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(Winnipeg Centre)
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COURT OF KING'S BENCH OF MANITOBA

B E T W E E N:

SARAH BOND, ANGÉLE CHOQUETTE, NATALIE GIESBRECHT, CYNDAL KIESMAN and SHELLEY SHIER STENBERG,	)	Patricia West and Natasha Ellis for the plaintiffs
plaintiffs,	)	
-and -	)	
ARCEL BISSONNETTE, CENTRE MEDICAL SEINE INC., SHARED HEALTH/SOINS COMMUNS, SOUTHERN HEALTH-SANTÉ SUD, operating as HÔPITAL STE. ANNE HOSPITAL and the said HÔPITAL STE. ANNE HOSPITAL,	)	Keith Ferbers and Tan Ciyiltepe for the defendant Arcel Bissonnette Kelly Dixon For the defendants Shared Health/Soins Communs, Southern Health-Santé Sud, operating as Hôpital Ste. Anne Hospital and the said Hôpital Ste. Anne Hospital
defendants.	)	William Haight for the defendant Centre Medical Seine Inc.
	)	JUDGMENT DELIVERED: November 3, 2025

ASSOCIATE JUDGE GOLDENBERG

INTRODUCTION

[1] The plaintiffs have filed a statement of claim in which they claim jointly and severally against the defendants for damages for sexual assault and battery (the Claim).

[2] The following three sets of defendants have each brought a motion to strike out portions of the Claim:

i. Arcel Bissonnette (Dr. Bissonnette)

ii. Shared Health/Soins Communs, Southern Health-Santé Sud, operating as Hôpital Ste. Anne Hospital and the said Hôpital Ste. Anne Hospital (Shared Health)

iii. Centre Medical Seine Inc. (the Centre)

[3] All defendants seek to strike out certain paragraphs of the Claim on the basis that it improperly pleads similar fact evidence. Shared Health also seeks to strike out a portion of the Claim on the basis that it is an attempt to circumvent ***The Manitoba Evidence Act***, C.C.S.M. c. E150, (the ***MEA***) and/or ***The Health System Governance and Accountability Act***, C.C.S.M. c. H26.5 (the ***HSGAA***) and is therefore an abuse of process of the court.

[4] Dr. Bissonnette also seeks to strike out certain paragraphs of the Claim on the ground that they are scandalous, frivolous and vexatious, and on the basis that they are not material facts to the causes of action against him. He also seeks particulars of some of the allegations set out in the Claim.

ANALYSIS

SIMILAR FACT EVIDENCE

[5] The Claim expressly pleads similar fact evidence. The following paragraphs are found in the Claim under the heading "Similar Fact Evidence":

> 15. From 2019 until Dr. Bissonnette's arrest in 2020, the Clinic and/or Health Authority were obligated by the College of Physicians and Surgeons of Manitoba to post a notice on their premises that Dr. Bissonnette required a chaperone to

> be present at all times when conducting a breast or pelvic examination of a female patient.
>
> 16. Dr. Bissonnette is currently not listed as a registered physician with the College of Physicians and Surgeons of Manitoba.
>
> 17. On or about November 5, 2020, the Dr. Bissonnette was investigated and charged with sexual assault in relation to the Plaintiffs' reports to police.
>
> 18. In or about 2021, Dr. Bissonnette was further charged and arrested and is currently in trial proceedings with respect to charges of sexual assault toward 6 other patients. He also awaits trial with respect to criminal charges of sexual assault toward a further 10 patients. All complainants were assaulted by Dr. Bissonnette at the Clinic and/or the Hospital.
>
> 19. The Plaintiffs intend to rely upon those facts, evidence and any convictions arising from these criminal proceedings against Dr. Bissonnette.

[6] Dr. Bissonnette seeks to strike out each of these paragraphs. The Centre seeks to strike out each of these paragraphs, except paragraph 16. Shared Health seeks to strike out paragraphs 17 to 19.

[7] Dr. Bissonnette says that the similar fact allegations will prejudice the fair, just and expeditious progress and trial of this action, including document disclosure and examinations for discovery. He says the similar fact allegations should be struck out and that the admissibility of similar fact evidence should be considered during the pre-trial process by the pre-trial judge.

