

On appeal from the decision of a master of the Court of Queen's Bench dated February 21, 2020.

Date: 20210519
Docket: CI 17-01-10025
(Winnipeg Centre)
Indexed as: Cameron v. Winnipeg (City of) et al.
Cited as: 2021 MBQB 109

COURT OF QUEEN'S BENCH OF MANITOBA

B E T W E E N:

| | | |
|-----------------------------|---|--------------------------------|
| KIRT CAMERON, |) | <u>Counsel/Appearances:</u> |
| |) | |
| (plaintiff) appellant, |) | <u>KIRT CAMERON</u> |
| |) | self-represented |
| |) | |
| - and - |) | <u>ASHLEY L. PLEDGER</u> |
| |) | for the City of Winnipeg |
| |) | |
| THE CITY OF WINNIPEG and |) | <u>TOM B. DOBSON</u> |
| THE GOVERNMENT OF MANITOBA, |) | for the Government of Manitoba |
| |) | |
| (defendants) respondents. |) | JUDGMENT DELIVERED: |
| |) | May 19, 2021 |

KROFT J.

I. INTRODUCTION

[1] The plaintiff, Kirt Cameron, is self-represented. On February 21, 2020, the master struck his amended statement of claim filed March 21, 2019, without leave to file a further amended claim. Mr. Cameron now appeals this decision though it is somewhat unclear whether he is appealing only the denial of leave to amend or

the striking of the amended claim as well. I say this because in his notice of appeal, Mr. Cameron identifies one point of relief: leave to file an amended claim. However, in his supplementary appeal brief, Mr. Cameron states: "After discussion with a lawyer, I am also appealing the Master's decision to strike the amended statement of claim". When asked by me at the hearing of the appeal, Mr. Cameron appeared to revert to the single request for leave to amend the claim. In the circumstances, including that Mr. Cameron is self-represented, I will assume Mr. Cameron is appealing both aspects of the master's order. In my view, this approach does not materially prejudice the defendant City of Winnipeg ("City") or the defendant Government of Manitoba ("Manitoba"). They were served with copies of Mr. Cameron's supplementary appeal brief, and the considerations relative to striking the amended claim form part of the context for the considerations relative to granting leave to file an amended claim.

[2] The City and Manitoba resist Mr. Cameron's appeal. For the reasons that follow, I agree with the City and Manitoba.

II. STANDARD OF REVIEW

[3] An appeal from the decision of a master to a judge is a fresh hearing; deference is not owed. That said, the master's decision certainly must be read and considered. See *Laing v. Sekundiak*, 2013 MBQB 17 (CanLII) at paras. 84–85. I have done that.

III. MATERIAL RELIED ON BY THE PARTIES

[4] In addition to the oral submissions of the parties and the master's reasons, I was referred to and have read the following:

Mr. Cameron

- amended statement of claim filed March 21, 2019
- motion brief filed February 14, 2020
- appeal brief filed October 7, 2020
- supplementary appeal brief filed March 18, 2021

City

- motion brief filed May 27, 2019
- supplemental motion brief filed January 24, 2020
- appeal brief filed March 9, 2021

Manitoba

- motion brief filed May 24, 2019
- supplemental motion brief filed January 21, 2020
- appeal brief filed March 4, 2021

IV. FACTS

A. Background

[5] As noted in paragraph 1 of these reasons, the master struck Mr. Cameron's amended statement of claim filed March 21, 2019. His original statement of claim was filed and served in September 2017.

[6] The cause of action in the original claim appears to be defamation. The quantum of damages claimed is \$30 million. The events giving rise to the claim relate to police conduct in the context of a charge against Mr. Cameron for sexual assault with a weapon (and related offences). The original claim is four pages long and references, among other things:

- The manner in which the offence was reported was sexist and discriminatory. Sexual assault calls should not be treated as domestic calls where the Winnipeg Police Service strongly and automatically believes everything the woman says.
- There was conflicting video evidence in respect of whether Mr. Cameron had a weapon.
- False allegations were sent by the Winnipeg Police Service to the media.
- The complainant ought to have been charged with perjury.
- There was a failure to investigate when Mr. Cameron was beaten by six people and raped in 2004.

[7] Although there were no allegations against Manitoba, Manitoba nevertheless was named as a defendant.

[8] Later in September 2017, the City and Manitoba each filed a notice of motion for an order to strike Mr. Cameron's original claim.

