

[2] The defendants bring a motion pursuant to Rule 25.11 of the *Court of King's Bench Rules*, M.R. 533/88 (the "Rules") to strike the Claim, in whole or in part. They seek the following relief:

- an order striking the Claim against the individually named RCMP members on the basis that it discloses no reasonable cause of action, without leave to amend;
- an order striking the plaintiff's section 15 Charter claim for failure to plead the essential elements of that cause of action, without leave to amend;
- an order striking numerous paragraphs or phrases as scandalous, frivolous, or vexatious, without leave to amend;
- an order amending the style of cause to substitute the Attorney General of Canada for the Government of Canada; and
- an extension of time to file their statement of defence.

[3] It is well established that a motion to strike is an exceptional remedy that should be used sparingly. As confirmed by the Court of Appeal in ***Grant v. Winnipeg Regional Health Authority et al***, 2015 MBCA 44, pleadings should only be struck where it is plain and obvious that the claim cannot succeed, assuming the facts pleaded to be true.

[4] For the reasons that follow, all the impugned portions of the Claim are struck, primarily without leave to amend.

ISSUES

[5] The issues on this motion are:

- a) Does the Claim disclose a reasonable cause of action against the individual defendants?
- b) Does the Claim disclose a reasonable cause of action for a breach of s. 15 of the *Charter*?
- c) Are portions of the Claim scandalous, frivolous, or vexatious within the meaning of Rule 25.11(1)(b)?
- d) If any portions of the Claim are struck, should the plaintiff be granted leave to amend?
- e) Should the style of cause be amended to substitute the Attorney General of Canada?
- f) Should the defendants be granted an extension of time to file a statement of defence?

ANALYSIS**REASONABLE CAUSE OF ACTION AGAINST THE INDIVIDUAL DEFENDANTS**

[6] Rule 25.11(1)(d) permits the court to strike a pleading that does not disclose a reasonable cause of action. As noted, the governing test is whether it is “plain and obvious” that the claim, as pleaded, cannot succeed.

[7] Pleadings must contain material facts sufficient to support each legal element of the cause of action asserted. Bald allegations, legal conclusions, or rhetorical assertions

are insufficient: ***Robertson v. Manitoba Keewatinowi Okimakanak Inc. et al***, 2011 MBCA 4 at paras 23–25.

[8] The Claim names five RCMP members as defendants but fails to plead material facts connecting any individual defendant to specific wrongful acts. The Claim refers generically to “two RCMP members” but does not identify who did what, when, or how. Nor does it plead facts capable of grounding personal liability for any individual defendant.

[9] The plaintiff appears to pursue vicarious liability against the federal Crown. Section 3 of the ***Crown Liability and Proceedings Act***, R.S.C. 1985, c. C-50, permits such liability without requiring individual Crown servants to be named as defendants. However, where individual officers are named, the claims must plead material facts demonstrating each individual’s liability. The plaintiff must still plead a viable cause of action against them personally.

[10] As presently drafted, the Claim fails to establish any liability by any individual Crown servant. That said, the jurisprudence cautions against denying leave to amend where a viable claim is possible. I am not satisfied that there is absolutely no possible claim against individuals for actions that the plaintiff has described in the Claim.

[11] I am therefore satisfied that the Claim against the individual defendants should be struck for failure to disclose a reasonable cause of action, with leave to amend, should the plaintiff elect to plead material facts capable of supporting such claims.

SECTION 15 OF THE CHARTER

[12] Section 15(1) of the *Charter* guarantees substantive equality. The modern test requires a claimant to plead facts capable of showing:

1. a distinction based on an enumerated or analogous ground; and
2. that the distinction imposes a burden or denies a benefit in a manner that perpetuates disadvantage: ***R v. Sharma***, 2022 SCC 39 at para 28.

[13] The Claim contains only a conclusory assertion that the plaintiff's s. 15 rights were breached. It does not plead the basis of any alleged distinction, nor how any government action created discriminatory disadvantage.

[14] This absence of material facts is fatal to the Claim. The plaintiff's s. 15 claim is therefore struck without leave to amend, as it is plain and obvious that this cause of action has no reasonable prospect of success.

