

SUPREME COURT OF NOVA SCOTIA

Citation: *Green v. Nova Scotia Department of Community Services*,
2023 NSSC 155

Date: 20230516

Docket: Hfx No. 508867

Registry: Halifax

Between:

Kelsey Daniel Forbes Green

Plaintiff

and

Nova Scotia Department of Community Services, Kelly Regan, Sandy Graves, Executive Director, Service Delivery, Shauna Clark-Foran, Acting Executive Director, Services, Tracy Embrett, Acting Executive Director, Child, Youth & Family Supports, Kelly Besler, RSW, Director of CYFS, David MacLennan (Former RSW), Megan Turetzek-Windsor, Social Worker Candidate, Kimberley Hankin, RSW, Denise Crowell, MSW, RSW, Nicole Warren, RSW, Kelsie Maloney, Social Worker Candidate, Heather-Ann Ross, Social Worker Candidate, Colleen Maloney-Greenfield, RSW, Kathryn Giacomantonio, Social Work Candidate, Nova Scotia Department of Justice, Theresa Forgeron, Tanya McCarthy

Defendants

**DECISION ON MOTION FOR ORDER DECLARING
NOTICE OF ACTION A NULLITY FOR LACK OF NOTICE**

Judge: The Honourable Justice Ann E. Smith

Heard: October 27, 2022, in Halifax, Nova Scotia

Counsel: Kelsey Daniel Forbes Green, Self-Represented Plaintiff
Drew Hampden and Myles Thompson, for the Defendants

By the Court:

[1] The Attorney General of Nova Scotia (the “AGNS”), on behalf of all of the Defendants (“AGNS Defendants”) in this matter, with the exception of Justice Theresa Forgeron, move for an order setting aside the Notice of Action and Statement of Claim filed by Mr. Green in the Supreme Court of Nova Scotia on September 13, 2021 (the “Action”) and declaring it a nullity for failure to comply with the provisions of the *Proceedings Against the Crown Act*, RSNS 1989, c. 360 (the “PACA”).

Evidence on the Motion

[2] Filed in support of the AGNS’ motion is the Solicitor’s Affidavit of Mr. Myles H. Thompson, affirmed on March 25, 2022 (the “Thompson Affidavit”).

[3] Mr. Green filed a letter addressed, “To Whom it May Concern” in this matter on October 24, 2022. The Court accepted this document as a submission on Mr. Green’s behalf. However, to the extent that this document purports to give evidence on Mr. Green’s behalf, the Court notes that it is not evidence properly before the Court, being unsworn and not in the form of an Affidavit, compliant with the *Civil Procedure Rules*.

[4] The Court also has an Affidavit sworn by Mr. Green on November 25, 2021 and filed with the Court on November 25, 2021. This Affidavit is titled, “Affidavit of Kelsey Green Supporting the Motion for Contempt” (the “Green Affidavit”). Mr. Green’s allegation in a Notice of Motion for Contempt Order (the “Contempt Motion”) is that the Department of Justice did not file a Statement of Defence in the within matter as of the date of the Contempt Motion. Justice Gregory Warner granted an Order of the Court dated May 30, 2022 staying the Contempt Motion.

[5] The Court’s decision on the within motion will determine whether the Contempt Motion will be dismissed, or able to continue.

Background

[6] On or about September 13, 2021, Mr. Green commenced the Action. The Nova Scotia Department of Community Services (“DCS”) and the Nova Scotia Department of Justice are named as Defendants, as are a number of individuals. One of those individuals was Justice Theresa Forgeron, a Justice of the Supreme Court of Nova Scotia, Family Division. By way of separate motion heard on the same day as the within motion, this Court issued an oral decision (October 27, 2022) dismissing the action and all claims brought by Mr. Green against Justice Forgeron.

[7] The Action arises from the involvement of Mr. Green's family with the Nova Scotia Supreme Court (Family Division) and DCS. In December 2018, Mr. Green initiated divorce proceedings against his former spouse. DCS was involved with child protection investigation(s) of Mr. Green's family during this time and over the course of the Greens' acrimonious separation, divorce and child custody dispute. In general, the Action alleges that the negligent actions of the parties and the parties' "common intent to deny [Mr. Green's] parental rights" have resulted in Mr. Green suffering losses.

