

Federal Court



Cour fédérale

Date: 20220607

Docket: T-559-22

Citation: 2022 FC 841

Ottawa, Ontario, June 7, 2022

PRESENT: Prothonotary Benoit M. Duchesne

BETWEEN:

KERRY FITZPATRICK

Plaintiff

and

**CODIAC REGIONAL RCMP FORCE, DISTRICT 12
AND HER MAJESTY THE QUEEN**

Defendants

ORDER WITH REASONS

[1] The Defendants, Codiac Regional RCMP Force, District 12 and Her Majesty the Queen [together, the “Defendants”] have brought a motion to strike the Plaintiff’s Statement of Claim without leave to amend pursuant to Rule 221(1)(a) and (c) of the *Federal Courts Rules*, SOR/98-106 [the “Rules”].

[2] The Defendants contend that the Statement of Claim does not disclose a reasonable cause of action against them, is scandalous, frivolous and vexatious, and that the claims advanced by

the Plaintiff are statute-barred pursuant to paragraph 5(1)(a) of the *Limitations of Actions Act*, N.S, 2009, c. L-8.5. They also argue that the New Brunswick Court of Queen’s Bench has the authority to decide of the dispute between the parties.

[3] The Plaintiff is self-represented. He argues that this Court has the requisite jurisdiction to hear and decide this matter, that the causes of action he advances are reasonable and that his claims are not statute-barred by the passage of time.

[4] For the reasons that follow, the Defendants’ motion is granted and the Statement of Claim is struck without leave to amend.

1. The law applicable on a motion to strike

[5] The law applicable to a motion to strike pursuant to Rule 221(1)(a) is well established and was summarized by Justice Pentney in *Fitzpatrick v. Codiac Regional RCMP Force, District 12, and Her Majesty the Queen*, 2019 FC 1040, a predecessor matter involving the same parties in connection with a Statement of Claim filed by Mr. Fitzpatrick in 2019 that was struck without leave to amend, 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

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) discloses no reasonable cause of action or defence, as the case may be,	a) qu'il ne révèle aucune cause d'action ou de défense valable;
(b) is immaterial or redundant,	b) qu'il n'est pas pertinent ou qu'il est redondant;
(c) is scandalous, frivolous or vexatious,	c) qu'il est scandaleux, frivole ou vexatoire;
(d) may prejudice or delay the fair trial of the action,	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.

[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.

[6] Prothonotary Aylen (as she then was) applied the same analysis in her unreported November 27, 2019, reasons and decision in *Kerry Fitzpatrick v. Codiac Regional RCMP Force, District 12, New Brunswick Department of Social Development Regions 1, and Her Majesty the*

Queen, Docket T-1500-19, another predecessor matter involving several of the parties in this matter in connection with a Statement of Claim filed by Mr. Fitzpatrick in 2019 that was struck without leave to amend.

[7] Given the extensive responding motion record filed by the Plaintiff, some explanation must be given regarding what evidence may be considered in the context of a motion to strike pursuant to Rule 221(1)(a) and on a motion to strike pursuant to Rule 221(1)(c).

[8] Rule 221(2) provides that no evidence shall be heard on a motion for an order under Rule 221(1)(a). The effect of Rule 221(2) is that none of the affidavit and documentary evidence contained in either party's motion record is admissible to be considered on the issue of whether Mr. Fitzpatrick's pleading discloses a reasonable cause of action.

[9] This general prohibition against the consideration of evidence on a Rule 221(1)(a) motion to strike does not apply with respect to documents that are otherwise specifically referred to in the Statement of Claim under review and are produced in motion records filed in connection with the motion. These documents are not inadmissible "evidence" within the meaning of Rule 221(2) because they have been specifically referred to in the Statement of Claim and are, in effect, incorporated into the pleading by reference (*Paul v. Canada (Attorney General)*, 2001 FCT 1280 (CanLII), at para. 23; see also *McLarty v. Canada*, 2002 FCA 206 (CanLII), at para. 10; *Harris v. Canada*, 2000 CanLII 15738 (FCA), [2000] 4 F.C. 37 (F.C.A.) approving the judgment of the Ontario Court of Appeal in *Web Offset Publications Limited et al. v. Vickery et al.* (1999), 1999 CanLII 4462 (ON CA), 43 O.R. (3d) 802 (C.A.)).

