Spears v. Young et al, 2000 NWTSC 66

Date: 2000 10 27
Docket: CV 06643

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

MODENA SPEARS

Plaintiff

-and-

CHERYL YOUNG, PAUL YOUNG, SHAREN CONNELLY, SHARRON OLIPHANT, CAROLINE WIEBE, DR. CHARLES MACNEIL, ANDREW LOCKHART, DALE HANSON, KAREN LEIDL, DR. FRAN PATTERSON, THE INUVIK REGIONAL HEALTH BOARD, THE COMMISSIONER OF THE NORTHWEST TERRITORIES, NELLIE COURNOYEA, KENNETH LOVELY, STEPHEN KAKFWI, DONALD AVISON, DAVID RAMSDEN, and KELVIN NG, DOROTHY COCHRANE and HER MAJESTY THE QUEEN IN RIGHT OF CANADA.

Defendants

Applications by Defendant Her Majesty the Queen in Right of Canada to strike out statement of claim or sever action; applications by Plaintiff to amend statement of claim and to compel certain Defendants to re-attend for examination for discovery at their expense.

REASONS FOR JUDGMENT OF THE HONOURABLE JUSTICE V.A. SCHULER

Heard at Yellowknife, Northwest Territories on October 16, 2000.

Reasons Filed: October 27, 2000

Counsel for the Plaintiff: Allan Garber

Counsel for the Defendant, Her Majesty the Queen in Right of Canada and Paul Young: Alan Regel

Counsel for the Defendant, Dr. Fran Patterson: Jonathan P. Rossall

Counsel for Cheryl Young, Sharen Connelly, Sharron Oliphant, Caroline Wiebe, Dr. Charles MacNeil, Andrew Lockhart, Dale Hansen, Karen Leidl and The Inuvik Regional Health Board: Garth Malakoe

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MODENA SPEARS

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Defendants

REASONS FOR JUDGMENT

[1] A number of applications were brought before me in Chambers, some by the Plaintiff and some by the Defendant Her Majesty the Queen in Right of Canada ("the Crown"). The Plaintiff's application is for permission to amend her statement of claim for the fourth time and for an order that the Defendants Paul and Cheryl Young re-attend for examination for discovery at their own expense. The Crown seeks an order declaring that an earlier order amending the statement of claim is inoperative, alternatively, striking out the statement of claim as against the Crown or, alternatively, striking out certain allegations in the statement of claim or, if the Crown remains a party in the action, severing that aspect of the action from the remainder of the claim.

Background

[2] Because the applications involve both the merits of the Plaintiff's claims and the history of this litigation, some background is necessary. The Plaintiff was the nurse in charge at the Health Center in Fort Good Hope. She commenced this action in September of 1996, alleging that some of the Defendants, most of them her co-workers or health care personnel connected with the Inuvik Regional Health Board, had made defamatory statements about her and had maliciously conspired to defame, harass and intimidate her, in part to conceal instances of professional malpractice and misconduct that the Plaintiff had observed and reported. Among the Defendants in this part of the Plaintiff's claim are Cheryl Young, a nurse colleague, and her husband, Paul Young, a member of the Royal Canadian Mounted Police ("R.C.M.P.") then stationed in Fort Good Hope

[3] The statement of claim also included a claim against various territorial government officials which has since been discontinued and a claim, still pursued, against various health care providers who allegedly failed to treat the Plaintiff properly for injuries she suffered. Essentially, the Plaintiff claims that there was an "ongoing campaign" (the words used in the statement of claim) against her by the various Defendants.

[4] In early October 1997, the Plaintiff discovered that the R.C.M.P. were investigating a complaint against her of unlawful confinement. The complaint had been made by Cheryl Young, arising out of incidents which she said took place in 1995 and which she had not brought to the attention of the R.C.M.P. until June of 1997, although the Defendant Paul Young was aware of them at the time they occurred. In early December of 1997, just as examinations for discovery got underway, the Plaintiff's counsel was told that the Plaintiff was no longer considered a suspect, although it appears from the material filed that the investigation was not formally concluded without charge until later that month.