The Position of the AGNS

[8] Counsel for the AGNS Defendants says that the Action should be declared a nullity for failure to comply with the provisions of the *PACA*. In particular, the AGNS says that pursuant to s. 18 of the *PACA*, no action shall be brought against the Crown unless two months' prior notice has been served upon the AGNS in writing. The AGNS says that it has no record of receiving a "Notice of Intended Action" from Mr. Green.

[9] The AGNS notes that Mr. Green's sole ground for a contempt order is that the AGNS Defendants failed to file a defence within 15 days of receiving the Notice of Action. The AGNS says that it has never been properly served with either a Notice

of Intended Action or a Notice of Action pursuant to the requirement of s. 13 of the *PACA*, and that therefore the Action is a nullity and a Notice of Defence is not required.

The Position of Mr. Green

[10] Mr. Green maintains that he properly served the AGNS with notice pursuant to the *PACA* by letter to the AGNS dated May 27, 2021. He argues that, accordingly, his Notice of Action and Statement of Claim filed on September 14, 2021 complies with the *PACA* and is not a nullity.

Introduction

[11] The Thompson Affidavit discloses that on or about November 1, 2021 the office of the Minister of Justice received a Notice of Action and Statement of Claim filed by Mr. Green on September 13, 2021. Mr. Thompson states that it appears that these documents were received by regular mail. Mr. Thompson says that once received this documentation made its way through the Minister's office to Legal Services and then to one of the litigation teams that deal with civil litigation. Mr. Thompson says that November 1, 2021, was the first time the AGNS became aware that Mr. Green had filed the Action.

[12] Pursuant to s. 18 of the *PACA*, no action shall be brought against the Crown unless two months' prior notice has been served upon the AGNS in writing.

[13] The Thompson Affidavit provides that upon receipt of the Action on November 1, 2021, the office of the AGNS conducted a search of its files for any record of receiving a "Notice of Intended Action" from Mr. Green. Mr. Thompson says that no records were found pertaining to the receipt of a Notice of Intended Action from Mr. Green, and nor was there any record of the office of the AGNS sending a letter of acknowledgement of receipt of such notice. Mr. Thompson says that that would be standard practice at the office of the AGNS.

[14] Mr. Thompson states that given that no Notice of Intended Action was ever received by the AGNS, on November 17, 2021, a letter was sent to Mr. Green advising him that he failed to comply with several of the requirements of the *PACA* including the requirement to provide two months' previous notice to the AGNS before commencing an action against it.

[15] The November 17, 2021 letter states that the AGNS would consent to a discontinuance of the Action on a without-costs basis if Mr. Green discontinued the Action by November 25, 2021. The letter also states that if Mr. Green did not voluntarily discontinue the Action, the AGNS would move to have the matter

dismissed as a nullity for failing to comply with the *PACA*. The letter also recommended that Mr. Green seek independent legal advice. A copy of the *Proceedings Against the Crown Act* was attached to the letter.

[16] Mr. Thompson's November 17, 2021 letter to Mr. Green also outlined a number of other issues which the AGNS said constituted deficiencies with the Notice of Action and Statement of Claim itself, including the requirement that an action against the AGNS be personally served:

Furthermore, section 13 of the *PACA* provides direction on how such notice and other documents are to be served upon the Crown:

Service of document on Crown

13 A document to be served on the Crown shall be served by delivering a copy to the office of the Attorney General or the Deputy Attorney General or any barrister or solicitor employed in the Department of the Attorney General, or by delivering a copy to a barrister or solicitor designated for the purpose by the Attorney General. R.S., c. 360, s. 13

Finally, the style of cause in your Notice of Action lists the "Nova Scotia Department of Community Services", the "Nova Scotia Department of Justice", the former Minister of Community Services, as well as fourteen other "officers" of the Crown as defined in section 2 of the *PACA*. However, pursuant to section 12 of the *PACA*, in an action against the Crown the appropriate party to be named in the style of cause is set out as follows:

Style of Cause

12 In proceedings under this Act, the Crown shall be designated "The Attorney General of Nova Scotia representing Her Majesty the Queen in right of the Province of Nova Scotia". R.S., c. 360, s. 12.

Until such time as these deficiencies are corrected, we cannot accept service of your Notice of Action filed on September 13, 2021 as notice for the purposes of satisfying Section 18 of the *Proceedings Against the Crown Act*. Assuming that you intend to proceed with your action, we look forward to receiving a Notice of Intended Action which independently satisfies all of the requirements of sections 12, 13 and 18 of the *PACA*.

