Citation: Alexander v Sabourin, 2025 MBCA 106
Date: 20251212
Docket: AI25-30-10202

# IN THE COURT OF APPEAL OF MANITOBA

*Coram:* Chief Justice Marianne Rivoalen
Madam Justice Janice L. leMaistre
Mr. Justice David J. Kroft

***B E T W E E N**:*

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| ***KEITH ALEXANDER*** | ) | |
| | ) | ***R. I. Histed*** |
| *(Plaintiff) Appellant* | ) | *for the Appellant* |
| | ) | |
| *- and -* | ) | ***J. M. Woolley*** |
| | ) | *for the Respondent* |
| ***MAURICE SABOURIN*** | ) | |
| | ) | *Appeal heard and* |
| *(Defendant) Respondent* | ) | *Decision pronounced:* |
| | ) | ***December 5, 2025*** |
| *- and -* | ) | |
| | ) | *Written reasons:* |
| ***ADAM CHEADLE and ANDREW ZURAWSKY*** | ) | ***December 12, 2025*** |
| | ) | |
| *(Defendants)* | ) | |

On appeal from *Alexander v Cheadle et al*, 2024 MBKB 190 [*Alexander*]

**LEMAISTRE JA** (for the Court):

[1] The plaintiff appealed the motion judge's order staying his action against the defendant, Maurice Sabourin (the defendant), under rule 21.01(3)(a) of the MB, *King's Bench Rules*, Man Reg 553/88. The motion judge concluded that the Manitoba Labour Board (MLB) has exclusive jurisdiction over the dispute.

[2] After the hearing, we dismissed the appeal with reasons to follow. These are those reasons.

Background

[3] The motion judge found the factual context, as pled in the statement of claim, included the following:

- The defendant was the president of the Winnipeg Police Association (WPA) and was acting in that capacity throughout his involvement in the matters that are the subject of the claim.
- The plaintiff was a member of the WPA.
- The plaintiff was charged with two counts of uttering threats.
- The WPA provides counsel to its members when they are facing criminal charges.
- The plaintiff retained counsel, facilitated and approved by the defendant (initial lawyer).
- The WPA paid the initial lawyer's fees.
- The plaintiff retained other counsel after the defendant told him the WPA could withdraw his initial lawyer's representation if he did not accept the proposed plea bargain arranged by his initial lawyer.
- The criminal charges were stayed.

- After the charges were stayed, the defendant advised the plaintiff as follows (*Alexander* at para 17):

> I will address your concern that [your initial lawyer], in your view, inappropriately shared information about the case and I can only assume you are referring to him discussing the case with the [WPA]. I can tell you this is common practice as the [WPA] is the client who retained [the initial lawyer] on your behalf.

Issues and Standard of Review

[4] The plaintiff argues that the motion judge erred by:

1. refusing to accept the facts alleged in the statement of claim as true;

2. mischaracterizing the essential character of the dispute;

3. concluding that the MLB has jurisdiction over the claims for damages for breach of fiduciary duty, inducing a breach of contract and violation of solicitor and client confidentiality; and

4. finding that *The Labour Relations Act*, CCSM c L10 [the *LRA*] provides the plaintiff an effective alternative remedy for such wrongs.

[5] The motion judge's decision was discretionary and "should not be overturned unless the motion judge has misdirected himself or his decision is so clearly wrong as to amount to an injustice" (*Hozaima v Perry et al*, 2010 MBCA 21 at para 17).

[6] The plaintiff does not take issue with the facts found or the legal principles articulated by the motion judge. The issues raised all relate to the motion judge's application of the law to the facts and are reviewed for palpable and overriding error.

