SUPREME COURT OF YUKON

Citation: *McLaughlin v Canada (Attorney General)*, 2024 YKSC 5

Date: 20240215
S.C. No. 22-A0011
Registry: Whitehorse

BETWEEN:

STEVE MCLAUGHLIN

Plaintiff/Respondent

AND

ATTORNEY GENERAL OF CANADA
GOVERNMENT OF YUKON (JUSTICE DEPARTMENT)

Defendants/Applicants

Before Justice E.M. Campbell

Appearing on his own behalf	Steve McLaughlin
Counsel for the defendant, Attorney General of Canada	Keith Cruz
Counsel for the defendant, Government of Yukon	Lesley Banton

REASONS FOR DECISION

INTRODUCTION

[1] On May 5, 2022, the plaintiff, Steve McLaughlin, filed a Statement of Claim, naming the Yukon Crown Office, the Watson Lake RCMP, the Whitehorse Correctional Centre, Yukon Community Corrections, and Second Avenue Law as defendants. The Statement of Claim contained the following allegations:

1. Withheld disclosure and proceeded maliscously [as written]

2. Illegally entered my place of residence

3. Posted my face in the newspaper while I was in custody

> 4. Breached confidentiality with my employer
>
> 5. Withheld information and shared information back to the Crown Office
>
> The Plaintiff claims as follows:
>
> (a) The defendents [as written] acted maliscously [as written] and breached trust of public, along with breaching Canadian Constitution
>
> (b) I'll settle one hundred thousand per *Charter* breach.

[2] On October 18, 2022, Wenckebach J. granted Second Avenue Law's application to strike the Statement of Claim against it. She awarded $1,000 in costs to Second Avenue Law. The application was brought on the basis that (i) Second Avenue Law is not a legal entity but an office of the Yukon Legal Services Society, which cannot be held liable for anything done or omitted to be done by a lawyer providing legal services under the *Legal Services Society Act,* RSY 2002, c 135 (s. 30(1)); and (ii) there were no allegations made against it in the body of the Statement of Claim. The court record reveals Mr. McLaughlin did not oppose the application to strike but opposed costs on the basis the amount claimed was too high.

[3] On February 3, 2023, Mr. McLaughlin filed an Amended Statement of Claim. The amendments pertained only to the names of the remaining defendants, as identified in the style of cause. Those amendments were made after counsel for the remaining defendants requested that their clients be identified and named properly as the Attorney General of Canada (the "AGC") and the Government of Yukon (Justice Department) ("Yukon"). However, Mr. McLaughlin did not make any changes to the allegations contained in the body of his initial Statement of Claim. They remained the same.

[4] On January 9, 2024, I heard the AGC's and Yukon's respective applications to have the plaintiff's Amended Statement of Claim struck in full without leave to amend on the basis it discloses no reasonable claim. Both applications are brought pursuant to Rule 20(26) of the *Rules of Court* of the Supreme Court of Yukon (the "*Rules of Court*"). The plaintiff opposes the applications.

Positions of the Parties

The defendants

[5] The defendants submit that the plaintiff's Amended Statement of Claim consists only of a few bald allegations and conclusory paragraphs that are not substantiated by any material facts, in clear contravention to the *Rules of Court*. While the defendants recognize that courts may allow self-represented parties some leeway in the content of their pleadings, they submit that the Amended Statement of Claim is so vague, unspecific, and ambiguous that it precludes them from being able to ascertain the nature and scope of the plaintiff's claims and impairs their substantive right to know the case they have to meet to properly defend this action. The defendants submit that the absence of any material facts plainly demonstrates that the plaintiff's claims lack any possibility of success and his Amended Statement of Claim should be struck in its entirety.

[6] The defendants also submit that the plaintiff should not be granted leave to amend his Amended Statement of Claim because he has demonstrated a pattern of non-compliance since filing his initial Statement of Claim. The defendants submit that the plaintiff has repeatedly failed to plead the necessary material facts on which his

claims rely despite the Court extending assistance to him and being given several opportunities to amend his claim over the past 18 months.

[7] The defendants submit that the lack of any meaningful facts about the plaintiff's claims coupled with the delay since the filing of the initial Statement of Claim have greatly prejudiced their ability to defend this action. So far, they have been unable to understand the case they have to meet; to assess their legal risks and exposure; and to meet their obligation to file a Statement of Defence that is responsive to the claims being made. The defendants submit that the claims' deficiencies have also resulted in the defendants being unable to take the necessary investigatory steps to identify the relevant documents they have to retain and collect to meet their discovery obligations; and to identify the public servants who may be implicated in order to obtain statements from them before memories of the alleged events fade away. The defendants submit that granting leave to amend in these circumstances would result in unfairness and prejudice to them; would violate the principles of proportionality; and would result in an abuse of the court process.

The plaintiff

[8] Mr. McLaughlin is representing himself. He opposes the application. He states he filed his initial Statement of Claim two days before his criminal matter ended. He adds that, at the time, he was in a difficult place after spending many months in custody facing criminal charges that, in the end, were dismissed by the court; and that it took him a long time to get back on his feet. Mr. McLaughlin states that he is in possession of many documents that support his claims and he is waiting for the results of the Access to Information and Privacy request(s) he made in relation to his claims. In addition,

Mr. McLaughlin submits his civil action has only been before the Court for approximately 18 months. Therefore, the Court should not give much weight to the defendants' argument that they are being prejudiced by the alleged deficiencies in his Statement of Claim and the passage of time because they would not have been in a better position had he waited longer to file his Statement of Claim, as permitted by the statutory limitation periods that apply to his claims. Mr. McLaughlin submits that the Court should exercise its discretion in his favour by appointing a lawyer to assist him with his civil action and by allowing him to pursue his claims against the defendants considering everything that he went through because of them.

