Drafting Proper Pleadings

Within Small Claims Court Proceedings

Particulars Required Within Pleading Documents

A legal action begins with a commencing document. In the Small Claims Court, the document that starts a lawsuit is called the Plaintiff's Claim. In the higher Court, the document is called a Statement of Claim. These documents, similar to any subsequent Defence document, are known as, and commonly referred to as, pleadings.

A good and proper pleading document, again whether the commencing document, being the Plaintiff's Claim or Statement of Claim, or even the responding Defence document, must be crafted in a manner that meets the requirements of the Court. This article shall focus upon and address common concerns that arise in the Small Claims Court amd are applicable to, and involve, the requirements within a proper Plaintiff's Claim pleading.

The ***Rules of the Small Claims Court***, O. Reg. 258/98, include an outline of the pleading requirements of the Court. For a Plaintiff's Claim, Rule 7 governs the applicable expectations, and in respect of the contents of the pleading states.

> 7.01(2) The following requirements apply to the claim:
>
> > 1. It shall contain the following information, in concise and non-technical language:
> >
> > i. The full names of the parties to the proceeding and, if relevant, the capacity in which they sue or are sued.
> >
> > ii. The nature of the claim, with reasonable certainty and detail, including the date, place and nature of the occurrences on which the claim is based.
> >
> > iii. The amount of the claim and the relief requested.

> iv. The name, address, telephone number, fax number if any, and Law Society of Upper Canada registration number if any, of the representative representing the plaintiff or, if the plaintiff is self-represented, the plaintiff's address, telephone number and fax number if any.

> v. The address where the plaintiff believes the defendant may be served.

> 2. If the plaintiff's claim is based in whole or in part on a document, a copy of the document shall be attached to each copy of the claim, unless it is unavailable, in which case the claim shall state the reason why the document is not attached.

Among legal circles there is often great debate as to whether the requirement in 7.01(2)2 requires that every document be attached or only those documents upon which the claim is "*based*". Language within other Rules, such as where Rule 13 requires disclosure of documents that will be "*relied*" upon at Trial suggests that a difference in meaning exists. Whereas the two different words are 'different', it seems apparent that each carries a unique definition. Generally, for example, it is understood that where a Plaintiff's Claim is brought alleging a breach of contract, the claim is "*based*" on the contract document; and accordingly, the written contract document, if any, should be attached to the Plaintiff's Claim document. Additional documents, which may be used to prove and support how the contract was breached, appear as documents that may be "*relied*" upon at Trial; and accordingly, attachment to the Plaintiff's is without requirement (disclosure of such a document will be required at a later date).

As above, Rule 7 requires a certain level of detail within a Plaintiff's Claim. The pleading document is to contain the details necessary to tell the story that outlines allegations; ***Weinstein v. HMQ***, 2019 ONSC 2133 at paragraphs 7 to 10:

[6] The two page Statement of Claim is admirable by attempting to be short and to the point. Brevity is sometimes lacking in pleadings. Certainly, Mr. Weinstein's is brief. And he does set out in a very short way the types of causes of action he wants to bring. They have been identified as breach of contract, negligence, public malfeasance in office, and intentional interference with economic relations.

[7] However, what it is fundamentally lacking (something Justice Diamond has said in his endorsements on an earlier Rule 2.1 motion brought by the Defendants) are any material facts that gives meat to very spare bones of the pleadings. There is very little, if any, who, what, when, where, and how. As I said to Mr. Weinstein through my questions of him, the Statement of Claim should tell a story of facts about him and the Defendants. A story about what happened to him. What was said or done to him. What, if anything, was promised, to him? What was agreed to? When this happened. By whom. Etc. Most claims are like a story. No doubt, Mr. Weinstein's claim, can lend itself to this type of story. From this story of facts, the causes of action are found. Obviously, the facts found in the story must ground all the legal requirements of any particular cause of action.

