

**FORM 171A Rule 171  
Statement of Claim**

*Federal Court of Canada*

BETWEEN:

CHRISTOPHER BUCKLEY

PLAINTIFF

-and-

CANADA BORDER SERVICES AGENCY, HER MAJESTY THE QUEEN IN RIGHT OF  
CANADA, and ATTORNEY GENERAL OF CANADA

DEFENDANTS

**STATEMENT OF CLAIM**

TO THE DEFENDANT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the *Federal Courts Rules*, serve it on the plaintiff's solicitor or, if the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court

WITHIN 30 DAYS after the day on which this statement of claim is served on you, if you are served in Canada or the United States; or

WITHIN 60 DAYS after the day on which this statement of claim is served on you, if you are served outside Canada and the United States.

TEN ADDITIONAL DAYS are provided for the filing and service of the statement of defence if you or a solicitor acting for you serves and files a notice of intention to respond in Form 204.1 prescribed by the *Federal Courts Rules*.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

Date:

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Issued by:

*(Registry Officer)*

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**Address of local office:** Pacific Centre  
P.O. Box 10065  
701 West Georgia Street  
Vancouver, British Columbia  
V7Y 1B6

**TO: Canada Border Services Agency**

#412 – 1611 Main Street,  
Vancouver, British Columbia, V6A 2W5

**Her Majesty the Queen in Right of Canada**

c/o The Attorney General of Canada

British Columbia Regional Office  
Department of Justice Canada  
900 - 840 Howe Street  
Vancouver, British Columbia V6Z 2S9

**Attorney General of Canada**

British Columbia Regional Office  
Department of Justice Canada  
900 - 840 Howe Street  
Vancouver, British Columbia V6Z 2S9

## CLAIM

1. The plaintiff claims: Damages greater than \$50,000 for breach of a contract of employment.

## RELIEF SOUGHT

2. General and aggravated special damages.
3. Costs.
4. Such further and other relief as this Honourable Court may deem just.

## STATEMENT OF FACTS/OVERVIEW OF THIS ACTION

### Background

5. Christopher Buckley (“Mr. Buckley”) is the individual plaintiff in this matter.
6. Canada Border Services Agency (“CBSA”) is a defendant in this matter.
7. The Attorney General of Canada is a defendant in this matter.
8. Her Majesty the Queen in Right of Canada (the “Crown”) is a defendant in this matter.
9. Mr. Buckley has an address for service in this proceeding care of Lysenko Law Corporation, 1993 Columbia Avenue, Rossland, British Columbia, V0G 1Y0.
10. The CBSA has an address for service in this proceeding care of #412 – 1611 Main Street, Vancouver, British Columbia, V6A 2W5.
11. Her Majesty the Queen in Right of Canada has an address for service in this proceeding care of the Attorney General of Canada, care of Department of Justice Canada, British Columbia Regional Office, 900 – 840 Howe Street, Vancouver, British Columbia, V6Z 2S9.
12. The Attorney General of Canada has an address for service in this proceeding care of Department of Justice Canada, British Columbia Regional Office, 900 – 840 Howe Street, Vancouver, British Columbia, V6Z 2S9.
13. At all material times, Her Majesty the Queen in Right of Canada (the “Crown”) owned and operated Canada Border Services Agency. This proceeding is taken against the Crown in

the name of the Attorney General of Canada and the Attorney General is joined as a defendant pursuant to the provisions of the Crown Liability and Proceedings Act, R.S.C. 1985, c. C-50.

### **Contract of Employment**

14. At all material times, Mr. Buckley was a servant of Canada Border Services Agency and was a servant of the Crown pursuant to the Canada Border Services Agency Act and the Public Service Employment Act.
15. On or about July 3, 2005 by an agreement in writing the Plaintiff entered into a contract of employment with the Defendant whereby the Defendant employed the Plaintiff as a Border Services Officer at the Cascade & Carson Port of Entry (the “**Employment Contract**”).
16. The Employment Contract required the Plaintiff to perform the following duties for the Defendant:
  - (a) primary customs clearance;
  - (b) immigration checks;
  - (c) commercial inspections; and
  - (d) commercial goods inspections.
  - (e) The Defendant promoted the Plaintiff in October, 2014, to perform the position of Superintendent at the Port of Cascade (the “**Cascade Contract**”).
  - (f) Pursuant to the Cascade Contract, the Plaintiff was required to perform the following duties for the Defendant:
    - (g) provide Superintendent services; and
    - (h) maintain:
      - (i) various certifications, security clearances and physical, medical, behavioural, & psychological fitness standards; and
      - (ii) ethical standards for the Federal Public Service.
17. On December 10, 2017, while the Plaintiff was faithfully performing his duties under the Cascade Contract, the Defendant unilaterally and substantially altered the terms of the Cascade Contract by:

- (a) deploying the Plaintiff to a substantive position at a new port of entry, *i.e.*, Kingsgate, away from Cascade;
  - (b) assigning the Plaintiff to perform duties related to commercial operations and inspections in a specifically-created position as the Superintendent of Commercial Operations, tasked with separating the ‘traveller’ and ‘commercial’ streams at the Kingsgate Port of Entry;
  - (c) significantly reducing:
    - (i) the Plaintiff’s ability to work overtime;
    - (ii) the Plaintiff from having direct subordinate supervision, in contrast to what he previously had pursuant to the Cascade Contract; specifically:
      - (1) requiring the Plaintiff to obtain other superintendent permission to deploy BSO employees to undertake commercial shipping clearances; and
      - (2) denying the Plaintiff’s reasonable requests to create a team out of existing BSO employees to staff a newly-created dedicated commercial port of entry; and
  - (d) failing within a reasonable time to resolve an omnibus workplace violence complaint, initially brought in 2016, resulting in two separate investigations, of which the Plaintiff was one of the subjects (the “**Complaint**”).
18. The Plaintiff faithfully and diligently performed his duties on behalf of the Defendant and throughout his employment proved to be a valuable and reliable employee.
19. While working at the Kingsgate Port of Entry, the Plaintiff never condoned the Defendant’s conduct referenced in paragraph 17.

### **Breach of Contract of Employment**

20. On or about December 23, 2019, the Defendant wrongfully dismissed the Plaintiff without just cause and without reasonable notice.
21. The dismissal by the Defendant without just cause and without reasonable notice constituted an arbitrary and willful breach of the Plaintiff’s contract of employment with the Defendant and a wrongful dismissal of the Plaintiff.

22. On or about December 23, 2019 the Plaintiff elected to treat the conduct of the Defendant described in paragraph 17 as a repudiation of the contract of employment and to treat the contract of employment as having been terminated by the Defendant.
23. The conduct of the Defendant described in paragraph 17 amounted to a dismissal of the Plaintiff from the Defendant's employment. That dismissal was effected without just cause and without reasonable notice and constituted an arbitrary and willful breach of the contract of employment.
24. At the date of his dismissal the Plaintiff was receiving a salary of approximately \$83,000 per year plus approximately \$46 in overtime pay for each additional hour worked in a day.
25. In addition to the salary set out above, the Plaintiff's remuneration package at the time of his termination on December 23, 2019 included:
  - (a) basic medical insurance;
  - (b) extended health insurance;
  - (c) dental insurance;
  - (d) short term disability and long term disability;
  - (e) employer pension contributions; and
  - (f) 25 vacation days per year.
26. At the time of the Plaintiff's dismissal, he was 48.
27. The Plaintiff's availability to obtain similar employment was severely limited given:
  - (a) the Defendant has a monopoly on the provision of border services in Canada; and
  - (b) the Complaint.
28. The Defendant failed to discharge its obligation of good faith and fair dealing in dismissing the Plaintiff in a callous and insensitive manner, and specifically failed to act in the candid, reasonable, honest and forthright manner that was a common expectation of the parties at the outset of the employment relationship, in that the Defendant did not resolve the Complaint within a reasonable amount of time.
29. By reason of the Defendant's actions in relation to the dismissal of the Plaintiff, as set out in paragraphs 20 to 23 of this Notice of Civil Claim, the Plaintiff has suffered mental distress the, particulars of which are as follows:

- (a) increased stress;
  - (b) insomnia;
  - (c) acute anxiety;
  - (d) anxiety disorder;
  - (e) adjustment disorder;
  - (f) major depressive disorder; and
  - (g) such further and other conditions as counsel may advise.
30. The Plaintiff has taken all reasonable steps to mitigate his loss by seeking alternative, similar employment but has been unsuccessful, however, in a reasonable attempt to mitigate, the Plaintiff has:
- (a) incorporated small business;
  - (b) applied for positions with Health Canada as a health assessment officer at Ports of Entry in airports and at large land borders.

**Simplified Action vs. Action**

31. The Plaintiff does not proceed with this action as a simplified action.

The plaintiff proposes that this action be tried at Vancouver, British Columbia.

December 17, 2021

**Lysenko Law**

Barristers & Solicitors

1993 Columbia Avenue

Rossland, British Columbia V0G 1Y0

Brogan G. Pastro

brogan@lysenkolaw.ca

**Telephone:** 250-362-6803

**Fax:** 1-888-435-4083

Lawyer for the Plaintiff



*(Signature of solicitor or plaintiff)*

Signature of  
BROGAN G. PASTRO  
Lawyer for the Plaintiff