IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Amherst Fabricators Ltd. v. Nova Scotia (Attorney General), 2002 NSSC 280

Date: 20021223
Docket: SH 184701
Registry: Halifax

Between:

Amherst Fabricators Limited

Plaintiff

- and -

Attorney General of Nova Scotia
representing Her Majesty the Queen in
Right of the Province of Nova Scotia,
The United Steel Workers of America and the
United Steel Workers of America, Local 4122

Defendants

Judge: The Honourable Justice F.B. William Kelly

Heard In Chambers: December 5, 2002, in Halifax, Nova Scotia

Counsel: George W. MacDonald, Q.C./Michelle Awad, for the Plaintiff
Genevieve Harvey, for the Defendant, the Attorney General of N. S.
Raymond F. Larkin, Q.C./Linda Cleveland-Smith, for the Defendants, The United Steel Workers of America and The United Steel Workers of America, Local 4122

[1] The applicants Local and Parent Union (the Unions) are defendants in an action commenced by the Plaintiff, Amherst Fabricators Ltd. (Amherst), on August 20, 2002. Although the AGNS is named as a defendant, the cause of action relates to the Department of Environment and Labour and I will refer to this party as DOEL. The essential causes of action against the applicant Unions are intentional interference with economic relations and conspiracy. On September 24th, the Unions filed Demands for Particulars and Amherst replied. The Parent Union and the Local are now applying for full and better particulars relating to paragraphs 19 and 20 of the Statement of Claim pursuant to Civil Procedure Rule 14. Amherst had responded to the Demand for Particulars relating to these paragraphs by stating the demands were attempts to secure evidence and not proper demands for particulars. The Union and Local found this response inadequate and jointly commenced this application for an Order requiring these further particulars be provided.

[2] Amherst resists the application on the basis that the Unions have sufficient material facts from the Statement of Claim to enable them to understand the claim and prepare their defence.

BACKGROUND

[3] The background of this action relates to a steel fabrication plant in Amherst, Nova Scotia, which was purchased and renovated by the plaintiff, Amherst, in the late 90's. The workers in this plant were represented by Local 4122 (the Local) and by the Parent Union. A collective agreement was entered into by the parties in April of 1999, shortly before plant operations commenced.

[4] After the plant opened, the Parent Union or the Local filed numerous grievances under the agreement, apparently none of them involving safety matters. After the operation commenced, the DOEL issued some 48 Compliance Orders against Amherst, most of them apparently dealing with workplace safety matters. The *Act* charges the Occupational Health and Safety Division of the DOEL with intervening when the responsibilities of the participants under the *Act* (such as employers and employees) are not being properly carried out.

[5] Amherst eventually shut down its operations and commenced this action, claiming that it received unusually harsh treatment and that it was harassed by the DOEL by the issuance of such numerous orders (48) and also by its decision that Amherst should be investigated by a Joint Evaluation by the Occupational Health and Safety Division of the DOEL. Amherst claims that this was intentional harassment and was an interference with its business operations which eventually required it to close its operations.

[6] In relation to the Local and Parent Union, Amherst claims these actions of DOEL were encouraged by and resulted from communications between the Parent Union, the Local and DOEL. On this basis, Amherst advances the claim of conspiracy to do harm. In addition, in paragraph 18 of the Statement of Claim, Amherst advances that the DOEL had sufficient proximity between Amherst under the OHSA to owe Amherst a duty of care, that it breached its duty and that damages resulted - a claim of damages for negligence. In paragraph 20, Amherst also claims damages against all parties for the tort of intentional interference with economic interests.

[7] However, this application is based on Demands for Particulars relating to the alleged deficiencies in paragraphs 19 and 20 of the Statement of Claim, which read as follows:

> 19. The Plaintiff repeats the foregoing paragraphs and says that some or all of the harassing actions of the AGNS, as outlined above, were suggested by, originated with and/or were encouraged by the Union or the Local, or both, and thus the Defendants, and each of them, conspired to harm and did harm the Plaintiff's interests. The Plaintiffs claim damages for conspiracy from the Defendants, and each of them.
>
> 20. The Plaintiff repeats the foregoing paragraphs and says that through their deliberate, unlawful conduct intended to harm the Plaintiff's business interests, the Defendants, and each of them, have committed the tort of intentional interference with economic interests and the Plaintiff claims damages therefore.