[10] The difficulty in this instance lies in the fact that Mr. Fitzpatrick’s Statement of Claim specifically identifies a number of documents as “material used in support” of his allegations in 19 of the 45 paragraphs contained in the Statement of Claim. Each of these documents are referenced separately from pleaded allegations. Mr. Fitzpatrick also includes in his Statement of Claim a list of 63 documents under the heading of “material used in support”. In these respects, the Statement of Claim resembles more an affidavit referring to its supporting documentary exhibits with an appended list of documents similar to Schedule 1 of an Affidavit of Documents that discloses potentially relevant documents than it does a Statement of Claim. Such pleading of evidence in a Statement of Claim is improper and runs afoul of Rule 174 and its requirement that “every pleading shall contain a concise statement of the material facts on which the parties relies, but shall not include the evidence by which those facts are to be proved” [emphasis added].

[11] The documents pleaded by Mr. Fitzpatrick as “material used in support” must be considered as “evidence” that is prohibited by Rule 221(2) from being considered in assessing whether a Statement of Claim discloses a reasonable cause of action. To hold otherwise would reward the Plaintiff’s disregard of the *Rules* and the drafting guidance included in previous decisions of this Court in which his other Statements of Claim were struck without leave to amend.

[12] The law applicable to a motion to strike pursuant to Rule 221(1)(c) is the same as the law applicable to a motion to strike pursuant Rule 221(1)(a). By contrast, however, there is no prohibition against considering admissible evidence as Rule 221(2) does not apply. The focus of

the analysis to be carried out is also different in that it seeks to determine whether the pleading or the allegations within it are scandalous, frivolous or vexatious.

[13] There is no rigid test applicable to determine whether a pleading is scandalous, frivolous or vexatious (*Mahoney v. Canada*, 2020 FC 975 (CanLII), at paragraphs 28 and 29) despite that there are hallmarks of scandalous, frivolous or vexatious pleadings. In *Steiner v. Canada*, 1996 CanLII 3869 (FC), Prothonotary Hargraves described a scandalous, frivolous or vexatious proceeding as follows:

“A scandalous pleading includes one which improperly casts a derogatory light on someone, with respect to their moral character. A claim is a frivolous one where it is of little weight or importance or for which there is no rational argument based upon the evidence or law in support of the claim. A vexatious proceeding is one that is begun maliciously or without a probable cause, or one which will not lead to any practical result.

Paragraph 2 of the Statement of Claim is certainly scandalous in that, without any grounds, it impugns the moral character of the Crown counsel who was initially involved.

The pleading as a whole is insufficient on its face. It does not present a rational argument, either on evidence or on the law, in support of the claim, but merely complains of a police investigation, which I have pointed out was not unreasonable, given the circumstances, and goes on to cast unreasonable aspersions on Crown counsel. As such this claim is frivolous.”

[14] In *Lawyers’ Professional Indemnity Co. v. Coote*, 2013 FC 643 at para. 25 (CanLII), aff’d 2014 FCA 98 (CanLII), this Court cited the following principles regarding indicia of vexatious proceedings, as detailed by Madam Justice Carolyn Layden-Stevenson in *R. v. Mennes*, 2004 FC 1731 at para. 77, with approval:

(a) the bringing of one or more actions to determine an issue which has already been determined by a court of competent jurisdiction constitutes a vexatious proceeding;

(b) where it is obvious that an action cannot succeed, or if the action would lead to no possible good, or if no reasonable person can reasonably expect to obtain relief, the action is vexatious;

(c) vexatious actions include those brought for an improper purpose, including the harassment and oppression of other parties by multifarious proceedings brought for purposes other than the assertion of legitimate rights;

(d) it is a general characteristic of vexatious proceedings that grounds and issues raised tend to be rolled forward into subsequent actions and repeated and supplemented, often with actions brought against the lawyers who have acted for or against the litigant in earlier proceedings;

(e) in determining whether proceedings are vexatious, the court must look at the whole history of the matter and not just whether there was originally a good cause of action;

(f) the failure of the person instituting the proceedings to pay the costs of unsuccessful proceedings is one factor to be considered in determining whether proceedings are vexatious;

(g) the respondent's conduct in persistently taking unsuccessful appeals from judicial decisions can be considered vexatious conduct of legal proceedings.

[15] Finally, whether an action is vexatious is a matter to be determined by objective rather than subjective standards. In making its determination, the court is entitled to take notice of its own records and of the proceedings contained therein (*R. v. Mennes*, 2004 FC 1731 at para. 79).

2. THE STATEMENT OF CLAIM

[16] The Plaintiff filed his Statement of Claim on March 14, 2022. He claims damages in the amount of \$6,900,000 from the Defendants. The claims for damages are grouped under three (3) headings, although each appear to be based largely on the same series of events as appreciated by Mr. Fitzpatrick.

[17] The first claim is for \$520,494.22 in damages equivalent to his losses following the alleged violation of his rights pursuant to section 7 of the *Canadian Charter of Rights and Freedoms*, Schedule B to the Canada Act 1982 (UK), 1982, c 11 [the “Charter”] as a result of alleged misrepresentations of fact by the Defendants. The Plaintiff describes these losses as consisting of the loss of his house and 85% its contents, state interference with legal custodial parent and parental abduction and the payment of a \$10,987.44 debt owed to Revenue Canada for Government family allowance as a direct result of his abduction. He has quantified these losses as \$40,987.44. The remaining \$479,506.78 claimed is for damages arising from misrepresentations by the Defendants, including the Defendants’ purported fabrication of evidence, which is alleged to constitute state interference with his psychological integrity in contravention of his “Custody Order FDM 208-16”. This first claim is re-articulated in Appendix “A” of the Statement of Claim in different wording but remains to the same effect.

[18] The second claim is for \$1,918,027.12 in damages arising from alleged breaches of his section 8, 9, 10, and 12 *Charter* rights. The *Charter* rights are claimed to have been violated by the conduct and alleged negligence of two (2) RCMP constables, Constables Estabrooks and Savoie, neither of whom are parties to this proceeding, in the series events alleged in the

Statement of Claim. In Appendix “B” of the Statement of Claim, the Plaintiff specifies that the breaches complained about are alleged to have occurred on March 24, 2019.

[19] The third claim is for punitive damages arising from the Defendants’ intentional interference with contractual relations, aiding and abetting parental abduction, as well as \$4,461,478.66 in damages for defamation ensuing from the Defendants’ alleged actions, interference with contractual relations and fraudulent misrepresentations of fact.

[20] The Plaintiff relies on section 10 and subsections 35(1)(2) of the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50 and the *Charter* in support of his claims. He pleads that this Court has jurisdiction over this matter pursuant to section 17(5)(a) and (b) of the *Federal Courts Act*, R.S.C. 1985, c F-7.

[21] The Plaintiff’s claims appear to be generally based on his appreciation of the conduct of two RCMP constables, namely Constables Estabrooks and Savoie, who acted upon what the Plaintiff characterizes as fraudulent misrepresentations provided by his former spouse and by others sympathetic to her interests that he had uttered the threat of slicing his own son’s throat. However, as will be discussed below, some claims also appear to be based on the conduct of non-parties.

[22] An information was sworn in connection with the information Constables Estabrooks and Savoie received about the uttered threat. The Plaintiff was arrested on March 24, 2019, on the basis of the uttered threat and also on the basis of his breach of an undertaking to the Court in

connection with previous court orders to notify the court of a change of address. The Plaintiff pleads that the Crown withdrew the charge of uttering threats on March 27, 2019. The charge of a breach of undertaking to the Court was not withdrawn.

[23] The Plaintiff alleges that Constables Estabrooks and Savoie were negligent in their investigation of the information provided by his former spouse that led to his arrest on March 24, 2019. The Plaintiff pleads that the RCMP Constables owed him a duty of care as a suspect. Although not pleaded, the only conclusion to be drawn from reading certain portions of the Statement of Claim is that the Plaintiff believes that the RCMP Constables at issue breached the duty of care he says they owed him. The standard of care at issue is not pleaded. How the Constables are alleged to have breached the duty of care is not pleaded either. The individual Constables are not named parties in this proceeding and no specific claim or prayer for relief is advanced against either of them personally in negligence except in an Appendix to the Statement of Claim.

