

Federal Court



Cour fédérale

**Date: 20250612**

**Docket: T-2766-24**

**Citation: 2025 FC 1062**

**Toronto, Ontario, June 12, 2025**

**PRESENT: Madam Justice Whyte Nowak**

**BETWEEN:**

**DONN MACDOUGALL**

**Plaintiff**

**and**

**THE GOVERNMENT OF THE NORTHWEST TERRITORIES (“GNWT”) AND THE  
NORTHWEST TERRITORIES LEGISLATIVE ASSEMBLY (“NTLA”)**

**Defendants**

**JUDGMENT AND REASONS**

**I. Overview**

[1] The Plaintiff, Donn MacDougall [Plaintiff], is a former employee of the Government of Northwest Territories [GNWT]. He has commenced an action against the GNWT and the Northwest Territories Legislative Assembly [NTLA] [collectively, the Defendants] seeking a variety of relief, including *Charter* and punitive damages and an injunction in connection with his literary works, titled “infobreach.ca.”

[2] The GNWT and the NTLA say that the Statement of Claim fails to plead an identifiable cause of action and is devoid of material facts which entitle the Plaintiff to the relief he claims, or which could engage their liability. Accordingly, they have brought motions for an order striking the Plaintiff's Statement of Claim under Rule 221(1) of the *Federal Courts Rules*, SOR/98-106 [*Federal Courts Rules*]. The NTLA alternatively seeks an order summarily dismissing the action.

[3] For the reasons that follow, I am granting the Defendants' motions to strike, as I find that it is plain and obvious that the cause of action pleaded by the Plaintiff is wholly deficient and the cause of action contemplated by the Plaintiff cannot succeed at law. Accordingly, the Plaintiff's pleading is struck without leave to amend.

## II. Facts

[4] For the most part, the facts which follow come from the Plaintiff's Statement of Claim and are taken as true for the purposes of deciding whether the Plaintiff's Statement of Claim discloses a reasonable cause of action (Rule 221(2) of the *Federal Courts Rules*). Where facts come from the evidence filed by the parties on the Defendants' motions or from other pleadings, I have so indicated this as they may only be considered in determining other aspects of the Defendants' motions.

A. *The Applicant's employment with the GNWT and his access to information request*

[5] The Plaintiff was an employee of the Department of Justice in the GNWT from February 20, 2006 until he resigned on March 12, 2014. After the Plaintiff resigned, his manager rights were overridden, and his former work email address was left active and redirected to another GNWT employee for monitoring for a period of 11 months.

[6] According to the evidence, the Plaintiff learned from one of his former colleagues that she had sent the Plaintiff an email advising him of good news that she had received about her health. When she received no reply, she made a call to the Plaintiff's supervisor and was shocked to learn of the Plaintiff's departure and that personal emails sent to his former work email address were being monitored and not re-directed to him.

[7] The Plaintiff made a privacy review request in November 2017 seeking information, including whether the GNWT posted an automatic reply for his former work email address advising the public that he was no longer employed with them after his departure. The Information and Privacy Commissioner of the Northwest Territories [IPC] was never able to confirm whether this was done, but did confirm that the Plaintiff's account remained active for 11 months and that 510 emails dated between March 12, 2014 and July 23, 2014 and an email dated February 5, 2015 had been retained by the GNWT in accordance with its policies.

[8] On January 11, 2018, the Plaintiff made an access to information [ATI] request to the GNWT for "all documents that the department [of finance] has access to regarding any requests

or inquiries regarding [his] personal information between the dates of March 12, 2014 to June 19, 2015.”

[9] The response to the Plaintiff’s ATI request provided documents responsive to his request but indicated that 310 pages had been withheld as being exempt from disclosure. The Plaintiff made a complaint to the IPC regarding the missing pages. Ultimately, the IPC recommended that the missing pages be disclosed by the GNWT.

