

Federal Court



Cour fédérale

Date: 20240806

Docket: T-1666-23

Citation: 2024 FC 1232

Ottawa, Ontario, August 6, 2024

PRESENT: Associate Judge Benoit M. Duchesne

BETWEEN:

DAVID LEACH

Plaintiff

and

HIS MAJESTY THE KING

Defendant

ORDER & REASONS

[1] The Defendant has brought a motion in writing pursuant to Rule 369 of the *Federal Courts Rules* (the “*Rules*”) for an order pursuant to Rule 221(1)(a) of the *Rules*:

- a) striking out paragraphs 32, 33, 41 to 43, 47 to 54, 64, 67, 70 of the Statement of Claim as not disclosing a reasonable cause of action against the Defendant with regards to allegations directed at the Parole Board of Canada, and striking out the conclusion to “Condemn His Majesty The King to pay the Plaintiff the sum of \$1,000,000.00 as punitive damages, with interest and the additional indemnity provided for by the Civil Code of Québec, as of the judgment to be rendered”;

- b) striking out the following words from the following paragraphs of the Statement of Claim out in part as not disclosing a reasonable cause of action against the Defendant with regards to allegations directed at the Parole Board of Canada:
- i) in paragraph 2, the words “the Parole Board of Canada (hereinafter the “PBC”), and”;
 - ii) in paragraph 4, the words “of the PBC and”;
 - iii) in paragraph 5, the words “the PBC and”;
 - iv) in paragraph 29, the words “and the PBC”;
 - v) in paragraph 34, the words “the PBC nor”;
 - vi) in paragraph 57, the words “the PBC,”;
 - vii) in paragraph 58, the words “the PBC and”;
 - viii) in paragraph 60, the words “and the PBC”;
 - ix) in paragraph 62, the words “both at first instance and on appeal of the PBC, and”;
 - x) in paragraph 63, the words “, as well as the Plaintiff’s parole revocation decisions”, and the last sentence beginning with the words “The Appeal Division’s refusal [...]”;
- c) striking out paragraphs 5 and 58 to 63 of the Statement of Claim as not disclosing a reasonable cause of action against the Defendant; and,
- d) for the Plaintiff to serve and file an Amended Statement of Claim in accordance with the order on the Defendant’s motion to strike and within 30 days of such order. The Defendant will have the right to file an amended Defence within the delay provided for by the *Rules*.

[2] The Defendant argues that there is no reasonable cause of action in extracontractual liability as against the Parole Board of Canada (the “PBC”) notwithstanding section 3 of the *Crown Liability and Proceedings Act*, RSC 1985 C-50 (the “CLPA”) because the members of the PBC are not servants of the Crown within the meaning of the *CLPA*, and that they enjoy statutory immunity pursuant to section 154 of the *Corrections and Conditional Release Act*, SC

1992, c 20 (the “CCRA”) for anything done or said in good faith in the exercise or purported exercise of the functions of a member of the Board.

[3] The Defendant also argues that the Statement of Claim is deficient in that the Plaintiff alleges that PBC members acted in bad faith, were negligent, were grossly negligent, and acted in a discriminatory manner against him without alleging material facts that support the allegations advanced.

[4] The Plaintiff’s response is that he has pleaded a reasonable cause of action and that his Statement of Claim should not be struck. Further, the Plaintiff argues that the Defendant cannot plead for the PBC because they are not crown servants. In any event, the Plaintiff seeks leave from the Court to amend his Statement of Claim to add the Parole Board of Canada as a Defendant.

[5] The Plaintiff has neither served nor filed his own motion for leave to amend his originating document, nor provided the Court with any proposed draft Amended Statement of Claim for the Defendant and the Court’s review and consideration. The request for leave to amend the Plaintiff’s Statement of Claim as contained in the Plaintiff’s responding written representations is therefore denied as the request for leave is improperly brought and cannot be granted as presented.

