

2019

No.

IN THE SUPREME COURT OF NOVA SCOTIA

BETWEEN:

JOHN PERKINS

PLAINTIFF

-and-

**ATLANTIC MINING NS CORP., TERRY MOSER, DUSTIN O'LEARY, MARYSE
BELANGER, CONSTABLE JUSTIN GREENE, and the ATTORNEY GENERAL OF
CANADA**

DEFENDANTS

NOTICE OF ACTION

**To: Atlantic Mining NS Corp., Terry Moser, Dustin O'Leary, Maryse Belanger, Constable
Justine Greene, and Attorney General of Canada**

Action has been started against you

The plaintiff takes action against you.

The plaintiff started the action by filing this notice with the court on the date certified by the prothonotary.

The plaintiff claims the relief described in the attached statement of claim. The claim is based on the grounds stated in the statement of claim.

Deadline for defending the action

To defend the action, you or your counsel must file a notice of defence with the court no more than the following number of days after the day this notice of action is delivered to you:

- 15 days if delivery is made in Nova Scotia;
- 30 days if delivery is made elsewhere in Canada;
- 45 days if delivery is made anywhere else.

Judgment against you if you do not defend

The court may grant an order for the relief claimed without further notice, unless you file the notice of defence before the deadline.

You may demand notice of steps in the action

If you do not have a defence to the claim or you do not choose to defend it you may, if you wish to have further notice, file a demand for notice.

If you file a demand for notice, the plaintiff must notify you before obtaining an order for the relief claimed and, unless the court orders otherwise, you will be entitled to notice of each other step in the action.

Rule 57 - Action for Damages Under \$100,000

Civil Procedure Rule 57 limits pretrial and trial procedures in a defended action so it will be more economical. The Rule applies if the plaintiff states the action is within the Rule. Otherwise, the Rule does not apply, except as a possible basis for costs against the plaintiff.

This action is not within Rule 57.

Filing and delivering documents

Any documents you file with the court must be filed at the office of the Prothonotary at 1815 Upper Water Street, Halifax, Nova Scotia (telephone # 902-424-4900).

When you file a document you must immediately deliver a copy of it to each other party entitled to notice, unless the document is part of an *ex parte* motion, the parties agree delivery is not required, or a judge orders it is not required.

Contact information

The plaintiff designates the following address:

McKiggan Hebert Lawyers
502-1959 Upper Water Street
Halifax, Nova Scotia
B3J 3N2
Ph: (902) 423-2050
Fax: (902) 423-6707

Documents delivered to this address are considered received by the plaintiff on delivery.

Further contact information is available from the prothonotary.

Proposed place of trial

The plaintiff proposes that, if you defend this action, the trial will be held in Halifax, Nova Scotia.

Signature

Signed on this day of August, 2019.

Brian J. Hebert as counsel for
the Plaintiff, John Perkins

Prothonotary's certificate

I certify that this notice of action, including the attached statement of claim, was filed with the
court on , 2019.

Prothonotary

STATEMENT OF CLAIM

1. The Plaintiff, John Perkins (“John”), resides in Tatamagouche, Nova Scotia. At the time of the incident, John was 68 years old.
2. The Defendant Atlantic Mining NS Corp., doing business as Atlantic Gold Corporation (“Atlantic Gold”), is a body corporate incorporated under the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44.
3. The Defendant Terry Moser (“Moser”) is employed as a Security Manager for Atlantic Gold and was so employed and acting in that capacity at all material times.
4. The Defendant Dustin O’Leary (“O’Leary”) is employed as the Communications Director for Atlantic Gold and was so employed and acting in that capacity at all material times.
5. The Defendant Maryse Belanger (“Belanger”) is employed by Atlantic Gold as its President and Chief Operating Officer and is also a Director of the company and was so employed and acting in that capacity at all material times.
6. The Defendant Constable Justin Greene (“Greene”) is employed as a member of the Royal Canadian Mounted Police (“RCMP”) and was so employed and acting in that capacity at all material times and by virtue of that employment was also a servant of Her Majesty the Queen in Right of Canada, represented in this proceeding by the Defendant Attorney General of Canada, pursuant to the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50.
7. Atlantic Gold has proposed to develop and operate a gold mine at Cochrane Hill in Guysborough County, Nova Scotia. The proposed project is subject to environmental assessment processes under the *Canadian Environmental Assessment Act, 2012*, S.C. 2012, c. 19. These processes were ongoing at all material times.

8. On May 23, 2019, Atlantic Gold held two public information sessions at the Sherbrooke Fire Hall. Both sessions were advertised publicly as opportunities for attendees to receive a presentation by experts on tailings dams and tailings management and to ask questions. The first session was scheduled from 3:00-4:30 PM; the second session was scheduled from 5:00-6:30 PM.

9. Both sessions were facilitated by O’Leary.

10. John attended the first information session, accompanied by his friends Joan Baxter and Madeline Conacher.

11. During the first session, multiple attendees asked questions and expressed concerns about the potential environmental effects of the proposed mining operations. John himself asked questions that sought to clarify whether the experts on the panel were independent from Atlantic Gold or employed by the company in some respect. John’s comments were critical, but his demeanour was polite and respectful.

