The Power of Pleadings

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INTRODUCTION

The importance and power of the pleadings in civil litigation cases is often underestimated, especially in smaller firms when manpower and resources can be somewhat limited. The purpose of this paper is to illustrate the importance of the pleadings and why taking extra time at the outset of a case to properly frame a client's claim can pay big dividends in the long run. This paper will also deal with some recent case/developments in sub-categories of the law relating to pleadings that may be of use and interest in your legal practices.

1. GENERAL OVERVIEW ON THE LAW OF THE IMPORTANCE OF PLEADINGS

Probably the most oft quoted statement in Alberta jurisprudence about the importance of pleadings comes from the *Mikisew Cree First Nation v. Canada* case involving an application for extensive amendments to the pleadings (2002 CarswellAlta 603), where the Court of Appeal, at paragraph 85 states the following:

> "Pleadings are not a meaningless ritual incantation or medieval superstition; they fulfil the first rule of natural justice, knowledge of the case against one."

In the case of *Ignition Energy Ltd. v. Creswick Petroleum Ltd.* (2011 CarswellAlta 195) Justice Macleod of the Court of Queen's Bench states:

> "The Court's discretion to amend pleadings recognizes the importance of accurate pleadings. Pleadings inform the other side as to the case being put forth against them and the Court is bound to make a decision based on what is plead before it"

Justice Bensler goes on to state, in the Newel *Post Developments Ltd. v. 1402801 Alberta Ltd.* case (2010 CarswellAlta 2080), at paragraph 18:

> "Furthermore, with the Court bound to decide a matter upon the issues pled before it, accurate pleadings are necessary for just decisions."

2. TECHNICAL REQUIREMENTS

The technical requirements are outlined in Rules 13.6 to 13.12 of our *Alberta Rules of Court*, which are self explanatory. These rules should be reviewed whenever any cause of action is being framed into a pleading so as to ensure accuracy and full compliance. This necessitates that before proceeding with the actual drafting of the pleading, that some measure of legal analysis/legal research is to take place in order to properly frame a client's case. Rather than dictating a statement of claim "off the top of our heads" simply to get something filed and served, a better

practice would be giving adequate time for the legal analysis to take place to ensure that nothing is missed at the important stage of the pleadings.

In smaller firms where articling students and/or research assistants might be scarce, lawyers should either become familiar with online legal research tools, such as WestLaw, so that they can do basic research themselves, or contract out with third party legal researchers who can be of great assistance, and at a reasonable cost.

Rule 13.6, in particular, should be closely examined as it contains requirements that relevant facts be stated, including any matter that defeats or raises a defence to a claim of another party; the exact nature of the remedy claimed, including the type of damages; and a statement of any matter on which a party intends to rely that may take another party by surprise, including, without limitation, a number of the items listed in Rule 13.6(3). These matters must also be reviewed in preparing a statement of defence inasmuch as trial defences that raise new arguments, or legal issues, that were not raised in the pleadings, should be disregarded by the Court.

A good example of this is the case of *Paniccia Estate v. Toal* (2012 Carswell Alta 2159), a decision of the Court of Appeal of Alberta in which a defendant physician being sued in negligence for allegedly not diagnosing incurable stomach cancer, raised at trial a legal argument arising out of the *Fatal Accidents Act,* and also questioned the Plaintiff's right to sue for disbursements for American based therapies and arguing that they were not caused by the alleged negligence. The Defendant did not seek to amend his pleadings at trial, but simply raised these two additional issues. The trial judge declined to consider same, indicating that they were raised too late after the close of evidence. The Defendant appealed to the Court of Appeal, which appeal was dismissed stating:

> "It is very clear that the appellant never pleaded the two points of law described above…the statement of defence against the executrix's suit merely contains a denial of liability".

The Court then, at paragraphs 21 to 29, goes through a review of the old rules regarding pleadings and the new rules.

Another good example is the case of *Elan Construction Ltd. v. South Fish Creek Recreation Assoc.* (2016 ABCA 215, 2016 CarswellAlta 1316) in which the Court ruled that a border plate denial of damages contained in the statement of defence was not adequate for a defendant to then raise at trial an actual loss of profits incurred by another party, as a way of deferring or minimizing the damages. The Court states, at paragraph 23: