SUPREME COURT OF YUKON

Citation: *Ross River Dena Council* v. *The Attorney General of Canada*, 2009 YKSC 57

Date: 20090813
S.C. No. 05-A0043
Registry: Whitehorse

Between:

ROSS RIVER DENA COUNCIL

Plaintiff

And

THE ATTORNEY GENERAL OF CANADA

Defendant

Before: Mr. Justice L.F. Gower

Appearances:

Stephen L. Walsh	Counsel for the Plaintiff
Alexander E. Benitah and Suzanne M. Duncan	Counsel for the Defendant

REASONS FOR JUDGMENT

INTRODUCTION

[1] This is an application by the defendant Attorney General of Canada ("Canada"), for an order for further and better particulars pursuant to Rule 20(18) of the *Rules of Court*. Canada's Demand for Particulars was responded to by the plaintiff Ross River Dena Council ("RRDC") on May 14, 2009. While Canada is content with a number of the responses thus far, it submits that some 20 specific demands remain unanswered or with insufficient particulars.

LAW

[2] One of the leading cases in this area is *Cansulex Ltd.* v. *Perry*, [1982] B.C.J. No. 369 (B.C.C.A.), where Lambert J.A., at para. 15, listed six points for courts to consider in exercising their discretion to order particulars:

> "(1) to inform the other side of the nature of the case they have to meet as distinguished from the mode in which that case is to be proved;
>
> (2) to prevent the other side from being taken by surprise at the trial;
>
> (3) to enable the other side to know what evidence they ought to be prepared with and to prepare for trial;
>
> (4) to limit the generality of the pleadings;
>
> (5) to limit and decide the issues to be tried, and as to which discovery is required; and
>
> (6) to tie the hands of the party so that he cannot without leave go into any matters not included."

[3] In *Alford* v. *Canada (Attorney General)*, [1999] B.C.J. No. 1937 (B.C.S.C.), Taylor J., at para. 14, acknowledged that the ordering of particulars is a matter of discretion which should generally be exercised only when "necessary" to define the issues and to enable a defendant to plead (*Big Bay Timber Ltd.* v*. Arkinstall Logging Co. Ltd.* (1978), 7 B.C.L.R. 69 (S.C.)), but that "necessary" should not be interpreted to mean simply "helpful" or "of assistance".

[4] In *Yewdale* v. *Insurance Corp. of British Columbia*, [1994] B.C.J. No. 1892 (B.C.S.C.), Master Bishop, at para. 68, reviewed *Cansulex*, cited above, and a number of other authorities and set out a helpful summary of his view of the principles to be applied on an application for particulars:

“1. Given the increasing number and complexity of cases brought before our court, any steps legitimately taken to clarify the issues and reduce the length of trial must be encouraged;

2. Parties to an action must frame their pleadings with certainty and they are not permitted to bring or defend an action in the hope that the claim or defence will be established by admissions on a notice to admit or at an examination for discovery. In framing their pleadings, so much as is possible and practical, the parties must set out the facts but not the evidence on which they intend to rely to prove their claim or defence;

3. The purpose of particulars is to require a party to clarify the issues raised by the pleadings so that the opposite party may be able to properly respond to the pleadings and to properly prepare for an examination for discovery and for trial;

4. An examination for discovery is not a substitute for an order for particulars and an application for particulars should not be defeated by an argument that the applicant can get the same particulars by way of conducting an examination for discovery;

5. If the particulars applied for are generally only known to the party making the application, that party may be required to give discovery prior to particulars being ordered; and

6. The order for delivery of particulars is one of discretion to be exercised in a judicial manner. In exercising the discretion, the justice or master must be mindful of the stage of proceedings when determining whether or not:

    1. sufficient particulars have been given, or

    2. particulars should be delivered now, or

    3. particulars should be given following an examination for discovery, or

    4. some particulars should be given now and others given later following discoveries.”

[5] A number of other cases have confirmed that the ordering of particulars is an exercise in discretion and depends on the facts of each case: *Hoy* v. *Medtronic, Inc.*, [2004] B.C.J. No. 676 (B.C.S.C.), at para. 25; *Alford*, cited above, at para. 14; *G.W.L. Properties Ltd.* v. *W.R. Grace & Co. of Canada*, [1993] B.C.J. No. 1062 (B.C.S.C.) at p. 2; and *Nemaiah Valley Indian Band* v. *Riverside Forest Products Ltd.*, 2003 BCSC 735 (*Nemaiah #2*), at para. 7.