[5] In 1998, the Plaintiff applied for a third time to amend her statement of claim. The amendment was granted on June 12, 1998. The result was that Her Majesty the Queen in Right of Canada was added as one of two new Defendants. The allegations in the statement of claim were amended and included the following (references are to paragraph numbers in the pleading):

57. On or about July, 1997, the Defendant Cheryl Young, acting in bad faith and motivated by malice towards the Plaintiff, complained to the RCMP that she had been imprisoned, kidnapped and wrongfully detained by the Plaintiff.

58. The complaint made by Cheryl Young was false, malicious, defamatory and completely without merit.

59. The Defendant Paul Young, acting in his capacity as a Corporal with the RCMP and in league with his wife the Defendant Cheryl Young, used his position with the RCMP to cause an RCMP investigation to be made into his wife's malicious and groundless complaint. Alternatively, the Defendant Paul Young, acting in his capacity as a Corporal with the RCMP, encouraged or participated in the said RCMP investigation, as a result of which the Plaintiff suffered much fear, anxiety, stress and psychological trauma.

60. The RCMP investigation into the complaint made by Cheryl Young was not carried out in good faith, but was done furtherance of a scheme on the part of the Defendants Paul and Cheryl Young to harass, intimidate and victimize the Plaintiff.

61. Corporal Greg Brown, a member of the RCMP stationed at all material times at Fort Good Hope, advised the Plaintiff early in the investigation that she would be allowed to see a copy of the complaint filed by Cheryl Young, but to date the RCMP has not allowed the Plaintiff to see the complaint.

62. In furtherance of its investigation, members of the RCMP, including Corporal Greg Brown and Corporal Young, advised members of the public, including the Defendant Oliphant, that the Plaintiff was under criminal investigation.

63. As a result of the conduct of the Defendant Cheryl Young and the Defendant Corporal Paul Young acting in his personal capacity and in his capacity as a member of the RCMP, the Plaintiff has suffered the following loss and damage:

    a) Damage to her name and reputation;

    b) Nervous shock, anxiety, stress and psychological trauma.

64. Her Majesty the Queen in Right of Canada is vicariously liable to the Plaintiff for the negligence and breach of duty of Corporal Paul Young which occurred in the course of his employment as a member of the RCMP.

[6] For reasons which I will refer to below, the Crown argues that the June 12, 1998 order which gave leave to make those amendments is no longer operative.

[7] One of the applications now before me is for leave to make further amendments to the statement of claim. The proposed amendments do not materially change the claims made by the Plaintiff but they do clarify some of the allegations. In particular, some of the proposed amendments say that:

39. On or about July, 1997, the Defendant Cheryl Young, acting in league with her husband the Defendant Corporal Paul Young, complained to the RCMP that in August of 1995 she had been imprisoned, kidnapped and wrongfully detained by the Plaintiff. Cheryl Young's complaint to the RCMP was not made in good faith but was made for the purpose of harassing, victimizing and intimidating the Plaintiff during the course of this litigation.

40. The complaint made by Cheryl Young was false, malicious, defamatory and completely without merit.

41. The Defendant Paul Young, acting in his capacity as a Corporal with the RCMP and in league with his wife the Defendant Cheryl Young, used his position with the RCMP to cause an RCMP investigation to be made into his wife's malicious and groundless complaint. Further, the Defendant Paul Young, acting in bad faith and in league with his wife the Defendant Cheryl Young, participated in the said RCMP investigation by providing a false, misleading and unsolicited witness

statement and opinion to one of his RCMP colleagues, Constable Greg Brown, who had been assigned to handle the investigation.

42. The RCMP investigation into the complaint made by Cheryl Young was not carried out in good faith, but was done in furtherance of a scheme on the part of the Defendants Paul and Cheryl Young to harass, intimidate and victimize the Plaintiff. In particular:

a) The RCMP insisted on interrogating the Plaintiff in circumstances where the Plaintiff had made it clear to the RCMP that she would not give a statement without her legal counsel being present;

b) The RCMP failed to provide the Plaintiff with a copy of Cheryl Young's statement even though Constable Brown had promised to do so; and

c) The RCMP proceeded with the investigation even though the investigating officer, Constable Brown, had concluded that there was no evidence that the Defendant Cheryl Young had been physically restrained.

