CITATION: *Pandher v. University of Windsor et al*, 2025 ONSC 4218
COURT FILE NO.: CV-19-28370
DATE: 2025-07-18

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
GURUPDESH PANDHER Plaintiff	)	Jordan Afolabi, counsel, for the Plaintiff
– and –	)	
UNIVERSITY OF WINDSOR, ALAN WILDEMAN, DOUGLAS KNEALE and MITCHELL FIELDS Defendants	)	Albert Formosa and Phil Wallner, counsel, for the Defendants
	)	**HEARD:** November 25 and 28, 2024 by videoconference; Reasons for Judgment released January 20, 2025, cited as 2025 ONSC 168; written argument completed June 24, 2025

REASONS FOR JUDGMENT ON AMENDMENT OF THE STATEMENT OF CLAIM

HEENEY J.:

[1] In my reasons for judgment released January 20, 2025, I ruled that the plaintiff was, in principle, permitted to amend his Statement of Claim so as to add the *Human Rights Code* (the "*Code*") claims asserted in three separate applications before the Human Rights Tribunal to the present civil action. However, the draft that was before me at the hearing of this matter was defective in many ways, and counsel for the plaintiff was directed to correct those errors. The resulting draft is, in the view of counsel for the defendants, still defective in a variety of ways. The alleged defects identified by the defendants will be dealt with in these reasons.

Improper Attempt to Add an Additional Defendant Without Notice:

[2] The plaintiff's proposed Fresh As Amended Statement of Claim ("FAASOC") includes a new defendant, Robert Gordon. The plaintiff did not seek an order for leave to add this defendant in the omnibus notice of motion that is before the court. He did seek to add two other new defendants, Jeff Berryman and Patricia Weir to this action, and that request was dismissed by me in my reasons for judgment released January 20, 2025.

[3] The plaintiff argues that he was given instructions by the court to prepare a FAASOC to include the allegations made in his HRTO applications. Since Robert Gordon was named as a respondent on HRTO #3, he argues that he is entitled to add that individual as a defendant in this action.

[4] I reject this submission. The plaintiff was granted leave to add the claims made in the HRTO applications to the claims made in this civil proceeding. If he was of the view that it was necessary to add a party or parties as defendants in order to do so, he should have asked for leave to do so. He did, unsuccessfully, seek leave to add Berryman and Weir as defendants, so he was clearly aware that the addition of parties was a separate and distinct issue to the amendment of the statement of claim.

[5] I agree with counsel for the defendants that this is not the first time the plaintiff has attempted to introduce new issues or evidence after having completed his submissions on the motion. Given that leave to add Robert Gordan as a defendant was not requested in the plaintiff's notice of motion, and the issue was not argued when the matter was heard, it is not properly before the court. Thus, Robert Gordon's name shall be removed from the title of proceedings, and all references to him, and claims made against him, as a defendant in this action, shall be deleted. This will not preclude references that are made to him in the context of pleading relevant facts with respect to claims made against other defendants.

Defamation Claim Not Properly Pleaded:

[6] The plaintiff's claim in defamation is outlined at para. 10(a) of the FAASOC, as follows:

> 10. From 2016-2020, Kneale, Wildeman, Fields and other employees of the University defamed and undermined the Plaintiff as follows:
>
> (a) The Defendants and implicated members of the University defamed the Plaintiff by alleging, untruthfully, that he, inter alia, misrepresented his title; was a "psychopath"; represented a threat of armed physical violence on campus; did not fulfil his duties; was disruptive to the department; played the "race card"; by silencing him during Faculty Council meetings; by removing him from various committees; by making public defamatory information about the Plaintiff to the OBS faculty; by conducting an investigation based on defamatory allegations/statements made against him; and by having him removed from Campus. Such actions negatively affected, and continue to affect, his position and reputation both at Windsor and the academic community at large.

[7] The defendants argue that the plaintiff has failed to provide proper particulars of the allegedly defamatory statements, such as properly identifying the speaker, the specific words alleged to have been spoken, and the dates the statements were made.

