

**CITATION:** *Saleem v. University Health Network*, 2026 ONSC 1208  
**COURT FILE NO.:** CV-21-00660958-0000  
**DATE:** 20260310

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** *Nusrat Saleem v. University Health Network*

**BEFORE:** Associate Justice Rappos

**COUNSEL:** *Paul Schwartzman*, for the Plaintiff

*Ernest Tam*, for the Defendant

**HEARD:** September 12, 2025 (in person), and September 26 and October 10, 2025  
(written submissions)

**REASONS FOR DECISION**

**Overview**

[1] The Plaintiff, Nusrat Saleem, was formerly employed by the Defendant, University Health Network. Mr. Saleem commenced this action against UHN seeking damages for wrongful dismissal and breaches of the *Human Rights Code*. The action was started under the simplified procedure.

[2] Mr. Saleem alleges that he was suspended without pay and constructively terminated within a month after his return from an 18-month disability leave. Mr. Saleem believes that his disability or perceived disability, his ethnic background and religion played a role in his treatment by UHN.

[3] In its statement of defence, UHN alleges that Mr. Saleem was not suspended without pay or constructively dismissed. UHN's position is that Mr. Saleem attempted to return to work after his leave but was unsuccessful due to medical reasons. Mr. Saleem's medical leave resumed but became unpaid due to the termination of his benefits by the long-term disability benefits provider.

[4] UHN's defence goes into significant detail as to Mr. Saleem's role as a registered perfusionist, his return to work, his re-starting of a medical leave of absence, the request for an independent medical assessment, a rehab program recommended by the long-term disability benefits provider, Mr. Saleem's alleged refusal to participate in the rehab program and assessment, and the termination of benefits by the provider for non-compliance with the recommended treatment program.

[5] More than two years after UHN served its statement of defence, the Plaintiff, through counsel, advised that he wished to amend his statement of claim. Additionally, Mr. Saleem sought agreement on a litigation timetable for the completion of discoveries. UHN did not consent to the proposed amendments to the claim, nor did it consent to the proposed timetable.

[6] As a result, the Plaintiff brings a motion for leave to amend his statement of claim and for an order that the action proceed under the ordinary procedure, and that a litigation timetable be imposed upon the parties.

[7] The Plaintiff's proposed amendments to his claim are significant. They include an increase to the amount of wrongful dismissal damages, the addition of moral and/or aggravated damages, the addition of punitive damages, and an order for the reinstatement to his prior position or alternatively damages under the *Human Rights Code*. The proposed amendments include 48 new paragraphs that detail Mr. Saleem's employment with UHN, with a focus on his leave of absence, his return to work, his relationship with UHN following his leave of absence, and matters related to his long-term disability benefits.

[8] The Plaintiff argues that his motion should be granted, as subrule 26.01 of the *Rules of Civil Procedure* permits amendments to pleadings at any time, and the amendments do not contain any new causes of action and only add further particulars to his existing claim of wrongful dismissal. The Plaintiff also argues that the Defendant has failed to show any prejudice if the proposed amendments are permitted by the Court.

[9] UHN agrees to the transfer of the action to the ordinary procedure and the imposition of a litigation timetable that has been agreed to by the parties. UHN also agrees to certain of the amendments to the claim proposed by Mr. Saleem. However, in connection with the majority of the proposed amendments, the Defendant argues that they add new causes of action and new facts after the expiry of the applicable limitation period, are not based on the existing factual matrix, present a fundamentally different theory of liability, and would result in non-compensable prejudice if they are permitted by the Court.

[10] For the reasons that follow, the Plaintiff's motion to amend its statement of claim is granted in part.

### **Legal Principles**

[11] Motions for leave to amend are governed by rule 26.01 of the *Rules of Civil Procedure*, which provides that the court shall grant leave to amend a pleading on such terms as are just, unless prejudice would result that could not be compensated for by costs or an adjournment.

