Date: 2025 12 18
S-1-CV-2025-000-056

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

NIHTAT GWICH'IN COUNCIL, KELLY MCLEOD, EHDIITAT GWICH'IN COUNCIL and MICHAEL GREENLAND

Applicants

-and-

FREDERICK BLAKE JR., DORIS KOE, DIANE KOE, RICHARD NERYSOO, and CINDY MCDONALD

Respondents

MEMORANDUM OF JUDGMENT ON APPLICATION FOR CONVERSION

OVERVIEW

[1] The Applicants are Designated Gwich'in Organizations (DGOs) and directors of the Gwich'in Tribal Council (GTC). The Respondents are also directors of the GTC. Earlier this year, the Applicants filed an Originating Notice seeking relief from oppression under s 253 of the *Canada Not-for-profit Corporations Act* (the *Act*). They are now asking that the application be converted into an action which, if granted, would result in this matter being determined through a full trial rather than through the summary process of an application.

BACKGROUND

[2] The GTC is an Indigenous organization that represents participants to the Gwich'in Comprehensive Land Claim Agreement. The GTC was created at the time of the Gwich'in Comprehensive Land Claim Agreement negotiations. It has since continued to serve several purposes, including the protection of the rights of the Gwich'in and the development and promotion of their interests. The GTC is incorporated under the *Act*. The main GTC governance rules are contained in By-law No. 1 Governance (By-law No. 1).

[3] The GTC Board is composed of one Grand Chief, who is elected by the GTC Participant Members, and eight additional directors, two directors appointed by each of the four DGOs: the Tetlit Gwich'in Council (TGC), the Gwich'ya Gwich'in Council (GGC), the Ehdiitat Gwich'in Council (EGC), and the Nihtat Gwich'in Council (NGC).

[4] The Applicants in this case are two DGOs, the NGC and the EGC, and two directors of the GTC, Kelly McLeod, the President of the NGC, and Michael Greenland, the President of the EGC.

[5] The Respondents are Frederick Blake Jr., who was elected Grand Chief of the GTC in August 2024, the two TGC directors appointed to sit on the GTC board: Diane Koe and Richard Nerysoo, Doris Koe, a director of the GGC and of the GTC and Cindy McDonald, who participated in a GTC board meeting on February 3, 2025 as a representative of the GGC in replacement of John Firth. Mr. Firth is the other GGC director appointed to sit on the GTC board, but he was unable to attend the February 3 meeting because of health issues.

[6] In August 2024, there was an election for the office of Grand Chief of the GTC. The Respondent, Frederick Blake Jr., received more votes than the other candidate, the incumbent Grand Chief, Ken Kyikavichik. The day after the election, Mr. Kyikavichik lodged a complaint alleging violations of the GTC election rules. The GTC Board ruled such violations occurred and called a new election. Mr. Blake challenged this decision before this Court.

[7] I heard an application challenging the Board's decision to call a new election on October 30, 2024. On January 14, 2025, I found that some of the alleged violations to the election rules did occur but that they did not justify a new election. I declared Mr. Blake elected Grand Chief of the GTC.

[8] The events that unfolded after my decision are the subject of this litigation. These events occurred in the context of a history of disputes within the GTC governance by two opposing factions: one faction composed of directors appointed by the NGC and the EGC (the Applicants) and one faction composed of the directors appointed by the GGC and the TGC (the Respondents).

[9] After my decision declaring Mr. Blake Grand Chief of the GTC, the Applicants did not immediately recognize him as Grand Chief. The parties disagreed on the interpretation of By-law No. 1 and more specifically on what steps, if any, were required for Mr. Blake to take office.

[10] In late January 2025, Mr. Blake took the position that no further steps were required for him to exercise the powers of Grand Chief. He called a special board meeting scheduled for February 3, 2025, in Edmonton. Mr. McLeod and Mr. Greenland raised concerns about Mr. Blake's authority to call a board meeting because he had not been sworn in yet. On January 31, 2025, a swearing-in ceremony was held in Tsiigehtchic. However, this ceremony was not recognized or attended by representatives of the NGC and of the EGC.

