Court of King's Bench of Alberta

Citation: Pinkney v Hines, 2026 ABKB 267

Date: 20260407
Docket: 2413 00285
Registry: Ft. McMurray

Between:

Douglas Ryan Pinkney

Plaintiff/Respondents

- and -

Kristi Hines, Lindsay Pinkney, Wayne Pinkney, Pinkney Wealth Management Inc., Twin Tax by Pinkney Inc., Ogilvie LLP, Imran Qureshi

Defendants/Applicants

Endorsement
of the
Honourable Justice Michael J. Lema

I. Introduction

[1] A lawyer and his former firm appeal Application Judge Park's decision declining to strike portions of a statement of claim seeking relief against them and to summarily dismiss the balance of the claim against them.

[2] Per the appellants (Mr. Imram Qureshi and Ogilvie LLP), the pleadings of the respondent Mr. Douglas Ryan Pinkney (Pinkney) contain no reasonable cause of action in defamation and should be struck based on the defence of absolute privilege. Additionally, the claim for inducing breach of contract should be summarily dismissed.

[3] Per Pinkney, the defence of absolute privilege does not apply; accordingly, it is not plain and obvious that the defamation claim fails. Additionally, there is insufficient evidence for summary dismissal.

[4] I accept Pinkney's positions, as explained below.

II. Background

[5] In February 2022, Wayne Pinkney and Pinkney Wealth Management Inc filed an action in this Court naming Pinkney as defendant ("PW Action"). The statement of claim ("PW Pleading") alleges various misconduct by him against the interests of PWM.

[6] At the time Pinkney was an employee of Manulife Securities Inc.

[7] Manulife became aware of the PW Action while investigating client complaints against Pinkney. On June 8, 2022 Manulife's regional director requested a copy of the PW Pleading from PWM. Mr. Qureshi, then a partner at Ogilvie LLP and who still represents Wayne Pinkney and PWM in the PW Action, sent a copy of the PW Pleading to Manulife.

[8] In September 2022, Manulife terminated Pinkney.

[9] In response, Pinkney filed a statement of claim advancing defamation and inducing breach of contract actions against various defendants including Qureshi and Ogilvie. (Note: I use the same short-form descriptors of Mr. Quereshi and the Ogilvie firm used by their counsel in this appeal.) Pinkney asserts that, by sending the PW Pleading to Manulife, Qureshi and Ogilvie defamed him and induced a breach of his employment contract with Manulife.

III. Procedural History

[10] Qureshi and Ogilvie applied to strike certain paragraphs of Pinkney's statement of claim pursuant to R 3.68 of the *Alberta Rules of Court*. They invoke the defence of absolute privilege as protecting the occasion under which the PW Pleading was shared with Manulife i.e. with the alleged defamatory statements being wholly contained within the PW Pleading.

[11] Additionally, Qureshi and Ogilvie sought summary dismissal of the inducing-breach-of-contract claim. They argued there is no evidence of an intention by Mr. Qureshi to cause Pinkney's employment contract to be terminated or that termination was reasonably foreseeable as a result of Mr. Qureshi's actions. Per them, the only communication between them and Manulife was the email request by Manulife and Mr. Qureshi's response sending the PW Pleading.

[12] Pinkney opposed the application to strike, arguing it was not plain and obvious that his statement of claim does not disclose an arguable cause of action. In particular, he argued it was not plain and obvious that the doctrine of absolute privilege attached to the occasion, as the PW Pleading was provided to Manulife, a non-party to the litigation.

[13] On summary dismissal, Pinkney argued that Qureshi and Ogilvie relied on improper (hearsay) evidence in support of their application, contrary to R 13.18(3), namely, a single affidavit sworn by Qureshi's assistant, who (per Pinkney) lacked personal knowledge of the emails requesting and sending the PW Pleading. With inadequate evidence, summary dismissal is not warranted

[14] The application was argued on June 5, 2025 before AJ Park, who (via unpublished endorsement issued the next day) dismissed the application to strike. He found it was not plain and obvious that the defence of absolute privilege applied to the sending of the statement of

claim in the circumstances here and accordingly not plain and obvious the defamation claim had no reasonable prospect of success.