[8] Shared Health says that if the averments contained in paragraphs 17, 18 and 19 of the Claim are not struck out, these defendants will have to produce, at this early stage of the proceedings, the names and medical records of the "6 other patients" and "further 10 patients" alluded to in paragraph 18 of the Claim. They say this will *ipso facto* raise issues respecting the confidentiality of medical records which are protected by ***The Personal Health Information Act***, C.C.S.M. c. P33.5. They suggest that the

obvious ethical and legal quagmire that will arise should not be addressed until the pre-trial judge assigned to the case rules on whether similar fact evidence is admissible in the proceedings.

[9] The Centre expresses concern about the potential for protracted discovery and a prolonged trial if similar fact allegations are permitted. It is also concerned about the disclosure of personal health information of 16 additional individuals. It says that the similar fact allegations are unnecessary and negatively colour the reputation of Dr. Bissonnette, and are therefore scandalous, frivolous and vexatious.

[10] The plaintiffs say that the motion to strike similar fact evidence is inappropriate at this juncture and should be addressed at the pre-trial stage or during the trial.

THE LAW

[11] All rulings by this court should attempt to secure the just, most expeditious and least expensive determination of every civil proceeding on its merit and in a manner consistent with the principles of proportionality (see Court of King's Bench Rule (MR 553/88) (KBR) 1.4).

[12] The rules of pleading are important in the context of considering similar fact allegations. KBR 25.06(1) provides that evidence by which material facts are to be proven shall not be contained within a pleading. KBR 25.11(1) enables the court to strike out part or all of a pleading which may prejudice or delay the fair trial of the action, or which is scandalous, frivolous or vexatious.

[13] In addition to the rules of pleading, the presumptive legal position is that similar fact evidence is not permitted in a pleading unless specific exceptions apply. This is

consistent with the general restriction on pleading evidence and the presumptive inadmissibility of similar fact evidence: see ***Woods et al v. Jackiewicz***, 2013 ONSC 519 at para. 8. The principles that apply when a party seeks to plead allegations of similar fact, often referred to as the "Prism factors" are set out at para. 9 in ***Prism Data Services Ltd. v. Neopost Inc.***, [2003] O.J. No. 2994, 124 A.C.W.S. (3d) 461, as follows:

> **9** The following principles apply when a party seeks to plead allegations of similar facts:
>
> > (a)such allegations are proper as long as the added complexity resulting therefrom does not outweigh the probative value;
> > (b)similar acts are not probative if there is not a sufficient degree of similarity;
> > (c)the similarity must be provable without a prolonged inquiry although, inevitably, the litigation process will be lengthened to some extent as a result of proper similar fact allegations;
> > (d)the added complexity should not lead to undue oppression or unfairness; and
> > (e)if a system or scheme of conduct is alleged the past similar acts must have sufficient common features to constitute the system or scheme.

[14] The case law is also clear that the admissibility of evidence is for the trial judge to consider. While similar fact allegations are subject to a weighing of factors, a failure to plead similar facts does not necessarily preclude the admissibility of those facts as evidence at trial. Furthermore, inappropriate pleading of similar fact allegations which broaden discovery in a trial of the action should be weeded out at the earliest opportunity: see ***Toronto City v. MFP Financial Services Ltd. et al***, 2005 CarswellOnt 3324, 141 A.C.W.S. (3d) 254 at para. 29.

[15] For similar facts to be permitted in a pleading, there must be a real and substantial connection between the similar facts in the plaintiff's allegation: see ***Woods*** at paras. 8 to 9. The onus is upon the party seeking to plead similar fact evidence to show this real and substantial connection. Furthermore, the issue of prejudicial effect must also be viewed through the lens of non-parties affected by similar fact allegations: see ***MFP*** at para. 35.

APPLICATION OF THE LAW

[16] Paragraph 18 is clearly similar fact evidence; it references similar charges by other patients regarding allegations of sexual assault by Dr. Bissonnette. However, there are no particulars provided about the nature of the sexual assaults referenced in the similar fact allegations. Therefore, other than indicating that these other individuals were also patients, no real substantial connection is established between the alleged similar facts and the plaintiffs' allegations of having been sexually assaulted.

