CITATION: Dobratz v. Northern College of Applied Arts and Technology, 2026 ONSC 1218
COURT FILE NO.: CV-23-0218-0000
DATE: 2026/03/02

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

STEPHANIE DOBRATZ AND SYLVIE TREMBLAY
Plaintiffs

Stephanie Dobratz and Sylvie Tremblay, Self-represented

– and –

NORTHERN COLLEGE OF APPLIED ARTS AND TECHNOLOGY
Defendant

Eleanor A. Vaughan, for the Defendant

HEARD: February 10, 2026

DECISION ON MOTION

TYSICK, J.

OVERVIEW

[1] The defendant brings a Rule 21 motion to strike the plaintiffs' statement of claim on the basis that: a) it is barred by the *Limitations Act*, 2002, S.O. 2002, c. 24 (the "*Limitations Act*"); b) it discloses no reasonable cause of action and) it is frivolous, vexatious or otherwise an abuse of process.

[2] On February 28, 2024, the self-represented plaintiffs (who are mother and daughter) commenced an action against Northern College ("the College") in which they seek general damages in the amount of $1,000,000 and special damages in the amount of $50,000.

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[3] The statement of claim sets out that in September 2020, the plaintiffs commenced a two-year online social work course as distance learners with the College. In August, 2021, they were told that they would be obligated to attend in-person for two weekend workshops during the Fall 2021 semester. This was during the COVID-19 pandemic, and the College required that all students be vaccinated to attend on campus. The plaintiffs sought a religious exemption to the vaccination policy on two occasions, on both of which they were denied. The final denial was on October 29, 2021, one day before the final workshop. Ultimately, the plaintiffs were unsuccessful in the course and were put on academic probation on December 25, 2021, the end of their third semester. This resulted in the financial grants they received being turned into loans.

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[4] On March 22, 2024, the College served this motion on the plaintiffs. The College has not filed a statement of defence.

ISSUES

Should the plaintiffs' statement of claim be dismissed as barred by the *Limitations Act*?

[5] The defendant argues that the plaintiffs' statement of claim should be dismissed as being barred by the *Limitations Act*, 2002, S.O. 2002, c.24, Sch B (the "*Limitations Act")*. It asserts that it is plain and obvious that the action cannot succeed because it was commenced after the expiry of the limitation period. It relies on the undisputed fact that the plaintiffs were aware of their religious exemption denials on October 29, 2021 and the limitation period therefore commenced on that date. The defendant submits that, since the claim was not commenced until February 28, 2024, it is statute-barred.

[6] The self-represented plaintiffs rely on materials that were uploaded to Case Center including email exchanges with the defendant, documents purporting to be unsworn affidavits yet containing legal argument, and a factum that contained a mix of evidence and argument. They sought to rely on several facts to support their argument that their claims were not discoverable until the Spring of 2022. The defendant argues that this Court cannot consider any "evidence" filed by the plaintiffs as it disputes authenticity of some of the documents and regardless, no evidence is admissible on a Rule 21.01(1) (a) or (b) motion as per Rule 21.01(2). I agree with the defendant that the material filed is inadmissible and, for that reason, the content has not been considered in this motion. Suffice it to say that the plaintiffs take the position that they have relevant evidence pertaining to the discoverability issue which they are unable to introduce given the nature of the motion.

[7] Section 4 of the *Limitations Act* states that "unless this Act provides otherwise, a proceeding shall not be commenced in respect of a claim after the second anniversary of the day on which the claim was discovered". Section 5(1) of the *Limitations Act* statutorily sets out the discoverability principle as follows:

> 5(1) A claim is discovered on the earlier of,
> (a) the day on which the person with the claim first knew,
> (i) that the injury, loss or damage had occurred,

(ii) that the injury, loss or damage was caused by or contributed to by an act or omission,

(iii) that the act or omission was that of the person against whom the claim is made, and

(iv) that, having regard to the nature of the injury, loss or damage, a proceeding would be an appropriate means to remedy it; and

(2) the day on which a reasonable person with the abilities and in the circumstances of the person with the claim first ought to have known of the matters referred to in clause (a), 2002, c.24, Sched. B, s.5(2).

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[8] The rare ability to determine a limitation issue on a Rule 21 motion and prior to a statement of defence being filed was outlined by the Ontario Court of Appeal in *Beardsley v. Ontario*, 2001 CanLII 8621 (ONCA), at paras. 21-22. It held that it would be unnecessary to file a statement of defence where it is "plain and obvious from a review of a statement of claim that no additional facts could be asserted that would alter the conclusion that a limitation period had expired". If there were additional facts to be asserted, the plaintiffs would be deprived of placing a factual context before the court thereby impacting procedural fairness.

[9] The *Beardsley* decision was released prior to the introduction of the basic limitation period established by the *Limitations Act*, which now contains s. 5 premised on the discoverability rule. In *Salewski v. Lalonde*, 2017 ONCA 515, at para. 45, the Ontario Court of Appeal discussed the *Beardsley* decision within the context of the 2002 *Limitations Act*. Given that the discoverability rule raises issues of mixed fact and law, the Court questioned "whether there is now any circumstance in which a limitation issue under the Act can properly be determined under rule 21.01(1)(a) unless pleadings are closed and it is clear that the facts are undisputed".

[10] More recently, the Ontario Court of Appeal in *Toussaint v. Canada (Attorney General)*, 2023 ONCA 117, at para. 11, reiterated that Rule 21.01 motions to strike will rarely be suitable for limitation issues as fact-finding is needed to assess discoverability.

[11] The defendant argues that the case at bar is one of the rare cases where it is plain and obvious that the plaintiffs' claims are outside the limitation period and that there are no material facts in dispute. They rely on two cases to support their argument: *Kaynes v. BP, P.L.C.*, 2018 ONCA 337 (the "*Kaynes* decision") and *Davidoff v. Sobeys Ontario,* 2019 ONCA 684 (the "*Davidoff* decision"). Neither case is factually like the one before me.

[12] In the *Kaynes* decision, the parties agreed that there were no material facts in dispute. Further, the limitation period in issue was governed by the *Securities Act*, R.S.O 1990, c. S.5., an event-triggered limitation period where discoverability does not come into play. In the case at bar, we are dealing with a cause-of-action or claim-based limitation period where s.5 of the *Limitations Act* (discoverability) is squarely applicable.[1]

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[1] See *Kaynes v. BP, P.L.C.*, 2017 ONSC 5172 at para. 34 for comparison between event triggered vs cause-of action triggered limitation period.

[13] In the *Davidoff* decision, there were no facts in dispute. The parties agreed on the date the claim became discoverable, and the limitation period began.

[14] In the present case, the self-represented plaintiffs intend to argue that their claims were not discoverable until several months after their religious exemption requests were last denied on October 29, 2021. They assert that they have evidence to support this position.

[15] When plaintiffs are unrepresented, a court's decision to strike a statement of claim requires balancing the court's obligation to assist self-represented litigants without unfairly hindering the rights of represented parties. As endorsed in the *Statement of Principles on Self-represented Litigants and Accused Persons* (2006) adopted by the Canadian Judicial Council, judges should ensure that procedural and evidentiary rules are not used to unjustly hinder the legal interests of self-represented persons.[2] Judges are also required to do whatever is possible to provide a fair and impartial process and prevent an unfair disadvantage to self-represented persons.[3]

[16] In my view, it would be unfair to determine the limitation issue on a Rule 21 motion when the self-represented plaintiffs have raised discoverability issues and suggest that they have evidence relevant to that issue. Limitation defences must be pleaded giving plaintiffs the opportunity to reply. In the case at bar, they have been denied the right to reply to a pleaded defence and denied the right to introduce evidence relevant to the issue on a Rule 21 motion. Striking their statement of claim in this context would result in the procedural and evidentiary rules operating unfairly to the disadvantage of the self-represented litigants. It is also contrary to the principles of procedural fairness. Accordingly, the motion to strike the statement of claim based on the limitation period is dismissed.

Should the plaintiffs' statement of claim be struck in its entirety, without leave to amend, on the basis that it discloses no reasonable cause of action?