[6] The argument that the Defendant cannot plead for the members of the PBC is wrong-headed. The Defendant is arguing on his own behalf that the Statement of Claim does not disclose reasonable cause of action. I do not read his argument as being on behalf of any member of the PBC or on behalf of the PBC itself.

[7] The Defendant's motion is granted. For the reasons that follow, I conclude that the Statement of Claim does not disclose a reasonable cause of action and is doomed to fail. The Statement of Claim is also an abuse of process and is struck accordingly. The Plaintiff's Statement of Claim will be struck in its entirety rather than in a limited matter as sought by the Defendant, without leave to amend.

I. Principles on Motion to Strike

[8] The law applicable to a motion to strike pursuant to Rule 221(1)(a) is well established. It was summarized by Justice Pentney in *Fitzpatrick v. Codiac Regional RCMP Force, District 12, and Her Majesty the Queen*, 2019 FC 1040, as follows:

[13] Rule 221(1) of the Federal Courts Rules, SOR/98-106 [Rules], sets out the framework that applies to this motion:

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,

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) constitutes a departure from a previous pleading, or

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

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

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

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

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

Evidence

Preuve

(2) No evidence shall be heard on a motion for an order under paragraph (1)(a).

(2) Aucune preuve n'est admissible dans le cadre d'une requête invoquant le motif visé à l'alinéa (1)a).

[14] As noted above, the law governing a motion to strike seeks to protect the interests of the plaintiff in having his or her "day in court," while also taking into account the important interests in avoiding burdening the parties and the court system with claims that are doomed from the outset. In order to achieve this, the courts have developed an analytical approach and a series of tests that apply in considering a motion to strike.

[15] The test for a motion to strike sets a high bar for defendants, and the onus is on the defendant to satisfy the Court that it is plain and obvious that the pleading discloses no reasonable cause of action, even assuming the facts alleged in the statement of claim to be true: *R v Imperial Tobacco Canada Ltd*, 2011 SCC 42 at para 17; *Hunt v Carey Canada Inc*, 1990 CanLII 90 (SCC), [1990] 2 SCR 959 at p 980. Rule 221(2) reinforces this by providing that no evidence shall be heard on a motion. In view of this Rule, the further evidence submitted by the Plaintiff in his response to the motion to strike cannot be considered.

[16] The facts set out in the statement of claim must be accepted as true unless they are clearly not capable of proof or amount to mere speculation. The statement of claim must be read generously, and mere drafting deficiencies or using the wrong label for a cause of action will not be grounds to strike a statement of claim, particularly when it is drafted by a self-represented party.

[17] Further, the statement of claim must set out facts that support a cause of action – either a cause of action previously recognized in law, or one that the courts are prepared to consider. The mere fact that a cause of action may be novel or difficult to establish is

not, in itself, a basis to strike a statement of claim. Related to this, the claim must set out facts that support each and every element of a statement of claim.

[18] As explained by Justice Roy in *Al Omani v Canada*, 2017 FC 786 at para 17 [Al Omani], “[a] modicum of story-telling is required.” The law requires, however, a very particular type of story to be set out in a statement of claim – one which describes the events which are alleged to have harmed the plaintiff, focused only on the “material facts,” and set out in sufficient detail that the defendant (and the Court) will know what the specific allegations are based on, and that they support the specific elements of the various causes of action alleged to be the basis of the claim.

[19] The Court generally shows flexibility when a party is self-represented, but this does not exempt the party from complying with the rules set out above: *Barkley v Canada*, 2014 FC 39 at para 17. The reason for this is simple – it is not fair to a defendant to have to respond to claims that are not explained in sufficient detail for them to understand what the claim is based on, or to have to deal with claims based on unsupported assumptions or speculation. Neither is it fair to the Court that will have to ensure that the hearing is done in a fair and efficient manner. A court would have difficulty ruling that a particular piece of evidence was or was not relevant, for example, if the claim is speculative or not clear. This will inevitably lead to “fishing expeditions” by a party seeking to discover the facts needed to support their claims, as well as to unmanageable trials that continue far longer than is appropriate as both sides try to deal with a vague or ever-changing set of assertions.