1) Should the plaintiff's Amended Statement of Claim be struck?

Legal Framework

[9] The defendants bring their applications under Rule 20(26) of the *Rules of Court,* and more specifically, under Rule 20(26)(a), which provides that:

> (26) At any stage of a proceeding the court may order to be struck out or amended the whole or any part of an endorsement, pleading, petition or other document on the ground that:
>
> > (a) it discloses no reasonable claim or defence as the case may be;
>
> …
>
> and the court may grant judgment or order the proceeding to be stayed or dismissed and may order the costs of the application to be paid as special costs.

[10] The legal test for striking out a claim on that basis is well established. A claim should be struck out only if it is plain and obvious that it discloses no reasonable cause of action. Another way of describing the test is that a claim should be struck out only if it

has no reasonable prospect of success (*R v Imperial Tobacco Canada Ltd*, 2011 SCC 42 ("*Imperial Tobacco*") at para. 17; see also *Ausiku v Hennigar*, 2011 YKCA 5 ("*Ausiku*") at para. 18, citing *Imperial Tobacco* at paras. 17 and 22).

[11] In making that determination, I "must read the statement of claim generously, with allowances for inadequacies due to deficient drafting" (*McDiarmid v Yukon (Government of)*, 2014 YKSC 31 ("*McDiarmid*") at para. 14).

[12] Rule 20(29) provides that no evidence is admissible on a motion to strike a statement of claim because it fails to disclose a reasonable claim. This is so because the application is not about evidence, it is about the pleadings. As a result, the application proceeds on the basis that the facts pleaded are true, unless they are manifestly incapable of being proven. As stated by the Supreme Court of Canada in *Imperial Tobacco* at para. 22:

> … It is incumbent on the claimant to clearly plead the facts upon which it relies in making its claim. A claimant is not entitled to rely on the possibility that new facts may turn up as the case progresses. The claimant may not be in a position to prove the facts pleaded at the time of the motion. It may only hope to be able to prove them. But plead them it must. The facts pleaded are the firm basis upon which the possibility of success of the claim must be evaluated. If they are not pleaded, the exercise cannot be properly conducted.

[13] However, as the application judge, I need only accept as true, pleadings of material facts that are capable of proof. Allegations based on speculation or assumptions, bare allegations or bald assertions without any factual foundation, pleading of law, or allegations that are patently ridiculous or incapable of proof do not have to be accepted as true (see *Northern Cross (Yukon) Ltd v Yukon (Energy, Mines and Resources)*, 2021 YKSC 3 at para. 16; *Operation Dismantle v The Queen*, [1985] 1

SCR 441 at 455; *Grenon v Canada (Revenue Agency)*, 2016 ABQB 260 at para. 32; *Al-Ghamdi v Alberta*, 2017 ABQB 684 at para. 110; *Brooks v Canada*, 2019 FCA 293 at para. 8; *Grenon v Canada (Revenue Agency)*, 2017 ABCA 96 at para. 6; *Das v George Weston Limited*, 2018 ONCA 1053 at para. 74).

[14] The power to strike a claim has been described as a "valuable housekeeping measure essential to effective and fair litigation" (*Imperial Tobacco* at para. 19) because it allows litigants, as well as courts, to devote their time, resources, and attention to claims that have a reasonable chance of success rather than on claims that are hopeless, and, ultimately, on the real issues that oppose the parties and the merits of their respective positions.

[15] Nonetheless, as summarized by Duncan C.J. in *Smith v Potvin*, 2021 YKSC 59 at para. 22 "[t]he pleading should not be struck solely on the basis of the complexity of the issues, the novelty of the claims being advanced, or the apparent strength of the defences to the claim".

Analysis

[16] First, as no evidence is permitted on an application to strike under Rule 20(26)(a), I cannot and will not consider the affidavit and two attached documents that Mr. McLaughlin filed on December 18, 2023, to determine whether his Amended Statement of Claim discloses a reasonable claim (*Ausiku* at para. 19).

[17] The only facts I can and will consider are those pleaded in Mr. McLaughlin's Amended Statement of Claim. As stated earlier, his allegations are as follows:

1. Withheld disclosure and proceeded maliscously [as written]
2. Illegally entered my place of residence

> 3. Posted my face in the newspaper while I was in custody
>
> 4. Breached confidentiality with my employer
>
> 5. Withheld information and shared information back to the Crown Office
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> The Plaintiff claims as follows:
>
> (a) The defendents [as written] acted maliscously [as written] and breached trust of public, along with breaching Canadian Constitution
>
> (b) I'll settle one hundred thousand per *Charter* breach.

[18] Rule 20(1) of the *Rules of Court* provides that:

> A pleading shall be as brief as the nature of the case will permit and must contain a statement in summary form of the material facts on which the party relies, but not the evidence by which the facts are to be proven. [my emphasis]

[19] Rule 20(1) clearly requires the plaintiff to include in his Statement of Claim the material facts on which he relies to advance each of his claims. In other words, it is the plaintiff's responsibility to set out, in his Statement of Claim, the facts that are necessary to support each of his claims.

[20] In *Mancuso v. Canada (National Health and Welfare)*, 2015 FCA 227 ("*Mancuso*"), the Federal Court of Appeal, in referring to Rule 174 of *the Federal Court Rules*, which is worded in a very similar manner to Rule 20(1) of the *Rules of Court*, explained the important reasons behind the requirement that plaintiffs plead the facts that are material to their case in sufficient details to support the claims they wish to advance and the relief they seek. The court wrote, at paras. 16 to 20:

> [16] It is fundamental to the trial process that a plaintiff plead material facts in sufficient detail to support the claim and

relief sought. As the judge noted "pleadings play an important role in providing notice and defining the issues to be tried and that the Court and opposing parties cannot be left to speculate as to how the facts might be variously arranged to support various causes of action."

[17] The latter part of this requirement – sufficient material facts – is the foundation of a proper pleading. If a court allowed parties to plead bald allegations of fact, or mere conclusory statements of law, the pleadings would fail to perform their role in identifying the issues. The proper pleading of a statement of claim is necessary for a defendant to prepare a statement of defence. Material facts frame the discovery process and allow counsel to advise their clients, to prepare their case and to map a trial strategy. Importantly, the pleadings establish the parameters of relevancy of evidence at discovery and trial.

[18] There is no bright line between material facts and bald allegations, nor between pleadings of material facts and the prohibition on pleading of evidence. They are points on a continuum, and it is the responsibility of a motions judge, looking at the pleadings as a whole, to ensure that the pleadings define the issues with sufficient precision to make the pre-trial and trial proceedings both manageable and fair.

[19] What constitutes a material fact is determined in light of the cause of action and the damages sought to be recovered. The plaintiff must plead, in summary form but with sufficient detail, the constituent elements of each cause of action or legal ground raised. The pleading must tell the defendant who, when, where, how and what gave rise to its liability.

[20] The requirement of material facts is embodied in the rules of practice of the Federal Courts and others: see *Federal Courts Rules*, Rule 174; Alta. Reg. 124/2010, s. 13.6; B.C. Reg. 168/2009, s. 3-1(2); N.S. Civ. Pro. Rules, s. 14.04; R.R.O. 1990, Reg. 194, s. 25.06. While the contours of what constitutes material facts are assessed by a motions judge in light of the causes of action pleaded and the damages sought, the requirement for adequate material facts to be pleaded is mandatory. Plaintiffs cannot file inadequate pleadings and rely on a defendant to request particulars, nor can they supplement insufficient pleadings to make them sufficient through particulars: *AstraZeneca*

> *Canada Inc. v. Novopharm Limited*, 2010 FCA 112 [my emphasis].

[21] The plaintiff's Amended Statement of Claim only consists of five bald assertions that are not supported by any material facts. As stated in *Mancuso* at para. 27, "[t]he bald assertion of a conclusion is not a pleading of material fact". Without anything more to support them, bald assertions are conclusory statements that should be struck.

***Charter* claims**

[22] The plaintiff asserts, generally, that the defendants breached his rights under the *Canadian Charter of Rights and Freedoms*, *Part 1 of the Constitution Act, 1982* (the "*Charter*") and that he is entitled to financial compensation. He broadly asserts that the defendants "[w]ithheld disclosure and proceeded maliscously" [as written] (presumably relying on s. 7 of the *Charter* – the right to life, liberty and security of the person; and/or s. 11(d) of the *Charter* – the right to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal), and that they "[i]llegally entered my place of residence" (presumably relying on s. 8 of the *Charter* – everyone has the right to be secure against unreasonable search or seizure), without any material facts to particularize and support his bald assertions.

[23] Violations of the *Charter* may give rise to claims for damages against unconstitutional government action pursuant to s. 24(1) of the *Charter* (see *Vancouver (City) v Ward*, 2010 SCC 27).

[24] However, as stated by the Federal Court of Appeal in *Mancuso* at para. 21, the requirement for plaintiffs to plead material facts applies to *Charter* cases as well:

> There are no separate rules of pleadings for Charter cases. The requirement of material facts applies to pleadings of Charter infringement as it does to causes of action rooted in

> the common law. The Supreme Court of Canada has defined in the case law the substantive content of each Charter right, and a plaintiff must plead sufficient material facts to satisfy the criteria applicable to the provision in question. This is no mere technicality, "rather, it is essential to the proper presentation of Charter issues": *Mackay v Manitoba*, [1989] 2 S.C.R. 357 at p. 361.

[25] Nowhere in his Amended Statement of Claim does the plaintiff plead material facts that support his conclusionary statement that he is entitled to damages because the defendants' breached his *Charter* rights.