[17] The plaintiffs are attempting to allege that which is unnecessary to prove their cause of action, presumptively restricted, and contrary to the principle of proportionality. I am satisfied that the inclusion of the similar fact allegations in paragraph 18 of the Claim will result in protracted discoveries and a prolonged trial. Permitting the similar fact allegations to stand will not result in the most expeditious and least expensive determination of the plaintiffs' allegations of sexual assault.

[18] Furthermore, unnamed individuals, namely the 16 patients referred to in paragraph 18 of the Claim, will be adversely impacted. These individuals are not parties

to the proceeding, but disclosure of their personal health information will be required should these allegations be permitted to stand.

[19] The plaintiffs rely on ***Garwood Financial Ltd. v. Wallace***, [1997] O.J. No. 3358, in support of their position that it is appropriate for them to plead similar fact evidence and that their failure to do so could preclude them from leading such evidence at trial. In that case, the plaintiffs sought to strike a portion of the defendants' counterclaim that alleged that the plaintiffs' misrepresentations were a course of conduct in which the plaintiffs had engaged with other small businesses. The judge was satisfied in the specific circumstances of that case that the added complexity of the similar fact evidence did not outweigh its potential probative value.

[20] In the present case, there is no concern that striking this similar fact evidence could give rise to an objection to its admission at trial due to its not having been pleaded. The defendants in this case have clearly communicated that they will not object to the plaintiffs seeking to admit the evidence at the pre-trial stage. And more recent authorities, such as ***MFP***, make it clear that a failure to plead similar facts will not necessarily prevent the discovery of similar facts or preclude the trial judge from admitting similar fact evidence, see ***MFP*** at para. 29.

[21] I agree with the defendants that the admissibility of similar fact evidence in this case, weighing all the factors including the impact on many other individuals, should be considered further during the pre-trial process with the pre-trial judge, rather than at the pleadings stage. If appropriate, the pleadings can be amended at a later stage. Accordingly, paragraph 18 is struck from the Claim.

[22] While paragraphs 15 to 19 all fall under the heading "Similar Fact Evidence", I am not satisfied that the paragraphs other than 18 are similar fact evidence as that term is used in the case law.

[23] Paragraph 15 is evidence relating to an obligation to post a notice that Dr. Bissonnette required a chaperone to be present at all times when conducting a breast or pelvic examination of a female patient. The time frame for this requirement post-dates the alleged sexual assaults against the defendants. There is no reference to this being related to any similar incidents with other patients. I am not satisfied that this is similar fact evidence.

[24] Paragraph 16 states that Dr. Bissonnette is not registered with the College of Physicians and Surgeons of Manitoba. I am not satisfied that this constitutes similar fact evidence.

[25] Paragraph 17 states that Dr. Bissonnette was investigated and charged with sexual assault in relation to the plaintiffs' reports to police. This paragraph does not relate to similar alleged facts involving other people; rather, it is specific evidence regarding the allegations by these plaintiffs. I am not satisfied that this constitutes similar fact evidence.

[26] I will address paragraphs 15 to 17 with my analysis below on whether those paragraphs ought to be struck on the basis of being scandalous, frivolous or vexatious.

[27] Paragraph 19 is simply a notice of intention to rely on similar fact evidence. Given my findings on the similar fact evidence, I find that paragraph 19 should also be struck.

SCANDALOUS, FRIVOLOUS AND VEXATIOUS

[28] Dr. Bissonnette seeks to strike out the aforementioned paragraphs 15 to 19 as well as paragraphs 22, 27, 31, 32, 35 and 41 of the Claim on the grounds that they are scandalous, frivolous and vexatious, and on the basis that they are not material facts to the causes of action against Dr. Bissonnette. Those additional paragraphs provide as follows:

> 22. Sarah reported the Incident to the police department in Ste. Anne in 2017 and to the College of Physicians and Surgeons of Manitoba in 2018, when she fully understood the impact of the Incident on her mental and emotional health.
>
> 27. Angéle further reported the Incident with the police department in Ste. Anne due to the Clinic's lack of investigation into the Incident.
>
> 31. Natalie reported the Incident to her school guidance counsellor shortly after it occurred. She does not believe the guidance counsellor further reported the Incident to the police himself, but he advised that she file a police report.
>
> 32. Natalie did not come forward to file a police report for the Incident until 2018 when she fully understood the impact of the Incident on her mental and emotional health.
>
> 35. Cyndal reported the Incident to the police department in Ste. Anne in 2017, when she fully understood the impact of the Incident on her mental and emotional health.
>
> 41. Shelley made several attempts in 2017 to contact the police department in Ste. Anne, Manitoba to report the Incidents once she fully understood the impact of the Incidents on her mental and emotional health. By the time the Ste. Anne police department returned her calls, she had moved to Warman, Saskatchewan and was asked to provide a video statement to the RCMP related to the first Incident.

