion

[99] I find that the allegations of violations of section 8 and paragraph 10(b) of the Charter are without merit. I also find that the allegations of violations of sections 7 and 9 and subsection 10(a) of the Charter are also without merit.

[100] I find that Mr. Denis has not discharged the burden of proof, and that the action must therefore be dismissed.

VIII. Costs

[101] The parties have requested that I defer my decision on costs. If they cannot agree on costs, they shall submit written submissions of not more than 10 pages, with the defendant filing

its submissions within 30 days of this decision; and unless otherwise directed, Mr. Denis shall file his written submissions within 14 days.

JUDGMENT in T-1734-18

THE COURT ORDERS as follows:

1. The plaintiff's action is dismissed.
2. The style of cause is amended to remove the Attorney General of Canada and substitute Her Majesty the Queen as the defendant.
3. The issue of costs is reserved and will be dealt with in accordance with the reasons for judgment.

“Roger R. Lafrenière”

Judge

Certified true translation
Michael Palles, Reviser

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1734-18

STYLE OF CAUSE: PAUL HUGENS DENIS v HER MAJESTY THE
QUEEN

PLACE OF HEARING: VIA VIDEOCONFERENCE

DATE OF HEARING: MAY 17, 18, 19, AND JUNE 11, 2021

JUDGMENT AND REASONS: LAFRENIÈRE J.

DATED: OCTOBER 22, 2021

APPEARANCES:

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