[20] A degree of flexibility is needed to allow parties to represent themselves and to have access to the justice system; but flexibility cannot trump the ultimate demands of justice and fairness for all parties, and that is what the Rules and the principles set out in the cases seek to ensure.

[9] Rule 174 requires that a pleading contain a concise statement of the material facts on which the party relies but shall not include evidence by which those facts are to be proved. What constitutes a material fact or an essential element of a claim is determined in light of the cause of action advanced and the relief sought. A plaintiff must plead the constituent elements of each cause of action or legal ground raised in summary form but with sufficient detail. The pleading

must tell the defendant who, when, where, how and what gave rise to its liability (*Mancuso v. Canada (National Health and Welfare*, 2015 FCA 227 (CanLII), at paras 17 to 19 (“*Mancuso*”).

[10] Although the applicable Rule and the origins of the Court’s power to strike an originating document differ depending on whether the underlying proceeding is an application or an action, the core of the Court’s approach to allegations contained in an originating document remains the same. Allegations of fact that are patently ridiculous, incapable of proof, based on assumptions or speculations, inconsistent with common sense, are vague generalizations, or are otherwise not supported by any other material facts or particulars are not to be considered as true for the purposes of the court’s analysis on a motion to strike. Likewise, “the bare assertion of a conclusion upon which the court is called upon to pronounce is not an allegation of a material fact” (*Empire Company Limited v. Attorney General of Canada*, 2024 FC 810, at paras 22 and 23). Such bare assertions may also serve as the basis upon which the court may find that a pleading is an abuse of process (*Merchant Law Group v Canada Revenue Agency*, 2010 FCA 184 at para 34).

[11] Pleadings that assert bald conclusions of law are not proper. A conclusion of law may be pleaded in a pleading pursuant to Rule 175, but the material facts that give rise to such a conclusion must be pleaded elsewhere in the pleading. Doing otherwise may constitute an abuse of process (*Merchant Law Group v Canada Revenue Agency*, 2010 FCA 184 at para 34) that could cause the pleading to be struck.

II. The Statement of Claim

[12] The Plaintiff claims \$5,695,000.00 in damages from the Defendant as compensation for the trouble and inconvenience he has suffered and for the violation of his fundamental rights that are the direct and immediate consequences of the Defendant's "subordinates" actions. He also claims \$1,000,000 as punitive damages for the Parole Board of Canada's alleged unlawful and intentional infringement of his rights guaranteed by the *Canadian Charter of Rights and Freedoms* (the "Charter") and by the *Charter of Human Rights and Freedoms*, CQLR c C-12 (the "Quebec Charter").

[13] The Plaintiff summarizes his claims in the opening paragraphs of his Statement of Claim as follows:

1. The Plaintiff is a 49 year old black male, who was detained illegally for a period of 2 years, in different federal institutions in the province of Quebec, while being admissible to his full release, following his serving of a sentence to five (5) years of detention;
2. The Defendant, His Majesty the King, is prosecuted as the principal of the Parole Board of Canada, (hereinafter the "PBC") and the Correctional Service Canada (hereinafter the "CSC"), not having separate legal personality from the State in accordance with the *Corrections and Conditional Release Act*, SC 1992, c 2010;

3. The Crown's liability is based on the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, for the damages alleged by the Plaintiff, which were caused by the fault of the servants of the Crown;
4. In fact, the employees of the PBC and of the Correctional Service of Canada have committed faults against the Plaintiff having, in bad faith and negligently, infringed upon the Plaintiff's liberty;
5. Furthermore, the Plaintiff alleges that the decision of the PBC and the Correctional Service of Canada was tainted by racial profiling, causing the Plaintiff discriminatory racialization, which is forbidden by the Law.