Analysis

[7] The motion judge understood that the facts pled in the statement of claim are presumed to be true and provable. He also understood the test for determining whether exclusive jurisdiction over a matter vests in a forum other than a court as articulated in *Weber v Ontario Hydro*, 1995 CanLII 108 (SCC) [*Weber*] (see also *Giesbrecht v McNeilly et al*, 2008 MBCA 22 [*Giesbrecht*]; *Warraich v University of Manitoba*, 2003 MBCA 58 [*Warraich*]; *Phillips v Harrison*, 2000 MBCA 150). In his reasons, the motion judge stated (*Alexander* at para 12):

> Thus, in shorthand, the test requires three questions to be analyzed:
>
> (i) What is the essential character of the dispute?
>
> (ii) What is the ambit of the collective agreement or statutory scheme?
>
> (iii) Does the collective agreement, or statutory scheme, provide an effective remedy?

[8] The motion judge recognized that the test outlined in *Weber* "applies in circumstances engaging a statutory scheme" (*Alexander* at para 13).

[9] We are not convinced that the motion judge erred by finding that the plaintiff's assertion in the statement of claim that the defendant colluded with

others to remove him as their supervisor and force his retirement (the assertion) was a bald assertion or conclusory statement rather than a fact pled.

[10] As explained in *Gay v Alberta (Workers' Compensation Board)*, 2023 ABCA 351, "bald assertions of misconduct (such as malice, fraud, deceit, 'absence of honest belief', misfeasance in public office, etc.) will not be accepted as being true without reasonable particulars of the allegations" (at para 12).

[11] The plaintiff's claim fails to particularize the assertion, which is a conclusory statement about the state of mind and intent of the defendant.

[12] We are also not convinced that the motion judge mischaracterized the essential character of the dispute.

[13] The motion judge found that the essential character of the dispute "[was] of arbitrary, discriminatory or bad faith treatment of a union member, by an agent of the union, for a purpose inconsistent with the requirements of the union in representing that member" (*Alexander* at para 20) and was about "an unfair labour practice" (*ibid* at para 21) by the president of a union who had a duty to "properly represent" a union member (*ibid*).

[14] In the plaintiff's factum, he argues that the dispute is "about [the defendant] promoting a malicious prosecution by illegal means for harmful ends." This assertion was not pled and, importantly, this argument was not raised before the motion judge.

[15] In his reasons, the motion judge cited the plaintiff's motion brief, which stated: "In its essential character, this dispute is about the defendant

attempting to subvert the criminal defence of the plaintiff to a failed prosecution maliciously initiated by other union members who are co-defendants" (*ibid* at para 15). The motion judge also pointed out that (*ibid*):

> During the hearing, his counsel confirmed what is evident from the pleading: as against [the defendant] only, the alleged causes of action are (i) breach of fiduciary duty, and (ii) inducing a breach of contract between the lawyer hired to represent [the plaintiff] on the criminal charge and [the plaintiff].

[16] The motion judge did not find that the dispute was about "promoting a malicious prosecution". We see no palpable and overriding error.

[17] The plaintiff argues that the motion judge mischaracterized the substance of the claim when he found that the defendant "arranged" (*ibid* at para 2) for the initial lawyer to represent the plaintiff and that the defendant was "representing [the plaintiff] . . . respecting criminal charges" (*ibid* at para 20). His position was that the defendant did not arrange the plaintiff's initial lawyer and did not represent him on the criminal charges or at all.

[18] It is not our role to finely parse the motion judge's reasons (see *R v GF*, 2021 SCC 20 at para 69; see also *Parkinson v Winnipeg Regional Health Authority*, 2025 MBCA 82 at para 23). In our view, the motion judge understood the essential character of the dispute as advanced in the statement of claim. When his reasons are considered in context, it is readily apparent that he understood the scheme provided for in the collective agreement and the WPA constitution for the provision of legal services and the role of the WPA. The motion judge also recognized that the plaintiff's initial lawyer was representing the plaintiff on the criminal charges.

[19] In addition, as the defendant points out, the role of the WPA pursuant to its constitution is more involved than simply paying for the plaintiff's legal services. Section 4.4.10 of the WPA constitution states that the member "shall" be represented by the lawyer chosen by the WPA and section 4.4.12 provides the WPA with "full discretion to deny, cancel or reduce the Legal Assistance to a member" for reasons that include a member acting in a manner that is, in the lawyer's opinion, detrimental to the case.