[9] The motions to strike first went before the master in October 2017 on the uncontested list. At that time, Mr. Cameron expressed his intention to amend the original claim, promising to do so by March 2018. The City and Manitoba agreed.

[10] No amended claim was filed by March 2018. In fact, Mr. Cameron did not do so until March 21, 2019 (one year later).

[11] The amended claim is forty-one pages long (small print) compared to the original four-page claim. It is impractical to reproduce or even effectively summarize the document in these reasons, but I will make some observations:

- The impetus for the amended claim remains the sexual assault with a weapon charge (and related charges).
- Many of the paragraphs appear to argue evidence and positions in a manner that renders a response exceedingly difficult if not impossible.
- To the extent the first paragraph of the amended claim encapsulates the relief sought, it claims, among other things:
 - general damages of \$10 million
 - punitive or aggravated damages of \$10 million
 - special damages of \$10 million
 - an order removing defamatory information from COMS and CPIC

- discrimination by the City and Manitoba by maliciously believing everything and anything Mr. Cameron's accuser told them because she is a woman and he is a man
- the behaviour of the City and Manitoba is scandalous; not Mr. Cameron's pleading
- The Winnipeg Police Service broke its code of ethics as did the Manitoba Prosecution Service by pursuing the complaint against Mr. Cameron. In proceeding in the manner they did, the Winnipeg Police Service and the Manitoba Prosecution Service acted maliciously.
- The Winnipeg Police Service and the Manitoba Prosecution Service should have charged Mr. Cameron's accuser but failed to do so.
- Mr. Cameron lost 3.5 years of his life sitting in jail as an innocent man.
- Mr. Cameron's rights under the ***Canadian Charter of Rights and Freedoms*** were breached.
- The Winnipeg Police Service failed to charge correctional officers for assaulting Mr. Cameron.
- The Winnipeg Police Service and the Manitoba Prosecution Service maliciously and discriminatorily accused Mr. Cameron of another sexual assault in February 2014, which charge was stayed in September 2014.

- The Manitoba Ombudsman violated Mr. Cameron's **Charter** rights by making biased comments.
- Manitoba and the Winnipeg Police Service are wrongfully making men who use the services of prostitutes out to be rapists.
- Manitoba (Probation Services) spread defamatory information to Addictions Foundation of Manitoba.
- Manitoba (Correctional Service) failed to provide any help to reduce recidivism.
- Addictions Foundation of Manitoba refused to accept Mr. Cameron into the residential program unless he agreed to not be alone with any female.
- The Winnipeg Police Service and the Manitoba Prosecution Service knowingly and wrongfully accused Mr. Cameron of sexual assault, causing the entire justice system to make him out as someone he is not and, thereby, ruining his whole life.

[12] On March 28, 2019, the City and Manitoba each filed a new notice of motion for an order to strike. This time, the motions were in respect of the amended claim.

[13] On April 25, 2019, this matter once again went before the master on the uncontested list. Timelines were set for filing briefs. The City and Manitoba filed their briefs within the prescribed time. Mr. Cameron did not, proposing instead to amend his claim a third time.

[14] On August 7, 2019, again on the master's uncontested list, a deadline was given to Mr. Cameron to file a motion to re-amend his claim. The motion was filed within the time frame, but Mr. Cameron failed to include his proposed re-amended statement of claim.

[15] On September 5, 2019, again on the master's uncontested list, Mr. Cameron was given until December 4, 2019, to file an affidavit attaching his proposed re-amended claim. He did not.

[16] On December 6, 2019, the master dismissed Mr. Cameron's motion to re-amend his claim. The master also set February 21, 2020 as the date to hear the City's and Manitoba's motions for orders to strike the March 21, 2019 amended claim (which hearing occurred and ultimately resulted in the decision now under appeal). A deadline also was set for Mr. Cameron to file an affidavit attaching a proposed re-amended claim. The purpose of permitting this affidavit was to afford Mr. Cameron an opportunity to show the Court the form of claim he would file in the event the master granted the City's and Manitoba's motions to strike but was inclined to grant leave to Mr. Cameron to file a further amended pleading.

Mr. Cameron was to file this affidavit by no later than January 10, 2020, failing which any further proposed amendments would not be considered by the Court.

[17] Mr. Cameron did not meet the January 10, 2020 filing deadline. Sometime after, Mr. Cameron attempted to serve the City and Manitoba with a further amended claim. That version had grown to one hundred five pages in length.