[14] The remaining 68 paragraphs of the Statement of Claim alternately allege bald statements of fact, material facts, conclusions of law and bald conclusions of law, argument, and opinion in support of the claims advanced. As the jurisprudence requires, the bald assertions of fact as well as the allegations that are based on conjecture, argument and opinion are not presumed to be true on this motion.

[15] The key allegations of material fact pleaded in the Statement of Claim for the purposes of this motion are as follows.

A. The Main Events

[16] The Plaintiff was granted day parole on or about December 19, 2019, by the PBC. The PBC imposed conditions on the Plaintiff's day parole. Those conditions included that: a) the Plaintiff not associate with any person he knows or has reason to believe is involved in criminal activity; b) the Plaintiff not own or possess more than one mobile communication device; and, c) the Plaintiff provide his supervisor with the billing statements for his mobile device.

[17] On June 23, 2020, the Plaintiff was granted full parole by the PBC, under the same conditions as applied to his day parole.

[18] On or about July 27, 2020, the Plaintiff was summoned by the Longueil Parole Office to discuss his contact with his nephew, Mr. Jerome Leach, who was suspected of being involved in criminal activities. Although the Plaintiff denied any knowledge of his nephew's alleged involvement in criminal activities, he ceased communicating with him. The Plaintiff was informed that he was suspected of having had several telephone conversations with Mr. Leach and that conversations had occurred when the Plaintiff was aware of Mr. Leach's criminal activities. The Plaintiff continued on parole despite that his suspected communications with Mr. Leach was treated as a breach of his parole conditions.

[19] On or about September 18, 2020, the Plaintiff informed his parole officer that he learned that his son had just been arrested. The Plaintiff heeded his parole officer's order and ceased having contact with his son.

[20] On or about September 23, 2024, the Plaintiff's parole case management team suspended his conditional release upon its receipt of information that he was violating the conditions attached to his parole by having telephone conversations with his nephew, Mr. Leach, and other suspects, and by associating with any person he knew or had reason to believe was involved in criminal activity. The Plaintiff was then sent to the Archambault medium security institution and was detained pending a determination of his parole.

[21] A hearing before the PBC regarding the suspension of the Plaintiff's parole was scheduled and was held on December 22, 2020.

[22] The Plaintiff requested a copy of all written evidence of incriminating conversations between himself and his nephew from his parole officer in advance of the PBC hearing. A redacted police report was provided to him on or about December 4, 2020, more than two (2) weeks in advance of the December 22, 2022, hearing. The redactions from the police report allegedly made it impossible for the Plaintiff to view the content of the conversations that led to his parole being suspended. The Plaintiff did not receive a copy of any telephone conversation.

[23] The PBC hearing proceeded on December 22, 2020. The Plaintiff's parole officer testified that she had only partially listened to the two (2) telephone conversation recordings that lead to the suspension of his parole. Recordings of the telephone conversations were not produced at the hearing. A redacted police report was presented for the PBC's consideration. The redacted police report had redacted the telephone numbers related to the incriminating telephone conversations as well as the identity of the persons associated with those telephone numbers. The report had also redacted the transcription of the incriminating text messages and telephone conversations. The report nevertheless set out that the Plaintiff had been identified in

communications with nephew and other suspects. The Plaintiff denied that he had breached any parole conditions.

[24] The Plaintiff's full parole was revoked by the PBC on December 22, 2020, following the hearing.

[25] There is no allegation in the pleading that the Plaintiff was denied the ability to cross-examine the witness(es), to participate in the hearing, to lead his own evidence, or to make submissions at the December 22, 2020, hearing before the PBC, although he alleges that he was unable to access the audio recordings of the purportedly incriminating telephone conversations.

[26] On March 17, 2021, the Plaintiff filed an appeal from the PBC's December 22, 2020, decision on the basis of an absence of procedural fairness. The Plaintiff alleges that he was denied procedural fairness during the December 2020 PBC hearing and does not allege any material facts as to how he was denied procedural fairness by the PBC. He does not allege how his right to procedural fairness was breached by the PBC or by the PBC member presiding over the hearing.