43. In furtherance of its investigation, members of the RCMP, including Corporal Greg Brown and Corporal Young, advised members of the public, including the Defendant Oliphant, that the Plaintiff was under criminal investigation.

44. As a result of the conduct of the Defendant Cheryl Young and the Defendant Corporal Paul Young acting in his personal capacity and in his capacity as a member of the RCMP and referenced in paragraphs 39 through 43 herein, the Plaintiff has suffered the following loss and damage:

a) Damage to her name and reputation; and

b) Nervous shock, anxiety, stress and psychological trauma.

45. Her Majesty the Queen in Right of Canada is vicariously liable to the Plaintiff for the negligence, breach of duty and wilful misconduct of Corporal Paul Young referenced in paragraphs 39 through 43 herein which occurred in the course of his employment with the RCMP.

Is the June 12, 1998 order allowing the amendments inoperative and if so, should the Court cure that defect?

[8] The order made on June 12, 1998, permitting the amendments adding the claim against the Crown, did not specify the time within which those amendments were to be made. Accordingly, by operation of Rule 135, the time was 15 days. Counsel for the Crown relied on that rule, which also provides that where the amendments are not made within the 15 days, the order granting leave to amend becomes inoperative on the expiration of the 15 days, unless the time is extended by the Court. He also relied on Rule 138, which provides that the amended pleading shall be delivered within the time allowed for amending it, the word "delivered" meaning filed and served pursuant to Rule 1.

[9] In this case, the amended statement of claim was not filed until July 7, 1998 and not served on the Crown until November 19, 1998. The Plaintiff explains the delay by the correspondence that went back and forth between her counsel and counsel for those Defendants other than the Crown settling the terms of the order and a second order made the same day which related to the release of medical records. The Plaintiff also points out that counsel for the Crown had been provided with a copy of the notice of motion in support of the amendments and the proposed amended statement of claim in May of 1998. It was not until May of 2000 that the Crown filed its application for a ruling that the order permitting the amendments has become inoperative.

[10] There is no doubt that the requirements of Rules 135 and 138 were not met. The only question is whether the times for filing and serving the amended statement of claim should be extended now to the dates on which those actions were taken.

[11] Counsel for the Crown made a number of arguments in opposition to the extension of time. In my view, most of those arguments are more properly dealt with under his application that the statement of claim be struck out as against the Crown. I see the issue as to the extension of time as a procedural one that does not involve the merits of the Plaintiff's claim. Accordingly, I am not going to consider the merits of the claim on the issue as to whether the time should be extended so as to render the June 12, 1998 order operative.

[12] Counsel for the Crown asserts that I should not extend the time because counsel for the Plaintiff did not advise the Court, when he spoke to the amendments on June 12, 1998, that the R.C.M.P. opposed his application to add the Crown as a Defendant. Counsel for the Crown relies on a letter which is in the affidavit material and which he

sent to counsel for the Plaintiff on receipt of the notice of motion and proposed amended statement of claim. In that letter, he advised counsel for the Plaintiff that he would likely be seeking an adjournment of the motion. Counsel for the Plaintiff wrote back, asserting that the Crown was not a party to the lawsuit and had no standing to make any representations to the court and that any adjournment request would be opposed. Counsel for the Crown did not appear on the application on June 12, 1998, nor was any request for an adjournment relayed to the Court.

[13] I note that the correspondence relied on by counsel for the Crown does not say what the position of the R.C.M.P. was with regard to being added as a Defendant. Even if counsel for the Plaintiff was aware that the R.C.M.P. did not want to be added as a party, I doubt that would make any difference to whether the order would have been granted. Most proposed defendants probably object to being sued. It may be that had counsel for the Crown appeared on the application, he would have been granted standing to oppose the addition of the Crown as a Defendant. I do not want to be taken as deciding that. In any event, it seems to me that counsel cannot now complain that his client's position was not put before the Court. Either the Crown had no standing on the application or, if it wanted to argue that it did have standing, it should have appeared or requested an adjournment.