[8] I note that these paragraphs incorporate the prior paragraphs of the Statement of Claim, which relate to the claims of Amherst I have reviewed above. I also note that Amherst provided three answers to the six requests for particulars, claiming that the other three constituted requests for evidence and thus not proper particulars under the Rule. The Parent Union and Local have brought this Application in relation to two of these three refusals.

[9] The two demands in particular that are before the Court are identical, as are the responses to them. The only distinction in each case is that one refers to

the Parent Union and one refers to the Local. I will therefore provide only one of each of the Demands for Particulars by the Union and Local:

> With respect to the allegations contained in paragraph 19 and 20 of the Plaintiff's Statement of Claim, the Defendant seeks further and better particulars as follows:
>
> (a) Particulars of the conduct of the [Parent Union and Local] by which it conspired to harm and did harm the Plaintiff's interests.
>
> With respect to the allegations contained in paragraph 20 of the Plaintiff's Statement of Claim the Defendants seek further and better particulars as follows:
>
> (a) Particulars of the deliberate unlawful conduct of the [Parent Union and Local].

The following is Amherst's reply to both:

> With respect to the allegations contained in paragraph 20 of the Plaintiff's Statement of Claim, the Defendant seeks further and better particulars as follows:
> (a) Particulars of the deliberate unlawful conduct of the [Parent Union and Local].
> The Plaintiff says that the particulars requested in paragraph 4(a) of the Demand for Particulars are an attempt to secure evidence from the Plaintiff and are not proper demands for particulars. The Plaintiff says that paragraph 20 of the Statement of Claim refers to all the material facts necessary to enable the [Parent Union and Local] to understand the Plaintiff's claim and to permit it to prepare its Defence.

Law and Analysis

[10] As noted above, civil pleadings in Nova Scotia are governed by the **Civil Procedure Rules** and **Rule 14** in particular. The relevant parts of that **Rule** for this Application are:

> 14.04 Every pleading shall contain a statement in a summary form of the material facts on which the party pleading relies for his claim or defence,

> but not the evidence by which the facts are to be proved, and the statement shall be as brief as the nature of the case admits.
>
> 14.08 The effect of any document or the purport of any conversation referred to in the pleading shall, if material, be briefly stated, and the precise words of the documents or conversation need not be stated except in so far as those words are themselves material.
>
> 14.12 (1) ...[E]very pleading shall contain the necessary particulars of any claim, defence or other matter pleaded...

[11] I agree with both parties that the leading case in the application of **Rule 14** is *M.A. Hanna Co. v. Nova Scotia (Premier)*, [1990] N.S.J. No. 143 (S.C.T.D.) (QL). There the plaintiff alleged that the defendant had committed the tort of inducing breach of contract. Glube, C.J.T.D. as she then was, found the plaintiff was obliged to provide some of the particulars demanded, but not information that was evidentiary in nature. She also provided an excellent analysis of the **Rule**, a review of authorities, and a framework of analysis for the process. At pp. 3 and 4 (of 6) she wrote:

> Civil Procedure Rule 14 has its origins in the English Rules 0. 18, r. 12 entitled "Particulars of Pleading". As stated in Rules of the Supreme Court 1982, at p. 318 in a commentary on the English Rule, the function of particulars is as follows:
>
> > "Function of Particulars. - This Rule imposes on the parties a primary obligation to state in their pleadings all the 'necessary particulars' of any claim, defence or other matter pleaded, and if any pleading does not state such particulars or states only some or insufficient or inadequate particulars, the Rule enables the Court to order a party to serve either (1) particulars or further and better particulars of any claim, defence or other matter pleaded, or (2) a statement of the nature of the case relied on, or (3) both such particulars and statement. It is therefore an essential

principle of the system of pleading that particulars should be given of every material allegation contained in the pleading. The function of particulars is to carry into operation the overriding principle that the litigation between the parties, and particularly the trial, should be conducted fairly, openly and without surprises and incidentally to reduce costs (cited with approval by Edmund Davies L.J. in *Astrovlanis Compania Naviera S.A. v. Linard* [1972] 2 Q.B. 611; [1972] 2 W.L.R. 1414 at p. 1421)(sic). This function has been stated in various ways as follows:

(1) to inform the other side of the nature of the care they have to meet as distinguished from the mode in which that case is to be proved;

(2) to prevent the other side from being taken by surprise at the trial;

