# KING'S BENCH FOR SASKATCHEWAN

Citation: **2025 SKKB 66**

Date: **2025 05 21**
Docket: KBG-RG-01943-2024
Judicial Centre: Regina

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BETWEEN:

WABOSHI NAKIHIMBA

PLAINTIFF

- and –

DARREN ZAWRYUCKA, MADAZEN FOODS INC.

DEFENDANTS

**Appearing:**

| | |
|---|---|
| Waboshi Nakihimba | self-represented plaintiff |
| Jason M. Clayards | for the defendants |

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JUDGMENT
May 21, 2025

ROBERTSON J.

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## Contents

## INTRODUCTION

[1] This decision addresses applications by both parties under Rule 7-9 of *The King's Bench Rules*. The plaintiff applies to strike paras. 6 to 8 of the Affidavit of Darren Zawryucka sworn September 11, 2024. The defendants apply to strike the Statement of Claim.

[2] For the reasons which follow, the plaintiff's application is dismissed and the defendants' application is granted. The Statement of Claim is struck without leave to amend. The action is therefore dismissed.

## BACKGROUND

### Evidence

[3] The parties filed the following affidavits for this application:

Defendants

- Darren Zawryucka sworn September 11, 2024 [Zawryucka Affidavit]

Plaintiff

- Waboshi Nakihimba sworn October 1, 2024 [Nakihimba Affidavit #1]
- Waboshi Nakihimba sworn April 7, 2025 [Nakihimba Affidavit #2]

### Facts

[4] From the court file and filed materials, the following chronology of events is established.

2022

| | |
|---|---|
| December 20 | Waboshi Nakihimba interviewed by Darren Zawryucka and engaged for employment by Madazen Foods Inc. |
| December 21 | Mr. Nakihimba works at Madazen Foods Inc. for four hours |
| December 22 | Mr. Nakihimba works at Madazen Foods Inc. for eight hours |

| | |
|---|---|
| December 23 | Mr. Nakihimba works at Madazen Foods Inc. for seven hours |
| December 24 | Christmas shutdown at Madazen Foods Inc. |
| 2023 | |
| January 3 | Madazen Foods Inc. resumes operation; Mr. Nakihimba fails to return to work at Madazen Foods Inc. as scheduled |
| January 16 | Email exchange between Mr. Nakihimba and Darren Zawryucka; Mr. Nakihimba told of termination of employment for failure to attend to work since January 3, 2023 |
| February 22 | Employment Standards finalizes payment for claim of wages owed to Mr. Nakihimba by Madazen Foods Inc. |
| August 28 | Saskatchewan Human Rights Commission dismisses discrimination complaint from Mr. Nakihimba arising from termination of employment |
| 2024 | |
| August 19 | Statement of Claim filed by Mr. Nakihimba seeking various relief for breach of contract for termination of employment |
| September 12 | Defendants' application to strike claim filed, supported by Zawryucka Affidavit, with return date of October 3, 2024 |

| | |
|---|---|
| October 1 | Nakihimba Affidavit #1 filed |
| October 3 | Mitchell J. adjourns application *sine die* to allow plaintiff time to file amended Statement of Claim |
| 2025 | |
| March 10 | Amended Statement of Claim filed |
| April 7 | Plaintiff's application to strike paras. 6 – 8 of Zawryucka Affidavit filed, supported by Nakihimba Affidavit #2 |
| April 24 | Robertson J. hears applications in chambers with decision reserved |

[5] From the materials filed, I find the following as fact.

[6] Waboshi Nakihimba was employed by Madazen Foods Inc. on December 20, 2022. Mr. Nakihimba was to be paid an hourly wage of $16 an hour.

[7] Mr. Nakihimba worked a total of 19 hours over December 21, 22 and 23, 2022. Madazen Foods Inc. then closed for its Christmas shutdown.

[8] Mr. Nakihimba was scheduled to return to work on January 3, 2023. Mr. Nakihimba did not return to work.

