

**IN THE COURT OF APPEAL OF MANITOBA**

*Coram:* Chief Justice Marianne Rivoalen  
Madam Justice Diana M. Cameron  
Mr. Justice Christopher J. Mainella

***BETWEEN:***

	)	<b><i>R. M. Beamish and</i></b>
	)	<b><i>A. Bailey</i></b>
	)	<b><i>for the Appellant</i></b>
	)	
<b><i>NAMED PERSON</i></b>	)	<b><i>G. A. McKinnon and</i></b>
	)	<b><i>A. D. F. Sain</i></b>
<b><i>(Plaintiff) Appellant</i></b>	)	<b><i>for the Respondent</i></b>
	)	<b><i>K. Champagne</i></b>
	)	
<b><i>- and -</i></b>	)	<b><i>J. R. Koch and</i></b>
	)	<b><i>T. P. Sandulak</i></b>
	)	<b><i>for the Respondent</i></b>
<b><i>KENNETH CHAMPAGNE and THE</i></b>	)	<b><i>The Government of Manitoba</i></b>
<b><i>GOVERNMENT OF MANITOBA</i></b>	)	
	)	<b><i>Appeal heard and</i></b>
<b><i>(Defendants) Respondents</i></b>	)	<b><i>Decision pronounced:</i></b>
	)	<b><i>September 9, 2025</i></b>
	)	
	)	<b><i>Written reasons:</i></b>
	)	<b><i>September 22, 2025</i></b>

On appeal from *Named Person v Champagne*, 2024 MBKB 186 [*motion decision*]

**RIVOALEN CJM** (for the Court):

[1] This appeal turns on the common law doctrine of judicial immunity vis-à-vis a judge's actions and statutory immunity vis-à-vis court staff acting in the discharge of responsibilities vested in them of a judicial nature. Also at

issue is whether a statement of claim can survive a motion to strike when the material facts on which the appellant relies to establish the causes of action have not been pled.

[2] The appellant appealed from the order of a judge of the Court of King's Bench (the motion judge) striking out the appellant's statement of claim in its entirety, without leave to amend.

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

### Background

[4] The appellant was a witness in a criminal trial before Justice Kenneth Champagne, a judge of the Court of King's Bench (Champagne J). During the trial, Champagne J issued a discretionary publication ban under section 486.5(1) of the *Criminal Code*, RSC 1985, c C-46, directing that any information that could identify the victim or a witness not be published in any document or broadcast or transmitted in any way.

[5] The appellant later found out that Champagne J's judgment containing information identifying her was published on the Court of King's Bench website. Upon discovering the published judgment, the appellant contacted Victim Services. The unredacted judgment was then removed from the Court of King's Bench website and a corrected judgment was posted.

[6] The appellant filed a statement of claim against Champagne J and the Government of Manitoba (Manitoba) (together, the respondents) for

damages she alleges she suffered as a result of the publication of the unredacted judgment. She sued the respondents for breach of privacy under sections 2 and 4(1) of *The Privacy Act*, CCSM c P125, and breach of an ad hoc fiduciary duty.

[7] Counsel for Champagne J and counsel for Manitoba each filed a motion to strike the statement of claim pursuant to MB, *King's Bench Rules*, Man Reg 553/88, r 25.11(1)(d) [the *Rules*], on the grounds that the pleading did not disclose a reasonable cause of action.

[8] As noted above, the motion judge struck the statement of claim as against both Champagne J and Manitoba without leave to amend. She found that it was plain and obvious that the claim against the respondents could not succeed. She also found that the statement of claim was devoid of particulars that would establish a cause of action for breach of privacy or breach of an ad hoc fiduciary duty against either respondent.

[9] The motion judge denied leave to amend because the appellant had been provided with the opportunity to do so but declined. In any event, the motion judge determined that, even if the additional facts in the corrected judgment were added to the claim, the action would be doomed to fail.

[10] The motion judge held that the principles of judicial immunity prevent the claim from being pursued and that it should be struck (see *motion decision* at para 38). She determined that it was not necessary to make a finding on whether section 4(6) of *The Proceedings Against the Crown Act*, CCSM c P140, applied to the court staff because the statement of claim did not disclose a reasonable cause of action against Manitoba (see *motion decision* at para 51).

Standard of Review and Issues

[11] Decisions on a motion to strike are discretionary. Absent an error in law or a palpable and overriding error on a question of fact, the decision of the motion judge is entitled to deference and this Court will not intervene unless the decision is so clearly wrong as to amount to an injustice (*Sarrasin v Sokal*, 2022 MBCA 67 at para 16).

[12] The appellant frames her grounds of appeal as errors of law.

[13] Her submissions are twofold. First, in her written submissions and in oral argument, the appellant concedes that her pleadings contained a “dearth of facts” as to how the unredacted judgment found its way onto the Court of King’s Bench website. She argues, however, that those facts were simply “unknowable” or unascertainable and that the only method by which she could ascertain the facts and provide specificity in the pleadings would be to require the respondents to file their separate statements of defence and then proceed to examinations for discovery. She submitted that it is an error in law to strike a statement of claim based on the insufficiency of the pleadings in a unique situation such as hers.

