

COURT OF KING'S BENCH OF MANITOBA

B E T W E E N:

JAMIE RIST,	)	<u>Kathryn Marshall,</u>
	plaintiff,)	for the plaintiff
	)	
- and -	)	
	)	
PRAIRIE MOUNTAIN HEALTH,	)	<u>Kelly L. Dixon,</u>
DR. SHAUN GAUTHIER,	)	for the defendants
	defendants.)	
	)	
	)	
	)	Judgment Delivered:
	)	August 19, 2026

ASSOCIATE JUDGE PATTERSON

INTRODUCTION

[1] Pleadings are the foundation of any action.

[2] While I am not compiling and analyzing data, it is nonetheless my sense that there has been an increase of recent insofar as motions to strike pleadings. Although the Court has encouraged and will continue to facilitate access to justice, more complicated actions and a rise in self-represented litigants may be two of many factors which provide a partial

explanation for this trend. Regardless, this is one such case where the drafting and content of the pleadings are at issue.

BACKGROUND

[3] The Defendants, Prairie Mountain Health and Dr. Shaun Gauthier ("Prairie Mountain" and "Gauthier" respectively, and collectively, the "Defendants"), filed a motion on December 22, 2025 (the "Defendants' Motion") seeking to strike the Statement of Claim (the "Claim"), in whole or in part, without leave to amend, which had been filed on behalf of Dr. Jamie Rist (the "Plaintiff") on June 27, 2025.

[4] The Plaintiff is a physician who presently resides in British Columbia. She graduated from the University of Manitoba's Family Medicine Residency Program (in Brandon, Manitoba) on or about October of 2016.

[5] Prairie Mountain is a regional health authority serving the City of Brandon and Southwestern Manitoba.

[6] Gauthier, a physician, was at all material times the Chief Medical Officer for Prairie Mountain.

[7] The following relief is sought by the Plaintiff within the Claim:

- a. damages for wrongful dismissal;
- b. damages for breach of contract,
- c. a declaration that Prairie Mountain breached its contractual duty of good faith and honesty in contractual performance to the Plaintiff;
- d. damages for breach of contractual duty of good faith and honesty;
- e. damages for bad faith; and

f. pre-judgment and post-judgment interest as well as costs.

[8] Based upon the foregoing, the Claim provides that the Plaintiff is seeking damages from the Defendants in excess of \$1,000,000.00.

[9] Following service of the Claim, counsel for the Defendants served a Request for Particulars upon counsel for the Plaintiff on September 29, 2025. On November 26, 2025, the Answers of the Plaintiff to the Request for Particulars was served upon counsel for the Defendants, subsequent to which the Defendants' Motion was filed and served.

SUMMARY OF DEFENDANTS' POSITION

Failure to disclose a reasonable cause of action

[10] The Defendants rely upon the ***Court of King's Bench Rules***, Man. Reg. 553/88 (the "***Rules***"), and primarily Rule 25.11(1)(d), which confirms that the Court may strike out all or a portion of a pleading, with or without leave to amend, should the pleading fail to disclose a reasonable cause of action.

[11] With reference to the decision of the Supreme Court of Canada in ***R. v. Imperial Tobacco Ltd***, [2011] 3 SCR 45 ("***Imperial Tobacco***"), counsel for the Defendants asserts that the Claim has no reasonable chance of success (even if the facts as pleaded are presumed to be true for these purposes) and should be struck in its entirety, without leave to amend.

Allegations of the Plaintiff from 2016 to September 30, 2022 are statute barred

[12] The Defendants submit that the Claim was filed well after the expiry of the applicable limitation date(s) in connection with the specific allegations made by the

Plaintiff within the Claim. The following facts as pled within the Claim were referred to by counsel for the Defendants:

- a. The Claim reads that the Plaintiff was offered and accepted a 0.25 full-time position with Prairie Mountain at Brandon Regional Health Centre ("BRHC") as an Emergency Medical Officer on or about October of 2016. Contemporaneous with acceptance of this position, the Plaintiff says that she was appointed by Gauthier to become a member of the Associate Medical Staff at BRHC (paras 6 and 7 of the Claim).
- b. On November 30, 2017, the Plaintiff states that Gauthier provided her with a letter of termination, which involved withdrawal of an offer for a position in the Emergency Department at BRHC, terminated the Plaintiff's then term position in the Emergency Department at BRHC and terminated her 0.25 full-time position in the Emergency Department, effective immediately. The Plaintiff alleges that Gauthier informed her not to attend for her scheduled shifts at BRHC the evening of November 30, 2017 (para 47 of the Claim).
- c. The Plaintiff initiated a respectful workplace complaint (the "Complaint") against Gauthier on or about December 19, 2017, alleging that she had suffered repeated bullying and harassment from Gauthier (para 52 of the Claim).
- d. Upon completion of an investigation, the Complaint was dismissed in 2018 (paras 54 to 56 of the Claim).

- e. The Plaintiff contends that she suffered reprisals from Gauthier upon proceeding with the Complaint. Without limiting the foregoing, the Plaintiff alleges that the Defendants did not allow her to pick up casual shifts in the Emergency Room at BRHC, excluded her from available incentives, did not permit her to work as a hospitalist, denied her the opportunity to cover for other rural physicians, attempted to take away the Plaintiff's privileges entirely and made disparaging comments about her reputation, both personally and professionally (paras 57 through 64 of the Claim).
- f. As highlighted by counsel for the Defendants, the initial seventy paragraphs of the Claim (approximately ten pages) are focused upon events which are alleged to have occurred between 2016 and 2019.

[13] It was concisely summarized by counsel for the Defendants that "the statement of claim complains of events that occurred between 2016 and 2018, culminating in the termination of [the Plaintiff's] positions on November 30, 2017, and the contemporaneous cancelling of emergency room shifts" (page 6 of the Motion Brief filed on behalf of the Defendants).

[14] Accordingly, the Defendants take the position that the above noted circumstances as alleged by the Plaintiff within the Claim occurred prior to September 30, 2022 when ***The Limitations Act***, C.C.S.M. c. L150 (the "***New Act***") was enacted in Manitoba.

[15] Section 31(3) of the ***New Act*** is relied upon by the Defendants, which provides as follows:

Claim discovered under former Act

31(3) In the case of a claim **discovered before the coming into force of this Act, a proceeding may be commenced under this Act if it is commenced before the earlier of**

(a) two years after the coming into force of this Act; and

(b) the day the limitation period under the former Act expires or would expire.

(emphasis added)

Découverte des faits sous le régime de la loi antérieure

31(3) Sous le régime de la présente loi, les instances dont les faits ont été découverts avant l'entrée en vigueur de la présente loi se prescrivent par deux ans à compter de cette entrée en vigueur; toutefois, si le délai de prescription prévu par la loi antérieure expire plus tôt, celui-ci s'applique.

[16] From the Defendants' perspective, the Plaintiff was well aware and knew (or ought reasonably to have known) that her positions with Prairie Mountain were terminated on November 30, 2017, almost five years prior to the ***New Act*** being enacted on September 30, 2022.

[17] Similarly, the Defendants contend that the Complaint against Gauthier and other allegations of the Plaintiff, including but not limited to attempting to take away her privileges or disparaging her personal and professional reputation, all occurred before enactment of the ***New Act***.

[18] The Defendants submit that the Claim should have been filed by the Plaintiff on or before the earlier of the two following options (as the Claim was initiated following enactment of the ***New Act***):

- a. two years following September 30, 2022 (September 30, 2024); or

- b. the date upon which the applicable limitation period expired in accordance with ***The Limitation of Actions Act***, R.S.M. 1987, c. L150 (the "***Old Act***"), which would be November 30, 2023 should a limitation period of six years be applied for alleged breach of contract).

[19] In reliance upon the decision of the Honourable Justice Bock of this Court in ***Kitching v. Morris*** (08 November 2024) CI 23.01.40153 ("***Kitching***"), and the decision of the Manitoba Court of Appeal in ***Abas Auto Inc. v. Superior General Partner Inc.***, 2015 MBCA 104 ("***Abas Auto***"), counsel for the Defendants asserts it is clear and uncontroverted that the applicable limitation period in connection with the cause(s) of action raised by the Plaintiff had expired prior to the Claim being filed.

[20] The Manitoba Court of Appeal held in ***Abas Auto*** (at para 11) that "A limitation defence should be on a motion for summary judgment or upon trial of an issue, but not on a motion to strike under r 25.11(d) unless the pleadings themselves, on their face, contain an admission or facts sufficient to conclude that the cause of action arose after the expiry of the limitation period."

[21] Based upon the foregoing, the Defendants submit that the Claim should be struck for failing to disclose any reasonable cause of action pursuant to Rule 25.11(1)(d).

Allegations of the Plaintiff following September 30, 2022 do not disclose a reasonable cause of action

[22] The Defendants contend that while the Plaintiff has made further allegations involving the Defendants, there is still no reasonable cause of action disclosed within the balance of the Claim. Counsel for the Defendants referred to the following further facts as pled within the Claim:

- a. The Plaintiff alleges that she was approached by Prairie Mountain to assist with hospitalist care on or about January of 2023 (para 71 of the Claim).
- b. On January 13, 2023, the Plaintiff states that she gave up inpatient care at her own clinic (established in 2021) to resume privileges and provide coverage in various capacities at BRHC and other facilities administered by Prairie Mountain (paras 65 through 67 and 71 of the Claim).
- c. The Plaintiff says she was then informed by Prairie Mountain on June 29, 2023 that she could no longer cover shifts and needed to find alternate employment, resulting in an alleged loss in earnings to the Plaintiff of approximately \$70,000.00 (para 72 of the Claim).

[23] In response, counsel for the Defendants directed the Court's attention to the Request for Particulars, wherein the Plaintiff was asked to clarify whether the provision of services in 2023 (described within para 71 of the Claim) were provided by her pursuant to a contract (if so, details were sought as to when was the contract made, with whom, and if was it oral or in writing). Despite the lengthy response of the Plaintiff within the Answers to the Request for Particulars (over four pages), counsel for the Defendants submits that the Plaintiff did not identify any specific contract(s) by which the services of the Plaintiff were provided (as referenced at para 71 of the Claim).

