IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
COURT OF APPEAL

Citation: *Hynes v. Pro Dive Marine Services Ltd.*, 2016 NLCA 17
Date: May 3, 2016
Docket: 201401H0063

BETWEEN:

JAMES HYNES — FIRST APPELLANT

AND:

BARRY HYNES — SECOND APPELLANT

AND:

SEAFORCE TECHNOLOGIES INC. — THIRD APPELLANT

AND:

SEAFORCE DIVING LIMITED — FOURTH APPELLANT

AND:

PRO DIVE MARINE SERVICES LTD. — FIRST RESPONDENT

AND:

DAVID SQUIRES — SECOND RESPONDENT

Coram: Green C.J.N.L., Welsh and Harrington JJ.A.

Court Appealed From: Supreme Court of Newfoundland and Labrador
Trial Division (G) 201201G3477
2014 NLTD(G) 81

Appeal Heard: November 10, 2016
Judgment Rendered: May 3, 2016

Reasons for Judgment by Welsh J.A.
Concurred in by Green C.J.N.L. and Harrington J.A.

Counsel for the Appellants: M. John Mate
Counsel for the Respondents: Kevin Stamp Q.C.

Welsh J.A.:

[1] This is an appeal from an order striking out portions of the appellant's statement of claim. The claim alleges defamation and resulting interference with the appellant's reputation and with its economic and contractual relations. The issues engage consideration of the exactitude with which allegations of defamation must be pleaded based on developments in the law.

BACKGROUND

[2] James Hynes, Barry Hynes, Seaforce Technologies Inc. and Seaforce Diving Limited (together, "Seaforce") filed a statement of claim on June 22, 2012 seeking damages for the "malicious, high handed and arrogant conduct" of Pro Dive Marine Services Ltd. and David Squires (together, "Pro Dive") "in spreading false defamatory statements about them" (decision of Goodridge J., 2014 NLTD(G) 81, 352 Nfld. & P.E.I.R. 167, at paragraph 3). Seaforce and Pro Dive are competitors in the business of supplying commercial diving services in the offshore petroleum industry. James and Barry Hynes and David Squires had been partners for approximately twenty years before Mr. Squires established his own diving company and competed for business with his former partners.

[3] Before filing a defence, Pro Dive applied to have the statement of claim struck on the basis that it lacked sufficient particulars to enable the

preparation of a response. The initial history is explained in the earlier decision of Hurley J. (2014 NLTD(G) 3, 345 Nfld. & P.E.I.R. 320):

> [3] By way of background, the Statement of Claim was issued on June 22, 2012. [Pro Dive] did not file a defence but took this application which initially came before this Court on September 21, 2012. The matter was adjourned to permit [Seaforce] to file an amended Statement of Claim which was filed on October 5, 2012. On October 4, 2012, [Seaforce] filed an application seeking an order to serve interrogatories prior to the close of pleadings. On December 21, 2012, [Seaforce was] given leave to issue and serve interrogatories upon Technip Canada Limited. On February 19, 2013, [Seaforce] filed a further Amended Statement of Claim which contained Schedule A consisting of 409 pages.
>
> [4] The main issue taken by [Pro Dive] with respect to Rule 14 is that the pleadings as framed lack necessary material facts to sustain the relevant causes of action. [Pro Dive maintains] they have the right and are entitled to know, not only the causes of action which they must defend, but also to be advised of the material factual background upon which each cause of action is based. There is also an issue that certain paragraphs are scandalous, frivolous and vexatious. [Pro Dive is] requesting that the offending paragraphs be struck.

[4] In that decision, which was not appealed, Hurley J. struck several paragraphs in the statement of claim, including Schedule A, and permitted the amendment of others. Pro Dive continued to take the position that the pleadings were deficient. Upon a further application by Pro Dive, the statement of claim, amended after Hurley J.'s decision, was considered by Goodridge J. who struck several paragraphs and portions thereof and granted leave to amend in some cases. He clearly stated:

> [7] [Seaforce] must comply with the January 10, 2014 ruling of Hurley, J. If any parts of the 2014 statement of claim are found to be non-compliant with the ruling of Hurley, J. then these will be struck.
>
> [8] In [his decision], Hurley, J. found that several paragraphs of [Seaforce's] 2013 statement of claim failed to include the material facts; improperly pleaded evidence; and improperly included argument. It was not a good pleading; it was not concise; it was not clear; it was not chronological. …

