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## The Perils of Imprecision – British Columbia Supreme Court Rebukes Plaintiff for Failing to Stick to the Relevant Facts

In *Ossudallah v. Swiss Consulting Management Ltd.*, 2020 BCSC 567 [*Ossudallah*], the British Columbia Supreme Court highlighted the importance of making clear, precise, and relevant pleadings – otherwise, a plaintiff risks jeopardizing their underlying cause of action.

### Facts

The plaintiff, Ms. Ossudallah, worked as a sales person with the defendant company, Swiss Consulting Management Ltd., for over a year when she was terminated on May 23, 2019. The parties did not dispute that the termination occurred; rather, the plaintiff and defendant disputed whether the termination amounted to wrongful termination or termination for cause.

In her notice of civil claim, however, the plaintiff alleged more than wrongful termination. She advanced pleadings relating to the conduct of her supervisor, individual defendant Mr. Pourfar. The plaintiff's pleadings disclosed, in part, the following conduct allegations (the "Conduct Allegations"):<sup>1</sup>

23. Mr. Pourfar engaged/engages in a course of conduct which is sexually inappropriate with respect to his female staff including, without limitation, the Plaintiff.

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<sup>1</sup> Paragraphs 23-30 of the plaintiff's statement of claim are reproduced at paragraphs 4-5 of *Ossudallah*.

24. On several occasions, Mr. Pourfar groped the Plaintiff on her breast(s) and/or buttocks and/or made inappropriate sexual remarks to her. This was non-consensual and there was no objective reason for Mr. Pourfar to believe it was consensual.

25. On other occasions Mr. Pourfar made sexually inappropriate remarks to the Plaintiff and/or other workers.

The plaintiff also alleged financial impropriety on the part of the individual defendant. The plaintiff alleged, in part, that Mr. Pourfar routinely falsely and retroactively re-arranged numerical data that the plaintiff and/or others had correctly entered into the corporate defendant's accounting and/or bookkeeping records (the "Financial Impropriety Allegations").

The defendants did not dispute that the plaintiff properly pleaded her wrongful dismissal claim. They applied only to strike the Conduct Allegations and the Financial Impropriety Allegations, arguing that these allegations were irrelevant, scandalous, vexatious, and did not substantiate a cause of action.

### Analysis

The test on an application to strike under Rule 9-5 of the *Supreme Court Civil Rules* is whether it is plain and obvious that the plaintiff's claim discloses no reasonable cause of action.<sup>2</sup> Pleadings are commonly struck where, for example, they are unnecessary, vexatious, or embarrass the hearing of a proceeding in that allowing them to stand would be a waste of time and expense.

The majority of argument surrounded the Conduct Allegations. The plaintiff relied on *Lewis v. WestJet Airlines Ltd.*, 2019 BCCA 63 [*Lewis*] to support her contention that the Conduct Allegations should stand. In *Lewis*, the Court of Appeal ruled that because an employer had incorporated terms of an anti-harassment policy into a former employee's employment agreement, that employee was entitled to raise facts involving discrimination and harassment in her action for breach of contract. The defendants disputed the application of *Lewis* to the fact at bar, as Ms. Ossudullah did not advance that the

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<sup>2</sup> B.C. Reg. 168/2009.

Conduct Allegations constituted a breach of her employment contract.

### Decision

The defendants' application to strike was granted as the Court held that the Conduct Allegations revealed no specific allegations to which the individual defendant could respond. On an application to strike pleadings, normally the facts alleged must be assumed to be true. In this case, the pleadings were deficient because no specifics or details were pleaded – no date, time, nor place. Use of the term "and/or" also rendered it unclear whether the individual defendant had groped the plaintiff, made inappropriate sexual remarks towards the plaintiff, or both; a defendant does not have to disprove a fact that a plaintiff does not specifically allege happened. The Court noted that use of the term "engaged/engages" was ambiguous as well, as it was unclear when the impugned conduct occurred.

The Court further found that the plaintiff did not allege that the Financial Impropriety Allegations, if proven, would represent a breach of the plaintiff's employment contract. The Court further rejected the plaintiff's additional argument that the defendant's application to strike was premature because there had been no demand for particulars; it is not incumbent upon a defendant to take steps to try to make sense of a deficient pleading.

After concluding the pleadings were deficient, the Court considered whether they could be saved by amendment. The Court noted that the impugned paragraphs had no real or potential relevance to the wrongful dismissal claim and no amendment could change that. However, the Conduct Allegations potentially disclosed a separate sexual battery claim. Denying the plaintiff leave to amend would prevent her from pursuing these allegations in the same action as her wrongful dismissal claim, but would not prevent her from advancing a separate claim. The Court accordingly struck the Conduct Allegations and Financial Impropriety Allegations, with leave for the plaintiff to apply to amend the pleadings at a later date, and without prejudice to her ability to bring a separate claim in battery.

## Takeaways

*Ossudallah* is a strong reminder about the importance of clear and specific pleadings – in wrongful dismissal actions and otherwise. Use of ambiguous language such as “and/or” or other “slashed” terms is likely to result in deficient pleadings as a defendant does not have to disprove facts that a plaintiff does not specifically allege happened. It is similarly no defence to an application to strike that the opposing party did not request particulars; it is not incumbent upon another party to try to make sense of deficient pleadings.

While the deficient pleadings in this instance potentially disclosed a separate action, the Court will not grant leave to apply to amend pleadings or to bring a separate action where no such action is available on the facts. All litigants should therefore ensure that their pleadings are sufficiently specific because the opportunity to remedy deficiencies is far from guaranteed.

by Joan M. Young, Eleanor Rock (Articled Student)

For more information on this topic, please contact:

Vancouver    [Joan M. Young](#)    604.893.7639    [joan.young@mcmillan.ca](mailto:joan.young@mcmillan.ca)

### a cautionary note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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