

Subway chain was actually chicken, based on an analysis done by Trent University's Natural Resources DNA Profiling & Forensic Centre. In addition to a defamation claim against CBC and Trent University, the plaintiff alleged that the underlying DNA analysis was conducted in a negligent fashion. *Subway* differs from the present case in that the only damage the plaintiff could possibly be claiming for in its negligence claim was to its reputation and the only vector for that damage would be through the television program. In *Subway*, it might be inappropriate to "prune" the negligence claim, because negligence in the laboratory was tied so intimately with the allegation of harm in the television show.

[98] In my view, this case is different because in each of what I have referred to as the Physical Intrusion Claims, the Surveillance Claims and the Dissemination Claims, there are distinct (if related) facts, distinct legal theories and distinct remedies. Most importantly, the different sub-claims invoke the underlying values of the PPPA in very different degrees. If the Dissemination Claims are successful, then expression on a matter of public interest will be deterred. This would be especially true if punitive damages are awarded. Whether this is true of the Surveillance Claims or Physical Intrusion Claims at least raises different issues, which need to be analyzed on their own. Even at the pre-trial stage, if the Dissemination Claims go forward, then Ms. Reynolds' communications with other activists, her statements on her blog and what she may have provided to the media become relevant and subject to documentary and oral discovery. This in itself will chill not just Ms. Reynolds' speech but also that of other activists and journalists.

[99] As the Court of Appeal makes clear in *Rooney*, when deciding whether to "prune", each case must be taken on its own, based on the totality of what is going on. I am satisfied that the Physical Intrusion Claims, the Surveillance Claims and the Dissemination Claims, as I have defined them, should be analyzed separately.