[18] On February 14, 2020, one week before the City's and Manitoba's motions to strike the March 21, 2019 amended claim, Mr. Cameron filed a responding brief, attaching yet another version of the statement of claim.¹ It is this re-amended claim that Mr. Cameron proposed would be filed if granted leave by the master.

[19] This latest version of the claim is much shorter—only fourteen pages in length. Much of the voluminous evidence and arguments is removed such that on its face, the document as a whole is at least easier to read.

[20] In the proposed re-amended claim, Mr. Cameron alleges, among other things:

- He was wrongfully charged on November 8, 2013, with sexual assault with a weapon, utter threats, and breach of recognizance as a result of false and inconsistent allegations made by the same complainant.

¹ Version 4

- The police and the Crown deliberately ignored these inconsistencies (which Mr. Cameron alleges "grounds" his claims for negligent investigation by the police and malicious prosecution by the Crown).
- The police negligently failed to confront the complainant on the inconsistencies.
- The inconsistencies were provided to the Crown, but the Crown continued to prosecute him maliciously and negligently in respect of the weapon and utter threats charges although, according to Mr. Cameron, the video proved there was no basis to the charges of utter threats and there was no weapon.
- The police and the Crown ought to have stayed the charges based on the evidence. Continuing with the charges was negligence and malicious conduct by the police.
- Information released by the police to various public media outlets that Mr. Cameron used a weapon was damaging and impeded his ability to lead a normal life. The police committed the tort of defamation or, in the alternative, the tort of injurious falsehood.
- After being taken into custody, Mr. Cameron was assaulted by a uniformed officer, which assault would not have happened had he not been wrongfully charged and arrested.

- The police knew there was no weapon, no uttering of threats, and, therefore, committed the tort of false arrest and false imprisonment and negligent investigation.
- Mr. Cameron makes new and similar allegations in respect of further charges of sexual assault occurring in February 2014.

[21] At the hearing of the appeal, Mr. Cameron requested that in the event I allow the appeal, he be provided a short period of time to make further amendments to the pleading.²

B. Master's Decision

[22] In her reasons granting the City's and Manitoba's motions to strike Mr. Cameron's amended claim, the master comments:

- The claim completely offends the rules of pleading set out in rule 25.06 of the Manitoba *Court of Queen's Bench Rules*, amounting to an abuse of process under rule 25.11(1)(c).
- The pleadings also are an abuse of process under rule 25.11(1)(c) because, in essence, the claim is a collateral attack on Mr. Cameron's earlier criminal proceedings.
- The amended claim discloses no reasonable cause of action.

² Version 5. Apparently, a similar request was made of the master at first instance.

- Striking the claim is consistent with rule 1.04 providing, among other things, that the rules should secure the just, most expeditious and least expensive determination of every civil proceeding on its merits, and take into account the principle of proportionality.

- Leave to amend is refused because:
 - Mr. Cameron had ample opportunities to perfect his claim but failed to do so.

 - Based on the form of proposed re-amended claim, it will be met with further motions to strike and will most likely meet the same fate as the amended claim.

V. ANALYSIS

A. Rules of Pleading

[23] The Manitoba *Court of Queen's Bench Rules* applicable to drafting statements of claim include:

Material facts

25.06(1) Every pleading shall contain a concise statement of the material facts on which the party relies for a claim or defence, but not the evidence by which those facts are to be proved.

Separate claims or defences

25.06(2) Where a party seeks relief in respect of separate and distinct claims, or raises separate and distinct grounds of defence, the material facts supporting each claim or ground of defence shall be stated separately as far as may be possible.

[24] There is an obligation on parties who come to court to comply with the rules. A claim that disregards these rules in a significant way may be characterized as an abuse of court process and struck on that basis. See *Peguis First Nation et al. v. Canada (Attorney General)*, 2014 MBQB 98 (CanLII) at para. 48; *Provincial Drywall Supply Ltd. v. Toronto-Dominion Bank*, 2001 MBCA 38 (CanLII) at para. 62.

[25] Mr. Cameron's March 21, 2019 amended claim offends the rules of pleading to a significant extent. It is forty-one pages in length, typed mostly in single space. It is replete with argument and evidence and exceedingly difficult to follow in an understandable way. Even when viewed with a generous eye, the amended claim does not contain a concise statement of material facts nor does it separate the various claims, including as between the City and Manitoba. It is next to impossible to respond to it in a coherent or useful way. It, without question, breaches the rules of pleading.