[14] Next, the appellant acknowledges that there were no allegations of bad faith against either respondent. As before the motion judge, the appellant concedes that she is not relying on an existing or recognized exception to judicial immunity. She agrees that there are no reported cases where a civil claim against a judge has been allowed to proceed. Nevertheless, she argues that the concept of judicial immunity has not been established in Canadian jurisprudence as being absolute. That is, the category of exceptions to judicial

immunity is not closed and the unique fact situation before us deserves more latitude.

[15] Her emphasis is that the claim should not be struck. She says it is not her fault that she does not have the particulars of her causes of action and, in this unique situation, she should be allowed to proceed to discoveries.

### Analysis

[16] What occurred here is unfortunate. However, we see no grounds to intervene with the order of the motion judge. In making the order, the motion judge did not err in law.

[17] At the outset, the motion judge identified and applied the correct legal test for striking out a pleading as disclosing no reasonable cause of action (see *motion decision* at paras 10-11).

[18] Focussing on the claim against Champagne J, the motion judge was correct when she found that there were no facts in the claim to support an allegation that Champagne J breached the publication ban (see *ibid* at para 25). Rule 25.06(1) of the *Rules* requires that “every pleading shall contain a concise statement of the material facts on which the party relies for a claim”.

[19] With respect to the doctrine of judicial immunity, we agree with the motion judge “that the issuing of reasons for a decision is a judicial act that is protected by judicial immunity even if the reasons contain errors or omissions” (*motion decision* at para 33). As stated by the motion judge, “Even the narrowest interpretation of judicial immunity would prevent a claim

against a judge for mistakes or omissions in the writing of reasons. To find otherwise would undermine the very reason for the immunity – the freedom of the judge to make decisions without fear of consequences” (*ibid* at para 33). (See also *Shaw v Trudel*, 1988 CanLII 5702 (MBCA).)

[20] Judicial immunity applies to the issuing of reasons for a decision, full stop. There is no legal error in striking an action on this basis pursuant to the *Rules*, r 25.11(1)(d).

[21] A review of the jurisprudence demonstrates that motions to strike are routinely used to dismiss civil claims against judges on the basis of judicial immunity. In the leading case of *Morier v Rivard*, 1985 CanLII 26 (SCC), the Supreme Court of Canada confirmed that these actions “have been struck out and will continue to be struck out” (at para 114, quoting Denning LJ in *Sirros v Moore*, [1975] 1 QB 118).

[22] Turning her attention to the claim against Manitoba, the motion judge was correct when she found that the claim did not articulate what role each of the respondents had in posting the decision on the Court of King’s Bench website. In terms of the breach of privacy, the claim does not allege that the court staff breached the publication ban knowingly (see *motion decision* at para 42). The motion judge was satisfied that the tort created under section 2(1) of *The Privacy Act* upon which the appellant relied is not established unless the respondent “substantially, unreasonably, and without claim of right” breached the appellant’s claim to privacy. Without particulars as to this essential element of the tort of breach of privacy, the claim does not support the cause of action. We agree.

[23] The same can be said with respect to the claim that the court staff owed the appellant an ad hoc fiduciary duty.

[24] As explained by McLachlin CJC in *R v Imperial Tobacco Canada Ltd*, 2011 SCC 42: “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” (at para 22).

[25] The statement of claim reveals no material facts necessary to support a reasonable cause of action in breach of the appellant’s privacy rights and alleged breach of an ad hoc fiduciary duty owed to her. The lack thereof is fatal.

[26] In *obiter*, the motion judge did not find it necessary to conclude that the court staff employed by Manitoba to assist judges in their judicial functions, such as the issuing and publication of reasons, are also immune from civil suit because of the protection afforded to them under section 4(6) of *The Proceedings Against the Crown Act*. That subsection provides for immunity for court staff who are discharging responsibilities of a judicial nature or responsibilities that the court staff have in connection with the execution of the judicial process.

[27] We make the following additional observations.

[28] If the publication of reasons is considered to be an administrative judicial act, and if the court staff post the judgment on the Court of King’s Bench website at the direction of the judge, we are of the view that it is one that is directly connected to the judge’s judicial role and therefore protected

by immunity. Secondly, we do not adopt the motion judge's comments on whether the act of posting a decision on the Court of King's Bench website would fall within the "execution of judicial process" (*motion decision* at para 48). In our respectful view, such actions would fall squarely within the judicial process.

### Conclusion

[29] The statement of claim does not disclose a reasonable cause of action against Champagne J and, in any event, the doctrine of common law judicial immunity prevents the claim from being pursued against him. The statement of claim also does not disclose a reasonable cause of action against Manitoba as the pleadings were insufficient and, in our view, the court staff benefited from the immunity afforded to them under section 4(6) of *The Proceedings Against the Crown Act*.

[30] The motion judge was correct to strike out the statement of claim in its entirety as against both respondents.

[31] The appeal was therefore dismissed with costs in favour of the respondents.

---

Rivoalen CJM

---

Cameron JA

---

Mainella JA