[6] Finally, the distinction between material facts, which must be pled or particularized, and evidence is addressed in Rule 20(1) of the *Rules of Court*:

> "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."

This distinction was addressed by D.M. Smith J. in *Hoy* v. *Medtronic, Inc*, cited above, at para. 45:

> "The important distinction to be noted from this passage is that particulars are provided to disclose <u>what</u> one party intends to prove against the other; <u>how</u> the party intends to prove his case is a matter of evidence." (my emphasis)

ANALYSIS

[7] While there are various ways of grouping the demands and responses to date, my preference is to deal with them in the order in which they are drafted in Canada's Demand for Particulars, although that will necessarily result in some repetition where certain demands are similar to one another.

[8] There are two actions involved in this application, S.C. No.'s 05-A0043 (the " '05 Action") and 06-A0092 (the " '06 Action"). However, pursuant to a previous order, made on February 20, 2008, both will be tried together and evidence in one is applicable to the

other. A further order made on October 24, 2008 severed the trial on the issues of liability and damages.

The '05 Action

[9] In Demand # 3, Canada seeks particulars of the "interests" referred to by RRDC at paras. 22(a), 32, 35, 43(a) and 45 of the Second Further Amended Statement of Claim filed April 29, 2009 ("the '05 Statement of Claim"). RRDC has responded that, for the purposes of the '05 Action, the "interests" referred to in those paragraphs "include all of the rights and claims of the plaintiff, its members, and other Kaska in and to the land comprising the Territory including, in particular, the rights and claims of the Kaska under the terms of the ***1870 Order***". Canada's concern is that the use of the word "including" may mean there are other interests claimed beyond those stated. However, at the hearing, RRDC's counsel confirmed that the relief sought in the '05 Statement of Claim only relates to the rights and interests of the plaintiff and other Kaska under the *1870 Order.* Accordingly, a further formal answer to that effect by RRDC will suffice to answer to this demand.

[10] In Demand # 4C, Canada refers to para. 24 of the '05 Statement of Claim and seeks particulars as to when, how, by whom, and with whom RRDC's claims for compensation for lands were raised with Canada. In response, RRDC has stated that it is unable to provide any particulars in that regard. However, Canada further submits that in these circumstances, RRDC should provide affidavit evidence from "some officer of the plaintiff" to corroborate that: (i) it is indeed unable to provide such particulars; and (ii) it believes there was wrongdoing of the kind alleged in the plea at issue and provide grounds for such a belief. In support of that submission, Canada relies on two authorities:

Proconic Electronics Ltd. v. *Wong*, [1985] B.C.J. No. 2863 (B.C.S.C.); and *RCG Forex Services Corp.* v. *Chen*, [1997] B.C.J. No. 2681 (B.C.S.C.). In my view, both of these cases are distinguishable.

[11] In *Proconic*, at para. 23, the court found that the plaintiffs had made a "bald allegation of breach of fiduciary duty of which there is no evidence and of which no particulars are given." Thus, the court felt that it was improper to call upon the defendants to answer such an allegation. Rather, the court directed that the plaintiffs provide an affidavit confirming that they are unable to give particulars, but that they believe that there was wrongdoing of the kind alleged in the plea at issue and giving the grounds for that belief. In the case at bar, the alleged breach of the fiduciary duty by Canada is far more than a mere "bald allegation" and is particularized in eight subparagraphs at para. 43 of the '05 Statement of Claim.

[12] *RCG* followed *Proconic*, observing that the court there ruled that "while a plaintiff who alleges fraud may no longer be required to verify his inability to provide particulars on oath, he must at least depose that there are strong grounds for believing that there has been fraud of the kind alleged and provide the grounds for that belief." On the facts in *RCG*, the court was satisfied that such evidence had been provided by way of an affidavit from an individual on behalf of the plaintiff, notwithstanding that it was based on hearsay. Thus, *RCG* does not independently stand for the proposition that such an affidavit is required in <u>every</u> case where a plaintiff states that it is unable to provide particulars in support of a specific allegation in a statement of claim.