[9] Mr. Nakihimba did not return to work on January 3, 2023 because he was ill. Mr. Nakihimba tried on January 3, 2023 to send a text message to

Darren Zawryucka to inform his employer that he was too ill to return to work. Mr. Zawryucka, who was likely out of the country on vacation, did not receive that text message. (Nakihimba Affidavit #1, para. 4 and Exhibit “C”; Zawryucka Affidavit, para. 6)

[10] When Mr. Nakihimba failed to return to work on and after January 3, 2023, Madazen Foods Inc. decided to terminate his employment for failing to attend work. (Zawryucka Affidavit, paras. 6 – 8)

[11] On January 16, 2023, Mr. Nakihimba sent an email to Darren Zawryucka, who had hired Mr. Nakihimba for Madazen Foods Inc. An exchange of emails between the two men followed on January 16, 2023 in which Mr. Nakihimba explained he had been ill and Mr. Zawryucka told Mr. Nakihimba that his employment was terminated. (Nakihimba Affidavit #1, paras. 7-8 and Exhibits “F” & “G; Zawryucka Affidavit, para. 7)

[12] On February 22, 2023, Mr. Nakihimba was paid his outstanding wages through the Employment Standards Branch of the Ministry of Labour Relations and Workplace Safety. (Nakihimba Affidavit # 1, Exhibits “H” and “I”)

[13] Mr. Nakihimba made a complaint to the Saskatchewan Human Rights Commission alleging discrimination in his treatment by Madazen Foods Inc. and Darren Zawryucka, in particular in his dismissal. On August 28, 2023, his complaint was dismissed. (Nakihimba Affidavit #1, Exhibit “J)

**ISSUES**

[14] The issues to be determined are:

1. Whether paras. 6-8 of the Zawryucka Affidavit should be struck?

2. Whether the Statement of Claim should be struck?

3. Whether there should be any award of costs?



**LAW**

[15] In this part I will review relevant law, including: the court's duty to self-represented parties and their obligations in litigation; relevant Rules; and decisions in which Rule 7-9 of *The King's Bench Rules* has been on striking applications.

**Self-Represented Parties**

[16] The plaintiff, Waboshi Nakihimba, is self-represented.

[17] While, in practice, the courts afford some latitude to self-represented parties, they are required to familiarize themselves with and follow the rules and procedures of the court, including the rules governing pleadings. This basic requirement has been repeatedly stated by this Court in decisions striking pleadings. See: *Ryan v KDGO Holdings Ltd*., 2020 SKQB 170 at paras 21 and 49-50; *Yashcheshen v College of Physicians and Surgeons of Saskatchewan*, 2019 SKQB 43 at paras 7-10; and *A.L. v Saskatchewan*, 2008 SKQB 115 at paras 14-15.

[18] The Court of Appeal for Saskatchewan has said that some allowance should be given when assessing the adequacy of pleadings from a self-represented party. See: *Yashcheshen v Teva Canada Ltd*., 2022 SKCA 49, [2022] 8 WWR

60; and *Harpold v Saskatchewan (Corrections and Policing)*, 2020 SKCA 98 at paras 35 and 37.

### *The King's Bench Rules*

[19] *The King's Bench Rules* are relevant to the applications.

[20] Rules 3-9 and 13-8 provide direction on content of statements of claim:

> **Contents of statement of claim**
>
> **3-9** A statement of claim must:
>
> (a) be in Form 3-9;
>
> (b) include the notice to defendant on the first page;
>
> (c) state the names of the parties and their places of residence;
>
> (d) state the claim and the basis for it;
>
> (e) state any specific remedy sought; and
>
> (f) comply with the rules about pleadings in Division 3 of Part 13.
>
> . . .
>
> **Pleadings: general requirements**
>
> **13-8**(1) Every pleading must:
>
> (a) be divided into paragraphs, numbered consecutively, and each allegation must, as far as is practicable, be contained in a separate paragraph;

> (b) be signed by the party's lawyer or, if the party is self-represented, by the party;
>
> (c) contain only a statement in summary form of the material facts on which the party pleading relies for the party's claim or defence, but not the evidence by which the facts are to be proved; and
>
> (d) be as brief as the nature of the case will permit.



[21] Both parties rely upon Rule 7-9 of *The King's Bench Rules* for their applications to strike:

> **Striking out a pleading or other document, etc. in certain circumstances**
>
> **7-9**(1) If the circumstances warrant and one or more conditions pursuant to subrule (2) apply, the Court may order one or more of the following:
>
> (a) that all or any part of a pleading or other document be struck out;
>
> (b) that a pleading or other document be amended or set aside;
>
> (c) that a judgment or an order be entered;
>
> (d) that the proceeding be stayed or dismissed.
>
> (2) The conditions for an order pursuant to subrule (1) are that the pleading or other document:
>
> (a) discloses no reasonable claim or defence, as the case may be;
>
> (b) is scandalous, frivolous or vexatious;
>
> (c) is immaterial, redundant or unnecessarily lengthy;
>
> (d) may prejudice or delay the fair trial or hearing of the proceeding; or
>
> (e) is otherwise an abuse of process of the Court.

> (3) No evidence is admissible on an application pursuant to clause (2)(a).

[22] Rule 13-30 requires that affidavits be confined to facts within the personal knowledge of the affiant or based on information known to and believed by the affiant. Rule 13-31 states the requirements for affidavits. Affidavits which do not comply with these requirements may be struck for that reason. Although not cited by the plaintiff, Rule 13-33 expressly authorizes striking of affidavits which are scandalous:

> 13-33 The Court may order any matter that is scandalous to be struck out from any affidavit.

**Court's Gatekeeping Function**

[23] In *R v Imperial Tobacco Canada Ltd.*, 2011 SCC 42, [2011] 3 SCR 45, the Supreme Court of Canada emphasized the "gatekeeping" function fulfilled in the litigation process by applications seeking to have a pleading struck. In *Reisinger v J.C. Akin Architect Ltd.*, 2017 SKCA 11, 411 DLR (4th) 687, the Court of Appeal endorsed this gatekeeping function, with specific reference to Rule 7-9 of *The King's Bench Rules*.

**Rule 7-9 Striking of Pleadings**

[24] The defendants rely upon clauses (a), (b), (c) and (e) of Rule 7-9(2).

*Rule 7-9(2)(a) – no reasonable claim*

[25] Rule 7-9(3) provides that "No evidence is admissible on an application pursuant to clause (2)(a)." In an application to strike for failing to disclose a cause of action, the court's review is restricted to the statement of claim. The test is whether sufficient facts have been pled to establish the legal

elements of the cause of action relied upon to support the claim. This information is necessary to allow defendants to respond. To understand and to be able to respond to the claim, the defendant(s) must know both the precise causes of action relied upon and the material facts that would establish the elements of each cause of action.

[26] In *Hollinger v SaskTel Centre*, 2025 SKCA 40 at para 9, the Court of Appeal upheld the striking of a claim under Rule 7-9(2)(a) based on a finding that the facts pled did not establish a *prima facie* duty of care:

> [9] Thus, the Chambers judge correctly applied the test for determining if the facts pled in the claim established a prima facie duty of care. This is the *Anns/Cooper* test (see *Cooper v Hobart*, 2001 SCC 79, [2001] 3 SCR 537), which requires the plaintiff to demonstrate that: "the harm complained of is a reasonably foreseeable consequence of the alleged breach" and; (b) "there is sufficient proximity between the parties that it would not be unjust or unfair to impose a duty of care on the defendants": *Odhavji Estate v Woodhouse*, 2003 SCC 69 at para 52, [2003] 3 SCR 263. The Chambers judge correctly employed the *Anns/Cooper* analysis and determined that the facts pled, which he presumed to be true, did not establish foreseeability or proximity. He therefore concluded that the claim had no reasonable chance of success, which applied equally to negligence or negligent investigation. We see no error here, and this ground of appeal must fail.

[27] In *Sawatzky v Prince Albert Golf and Curling Club Inc.*, 2025 SKCA 16 at paras 26-27, Schwann J.A. for the Court of Appeal reviewed the law governing an application to strike a claim for disclosing no reasonable claim:

> [26] Pursuant to Rule 7-9(2)(a) of *The King's Bench Rules*, a pleading may be struck for disclosing "no reasonable claim or defence"; that is, assuming the plaintiff can prove everything alleged in the claim, there is no arguable case. The test for striking a claim under Rule 7-9(2)(a) is stringent and the threshold is high: see *Atlantic Lottery Corp. Inc. v Babstock*, 2020 SCC 19 at para 90, [2020] 2 SCR 420, Karakatsanis J. in dissent (but not on this point). The question is not whether the claim might fail or even whether it is likely to fail. Judges should exercise their discretion to strike on this ground only where it is plain and obvious and they are satisfied that the case is "beyond reasonable doubt" (*Hunt v Carey Canada Inc.*, [1990] 2 SCR 959 (WL) at para 34): similarly, see *Odhavji Estate v Woodhouse*, 2003 SCC 69 at para 15, [2003] 3 SCR 263; *Sagon v Royal Bank* (1992), 105 Sask R 133 at para 16; and *Harpold* at para 35. …

[28] In *Sheppard v Sun Country Health Authority*, 2024 SKKB 9 at para 11, I wrote:

> [11] The test for striking a claim is whether, accepting the facts alleged in the statement of claim, there is no reasonable chance that the claim could succeed. The jurisdiction to strike a claim should only be exercised in plain and obvious cases where the matter is beyond doubt.

*Rule 7-9(2)(b) – scandalous, frivolous or vexatious*

[29] The court may consider affidavit evidence on an application to strike relying upon the other grounds under Rule 7-9(2).

[30] In *Abrametz v Allen*, 2024 SKKB 159 at paras 12 – 15, Mitchell J. explained what "scandalous", "frivolous" and "vexatious" mean in the context of an application to strike pleadings.

> [12] Rule 7-9(2)(b) provides that a pleading may be struck out in whole or in part if it is shown to be "scandalous, frivolous or vexatious".
>
> [13] A pleading is scandalous if it levels degrading charges or baseless allegations of misconduct or bad faith against an opposite party. See, for example: *Siemens v Baker*, 2019 SKQB 99 at para 23 [*Siemens*]; *Paulsen v Saskatchewan (Ministry of Environment)*, 2013 SKQB 119 at para 45, 418 Sask R 96 [*Paulsen*], and *C & J Hauling Ltd. v Mistik Management Ltd.*, 2010 SKQB 60 at para 15, 351 Sask R 199 [ *C & J Hauling*].
>
> [14] It is frivolous if it advances a legal claim which is groundless and cannot succeed. See, for example: *Siemens* at para 25; *Paulsen* at para 47, and *Hunt v Carey Canada Inc.*, [1990] 2 SCR 959 at 980 [*Hunt*].
>
> [15] It is vexatious if it does not assist in establishing a plaintiff's cause of action or fails to advance a claim known in law. See, for example: *Siemens* at para 24; *Paulsen* at para 46, and *C & J Hauling* at para 15.

*Rule 7-9(2)(c) – immaterial, redundant or unnecessarily lengthy*

[31] Rules 3-9 and 13-8, reproduced above, provide direction on the content of statements of claim. The purpose of pleadings is to inform, not to argue. The statement of claim should identify the parties, identify the causes of action and the material facts supporting each element of the causes of action pled. This information then allows the defendant(s) to respond with a statement of defence. The pleadings are the foundational documents which frame the civil action and are then referred to throughout the action. Pleadings must be both complete and concise. These two goals are not mutually exclusive if one follows the Rules.

[32] In *Ducharme and Holben v Davies and Rogoschewsky* (1983), 29 Sask R 54 (CA) at para 64, Cameron J.A. described the function of pleadings:

> [64] While pleadings are no longer subject to the precise, complex, and occasionally oppressive requirements they once were, nevertheless they remain an important aspect of every law suit and must be framed with care. The following passage taken from *The Law of Civil Procedure* - Williston and Rolls (vol. 2, page 636) illustrates why a careful pleading is still important;
>
> The function of pleadings is fourfold:
>
> 1. To define with clarity and precision the question in controversy between litigants.
>
> 2. To give fair notice of the case which has to be met so that the opposing party may direct his evidence to the issues disclosed by them. A defendant is entitled to know what it is that the plaintiff asserts against him; the plaintiff is entitled to know the nature of the defence raised in answer to his claim.
>
> 3. To assist the court in its investigation of the truth of the allegations made by the litigants.
>
> 4. To constitute a record of the issues involved in the action so as to prevent future litigation upon the matter adjudicated between the parties.
>
> To the extent paragraph 6 of the statement of defence is relied upon to found the claim for reduction of the child's damages, on the basis now being advanced, as opposed to that put forward at trial, it fails to fulfill most, if not all, of these basic functions. With respect that is my opinion of it.

