KING'S BENCH FOR SASKATCHEWAN

Citation: **2025 SKKB 59**

Date: **2025 04 28**
File No.: QBG-RG-00874-2021
Judicial Centre: Regina

BETWEEN:

MEHWISH SEHGAL

PLAINTIFF

- and -

628656 SASKATCHEWAN LTD., V.J. MANAGEMENT INC., CARRYING ON BUSINESS UNDER THE NAME "HOLIDAY INN HOTEL & SUITES REGINA"

DEFENDANTS

Appearing:

Mehwish Sehgal	self-represented plaintiff
Anthony Thera	for the defendants

FIAT — ROBERTSON J.
April 28, 2025

INTRODUCTION

[1] This decision addresses an application to restrict the scope of questioning in discovery questioning before trial. The application is dismissed for several reasons, including that the application is premature. The proper procedure is to proceed to questioning and, if necessary, take objection to the offending questions, complete questioning and, if the questioning party wishes, apply to the Court to compel answers to the objected questions. While this involves delay, frivolous and unnecessary

objections can be sanctioned through costs awards on application to compel answers. My full reasons follow.

BACKGROUND

Plaintiff's Application

[2] On March 28, 2025, the plaintiff, Mehwish Sehgal, applied by Notice of Application for an order that: the defendants remove any reference to QBG-SA-00651-2019 from this claim; and to produce recording of documents declared to be voluntary statements.

Litigation history

[3] The following is a summary of the litigation history of this action.

<u>2021</u>	
April 27	Statement of Claim issued
October 12	Statement of Claim served
<u>2023</u>	
May 26	Mandatory mediation completed
August 1	Kilback J. order for plaintiff to serve Affidavit of Documents within 30 days, costs awarded to defendant
<u>2024</u>	
April 16	Wildeman J. fiat for plaintiff to produce documents
April 23	Wildeman J. approves Draft Order (not yet issued)

2025

January 8	Subpoena issued for plaintiff to attend questioning on March 28, 2025
March 28	Plaintiff serves and files this application
	Questioning begins, but is called off because of dispute over scope of questioning
April 24	Robertson J. hears plaintiff's application

Materials filed for Application

[4] The parties each filed affidavits:

(a) Affidavit of Mehwish Sehgal sworn March 27, 2025 filed by plaintiff; and

(b) Affidavit of Mariia Voloshchuk sworn April 17, 2025 filed by defendants [Voloshchuk Affidavit].

[5] The plaintiff and defendants also filed Briefs of Law and Arguments.

[6] The plaintiff's Brief was filed April 24, 2025, being the date of the hearing of the application. This Brief was filed late. *The King's Bench Rules* in Rule 6-15(b) requires Brief of Argument be filed at least two days before the designated chambers date.

Plaintiff's non-appearance at Chambers

[7] The plaintiff did not appear in person in Chambers on April 24, 2025. Instead, the plaintiff filed on April 24, 2025 a single page document with one line of

text, stating "I, Mehwish Seghal, the Plaintiff will appear by telephone, as I am a resident of Saskatoon for the Civil Chambers of April 24, 2025." (Emphasis in original).

[8] Rule 6-17 allows for electronic hearings, including telephone appearance in Chambers. This Court does regularly allow counsel and self-represented parties to appear by telephone, however, they are required by Rule 6-17(2) to obtain consent of the Court beforehand. Appearance by telephone is a privilege, not a right.

[9] Despite these failures to comply with *The King's Bench Rules*, I decided, without objection from the defendants, to proceed with the hearing.

Issue

[10] The Voloshchuk Affidavit at para. 4 states that the audio recording was provided to the plaintiff on April 17, 2025. The plaintiff confirmed this part of the application was no longer in issue. So the only issue to be addressed is the reference to QBG-SA-00651-2019, which I will refer to as the Saskatoon Action.

LAW

The King's Bench Rules

[11] *The King's Bench Rules*, in Part 5, subdivision 3 provide for discovery by questioning before trial. Rule 5-18(1)(a) allows questioning "about information relevant to any matter in issue by any party adverse in interest". Rule 5-25 requires the person being questioned to be prepared for questioning about anything "relevant to any matter in issue in the action." Rule 5-27 provides a procedure to deal with objections by a witness or their counsel to questions.

> **Objections by witness**
>
> **5-27**(1) If a person being questioned objects to any question or questions put to him or her, the court transcriber shall take down:

> (a) the question or questions so put; and
>
> (b) the objection of the witness to the question or questions.
>
> (2) The questioning party shall file the questions and objections mentioned in subrule (1) with the local registrar in whose office the proceedings are pending.
>
> (3) On application, the Court shall decide the validity of any objections.

Caselaw

[12] In *Laybourne Enterprises Ltd. v Laybourne*, 2005 SKQB 128 at para 4, 264 Sask R 128 [*Laybourne*], Ryan-Froslie J., as she then was, dealt with an application arising from the refusal of a witness at questioning to answer certain questions. In doing so, she reviewed the scope of permissible questioning.