[Emphasis added]

[17] In his Affidavit, Mr. Green states:

6. On September 13th, 2021, the Notice of Action and Statement of Claim were filed.
7. On September 14th, 2021, documents were delivered to the Attorney General of Nova Scotia. Evidence of the delivery is provided in EXHIBIT “B”.

[Emphasis added]

[18] Mr. Green does not state in paragraph 7 of his Affidavit what “documents” he says were delivered to the AGNS on September 14, 2021; nor does Mr. Green say that he delivered these documents by personal service.

[19] Exhibit “B”, which Mr. Green attaches to his Affidavit purportedly as proof of service on the AGNS, is a document which this Court describes as follows:

- It is dated October 13, 2021
- There is a “Canada Post” logo at the top left-hand side of the page
- It provides as follows:

Dear Sir or Madam

Please find below the scanned delivery date and signature of the recipient of the item identified below:

Item Number: RN545329149CA

Product Name: Lettermail

Reference Number 1 Not applicable

Reference Number 2 Not Applicable

Delivery Date (yyyy/mm/dd) 2021 – 09-14

Signatory Name H LEBLANC

Signature [There appears a scanned copy of a person’s initials]

Yours sincerely,

Customer Relationship Network

1-888-550-6333

(From outside Canada 1 416 979-3033)

This copy confirms to the delivery date and signature of the individual who accepted and signed for the item in question. This information has been extracted from the Canadapost data warehouse.

[20] The Court notes that this Canada Post document does not provide an address for the recipient, “H LeBlanc” so it cannot be said where this letter was delivered, but rather only that it was signed for by a “H LeBlanc”. It also cannot be said who it was that sent this letter or what document was sent and delivered other than “Letter Mail.”

[21] On November 25, 2021, Mr. Green emailed three documents to counsel for the AGNS, consisting of a “Notice of Motion for Contempt Order”, the “Affidavit of Kelsey Green Supporting the Motion for Contempt” (the “Green Affidavit”) and a covering letter of the same date which provides:

Attn: Mr. Hampden & Mr. Thompson

I am writing to acknowledge receipt of your letter dated November 17TH. Due to an error in the postal code, it was only received this week.

Would you prefer to communicate via email going forward?

It appears you (sic) when the file was handed to you, you were not provided with the letter received by the Attorney General May 2021. That letter meets the timeline required under the PACA you identify.

You have had this file for over 2 months, and have made yet (sic) to make any Statement of Defence. Given that, a motion for contempt has been made in this matter. Please see attached.

Please provide affidavit of documents and electronic information in this matter.

I look forward to hearing from you.

[Emphasis added]

[22] The Court notes that in his November 25, 2021 letter, Mr. Green refers to a letter “received by the Attorney General May 2021”. Attached as an exhibit to Mr. Green’s Affidavit is a letter dated May 27, 2021 which is addressed to the Attorney General of Nova Scotia. The letter provides as follows:

Re: Notice to Crown

Dear Attorney General of Nova Scotia,

I Kelsey Green, of the above noted residence, do hereby provide notice to you of my intent to file legal action against the Nova Scotia Department of Community Services (Child Protection).

This action is being brought due to negligence by the Department of Community Services.

Action will be filed in Halifax, at the Supreme Court trial division.

After agreeing with my concerns, DCS staff breached the duty owed by not addressing them and acted in contravention of current policies and procedures. As such, I have been left with no alternative but to submit this notice.

If there is a way that we can collaborate or cooperate to remedy the acknowledged child abuse and failure to act, I would gratefully pursue that resolution to this matter.

[23] Mr. Green’s May 27, 2021 letter to the AGNS does not, on its face, stipulate a mode of delivery.

[24] Mr. Thompson notes in his Affidavit that no affidavit of service was included with Exhibit “A” of the Green Affidavit as proof that the May 27, 2021 letter was

served upon the AGNS pursuant to the service requirements of s.13 of the *PACA* and Civil Procedure *Rule* 31.05.

[25] The Thompson Affidavit states that given that the May 27, 2021 letter was alleged to be Mr. Green's Notice of Intended Action, further inquiries were made to determine if this letter was received by anyone at the Department of Justice or the office of the AGNS.