[8] The law is clear that pleadings in a defamation action are more important than in any other cause of action. Traditionally, the defendant was entitled to particulars of the date or dates on which, and of the place or places where, the slander was uttered, as well as the names of the person or persons to whom the slander was uttered. However, this rule has evolved somewhat in recent years. The more flexible approach is outlined by Lane J. in *Magnotta Winery Ltd. v. Ziraldo* (1995), 25 O.R. (3d) 575 (Ont. Gen. Div.), which was cited with approval by the Court of Appeal in *Catalyst Capital Group Inc., v. Veritas Investment Research Corp.*, 2017 ONCA 85 at para. 28:

> This more flexible approach to defamation pleadings is reflected in the subsequent decision of Lane J. in *Magnotta Winery* (a case involving the plaintiff's inability to plead the exact wording of the allegedly defamatory statement). After analysing many of the authorities relating to the strict requirements of pleading in defamation actions, Lane J. opted for a more flexible approach. He did so recognizing the benefits to "fashioning a contemporary resolution of the tension between the need to prevent fishing expeditions, on the one hand, and the injustice of permitting defendants to escape liability for serious defamations on the other" (p. 582). At pp. 583-84, he concluded:
>
> > On these authorities, it is open to the court in a limited set of circumstances to permit a plaintiff to proceed with a defamation action in spite of an inability to state with certainty at the pleading stage the precise words published by the defendant. The plaintiff must show:
> >
> > • that he has pleaded all of the particulars available to him with the exercise of reasonable diligence;
> >
> > • that he is proceeding in good faith with a prima facie case and is not on a "fishing expedition"; normally this will require at least the pleading of a coherent body of fact surrounding the incident such as time, place, speaker and audience;
> >
> > • that the coherent body of fact of which he does have knowledge shows not only that there was an utterance or a writing emanating from the defendant, but also that the emanation contained defamatory material of a defined character of and concerning the plaintiff;
> >
> > • that the exact words are not in his knowledge, but are known to the defendant and will become available to be pleaded by discovery of the defendant, production of a document or by other defined means, pending which the plaintiff has pleaded words consistent with the information then at his disposal.

[9] The FAASOC is clearly deficient in particularity. It does not state when any allegedly defamatory statements were made, other than sometime between 2016 and 2020, nor where such statements were made nor to whom. It does not even specify who said them, other than it was "the defendants and implicated members of the University". Unless all of those persons were speaking in unison, this does not serve to put the defendants on notice as to who allegedly said what.

[10] The plaintiff has not provided any evidence to demonstrate that he is unable to provide these particulars, nor that he has provided "all of the particulars available to him with the exercise of reasonable diligence". He has similarly not provided evidence that there is a "coherent body of fact of which he does have knowledge", from which defamatory statements emanated.

[11] The plaintiff argues that the same particulars were provided in the first proposed draft of the FAASOC, provided to the defendants on October 24, 2024 (incorrectly stated to be October 24, 2025), which the defendants objected to at paras 78-79 of their Responding Factum. I reject this submission. Those paragraphs objected to statements in the proposed pleading that amounted to insults and character assassination and have nothing to do with details of the alleged defamation.

[12] An order will go that the proposed FAASOC shall be amended to include particulars detailing precisely what defamatory statements were made, by whom, when, where and to whom. Failing that, para. 10 of the proposed pleading will be deleted, as will the claim for defamation itself.

The Claim for Misfeasance In Public Office Is Not Properly Pleaded:

[13] The defendants argue that this claim was not properly pleaded, because it does not alleged that the alleged actions of the alleged public officeholders were unlawful, nor does it contain sufficient particulars of the allegedly unlawful actions.

[14] I accept the plaintiff's submission that that this pleading relates to allegations of discrimination, systemic discrimination, harassment and reprisal, contrary to the *Code*, as set out in paras. 4 to 7 of the pleading. This constitutes unlawful conduct. I am similarly satisfied that the proposed pleading contains sufficient particulars.

Introduction of Previously Unpleaded Human Rights Claims:

[15] The defendants point out that in paras. 4, 4(a), 4(c)(vi), 5 and 6 of the proposed FAASOC, the plaintiff identifies several alleged protected characteristics that did not form the basis for the plaintiff's HRTO applications: sex, gender identity, gender expression and disability. None of these characteristics were identified in any of the plaintiff's HRTO applications, and the defendants could have no reasonable expectation of being required to defend against claims on those bases.

[16] The plaintiff's response is that the core analysis of *Code* breaches is on the facts, and that there is authority for the proposition that this relief could be granted despite the fact that it had not been explicitly pleaded.

[17] I will leave it to the trial judge to make that determination. As matters now stand, the plaintiff has been granted leave to amend his statement of claim to include claims made in his HRTO applications. Claims based on alleged discrimination on the basis of sex, gender identity, gender expression and disability were not made in those HRTO applications, and I agree with the defendants that they had no reasonable expectation of being required to

defend against any such claims. Granting leave to the plaintiff to add his human rights claims to the civil action is not a blank cheque to expand those claims well beyond anything that he pleaded before the HRTO.

[18] An order will go striking all references to these new protected characteristics in the paragraphs identified above.

Plaintiff Pleads Matters Subject To Collective Agreement:

[19] The defendants argue that many of the allegations made in the proposed FAASOC relate to the time period during which the plaintiff was a unionized employee, or are already the subject of existing labour grievances. As such, they are within the exclusive jurisdiction of a labour arbitrator, in accordance with the terms of the Collective Agreement, and should be struck from the proposed pleading.

[20] This flows from the decision of the Supreme Court of Canada in *Weber v. Ontario Hydro*, [1995] 2 S.C.R. 929, which held that where the "essential character" of a dispute arises from the collective agreement, either "expressly or inferentially", then courts have no jurisdiction to hear the matter.

[21] This decision was relied upon in *Nelson v. Her Majesty the Queen in Right of Ontario*, 2020 ONSC 2147, aff'd 2020 ONCA 751. In that case, the plaintiff had brought a civil suit against her employer, the Ontario Government, as well as against her union, alleging discrimination and harassment in the workplace. She had previously brought grievances that were the subject-matter of arbitrations as well as proceedings under the HRTO, which were deferred while the arbitration was outstanding, and deferred again after the civil action was brought. The defendants brought a motion striking her action based on lack of jurisdiction.

[22] The motion was successful. Schabas J. applied long-standing principles stated in *Weber*, that a court's jurisdiction is ousted when a plaintiff is under a collective bargaining regime. Since the plaintiff's complaints arose entirely from her employment, which is governed by the collective agreement, and does not raise any new or separate cause of action, exclusive jurisdiction rested with an arbitrator under the collective agreement. He summarized his decision at para. 62:

> Accordingly, for a unionized employee to assert human rights claims in a civil action against her employer, and/or union, there must be some independent civil wrong that does not, in its "essential character", arise from the workplace governed by the collective agreement. As there is no such wrong pleaded here on which to "piggy back" a human rights claim, the court has no jurisdiction.

[23] The plaintiff objects to this argument, on the basis that this jurisdictional issue was not argued before me when the motion was heard on November 25, 2024. Given the propensity of the plaintiff himself to routinely raise new issues at every opportunity, I am not disposed to giving any weight to this submission. In any event, this issue goes to the very jurisdiction of this court to deal with these claims. If it is clear, as a matter of law, that the court does

not have jurisdiction, the court has no discretion to deal with these claims, irrespective of how tardy the defendants were in bringing the matter to the court's attention.

[24] The plaintiff also suggests that my decision, released in January, "determined that the substance of the pleadings should be permitted". This is not the case. I stated, at para. 52, that I was prepared, *in principle*, to grant leave to amend to add the *Code*-related claims to the Statement of Claim, but that the precise form of the FAASOC would be the subject-matter of further submissions and a later decision. This did not foreclose any potential objection by the defendants to the content of the proposed pleading.

[25] The plaintiff also argues that he alleges an independent civil wrong, upon which the HRTO claims could "piggyback". I disagree. All of the allegations made by the plaintiff relate to his treatment by the University and its staff in an employer/employee context, primarily related to allegations of unfair consideration of his candidacy by the Dean Search Committee and the defendants' handling of his workplace harassment complaints. All of these allegations, in their essential character, arise from the workplace that is governed by the collective agreement.

[26] I do agree that some of the human rights claims allegedly arose before the plaintiff became part of the bargaining unit. It is not clear from the material precisely when that occurred. In the affidavit of the plaintiff sworn November 24, 2024, he stated that he was employed as a non-unionized Senior Associate Dean at the university from 2012 until 2018. He raised what he believed to be instances of unfairness, unethical conduct and discrimination to the Dean Search Committee and Faculty Counsel. He said, "most of these events occurred in or before 2018". In retaliation to that disclosure, he alleges that the defendants racially profiled him, initiated an investigation against him, and ultimately sanctioned him from March 20, 2018 until May 31, 2019. He then said "after some time, my employment reverted to a unionized full-time Professor role". He does not say precisely when that occurred. Thereafter, grievances were initiated through his union.