[26] For example, in certain circumstances, *Charter* damages may be awarded for a breach of the Crown's disclosure obligations. A plaintiff who seeks *Charter* damages on that basis must meet the liability threshold by establishing on a balance of probabilities that: (i) the Crown prosecutor(s) intentionally withheld information; (ii) when the Crown prosecutor(s) knew or ought reasonably to have known, that the information was material to the defence, and that the failure to disclose would likely affect the accused's ability to make full answer and defence; (iii) withholding the information violated the accused's *Charter* rights; and (iv) he/she/they suffered harm as a result (see *Henry v British Columbia (Attorney General)*, [2015] 2 SCR 214 at para. 85 – in that case, disclosure that was available at trial and should have been disclosed, as well as information obtained later through a subsequent investigation, were only provided by the Crown to Mr. Henry many years after his conviction). The plaintiff's bald assertion that the defendants "[w]ithheld disclosure and proceeded maliscously" [as written] falls quite short of pleading material facts sufficient to support a finding on each element of that claim. The same applies to the other bald statements contained in the Amended Statement of Claim that could be taken as alleging other *Charter* breaches.

[27] As a result, I find it is plain and obvious that the unsupported bald assertions contained in the plaintiff's Amended Statement of Claim fail to disclose any reasonable *Charter* claim.

Tort claims

[28] The plaintiff alleges broadly that the defendants acted maliciously and in breach of public trust – possibly alleging that one or more Crown prosecutors acting for one or both defendants committed the tort of malicious prosecution and/or that one or more public servants committed the tort of misfeasance in public office. The plaintiff's bald allegation that the defendants "[i]llegally entered my place of residence" could also be taken as asserting a trespass claim.

[29] To advance a tort claim, a plaintiff must set out "the material facts needed to satisfy the elements of that tort" (*Mancuso* at para. 26). The Amended Statement of Claim filed by Mr. McLaughlin does not meet this requirement.

[30] For example, to successfully advance an action for malicious prosecution, a plaintiff must prove on a balance of probabilities that the prosecution was (i) initiated by the defendant; (ii) terminated in favour of the plaintiff; (iii) undertaken without reasonable and probable cause; and (iv) motivated by malice or a primary purpose other than that of carrying the law into effect (see *Miazga v Kvello Estate,* 2009 SCC 51 at paras. 3, 53-56). The plaintiff's bald assertion that the defendants "[p]roceeded maliscously" [as written] falls quite short of pleading material facts sufficient to support a finding on each element of the claim.

[31] As stated earlier, the plaintiff did not plead any material facts in support of the bare assertions he makes in his Amended Statement of Claim, let alone material facts

sufficient to support a finding on the constituent elements of any tort claim. As a result, I find it is plain and obvious that the few bald assertions, contained in the Amended Statement of Claim disclose no reasonable cause of action in tort.

Breach of privacy claims

[32] The plaintiff's assertions that the defendants "[p]osted my face in the newspaper while I was in custody", "[b]reached confidentiality with my employer" and "[w]ithheld information and shared information back to the Crown office" could also be taken as asserting breaches of privacy laws. However, the plaintiff does not identify which laws would have been breached nor does he provide any particulars regarding these alleged incidents. In my view, the three above-mentioned allegations standing on their own without any supporting material facts amount to bald assertions that are highly insufficient to disclose any reasonable claim for breach of privacy.

Conclusion

[33] The plaintiff chose to file a civil action against the defendants. It is therefore his responsibility to ensure that he complies with the *Rules of Court* and the principles that govern the judicial process in which he chose to engage, which include a responsibility to plead the material facts that support each of his claims.

[34] The plaintiff's Amended Statement of Claim is only composed of a few bald assertions. It does not contain any material facts. It does not provide any information regarding the circumstances of the plaintiff's claims, nor does it specify against which defendant each allegation is made. Nowhere in his Amended Statement of Claim does the plaintiff set out who, when, where, how, and what gives rise to each defendant's liability.

[35] I find that the plaintiff's Amended Statement of Claim is wholly deficient. It is plain and obvious that it discloses no reasonable claim (cause of action). Consequently, it must be struck entirely.

[36] I now turn to the question of whether I should grant leave to amend to the plaintiff.

2) Should the plaintiff be granted leave to amend?

[37] As stated in *TSCC Corporation No. 2123 v Times Group Principals*, 2018 ONSC 4799 at para. 88, leave to amend should not be granted:

> … where there is no reason to believe that the party's case could be improved further by amendment. "[I]f it is clear that the plaintiff cannot allege further facts that they know to be true to support the allegations in the pleading, leave to amend will not be granted": [Miguna v Ontario, para.18].

[38] Courts have consistently examined litigants' proposed amendments to their pleadings to decide whether to grant leave to amend after striking their claim. In this case, Mr. McLaughlin did not prepare a draft Amended Amended Statement of Claim for consideration. However, on December 18, 2023, he filed an affidavit with two documents attached. I am of the view that I can consider evidence on the issue of leave to amend and will consider Mr. McLaughlin's affidavit. I also find it appropriate to consider the history of this proceeding, as revealed by the court record.

[39] The court record reveals that the defendants filed their respective applications to strike after the Court gave Mr. McLaughlin several opportunities to amend his Statement of Claim (and his Amended Statement of Claim) to include the material facts in support of his claims.

[40] Four case management conferences were held in this case: on July 5, 2022; November 21, 2022; February 20, 2023; and July 12, 2023. I presided over each of them. The court record reveals that, at the very first case management conference of July 5, 2022, the defendants pointed out that they had not been properly named in the Statement of Claim. They also raised concerns with the lack of material facts in support of the plaintiff's claims. They stated their intention to file an application to strike the plaintiff's claims if he did not amend his Statement of Claim to remedy this issue. The defendants reiterated their concerns with the lack of material facts in the Statement of Claim (and later on his Amended Statement of Claim) at each subsequent case management conference.