[27] On May 5, 2021, the PBC's Appeal Division upheld the revocation of the Plaintiff's parole after having heard the Plaintiff and his solicitors at an appeal hearing from the PBC's December 2020 decision.

[28] There is no allegation that the Plaintiff took any steps to seek the judicial review of the PBC Appeal Division's decision at any time, or that the PBC Appeal Division's decision was

otherwise determined by any competent authority as having been incorrect, unreasonable, or delivered in breach of any of the Plaintiff's rights.

[29] On December 15, 2021, the Plaintiff was released on day parole following another hearing before the PBC. The same conditions of release imposed in December 2019 were imposed afresh in December 2021.

B. The Post-Hearing Forensic Expert Report and the James Affidavit

[30] The Plaintiff alleges that he obtained a copy of the incriminating audio recording and the evidence against him from his nephew's lawyer after the December 2020, PBC hearing, and retained an expert in biometric voice recognition and forensic audio analysis to analyse the recordings he had obtained from a source other than the PBC. The Plaintiff alleges that the expert he retained produced a report on March 13, 2021, which demonstrates that his voice was not the voice on the recordings he had obtained from his nephew's lawyer and, thereby, contradicted the redacted report produced to the PBC at the December 2020 hearing.

[31] The Plaintiff alleges that he also obtained an affidavit from his half-brother, Jerome James, who deposed to being the owner of the telephone bearing the telephone number used for the incriminating telephone calls and that Plaintiff never used the telephone at issue.

[32] Both the expert report and the affidavit from the Plaintiff's half-brother are alleged to have been submitted to the PBC's Appeal Division in connection with the Plaintiff's appeal from the December 20, 2020.

C. **The Arguments in the Statement of Claim**

[33] The Plaintiff argues in his Statement of Claim that the PBC made its December 22, 2020, decision in breach of the principle of fundamental justice. Which principle was breached and how it was breached is not alleged.

[34] He also argues that the PBC wrongfully and in bad faith omitted to take into consideration the fact that the Plaintiff wasn't able to access the recordings in question, both before and during the December 22, 2020, hearing. This is clearly bald argument and pleading conjecture as there is no material fact pleaded with respect to the reasons supporting the PBC's December 22, 2020, decision, the legal duty allegedly owed to the Plaintiff by the PBC or its presiding member, or how and when that duty breached. There are also no pleaded particulars of the alleged bad faith other than that the Plaintiff's arguments were not successful.

[35] The Plaintiff also argues that the PBC not only negligently relied on incomplete information from a "redacted and lacking report", but also failed to listen to the recordings which had led to the Plaintiff's parole suspension in making its December 22, 2020, decision. As above, this is clearly bald argument and pleading conjecture as there is no material fact pleaded with respect to the reasons supporting the PBC's December 22, 2020, decision. There is no basis in material fact alleged for the pleaded unnamed PBC member's negligence other than the inference that the Plaintiff considered the evidence presented to the PBC as insufficient. There is no allegation that any legal duty was allegedly owed to the Plaintiff by the PBC or by its presiding member, or how and when that duty was breached beyond that summarized herein.

[36] The Plaintiff alleges that the PBC Appeal Division decision was made in bad faith because the PBC did not accept the new evidence he presented to it. This is clearly bald argument and pleading conjecture as there is no material fact pleaded with respect to the reasons supporting the decision to uphold PBC's December 22, 2020, decision other than that the PBC did not accept fresh or new evidence on appeal. There is no allegation of any alleged legal duty owed to the Plaintiff by the PBC Appeal Division or by its members, or how and when that duty was breached. There are also no pleaded particulars of the alleged bad faith.

[37] The Plaintiff also alleges that the PBC's Appeal Division acted negligently toward the Plaintiff by failing to order a reconsideration of his case and by upholding his parole revocation. As above, this is clearly bald argument and conjecture unsupported by any allegation of material fact to support the bald conclusion of law that is pleaded.

