# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *James v. The Synod of the Diocese of New Westminster,* 2024 BCSC 2130

Date: 20241030
Docket: S232608
Registry: Vancouver

Between:

**Simon James**

Plaintiff

And:

**The Synod of the Diocese of New Westminster**

Defendant

Before: Associate Judge Robertson

## Oral Reasons for Judgment

In Chambers

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| Counsel for the Plaintiff: | E. Lay |
| Counsel for the Defendant: | H. Kang |
| Place and Date of Hearing: | Vancouver, B.C.<br>October 30, 2024 |
| Place and Date of Judgment: | Vancouver, B.C.<br>October 30, 2024 |

[1] **THE COURT:** When I issued these oral reasons for judgment, I reserved the right to edit them as to grammar, background and citations should a transcript be ordered. I have made such edits, without affecting the substance or final disposition.

[2] The application before the court today is for the plaintiff to provide answers to a demand for particulars and for leave under R. 7-3 for the defendant to deliver interrogatories in the form attached to the materials, a copy of which was sent to the plaintiff with a request that they consent to those interrogatories, failing which the subject application would be brought.



## Background

[3] By way of background, the plaintiff brings this claim as against the Diocese with respect to damages arising from an alleged sexual abuse that occurred sometime in or around the 1970s when the plaintiff was in his 20s. He does not recall, or it is not obvious on the materials that he recalls, the specific particulars in terms of the precise date of the incident or incidents making up the abuse as claimed.

[4] The action was commenced in March 2023, such that a significant period of time has elapsed since the incidents are alleged to have occurred. As such, it is not too surprising that the notice of civil claim is, respectfully, somewhat vague in respect of some of the allegations being made. Thus, the request by the defendant for particulars and answers to interrogatories to remedy or address that vagueness.

[5] As to the current status of the litigation, I am advised that a trial has been scheduled for June 2025. Discovery of the defendant's representative has been undertaken. However, the defendant has not yet discovered the plaintiff. The demand for particulars was issued on December 20, 2023, in response to which the plaintiff took the position that, for the most part, the particulars being sought were not properly subject to a demand for particulars as well as taking the overall position that these issues are ones more properly canvassed on an examination for discovery.

[6] Some information, however, was provided. Specifically, the plaintiff provided further confirmation as to the place and time of the alleged assault occurring, and some further particulars as to the plaintiff's involvement with the church and church activities, to the extent it is currently known by him. As to those answers given to date, the plaintiff's submission is that any further inquiry is more effectively undertaken through the examination for discovery process.



## The Law

[7] The parties do not disagree as to the applicable law with respect to this matter,

### Particulars

[8] The right to particulars is governed by the *Supreme Court Civil Rules*, R. 3-7(20), (22), and (23), but also by R. 3-1(2) which sets out the requirements of a notice of civil claim in order to be a proper pleading. In short, pleadings must provide the specifics of a cause of action in order to enable a party to properly and adequately prepare for their defence.

[9] As noted in *Taylor v. British Columbia*, 2020 BCSC 1936, at paras. 33 and 35, the material facts that support a claim are to be part of the pleading, and to the extent they are not, then it may be part of a particulars, the purpose of which is to permit a party to investigate the pleading in order to prepare for discovery. The objective is to make discoveries more efficient, and it is not an answer to suggest that discovery should be a substitute for those particulars. In this respect, and again it is trite, the obligation to properly particularize one's claim is on the party doing the pleading, not on the respondent to that pleading to have to seek out those particulars themselves.

[10] As previously noted, the plaintiff opposes providing particulars generally on the basis that the particulars being sought are not properly subject to particularization given that they are seeking, for example, issues that are legal conclusions or evidence. In short, they go beyond the scope of what is a proper

demand for particulars, relying on *Edgars v. British Columbia (Children and Family Development)*, 2023 BCSC 1082 ("*Edgars*").

[11] In *Edgars,* at para. 70, the court noted a similar broadness or generality of the pleadings that were filed with respect to the claim for abuse, in that case abuse of a child who was cared for by the defendant as a youth. Her claims included physical abuse, emotional abuse, sexual abuse, malnourishment, neglect, and racism, amongst other allegations. Here, of course, the allegation of abuse is limited to a single event, which has now been particularized as much as the plaintiff is currently able to do so.

[12] At para. 71, the court set out the concerns it had with the scope of particulars sought in that case, which are similar to the particulars being sought here:

> [71] It is also obvious that the particulars demanded by the defendants go far beyond the proper or reasonable scope of particulars. Examples include demands that the plaintiff particularize: (1) the plans of care, education and acculturation the MCFD allegedly failed to provide; (2) the specific regulations and policies MCFD allegedly failed to follow; (3) which defendant caused what harm; (4) whether her alleged disability presently affects her; (5) what substances she was addicted to at what times; and (6) whether her substance abuse disorder continues and, if not, when it ended.