[24] The Plaintiff pleads that he lodged a complaint with the RCMP with respect to the Constables pursuant to section 45.35(1) of the *Royal Canadian Mounted Police Act*, RSC 1985, c R-10 [the “*RCMP Act*”]. The RCMP is alleged to have provided the Plaintiff with a report setting out the summary of its investigation along with its conclusions pursuant to section 45.64 of the *RCMP Act*. The Plaintiff pleads this document explicitly in his allegations as the “Final Notice” document dated September 15, 2020. The Plaintiff pleads that the content of the RCMP’s “Final Notice” in response to his complaint includes fraudulent misrepresentations of facts and that

those misrepresentations of fact show how Constables Estabrooks and Savoie breached his section 8, 9, 10 and 12 *Charter* rights.

[25] These events seem to have taken place in the midst of a child custody dispute between the Plaintiff and his former spouse. Many of the paragraphs in the pleading outline situations, communications and events transpiring between Mr. Fitzpatrick, his former spouse, and persons close to them in what is quite clearly a very high conflict and contentious situation involving a number of family members near and far, several minor children, their safety and their custody. The Plaintiff alleges that his March 24, 2019 arrest led to the abduction of his sons from his custody and their placement in the “unlawful” care of his former spouse.

[26] The Plaintiff pleads that by acting on the information provided by his former spouse and others with respect to the uttered threat, the RCMP has fraudulently interfered with his contractual relations with his former spouse. The contractual relations alleged to have been interfered with are identified as “Custody Order FDM-208-16”. The Plaintiff has neither alleged nor produced another contract or contracts in support of his claims of interference with contractual relations.

[27] All of these events, along with the RCMP’s alleged highhanded conduct within them, are pleaded to form the basis for an award of unquantified punitive damages.

[28] Reading the Statement of Claim very generously, it appears that the Plaintiff relies on his March 24, 2019 arrest by the RCMP Constables on the information provided by his former

spouse, as the basis for his claimed financial losses, for his claims that his section 7, 8, 9, 10 and 12 *Charter* rights were breached, and for damages for the RCMP's intentional interference with his contractual relations pertaining to child custody.

3. The Parties' Positions

[29] The Defendants have brought their motion as a motion to be determined in writing. The Plaintiff did not object to having the motion disposed of in writing in his responding materials. As the Plaintiff is self-represented, the Court requested that the parties confirm their intention to proceed in writing only, without any oral submissions. On May 31, 2022, the parties each confirmed to the Court that they desired to have this motion proceed in writing only.

[30] The Defendants' position is that the Plaintiff's Statement of Claim is the fourth (4th) Statement of Claim he has filed against the Defendants since 2019, that this newest Statement of Claim arises substantially out of the same facts as pleaded in those other proceedings (docket numbers T-658-19, T-1500-19 and T-1979-19), each of which were struck by the Court without leave to amend, and is in effect an amended version of the earlier pleadings in different court files.

[31] The Defendants argue that the Statement of Claim is devoid of material facts required to support any of the causes of action advanced, with the result that it is plain and obvious that the claims have no reasonable chance of success and should be struck pursuant to Rule 221(1)(a) of the *Rules*. The Defendants argue that the Statement of Claim is scandalous, frivolous and vexatious as it is vague and so bereft of factual support that it is impossible for the Defendants to

respond. In addition, the absence of full particulars required to support claims of fraud and intent as is required by Rule 181(1)(b) highlight that this fourth attempt by the Plaintiff to refine his claims is nothing more than unsubstantiated attacks on the Defendants' integrity that lead to the conclusion that this pleading should be struck without leave to amend pursuant to Rule 221(1)(c) of the *Rules*.