> [4] Rule 222 of the *Queen's Bench Rules of Court* provides for the examination for discovery of a party to an action with regard to the matters in issue in that action. A question relates to a matter in issue if it directly or indirectly enables a party to advance their case or challenge the case of the opposing party. (See: *Popowich v. Saskatchewan* (1996), , 144 Sask. R. 166 (C.A.); *Soke Farm Equipment Ltd. v. New Holland of Canada Ltd.* (1990), 82 Sask. R. 287 (C.A.) and *Milton Farms Ltd. v. Dow Chemical Canada Inc.* (1986), 52 Sask. R. 264 (Q.B.))
>
> [5] Examinations for discovery have many purposes including defining the issues, obtaining full disclosure of the facts relating to the court action, pinning down the testimony of the parties, obtaining admissions, and ascertaining the strengths and weaknesses of the litigants' cases, all of which may lead to settlement of the action or streamlining of the trial. It has often been said that the broad relevance test applies to examinations for discovery. While discoveries are not fishing expeditions, there is considerable latitude in the questions that may be asked. The scope of such examinations are generally limited only by the pleadings and whether the questions may directly or indirectly enable a party to advance their case or destroy the case of the opposing party. Questions allowable on an examination for discovery will not necessarily be allowed at trial. As Justice

> Cameron stated in *Cominco Ltd. v. Phillips Cables Ltd.*, [1987] 3 W.W.R. 562 (Sask. C.A.) at page 566: "...the test of relevance is broader on discovery than at trial, and greater latitude is permitted at this stage of the proceedings than later". (See also: *Steier v. University Hospital Board* (1988), 67 Sask. R. 81 (C.A.)) This same principle applies to the discovery of documents as set out in Rules 211 to 215 of the *Queen's Bench Rules of Court*. (See: *Popowich v. Saskatchewan*, *supra*)

[13] In *Saskatchewan Economic Development Corp. v Kolody* (1996), 147 Sask R 309 (QB), Gunn J. held that in the event of an objection to answer, counsel should complete questioning before adjourning to seek rulings on the objected questions.

> **[15]** In the event of disagreement, counsel should complete the examination before adjourning to seek rulings on the issues in dispute. There may be circumstances where the conduct of one of the parties is such that it would be impossible to continue, but that cannot be said to be the case here where only three questions were asked before the decision was taken to adjourn.

ANALYSIS

[14] The plaintiff in this action seeks damages from the defendants for injuries alleged suffered while using the Fitness Centre at the Holiday Inn Hotel & Suites Regina as a paying guest of the hotel.

[15] From the materials filed and argument heard, I gather that the Saskatoon Action involves a claim for injuries allegedly suffered by the plaintiff. The Saskatoon Action was filed two days before the date of the alleged injuries suffered in this action.

[16] The plaintiff appears to seek a pre-emptive ruling from the Court on relevance of questions that have not yet been asked in questioning. I decline to do so for a few reasons.

[17] First, the request is premature. Questioning has not yet taken place. There is a procedure for taking objection to questions which are irrelevant.

[18] Second, the affidavit evidence does not provide sufficient factual underpinning for a ruling about relevance. The plaintiff in his affidavit at para. 5 says "both injuries are unrelated and distant from each other". The only reason given is because the Saskatoon Action was about a claim for "an injury to the neck resulting from medical malpractice", whereas this claim is for "an injury to the knees, resulting from negligence by the Defendant." That may be so, but that on its own would not foreclose any and all questioning about the prior injury and claim. Further, the Court is usually reluctant to bar any questioning on a subject, since the relevance may not be immediately apparent.

[19] Third, it is far from clear that questions about the Saskatoon Action and the facts on which that claim was made would be irrelevant. On the contrary, I can well see why the defendants might want to pursue a line of questioning about those alleged injuries and the pursuit of that claim through the Saskatoon Action. The defendants, in their Brief of Law at para. 13, explains the potential relevance:

> 13. The Saskatoon Action contains a number of references to injuries and alleged damages that are functionally and substantively identical to the pleadings referenced in the Statement of Claim in this matter. This includes allegations regarding the nature of injuries and the damages alleged. The substance of these allegations, as well as the existence of overlapping and/or pre-existing injuries and losses, are clearly relevant to the determination of this matter. The Defendant is entitled to this information.

[20] Fourth, as discussed in *Laybourne* at para 5, there is more latitude allowed in questioning during discovery than in testimony. While there are still limits, questioning in discovery may go further afield. Questions must still be potentially relevant to the issues, as disclosed in the pleadings, but the purpose of discovery is, as the name suggests, to allow general exploration and gathering of information. This purpose weighs against undue narrowing of questioning.

[21] Fifth, the Court file in the Saskatoon Action is a public record, absent a court order restricting public access. There is no evidence of any court order restricting public access to that file. The plaintiff in his affidavit at para. 6 mentions that McKercher LLP was defendant's counsel in both actions. If the suggestion is that there is some impropriety on the part of defendants' counsel in asking about the Saskatoon Action, I do not see it. The defendants, their lawyers or anyone else can review that file at the courthouse. If there was a question of privilege, that would be for the client to assert, not this plaintiff.

[22] For these reasons, the plaintiff's application is dismissed.

Costs

[23] The plaintiff was opposed to any award of costs against the plaintiff. The defendants asked that costs be in the cause. I order that costs be in the cause.

[24] The award of costs is discretionary. *The King's Bench Rules* in Part 11 provides guidance on award of costs. Rule 11-1(4) provides a non-exhaustive list of matters the Court can consider in exercising its discretion on costs. When the Court does consider an award of costs, it may wish to consider the following with respect to this application:

(a) The plaintiff is self-represented.

(b) This application was served on the defendants' lawyer on the morning of the day scheduled for questioning. (The application was also filed that day.) The questioning began later that day. It was called off because of the dispute over scope of questioning.

(c) The plaintiff's Brief of Argument was filed late, received on the day this application was heard in Chambers.

(d) There has mixed success on the plaintiff's application, since the application did result in the voluntary production of the audio recording before the hearing of the application.

J.
D.N. ROBERTSON