

SUPREME COURT OF NOVA SCOTIA

Citation: Durham v. Mahmoud-Ahmed , 2013 NSSC 421

Date: 20131212

Docket: Hfx. No. 413262

Registry: Sydney

Between:

Clarence Durham

Plaintiff

v.

Dr. Ashraf Mahmoud -Ahmed and Cape Breton Regional Hospital c/o Cape
Breton District Health Authority

Defendants

Judge: The Honourable Justice Patrick J. Murray

Heard: October 17, 2013, in Halifax, Nova Scotia

Written Decision: December 12, 2013

Counsel: Daniel Wood, Article Clerk, for Clarence Durham
Dan Campbell, Q.C., for Dr. Ashraf Mahmoud-Ahmed
Karen Bennett-Clayton, for Cape Breton Regional
Hospital c/o Cape Breton District Health Authority

By the Court:

Introduction

[1] The Plaintiff, Clarence Durham, has commenced an action against the Defendant physician and the Defendant hospital alleging medical malpractice. In addition to negligence, the Plaintiff maintains the Defendant hospital is vicariously liable for the action or inaction of staff. The Plaintiff also alleges battery against the Defendant(s). No defence has yet been filed by either Defendant.

Motion #1 - For Particulars by Defendant Physician

[2] This is a motion by the Defendant physician for further and better particulars, failing which the claim by the Plaintiff should be struck. The Defendant maintains the allegations of negligence are devoid of particulars, specifically of material facts to support the claim of negligence. The Defendant is prepared to respond, but without further details, can make only a blanket denial to what are bald assertions and boiler plate allegations.

[3] The Plaintiff submits that while the pleadings may not be perfect the Statement of Claim contains sufficient detail, to allow the Defendant to respond. A summary of the claim is contained in the paragraphs 4 - 12. The Plaintiff maintains that those facts explain and support the allegations against Dr. Mahmoud-Ahmed.

[4] The impugned paragraphs are numbers 13, 15, 16 and the final paragraph, in which the Plaintiff claims solicitor and client costs.

[5] The Plaintiff further argues that the Defendant has not proven that the particulars sought are manifestly necessary, in order for the Defendant to be able to file a proper Defence.

[6] The Plaintiff states that the Defendant should have filed an affidavit, so as to establish by evidence that the Defendant is unable to respond, short of a general denial. Without such evidence, the Plaintiff argues the motion should be dismissed.

[7] The Plaintiff has responded to the demand of the Defendant. In that response he states that at this early stage of the proceeding, it is overly cumbersome and oppressive to expect the Plaintiff to provide further factual details.

[8] The Plaintiff states there is an imbalance in terms of access to the information required to provide further particulars. Particulars, says the Plaintiff, need not be ordered if they are within the knowledge of the mover, or in the care and control of the Defendant physician.

[9] The Plaintiff submits once disclosure and discovery is complete, the issues will be narrowed, and the Defendant will know the case it has to meet prior to trial.

[10] The Defendant Dr. Mahmoud-Ahmed argues that further disclosure is not relevant to a demand for particulars. It has no basis in law, says the Defendant. If a pleading does not contain sufficient detail, it ought not to be allowed. If the allegation cannot be supported with a material fact, however concise, it ought not to be pleaded. The Defendant states that is the law.

[11] The Defendant argues further that particulars cannot be sought after pleadings close. If new information becomes available, leave to amend pleadings can and should be sought, by any party including the Plaintiff. This is the Defendant's position on this matter.

[12] The Defendant says in Nova Scotia the *Civil Procedure Rules* do not require affidavit evidence on a motion for particulars. The pleadings must be assessed on their face. The mover has the "burden of persuasion".

The Law

[13] The Defendant cites *Rules 4.02, 13.03, 38.08 and 38.09* in support of this motion.

[14] *Rule 4.02(4)(b)* states that a Statement of Claim must conform with *Rule 38*, and include a concise statement of material facts relied upon by the Plaintiff; but not argument or evidence, the latter of which will be used to prove those facts.

[15] Under *Rule 38.08(2)* a party must not demand evidence or a description of the evidence. *Rule 38.08(6)* states that a judge may order a party to provide a further and better statement of claim or defence.

[16] Fundamental to this motion are the general principles of pleading. The caselaw is embodied in *Rule 38.02*. Sufficient information must be provided to ensure (1) the opposing party will know the case it has to meet; and (2) the other party will not be taken by surprise, when a material fact is sought to be proven. The pleading need only be concise.

[17] Further rationale for these *Rules* is that without the underpinning of material facts, a statement of claim may not and likely would not give rise to a cause of action. (**MacCulloch Estate**, 1992 CanLii 2796(NSSC)).

[18] The Defendant physician through his counsel relies on the case of **Basdeo (litigation guardian) v. University Health Network**, [2002] O.J. No 263 (S.C.J.). The Defendant submits that case, like the present case, was a medial malpractice action, and one in which the judge dealt with “boilerplate allegations”. The Court

noted that most of the paragraphs in the Statement of Claim amounted to conclusions, without pleading the facts that would give rise to the conclusions.

[19] In **Basdeo**, Nordheimer, J., commented on the need to define the issues, at paragraph 17:

Surely the defendants are entitled to have some indication of how they failed to exercise reasonable skill and care, what diagnostic steps were not taken, what tests were not administered, what medications should have been prescribed but were not, and so on before they are required to plead in defence to the allegation that they were negligent. As has been observed in the context of other cases, if the plaintiffs do not know what the facts are in support of certain allegations then those allegations ought not to be made. Nothing prevents a plaintiff from amending his or her statement of claim if new information is revealed during the discovery process. Conversely, to permit a party to plead in the manner which the plaintiffs have here is to countenance a method of pleading which effectively allows the plaintiffs to engage in a fishing expedition which in turn leads at a minimum to the lengthening of the discovery process.

[20] The Plaintiff, Mr. Durham, maintains that the Statement of Claim provides context for the allegations, and that by implication, Nordheimer, J., endorsed that a factual summary (also called a rendition) could meet the requirements of the *Rules*, when he stated:

The pleading... sets out the date, time and events that took place, and in so doing gives a framework against which the subsequent allegations regarding negligence can be understood.

[21] The learned judge in **Basdeo** concluded there was no such rendition. He ordered that the provisions of the Statement of Claim be stuck without leave to amend.

[22] The Plaintiff relies heavily on **Chenier v. Hopital General de Hawkesbury**, [2006] O.J. No. 1679. In **Cheneir**, the Court concluded that the Statement of Claim as a whole (“in totality”) provided the minimum level of facts relied upon by the Plaintiffs, to establish their claim against the Defendant physicians. The document identified four specific areas of concern, in terms of the procedure followed, during an alleged negligently performed birth and the resulting claims of severe brain damage.

[23] In **Chenier**, C.D. Aitken, J., stated at paragraph 21:

At this early stage in the litigation process, it would be placing an unduly onerous burden on the Plaintiff’s to describe in detail what transpired or did not transpire at all these points in time. The Defendants are in the position of knowing with great particularity what was done or not done by way of treatment and intervention.

[24] This paragraph essentially describes the Plaintiff’s position on this motion. The Statement of Claim here describes a long series of visits by Mr. Durham to the emergency room of the Defendant hospital. The Defendant, he says, has a greater

ability to organize and understand the medical information pertaining to this matter. This is not within the Plaintiff's knowledge. He would be guessing more than the Defendants would be as to the facilities, procedures, systems and knowledge, states the Plaintiff.

[25] The Plaintiff further argues that there should be a lower level of material facts required as the issues will be better narrowed after the disclosure and discovery process.

[26] The Plaintiff, in reliance on this position, cites **Penwell v. Harwood**, 2011 NSSC 309, at paragraph 49:

The Defendants are in control of the inventory of documents that are most relevant to the litigation, and have the greater ability to organize and understand that information -- yet argue they need the Plaintiffs to particularize the "many decisions made and investment transactions completed" -- para. 29 and similarly para. 33 and 37- 45 Brief.

[27] In **Penwell** the Court accepted the Plaintiff's argument that *Rule 1.01* providing for the just, speedy and inexpensive determination of every proceeding "must be kept in mind".

[28] In **Chenier**, some of the claims were found to be general (paragraphs 1, 3, 6, 7, 9, and 12), but it was the lack of an affidavit from the Defendant physicians, who were seeking the particulars, which proved to be fatal to the motion.

[29] In **Penwell**, the Court refused the motion for particulars. The Plaintiffs had already provided significant particulars to the Defendants. The Court concluded also, that the various requests were inappropriate as they were request for evidence.

[30] A further case relied upon by the Plaintiff is **Obonsawin v. Canada**, 2001 O.J. No. 369, in which the Court ordered that the Plaintiff specify the amount of damages sought in relief. Otherwise, the Court concluded the lack of affidavit evidence by the Crown was fatal, stating the pleading was not so deficient on its face, that particulars were necessary. The Court concluded there was an imbalance between the parties, and that the actions of the Crown were mostly outside the knowledge and control of Mr. Obonsawin.

[31] The difficulty here, is whether the information sought is outside the knowledge of Mr. Durham, such that an Order for him to provide particulars

would be placing an unduly onerous burden on him. At the same time, it would increase the risk of his claim being dismissed for his being unable to comply with such an order.

[32] I turn now to review the Statement of Claim.

Summary of Facts as alleged in the Statement of Claim

[33] The following paragraphs are a summary of the facts as alleged by the Plaintiff, in the statement of claim.

[34] The Plaintiff is alleging negligence, breach of contract, and battery. Mr. Durham was diagnosed with prostate cancer and underwent successful surgery to have his prostate removed. He recovered well. Subsequently, following a biopsy of the Plaintiff's prostate, Dr. Mahmoud-Ahmed recommended two (2) hormone treatments and thirty-three (33) radiation therapy treatments as a preventative measure in case the cancer had spread.

[35] Mr. Durham then underwent a CT scan in preparation for the radiation therapy. This was performed to determine and pin point three locations and mark with small tattoo's on his abdomen to direct the radiation treatments so as to avoid damaging healthy organs.

[36] In preparation for the CT scan, Mr. Durham drank and ate normally and had two glasses of water 15 minute before the CT scan to ensure his bladder was full.

[37] Mr. Durham underwent a second CT scan. Allegedly, there had not been enough fluid in his bladder (during the first scan) and, therefore, the tattoo's were not accurate. No new tattoo's were placed, but offsetting calculations were made from the original markings. These calculations were to be applied and the radiation treatments were administered. The same preparation instructions which had been received by Mr. Durham, were followed during the second CT scan. He drank several cups of coffee throughout the morning and had two glasses of water prior to the CT scan.

[38] The Plaintiff, Mr. Durham, completed his 33 radiation treatments for the two months beginning in January, 2011. He was given certain instructions and

claims he followed the instructions each time. He digested no food or drink prior to the treatments other than two glasses of water as instructed.

[39] In the weeks and months following the radiation treatments, Mr. Durham experienced severe pain and problems with his bowels, bladder and overall health. He made numerous visits to the emergency department of the Defendant hospital and underwent several cystoscopies and had numerous catheters inserted and removed.

[40] Later in 2011 Mr. Durham was advised by Dr. Mahmoud-Ahmed that he may have suffered radiation damage to his bladder and radiation damage to his bowels. As a result, the Plaintiff underwent surgery to have his bowels diverted and a colostomy installed. In addition he underwent surgery to have his bladder fully removed.

Statement of Claim

[41] The following paragraphs in the Plaintiff's Statement of Claim are alleged by the Defendant, Dr. Mahmoud-Ahmed to be deficient and lacking in particulars:

- 13.(a) Failing to properly inform the Plaintiff of the nature, risks or benefits of radiation therapy;
- (c) Recommending radiation therapy as a treatment to the Plaintiff when it was not appropriate, not necessary, of negligible benefit and other less invasive or less risky options were available;
- (d) Failing to meet the appropriate standard of care required by a physician specializing in radiation oncology;
- (e) Failing to properly perform the procedures for the preparation and application of radiation therapy, including the Marking Process and Offsetting Process, or to perform these procedures in accordance with the appropriate standard of care;
- (g) Failing to perform radiation therapy treatments utilizing appropriate imaging or guidance;
- (h) Failing to perform radiation therapy treatments utilizing appropriate surgical tools and/or equipment;
- (i) Failing to undertake, request or obtain appropriate diagnostic follow-up immediately after each radiation therapy treatment as well as upon completion of the entire radiation therapy process, to monitor the effects and impacts of radiation therapy;
- (j) Filing to otherwise adequately monitor the Plaintiff subsequent to the radiation therapy treatments;
- (k) Failing to provide appropriate or timely treatment on completion of the radiation therapy treatments;
- (l) Generally failing to exercise the appropriate degree of skill or care expected of a radiation oncologist in the circumstances;
- (m) Failing to properly inform the Plaintiff in a timely manner of the impact of the radiation therapy treatments and of the resulting serious nature of the condition of the Plaintiff; and
- 15.(a) Adequately, or at all, of any risks associated with radiation therapy, and particularly of the risks of radiation cystitis and radiation proctitis, in order to allow the Plaintiff the opportunity to provide informed consent;
- (b) That there was an alternative more conservative treatment available that would have exposed the Plaintiff to less risk;

(d) That due to the special circumstances of the Plaintiff it would have been preferable for the Plaintiff to have the radiation therapy treatments performed by another physician at a different hospital with the knowledge, expertise and facilities to conduct radiation therapy treatments or treat the Plaintiff with appropriate alternatives that presented less risk to the Plaintiff; and

16. The Defendant Dr. Mahmoud-Ahmed failed to obtain consent to provide radiation therapy, provided the radiation therapy beyond the scope of the consent, or obtained consent as a result of misrepresentation. The Defendant, Dr. Mahmoud-Ahmed, in performing radiation therapy on the Plaintiff, engaged in intentional physical contact with the Plaintiff in the absent of consent, which was harmful or offensive to the Plaintiff and, accordingly, the Defendant Dr. Mahmoud-Ahmed committed a battery.

Particulars Sought by the Defendant, Dr. Mahmoud-Ahmed

[42] The particulars sought by the Defendant physician are as follows:

With respect to paragraph 13 of the Statement of Claim, the Plaintiff must provide further and better particulars of the allegations of negligence as follows (using the letter designations in paragraph 13):

- (a) Particulars of the nature, risks or benefits of radiation therapy of which the Defendant should have informed the Plaintiff, but failed to inform the Plaintiff, and the damage, if any, caused by such failure;
- (c) Particulars of the other less invasive or less risky options which were available;
- (d) Particulars of any aspects of the standard of care required of physicians specializing in radiation oncology which the Plaintiff alleges the Defendant did not meet;
- (e) Particulars of the manner of performance of the procedures for preparation and application of radiation therapy which the Plaintiff claims were performed improperly or were not performed in accordance with the appropriate standard of care and the damage, if any, caused by each alleged failure;

(g) Particulars of the appropriate imaging or guidance which the Plaintiff alleges the Defendant should have used, but failed to use in the performance of radiation therapy treatments;

(h) Particulars of the appropriate surgical tools and/or equipment, which the Plaintiff alleges the Defendant should have used, but failed to use in the performance of radiation therapy treatments;

(i) Particulars of the appropriate diagnostic follow-up which the Plaintiff alleges the Defendant should have made immediately after each radiation therapy treatment, but failed to undertake, and particulars of the appropriate diagnostic follow-up which the Plaintiff alleges the Defendant should have undertaken at the completion of the entire radiation therapy process, but failed to do so;

(j) Particulars of the adequate monitoring which the Plaintiff alleges the Defendant should have undertaken subsequent to the radiation therapy treatments, but failed to do so;

(k) Particulars of the appropriate or timely treatment on completion of the radiation therapy treatment which the Plaintiff alleges the Defendant should have undertaken, but failed to do so;

(l) Particulars of the alleged failure to exercise the appropriate degree of skill or care expected of radiation oncologists, specifying each act which is alleged to have been done or omitted in failure to exercise the appropriate degree of skill or care, and the damage, if any, caused by each such act;

(m) Particulars of what information the Plaintiff alleges the Defendant should have provided, at the time at which it should have been provided in a timely manner, and the damage, if any, caused by the failure to provide information in a timely manner.

With respect to paragraph 15 of the Statement of Claim, the Plaintiff must provide further and better particulars of the allegations of negligence as follows (using the letter designations in paragraph 15):

15(a) Particulars of the risks associated with radiation therapy which the Plaintiff alleges the Defendant should have informed the Plaintiff, but failed to do so, and the damage, if any, caused by such failure;

15(b) Particulars of the alternative more conservative treatment which the Plaintiff alleges was available;

15(c) Particulars of the special circumstances of the Plaintiff referred to in paragraph 15(d).

With respect to paragraph 16 of the Statement of Claim (Demand 3(a) and 3 (b)) the Plaintiff must provide:

Particulars of the scope of consent given by the Plaintiff, and of any act by the Defendant in excess of the scope; and

Particulars of the misrepresentation referred to in paragraph 16, including particulars of by whom, to whom, when that misrepresentation was made and what that misrepresentation was.

With respect to the final paragraph of the Statement of Claim, the Plaintiff must provide particulars of any facts or circumstances relied upon by the Plaintiff in claiming costs on a solicitor and his own client basis.

The Plaintiff's Answer to the Demand

[43] The Plaintiff's answer to the demand for particulars in relation to paragraphs 13(a) - (m) of the Statement of Claim made by the Defendant is as follows:

The Plaintiff refuses to respond to 1 (a) - 1 (m) of the Defendant, Dr. Ashraf Mahmoud-Ahmed's, Demand for Particulars because the demands are overly cumbersome and are in tension with the object of the Rules to provide "for the just, speedy and inexpensive determination of every proceeding" - CPR 1.01. The Plaintiff is unable to respond to the demand without having the opportunity to Discover the Defendant, Dr. Ashraf Mahmoud-Amhed, and to consult with an expert. The demand in essence is for evidence rather than particulars (CPA 38.02(3)). Even if the particulars demanded are technically proper, it would be oppressive to order it, since the necessary information to allow the Plaintiffs to be further informed in relation to this issue, is in the control and custody of either or both the Defendant, Dr. Ashraf Mahmoud-Ahmed, and the Defendant, Cape

Breton Regional Hospital c/o Cape Breton District Health Authority, who have thus far not provided such information.

[44] The Plaintiff's answer to the demand for particulars in relation to paragraph 15(a), (b) and (d) the Plaintiffs responses are as follows:

The Plaintiff refuses to respond to 2 (a) - 2 (b) of the Defendant, Dr. Ashraf Mahmoud-Ahmed's. Demand for Particulars because the demands are overly cumbersome and are in tension with the object of the Rules to provide "for the just, speedy and inexpensive determination of every proceeding" - CPR 1.01. The Plaintiff is unable to respond to the demand without having the opportunity to Discover the Defendant, Dr. Ashraf Mahmoud-Ahmed, and to consult with an expert. The demand in essence is for evidence rather than particulars (CPA 38.02(3)). Even if the particulars demanded are technically proper, it would be oppressive to order it, since the necessary information to allow the Plaintiffs to be further informed in relation to this issue, is in the control and custody of either or both the Defendant, Dr. Ashraf Mahmoud-Ahmed, and the Defendant, Cape Breton Regional Hospital c/o Cape Breton District Health Authority, who have thus far not provided such information.

The Plaintiff's response to 2(d) is that the special circumstances referred to in a paragraph 15(d) of the Plaintiff's Statement of Claim include that prior to beginning an invasive radiation therapy program with the Defendant, Dr. Ashraf Mahmoud-Ahmed, the plaintiff had underwent successful radical prostatectomy surgery to remove his prostate, he had recovered very well following the surgery and there was a low risk that his cancer may have spread beyond his prostate.

[45] The Plaintiff's answer to the demand for particulars in relation to paragraph 16 of the Statement of Claim and in particular 3(a) and 3(b) of the Plaintiffs demand is as follows:

The Plaintiff's response to 3(a) is that it is the Plaintiff's recollection that he did not consent to a radiation therapy program which he understood could lead to having have his bowels diverted and his bladder fully removed, or he did not consent to a radiation therapy program which he understood to have the level of invasiveness or level of risk to his bodily integrity as was possible in the radiation therapy program the Defendant, Dr. Ashraf Mahmoud-Ahmed, prescribed for the

Plaintiff, or in the way in which the Defendant, Dr. Ashraf Mahmoud-Ahmed, administered the radiation therapy program to the Plaintiff. Any further response will require access to documents in the control or custody of either or both the Defendant, Dr. Ashraf Mahmoud-Ahmed, and the Defendant, Cape Breton Regional Hospital c/o Cape Breton District Health Authority, who have thus far not provided such information.

The Plaintiff's response to 3(b) is that the misrepresentation referred to paragraph 16 of the Plaintiff's Statement of Claim was made to the Plaintiff by the Defendant, Dr. Ashraf Mahmoud-Ahmed and the Defendant, Cape Breton Regional Hospital c/o Cape Breton District Health Authority. A response on when the misrepresentation referred to was made or when any other misrepresentations were made are contained in documents which are in the custody and control of either or both the Defendant. Dr. Ashraf Mahmoud-Ahmed, and the Defendant, Cape Breton Regional Hospital c/o Cape Breton District Health Authority, who have thus far not provided such information.

Nova Scotia- Case law Principles

[46] In addition to **Penwell**, I have found the Nova Scotia cases of **M.A. Hanna Co. v. NS (AG)**, 1990 Carswell NS 524 (NSSC), and **MacNeil v. Bethune**, 2005 NSSC 59, to be instructive. These cases were decided by Glube, C.J., and Robertson, J. respectively.

[47] There are several paragraphs in these cases which illustrate the principles to be applied. In particular, I refer to paragraphs 11, 17 and 18 in **Hanna** and paragraph 22 of **Bethune**.

[48] In my respectful view, the principles to be applied contained therein may be summarized as follows:

- (i) a demand is made essentially to allow a Defendant to know the case he has to meet in order to prepare a defence;
- (ii) the law is clear that the court has a discretion as to whether and what particulars may be ordered;
- (iii) it is no objection to an application for particulars that the Applicant must know the true facts better than is opponent;
- (iv) the overruling principle is that the litigation be conducted fairly, openly, and without surprise, there being enough particularity to allow a proper answer;
- (v) a party must not confuse the right to make a Demand for Particulars with other provisions in the *Rules* which allow for the Discovery of Documents, Discovery, and/or Interrogatories;
- (vi) a mere plea of wrongdoing is not enough, there must be facts pleaded to support it. It is not sufficient to await discovery for delivery of particulars.

[49] As to the issue of whether, in medical malpractice, some latitude should be allowed (at the pleadings stage), Robertson, J., stated at paragraph 26 of **MacNeil**:

The plaintiff must be in a position to put forward at least some specific information to show that had a certain procedure or course of treatment been

administered properly or had some other procedure, course of treatment or series of tests been followed, that the outcome of the plaintiff's condition might have been different.

[50] The importance of a factual underpinning, was discussed in **Rowe v. New Capital**, 1994 Carswell NS 186, where Goodfellow, J., stated (in reference to the prior *Rule 14.24*) that “facts should be plead so that the opposing party will be left in no doubt as to the case that must be met.”

[51] Applying these principles to the present case, I shall approach the request for particulars, so as to ensure there is some minimal level of material fact pleaded, to support the allegation(s) and to ensure that the assertions are not just “bald allegations” or “boilerplate pleadings”.

[52] I do so keeping in mind that the pleading as a whole must be considered. This may include a rendition or summary of facts, which can provide necessary context for the pleading as well as insight to the Defendant about what is being pleaded. The pleading may be vague, or conversely the request for particulars may be vague. A call for evidence will not support a request for particulars but a request for material fact or facts must be carefully considered.

[53] **Decision on Particulars sought by Defendant, Dr. Mahmoud-Ahmed**

Paragraph 13(a) - Statement of Claim

[54] Particulars of the nature, risks or benefits of radiation therapy of which the Defendant should have informed the Plaintiff.

[55] This paragraph alleges there were risks and benefits which the Plaintiff should have known and was not told, including, not being informed about the nature of the therapy.

[56] On the one hand, the request is broad and appears to request evidence. On the other, the claim does not include any material fact. Further and better particulars should be provided in support of the allegation.

Paragraph 13(c) - Statement of Claim

[57] The Defendant seeks particulars of the other less invasive or less risky options which the Plaintiff says were available. Without any material facts, this is

a bald assertion. The Plaintiff is stating these other options existed. As such, he should be prepared to state what they were. Further and better particulars should be provided.

Paragraph 13(d) - Statement of Claim

[58] The Defendant seeks particulars as to aspects of the standard of care, which were not met by the Defendant for physicians specializing in radiation oncology.

[59] It is fair for the Defendant to request what it was that he did or did not do that caused him (the Defendant) not to have met the appropriate standard of care. This demand overlaps to some degree with a request for evidence. Once again, the paragraph provides no factual underpinning, and it should. Further and better particulars should be provided.

Paragraph 13(e) - Statement of Claim

[60] The Defendant requests particulars of the procedures for the preparation and application of radiation therapy which were performed improperly or not performed in accordance with the appropriate standard of care.

[61] This request overlaps to some degree with 13(d). This clause does provide certain particulars in identifying both the marking and offsetting process. It refers to these procedures. The request itself, is wordy and somewhat vague. If there were other procedures known to the Plaintiff, then they should be pleaded. The word “including” leaves open the possibility there were other procedures not followed. If so, they should be specified. Some further and better particulars should be provided.

Paragraph 13(g) - Statement of Claim

[62] The Defendant seeks particulars of the appropriate imaging and guidance which the Defendant should have used but failed to use in the performance of radiation therapy treatments. In my view, this request seeks evidence. Apart from

that, it is clear enough for the Defendant to know what it must respond to. It is well within the Defendant's knowledge. No further and better particulars need be provided.

Paragraph 13(h) - Statement of Claim

[63] The Defendant seeks particulars of the appropriate surgical tools and/or equipment which the Defendant alleges the Defendant should have used but failed to use in the performance of the radiation therapy treatments. In my view, this allegation explains what the failing was namely, the use of inappropriate surgical tools. For reasons similar to those given under 13(g), this request for particulars is denied. No further and better particulars need be provided.

Paragraph 13(i) - Statement of Claim

[64] The Defendant seeks particulars of the appropriate diagnostic follow up, which the Plaintiff alleges the Defendant should have made immediately following each radiation therapy treatment, but failed to undertake, and particulars of diagnostic follow up. In my view, this paragraph contains sufficient detail for the

Defendant to know what it is that is being alleged against him. It is clear enough in that it specifies that the concerns are: 1) diagnostic follow up after each treatment, and 2) after the entire process was completed, so as to monitor the effects and impact. No further and better particulars need be provided at this time.

Paragraph 13(j) - Statement of Claim

[65] The Defendant seeks particulars of the adequate monitoring, which the Plaintiff alleges the Defendant should have undertaken subsequent to the radiation therapy treatments, but failed to do so. This allegation is similar to 13(i). It is more general, but is sufficiently clear in my view, so as not to warrant further particulars. It is an instance where an allegation may be lacking a stated fact, but in any event clear enough for the Defendant to understand the allegation and be able to respond to it. No further and better particulars need be provided.

Paragraph 13(k) - Statement of Claim

[66] The Defendant seeks particulars of the appropriate or timely treatment on completion of the radiation therapy treatments, which the Plaintiff alleges the

Defendant should have undertaken, but failed to do so. This allegation is broad and somewhat vague. Further particulars are needed for the Plaintiff to know what will be proven against him, in that it overlaps with 13(i), and 13(j). It is an open ended allegation which requires a concise factual basis. Further and better particulars should be provided.

Paragraph 13(l) - Statement of Claim

[67] The Defendant seeks particulars as to his alleged failure to exercise the appropriate degree of skill or care expected. It seeks that the Plaintiff specify each act which is alleged to have been done or omitted in failing to exercise the appropriate degree of skill or care and the damage, if any, caused by such act.

[68] This allegation is more general than 13(c). Both deal with the standard of care. The amount of specificity requested is appropriate, up to a point. The allegation states “generally” but it is vague, even for a general allegation.

[69] It is not how the Defendant failed to exercise the appropriate degree of care and skill that must be particularized. It is rather the fact or facts which support the allegation that must be provided.

[70] In fairness to the Defendant physician this allegation needs to be more specific. Some further particulars should be provided in order to allow the Defendant to be better informed as to what will be proven, but as stated, evidence need not be provided.

Paragraph 13(m) - Statement of Claim

[71] The Defendant seeks particulars of what information the Plaintiff alleges should have been provided, the time at which it should have been provided, and the damage caused by failing to provide it in a timely manner.

[72] This paragraph alleges the Defendant failed to provide important information to the Plaintiff about his treatment(s) and the serious nature of the condition, in a timely manner.

[73] While it is a vague allegation, it is not without some particulars. It refers specifically to “treatment”, “serious condition”, and “timely manner”. Some factual basis must be provided to put this allegation into context in order that the Defendant will know the meaning of “timely manner”. Some further and better particulars should be provided, in regard to “timely manner”.

Paragraph 15(a) - Statement of Claim

[74] The Defendant seeks particulars of the risks associated with radiation therapy which the Plaintiff alleges the Defendant failed to adequately inform him of and the damage caused by such failure.

[75] The Plaintiff refused to respond to this demand (and 15(b)), citing numerous reasons: 1) Overly cumbersome; 2) Not in keeping with the object of *Rule 1.01*; 3) Need for Discovery; 4) It is in essence a demand for evidence rather than particulars; 5) Need to consult with an expert; 6) It would be oppressive to the Plaintiff to have to provide information which is in the custody or control of either or both Defendants.

[76] Having considered this claim under 15(a), the Answer given, and the subsequent demand, I note it is similar to the demand under 13(a), which related to a failure to inform the Plaintiff of risks. 15(a) however, is more specific in that it identifies the particular risks, namely “radiation cystitis” and “radiation proctitis”. 15(a) does state “any” risks, and so if there are other risks known to the Plaintiff they should be described. Apart from that limited disclosure, I am of the view that the paragraph is detailed enough for the Defendant to provide a response. Some further and better particulars should be provided, in regard to other risks.

Paragraph 15(b) - Statement of Claim

[77] The Defendant seeks particulars of the more conservative treatment which the Plaintiff alleges was available. The Plaintiff’s response was the same as that to 15(a).

[78] A Plaintiff can only plead facts presently known to him/her. If not known they cannot be pleaded. If known, however, they must be pleaded. This allegation contains a definitive statement, namely, “There was an alternative more conservative treatment available ...”. It is fair for the Defendant to request a

description of that treatment, without it being a demand for evidence. Further and better particulars should be provided, describing the alternative treatment.

Paragraph 15(d) - Statement of Claim - (15(c) of Demand)

[79] The Defendant physician requests particulars of the “special circumstances” which would have made it preferable for the Plaintiff to have had the treatments performed elsewhere at a different hospital and by another physician or to treat with appropriate alternatives that presented less risk.

[80] The Plaintiff’s response to this demand is essentially what constitutes the allegation in paragraph 4 of the Statement of Claim, with an addition. This addition is the allegation that “there was a low risk that his cancer may have spread beyond his prostate”. The rendition or summary of events provided in paragraphs 4 - 12 of the Statement of Claim, provides detail of the Plaintiff’s circumstances, which the Plaintiff alleges were special. With this in mind, I find the Defendant is entitled to ask on what basis the Plaintiff is alleging the risk of his cancer spreading was low. Other than the assertion there is no material fact

pleaded. Some further and better particulars on this point should be provided, in regard to the risk being low, as alleged.

Paragraph 16 - Statement of Claim - (Demand 3(a))

[81] The Defendant seeks particulars of the scope of the consent given and any actions by the Defendant in excess of that scope.

[82] The Plaintiff responded to this demand, with an attempt to provide further particulars. A review of the answers at paragraph 3(a) (paragraph 44 of this decision) leads me to conclude that the response is unclear and somewhat confusing in its wording. Further and better particulars, in the form of a clarification of the Plaintiff's answer is required.

Paragraph 16 - Statement of Claim - (Demand 3(b))

[83] The Defendant seeks particulars (in paragraph 3(b) of the Demand) of the representation referred to in paragraph 16 including what the representation was, by whom it was made and when.

[84] By whom and when the representation was made, is in my view, clearly a request for evidence. The Plaintiff's answer does not address what the representation was, however. Further and better particulars should be given in respect to the nature of the representation.

Sub-paragraph (c) of final paragraph - Statement of Claim

[85] In my respectful view, it is not unreasonable for Plaintiff to include this claim, at this early stage. It is not necessary for Defendant to respond to this pleading ,other than a general denial. The *Rules* allow for a point of law to be plead, as long as the facts that make it applicable are also pleaded. (*Rule 38.01(4)*). It is well known by the Defendant, through their counsel, of the need for the Plaintiff to show exceptional circumstances. I find that the rendition or summary of events provided in the Statement of Claim (at paragraphs 4 - 12) provides a sufficient explanation of the circumstances for this claim (as alleged) to be pleaded at this stage. Further and better particulars, need not be provided.

Motion # 2 - For Particulars by Defendant Hospital

[86] Ms. Bennett-Clayton makes several submissions on behalf of the Defendant hospital (CBRH) in support of her client's motion for further and better particulars. The Defendant CBRH, references *Rules 4.02; 38.02 and 38.08* of the *Nova Scotia Civil Procedure Rules*.

[87] The Defendant's position may be summarized by stating that the pleading is too broad, and as a result it is impossible to determine (as the allegations stand), the scope of the Plaintiff's claim. The Defendant is left to guess for example, what systems at the hospital should have been in place, what procedure, care and treatments the hospital failed to provide? In addition it is left to guess by whom; technicians, nurses, other employees?

[88] The Defendant's counsel reviewed in detail the Statement of Claim, pointing out numerous deficiencies and explaining why more detail is necessary. The Hospital submits that paragraphs 4, 5, 6, 7 describe no less than six (6) separate procedures, treatments, care and tests undertaken, in respect of Mr. Durham. The claim does not state who at the hospital performed the tests, or gave

the instructions. There were many visits and occasions, for example, to install catheters. Again, it does not specify the dates of those occasions.

[89] In short, the Defendant hospital states more detail is necessary in order for the CBRH to provide a meaningful response, as required by the *Rules* of pleading. *Rule 38.02(2)* is fundamental in that it states a pleading must allow a party to know the case against it, when preparing for or participating in a trial, and to enable that party to file their own pleading, in this case, their own defence to the allegations.

[90] There is no excuse says the Defendant hospital, because the Plaintiff is entitled to possession of his entire file, by filling out a form requesting same. The form states the Defendant is easily accessible, from the Defendant's website. It is not only common, but also prudent for the Plaintiff to request same. In practice, the Defendant submits that disclosure documents almost always contain the hospital materials. These materials, argues the Defendant, can be used to provide the factual detail necessary to narrow what, in this case, are broad allegations.

[91] Relying on a number of cases, the Defendant states that it must be left with no doubt as to the case that must be met by the hospital. Without an order that particulars be provided, the Defendant submits it has been left in doubt by the Plaintiff's pleadings. It cannot determine the basis of the claim. Particulars are needed to clarify it. (**Rowe v. Newcapital**)

[92] The Defendant submits there were many occasions which the Plaintiff visited the hospital. Once again, it asks in response, what facilities, what staffing, what treatment (was lacking); what day did the events as alleged occur?

[93] The Defendant among others cited the case of **M. A. Hanna**, as "still standing" in terms of the law on a motion for particulars. In addition the Defendant relies on **Penwell** (at paragraphs 39 and 46) for the law on principles of pleading in Nova Scotia.

[94] The Defendant argues that the particulars requested are required before a meaningful response to the allegations can be given. This is the onus on the moving party. This, says the Defendant, is exactly what gives rise to this motion, and what makes the motion necessary.

[95] The Plaintiff's response to this motion is similar to that in response to the motion for particulars by the Defendant physician, Dr. Mahmoud-Ahmed.

[96] The submissions of the Plaintiff and his reasons why particulars should not be ordered are contained in his answers outlined in paragraphs 104 and 105 herein. Germane to that response is that the information is exclusively controlled by the Defendants, and that the demand is in essence, a demand for evidence. In addition, due to the lack of affidavit evidence, the Plaintiff submits, the Defendant is unable to meet its onus and discharge its burden.

[97] I turn now to review the specific demands made by the Defendant hospital. Prior to addressing each of the particulars, it is prudent, in my view, to reference a point addressed by Glube J., in **M. A. Hanna**, which same point is also relevant in the present case.

[98] The Defendant has on a number occasions cited the lack of detail as to who was involved, on behalf of the hospital, in respect of these allegations.

[99] At paragraphs 24 and 25 of **Hanna** the Court states:

24 The defendants are entitled to an answer to number 3, except the plaintiffs are not required to supply "details as to the players involved", as this again is evidence.

4. Identification of the person or persons whom Buchanan persuaded, induced or procured 'to wrongfully repudiate the Contract...

25 Again, the defendants seek evidence which could be obtained through interrogatories or oral discovery after the defence has been filed. The plaintiff does not have to answer this demand.

[100] I repeat for emphasis what I earlier said, that one of the principles to be kept in mind is that, the demand must not be confused with other *Rules* dealing with interrogatories or oral discovery.

[101] I acknowledge this is a large hospital and considering the number of people who might be involved, more information than normal may be required. The Court, in **Hanna**, considered this argument in the context of specific legislation involving proceedings against the Crown. In doing so the Court maintained its previous rejection of the demands, at paragraph 31. The Court saw no need to alter its decision that particulars of “the players involved” need not be disclosed.

[102] I turn now to review the Statement of Claim.

Statement of Claim

[103] The following paragraphs in the Plaintiff's Statement of Claim are alleged by the Defendant hospital to be deficient and lacking in particulars:

- 14(a) Failing to provide proper facilities and adequate staffing for the purpose of diagnosing the condition of the Plaintiff in a timely manner following the radiation therapy treatments.
- (b) Failing to have adequate systems in place to ensure that medical examinations and procedures were conducted with proper care;
- (c) Failing to provide and maintain proper hospital procedures and standards for the diagnosis, care and treatment of its patients;
- (e) Failing to train and supervise properly the healthcare providing employed by the Defendant hospital for providing treatment to patients within the Defendant hospital;
- (f) Failing to have competent medically trained staff for the delivery of medical care to its patients;

Particulars sought by the Defendant Hospital

[104] The Particulars sought by the Defendant hospital are :

- 1. With respect to paragraph 14 of the Statement of Claim and generally using the letter designations in paragraph 14, further and better particulars of the allegations of negligence as follows:
 - (a) Particulars of what representations were made to the Plaintiff by the Defendant hospital upon which the Plaintiff relied;

- (b) Particulars of what were the proper facilities for the purpose of diagnosing the Plaintiff's condition in a timely manner following radiation therapy treatments which it is alleged the Defendant hospital failed to provide;
 - (c) Particulars of what systems should have been in place which the Plaintiff said the Defendant hospital failed to have in place to ensure that medical examinations and procedures were conducted with proper care;
 - (d) Particulars of what procedures the hospital ought to have had in place which the Plaintiff said the Defendant hospital failed to have in place for the diagnosis, care and treatment of patients;
 - (e) Particulars of what training to health care providers the Defendant hospital should have provided which the Plaintiff claims it failed to provide;
 - (f) Particulars of what competent medically trained staff the Defendant hospital ought to have had which the Plaintiff claims it failed to have;
2. With respect to paragraph 15 of the Statement of Claim and using the letter designations in paragraph 15, further and better particulars of the negligence as follows:
- (a) Particulars of what facilities to treat the Plaintiff with available clinical alternatives that would have presented less risk to the Plaintiff which he alleges the Defendant hospital did not have and about which he said he ought to have been informed; (15(c) of Statement of Claim).
3. With respect to sub-paragraph (c) of the final paragraph of the Statement of Claim, particulars of facts upon which the Plaintiff relies in asserting a claim for costs on a solicitor and his own client basis.

The Plaintiff's response to the Particulars Sought

[105] The Plaintiff's response is the same to the particulars requested by the Defendant hospital in paragraphs 14 (a) - (g) (1 (a) - (g) - of demand) and paragraph 15. That response is as follows:

The Plaintiff refuses to respond to 1(a) - (g) of the Defendant's Demand for Particulars because the demands are overly cumbersome and are in tension with the object of the *Rules* to provide "for the just, speedy and inexpensive determination of every proceeding" - *CPR 1.01*. The Plaintiff is unable to respond to the demand without having the opportunity to Discover the Defendant and to consult with an expert. The demand in essence is for evidence rather than particulars (*CPA 38.02(3)*). Even if the particulars demanded are technically proper, it would be oppressive to order it, since the necessary information to allow the Plaintiffs to be further informed in relation to this issue, is in the exclusive control and custody of the Defendants who have thus far not provided such information.

The Plaintiff refuses to respond to 2 c of the Defendant's Demand for Particulars because the demand is overly cumbersome and is in tension with the object of the *Rules* to provide "for the just, speedy and inexpensive determination of every proceeding.: - *CPR 1.01*. The Plaintiff is unable to respond to the demand without having the opportunity to Discover the Defendant and to consult with an expert. The demand in essence is for evidence rather than particulars (*CPA 38.02(3)*). Even if the particulars demanded are technically proper, it would be oppressive to order it, since the necessary information to allow the Plaintiffs to be further informed in relation to this issue, is in the exclusive control and custody of the Defendants who have thus far not provided such information.

[106] The Plaintiff's demand for particulars in relation to the final paragraph (c)

seeking the facts upon which a claim for costs on a solicitor client basis is as follows:

(c) The Plaintiff refuses to respond to paragraph 3 because it is a legal issue to be determined following trial.

Decision on Particulars sought by Defendant Hospital

[107] Applying the principles of law earlier discussed, the following, is my decision in respect of each paragraph of the particulars requested by the Defendant CBRH:

Paragraph 1(a) of the Demand for Particulars

[108] On a plain reading of paragraph 14 , the “representations” referred to in the first full paragraph, refers, in my view, to the undertaking (“undertook”) to provide the Plaintiff with necessary and proper hospital services, nursing care, and to provide these in a competent manner, in accordance with accepted standards pertaining to the care of patients in similar hospitals. This, however, is an assumption, implied as it might be. So as not to assume this is the case, the Plaintiff should clarify what is meant by the “representations”, as contained therein. Some further and better particulars should be provided.

Paragraph 14(a) - Statement of Claim

[109] Proper Facilities and Staffing - In my view, this is sufficiently clear and detailed for Defendant to respond. It identifies the purpose as diagnosing the condition of the Plaintiff following the radiation therapy treatments. No further and better particulars need be provided.

Paragraph 14(b) - Statement of Claim

[110] Adequate Systems - In my view, this paragraph is not sufficiently clear and detailed. The pleading is too broad and vague to respond to in that it simply identifies “medical examinations and procedures”. Further and better particulars should be provided.

Paragraph 14(c) - Statement of Claim

[111] Proper Hospital Procedures - This is not sufficiently clear. It refers to three separate areas where standards failed to be met; diagnosis, cure and treatment of

patients. However, it provides no further specifics. This is a sweeping allegation and is overly broad. Further and better particulars should be provided.

Paragraph 14(e) - Statement of Claim

[112] Training to Health Care Providers - This pleading alleges the failure of the Defendant hospital to properly train and supervise health care workers, so as to treat patients within the hospital. This is a boilerplate allegation without sufficient explanation as to what will be proven in this pleading by the Plaintiff. It is not sufficiently clear or detailed to allow for a proper Defence to be made, referring simply to “patients within the hospital”. Further and better particulars should be provided.

Paragraph 14(g) - Statement of Claim

[113] Competent Medically Trained Staff - This paragraph is similar to 14(e). This is a arguably, a bald assertion. The Defendant hospital, however, is in position to know whether or not its medical staff is properly trained to deliver medical care, including the type and amount of training required. While the

pleading itself is broad, what the Defendant hospital must respond to with this pleading is within its knowledge. Proper particulars, make it known to a defendant what, of the information they have, needs to be provided. However, the summary of facts (in the Statement of Claim, paragraphs 4 - 12) provide sufficient context for a defence to be provided. No further and better particulars need be provided.