[8] I do know that there is more of a story that can be told. Even apart from Mr. Weinstein's oral responses to my questions, his Notice of Motion for an injunction provides far more detail about what happened to him. So does his written submissions. However, these are not something I can consider. I say this, even though the Defendants themselves urge me to consider them. The Defendants' position is that when I do, it is plain and obvious that there are no reasonable causes of action and no leave to amend should be granted. I find though that to do so would not be right. It would not be fair. It will not accord with the law.

> [9] On this motion, I can only consider the Statement of Claim and the documents referred to in that Claim. The important document is the "Second Career Participant Agreement" signed between Mr. Weinstein and Her Majesty the Queen in Right of Ontario, as represented by the Minister of Advanced Education and Skills Development. Amongst other things, this contract is about providing financial assistance while Mr. Weinstein is in a training program.

> [10] When I consider these documents, I find it plain and obvious that the Statement of Claim contains no reasonable causes of actions. The fundamental reason is that no material facts are pled to support them.

In the above referenced ***Weinstein*** matter, Mr. Weinstein was a self-represented person without thorough knowledge of the procedural Rules. At a Motion hearing brought by the Defendants seeking to strike the claims of Mr. Weinstein, lackings that posed conflict with the Rules were found by the Judge. It is notable that the Weinstein matter was a higher Court matter rather than a Small Claims Court matter; however, the principle appears applicable whereas some reasonable factual outline is obviously required so to provide the Defendant with a reasonable understanding of what the case is about. For example, and simply put, a Plaintiff must say much more than, "*I am suing you for what you did last summer*", as such a bald and vague allegation would result in a very confused Defendant.

Typically in Small Claims Court, a layperson, such as Mr. Weinstein, would receive more leniency for deficiencies than would occur within the higher Court. The principle that laypeople should receive some slack was outlined in the case of ***936464 Ontario Ltd. v. Mungo Bear Ltd.***, 2003 CanLII 72356 where it was said:

> [45] More important, though, is the fact that the case at bar was litigated in the Small Claims Court. The higher standards of pleading in the Superior Court are simply unworkable in the Small Claims Court, where litigants are routinely unrepresented, and where legal concepts such as the many varieties of causes of action are completely foreign to the parties. Essentially, the litigants present a set of facts to the deputy judge, and it is left to the deputy judge to determine the legal issues that emerge from those facts and bring his or her legal expertise to bear in resolving those issues.

While it may be that laypeople will receive greater leniency, it is noted that, "*... the litigants present a set of facts ...*", remains a requirement; and accordingly, per the ***Weinstein*** case above, the story of the case must still be told by a layperson. Furthermore, the leniency that may be available to a layperson is unavailable to legal practitioners such as a lawyer or paralegal; and accordingly, especially if a layperson may seek the assistance of lawyer or paralegal at a later date, and particular for Trial representation, the pleading document must then be to the standards of pleadings drafted by a lawyer or paralegal as per ***Trapasso v. 241 Pizza (2006) Ltd.***, 2014 CanLII 56281 which states

> [23] I have looked at the pleadings in this matter. Accepting for discussion purposes various legal theories were not pleaded, I do not view any later attempt to raise same in the course of the trial and/or submissions as amounting to the type of unreasonable behaviour contemplated by either s 29 or R 19.06, ie not accepting an offer to settle, impugning the character of a party or high handed conduct. I note in passing it was certainly clear to me in the course of the trial the concepts of agency and piercing the corporate veil were in play, whatever the state of the pleadings. I would agree the vicarious liability submission could only fairly be said to have arisen in the course of submissions. I do note, however, an Amended Plaintiff's Claim dated February 28, 2013 failed to incorporate the legal theories advanced on behalf of Trapasso. It may be amongst self represented litigants it is too much to ask for proper pleadings [per *936464 Ontario Ltd. v Mungo Bear Ltd.*, 2003 CanLII 72356 (ON SC)] but lawyers and paralegals should be held to a higher standard, Small Claims Court action or not.

