

KING'S BENCH FOR SASKATCHEWAN

Citation: 2026 SKKB 18

Date: 2026 01 21
File No.: KBG-RG-01360-2025
Judicial Centre: Regina

BETWEEN:

STEVEN EWANCHUK

PLAINTIFF

- and -

ATTORNEY GENERAL OF CANADA, KELLY LATO,
AMY MACRAE AND KHAYLA CRUMLEY

DEFENDANTS

Appearing:

Steven Ewanchuk
Tatum Sully

self-represented plaintiff
for the defendants

FIAT
January 21, 2026

McMURTRY J.

[1] The defendants bring the following applications:

- (a) An order vacating the noting for default of the defendants Kelly Lato [Lato], Amy Macrae [Macrae], and Khayla Crumley [Crumley].
- (b) An order striking the claim, under Rule 7-9(1)(a) of *The King's Bench Rules*, without leave to amend.

- (c) In the alternative, an order amending the style of cause to replace the first two named defendants with the Attorney General of Canada.

[2] The plaintiff brought his own application in response, but it does no more than refute the defendants' applications.

An order vacating the noting in default the defendants Lato, Macrae, and Crumley

[3] The first application is brought by the individual defendants, Lato, Macrae, and Crumley. These defendants were noted for default on July 24, 2025. On July 28, 2025, counsel for the defendants wrote to the Court to advise that the noting for default was improper.

[4] At the hearing of the applications, I set aside the noting for default with reasons to follow. These are my reasons.

[5] Noting for default is permitted under Rule 3-21 of *The King's Bench Rules*, which reads:

Default of defence

3-21(1) If any defendant fails to deliver a statement of defence and the time for so doing has expired, the plaintiff may, on filing proof of service of the statement of claim, require the local registrar to note the default of that defendant.

(2) On filing proof of service pursuant to subrule (1), the local registrar shall:

(a) endorse on the statement of claim and on the fly-leaf accompanying the court file the words "Noted for default the _____ day of _____, 20____";

(b) sign the statement of claim and fly-leaf; and

(c) make an entry in the court registry database that the default has been noted.

(3) After default has been noted in accordance with subrule (2), the defendant shall not file a statement of defence without leave of the Court or the written consent of the plaintiff.

(4) On default being noted as provided in this rule, the plaintiff may enter judgment or take any other proceedings that the plaintiff may be entitled to take on default of defence.

[Emphasis added]

[6] After noting the individual defendants for default, the plaintiff applied for judgment against them. His application is based on the defendants' failure to respond to his claim within 20 days.

[7] However, the plaintiff does not have an absolute right to judgment. Noting for default is an administrative procedure, undertaken by court registry staff, upon evidence of service of a statement of claim and the absence of a statement of defence, or notice of intent to defend. The noting for default, and any judgment applied for and granted by default, may be set aside under Rule 10-13, which reads:

Setting aside default judgment

10-13 Subject to rule 9-13, in the case of any judgment by default, whether by reason of non-delivery of defence or non-compliance with any of these rules or with any order of the Court, the Court may set aside or vary the judgment on those terms as to costs or otherwise that the Court considers fit.

[8] The criteria a court may rely upon in setting aside a noting for default and/or default judgment are set out in *Strange v Saskatchewan (Advanced Education Employment and Labour)*, 2008 SKQB 481, by Popescul J. (as he was then) at para. 43, as follows:

[43] ...

(1) the application is to be made as soon as possible after

the judgment sought to be set aside comes to the attention of the applicant in the event of any delay, the applicant must justify and satisfactorily explain the reasons for the delay;

(2) the applicant must provide a satisfactory explanation for his failure in responding to the claim;

(3) the applicant must disclose the defence that raises arguable issues; and

(4) the applicant must satisfy the court that an order setting aside the judgment will not seriously prejudice the party who has obtained the judgment.

...

[9] The individual defendants assert that service of the claim upon them was contrary to the requirement under *The King's Bench Rules* to serve a commencement document personally. It appears the plaintiff served an unnamed person at the office of the Regina Parole Board, only. The defendants became aware of the claim thereafter.

[10] Moreover, the individual defendants did not receive notice of an application to note them for default, as required under s. 25 of the *Crown Liability and Proceedings Act*, RSC 1985, c C-50. It reads:

No judgment by default without leave

25 In any proceedings against the Crown, judgment shall not be entered against the Crown in default of appearance or pleading without leave of the court obtained on an application at least fourteen clear days notice of which has been given to the Deputy Attorney General of Canada.