[12] The rule is framed in mandatory terms: the court must allow the amendment, unless the responding party would suffer non-compensable prejudice, the proposed pleading is scandalous, frivolous or vexatious, or the proposed pleading fails to disclose a reasonable cause of action.<sup>1</sup>

[13] The court may refuse an amendment where it would cause non-compensable prejudice. The prejudice must flow from the amendment and not some other source. Alternatively, the responding party may resist the amendment by proving actual prejudice.<sup>2</sup>

[14] The court also has a residual right to deny amendments where appropriate.<sup>3</sup>

[15] The expiry of a limitation period is one form of non-compensable prejudice. A party cannot circumvent the operation of a limitation period by amending their pleadings to add additional claims after the expiry of the relevant limitation period.<sup>4</sup>

[16] An amendment will be statute-barred if it seeks to assert a “new cause of action” after the expiry of the applicable limitation period. The case law discloses a “factually oriented” approach to the concept of a “cause of action” – namely, “a factual situation the existence of which entitles one person to obtain from the court a remedy against another person”.<sup>5</sup>

[17] An amendment does not assert a new cause of action if the original pleading contains all the facts necessary to support the amendments such that the amendments simply claim additional forms of relief, or clarify the relief sought, based on the same facts as originally pleaded.<sup>6</sup>

[18] An amendment will be refused when it seeks to advance, after the expiry of a limitation period, a “fundamentally different claim” based on facts not originally pleaded.<sup>7</sup>

[19] The Court of Appeal for Ontario has cited favourably the following excerpt from *The Law of Civil Procedure*:

A new cause of action is not asserted if the amendment pleads an alternative claim for relief out of the same facts previously pleaded and no new facts are relied upon, or amount simply to different legal conclusions drawn from the same set of facts, or **simply provide particulars of an allegation already pled or additional facts upon [which] the original right of action is based.**<sup>8</sup> [emphasis added]

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<sup>1</sup> *Klassen v. Beausoleil*, 2019 ONCA 407 [*Klassen*], para. 25.

<sup>2</sup> *Ibid.*, paras. 31-32.

<sup>3</sup> *Avedian v. Enbridge Gas Distribution Inc.*, 2023 ONCA 289, para. 6.

<sup>4</sup> *Klassen*, para. 26.

<sup>5</sup> *Ibid.*, para. 27.

<sup>6</sup> *Ibid.*, para. 28.

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*, para. 29.

[20] When considering the proposed amendments, it is necessary to read the original statement of claim generously and with some allowance for drafting deficiencies.<sup>9</sup>

## **Analysis**

### *Statement of Claim*

[21] The starting point of the analysis is the statement of claim, which was issued on April 22, 202 and amended on February 15, 2022.<sup>10</sup>

[22] The statement of claim is brief. It is 16 paragraphs in total, with the last paragraph setting out the preferred location for the holding of the trial. Paragraph 1 of the claim states that Mr. Saleem seeks:

“(a) damages for wrongful dismissal and breach of the Human Rights Code, R.S.O. 1990, c. H.19 in the sum of \$130,000 less required deductions, being the wages he would have earned in the 12 month period following the termination of his employment;

...

(c) the sum of \$50,000 in compensation pursuant to section 46.1 of the Human Rights Code, R.S.O. 1990, c. H.19;...”

[23] Paragraphs 2 and 3 contain simple descriptions of the parties. Paragraph 4 describes the terms of Mr. Saleem’s employment with UHN. Paragraph 5 describes how Mr. Saleem was off work from January 7, 2019 to around July 7, 2020 due to a disability, for which he received disability benefits. Paragraph 6 states that “Mr. Saleem returned to work on or around July 7, 2020”.

[24] Paragraphs 7 through 9 describe the alleged suspension of Mr. Saleem’s employment as follows:

7. On August 7, 2020, UHN suspended Mr. Saleem’s employment without pay and thereafter failed to return Mr. Saleem to his employment.

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<sup>9</sup> *Ibid.*, para. 30.

<sup>10</sup> The amendment was minor, as it only added five words to a single paragraph of the claim.

8. It was not a term of Mr. Saleem's employment that he could be suspended by UHN without pay.

9. In suspending Mr. Saleem's employment without pay UHN constructively terminated his employment.

[25] Paragraph 10 provides that, in the alternative, the Defendant's "treatment of Mr. Saleem after it suspended his employment without pay amounted to a constructive termination of his employment."

[26] Paragraph 11 alleges that Mr. Saleem's disability or perceived disability, his ethnic background and religion played a role in his treatment by UHN, which was a breach of the *Human Rights Code*.

[27] Paragraphs 12 through 13 detail the damages that Mr. Saleem alleges he is entitled to: economic damages due to the breach of the *Human Rights Code* and compensation (para. 12); and 12 months' notice of the termination of his employment, due to his position, length of service and "other factors considered by the courts" (para. 13).

[28] Paragraph 14 alleges that "UHN wrongfully dismissed Mr. Saleem in that it failed to provide him with 12 months' notice of the termination of his employment." Paragraph 15 provides that "UHN is liable for the damages that result from its failure to provide Mr. Saleem with 12 months' notice of the termination of his employment."

