

**CITATION:** Argyle v. Dickinson, 2026 ONSC 207  
**COURT FILE NO.:** CV-25-00743033-00CL  
**DATE:** 20260112

**ONTARIO SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

Roanne Argyle, Robert Gemmill, Robert McEwan, Tomas Stefan Moores, Correy Myco, Ngi Holdings Inc., Kimberley Blanchette, Krystyna Lloyd, Jillian McLean, Kristin Owen, Whitney Siemens, And Matthew Stradiotto,

Plaintiffs

-and-

Arlene Dickinson and Arlene Dickinson Enterprises,

Defendants

**BEFORE:** FL Myers J

**COUNSEL:** *Simon Bieber, Sean Blakeley, and Caroline Harrell, for the Plaintiffs*

*Jeremy Devereux and Aliyyah Jafri, for the Defendants*

*David A. Schatzker for Daniel Tisch Communications Inc.*

**READ:** January 11, 2026

**ENDORSEMENT**

**The Motions**

- [1] By endorsement dated December 15, 2025, reported at 2025 ONSC 7003, the defendants obtained orders in two related actions to strike portions of the statement of claims. The court granted leave to amend all but one untenable allegation.
- [2] As stated expressly in the endorsement, the motions started as motions to dismiss the misrepresentation lawsuits for disclosing no reasonable causes of action. Realistically however, they were never more than demands for particulars.

**Pleadings Motions**

- [3] The plaintiffs did not do an adequate job pleading their claims and now have to do it again. The defendants therefore succeeded in forcing the plaintiffs to rethink or think more deeply about how to express their claims.
- [4] Pleadings are important. The rules of pleading, although technical, serve important purposes. Statement of claim give notice to the defendants that they are being placed in legal jeopardy. The pleadings define for the defendants the claims made against them. In addition, they tell the parties the scope of documents they will be required to produce and the scope of mandatory oral examination they will have to endure.
- [5] Under our current system of backend-loaded civil proceedings, pleadings define the scope of discovery that trial counsel will use some years hence to mould a theory of the case for trial.
- [6] Pleadings therefore have importance both as a process to give notice to the defendants as required by the doctrine of natural justice and also as a practical device to begin the process of arming trial counsel with as much information as possible to prepare for trial down the road.
- [7] On the other hand, pleadings are indeed just technical devices to achieve those goals. Drafting pleadings is a skill that, for the most part, can be drawn from available textbooks. While pleadings define the parameters of the lawsuit, they just contain unproven allegations. They are not evidence needed to prove a claim at trial.
- [8] Pleadings are almost infinitely amendable as facts are developed and circumstances change. Pleadings can even be amended after a verdict is granted to allow the amount claimed to be increased to match the amount awarded.
- [9] Because pleadings are important for some aspects of the lawsuit, the law allows the form and content of pleadings to be challenged. The defendants challenged the statements of claim in these cases successfully. But as pleadings are just a tool to achieve defined purposes, the nature of the success achieved by the defendants on these motions is questionable.

### Costs

- [10] The normative approach in Ontario is that the successful party on a motion is presumptively entitled to partial indemnity for its costs subject to proportionality concerns. *Boucher v. Public Accountants Council for the Province of Ontario*, 2004 CanLII 14579 (ON CA). The defendants therefore seek their costs as a result of their “success.”
- [11] But what have the defendants achieved? At paras. 45 – 46 of the endorsement, I wrote:
- ...As a result, the defendants’ apparent “success” will see them facing more organized, better drafted pleadings. All the defendants’ might have achieved therefore, is to force the plaintiffs to do a better job pleading a stronger case against them. Time will tell whether any victory on these motions proves pyrrhic.
- [13] Subject to hearing from the parties, my inclination is that the costs of this motion should be in the cause. I have no idea who will win this lawsuit. If it proves to be frivolous and add nothing to BCP’s action for breach of contract, perhaps a trial judge will find that it ought to have been cut off summarily. On the other hand, if the plaintiffs establish liability, especially for fraud, then these motions will likely be viewed as tactical delays and little more.
- [12] Despite this inclination, the defendants have asked that the plaintiffs pay partial indemnity for their costs in the amount of approximately \$40,000. To bring these pleadings motions the defendants actually incurred more than \$66,000 in legal fees, disbursements, and HST.
- [13] The defendants submit that they succeeded in striking most of the claims. Moreover, for a big piece of the statement of claim, referred to as the “post transaction conduct,” the defendants say they successfully pushed the plaintiffs to concede that the allegations were not fresh causes of action, but rather were allegations supporting the pre-contractual misrepresentation claims made earlier in the statement of claim.
- [14] The plaintiffs, by contrast, submit that the motion accomplished nothing but pointing out technical deficiencies that they can now correct and even bolster. They submit that the costs should be “in the cause.”



That is an historic way to say that the costs of this motion should be awarded to the party that wins at trial. The plaintiffs are picking up on my suggestion.

- [15] While the plaintiffs criticize the technical nature of the motion and the potentially pyrrhic victory, they downplay the fact that their pleadings were defective. They cast allegations broadly, without particulars, and they were at least confusing as to what role was to be played by the post transaction conduct allegations.
- [16] Over-pleading can be a tactic too. Lawyers know that pleadings motions have little practical benefit in most cases. Therefore, defendants do not bring pleadings motions nearly so often as they once did – especially with the costs involved these days.
- [17] But the knowledge that defendants may be reluctant to bring expensive pleadings motions can incentivize plaintiffs’ lawyers to plead imprecise and overly broad allegations to try to widen the scope of documentary and oral discovery. Since the theory of the case does not have to be set until just before trial, plaintiffs may seek opportunities to fish through as much of the defendants’ documents and oral evidence as possible to try to fund tidbits of evidence to use at trial (whether they have anything to do with the initial cause of the lawsuit or not).
- [18] These kinds of incentives being used as strategies in lawsuits have led to over-use of motions practice and discovery processes that delay trials on the merits and make the cost of civil litigation unaffordable to the average Canadian. Perhaps a system could be devised where parties have to provide their evidence at the outset to give precise and detailed notice to the other parties of the actual thing bothering them. Defendants won’t need particulars motions if they have the plaintiffs’ detailed evidence in hand already. That could avoid creating years of motions and unending examinations for discovery. But that is not the system under which we operate currently.
- [19] So here I have plaintiffs who delivered defective claims and defendants who spent a huge amount of money trying to narrow the allegations. I should note that there is no doubt that the defendants knew the fundamental case they have to meet. This was not a case of the pleadings failing to provide the minimum requisite disclosure as discussed by Master Sandler in the seminal decision of *Copland v. Commodore Business Machines Ltd.*, 1985 CanLII 2190 (ON SC).

[20] At para. 44 of the endorsement I wrote:

The statements of claim and particulars are not models of pleading. Much has been struck subject to amendment. On the other hand, this was never realistically a motion to strike out the statement of claim to dismiss the lawsuit. Mr. Devereux made clear in his opening submissions that realistically the motion was about the adequacy of the particulars.

[21] Do I fix costs for the successful party or defer them to trial to see if success was pyrrhic and if the very expensive effort was a waste of time?

[22] Under Rule 57.03, of the *Rules of Civil Procedure*, RRO 1990, Reg 194, the court will fix costs of a motion unless it is satisfied that a different order is more just. In *Sea Vision Marine Products Ltd. v. McKittrick*, 1998 CarswellOnt 373, [1998] O.J. No. 299, 77 A.C.W.S. (3d) 272, Wright J. discussed the tension between fixing and deferring costs especially in the circumstances now presented. He wrote:

5 Generally speaking, a judicial officer dealing with an interlocutory proceeding should dispose of the costs of that proceeding at the time. It is extremely difficult for a trial judge to properly deal with interlocutory proceedings over which he or she has not presided. There may, however, be circumstances where the justice of the cause dictates the postponement of the disposition of costs until further developments are known.

6 An award of costs to a successful party on a motion to strike out pleadings "in the cause" may simply be an indication by the judge or master that, while technically the motion must succeed, the motion itself was a tempest in a teapot. Under these circumstances it might be appropriate for the successful party to receive costs if they are ultimately successful on the trial but not if they are unsuccessful.

[23] This approach makes good sense to me. I am not deferring the outcome of the motion to the winner of the lawsuit as I was initially inclined to do. It is not "costs in the cause." Rather, Wright J. fairly suggests that costs should go to the successful defendants if they win the case. But there is no reason for costs to ever be ordered in favour of the plaintiffs.

Even if they win at trial, it was their unilateral acts of delivering inadequate pleadings was the ultimate cause of this process detour.

- [24] The plaintiffs incurred costs of approximately \$41,000 all-inclusive on these motions. They value their costs on a partial indemnity basis at approximately \$25,000 all-in.
- [25] The defendants bore the heavier lifting in establishing the bases for relief on the motion. It is not surprising that their research and preparation costs would be more than those of the plaintiffs.
- [26] In my view however, all the costs are too high for a pleadings motion that could or should have been resolved by a discussion among counsel about particulars. If both sides listened to the concerns of the other with the aim of providing the efficient and affordable civil process that all their clients are entitled to receive, most of the costs would have been avoided. Moreover, had a particulars motion been brought instead of a rather convoluted motion to strike, most of the costs would have been avoided. There is obvious antipathy among the parties. It is part of counsel's role to remain above the fray to manage and constrain client desires. Clients must be told that procedural cooperation is a requirement of the 3 Cs and modern civil procedure generally.
- [27] In my view, the fair and reasonable outcome of these motion is for the plaintiffs to pay the costs of the defendants in the cause on a partial indemnity basis fixed at \$20,000 all-inclusive.

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FL Myers J

**Date:** January 12, 2026