[5] Seaforce then sought leave to appeal Goodridge J.'s decision. In granting leave to appeal on a limited basis, this Court discussed the effect of appealing only Goodridge J.'s decision (2015 NLCA 22, 365 Nfld. & P.E.I.R. 356):

> [20] In striking paragraphs, or portions thereof, from the amended statement of claim, Goodridge J. dealt with four categories: (1) those struck for non-compliance with the earlier decision of Hurley J.; (2) those which failed to state the necessary material facts; (3) those considered to be frivolous and vexatious; and (4) those pleading inferences, conclusions and innuendo.
>
> [21] Applying the criteria set out in rule 57.02(4), there is no basis on which to grant leave to appeal regarding the first two categories. The decision of Hurley J. was not appealed and cannot be subjected to collateral attack through an appeal of Goodridge J.'s decision. Regarding the second category, where the paragraph could be corrected by amendment, Goodridge J. granted leave to do so.

[6] Accordingly, only those portions of Goodridge J.'s decision falling within categories (3) and (4) will be considered in this appeal.

ISSUES

[7] The issue, defined in the decision on leave to appeal, is whether Goodridge J. erred in striking portions of the statement of claim on the basis that those portions were frivolous and vexatious or that they improperly pleaded interpretation, inferences, conclusions and innuendo.

[8] Pro Dive also raised an issue regarding two paragraphs which, they allege, Goodridge J. erred in failing to strike.

ANALYSIS

Principles of Law

[9] A statement of claim must comply with fundamental requirements which are directed to achieving effective and fair litigation between parties. The material facts must be set out in a "clear, organized and concise" manner, providing the constituent elements of each alleged cause of action. Argument and evidence supporting the material facts are not to be included in the statement of claim. (Decision of Goodridge J., at paragraph 10; rule 14.03 of the *Rules of the Supreme Court, 1986*; *Lieb v. Smith* (1994), 120 Nfld. & P.E.I.R. 201 (Nfld. S.C.T.D.), at paragraphs 21 to 22; *Petten v. E.Y.E. Marine Consultants* (1994), 120 Nfld. & P.E.I.R. 313 (Nfld. S.C.T.D.), at paragraph 94.) The importance of framing a proper statement of claim is succinctly stated by Frank J. in *Bilich v. Toronto Police Services Board*, 2013 ONSC 1445:

> [9] … As a result, a pleading that does not adhere to the rules is likely to result in proceedings that are inefficient, wasteful and unnecessarily costly to not only the parties but to the administration of justice, as well.

[10] Where the requirements of good pleading are not met, rule 14.24 of the *Rules* provides for striking out or amending a statement of claim:

> (1) The Court may at any stage of a proceeding order any pleading, affidavit or statement of facts, or anything therein, to be struck out or amended on the ground that
>
> (a) it discloses no reasonable cause of action or defence;
>
> (b) it is false, scandalous, frivolous or vexatious;
>
> (c) it may prejudice, embarrass or delay the fair trial of the proceeding; or
>
> (d) it is otherwise an abuse of the process of the Court,
>
> and may order the proceeding to be stayed or dismissed or judgment to be entered accordingly.
>
> (2) Unless the Court otherwise orders, no evidence shall be admissible by affidavit or otherwise on an application under rule 14.24(1)(a).

[11] Goodridge J. summarized an analytical approach to applying rule 14.24 in this way:

> [13] The court may strike pleadings for not disclosing a reasonable cause of action only if it is plain and obvious, assuming the facts pleaded to be true, that the pleading discloses no reasonable cause of action: *Odhavji Estate v. Woodhouse*, 2003 SCC 69 at para. 15.
>
> …
>
> [15] In assessing whether some or all of a statement of claim should be struck, the court must assess whether the material facts have been adequately pled in respect of each of the causes of action alleged. If the pleadings are defective due to the failure to plead the requisite material facts, then the court must determine if such defects could be cured by amendment, or further particulars. If the defects cannot be cured, then the defective portions of the claim are to be struck.

[12] I would note that this test applies only to consideration of rule 14.24(1)(a), that is, failure to disclose a reasonable cause of action or defence. In this case, rule 14.24(1)(b) and (d) are the relevant provisions.

[13] The meaning of frivolous or vexatious under rule 14.24(1)(b) is discussed in *Walsh v. Johnson*, 2010 NLCA 6, 293 Nfld. & P.E.I.R. 101. A frivolous action is one that has "no substance", or "is obviously unsustainable or without arguable merit" (paragraphs 19 and 21). A vexatious action is

> [20] … one that is brought for an improper purpose such as to harass, annoy or embarrass a party and not for the legitimate purpose of seeking the vindication of legal rights.