[29] In reading the statement of claim generously, Mr. Saleem is pursuing a cause of action of constructive dismissal (a) on the basis that he was suspended without pay, which was not a term of his employment relationship, (b) on the basis that UHN failed to permit Mr. Saleem to return to his employment, and (c) as a result of UHN's treatment of him after it suspended his employment without pay.

[30] Mr. Saleem also seeks damages due to alleged breaches of the *Human Rights Code* by UHN, which were that his disability or perceived disability, his ethnic background and religion influenced UHN's treatment of him, and that he is entitled to compensation for injury to dignity, feeling and self-respect under the *Human Rights Code*.

[31] The statement of claim does not describe what transpired between the parties from July 7, 2020 (Mr. Saleem's return to work) and August 7, 2020 (when Mr. Saleem says he was suspended without pay). The claim also does not detail how Mr. Saleem was treated by UHN after the August 7, 2020 suspension date, or concerning how UHN "failed to return Mr. Saleem to his employment".

#### *Statement of Defence*

[32] The Defendant served a statement of defence dated February 24, 2022. UHN denies that Mr. Saleem was constructively dismissed or suspended without pay.

[33] The statement of defence details Mr. Saleem's return to work (para. 15), the Defendant's acquisition of a new heart and lung machine, the Plaintiff's training on the machine and concerns the Defendant had with the Plaintiff's work (paras. 16, 17 and 19), the meeting held on August 7, 2020 with the Plaintiff (para. 18), a meeting held on August 10, 2020 with the Plaintiff (para. 20), the resumption of a medical leave and subsequent termination of the Plaintiff's long term disability benefits by his insurance provider (paras. 21 through 27), and the status of matters since the termination of the benefits (paras. 28 through 33). The remaining paragraphs 34 through 40 detail UHN's position that the action should be dismissed for various reasons.

[34] The Plaintiff did not file a reply in response to the statement of defence. I note that subrule 25.08(1) of the *Rules of Civil Procedure* provides that a party who intends to prove a version of the facts different from that pleaded in the opposite party's defence shall deliver a reply setting out the different version, unless it has already been pleaded in the claim. Subrule 25.08(2) provides that a party who intends to reply in response to a defence on any matter that might, if not specifically pleaded, take the opposite party by surprise or raise an issue that has not been raised by a previous pleading shall deliver a reply setting out that matter, subject to subrule 25.06(5) (inconsistent claims or new claims).

#### *Proposed Amendments*

[35] The proposed amendments greatly expand the length of the claim. The proposed fresh as amended statement of claim is 53 paragraphs long, as compared to the original 16 paragraphs.

[36] There are a number of amendments that the Defendant does not oppose. I will not go over those in these reasons.

[37] UHN does oppose the proposed amendment for \$250,000 in moral and/or aggravated damages (paragraphs 1(c) and 50), and \$250,000 in punitive damages (paragraphs 1(d) and 51). UHN argues that these are new causes of action that are outside of the applicable limitation period.

[38] As set out in *Atlantic International Trade Inc. (Soltani & Associates) v. Georgian College of Applied Arts and Technology*, a claim to aggregated or punitive damages is not a cause of action in and of itself.<sup>11</sup> UHN has not put forward any case law that contradicts or challenges this ratio.

[39] As a result, the addition of these claims by Mr. Saleem is permissible, as they are not new causes of action.

[40] On initial review of the remaining opposed proposed amendments, being paragraphs 10 through 52 of the amended amended statement of claim, it appears that most of the amendments are in response to facts detailed by UHN in its statement of defence. Attached hereto as Schedule

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<sup>11</sup> *Atlantic International Trade Inc. (Soltani & Associates) v. Georgian College of Applied Arts and Technology*, 2008 CanLII 29103 (ON SC), para. 43.

“A” is a chart that sets out paragraphs in the statement of defence and the corresponding response from the Plaintiff in the proposed amended statement of claim.

[41] As a result, I asked the parties to provide further written submissions on the following two issues:

- (a) when considering whether a proposed claim asserts a new cause of action, can the court review and take into consideration allegations made in the statement of defence?
- (b) is there any case law that has considered whether proposed amendments to a statement of claim effectively are a reply to the statement of defence and, if so, whether that changes the test to be applied by the court?