[33] In *Mallard v Killoran*, 2005 SKQB 203 at para 26, then Chief Justice Gerein wrote the following with reference to then former Rule 139 of *The Queen's Bench Rules*:

> [26] Not much need be said about the nature and characteristics of a proper pleading. It must in concise but accurate words convey the position of the party putting forth the pleading. It should not be prolix, garrulous, argumentative or replete with opinions,

> speculation or descriptions of evidence. In a brief manner it should set out the essential facts so as to enable the opposing party to identify the issues which must be joined. …

[34] In *Shaw v Shaw*, 2020 SKQB 320 at paras 49 – 52, I struck a claim under Rule 7-9(2)(c). In doing so, I considered the meaning of the words "immaterial, redundant or unnecessarily lengthy":

> **Immaterial, Redundant or Unnecessarily Lengthy**
>
> [49] When reading the statement of claim, I was reminded of the word "prolix", which was once used for this ground, and is defined in *The Canadian High School Oxford Dictionary* (Oxford University Press Canada, 2001) as "using or containing too many words; lengthy and tedious". The remarks of Goldenberg J. from *Amendt v Canada Life Assurance Co.*, 1999 CanLII 12560 at para 19 (Sask QB), apply:
>
> > *Immaterial, redundant or unnecessarily prolix - Q.B. Rule 173(b)*
> >
> > [19] I am unable to fathom a claim against these defendants from the materials before me. The claim as a whole is unnecessarily prolix and contains innumerable immaterial and irrelevant comments. Further, the many exhibits appended to the claim offend the rule against pleading evidence. To weed out those passages in the claim which are superfluous would be an impossible task. Rule 173(b) has application and the claim runs afoul of the Rule. The claim must also be struck for this reason.
>
> [50] As set out above, much of the content of this statement of claim is immaterial and redundant. At 85 single-spaced pages, it is unnecessarily lengthy. The latin maxim, *res ipsa loquiter* (the thing speaks for itself) applies. It is not reasonably possible to strike parts and leave a coherent claim.

> [51] I would strike the claims on this ground.
>
> **Prejudice or Delay the Fair Trial or Hearing of the Proceeding**
>
> [52] Pleadings form the foundation of any legal action. If they are defective, that is likely to create problems throughout the litigation process, beginning with but not limited to the reply by way of statement of defence. In the usual process, lawyers and judges will repeatedly read and review the pleadings to ascertain the limits of the dispute and issues to be determined. As discussed above, one would hesitate to embark on that routine step with this claim. The basic step of reading this statement of claim, as set out above, would add (and waste) time and expense in any further proceedings.

*Rule 7-9(2)(e) - abuse of process*

[35] Rule 7-9(2)(e) was considered in *Nelson v Teva Canada Limited*, 2021 SKCA 171 at para 4:

> [4] Rule 7-9(2)(e) permits a judge to strike out all or any part of a pleading where the pleading "is otherwise an abuse of process of the Court". It reflects the Court's inherent jurisdiction to guard against its process being used by litigants to harass or vex others (which is catalogued under Rule 7-9(2)(b)) or in a way that would bring the administration of justice into disrepute (*Walker v Mitchell*, 2020 SKCA 127 at para 18, [2021] 4 WWR 555 [*Walker*], citing *Toronto v C.U.P.E., Local 79*, 2003 SCC 63 at para 51, [2003] 3 SCR 77). The Rule is, however, only to be used where it is "plain and obvious" that allowing an action to proceed would amount to an abuse of process (*Hunt v Carey Canada Inc.*, [1990] 2 SCR 959). Relevant to this appeal, the Supreme Court in *Hunt* stated that "neither the length and complexity of the issues, the novelty of the cause of action, *nor the potential for the defendant to present a strong defence* should prevent the plaintiff from proceeding with his or her case" (at 980; emphasis added).

**ANALYSIS**

[36] With this background and law in mind, I will address the issues in the order set out above.

**Should paragraphs 6-8 of the Zawryucka Affidavit be struck?**

[37] I will reproduce the offending paragraphs below:

> 6. After working 2.5 days in December 2022, Mr. Nakihimba was scheduled to return to work from a Christmas shutdown on or about January 3, 2023. Mr. Nakihimba did not attend this shift and no advance notice was provided regarding his absence. I have no record of receiving any communications from Mr. Nakihimba regarding this absence or his employment until January 16, 2023, and no sick note was provided excusing his absence [**NTD: Confirm**] [*sic*]
>
> 7. After finally reaching out on January 16, 2023, Mr. Nakihimba's employment was terminated by Madazen Foods following his January 3, 2023 unexcused absence. While I was involved in this decision, it was collectively determined that due to the brief nature of Mr. Nakihimba's employment this was considered sufficient to terminate his employment.
>
> 8. I am not aware of Mr. Nakihimba's medical condition and this had no impact on the decision to terminate his employment. The decision to terminate his employment was based exclusively on the fact that he was absent from work for an extended period of time.

[38] The plaintiff's argument for striking paras. 6, 7 and 8 of the Zawryucka Affidavit is that the statements are contrary to the Amended Statement of Claim and Mr. Nakihimba's affidavits. Specifically, he takes issue with the characterization in para. 7 of his failure to attend work in

January 2023 because he says he gave notice of his illness and had a doctor's note.

[39] The fact that a party disagrees with a factual assertion in an affidavit is no reason to strike that paragraph. The parties may have different perceptions of what occurred. The court may later reconcile apparently divergent views or determine that an assertion is factual or false. But that is no reason to strike part of an affidavit.

[40] I find that paras. 6, 7 and 8 of the Zawryucka Affidavit are proper content for an affidavit. The plaintiff's application is dismissed.

**Should the Statement of Claim be struck?**

[41] I will address each of the grounds relied upon under Rule 7-9 in the striking application. While each might have application, I conclude that the entire claim must be struck because it seeks to relitigate matters previously addressed by statutory tribunals. The claim, in its essence, is a collateral attack on those decisions and therefore an abuse of process.

*Rule 7-9(a) - no reasonable claim*

[42] The Amended Statement of Claim in paras. 13, 14, 21, 24 30, 31, 32, 33, 34 and 35 expressly identifies the tort of wrongful dismissal as the main cause of action. Facts are pled that support this claim in that the plaintiff began his employment with Madazen Foods Inc. on December 21, 2022 and the plaintiff was told on January 16, 2023 that his employment was terminated for failing to attend work on and after January 3, 2023.

[43] The Amended Statement of Claim at para. 16 claims that the defendants "refused to pay me my unpaid wages willingly." This goes to damages only.

[44] The Amended Statement of Claim in para. 31 proposes a separate duty of care on the part of the defendant Madazen Foods Inc. "not to lie or knowingly mislead in the performance of contractual obligations", which it did by wrongfully dismissing him. This is not a proper cause of action. No facts are pled beyond the alleged wrongful dismissal.

[45] The Amended Statement of Claim in paras. 32 and 33 asserts a duty of care on the part of the defendant Darren Zawryucka "not to dismiss me in a bad faith manner" and "not to lie or knowingly mislead the performance of contractual obligations", apparently referring to not receiving a $50 gift certificate as a Christmas bonus. While not clear from the pleadings, I take it that the bad faith and lie alleged is Mr. Zawryucka's statements that he did not receive the emails from Mr. Nakihimba saying he would not be at work because of illness. This does not create a separate cause of action, apart from the claim of wrongful dismissal. The manner of dismissal may be relevant to damages, but it does not create a separate cause of action.

[46] Accepting the facts pled are taken to be proven, the Amended Statement of Claim discloses a reasonable claim of wrongful dismissal.

*Rule 7-9(2)(b) – scandalous, frivolous or vexatious*

[47] The Amended Statement of Claim is scandalous in that it makes baseless claims against the defendants of "bad faith" in paras. 30 and 32 and that the defendant Darren Zawryucka "lied or knowingly misled" in para. 33

and engaged in “egregious conduct, high-handed misconduct and oppression” in para. 35. Pleadings are not intended as a free forum for gratuitous insult and slander.

[48] The Amended Statement of Claim is frivolous in that it advances claims which are groundless and cannot succeed, as discussed above.

[49] The Amended Statement of Claim is vexatious in that it advances claims that are not known to law, as discussed above.

[50] The offending parts of the Amended Statement of Claim could be struck under this ground.

*Rule 7-9(2)(c) – immaterial, redundant or unnecessarily lengthy*

[51] The Amended Statement of Claim is 6 unnumbered pages in length with 41 paragraphs. (The paragraphs end with para. 39 because there are two paragraphs 32 and 33.) It is single spaced with small font. Some of the content is immaterial and redundant.

[52] The facts on which the claim was brought were fairly simple. Repetition does not make those facts or claim better or more compelling. Although the Amended Statement of Claim could be better drafted and more concise, it is not so bad as to justify striking on this ground.

*Rule 7-9(2)(e) - abuse of process*

[53] The Amended Statement of Claim is an abuse of process.

[54] The plaintiff's claim is that he should not have been terminated. On the facts, one can understand why the employer decided to terminate him. He had only worked three days and then failed to return to work. While he may have tried to notify the employer, it was under no duty to keep him employed whether it received notice of illness or not.

[55] As a short-term, non-union hourly wage earner, Mr. Nakihimba had no security of tenure. His employment was governed by *The Saskatchewan Employment Act*, SS 2013, c S-15.1 [*Act*]. Section 2-43 of that *Act* requires more than 13 consecutive weeks service to be entitled to employment leave. His only right on dismissal without cause was to notice as established by s. 2-60 of the *Act*. As set out above, his entitlement to payment of wages was determined by the Employment Standards Branch and he was paid accordingly. That should have been an end to the matter.

[56] Instead, Mr. Nakihimba made a complaint to the Saskatchewan Human Rights Commission. That was his right. That complaint was dismissed.

[57] Mr. Nakihimba then commenced this action. But the fact is that the question of his termination and entitlement to payment of wages and proper notice have already been settled under the statutory framework and through the statutory tribunals provided for such disputes. The Legislature, having provided for resolution of such dispute through those tribunals, has removed the Court's jurisdiction, except through judicial review. The Amended Statement of Claim therefore offends the rule against collateral attack. Mr. Nakihimba seeks to relitigate what has already been resolved. That amounts to an abuse of process.

[58] While not necessary to do so, I note that the Amended Statement of Claim seeks to attach personal liability to Darren Zawryucka for what amounts to an employment dispute. The employer was Madazen Foods Inc., not Mr. Zawryucka. One purpose of incorporation is to limit liability to the corporation. There are circumstances where the corporate veil may be lifted, such as for unpaid wages, but they have no application here.

[59] There is nothing in the Amended Statement of Claim which would extend liability to Mr. Zawryucka as either manager of the company or as an officer, director and shareholder of the company. This would be a separate reason to dismiss the claim against him.

[60] While not necessary to do so, I will briefly comment on the relief sought in the Amended Statement of Claim at para. 39. Paragraph 39 lists 13 separate items as relief, including in clause 39(k) "$400,000 as punitive damages". This is simply absurd. Keep in mind that Mr. Nakihimba worked 19 hours for $16 an hour. His total earnings, leaving aside any right to additional notice, would be $304.

[61] The Amended Statement of Claim in paras. 21 to 27 claims damages for a variety of losses supposedly resulting from his loss of employment. These are not compensable damages. The defendants argued correctly that the plaintiff employs a "but for" test. But for the loss of his employment, he might not have made many other decisions which adversely affected his finances. That is not the test the Court would apply. The concepts of proof of damages, causation and remoteness of damages would apply to bar these claims.

[62] I strike the Amended Statement of Claim in its entirety as an abuse of process without leave to amend.

*Conclusion*

[63] The Amended Statement of Claim is struck in its entirety without leave to amend.

**Should there be any award of costs?**

[64] Rule 11-1 of *The King's Bench Rules* provides guidance to the court in the exercise of its discretion to award costs.

[65] The plaintiff was unsuccessful in his application to strike parts of the affidavit. The defendants have been successful in their application to strike the claim. The defendants are entitled to an award of costs.

[66] Waboshi Nakihimba is ordered to pay a single set of costs to the defendants, payable forthwith, calculated under Column I of the Tariff of Costs.

J.
D.N. ROBERTSON