[20] As for the plaintiff's argument that the claim does not fall under the *LRA*, we agree with the defendant that any duty alleged to be owed by the defendant to the plaintiff arose solely from his role as president of the WPA.

[21] The collective agreement gave the plaintiff the right to have his legal representation arranged and paid for by the WPA. It gave the WPA the responsibility to administer those rights. The plaintiff's claim is that the defendant administered his rights in a manner that was discriminatory and in bad faith. Thus, the essential character of the dispute is about how the plaintiff's contractual rights were administered.

[22] Section 20 of the *LRA* provides for a duty of fair representation. It states:

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| **Duty of fair representation**<br>**20** Every bargaining agent which is a party to a collective agreement, and every person acting on behalf of the bargaining agent, which or who, in representing the rights of any employee under the collective agreement, | **Juste représentation**<br>**20** Commet une pratique déloyale de travail l'agent négociateur partie à une convention collective ou la personne agissant au nom de l'agent négociateur qui, en représentant les droits d'un employé prévus à la convention collective : |

| | |
|---|---|
| (a) in the case of the dismissal of the employee, | a) en cas de renvoi de l'employé : |
| (i) acts in a manner which is arbitrary, discriminatory or in bad faith, or | (i) ou bien agit d'une manière arbitraire, discriminatoire ou de mauvaise foi, |
| (ii) fails to take reasonable care to represent the interests of the employee; or | (ii) ou bien omet de représenter de façon raisonnable les intérêts de l'employé; |
| (b) in any other case, acts in a manner which is arbitrary, discriminatory or in bad faith; | b) dans tout autre cas, agit de manière arbitraire, discriminatoire ou de mauvaise foi. |
| commits an unfair labour practice. | |

[emphasis added]

[23] As explained in *Warraich*, jurisdictional issues should be decided in a manner consistent with a liberal interpretation of the governing statutory scheme (see para 11). Furthermore, the rights provided for in the collective agreement also "must be interpreted in a large and liberal fashion" (*Giesbrecht* at para 46; see also para 58).

[24] In the circumstances of this case, the motion judge's finding that the dispute involved an allegation of an unfair labour practice under section 20 of the *LRA* is reasonable.

[25] Finally, the plaintiff argues that the motion judge erred by finding that the *LRA* provides an effective alternative remedy. He says that the six-month limitation period and the $2,000 limit on amounts payable for an unfair labour practice are not effective in the circumstances of this case. We disagree.

[26] The *LRA* provides a solution to the problem (see *Giesbrecht* at para 55). The remedy under the *LRA* may be different than the remedies available in a civil suit, "but that does not mean [the] remedy is not 'effective'" (*Giesbrecht* at para 59).

[27] We see no error in the motion judge's conclusion that the remedies provided for in the *LRA* for unfair labour practices are "no less effective" (*Alexander* at para 30) than those available in a civil action, "especially in the context of a complaint respecting whether a union failed to properly represent a member, for whatever reason" (*ibid*).

Disposition

[28] In the result, the appeal was dismissed with costs.

Motion for Further Evidence

[29] After the motion judge rendered his decision, the plaintiff filed an application alleging an unfair labour practice with the MLB. The MLB determined that the plaintiff "unduly delayed" the filing of his application and dismissed it pursuant to section 30(2) of the *LRA*.

[30] On the appeal, the defendant brought a motion for further evidence seeking to admit the MLB's order dismissing the plaintiff's application, as well as the underlying complaint and responses. His position was that the civil proceedings would constitute a collateral attack on the MLB's decision and/or an abuse of process. He conceded that, if the appeal were dismissed, the further evidence would be irrelevant.

[31] As the appeal was dismissed, it was unnecessary to deal with the motion for further evidence.

leMaistre JA

Rivoalen CJM

Kroft JA