[11] On February 3, 2025, a GTC board meeting was held in Edmonton. The Respondents attended and participated in the meeting. Twenty motions were adopted during this meeting. The NGC and the EGC Directors did not attend the meeting or seek to participate remotely.

[12] On February 7, 2025, Mr. Blake called another special board meeting for February 19, 2025, before the date was changed to February 15. All board members were notified of the meeting.

[13] On February 14, 2025, the Applicants filed the Originating Notice in the present matter seeking relief from oppression under s 253 of the *Act*. The application challenges the way the February 3 board meeting was called, how it was held, and the legality of some of the motions adopted. More specifically, it calls into question Mr. Blake's authority to act as Grand Chief before he was sworn in in compliance with By Law No.1. It claims that this affects the validity of the call to the February 3 meeting and the quorum at that meeting. It also disputes there was quorum to hold the board meeting because of the participation of Cindy McDonald, who the Applicants allege was not a properly appointed director for the GTC. Finally, it puts forward the position that motions adopted on February 3 are not compliant with the GTC Bylaws, and the Bylaws of the Gwich'in Development Corporation (GDC) and Gwich'in Settlement Corporation (GSC), two GTC subsidiaries, and that the

motions were otherwise adopted in breach of the Respondents' fiduciary duties and the duty of care owed as directors of the GTC.

[14] Of the twenty motions adopted during the February 3 meeting, the Applicants especially take issue with the following motions:

- Motion 1 - appointing Mr. Blake as Chairman of the GTC.
- Motion 5 - terminating the employment of the GTC CEO Jamie Koe.
- Motion 6 - directing Mr. Blake to review and manage all the employee contracts currently in existence at the GTC.
- Motion 12 - revoking previous resolutions that suspended funding for the GGC and the TGC and reinstating funding.
- Motion 14 - terminating the appointment of the existing Directors of the GDC and the GSC and replacing them for the GDC with John Firth and the Respondents – except Cindy McDonald - and, for the GSC with all GTC Directors.
- Motion 19 - directing that Mr. Blake receive back pay and benefits retroactively to the date of the election.

[15] In their Originating Notice, the Applicants seek the following reliefs:

- An order pursuant to s 253(3) of the *Act* enjoining reliance upon any business conducted or purported to have been conducted by the GTC at the meeting conducted in Edmonton on February 3, 2025;
- An order pursuant to s 253(3)(a) of the *Act* restraining the Respondents from conducting or purporting to conduct any business of the GTC and the GSC without the presence of a quorum of properly appointed directors;
- An order pursuant to s 243 of the *Business Corporation Act*, restraining the Respondents from conducting or purporting to conduct any business of the GDC without the presence of a quorum of properly appointed directors;
- An order pursuant to s 253(3) of the *Act* that until further order of this court, quorum for any meeting of the Board of Directors of the GTC shall be modified to require, in addition to all existing requirements, the presence of at least one director appointed by the NGC and one director appointed by the EGC;

- An order pursuant to s 253(3) of the *Act* restraining Cindy McDonald from acting as director of the GTC unless and until Ms. McDonald is properly appointed in accordance with By-law No. 1;
- An order restraining Mr. Blake from acting or purporting to act as Grand Chief of the GTC until Mr. Blake is sworn in in that position in accordance with By-law No. 1.

[16] Also on February 14, 2025, the Applicants filed a motion for interlocutory injunction seeking the same orders as the Originating Notice. On the same day, the hearing of that application was adjourned to March 7, 2025.

[17] On February 28, 2025, the Respondent, Mr. Blake, filed an application seeking, amongst other relief, a declaration that Mr. McLeod and Mr. Greenland were in civil contempt of my January 14, 2025, decision and an order declaring and confirming Mr. Blake as Grand Chief of the GTC.

[18] Between February 14 and March 7, 2025, the parties engaged in resolution discussions. On March 7, 2025, the Applicants filed an application seeking the enforcement of a settlement agreement. The Respondents sought an adjournment of all matters scheduled to be heard on March 7, 2025, including the application for an interlocutory injunction. I granted the adjournment. Court time was set aside on April 3, 2025, for the hearing of the interlocutory injunction application.

