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96 304 122

**BETWEEN:**

**BRUCE DELMAR PENNIE**

Plaintiff

- and -

**HER MAJESTY THE QUEEN**

Defendant

**REASONS FOR ORDER AND ORDER**

**GILES, A.S.P.:**

The motion before me is by the Crown and seeks to strike the plaintiff's case under Rule 419 as disclosing no cause of action. In the alternative, requiring particulars of certain paragraphs and in the further alternative, time within which to file a defence. In the submissions of the Crown's counsel, the further alternative remedy of striking with leave is mentioned.

This motion was originally brought in writing under Rule 324. The plaintiff sought an oral hearing by motion. That motion was dismissed and the plaintiff given time to file written representations. No further representations were filed by the plaintiff in response to the motion to strike.

I note first, that certain of the paragraphs are said by the plaintiff to be appropriate for a class action by person in the same situation as himself, whatever that may be prove to be.

The plaintiff is not a solicitor, and while he may represent himself he may not represent others. It is trite law that all plaintiffs must be represented by the same counsel (see for instance Halsbury's laws of England 4th Edition V. 37 para 515 and the cases cited thereat). Any allegations referable only to a class action will be struck because this plaintiff can not represent other than himself. No leave herein granted shall apply to any attempt to plead a class action.

So far as the remainder of the claim is concerned, I can detect that the plaintiff blames the Crown for a disease he contracted and may yet have, and he also claims damages, presumably resulting therefrom. This inkling of a cause of action requires that leave be given to plead again when, as it will be, this Statement of Claim is struck out.

The Crown seeks particulars of paragraph 11, which alleges interference with the plaintiff's filing of documents. This paragraph seems unrelated to any cause of action that the plaintiff may be trying to allege. And certainly particulars would be required to tie these allegations in with any cause of action which might be developed.

Regarding paragraph 12, the Crown seeks particulars of the negligence of the Correctional Services of Canada. If such negligence forms part of any claim of the plaintiff, it must be particularized. As it stands it is associated with a class action and must be struck out. The same applies to paragraphs 13 and 14 when all the particulars required by the Crown except those relating to a class action are required

The Crown has also indicated, and I agree, that where an action based on negligence is to be pleaded, it is necessary to show the essential elements of a negligence claim, namely: 1) the existence of a duty of care, 2) the specific breach of that duty and 3) the resulting damages. Bare assertions of the plaintiff's conclusion are not sufficient. Sufficient particulars (that is facts) to outline the essential elements of the negligence claim must be provided.

Because of the extent of the shortage of particulars, the Statement of Claim will be struck out with leave to file an Amended Statement of Claim (not inconsistent with these reasons) on or before November 15th, 1996.

**ORDER**

The Statement of Claim is struck out. Leave is granted to file an Amended Statement of Claim not inconsistent with these reasons on or before November 15th, 1996.

"Peter A.K. Giles"

A.S.P.

Toronto, Ontario  
October 9, 1996

FEDERAL COURT OF CANADA

Names of Counsel and Solicitors of Record

COURT NO: T-1377-96  
STYLE OF CAUSE. BRUCE DELMAR PENNIE  
- and -  
HER MAJESTY THE QUEEN

CONSIDERED AT TORONTO, ONTARIO UNDER THE PROVISION OF  
RULE 324.

REASONS FOR ORDER  
AND ORDER BY: GILES, A.S.P.

DATED: OCTOBER 9, 1996

SOLICITORS OF RECORD:

Bruce D. Pennie  
3-15 Winchester Street  
Toronto, Ontario  
M4X 1A6

Solicitor for the Plaintiff

Mr. Roger Lafrenière  
Department of Justice

George Thomson  
Deputy Attorney General  
of Canada

For the Defendant