[29] Dr. Bissonnette says that each of these paragraphs, as well as paragraphs 15 to 19, is scandalous, frivolous and/or vexatious, or is not relevant to the cause of action, including any allegations inserted for colour. That includes allegations relating to the

plaintiffs reporting of the alleged incidents, investigations or charges related to the allegations and, more generally, allegations that are unnecessary or not relevant to the cause of action.

THE LAW

[30] KBR 25.11 allows the court to strike allegations that would prejudice or delay a fair hearing, or that are scandalous, frivolous, or vexatious. Consideration of prejudice and delay in these circumstances is considered in the case law relating to pleading similar facts, as set out above. The case law surrounding the other factors mentioned in KBR 25.11 confirms that any allegation that is unnecessary, has no justification at law, is not relevant to the cause of action, or is inserted for colour should be struck out. And, of course, it is material facts, not evidence, that are to be contained in pleadings.

[31] An allegation which is unnecessary and inserted to tarnish or negatively colour a party is scandalous, frivolous and vexatious: see ***Rebillard v. Manitoba (Attorney General)***, 2014 MBQB 181. In ***Rebillard***, the court provides guidance as to what portions of a statement of claim are scandalous, frivolous and vexatious:

> [29] A pleading is scandalous where it contains "anything which is unbecoming of the court to hear", including "any unnecessary allegation, bearing cruelly on the moral character of an individual". Pleadings made "without any probable justification at law, mala fide with a clear intent only to annoy or embarrass the opposing party" are frivolous and vexatious and ought to be struck. See ***Kreiner v. Auditor General (Man.)***, 2007 MBQB 61, 213 Man. R. (2d) 252 at paras. 8 and 9.
>
> [30] In ***Bellan v. Curtis et al.***, 2007 MBQB 221, 219 Man. R. (2d) 175 at para. 37, the court considered the meaning of "scandalous", "frivolous" and "vexatious" in light of Queen's Bench Rule 25.11 as follows:
>
> > [37] Queen's Bench Rule 25.11 allows a court to strike a pleading that is "scandalous, frivolous or vexatious". Epstein, J., dealt with the meaning of "scandalous, frivolous or vexatious" in ***George Estate v. Harris et***

> ***al.***, [2000] O.T.C. Uned. 404 (Sup. Ct.); [2000] O.J. No. 1762. At para. 20, he stated:
>
> > "The next step is to consider the meaning of 'scandalous', 'frivolous' or 'vexatious'. There have been a number of descriptions provided in the multitude of authorities decided under this or similar rules. It is clear that a document that demonstrates a complete absence of material facts will be declared to be frivolous and vexatious. Similarly, portions of a pleading that are irrelevant, argumentative or inserted for colour, or that constitute bare allegations should be struck out as scandalous. The same applies to a document that contains only argument and includes unfounded and inflammatory attacks on the integrity of a party, and speculative, unsupported allegations of defamation. In such a case the offending statements will be struck out as being scandalous and vexatious. In addition, documents that are replete with conclusions, expressions of opinion, provide no indication whether information is based on personal knowledge or information and belief, and contain many irrelevant matters, will be rejected in their entirety."

[32] Accordingly, any unnecessary allegation not justified in law, not relevant or inserted for colour should be struck out. In ***7602678 Manitoba Ltd. and 6399500 Manitoba Ltd. and Landmhel Real Estate Services Inc.***, 2023 MBKB 161, the court relies on the paragraph from ***George v. Harris***, 2000 O.J. No. 1762, quoted above in ***Rebillard***, and finds that there must be a legal nexus between the material facts relied on and the remedy sought. The failure to establish a legal nexus between these two elements will lead to the offending pleading being struck. (See ***7602678 Manitoba Ltd.*** at para. 17.)