[24] As such, the Defendants take the position that there is no reasonable cause of action set forth within the Claim as it relates to the allegations raised by the Plaintiff concerning her provision of services for Prairie Mountain following September 30, 2022.

No ongoing, continuous or "rolling cause of action"

[25] The Defendants adamantly dispute the argument advanced on behalf of the Plaintiff to the effect that the Court should recognize there was an ongoing, continuous or "rolling cause of action", such that the operative limitation period would expire as of June 29, 2025 (two years following the Plaintiff being informed by Prairie Mountain, on June 29, 2023, that she could no longer cover shifts and needed to find alternate employment as outlined within para 72 of the Claim).

Claim is confusing, repetitive and prolix (frivolous, vexatious and/or an abuse of process)

[26] In the alternative (or in addition), the Defendants submit that the Claim is confusing, repetitive and prolix, such that it should be struck in its entirety for failure to comply with the generally accepted rules of pleadings. As support for the above noted position, counsel for the Defendants highlighted the following:

- a. The Claim fails to focus upon and plead material facts to support the relief requested by the Plaintiff; instead, the Claim is comprised largely of evidence or excessive background details.
- b. In ***Peguis First Nation et al v. Canada (Attorney General)***, 2014 MBQB 98 ("***Peguis***"), the Honourable Justice Dewar observed (at para 39) that "a statement of claim is not a hopper into which causes of action are simply thrown in a haphazard manner so that they have to be pulled out by a defendant and pieced together."
- c. As articulated at page 8 of the Motion Brief filed by counsel for the Defendants, adverse parties are entitled to know "the case be met" and "to respond only to

pleadings which follow the rules of court. The rules require material facts underpinning each cause of action to be plead clearly and precisely with the facts supporting each cause of action pleaded separately as far as that is possible. The statement of claim fails to do this”.

[27] Ultimately, the Defendants contend that the Claim as filed is arguably scandalous, frivolous and vexatious by raising allegations that are not relevant, argumentative, unfounded and inflammatory, all of which is contrary to Rule 25.11(1)(b).

[28] By extension, counsel for the Defendants also submits that the Claim as filed represents an abuse of process in contravention of Rule 25.11(1)(c).

Application of Rule 2.02(a) and (b)

[29] From the Defendants’ standpoint, there was no inordinate or inexcusable delay on their part, nor any significant prejudice to the Plaintiff, as it relates to preparation and service of the Request for Particulars (on September 29, 2025), followed by filing of the Defendants’ Motion (on December 22, 2025), which was approximately one month following service of the Answers to the Request for Particulars on behalf of the Plaintiff (on November 26, 2025).

Leave to Amend

[30] It was reiterated by counsel for the Defendants that leave to amend the Claim should not be granted when any relevant limitation date(s) has expired.

Response to other submissions by counsel for the Plaintiff

[31] Counsel for the Defendants was emphatic that a physician who acquires privileges from a health authority or facility does not become an employee or contractor on behalf

of that entity unless there has been contract entered into by the parties (in writing and/or orally), which confirms clearly the specific services to be provided and the capacity by which such services are to be provided by the physician.

[32] It was further noted by counsel for the Defendants that privileges acquired by physicians in Manitoba are governed by professional obligations pursuant to statute, regulations and medical by-laws as well as policy of a health care authority.

SUMMARY OF PLAINTIFF'S POSITION

Reasonable cause of action is disclosed which is not statute barred

[33] The Plaintiff contends that the Defendants have not demonstrated (on a balance of probabilities) it is plain and obvious that the Claim discloses no reasonable cause of action.

[34] Counsel for the Plaintiff submits that the wrongful dismissal (constructive dismissal) or breach of contract cause of action as set forth within the Claim is not straightforward, and that the Plaintiff served as an employee and/or dependent contractor for Prairie Mountain (not as an independent contractor).

[35] According to counsel for the Plaintiff, a motion to strike a pleading is not appropriate where a limitation defence is raised.

[36] Counsel for the Plaintiff relies upon the decision of the Manitoba Court of Appeal in ***Manning v. Nassar***, 1990 CanLII 11078 (MBCA), 70 Man. R. (2d) 310 ("***Manning***") where it was held (at para 40) that "a course which cannot be pursued is a motion by the defendant to strike out a claim on the ground that it was commenced after the expiry of a limitation period". As to the Defendants' reliance upon ***Abas Auto***, counsel for the

Plaintiff submits it is not at all clear from the Claim that the causes of action being pursued by the Plaintiff arose prior to expiration of the applicable limitation period(s).

[37] In the circumstances, counsel for the Plaintiff asserts that the Claim is not statute barred as it was filed on June 27, 2025, less than two years following June 29, 2023 (the date when the Plaintiff alleges she was informed by Prairie Mountain that she would no longer be permitted to cover shifts and needed to secure alternate employment).

Ongoing, continuous or "rolling cause of action"

[38] Within the Motion Brief filed on behalf of the Plaintiff (at para 20), it is articulated that any facts or circumstances establishing a cause of action for the Plaintiff which arose prior to June 29, 2023 "are not statute barred as they have been maintained by way of a rolling cause of action, or in other words, a series of acts or omissions respecting the same obligation". Upon this basis, it is the Plaintiff's position that the ***New Act*** has application "as the claim was discovered June 29, 2023, which is the day the last act or omission in the series occurred".

[39] As described by counsel for the Plaintiff, the wrongful dismissal (constructive dismissal) or breach of contract cause of action of the Plaintiff was a "continuous act or omission" and/or "a series of acts or omissions" in accordance with sections 8(a) and 8(b) of the ***New Act***.

[40] Counsel for the Plaintiff referred to the decision of the Supreme Court of the Northwest Territories in ***Acho Dene Koe First Nation v. Paramount Resources Ltd.***, 2025 NWTSC 65 ("ADK"). In ***ADK*** (at para 57, without reference to the authorities cited), it states that "(T)he jurisprudence suggests that a rolling limitation period may

apply in a breach-of-contract case in circumstances where the defendant has a recurring contractual obligation.”

[41] As a result, it is asserted on behalf of the Plaintiff that the material facts as pled within the Claim, when taken together, resulted in the wrongful dismissal (constructive dismissal) or breach of contract cause of action for the Plaintiff against the Defendants as of June 29, 2023 (the Plaintiff alleges that her privileges with Prairie Mountain had continued until being terminated on June 29, 2023).

[42] It is acknowledged by counsel for the Plaintiff (at para 9 within the Motion Brief filed on behalf of the Plaintiff) that “there has been little development or plain recognition of a ‘rolling cause of action’ or ‘rolling limitation period’ principle in Manitoba.” Nonetheless, the decision in **6165347 Manitoba Inc. et al. v. Jenna Vandal et al.**, 2019 MBQB 69 (“**Vandal**”) is referenced by counsel for the Plaintiff (paras 95 and 96) to assert that “novelty of the claim is not in and of itself sufficient to preclude an action from proceeding to trial.”

Compliance with the principles of pleadings and Rules 25.11(1)(b) and (c)

[43] While admitting that the Claim was “lengthy” and contained a “lot of history”, counsel for the Plaintiff submits that required material facts were pled. In addition, the Plaintiff refutes the position advanced on behalf of the Defendants that the Claim as filed is scandalous, frivolous and vexatious, and ultimately, represents an abuse of process.

[44] It was also argued on behalf of the Plaintiff that only broad allegations of non-compliance with the **Rules** have been raised by the Defendants, as opposed to

highlighting specific portions of the Claim which are alleged to have contravened the principles applicable to preparation of pleadings.

[45] With reference to ***Peguis*** (para 18), the Plaintiff takes the position that the Defendants have been provided with sufficient notice of what relief is being requested and what is being alleged insofar as the “case to be met” by the Defendants.

Application of Rule 2.02(a) and (b)

[46] The Plaintiff submits that the relief sought pursuant to the Defendants’ Motion ought not to be granted pursuant to Rule 2.02. In this regard, the Plaintiff relies upon the decision of my former colleague, the Honourable Associate Judge Lee (then Master Lee) in ***Hassman v. KCM Containment Systems Ltd.***, 1995 CanLII 16457 (MBQB), (1995) 106 Man. R. (2d) 18 (“***Hassman***”).

[47] In ***Hassman***, the defendant sought to set aside an interlocutory garnishment order upon grounds that the defendant was not properly named within the pleadings, and because an incorrect provision was relied upon within the motion requesting interim relief. The court concluded (at para 8) that “... a statement of defence was filed and a further three months passed before the applicant filed its notice of motion to set aside the garnishing order. Given the nature of the relief sought, I am satisfied that more than a reasonable period of time has expired and the defendant should in any event be precluded from obtaining the relief sought.”

[48] With the case at bar, counsel for the Plaintiff contends that following service of the Claim on July 31, 2025, there were “two separate month-long extensions” granted (at the request of counsel for the Defendants) to file and serve a defence. On

September 29, 2025, it was the Request for Particulars (not a defence) which was served upon counsel for the Plaintiff.

[49] As the Defendants' Motion was not filed until approximately five months following service of the Claim (and a defence has yet to be filed and served), counsel for the Plaintiff submits that the Defendants' Motion should be dismissed in consideration of Rule 2.02(a).

[50] Further, or in the alternative, counsel for the Plaintiff asserts that the Defendants are in contravention of Rule 2.02(b) by preparing and serving the Request for Particulars (a "further step in the proceeding") when the Defendants had ample opportunity to review the Claim and knew (or ought to have known) of the alleged irregularities with the Claim that are presently in issue before the Court. In addition, counsel for the Plaintiff emphasized that leave of the Court was not sought for filing the Defendants' Motion as contemplated by Rule 2.02(b).

Leave to Amend

[51] Should the Court conclude that the Defendants' Motion ought to be granted (which is adamantly opposed by the Plaintiff), counsel for the Plaintiff submits that leave to amend the Claim should be permitted in accordance with the following grounds:

- a. First and foremost, leave to amend the Claim has not been requested previously on behalf of the Plaintiff.
- b. Counsel for Plaintiff referenced the decision of my colleague, the Honourable Associate Judge Goldenberg, in ***Galton Corporation et al. v. Riley et al.***, 2023 MBKB 73 ("***Galton***"), where leave to amend pleadings was

granted in the face of an alleged limitation defence as well as a finding that the pleadings as drafted had failed to disclose a reasonable cause of action.