B. *The Plaintiff authors and publishes the work “infobreach.ca”*

[10] In December 2018, the Plaintiff set up a website hosted by GoDaddy, named *infobreach.ca*, which was intended to serve as a media outlet where he posted variations of a literary work he authored that details the events surrounding the termination of his employment. The Plaintiff’s literary works consist of different compilations of individual chapters which the Plaintiff has registered copyright in [the Works]. The Plaintiff pleads that he published the Works in order to “notify and inform the public of the GNWT’s failure to respect the Plaintiff’s privacy and the privacy of the GNWT’s employees.”

C. *The GNWT commences an action against the Plaintiff*

[11] The GNWT served the Plaintiff with a cease-and-desist letter with respect to the *infobreach.ca* website on December 20, 2018.

[12] When the Plaintiff failed to respond, the GNWT filed an action in the then Alberta Court of Queen's Bench [Alberta Action] in January 2019. The GNWT sought an injunction related to the Plaintiff's website, *infobreach.ca*, and also brought an interim application for an order seeking to restrain the Plaintiff from making GNWT employee emails public on the basis that they constituted personal and confidential records of others improperly obtained by the Plaintiff during or following his employment with the GNWT.

[13] In February 2020, the GNWT sent the Plaintiff a proposed consent to draft order to resolve the Alberta Action [Draft Order], which the Plaintiff rejected. The terms of the Draft Order as pleaded sought, *inter alia*, to prohibit the Plaintiff from publishing personally identifying information excerpted from records accessed or received by the Plaintiff during or after his employment with the GNWT and versions of personally identifying information contained in documents accessed or received by the Plaintiff during or after his employment that the Plaintiff had manipulated or edited.

[14] The Plaintiff considered the Alberta Action and the Draft Order to be "[...] an incredible assault on the *Charter of Rights and Freedoms*, Freedom of Expression, and the open court principle."

[15] The GNWT eventually discontinued the Alberta Action on November 4, 2020.

D. *The Plaintiff's registration of additional domain names*

[16] On February 3, 2020, the Plaintiff registered the domains *nwtassembly.ca* and *nwtassembly.com* with GoDaddy. According to the evidence, emails of other GNWT employees that were mistakenly addressed to these accounts were redirected to the Plaintiff's Gmail account which he had set up as a catch-all account for the *nwtassembly.ca* domain.

[17] By letter dated June 30, 2020, the GNWT advised the Plaintiff that he was prohibited from further employment with the GNWT due to his actions related to *infobreach.ca* (which the Plaintiff alleges was by then *nwtassembly.ca*) and the related litigation.

[18] The Plaintiff advised at the hearing that he believes he has every right to have registered these domain names which he says he uses for legitimate criticism of the GNWT.

E. *The Defendants' domain complaints*

[19] By letter dated March 3, 2021, the GNWT filed a complaint with GoDaddy requesting that it delete portions of *infobreach.ca* [GoDaddy GNWT Complaint]. GoDaddy rejected the complaint.

[20] Counsel for the NTLA wrote to GoDaddy by letter dated June 11, 2021 [GoDaddy NTLA Complaint] requesting that GoDaddy disable the domains *nwtassembly.ca* and *nwtassembly.com* on the basis that the NTLA owns the domain *ntassembly.ca* and the impugned domains were phishing websites designed to steal personal information.

[21] On June 17, 2021, the Plaintiff received notice from GoDaddy that his shopper account, which included the domains *infobreach.ca*, *nwtassembly.ca* and *nwtassembly.com*, was “permanently suspended” because of alleged malicious content on the *nwtassembly.com* website.

[22] When the registration periods with GoDaddy expired and the domains were made available, the Plaintiff re-registered the domain names *infobreach.ca*, *nwtassembly.ca* and *nwtassembly.com* with a different host, Super Privacy Service Ltd., care of Dynadot [Dynadot] on February 1, 2023, April 20, 2023 and April 23, 2023, respectively.