[27] At para. 30 of the affidavit of Corinthia Natyshak, sworn November 15, 2024, she attests that there have been nine grievances filed by the plaintiff against the University. Grievance numbers 973, 974, 983 and 986 were all filed in 2018. Grievance number 1000 was filed in June 2020. Clearly, the plaintiff must have joined the bargaining unit some time in 2018 in order for the union to have filed grievances on his behalf.

[28] The defendants argue that several paragraphs of the FAASOC relate to existing labour arbitration proceedings and should not be permitted. These are set out at para. 24 of the defendants written submissions:

> (a) 4(b)(iii)-4(b)(v), 10(a), 32-34, and 36-38 relate in whole or in part to disciplinary measures stemming from an email sent by the plaintiff in March 2018. This email and the subsequent discipline are at issue in grievances 0973 and 0974 identified in the affidavit of Corinthia Natyshak (Tab 1 of the defendants' motion record, the "Natyshak Affidavit");

> (b) 4(b)(vi), 4(b)(xiii), 39 and 40 relate in whole or in part to an allegation by the plaintiff that his application to become the Associate Dean was not fairly considered or was improperly rejected. This is clearly an allegation where the essential characteristic is a violation of the Collective Agreement. This issue is also already raised in an existing grievance commenced by WUFA on the plaintiff's behalf (grievance number 1000 identified in the Natyshak Affidavit); and
>
> (c) 10(a) and 39 refer to allegations that the plaintiff was improperly excluded from faculty meetings. This is the subject of existing grievance #0674.

[29] The plaintiff took no issue with the accuracy of these submissions in his responding written argument.

[30] The first problem with the defendants' submissions is that without knowing precisely when the plaintiff became part of the bargaining unit, I cannot be certain whether any particular allegation that happened in 2018 occurred after he became a unionized employee, and was therefore within the exclusive jurisdiction of an arbitrator to deal with. All that is certain is that anything that occurred after 2018 would have occurred while the plaintiff was part of the bargaining unit.

[31] The second problem concerns the statement that these allegations "relate in whole or in part" to matters that are the subject-matter of an ongoing grievance. This leaves open the prospect that some part of the allegations are *not* raised in the grievance, and may remain within the jurisdiction of this court.

[32] Since it is not plain and obvious that the court lacks jurisdiction over the claims relating to these allegations, they will be permitted to remain in the FAASOC, without prejudice to the right of the defendants to argue, at trial, that the court lacks jurisdiction over them.

[33] There are other paragraphs of the FAASOC, identified by the defendants, where these concerns do not arise:

- Para. 4(b)(iv): Kneale's unilateral interception and termination of the Plaintiff's Associate Dean Application in February 2020;
- Para. 4(b)(viii): The OPW and Provost Patti Weir's ("Weir") cancellation of the Dean search in January 2022 to prevent consideration of the Plaintiff's candidacy;
- Para. 4(b)(ix): The OPW and Gordon's interference with the Plaintiff's SSHRC applications in from October 2020 to October 2021;
- Para. 4(b)(x): Gordon's self-serving use of Article 29 dismissal proceedings against the Plaintiff and removal of the Plaintiff from the Dean Search Committee ("DSC") in February 2023;
- Para. 4(b)(xi): Gordon and the OPW's interference with the Plaintiffs job applications between March and June 2024;

- Para. 4(b)(xiii): The unprofessional and malicious email Kneale sent to the Plaintiff in February of 2020, claiming it was "inconceivable" he could serve as Associate Dean;

- Para. 39: In January 2020, the Plaintiff again applied for the Associate Dean (Academic) position. In response, Fields excluded the Plaintiff from faculty activities he was entitled to participate in.

- Para. 40: On February 12, 2020, Kneale unilaterally rejected the Plaintiff's application, citing pretextual reasons for doing so and unprofessionally advising it was "inconceivable" that the Plaintiff could serve as Associate Dean.

- Para. 41: On December 7, 2021, the Plaintiff filed a complaint of harassment, discrimination, and unethical conduct with the BOG. The BOG ignored him.

- Para. 42: In January to March, 2022, the Plaintiff again reapplied for the Associate Dean Academic position. Upon receiving his application, Fields cancelled the search to prevent the Plaintiff from being considered.