APPLICABLE RULES

[52] The following portions of the **Rules** are applicable to the disputed issues herein:

RULES OF PLEADING — APPLICABLE TO ALL PLEADINGS

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.**

...

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.

RÈGLES APPLICABLES À TOUS LES ACTES DE PROCÉDURE

Faits pertinents

25.06(1) L'acte de procédure expose de façon concise les faits pertinents sur lesquels la partie fonde sa demande ou sa défense, mais non les éléments de preuve devant les établir

...

25.11(1) Le tribunal peut, sur motion, radier ou supprimer un acte de procédure ou un autre document, en tout ou en partie, avec ou sans autorisation de le modifier, parce que l'acte de procédure ou le document, selon le cas :

a) peut compromettre ou retarder l'instruction équitable de l'action;

b) est scandaleux, frivole ou vexatoire;

c) constitue un recours abusif au tribunal;

d) ne révèle pas une cause d'action ou une défense raisonnable.

AMENDMENT OF PLEADINGS

General power of court

26.01 On motion **at any stage of an action the court may grant leave to amend a pleading on such terms as are just, unless prejudice would result that could not be compensated for by costs or an adjournment.**

PARTICULARS

Service of request

25.10(1) Where a party desires particulars of an allegation in the pleading of an opposite party, a written request shall be served on the opposite party specifying the particulars desired

Response to request

25.10(1.1) The opposite party shall

(a) file and serve the particulars; or

(b) file and serve a written statement refusing to provide the particulars;
within ten days of being served with a request for particulars.

Failure to comply

25.10(2) Where the opposite party fails to file and serve the particulars or fails to file and serve a written statement refusing to provide the particulars within ten

MODIFICATION DES ACTES DE PROCÉDURE

Pouvoir général du tribunal

26.01 À moins qu'il n'en résulte un préjudice qui ne saurait être réparé par les dépens ou par un ajournement, le tribunal peut, à la suite d'une motion présentée à une étape d'une action, accorder l'autorisation de modifier un acte de procédure à des conditions justes.

PRÉCISIONS

Signification de la demande

25.10(1) La partie qui désire que soient fournies des précisions sur une allégation contenue dans un acte de procédure de la partie adverse signifie à cette dernière une demande écrite indiquant les précisions demandées.

Réponse à la demande de précisions

25.10(1.1) Dans les 10 jours après avoir reçu signification d'une demande de précisions, la partie adverse :

a) dépose et signifie les précisions;

b) dépose et signifie une déclaration écrite aux termes de laquelle elle refuse de fournir les précisions.

Défaut

25.10(2) Si la partie adverse omet de déposer et de signifier les précisions ou une déclaration écrite aux termes de laquelle elle

days, the court may order particulars to be filed and served within a specified time.

Not a stay

25.10(3) A request for particulars shall not operate as a stay of proceedings except in the circumstances and for the periods of time referred to in subrules 25.10(4) and (4.1).

Pleading in response where particulars requested

25.10(4) Where particulars are requested, the party need not file a pleading in response until the expiry of 10 days after the particulars have been provided or refused in writing.

NON-COMPLIANCE WITH THE RULES EFFECT OF NON-COMPLIANCE

Not a nullity

2.01(1) A failure to comply with these rules is an irregularity and does not render a proceeding or a step, document or order in a proceeding a nullity, and the court,

(a) may grant all necessary amendments or other relief, on such terms as are just, to secure the just determination of the real matters in dispute; or

(b) only where and as necessary in the interest of justice, may set

refuse de les fournir dans les 10 jours suivant la demande de précisions, le tribunal peut ordonner qu'elles soient déposées et signifiées dans un délai déterminé.

Sursis de l'instance

25.10(3) Une demande de précisions ne constitue un sursis de l'instance que dans les circonstances et pendant les délais prévus aux paragraphes 25.10(4) et (4.1).

Acte de procédure — précisions demandées

25.10(4) Si des précisions sont demandées, la partie n'a pas besoin de déposer un acte de procédure en réponse avant la fin d'un délai de 10 jours après que les précisions ont été fournies ou refusées par écrit.

INOBSERVATION DES RÈGLES EFFET DE L'INOBSERVATION

Procédure ou document non entaché de nullité

2.01(1) L'inobservation des présentes règles constitue une irrégularité et n'est pas cause de nullité de l'instance ni d'une mesure prise, d'un document donné ou d'une ordonnance rendue dans le cadre de celle-ci. Le tribunal peut :

a) soit autoriser les modifications ou accorder les mesures de redressement nécessaires, à des conditions justes, afin d'assurer une résolution équitable des véritables questions en litige;

aside the proceeding or a step, document or order in the proceeding in whole or in part

2.02 A motion to attack a proceeding or a step, document or order in a proceeding for irregularity shall not be made,

(a) after the expiry of a reasonable time after the moving party knows or ought reasonably to have known of the irregularity; or

(b) if the moving party has taken any further step in the proceeding after obtaining knowledge of the irregularity, except with leave of the court.

2.03 The court may, only where and as necessary in the interest of justice, dispense with compliance with any rule at any time.

INTERPRETATION

General principle

1.04(1) These rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits.

b) soit annuler l'instance ou une mesure prise, un document donné ou une ordonnance rendue dans le cadre de celle-ci, en tout ou en partie, seulement si cela est nécessaire dans l'intérêt de la justice.

2.02 La requête qui vise à contester la régularité d'une instance ou d'une mesure prise, d'un document donné ou d'une ordonnance rendue dans le cadre de celle-ci, n'est pas présentée, sauf avec l'autorisation du tribunal :

a) après l'expiration d'un délai raisonnable après que l'auteur de la motion a pris ou aurait raisonnablement dû prendre connaissance de l'irrégularité;

b) si l'auteur de la motion a pris une autre mesure dans le cadre de l'instance après avoir pris connaissance de l'irrégularité.

2.03 Le tribunal peut dispenser de l'observation d'une règle seulement si cela est nécessaire dans l'intérêt de la justice.

PRINCIPES D'INTERPRÉTATION

Principe général

1.04(1) Les présentes règles doivent recevoir une interprétation large afin que soit assurée la résolution équitable sur le fond de chaque instance civile, de la façon la plus expéditive et la moins onéreuse.

Proportionality

1.04(1.1) In applying these rules in a proceeding, **the court is to make orders and give directions that are proportionate to the following:**

- (a) the nature of the proceeding;
- (b) the amount that is probably at issue in the proceeding;
- (c) the complexity of the issues involved in the proceeding;
- (d) the likely expense of the proceeding to the parties.

(emphasis added)

Proportionnalité

1.04(1.1) Lorsqu'il applique les présentes règles dans le cadre d'une instance, le tribunal rend des ordonnances et donne des directives qui sont proportionnées :

- a) à la nature de l'instance;
- b) au montant probablement en litige;
- c) au degré de complexité des questions en litige;
- d) au coût probable de l'instance pour les parties.

[53] Aside from the **Rules**, the following portions of the **New Act** are of relevance to the case at bar:

Basic limitation period — 2 years from discovery

6 Unless this Act provides otherwise, **a proceeding respecting a claim must not be commenced more than two years after the day the claim is discovered**

When is a claim discovered?

7 A claim is discovered under this Act **on the day the claimant first knew or ought to have known all of the following:**

- (a) that injury, **loss or damage has occurred;**

Délai de prescription de base — deux ans à compter de la découverte des faits

6 Sauf disposition contraire de la présente loi, les instances à l'égard d'une réclamation se prescrivent par deux ans à compter du jour de la découverte des faits.

Date de la découverte des faits

7 Sous le régime de la présente loi, les faits sont découverts le jour où le requérant prend connaissance ou aurait dû prendre connaissance de tous les éléments suivants :

- a) le préjudice, la perte ou les dommages sont survenus;

(b) that the injury, **loss or damage was caused by or contributed to by an act** or omission;

(c) **that the act or omission was that of a person against whom the claim is or may be made;**

(d) that, given the nature and circumstances of the injury, loss or damage, **a proceeding would be an appropriate means to seek to remedy it.**

Date of injury, loss or damage — specific cases

8 For the purpose of clause 7(a), the day an injury, loss or damage occurs is as follows:

(a) **in the case of a continuous act or omission, the day the act or omission ceases;**

(b) **in the case of a series of acts or omissions respecting the same obligation, the day the last act or omission in the series occurs;**

(c) in the case of a claim to realize on collateral under a security agreement, the day the default first occurs;

(d) in the case of a claim to redeem collateral under a security agreement, the day the creditor takes possession of the collateral;

(e) in the case of a default in performing a demand obligation, the day the default occurs, once a demand for performance is made;

b) le préjudice, la perte ou les dommages ont été causés en tout ou en partie par un acte ou une omission;

c) l'acte ou l'omission ont été commis par la personne contre laquelle la réclamation est faite ou pourrait l'être;

d) étant donné la nature et les circonstances du préjudice, de la perte ou des dommages, l'introduction d'une instance serait un moyen approprié de tenter d'en obtenir réparation.

Date de la survenance du préjudice, de la perte ou des dommages — cas particuliers

8 Pour l'application de l'alinéa 7a), le jour où le préjudice, la perte ou les dommages surviennent correspond :

a) dans le cas d'un acte ou d'une omission continuus, au jour où cessent l'acte ou l'omission;

b) dans le cas d'une série d'actes ou d'omissions qui se rapportent à une même obligation, au jour où a lieu le dernier acte ou la dernière omission de la série;

c) dans le cas d'une réclamation visant la réalisation d'un bien grevé aux termes d'un contrat de sûreté, au premier jour où survient le défaut;

d) dans le cas d'une réclamation visant le rachat d'un bien grevé aux termes d'un contrat de sûreté, au jour où le créancier prend possession du bien;

(f) in the case of a claim for contribution or indemnity by one alleged wrongdoer against another, the day the liability of the claimant, in relation to the matter for which contribution or indemnity is sought, is confirmed by a court judgment, arbitration award or settlement agreement.

Burden of proof

9 The claimant has the burden of proving that a proceeding has been commenced within the basic limitation period

(emphasis added)

e) dans le cas du défaut d'exécution d'un engagement à vue, au premier jour où le défaut survient, une fois qu'une demande d'exécution est présentée;

f) dans le cas d'une réclamation pour contribution ou indemnité faite par un des prétendus transgresseurs contre un autre, au jour où, relativement à l'affaire pour laquelle une contribution ou une indemnité est demandée, la responsabilité du requérant est confirmée par un jugement du tribunal, une sentence arbitrale ou un règlement à l'amiable.

Fardeau de la preuve

9 Il incombe au requérant de prouver qu'une instance a été introduite avant l'expiration du délai de prescription de base.

[54] Within the *Old Act*, section 2(1) sets forth the applicable limitation periods:

Limitations

2(1) The following actions shall be commenced within and not after the times respectively hereinafter mentioned:

...

(b) **actions for** penalties, **damages**, or sums of money in the nature of penalties, given by any statute to the person aggrieved, **within two years after the cause of action arose;**

(c) **actions for defamation, within two years of the**

Prescription

2(1) Les actions suivantes se prescrivent par les délais respectifs indiqués ci-dessous :

...

b) une action en recouvrement d'une pénalité, de dommages-intérêts, ou d'une somme d'argent de la nature d'une pénalité, accordés par une loi à la personne lésée, se prescrit par deux ans, à compter de la naissance de la cause d'action;

publication of the defamatory matter, or, where special damage is the gist of the action, within two years after the occurrence of such damage;

...

(i) actions for the recovery of money (except in respect of a debt charged upon land), **whether recoverable as a debt or damages** or otherwise, and whether a recognizance, bond, covenant, or other specialty, or on a simple contract, express or implied, and actions for an account or not accounting, **within six years after the cause of action arose;**

...

(n) any other action for which provision is not specifically made in this Act, within six years after the cause of action arose.

(emphasis added)

c) une action en diffamation se prescrit par deux ans, à compter de la publication de l'écrit diffamatoire; lorsque l'action est fondée sur des dommages spéciaux, la prescription est de deux ans à compter du moment où ces dommages ont été subis;

...

(i) lorsque la personne a connaissance de la violation de sa vie privée au moment où cette violation a lieu, l'action se prescrit par deux ans, à compter de la date à laquelle cette violation a lieu,

...

n) une autre action qui ne fait pas explicitement l'objet d'une disposition de la présente loi, se prescrit par six ans, à compter de la naissance de la cause d'action.

RELEVANT CASE LAW

Motions to strike pleadings generally

[55] ***Olfman v. University of Manitoba et al.***, 2014 MBQB 128 ("***Olfman***"), is a decision of the Honourable Justice Martin which sets forth the parameters to follow when preparing pleadings to commence an action (at para 13):

[13] Dewar J. recently expounded on the rules of pleadings in ***Peguis First Nation et al v. Canada (Attorney General)***, 2014 MBQB 98. Respecting Rule 25.06, at para. 6 he noted the following comments of Holmested and Watson, *Ontario Civil Procedure*, looseleaf (Toronto: Carswell, 1993):

This is the master rule of pleading: all of the other pleading rules are essentially corollaries or qualifications to this basic rule that the pleader must state the material facts relied upon for his or her claim or defence. **The rule involves four separate elements: (1) every pleading must state facts, not mere conclusions of law; (2) it must state material facts and not include facts which are immaterial; (3) it must state facts and not the evidence by which they are to be proved; (4) it must state facts concisely in a summary form.** See Odgers, *Principles of Pleading and Practice* (21st ed.) p. 94. As Master Haberman stated in *Pineau v. Ontario Lottery & Gaming Corp.*, 2011 CarswellOnt 11375 (Master), "A pleading is meant to give all parties fair notice of what the others plan to prove at trial, but not necessarily of how they intend to prove it." Thus, a party should avoid pleading (a) bald conclusory statements or arguments, (b) irrelevant matters, (c) evidence and (d) prolix descriptions of factual detail.

(emphasis added)

[56] Subsequent to *Olfman*, the Manitoba Court of Appeal in *Grant v. Winnipeg Regional Health Authority et al.*, 2015 MBCA 44 ("*Grant*"), emphasized the fundamental principles to apply with respect to motions to strike pleadings (at paras 35 to 37):

[35] The purpose of Queen's Bench Rule 25.11(d) is to ensure the effectiveness and fairness of the litigation process by the weeding out of hopeless claims or defences, without the necessity and cost of the full civil process (*R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42 at para. 19, [2011] 3 S.C.R. 45). **Protracted proceedings are unnecessary if a pleading is substantively inadequate to make out a claim or answer one** (*Dawson et al. v. Rexcraft Storage and Warehouse Inc. et al.* (1998), 1998 CanLII 4831 (ON CA), 111 O.A.C. 201 at paras. 8-10, 12 (C.A.)).

[36] The remedy of striking out a pleading, however, is to be used sparingly. It is reserved only for the "clearest of cases" (*Ellett and Kyte v. Qualico Securities (Winnipeg) Ltd. et al.* (1990), 1990 CanLII 11333 (MB CA), 64 Man.R. (2d) 318 at para. 6 (C.A.)). **A claim or defence, or part thereof, should not be struck out unless the moving party demonstrates that it is "plain and obvious" that the cause of action or defence, as pleaded, is certain to fail** (*Odhavji Estate v. Woodhouse*, 2003 SCC 69 at para. 15, [2003] 3 S.C.R. 263).

[37] On a motion to strike, the claim or defence should be read generously notwithstanding any imprecision in the language used in it.

Factors such as the novelty of a claim or defence, the length or complexity of the issues raised by it, or the likelihood that the opposing party has a strong position that will likely defeat the claim or defence are not reasons alone to strike out the pleading (*Hunt* at p. 980). If a claim or defence has a reasonable prospect of success, it should not be struck out (*Imperial Tobacco Canada Ltd.* at para. 17; *Driskell v. Dangerfield et al.*, 2008 MBCA 60 at paras. 11-13, 228 Man.R. (2d) 116).

(emphasis added)

[57] A further helpful summary of guiding concepts with respect to preparation of pleadings is provided by Goldenberg, A.J. in ***Rebillard v. The Government of Canada et al.***, 2026 MBKB 61 (at paras 6 and 7):

[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.

(emphasis added)

[58] The aforementioned principles were reviewed comprehensively by the Honourable Justice Joyal (then Chief Justice of the Manitoba Court of King’s Bench and recently appointed to the Supreme Court of Canada) in ***Winnipeg (City) v. Caspian Projects Inc. et al.***, 2020 MBQB 129 (“*Caspian*”), and last year by Goldenberg A.J., when referring to *Caspian* in ***Futros et al. v. Futros and Deighton***, 2025 MBKB 24 (“*Futros*”), where she commented that “the law relating to striking a pleading for failure to disclose a reasonable cause of action is well settled” (para 33).

[59] More recently, in ***Farmers Edge Inc. v. Precision Weather Solutions Inc.***, 2025 MBKB 113 (“*Farmers*”), which was upheld on appeal (2026 MBCA 63), Martin J.

succinctly summarized the considerations which the Court must balance when determining motions to strike pleadings (at para 35):

[35] I start by recognizing what is trite: striking a pleading wholly or partially, as in this situation, deprives the defaulting party of their day in court. It is an exceptional remedy, to be used cautiously. On the flipside, increasingly courts and the public recognize that the justice system is strained to do justice; the non-defaulting party, or access to justice more generally, cannot be straitjacketed by disinterested or distracted or disorganized or disingenuous litigants. Collectively, systemic issues including the high cost of litigation, the effort on parties and witnesses required to marshal a case, and psychological toll on them, demands no less.

(emphasis added)

[60] *Dowd et al. v. Skip the Dishes Restaurant Services Inc. et al.*, 2019 MBQB 63 ("*Skip the Dishes*") is a decision of my colleague, the Honourable Senior Associate Judge Clearwater (then Master Clearwater), which provides further context by identifying three specific instances when a court may determine that pleadings ought to be struck (at para 52):

[52] A finding that the pleading fails to disclose a reasonable cause of action may be made for various reasons. It is often because the court has determined there is a complete failure to plead the material facts supporting a particular cause of action. Alternatively, the court may determine the cause of action being pled is not one recognized by law. Finally, the court may strike the claim because it has found the pleadings are so incomprehensible, or fatally flawed, that it is clear the defendant cannot reasonably be expected to understand the case it must meet (see *Ebb and Flow*).

(emphasis added)

Striking pleadings where no reasonable cause of action disclosed (limitation periods)

[61] In *Re Vincent Estate; Vincent v. Vincent et al.*, 2025 MBKB 134 ("*Vincent*"), the Honourable Justice Rempel provides an informative overview of the changes to

Manitoba legislation concerning limitation periods which were ushered in with enactment of the ***New Act*** (commencing at para 48):

[48] With the repeal of ***The Limitations of Actions Act***, C.C.S.M c. L150, in 2022, (the "***Old Act***") **Manitoba brought its limitations of action regime into line with most Canadian provinces and territories.** As the Minister of Justice and Attorney General explained of the new legislation at first reading of what was then Bill 51 of the 3rd Session of the 42nd Legislature, "*[m]ost other provinces have already modernized their corresponding acts, and Manitoba is now doing the same*" (see Manitoba, Legislative Assembly, Debates and Proceedings, Official Report (Hansard), The Honourable Myrna Driedger, Speaker, 42-3, Vol. LXXV No. 12 (2 November 2020), at p. 438 (Cliff Cullen)).

[49] **By passing the *Act*, Manitoba replaced a patchwork quilt of limitation periods, ranging from two to ten years under the *Old Act*.** The variation in limitation periods under the ***Old Act*** was based in 19th Century English law, which prescribed different limitation periods depending on the legal principles grounding a lawsuit, which is called a "cause of action". In some lawsuits under the ***Old Act***, where two different causes of action emerged from the same fact scenario, a plaintiff could be bound by two different limitation periods.

[50] Instead of requiring litigants and their lawyers to identify the correct legal principles that gave rise to all possible claims, **the modern approach prescribed by the *Act* subjects almost all claims to a single basic limitation period of two years. This two-year basic limitation framework applies to all claims, other than a short list of clearly identified exceptions** in s. 18 of the ***Act***, where no limitation period applies. Will challenges are not among the prescribed exceptions.