Paragraph 15(c) - Statement of Claim

[114] Lack of Facilities to treat the Plaintiff with available clinical alternatives - This allegation is that the hospital lacked the knowledge, expertise and facilities to have provided the Plaintiff with alternative treatments which were less risky. In my view, it is fair for the Plaintiff to request further particulars. If the Plaintiff is going to allege there were alternative methods available, some indication of what those were should be provided. Further and better particulars should be provided.

Sub-paragraph (c) of final paragraph - Statement of Claim - Solicitor client

costs

[115] It is not unreasonable for Plaintiff to include this claim, at this early stage. It is not necessary for Defendant to respond to this pleading ,other than a general denial. The *Rules* allow for a point of law to be pleaded, as long as the facts that make it applicable are also pleaded. (*Rule 38.01(4)*) It is well known to the Defendant, through their counsel, of the need for the Plaintiff to show exceptional circumstances. I find that the rendition or summary of events provided in the statement of claim (at paragraphs 4 - 12) provide a sufficient explanation of the basis for this claim at this stage. Further and better particulars, need not be provided.

Damages

[116] The Defendant physician demanded particulars as to the damages caused in paragraphs 13(a), 13(e), 13(l), 13(m) and 15(a). In my view, the facts as alleged (cited in paragraphs 4 - 12 of the Statement of Claim), contains a sufficient factual basis for the damages contained, with the exception of paragraphs 13(a), 13(m)

and 15(a) which allege a failure to inform. Further particulars as to the damages caused should be provided in respect of 13(a), 13(m), and 15(a).

Related Issues - Both Motions

Stages of Litigation

[117] The Defendant physician's counsel discounted the notion of disclosure over time, in the context of particulars. The *Rules* support this position, as they require material facts to be provided at the outset, meaning in the pleadings. Yet, I find there are constant references in the cases to stages or time period within the litigation for particulars. An example may be taken from the list of factors which state the purpose of pleadings as set out in **Hanna** (paragraphs 10, 11) and **Penwell** (paragraphs 26, 27). It will be noted that two of the factors refer to "the pleading stage", where the primary functions are 1) informing; 2) limiting; and 3) pinning down. I have considered these factors for the purpose of this, my decision.

No Affidavit

[118] The Plaintiff submitted Ontario cases, which I have alluded to, in support his argument that the lack of an affidavit in support of this motion, means the Defendant's evidentiary burden on the motions, has not been met.

[119] The Defendant submits the practice in Nova Scotia is to view the pleadings "on their face". As a result the burden is one of persuasion. This is akin to an application for Summary Judgment on the Pleadings (*Rule 13.03*). It is made without evidence. The Court assesses the pleadings on their face, without an affidavit. I am not satisfied that pursuant to *13.03* the pleadings, at this stage, are unsustainable and certain to fail.

[120] I have found the caselaw in Nova Scotia, which I have been provided, does not require the use of an affidavit, in support of a motion for particulars. *Rule 39* deals with proper content of an affidavit. *Rule 39.02* states a party may only file an affidavit that contains evidence which is admissible under the rules of evidence, the *Civil Procedure Rules* or legislation.

[121] *Rule 23.08* deals with the manner of providing evidence on a Chambers motion. It states in *23.08(a)* that a party may provide evidence by filing

- (a) an affidavit that confirms with *Rule 39*.

[122] The Rule is permissive, as indicated by the use of the word “may”. It is not mandatory even though the usual practice would be to file an affidavit because evidence is generally needed to support a motion. It depends on what motion is being sought.

[123] Submissions are not proper content for an affidavit. Evidence is to some extent, incongruent with a demand for particulars, because the demand cannot be, “for evidence”.

[124] Neither **Hanna** or **Penwell** dealt with the affidavits. While I am unable to conclude an affidavit would be refused (assuming proper content), I am of the view, that it is not the practice in Nova Scotia to require an affidavit, on this type of motion. In Ontario, the lack of an affidavit was fatal to a motion for particulars in certain situations. That is not the practice here in Nova Scotia.

Costs

[125] Each of the Defendants was largely successful on the respectful motions.

Costs in the amount of \$750 will be awarded to each Defendant, which amount is as set out in Tariff C for ½ day of Chambers hearing. The amount reflected therein is \$750 - \$1,000. I have chosen the lower range as the Plaintiff has had some success. Costs shall be payable in the cause.

Conclusion

Motion of Mr. Mahmoud-Ahmed

[126] Further and better particulars are ordered in respect of the following paragraphs of the Statement of Claim:

Paragraphs 13(a), 13(c), 13(d), 13(k), and 13(m);

Paragraph 15(a), and 15(b).

For greater clarity, particulars of the damages caused (as requested) in 13(a), 13(m), and 15(a) shall be provided.

[127] Limited but better particulars are ordered in respect of the following paragraphs, so as to clarify the allegations of the Statement of Claim:

Paragraphs 13(e), 13(l);

Paragraph 15(d); 16(3a - Demand), and 16(3b - Demand).

For greater clarity, particulars for the damages caused (as requested) in 13(e) and 13(l) need not be provided. The reason for this is that the summary of facts as alleged (paragraph 4 - 12) of Statement of Claim provides sufficient context for the damages claimed.

[128] Further and better particulars need not be provided in respect of the following paragraphs of the Statement of Claim:

Paragraphs 13(g), 13(h), 13(i) and 13(j);

Sub-paragraph (c) of the final paragraph of the Statement of Claim re: claim for solicitor and client costs.

Motion by Cape Breton Regional Hospital

[129] Further and better particulars are ordered in respect of the following paragraphs of the Statement of Claim:

Paragraphs 14(b), 14(c), 14(e), and 15(c).

[130] Limited but better particulars are ordered in respect of the following paragraphs, so as to clarify the allegations of the Statement of Claim:

First full paragraph of 14 (Request 1(a) of Demand)- Meaning of “representations”;

[131] Further and better particulars need not be provided in respect of the following paragraphs of the Statement of Claim:

Paragraphs 14(a), and 14(g);

Sub-paragraph (c) of the final paragraph of the Statement of Claim re: claim for solicitor and client costs.

[132] Order accordingly.

Murray, J.