[38] The Statement of Claim also makes a general argument without particulars that the "Defendant's agents", none of which are identified in the pleading or named as defendants, were grossly negligent and that such gross negligence led to the Plaintiff's incarceration after September 2020. The allegations of gross negligence are bald and are unsupported by any particularized allegation of material fact against any particular "agent" of the Defendant, what legal duty they owed to the Plaintiff at any time, or how they breached such duty.

[39] The Plaintiff argues in his Statement of Claim that his rights section 7 and 9 *Charter* rights have been intentionally infringed by the unnamed "Defendant's agents". As set out in *Mancuso* at paragraph 21, a Plaintiff is required to plead material facts to satisfy the legal criteria required to establish the violation of a *Charter* right. Pleading material facts is essential to the presentation of *Charter* issues (*Mackay v Manitoba*, 1989 CanLII 26 (SCC), [1989] 2 S.C.R. 357

at p. 361). The Plaintiff does not specify which actions are alleged to have violated the Plaintiff's *Charter* rights, or how those violations were intentional despite that particulars are required pursuant to Rule 181 for a pleading relating to someone's state of mind and intention.

[40] The Plaintiff also argues that PBC members' decisions made on December 22, 2020, on appeal by the Appeal Division on May 5, 2021, as well as through the meetings between the Plaintiff and his parole officer were all based on flawed evidence, unreasonable suspicions very likely related to racial factors, on the basis of conscious or unconscious biases and prejudices, and were "clearly based on unfounded racial stereotypes of criminality and dangerousness of Black people". No material facts are alleged to support these bald arguments other than the Plaintiff identifies as a black male. The argument as presented is conjecture.

III. The Arguments

a) The Defendant's argument

[41] As mentioned above, the Defendant argues that there is no reasonable cause of action in extracontractual liability as against the PBC notwithstanding section 3 of the *CLPA* because members of the PBC are not servants of the Crown within the meaning of the *CLPA*, and they enjoy statutory immunity pursuant to section 154 of the *CCRA* for anything done or said in good faith in the exercise or purported exercise of the functions of a member of the Board.

[42] The Defendant relies on this Court's decision in *Armaly v. The Queen*, 2003 FC 991 (CanLII) in which Prothonotary Hargreaves held that section 154 of the *CCRA* would apply because parole board members are appointees and administrative decision makers, and are not

Crown servants for the purposes of the *CLPA*. Moreover, as reasoned by Justice Teitelbaum in *Latham v. Canada* (1996), 117 F.T.R. 121 (F.C.T.D.) at 125 and 126, if there is no servant of the Crown who can be held responsible for an alleged tort, then His Majesty cannot be held liable in tort. Tort in common law is the equivalent of extracontractual liability in civil law.

[43] The Defendant also argues that the Statement of Claim is deficient in that the Plaintiff alleges that PBC members acted in bad faith toward him without alleging material facts that support the allegation. The Defendant argues that the mere fact that the Plaintiff does not agree with the PBC's decision does not establish bad faith, negligence, or gross negligence.

[44] The Defendant makes the same arguments with respect to the Plaintiff's allegation of discrimination by arguing that the Statement of Claim does not plead any material facts with respect to the allegations of discrimination or racial profiling.

b) The Plaintiff's Argument

[45] The Plaintiff's response is that he has pleaded a reasonable cause of action and that his Statement of Claim should not be struck.

[46] The Plaintiff argues that the facts alleged are sufficiently grave that any statutory immunity for the members of the PBC ought not to apply. This is particularly because the PBC must act in accordance with the *Charter* and its own policies regarding requests for the review of hearings. There is no reference to PBC policies in the Statement of Claim.