[32] Finally, the Defendants also plead that several of the claims advanced by Mr. Fitzpatrick are time-barred by the two-year limitation period established by paragraph 5(1)(a) of the *Limitation of Actions Act*, S.N.B. 2009, c. L8.5 and that the New Brunswick courts have jurisdiction to determine the dispute.

[33] The Plaintiff's view is entirely the opposite. His written representations repeat the content of his Statement of Claim to a large extent with some pointed refinements, some of which are noteworthy.

[34] The Plaintiff argues that the RCMP misrepresentations that give rise to a cause of action are found in the September 15, 2020, "Final Notice" document delivered by the RCMP in connection with his complaint against the two Constables. He argues that this fact alone highlights that this 2022 Statement of Claim is in fact new. He argues that he could not have known that the misrepresentations contained in the September 15, 2020 "Final Notice" were in fact misrepresentations until he was acquitted of the charge of failing to notify of his change of address after trial on June 22, 2021, thus giving rise to a claim discoverability issue.

[35] He further clarifies that the defamation claims he advances arise from statements made in writing by his former spouse and others within his and her family and friends, and not with respect to any writing by the Defendants.

[36] Mr. Fitzpatrick clarifies that his claim for intentional interference with contractual relations is with respect to a Court Order regarding custody of his children. He argues that a Court Order made in family court is a legally binding contract that gives rise to an obligation that may be enforced by the Courts and that his March 2019 arrest interfered with his ability to comply with a custody order issued by the New Brunswick Court. He maintains that such interference through the arrest is construed as intentional interference with contractual relations that, in fact, supports the claim advanced.

4. The Rule 221(1)(a) Analysis

[37] The analysis that follows is carried out while reading the Statement of Claim generously and with flexibility to allow for any deficiencies in drafting that do not impact issues of substantive law or principles of procedure that are designed to make the causes of action intelligible and capable of being responded to.

a) Fraudulent Misrepresentation

[38] The first claim advanced in the pleading is framed in misrepresentation of fact and the alleged fabrication of evidence by the Defendants, each of which are alleged to constitute a breach of the Plaintiff's section 7 *Charter* rights.

[39] The misrepresentations the Plaintiff identifies are those pleaded at paragraphs 8 through 14 inclusively of the Statement of Claim. At paragraph 14 of his Statement of Claim, the Plaintiff states that “[...] the Final Notice constitutes the misrepresentations which gave cause for action against the Defendant”. The misrepresentations complained of are pleaded as being fraudulent and contained in the RCMP “Final Notice” document arising from his complaint against Constables Estabrooks and Savoie to the Civilian Review and Complaints Commission for the RCMP, pursuant to the *RCMP Act*. The misrepresentations complained of appear to be a recitation of the facts ascertained and steps taken by the RCMP during its investigation into the complaint filed by the Plaintiff as is required by section 45.64 of the *RCMP Act*. These facts include the allegations made by the Plaintiff’s former spouse, family and acquaintances that lead, in part, to Mr. Fitzpatrick’s March 24, 2019 arrest. Mr. Fitzpatrick appears to plead that the RCMP’s reliance on the alleged fraudulent misrepresentation by his former spouse with respect to uttered threats of bodily harm constitutes the RCMP’s fabrication of evidence against him.

[40] A claim for fraudulent misrepresentation requires the allegation of (1) a false statement by the defendant; (2) the defendant knowing that the statement is false or being indifferent to its truth or falsity; (3) the defendant having an intent to deceive the plaintiff; (4) the false statement being material and the plaintiff having been induced to act; and, (5) the plaintiff suffering damages (*EnerWorks Inc. v. Glenbarra Energy Solutions Inc.*, 2012 ONSC 414 (CanLII), at para. 58). Particulars of the alleged fraud must be pleaded in the Statement of Claim pursuant to Rule 181(1)(a) (*Bergeron v. Canada (Correctional Service)*, 2016 FC 235 (CanLII), at para. 13).

[41] The Plaintiff does not plead that there was any intent on either of the Defendants' part to deceive him. There is also no plea that he relied upon or was induced to act in any way on the basis of any of the fraudulent misrepresentations of fact alleged to have been made in the "Final Notice" document. Moreover, there is no allegation of any detrimental action being taken by the Plaintiff on the basis of the "Final Notice" document or its content at all.