A frivolous action may also be vexatious if the respondent is required "to engage counsel and respond to something that cannot succeed … because it would be an abuse of the court's process" (paragraph 21).

[14] A statement of claim alleging defamation raises particular issues. The meaning of defamation is discussed in *Lysko v. Braley* (2006), 79 O.R. (3d) 721 (ONCA). Rosenberg J.A., for the Court, explained:

> [108] In *Botiuk* [*v. Toronto Free Press Publications Ltd.*, [1995] 3 S.C.R. 3], at para. 62, Cory J. provided the following definition of defamatory meaning:
>
> > For the purposes of these reasons, it is sufficient to observe that a publication which tends to lower a person in the estimation of right-thinking members of society, or to expose a person to hatred, contempt or ridicule, is defamatory and will attract liability. See *Cherneskey v. Armadale Publishers Ltd.*, [1979] 1 S.C.R. 1067 at 1079. What is defamatory may be determined from the ordinary meaning of the published words themselves or from the surrounding circumstances. In *The Law of Defamation in Canada*, 2nd ed.. (Scarborough, Ont.: Carswell, 1994), R.E. Brown stated the following at p. 1-15:
> >
> > > [A publication] may be defamatory in its plain and ordinary meaning or by virtue of extrinsic facts or circumstances, known to the listener or reader, which give it a defamatory meaning by way of innuendo different from that in which it ordinarily would be understood. In determining its meaning, the court may take into consideration all the circumstances of the case, including any reasonable implication the words may bear, the context in which the words are used, the audience to whom they were published and the manner in which they were presented.

[15] In some circumstances, defamation may be the result, not of the ordinarily understood meaning of the words, but of particular innuendo. In

that situation, the statement of claim must contain sufficient particulars to enable the defendant to respond. In *Lysko*, Rosenberg J.A. explained:

> [120] … Without special knowledge, an ordinary person could not take a defamatory meaning from this statement. The appellant would have to plead this allegation as a legal innuendo. He would also have to plead extrinsic facts known to people exposed to the statement, such as the nature of the relationship between the commissioner and the member clubs. …
>
> (Emphasis added.)

The concept of legal innuendo is discussed further below.

[16] In assessing whether to strike portions of a statement of claim in a defamation action in *Lysko*, the Court adopted an approach which adjusts the historical requirement that the exact words alleged to be defamatory must be pleaded. That requirement has been replaced with a more flexible approach:

> [102] This modern rule is summarized by Raymond E. Brown in *The Law of Defamation in Canada*, 2nd ed. (looseleaf, updated 1999) (Toronto: Carswell, 1994) at [paragraph] 19.3(2)(a)(i):
>
> > The more modern rule is to permit a plaintiff to plead and prove words that are substantially but not precisely the same as those words which were spoken. It is not necessary for the plaintiff to plead or allege verbatim the exact words; it is sufficient if they are set out with reasonable certainty. Not every word must be proved if the variance or omission does not substantially alter the sense of the meaning of the words set out in the pleading. The test is whether the claim is sufficiently clear to enable the defendant to plead to it. The words must be pleaded with sufficient particularity to enable the defendant to understand whether the words have the meaning as alleged or some other meaning, and to enter whatever defences are appropriate in light of that meaning. It is impossible to require absolute precision in the pleading of oral communications; it is sufficient if there is certainty as to what was charged. If the words proved are substantially to the same effect as those used in the pleading, the pleading should stand. [Footnotes omitted.]

[17] Adopting this approach in *Lysko*, Rosenberg J.A. set out an analytical framework:

> [101] … I agree with Lane J.'s summary of the applicable principles in *Magnotta Winery* [(1995), 25 O.R. (3d) 575 (Ont. Gen. Div.)] at pp. 583-84:

> On these authorities it is open to the court in a limited set of circumstances to permit a plaintiff to proceed with a defamation action in spite of an inability to state with certainty at the pleading stage the precise words published by the defendant. The plaintiff must show:
>
> > - that he has pleaded all of the particulars available to him with the exercise of reasonable diligence;
> >
> > - that he is proceeding in good faith with a *prima facie* case and is not on a "fishing expedition"; normally this will require at least the pleading of a coherent body of fact surrounding the incident such as time, place, speaker and audience;
> >
> > - that the coherent body of fact of which he does have knowledge shows not only that there was an utterance or a writing emanating from the defendant, but also that the emanation contained defamatory material of a defined character of and concerning the plaintiff;
> >
> > - that the exact words are not in his knowledge, but are known to the defendant and will become available to be pleaded by discovery of the defendant, production of a document or by other defined means, pending which the plaintiff has pleaded words consistent with the information then at his disposal.