[41] Also, at the case management conferences, the Court extended assistance to Mr. McLaughlin in explaining what was required of him – in that he had to amend his Statement of Claim (and later on his Amended Statement of Claim) to set out the material facts that support each of his claims. Mr. McLaughlin repeatedly stated that he had been busy and needed more time. He also indicated he needed help and wanted to retain counsel to represent him. After each case management conference, the Court gave Mr. McLaughlin more time to amend his claim in a meaningful way.

[42] On March 17, 2023, at the request of the Court, the Court Registry sent an email to Mr. McLaughlin with an example of a simple but properly pleaded claim as well as a link to publicly available examples of statements of claim on another Canadian court website. A copy of Rule 20 of the *Rules of Court* was also attached to that email (see Appendix A[1]). On July 12, 2023, at the request of the Court, the Court Registry sent Mr.

[1] Appendices A and B have been redacted to protect the plaintiff's and counsel's email addresses as well as third parties' phone numbers.

McLaughlin an email explaining how he may file his court documents with the registry without having to travel to Whitehorse from his home community. The March 17, 2023 email was attached to the July 12, 2023 email (see Appendix B). However, Mr. McLaughlin did not avail himself of any of the opportunities that were provided to him to amend or even try to amend his Statement of Claim (and later on his Amended Statement of Claim) to set out the material facts in support of his claims. The only amendment he made was to the style of cause of his original Statement of Claim (his Amended Statement of Claim was filed on February 3, 2023), properly naming the remaining two defendants, as they had requested.

[43] I will now turn to Mr. McLaughlin's affidavit. There are two documents attached to Mr. McLaughlin's affidavit, which in his view support his claims. The first document is a one-page copy of a news article that Mr. McLaughlin describes as "[p]icture of Yukon News four months after my arrest". The article contains a photo showing the backs of four inmates attending a workshop at the Whitehorse Correctional Centre. The inmates' names are not mentioned in the document attached to the affidavit. The second document is described by Mr. McLaughlin as "a copy of the Disclosure delivered 8 months after I was arrested". The document is indeed a copy of a four-page disclosure letter from the Crown's office to Mr. McLaughlin, dated May 3, 2021.

[44] I do not intend to comment on the probative value of these two documents other than to say that they do not, on their own, provide the necessary material facts that the plaintiff must set out in his Statement of Claim to support each of his claims. Nonetheless, they reveal the plaintiff has in his possession some documents that are relevant to his claims, which militates in favour of granting leave to amend.

[45] However, as I previously indicated to Mr. McLaughlin during the case management conferences held in this case, a civil proceeding is quite different than a criminal proceeding. A plaintiff does not discharge his obligation to set out, in his Statement of Claim, the material facts that support his civil claims for damages by disclosing all his documents to the defendants. The exchange of relevant documents between the plaintiff and the defendants comes later in the civil process, after the plaintiff and the defendants have set out the material facts in support of the claims and the defence in their respective pleadings (statement of claim, statement of defence and reply). As stated in *Mancuso*, the pleaded facts frame the issues between the parties. They are the basis upon which the parties determine which documents are relevant and must be disclosed. Those material facts also determine the scope of oral discovery. Ultimately, they establish the scope of relevancy of evidence at trial.

[46] I am hesitant to give Mr. McLaughlin yet another chance to amend his Amended Statement of Claim because he has consistently failed to take advantage of the many opportunities he has had to do so over the past 18 months. His unwillingness to even try to amend his claim, demonstrated by the absence of any amendments to the body of his Statement of Claim since the beginning of this proceeding, makes me question whether he sees this proceeding as an opportunity to use his court appearances as a tribune to publicly express his discontent with the public authorities and the criminal process he faced rather than being genuinely interested in pursuing a claim in damages against the federal and territorial governments. I am also mindful of the fact that the defendants have not been in a position to properly ascertain the plaintiff’s claims for approximately 18 months.

[47] However, it is unclear whether up until the filing of the defendants' applications to strike and the hearing of their applications, Mr. McLaughlin realized that the Court could strike his claims and fully dismiss his civil action if he did not amend his Amended Statement of Claim to add the material facts that support each of his claims against each of the defendants.

Conclusion

[48] As a result, I am of the view that I should give Mr. McLaughlin one last chance to amend his Amended Statement of Claim meaningfully to set out the material facts that support each of his claims. However, Mr. McLaughlin will be given a set timeline to do so.

[49] Mr. McLaughlin is given until the end of the day (4:00 p.m.) on March 28, 2024, to file an Amended Amended Statement of Claim with the Court Registry. He must also provide a filed copy of his Amended Amended Statement of Claim either by email to counsel for each of the defendants or by delivering a paper copy at their respective offices within two working days of filing that document with the court registry. The Amended Amended Statement of Claim must set out the material facts in support of each of Mr. McLaughlin's claims. This means Mr. McLaughlin will have to set out in the body of his Amended Amended Statement of Claim what his claims (causes of action) against each defendant are, and the specific facts that answer the questions of who, when, where, how, and what gave rise to their respective liability with respect to each of his claims. Mr. McLaughlin is not required to underline his changes in the body of his Amended Amended Statement of Claim.