[26] Mr. Thompson states that after further inquiry, no record of the May 27, 2021 letter was found at the Department of Justice or the office of the AGNS.

[27] Mr. Thompson states he also caused further inquiries to be made with the Commissionaire for the office of the AGNS and the Department of Justice located at 1690 Hollis Street, Halifax, N.S. (the "Building"). He says that it was confirmed that there is no Commissionaire who works at the Building by the name of H. LeBlanc. Mr. Thompson further states that a search of the Province of Nova Scotia's employee directory also confirmed that there is no employee of the Department of Justice who works at the Building by the name of H. LeBlanc. Furthermore, Mr. Thompson confirms that there is no solicitor of the AGNS by the name of H. LeBlanc.

[28] After reviewing the documents emailed by Mr. Green to counsel on November 25, 2021 the AGNS sent a letter to Mr. Green dated November 26, 2021.

[29] The letter acknowledged receipt of Mr. Green's motion documents and reiterated the AGNS' position from its November 17, 2021 letter that Mr. Green had failed to comply with the provisions of the *PACA* and therefore his action was a nullity. The November 26, 2021 letter again requested that Mr. Green voluntarily discontinue the Action on a without costs basis by December 1, 2021, failing which the AGNS would move to have the Action dismissed as a nullity with costs for failing to comply with the *PACA*.

[30] On December 6, 2021 the AGNS filed a letter with the Court in advance of the Contempt Motion scheduled to be heard on December 14, 2021, which explained that the AGNS intended to cross examine Mr. Green during his motion and that the AGNS intended to file its own motion to have Mr. Green's matter dismissed as a nullity for failing to comply with the *PACA*.

[31] During the Court appearance on December 14, 2021, Mr. Green confirmed receipt of each of the letters sent to him by the AGNS. A conference for date and directions was set for February 23, 2022, at 11:00 a.m., before Justice G. Warner.

[32] During the course of the conference for date and directions, Justice Warner advised that he was staying the contempt motion pursuant to *Rule* 89.04(4) on the basis that the Green Affidavit, on its face, did not establish service of the contempt motion documents in accordance with the *Rules*.

Issue:

Should Mr. Green’s Action be set aside as a nullity for failure to comply with the *PACA*?

The Law and Analysis

[33] At the outset, the Court notes that the provisions of the *PACA* are not discretionary but are mandated by statute and must be strictly construed and complied with before any action against the Crown can proceed.

[34] The Civil Procedure *Rules* dictate how service, including service of notice, must be effected against the Province of Nova Scotia. That service is “personal service”.

[35] *Civil Procedure Rule* 31.03(1)(j) provides in that regard as follows:

31.03 Person to whom personal service is made

31.03(1) Personal service must be effected as follows:

....

(j) **Her Majesty the Queen in the Right of Nova Scotia** - to Her Majesty the Queen in the Right of Nova Scotia, in accordance with the *Proceedings Against the Crown Act*;

[Emphasis added]

[36] The requirements for service upon the Crown are set out in s. 13 of the *PACA* which states:

Service of document on Crown

13 A document to be served on the Crown shall be served by delivering a copy to the office of the Attorney General or the Deputy Attorney General or any barrister or solicitor employed in the Department of the Attorney General, or by delivering a copy to a barrister or solicitor designated for the purpose by the Attorney General. R.S., c. 360, s. 13.

[Emphasis added]

[37] In a proceeding against the Crown, the style of cause is prescribed pursuant to s. 12 of the *PACA* as follows:

Style of Crown

12 In proceedings under this *Act*, the Crown shall be designated "The Attorney General of Nova Scotia representing Her Majesty the Queen in right of the Province of Nova Scotia". R.S., c. 360, s. 12.

[38] Further, s. 18 of the *PACA* sets out the notice requirements for commencing an action against the Crown:

Notice to Crown

18 No action shall be brought against the Crown unless two months previous notice in writing thereof has been served on the Attorney General, in which notice the name and residence of the proposed plaintiff, the cause of action and the court in which it is to be brought shall be explicitly stated. R.S., c. 360, s. 18.

[Emphasis added]

[39] Section 18 of the *PACA* is clear that the cause of action “shall be explicitly stated.”