[42] The Statement of Claim fails to allege material facts in support of all of the essential elements of a claim of fraudulent misrepresentation. There is therefore no reasonable cause of action in fraudulent misrepresentation disclosed in the Statement of Claim.

[43] The alleged fabricated evidence is the uttered threat considered by the RCMP in its initial investigation prior to Mr. Fitzpatrick's arrest on March 24, 2019, and reported upon in the "Final Notice" document. The information about the uttered threat was received by the RCMP but not created by it. There is no pleaded factual basis for the claim that the RCMP fabricated evidence.

[44] Since it is obvious that the fraudulent misrepresentation and the fabricated evidence claim have no chance of success, it is equally obvious that the section 7 *Charter* claim that relies on the success of either claim also has no chance of success.

b) Negligence and Negligent Investigation

[45] The second claim is framed in negligence. Mr. Fitzpatrick claims negligence against the two (2) Constables (Estabrooks and Savoie) involved in the events of March 24, 2019, and also claims in negligence against the Defendant (used in the singular in the pleading) for not

complying with specific sections of the *RCMP Act* in connection with the classification of his complaints against the two Constables.

[46] The Plaintiff claims at paragraphs 25 and 26 of his Statement of Claim that the RCMP Officers, Constables Estabrooks and Savoie, negligently investigated the allegations that he uttered a threat and failed to report an address change. He also pleads that, as a suspect, the same Constables owed him a duty of care.

[47] These declaratory allegations do not meet the minimum threshold for sustainable claims of negligence or of negligent investigation.

[48] In *1688782 Ontario Inc. v. Maple Leaf Foods Inc.*, 2020 SCC 35 (CanLII), at para. 18, the Supreme Court of Canada reiterated that in order to be successful on a claim in negligence, the Plaintiff must prove all of the elements of the tort of negligence: (1) that the defendant owed the plaintiff a duty of care; (2) that the defendant's conduct breached the standard of care; (3) that the plaintiff sustained damage; and (4) that the damage was caused, in fact and in law, by the defendant's breach. These elements must be pleaded in the Statement of Claim, with material facts pleaded supporting each element, failing which there is no reasonable cause of action in negligence pleaded. The Statement of Claim does not plead each of these elements and does not include allegations of material fact in support of all of the elements required to be pleaded. Moreover, Mr. Fitzpatrick's allegations in the body of his Statement of Claim are against individuals who are not parties to the proceeding.

[49] The tort of negligent investigation also requires that the Statement of Claim plead the constituent elements of the tort, specifically, that: (1) criminal proceedings must have been initiated by the defendant; (2) the proceedings must have been terminated in favour of the plaintiff; (3) there must have been an absence of reasonable and probable grounds to commence the proceedings against the plaintiff; (4) in conducting the investigation the defendant owed a duty of care to the plaintiff, and did not meet the objective standard of a reasonable police officer in similar circumstances, and (5) in a case where charges were pursued the plaintiff must establish, among other things, that the criminal proceedings were terminated in his or her “favour”, understanding that where the criminal proceedings against the accused are resolved or settled by the Crown withdrawing the charges in return for the accused entering into a peace bond, this result is not one that is in favour of the accused (*Romanic v. Johnson*, 2012 ONSC 3449, at paras. 9 and 23, [2012] O.J. No. 2642, aff’d 2013 ONCA 23, [2013] O.J. No. 229).

[50] Although the pleading sets out some these elements, not all of them are pleaded nor are they supported by allegations of material fact. Although the Statement of Claim pleads that the charge of uttering death threats was withdrawn, it is silent on the matter of the other charge, namely that of failing to report a charge of address. The Statement of Claim is deficient with respect to this claim and does not disclose a reasonable cause of action for a claim of negligent investigation.