[47] Finally, regarding the claim of racial profiling and discrimination, the Plaintiff argues that he does not have to provide any specific evidence with regard to the systemic racism he faced, as it is of judicial notice that the correctional system is facing problems with systemic racism. There is no allegation of systemic racism in the Statement of Claim to support this argument.

IV. Analysis

[48] It is clear from the outset that the Plaintiff has not taken action against the proper Defendant. He contends throughout his Statement of Claim that the PBC's decisions made in the exercise of its jurisdiction at law is the source of the Defendant's liability. Further he characterizes PBC members as the "Defendant's agents" and that such agency relationship gives rise to the Defendant's vicarious liability pursuant to the *CLPA*. There are no material facts alleged to support the allegation that any of the PBC decision makers or that any of the parole officers alluded to but are unnamed in the pleading are in fact the Defendant's "agents", "subordinates" or servants.

[49] At its best, the Plaintiff's allegation is that the Defendant is the principal of the PBC and of its members, suggesting an agency relationship that is contradicted by section 103 of the *CCRA*. The PBC is an administrative tribunal continued by sections 103 and following the *CCRA*. Its members exercise the jurisdiction granted by statute to make decisions in their absolute discretion pursuant to the *CCRA*. Its members are Governor-in-Council appointees who hold office for terms of ten or three years respectively as full-time or part-time members of the PBC. Neither the PBC nor its members are agents of the Crown pursuant to the *CLPA*.

[50] It follows that the core assumption underlying the Plaintiff's Statement of Claim, that the Defendant is the PBC's principal and the PBC members' principal or employer, is fundamentally

incorrect in law and cannot succeed. It is plain and obvious that the Plaintiff's claims as pleaded in his Statement of Claim disclose no reasonable cause of action against the named Defendant. The Plaintiff's claims as pleaded are doomed to fail (*Armaly v. The Queen*, 2003 FC 991 (CanLII) and *Latham v. Canada* (1996), 117 F.T.R. 121 (F.C.T.D.)).

[51] The Statement of Claim will therefore be struck in its entirety as the claims predicated upon that relationship and through the application of the *CLRA* are obviously and plainly doomed to fail.

[52] Although it is not necessary to do so to dispose of this motion given the determination above, it is useful to consider the other reasons why the Plaintiff's Statement of Claim is struck out in its entirety without leave to amend.

[53] A PBC member is an administrative decision maker and as such, pursuant to section 154 of the *CCRA*, benefits from statutory immunity from criminal or civil proceedings for anything done or said in good faith in the exercise or purported exercise of the functions of a member of the Board under the *CCRA* or any other Act of Parliament.

[54] As noted by the Federal Court of Appeal in *9255-2504 Québec Inc. v. Canada*, 2022 FCA 43 (CanLII), at para 21, "Even if a discretionary decision of a decision maker has been declared invalid or unlawful, that in itself does not create a cause of action in extracontractual civil liability (in Quebec) or in tort liability (in provinces where the common law applies). That is, a decision, even if it is determined to be invalid, is not by that very fact a fault." I understand from the Federal Court of Appeal's statement above that if an invalid discretionary decision by a

decision maker is not a fault because of its invalidity, a valid discretionary decision by a decision maker is not a fault by the very fact of it being made either.

[55] The decision-making scheme set out in the *CCRA* relevant to this motion may be summarized by highlighting that a member of the PBC has the discretion and authority to suspend or revoke parole pursuant to section 135 of the *CCRA*, and the offender can appeal that decision to the Appeal Division pursuant to section 147 of the *CCRA*. If the offender is dissatisfied with the Appeal Division's decision, then their remedy is to seek judicial review of the Appeal Division's decision to this Court. The application for judicial may include allegations consistent with the grounds for review set out in section 18.1(4) of the *Federal Courts Act*, including that the PBC failed to observe a principle of natural justice, procedural fairness or other procedure that it was required to observe, erred in law, or based its decision on an erroneous finding of fact that it made in a perverse or capricious manner without regard for the material before it.