[13] Further, the court commented at para. 74 that particulars are not warranted in particular circumstances:

> [74] I conclude that particulars are not warranted on matters generally having to do with: (1) the assessment of general damages; (2) attribution or apportionment of fault; (3) negligence allegations which are expected to be the subject of expert evidence; (4) evidence, not material facts; and (5) claims that the defendants knew of certain things (MCFD items 2 and 14; RCMP item 6), with the exception of those assertions in the ANOCC that the plaintiff notified MCFD of certain harms (MCFD item 12). All or most of these issues will be the subject of opinion or assessment in some form and, as such, are not amenable to particularization: *Camp Development* at para. 10.

[14] In my view, the particulars here fail as a result of the same considerations set out in *Edgars*. In particular, and addressing each paragraph of particulars sought:

a) Paragraph 1 - particulars of the governance structure with respect to the church and how the defendant was responsible for the governance of the

church, etc.: Those are matters that are within the scope and knowledge of the defendant, not to be particularized by the plaintiff.

b) Paragraph 2 – particulars of the allegation that the defendant granted a position of power to Mr. Powell, turning him into a trusted authority figure. Again, those matters are within the knowledge of the defendant and its employees, not the plaintiff. There is a further reference under these particulars as sought to involvement of the plaintiff's family members and Mr. Powell. While I agree that the nature of the pleadings brings them into this litigation potentially as more than just witnesses, I agree that these are not matters that are subject to further particulars being provided.

c) Paragraphs 3 and 4 – I am satisfied that these particulars have been suitably answered to the extent required and no further answers are required.

d) Paragraph 5 – particulars as to the allegation that the defendant authorized Mr. Powell to carry out the purposes and objectives of the defendant. Again, this is matters that are within the knowledge of the defendant, not the plaintiff.

e) Paragraph 6 – particulars as to the allegation that the policies of the defendant created an opportunity for Mr. Powell to exert authority over the plaintiff. Again, the rules and principles and policies of the defendant are within the knowledge of the defendant, and that is not a proper scope for particulars to be provided by the plaintiff.

f) Paragraph 7 – particulars as to the allegation that all material times, Mr. Powell was acting in the course of his duties, with the specific particulars being how it is alleged that Mr. Powell was an agent of the defendant and how those policies were used by Mr. Powell. Again, these are matters within the knowledge of the defendants.

g) Paragraph 8 – particulars of the allegation that Mr. Powell held a position with the defendant, used that to take advantage of the plaintiff under the guise of conducting the activities of a religious leader, and what position it is alleged that Mr. Powell held and how it is alleged that the defendant put the plaintiff at risk of being abused. Certainly, the position that is being alleged or the position that Mr. Powell held with the defendant is within the knowledge of the defendant. As to the allegations of putting the plaintiff at risk of being abused, that is evidentiary in nature, or legal argument, which is not proper particulars.

h) Paragraph number 9 – particulars of the allegation that the defendant oversaw the activities at the church and a request to advise when it is alleged that the defendant oversaw or supervised activities. That too is information within the knowledge of the defendant.

i) Paragraph 10 – particulars of the allegation that the defendant owed and breached a special duty to the plaintiff. This is a legal conclusion and not properly subject to particularization.

j) Paragraph 11 – particulars of the allegation that the plaintiff has suffered damages. Particulars of the defendant's behaviours that caused the loss are provided and sufficiently set out in the whole of the notice of civil claim. When reading pleadings they are not to be read one paragraph at a time, but rather, the whole of it must be read with the full context in mind. The whole of the notice of civil claim sufficiently sets out the acts or behaviours of the defendant’s employee that give rise to the claim for damages. With respect to particulars of the individual injuries, the injuries claimed are clearly identified, by type of injury. Providing further particulars would be to plead evidence. This is not a proper scope for particulars.

k) Paragraph 12 – particulars of the allegation that the plaintiff has been required to undergo medical treatment, and particulars of such medical treatment. While theoretically some particulars could be provided

specifically with respect to what treatment providers have been consulted, generally this is not done through particulars. It is done through document disclosure, namely production of medical and clinical records. I expect the normal discussions are ongoing between counsel as to the exchange of medical records, whether that be MSP claims history printouts to determine who was consulted, and corresponding clinical records, in advance of the examination for discovery. If that is not being done, then in my view the proper use of the rules is to seek those documents through the processes set out in the rules. In other words, this request is more in the nature of seeking the evidence to support the pleading of injuries.

l) Paragraph 13 – particulars as to the allegations of special damages. The plaintiff says there is no opposition to providing special damages. That is usually done closer to discovery or other milestone dates such as mediation or trial when parties are turning their minds to final quantum. Nonetheless, there is no particular opposition to providing these particulars, in preparation for discoveries and trial in June 2025. I will order that particulars as sought in paragraph 13 are to be provided.

m) Paragraph 14 – particulars of the allegation that the conduct of the defendant was harsh, highhanded, malicious, and should be punished by aggravated or exemplary or punitive damages. These are matters of law.