12. By the time the first session ended, some attendees had not been able to raise questions they wished to ask. Raymond Plourde (“Plourde”) was one such attendee. He asked O’Leary whether persons who had attended the first session could stay for the second as well. O’Leary told Plourde that anyone could stay for the second session as long as there was space for those who had not attended the first session.

13. Plourde communicated this information to others who had gathered outside in the parking lot after the first session, and when John and his friends learned of this, they decided to stay for the second session as well, providing there was room.

14. When John and his friends went back into the Fire Hall shortly before the second session was to begin, many of the seats were empty and so they decided to stay.

15. John and others stood conversing near the back of the Fire Hall before the second session began. As they did, an unidentified man in plain clothes approached John. The man did not identify himself but told John that he had to leave.

16. John and others explained that they had permission to stay, but the man, who had still not identified himself, insisted they leave.

17. When John indicated that he intended to stay for the second session, the man said that he would call the RCMP if John did not leave. John remained in the Fire Hall.

18. The man left the Fire Hall and John and his friends sat down for the second session.

19. Unbeknownst to John, the unidentified man was the Defendant Moser and Belanger had instructed Moser to call 911 and report a disturbance at the meeting and to seek the assistance of the RCMP in the removal of John from the meeting. After Moser left the meeting room he called 911 and reported that several people were causing a disturbance at the public meeting and that RCMP assistance was required at the Fire Hall.

20. The truth is that the statements made by Moser to the 911 representative were false and malicious. No one at the Fire Hall, including John, had caused or was causing a disturbance.

21. As a result of the false statements made to 911, the Defendant Greene was dispatched to the Fire Hall. He entered the Fire Hall with Moser. Moser and Greene could see that the session was proceeding peacefully and that no one was causing a disturbance at that time. Nonetheless, Moser falsely and maliciously identified John to Greene as one of the persons who had earlier caused a disturbance. Greene chose not to conduct any investigation at all and instead approached John and told him to leave the Fire Hall.

22. John asked why he needed to leave and explained that he was at a public meeting. Greene chose not to answer John or advise him why he was asking John to leave and instead repeated that John leave the Fire Hall.

23. Greene told John that he would be placed under arrest for trespass and obstruction if he did not leave, and the officer began pushing John towards the exit. As John was being pushed through the doorway of the meeting room, he put his hands on the doorframe to prevent his wrongful eviction from the meeting.

24. Greene lifted John and forcibly pushed him through the doorway, telling John that he was resisting arrest. Greene was assisted by Moser who helped shove John through the doorway.

25. Once through the doorway, Greene then pushed John against a wall and onto a nearby table and then dragged John onto the floor, where Greene pressed his knee painfully into John's back and handcuffed John's hands behind his back. Moser stayed close by throughout, ready to assist further.

26. The handcuffs were painful and were cutting into John's wrists. He told Greene that the cuffs were too tight, but Greene neither acknowledged John nor adjusted the cuffs. Greene assisted John to his feet, led him out of the Fire Hall and placed him into the back seat of a police cruiser.

27. John was transported to the Sherbrooke Detachment of the RCMP, where he was taken inside and locked in a cell. He was left alone in the cell for some time before Greene returned and, for the first time, advised John of his *Charter* rights.

28. John was released later that evening after two hours of incarceration without charges. He has not since been charged with an offence in relation to the public meeting at the Fire Hall or his arrest.

29. The following day, O'Leary, on behalf of Atlantic Gold, issued a statement to select news media regarding John's arrest at the meeting the previous day which stated:

We respect people's right to protest, however, they must be respectful, follow the law and avoid belligerent and disrespectful conduct.

30. The statement also said or implied that John had engaged in concerning, confrontational, belligerent, and disrespectful conduct at the public meeting that ultimately led to his arrest. John has not seen the actual statement but the statement was quoted and summarized in a news report published by the Canadian Broadcasting Corporation.

31. The truth is that the statements made by O'Leary to the media were false and malicious and gave the impression that John had caused a disturbance at the public meeting in the Fire Hall and was acting unlawfully, when this was not in fact the case.

32. The Plaintiff claims against the Defendants Belanger, Moser and Atlantic Gold on the following grounds:

(a) that Belanger and Moser conspired to commit, and Moser did commit, injurious falsehood by falsely and maliciously reporting a disturbance to the RCMP and identifying the Plaintiff as one of the persons responsible:

(i) knowing that the Plaintiff had not caused and was not causing a disturbance, or being reckless and indifferent as to that truth;

(ii) having no proper purpose for which to make such a statement;

(iii) acting spitefully or with ill will to remove the Plaintiff from the public meeting in order to limit the Plaintiff's and others' ability to be present and participate as interested members of the public; and,

(iv) acting spitefully or with ill will to suppress public expression and engagement in environmental assessment processes;

(b) that Belanger and Moser conspired to, and that Moser did, maliciously prosecute the Plaintiff by making false statements to the RCMP for an improper purpose, desiring and intending that enforcement action be taken against John, and by continuing to steer the events that unfolded;

(c) that Moser committed battery by intentionally applying harmful or offensive force to the Plaintiff's person, including by helping Greene push the Plaintiff out of the meeting room;

(d) that Moser committed assault by intentionally causing the Plaintiff to apprehend the application of harmful or offensive force to his person; and, moreover,

(e) that Belanger and Moser conspired to commit, and Moser did commit, abuse of process by commencing a legal process against the Plaintiff, with the collateral improper purposes of:

(i) limiting the Plaintiff's and others' ability to be present and participate in the public meeting as interested members of the public; and,

(ii) oppressively suppressing public expression and engagement in environmental assessment processes.

33. The Plaintiff states that the Defendant Atlantic Gold is either directly or vicariously liable for the torts committed by Belanger and Moser as its employees, agents and servants.

34. The Plaintiff says that Belanger and O'Leary conspired to defame the Plaintiff and that O'Leary did defame the Plaintiff by making false statements to the media. The Plaintiff says that Atlantic Gold is either directly or vicariously liable for the defamatory statements made by O'Leary as is employee, agent or servant.

35. The Plaintiff claims against the Defendant Greene on the following grounds:

- (a) that Greene was negligent in his investigation of the alleged disturbance, as he:
- (i) accepted and relied entirely on allegations made by Moser without any or any adequate investigation of the allegations;
 - (ii) ignored exculpatory evidence that no disturbance had occurred or was occurring at the meeting at the time he accosted the Plaintiff;
 - (iii) ignored evidence that the meeting taking place in the Fire Hall was a public meeting to which members of the public, including the Plaintiff, had been invited;
 - (iv) failed to inform the Plaintiff of the allegations of causing a disturbance that had been made against him and provide the Plaintiff with adequate opportunity to respond; and,
 - (v) allowed himself to be guided entirely by Moser, with the result that his law enforcement powers were co-opted for the malicious, improper, and abusive purposes of Belanger, Moser and Atlantic Gold;
- (b) that Greene was negligent in his arrest of the Plaintiff without reasonable and probable grounds;
- (c) that Greene lacked reasonable and probable grounds upon which to arrest and imprison the Plaintiff and thereby committed unlawful arrest and false imprisonment;
- (d) that Greene committed battery by intentionally applying harmful and offensive force to the Plaintiff without lawful authority to do so;

(e) that Greene committed assault by intentionally causing the Plaintiff to apprehend the application of harmful and offensive force to his person, having no lawful authority to do so;

(f) that Greene infringed and violated the Plaintiff's right to freedom of expression under section 2(b) of the *Canadian Charter of Rights and Freedoms* ("the *Charter*") by unjustifiably removing the Plaintiff from a public meeting and thereby preventing him from expressing his opinion and asking questions on matters of public importance;

(g) that Greene infringed and violated the Plaintiff's right to freedom of expression under section 2(c) of the *Charter* by unjustifiably removing the Plaintiff from a public meeting and thereby preventing him from assembling peacefully with others for the purpose of learning about, discussing and expressing his opinion on matters of public importance;

(h) that Greene infringed and violated the Plaintiff's right to liberty and security of the person under section 7 of the *Charter* by unlawfully detaining, arresting and imprisoning the Plaintiff and through the use of excessive force during his arrest; and,

(i) that Greene infringed and violated the Plaintiff's right not to be arbitrarily detained or imprisoned under section 9 of the *Charter* by detaining, arresting and imprisoning the Plaintiff when the Plaintiff had committed no crime.

36. The Plaintiff states that the Defendant Attorney General of Canada is liable for the torts and *Charter* violations committed by Greene as an employee, agent and servant of the Crown.

37. As a result of the *Charter* violations, the defamatory statements, and the tortious and intentional acts of the Defendants before, during and after his detention, arrest and imprisonment, the Plaintiff suffered injury, loss and damage including, but not limited to, nerve damage to his wrist, a wrist sprain, contusions, other soft tissue injuries, loss of reputation, and emotional and mental suffering including, but not limited to, shock, cognitive and psychological difficulties, memory problems, difficulty sleeping, disorientation, lethargy, confusion, anxiety, and other

mental harms caused by the traumatic experience, leading to an inability to carry out domestic tasks and other work that the Plaintiff was previously able to do.

38. The Plaintiff relies on sections 2(b), 2(c), 7, 9, and 24(1) of the *Charter*, on sections 3, 23(1), and 36 of the *Crown Liability and Proceedings Act*, and on the *Contributory Negligence Act*.

39. The Plaintiff claims jointly and severally against the Defendants for the following:

- a) special damages;
- b) general damages;
- c) aggravated damages;
- d) punitive damages;
- e) costs on a solicitor-client basis; and
- f) such other relief as this Honourable Court deems just.

DATED at Halifax Regional Municipality, Nova Scotia this day of August, 2019.

Brian J. Hebert
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502-1959 Upper Water Street
Halifax, NS B3J 3N2

SOLICITOR FOR THE PLAINTIFF