[50] I want to make it clear to Mr. McLaughlin that, his civil action against both defendants will be dismissed automatically if he does not amend his claims through an Amended Amended Statement of Claim filed with the Court Registry by 4:00 p.m. on March 28, 2024. The Court Registry shall not accept for filing any amendments to the Amended Statement of Claim after that date.

[51] I have decided to give Mr. McLaughlin more than a month to amend his claims because it is my understanding his worksite is located outside his home community and he works on a two to three weeks on – two to three weeks off basis.

[52] If Mr. McLaughlin files an Amended Amended Statement of Claim within the timeline provided, the Office of the Trial Coordinator will contact the parties to provide a timeline for them to file written submissions on whether the filed amendments are responsive to the Court's decision.

[53] I will then decide – on the basis of those written submissions only – whether the Amended Amended Statement of Claim is responsive to the Court's decision or not. If not, the claim will be struck without further leave to amend and the action dismissed.

[54] Before I conclude, I want to say a few words about Mr. McLaughlin's request that the Court appoint counsel for him in this matter. First, Mr. McLaughlin did not file any application for the appointment of counsel before making that request during his oral submissions on the defendants' applications. Second, Mr. McLaughlin has indicated to the Court in the past that he is gainfully employed. Third, the matter before the Court is an individual's claim for pecuniary damages. In that context, I am not prepared to consider Mr. McLaughlin's request any further.

COSTS

[55] Generally, in a civil proceeding, costs are awarded to the successful party. However, counsel for the AGC indicated at the hearing hat his client is not seeking costs of the application. Yukon has indicated in its outline that it is seeking costs. I will decide the issue of costs of both applications after March 28, 2024.

CONCLUSION

[56] The plaintiff's Amended Statement of Claim is struck in its entirety, with leave to amend until 4:00 pm on March 28, 2024, on the strict condition that the plaintiff sets out with particularity in his Amended Amended Statement of Claim the material facts in support of each of his claims (causes of action) and the defendant against which each claim is made. The plaintiff must also provide a copy of his filed Amended Amended Statement of Claim, to counsel for the defendants either by email or by delivering a paper copy at their respective offices within two working days of filing that document with the court registry.

_____

CAMPBELL J.

APPENDIX A

Lisa.Robinson

From: Lisa.Robinson
Sent: Friday, March 17, 2023 4:24 PM
To: [redacted]
Subject: 22-A0011 - MCLAUGHLIN v. ATTORNEY GENERAL OF CANADA et. al.
Attachments: Rule 20 PLEADINGS GENERALLY.pdf; SOC Sample Negligence Claim.pdf

Please see Justice Campbell's message below:

> "On February 20, 2023, at the last Case Management Conference held in the above-noted matter, I told Mr. McLaughlin the court would try to find examples of statement of claims he could review. This was to help him draft an Amended Amended Statement of Claim that contains and sets out the relevant facts that support each of his claims against each of the defendants, as required by Rule 20 of the Supreme Court of Yukon Rules (see attached).
>
> The Supreme Court of Yukon does not have examples of completed statement of claims on its website or available for distribution at the court registry.
>
> However, there are sample forms on the small claims court resources webpage of the Saskatchewan Courts website at:
>
> > https://sasklawcourts.ca/provincial-court/small-claims-court/how-to-complete-a-claim/
>
> These sample forms could be useful to Mr. McLaughlin. One of the sample forms is attached to this email.
>
> These sample forms relate to different causes of action and have different (and possibly simpler) factual backgrounds than the ones Mr. Mclaughlin alleges and advances in his matter. Nonetheless, they constitute examples of how facts that are relevant (material) to the specific claim(s) being advanced by a plaintiff are set out in a statement of claim.
>
> Thank you,
>
> Justice E.M. Campbell
> Supreme Court of Yukon"

Thank you.

Lisa Robinson-Fernandes
Supervisor – Counter Clerks
Department of Justice | Court Services Branch
Box 2703 (J-3)
2134 Second Avenue, 1st Floor
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RULE 20 – PLEADINGS GENERALLY

Contents

(1) A pleading shall be as brief as the nature of the case will permit and must contain a statement in summary form of the material facts on which the party relies, but not the evidence by which the facts are to be proved.

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(3) A party need not plead a fact if it is presumed by law to be true or if the burden of disproving it lies on the other party.

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(9) A party may raise in a pleading an objection in point of law.

Pleading conclusions of law

(10) Conclusions of law may be pleaded only if the material facts supporting them are pleaded.

Status admitted

(11) Unless the incorporation of a corporate party or the office or status of a party is specifically denied, it shall be deemed to be admitted.

Where particulars necessary in pleading

(12) Where the party pleading relies on misrepresentation, fraud, breach of trust, wilful default or undue influence, or where particulars may be necessary, full particulars, with dates and items if applicable, shall be stated in the pleading. If the particulars of debt, expenses or damages are lengthy, the party may refer to this fact and instead of pleading the particulars shall deliver the particulars in a separate document either before or with the pleading.

(13) [repealed by O.I.C. 2022/168]

Particulars in libel or slander

(14) In an action for libel or slander:

(a) where the plaintiff alleges that the words or matter complained of were used in a derogatory sense other than their ordinary meaning, the plaintiff shall give particulars of the facts and matters on which the plaintiff relies in support of that sense; and

(b) where the defendant alleges that, in so far as the words complained of consist of statements of fact, they are true in substance and in fact, and that in so far as they consist of expressions of opinion, they are fair comment on a matter of public interest, the defendant shall give particulars stating which of the words complained of the defendant alleges are statements of fact and of the facts and matters relied on in support of the allegation that the words are true.