[42] The parties referred the Court to the decision of Master Glustein (as he then was) in *Thompson v. Zeldin*. In that case, the plaintiff wished to amend his statement of claim to plead that the defendant, a doctor, had failed to obtain informed consent from him prior to performing a medical procedure and thus committed battery.<sup>12</sup>

[43] The plaintiff argued that the statement of claim set out a claim for informed consent because the defendant pled factual allegations in the defence relating to informed consent. Master Glustein held that “the raising of an issue in a statement of defence does not make it a claim in an action. This would apply even if [the plaintiff] had replied to the defence and set out, in such a reply, all his allegations that there was no informed consent. It is the allegations in the Claim which must be considered to determine if [the plaintiff] pled sufficient facts to raise the issue of informed consent, not the allegations in the Defence or in a reply.”<sup>13</sup>

[44] In my view, *Thompson v. Zeldin* is distinguishable. In that case, Master Glustein found that the initial claim was framed in negligence and that the plaintiff was not an appropriate candidate for the surgery. It was in the statement of defence that the defendant alleged that he clearly explained the nature, risks and possible complications of the surgery, and that the plaintiff wished to proceed with the surgery. Master Glustein held that the informed consent claim was a new cause of action and the plaintiff had failed to plead material facts in support of the informed consent claim in his statement of claim.<sup>14</sup>

[45] As detailed below, I do not read most of proposed amendments to constitute a new cause of action, but simply particularization of facts to the causes of action contained in the statement of claim.

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<sup>12</sup> *Thompson v. Zeldin*, 2008 CanLII 46703 (ON SC), para. 1.

<sup>13</sup> *Ibid.*, para. 77.

<sup>14</sup> *Ibid.*, paras. 69 and 70.

[46] The Plaintiff also relied on *Modine Manufacturing Company v. Rose Corporation*. In that case the plaintiff sought leave to amend its statement of claim and leave to file a reply. In the proposed amendments to the claim, the plaintiff asked to incorporate the terms of the draft reply. Master Graham (as he then was titled) held that a statement of claim should stand on its own without incorporating by reference the contents of the draft reply.<sup>15</sup> However, Master Graham granted leave to the plaintiff to include in the amended claim any or all of the paragraphs of the draft reply that relate to a relief mentioned by the defendant in the statement of defence.<sup>16</sup> The Defendant argues that this case is distinguishable as it dealt with matters that were raised within the applicable limitations period.

[47] In my view, neither of these cases prevents a court, when considering amendments to a statement of claim, to consider the provisions of the statement of defence where the some or all of the amendments directly respond to factual allegations made in the statement of defence.

[48] I do not believe that the proposed amendments in paragraphs 10 through 38 create a new theory of liability, as argued by the Defendant, that triggers an analysis of the running of a limitation period. The Plaintiff's statement of claim is no doubt brief and short in detail. However, the cause of action pled in the statement of claim is constructive dismissal, based on being placed on unpaid leave (referred to as a suspension) on August 7, 2020. In the alternative, Mr. Saleem pled that he was constructively terminated when UHN "failed to return Mr. Saleem to his employment" and their treatment of him "after it suspended his employment without pay".

[49] As set out in the excerpts in Schedule "A", UHN responded to the statement of claim by going into significant detail in their statement of defence as to their view of what transpired between the parties from his return to work on July 7, 2020 and thereafter. In my view, paragraphs 10 through 38 of the proposed amended statement of claim adds facts to particularize the causes of action contained in the statement of claim and are responses to the facts as alleged by UHN.

[50] I recognize that there is a fine line between "fundamentally different claim" based on facts not originally pleaded, which is on one end of the spectrum, and simply providing particulars of an allegation already pled or additional facts upon which the original right of action is based. However, when reviewing the original statement of claim broadly, and considering the context of the facts alleged by UHN in the statement of defence, the proposed amendments in paragraphs 10 through 38 are particularizations of the facts are pled in the statement of claim.

[51] In my view, it would be inequitable to prevent Mr. Saleem from fleshing out his factual allegations to his claim and respond to the Defendant's version of the events through the amendments contained in paragraphs 10 through 38. In reviewing the statement of claim, UHN clearly understood what was at issue in the claim commenced by Mr. Saleem and responded accordingly with its factual responses in its statement of defence. While from a procedural

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<sup>15</sup> *Modine Manufacturing Company v. Rose Corporation*, 2006 CanLII 42588 (ON SC), para. 32.

<sup>16</sup> *Ibid.*, para. 33.

perspective it would likely have been more appropriate for the Plaintiff to have filed a reply to the statement of defence instead of seeking to amend its claim years later, it does not change the fact that the factual allegations contained in paragraphs 10 through 38 of the proposed amended statement of claim were known to the Defendant and are not a completely new factual matrix that is being pled outside of an applicable limitation period as alleged by UHN.