[40] In addition to enabling suits against the Crown, the provisions of the *PACA* serve another important purpose; they ensure that the Attorney General has proper and adequate notice to investigate and defend a matter and to take corrective steps when required:

...the intent of s.7(1) of the *P.A.C.A.* is to provide the defendant with early notice in order to permit an investigation of the claim and to take whatever corrective action is required. (*Latta v Ontario*, 2001 CarswellOnt 4386, [2001] O.J. No. 4890 per Justice McGarry at para 10, reversed on other grounds by Ontario Court of Appeal at (2002) CarswellOnt 3585).

[41] As noted previously in this decision, Mr. Green relies upon his May 27, 2021 as constituting notice to the AGNS of the Action.

[42] However, the Court notes as follows concerning the efficacy of the May 27, 2021 as “notice” pursuant to the *PACA*.

[43] As noted earlier in this decision, the AGNS has no record of ever receiving this letter prior to Mr. Green emailing his affidavit to counsel for the AGNS on November 25, 2021.

[44] The evidence of Mr. Thompson is that at the office of the AGNS it is standard procedure when the Attorney General is served with a “Notice of Intended Action”,

pursuant to s.18 of the *PACA*, that a copy of the Notice of Intended Action is stamped, dated and signed for by a solicitor for the AGNS to verify service. Mr. Thompson's evidence is that a letter is then sent to the notifying party acknowledging receipt of the two months' notice, with both the stamped Notice of Intended Action and the acknowledgment letter kept on file.

[45] In this case, Mr. Thompson's evidence is that there is no record of the office of the AGNS ever receiving Mr. Green's May 27, 2021 letter. The Court notes that the copy of the May 27, 2021 letter attached as Exhibit "A" to the Green Affidavit is not stamped and signed by a solicitor for the AGNS. Further, Mr. Thompson's evidence is that the office of the AGNS has no record of anyone from the AGNS acknowledging receipt of said letter.

[46] There is certainly no record that this "notice" was personally served on the AGNS or its counsel.

[47] In that regard, Mr. Green has not provided an affidavit of service to verify that his May 27, 2021 letter was served upon the AGNS, let alone personally served.

[48] *Civil Procedure Rule* 31.03 notes that personal service on the Provincial Crown must be effected in accordance with the *PACA*. *Civil Procedure Rule* 31.05 sets out how a party can prove personal service was effected:

31.05 Proof of personal service

(1) A party who causes a document to be personally served must obtain an affidavit of service that proves all material facts of the service.

(2) The affidavit of service must contain a standard heading written in accordance with Rule 82 - Administration of Civil Proceedings, be entitled Affidavit of Service, and include all of the following:

- (a) the name of the person swearing or affirming the affidavit and of the community where the person resides;
- (b) a statement that the person personally delivered a certified copy of the notice to the person to be notified;
- (c) a reference to an exhibited certified copy of the notice;
- (d) the hour, date, and place of delivery; (e) the name of the person to whom delivery was made;
- (f) how the person swearing or affirming the affidavit identified the person as the one to whom delivery is to be made;
- (g) a certified copy of the notice attached and marked as an exhibit to the affidavit.

(3) The affidavit may be in Form 31.05.

[49] The *Rules* are clear. A party who causes a document to be personally served must obtain an affidavit of service. Mr. Green has not provided an affidavit of service in accordance with *Rule* 31.05(2) verifying that his May 27, 2021 was in fact personally served upon the AGNS in accordance with the *Civil Procedure Rules* and s. 13 of the *PACA*.

[50] Mr. Green has provided the Court with a Canada Post document dated October 13, 2021 which shows that an individual named “H LeBlanc” signed for a letter on September 14, 2021. This October 13, 2021 document is not addressed to Mr. Green, but rather to “Dear Sir or Madam”. Mr. Green states in his Affidavit that this

document is “evidence of the delivery” of his Contempt Motion and Action to the AGNS. However, the Canada Post document does not provide where the letter was delivered, only that it was accepted by a “H. LeBlanc.”

[51] Thompson’s evidence establishes that no employee or solicitor by the name of “H. LeBlanc” works at the office of the AGNS and the Department of Justice.

[52] It is well established by the Courts in this province and in jurisdictions across Canada that a failure to strictly comply with the notice provisions of the respective *Proceedings Against the Crown Act* renders an action null and void. Any form of an informal or implied notice of intended action does not meet the strict statutory requirements of the *PACA*.