[Emphasis added]

[11] It is clear the defendants applied within days to set aside the noting for default, explaining that the indirect method of service of the claim delayed their receipt of it, and their ability to respond. The defendants present defences, in their materials on the application to strike, that raise arguable issues. Because of the defendants' quick

action in seeking to vacate the noting for default, the plaintiff suffered no prejudice from the individual defendants' failure to respond to the claim within 20 days.

[12] I am satisfied the individual defendants have met the criteria in Rule 10-13. Leave to defend the claim is granted. Under Rule 12-1(5) I am extending the time for all defendants to respond to 30 days after receipt of this fiat.

An order striking the claim, under Rule 7-9(1)(a) of *The King's Bench Rules*, without leave to amend

[13] A claim or defence may be struck under Rule 7-9(1), which reads:

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;

...

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

[14] The Saskatchewan Court of Appeal decision in *Harpold v Saskatchewan (Corrections and Policing)*, 2020 SKCA 98 [*Harpold*], explains when a claim might be struck under Rule 7-9:

[25] A useful summary of the governing principles with respect to an application to strike a pleading for failing to disclose a reasonable cause of action is found in *Swift Current (City) v Saskatchewan Power Corporation*, 2007 SKCA 27, [2007] 5 WWR 387 [*Swift Current*]:

[18] These general principles were summarized by Gunn J. in the case of *Collins v. McMahon*, 2002 SKQB 201, [2002] S.J. No. 318 (QL):

[11] The principles which apply to an application to strike a plaintiff's claim under Rule 173(a) are the following:

(i) The claim should be struck where, assuming the plaintiff proves everything alleged in the claim there is no reasonable chance of success. (*Sagon v. Royal Bank of Canada et al.* (1992, 105 Sask. R. 133 at 140 (C.A.));

(ii) The jurisdiction to strike a claim should only be exercised in plain and obvious cases where the matter is beyond doubt. (*Sagon*, at 140; *Milgaard v. Kujawa et al.* (1994), 123 Sask. R. 164 (Sask. C.A.));

(iii) The court may consider only the claim, particulars furnished pursuant to a demand and any document referred to in the claim upon which the plaintiff must rely to establish its case (*Sagon*, at p. 140);

(iv) The court can strike all, or a portion of the claim (Rule 173);

(v) The plaintiff must state sufficient facts to establish the requisite legal elements for a cause of action. (*Sandy Ridge Sawing Ltd. v. Norrish and Carson* (1996), 140 Sask. R. 146 (Q.B.)).

As noted, see *Sagon v Royal Bank of Canada* (1992), 105 Sask R 133 (CA) at para 16 [*Sagon*].

[26] When called upon to review a claim in response to an application under Rule 7-9(2)(a), the reviewing judge is required to determine whether sufficient facts have been pleaded to establish the legal elements of a cause of action by considering the whole of the statement of claim. It is for the reviewing judge “to determine whether the combined effect of any technical pleading, together with other facts, properly plead the essential elements of the cause of action” (*Reisinger v J.C. Architect Ltd.*, 2017 SKCA 11 at para 20, 411 DLR (4th) 687 [*Reisinger*]).

See also *Nazeer v Fink*, 2025 SKCA 112 at paras 15-16.

[15] The Court also discussed why a statement of claim must meet certain criteria or contain certain elements. The Court explained that the purposes of a “pleading”, like a statement of claim, are the following:

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.

[16] The Court noted, as well, that these purposes are reflected in Rule 1-3 of the Foundational Rules, which reads in part:

Purpose and intention of these rules

1-3(1) The purpose of these rules is to provide a means by which claims can be justly resolved in or by a court process in a timely and cost effective way.

(2) In particular, these rules are intended to be used:

- (a) to identify the real issues in dispute;
- (b) to facilitate the quickest means of resolving a claim at the least expense.

[17] Finally, in *Saskatchewan Provincial Court Judges Association v Saskatchewan (Minister of Justice)*, 1995 CanLII 4062, [1996] 2 WWR 129 at para 2 (SKCA), the Court of Appeal noted that on an application to strike, the material facts in a statement of claim must be taken as true. However, this rule does not apply to allegations based on assumption and speculation. Nor does a court have to accept “bald conclusory statements of fact unsupported by material facts.”: see *Castrillo v Workplace Safety and Insurance Board*, 2017 ONCA 121 at para 15.