[15] He also dismissed the application for summary dismissal, with the affiant lacking personal knowledge of the matters deposed to.

[16] Qureshi and Ogilvie appeal both findings.

IV. Issues

[17] The issues are:

1) Did AJ Park err in dismissing the application to strike pursuant to R 3.68? and
2) Did he err in dismissing the summary disposition application?

V. Standard of Review

[18] The standard of review for an appeal of an applications judge's decision is correctness: ***Bahcheli v Yorkton Securities Inc***, 2012 ABCA 166 at para 30. While considered a *de novo* hearing, practically this is an appeal on the record as no new evidence was introduced on appeal: ***Challis v Maverick Oilfield Services Ltd***, 2023 ABKB 514 at paras 13-15.

VI. Application to strike

A. Positions of the parties

[19] Qureshi and Ogilvie argue that AJ Park erred in not striking the defamation paragraphs aimed at them, with the impugned statements contained within a filed pleading and thus protected by absolute privilege. They rely here primarily on ***Tuharsky v O'Chiese First Nation***, 2025 ABCA 267. Finally, they add that the accompanying email to Manulife contained no commentary and that lawyers regularly exchange pleadings through email.

[20] Pinkney argues that, for the application to strike, the Court must, per R 3.68(2)(b), assume the facts related to the sending of the email as pleaded are true. Additionally, for the application to succeed, it must be plain and obvious that the defence of absolute privilege applies. Per Pinkney, the defence does not apply here as the communications were not shared on a "protected occasion", instead with a third party outside the litigation. In other words, the sharing of the statement of claim here was not a litigation step per ***Tuharsky***.

B. Rule 3.68

[21] Applications to strike must satisfy at least one of the conditions under R. 3.68(2). Quereshi and Ogilvie argue that R 3.68(2)(b) applies i.e. "a commencement document or pleading discloses no reasonable claim or defence to a claim."

[22] When an applicant seeks to strike pleadings under this rule, it must demonstrate it is "plain and obvious" the pleading does not disclose a reasonable claim: ***Atlantic Lottery Corp Inc v Babstock***, 2020 SCC 19 at para 14; ***Mikisew Cree First Nation v Alberta***, 2025 ABCA 304 at para 15; and ***SR v Edmonton (Police Service)***, 2024 ABCA 340 at para 13.

[23] As no evidence may be submitted on an application under r 3.68(2)(b), the facts as pleaded are assumed to be true: R 3.68(3); ***SR*** at para 13; ***Alberta v Elder Advocates of Alberta Society***, 2011 SCC 24 at para 20; and ***Tuharsky*** at para 16. The Court assesses only whether there is a legal basis for the claim.

C. Defamation

[24] A claim for defamation will be made out where: (1) the impugned statement is defamatory, (2) the words refer to the claimant, and (3) the words were communicated to at least one other person other than the claimant: ***Grant v Torstar Corp***, 2009 SCC 61 at para 28. A statement is defamatory if it tends to lower the reputation of the claimant in the eyes of a reasonable person in the claimant's community: ***Crookes v Newton***, 2011 SCC 47 at para 39.

[25] On this application to strike, I do not need to gauge whether Pinkney will make out his defamation claim. I simply need to determine whether it is plain and obvious that the pleadings do not disclose a reasonable action in defamation.

[26] The PW Pleading contain statements which would objectively tend to lower Pinkney's reputation. Quereshi and Ogilvie did not argue otherwise. In this context, it is not necessary to detail those allegations here. *Prima facie* the impugned statements would tend to lower Pinkney's reputation and refer directly to him, making out the first two elements of defamation.

[27] The third element of defamation is also made out, as Qureshi communicated the statements by emailing the PW Pleading to Manulife. While I make no formal findings on the cause of action itself, based on the face of the pleadings, it is not plain and obvious that Pinkney's statement of claim fails to outline a reasonable cause of action in defamation.

[28] I must now determine whether, in light of the invoked defence of absolute privilege, it is plain and obvious that the pleading does not disclose such a claim.