- Para. 43: In November, 2022, after the Plaintiff was elected to the Associate Dean Search Committee, Fields openly disclosed the Plaintiff's confidential information to the committee and attempted to have him removed.

- Para. 44: The OPW interfered with the Plaintiff's SSHRC applications in 2020 and 2021 in order to pressure him into resigning and harmed his academic career by denying him approximately $135,000 in research funding.

- Para. 45: In fall 2022, the Plaintiff proposed a no-confidence motion against President Gordon's leadership for the November 4, 2022 Windsor University Faculty Association AGM, raising concerns of unethical conduct, and discrimination.

- Para. 46: After failed attempts to pressure the Plaintiff to end his litigation and accept a settlement, the Plaintiff submitted a discrimination complaint on February 5, 2023, detailing discrimination and the unethical conduct of Weir and Gordon. On February 6, 2023, the Plaintiff was elected to the 2023 DSC. The next day, President Gordon initiated dismissal proceedings against the Plaintiff, citing his ongoing litigation, human rights complaints, and his no-confidence motion as just cause for dismissal. Gordon also suspended the Plaintiff from his duties and directed him to step down from the DSC. This was intended to pressure the Plaintiff to settle.

- Para. 47: March – June 2024: Job Application Sabotage: The Defendants interfered with the Plaintiff's job search by ignoring his requests for employment verification, leading to the loss of two job offers. This was to pressure him to accept a settlement.

[34] All of these allegations, on their face, arise out of the workplace, after 2018 and while the plaintiff was a member of the bargaining unit. They are, therefore, within the exclusive jurisdiction of an arbitrator under the Collective Agreement to deal with. They will be struck from the proposed FAASOC.

Plaintiff Pleads Particulars In Breach of Deemed Undertaking Rule:

[35] The defendants submit that several paragraphs of the FAASOC plead allegations based solely on documents produced in the context of labour grievances between the plaintiff and the University, in violation of the deemed undertaking rule.

[36] To be specific, the pleadings in question relate to a workplace investigation that was conducted at the request of the University. Records about the investigation were produced in the context of labour grievances brought on the plaintiff's behalf by the union. The defendants allege that the plaintiff now wishes to use those productions as the basis for these particulars in his proposed amended pleading.

[37] The plaintiff, in opposition, raises the same argument that was dealt with on the preceding topic, i.e. that this is a new issue being raised by the defendants. I reject that argument for reasons already stated.

[38] The plaintiff also asserts that, pursuant to r. 30.1.01(8) of the *Rules of Civil Procedure*, the deemed undertaking rule should not apply, as the interests of justice in allowing the amendments outweighs any prejudice that would flow to the defendants.

[39] However, the "deemed undertaking" rule, r. 30.1.01, applies only to evidence obtained during proceedings governed by the *Rules*: see *Tanner v. Clark* 2003, 60 O.R. (3d) 304 (Div. Ct.), aff'd 63 O.R. (3d) 508 (C.A.). The labour arbitration between the union and the University is not such a proceeding. There is, however, an "implied undertaking" rule that continues to exist at common law which may or may not apply to compulsory documentary disclosure in other proceedings, subject to the power of the court to relieve against its application in the interests of justice.

[40] *Tanner* was a motor vehicle accident case, where the plaintiffs were injured in an accident. The plaintiffs were compelled to submit to medical examinations at the behest of their accident benefits insurer, for purposes of an arbitration proceeding before the Ontario Insurance Commission (now the Licence Appeal Tribunal) with respect to accident benefits. The defendants in the tort case later sought production of the medical reports generated from those examinations, and the plaintiffs refused, using the implied undertaking rule as justification for this position.

[41] The Divisional Court, and later the Court of Appeal, held that this was an improper extension of the implied undertaking rule, and ordered that the reports be disclosed.