[51] The ***Act*** employs broad and expansive language to describe what a "*claim*" is rather than a technical legal term like "cause of action" and avoids referring to the three different types of pleadings that are used to initiate a claim in the Court of King's Bench, namely a statement of claim, notice of application or petition. It is also significant, in my view, that the ***Act*** uses open-ended language, to describe the type of harm flowing from a claim, namely "*injury, loss or damage*" rather than detailed legal terminology lawyers use to describe the many different varieties of relief a litigant might be seeking.

...

[53] Under the ***Act*** the basic two-year limitation period starts to run from the day a claim is "*discovered*" by a claimant.

...

(emphasis added)

[62] With respect to the principle of discoverability as highlighted by Rempel J. in ***Vincent*** (at para 55):

[55] ***Grant Thornton LLP v. New Brunswick*, 2021 SCC 31, remains the leading case in Canada regarding the principle of discovery in limitation cases. In *Grant Thornton LLP*, the Supreme Court of Canada teaches that the discoverability requirements in the New Brunswick legislation:**

[29] ... operates against the backdrop of a common law discoverability rule that is well-established. **Under that rule, “a cause of action arises for purposes of a limitation period when the material facts on which it is based have been discovered or ought to have been discovered by the plaintiff by the exercise of reasonable diligence”** (*Central Trust Co. v. Rafuse*, 1986 CanLII 29 (SCC), [1986] 2 S.C.R. 147, at p. 224, citing *Kamloops (City of) v. Nielsen*, 1984 CanLII 21 (SCC), [1984] 2 S.C.R. 2; see also *Ryan v. Moore*, 2005 SCC 38, [2005] 2 S.C.R. 53, at paras. 2 and 22). This rule has its origins in equity. In particular, it seeks to balance the three rationales for imposing limitation periods — the guarantee of repose, the desire to foreclose claims based on stale evidence and the expectation that a plaintiff will start a claim in a timely manner (*M. (K.) v. M. (H.)*, 1992 CanLII 31 (SCC), [1992] 3 S.C.R. 6, at pp. 29-30) — with the need to avoid the injustice of precluding a claim before the plaintiff even has knowledge of its existence (*Peixeiro v. Haberman*, 1997 CanLII 325 (SCC), [1997] 3 S.C.R. 549, at para. 36).

(emphasis added)

Striking pleadings where frivolous or vexatious/abuse of process

[63] In ***10042210 Manitoba Inc. et al. v. The City of Winnipeg***, 2026 MBKB 35 (“**1004**”), Rempel, J. confirmed that the test for motions to strike frivolous and vexatious proceedings or proceedings which constitute an abuse of process was set forth in ***Nygaard International Partnership v. Canadian Broadcasting Corporation et al.***, 2011 MBQB 124 (“***Nygaard***”), where the Honourable Justice Cameron (then of this Court) commented as follows (commencing at para 12):

[12] **For a claim to be struck as frivolous and vexatious, the test is high.** In *57655 Manitoba Ltd. v. Iliffe* (1988), 1988 CanLII 7358 (MB KB), 57 Man.R. (2d) 276 (Q.B.), affrm’d at 1989 CarswellMan 387, Monnin J. (as he then was) approved of the following observations made by the learned referee (at p. 278):

For pleadings to be struck as frivolous and vexatious I believe that **it must be shown that the pleadings are made without any probable justification at law, *mala fide* with a clear intent only to annoy or embarrass the opposing party.**

[13] The above standard was recently reinforced by MacInnes J.A. in *Kreiner v. Manitoba (Auditor General)*, 2007 MBCA 154 where he stated:

3 To strike out on the ground of frivolity under Queen's Bench Rule 25.11(b), the appellants **must show that there is no probable justification at law for the claim advanced.**

[14] **A claim that is frivolous and vexatious may also constitute an abuse of process.**

(emphasis added)

[64] ***Zaki v. University of Manitoba***, 2024 MBKB 181 ("***Zaki***"), is another recent decision of this Court which confirmed that the moving party bears the onus to establish that there has been an abuse of process (paras 11 and 12).

[65] Within ***Zaki***, there is reference to the decision of the Supreme Court of Canada in ***Toronto (City) v. C.U.P.E., Local 79***, 2003 SCC 63 ("***Toronto***"), wherein it was held that abuse of process involves proceedings which are "unfair to the point that they are contrary to the interest of justice". It was also confirmed in ***Toronto*** that abuse of process may be established where "(1) the proceedings are oppressive or vexatious, and (2) violate the fundamental principles of justice underlying the community's sense of fair play and decency" (para 35).

Irregularities or non-compliance with the Rules is not a nullity

[66] In ***Cement Accents Manitoba Inc et al. v. Wagner Construction et al.***, 2023 MBCA 59 ("***Cement Accents***"), the Manitoba Court of Appeal held as follows (at para 26 and 27):

[26] As in *Chan*, **I consider the failure to bring the motion under the proper rule as an irregularity and would determine this appeal as if the matter had been properly brought as a summary judgment motion under r 20.** (See also *AC Concrete Forming Ltd v JAC Concrete Structures and Drain Inc*, 2018 ONCA 272, where the Court treated a motion for enforcement of an oral settlement brought pursuant to r 49 of the Ontario *Rules* as a motion for summary judgment under r 20.)

[27] **Authority for treating the pleading of r 49 as an irregularity which the Court can correct is found in r 2 of the *Rules*. This empowers the Court, where necessary and in the interests of justice, to dispense with compliance with any rule. Also relevant is r 1 which states that the rules should be liberally construed to secure the just, most expeditious and least expensive determination of proceedings.** Here, the issue of the nature of the settlement was fully argued before the motion judge and summary judgment considerations are, in any event, applicable to motions under r 49. Substituting the proper rule will provide a just determination of this dispute and is proportionate.

(emphasis added)

Leave to amend pleadings

[67] With respect to Rule 26.01 and what is to be reviewed when there is a request made for leave to amend pleadings, ***Lagimodiere et al. v. The Wawanesa Mutual Insurance Company et al.***, 2020 MBQB 154 ("***Wawanesa Mutual***"), is a decision of the Honourable Justice Edmond (then of this Court) wherein it was held as follows (commencing at para 30):

[30] In ***Winnipeg (City) v. Integra Credit Union Ltd.***, 2013 MBCA 2, 288 Man.R. (2d) 133 (QL), the Court of Appeal confirmed the factors to be considered on a motion under Rule 26.01 as follows (at para. 16):

- (a) the **seriousness of the prejudice** to the other party;
- (b) whether that **prejudice that would result can be compensated for by costs or an adjournment**;
- (c) whether there was a **delay on the part of the party moving for the amendment and, if so, whether the delay has been satisfactorily explained**; and

(d) **the nature of the proposed amendment** and whether it raises a **valid, arguable point that has merit**.

[31] In considering the seriousness of the prejudice to the other party, the court considers **whether any of the proposed amendments create a new cause of action and if so, whether the new cause of action is statute barred**.

[32] In *Onishenko Estate v. Quinlan*, [1972] S.C.R. 380 (S.C.C.) (QL), the **Supreme Court of Canada held that amendments to pleadings that create new causes of action which are statute barred may only be allowed if "special circumstances" exist**. It is clear that special circumstances have been interpreted to be "rare" and "exceptional". (See *Miller v. Jaguar Canada*, [1998] 123 Man.R. (2d) 161, [1997] M.J. No. 555 (Man. C.A.) (QL))

[33] The analysis to be undertaken to consider whether to grant an amendment respecting a new cause of action arising outside a limitation period was considered in *Arctic Foundations of Canada Inc. v. Mueller Canada Ltd.* (c.o.b. Mueller Flow Control), 2009 MBQB 309, 248 Man.R. (2d) 123 (QL) and the questions to be answered can be summarized as follows:

a) **Do the proposed amendments create new causes of action? If so, b) When did the new causes of action arise and what are the limitation dates? c) Are the new causes of action statute barred? d) If the limitation period has expired, should the proposed amendments nonetheless be permitted** if "special circumstances" exist? Page: 8 (See also, *Arnason Industries Ltd. v. Red Sucker Lake First Nation et al*, 2024 MBKB 69, para. 8)

(emphasis added)

ANALYSIS

[68] At the outset, I confirm that certain portions of the pleadings, submissions of counsel and authorities referenced have been analyzed more than others within these reasons for decision, which reflects the issues requiring determination and the findings necessary to resolve them. Nonetheless, the conclusions I have reached are based on consideration of the entire record before the Court.

Allegations of the Plaintiff from 2016 to September 30, 2022

[69] In the circumstances, the Claim clearly reads that Gauthier (on behalf of Prairie Mountain) provided the Plaintiff with a letter of termination on November 30, 2017, which was effective immediately and involved the following:

- a. withdrawal of an offer to the Plaintiff for a position in the Emergency Department at BRHC;
- b. termination of the Plaintiff's then term position in the Emergency Department at BRHC; and
- c. termination of the Plaintiff's 0.25 full-time position in the Emergency Department at BRHC, effective immediately.

[70] Gauthier also informed the Plaintiff not to attend for her scheduled shifts at BRHC on November 30, 2017.

[71] If it was not already abundantly clear that the Plaintiff's positions with Prairie Mountain had been terminated as of November 30, 2017, the Claim states (at para 50) that a total of thirty-nine shifts which the Plaintiff had expected to work between December 2017 and February 2018 were cancelled by Prairie Mountain, despite the Plaintiff continuing to hold privileges within the Emergency Department at BRHC "without a contract".

[72] Consistent with termination of the Plaintiff's positions with Prairie Mountain on November 30, 2017, the Claim goes on to provide as follows:

- a. the Plaintiff was not permitted to pick up casual shifts in the Emergency Room at BRHC as of on or around January of 2018, which "had not been

communicated to her at the time of her contract termination, and other physicians working in Emergency Rooms throughout the Health Authorities do not have contracts but are still able to pick up shifts to their privileges” (para 57 as well as para 9);

- b. on or about February of 2018, the Plaintiff was informed that she was no longer allowed to perform hospitalist work (para 59);
- c. the Plaintiff learned on or about March 22, 2018 that she “was not allowed any new initiatives with the Health Authority and that she would not be considered for any open opportunities of any sort, including personal care for homework, surgical assisting, family medicine practice outside of Brandon, hospitalist work or general practice psychiatry work” (para 60);
- d. on April 12, 2018, the Plaintiff was informed that she could no longer work in Virden, Manitoba (para 61), and was advised on or about May 12, 2018 that she would not be permitted to provide coverage for a physician in Souris, Manitoba (para 62);
- e. the Plaintiff was advised on January 26, 2019 that “she had been excluded from the annual GP Hospital Care Incentive of \$15,000.00” (para 58);
- f. it is alleged that the Defendants attempted to take away the Plaintiff’s privileges entirely at BRHC on or around December of 2019 (para 64);
- g. the Plaintiff opened her own clinic in 2021 (para 65);

- h. Gauthier denied the Plaintiff's request for funding to hire a physician assistant in the spring of 2022, which resulted in a grievance being filed by Doctors Manitoba on behalf of the Plaintiff (paras 68 through 70); and
- i. it is also noteworthy that the Claim reads (at para 55) that "Many humans who do not have an employment contract would feel insecure in their employment" (in connection with the investigator of the Complaint determining that the Plaintiff did not have an employment contract with Prairie Mountain in 2018).

[73] Upon consideration of the foregoing portions of the Claim, I find that the Defendants have satisfactorily established (on a balance of probabilities) the Plaintiff's positions with Prairie Mountain were terminated on November 30, 2017 (subject to review of other circumstances as alleged by the Plaintiff within the balance of the Claim).

[74] For purposes of determining the relevant limitation period(s), the potential claim(s) of the Plaintiff against the Defendants arose when the material facts upon which her action is based was discovered or ought to have been discovered by the Plaintiff through reasonable due diligence (in reliance upon ***Grant Thornton LLP***, at para 29). With application to the case at bar, it is my further determination that the Plaintiff knew, or if not, certainly ought to have known that she had a potential claim(s) against the Defendants once her positions with Prairie Mountain were terminated on November 30, 2017.

[75] Accordingly, I agree with counsel for the Defendants in that the applicable limitation period(s) for the Claim (as it relates to the circumstances alleged by the Plaintiff

to have occurred prior to enactment of the **New Act** on September 30, 2022) is the earlier of the following two options:

- a. two years following September 30, 2022 (in other words, September 30, 2024); or
- b. the date upon which the applicable limitation period(s) expired pursuant to the **Old Act** (if the limitation period for breach of contract is utilized, the result is six years from November 30, 2017, or in other words, November 30, 2023).

[76] Even if the relevant limitation period(s) for the Claim expired as of September 30, 2024, and not as early as November 30, 2023, I am left with the inescapable conclusion that the Plaintiff has failed to meet her onus (on a balance of probabilities) to establish that the relevant limitation period(s) had not expired in accordance with section 9 of the **New Act** when the Claim was filed on June 27, 2025.

[77] As a result, the Defendants have satisfied their onus (on a balance of probabilities) and demonstrated that the Claim fails to disclose any reasonable cause of action, such that the Claim should be struck with respect to the circumstances which the Plaintiff has alleged occurred from 2016 to September 30, 2022 (subject to review of the other issues contained within the balance of these reasons for decision).

Striking an action where a limitation defence is raised

[78] The Manitoba Court of Appeal in **Abas Auto** (as referenced earlier at para 11) confirmed that there can be determination of a motion to strike pleadings where it is clear the alleged cause of action and material facts in support arose after the expiry of the limitation period.

[79] More recently, in ***Romana v. Shared Health et al***, 2026 MBKB 42 ("***Romana***"), Goldenberg A.J. considered ***Abas*** and proceeded to strike a statement of claim which she had determined was clearly statute barred and failed to disclose a reasonable cause of action.

[80] As I have determined that any applicable limitation period(s) would have clearly expired with respect to the circumstances alleged by the Plaintiff to have occurred from 2016 to September 30, 2022, I find that there is no prohibition upon this Court striking the Claim, in whole or in part, if deemed appropriate to do so.

Did the Plaintiff's privileges and the nature of her provision of services for Prairie Mountain result in continuous, ongoing contractual rights or a rolling cause of action?

[81] Regardless of the manner by which the Plaintiff provided services for Prairie Mountain, it does not alter the reality that the allegations being advanced by the Plaintiff are statute barred unless, by maintaining privileges, the Plaintiff had an ongoing, continuous and "rolling cause of action" against the Defendants as argued by counsel for the Plaintiff.

[82] The Plaintiff contends that as a consequence of being granted privileges by Prairie Mountain, she was (at all relevant times) an employee of Prairie Mountain, or alternatively, a dependent contractor when providing services for Prairie Mountain (para 75).

[83] In ***Hahlweg et al. v. Women's Health Clinic Inc.***, 2024 MBKB 110 ("***Hahlweg***"), the Honourable Justice Champagne reviewed the three primary categories

of possible working relationships for a physician with a health care facility (commencing at para 71):

[71] The next issue to be determined is the working relationship between Dr. Hahlweg and WHC. In Canada, there are three categories of workers. The categories include employees, independent contractors and dependent contractors.

[72] The Ontario Court of Appeal reviewed the distinction between employees and dependent and independent contractors in *McKee v. Reid's Heritage Homes Ltd.*, 2009 ONCA 916. The court provided a helpful approach to making this determination. First, I am to determine if Dr. Hahlweg was an employee of WHC. If he was not an employee, I go on to determine if he was a dependent contractor or independent contractor.

[73] Dr. Hahlweg testified and made it clear that he was not an employee of WHC. He described himself as a contractor. My task is to determine if he was an independent or dependant contractor when performing services for WHC. A dependant contractor may be entitled to additional notice for termination if reasonable notice is not set out in the contract.

[74] The onus is on Dr. Hahlweg to prove on a balance of probabilities that he was a dependant contractor. In *McKee*, the court explained **dependent contractor status as a non-employment relationship in which there is "a certain minimum economic dependency, which may be demonstrated by complete or near-complete exclusivity"** (at para. 30).

...

[89] The Ontario Court of Appeal has made it clear that **"near-exclusivity" necessarily requires substantially more than 50% of billings**. If it were otherwise, exclusivity – the "hallmark" of dependent contractor status – would be rendered meaningless" (*Thurston v. Ontario (Children's Lawyer)*, 2019 ONCA 640, at para. 30).

[90] After considering the totality of the circumstances, I do not hesitate in concluding Dr. Hahlweg was an independent contractor as described in the contract.

(emphasis added)

[84] Within an article published by the Canadian Medical Protection Association ("CMPA") entitled *"The Changing Practice of Medicine: Employment Contracts and Medical Liability"* (initially published in September of 2012 and revised in February, 2021),

the following guidance is provided with respect to the issue of privileges being granted to a physician at a health care facility:

Traditionally, when physicians delivered care in hospitals, they normally did so under a privileges-based model that granted them rights to perform specific acts and access to certain services and facilities. This model recognized the independent nature of the doctor.

Privileges-based models are governed by a framework set out in provincial or territorial legislation and regulations that requires specified procedures be adopted for renewing, restricting, and terminating privileges. **These procedures are normally contained in regional health authority or hospital bylaws.**

This model is also supported by case law that clarifies the processes that should be in place to protect a physician's rights when a hospital seeks to restrict, revoke, or not renew the physician's privileges. For example, all provinces and territories have statutory appeal processes for physicians who are denied or lose their privileges.

More recently, a staff appointment model has developed whereby physicians are appointed to the medical/practitioner staff at the health authority or hospital level. The appointment model includes many protections for physicians found within the privileges model.

While privileges and appointment models have been successful and continue to be used across Canada, **many physicians and hospitals arrange for the delivery of medical services pursuant to contractual arrangements or a combination of models and payment structures. As such, many physicians practice under some form of contractual arrangement. There are a variety of such arrangements, including employment contracts (similar to those for other professional staff such as nurses) and service agreements (in which the doctor provides medical services as an independent contractor)...**

(emphasis added)

[85] Upon the website for the Canadian Medical Association ("CMA"), there is an article which provides a general explanation concerning what is involved when privileges are acquired by a physician (the article was last updated on June 8, 2026):

Having "privileges" is essentially when a doctor has the right, or "privilege," to practice medicine at a hospital and use the hospital's resources. By having hospital privileges at a specific institution, your

doctor is considered part of hospital staff and is able to admit and treat you at the hospital's facilities. If your family doctor has hospital privileges, for example, they might be able to order tests using the hospital's diagnostic equipment and laboratories, work with hospital staff including residents and nursing staff, and treat you in the hospital.

(emphasis added)

[86] The current Medical Staff Rules and Regulations of Shared Health Inc. ("Shared Health"), the provincial health authority which coordinates the provision of health care services in Manitoba, were approved effective January 17, 2022 (following termination of the Plaintiff's positions with Prairie Mountain on November 30, 2017). Nonetheless, I note that the definition of "Privileges" is set forth as follows:

"Privileges" means the authority granted to a Practitioner by the Authority to provide care to patients which may include admitting, treatment and consultation privileges. Privileges are limited by the individual Practitioner's professional license, experience and competence and are Site specific you may include multiple specified Sites. The Privileges granted by the authority cannot exceed the privileges recommended by the MPABC special committee. **Granted privileges alone does not confer the right to participate in any rule roti or on-call roster, access to resources, or other like opportunities. Such rights are provided through contracts or services of employment or, where applicable, through collective agreements.**

(emphasis added)

[87] Pursuant to By-Law No. 3 of Shared Health, which became effective on March 20, 2019, the following definitions are of relevance:

"Privileges" means the authority granted to Practitioner by the Authority to provide care to patients, including admitting, treatment and consultation privileges. Privileges are limited by the individual Practitioner's professional license/registration, experience and competence and are Site specific and may include multiple specified Sites.

"Practitioner" is defined as "a member of the Medical Staff whether Active, Associate, Trainee and includes Locum Tenens."

"Medical Staff" is defined as "comprised of all physicians, dentists, psychologists, midwives, physician assistants, clinical assistants, trainees, Lab

Scientists, Locum Tenens, nurse practitioners and oral surgeons who are appointed pursuant to this By-Law.

