

CITATION: *Warren v. D'Alfonso et al.*, 2025 ONSC 956
COURT FILE NO.: CV-23-92550
DATE: 2025-02-12

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Troy Warren, Plaintiff

AND

Gina D'Alfonso and Lifework / Morneau Shepell,
Defendants

BEFORE: The Honourable Mr. Justice Marc Smith

COUNSEL: Self-represented Plaintiff

Andrew Bratt, Counsel for the Defendants Gina D'Alfonso
and Lifework / Morneau Shepell, and the Proposed Defendants
Chloe Rodricks and Telus Health (Canada) Ltd.

Julien Frigon, Counsel for the Proposed Defendants Canada Post Corporation,
Mathieu Sicard, and Erin Keating

HEARD: January 10, 2025

REASONS FOR DECISION

M. SMITH J

OVERVIEW

[1] The Plaintiff, Troy Warren, brings a motion to amend his Statement of Claim to increase his claim for lost wages to \$110,000 and to add the following Defendants: Chloe Rodrick, Telus Health (Canada) Ltd. ("Telus Health"), Canada Post Corporation ("CPC"), Mathieu Sicard, and Erin Keating. In addition, Mr. Warren seeks an order compelling the Defendants to attend mediation.

[2] Mr. Warren is an employee of CPC. He is a unionized letter carrier. Ms. Rodrick is an employee of Telus Health. Mr. Sicard and Ms. Keating are employees of CPC.

[3] On February 26, 2021, it was alleged that Mr. Warren left the scene of an accident when driving a CPC vehicle. He was charged with failing to remain at or immediately return to the scene of the accident, contrary to s. 200(1)(a) of the *Highway Traffic Act*, R.S.O. 1990, c. H.8.

[4] Mr. Warren applied for short-term disability benefits because of the stress of the traffic incident and for other personal reasons. Lifework / Morneau Shepel (now Telus Health) provides claims management services with respect to CPC's short-term disability plan as a subcontractor of Canada Life Assurance Company.

[5] On April 21, 2021, Mr. Warren was advised that his claim for short-term disability, beyond a period of six weeks, was denied.

[6] On July 6, 2021, Mr. Sicard, a manager with CPC wrote to Mr. Warren and said, in part, as follows: "After reviewing the evidence and the contents of your personal file, I have concluded that the discrepancies in your statement contradict the evidence provided by the Ottawa Police Officer and your own disclosure memo. I consider your conduct to be a major misconduct [*sic*]. Your conduct was dishonest and a breach of trust. Your conduct also disregarded one of CPC's five values: Integrity." Because of this alleged conduct, Mr. Warren received a five-day unpaid suspension from July 19th to July 23rd, 2021.

[7] Mr. Warren filed a grievance regarding the five-day unpaid suspension. A settlement was reached in or around the end of May 2022. The suspension was reduced to two and half days.

[8] In or around June 2023, the charges relating to the traffic incident were stayed and/or dismissed, the specifics of which are unknown.

[9] On June 29, 2023, Mr. Warren commenced his claim against Ms. D'Alfonso and Lifework / Morneau Shepell for defamation, discriminatory and racist statements.

[10] Between November 2023 and February 2024, a manager with CPC, Ms. Keating, wrote to Mr. Warren requesting that he cease and desist harassing employees of the CPC.

[11] On February 6, 2024, Mr. Warren received a letter from Ms. Chloe Rodricks, Case Manager at Telus Health regarding the closing of the short-term disability file because an

Attending Physician Statement and Employee Statement were not received. Ms. Rodricks also provided the steps to follow to re-open the file.

[12] In early April 2024, the parties scheduled a mediation to proceed on June 3, 2024.

[13] On April 12, 2024, Mr. Warren filed and served his Notice of Motion. The mediation was cancelled.

[14] The motion was to proceed on July 30, 2024, but it was adjourned by Corthorn J. on terms.

ISSUE

[15] The only disputed issue regarding the Amended Statement of Claim is to determine whether the court should exercise its discretion to refuse to add any of the proposed Defendants to Mr. Warren's Statement of Claim.

LEGAL PRINCIPLES

[16] Rules 26.01 and 5.04(2) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, set out the powers of the court in relation to amending a pleading and adding parties to the proceeding, respectively.