[19] Between February 14 and April 3, 2025, the parties filed affidavit evidence that set out their versions of events related to the GTC governance issues. The evidence covers the circumstances surrounding the February 3 board meeting as well as dealings between the parties before and after the meeting. This includes evidence related to the February 15 board meeting, when the Applicants claim they were prevented from fully participating and exercising their fiduciary duties as directors of the GTC. A few parties filed multiple affidavits. Most, but not all, affiants were cross-examined by the other parties.

[20] I heard the interlocutory injunction application on April 3, 2025, and delivered an oral decision on April 16, 2025. Applying the test for mandatory injunctive relief, I found the Applicants did not establish they had a strong *prima facie* case on the questions of Mr. Blake's ability to assume the office of Grand Chief, including the calling of the February 3 board meeting, the quorum at the meeting and the lawfulness of most motions adopted on that day. However, I concluded that the Applicants had a strong *prima facie* case for oppression with

respect to the lawfulness of the motion replacing the GDC and GSC boards and for breach of fiduciary duty in the way the February 3 decisions were made. Nonetheless, I was not convinced the Applicants had met the two other branches of the injunction test: irreparable harm and the balance of convenience. I dismissed the application.

[21] On May 2, 2025, the parties filed a consent order that recognizes Mr. Blake as Grand Chief of the GTC without the need for any further process.

[22] Section 253(1) of the *Act* requires an oppression proceeding to commence by application, but pursuant to s 253(3)(n) of the *Act*, the court can direct a trial on some or all issues raised by the application. Conversion can mitigate the effect of the restrictions and constraints of the summary and expeditious nature of the application process, including, for example, more limited disclosure of evidence, the presentation of evidence by affidavit rather than oral testimony, and different and less favourable rules for cross-examination on affidavit than for examination for discovery (*Association des crabiers acadiens Inc v Canada (Attorney General*), 2009 FCA 357, para 38).

[23] On August 15, 2025, the Applicants filed a Notice of Motion seeking the conversion of this proceeding initiated by way of Originating Notice into an action. This is the application that is the focus of this decision.

[24] To the Notice of Motion, the Applicants appended a Proposed Statement of Claim, which sets out the facts they wish to rely on and lists the relief they intend to seek. The Proposed Statement of Claim contains many new allegations that postdate the Originating Notice. The Applicants are in essence alleging that the February 3, 2025, board meeting is the first of many events that unfolded between February 2025 and June 2025 that form part of an ongoing pattern of conduct from the Respondents to exclude the Applicants from the governance of the GTC. The Applicants also assert that the Respondents have renewed their efforts to replace the GDC and the GSC boards in ways that are not compliant with the applicable bylaws. Additionally, the Applicants allege that Mr. Blake has misappropriated GTC funds.

[25] The Applicants argue that the conversion of the application into an action is justified for four main reasons: they submit there are issues of credibility that require *viva voce* evidence; they claim material facts are in dispute; they say the issues at play are important and complex; and, finally, and central to their position, they argue discoveries are required in the context of information asymmetry between the

parties. The Applicants submit that proceeding in this fashion is both efficient and fair.

[26] The Respondents oppose this application. They argue that the Applicants have not displaced the statutory presumption that an oppression claim should be brought by way of application. They also raise several procedural issues. They claim that the conversation application is a disguised application to amend, whereas the conditions for obtaining such a relief have not been met. They further argue that the Proposed Statement of Claim offends the rules of pleading in many respects and that, as a result, the conversion application should fail.

[27] For the following reasons, I dismiss the conversion application in its current form.

ANALYSIS

Failure to Seek Leave to Amend and the Failure to Particularize

[28] The Originating Notice alleges oppression based on events related to the February 3, 2025, board meeting. The Proposed Statement of Claim would significantly expand the scope of these proceedings.

[29] Some of the new allegations are supported by evidence presented on the interlocutory injunction application, such as affidavits and cross-examinations on affidavits that address the circumstances surrounding the February 15, 2025, emergency board meeting. However, the record before me does not contain evidence of the events that unfolded after my decision on the interlocutory injunction application. The Proposed Statement of Claim covers a wide range of facts, many of which are not supported by any evidence, including the facts related to board meetings Mr. McLeod and Mr. Greenland claim they attempted to attend without success after February 15, 2025, and the resolutions and actions taken by the Respondents in relation to the GDC and the GSC boards' membership after February 15, 2025. In addition, there is no evidence before me that Mr. Blake misappropriated GTC funds and the Proposed Statement of Claim does not provide particulars of the misappropriation allegations.

[30] The Respondents argue that by seeking to file the Proposed Statement of Claim, the Applicants are not only asking this Court to convert an application into an action, but they are also, in effect, seeking to amend their originating document. The Respondents submit that the Applicants ought to have sought to amend the

Originating Notice as part of their conversion application. The Respondents also argue that the proposed amendments should be supported by affidavit evidence. In addition, they claim that some of the new allegations require particulars that are not provided in the Proposed Statement of Claim. They submit that these deficiencies justify dismissing the conversion motion.

[31] The Applicants submit that granting the conversion application is the most efficient way to litigate the issues that have arisen in the GTC governance since Mr. Blake started to exercise the powers of Grand Chief. They point to case law that underscores the importance of seeking conversion as early as possible in the judicial process. They claim that they are not required by the *Act*, the *Rules of the Supreme Court of the Northwest Territories* (the *Rules*), or by the applicable case law to submit evidence that supports the additional allegations contained in the Proposed Statement of Claim.

[32] Although I agree with the Respondents that it would have been preferable for the Applicants to specifically seek to amend the Originating Notice in the conversion application, I am not convinced that the failure to do so in this case is fatal to the Applicants' position. This court enjoys wide discretion in granting remedies, including remedies not specifically sought by a party (Rule 121; s 27 of the *Judicature Act*; *Northwest Territories (Attorney General) v Fédération Franco-Ténoise*, 2008 NWTCA 6, paras 79-80). The Respondents received notice of the intended amendments when the Applicants attached the Proposed Statement of Claim to their conversion application. I am not persuaded the Respondents would suffer prejudice from the lack of a formal motion to amend.

[33] However, I do accept the Respondents' position that granting this application would be akin to granting the Applicants leave to amend their Originating Notice and that to obtain such leave, the Applicants must rely on some evidence that supports the proposed amendments.

[34] Rule 133 governs applications for leave to amend after the close of the pleadings. It provides that:

> The Court may, at any stage of the proceeding, allow a party to alter or amend his or her pleadings for the purpose of determining the real question in issue between the parties in such a manner and on such terms as the Court considers just.

[35] In *Iqaluit Caterers Ltd v Zakal*, 1988 CanLII 8991 (NWT SC); [1988] NWTR 186 [*Zakal*], this Court found that amendments should be granted if they can be

made without injustice to the other parties (at 189). This interpretation is in line with *Voghell v Voghell and Pratt*, 1960 CanLII 841 (NWT CA); 33 WWR (ns) 673 [*Voghell*] where the Court of Appeal stated: "The golden thread running through judgments concerning amendments is whether an amendment can be made without injustice to the other side" (at 686). Although these decisions are dated, the principle they state is still relevant and applicable today.

[36] The parties have not filed, and I have not found any decision from this jurisdiction that directly addresses whether a party seeking to amend their pleadings has an evidentiary burden.

[37] The Respondents Doris Koe and Cindy McDonald (the GGC Respondents) rely on *Thillainathan v Hindu Temple Society of Canada*, 2025 ONSC 1782 [*Hindu Temple Society of Canada*]. In that case, the applicant was not proactive in moving the litigation along and failed to comply with deadlines imposed by the case management judge on numerous occasions. Several years after the proceeding was launched, the applicant sought to amend their pleading. The court ruled that, at such an advanced stage of the litigation, no amendments to the Notice of Motion were permitted unless they were supported by admissible evidence. I am not convinced *Hindu Temple Society of Canada* supports the Respondents' position. The case before me is not at an advanced stage. The parties filed a few preliminary applications in the spring of 2025, including the application for an interlocutory injunction, but since then, this is the first motion filed by the parties. Less than a year has elapsed since the proceedings started. In addition, the Applicants have complied with all deadlines this Court has imposed. *Hindu Temple Society of Canada* is distinguishable on its facts.

[38] However, a large body of case law from Alberta, including decisions from the Alberta Court of Appeal, supports the proposition that an application to make substantive amendments to original pleadings must be supported by evidence (see for example, *Balm v 3512061 Canada Ltd*, 2003 ABCA 98, paras 25-29 [*Balm*]; *JAV International Ventures Ltd v Halliburton Group Canada Inc*, 2008 ABCA 99, para 5; *Attila Dogan Construction and Installation Co Inc v AMEC Americas Limited*, 2014 ABCA 74, paras 25-26 [*AMEC Americas*]; *Canadian Natural Resources Limited v Arcelormittal Tubular Products Roman S.A. (Mittal Steel Roman S.A.)*, 2012 ABQB 679, paras 49-56 [*Canadian Natural Resources*]; *Astolfi v Stone Creek Resorts Inc*, 2023 ABKB 416, para 61 [*Astolfi*]; *Mikisew Cree First Nation v Alberta*, 2024 ABKB 578, paras 16-17 [*Mikisew Cree First Nation*]). In contrast, the Applicants did not provide me with one case from any jurisdiction that ruled mere allegations are sufficient.

[39] I find the cases from Alberta persuasive. The *Alberta Rules of Court* that deal with amendments to pleadings are not identical to the *Rules*, but both sets of rules are broad and permissive and have been interpreted as generally allowing amendments, absent a prejudice or injustice to the other parties (*Voghell; Zakal*; *Mikisew Cree First Nation*, para 16). In addition, the decisions of the Alberta Court of Appeal are particularly persuasive in the Northwest Territories because the Court of Appeal for the Northwest Territories is largely composed of members of that Court (see for example *Brost v Bullis*, 2019 NWTSC 30, para 66 and *R v Whittle*, 2024 NWTSC 30, para 53). Furthermore, and importantly, the requirement that the new allegations be supported by some evidence makes sense when the Applicants are seeking to expand the scope of the proceedings and substantially change the case the Respondents must now answer. As a result, I adopt the Alberta line of jurisprudence.

[40] Admittedly, the applicable cases set a low evidentiary threshold. For example, in *Balm*, the Alberta Court of Appeal referred to a "modest degree of evidence" (para 29). In *AMEC Americas*, it noted that "the amount of evidence required to justify an amendment is low" and that "it is not necessary for the amending party to show that the amended pleading can be proven at trial, nor that it meets the test for summary judgment" (para 26). In *Canadian Natural Resources Limited*, Hughes J (as she was then) described the evidentiary standard to support a substantive amendment as "very low" (para 50). However, what is common to all the decisions from Alberta I cited above is that they state substantive amendments must be supported by at least *some evidence*. In the present case, the Applicants did not file any evidence to support substantive amendments.

[41] The necessity to file evidence in support of amendments is of particular importance in this case because the Proposed Statement of Claim contains new allegations of conspiracy and of breach of trust and fiduciary duty. As stressed in *Astolfi*, proposed amendments that include "new causes of action based on fraud, high-handedness, or malicious conduct require 'significant evidence' establishing a 'good ground' or 'exceptional circumstances'" (para 61; also see *Balm*, para 63).

[42] Moreover, the Proposed Statement of Claim only contains a bald assertion that Mr. Blake misappropriated GTC funds. It does not particularize the allegations of breach of trust and fiduciary duty. Rule 117 requires that allegations of breach of trust be particularized. As this Court recently noted in *TSA Corporation et al v Reynolds Mirth Richards and Farmer LLP et al* [*TSA Corporation*], 2025 NWTSC 16 at para 25:

> [F]airness demands that pleadings which allege the most serious forms of wrongdoing, such as fraud and breach of fiduciary duty, contain detailed particulars. This both allows the accusations to be answered and avoids defamatory material being publicized on the privileged court record without substance behind it".

