Court of King's Bench of Alberta

Citation: Sakamoto v Canada (Attorney General), 2025 ABKB 149

Date: 20250313
Docket: 2401 05557
Registry: Calgary

Between:

Carrie Sakamoto

Plaintiff/Respondent

- and -

Attorney General of Canada and His Majesty the King in Right of Alberta

Defendants/Applicants

Decision of the
Honourable Justice N.F. Dilts

Introduction

[1] The issue to be decided on this application is whether to permit the Defendants to bring a pre-certification application to strike all or portions of the Amended Amended Amended Statement of Claim as disclosing no reasonable cause of action. This issue raises questions of efficiencies, economies and fairness.

Background

[2] Carrie Sakamoto has commenced an action against the Attorney General of Canada ("Canada") and His Majesty the King in Right of Alberta ("Alberta") in relation to their handling of the Covid 19 vaccination program. The causes of action pled in the Amended Amended Amended Statement of Claim include claims for negligence, negligent misrepresentation, misfeasance in public office, breach of fiduciary duty and conspiracy.

[3] The causes of action rest on a platform of alleged facts that are very highly summarized as follows:

- the Defendants and their agents and agencies authorized or administered Covid 19 vaccines when they knew that they were unsafe and/or ineffective;
- the Defendants provided the public with false, misleading and/or incomplete information regarding the safety and efficacy of the vaccines thereby preventing members of the public from making an informed decision regarding vaccination; and
- the Defendants led a coercive campaign to compel the public to get vaccinated.

[4] The action was commenced by Ms. Sakamoto as a class action pursuant to the *Class Proceedings Act*, SA 2003, c C-16.5 (the "*Act*"). The proposed class is people who received an inoculation of a Covid 19 vaccine in Alberta on or after December 9, 2020 and who suffered injury and damages as a result of receiving a Covid 19 vaccine. The action has not yet been certified.

[5] Alberta wishes to bring a preliminary application to strike the action against it under Rule 3.68 of the *Alberta Rules of Court* as disclosing no reasonable cause of action. Alberta submits that the Plaintiff's claims are bound to fail as the facts alleged in the Amended Amended Amended Statement of Claim, taken as true, cannot establish the legal requirements for the various causes of actions pled. In addition, Alberta says that to the extent that the Plaintiff makes claims against Alberta arising from the actions of Alberta Health Services (AHS) or its agents, those claims can swiftly be resolved as Alberta cannot be liable in law for the actions of AHS or its agents as AHS is a distinct legal entity.

[6] Even if it is not successful in its application to strike the entire claim as disclosing no cause of action, Alberta submits that there are significant efficiencies that can be gained by hearing the motion to strike prior to certification. It says the pre-certification application will establish the potential scope of Alberta's liability, allow for a streamlining of the action by eliminating those causes of action that cannot succeed, and identify whether amendments to the pleadings should be sought prior to the certification hearing. Alberta submits that those outcomes will allow the parties and the Court to focus their efforts on those claims that may have merit.

[7] Canada takes no position as to whether the proposed application to strike should be heard prior to the certification hearing. Canada intends to bring an application to strike the action as disclosing no cause of action. Its position is that its application to strike should be heard at the same time as Alberta's, whether prior to or at the time of the certification hearing.

[8] The Plaintiff submits that the Defendants' applications to strike should be heard as part of the certification process. It says there are no efficiencies to be gained by bifurcating the analysis of this claim, and there are distinct disadvantages. Those disadvantages include the risk that all or portions of the claim will be determined on an insufficient record, and the likely increase in cost and effort required of the parties and the Court to address the issues twice. The Plaintiff submits that it is better to determine the causes of action once on a full evidentiary record.

Analysis

[9] In the context of class proceedings, the decision whether to hear an application to strike all or portions of a claim before the certification application is a discretionary one. The exercise of that discretion is to be guided by the public policy purposes underpinning class proceedings. Those policy considerations were articulated in ***Western Canadian Shopping Centres Inc v Dutton***, 2001 SCC 46 at paras 27-29 and were succinctly re-stated by the Alberta Court of Appeal in ***Ravvin v Canada Bread Company, Limited***, 2020 ABCA 424 at para 24, leave to appeal dismissed 2021 CanLII 42359. Those public policy considerations are access to justice, behaviour modification and judicial economy.

[10] Although in ***Ravvin*** the Alberta Court of Appeal was addressing multi-jurisdictional class proceedings, its discussion regarding the circumstances in which case management judges may hear applications in advance of certification are equally applicable to this case. In ***Ravvin*** at para 51 quoting from ***Holland v Saskatchewan (Agriculture, Food and Rural Revitalization)***, 2009 SKQB 334 at para 8, the Alberta Court of Appeal reiterated that only motions that are likely to dispose of an action or more efficiently address the goals of class proceedings should be heard and determined prior to the certification hearing.

[11] At the certification hearing itself, a court is required to wrestle with whether the pleadings disclose a cause of action: ***Warner v Smith & Nephew Inc***, 2016 ABCA 223 at para 12, leave to appeal dismissed 2017 CanLII 4192. There is always the concern, therefore, that a preliminary motion to strike risks duplication of effort. The test to be met under s 5 of the *Act* is essentially the same as the test on a motion to strike: the facts as pled are assumed to be true and the requirement in s 5 of the *Act* will be satisfied unless it is plain and obvious that the plaintiff's claim cannot succeed: ***Willott v Northwynd Resort Properties Ltd***, 2021 ABQB 747 at para 30.

[12] Justice Martin in ***Stewart v Enterprise Universal Inc***, 2010 ABQB 259 at para 31, addressed this same point:

> In some instances the pre-trial motion may simply address what would be canvassed at a certification hearing. The best example is the overlap between a defendant's application to strike pleadings for disclosing no cause of action under Rule 129 and the requirement under s. 5 of the [*Act*] for the plaintiff to show the existence of a cause of action. While the burden of proof may vary, the substantive inquiry is virtually identical. Applying the principles of judicial economy and the doctrine of issue estoppel, the issue of whether a cause of action exists should only be addressed once, and such determination will be binding regardless of when in the process it is made.

[13] To disclose a cause of action that has a reasonable prospect of success, a Statement of Claim must not only articulate the legal basis for the claim, but also sufficient material facts to support that claim. Bare allegations or the characterization of the Defendant's actions as being unlawful, conspiratorial, wrongful, or fraudulent are not enough. A claim must fairly disclose to the Defendants the particulars of the actions that are alleged to give rise to liability so that they can be meaningfully responded to and understood: ***Willott*** at para 37 citing ***Manusco v Canada (Minister of National Health and Welfare)***, 2015 FCA 227.

[14] There is no question that the Defendants are entitled to have their motions to strike heard: ***Martindale v Mercon Benefit Services***, 2023 ABKB 35 at para 44. The Defendants are entitled to bring an application to strike to narrow the scope of the potential action, and to ensure that the Statement of Claim on which the action will proceed if certified is clear and discloses recognizable causes of action.

[15] The sole question on this application is whether that motion should be heard prior to the certification hearing. Undoubtedly there are circumstances where hearing a preliminary application prior to certification saves time and effort, like, for example, where the application would result in dismissal of the entire action. Previous decisions and discussions have identified several factors that may assist in determining whether to exercise the discretion to permit a pre-certification application. Those factors include:

> i) whether the motion will dispose of the entire proceeding or will substantially narrow the issues to be determined, and, relatedly, whether there is likely to be an overlap in the issues raised on certification and the issues the court will consider on the motion to strike;
>
> ii) the likelihood of delays and costs associated with the motion and whether the motion could give rise to interlocutory appeals and delays that would impact the timely decision on certification, including whether the defendant has agreed not to appeal a decision on the pre-certification motion; and
>
> iii) broadly, the interests of economy and judicial efficiency and whether scheduling the motion in advance of certification would promote the fair and efficient determination of the action or could promote settlement.
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> ***Martindale v Mercon Benefit Services***, 2023 ABKB 35 at para 49 citing ***Forster v Monsanto Company***, 2020 BCSC 1376 at para 57.

[16] At its core, a motion to strike is about the pleadings. The question to be answered is whether the claim has any reasonable prospect of success. The expectation is that striking an unmeritorious cause of action prior to trial achieves litigation efficiency. It focuses finite personal and public resources on serious claims with the ultimate result that the time to final resolution is reduced, and cost to the parties and to the justice system are contained: ***R v Imperial Tobacco Canada Ltd***, 2011 SCC 42 at para 20.

[17] In ***R v Haevischer***, 2023 SCC 11 at para 48 the Supreme Court of Canada reiterated its comments earlier made in ***Imperial Tobacco*** that striking a civil claim where it is plain and obvious that the pleadings disclose no reasonable cause of action unclutters the proceedings, promotes litigation efficiency in both time and cost, and allows litigants to focus on serious claims. As with summary judgment applications, striking an unmeritorious claim favours proportionality and the fair access to affordable, timely and just adjudication of claims.

[18] There is, however, a tension between exercising the authority to strike a claim before evidence is presented and preserving space for the development of the law. The law is not static and for that reason, courts are to proceed with caution on applications to strike so as not to preclude advances in the law that may be necessary to respond to complex social and commercial realities not previously examined. For that reason, courts are to be generous and err on the side of permitting

novel, but arguable, actions to proceed: ***Imperial Tobacco*** at para 21. As the outcome of a motion to strike can be fatal, the potential consequence demands caution.

[19] In the present case, I decline to exercise this Court's discretion to permit the Defendants to bring a motion to strike in advance of the certification proceedings. I am not persuaded that hearing a pre-certification application to strike would conserve resources, nor is it likely to dispose of the whole action against both Defendants. Part of the Court's case management responsibilities is to ensure that the parties' and the Court's resources are not spent on claims that are frivolous or that lack substance. In that respect, Canada's argument that it may be conceptually clearer to have the Defendants' motion to strike heard pre-certification is compelling. However, unless the pre-certification application will dispose of the claim entirely or facilitate and achieve efficiencies and fairness, there is a material risk that the Court will be required to undertake an analysis of the Plaintiff's claims twice and that the litigation will therefore be delayed. Ultimately, I am concerned that permitting a pre-certification motion to strike will not generate the efficiencies suggested and instead may cause the opposite – a lack of judicial efficiency and economy and increased costs and effort for the parties.

[20] Particularly, Alberta and Canada played different but interconnected roles in the Covid vaccination program, with the result that any analysis of the claims as against one party could require an understanding of the actions of the other. There will be value in having interrelated issues heard together. At the same time, the analysis of a claim against one party is not likely to be determinative of a similar claim against the other with the result that there may not be a comprehensive streamlining of issues.

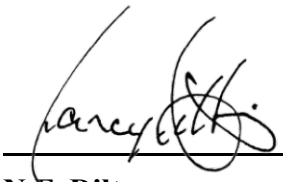
[21] Other than the question of Alberta's liability for the actions of AHS or its agents, the issues identified in the Amended Amended Amended Statement of Claim are not all resolved by the application of clear legal principles unlike, for example, foundational questions like jurisdiction or constitutionality where an advance determination might allow certification to proceed more efficiently. Moreover, Alberta's liability for the actions of AHS or its agents does not eliminate a party; it just puts parameters on Alberta's potential liability.

[22] While Alberta covenants not to appeal the disposition of its pre-certification motion to strike, there is no such concession by the Plaintiff. While that is understandable given the implications on the claim, without a reciprocal covenant, it leaves open the very real risk, depending on the outcome of the application, that the proceedings would be delayed while an appeal is pursued.

[23] Given the size, breadth and complexity of the proposed class action, I conclude that leaving matters to be considered at or with the certification hearing is preferable to taking a sequential approach. While there is nothing unfair in a motion to strike based on the pleadings, where possible, cases should be disposed of on their merits: ***Atlantic Lottery Corp. Inc. v Babstock,*** 2020 SCC 19 at para 87.

[24] For these reasons, I decline to exercise my discretion to permit Alberta and Canada to bring a pre-certification application to strike all or portions of the claim for failing to disclose a cause of action. The Defendants' motions to strike will be heard at or concurrently with the certification application.

Heard on the 29th day of January, 2025.
Dated at the City of Calgary, Alberta this 13th day of March, 2025.



N.F. Dilts
J.C.K.B.A.

Appearances:

J. Rath & E. Chipiuk
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C. Ashcroft, M. Chao
for the Defendant/Applicant, Attorney General of Canada

J-M. Dube, J. Flanders, F. Chiu
For the Defendant/Applicant, His Majesty the King in Right of Alberta