APPLICATION OF THE LAW

[33] I have already struck out paragraph 18 on the basis that this paragraph constitutes inappropriate similar fact evidence. I find that paragraph 18, as well as paragraphs 15 to 17, 19, 22, 27, 31, 32, 35 and 41, are scandalous, frivolous and vexatious and/or lack relevance to the cause of action. These further paragraphs

include allegations relating to the plaintiffs' reporting of the alleged incidents to the College of Physicians and Surgeons of Manitoba, to police, or to a school guidance counsellor. I find that the timing of, and the facts of such reporting, are not relevant to the causes of action relating to sexual assault, including whether or not reporting coincided with the plaintiffs' understanding the "impact" of any such allegations. I am not satisfied that these allegations are material facts or relevant or necessary to pleading the cause of action. Paragraphs 22, 27, 31, 32, 35 and 41 of the Claim are therefore struck.

[34] This analysis also applies to the allegations at paragraphs 15 to 18 which, in addition, tend to colour the allegations against Dr. Bissonnette. Paragraph 18 of the Claim refers to 16 criminal charges of sexual assault that do not involve the plaintiffs in the within action, and paragraphs 15, 16 and 17 have no relevance to the causes of action. For this reason as well, paragraphs 15 to 18 of the Claim are struck.

THE MANITOBA EVIDENCE ACT AND THE HEALTH SYSTEM GOVERNANCE AND ACCOUNTABILITY ACT

[35] Shared Health says that paragraph 52 of the Claim ought to be struck as the plaintiffs are clearly attempting to circumvent Section 9 of the ***MEA*** and/or Part 4.1 of the ***HSGAA,*** by raising "critical incidents" in the paragraph presumably to allow discoveries surrounding such reports and investigations, which, they say, are privileged under this legislation.

[36] Paragraph 52 of the Claim provides as follows:

> 52. Further, the Plaintiffs state that the Clinic and/or Health Authority breached its statutory duty to each of the Plaintiffs by:
>
> (a) failing to establish and follow written procedures respecting providing information about and recording critical incidents;
>
> (b) failing to notify the Southern Health and/or the Minister of any critical incidents taking place; and
>
> (c) failing to establish a critical incident review committee to investigate and report on the sexual assaults and batteries as critical incidents.

[37] Section 9 of the ***MEA*** provides in part as follows:

> **Privilege re committee proceedings**
>
> **9(2)** Subject to subsection (4), a witness in a legal proceeding, whether a party to it or not,
>
> (a) is not liable to be asked and is not permitted to answer any question or to make any statement with respect to a committee proceeding; and
>
> (b) is not liable to be asked to produce, and is not permitted to produce,
>
> (i) any record or information — including, without limitation, an opinion or advice — that is prepared solely for the use of, or collected, compiled or prepared by, a committee for the purpose of carrying out its duties,
>
> (ii) any record or information — including, without limitation, an opinion or advice — that is used solely in the course of, or arising out of, a committee proceeding, or
>
> (iii) a notice, report or other record or information respecting a critical incident that is required to be provided by a health corporation, prescribed health care organization or health authority under section 53.3 or 53.4 of *The Health System Governance and Accountability Act* (patient safety).
>
> **Records not admissible**
>
> **9(3)** Subject to subsection (4), a record and information referred to in clause (2)(b) are not admissible as evidence in a legal proceeding.
>
> **Exception**
>
> **9(4)** The privileges in subsections (2) and (3) do not apply
>
> (a) to information in a record created or maintained for the purpose of providing health services, including health care or treatment, to an individual;
>
> (b) to the facts of what actually occurred with respect to a critical incident that are contained in a record, unless those facts are also fully recorded in a record described in clause (a), or another record, that is available to the individual affected by the critical incident; or
>
> (c) to information in a record required by law to be created or maintained by the owner, operator or person in charge of a facility or by a health care provider.

[38] Section 53.10(1) of the ***HSGAA*** provides as follows:

> **Limit on access to records re critical incident**
> **53.10(1)** No person, including an individual information is about, has a right of access under any Act or regulation — including under Part 2 of *The Freedom of Information and Protection of Privacy Act* or Part 2 of *The Personal Health Information Act* — to any of the following:
>
> (a) a notice provided under section 53.3 or 53.4;
>
> (b) a record or information — including an opinion or advice — prepared solely for the use of a critical incident review committee, or collected, compiled or prepared by a critical incident review committee for the sole purpose of carrying out its duties under this Part;
>
> (c) a report, record or information that is required to be prepared or provided by a health corporation, prescribed health care organization or health authority under section 53.3 or 53.4.

