

Civil Procedure
Winter Term 2026

Lecture Notes No. 8

VII. PLEADINGS

Amending Pleadings

Rule 26

26.01 On motion **at any stage of an action** the court shall grant leave to amend a pleading on such terms as are just, unless prejudice would result that could not be compensated for by costs or an adjournment.

26.02 A party may amend the party's pleading,

(a) without leave, before the close of pleadings, if the amendment does not include or necessitate the addition, deletion or substitution of a party to the action;

(b) on filing the consent of all parties and, where a person is to be added or substituted as a party, the person's consent; or

(c) with leave of the court.

Miguna v. Ontario (Attorney General)
2005 CanLII 46385 (Ont. C.A.)

- **Here the pleadings were scandalous and an abuse (grave unspecific allegations) and leave to amend was refused; leave allowed on appeal – fairness favours amendment if no prejudice.**

The plaintiff was arrested for sexual assault and acquitted. He then sued the Crown alleging many improper acts in the police investigation and Crown prosecution of his criminal charges, including racial profiling. His pleadings were struck with leave to amend refused. He then appealed to the Court of Appeal which allowed his appeal in part.

Per Blair J.A.

[14] By any standards, Mr Miguna's statement of claim is not well pleaded. He is claiming \$17.5 million in damages and alleging the

gravest of allegations against the Crown Attorney and Police defendants. Yet, **instead of focusing his claim and the factual assertions supporting it on the few bases that may be open to him, he has taken the scattergun approach and raises – according to the respondents’ count – somewhere between sixteen and twenty-five causes of action...**

[15] In addition, **Mr. Miguna’s statement of claim confuses the need to plead the material facts relied upon – and in the case of malicious prosecution, the need to do so with full particularity – with the view that superimposing pejorative adverbs or adjectives one upon the other is a suitable substitute for pleading facts.** For example, each of the Crown Attorney defendants is repeatedly alleged to have “negligently, incompetently, unethically, recklessly, and unprofessionally” (and, occasionally, “arrogantly”) engaged in various types of impugned activities. But the pleading is very sparse when it comes to setting out material facts in support of the sweeping allegations made.

[16] Having said that, however, the statement of claim does contain some basis for alleging the core causes of action that are asserted, and in my view, Mr. Miguna should be given an opportunity to amend to make out his case properly on a pleading basis...

...

[19] **The motion judge accepted the respondents’ arguments that the statement of claim in its entirety was deficient... He concluded, however, that he should exercise his discretion not to grant leave to amend. His exercise of discretion was based upon the following considerations:**

- a) **the appellant had been made aware of the deficiencies in the pleading and had had ample opportunity to amend, but had not done so (and the proposed amended statement of claim presented at the hearing was deemed to be similarly deficient);**
- b) **the appellant had committed a grievous error in misrepresenting the reasons of the trial judge at the criminal trial on the charges of sexual assault; and,**
- c) **the appellant had made bald allegations of racial profiling, which amounted to a serious abuse.**

[20] **Respectfully, the motion judge erred in principle in refusing to grant Mr. Miguna leave to amend his statement of claim for the foregoing reasons, in the circumstances of this case. He**

placed too much emphasis on what he perceived as the appellant's failure to move quickly to deliver a proper amended statement of claim, in the face of the respondents' criticisms of his pleading, and he appears to have reacted so as to punish Mr. Miguna for his erroneous characterization of the reasons of the trial judge at his criminal trial and for his allegations of racial profiling. These are factors that might well attract cost consequences as a sanction, but they do not justify a refusal to grant leave to amend in the circumstances.

...

[24] ... the test for granting leave to amend a pleading is not whether the pleader should be punished for previous misstatements or for making serious but bald allegations; rather, the test is whether the amendment can properly be made without prejudice to the other side. Here, there is no prejudice to the respondents in permitting Mr. Miguna an opportunity to rescue his statement of claim by properly pleading the facts within his knowledge relevant to the causes of action available to him that do exist in law.

The amended claim was also the subject of litigation; see **Miguna v. Toronto Police Services Board, 2008 ONCA 799**.

Stekel v. Toyota Canada Inc.
2011 ONSC 6507 (Ont. S.C.J.)

- Here the pleadings named a subsidiary and not the parent corporation. There was actual knowledge that damages were being sought from the parent; no prejudice to the defendant and thus plaintiff should be allowed to amend.

The plaintiff brought an action against the Canadian subsidiary of Toyota rather than the parent company and sought to amend the Statement of Claim to amend the pleadings and add the parent company. The claim against the parent company was beyond the basic limitations period. The doctrine of misnomer allows a correction to a mistaken identification of a party under s.21(2) of the Limitations Act and the plaintiff's position was that it ought to be allowed to amend its claim. The appeal by the plaintiff was dismissed as it was held that the claim was intended to include the parent company and the defendant knew as much. Should the Court refuse the amendment based on prejudice to the defendant?

Per Campbell J.:

[14] The Rules of Civil Procedure cannot properly be applied so as to effectively expand the ability of plaintiffs, through court order, to add party defendants to claims after the expiration of limitation periods.

[15] Rule 5.04 (2) provides that, at any stage of a proceeding, the court may “add, delete or substitute a party” or “correct the name of a party incorrectly named,” on such terms as are just, “unless prejudice would result that could not be compensated for by costs or an adjournment.” Rule 26.01 provides that, at any stage of an action, the court “shall grant leave to amend a pleading” on such terms as are just, “unless prejudice would result that could not be compensated for by costs or an adjournment.”

...

[19] While rule 5.04(2) of the Rules of Civil Procedure formulates the general procedural rule for the addition, deletion, or substitution of other parties somewhat differently, this general rule cannot properly be applied so as to effectively change the interpretation of s. 21 of the Limitation Act, 2002. In short, in circumstances where a limitation period has expired, rule 5.04(2) cannot be employed by the court to add a party to an ongoing proceeding unless it is only to “correct the name of a party incorrectly named” within the meaning of s. 21(2) of the Limitations Act, 2002.

...

[24] The Court of Appeal for Ontario has made it clear that a plaintiff’s pleading will be viewed as reflecting a correctible “misnomer” in respect of a defendant where it is apparent: (1) that the plaintiff intended to name the defendant; and (2) that the intended defendant knew it was the intended defendant in relation to the plaintiffs claim. Moreover, such a misnomer can be corrected notwithstanding that it requires that the defendant be added to the litigation after the expiry of the limitation period...

...

[33] As the master observed, in all of the circumstances of this case, it is more credible than not (and more likely than not), that TMC knew all about the plaintiffs’ claims....

[36] To the extent that the issue of potential prejudice to TMC must be considered in determining whether or not the proposed amendment can appropriately be made under s. 21(2) of the Limitations Act, 2002 and/or under rule 5.04(2) of the Rules of Civil Procedure, the evidence fails to establish any such prejudice... [this is] precisely the type of “prejudice” contemplated by s. 21(2) of the Limitations Act, 2002, it can not properly be relied upon to defeat a proposed amendment that is otherwise in accordance with the provision...