[18] Adopting a similar approach in *Hope v. Gourlay*, 2015 SKCA 27, 384 D.L.R. (4th) 235, Richards C.J.S., for the Court, wrote:

> [25] A plaintiff must, of course, identify the exact words at the root of a claim for defamation if that is possible. But, when it is not, a claim might still be allowed to stand if the pleading nonetheless identifies the offending communication with sufficient precision and particularity that the defendant knows the case against him or her and is able to plead to it and prepare his or her defence. Any assessment in this regard must be undertaken with an appreciation for the fact that, in a defamation action, the words said to be defamatory are the very heart of the plaintiff's claim. The defendant should not be required to shoot at a fuzzy or moving target.

[19] Where the claim of defamation is based on a special meaning of the words, Richards C.J.S., in *Hope*, explained:

> [39] … Raymond Brown, in *Brown on Defamation: Canada, United Kingdom, Australia, New Zealand, United States*, loose-leaf (2012-Rel 4) 2d ed, vol 5 (Toronto: Carswell, 1999) at s 19.1, makes the point in this way:

> The defamatory words must be set out with reasonable certainty, clarity and precision and if the words are innocent on their face, or have some special meaning, the facts or circumstances which give them a defamatory sting must be pleaded and proved. … [Underlining added in *Hope*.]
>
> [40] In other words, if the defamatory effect of otherwise innocuous or innocent words turns on extrinsic facts, then those facts must be pleaded. …

[20] Further, while it is appropriate to plead the facts supporting legal innuendo where it arises, an allegation of this type should be distinguished from drawing inferences. The latter relies on the ordinary meaning of the words. In R.E. Brown, *The Law of Defamation in Canada*, (Toronto: Carswell, 1987), the issue is referenced at page 131:

> Words are to be construed in their plain and popular, or natural and ordinary, meaning which a reasonable person of ordinary intelligence and experience would be expected to understand from the words, at the time when they are read or heard, and in the community in which they are published. This is true even if he or she might otherwise be mistaken in that belief or if someone better informed might reach a different conclusion. The reasonable man is inclined to "and does read between the lines in the light of his general knowledge and experience of worldly affairs", and what he infers is included in the natural and ordinary meaning of the words.
>
> …
>
> The natural meaning is not necessarily the literal meaning of the words, but that meaning which they would naturally convey to those reading or hearing them, giving the words their ordinary signification. [Footnotes omitted.]
>
> (Emphasis added.)

[21] In general, statements drawing inferences and conclusions are not properly included in pleadings. It is the material facts, including any relevant extrinsic facts, that must be pleaded in order to enable the defendant to plead in response. Seaforce submits that, pursuant to rule 14.04, "conclusions of law are specifically allowed". Rule 14.04 provides:

> A party by a pleading may raise any point of law.

[22] A point of law is not the same as a conclusion. Pleading a statutory provision, for example, or perhaps a principle of law such as contributory negligence, would amount to raising a point of law. A conclusion of law, by contrast, involves the application of the law to the facts, a matter for the

judge to assess. Drawing conclusions engages argument to which a defendant could only reply by argument. That is not the intended purpose of pleadings. Where a pleading sets out conclusions that amount to argument, that portion should be struck as improper.

[23] Depending on the circumstances, the court may take a less strict approach to the inclusion of statements that may be characterized as conclusions, but which are intended to indicate or explain how the plaintiff views the alleged words to be defamatory. On balance, the court may determine that such statements do not constitute argument and do not interfere with the defendant's ability to respond.

Application of the Law

Pleadings of Interpretations, Inferences, Conclusions and Innuendo

[24] Applying the above principles of law, there is no basis on which to find that Goodridge J. erred in exercising his discretion to strike statements that amounted to the improper pleading of interpretations, inferences, conclusions and innuendo.

[25] The portions that were struck do not rely on legal innuendo. Inferences to be drawn flow from the ordinary meaning of the words. The material facts set out in the remainder of each paragraph provide appropriate pleadings to permit Pro Dive to respond. Removal of the offending portions operates to clarify the claim and focus the ability of the defendant to respond to the allegations.

[26] For example, in paragraph 14, the last sentence, which was struck, simply draws inferences and conclusions from the facts. It amounts to argument:

> This communication indicated or implied that James Hynes had an interest in Seaforce Diving, which is not correct, that he had not disclosed it to Technip as he should have done and he would use his position improperly to its advantage and Pro-dive's disadvantage.
>
> (Emphasis added.)

[27] The portions struck in paragraphs 17, 18 and 23 are similar. (Decision of Goodridge J., at paragraphs 33, 39, 40 and 46.)

[28] In paragraph 20, the portion that is struck begins with, "The Plaintiffs state that this e-mail also stated and certainly implied that …"; and further, "Essentially Squires is alleging an improper connection that did not exist and is alleging or implying that confidential information will be stolen by James Hynes …". The applications judge did not err in concluding that the identified portions amounted to argument, not the statement of material facts. Further, the implication alleged by Seaforce was drawn from the ordinary meaning of the words and was not pleaded as legal innuendo which requires an explanatory foundation. (Decision of Goodridge J., at paragraph 42.)

[29] In paragraph 24, Goodridge J. struck the following:

> These correspondences imply or by innuendo indicate that James Hynes, Barry Hynes, Sam Allen and Jason Muise are engaging in improper behavior, their relationships are too close and that they cannot be trusted, must be investigated intensively so that the wrongdoing can be uncovered. It is alleged that this was not just defamatory of the Plaintiffs, but also Sam Allen and Jason Muise and was therefore an unlawful interference with the Plaintiffs' economic interests.
>
> (Emphasis added.)

[30] Despite the use of the language "imply or by innuendo", this is not an instance of legal innuendo requiring special pleading. As indicated by Goodridge J., the material facts to ground a cause of action in defamation are set out in the remaining portion of paragraph 24. The above sentences were struck because they would properly be characterized as conclusion amounting to argument. (Decision of Goodridge J., at paragraph 48.)

[31] The sentence struck from paragraph 25 begins, "In this correspondence he is clearly implying that there is corruption …". Again, this sentence alleges an inference to be drawn from the ordinary meaning of the material facts stated in the remainder of the paragraph. Goodridge J. did not err in limiting the paragraph to a statement of the material facts. The same analysis applies to paragraphs 26 to 31. (Decision of Goodridge J., at paragraphs 50 to 63.)

[32] I note in passing that Goodridge J. determined that the impugned statements of interpretation, inferences, innuendo and conclusions should be struck because they did not satisfy the requirements of appropriate pleading. As set out above under principles of law, in some circumstances a judge may find that, despite this failure, on balance, such statements do not warrant

striking. In this case, it cannot be said that Goodridge J. erred in the exercise of his discretion.

Paragraphs Struck as Frivolous and Vexatious

[33] Goodridge J. termed as frivolous and vexatious those paragraphs, and portions thereof, that were struck because they pleaded inferences, conclusions, interpretation and innuendo. These would, in fact, not fall under rule 14.24(1)(b), pleadings that are frivolous or vexatious as those terms are defined above. They would, instead, more properly be considered under rule 14.24(1)(d), an abuse of process for failure to comply with proper principles of pleading so as to permit the defendant to respond. However, the failure to strike under the appropriate paragraph of rule 14.24 has no effect on the validity of the decision. Goodridge J. clearly indicated an appropriate basis whenever a portion of the statement of claim was struck.

[34] Only paragraphs 33 and 37 properly fall for consideration under the heading "frivolous or vexatious". Goodridge J. referred to two portions of paragraph 33. The first states:

> … The Plaintiffs state that at all material times Squires was sophisticated and experienced in handling defamation allegations against him (see 1995 St. J. No. 2260) and his statements should therefore be viewed in the context of someone with such knowledge and experience. …

[35] Regarding this sentence, Goodridge J. concluded:

> [67] Lines 7 to 10 of paragraph 33 repeat the same substantive material as found in lines 32 to 36 of paragraph 7 of the 2013 statement of claim. That prior paragraph was struck by Hurley, J. because its content was scandalous, frivolous and vexatious. Leave to amend the old paragraph 7 was *not* granted. [Italics in the original.]

In the result, Hurley J. having struck the paragraph and having refused leave to amend, the sentence at issue is not before this Court because leave to appeal was refused on issues determined by Hurley J.

[36] The second portion of paragraph 33 that was struck by Goodridge J. states:

> As a result, Squires and Breen of Suncor conspired to get James Hynes removed from the project and they were successful in doing so. Also, in late 2013 the Defamatory Campaign, the resources required to respond to Squires and despite

> no wrongdoing whatsoever being uncovered, was a vital and crucial part of Technip's decision not to renew James Hynes contract. The defamation of Technip, its other employees also grounds a claim by the Plaintiffs to intentional interference with its economic interests.