[23] On February 28, 2023, NTLA’s counsel sent a letter to Dynadot requesting that the domains be disabled [Dynadot NTLA Complaint] [the GoDaddy GNWT Complaint, the GoDaddy NTLA Complaint and the Dynadot NTLA Complaint are hereinafter collectively referred to as the Domain Complaints].

[24] Dynadot disabled the domain *nwtassembly.com* and advised the Plaintiff of the fact by letter dated March 2, 2023.

[25] In April 2023, the Plaintiff again re-registered the domain names *nwtassembly.ca* and *infobreach.ca* with yet another host. According to the Plaintiff’s Reply, he did not re-register his domain name for *nwtassembly.com*.

F. *The Plaintiff's action against GNWT and NTLA*

[26] The Plaintiff commenced this action against the GNWT and NTLA in October 2024 seeking a declaration that copyright subsists in *infobreach.ca* and that he is the sole owner of that copyright. He seeks a permanent injunction against the Defendants from “attempting to interfere with [his] ability to reproduce *infobreach.ca*, or any part or parts of it, except in accordance with the law, in a court of competent jurisdiction.” He also seeks damages under paragraph 2(b) of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982, c 11 [Charter]*, as well as punitive damages, interest and costs. The GNWT and the NTLA have defended the action and the NTLA has commenced a counterclaim seeking relief under the *Trademarks Act*, RSC 1985, c T-13, in connection with the Plaintiff's use of the domain names *nwtassembly.ca* and *nwtassembly.com*.

III. Preliminary Issue

[27] The Plaintiff is a self-represented litigant who is also a non-practising lawyer.

[28] At the time that the Plaintiff sought to file his Responding Motion Record, the Registry identified the following procedural irregularities in the Plaintiff's materials:

- i. The Plaintiff's Responding Motion Record contains an affidavit of the Plaintiff [the Plaintiff's Affidavit] and given that he is a non-practising lawyer, it runs afoul of Rule 82 of the *Federal Courts Rules*, which states that an affiant cannot both depose to an affidavit and present argument to the Court based on that affidavit without leave of the Court; and
- ii. The Plaintiff's Responding Motion Record contains an affidavit of Adam Vivian [Vivian Affidavit], sworn December 5, 2023,



which does not comply with Form 80A and references the Court File for the Alberta Action.

[29] After hearing the submissions of the parties, I am content to allow, with two exceptions, the filing of the Plaintiff's Affidavit, given that the affidavit largely attaches documents and does not engage the credibility issue that Rule 82 is meant to address. The exceptions relate to paragraphs 11 and 12; they constitute argument and are therefore struck. I am also allowing the Vivian Affidavit, as the Defendants' objection to it is one relating to procedure, not substance, for which self-represented litigants should be afforded some grace according to the Canadian Judicial Council's *Statement of Principles on Self-represented Litigants and Accused Persons* (2006).

#### IV. Issues

[30] The Defendants have raised the following issues on this motion:

- A. Should the Statement of Claim be struck pursuant to Rule 221 of the *Federal Courts Rules* by reason that it: (i) fails to disclose a reasonable cause of action (Rule 221(1)(a)); (ii) is immaterial or redundant (Rule 221(1)(b)); and/or (iii) is scandalous, frivolous and vexatious (Rule 221(1)(c))?
- B. Alternatively, should the Plaintiff's action as against the NTLA be summarily dismissed under Rule 215 of the *Federal Courts Rules*?
- C. If the Court determines that the Statement of Claim should be struck, should the Court grant the Plaintiff leave to amend his pleading?
- D. Should costs be awarded on this motion?