(emphasis added)

[88] As to relevant case law, *Jaman Estate v. Hussain*, 2001 MBQB 320 ("*Jaman*"), is a decision of the Honourable Justice Morse where it was held as follows (at para 12):

[12] I think the law is clear that a hospital is only vicariously liable for the acts of its employees. **Independent doctors who are members of the medical staff with admitting privileges to a hospital are not employees of a hospital**, and a hospital will not be vicariously liable for their negligence.

(emphasis added)

[89] More recently, in *Engel v. Southern – Santé Sud Regional Health Authority*, 2020 MBQB 157 ("*Engel*"), a physician alleged that his rights to perform surgeries in hospitals of the health authority were terminated without due process (it was argued that the applicable by-law of the health authority was not followed when the privileges of the surgeon were terminated). The Honourable Justice Greenberg concluded that the surgeon was not an employee of the health authority and determined that the term "privileges" should be interpreted as follows (para 41):

[41] ...the only reasonable interpretation of "privileges" is that the privileges granted to a surgeon include access to the facility's operating rooms. The By-law sets out the circumstances in which a physician may lose privileges.

...

(emphasis added)

[90] While the Plaintiff contends that maintaining her privileges at BRHC (when she was not employed or providing services as a dependent contractor) resulted in there being an ongoing, continuous and rolling cause of action (to the extent that the relevant

limitation period(s) had not expired in contemplation of section 8(a) and (b) of the **New Act** as well as **ADK.**), it was not pled as such within the Claim.

[91] The Plaintiff has alleged that she was “financially and economically dependent” upon Prairie Mountain (para 75), which is consistent with the factors reviewed within **Hahlweg** (at para 30). The Claim does not, however, identify any contract or agreement (written or verbal) by which the Plaintiff provided services for Prairie Mountain at BRHC (nor are there any material facts provided as to the terms of compensation) following termination of her positions on November 30, 2017 (or between January and June of 2023), whether as an employee, dependent contractor or otherwise.

[92] In **Northern Health Authority v. du Plessis**, 2026 BCCA 143 (“**du Plessis**”), the appeal of an arbitral award was dismissed last month by the British Columbia Court of Appeal where the physician had been determined to be a dependent contractor and entitled to receipt of pay in lieu of notice. The critical distinction from the case at bar, however, is that in **du Plessis**, there was a specific service contract in place between the health authority and the physician.

[93] Based upon the foregoing, I am not prepared to conclude that the Plaintiff, by maintaining her privileges, continued to be an employee or dependent contractor on behalf of Prairie Mountain following termination of the Plaintiff's positions on November 30, 2017.

[94] Simply put, the Claim does not set forth sufficient material facts to establish how or in what manner the Plaintiff having privileges at BRHC resulted in her continuing to be an employee or dependent contractor with Prairie Mountain at all relevant times. I should

add that the novelty of the Plaintiff's position in this regard has not formed a basis for my conclusion (in consideration of ***Vandal***).

[95] As a result, I do not accept the Plaintiff's position that an ongoing, continuous or rolling cause of action was operative or applicable in the case at bar.

Allegations of the Plaintiff following September 30, 2022

[96] The remaining allegations of the Plaintiff (such as at para 71 of the Claim, whereby the Plaintiff contends that she was advised by the Defendants on June 29, 2023 that she could no longer cover shifts and had to find a new working environment), arose following enactment of the ***New Act***. As a consequence, any relevant limitation period(s) would have expired as of June 29, 2025, two days following the filing of the Claim in this matter.

[97] Even though the alleged loss of income to the Plaintiff in an amount of \$70,000.00 from cancelled shifts is confirmed (at para 72), the Claim does not (as referenced earlier) disclose or make reference to any contract or agreement with Prairie Mountain (whether in writing or orally), nor are there foundational material facts pled which would serve as the basis for alleging that breach of any contract or agreement gave rise to a cause of action against Prairie Mountain in connection with cancelled shifts and the services to be provided by the Plaintiff (as an employee or dependent contractor) between January and June of 2023.

[98] Accordingly, it is my further finding that the Defendants have satisfied their onus (on a balance of probabilities) by establishing that the Claim as currently drafted does not adequately set forth a reasonable cause of action against the Defendants, and should be struck, insofar as the above noted allegations made by the Plaintiff for the period of

January to June of 2023 (subject to review of other issues within the balance of the Claim).

RULE 2.02(a) and (b)

[99] Despite the submissions of counsel for the Plaintiff, I find that Rule 2.02 does not preclude the Defendants from seeking the relief requested pursuant to the Defendants' Motion. I have arrived upon this determination in consideration of the following:

- a. In ***Hassman***, there was an error within the pleadings as to the name of the defendant, and the motion before the court referenced an inapplicable provision from the ***Rules***. The above noted irregularities were minor in nature when contrasted with the significant issues of concern in relation to the Claim as drafted.
- b. Unlike in ***Hassman***, the Request for Particulars was prepared and served in the case at bar.
- c. While the Plaintiff had granted two extension requests of the Defendants, and anticipated that a defence would be filed, I do not find it to be entirely unreasonable for the Defendants to have proceeded initially with serving the Request for Particulars.
- d. Within the Claim (at para 71), it is not identified whether there was a contract or agreement (in writing or orally) whereby the Plaintiff provided services for Prairie Mountain at BRHC between January and June of 2023. As a result, the Request for Particulars (at para 2) sought clarification as to whether the Plaintiff was providing such services for Prairie Mountain pursuant to a contract, and if

so, requested provision of particulars as to the terms and conditions of such agreement.

- e. Similarly, question 5 within the Request for Particulars referred to the Claim (at para 78) and sought clarity insofar as the allegation that Prairie Mountain had contravened the essential terms of the Plaintiff's employment, resulting in a wrongful dismissal (constructive dismissal). Within the Answers to the Request for Particulars, the Plaintiff did not refer to any contract or agreement in writing but insisted that there was an employment or dependent contractor relationship between the parties.
- f. Contrary to the Plaintiff's position, I find that a period of approximately two months for the Defendants to prepare and serve the Request for Particulars was not inordinate, and by extension, was not inexcusable, in contemplation of the judicial determinations that have been made by this Court concerning the dismissal for delay provisions contained within Rules 24.01(1) and 24.02(1).
- g. The Defendants' Motion was filed promptly following receipt of the Answers to the Request for Particulars (within essentially one month).
- h. While the facts in ***Cement Accents*** are distinguishable, the findings and comments of the Manitoba Court of Appeal (at para 27) are nonetheless relevant. Rule 2.03 empowers this Court to dispense with compliance with any Rule, with the ***Rules*** as a whole to be liberally construed, and applied in a proportionate matter, pursuant to Rules 1.04(1) and 1.04(1.1).

Contravention of rules for pleadings

[100] As confirmed by Martin J. in ***Olfman*** (at para 13), the “master rule of pleadings” consists of “four separate elements”:

- (1) every pleading must state facts, not conclusions of law;
- (2) it must state material facts, not facts which are immaterial;
- (3) it must state facts, not evidence; and
- (4) it must state the material facts concisely.

[101] There is no debate that the Claim is thorough. It is fifteen pages and consists of ninety-one paragraphs. Unfortunately, the Claim reads more like a story and less like a concise pleading, in contravention of the generally accepted rules for preparation of pleadings and what has been codified within Rule 25.06(1).

[102] Quite frankly, it is not proportionate or practical to embark upon a detailed analysis of each paragraph or page of the Claim given the determinations made thus far within these reasons for decision, and when this is a secondary argument being advanced on behalf of the Defendants. As a result, the following represents only a sampling of concerns held by the Court in relation to the Claim as drafted:

- a. Paragraph 5 provides background information and evidence as opposed to material facts (recruitment of the Plaintiff to work with Prairie Mountain by her mentor at the Emergency Department of BRHC).
- b. Paragraphs 13 and 14 contains evidence and not material facts (the circumstances allegedly involved with Gauthier asking to meet with the Plaintiff on or around the end of December, 2016).

- c. Paragraph 21 includes evidence and fails to focus upon material facts (review of what is alleged to have occurred in February of 2017 at a meeting involving the Plaintiff and Gauthier).
- d. Paragraphs 24, 26, 27 and 28 consists of background details and is not restricted to material facts (reference to hearsay comments allegedly made by other physicians or individuals).
- e. Paragraphs 38, 39, 40 and 41 represents evidence and is not focused upon provision of material facts (description of what the Plaintiff alleges had transpired between herself and Gauthier on October 23, 2017).
- f. Paragraph 44 is embedded with evidence, not material facts (in relation to the Plaintiff's reaction when being asked by Gauthier to meet on November 29, 2017).
- g. Paragraph 55 provides argument as opposed to material facts (outlining the Plaintiff's position regarding certain aspects of the investigation concerning the Complaint).
- h. Paragraph 62 includes hearsay comments allegedly made by another physician (concerning physician coverage in Souris).
- i. Paragraph 63 contains evidence and is not focused upon material facts (with respect to the Plaintiff allegations about what occurred in the spring of 2018 while she was working at Western Medical Clinic in Brandon).

[103] I have read and interpreted the Claim in a generous manner (as required by ***Grant***). Despite doing so, it is my determination that the foregoing portions of the Claim

are in breach of the above noted rules of pleadings, as well as Rule 25.06(1), which serves as a further basis for striking the Claim (if not in whole, then in part).

Frivolous and vexatious pursuant to Rule 25.11(1)(b)

[104] For completeness sake, I have also considered the limited submissions of counsel as to the secondary issue of whether the Claim also contravenes Rule 25.11(1)(b).

[105] As noted within ***Nygaard*** (at para 12):

- a. the “test is high” for a claim to be struck upon the basis that it is frivolous and vexatious; and
- b. it must be established that the pleading in question “was made without any probable justification at law, *mala fide*, with a clear intent only to annoy or harass the other party”.

[106] In the circumstances, I am not convinced that the Defendants have satisfied their onus (on a balance of probabilities) to demonstrate that there was *mala fide* intent on the part of the Plaintiff (with intention to annoy or harass the Defendants) and no justification at law for filing the Claim (the alleged circumstances in connection with the Plaintiff no longer providing various services at BRHC as of June 29, 2023 are not statute barred despite the other drafting concerns as reviewed herein).