[52] I echo the comments made by Master Short in *Brand Name Marketing Inc. v. Rogers Communications Inc.*, where he said that:

“I believe that equity dictates that if a defendant knows that the "finger of litigation" is pointing in its direction, and an action is commenced on a timely basis based on specific actions, this court ought to take appropriate steps to ensure that the true *lis* between the parties is addressed, rather than permitting one party to perhaps escape its possible liability by relying upon a technical *Limitations Act* defence.”<sup>17</sup>

[53] With respect to paragraphs 39 through 44 in the proposed amendments, I agree with the Defendant that they are improper and should not be permitted. Paragraph 39 refers to Mr. Saleem being forced to submit a resignation letter to UHN for the purpose of getting access to his pension. This amendment is untethered to the statement of claim and seems to suggest a different theory of liability, which is that Mr. Saleem was constructively dismissed in February 2022 through a forced resignation due to UHN’s repeated refusals to let him return to paid employment. To me, this amendment goes beyond what could be said to be a particularization of his broad statements in the original claim that UHN’s treatment after his suspension led to his constructive dismissal. While I recognize that Mr. Saleem referred to his treatment by UHN after the suspension as part of his constructive dismissal claim, on balance, I am of the view that this is a fundamentally different claim in constructive dismissal that was originally pled.

[54] As the event at issue in proposed paragraph 39 occurred in February 2022, and the proposed statement of claim was first sent to counsel to UHN in July 2024, it is not permissible as an amendment to the statement of claim as it was first raised more than two years after the event occurred and thus is outside of the applicable two-year limitation period contained in the *Limitations Act, 2002*.

[55] With respect to paragraphs 40 through 43, the proposed amendments deal with Mr. Saleem’s allegations concerning his attempts to mitigate his damages and the failure of UHN to assist him in securing a new position. Again, these factual allegations go far beyond what is pled in the statement of claim and does not respond to any allegation in the statement of defence. As a result, I believe they are improper amendments and are not permissible, as the paragraphs refer to

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<sup>17</sup> *Brand Name Marketing Inc. v. Rogers Communications Inc.*, 2010 ONSC 2892, para. 84

events that occurred more than two years before the Plaintiff served his notice of motion to amend his statement of claim on July 30, 2024.

[56] Paragraph 44 is with respect to an allegation concerning an event that occurred on August 16, 2022, which is less than two years from when the notice of motion was served by the Plaintiff. As well, the paragraph responds to UHN's position in paragraph 33 of its statement of defence concerning Mr. Saleem's attendance at a neurology assessment. As I find that this paragraph is responsive to the statement of defence and raised within the two-year limitation period, it is a permissible amendment.

[57] Paragraphs 45 through 47 of the proposed amendments provide further particularization of his allegations in the statement of claim that he was constructively dismissed through the actions of UHN by suspending him and not permitting him to return to work and confirms that he remains unemployed. As a result, I find them to be permissible amendments to the claim.

[58] The proposed amendment in paragraph 48 contains Mr. Saleem's position as to the factors that exist that would entitle him to the wrongful dismissal damages, I believe this paragraph particularizes the increase in the amount of damages sought by the Plaintiff, which is not opposed by the Defendant, and is a particularization of paragraph 13 of the existing claim that refers to "other factors considered by the court" in making an determination as to entitlement to reasonable notice damages. As a result, this proposed amendment is permissible.

[59] The Defendant objects to the withdrawal of paragraph 6 of the statement of claim (which is crossed out paragraph 9 in the amended amended statement of claim), arguing that it is an improper withdrawal of an admission that he was employed for six years with UHN. I do not see it that way. The statements that were contained in paragraph 6 of the statement of claim can now be found in paragraphs 4 and 7 in the amended amended statement of claim. The Defendant does not oppose those amendments, and those amendments say that he began work in September 2014. Given that Mr. Saleem says he was constructively dismissed on August 7, 2020, which is almost six years from his start date, I do not see how this is a withdrawal of an admission. As a result, the amendment is permissible.

### **Disposition and Costs**

[60] For the reasons set out above, the Plaintiff's motion to amend its statement of claim is granted in part. The parties shall agree to a form of order that details the proposed amendments that have been consented to, those that have been permitted by the Court, and those that have been disallowed by the Court. The order shall also set out how the parties have agreed to the action proceeding under the ordinary procedure, and set out the litigation timetable agreed to by the parties.

[61] Given the divided success on this motion, the parties are strongly urged to come to an agreement on costs. If they are unable to do so, they may contact my Assistant Trial Coordinator to obtain my directions on the exchange of written cost submissions.

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Associate Justice Rappos

**DATE:** March 10, 2026