D. Defence of Absolute Privilege

[29] The defence of absolute privilege enables "those involved in the administration of justice, including litigants, witnesses, advocates and judges, [to] speak freely without fear of an action in defamation": ***Liboiron v Majola***, 2007 ABCA 18 at para 10. This immunity ensures the "vigorous and undistracted advocacy" essential to the adversarial system: ***Tuharsky*** at para 22 citing ***170460 4 Ontario Ltd v Pointes Protection Association***, 2020 SCC 22 at para 123.

[30] Absolute privilege attaches to the occasion on which the statement is made rather than the words themselves: ***Tuharsky*** at para 21. For absolute privilege to apply in this case, the alleged defamatory statement must have been made during, incidental to or in the process or furtherance of judicial or quasi-judicial proceedings: ***Liboiron*** at para 10. There is no "bright line test" for whether absolute privilege attaches to specific communications or conduct: ***Patel v McMurtry,*** 2023 SKCA 74 at para 50. Courts must look to the connection between the communication or conduct and the judicial proceeding: ***Patel*** at para 50.

[31] If the communication or conduct occurred within a "step" of the proceeding, then absolute privilege will protect the impugned statements: ***Tuharsky*** at para 26. For example, statements made in a filed pleading or as part of oral submissions in court fall within the core of judicial proceedings and are thus protected: ***Tuharsky*** at para 26. Where the communication or conduct does not occur as or within such an obvious or recognizable litigation step, the Court

must review the context to determine "whether the communication was incidental to or in furtherance of the underlying proceeding": ***Tuharsky*** at paras 29 and 32.

[32] For an example of such communication, see ***Dingwall v Lax***, 1988 CanLII 4716 (ONSC) (Potts J.):

> In my opinion, the draft [statement of claim] and letter [sent tot opposing counsel] were intimately connected to a judicial proceeding the institution of which was being seriously considered by the defendants. In that respect they fall within the purview of the absolute privilege. As Fleming notes, **the privilege extends to all preparatory steps taken with a view to judicial proceedings.**
>
> Therefore, I do not consider it an unwarranted, "Draconian" extension of the privilege to so protect a courtesy letter and draft statement of claim sent to solicitors personally involved in the action. It is my understanding that according to the doctrine such an exchange of correspondence constitutes **"publication ... on some occasion properly incidental [to] and necessary for the proceedings"** (Gatley on Libel and Slander, 7th ed. (1974), p. 176, para. 411).

[33] On the other hand, a communication may fall outside the spectrum of preparatory to, within, or otherwise incidental to a judicial proceeding: ***Rumancik v Hardy***, 2024 ABKB 670. Eamon J. wrote:

> Pleadings filed in Court are protected by absolute privilege. **Disseminating the content of pleadings outside of the Court proceeding** (for example, by reading the pleading aloud on the Court House steps or **sending it to others) is not protected by absolute privilege**. [Balance of paragraph discusses qualified privilege, which the appellants have not invoked here.] [para 76] [emphasis added]

[34] See also ***Shah v Bakken***, 2001 BCSC 1467 (Scarth J.):

> … what of the statement of claim in his action which Mr. Shah **circulated to third parties, such as realtors who were apparently uninvolved as parties to the litigation**, in May and June, 1995. It is not in dispute that absolute privilege attaches to a pleading used in the course of court proceedings. But **to extend the privilege to the use of document in this way, that is to publish the libel, defies logic**. Neither justification nor privilege can be claimed by Mr. Shah or L'Abri in the circumstances. [para 156]

[35] And ***Rubin v Ross***, 2013 SKCA 21, where a union posted a grievance report on bulletin boards to look for witnesses. The Saskatchewan Court of Appeal determined that although seeking witnesses may be a preparatory step related to the judicial proceeding, it was not "so intimately connected with the process" as to attract absolute privilege (para 42).

[36] And "Beware: Court Documents Used Outside Court May Not Have Immunity Against Defamation", Peter S. Spiro, CanLII Connects (January 19, 2023).

[37] The focus here is the sending of the PW Pleading to the outsider, not the inclusion of the statements within the PW Pleading.