Set-off or counterclaim

(15) A defendant in an action may set-off or set up by way of counterclaim any right or claim, whether the set-off or counterclaim is for damages or not, so as to enable the court to pronounce a final judgment on all claims in the same action.

Filing and delivery of pleadings

(16) A pleading shall be filed and a copy delivered to all parties of record and shall contain the style of proceeding, the description of the pleading, and the name and address for delivery of the party delivering the same.

Pleading after the statement of claim

(17) In a pleading subsequent to a statement of claim a party shall plead specifically any matter of fact or point of law that:

(a) the party alleges makes a claim or defence of the opposite party not maintainable;

(b) if not specifically pleaded, might take the other party by surprise; or

(c) raises issues of fact not arising out of the preceding pleading.

Order for particulars

(18) The court may order a party to deliver further and better particulars of a matter stated in a pleading.

Demand for particulars

(19) Before applying to the court for particulars, a party shall demand them in writing from the other party, and a response shall be given within 10 days of the demand being received.

(19.1) No demand for particulars can be made after the pleadings have closed, unless such particulars are necessary to answer a new pleading or an amended pleading, or by order of the court.

Demand for particulars not a stay of proceedings

(20) A demand for particulars does not operate as a stay of proceedings or give an extension of time, but a party may apply for an extension of time for delivering a pleading on the ground that the party cannot answer that pleading until particulars are provided.

Consequence if fact not responded to

(21) An allegation of fact in a pleading, if not admitted, denied or stated to be outside the knowledge of the opposite party, shall be taken to be outside the knowledge of the opposite party.

General denial sufficient except where proving different facts

(22) It is not necessary in a pleading to deny specifically each allegation made in a preceding pleading and a general denial is sufficient of allegations which are not admitted, but where a party intends to prove material facts that differ from those pleaded by an opposite party, a denial of the facts so pleaded is not sufficient, and the party shall plead their own statement of facts if those facts have not been previously pleaded.

Substance to be answered

(23) If a party in a pleading denies an allegation of fact in the previous pleading of the opposite party, the party shall not do so evasively but shall answer the point of substance.

Denial of contract

(24) If a contract, promise or agreement is alleged in a pleading, a bare denial of it by the opposite party shall be construed only as a denial of fact of the express contract,

promise or agreement alleged, or of the matters of fact from which it may be implied by law, and not as a denial of the legality or sufficiency in law of that contract, promise or agreement.

Allegation of malice

(25) Where malice or fraudulent intent is alleged, the pleading shall contain full particulars.

(25.1) Knowledge may be alleged as a fact in a pleading without pleading the circumstances from which it is to be inferred.

Scandalous, frivolous or vexatious matters

(26) At any stage of a proceeding the court may order to be struck out or amended the whole or any part of an endorsement, pleading, petition or other document on the ground that:

(a) it discloses no reasonable claim or defence as the case may be;

(b) it is unnecessary, scandalous, frivolous or vexatious;

(c) it may prejudice, embarrass or delay the fair trial or hearing of the proceeding; or

(d) it is otherwise an abuse of the process of the court,

and the court may grant judgment or order the proceeding to be stayed or dismissed and may order the costs of the application to be paid as special costs.

(27) Where on the filing of a document the court considers that the whole or any part of an endorsement, pleading, petition or other document could be the subject of an order under subrule (26), the court may, notwithstanding any other provision of these rules, conduct a summary hearing as the court directs and make an order under subrule (26).

(28) Where the court makes such an order, the clerk shall give notification of the order, in the manner directed by the court, to the person who filed the document, and that person may, within 7 days of being notified, apply to the court and the court may confirm, vary or rescind the order.

(29) No evidence is admissible on an application under subrule (26)(a).

(30) [repealed by O.I.C. 2022/168]

General damages shall not be pleaded

(31) Where general damages are claimed, the amount of the general damages claimed shall not be stated in the originating process or in any pleading.

John Smith
123 Any Street
Regina, SK S7J 2R5 PLAINTIFF

Discount Corner Grocery
27 Main Street.
Regina, SK S7K 3M2 DEFENDANT

STATEMENT OF PLAINTIFF'S CLAIM

1. The Plaintiff, John Smith, resides in the City of Regina, Saskatchewan.

2. The Defendant, Discount Corner Grocery, is a company incorporated in Saskatchewan with a registered office in Regina, Saskatchewan and carries on business in Saskatchewan as a convenience store selling groceries.

3. On May 5th, 2018, the Plaintiff was in the frozen foods section of the Defendant's store. The Plaintiff opened the door of an upright freezer and reached for a container of ice cream on the bottom shelf. While leaning in to do this, a 12 pound frozen turkey fell from the top freezer shelf, hitting the Plaintiff on the back of the head.

4. The Plaintiff suffered a concussion, lost consciousness and required 6 stitches. An ambulance transported him to the hospital. The Plaintiff's glasses were also broken.

5. The Plaintiff alleges that these injuries are the result of the Defendant's negligence. The Defendant failed to protect the safety of store patrons by not ensuring the freezer shelves were in proper condition. The Defendant also negligently created a falling hazard by placing heavy objects in a high location in an area used by the public.