[43] The Applicants claim that if I conclude that particulars are required, the remedy should be a direction to particularize. I disagree. Proposing an amended pleading that offends such a fundamental rule of pleading is a form of prejudice sufficient to deny leave to amend (*Monster Snacks Inc v David*, 2023 ONSC 6223, para 25).

[44] Although these procedural issues do not mean that conversion could never be justified, I find that it would be unfair to the Respondents if I entertained the conversion application on the current record and based on the Proposed Statement of Claim.

[45] The combination of the failure to file some evidence in support of the substantive amendments and the failure to particularize the allegations of misappropriation of GTC funds justify dismissing the application for conversion.

Mootness and Rules of Pleading

[46] The GGC Respondents also raise other procedural concerns. They argue that the issues raised by the Originating Notice are moot and that, consequently, the Applicants should raise any new grounds of action by filing a fresh Originating Notice. They also claim the Proposed Statement of Claim violates other rules of pleading.

[47] I agree with only one of the GGC Respondents' additional grievances, and I would not have denied the application for conversion solely because of this deficiency. However, to assist the parties in the next steps they take in these proceedings and, hopefully, avoid unnecessary applications in the future, I set out below my findings on these issues.

[48] I agree that some of the issues raised in the Originating Notice are moot. When the parties filed a consent order in May 2025, the status of Mr. Blake as Grand Chief of the GTC was settled. As a result, some of the Applicants' arguments advanced in support of the proposition that the motions adopted on February 3 are invalid because of the lack of quorum were rendered moot. However, this is not the case for the allegations related to the status of Cindy MacDonald and for the allegations of

oppression and breach of fiduciary duty in the way the February 3 board meeting was called and conducted. I examined the parties' factual and legal arguments at the stage of an interim order. I concluded the Applicants established a strong *prima facie* case with respect to some issues they raised, while they did not with respect to other issues. However, my decision on the interlocutory injunction is not final. Only some of the issues raised by the Originating Notice are moot, those resolved by the consent order. Other important issues related to the governance of the GTC are still pending and the Applicants are entitled to pursue them.

[49] The GGC Respondents submit that the Proposed Statement of Claim improperly pleads oppression. I agree. The Supreme Court of Canada set out the test for oppression in *BCE Inc v 1976 Debentureholders*, 2008 SCC 69. To prove oppression, the Applicants must establish that they had a reasonable expectation that the Respondents would conduct themselves in a certain way and that their reasonable expectation was violated by unfair conduct leading to prejudicial consequences. When oppression is a cause of action, the applicant must plead the reasonable expectations and how they were violated. As noted by the Ontario Court of Appeal in *Abbasbayli v Fiera Foods Company*, 2021 ONCA 95, "the appellant's reasonable expectations cannot simply be inferred from his pleadings of what the directors did or failed to do" (para 45). Here, the Proposed Statement of Claim does not state the Applicants' reasonable expectations and how the Respondents failed to meet those expectations. As indicated above, this does not justify dismissing the conversion application and had it been the only deficiency, I would have directed the Applicants to provide particulars.

[50] The GGC Respondents also argue there are further deficiencies with the Proposed Statement of Claim. They submit that it contains arguments, irrelevant facts, and evidence, which offend the rules of pleading.

[51] I am not persuaded by the GGC Respondents' argument that some facts alleged in the Proposed Statement of Claim are irrelevant to this dispute. I find the facts related to the GTC's lawyers refusing to produce legal advice prepared for the GTC to the Applicants, Mr. Blake's testimony about his relationship with the new CEO Mark Ellwood, Mr. Ellwood's resignation, and the description of a settlement offer meet the low threshold of relevance.

[52] I also reject the GGC Respondents' position that the Proposed Statement of Claim contains evidence and arguments.

[53] The Proposed Statement of Claim sets out the content of a letter signed by Mr. Blake and of a memorandum prepared by counsel for the GTC, quoting portions of the documents. I disagree with the GGC Respondents that this offends Rule 106, which provides that "[a] pleading must contain only a statement in a summary form of the material facts […] but not the evidence by which those facts are to be proved".