V. Analysis

A. *Should the Plaintiff's Statement of Claim be struck as disclosing no reasonable cause of action?*

[31] The Federal Court of Appeal recently reviewed the principles applicable to motions to strike under Rule 221(1)(a) in *Brink v Canada*, 2024 FCA 43 at paras 43-47. These principles can be summarized as follows:

- It must be plain and obvious that the pleading discloses no cause of action before a claim can be struck.
- The threshold that a plaintiff must meet is a low one; conversely, the moving party must show that the plaintiff has no reasonable prospect of success.
- Pleadings must be read generously with leniency that accommodates mere drafting deficiencies.
- Courts should not delve into the merits of the case but determine whether the plaintiff should be precluded from advancing the case at all while recognizing that novel, but arguable claims, should be permitted to proceed to trial.
- It must be recognized that there is a cost to the justice system in allowing cases with no substance to proceed.

[32] The Defendants submit that the Statement of Claim fails to (1) allege facts that are capable of giving rise to a cause of action; (2) disclose the nature of the action which is to be founded on those facts; and (3) indicate the relief sought, which must be of a type that the action could produce and the Court has jurisdiction to grant (citing *Bérubé v Canada*, 2009 FC 43 at para 24, *aff'd* 2010 FCA 276). I agree that the Statement of Claim fails on all three counts.

[33] The main problem with the Statement of Claim is that the nature of the cause(s) of action being asserted are entirely unclear. While the Statement of Claim repeatedly alleges that the Domain Complaints contain “false and derogatory statements regarding the Plaintiff’s use of the domains”, the Plaintiff has pleaded in Reply that he is not advancing a claim in defamation.

[34] The relief claimed suggests a cause of action for copyright infringement and breach of a *Charter* right. I say “suggests” because the relief sought refers to the Defendants’ interference with the Plaintiff’s ability to reproduce *infobreach.ca* and claims *Charter* damages. The Plaintiff refers to subsections 3(1) and 53(2) of the *Copyright Act*, RSC 1985, c C-42 [*Copyright Act*] and cites paragraph 2(b) and section 24 of the *Charter* accompanied by the statement that “[a]ccess to government information has been determined by the Supreme Court of Canada to be a right derived from freedom of expression.” No facts are pleaded in the sections titled “*Copyright Act*” and “*Charter of Rights and Freedoms*” and further confusion arises from other sections titled, “The Northwest Territories’ *Access to Information and Protection of Privacy Act (ATIPP)*,” “The Northwest Territories’ *Department of Justice Act*” and “The Federal *Northwest Territories Act*,” each of which recite statutory provisions unaccompanied by any facts. The Plaintiff’s Reply clarifies that he is not seeking relief under the *Privacy Act*, RSC 1985, c P-21 [*Privacy Act*]. In the end, the Defendants are left to determine what cause of action is being pleaded as a matter of deduction and guesswork.

[35] Nor do those facts pleaded by the Plaintiff in the “Statement of Facts Relied on” section assist in explaining the “who, when, where, how and what” that gives rise to the Defendants’ liability as required (*Al Omani v Canada*, 2017 FC 786 at para 14 [*Al Omani*] citing *Baird v*

*Canada*, 2006 FC 205 at paras 9-11, aff'd 2007 FCA 48). The facts pleaded are unconnected to the statutory references and the relief sought, and do not distinguish between the Defendants and are therefore insufficient to ground a cause of action (*Sivak v Canada*, 2012 FC 272 at paras 26 and 43).

[36] Based on a generous reading of the pleading on its face, I have no hesitation in finding that it fails to disclose a reasonable cause of action. The Defendants are simply flying blind in answering the Statement of Claim which serves no one.

B. *Should the Plaintiff be granted leave to amend his pleading?*

[37] The case law is clear that if a statement of claim contains a scintilla of a cause of action, it should not be struck if it can be cured by amendment (*Al Omani* at paras 32-34); conversely, where it has “no reasonable chance of succeeding,” it must be struck (*R v Imperial Tobacco Canada Ltd*, 2011 SCC 42 at paras 25, 60).

[38] In determining whether to grant the Plaintiff leave to amend his claim, I may consider the Plaintiff's evidence and his submissions since they may assist the Court in determining whether the pleading is capable of amendment (*Dugas v Canada (Attorney General)*, 2025 FC 842 at para 111).