(3) to enable the other side to know what evidence they ought to be prepared with and to prepare for trial;

(4) to limit the generality of the pleadings or the claim of the evidence;

(5) to limit and define the issues to be tried, and as to which discovery is required;

(6) to tie the hands of the party so that he cannot without leave go into any matters not included. But if the opponent omits to ask for particulars, evidence may be given which supports any material allegation in the pleadings." (citations omitted)

Normally at this stage of an action a Demand for Particulars is made essentially to allow a defendant to know the case he has to meet in order to prepare a defence, however, the law is clear that the court has a discretion as to whether and what particulars may be ordered. As stated in Odgers' *Principle, Principles of Pleading and Practice in Civil Actions in the High Court of Justice* (22nd Ed.) at p. 155:

"It is no objection to an application for particulars that the applicant must know the true facts of the case better than his opponent. He is entitled to know the outline of the case that his adversary will try to make against him, which may be something very different from the true facts of the case. His opponent may know more than he does; in any event it is well to bind him down

> to a definite story. Particulars will be ordered whenever the master is satisfied that without them the applicant cannot tell what is going to be proved against him at the trial. But how his opponent will prove it is a matter of evidence of which particulars will not be ordered."...
>
> ..As stated previously, the overriding principle is that litigation between the parties and particularly at the trial should be conducted fairly, openly and without surprises, and also that there should be enough particularity in a pleading to allow the opposing party to answer properly.
>
> A party must not confuse the right to make a Demand for Particulars with other provisions of the Rules which come at a later stage, namely, Rules 18, 19 and 20, Discovery, Interrogatories and Discovery and Inspection of Documents. It in fact appears from the material before me that the plaintiff has actually supplied many of the documents, if not all of the documents, even before the action was commenced. Although the defendants have a number of documents in their hands, and particularly, documents have been identified by the plaintiff as ones which it will rely upon, it is not for the defendants to have a sift through to find the responses.
>
> One of the crucial matters is that a pleading is to contain a summary statement of material facts on which a party relies, but not the evidence by which the facts are to be proved (C.P.R. 14.04).

[12] The issue here between the parties is the distinction between what are "necessary particulars" or "statement in a summary form of the material facts"; and what is "evidence by which the facts are to be proved." The dividing line between these concepts is not always clear and may be a moving line as the fact situation evolves in the trial preparation process. Has Amherst in its initial pleading properly provided a satisfactory "outline of

the case" sufficient for Parent Union and Local to know the case against them?

[13] Here, counsel for Amherst argues that the pleadings provide all of the necessary particulars to the Parent Union and Local and that the information being sought are facts which it must eventually prove to make its case. These, it is argued, can effectively be determined by the other methods of pre-trial such as discovery and interrogatories. Counsel for Amherst state there is a further reason why the material requested in the Demand for Particulars should not be provided. As noted, the basis of the claims substantially involves meetings and discussions between the defendants giving rise to the alleged conspiracy, and the other claims involving the Parent Union and the Local constituted meetings and other communications between them and the third government defendant. Thus, all or most of the content of such communications would not be available to Amherst, and in fact, as it claims in the Statement of Claim, it had no involvement or even prior notice of such meetings. Amherst submits that such knowledge will only come to them through some pre-trial discovery or interrogatory process.

[14] In *Rowe v. New Cap Inc.* [1994] N.S.J. No. 394 (S.C.N.S.), Goodfellow, J. discussed a situation where the parties sought particulars when they were the repository of that information. At paragraph 24 he stated:

> It is the position of the defendants that the plaintiff is fully aware and has within his possession knowledge of all occasions where he has been successful on behalf of companies with which he is associated in securing financial handouts, loans, grants, subsidies, etc. In many cases the demand for particulars will not be granted where it is clear the knowledge sought is already possessed by the party presenting the demand. While not necessary to the conclusion I have reached, it appears clear that Mr. Rowe knows of what the defendant speaks, although he would undoubtedly categorize his dealings with the government and governmental agencies somewhat differently.

[15] Although not stated, one can conclude from all the pleadings that Amherst has little if any information regarding the content, time and actual participants involved in the meetings and communication alleged which form the basis of the claims of Amherst against the Parent Union and the Local. On the other hand, such information (if such communications and meetings actually occurred) would likely be within the knowledge of the Union defendants or one of them. Although the Demand for Particulars and Responses dealt with them separately, they are represented by the same counsel and appear, at least at this stage of the proceedings, to be acting in concert. The interrogatory and examination for discovery procedures are designed specifically for the purpose of obtaining the knowledge of the

adverse party. In my opinion, the fact that the Parent Unions and/or the Local are, along with the government agency, the sole repository of the specifics of the meetings and communications between the defendants is one of the limiting factors relating to these pre-defence procedures.

[16] I welcome the specific enunciation by counsel for the Parent Union and the Local of its need by way of its demands for particulars. They are as follows:

1. The pleadings do not set out material facts to establish the tort of conspiracy.

2. The pleadings do not set out material facts to establish the tort of intentional interference with economic interest by deliberate and unlawful means.

In general, the Unions claim that the pleadings do not set out the case they are to meet. More specifically, they require more particulars and complain that the general nature of the pleadings are insufficient.

[17] Using the analysis process outlined by Chief Justice Glube in *M.A. Hanna Co. v. Nova Scotia (Premier), supra*, I will discuss each of the areas where the Unions require further particulars as listed above.

Claim of Conspiracy

[18] The Unions submit that the pleadings do not contain a summary statement of material facts in relation to this tort. In the Demand for Particulars, they required particulars "of the conduct" of each of the Unions by which they "conspired to harm and did harm the Plaintiff's interests." Before determining if any further particulars are to be provided, it is necessary to examine the tort of conspiracy as outlined in paragraph 19 of the Statement of Claim. It is claimed that the government's actions against Amherst were harassing and encouraged by the Unions and that "each of them conspired to harm and did harm the Plaintiff's interests."

[19] In *Normart Management Ltd. v. West Hill Redevelopment Co.* (1998), 37 O.R. (3d) 97 (Ont. C.A.)(QL) one of the issues was whether the Plaintiff's Statement of Claim provided the basis for a separate cause of action in conspiracy against directors of the corporate defendants arising out of alleged secret meetings. The appeal before the Ontario Court of Appeal was against a motion striking the claim for conspiracy from the Statement of Claim. Finlayson, J.A. speaking for the Court, in his analysis wrote as follows at p.6-7 of 9 (QL):

In *H.A. Imports of Canada Ltd. v. General Mills Inc.* (1983), 42 O.R. (2d) 645, 150 D.L.R. (3d) 574 (H.C.J.), O'Brien J., dealing with the civil action of conspiracy as pleaded, quoted from Bullen, Leake and Jacob's Precedents of Pleadings, 12th ed. (London: Sweet & Maxwell, 1975), as follows at pp. 646-47:

> The statement of claim should describe who the several parties are and their relationship with each other. It should allege the agreement between the defendants to conspire, and state precisely what the purpose or what were the objects of the alleged conspiracy, and it must then proceed to set forth, with clarity and precision, the overt acts which are alleged to have been done by each of the alleged conspirators in pursuance and in furtherance of the conspiracy; and lastly, it must allege the injury and damage occasioned to the plaintiff thereby.

[20] Justice Finlayson noted that this was still good law and continued in the next paragraph but one:

The appellant relies upon *Canada Cement LaFarge Ltd. v. B.C. Lightweight Aggregate Ltd.*, [1983] 1 S.C.R. 452, 145 D.L.R. (3d) 385. This was a conspiracy to eliminate competition which ended up injuring the respondent. As found by the courts below, while the appellants did not deliberately conspire to drive the respondent out of business, the appellants did intend to eliminate all competitors which in the view of the courts below included the respondent. In delivering the judgment for the Supreme Court of Canada, Estey J. stated at pp. 471-72:

> Although the law concerning the scope of the tort of conspiracy is far from clear, I am of the opinion that whereas the law of tort does not permit an action against an individual defendant who has caused injury to the plaintiff, the law of torts does recognize a claim against them in combination as the tort of conspiracy if:
>
> (1) whether the means used by the defendants are lawful or unlawful, the predominant purpose of the defendants' conduct is to cause injury to the plaintiff; or,
>
> (2) where the conduct of the defendants is unlawful, the conduct is directed towards the plaintiff (alone or together with others), and the defendants should know in the circumstances that injury to the plaintiff is likely to and does result.

> In situation (2) it is not necessary that the predominant purpose of the defendants' conduct be to cause injury to the plaintiff but, in the prevailing circumstances, it must be a constructive intent derived from the fact that the defendants should have known that injury to the plaintiff would ensue. In both situations, however, there must be actual damage suffered by the plaintiff.
>
> In argument and in its factum, the appellant enlarges on the pleading by saying that the only cause of action asserted against the individual respondents is the tort of conspiracy. Its factum states:
>
> > As against the individual defendants, the appellant alleged that they conspired with and among each other, directly and through the corporate defendants they then controlled and continue to control, to injure the appellant.
>
> This bare allegation of a conspiracy involving the directing minds of the respondent corporations is an impermissible legal proposition. Additionally, it is very difficult to fit it into either of the two categories referred to in *Canada Cement LaFarge, supra*. There is no allegation of a predominant purpose to injure under (1) or of unlawful acts under (2). The acts of the individual respondents are not unlawful per se. They are not parties to the contract in issue and have no personal obligation to the appellant or to its principal Yakubowicz, either contractual or fiduciary. Simply reciting a series of events and stating that they were intended to injure the appellant is hardly sufficient to establish a conspiracy at law particularly where the same facts have already been pleaded in support of an action for breach of contract. The basis in law of a stand-alone conspiracy is simply not established. *(emphasis added)*

[21] I should note that *Normart, supra,* was followed in a recent decision of the Nova Scotia Court of Appeal in *R. Baker Fisheries Ltd. v. Widrig,* [2002] N.S.J. No. 283 (QL) where the Court upheld a decision to strike out a statement of claim for the tort of conspiracy on the ground it failed to plead the necessary elements.

[22] I find *Normart* an instructive discussion of the law both relating to applications of this nature and on the constituent elements of the tort of conspiracy. In reviewing the requirements of a Statement of Claim as noted above from Bullen, Leake and Jacob's Precedents of Pleadings, I note that the Statement of Claim in this action does describe the parties and their relationship, alleges an agreement between the defendants or some of them to conspire, and states a purpose or object to the alleged conspiracy. Furthermore, it alleges the injury and damage to the plaintiff claiming damages arose from it being forced to shut down its operations.

[23] However, it is certainly arguable whether Amherst's Statement of Claim sets forth "with clarity and precision, the overt acts, alleged acts by each of the alleged conspirators in pursuance and furthermore of the conspiracy." Amherst does allege the overt acts, that of communications and meetings, and with some vagueness their nature, but hardly with "clarity and precision." This weakness was argued strenuously by counsel for the Unions; however, this is precisely the area where the information is substantially in the possession of the defendants and, based on the principles

I referred to above, can more properly be obtained by past defence methods such as discoveries and interrogatories.

[24] The Unions' counsel submits that the pleadings must also be reviewed based on the comment of Estey, J. cited above from *Canada Cement LaFarge Ltd.*, *supra*, regarding the constituent elements of the tort of conspiracy:

> (1) Whether the means used by the defendants are lawful or unlawful, the predominant purpose of the defendants' conduct is to cause injury to the plaintiff; or
>
> (2) Where the conduct of the defendants is unlawful, the conduct is directed towards the plaintiff ... and the defendants should know in the circumstances that injury to the plaintiff is likely to and does result.

[25] Paragraph 19 of the Statement of Claim does allege the tort of conspiracy, alleging that the harassing actions of the government body were "suggested by, originated with and/or were encouraged by" the Unions or one of them. However, it does not allege these actions constituted unlawful conduct, but it is noted that in paragraph 20, where the tort of intended interference with economic interests is alleged, there is a reference that this tort occurred through 'deliberate, unlawful conduct.'

[26] If unlawful conduct is alleged, the Unions should know the circumstances within which injury to the plaintiff is likely to result. Even if one could read

from the context of the pleading the allegation that the meetings and communications were lawful, the pleading does not allege that the "predominant purpose of the defendants' conduct" was to cause injury to Amherst.

[27] Counsel for Amherst argues that if these requirements were indeed required in the pleading, it might be remedied by a generous reading of the whole Statement of Claim and some minor amendments to it. This may be so, but such amendments are not before the Court at this time. In the circumstances, I conclude this aspect of the pleading is deficient and that Amherst has failed to properly respond to the Demands for Particulars in relation to its claim of conspiracy.

Intentional Interference with Economic Interests

[28] I agree with both counsel that the decision of the Nova Scotia Court of Appeal in *Cheticamp Fisheries Co-operative Ltd. v. Canada*, [1995] N.S.J. No. 127 (QL) accurately sets out the elements of the tort of intentional interference with economic interest as alleged in the Statement of Claim. These elements are:

1. Unlawful conduct;
2. Deliberately done with the intention of damaging the plaintiff's business; and

3. Resulting damage.

[29] Counsel for the Unions notes that the requested particulars of the alleged "deliberate, unlawful conduct" by each of them was committed "with the intention of damaging" Amherst's business. It would appear that resulting damage has been pleaded. The Unions also argue that an essential element of this tort is not apparent in the Statement of Claim and if it was, it required a substantive response from Amherst, and not a reply that the Demand was an attempt to secure evidence and that the Statement of Claim refers to all the material facts necessary. In other words, that the reply should have provided material facts to support the missing essential element.

[30] For authority regarding that element, counsel for the Unions has referred to *Cheticamp Fisheries Co-operative Ltd. v. Canada, supra*, which discussed extensively the tort of interference with economic relations. The Department of Fisheries and Oceans (D.F.O.) had imposed dockside monitoring fees affecting fishers and fish buyers and processors without statutory authorization. The trial court found that the D.F.O. had committed the tort and was liable for damages for the fees paid. The appeal from this decision was allowed by the Court of Appeal on the basis of reasons given by Chipman, J.A. It was determined that the unlawful conduct element was

satisfied but that the third element of damages had not been proven. Chipman, J.A. conducted an extensive review of this aspect of the law involving both Canadian and other common-law countries to assess the current state of the law with respect to the second element of this tort, that relating to the intention of the defendant.

[31] In *Cheticamp Fisheries Co-operative Ltd.*, Justice Chipman reviewed the evidence and concluded that the intention of the D.F.O. was to attempt to regulate the fishing activity and not to cause damage to the business operations of the plaintiffs, but rather to provide a benefit to them. Among the authorities referred to by Chipman, J.A. on the second element of intention was *Barrets and Baird (Wholesale) Limited, et al. v. I.P.C.S., et al.* (1987), 1R.L.R. 3 (H.C.Q.B.), where Henry, J. discussed the nature of the tort of interfering with business relations at p.6, para. 28. Chipman, J.A. quoted, at para.31 of his decision:

> I come then to the first tort- interference with the plaintiff's trade or business, including his contractual relations with his employees, by unlawful means. This is now a clearly recognised tort (see Lord Reid in *Stratford v. Lindley* (1965), A.C. 269, and Lord Diplock in *Merkur Island Shipping Corp. v. Laughton,* [1983] I.R.L.R. 218). The basic ingredients of that tort are common ground; first that there should be interference with the plaintiffs' trade or business (there clearly is such interference here); secondly, that that should be the unlawful means, that is in issue in this case; thirdly that that should be with the intention to injure the plaintiffs, that too is in issue in this case; and fourthly, that the action should in fact injure him. It is common ground that the plaintiffs have been injured by the Fatstock Officers' action in this case.

[32] At paragraph 66 Henry J. deals at length with the second element (his third element), the intent to injure:

> The next necessary ingredient in this still relatively undeveloped tort of interfering with the trade or business of a person by unlawful means is what we have called the 'intent to injure'. That is useful shorthand but insufficiently precise to be useful as a legal test here. To make an individual striker liable in tort to any third party damages by that strike the test, in my judgment, must in Lord Diplock's words in *Lonrho Ltd. v. Shell Petroleum (No. 2)* supra, be that the striker's predominant purpose must be injury to the plaintiffs rather than his predominant purpose being his own self-interest. Perhaps essentially the same test is expressed slightly differently by the Court of Appeal in the New Zealand case of *Van Camp Chocolates Ltd. v. Aulsebrooks Ltd.* (1984), 1 N.Z.L.R. 354 where (on facts which need not concern us) the plaintiffs sued for interference with their trade or business by unlawful means, namely, breach of confidence, claiming damages for lost sales and lost sales reputation. A preliminary point of law was argued as to the necessary intent to injure the plaintiffs necessary to establish the tort. It was there said:
>
> > "In principle, as we see it, an attempt to harm a plaintiff's economic interests should not transmute the defendant's conduct into a tort actionable by the plaintiff unless that intent is a cause of his conduct. If the defendant would have used the unlawful means in question without that intent, and if that intent alone would not have led him to act as he did, the mere existence of the purely collateral and extraneous malicious motive should not make all the difference. The essence of the tort is deliberate interference with the plaintiff's interest by unlawful means..."

Chipman J.A. endorsed this approach to the tort in *Cheticamp Fisheries Co-operative Ltd., supra,* and rejected the test applied by the trial judge that the D.F.O. satisfied the intent element as it knew its actions were unlawful, or were reckless as to whether or not they were unlawful. At para. 42 he commented:

> With respect, this is not the test. What the case law requires is an intention to cause the damage. Mere knowledge of D.F.O. officials that their actions were unlawful or recklessness as to whether or not they were unlawful is

> not, in itself, sufficient evidence of intention to do harm. I have already referred to the fact that the purpose or intention of inflicting injury is an essential element of the tort. The courts have stopped short of substituting for an intention to cause damage to the plaintiff a mere foreseeability that such damage may result from the unlawful conduct. A constructive intent to injure or foreseeable injury may have a place in the tort of conspiracy but not in my opinion in the tort of interference with economic relations. See *Canada Cement LaFarge v. B.C. Lightweight Aggregate Ltd., et al.* (1983), 145 D.L.R. (3d) 385 at 398-9 (S.C.C.), Fleming, *The Law of Torts*, 7th Edition, (1987), p.663, note 45, p.665 especially note 59. I think that recklessness is more akin to foreseeability than it is to intention. If any lesser standard of intention were required, it still seems clear that the offending conduct must be "directed at" the plaintiff.

[33] The tort of interference with economic interests by unlawful means is an emerging but nevertheless a clearly-recognized tort in Canada. Its basis is to constrain unlawful acts directed at others with the intention of causing injury to their commercial interests. In *Cheticamp Fisheries Co-operative Ltd.*, the Nova Scotia Court of Appeal has clarified the nature of the second element; that of intent to injure. The foreseeability of damages or "constructive intent" is not sufficient. The defendant may have other purposes, as in *Cheticamp Fisheries Co-operative Ltd. v. Canada, supra,* and the harm to economic interest may not be the primary intention of the defendant. It appears from the review of the law and reasons expressed in that case that the intent to injure must be a significant if not "predominant" essential element of the tort. I am of the opinion that the existing Statement of Claim, even with a liberal and expansive reading, does not clearly allege the significant or predominant aspect of this essential element of the tort alleged.

[34] When the Unions in their Demands for Particulars ask for the “Particulars of the deliberate unlawful conduct” alleged against them, they are seeking “a further or better statement of the claim or further and better particulars.” They are entitled to a response that at least provides some adequate reply in a situation where an essential element of a claim is not clearly pleaded in the Statement of Claim.

Conclusion

[35] Much of the information which the Unions seek in reply to their Demands for Particulars are specific details of the overt acts of the defendants such as the time and place of the alleged meetings and the persons in attendance. They seek clarification of the somewhat vague references to the alleged conspiracy and intentional interference with the economic interests of Amherst. In some circumstances some of such details would be material facts to be contained in a statement of claim. In the present matter, principally because such knowledge, if any, is available to the Unions, this information is more properly obtained by the process of discoveries and interrogatories.

[36] As a substitute for oral reasons, I provided counsel on December 11, 2002 with a draft of my reasons in this matter. At the time I requested their comments on the wording of the Order in this matter. On this day they provided me with a Consent Order and a copy of the Respondent's amendments to the statement of claim. The Consent Order included the following paragraph:

> IT IS HEREBY ORDERED that the Plaintiff provide further and better particulars of the claims set out in the Statement of Claim, which further and better particulars, along with the particulars provided in the Plaintiff's Replies to Demands for Particulars: (i)dated September 18, 2002 and in response to the Demand for Particulars of the Defendant, the Attorney General of Nova Scotia; (ii) dated October 9, 2002 and in response to the Demand for Particulars of the Defendant, the United Steel Workers of America, (iii) dated October 9, 2002 and in response to the Demand for Particulars of the Defendant, the United Steel Workers of America, Local 4122, are set out in the Amended Statement of Claim attached hereto as Schedule "A".

[37] The Consent Order as initiated today concludes this matter. The Unions shall have their costs jointly in the amount of $750.00, payable in any event of the cause.