[42] Carthy J.A., speaking for the Court of Appeal, said the following, at paras. 6 – 7:

> It is "used by the other party" and "use them to the detriment of the party who has produced them" that are the keynote phrases. Rule 30.1.01(1) speaks in the same voice — it is "evidence obtained" on discovery that shall not be "used". These verbs describe the acts of receiving and disseminating information; they do not label the evidence as sealed or privileged. The applicants in the AB proceedings submitted to medical examinations knowing that the information they impart will

> not be used by the two insurance companies except in those proceedings, and will not be communicated to others for their use in other proceedings. That has not happened here. The insurers in the tort proceedings are different companies and the information is sought, not from the insurers in the AB proceedings, but from the source of that information, the respective plaintiffs in the tort actions. Those plaintiffs are not constrained in any way from the use of their medical information for any purpose. What they argue for is not enforcement of an undertaking, but a protective shield against production of very relevant evidence.
>
> In my view, it would do no service to the implied undertaking rule to extend it in this fashion and would, indeed, be a considerable disservice. It would wrap a cloak of privilege around evidence given in any administrative tribunal hearing where a related issue arose in other proceedings. It would stand in the way of courts and tribunals having available the best evidence, or all of the evidence, bearing upon the issue in dispute.

[43] The case now before this court is indistinguishable from *Tanner*. The workplace investigation reports were produced for purposes of a labour arbitration, just as the medical reports in *Tanner* were produced for an accident benefits arbitration. It was the union, not the plaintiff, who received the investigative reports, just as it was the accident benefits insurer who received the medical reports, not the defendants in the civil action. The University, who requested the investigation, now objects to the production and use of the investigative reports, just as the plaintiffs objected to the use of the medical reports by the defendants in the tort action. In both cases, the University and the plaintiffs are seeking "a protective shield against production of very relevant evidence".

[44] It is clear that the records generated by the workplace investigation are not privileged, and I conclude that it would be an unwarranted extension of the implied undertaking rule to prohibit their use in this civil proceeding. Accordingly, I find no merit to the defendants' submission in this regard.

[45] When counsel discuss resolution of the outstanding production motion, they should consider the parties to be bound by this ruling, since it speaks to the relevance of the investigative records.

Plaintiff Improperly Pleads Allegations Subject To Settlement Privilege:

[46] The defendants object to paras. 46 and 47 of the proposed FAASOC on the basis of settlement privilege. Paragraph 46 refers to "failed attempts to pressure the Plaintiff to end his litigation and accept a settlement". It also asserts that the plaintiff was suspended from his duties and directed to step down from the DSC, and this "was intended to pressure the Plaintiff to settle". Paragraph 47 alleges that the defendants interfered with his job search by ignoring his requests for employment verification, and that this was done "to pressure him to accept a settlement".

[47] The defendants argue that these pleadings improperly render settlement discussions at issue in the litigation, and should be struck. I have already ordered, above, that paras. 46 and 47

be struck for different reasons, but will nevertheless consider this issue in the event that I was in error in my previous ruling.

[48] The plaintiff argues that settlement privilege attaches to communications intended to effect a settlement, made with the express or implied intention that they would not be disclosed in a legal proceeding in the event that negotiations failed. He argues that the pressure that the defendants exerted on the plaintiff to return to settlement discussions took the form of unlawful action taken against him, rather than communications extended with the intent of lawfully effecting a settlement. He therefore argues that these actions do not attract the protection of settlement privilege.

[49] I agree with the defendants that this pleading improperly puts settlement discussions in issue. The submissions of the plaintiff assert that the pressure to extract a settlement was unlawful, but the plaintiff could not prove that assertion without delving into the content of the settlement discussions themselves. This would violate settlement privilege.

[50] Furthermore, the plaintiff is attributing a motive to the defendants that he is in no position to prove. It would be improper for the plaintiff to be asked in his examination-in-chief at trial why the defendants took the position they did on settlement, because such a question would be quickly met with the objection that the plaintiff cannot speak to what is in the mind of the defendants. If the plaintiff couldn't testify to this at trial, he clearly can't plead it as a fact in his pleadings.

[51] An order will go that the references to pressuring the plaintiff to settle shall be struck out.

Miscellaneous Deficiencies with the FAASOC:

[52] The remaining concerns may be dealt with summarily.

[53] The first is that many passages use the phrase "implicated members of the University". The defendants state that it is unclear what this phrase means, and argue that there is no reason why the plaintiff cannot name the individuals he is referring to.

[54] The plaintiff indicated that he is willing to provide the names. An order will go that the offending phrase be replaced with the names of the individuals involved.

[55] In a similar vein, the defendants complain that para. 6 of the proposed pleading refers to "other members of the University" who allegedly harassed the plaintiff, without identifying any of those persons. The plaintiff does not deal with this issue in his written submissions, but the same logic applies. That phrase shall be replaced with the names of the individuals involved.