[14] Counsel for the Crown also pointed out a number of other facts that he said should have been brought to the Court's attention when the order was sought, such as the fact that the R.C.M.P. investigation did not result in a charge being laid against the Plaintiff. In effect, his argument is that the Plaintiff ought to have presented to the Court all the potential weaknesses in her case against the Crown. But the question on an application to add a defendant is not whether the plaintiff has a good case; it is whether the plaintiff has a possible case against that defendant. The Court will not be engaged at that stage in assessing the merits of the case.

[15] Counsel for the Crown also argued that to allow the extension would result in prejudice to the Crown because of the expiry of a limitation period. He relied on the two year limitation period set out in the *Limitation of Actions Act*, R.S.N.W.T. 1988, c. L-8, section 2(1)(c) for actions for defamation. He submitted that it ran from October 1, 1997, the date on which the Plaintiff learned of the R.C.M.P. investigation, and so her claim against the Crown had to be filed by October 1, 1999.

[16] The order permitting the amendments was made within the limitation period and the amended statement of claim was served within the limitation period. The Crown had notice of the claim against it well before the limitation period expired. The only thing that

has happened is that the order allowing the amendments has become inoperative (a condition which was always subject to the Court ordering otherwise) and the Plaintiff has not sought to rectify that until now, after the expiry of the limitation period. Nor did the Crown complain of it until after the limitation period had expired. In the circumstances, I am not satisfied that there is any real prejudice to the Crown.

[17] I view the failure to file and serve the amended statement of claim in accordance with the Rules of Court as a technicality that should not defeat any merit the claim may have. Accordingly, the time for filing the amended statement of claim is extended to July 8, 1998 and the time for service of it to November 20, 1998.

Should the claim against the Crown be struck out on the basis that it discloses no cause of action*?*

[18] Rule 129(1)(a)(i) provides that the Court may order that a pleading be struck out or amended on the ground that it discloses no cause of action. Rule 129(2) says that no evidence is admissible on an application under subrule (1)(a)(i). I have to proceed on the assumption that the allegations in the statement of claim are true and ask whether they give rise to at least an arguable cause of action.

[19] Since the statement of claim could be amended to cure any deficiencies, I will refer to both the amended statement of claim filed pursuant to the June 12, 1998 order and the further amended statement of claim proposed by the Plaintiff on this application, the relevant portions of which are set out earlier in this decision.

[20] The gist of the claim against the Crown appears from the statement of claim and the amendments to be the following. The Plaintiff alleges that Paul Young and Cheryl Young conspired with each other and others to cause injury to the Plaintiff. As part of their desire to cause injury to the Plaintiff, Cheryl Young made a false complaint. She did so in league with Paul Young, who, in his capacity as a member of the R.C.M.P. and using his position as such, joined her in causing a police investigation to be made into the false complaint. As a result, the Plaintiff suffered loss and damage. The Crown is vicariously liable as the employer of Paul Young for his conduct in connection with the complaint and the investigation, all of which occurred in the course of his employment.

[21] Paragraphs 42 and 43 of the statement of claim as the Plaintiff proposes to amend it may confuse matters as they suggest there were actions taken by the R.C.M.P. as an institution and by a member or members of the R.C.M.P. other than Paul Young in furtherance of the conspiracy or scheme of the Youngs, yet they do not allege that the R.C.M.P. or its members were parties to that conspiracy. The only way in which it is suggested that the Crown is liable is vicariously, as indicated above, for the actions of Paul Young. However, it can be inferred from the wording of paragraphs 42 and 43 that bad faith is alleged on the part of the R.C.M.P. ; that it took the actions it did to further the scheme of the Youngs.

[22] It would seem, therefore, that the claim against the Crown is based either on (i) vicarious liability for the actions of Paul Young in causing harm to the Plaintiff by his involvement in the investigation or (ii) bad faith on the part of the R.C.M.P. in pursuing the investigation or (iii) both. It is not clear whether the claim is brought on the basis of malicious prosecution or conspiracy to injure or both.

[23] The rules for striking out pleadings are set out in *Fullowka v. Whitford*, [1997] N.W.T.R. 1 (C.A.). The impugned pleading must be read generously. The major rule is that a pleading will not be struck out for want of a cause of action unless the flaw is plain and obvious and beyond doubt; the claim must be hopeless to be struck out. The pleading need only give facts which create a cause of action and need not name the cause of action. A good defence does not constitute want of a cause of action, nor grounds to strike out. Finally, in *Fullowka*, the Court of Appeal points out that the rule does not force the Court to strike out, but only permits it to do so.