[51] Although it is not pleaded, Mr. Fitzpatrick’s pleading suggests that the RCMP was negligent in its treatment of his complaint against Constables Estabrooks and Savoie because the RCMP breached certain provisions of the *RCMP Act* with respect to the classification of his

complaint. Although it is possible for a breach of statute to assist in demonstrating a standard of care in a negligence proceeding, there is no actionable tort for the breach of a statute alone (*The Queen (Can.) v. Saskatchewan Wheat Pool*, 1983 CanLII 21 (SCC), [1983] 1 SCR 205, at page 225-226). The Plaintiff's various allegations of the breach of the *RCMP Act* are not pleaded in a manner to disclose a reasonable cause of action.

c) *Intentional Interference with Contractual Relations*

[52] The Plaintiff's claim of intentional interference with contractual relations is based on the allegation that his March 24, 2019 arrest interfered with his ability to comply with "Custody Order FDF-208-16", a Court Order for the custody of his children. Mr. Fitzpatrick conflates contracts and Orders of the Court. A contract, and indeed a contract that could be at issue in a claim of intentional interference with contractual relations, is a contract entered into by persons. A Court Order, even though made with the consent of the parties affected by it, is not a contract between persons as contemplated by the elements of the tort. The Statement of Claim accordingly fails to disclose a reasonable cause of action for this claim.

d) *Defamation*

[53] The Statement of Claim sets out that the Plaintiff was defamed by various persons, more specifically, Judy May Augustine, his former spouse Mellissa Hebert and others. The Plaintiff does not allege how either of the Defendants might have defamed him. There is no reasonable cause of action in defamation disclosed in the Statement of Claim against either Defendant.

e) *Alleged breaches of the Plaintiff's section 7, 8, 9, 10, and 12 Charter rights*

[54] In order to establish breaches of his section 7, 8, 9, 10 and 12 *Charter* rights, the Plaintiff is required to plead all the necessary facts to support such claims. The Plaintiff alleges that on March 24, 2019, each of these rights were violated.

[55] He alleges that the Constables who drafted the information leading to his arrest violated the “rule against narrative” and that the RCMP did not make full, fair and frank disclosure of all of the information known by Constables Estabrooks and Savoie before the Justice who authorized the warrant for his arrest. He pleads that the Defendants “physically knew that their source was intoxicated and not in the right frame of mind”.

[56] These allegations do not set out material facts that disclose a reasonable cause of action with respect to the alleged breaches of his section 7, 8, 9, 10 and 12 *Charter* rights (*Mancuso v. Canada (National Health and Welfare)*, 2015 FCA 227 (CanLII), at paragraph 21).

[57] The Plaintiff’s claim for a constitutional remedy pursuant to section 24 of the *Charter* has no chance of success because the underlying alleged *Charter* breaches do not disclose a reasonable cause of action, much less a cause of action that could lead to an order to have his own sons apprehended on account of “irreparable harm and threats” they are alleged to have caused and made towards him.

[58] The Statement of Claim as drafted fails to disclose a reasonable cause of action and should be struck on the basis of Rule 221(1)(a).

5. The Rule 221(1)(c) Analysis

[59] The Defendants have included Justice Pentney's and Prothonotary Ayleson's reasons for striking the Plaintiff's claims in docket numbers T-658-19 and T-1500-19 in their book of authorities. A review of those decisions highlights that the 2019 claims by the Plaintiff were advanced on the basis of the same events and circumstances leading up to and following March 24, 2019 as are relied upon in this case. The Statements of Claim in those proceedings were struck for failing to disclose reasonable causes of action without leave to amend.

[60] This Statement of Claim is the Plaintiff's fourth (4th) Statement of Claim in which he seeks remedies against the Defendants on the basis of the same events and circumstances leading up to and following March 24, 2019. This Statement of Claim bears the hallmark of a scandalous, frivolous or vexatious proceeding in that the grounds and issues, with one exception, had been raised in prior proceedings, and were rolled into this proceeding with some supplemental content (see *R. v. Mennes*, supra).

[61] I find that the Statement of Claim, along with the claims advanced within it by the Plaintiff, are scandalous, frivolous and vexatious with the exception of the fraudulent misrepresentation claim advanced with respect to the September 15, 2020, "Final Notice" document. As noted above, that claim fails because it does not disclose a reasonable cause of action.

6. Leave to Amend

[62] The Defendants argue that Mr. Fitzpatrick ought not to be given leave to amend his pleading in this action. I agree.