[56] Next, the defendants note that para. 4(b)(iv) refers to racial profiling of the defendant rather than the plaintiff. The plaintiff acknowledges that this is a typographical error and will be corrected.

[57] Next, in para. 9 of the proposed pleading, it is alleged that "the plaintiff suffered harm as plead, but not limited to, the particulars", as a result of the defendants' misfeasance in public office. The defendants state that this is deficient and unclear, and request clarification as to the meaning of this suggestion that the plaintiff suffered harm in excess of what is pleaded in the claim.

[58] In response, the plaintiff indicated that he consents to providing additional particulars as to the harm he suffered in excess of what has already been pleaded. An order will go that the vague statement identified above shall be replaced with concrete particulars of all of the harm alleged to have been suffered.

[59] Next, the defendants have an issue with para. 12, which alleges that the defendants intentionally interfered with the plaintiff's contractual or economic relations. Of concern is that no particulars were provided as to who undertook the actions allegedly giving rise to the intentional interference, and no specific actions were identified as having been taken. The plaintiff consents to providing those additional particulars, and an order will go in that regard.

[60] Next, para. 14(c) of the proposed pleading states that the plaintiff will provide full particulars "prior to trial" of alleged damages including loss of enjoyment of life, loss of income, and so on. The plaintiff consents to an order that he provide those particulars now, and an order will go in that regard.

[61] Finally, the defendants point out that the FAASOC claims damages of $750,000 for alleged breaches of the *Code* in para. 1(g) of the proposed pleading. However, the amended statement of claim that was before the court on this motion sought damages of only $250,000 for the alleged breaches of the *Code*. The plaintiff has therefore inflated the damages claim in the draft pleading now before the court. It is submitted that this amendment should not be permitted.

[62] The plaintiff argues that the pleadings have been re-opened it is open to the plaintiff to amend the quantum. He also argues that the plaintiff has yet to receive the productions he has requested from the university and is only partially knowledgeable as to their contents. He will, he states, be in a better position to assess his damages upon receiving these productions. He suggests that determination of this issue be deferred until the issue of further productions has been resolved.

[63] I disagree with the plaintiff that re-opening pleadings gives the plaintiff *carte blanche* to make any amendments he wishes, including to the quantum of damages. The motion was based upon a proposed amended statement of claim that claimed damages of $250,000 under this heading, and that document was the basis of the order granting leave to amend. While it was subject to the need to edit the draft pleading to correct its many errors, that did not involve the need to change the quantum of damages.

[64] An order will go that this claim for damages shall be changed to the original number of $250,000. If the plaintiff wishes to amend this number at some point, he is at liberty to

bring a motion to that effect, before the presiding motions judge. I do not consider it to be part and parcel of the motion I am dealing with, and I am not seized with that issue.

[65] To conclude, the plaintiff shall serve and file a FAASOC in compliance with the above orders, within 30 days. The defendant shall have 30 days to serve and file a Fresh As Amended Statement of Defence. A Fresh As Amended Reply shall be served and filed within 10 days thereafter.

[66] The only remaining matter on this omnibus motion is the motion for production of documents. Now that the final form of the statement of claim has been determined, the parties should be able to determine the relevance of the requested documents without my intervention, and I expect them to do so. This omnibus motion has already consumed a disproportionate amount of judicial resources for purely procedural matters, and must be brought to a close. The parties are cautioned that a significant costs order can be expected against a party who unreasonably fails or refuses to resolve this remaining issue on consent.

[67] If no consent is arrived at, the parties shall submit written argument on the production motion, with the plaintiff serving and filing his submissions first, the defendants serving and filing theirs within 20 days thereafter and the plaintiff serving and filing his reply within 10 days thereafter.

[68] The court will presume that the matter has been resolved unless the Trial Coordinator is advised otherwise, within 30 days.

Mr. Justice T. Heeney

Released: July 18, 2025

CITATION: *Pandher v. University of Windsor et al*, 2025 ONSC 4218
COURT FILE NO.: CV-19-28370

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

GURUPDESH PANDHER

Plaintiff

– and –

UNIVERSITY OF WINDSOR, ALAN WILDEMAN, DOUGLAS KNEALE and MITCHELL FIELDS

Defendants

REASONS FOR JUDGMENT ON ON AMENDMENT OF THE STATEMENT OF CLAIM

T. Heeney J.

Released: July 18, 2025