[24] It seems to me that it is sufficient that the statement of claim can be read as pleading the causes of action referred to above. If the allegations are proven, they could be grounds for one or both of those causes of action. The law does not appear to be settled as to whether an action for malicious prosecution requires that the defendant has actually laid a charge; see, for example, *Temelini v. Ontario Provincial Police (Commissioner)* (1990), 73 O.R. (2d) 664 (Ont. C.A.), leave to appeal to the Supreme Court of Canada refused, 1 O.R. (3d) xii; *Hinde v. Skibinski*, [1994] O.J. No. 1701 (Ont. Gen. Div.); *Khanna v. Royal College of Dental Surgeons of Ontario* (2000), 44 O.R. (3d) 95 (Ont. C.A.), in which leave to appeal to the Supreme Court of Canada was recently refused.

[25] Counsel for the Crown submitted that there can be no cause of action based on a member of the R.C.M.P. telling any member of the public that an investigation is underway. But the statement of claim is not clear that that is the basis of the cause of

action. That particular aspect of the pleading may relate more to the element of damages or injury to the Plaintiff.

[26] Counsel for the Crown also complained of the plea that the Crown is vicariously liable for the negligence, breach of duty and wilful misconduct of Paul Young, pointing out that there is no plea that Paul Young was negligent or breached any duty. Again, however, that may just be a deficiency in the pleading. The statement of claim is clear in alleging that Paul Young acted out of malice. If he did, that might amount to negligence or a breach of duty or wilful misconduct. A logical reading of the statement of claim is that the Crown is vicariously liable for the malicious conduct of the Defendant Paul Young.

[27] To the extent that the statement of claim alleges that Paul Young abused his authority as a police officer, counsel for the Crown submitted that particulars must be provided pursuant to Rule 117. However, that rule does not apply to abuse of authority and its reference to undue influence must be to the very specific meaning those words have in law, as was stated in *Fullowka*. See also *Goodman Estate v. Geffen*, [1991] 5 W.W.R. 389 (S.C.C.).

[28] As has been pointed out in some of the cases cited above, novelty is not a bar to an action at the pleading stage. This case may be novel in that it is brought against the Crown for liability for the actions of a police officer or officers in connection with an allegedly groundless and bad faith criminal investigation of the Plaintiff in the context of a civil suit by that Plaintiff against one of those police officers and his wife. The Plaintiff may or may not be able to substantiate her case with facts but I think that decision is best left to the trial judge. I cannot say that the Plaintiff has no arguable cause of action.

Is the action against the Crown frivolous or vexatious?

[29] Rule 129(1)(a)(ii) permits the Court to strike out a pleading on the ground that it is frivolous or vexatious.

[30] Counsel for the Crown argued that the allegations about the lack of good faith in the R.C.M.P. investigation of the Plaintiff are very serious and so they are. He also argued, based on the Plaintiff's answers to questions during cross-examination on her affidavit and the answers of some police officers during cross-examination on affidavits they had sworn, that there is no evidence to support the allegations and that the police evidence to date negates the suggestion that Corporal Young influenced the investigation. For this reason, he says that the claim is frivolous and vexatious.

[31] However, Paul and Cheryl Young have not yet been asked about these allegations, since they would not answer questions about the complaint to the police when they were examined for discovery. Nor does what may be viewed as a weak case at this point necessarily mean that the claim is frivolous and vexatious. That the Plaintiff may not have facts which directly prove her claim is not determinative. At trial, she may be able to persuade a judge to draw inferences from facts which are proven or she may be able to present evidence which is not now in her hands.

[32] As Grange J.A. said in the Ontario Court of Appeal in *Temelini:* "It is true that he [the plaintiff] is woefully short of evidence to prove his case but that is not, and in my view should not be, the test. The test, which has been articulated time and time again, ... is that the rule should be exercised only in the clearest of cases. Where a case cannot succeed because the law forbids it, the rule brings a salutary end to the proceedings. In cases depending on the facts, however, the court should be very loath to determine those issues in a summary fashion."