[63] Generally speaking, if an amendment can cure a defect in a pleading, the Court should be willing to exercise its discretion to allow such an amendment subject to the consideration of matters such as prejudice and costs (*Pearson v. Canada*, 2008 FC 1367 (CanLII), at para. 47). An amendment should be allowed for the purpose of determining the real questions in controversy, provided that allowing the amendment would not result in an injustice to the other party that is not capable of being compensated by an award of costs and the amendment would serve the interests of justice: *Canderel Ltd. v. Canada*, 1993 CanLII 2990 (FCA), [1994] 1 F.C. 3 at page 10 (C.A.); *Apotex Inc. v. Bristol-Myers Squibb Company*, 2011 FCA 34 (CanLII), at para. 4). Nevertheless, those who disrespect the *Rules* and their aims can hardly expect courts to smile upon them when they look for a favourable exercise of discretion under those *Rules* (*Apotex Inc. v. Bristol-Myers Squibb Company*, 2011 FCA 34 (CanLII), at para. 4). Claims that are struck on the basis that they are an abuse of process are not of a nature that can be cured by an amendment (*Pearson v. Canada*, 2008 FC 1367 (CanLII), at para. 48).

[64] In my view, except with respect to the fraudulent misrepresentation claim based on the September 15, 2020, “Final Notice” document, the pleading in this case is a fourth attempt over as many years to litigate the same claims on the basis of the same facts, advancing the same general allegations that were previously struck without leave to amend. The grounds and issues were raised in previous pleadings and rolled forward into this action, where they were repeated

and supplemented. This is a hallmark of a scandalous, frivolous and vexatious pleading. As the pleading is in the nature of an abuse of process, it is not of the nature that can be cured by an amendment.

[65] The claim with respect to the September 15, 2020, “Final Notice” document is not scandalous, frivolous or vexatious despite not having been pleaded properly and failing to disclose a reasonable cause of action as a result. Notwithstanding, there is no basis upon which to grant leave for Mr. Fitzpatrick to amend his pleading with respect to the claim made on the basis of the “Final Notice” document. The underlying facts necessary for the deficient pleading to be potentially cured through an amendment are that the Plaintiff must have been induced to act and in fact acted to his detriment on the basis of a misrepresentation contained in the “Final Notice” document. The nature of the “Final Notice” document is that it is a report of events rather than an invitation to act. Its descriptions of the RCMP’s investigation into the complaint against the two Constables contains no inducement on which the Plaintiff could act to his detriment. The missing elements for the claim to be rehabilitated are inconsistent with the nature of the document and its content, and are therefore incapable of proof in connection with the claim advanced. The claim fails as a result and cannot be made good by an amendment.

[66] Leave to amend the Statement of Claim is accordingly denied.

[67] Given the foregoing analysis and the determinations that the Statement of Claim discloses no reasonable cause of action and is scandalous, frivolous and vexatious, there is no need for the Court to consider the jurisdictional and limitation period arguments raised by the Defendants.

7. Costs

[68] The Defendants have sought costs on a lump sum basis on this motion but have not suggested any amount. The Plaintiff submits that the parties should bear their costs of this motion.

[69] The Defendants are entitled to their costs as the successful party. I hereby fix the costs of this motion in the lump sum amount of \$750.00, which is equivalent to the middle of Tariff B, column III.

THIS COURT ORDERS that:

- 1 The Defendants' motion is granted.
- 2 The Statement of Claim in this proceeding is struck without leave to amend.
- 3 The Plaintiff shall pay costs to the Defendants in the lump sum amount of \$750.00.

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"Benoit M. Duchesne"
Prothonotary

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-559-22

STYLE OF CAUSE: KERRY FITZPATRICK v CODIAC REGIONAL RCMP
FORCE, DISTRICT 12 and HER MAJESTY THE
QUEEN

PLACE OF HEARING: OTTAWA, ONTARIO (IN WRITING)

DATE OF HEARING: IN WRITING

**REASONS FOR ORDER AND
REASONS** PROTHONOTARY B.M. DUCHESNE

DATED: JUNE 7, 2022

SOLICITORS OF RECORD:

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