SCANDALOUS, FRIVOLOUS OR VEXATIOUS PLEADING

[15] Rule 25.11(1)(b) authorizes the court to strike pleading content that is scandalous, frivolous or vexatious. As set out in ***Rebillard v. Manitoba (Attorney General)***, 2014 MBQB 181, any unnecessary allegation not justified in law, not relevant, or inserted for colour should be struck out.

[16] The Claim repeatedly characterizes some of the alleged conduct as "kidnapping". Kidnapping is a Criminal Code offence, not a civil cause of action, and no material facts pleaded could support such terminology.

[17] The plaintiff acknowledged at the hearing that the description "savage, violent and abusive gang rape" was inappropriate. The portions of the Claim that refer to a "savage, violent and abusive gang rape" are based on a complete absence of material facts and resemble a grossly inaccurate distortion of the factual assertions in the Claim. There are no facts pleaded to support these allegations, and particularly considering the plaintiff's acknowledgment in that regard, I find that they were solely inserted for colour. These assertions must be struck from the Claim at each instance.

[18] The plaintiff's use of statements such as "cheap prostitute" and "vulgar and creepy" is similarly language that has been inserted only for colour. Such editorialization is not proper in a pleading and should be struck.

[19] Finally, a portion of the Claim refers to non-parties and appears to relate to another proceeding. These assertions are irrelevant, opinion-based and only inserted for colour. Accordingly, they should be struck from the Claim.

[20] The following portions of the Claim (the "impugned portions") are scandalous, frivolous, and/or vexatious and are struck without leave to amend:

a) at paragraph 9 of the Claim, the portions that state:

- "forcefully kidnapped";
- "The Plaintiff, more specifically, refers to it as a ("savage, violent and abusive gang rape") by the Defendant Sergeant and Constables at and in the Gimli Detachment"; and
- "This made her feel like a cheap prostitute"

b) at paragraph 10 of the Claim, the portions that state:

- “kidnapping”; and
- (“savage, violent and abusive gang rape”)

c) at paragraph 11 of the Claim, the portions that state: “it was vulgar and creepy”

d) at paragraph 11(d) of the Claim, the portions that state:

- (“savage, violent and abusive gang rape”); and
- The balance of that paragraph beginning at “She felt the defendant Winnipeg Police Officers . . .”

e) at paragraph 14 of the Claim, the portions that state:

- “kidnapping”; and
- (“savage, violent and abusive gang rape”).

LEAVE TO AMEND

[21] As set out above, the plaintiff is granted leave only with respect to a claim against individual defendants and only if she can properly plead a viable cause of action against any of them personally. The plaintiff is strongly encouraged to seek legal advice on whether she has a cause of action against any individuals. If she amends her claim and the amendments do not disclose a reasonable cause of action against the individuals, the amendments will certainly be struck, and there will likely be elevated cost consequences.

[22] The plaintiff is granted 30 days from the signing of the order to file and serve an amended statement of claim.

AMENDMENT OF THE STYLE OF CAUSE

[23] Section 23(1) of the ***Crown Liability and Proceedings Act*** (*supra*) provides that the Attorney General of Canada is the proper defendant in proceedings against the federal Crown. Rule 5.04(2) permits the court to correct the naming of a party where no non-compensable prejudice results. The amendment sought is technical and necessary. The style of cause is therefore amended to substitute the Attorney General of Canada for the Government of Canada.

EXTENSION OF TIME

[24] Pursuant to Rule 19.01(1), the defendants are not required to deliver a statement of defence until the motion to strike is finally determined. The defendants are granted 30 days from the amendment deadline to file their statement of defence.

CONCLUSION

[25] The motion is allowed in part. I order as follows:

- a. The Claim is struck against the individual defendants with leave to amend.
- b. The Claim is struck in respect of the alleged breach of s. 15 of the *Charter*, without leave to amend.
- c. The impugned portions of the Claim are struck without leave to amend.
- d. The style of cause is amended to substitute the Attorney General of Canada for the Government of Canada.
- e. The plaintiff has 30 days from the signing of the order to file and serve an amended statement of claim (the "amendment deadline").

- f. The defendants have 30 days from the amendment deadline to file and serve a statement of defence.
- g. The plaintiff shall pay costs to the defendants in the amount of \$2,500, in any event of the cause.
- h. The requirement for the plaintiff to approve the form of order is waived.

J. L. Goldenberg
Associate Judge