IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION

Citation: *Intact Insurance Company v. Edward Collins Contracting Limited*, 2026 NLSC 49
Date: April 27, 2026
Docket: 202201G4574

BETWEEN:

INTACT INSURANCE COMPANY

PLAINTIFF

AND:

EDWARD COLLINS CONTRACTING LIMITED

FIRST DEFENDANT

AND:

UNIVERSAL ENVIRONMENTAL SERVICES INC.

SECOND DEFENDANT

AND:

E & T INVESTMENTS LIMITED

THIRD DEFENDANT

AND:

EDWARD COLLINS

FOURTH DEFENDANT
(DISCONTINUED)

AND:

THERESA COLLINS

FIFTH DEFENDANT
(DISCONTINUED)

AND:

FRANCIS COLLINS

SIXTH DEFENDANT

Before: Justice Peter N. Browne

Place of Hearing: St. John's, Newfoundland and Labrador

Date of Hearing: April 21, 2026

Date of Oral Judgment: April 21, 2026

Summary:

The Sixth Defendant, ("Collins"), brought an application under Rule 14.24(a) and (d) to strike the claim issued by Intact Insurance Company ("Intact") for payment of monies owed under an indemnity agreement. Collins argued that the Releases obtained under the Approval and Vesting Order ("AVO") issued pursuant to the *Companies' Creditors Arrangement Act* ("*CCAA*") had released him from any personal liability to Intact.

The Court held that on the face of the pleadings it was not plain and obvious that Intact did not have a reasonable cause of action, and more importantly, that the wording of the Release when read in conjunction with the AVO, the oral reasons of the Court and the wording of section 5(1) (a) of the *CCAA*, was not intended to release Collins in any personal capacity. Consequently, the proceeding did not constitute an abuse of process or *res judicata*/issue estoppel.

The application was dismissed with costs in the cause on a Column III basis.

Appearances:

Sam Babe	Appearing on behalf of the Plaintiff
Adam Baker	Appearing on behalf of the Defendants

Authorities Cited:

CASES CONSIDERED: *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42; *FORCOMP Forestry Consulting Ltd. v. British Columbia*, 2021 BCCA 465; *Mercantile Office Systems Private Limited v. Worldwide Warranty Life Services Inc.*, 2021 BCCA 362; *Danyluk v. Ainsworth Technologies Inc.*, 2001 SCC 44; *Mancuso v. Canada (Minister of National Health and Welfare)*, 2015 FCA 227; *Kindylides v. Does*, 2020 BCCA 330; *Chiasson v. Nalcor Energy*, 2021 NLCA 34; *Atlantic Lottery Corp. Inc. v. Babstock*, 2020 SCC 19; *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42; *755165 Ontario Inc. v. Parsons et al.*, 2006 NLTD 123, leave to appeal refused, 2006 NLCA 60; *Penner v. Niagara (Regional Police Services Board)*, 2013 SCC 19; *Edward Collins Contracting Ltd. (Re)*, 2023 NLSC 139; *C.I.T. Financial v Lambert*, 2005 BCSC 1779; *Allen-Vanguard Corp (Re)*, 2011 ONSC 5017; *Banque Canadienne Nationale v. Dufour* (1979), 31 C.B.R. (N.S.) 300, 1979 CarswellQue 72 (Qc. Sup. Ct.); *Alterinvest Fund L.P. v Neufeld*, 2011 MBQB 250; *Canadian General Insurance Company, v. Dube Ready-Mix Ltd., Carrier, d'Amours, Grandmaison and Edmundston Construction Group Ltd.* (1984), 52 N.B.R. (2d) 66, [1984] I.L.R. 6702 (NBCA); *JTI-MacDonald (Re)*, 2025 ONSC 1358; *Hynes v. Pro Dive Marine Services Limited*, 2014 NLTD(G) 81

STATUTES CONSIDERED: *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36

RULES CONSIDERED: *Rules of the Supreme Court, 1986*, S.N.L. 1986, s. 42, Sch. D

REASONS FOR JUDGMENT GIVEN ORALLY

BROWNE, J.:

INTRODUCTION

[1] The Sixth Defendant, Francis Collins ("Collins"), applies under Rule 14.24 of the *Rules of the Supreme Court, 1986*, S.N.L. 1986, s. 42, Sch. D to strike the Statement of Claim as against him.

[2] The application alleges that Intact's claim for indemnification is barred by the doctrines of *res judicata*, issue estoppel, or otherwise constitutes an abuse of process.

[3] Collin's application is based on the order issued by this Court in the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36 (the "*CCAA*") proceedings relating to Edward Collins Contracting Ltd. and related entities, including the Amended and Restated Initial Order ("ARIO") dated October 17, 2022, and the Approval and Vesting Order ("AVO") dated October 18, 2023.

[4] Specifically, Collins relies on paragraph 21 of the AVO Release to argue that his personal liability under the Indemnity Agreement with Intact was finally and unequivocally released.

[5] On this basis he argues Intact's action should be struck under either Rule 14.24 (a) or (d).

[6] For the reasons that follow, the application to strike is dismissed.

THE GOVERNING LEGAL PRINCIPLES

The Test on an Application to Strike under Rule 14.24

Overview

[7] On an application under Rule 14.24 the question is whether it is "plain and obvious" the pleading discloses no reasonable claim. The application proceeds on the basis the facts pleaded are true, unless they are manifestly incapable of being proven.

[8] The approach is generous; if an amendment can salvage an otherwise questionable claim, the Court should permit the plaintiff an opportunity to amend; (see *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42, at paras. 17, 21-22).

[9] Rule 14.24 is concerned primarily with whether a notice of civil claim properly advances a cause of action. The structure for this inquiry was set out by the Court of Appeal in *FORCOMP Forestry Consulting Ltd. v. British Columbia*, 2021 BCCA 465.

[10] For a cause of action to be properly advanced, the elements of the cause of action must be set out, the material facts that ground those various elements of the cause of action must be concisely stated, and the relief that is sought must be available for the specific cause of action advanced.

[11] In *Mercantile Office Systems Private Limited v. Worldwide Warranty Life Services Inc.*, 2021 BCCA 362, the BC Court of Appeal emphasized that the function of pleadings is to clearly define the issues of fact and law to be determined by the court. The objective is not to tell a story or provide a narrative of events, but rather to state the material facts - the essential elements to formulate a claim or defence - as succinctly as possible; (see paras. 44-48).

[12] As explained by the Supreme Court of Canada in *Danyluk v. Ainsworth Technologies Inc*., 2001 SCC 44 at paragraph 54, in short, "[t]he pleading must tell the defendant who, when, where, how and what gave rise to liability"; (*Mancuso v. Canada (Minister of National Health and Welfare)*, 2015 FCA 227 at para. 19, referred to with approval in *Kindylides v. Does*, 2020 BCCA 330 at para. 34).

[13] In reviewing Intact's Statement of Claim, I find the pleadings address the elements surrounding its cause of action (see para 8-9 of the Statement of Claim); the material facts that ground those various elements of the cause of action are concisely stated (see paras. 11-30 of the Statement of Claim); and the relief that is sought is available for the specific cause of action advanced (see para. 31 of the Statement of Claim).

The Plain and Obvious Test-Rule 14.24(a)

[14] The test to be applied when considering whether there is a cause of action under Rule 14.24 is the "plain and obvious test".

[15] That is, the question to be determined is: accepting the facts as pleaded to be true and without going beyond the pleadings or considering any evidence, whether it is "plain and obvious" that the claim as pleaded discloses no reasonable cause of action; (see *Chiasson v. Nalcor Energy*, 2021 NLCA 34, at para. 8, citing the Supreme Court of Canada decisions in *Atlantic Lottery Corp. Inc. v. Babstock*, 2020 SCC 19, and *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42).

[16] In *Imperial Tobacco* the Court added at paragraph 22 that "… [I]t is incumbent on the claimant to clearly plead the facts upon which it relies in making its claim ... . The facts pleaded are the firm basis upon which the possibility of success of the claim must be evaluated ... .

[17] In *755165 Ontario Inc. v. Parsons et al.*, 2006 NLTD 123, (leave to appeal refused, 2006 NLCA 60), our Court of Appeal described the test for finding that no cause of action exists as a "stringent one because it is based on the policy that, other things being equal, a case should be decided on its merits rather than be derailed on a technicality"; (at para. 35).

[18] Rule 14.24 permits the Court to strike a pleading where it discloses no reasonable cause of action or where it constitutes an abuse of process. These grounds are distinct but, in this application, are said to converge through the operation of *res judicata*.

The test for abuse of process under Rule 14. 24 (d)

[19] An application grounded in *res judicata*, or issue estoppel, is generally brought under Rule 14.24(1)(d) as an alleged abuse of the Court's process. As such, the Court must determine:

- whether the same issue was previously decided;
- whether the earlier decision was final and intended to finally determine the issue; and
- whether the parties are the same (see *Penner v. Niagara (Regional Police Services Board)*, 2013 SCC 19, at para. 29.

[20] At paragraph 69 in *Penner*, the Supreme Court concluded that issue estoppel is about balancing judicial economy and finality and other considerations of fairness to the parties. It is a flexible doctrine that permits the court to respond to the equities of a particular case.

[21] Even where these elements are arguably present, the doctrine is applied with caution, particularly where the earlier determination arose in a different procedural and statutory context, such as the case here where it involved insolvency proceedings under the *CCAA*.