[107] As a result, the request of the Defendants to strike the Claim in reliance upon Rule 25.11(1)(b) is dismissed.

Abuse of process in accordance with Rule 25.11(1)(c)

[108] With respect to this further argument on behalf of the Defendants (where limited submissions were received), the onus to establish that the Claim is tantamount to an

abuse of process rests with the Defendants (as confirmed within ***Zaki*** at paras 11 and 12).

[109] Even though I have determined that there are insufficient grounds to strike the Claim pursuant to Rule 25.11(1)(b), an improperly drafted pleading (limited in material facts and replete with evidence) can still be determined to represent an abuse of process.

[110] In ***Romana***, Goldenberg A.J. made the following findings:

[23] **Rule 25.06(1) requires that a pleading contain a concise statement of material facts, not evidence or argument.**

[24] **The 2025 Amendment plainly fails to comply with that rule and with the express directions of Associate Judge Lee. It is therefore an abuse of process.**

(emphasis added)

[111] I am not inclined, however, to conclude that the Defendants have met their onus to establish (on a balance of probabilities) that the Claim as filed represents an abuse of process which would justify striking the Claim (whether in whole or in part). In sum, I am not satisfied that the Claim in is oppressive and vexatious (the first of the two step test set forth at para 35 of ***Toronto***), or frivolous and vexatious (another factor to consider from ***Nygaard*** at para 14).

Leave to amend

[112] Section 22 of the ***New Act*** provides as follows:

Amending pleadings

22 Despite the expiry of a limitation period after a proceeding is commenced, **a judge may allow the pleadings to be amended to add a new claim or to add or substitute a party, but only if**

Modification des actes de procédure

22 Malgré l'expiration d'un délai de prescription après l'introduction d'une instance et seulement si les conditions qui suivent sont satisfaites, le juge peut autoriser la modification des actes de

(a) the claim added by the **amendment, or the claim by or against the new party, arises out of the same transaction or occurrence** as the original claim; **and**

(b) the judge is satisfied that no party will suffer actual prejudice as a result of the amendment **that cannot be compensated for by costs or an adjournment.**

(emphasis added)

procédure en vue de l'ajout d'une nouvelle réclamation ou de l'ajout ou de la substitution d'une partie :

a) la réclamation ainsi ajoutée, ou la réclamation faite par ou contre la nouvelle partie, découle de la même opération ou du même événement que la réclamation initiale;

b) le juge est convaincu qu'aucune partie ne subira, en conséquence de la modification, un réel préjudice qui ne saurait être compensé par l'octroi de dépens ou d'un ajournement.

[113] Any amendment to the Claim (unless the Plaintiff should advise otherwise) would not involve a new cause of action or seek relief against another party. Upon this basis, a request for leave from a Justice to approve any contemplated amendments to the Claim is not necessary.

[114] In *Fenton Group Investment Ltd. et al. v. Riverbend Realty Ltd. et al.*, 2021 MBQB 150 ("*Fenton*"), Goldenberg A.J. (then Master Goldenberg) made the following findings insofar as whether the plaintiff ought to be granted leave to file an amended statement of claim (commencing at para 18):

[18] **I find that there is no amendment that could raise a valid, arguable point that has merit. Simply put, the claim is so deficient it cannot be rectified by an amendment.** That is particularly the case where, as here, I find there is no identified or identifiable cause of action against the City based on the facts plead in the claim. **As such, I am exercising the discretion afforded to me under Rule 25.11(1) to strike the claim without leave to amend.**

(emphasis added)

[115] ***Garang v. Grimolfson***, 2021 MBQB 234 ("***Garang***") is another decision from Goldenberg A.J. (then Master Goldenberg) that involved a motion to strike pleadings. In ***Garang*** (at paras 23 and 24), the rationale for not granting leave for the plaintiff to file an amended statement of claim was explained as follows:

[23] **I am satisfied that this is a case where I should exercise my discretion to not grant the plaintiff leave to amend the claim. It is fundamentally flawed and its deficiencies cannot be adequately addressed by a request for particulars or amendments of specific sections.** The plaintiff has already amended his claim once prior to serving the claim on the defendant, and has already had an opportunity to clarify the claim. The plaintiff submitted a further proposed amendment in his motion brief, which in no way helps to remedy the glaring deficiencies. **Granting the plaintiff another opportunity to bolster his claim would only prolong the litigation unnecessarily when the claim is certain to fail.**

[24] **I find that striking the claim in its entirety without leave to amend is the most proportional, fair, expedient and cost effective determination on the facts. Further, I find that it is in the interest of justice for the court to do so.**

(emphasis added)

[116] In the circumstances, there is essentially nothing within the Claim which could be reasonably salvaged or remedied in connection with the allegations made by the Plaintiff against the Defendants for the period of 2016 until September 30, 2022. As reviewed in detail, I have determined that the cause(s) of action advanced by the Plaintiff in this regard are statute barred, such that no reasonable cause of action is disclosed within what is amounts to a substantial portion of the Claim.

[117] Upon consideration of the determinations made thus far, and the guidance provided by ***Fenton*** and ***Garang***, there are certainly grounds for striking the Claim (which has been demonstrated to be a deficient pleading), without leave to amend.

[118] That being stated, the entire Claim is not irreversibly flawed insofar as the allegations of the Plaintiff concerning the period of January to June in 2023.

[119] With reference to the factors to consider as set forth within ***Wawanesa Mutual***, I find as follows:

- a. No defence has been filed thus far, such that any prejudice sustained by the Defendants (if amendments to the Claim are permitted) should not be of a substantial nature and could be reasonably compensated by way of an order for costs.
- b. There has been no inordinate or inexcusable delay by the Plaintiff insofar as requesting leave to amend the Claim, as this alternative position has been presented to the Court should the Defendants' Motion be successful.
- c. Unless the Plaintiff advises to the contrary, amendment of the Claim should not involve raising a new cause(s) of action or adding a new party; rather, any amendments to the Claim could supply further material facts and better particularize how or upon what basis the Plaintiff contends that there is a cause(s) of action against the Defendants as it concerns the allegations made involving January until June of 2023 (when no contract or agreement between the parties has been identified by the Plaintiff relative to that period of time).

[120] As a result, I am reluctant to strike the Claim in its entirety without granting the Plaintiff leave to amend a portion thereof; this conclusion is based upon the following considerations:

- a. This is the first motion to strike pleadings in this case.

- b. Striking a pleading in accordance with Rule 25.11(1) is distinct from dismissal of an action for delay where the Court can stipulate, pursuant to Rule 24.06(1), that dismissal shall serve as a defence to any subsequent action.
- c. ***Vosters v. S.A.M. Management Inc. et al***, 2026 MBKB 34 (“***Vosters***”) is yet another decision of Goldenberg, A.J. from earlier this year, which serves as a recent example of where leave to amend was permitted in relation to a defective pleading. While the statement of claim in ***Vosters*** was struck, leave to amend was granted so that there could be “a properly pleaded claim” for one specific cause of action which involved allegations of defamation (para 4).

[121] Ultimately, I have decided to grant the Plaintiff leave to amend the Claim with respect to the allegations made against the Defendants involving the period of January to June of 2023 (at paras 71 to 83 of the Claim), provided the Plaintiff complies with the following terms (which if not strictly adhered to by the Plaintiff, will result in the Claim remaining struck in its entirety):

- a. A copy of the proposed form of amended Claim (the “Draft Amended Claim”) shall be attached as an exhibit to an affidavit from the Plaintiff (or a legal assistant working with counsel for the Plaintiff) and be filed with the Court (as well as served upon counsel for the Defendants) on or before 45 days from the date of filing the order which will confirm my reasons for decision herein.
- b. Should the Draft Amended Claim not be included with an affidavit and filed as well as served on or before 45 days from the date of filing of the order reflecting

these reasons for decision, leave for the Plaintiff to amend the Claim shall be terminated.

- c. In the event that the Draft Amended Claim has been included with an affidavit and filed as well as served on or before 45 days from the date of filing of the order confirming my reasons for decision herein, and should the Defendants be opposed to the Draft Amended Claim being filed as a pleading in this action, counsel shall promptly contact the Trial Coordinator to schedule a further hearing (one hour), at which time the Court will determine if the Draft Amended Claim shall be permitted to be filed.
- d. Leave to file the Draft Amended Claim is premised and conditional upon the Plaintiff making arrangements that are agreeable to the Defendants, or in the alternative, which are satisfactory to the Court, in connection with any costs award arising from determination of the Defendants' Motion.

[122] In the circumstances, I find that striking the Claim, with leave to amend being so long as there is compliance with the foregoing terms, is proportionate as well as in keeping with the objectives of achieving fair, focused and timely proceedings before this Court. At the same time, moving forward upon this basis assists the Court insofar as guarding against the potential of there being a further motion filed which requests to strike pleadings.

[123] Proceeding as I have directed is also consistent with the objectives outlined by Martin J. in ***Farmers*** (at para 35); despite it being confirmed that striking a pleading is

an “extraordinary remedy”, proactive management of litigation is imperative for minimizing delay resulting from issues such as improperly drafted pleadings.

CONCLUSION

[124] In summary, I have made the following determinations with respect to the Defendants’ Motion:

- a. Based upon my review of the provisions noted and authorities referenced, I find that the Defendants have satisfied their onus, on a balance of probabilities, to establish that the Claim as drafted does not disclose any reasonable cause of action against the Defendants pursuant to Rule 25.11(1)(d).
- b. The Claim shall be struck as against the Defendants, although leave is granted in favour of the Plaintiff to amend the Claim with respect to the alleged circumstances involving the Defendants as set forth within paragraphs 71 to 83 of the Claim; and
- c. The Amended Claim is only to be filed should there be full compliance with the terms contained herein.

COSTS

[125] The Defendants have been largely successful with respect to the Defendants’ Motion, and as such, are entitled to an award of costs against the Plaintiff. In the event there is a dispute between the parties as to the sum which ought to be payable for costs by the Plaintiff, counsel may contact the Trial Coordinator to schedule a further brief hearing.