[54] I support the modern and functional approach to the drafting of pleadings adopted by Devlin J in *TSA Corporation*, in which he wrote:

> "[43] While the principle that evidence should not be pled is easily stated, it is less easily applied, as the line between fact and evidence is notoriously grey: ***MFP*** at para 15. As Master Sugunasiri (as she then was) noted in ***Carter v Minto Management Limited***, 2017 ONSC 3131 at para 9, "… there is not always a bright line that distinguishes material facts from evidence and/or particulars. Sometimes an allegation can be all three".
>
> [44] Indeed, the more detailed a description of facts is, the more it looks like evidence. This is particularly true where the relevant facts involve communications between parties and the creation of documents. In those instances, the fact is itself the evidence. When such cases demand a high degree of particulars at the outset, the distinction between facts and evidence as a matter of form is often all but obliterated.
>
> [45] Only an analysis based on functionality and fairness can really answer whether a pleading is serving its purpose or providing argumentative surplusage. The test is this: Do the impugned statements help the court and the other side understand the specifics of the claim? Or do the impugned statements instead consist in premature argument, distracting the court and the other party, and possibly also unfairly maligning them through the presentation of dubious or selective evidence?

[55] The disputed paragraphs of the Proposed Statement of Claim are concise quotes of two documents. I do not see how this creates any unfairness to the Respondents. In fact, the disputed paragraphs help understand the specifics of the claim.

[56] Similarly, I do not accept that the Proposed Statement of Claim offends the rules of pleading because it contains arguments in three of the over ninety paragraphs of the document.

[57] I agree with Devlin J's comments in *TSA Corporation* at paragraph 55 that:

> "[…] while claims and defences must not become factums, there is also nothing wrong with statements of claim and defence being artfully drafted to create a strong and

> positive first impression of the party's case […]. Good advocacy need not be argumentative, and pleadings are permitted to be persuasive, if they do so fairly."

[58] The disputed paragraphs are drafted in a way that is intended to be persuasive, but they mostly state facts. The court can disregard any portions of these paragraphs that could be perceived as argument.

[59] I accept the GGC Respondents' submission that the Proposed Statement of Claim does not sufficiently plead oppression, but I reject the other concerns related to the pleading they raised.

CONCLUSION

[60] The Applicants are seeking to convert the application for relief from oppression under s 253 of the *Act* into an action. The Proposed Statement of Claim contains many new allegations that would expand the scope of this proceeding and, in effect, substantially amend the originating document. Yet, the Applicants have not met the conditions to obtain leave to amend their Originating Notice, as there is no evidence in support of many substantive amendments, including an allegation that Mr. Blake misappropriated GTC funds. In addition, the Applicants did not particularize the allegation of misappropriation of GTC funds, contrary to the applicable rules of pleading.

[61] The Applicants submit that declining to rule on the conversion application because of procedural concerns would, in effect, amount to "litigating in slices". It might well be the case, but this is a situation that was within the Applicants' control. They are in no position to complain about the procedural burden caused by their failure to follow the proper process. Efficiency is important but it cannot take precedence over fairness.

[62] However, I do not accept the proposition that because the Applicants had the opportunity to file evidence in support of their application and chose not to do so, they should be barred from pursing conversion in the future. Although it is unfortunate this application was presented prematurely, fairness also requires that the Applicants be allowed to have the issue of conversion adjudicated on its merits. Before this Court can decide whether the test for conversion has been met, it must first define the scope of the proceedings by deciding whether the proposed amendments are permissible. This can only be done if, and once, the Applicants file some evidence in support of the new allegations and provide the required particulars.

[63] I conclude that the application to convert must be dismissed, but the Applicants can renew their application when they have addressed the issues identified in this decision.

[64] I make the following order:

a. I dismiss the conversion application without prejudice to the Applicants' right to renew the application;

b. This application is dismissed with costs in any event of the cause.

Annie Piché
J.S.C.

Dated at Yellowknife, NT, this
18th day of December, 2025

Counsel for Applicants:

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Counsel for the Respondent Frederick Blake Jr.:

Toby Kruger and Emma Russell

Counsel for the Respondents Doris Koe and Cindy MacDonald:

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Counsel for the Respondents Diane Koe and Richard Nerysoo:

Keltie Lambert

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