[38] Sending the PW Pleading to a third party unrelated to the PW Action was not a step in those judicial proceedings.

[39] As well, there is no argument or in any case any evidence from Quereshi and Ogilvie that sending it was connected to that proceeding i.e. in the sense of preparatory to or in furtherance of it.

[40] Quereshi and Ogilvie argue that, if the Court finds absolute privilege does not extend to the impugned sending of the statement of claim, court clerks would necessarily be liable for defamation any time they provide a filed pleading to a member of the public.

[41] This argument raises different considerations, which do not require exploration or resolution here. I simply note that it appears to overlook the purpose of absolute privilege and other principles which courts uphold.

[42] The defence of absolute privilege presumably extends to courts and their administrators and staff acting in their representative capacity. Managing court records, including providing copies of publicly filed records to ordinary-course requests, is part of the administration of justice. When a court clerk provides a pleading to a member of the public or the media in response to such a request, she or he is acting as a representative of the court, presumably attracting absolute privilege.

[43] Additionally, courts uphold other principles to maintain public confidence in the justice system. Courts have supervisory and protecting powers over their own records: ***AG (Nova Scotia) v MacIntyre***, [1982] 1 SCR 175 at 189. The standard practice of courts is to provide the public and media with open access to proceedings and information, in line with the open-court principle: ***Sherman Estate v Donovan***, 2021 SCC 25 at para 1. This approach aligns with freedom of expression under s 2(b) of the *Charter* – in particular, freedom of the press: ***Vancouver Sun (Re)***, 2004 SCC 43 at paras 23-26; ***Sherman Estate*** at para 39.

[44] The obvious connections of court administration to judicial proceedings and these open-court principles appear to attract absolute privilege to court staff when providing the public with publicly filed documents (including pleadings) in the ordinary course.

[45] Accordingly, declining to extend the defence of absolute privilege to the appellants' actions here would not appear to create defamation jeopardy for court clerks acting in the ordinary course of their duties.

[46] Summarizing here, it is not plain and obvious that absolute privilege applies to the sending of the statement of claim here or (in turn) that Pinkney's pleading fails to outline a reasonable claim.

[47] Accordingly, I dismiss this ground of appeal.

VII. Summary Judgment and Inducing Breach of Contract

[48] Pinkney also alleges that Quereshi induced, or participated in inducing, Manulife to breach his employment contract with Manulife.

[49] Quereshi asserts that the only communication between himself or anyone at Ogilvie, on the one hand, and anyone at Manulife, on the other, was the purely housekeeping email sent by his assistant (Michelle Somarriba) to a Manulife executive to accompany the copy of the statement of claim, namely, an email sent by her at 2.06 pm on July 8, 2022 (part of Exhibit A to her affidavit sworn on April 11, 2025.

[50] The email is indeed narrow, containing only this text:

> Good afternoon.
>
> Please find attached a copy of the filed Amended Statement of Claim.
>
> Should you have any questions or concerns, do not hesitate to contact me.

[51] However, the emails preceding that email include one from Quereshi to the Manulife executive at 12.39 pm that day stating:

> [Manulife executive]
>
> Pleased to connect. My assistant will email me a copy of the filed Statement of Claim this afternoon. I am happy to discuss further in a call next week.
>
> Cheers.

[52] Counsel for Pinkney argues that that email seems to imply (i.e. from "[p]leased to connect") some level of communication between Quereshi and the Manulife executive preceding that email.

[53] That may or may not be so.

[54] Quereshi points to the following paragraph in Ms. Somarriba's affidavit as evidence that no such (or any other) communication occurred between himself or anyone else at Ogilvie, on the one hand, and anyone at Manulife, on the other:

> I am informed from my review of the time records for the [PW] Action, and through my discussions with Quereshi, that no further discussions took place between Quereshi or anyone else at Ogilvie, and [the Manulife executive], or anyone else at Manulife.

[55] Quereshi argues that, with lawyers having an ethical duty to record their time accurately, this evidence confirms that no additional discussions took place i.e. otherwise they would have been reflected in his or in other Ogilvie lawyers' time records relating to the PW Action.

[56] That may or may not be so.