Claims made by the Plaintiff

[18] Mr. Ewanchuk filed several affidavits describing the basis for his claim against the defendants. I have not considered the affidavits because in an application to strike a statement of claim, on the grounds it does not disclose a reasonable cause of action, Rule 7-9(3) states that “[n]o evidence is admissible”. As the Court explained in *Harpold*, I may “consider only the statement of claim, any particulars furnished pursuant to demand, and any document referred to in the claim upon which the plaintiff must rely to establish his case”: *Harpold* at para 57.

[19] From the Statement of Claim it appears that Mr. Ewanchuk is claiming the following:

- (a) The defendants are responsible for the wrongful suspension of his long-term supervision order [LTO] and his wrongful imprisonment, between March 22, 2024 and June 19, 2024, and between July 16, 2024 and March 16, 2025; and

- (b) The individual defendants misused their authority, committed gross negligence and a miscarriage of justice when they suspended his LTO.

[20] Mr. Ewanchuk claims damages for other suspensions of his LTO over the last six and one half years; damages for psychological harm, wrongful arrest and detention, and solitary confinement; and medical negligence for insufficient catheter provision. Finally, Mr. Ewanchuk seeks an order reducing his LTO.

[21] While Mr. Ewanchuk provides far more opinion than fact in his claim, it appears he is alleging that the individual defendants laid charges against him that were of no merit, that they knew were without merit, to keep him incarcerated. Mr. Ewanchuk claims the charges related to false allegations that he had failed to report a female friendship to the defendant Lato, his parole officer, and that he deleted two text messages on his cellphone.

[22] Mr. Ewanchuk claims, at para. 12 of the statement of claim, that the “evidence used to justify incarceration was demonstrably false”. Mr. Ewanchuk acknowledges that the officer had evidence that he had formed a relationship with a woman, but he claims the officer should not have believed it. In relation to his cellphone, he denies the messages were deleted.

Response by the Defendants

[23] The defendants argue the plaintiff’s claim that his LTO was wrongly suspended is not a recognized cause of action. A claim of wrongful imprisonment is recognized, but such a claim fails if it was authorized by law, as explained in *Kovacs v Ontario Jockey Club*, 1995 CanLII 7397, 126 DLR (4th) 576 (ONSC) [*Kovacs*]. In *Kovacs*, the Divisional Court of Ontario held that there are four elements to the tort of false or wrongful imprisonment:

[46] The plaintiff must prove three elements to establish the tort of false imprisonment. He or she must have been totally deprived of liberty; this deprivation must have been against his or her will; and it must be caused by the defendant. The onus then shifts to the defendant to justify the detention, based on legal authority under common law or statute: *Kendall v. Gambles Canada Ltd.*, [1981] 4 W.W.R. 718 at p. 728, 11 Sask. R. 361 (Q.B.).

See also: *Sil v Cardinal*, 2009 SKQB 408.

[24] The legal authority claimed by the defendants is found in s. 135 of the *Corrections and Conditional Release Act*, SC 1992, c 20 [CCRA] to suspend an LTO, which reads:

135 (1) A member of the Board or a person, designated by name or by position, by the Chairperson of the Board or by the Commissioner, when an offender breaches a condition of parole or statutory release or when the member or person is satisfied that it is necessary and reasonable to suspend the parole or statutory release in order to prevent a breach of any condition thereof or to protect society, may, by warrant,

(a) suspend the parole or statutory release;

(b) authorize the apprehension of the offender; and

(c) authorize the recommitment of the offender to custody until the suspension is cancelled, the parole or statutory release is terminated or revoked or the sentence of the offender has expired according to law.

[25] The defendants also note that s. 154 of the *CCRA* exempts members of the Parole Board from civil or criminal liability if their actions were in good faith. Section 154 reads:

Immunity of members

154 No criminal or civil proceedings lie against a member of the Board for anything done or said in good faith in the exercise or purported exercise of the functions of a member of the Board under this or any other Act of Parliament.

[26] In *Archer v Canada (Attorney General)*, 2004 FC 865, the Court provided a definition for “good faith”, in the context of the *CCRA*:

[7] The decision to transfer an inmate from one institution to another is a discretionary one, and Parliament has entrusted this administrative function to CSC as an expert tribunal. In *Gravel v. Canada (Correctional Services)* [1999] F.C.J. No. 1569 (T.D.) Pinard J. reviews the applicable standard of review, at paragraph 4, and concludes that deference ought to be paid to CSC in accordance with the Supreme Court of Canada's decision in *Maple Lodge Farms Ltd. v. Canada*, [1982] 2 S.C.R. 2. In that decision the Supreme Court states at pages 7 - 8 per McIntyre J.:

It is, as well, a clearly-established rule that the courts should not interfere with the exercise of a discretion by a statutory authority merely because the court might have exercised the discretion in a different manner had it been charged with that responsibility. Where the statutory discretion has been exercised in good faith and, where required, in accordance with the principles of natural justice, and where reliance has not been placed upon considerations irrelevant or extraneous to the statutory purpose, the courts should not interfere.