[56] In this case, the allegations contained in the Statement of Claim reflect that the Plaintiff exhausted his appeal routes from the decision that followed the December 22, 2020, decision pursuant to the *CCRA* and then took no steps to seek further redress. There is no allegation that the Plaintiff sought the judicial review of the Appeal Division's decision. As there was no judicial review initiated, the Court must infer from the pleading and the material facts pleaded that the PBC decisions referred to by the Plaintiff are now unimpeachable and valid discretionary decisions made in the usual course even though the Plaintiff may not agree with them.

[57] The Plaintiff baldly argues that the PBC engaged in racial profiling against him because his arguments were not successful before the PBC. He also argues without supportive material

fact that the decisions made by the PBC were based discriminatory racialization, differential and unfair treatment, conscious and unconscious biases and prejudices, and bad faith by the PBC, its members and other “agents”. None of these allegations are properly pleaded and all are based on conjecture. The allegations could have been raised and advanced on judicial review but were not. The Statement of Claim is therefore in my view an improper collateral attack on the PBC’s decisions and constitutes an abuse of process (*Strickland v. Canada (Attorney General)*, 2013 FC 475 (CanLII), at paras 41 to 47, and the jurisprudence cited therein).

[58] The Plaintiff’s pleading is deficient and fails to disclose a reasonable cause of action in negligence, gross negligence, or with respect to racial profiling, bias, discrimination, or for alleged *Charter* violations. The arguments made by the Plaintiff in his Statement of Claim are arguments based on conjecture and are unsupported by any material fact that would inform the Defendant of the essential elements of the causes of action alleged and how and when those essential elements are alleged to have occurred in fact.

[59] The same is true with respect to the Plaintiff’s allegation of bad faith that, if properly pleaded, could perhaps affect the application of the statutory immunity of PBC members set out in section 154 of the *CCRA*. There are no allegations of material fact and no particulars of the BPC Appeal Division’s alleged bad faith other than improper argument that any decision, be it procedural with respect to the admission of new evidence or otherwise, against the Plaintiff’s interests was wrong. The Federal Court of Appeal has made it clear that an allegation of bad faith has to be pleaded with particularity as required by Rule 181 of the *Rules* (*Mancuso v. Canada (National Health and Welfare)*, 2014 FC 708 (CanLII), at para 100), *Merchant Law Group v. Canada Revenue Agency*, 2010 FCA 184 (CanLII), at para 34). A failure to do so leaves the

allegation of bad faith made in the Statement of Claim as a bald allegation that need not be considered as true on a motion to strike (*Merchant Law Group v. Canada Revenue Agency*, 2010 FCA 184 (CanLII), at para 34; *Zundel v. Canada*, 2005 FC 1612, 144 A.C.W.S. (3d) 635; *Vojic v. Canada* (M.N.R.), 1987 CanLII 9545 (FCA), [1987] 2 C.T.C. 203, 87 D.T.C. 5384 (F.C.A.)).

[60] Such a bald allegation of bad faith without evidentiary foundation constitutes an abuse of process that justifies the Court striking out the claim based on it (*AstraZeneca Canada Inc. v. Novopharm Limited*, 2010 FCA 112 at para 5; *Merchant Law Group v. Canada Revenue Agency*, 2010 FCA 184 (CanLII), at para 41).

THIS COURT ORDERS that:

1. The Defendant's motion is granted.
2. The Plaintiff's Statement of Claim is struck out in its entirety pursuant to Rule 211(1)(a) and (f) of the *Rules*.
3. As the Defendant has not sought its costs of this motion, no costs are awarded.

“Benoit M. Duchesne”

Associate Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1666-23

STYLE OF CAUSE: DAVID LEACH v HIS MAJESTY THE KING

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: AUGUST 6, 2024 (IN WRITING)

REASONS FOR ORDER: ASSOCIATE JUDGE BENOIT M. DUCHESNE

DATED: AUGUST 6, 2024

SOLICITORS OF RECORD:

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