[57] Quereshi's counsel did not provide any cases addressing whether the asserted ethical duty (which seems uncontroversial in principle) means that recorded time must be recorded accurately, that all time spent on or relating to a file must be recorded (i.e. whether billed or not), or something else.

[58] I am not convinced, merely from the apparent absence of time records reflecting any other Ogilvie-Manulife communications on the subject of the statement of claim, that no such discussions occurred.

[59] Here Quereshi points to the further element of Ms. Somaribba's affidavit, namely, that, per his discussions with her, she believes that no such further communications occurred.

[60] Quereshi acknowledges that "legal assistant affidavits" should be "limited to non-controversial matters and must not offer commentary in the nature of opinion, argument or proposed inferences", citing ***Baker Law Firm v Colors Unlimited Inc***, 2024 ABKB 53 at paras 54 and 55, in turn citing ***Fedun v Korchinski***, 2021 ABQB 14 at para 12.

[61] He then argues:

> The Somaribba Affidavit does not offer commentary in the nature of opinion, argument or proposed inferences. It provides a summary of her review of Quereshi's time records. Further, Ms. Somaribba was directly involved in the events giving rise to this [inducing breach] cause of action. She was the individual who provided the [PW Pleading] to [the Manulife executive]. Her affidavit is not a true secretarial affidavit just used to append relevant documents.

[62] The Somaribba affidavit is not so limited. As noted, it includes her evidence (based on Quereshi's statement to her) that neither he nor anyone else at Ogilvie communicated with anyone at Manulife.

[63] I agree that this is not opinion, argument, or an inference-offering.

[64] It is, however, direct evidence of what Quereshi himself sees as material evidence on the summary-dismissal issue (per paras 64 and 65 of his brief), namely, what other Ogilvie-Manulife communications occurred here, if any.

[65] Here is where R 13.18(3) comes into play. It states:

> If an affidavit is used in support of an application that may dispose of all or part of a claim, the affidavit must be sworn on the basis of the personal knowledge of the person swearing the affidavit.

[66] From her affidavit, it is apparent Ms. Somaribba did not have personal knowledge of the state of communications between Ogilvie and Manulife.

[67] Quereshi argues that R 13.18(3) should be applied less than strictly here:

> The Alberta Court of Appeal has explained that "some flexibility" is required in interpreting [this Rule]. By "some flexibility", the Court means that [it] should not be read as an absolute bar to the use of hearsay evidence. When evaluating whether hearsay evidence should be admitted on a summary judgment application, a key consideration is whether the underlying source of the information is reliable and would be admissible at trial. [citing ***Moore v Wetaskiwin Friends and Horizon Training***, 2022 ABKB 617 (Funk J.) at para 35 in turn citing ***Saito v Lester Estate***, 2021 ABCA 179 at paras 11 and 12]

[68] Here is paragraph 12 from ***Saito***, which summarizes the guidance on interpreting R 13.18(3) flexibly:

> As the chambers judge correctly noted, some flexibility is required in interpreting Rule 13.18(3) and the use of hearsay affidavits in summary judgment applications, particularly those involving **corporations** and by analogy, **estates**. Other than the will itself, a testator has no voice as to his testamentary intentions or, as here, when he intended to end any common law relationship with Ms Saito. As this Court recognized in ***Goodswimmer v Canada (Attorney General)***, 2017 ABCA 365, leave to appeal ref'd [2018] SCCA No 1 at para 33:
>
> > The case law has long recognized that some flexibility is required in interpreting the rule on the use of hearsay affidavits. Too strict an interpretation would preclude summary judgment applications by **large organizations**. In some **cases involving historical claims**, due to the passage of time there may be no one with any

> personal knowledge; for example, there is no longer anyone around with personal knowledge of the negotiation and signing of Treaty 8, or the original survey of the Reserve. Thus, **litigants are allowed to rely on affidavits in support of final relief where the personal information in the affidavit is obtained from reviewing relevant and reliable documents** […] A key consideration is whether the underlying source of the information is reliable, and would be admissible at trial. **The proximity of the affiant to the original events and the documents themselves is an important consideration** in the weight that will be given to such affidavits. [emphasis added]

[69] The present case does not feature a corporate, other "large organization", estate, or historical claim where a person with personal knowledge is not or is no longer available or otherwise involve the absence of a person with direct knowledge of the evidence in question.