ANALYSIS

The Nature of Intact's Claim

[22] Intact's claim against Collins is contractual. It is based on a personal indemnity agreement executed by him in favour of Intact in connection with the issuance of surety bonds. An indemnity agreement creates a primary obligation, independent of the debtor's liability, and is conceptually and legally distinct from liability arising solely by reason of one's status as a director or officer.

[23] The Statement of Claim pleads the existence of the Indemnity Agreement, the incurring of losses by Intact under the bonds, and Mr. Collins' obligation to indemnify Intact for those losses. On its face, the pleadings disclose a reasonable cause of action.

[24] However, a review of Collins' application leaves me with the impression that the main ground being advanced is the assertion that the claim has been extinguished by operation of the AVO Release and the wording contained in the "order" endorsed by MacDonald, J.

[25] I will expand upon this analysis in the next section of my reasons.

The *CCAA* Order and the Decision of Macdonald, J.

[26] The AVO approved the sale of substantially all of the assets of the debtor companies and granted releases to specified parties. Paragraph 21 of the AVO Release released, among others, the debtor companies, certain third-party sponsors, and directors and officers in their capacities as such, subject to an explicit savings clause.

[27] Paragraph 21 ends with the following statement: "nothing in this paragraph shall waive, discharge, release, cancel or bar any claim for fraud or wilful misconduct or any claim that is not permitted to be released pursuant to section 5.1(2) of the *CCAA*".

[28] Subsection 5.1(1) and (2) of the *CCAA* read as follows:

> Claims against directors — compromise
> 5.1 (1) A compromise or arrangement made in respect of a debtor company may include in its terms provision for the compromise of claims against directors of the company that arose before the commencement of proceedings under this Act and

> that relate to the obligations of the company where the directors are by law liable in their capacity as directors for the payment of such obligations.
> Exception
> (2) A provision for the compromise of claims against directors may not include claims that
> *(a) relate to contractual rights of one or more creditors*; or
> (b) are based on allegations of misrepresentations made by directors to creditors or of wrongful or oppressive conduct by directors. [Emphasis added]

[29] The oral reasons of MacDonald, J. as subsequently reported in *Edward Collins Contracting Ltd. (Re)*, 2023 NLSC 139, also address the scope of the AVO Release, in particular, paragraphs 82 to 83, where he stated, in unequivocal terms:

> **82** I approve the Releases. No one disputes most of the Releases. The only dispute is whether I should order the UESI Release. Notably, no one asks me to release UESI's directors or any of the Collins family in their personal capacity (other than in their roles as directors, officers or employees of the Vendors).
>
> **83** The Releases will cover any present and future claims against the released parties based on any fact, or matter, or occurrence in respect of the purchase transaction. It does not release any claim for fraud or willful misconduct. It does not release any claim that I may not release pursuant to s. 5.1(2) of the *CCAA*. It does not release any environmental liability to the Government of Newfoundland and Labrador (GNL).

[30] When examined together with a critical eye, the wording of the AVO Order and the reasons of MacDonald, J. can be read in a harmonious fashion so as to draw the conclusion that the release was not intended to extend to personal contractual obligations that could not be released under section 5.1(2) of the *CCAA*.

[31] Bearing these comments in mind, I also note that this appears consistent with jurisprudence surrounding the scope of section 5.1(2)(a) of the *CCAA.* Courts have consistently interpreted this provision as excluding from release personal guarantees and personal indemnities, which arise from independent contractual undertakings.

[32] One reason advanced in the case law is the policy surrounding the personal liability that directors face under both Federal and Provincial legislation, or the personal undertaking of a director to a creditor such as a personal guarantee; (see *C.I.T. Financial v Lambert*, 2005 BCSC 1779, at para. 47; *Allen-Vanguard Corp (Re)*, 2011 ONSC 5017; *Banque Canadienne Nationale v. Dufour* (1979), 31 C.B.R. (N.S.) 300, 1979 CarswellQue 72 (Qc. Sup. Ct.), at para, 31; *Alterinvest Fund L.P. v Neufeld*, 2011 MBQB 250).

[33] Citing the New Brunwick Court of Appeal in *Canadian General Insurance Company, v. Dube Ready-Mix Ltd., Carrier, d'Amours, Grandmaison and Edmundston Construction Group Ltd.* (1984), 52 N.B.R. (2d) 66, [1984] I.L.R. 6702 (NBCA), at paragraphs 7 to 9, counsel for Intact argues that an indemnity is a more direct contractual right than a guarantee, as an indemnitor has a primary obligation and a guarantor only a secondary obligation.

