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“Strategies, Approaches and Considerations for a Statement of Claim”

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Pleadings are an art form. As Plaintiff’s counsel, the Statement of Claim allows you an opportunity to frame the story your client wishes to tell. Done well, a Statement of Claim acts as an important tool of persuasion and establishes the theme of the case.

In drafting a Statement of Claim, the Plaintiff is challenged with balancing the need to plead broadly to allow for any changes in the sequence of events or facts unknown at the time of issuance, while at the same time, pleading with enough specificity to establish the cause of action.

The first step in drafting a Statement of Claim is to ensure that you have correctly identified all of the relevant parties, both Plaintiffs and Defendants. As Plaintiff’s counsel, you will have to consider whether family members should be added to the claim as *Family Law Act*¹ claimants, with consideration given to the applicable statutory deductions. Where a minor Plaintiff is asserting claims, it is also necessary to ensure that the Litigation Guardian has been appropriately identified in the style of cause.

¹R.S.O. 1990, c. F. 3, as amended.

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In determining which parties to identify as the appropriate Defendants in an action, it is wise to err on the side of caution in naming any and all parties who may ultimately be found to be responsible for the proposed claim. Often in a medical malpractice action, the expiry of a limitation period is approaching and counsel must issue the Notice of Action and/or Statement of Claim without receiving all of the relevant documentation needed to fully investigate the claim. In such cases, it is necessary to name as Defendants all primary medical personnel who participated in the alleged negligent treatment, along with additional, yet to be identified Defendants (i.e. “Dr. John Doe” and/or “Nurse Jane Doe”). In doing so, the applicable limitation periods may be protected and the Plaintiff is able to assert the right of discovery over more parties, adverse in interest, who may be able to offer further insight into the alleged negligence.² It is, however, essential to proceed to discovery only after an investigation has been conducted and only after counsel is in receipt of an expert report favourable to his case.

In many cases, it will also be necessary to plead inconsistent allegations in order to assert multiple causes of action and/or assert the same allegations of negligence against different Defendants when responsibility for the negligence remains unclear. Pleading “in the alternative” is permitted under the *Rules of Civil Procedure* so long as this inconsistency is acknowledged in the Statement of Claim.”³

²Rule 31.03(1) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended.

³Rule 25.06(4) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended.

The foremost objective for any Plaintiff's counsel in drafting a Statement of Claim is to plead the allegations in such a fashion as to permit him/herself the broadest possible rights of discovery. As the seminal case of *Kay v. Posluns*⁴ informs us, questions on an oral discovery will be limited to those which demonstrate a "semblance of relevance" to facts and matters at issue, as defined by the pleadings. For example, questions at an Examination for Discovery regarding the repair history of a snow plough in a snow and ice motor vehicle case against a municipal road authority will likely be upheld as proper questions on a refusals motions where the Plaintiff has included an allegation concerning the fitness of the vehicles in the Statement of Claim.

In addition to considerations regarding discovery rights, it is also important to be aware of any weaknesses in the Statement of Claim which would make it vulnerable to attack by the Defendants. In a motion brought pursuant to Rule 21.01(1)(b) of the *Rules of Civil Procedure*, the Defendant will attempt to strike out the Statement of Claim on the ground that it discloses no reasonable cause of action.⁵ While the test on this motion is strict, requiring proof that it is plain and obvious that the claim discloses no cause of action, it is important to ensure that the necessary elements of the cause of action and/or the facts supporting such elements are adequately addressed in the Statement of Claim.⁶ For example, in a motor vehicle accident case, it is necessary to identify the various negligent

⁴(1989), 71 O.R. (2d) 238 (H.C.); additional reasons (February 1, 1991), Doc. No. Toronto 26686/88 (Gen. Div.).

⁵Rule 21.01(1)(b) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended.