Other cases making the same or similar point include, ***Cecatina General v. Arbour***, [1980] O.J. No. 331, which references the outdated rules known as the Section 71(2) of the *Small Claims Court Act*, R.S.O. 1970, chapter 439 as well as the case of ***Cerqueira v. Ontario***, 2010 ONSC 3954 which states on point that:

> [11] It may be of assistance to the parties, and particularly to Ms. Cerqueira who is not a lawyer, to state some general principles governing pleadings. I set out some of these principles in *Cavarra v. Sterling Studio Lofts Inc.*, 2010 ONSC 3092 (CanLII), [2010] O.J. No. 2211, and I have added some additional principles:

(a) the purpose of pleadings is to give notice of the case to be met, to define the matters in issue for the parties and for the court, and to provide a permanent record of the issues raised: *1597203 Ontario Limited v. Ontario*, [2007] O.J. No. 2349; *Aristocrat Restaurants v. Ontario*, [2003] O.. No. 5331 (S.C.J.) at para. 15; *Somerleigh v. Lakehead Region* Conservation Authority, 2005 CarswellOnt 3546 (S.C.J.) at para. 5;

(b) the causes of action must be clearly identifiable from the facts pleaded and must be supported by facts that are material: *CIT Financial Ltd. v. Sharpless*, 2006 CarswellOnt 3325;

(c) every pleading must contain a concise statement of the material facts on which the party relies but not the evidence by which those facts are to be proved: rule 25.06; this includes pleading the material facts necessary to support the causes of action alleged;

(d) a party is entitled to plead any fact that is relevant to the issues or that can reasonably affect the determination of the issues, but it may not plead irrelevant, immaterial or argumentative facts or facts that are inserted only for colour: *Williams v. Wai Ping*, [2005] O.J. No. 1940 (S.C.J.), aff'd [2005] O.J. No. 6186 (Div. Court.); *George v. Harris*, [2006] O.J. No. 1762 (S.C.J.);

(e) allegations that are made only for the purpose of colour or to cast a party in a bad light, or that are bare allegations, are scandalous and will be struck under rule 25.11(b): *Senechal v. Muskoka* (District Municipality), [2003] O.J. No. 885 (S.C.J.);

(f) the court may strike part of a pleading, with or without leave to amend, on the grounds that (a) it may prejudice or delay the trial of an action, (b) it is scandalous, frivolous or vexatious, or (c) it is an abuse of the process of the court: rule 25.11;

(g) on a motion to strike a pleading under rule 21.01(1) on the ground that it discloses no cause of action, it must be shown that it is plain, obvious and beyond doubt that the claim cannot succeed and the pleading must be read generously; allegations of fact, unless plainly ridiculous or incapable of proof must be accepted as proven: *Hunt v. Carey Canada Inc.*, 1990 CanLII 90 (SCC), 1990 CarswellBC 216 (S.C.C.);

(h) any fact that can affect the determination of rights between the parties can be pleaded, but the court will not permit facts to be alleged that are immaterial or irrelevant to the issues in the action: *Toronto (City) v. MFP Financial* Services Ltd. [2005] O.J. No. 3214 (S.C.J.);

(i) allegations of fraud, misrepresentation, negligence and conspiracy musy be pleaded with particularity: *Lana International Ltd. v. Menasco Aerospace Ltd.*, 1996 CanLII 7974 (ON SC), [1996] O.J. No. 1448.

[12] I accept the submission of Mr. Adair, on behalf of the Extendicare defendants, that while the plaintiffs are entitled to some leeway in the wording of their pleading, and a potentially meritorious claim should not be struck merely because of technical drafting deficiencies, the defendants are entitled to know the case they must meet. The court must be fair to the plaintiff, but it must also be fair to the defendants. In this regard, I respectfully adopt the observation of Cameron J. in *Balanyk v. University of Toronto*, 1999 CanLII 14918 (ON SC), [1999] O.J. No. 2162 (S.C.J.) at para. 46:

> Neither the opposite party nor the court should be forced to nit-pick their way through a long, complex and sometimes redundant and split pleading, parsing each paragraph and each sentence with a view to extracting the claims and related material facts and redrafting them into a clear and precise pleading. It is the responsibility of the party pleading to plead in accordance with the requirements of our law and the purposes of pleading. Bearing in mind National Trust v. Frubacher those purposes are:

(a) to give precise notice to the opposite party of the case which is to be met, sufficient to enable the opposite party to plead;

(b) to assist the court in understanding the material facts alleged and the factual and legal issues in dispute between the parties;

(c) to establish a benchmark against which the parties and the court may determine the relevance of evidence on discovery and at trial and the scope of the evidence which will be required to fairly and efficiently address the issues in dispute.

This requires the party pleading to understand the facts and the law as to what is required to support or defend a cause of action and to then state its position clearly and concisely.

[13] I also note the observation of Epstein J., as she then was, in George v. Harris, above, at para. 20:

> The next step is to consider the meaning of "scandalous", "frivolous" or "vexatious". There have been a number of descriptions provided in the multitude of authorities decided under this or similar rules. It is clear that a document that demonstrates a complete absence of material facts will be declared to be frivolous and vexatious. Similarly, portions of a pleading that are irrelevant, argumentative or inserted for colour, or that constitute bare allegations should be struck out as scandalous. The same applies to a document that contains only argument and includes unfounded and inflammatory attacks on the integrity of a party, and speculative, unsupported allegations of defamation. In such a case the offending statements will be struck out as being scandalous and vexatious. In addition, documents that are replete with conclusions, expressions of opinion, provide no indication whether information is based on personal knowledge or information and belief, and contain many irrelevant matters, will be rejected in their entirety.

> [14] With due respect to Helen Cerqueira, much of the difficulty with the pleading in this case is that it is a jumble of complaints, some of which are recognized by law and some of which are not. These complaints are, in many cases, not asserted as elements of proper causes of action supported by material facts going to either liability or damages. It is almost impossible for the defendants to do anything other than guess about the nature of the plaintiffs' complaints against them. As expressed above, defendants are not required to do this. They are entitled to know the case they must meet.

Furthermore, and continuing on the point that even a layperson must make out some semblance of a proper pleading, in the case of ***Nelson v. Bray***, 2007 CanLII 86745, the self-represented Plaintiff simply sought to attach various documents to the Plaintiff's Claim form and make reference to such attachments; however, this attempt to circumvent the requirements was problematic and addressed by the Judge whereas it was said:

[17] I am concerned that the plaintiff has not framed proper pleadings. He is claiming $10,000, but for the life of me, despite my review of the myriad of documents and personal notes affixed, I cannot ascertain how he supports his $10,000 claim. I pass no judgment on whether or not his claim is valid. At this stage, it is not possible for me to so discern.

[18] Rule 7.01(1) of the *Rules* states that: "An action shall be commenced by filing a plaintiff's claim (Form 7A) with the clerk, together with a copy of the claim for each defendant. Rule 7.01(2)1.ii goes on to state that: "The following requirements apply to the claim: It shall contain the following information, in concise and non-technical language: The nature of the claim, with reasonable certainty and detail, including the date, place and nature of the occurrences on which the claim is based."

[19] The plaintiff has not complied with this rule. It is actually surprising to me, as he is in the accounting business and surely he must have the ability to set forth, in a concise and fluid manner what in fact he is basing his $10,000 claim upon – that is what facts and figures, clearly set forth. He has not done so.

.....

[22] As stated above, I am concerned that the plaintiff's claim lacks clarity and has not set forth, in a concise manner, particulars upon which his claim is based.

Summary Comment

The requirements within pleadings, while much more strict in the higher Court, are without complete lax in the Small Claims Court and while lawyers and paralegals will be held to a higher standard than a layperson, all pleadings, whether prepared by professional representatives or laypersons should comply with the minimum standards of pleading as required by the ***Rules of the Small Claims Court***, and in particular Rule 7.01(2) or risks to the case may be present.