[53] For example, in the case of *B.M.G. Farming Ltd v. New Brunswick*, 2010 NBQB 151 (CanLII), Justice LaVigne held at para. 81 that the notice provisions of the *Proceedings Against the Crown Act* (New Brunswick) “must be strictly construed” and “must be complied with before the process may validly issue”.

[54] In *Biseau v Harnish*, 2012 NBQB 339 (CanLII), the plaintiff, Erica M. Biseau and the defendant, Scott Harnish, were involved in a motor vehicle accident which occurred on April 16, 2009. Mr. Harnish was employed by the Province of New Brunswick, Minister of Transportation, and was operating a vehicle owned by the

Department of Transportation at the time of the accident. The adjuster for the insurers of the Province were notified of the accident. Given that the Province's adjuster was aware of the claim, Justice Rideout of the Court of Queen's Bench of New Brunswick considered whether the court had discretion to prevent the strict application of the notice requirements under New Brunswick's *Proceedings Against the Crown Act*. He concluded at para. 23 that "no such discretion exists." As such, Mrs. Biseau's action against the Province of New Brunswick was struck.

[55] In *Beardsley v. Ontario*, 2001 CanLII 8621 (ON CA) the plaintiff sued the Crown and two Ontario police officers for false arrest, false imprisonment, malicious prosecution, negligence and breach of his *Canadian Charter of Rights and Freedoms* rights. A formal letter of notice under s. 7(1) of the *Proceedings Against the Crown Act*, RSO 1990, c. P.27 was sent by counsel for the plaintiff the day after the statement of claim was issued. On a motion brought pursuant to *Rule 21.01(1)(a)* and (b) of the *Ontario Rules of Civil Procedure*, the motions judge held that the claims against the Crown and the police officers were void, having been instituted without the appropriate notice under s. 7(1) of the *Proceedings Against the Crown Act*. The plaintiff appealed and the Ontario Court of Appeal upheld the motion judge's decision.

[56] On appeal, the appellant attempted to argue that a letter of complaint against the individual police officers sent by his counsel several months before the claim was filed met the notice provisions of the *Act*. The Court of Appeal found at para. 13 that not “every letter of complaint delivered to a provincial agency will fulfil the notice requirements of s. 7(1) of the *Proceedings Against the Crown Act*.” As the letter was not before the Court to determine if it complied with the notice provisions of the Act the Court of Appeal did not interfere with the motion judge’s findings that sufficient notice was not given.

[57] Nova Scotia Courts have taken a similar approach to nullifying claims that do not strictly adhere to the notice provisions of the *PACA*. For example, in *Clayton Developments Ltd. v Nova Scotia (Housing Commission)*, 1978 CarswellNS 409, 26 NSR (2d) 161 the sole issue before the Court of Appeal was whether the plaintiff was required to give two months’ notice before commencing its action against the Crown pursuant to the *PACA*. The Nova Scotia Court of Appeal held that the notice requirements in the *PACA* apply to all actions, including any civil proceedings, and thus the originating notice of action and statement of claim must be set aside for failure to provide two months’ notice of intended action.

[58] In *Offume v. Nova Scotia*, 2004 NSSC 132, the Court struck Mr. Ofume’s action against various Crown entities for failure to provide proper notice to the

Crown pursuant to s. 18 of the *PACA*. Although Mr. Ofume alleged that some form of notice was given to the Crown, the Court rejected that assertion and accepted the Crown's position that the notice was never served on the Attorney General pursuant to the *PACA* and therefore did not constitute clear notice of intended action or cause of action.

[59] In both *Union of Nova Scotia Indians v. Nova Scotia (Attorney General)*, 1999 NSCA 160 and *Cook v. Nova Scotia*, 2005 NSCA 23, the Court of Appeal affirmed the motion judges' decisions to strike claims against the Province for failure to provide notice in accordance with the *PACA*. In both cases, failure to provide the Attorney General with proper notice of intended action in accordance with the *PACA* rendered the actions against the Crown nullities.

[60] Most recently in *Layes v. AGNS*, 2018 NSSC 29 this Court granted an order setting aside and declaring an application a nullity for failure to provide proper notice under the *PACA*. In *Layes* the applicant attempted to argue that notice was not required under the *Act* because it was an application for the collection and preservation of evidence and thus the *PACA* did not apply. In the alternative, the applicant argued that the Crown had implicit notice as a result of a separate, but related action that was filed in the Truro courts. This Court rejected the argument

that the Crown had implicit notice due to its knowledge of the Truro action and stated at para. 28 that “notice to the Crown, if required, is formal notice.”