[37] Regarding this portion, Goodridge J. concluded:

> [68] The remainder of paragraph 33 (lines 14 to 21) provides conclusions and argument, including a new allegation of defamation against a non-party. Material facts are absent and the overall content is frivolous and vexatious.

The reasons given by Goodridge J. are sound. This pleading is frivolous and vexatious as defined above.

[38] I turn, then, to paragraph 37. The lines at issue state:

> … It is further alleged that the defamation of Technip, Sam Allen and Jason Muise, outlined above, while not actionable by the Plaintiffs directly, was an intentional interference with James Hynes economic interests which caused the loss of his contract in 2013.

[39] In striking this sentence, Goodridge J. concluded:

> [77] The last four lines are new, and add that the Defendants defamed non-parties and that conduct toward non-parties was an intentional interference with the First Plaintiff's economic interests. The material facts to establish the links of logic are absent. The pleading does not support a cause of action for intentional interference with economic interests and is frivolous and vexatious. The plea of defamation against non-parties is also frivolous and vexatious.

[40] Again, Goodridge J. gave reasons for striking this portion. Those reasons are consistent with the above definition of what constitutes frivolous and vexatious pleading.

Paragraphs for Which Leave to Appeal was Refused

[41] At the hearing, Seaforce asked the Court to review several paragraphs which had been struck for non-compliance with Hurley J.'s order. However, leave to appeal regarding those paragraphs was not granted. Accordingly, the decision of Goodridge J. remains in effect.

Paragraphs 7 and 8 – Pro Dive's Issue

[42] Pro Dive submits that paragraphs 7 and 8 of the statement of claim should have been struck for failure to provide material facts. In finding the amended paragraphs to be acceptable, Goodridge J. explained:

> [20] The new paragraphs 7 and 8 address the deficiencies by cross-reference to later, unspecified paragraphs of the 2014 statement of claim. The essence of the alleged defamatory communications, who spoke or published the words, the persons to whom the alleged defamatory communications were made, and the date of the communications are found scattered among paragraphs [as listed]. It is not a good way to lay out the material facts to support a defamation action because it is challenging for the Defendants to tie together the allegations in paragraphs 7 and 8 with the subsequent disclosure of material facts. However, on balance it is accepted.

[43] Goodridge J. clearly turned his attention to the deficiencies in these paragraphs before exercising his discretion to permit them to stand. The exercise of that discretion falls properly within the mandate of the applications judge absent some error in principle, which has not been demonstrated by Pro Dive.

Costs

[44] The inability of Seaforce to produce an acceptable statement of claim is inconsistent with the interests of both parties and the administration of justice. Even after Goodridge J.'s decision, Seaforce may choose to make further amendments to several paragraphs of the statement of claim.

[45] The first statement of claim was issued on June 22, 2012 and has been amended a number of times, including once as a consequence of Hurley J.'s decision. If Seaforce had difficulty in obtaining the material facts to ground the statement of claim, it was open to it to seek the court's authority to conduct an examination for discovery prior to the close of pleadings under rule 30.02(b). The onus is on Seaforce to provide a proper statement of claim to which Pro Dive can respond.

[46] Seaforce had only partial success in its application for leave to appeal, with the appeal being limited to those instances where pleadings were struck as being frivolous and vexatious or the improper inclusion of interpretation, inferences, conclusions and innuendo. Seaforce was unsuccessful on the appeal of those issues.

[47] In the circumstances, given Seaforce's failure to provide a proper statement of claim after the passage of four years and despite directions from Hurley J., I would order that Pro Dive have its costs of the application for leave to appeal and the appeal on column 4 of the scale of costs.

SUMMARY AND DISPOSITION

[48] In summary, Goodridge J. did not err in the exercise of his discretion to strike the challenged portions of the statement of claim on the basis that they were frivolous and vexatious or that they improperly pleaded interpretation, inferences, conclusions and innuendo.

[49] I would dismiss Pro Dive's submission that Goodridge J. erred in failing to strike paragraphs 7 and 8 of the statement of claim.

[50] In the result, I would dismiss the appeal, with costs to Pro Dive under column 4 of the scale of costs for the application for leave to appeal and the appeal.

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B. G. Welsh J.A.

I Concur: _____

J. D. Green C.J.N.L.

I Concur: _____

M. F. Harrington J.A.