[70] Qureshi himself is available to provide, and could have provided, the evidence on the state of communications between Ogilvie and Manulife or, at minimum, communications between himself and anyone at Manulife.

[71] And given the centrality of this evidence, it does not fall into the "non-controversial" zone where legal-assistant affidavits are often seen and accepted without question.

[72] Qureshi argues that he "cannot swear an affidavit in support of the [summary-dismissal] application", in light of the following:

> ... Quereshi remains as counsel of record for the [PW] Action and other underlying actions between [Douglas Ryan Pinkney], Wayne [Pinkney], Kristi [Hines], Lindsay [Pinkney], and Pinkney Wealth. It is a well-established rule that a lawyer cannot be both lawyer and witness in the same case. The role of witness for the purpose of the rule includes affidavit evidence and cross-examination on affidavits. This rule is rigorously enforced [citing ***RT v Alberta***, 2020 ABQB 655 ... at para 70 [in turn] citing ***R v Kinal***, 2007 MBQB 26 at para 6]
>
> ...
>
> While Quereshi is not counsel to these parties in this Action, the [PW] Action is closely related to this Action. The actions are so closely related that an application to consolidate this Action, the [PW] Action, and [another KB action] was filed by [Douglas Ryan Pinkney] on May 7, 2025 and has been adjourned *sine die* to allow for questioning on affidavit. [Quereshi brief (paras 76, 79, and 80, the latter the source of other "cannot swear" comment)]

[73] On this point, I accept Pinkney's position that the "state of communication" evidence had to come from Quereshi:

> [He] made [or may have made] a strategic decision not to provide his own affidavit. He may have made this decision to preserve his ability to continue to represent the co-defendants in related proceedings as suggested in [his and Ogilvie's] brief, but that does not mean that this Court ought to relax the rules of evidence or procedure to accommodate his [actual or possible] strategic choice. [He] is a *party to these proceedings* and therefore should be expected to be bound

> to his obligations *as a party*. That will include giving evidence and otherwise acting *as a witness*. He absolutely can and should have sworn an affidavit for the purposes of this application. ... [Pinkney brief, para 50] [emphasis in original]

[74] That analysis accurately expresses the reason a legal-assistant affidavit is insufficient here i.e. Quereshi's party status.

[75] It may be that consolidation is no longer sought. Or that consolidation is not ordered. On any such application, Quereshi or someone on his behalf can argue that consolidation should not be directed, whether on account of his witness status here or otherwise. Or, if consolidation is directed, that accommodations be made to allow him to continue to act as counsel in the other branch(es) of the consolidated proceeding e.g. if directed to be heard in sequence.

[76] Regardless, those possible complications do not undercut Quereshi's party status here or his associated witness obligations.

[77] More generally, I accept the balance of Pinkney's positions on some assertions in the Quereshi + Ogilvie brief lacking an evidentiary foundation, the elements of the inducing claim that are effectively acknowledged, the incomplete evidence on the "state of communication", and (with these shortcomings) the burden not switching to Pinkney to demonstrate a genuine issue for trial (as outlined in paras 54-65 of Pinkney's brief).

[78] In any case, I see a genuine issue for trial here: at minimum, whether further Ogilvie-Manulife communications occurred here, the nature of those communications (if any), and their impact (if any) on Pinkney's dismissal by Manulife.

[79] Accordingly, I dismiss the appeal on this ground as well.

VIII. Conclusion

[80] AJ Park reached the correct answers on both issues.

[81] As indicated in the by-issue conclusions above, the appeal is dismissed.

[82] Pinkney is entitled to costs of the application under the appropriate column of Schedule C.

[83] I thank both counsel for their helpful written and oral submissions.

Heard on the 15th day of January, 2026.
Dated at the City of Ft. McMurray, Alberta this 7th day of April, 2026.

Michael J. Lema
J.C.K.B.A.

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