[34] As part of this primary obligation, Collins signed the Indemnity in both his personal capacity and on behalf of his company. The Indemnity Agreement specifically contemplates the release of one indemnitor without release of the others; (see Indemnity Agreement at paragraph 12: Price Affidavit at Exhibit “A”).

[35] On the other side of the argument, counsel for Collins refers this court to the decision of Justice Morawetz in *JTI-MacDonald (Re)*, 2025 ONSC 1358, at paragraphs 195 to 197, for the proposition that under a *CCAA* proceeding the Court has the jurisdiction to grant releases in favour of third parties and paragraph 21 of the AVO Release does just that.

[36] I do note that *JTI* was a *CCAA* proceeding flowing out of a global settlement of the Tobacco Claims litigation in Canada where the *CCAA* Court was responsible for the supervision of the Cy-prs fund Foundation. This is a much different circumstance than in the current proceeding where Intact is pursuing payment of a number of construction bonds that were underwritten by Collins’ personal indemnity.

[37] In fact, Collins' counsel conceded in oral argument that when read in its most favourable light the JTI decision highlights some inconsistency in the jurisprudence surrounding whether section 5.1(2) permits the release of Collins in his personal capacity under the Indemnity Agreement.

[38] From my reading of these decisions, I conclude that the sale of the assets and undertakings of the borrowers does not extinguish their indebtedness to the bank, even where a creditor approves a proposal under the *CCAA* as such approval does not affect the right of a creditor to proceed against a guarantor or an indemnitor in their personal capacity.

[39] Moreover, I find nothing in the Order or the reasons of MacDonald, J. which supports the conclusion that Collins' personal indemnity obligation was finally determined or extinguished. On the contrary, the reasons of MacDonald, J. explicitly draw a distinction between liability arising in a representative capacity and liability arising from personal contracts with the latter not being addressed in the reasons advanced by the Court.

[40] I conclude that it is not plain and obvious that paragraph 21 of the AVO Release discharges the liability of persons who have personally guaranteed the debts of the discharged vendor under a *CCAA* order.

***Res Judicata*/Issue Estoppel**

[41] In reviewing the pleadings, I find that the main issue raised in Intact's legal action is whether Mr. Collins is liable under a personal indemnity agreement.

[42] The focus of the AVO hearing before Justice MacDonald was the approval of a sale transaction and the necessity of certain third-party releases to facilitate that restructuring. The enforceability of Mr. Collins' personal indemnity was neither litigated nor decided as a discrete issue.

[43] While Intact opposed aspects of the releases in the *CCAA* proceeding, the Court's determination was confined to what could lawfully and appropriately be released under the *CCAA*. The Court did not purport to adjudicate, nor could it adjudicate, the merits of a creditor's personal contractual claim that falls outside section 5.1(2).

[44] Accordingly, the essential elements of *res judicata* and issue estoppel are not met. The prior decision was not a final adjudication of the issue now before this Court.

[45] For these reasons, this issue was not finally determined in the *CCAA* proceedings.

Abuse of Process

[46] Given the statutory limitations on releases under the *CCAA*, and the express language used by MacDonald J., it cannot be said that Intact's continuation of its claim is an attempt to relitigate matters already decided or to circumvent an earlier order of the Court.

[47] On the contrary, Intact is pursuing a claim that the *CCAA* process expressly left untouched. To hold otherwise would impermissibly broaden the scope of the AVO and undermine the protections afforded to creditor contractual rights by Parliament in section 5.1(2) of the *CCAA*.

[48] The application to strike therefore fails under Rule 14.24(1)(a) and (d).

DISPOSITION

[49] The Statement of Claim discloses a reasonable cause of action.

[50] The claim against the Sixth Defendant is not barred by *res judicata*, issue estoppel, or abuse of process.

[51] The application to strike the Statement of Claim as against Collins is dismissed.

COSTS

[52] In his Memorandum of Fact and Law, Collins' counsel devoted a section to the issue of costs.

[53] Citing *Hynes v. Pro Dive Marine Services Limited*, 2014 NLTD(G) 81 at paragraph 100, Collins seeks lump sum costs pursuant to Rule 55, or alternatively, on a Column IV basis.

[54] The argument advanced by his counsel was that *Hynes* supports the notion that where the Court determines that a Plaintiff has failed to comply with a prior decision of this Court and forces the Defendant to return to court for a repeat application, then this constitutes an award of costs on the higher end of the scale.

[55] However, during oral argument, Collins' counsel conceded that the position taken in their Memorandum of Fact and Law was more bullish regarding the outcome than it should have been, especially given the inconsistent jurisprudence surrounding the scope of third-party releases arising from *CCAA* proceedings.

Therefore, should they not be successful in their application then costs should be awarded as costs in the cause without a pre-determined amount.

[56] Based on this concession, I award costs in the cause on a Column III basis.

PETER N. BROWNE
Justice