[39] I agree with Shared Health that paragraph 52 of the Claim ought to be struck. The plaintiffs are making allegations regarding procedures for which there is clearly a statutory privilege. A witness cannot be permitted to answer questions about committee proceedings or to produce any information prepared for the use of, or collected, compiled or prepared by a committee, or used solely in the course of or arising out of a committee proceeding. Nor can a witness be asked to produce a notice, report or other record or information respecting a critical incident.

[40] None of these records would be admissible in this civil action. Allowing paragraph 52 of the Claim to remain would be an abuse of process given that any discovery relating to any such reports or investigations would be improper in light of the statutory privilege. Accordingly, paragraph 52 of the Claim is struck.

FURTHER PARTICULARS

[41] Dr. Bissonnette also seeks an order for the plaintiff, Shelley Shier Stenberg, to provide particulars of paragraph 40 of the Claim, including dates, locations and nature of any alleged stalking behaviours.

[42] Paragraph 40 of the Claim provides as follows:

> 40. Shelley further states that she has been subjected to stalking behaviours by Dr. Bissonnette, including driving by Shelley's house and staring at Shelley when encountering her in public, which has caused her mental and emotional distress.

THE LAW

[43] The reasons why particulars are required are set out at para. 29 of the oft-quoted decision ***Dumont v. Canada***, [1991] M.J. No. 62, 75 Man.R.(2d), as follows:

> [29] All counsel agree that the principles to be applied in this case are those found in the decision of the Federal Court of Appeal in *Gulf Canada Ltd. v. Mary Mackin (The)*, 1984 CanLII 5405 (FCA), [1984] 1 F.C. 884 at p. 889, 42 C.P.C. 146, 52 N.R. 282, to the effect that the plaintiffs are obliged to provide particulars where same are necessary:
>
> (a) to inform the defendants of the nature of the case they have to meet as distinguished from the mode in which it is to be provided;
> (b) to prevent the defendants from being taken by surprise;
> (c) to enable the defendants to know what evidence they ought to be prepared with and to prepare for trial;
> (d) to limit the generality of the plaintiffs' claim;
> (e) to limit and decide the issues to be tried, and as to which discovery is required; and
> (f) to tie the hands of the plaintiffs so that they cannot, without leave, go into any matters not included in their claim.

[44] In addition, when a plaintiff makes serious allegations in a statement of claim, particulars related to the serious allegations "must meet a stringent standard of particularity", and they "must be pleaded with clarity and precision" in order for the defendant to know the case it has to meet. This is especially true in claims respecting intentional torts. See ***Ceballos v. DCL International Inc.***, 2018 ONCA 49 at para. 12 and ***N. v. N.***, 1976 CarswellMan 7, 24 R.F.L. 366 at para. 7.

APPLICATION OF THE LAW

[45] Paragraph 40 of the Claim relates to the plaintiff Stenberg with respect to stalking allegations. Paragraph 40 makes serious allegations regarding stalking behaviours regarding Dr. Bissonnette and the plaintiff Stenberg. Such allegations require the plaintiff Stenberg to meet a stringent standard of particularity. I find that paragraph 40 is not pleaded with sufficient clarity and precision to enable Dr. Bissonnette to know the case he has to meet. Dr. Bissonnette is entitled to particulars as to when, where, and in what manner the alleged stalking occurred to be able to consider and respond to the allegations.

[46] The plaintiff shall provide those particulars within 20 days of the date of the signing of the Order that flows from these reasons.

CONCLUSION

[47] For the reasons set out above, paragraphs 15 to 19 (and the Similar Fact Evidence heading), 22, 27, 31, 32, 35, 41 and 52 of the Claim are struck. The plaintiffs shall provide particulars of the stalking behaviours referenced in paragraph 40 of the Claim within 20 days of the signing of the Order.

[48] If the parties cannot agree on the issue of costs, they may arrange to speak to the matter.

_____

J.L. Goldenberg
Associate Judge