[17] Rule 26.01 is mandatory. The court must allow the amendment unless the responding party would suffer non-compensable prejudice such as the proposed pleading is scandalous, frivolous, or vexatious, or the proposed pleading fails to disclose a reasonable cause of action: *Klassen v. Beausoleil*, 2019 ONCA 407 at para. 25.

[18] In a pleading motion, it is necessary to read the claim generously, allowing for some drafting deficiencies: *Klassen v. Beausoleil*, at para. 30.

[19] Rule 5.04(2) is discretionary. The wording of this rule is similar to r. 26.01 and therefore subject to the same tests. The court may add, delete, or substitute a party or correct the name of a party incorrectly named, unless prejudice would result that could not be compensated by costs or an adjournment. If the addition of a party appears to be an abuse of process, the court may refuse

the amendment: *Plante v. Industrial Alliance Life Insurance Co.*, [2003] O.J. No. 3034, 66 O.R. (3d) 75, at para. 25.

[20] At the pleadings stage, the court must scrutinize the proposed amendments to prevent untenable claims from proceeding: *Bonenfant v. Ponesse*, 2021 ONSC 8544, at para. 43.

[21] In a claim for defamation, a defendant must be able to tell from the pleading (a) what the defamatory words were, (b) where they were spoken, (c) to whom they were spoken, and (d) whether the words spoken are defamatory to the plaintiff: *Saier v. Ottawa Hospital*, 2021 ONSC 3553 at para. 24.

[22] Section 4 of the *Limitation Act*, 2002, S.O. 2002, c. 24, Sched. B, provides that a proceeding shall not be commenced in respect of a claim after the second anniversary of the day on which the claim was discovered.

[23] Pursuant to s. 5 of the *Limitation Act*, a claim is discovered when the claimant knew or reasonably ought to have known that (i) the injury, loss or damage had occurred; (ii) the injury, loss or damage was caused by or contributed to by an act or omission; (iii) the act or omission was that of a person against whom the claim is made; and (iv) having regard to the nature of the injury, loss or damage, a proceeding is an appropriate means to seek to remedy it.

ANALYSIS

Issue – Should the court exercise its discretion to refuse to add any of the proposed Defendants to Mr. Warren’s claim?

Gina D’Alfonso and Lifework / Morneau Shepell

[24] It is not necessary to add Telus Health as a party because Telus Health (Canada) Ltd. is now the proper legal entity. On or about September 1, 2022, Telus Health acquired Lifework / Morneau Shepell. Accordingly, on consent, the Statement of Claim may be amended to reflect the correct legal name.

[25] Regarding Ms. Gina D'Alfonso, Mr. Warren conceded during the motion that she is not a proper Defendant and as such, she can be removed as a Defendant to the claim.

Chloe Rodricks

[26] The allegations made against Ms. Rodricks can be found generally in paragraphs 1 and 2 of the Amended Statement of Claim which refer to the Defendants making defamatory, discriminatory, and racist statements, as well as the publishing of a report. Also, at paragraph 9 of the amended claim it is specifically alleged that Ms. Rodricks sent a false and misleading letter to CPC regarding attending doctor appointments.

[27] Ms. Rodricks' form letter dated February 6, 2024, is nothing more than a standard letter to advise Mr. Warren that Telus Health has not received the Attending Physician Statement and the Employee Statement. She was not involved in case managing Mr. Warren's claim with respect to his short-term disability claim. I am not satisfied that this letter forms the basis of a claim against Ms. Rodricks.

[28] There is insufficient evidence to support a separate basis of liability for Ms. Rodricks. I find that the claim against her is legally untenable and there is no reasonable cause of action related to Ms. Rodricks.

[29] I am exercising my discretion to deny leave to add Ms. Rodricks as a Defendant.

Erin Keating and Mathieu Sicard

[30] Like Ms. Rodricks', the allegations against Ms. Keating and Mr. Sicard can be found in paragraphs 1 and 2 of the Amended Statement of Claim. There are two additional allegations regarding these proposed Defendants: (a) at paragraph 9 of the amended claim, Mr. Warren alleges that Mr. Sicard made up his own decision before a court hearing; and (b) at paragraph 8 of the amended claim, Mr. Warren pleads that Ms. Keating has been harassing him from November 2023 until February 2024 by sending letters to him, which he qualifies as intimidation, threats of termination and defamatory comments.

[31] It is true that Mr. Sicard pre-judged Mr. Warren's conduct with respect to the motor vehicle accident. However, he was doing so in the context of his employment and as a manager positioned to review Mr. Warren's conduct. In the letter dated July 6, 2021, Mr. Sicard outlines the result of his investigation into the motor vehicle accident, his findings and the disciplinary action taken against Mr. Warren. Mr. Sicard was acting within the scope of his function.

[32] CPC submitted that Mr. Sicard was a mere conduit of their communication to Mr. Warren and that Mr. Sicard did not act independently from CPC. Therefore, being vicariously liable for Mr. Sicard's actions, I find that Mr. Sicard is not a necessary party.

[33] Ms. Keating's letters are dated November 29, 2023, December 12, 2023, and February 6, 2024. The first two letters warn Mr. Warren to refrain from communicating with certain employees of CPC, citing the workplace policies, and failing to adhere to those policies may result in disciplinary measures. It is alleged that Mr. Warren sent a series of communications to various employees, accusing them of illegal and fraudulent activities, threatening legal action against them. Ms. Keating was following company protocol in sending the cease and desist letters to Mr. Warren. None of these letters were distributed to third parties.

[34] In regard to the February 6, 2024 letter, Ms. Keating simply reminded Mr. Warren that he was required to fully cooperate with the short-term disability process, namely by submitting the necessary documentation. Failure to do so may be considered as insubordination and subject to the progressive disciplinary process. Mr. Warren disputes that he did not follow the process. Regardless, this letter follows CPC's standard procedure, in accordance with internal processes.

[35] I am not satisfied that these three letters form the basis of a claim against Ms. Keating.

[36] There is insufficient evidence to support a separate basis of liability for Ms. Keating. I find that the claim against her is legally untenable and there is no reasonable cause of action related to Ms. Keating.

[37] I am exercising my discretion to deny leave to add Ms. Keating and Mr. Sicard as Defendants.

CPC

[38] I am unable to conclude that Mr. Warren's claim against CPC is untenable at law.

[39] First, I recognize that in a defamation claim, a plaintiff must set out the material facts of the alleged defamatory statements. Here, Mr. Warren's Amended Statement of Claim does not identify the nature of the defamatory statements, nor does he identify when, where or to whom the words were spoken. Mr. Warren is a self-represented litigant, and he may not have known or understood the particularity upon which a defamation claim must be pleaded. That said, I am not persuaded that CPC does not know the case that needs to be met.

[40] It is not plain and obvious that Mr. Warren has no chance of success. When generously reading Mr. Warren's amended claim and allowing for deficiencies in his pleadings, his defamation claim stems from Mr. Sicard's letter dated July 6, 2021, and his subsequent actions. Mr. Warren takes the position that his rights under the Canadian Charter of Rights and Freedoms were violated when Mr. Sicard concluded that Mr. Warren was guilty of the charges under the *Highway Traffic Act* before the matter was properly adjudicated before the court.

[41] Mr. Sicard's letter clearly puts Mr. Warren's integrity into question. Importantly, it was distributed to third parties, and I am not convinced that CPC had an interest in making those parties aware of the reasons for a disciplinary action. The charges against Mr. Warren were pending, yet Mr. Sicard took it upon himself to finalize his investigation. Mr. Sicard accused Mr. Warren of improper conduct, he imposed disciplinary sanctions, and he chose to disseminate his findings to third parties. It is worth repeating that all charges against Mr. Warren were either stayed and/or dismissed. In any event, at this stage of the pleadings, it is not necessary to consider whether Mr. Warren is able to prove his defamation claim against CPC.

[42] On the facts of this case, it is my view that Mr. Warren's claim against CPC is not scandalous, frivolous, vexatious, or an abuse of process. The claim against CPC is not limited to the disciplinary measures taken against Mr. Warren by Mr. Sicard. It includes Mr. Sicard's unwise decision to pre-judge Mr. Warren's conduct as well as distribute to third parties that Mr. Warren was dishonest and that he lacked integrity, all without having properly and thoroughly investigated the allegations against Mr. Warren. It is unknown if the dissemination was handled confidentially

by Mr. Sicard. I do not find that Mr. Warren's claim against CPC is a fishing expedition. There is a clear connection between the actions of Mr. Sicard and the alleged damages.