B. Striking a Pleading—Rule 25.11

[26] Rule 25.11 provides, in part:

STRIKING OUT OR EXPUNGING DOCUMENTS

25.11(1) The court may on motion strike out or expunge all or part of a pleading or other document, with or without leave to amend, on the ground that the pleading or other document,

- (a) may prejudice or delay the fair trial of the action;
- (b) is scandalous, frivolous or vexatious;
- (c) is an abuse of the process of the court; or
- (d) does not disclose a reasonable cause of action or defence.

[27] The City and Manitoba submit Mr. Cameron's amended claim offends all aspects of rule 25.11(1) but particularly clauses (c) and (d). In his submissions, Mr. Cameron's focus was less on the specific arguments raised by the City and Manitoba, and more on the fact he was in prison at the time he filed the original claim and for a period thereafter and that he is self-represented. However, at the hearing, Mr. Cameron suggested he consulted a lawyer at least in respect of preparing his appeal material and the latest proposed re-amended claim.

[28] Mr. Cameron argues it would be unjust to strike his amended claim now especially since he has spoken with a lawyer. To be clear, no lawyer appeared on behalf of Mr. Cameron at the appeal or, to my knowledge, has gone on record since arguing the appeal.

1. Abuse of Process—Rule 25.11(1)(c)

[29] The City and Manitoba submit Mr. Cameron's amended claim should be struck as an abuse of process. In that regard, they refer to Mr. Cameron's disregard for the rules of pleading as set out in paragraphs 24 and 25 of these reasons and the cases cited therein.

[30] The City and Manitoba also submit Mr. Cameron's amended claim is an abuse because, at its core, it is a collateral attack against the criminal proceedings. "[A] collateral attack may be described as an attack made in proceedings other than those whose specific object is the reversal, variation, or nullification of the order or judgment": ***Wilson v. The Queen***, [1983] 2 S.C.R. 594 at 599. In other

words, the primary focus of Mr. Cameron's amended claim is to reverse or nullify orders or judgments that arose in the course of the criminal proceedings brought against him.

[31] To illustrate this point, the City and Manitoba point out, among other things:

- Mr. Cameron alleges he was improperly denied bail (page 20 of the amended claim).
- He alleges the Manitoba Court of Appeal improperly denied his appeal of guilty pleas he entered (page 24 of the amended claim).
- He impugns the rulings of various judges (Abra J., page 21; Roller P.J. and Harvie P.J., page 20 of the amended claim).
- He asserts he suffered various *Charter* breaches in the course of his criminal proceedings and his dissatisfaction with the results of having raised those issues.

[32] The City and Manitoba say Mr. Cameron now invites this Court to review the various judicial decisions made and come to different conclusions.

[33] I agree with the submissions of the City and Manitoba and, for that reason, find the amended claim is an abuse of process by virtue of its broad disregard for the rules of pleading, and because the paragraphs of the amended claim

referenced in paragraph 31 of these reasons constitute collateral attacks against the criminal proceedings.

2. No Reasonable Cause of Action—Rule 25.11(1)(d)

[34] The City and Manitoba submit Mr. Cameron's amended claim also should be struck for not disclosing a reasonable cause of action. It is well accepted that a claim will only be struck if it is plain and obvious the pleading discloses no reasonable cause of action (assuming the facts pleaded to be true). In other words, there can be no reasonable prospect of success. See *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42, [2011] 3 S.C.R. 45 at para. 17. Also relevant is rule 25.06(3) providing a conclusion of law may be pleaded only if the material facts supporting it are pleaded.

[35] A central allegation in the amended claim (and in the proposed re-amended claim) is an allegation against the Crown of malicious prosecution.

[36] Historically, Crown prosecutors were wholly immune from civil suit. As a result of the Supreme Court of Canada's "malicious prosecution trilogy", the absolute immunity against prosecution was lifted. I will not engage in a detailed summary of the rationale for lifting the absolute immunity save to indicate the courts balanced the public interest in setting the threshold for liability very high, so as to deter all but the most serious claims against the prosecuting authorities, and to ensure that Crown liability is engaged in only the most exceptional circumstances, *against* the principle that the Crown and its prosecutors are not

above the law and individuals caught up in the justice system must have some protection from abuses of power. See *Proulx v. Quebec (Attorney General)*, 2001 SCC 66, [2001] 3 S.C.R. 9 at para. 4. This one exception is the tort of malicious prosecution.