[33] In my view, this is not the clearest of cases and the claim should not be struck out.

Should the claim against the Crown be struck out as an abuse of process?

[34] The Crown takes the position that the Plaintiff added the Crown as a defendant primarily if not solely for the purpose of obtaining documents from the R.C.M.P. on the issue of the complaint made by Cheryl Young and that the claim should therefore be struck out as an abuse of process under Rule 129(1)(a)(iv). The Plaintiff denies that the Crown was added for the sole purpose of obtaining disclosure of documents.

[35] In my view, if the Plaintiff has an arguable cause of action against the Crown, then even if she also wants the Crown to be a party so as to obtain documents (and I do not make that finding), this does not amount to an abuse of process and is not a reason to strike out the statement of claim. Documents may be obtained from non-parties under Rule 231 and if the Plaintiff was interested only in documents one would expect that she would apply under that rule rather than joining the Crown as a party and taking the risk of a costs award against her in the event her action is unsuccessful.

[36] In any event, as I have found that there is an arguable cause of action, there is no abuse of process.

Should portions of the statement of claim be struck out on the basis that they are embarrassing?

[37] I would not strike any portion of the statement of claim on this basis. The allegations complained of are relevant to the Plaintiff's claim that the R.C.M.P. investigation was not done in good faith. The fact that the pleading could be more clear does not make it embarrassing in the sense the rule is intended to address.

Should the action against the Crown be severed from the action against the remaining Defendants?

[38] Severing the action against the Crown, since that action is at least in part based on vicarious liability for the actions of Paul Young in connection with the investigation into Cheryl Young's complaint, would also mean either severing part of the action against Paul Young from the action against him in defamation or duplicating evidence called against him (and Cheryl Young) in connection with the investigation in a separate action against the Crown. The Plaintiff's position is that all the actions by Paul Young were part of a continuing scheme to cause harm to her. In the circumstances, I think it makes more sense for the matter to continue as one action, at least at this stage. It may be that further down the line, consideration should be given to asking the Court for directions as to how the trial will proceed or even for separate trials. However, I think any such steps would be premature at this stage.

[39] In addition, it seems to me that, as submitted by counsel for the Crown, if there is liability, there is likely to be an issue as to how much of the Plaintiff's claimed loss and damages were suffered as a result of the earlier actions by some of the Defendants and how much as a result of the actions by the Youngs and the R.C.M.P. in connection with the investigation. I would expect that some duplication of evidence might be necessary to sort out those issues whether this proceeds as one action or not.

[40] Accordingly, the claim against the Crown will not be severed.

Is this an appropriate case for a further amendment of the statement of claim*?*

[41] I have set out above the further amendments proposed by the Plaintiff. In my view, although they do not completely resolve the uncertainties in the statement of claim, they do achieve some clarification of it and should be made. The Amended Amended Amended Amended Statement of Claim in the form attached as Schedule "A" to the Written Submissions of the Defendant Patterson, which counsel indicated is the version

sought to be filed, is to be filed and served within 45 days of the date these reasons for judgment are filed.

Should Paul and Cheryl Young attend for further examinations for discovery and if so, should it be at their own expense?

[42] Some more background should be referred to on this point. In December of 1997, prior to the Plaintiff having applied to add the Crown as a defendant in the action, counsel for the Plaintiff had arranged to conduct examinations for discovery of the Youngs in Inuvik. Counsel for the Plaintiff was aware of the criminal investigation but had little information about it. The statements made by Cheryl and Paul Young to the R.C.M.P. had not been disclosed at that point and although the initial investigation had been concluded without a charge against the Plaintiff, that decision was under review by the Department of Justice. Counsel for the Youngs took the position at the examinations for discovery that they would answer questions about the incidents that were the subject matter of the complaint by Cheryl Young to the R.C.M.P. but not about the making of her complaint or the investigation instigated by it. This position was taken on the basis that the police investigation was still open and Cheryl Young had not had time to consider what other options she might have if no charge was laid by the police. Paul Young relied at least in part on his oath of secrecy under the *Royal Canadian Mounted Police Act*.