[Emphasis added]

Decision on the Striking Application

[27] The plaintiff does not deny that his incarcerations between March 22, 2024 and June 19, 2024, and between July 16, 2024 and March 16, 2025, were pursuant to warrants permitted under the *CCRA*. Rather, he asserts that the individual defendants improperly suspended his LTO, which caused him to be brought back into custody wrongly. As evidence of the defendants' improper actions, he points to the withdrawal of the original breaches in March 2025. However, withdrawal of the breach allegations does not, in and of itself, show wrongful imprisonment.

[28] The defendants rely on an assertion of good faith to show there is no reasonable chance of success for the claims made by Mr. Ewanchuk. However, as held

in *Harpold*, whether someone acts in good faith is a matter of evidence and cannot be determined in a Rule 7-9 application:

[56] ... Corrections and Policing submits the impugned actions were in complete accordance with their statutory duties and legislative mandate and that, as a matter of statutory authority, probation officers are entitled to change course when new information comes to light.

[57] Respectfully, I do not accept those arguments. Principally, they are built on assumptions of fact and inferences derived from those assumptions – much of which was pleaded in the statement of defence and in the affidavit of C.K. (filed in relation to the frivolous argument ground). As such, the arguments amount to little more than bald assertions that the actions and inactions of the probation officers in question were taken in good faith. Whether the probation officers acted in good faith is a question of fact. Fact-finding or even reliance on a defendant’s pleadings is beyond the scope of an application to strike under Rule 7-9(2)(a). As this Court made clear in *Sagon* [*Sagon v Royal Bank of Canada* (1992), 105 Sask R 133 (CA)], on an application to strike, “the court may consider only the statement of claim, any particulars furnished pursuant to demand, and any document referred to in the claim upon which the plaintiff must rely to establish his case” (citations omitted, at para 16). Furthermore, the Corrections and Policing argument ignores Mr. Harpold’s pleadings. As I read his pleadings, Mr. Harpold argues that Corrections and Policing was motivated by an improper purpose when it withdrew approval for the Fort McMurray job and the other jobs: i.e., continued punishment for his past crimes and as a “set-up” for a breach of his conditions.

[Emphasis added]

[29] Mr. Ewanchuk blames the suspensions of his LTO on “demonstrably false” evidence (Statement of Claim, para. 12). In other words, he claims the actions of the individual defendants caused him to be falsely, or wrongly, imprisoned. Such a determination requires the Court to find facts to support or refute this allegation. As held in *Harpold*, a Rule 7-9 application cannot make such a determination.

[30] Paragraphs 1-22, 25, and 26 of the Statement of Claim relate to the actions of the individual defendants. While there is little clarity and precision in the claim, it is possible for the defendants to know what it is alleged against them. In paras. 1-4 under Compensation Breakdown, Mr. Ewanchuk outlines the damages that he says resulted from these actions.

[31] In the remainder of the Statement of Claim, however, the plaintiff opines on the law and refers to other incidents for which he provides no factual basis whatsoever. Consequently, I am striking paras. 27 and 28 of the claim, paras. 5 and 6 of the Compensation Breakdown, and the remainder of the Statement of Claim.

[32] Finally, I believe it is appropriate to repeat the warning provided by the Court of Appeal to Mr. Harpold:

[69] I would also add that pleading a claim is not the same thing as proving it. While I find Mr. Harpold has substantively pleaded the tort of misfeasance in public office, whether that claim can survive the scrutiny of a summary judgment application or trial is another matter.

[Harpold at para 69]

In other words, it is one thing to claim wrongful imprisonment. It is another thing to prove it. Mr. Ewanchuk claims the individual defendants acted in bad faith by accepting “false allegations”. The facts relied on by him, as set out in the Statement of Claim, do not show much support for his allegation, but I cannot strike the Statement of Claim on that basis.

Order amending the style of cause to replace the first two named defendants with the Attorney General of Canada

[33] The defendants’ application in this regard does not prejudice the plaintiff and is appropriate. The style of cause shall be amended to change the names of the

defendants Correctional Services of Canada and National Parole Board to the Attorney General of Canada.

[34] Costs were not sought on any of the applications and will not be granted.

J.
J.E. McMURTRY