6. The Plaintiff alleges his damages total $6,075.00, listed as follows:
   a. Ambulance costs of $500.00
   b. Replacement of broken glasses at $375.00
   c. Reimbursement for lost wages being $200.00
   d. Damages for pain, suffering and embarrassment being $5,000.00

7. The Plaintiff has demanded payment of this amount, but the Defendant has refused and/or neglected to pay the same.

8. THE PLAINTIFF, THEREFORE, CLAIMS:
   a) judgment in the sum of $6,075.00;
   b) interest pursuant to The Pre-Judgment Interest Act; and
   c) the filing costs of these proceedings being $
   d) such further costs as this Honourable Court may deem just.

Dated at _____, Saskatchewan, this _____ day of _____, 20__.

(Plaintiff's signature)____

APPENDIX B

Joan.Peddle

From: Joan.Peddle
Sent: July 12, 2023 3:22 PM
To: [redacted]
Cc: [redacted]
Subject: 2A0011 McLaughlin v AG
Attachments: Scanned from a Xerox Multifunction Printer.pdf; GENERAL_4 Filing of Copies of Documents amended sept 3 2021.pdf

Mr. Mclaughlin,

Following your appearance before Justice E.M. Campbell today, please be advised of the following:

1. You may file your court documents (Statement of Claim, outlines (written submissions), etc.) in person at the Whitehorse Court Registry.

2. You may mail them to the Whitehorse Court Registry at the following mailing address:

   Supreme Court of Yukon
   The Law Courts
   2134-2nd Avenue
   Whitehorse, Yukon
   Y1A 5H6

3. You may fax them to the Whitehorse Court Registry at 867-393-6212, as long as you mail the original documents to the Whitehorse Court Registry as soon as possible afterwards.

   If you choose this option, please confirm receipt of your faxed documents with the Registry staff by calling 867-667-5937. You should include your contact information (phone number and/or email address) on the fax cover sheet in order to have the filed front page returned to you.

   I am attaching Practice Direction General-4, which indicates you can fax your documents as long as you undertake to send the originals by mail to the Whitehorse Court Registry as soon as possible afterwards.

4. If you choose to mail your original documents with or without faxing them to the Whitehorse Court Registry prior to mailing them, it is your responsibility to ensure that you (i) mail them or (ii) fax them and mail them long enough in advance to meet the filing timelines ordered by the Court.

5. There are two public notaries in Watson Lake you can contact to notarize your documents: Colleen Craft [redacted]) and Tiffany Lund [redacted]. Further, under s. 59 of the *Evidence Act,* the Postmaster at Canada Post can notarize them as well.

6. I am also attaching a copy of a previous email you should have received back in March 2023 with respect to Rule 20 of the *Rules of the Supreme Court of Yukon* in relation to the content of a Statement of Claim.

Sincerely,
Joan

JOAN PEDDLE
Court Services Counter Clerk
Justice | Court Services Branch | J-3
T 867-667-5089 | F 867-393-6212 |
joan.peddle@yukon.ca

Marie.Gagnon

Subject: FW: McLaughlin v AG (22-A0011)
Attachments: Rule 20 PLEADINGS GENERALLY.pdf; SOC Sample Negligence Claim.pdf

On February 20, 2023, at the last Case Management Conference held in the above-noted matter, I told Mr. McLaughlin the court would try to find examples of statement of claims he could review. This was to help him draft an Amended Amended Statement of Claim that contains and sets out the relevant facts that support each of his claims against each of the defendants, as required by Rule 20 of the Supreme Court of Yukon Rules (see attached).

The Supreme Court of Yukon does not have examples of completed statement of claims on its website or available for distribution at the court registry.

However, there are sample forms on the small claims court resources webpage of the Saskatchewan Courts website at:

https://sasklawcourts.ca/provincial-court/small-claims-court/how-to-complete-a-claim/

These sample forms could be useful to Mr. McLaughlin. One of the sample forms is attached to this email.

These sample forms relate to different causes of action and have different (and possibly simpler) factual backgrounds than the ones Mr. Mclaughlin alleges and advances in his matter. Nonetheless, they constitute examples of how facts that are relevant (material) to the specific claim(s) being advanced by a plaintiff are set out in a statement of claim.

Thank you,

Justice E.M. Campbell
Supreme Court of Yukon

Thanks,

RULE 20 - PLEADINGS GENERALLY

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   a) judgment in the sum of $6,075.00;
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   c) the filing costs of these proceedings being $
   d) such further costs as this Honourable Court may deem just.

Dated at _____, Saskatchewan, this __ day of _____, 20_.

(Plaintiffs signature)

SUPREME COURT OF YUKON

PRACTICE DIRECTION
GENERAL-4

Filing of Copies of Documents

The filing of copies, not originals, shall be permitted on the implied undertaking of the party or their counsel that they will not file the copy of the document until they have made arrangements to obtain the original promptly and will file the original as soon as possible after its receipt.

With the approval of the Clerk or Deputy Clerk of the Court and subject to their direction, a party or their counsel may file pleadings or other documents with the court by faxing them to the Court Registry, on the implied undertaking that the original will be filed as soon as possible afterwards.

Duncan C.J.
September 3, 2021