[13] In any event, I agree with RRDC's counsel that a further response to this demand will likely be a matter of argument as to the interpretation of the wording of the *1870*

Order. RRDC submits that the *1870 Order* can be viewed as a unilateral undertaking by Canada and that there was no affirmative obligation on the indian tribes of the day to come forward to assert their claims in order to trigger the undertaking. I accept that such an argument could be raised at trial. Thus, the particulars demanded would seem to relate more to the way in which the issues will be proved at trial, as opposed to what a party is going to prove, or to delineating the issues between the parties: see *Cansulex*, cited above, at para. 11; and *Hoy* v. *Medtronic, Inc.*, cited above, at para. 44. Accordingly, these demands are dismissed.

[14] Demand # 5C refers to the allegation at para. 43(b) of the '05 Statement of Claim which alleges that one of the ways in which Canada breached its constitutional and fiduciary duties to the RRDC and other Kaska was by enacting legislation to open the claimed territory for the purposes of settlement, prior to considering and settling the plaintiff's claims in accordance with the *1870 Order*. Canada seeks particulars of the specific legislation referred to. In response, RRDC has stated that the legislation "includes any and all legislation enacted after the first *Dominion Lands Act* of 1872 (35 *Vict.*, c. 23) which provided for, or currently provides for, the sale, lease or other disposition of rights and interests in the lands (including resources) comprising the Territory …" Canada submits that where legislation is relied upon, it must be particularly identified, and points to the following authorities in support of that proposition: *Alford*, cited above, at para. 39; *Kwakiutl Nation* v. *Canada (Attorney General)*, 2004 BCSC 490; and *Nemaiah Valley Indian Band* v. *Riverside Forest Products Ltd.*, 2003 BCSC 249 (*Nemaiah #1*).

[15] At the hearing, I queried whether it was necessary to provide a comprehensive list of every piece of legislation which provided or currently provides for the disposition of lands and resources since the *Dominion Lands Act* of 1872. I asked the question because it seems to me that the allegation of this manner of breach of constitutional and fiduciary duties in para. 43(b) of the '05 Statement of Claim could be proven by RRDC establishing that a representative number of statutes have been enacted, perhaps only even a single statute, to open the Territory for the purposes of settlement without first considering and settling the plaintiff's claims. If so, it should not be necessary for RRDC to have to prove each and every piece of such legislation. In this vein, RRDC's counsel acknowledged that he was prepared to provide Canada with a list of representative examples of the sort of legislation he is referring to. Accordingly, a further formal answer to that effect will suffice to answer this demand.

[16] In the alternative, if I am wrong in the above conclusion, I would find that the enactment of legislation is the material fact alleged which RRDC has pled as a breach of constitutional and fiduciary duties by Canada. Other than seeking a declaration that s. 45 of the *Yukon Act*, S.C. 2002, c. 7, is inconsistent with the plaintiff's rights under the *1870 Order* and therefore of no force and effect, RRDC seeks no specific relief in relation to any of the legislation which it says was improperly enacted. In other words, I do not understand RRDC to rely upon such legislation for its cause of action. Accordingly, it would seem that little or nothing will turn on the legal consequences or content of any specific piece of such legislation. If that is so, there would be no utility in requiring RRDC to particularize every single piece of such legislation. In that regard, I respectfully conclude that Harvey J. in *Kwakiutl*, cited above, was correct in his initial conclusion, at

para. 34, where he distinguished *Mentuck* v. *Canada* (1986), 3 F.T.R. 80, as authority for the proposition that, if one is relying on legislation, one must specify the legislation:

> "In Mentuck, the legislation on which the party sought to rely was the legal ground of the defence. In the present case, the enactment of legislation and development of policies are facts used to show that the Province and Canada breached the treaty. As such, the plaintiffs here do not rely on legislation for a cause of action. The various pieces of legislation form material facts to the claim and the legal consequences of those facts need not be pleaded." (my emphasis)

[17] Despite having said that, Harvey J. went on to follow Vickers J. in *Nemaiah #1*, cited above, which he interpreted as authority for the proposition that whenever a plaintiff alleges that a statute infringed on their rights, the statute must be pled. However, I agree with RRDC's counsel that *Nemaiah #1*, was a different situation from the case at bar. That case involved an application after 20 days of trial by the plaintiff Indian band for leave to amend its statement of claim to provide that the *Forest Act* and the *Forest Practices Code of British Columbia* were constitutionally invalid to the extent that they authorized the issuance of forest licences which infringed the band's aboriginal title. Thus, there was clearly a need to specifically identify the statutes concerned as they were central to the relief sought in that case. A similar situation was before the court in *Alford*, cited above, and thus the court concluded that it was necessary to specify the statutes relied upon by the plaintiffs.

[18] In the case at bar, I do not find that the type of legislation referred to by the plaintiff in para. 43(b) of the '05 Statement of Claim is so central to the plaintiff's overall cause of action or the relief sought that it is "necessary" to be particularized beyond the extent of my order in para. 15 above.

[19] Demand # 5(c)(iii) seeks confirmation that the claims referred to in para. 43(b) of the ‘05 Statement of Claim are the same as those referred to in para. 24. In his Response to this demand, RRDC’s counsel initially stated that it was not a proper demand as the “claims” referred to have been clearly and unambiguously pleaded and that Canada knows or certainly ought to know the case it must meet in that regard. However, at the hearing, RRDC’s counsel conceded that the claims referred to in para. 43(b) are indeed the same as those referred to in para. 24 of the ‘05 Statement of Claim. Accordingly, a further formal answer to that effect will suffice.

[20] Demand #5(d)(i) was retracted by Canada prior to the hearing.

[21] Demand # 5(d)(iii) similarly seeks confirmation that the claims referred to in para. 43(c) of the ‘05 Statement of Claim are the same as those referred to in para. 24. Given the concession by RRDC’s counsel at the hearing that they are the same, a further formal answer to that effect will suffice.

[22] In Demand # 5(e), Canada refers to para. 43(d) of the ‘05 Statement of Claim, where RRDC claims that Canada breached duties by “enjoying the benefits of the lands … by exploiting those lands as a source of revenue” prior to considering and settling the plaintiff’s claims to those lands. Canada seeks particulars as to the types of “benefits” or “revenue” referred to by the plaintiff. In response, RRDC has stated that it is referring to the “beneficial enjoyment of the lands” comprising the Territory by the defendant and, further, that “revenue” refers to all types of revenue accruing to Canada “through the disposition to others of rights or interests in and to the lands, including resources, comprising the Territory, or through the granting to others of leases, licences, permits or other authorizations to use or develop the lands (including resources) …”.

[23] In my view, this response, coupled with the initial pleading that the alleged enjoyment of the benefit of the lands is through exploitation of those lands as a source of revenue, is sufficient to define the issue for the defendant. Put another way, the alleged exploitation of the lands as a source of revenue and the consequent benefit to Canada are the material facts pled. The specific means by which Canada may have exploited the lands as a source of revenue, for example by hunting, forestry, mining or otherwise, would seem to me to be an evidentiary matter.

[24] Demand # 5(f) refers to para. 43(e) of the '05 Statement of Claim which alleges that Canada breached its duties by failing to consult the RRDC "in respect of the disposition of lands and resources within the Territory to third parties". Canada seeks particulars of the disposition of lands and resources and the identity of the third parties. RRDC has stated that this does not constitute a proper or timely demand for particulars.

[25] I conclude that the failure to consult with respect to the disposition of the lands and resources to third parties are the material facts, which have been pled. Identification of the specific dispositions and the third parties concerned is a matter of evidence as to how RRDC will prove the point. Further, I see no significant distinction between this demand and Demand # 5(d)(i), which was retracted by Canada prior to the hearing. In that instance, Canada had initially sought particulars as to the grants of land, leases, licences and permits referred to in para. 43(c) of the '05 Statement of Claim. However, after reviewing the decision of Vickers J. in *Nemaiah #2*, cited above, Canada's counsel conceded that the particulars sought in Demand #5(c)(i) were matters of evidence.

[26] In *Nemaiah #2*, Her Majesty the Queen in Right of British Columbia ("HMQBC") applied for further and better particulars from the Nemaiah Valley Indian Band regarding

the band's action for infringement of a land claim. HMQBC sought particulars of decisions that its Regional Manager had made, or was authorized to make, with respect to forest development activities in the claim area. Vickers J. held that the pleading placed in issue all forest licences, past and present and that the Indian Band was not required to provide a detailed list of those licences because that was evidence and not material fact. In addition, it was held to be evidence that was within the knowledge of HMQBC. At para. 17, Vickers J. stated that:

> "In reaching that decision it will be apparent that I do not consider an on the ground examination of each forest licence to be an appropriate way to proceed with this action. The pleadings assert that the issuance of forest licences anywhere in the claim area is an interference with, and thus an infringement of, aboriginal rights and title to the whole area. An examination of what was involved in the issue of specific licences in past decades could lead to a trial that would never end. … The licences in issue are matters of evidence, revealed in the discovery process, either by examination for discovery or by way of interrogatories. …"

[27] In my view, that reasoning applies both to the grants of land, leases, licences and permits referred to in para. 43(c) of the '05 Statement of Claim as well as the specific dispositions and third parties referred to in para. 43(e). Thus, these demands are dismissed.

[28] Demand #5(f)(iii) again refers to para. 43(e) of the '05 Statement of Claim and seeks particulars as to the facts or events pursuant to which Canada should have consulted the RRDC, as alleged. In response, RRDC has stated that it clearly and unambiguously pleaded in para. 43(e) that the facts or events were the disposition of lands and resources to third parties. With respect, I see little to distinguish this demand from the related demand (#5(f)) for particulars as to the dispositions and identity of the

third parties. Given RRDC's answer that the facts or events are the dispositions themselves, I can see little utility in requiring RRDC to further identify those dispositions, as that is a matter of evidence and goes to how it will prove the point at trial. Further, the question of whether Canada was obliged to take any consultative steps in respect to any particular dispositions would seem to be a matter of argument. Finally, the details of the dispositions themselves would be evidence within Canada's knowledge. For these reasons, this demand is dismissed.

[29] Demand #5(g) refers to the allegation that para. 43(f) of the '05 Statement of Claim that Canada failed to compensate the RRDC for the disposition of lands and resources to third parties, and similarly seeks particulars as to the dispositions themselves and the identity of the third parties. For reasons given at para. 23 above, this demand is dismissed.

[30] Demand #5(h)(iv) refers to the allegation at para. 43(g) of the '05 Statement of Claim that Canada breached duties by "failing to put the rights and interests of the plaintiff … in and to the Territory ahead of the interests of others" to whom Canada owes no fiduciary duties. Canada seeks particulars as to what the "rights and interests" referred to are. As noted earlier, RRDC's counsel conceded at the hearing that the relief claimed in the '05 Action only relates to the rights and interests under the *1870 Order*. Accordingly, a further formal answer to that effect will suffice.

The '06 Action

[31] Demand #13 refers to the allegations in the Amended Statement of Claim filed May 30, 2007 in the '06 Action (the " '06 Statement of Claim") at paras. 7(a), 32 and 36 and seeks particulars as to the "interests" referred to by the plaintiff therein. RRDC has

stated in response that these "include all of the rights and claims of the plaintiff, its members, and other Kaska in and to the land comprising the portion of the Kaska traditional territory in Yukon including their rights and claims under the terms of the ***1870 Order***."

[32] At the hearing, RRDC's counsel further acknowledged that the plaintiff's rights under the *1870 Order* are a subset of the broader domain of rights addressed in the '06 Action under the comprehensive land claims process. He referred specifically to para. (a) of the prayer for relief in the '06 Statement of Claim which speaks of "the plaintiff's claims to aboriginal title, rights and interests in and to the Kaska traditional territory" (my emphasis). In any event, I conclude that any further particularization of the "interests" referred to in the '06 Statement of Claim is ultimately going to be a matter of argument on a question of law: see *Gerle Gold Ltd.* v. *Golden Rule Resources Ltd.*, [2000] F.C.J. No. 1650; and *Lawrence* v. *Ballingall*, 2003 M.B.Q.B. 157. Thus, this demand is dismissed.

[33] Demand # 14 refers to the allegation at para. 7(c) of the '06 Statement of Claim that the plaintiff has suffered loss and harm as a result of the ongoing breach of Canada's fiduciary and constitutional duty to negotiate with due diligence and in good faith towards a settlement of the plaintiff's claims to the Kaska traditional territory. Canada seeks particulars as to: (a) the facts which constitute the alleged loss and harm; and (b) the facts or events which constitute the alleged ongoing breach. RRDC has stated in response that the facts or events "which give rise to" the loss and harm pleaded are described at paras. 7(a), 7(b), 50 and 51 of the '06 Statement of Claim and also in the response to para. 17 of Canada's Demand for Particulars, which I note to be quite a lengthy response of some 17 subparagraphs. Canada's counsel acknowledges that the

trial has been severed with respect to liability and damages and concedes in his Outline that Canada is "not seeking a high level of quantified detail regarding loss and harm", but rather "some generalized understanding of the nature of the loss or harm" (my emphasis). Nevertheless, Canada's counsel submits that RRDC's response thus far does not identify the loss and harm with any particularity, but simply sets forth the facts and events which caused the loss and harm. Canada provided no authorities in support of its position on this point.

[34] Counsel for RRDC argues that any further particulars as to the loss and harm will go to arguments to be made at trial. In support, he refers to two cases: *Sutherland* v. *Banman*, 2008 BCSC 1194; and *Yewdale* v. *Insurance Corp of British Columbia*, cited above.

[35] In *Sutherland*, the defence was seeking particulars of a wage loss claim resulting from a motor vehicle accident. Master Baker held, at para. 7, that what was sought was not particulars but evidence, and dismissed the demand. *Yewdale* involved a claim for negligence against a firm of solicitors who acted for the plaintiff in another action arising out of a motor vehicle accident. The defendants sought particulars of the fashion in which it was alleged that their wrongdoing caused the plaintiff loss and damage. Master Bishop held that the plaintiff was not required to provide such particulars, as these were matters of argument. At paras. 90 and 91, he stated:

> "Paragraphs 21 and 30 - in what fashion is it alleged that the wrongdoing of the defendants caused loss and damaged *(sic)* to the plaintiff? and what material facts are alleged to constitute the causal link between these additional allegations and the allegation of loss and damage?
>
> It is the court's view that these are matters of argument and need not be supplied as particulars."

[36] Canada's counsel attempted to distinguish both *Sutherland* and *Yewdale* as cases were the plaintiffs were looking for a causal link between the loss and harm and the unlawful act, whereas, in the case at bar, Canada is not asking what caused the alleged loss and harm. I disagree with that characterization of these cases. In *Sutherland*, it seems to me that what was clearly at issue was "particulars of the wage – loss claim" in and of itself and not particulars as to what caused that loss. In *Yewdale*, as can be seen from the above quote, the court specified that one of the demands for particulars was "in what fashion is it alleged that the wrongdoing of the defendant caused loss and damaged [as written] to the plaintiff?" (my emphasis) and concluded that that was a matter of argument. In my view, there is little to distinguish the nature of that question from Demand # 14(a) in the case at bar.

[37] Finally on this point, I did not understand Canada's counsel to make any argument either in his Outline or at the hearing with respect to Demand #14(b), so I take it that particular demand was not seriously at issue.

[38] In concluding here, I find that the particulars sought by Canada in Demand #14 are not "necessary" at this stage of the proceedings, given the severance of liability from the issue of damages, and that they go to either matters of evidence or argument, or both. Accordingly, this demand is dismissed.

[39] Demands numbered #16(b), (c) and (d) refer to the allegations at paras. 24 and 46(a) of the '06 Statement of Claim and seek particulars as to when, how, by whom and with whom the plaintiff's claims for compensation for lands were raised with Canada. For the reasons given at paras. 10-13, above, these demands are dismissed.

[40] Demand # 18 refers to the allegation at para. 44 of the ‘06 Statement of Claim that Canada “unilaterally and arbitrarily abandoned the negotiations with the plaintiff”, and seeks particulars as to the facts which constitute the “arbitrary” abandonment. RRDC stated in response that it relies upon the material facts alleged in para. 44 of the ‘06 Statement of Claim that Canada abandoned the negotiations “on the grounds that [its] mandate for negotiating comprehensive land claims settlements had expired”. In addition, RRDC stated that “further particulars include the refusal or failure of the defendant to renew or reinstate its negotiations mandate so as to allow to [as written] negotiations to continue or resume” (my emphasis). At the hearing, RRDC’s counsel confirmed that the use of the word “include” did not mean that there was *something else* it would be relying on in terms of particulars on this point. Given that concession, a further formal answer to this demand to that effect will suffice.

[41] Demand # 23(a) refers to para. 52 of the ‘06 Statement of Claim and seeks particulars as to the facts which constitute the loss and harm allegedly suffered by the plaintiff. For the reasons given at paras. 31-36 above, this demand is dismissed.

COSTS

[42] Although RRDC was substantially successful in responding to this application by Canada, in my view, the application was brought in good faith and with a genuine intention to define the issues. Further, in some instances, there were concessions made by RRDC’s counsel at the hearing, which presumably could have been made prior to the hearing and might have expedited matters. Finally, even some instances where specific demands for particulars were dismissed, the net effect of having raised the point has, I

believe, resulted in greater clarity on certain issues. In these circumstances, it seems appropriate that each party should bear their own costs.

GOWER J.