[61] This Court finds that Mr. Green failed to provide the AGNS with notice of his intended action, as required by the *PACA*. There is no evidence that Mr. Green’s May 27, 2021 letter was properly served on the AGNS. As a result, the Notice of Action and Statement of Claim which Mr. Green filed on September 13, 2021 are nullities.

[62] Even if the Court were to accept (which it does not) that Mr. Green’s May 27, 2021 letter was properly served upon the AGNS, the notice provisions of the *PACA* also require that “the cause of action and the Court in which it is to be brought shall be explicitly stated.” A review of the May 27, 2021 letter in comparison to the Court filed Action shows that Mr. Green’s Notice fails in this regard as well.

[63] The sole cause of action identified in the May 27, 2021 letter is “negligence by the Department of Community Services.” The letter contains no description of the alleged negligence, including details of who allegedly committed the acts complained of and when.

[64] However, in the Action filed on September 13, 2021, the cause(s) of action were expanded from “negligence” on the part of DCS to “Civil Negligence, Civil

Conspiracy, Abuse of Process, and Intentional Infliction of Mental Suffering.” Furthermore, the named Defendants were also expanded from DCS as the sole intended Defendant to include the Minister of DCS, thirteen employees of DCS, the Department of Justice, a Supreme Court (Family Division) Justice, and an employee of the Department of Justice. As such, the causes of action were not “explicitly stated” in May 27, 2021 letter as expressly required in s. 18 of the *PACA*.

[65] Pursuant to the Supreme Court of Canada’s decision in *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC), statutory provisions must be read “in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, and the intention of Parliament.” (para 21).

[66] The ordinary grammatical meaning of “explicitly” as defined in the Oxford Dictionary means “in a clear and detailed manner, leaving no room for confusion or doubt.” There was nothing clear and detailed about Mr. Green’s alleged cause(s) of action included in his May 27, 2021 letter in comparison to those included in the Action.

[67] Before Mr. Green may proceed with his action, he must given proper and explicit notice to the AGNS.

[68] The Court notes that more recently, on March 3, 2022, Mr. Green delivered another “Notice to Crown” to the office of the AGNS. This “Notice to Crown”, which purports to notify the Crown of Mr. Green’s intent to commence an action, was stamped, dated and signed by a solicitor of the AGNS.

[69] Mr. Thompson sent a letter dated March 18, 2022, to Mr. Green in response to receipt of the “Notice to Crown” letter. The letter states that the notice is insufficient in that it does not meet the mandatory requirements of s. 18 of the *PACA*. While the letter lists causes of action, it does not include any details around who is alleged to have committed the acts complained of or when those acts were committed. Mr. Thompson’s March 18, 2022 letter to Mr. Green also requests an affidavit of service from Mr. Green which was not attached to his “notice letter.”

[70] The Court finds that Mr. Green’s March 3, 2022 letter does not comply with s. 18 of the *PACA*. In this letter, Mr. Green merely states that the action he intends to bring against the Department of Community Services and the Department of Justice are being brought due to “negligence, conspiracy, abuse of process, and intentional infliction of mental suffering.” There is nothing “explicit” about such “notice”, including by whom and when these torts are alleged to have been committed.

Conclusions

[71] Mr. Green's March 3, 2022 letter does not comply with s. 18 of the *PACA* because the cause of action is not "explicitly stated."

[72] The within Notice of Action and Statement of Claim are each nullities because Mr. Green failed to give proper notice pursuant to the *Proceedings Against the Crown Act*. Further, Mr. Green failed to properly serve the Action on the AGNS.

[73] The Contempt Motion is dismissed. The AGNS Defendants did not fail to file a Defence in accordance with the *Rules*. That is because Mr. Green's Notice of Action and Statement of Claim are each a nullity because of his failure to give notice pursuant to the *Proceedings Against the Crown Act*.

[74] The AGNS Defendants are awarded their costs on this motion. The parties will have twenty calendar days from the date of this decision to see if they can agree on the quantum of costs. Failing agreement, the parties may write to the Court with their costs submissions, following which the Court will set costs.

Smith, J.