⁶*Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959.

actions or/omissions on the part of the Defendant driver (i.e. made an unsafe left hand turn) which resulted in injuries to the Plaintiff (i.e. struck the Plaintiff's vehicle, causing injuries to his head, neck and arm) for which s/he is claiming damages (i.e. loss of income).

A Statement of Claim must contain a concise statement of the material facts on which the Plaintiff intends to rely. However, it is also important to bear in mind that the evidence by which those facts are to be proved must not be included in the Statement of Claim.⁷ While what constitutes "evidence" versus "material fact" may be the subject of some debate, in motor vehicle accident cases, it is often useful to plead any convictions entered against the Defendant arising as a result of the subject accident which are, arguably, "material facts" at issue.⁸

In a Statement of Claim, any point of law may be raised but conclusions of law can only be pleaded if the material facts supporting the legal conclusion are also pleaded⁹. The Statement of Claim should include reference to any statute and the applicable sections to be relied upon in asserting a cause of action (i.e. the *Negligence Act*¹⁰ or the *Insurance*

⁷Rule 25.06(1) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended.

⁸*Royal Bank of Canada v. McArthur et al.* (1985), 51 O.R. (2d) 86; *Demeter v. British Pacific Life Insurance Co. et al.* (1984), 48 O.R. (2d) 266 (C.A.); (1983), 43 O.R. (2d) 33 (H.C.J.).

⁹Rule 25.06(2) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended.

¹⁰R.S.O. 1990, c. N.1, as amended.

*Act*¹¹). Where the Plaintiff intends to rely upon an out of province statute, it should be expressly pleaded with reference to the statute's name, citation, province of origin, section numbers and the words of the section.¹²

The appropriate relief sought in a pleading will, of course, depend on the nature of the action. The Statement of Claim must contain a claim for relief, with the nature of the relief specified, and also, where damages are claimed, an indication of the amount claimed for each claimant in respect of each claim sought and the amounts and particulars of any special damages known at the time.¹³ In a long term disability action, the Plaintiff may seek reinstatement of benefits to which they are owed and payment for all outstanding amounts. In a motor vehicle accident, the Plaintiff will seek payment of an award for damages in an amount usually based on the maximum amount of insurance available. Where the specifics of the relief (i.e. out of pocket expenses) are unknown at the time the Statement of Claim is issued, the claim may merely reflect that the particulars will be provided prior to the trial of the action.¹⁴ In addition, it is also useful to include a request for "such further and other relief as the Court may deem just" to enable the Court to grant relief not pleaded

¹¹R.S.O. 1990, c. I. 8, as amended.

¹²*Boulanger v. Johnson & Johnson Corp.* (2003), 64 O.R. (3d) 208 (Div. Ct.).

¹³Rule 25.06(9) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended.

¹⁴Rule 25.06(9)(b) provides that particulars as to special damages unknown at the time of the issuance of the Statement of Claim must be delivered forthwith after they are known and/or not less than ten days before trial.

in the Statement of Claim.¹⁵

Having considered the importance of naming all potential Defendants to an action, the need to plead broadly to permit a wide scope of discovery and with enough specificity to avoid a Rule 21 motion, and the requirements under the *Rules of Civil Procedure*, it is also important to recognize that mistakes are made, parties are incorrectly named, and allegations are missed. Fortunately, the *Rules of Civil Procedure* instruct Courts, on motion, to grant parties leave to amend a pleading “on such terms as are just, unless prejudice would result that could not be compensated for by costs or an adjournment.”¹⁶

The importance of the Statement of Claim, as the first introduction to the litigation, should not be underestimated.¹⁷

¹⁵*Eckland v. Eckland*, [1973] 3 O.R. 472 (H.C.).

¹⁶Rule 26.01 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended.

¹⁷Attached to this paper please find redacted precedent Statement of Claims reflecting the principles discussed herein: (A) Long-term Disability claim; (B) Motor Vehicle Accident claim; (C) Medical Malpractice claim.