[15] In summary, other than providing the answer to the particulars sought in sub-paragraph 13, the rest of the relief sought in para. 1 of the notice of application is dismissed.

**Interrogatories**

[16] Turning, then, to the interrogatories. As noted, since the amendment to the Rules in 2010, interrogatories are not deliverable as of right. Rather, the receiving party must either consent or a court order must be obtained for leave to deliver interrogatories, and compel them to be answered.

[17] Here, despite not having consent, the defendant delivered a set of interrogatories to the plaintiff. The plaintiff took issue with the defendant doing so. Of note, however, is that the defendant issued the interrogatories with a cover letter making it clear that they understood the requirements under the Rules, in that they requested consent, but gave notice that if such consent was not given, an application would be brought.

[18] In my view, the defendant acted appropriately and in keeping with the overall objective of the Rules, which includes encouraging parties to discuss resolution of such procedural issues prior to an application being brought. In addition, by having the proposed interrogatories before the court as opposed to a general description of the matters the interrogatories are being sought to address, it is much easier for the court to consider whether they should be answered and avoids further applications if later disputes as to the appropriateness of an individual interrogatory is raised.

[19] As to the considerations for the court in making an order for leave to deliver interrogatories, again, there is not a significant dispute between the parties.

[20] The defendant specifically relies on *Tse-Ching v. Wesbild Holdings Ltd.*, 1994 CanLII 1505 (BC SC), 98 B.C.L.R. (2d) 92 (“*Tse-Ching*”) at para. 15, where the court established the requirements for the limitations on interrogatories, including that they are not in the nature of cross-examination; they are not to include duplicate particulars; they are not to be used to obtain the names of witnesses; and that they are significantly more narrow than examinations for discovery with their purpose being to enable the party to obtain admissions of fact in order to establish their case and provide a foundation upon which cross-examination can then proceed when the discoveries are held.

[21] That latter point is similar to what was stated in *Araya v. Nevsun Resources Ltd.*, 2018 BCSC 808, at paras. 16 and 18, as relied upon by the plaintiff.

[22] In *Loo v. Alderwoods Group Canada Inc.*, 2010 BCSC 1471, at para. 18, the court also noted that interrogatories may be more useful when the question is one

that requires some investigation for answering, which will be difficult to undertake on an examination for discovery.

[23] Here, the interrogatories are generally beyond the proper scope of interrogatories. They do not advance those interests or fall within those parameters. Specifically:

a) Interrogatory 1 – what facts do you know that suggest the Diocese owed a special duty? That is a matter of law, if not the ultimate issue that is going to be decided by the court. It is not a proper scope of interrogatory.

b) Interrogatory 2 – who from the Diocese did you have interaction with and when? As well as Interrogatories 3, 4 and 5, which involve questions with respect to the interactions between the plaintiff, the church, and Mr. Powell. Those, as I have previously noted, have been answered as part of the particulars process, in so far as the plaintiff can recall. They are no longer necessary.

c) Interrogatory 6 – did members of the family also have interactions? If so, provide their names and specific dates and locations. This interrogatory in improperly seeking the names of witnesses.

d) Interrogatory 7 and 8 – for each of the claimed injuries or loss, describe in your own words what you have claimed, and provide details of the medical treatment you have undergone, the psychological treatment you have undergone, and spiritual counselling you have and continued to undergo. As previously noted, this question seeks evidence, and is not something that is properly under the scope of an interrogatory. While it may also be a matter where more extensive investigation is needed, similar to that commented upon by the court in *Loo.* However, it is the type of matter that is more properly obtained through the obtaining of clinical records and medical records, or expert reports. In all applications, the court is to consider the overall objective of the *Rules of Court* and proportionality.

> Having regard to those considerations, including the other processes available under the *Rules* for obtaining third party document disclosure as is routinely done in personal injury matters, these matters can be fully investigated through the usual process of obtaining clinical records rather than trying to have the plaintiff piece together details that are not always within the immediate knowledge or memory to the level of specificity being sought.

[24] Paragraph 2 of the notice of application is dismissed.

(SUBMISSIONS ON COSTS)

[25] THE COURT: The plaintiff was substantially successful on this application. I am making the order that the plaintiff will have their costs in any event of the cause. Thank you.

"Associate Judge Robertson"