[37] The four requirements that must be established by Mr. Cameron to prove malicious prosecution are that (1) the prosecution was initiated by the defendants, (2) the prosecution terminated in favour of the plaintiff, (3) the prosecution was undertaken without reasonable and probable grounds, and (4) the prosecution was motivated by malice or for a primary purpose other than that of carrying the law into effect. See *Proulx* at paras. 8–9.

[38] In respect of these four requirements, Manitoba concedes the amended claim sets out a factual foundation to establish the prosecution was initiated by the defendants (requirement 1). In respect of the prosecution terminating in favour of Mr. Cameron (requirement 2), Manitoba suggests the pleading, at best, is unclear. However, in respect of establishing the prosecution was undertaken without reasonable and probable grounds (requirement 3) and motivated by malice or for a primary purpose other than that of carrying the law into effect (requirement 4), Manitoba submits the amended claim clearly is deficient.

[39] Specifically in respect of reasonable and probable grounds, the pleadings establish there was a criminal complaint, there was a police investigation, the complainant provided evidence, a video was received that captured part of the

interaction between Mr. Cameron and the complainant, and Mr. Cameron saying the evidence against him was inconsistent.

[40] However, Manitoba submits the presence of inconsistent evidence does not establish a lack of reasonable and probable grounds for a prosecution. Courts are regularly asked to weigh inconsistent evidence. The prosecutor is not required to weigh evidence beyond a reasonable doubt for the reasonable grounds analysis.

[41] The proposed re-amended claim also pleads there was a preliminary inquiry, and the charges were downgraded by the prosecutor on the day it occurred. Mr. Cameron takes issue not only with the timing of this decision by the prosecutor, but also with the prosecutor's request that the police obtain a further statement pertaining to the revised charges.

[42] The fact a prosecutor downgraded charges, sought an additional statement, or decided to proceed with a prosecution on an included offence, does not establish a lack of reasonable grounds. To the contrary, this allegation suggests the prosecutor assessed the evidence, sought clarification, and proceeded accordingly. There also was a preliminary inquiry. The fact an independent trier of fact was satisfied there was sufficient evidence for the matter to proceed to trial suggests the presence of reasonable and probable grounds for prosecution, not the reverse. At the end of the day, Manitoba says the facts pleaded in the amended claim do not support the lack of reasonable and probable grounds requirement.

[43] In respect of the malice requirement, Manitoba submits, once again, the factual foundation is not apparent upon review of the amended claim.

[44] Manitoba argues malice cannot be inferred simply from the allegation of an absence of reasonable grounds for prosecution. One cannot discern, from a review of the amended claim (or even the proposed re-amended claim), the particulars related to the malice allegations from those related to no reasonable grounds. The malicious prosecution test created by the Supreme Court of Canada was intended to be difficult. See *Miazga v. Kvello Estate*, 2009 SCC 51, [2009] 3 S.C.R. 339 at para. 52. In the case of malicious prosecution, it simply is not appropriate to lump all facts and events together and allege a blanket allegation of malice.

[45] As for Mr. Cameron's allegations of negligent prosecution, Manitoba submits there is no such tort, repeating the only exception to immunity is where malicious prosecution is proved.

[46] Mr. Cameron makes allegations other than malicious and negligent prosecution. The City and Manitoba submit Mr. Cameron uses the word "defamation" multiple times throughout the amended claim but fails to plead a coherent set of material facts to maintain the claim. They also submit defamation is a cause of action requiring a number of specific elements to be pleaded by a plaintiff to establish a reasonable cause of action for the purpose of rule 25.11(1)(d). Mr. Cameron has not pleaded these elements. See *Sam v. Kopynsky et al.*, 2011 MBQB 56 (CanLII) at paras. 14, 30.

[47] In respect of the City, Mr. Cameron alleges members of its police force violated their code of ethics. The City, supported by Manitoba, submits that is not a cause of action. Mr. Cameron is alleging breaches of duties, however fails to plead the relevant provisions of ***The Police Services Act***, C.C.S.M. c. P94.5, and/or set out the facts establishing a duty.

[48] Mr. Cameron further alleges he did not receive adequate programming in prison or from Probation Services. He impugns the conduct of the Manitoba Ombudsman, Legal Aid, Addictions Foundation of Manitoba, various probation officers and correctional officers, as well as various judges, courts and government officials. Manitoba, supported by the City, submits these piecemeal allegations do not support any known cause of action at law, and, as pleaded, appear to be barred by statute. See ***The Ombudsman Act***, C.C.S.M. c. O45, section 40; ***The Legal Aid Manitoba Act***, C.C.S.M. c. L105, section 19; ***The Addictions Foundation Act***, C.C.S.M. c. A60, section 15; ***The Correctional Services Act***, C.C.S.M. c. C230, section 58(1); ***The Proceedings Against the Crown Act***, C.C.S.M. c. P140, section 4(6). The City and Manitoba also rely on ***The Limitation of Actions Act***, C.C.S.M. c. L150, clauses 2(1)(c) and (e), imposing a two-year limitation period in respect of, among other things, defamation, malicious prosecution, false imprisonment, assault, and other injuries to the person.

[49] After careful consideration of the arguments advanced by the City and Manitoba, I agree with them and find (in addition to my finding in paragraph 33

of these reasons) the majority of the amended claim does not disclose a reasonable cause of action.

[50] My conclusion takes into account that Mr. Cameron has been afforded multiple opportunities to improve and perfect his pleadings but, even at the time of hearing this appeal, still was suggesting he needed yet another opportunity. Objectively speaking, it cannot be said Mr. Cameron has been denied a fair opportunity to prepare and file a proper statement of claim.

[51] I have not ignored Mr. Cameron's submission about being self-represented. However, a party's unrepresented status does not excuse them from complying with the fundamental requirements of the rules of court. See ***Coleman v. Pateman Farms Ltd. et al.***, 2001 MBCA 75 (CanLII); ***Rebillard v. Manitoba (A.G.) et al.***, 2014 MBQB 181 (CanLII). In the facts of this case, I am satisfied my findings balance both Mr. Cameron's imperfect knowledge of the rules and procedures and the right of the City and Manitoba to know the legal and factual issues they must meet. Mr. Cameron has been given ample opportunity and leeway. Moreover, Mr. Cameron presents articulately and intelligently. In contrast to some self-represented litigants, I have little doubt about Mr. Cameron's ability to grasp what was occurring throughout these proceedings.

[52] Before concluding this section, I note I was referred to some authorities suggesting arguments about limitation periods should not normally be resolved on

a motion to strike. In the present case, the limitation argument is only one of many pleading violations such that my decision does not turn on it.

C. Leave to Further Amend the Statement of Claim

[53] The City and Manitoba submit that even though the proposed re-amended claim is more concise and easier to read, it still fails to disclose reasonable causes of action, is an abuse of process, and represents a fourth (and, as acknowledged by Mr. Cameron, not final) opportunity for Mr. Cameron to perfect an unsalvageable pleading. While not determinative, both the City and Manitoba have indicated they will once again move to strike the pleading in the event a further amendment is filed.

[54] In all the circumstances, I agree with the City and Manitoba. Upon careful review, except for the improved drafting, the pleading at its core remains flawed for most of the reasons already articulated in these reasons.

[55] At the risk of repeating myself, Mr. Cameron has had every opportunity to place before the parties and the Court further and better versions of his claim. Notwithstanding Mr. Cameron's submission about being self-represented, overall the equities do not weigh in his favour when all the facts are taken into account. Manitoba referred me to the case of *Brummell v. Ontario (Attorney General)*, 2014 ONSC 486 (CanLII), aff'd 2014 ONCA 828 (CanLII). In that case, a self-represented plaintiff had advanced multiple versions of his statement of claim. Ultimately the Court found the allegations, no matter their form, disclosed no

reasonable cause of action, were raised beyond the applicable limitation period, and constituted an abuse of process. The motion judge noted:

[132] The claim is flawed in its entirety. There is no utility in allowing a further amendment. The plaintiff filed his *Fresh as Amended Claim* in his response to the Crown's motion. He did so without leave but with the acquiescence, ex post facto of the Crown. There is simply no reason, given now three versions of the claim, to think that allowing an amendment can salvage the claim. Leave to amend is therefore denied.

[56] While the facts on this motion are not identical, I find the logic in ***Brummell*** applies to Mr. Cameron's situation. This is a very different scenario than is contemplated under rule 26.01, permitting a plaintiff to amend their claim at any time subject to certain specified considerations.

[57] To sum up, I agree with the submissions of the City and Manitoba and with the conclusion reached by the master. Mr. Cameron's amended claim should be struck. Leave is not granted to amend it.

VI. CONCLUSION

[58] The motions of the City and Manitoba are allowed.

[59] I am prepared to hear the parties in respect of costs.

[60] The orders should be drawn by counsel for the moving parties. A copy of the proposed orders should be sent by e-mail to Mr. Cameron but orders need not bear his consent as to form.

_____J.