[43] Although Mr. Warren's Amended Statement of Claim is not properly drafted, I am of the view that it nonetheless reveals a valid cause of action against CPC.

[44] Second, I am not satisfied that Mr. Warren's claim falls outside of the two-year limitation.

[45] There is no doubt that Mr. Warren relies upon Mr. Sicard's letter dated July 6, 2021. However, it is not until June 2023 that Mr. Warren was made aware that all charges against him were either stayed and/or dismissed. It cannot be said that Mr. Warren knew or reasonably ought to have known that a loss had occurred until such time as he was vindicated in June 2023. As time progressed, the facts and circumstances regarding a potential claim against CPC became clearer.

[46] Also, as a self-represented litigant, it cannot be said that Mr. Warren knew or ought to have reasonably known that a defamation claim could be pursued against CPC. Shortly after the delivery of Mr. Sicard's letter, steps were taken by Mr. Warren's union representative to challenge the disciplinary measures. The results of the grievance were not known to Mr. Warren until June 2022, and it was limited to reducing his suspension by 2.5 days. As stated in Mr. Warren's affidavit, at the time that he received the results of the grievance, the traffic incident had not been finalized in court, therefore the "defamation, discrimination and prejudice was not dealt with." This raises a question of discoverability.

[47] I find that these foregoing potential issues of discoverability may extend the limitation period. In my view, because of the existence of a discoverability dispute, it is inappropriate to decide at the pleadings stage whether Mr. Warren's cause of action is statute-barred.

[48] Third, I disagree with CPC's argument that Mr. Warren is attempting to re-litigate the suspension that was grieved and settled by Mr. Warren's union representative, or that it should otherwise be submitted through the collective agreement process.

[49] As stated above, this case goes beyond the unreasonable and unfounded suspension imposed by Mr. Sicard. The fact that CPC and Mr. Warren's union settled the grievance does not,

in my view, mean that all issues have been resolved. The five-day suspension may have been resolved through the grievance process, but Mr. Sicard's conduct vis-à-vis his alleged defamatory comments distributed to third parties has yet to be litigated.

DISPOSITION

[50] For the foregoing reasons, I make the following orders:

- i. The name of the Defendant Lifework / Morneau Shepell shall be correctly changed to Telus Health (Canada) Ltd.
- ii. The Defendant Gina D'Alfonso shall be removed as a party Defendant.
- iii. Mr. Warren shall have leave to add CPC as a party Defendant.
- iv. Mr. Warren shall not have leave to add Ms. Rodricks, Ms. Keating, and Mr. Sicard as party Defendants.
- v. Given that Mr. Warren may not have known or understood the particularity upon which a defamation claim must be pleaded, I am granting him leave to further amend the Statement of Claim. Mr. Warren shall have 30 days from the date of these Reasons for Decision to file and serve a fresh Amended Statement of Claim, setting out the required particulars of the defamation claim.
- vi. Upon receipt of the fresh Amended Statement of Claim, Telus Health and CPC shall have 30 days to file an Amended Statement of Defence, if required.
- vii. The parties shall schedule a mandatory mediation to occur within 120 days of these Reasons for Decision.

[51] On the issue of costs, the parties are encouraged to reach a consensus. Failing which, if a party wishes to seek costs, that party shall serve and file cost submissions, limited to three pages excluding Offers to Settle and a Bill of Costs, within 30 days of these Reasons for Decision. The other party shall file and serve their responding cost submissions, with the same page restrictions, within 30 days thereafter.

M. Smith J

Released: February 12, 2025

CITATION: *Warren v. D'Alfonso et al.*, 2025 ONSC 956
COURT FILE NO.: CV-23-92550
DATE: 2025-02-12

SUPERIOR COURT OF JUSTICE

BETWEEN:

Troy Warren

Plaintiff

– and –

Gina D'Alfonso and Lifework / Morneau Shepell

Defendants

REASONS FOR DECISION

M. Smith J

Released: February 12, 2025