[17] The defendant further argues that the plaintiffs have pleaded a claim for damages with no viable cause of action identified to support entitlement. In particular, the plaintiffs have not pleaded the basic elements of any recognized cause of action nor any material facts capable of supporting an award of general or special damages. Instead, the plaintiffs rely on a) the College's breach of its own policies without particularizing the breach; b) the failure of the College to follow the OCAAT (*Ontario Colleges of Applied Arts and Technology Act*) to ensure student success, and c) allegations of discrimination by the College's staff without linking the discrimination to a freestanding cause of action. The defendant says that none of these allegations amount to a cause of action.

[18] On the issue of whether leave should be granted to amend the statement of claim, the defendant argues that leave should not be granted as there is no reasonable cause of action that could be brought. The College also argues that given the limitation issue, allowing an amendment would

[2] See Section C "Responsibilities of the Participants in the Justice System".
[3] See Section B "Promoting Equal Justice"

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be contrary to the principle of finality. It argues that costs are insufficient to address the harm to the defendant if leave were granted.

[19] The Plaintiff, Ms. Dobratz, speaking on behalf of both plaintiffs, acknowledges that she "messed up" the statement of claim. She advises the Court that she has received legal advice since filing the statement of claim and now understands the importance of pleading a cause of action. In the plaintiffs' factum, they set out several causes of action that they wish to advance against the defendant including breach of contract, negligence, negligent misrepresentation, negligent infliction of emotional distress, intentional infliction of emotional distress, and discrimination. The plaintiffs ask for leave of the court to amend their statement of claim to address the acknowledged deficiencies.

[20] To have a pleading struck as not disclosing a reasonable cause of action, the defendant must show that it is plain, obvious and beyond doubt that the plaintiff cannot succeed in the claim and this power is only to be exercised in the clearest of cases.[4]

[21] The correct test is whether the action is certain to fail because it contains a radical defect. In applying the test, the court should read the pleading generously, providing allowances for any inadequacies due to drafting deficiencies. If the pleading has even "a germ or scintilla" of a cause of action contained therein, it should not be struck.[5]

[22] Presuming that the allegations contained in the plaintiffs' statement of claim can be proven, I find that there is a "germ or scintilla" of evidence upon which a claim could succeed if properly pleaded. The claim is based on the defendant's decision to modify the mode of learning required for previously registered distance education students. This was done in the context of the COVID-19 pandemic when they also implemented a policy requiring that students be vaccinated if attending in-person. The plaintiffs refused vaccination and, ultimately, did not complete one of the mandatory in-person sessions. As a result, they were put on academic probation, and their grants were converted to loans.

[23] Reading the statement of claim generously and accounting for the drafting deficiencies by the self-represented plaintiffs, I would not strike the statement of claim in its entirety. However, as conceded by the plaintiffs, the claim as drafted is deficient in that now identified causes of action were not pleaded.

[24] Rule 26.02 provides that a party may amend its pleading without leave, before the close of pleadings, if the amendment does not include or necessitate the addition, deletion or substitution of a party to the action. As per Rule 25.05, pleadings are closed when every defendant who is in default in delivering a defence in the action has been noted in default. As the defendant has not

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[4] *Derenzis v. Johnson*, 2021 ONSC 5136 at para. 66, *Hunt v. Carey Canada Inc.* (1990), 74 D.L.R. (4th) 321 (S.C.C.)

[5] *O'Farrell et al. v. Attorney General of Canada et al*, 2016 ONSC 6342 at paras. 32-34 (leave to appeal refused 2017 ONSC 931), *Doyle Salewski Inc. v. Lalonde*, 2016 ONSC 5313, *1597203 Ontario Ltd. v. Ontario*, 2007 CanLII 21966 (ONSC), [2007] O.J. No. 2349 (S.C.).

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yet filed a statement of defence nor been noted in default, the plaintiffs may amend their statement of claim without leave of this Court.

[25] Even if leave were required to amend, I would grant leave pursuant to Rule 26.01. I am not satisfied that granting leave would cause prejudice to the defendant that could not be compensated for by costs.

Should the plaintiffs' statement of claim be dismissed on the basis that it is frivolous, vexatious or otherwise an abuse of process?

[26] The defendant also seeks to strike the plantiffs' statement of claim pursuant to Rule 21.01(3)(d) and Rule 25.11 on the basis that it is frivolous, vexatious and an abuse of this Court's process.