[43] From the record it is clear that at the time of the discoveries, counsel for the Plaintiff was contemplating amendments to the statement of claim but would not commit to what those amendments would be.

[44] At the time of the examinations for discovery and until July of 1998, the Youngs were living in Norman Wells, Northwest Territories. They then moved to Labrador. Paul Young left Labrador in October 2000 for a posting in Bosnia-Herzogovina and will not return to Canada until the summer of 2001.

[45] Cheryl Young's statement to the R.C.M.P. was not provided to the Plaintiff until March 2000. During that month, counsel for the Plaintiff also learned for the first time that Paul Young had given a statement in connection with his wife's complaint. His statement was not produced until September 2000.

[46] In my view, the questions at the examinations for discovery about the criminal complaint were relevant. It was not sufficient that the Youngs answered questions about the incidents which were the subject matter of the complaint. The making of the complaint and the surrounding circumstances were relevant because they occurred during

the lawsuit by the Plaintiff against those Defendants. As counsel for the Plaintiff noted during the examination of Cheryl Young (page 89 of Exhibit "A" to the affidavit of Cheryl Young filed by undertaking October 13, 2000), he suspected that it was "one more defamatory piece of work". It ties in with what the Plaintiff alleges was a continuing scheme to harass and defame her. The conduct of a party in a lawsuit can also be relevant to the issue of costs and punitive damages. Even without the R.C.M.P. having been added as a party at the time of the examinations for discovery, the making of the complaint was relevant in the context of the suit against the Youngs personally.

[47] I see no reason why the fact that the police investigation had not been completely resolved should have been a barrier to Cheryl Young answering the questions put to her. It was not shown that there was any way in which her answers might have prejudiced the investigation, such as it was at that point. As to Paul Young's reliance on the oath of secrecy, counsel for the Crown did not attempt to use that as justification for not answering and counsel for the Plaintiff did not address it. The oath of secrecy referred to was not included in the materials before me and I have no way of assessing its relevance, considering especially that counsel for the Crown (who is also counsel for Mr. Young) took the position that Mr. Young acted only as a witness in connection with his wife's complaint, and not as a police officer.

[48] No explanation was given as to why it took so long for the statements made by the Youngs to the police to be disclosed to the Plaintiff. At the same time, there has been a significant delay on the part of the Plaintiff in bringing on this application to compel the Youngs to re-attend for examination for discovery and that delay has meant that the costs of re-attendance will be more substantial than had this been done earlier.

[49] In all the circumstances, I order that Paul and Cheryl Young re-attend for examination for discovery, that they answer questions surrounding the making of the complaint by Cheryl Young and their knowledge of the R.C.M.P. investigation into it, and that the costs of such re-attendance be split equally as between them and the Plaintiff.

Summary

[50] To summarize, the applications by the Crown to declare the order made June 12, 1998 inoperative, to strike out parts of the statement of claim and to sever the claim as against the Crown are dismissed. The time for filing and service of the amendments to the statement of claim as a result of that order are extended as set out earlier in these reasons for judgment. The Plaintiff's application to further amend the statement of claim

is granted as set out above. The Plaintiff's application for an order that Paul and Cheryl Young re-attend for examinations for discovery is also granted as set out above and the costs of such re-attendance will be split equally between the said Defendants and the Plaintiff.

[51] Counsel made some reference to the costs of these applications in their briefs. Should they wish to speak to costs they may make arrangements to do so through the registry. Alternatively, if they are content to rely on their briefs, they may advise of that in writing within 45 days of the date these reasons for judgment are filed.

V.A. Schuler
J.S.C.

Dated this 27th day of October, 2000
at Yellowknife NT.

Counsel for the Plaintiff:	Allan Garber
Counsel for the Defendants, Her Majesty the Queen in Right of Canada and Paul Young:	Alan Regel
Counsel for the Defendant, Dr. Fran Patterson:	Jonathan P. Rossall
Counsel for Cheryl Young, Sharen Connelly, Sharron Oliphant, Caroline Wiebe, Dr. Charles MacNeil, Andrew Lockhart, Dale Hansen, Karen Leidl and the Inuvik Regional Health Board:	Garth Malakoe