[39] The Plaintiff explained his cause of action at the hearing as follows: by making the Domain Complaints, the Defendants were attempting to interfere with his ability to publish his Works, which infringed his right under subsection 3(1) of the *Copyright Act*, which provides him

with the right to reproduce his Works in any material form whatsoever and publish them or any part of them. The Plaintiff claims that these acts of interference entitle him to relief, including damages for breach of his freedom of expression; punitive damages for the false and derogatory comments the Defendants made in the Domain Complaints which suggested that he was phishing or committing fraud; and an injunction to prevent any further interference without notice.

[40] The question is whether a viable cause of action under the *Copyright Act* can be made out based on this theory of the Plaintiff's case.

[41] The Plaintiff relies on the rights provided in subsection 3(1) of the *Copyright Act*, which reads as follows:

**3 (1)** For the purposes of this Act, *copyright*, in relation to a work, means the sole right to produce or reproduce the work or any substantial part thereof in any material form whatever, to perform the work or any substantial part thereof in public or, if the work is unpublished, to publish the work or any substantial part thereof, and includes the sole right

(a) to produce, reproduce, perform or publish any translation of the work,

(b) in the case of a dramatic work, to convert it into a novel or other non-dramatic work,

(c) in the case of a novel or other non-dramatic work, or of an artistic work, to convert it into a dramatic work, by way of performance in public or otherwise,

(d) in the case of a literary, dramatic or musical work, to make any sound recording, cinematograph film or other contrivance by means of which the work may be mechanically reproduced or performed,

(e) in the case of any literary, dramatic, musical or artistic work, to reproduce, adapt and publicly present the work as a cinematographic work,

(f) in the case of any literary, dramatic, musical or artistic work, to communicate the work to the public by telecommunication,

...

[42] The Defendants say that the Plaintiff's stated cause of action is based on a fundamental misunderstanding of the rights the *Copyright Act* provides an author of a literary work. I agree and find that the Plaintiff's cause of action is based on two misconceptions.

[43] The first misconception is the extent of the Plaintiff's rights under subsection 3(1) of the *Copyright Act*. According to the Federal Court of Appeal, interference with copyright must involve the Defendants' exercise of rights reserved exclusively to the Plaintiff as the holder of copyright (*Columbia Pictures Industries Inc v Gaudreault*, 2006 FCA 29 at para 28). Such interference may constitute infringement of copyright under subsection 27(1) of the *Copyright Act* (a provision not cited by the Plaintiff). However, subsection 3(1) recognizes rights; it does not confer rights that an author does not already have. In the same way that an artist cannot use subsection 3(1) to demand that their painting be hung in the National Art Gallery, the Plaintiff does not have an absolute right to require his Works to be published on any website. The Plaintiff's ability to publish his works on the GoDaddy or Dynadot platforms are governed by, among other things, the contractual rights negotiated with these entities, which includes a complaint process that third parties like the Defendants are entitled to engage.

[44] Secondly, it is not enough to plead an act that interferes with the Plaintiff's exclusive rights in the Works; the Plaintiff must plead facts that show the acts complained of fall within

subsection 27(1) of the *Copyright Act* and meet the definition of “infringing” in section 2(a), which states that “infringing” means:

- (a) in relation to a work in which copyright subsists, any copy, including any colourable imitation, made or dealt with in contravention of this Act,

[45] The Defendants are not alleged to have made or dealt with a copy of the Works, with the exception of the GNWT’s reproduction of the Works in the course of the Alberta Action, which the Plaintiff acknowledges he does not rely on to support his cause of action for copyright infringement. To the extent that the Plaintiff considers that the Defendants were trying to interfere with his Works or censor him, the evidence makes clear that the acts complained of had nothing to do with any original content published by the Plaintiff: NTLA was trying to prevent the misuse of the NTLA domain names and the disruption to its business and the GWNT was trying to prevent the public disclosure of emails containing the personal and confidential information of its employees on the Plaintiff’s websites. None of these acts relate to what could be considered the unauthorized dealing with original content on *infobreach.ca* which could support a cause of action for copyright infringement.

[46] Copyright is purely a creature of statute, and the statute does not provide for a cause of action for copyright infringement based on “censorship” (or “self-censorship” as the Plaintiff refers to it in his Reply) in relation to the publication of an original work. The Plaintiff’s claim is not novel; rather, it is based on a theory of infringement that cannot succeed and cannot be cured by amendment.

[47] Moreover, without a cause of action supported by “existing and applicable federal law” such as the *Copyright Act* or the *Privacy Act*, it is plain and obvious that the Federal Court has no jurisdiction over the Plaintiff’s claim for *Charter* damages (*Kigowa v Canada*, [1990] 1 FC 804 (FCA) at 810-822, *ITO-Int’l Terminal Operators v Miida Electronics*, [1986] 1 SCR 752 at 766 and *Windsor (City) v. Canadian Transit Co.*, 2016 SCC 54 at paras 24, 48-50).

[48] As it is plain and obvious that the Plaintiff’s intended claim cannot succeed, it shall be struck without leave to amend.

[49] Having found that the Plaintiff’s action should be struck under Rule 221(1)(a) of the *Federal Courts Act*, I do not find it necessary to address the Defendants’ submission that the Plaintiff’s pleading is immaterial or redundant or scandalous, frivolous and vexatious. Nor do I need to decide whether summary judgment should be granted under Rule 215 of the *Federal Courts Rules* as requested by the NTLA by way of alternative relief.

### C. Costs

[50] Paragraph 74 of the *Amended Consolidated General Practice Guidelines* dated December 20, 2023, provides that parties who have not settled the disposition and/or quantum of costs on a motion should come to the hearing prepared to make submissions on the issue of costs. Despite this guidance, none of the parties made any submissions on costs at the hearing. In their written memoranda, the Defendants have asked for costs on a solicitor-client basis, coupled with a request that they be permitted to provide submissions on costs at a later date. Neither Defendant



provided a draft bill of costs nor have they provided any basis for their request for an elevated cost award.

[51] This was a straightforward motion and given my belief that the parties would benefit from finality in this proceeding, I am awarding the Defendants each \$500 in costs.

## VI. Conclusion

[52] I find that it is plain and obvious that the Plaintiff's claim fails to disclose a reasonable cause of action and should be struck pursuant to Rule 221(1)(a) of the *Federal Courts Rules* without leave to amend.

**JUDGMENT in T-2766-24**

**THIS COURT'S JUDGMENT is that:**

1. The statement of claim is struck in its entirety, without leave to amend.
2. The Plaintiff shall pay each Defendant \$500 in costs.

\_\_\_\_\_  
"Allyson Whyte Nowak"

Judge

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

**DOCKET:** T-2766-24

**STYLE OF CAUSE:** DONN MACDOUGALL v THE GOVERNMENT OF  
THE NORTHWEST TERRITORIES (“GNWT”) AND  
THE NORTHWEST TERRITORIES LEGISLATIVE  
ASSEMBLY (“NTLA”)

**PLACE OF HEARING:** VANCOUVER, BRITISH COLUMBIA AND BY  
ZOOM VIDEOCONFERENCE

**DATE OF HEARING:** JUNE 5, 2025

**JUDGMENT AND REASONS:** WHYTE NOWAK J.

**DATED:** JUNE 12, 2025

**APPEARANCES:**

Donn MacDougall	FOR THE PLAINTIFF (ON HIS OWN BEHALF)
Jeremy M. Walsh Maren Zimmer	FOR THE DEFENDANT (FOR THE GOVERNMENT OF THE NORTHWEST TERRITORIES)
Mark Fancourt-Smith	FOR THE DEFENDANT (FOR THE NORTHWEST TERRITORIES LEGISLATIVE ASSEMBLY)

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