[27] The meaning of "scandalous", "frivolous" or "vexatious has been described as follows[6]:

> The next step is to consider the meaning of "scandalous", "frivolous" or "vexatious". There have been a number of descriptions provided in the multitude of authorities decided under this or similar rules. It is clear that a document that demonstrates a complete absence of material facts will be declared to be frivolous and vexatious. Similarly, portions of a pleading that are irrelevant, argumentative or inserted for colour, or that constitute bare allegations should be struck out as scandalous. The same applies to a document that contains only argument and includes unfounded and inflammatory attacks on the integrity of a party, and speculative, unsupported allegations of defamation. In such a case the offending statements will be struck out as being scandalous and vexatious. In addition, documents that are replete with conclusions, expressions of opinion, provide no indication whether information is based on personal knowledge or information and belief, and contain many irrelevant matters, will be rejected in their entirety.

[28] I do not find that the plaintiffs' entire statement of claim is frivolous, vexatious or an abuse of process. The plaintiffs brought their action to remedy the situation they found themselves in when they could not complete their online social work course. They have pleaded material facts to support their allegation that the College is responsible for them not being able to complete their course. I do not find that the plaintiffs have brought the claim for a collateral purpose or that allowing the claim would be an abuse of process.

[29] However, I would accept the defendant's request to strike paragraph 15 of the statement of claim on this basis. That paragraph states:

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[6] *Cerquerira v. Ontario*, 2010 ONSC 3954 at para 13 citing *George v. Harris*, [2006] O.J. No. 1762 (S.C.J.)

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> The plaintiffs suffered unfair treatment, harassment, emotional and psychological abuse from the college administration and teaching faculty during their third semester. Plaintiffs believe it is because of previous discrimination against plaintiff Stephanie Dobratz's mental health and because plaintiffs did not want to be vaccinated.

[30] I agree that paragraph 15 should be struck from the statement of claim on the basis that it is scandalous and vexatious. It constitutes bare allegations and inflammatory attacks on the staff of the defendant and lacks the material facts to support it.

[31] The defendant's request that I also strike paragraphs 11, 13 and 16 as scandalous and vexatious is dismissed. Although not pleaded perfectly, those paragraphs contain material facts relevant to their new proposed causes of action.

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CONCLUSION

[32] For the above reasons, I dismiss the defendant's motion to strike the plaintiffs' statement of claim in its entirety. I grant the defendant's motion to strike paragraph 15 as scandalous and vexatious.

[33] The plaintiffs shall have 30 days from the date of release of this decision to file an amended statement of claim. The amended statement of claim should include the events or circumstances giving rise to the enumerated causes of action and give particulars of the damages suffered.

[34] To assist the plaintiffs, I include some of the general principles governing pleadings set out in *Cerqueira v. Ontario*, *supra*[7]:

> (a) the purpose of pleadings is to give notice of the case to be met, to define the matters in issue for the parties and for the court, and to provide a permanent record of the issues raised.
>
> (b) the causes of action must be clearly identifiable from the facts pleaded and must be supported by facts that are material.
>
> (c) every pleading must contain a concise statement of the material facts on which the party relies but not the evidence by which those facts are to be proved; this includes pleading the material facts necessary to support the causes of action alleged.
>
> (d) a party is entitled to plead any fact that is relevant to the issues or that can reasonably affect the determination of the issues, but it may not plead irrelevant, immaterial or argumentative facts or facts that are inserted only for colour.

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[7] See para. 11 for principles and related supporting jurisprudence.

> (e) allegations that are made only for the purpose of colour or to cast a party in a bad light, or that are bare allegations, are scandalous and will be struck.
>
> (f) any fact that can affect the determination of rights between the parties can be pleaded, but the court will not permit facts to be alleged that are immaterial or irrelevant to the issues in the action; and
>
> (g) allegations of fraud, misrepresentation, negligence and conspiracy must be pleaded with particularity.

[35] If the parties cannot agree on the issue of costs of this motion, they may make submissions in writing. The defendant will have 30 days to file written submissions after the date of release of this decision. The plaintiffs will have 30 days to file written response submissions after receipt of the defendant's submissions.

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Tysick J.

Released: March 2, 2026

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