

COURT OF KING'S BENCH OF MANITOBA

B E T W E E N:

HAIMANA ROMANA,	)	<u>Haimana Romana</u>
	)	on his own behalf
	)	
plaintiff,	)	
	)	
	)	
-and-	)	
	)	
SHARED HEALTH, THE HEALTH SCIENCES	)	<u>Thomas K. Reimer</u>
CENTRE, DR. JANE or JOHN DOE Doe	)	Counsel for Shared Health,
PERSONALLY, and, alternatively carrying on	)	Health Sciences Centre and
business under the name and style of QRS	)	Melody Rogocki
Medical Corporation, and, MELODY ROGOCKI	)	
Registered Nurse,	)	
	)	
defendants.	)	
	)	Judgment Delivered:
	)	April 1, 2026

ASSOCIATE JUDGE GOLDENBERG

INTRODUCTION

[1] The defendants Shared Health, Health Sciences Centre and Melody Rogocki (the moving defendants) brought a motion under Rule 25 of the King's Bench Rules M.R. 553/88 to strike the plaintiff's Fresh Copy Re-Re-Amended Statement of Claim (the 2025 Amendment).

[2] The action arises from the treatment, or alleged lack of treatment, provided to the plaintiff when he attended the Health Sciences Centre emergency department on July 10, 2022, with severe chest pain.

DECISION

[3] The 2025 Amendment ought to be struck in its entirety without leave to amend.

BACKGROUND

[4] The plaintiff initially filed a statement of claim, followed by an amended statement of claim. The moving defendants, together with a physician defendant named at that time, brought a motion to strike the amended statement of claim.

[5] The amended statement of claim was struck in its entirety. The plaintiff was granted one final opportunity to amend his pleading, except against the physician defendant.

[6] In his written endorsement, Associate Judge Lee identified significant deficiencies in the amended pleading. At paragraph 13 of his decision, he summarized the required corrections as follows:

The pleadings consisting of argument, evidence and otherwise improper content, ... need to be removed. The statement of claim needs to succinctly set out the cause of action, the duty owed by the defendants with respect to treatment that he received, and breaches of that duty which the plaintiff alleges as treatments and procedures he did not receive on his attendance at the Health Sciences Centre on July 10, 2022, as well as the damages suffered as a result of the alleged breach of duty.

[7] The plaintiff filed the 2025 Amendment on May 29, 2025. The moving defendants now seek to strike that pleading without leave to amend.

POSITIONS OF THE PARTIES

[8] The moving defendants submit that the plaintiff's claim commenced outside the applicable limitation period and that the limitation period has not been tolled by disability. They argue that it is plain and obvious the action cannot succeed and must be struck without leave to amend. The moving defendants also submit that the 2025 Amendment constitutes an abuse of process.

[9] The plaintiff argues that the claim is neither statute-barred nor an abuse of process. He submits that the limitation period was tolled because he was disabled for a period after July 10, 2022.

IS THE CLAIM STATUTE BARRED ON ITS FACE?

[10] Rule 25.11(1)(d), permits the court to strike all or part of a pleading, with or without leave to amend, where it fails to disclose a reasonable cause of action.

[11] While limitation defences are ordinarily determined on a summary judgment motion after pleadings are closed, a statement of claim may be struck where it is clear on its face that the limitation period has expired (see: ***Abas Auto Inc. v. Superior General Partner Inc.***, 2015 MBCA 104).

[12] In the 2025 Amendment, the plaintiff pleads that the cause of action arose on July 10, 2022 (para. 87), and that his claim is governed by ***The Limitations of Actions Act***, C.C.S.M. c. L150 (para. 86).

[13] The original claim was filed on September 4, 2024, more than two years after July 10, 2022. On the face of the pleading, it was commenced beyond the two-year limitation period under the former ***The Limitations of Actions Act***, R.S.M. 1987, c.

L150 (the **LAA**). Accordingly, unless the plaintiff has properly pled facts capable of extending the limitation period, the claim is statute-barred and has no reasonable prospect of success.

WAS THE PLAINTIFF INCAPABLE OF MANAGING HIS AFFAIRS?

[14] Section 7 of the **LAA** provides that time does not run for limitation purposes while a person is “under a disability,” including while the person is “in fact incapable of the management of his affairs because of disease or impairment of his physical or mental condition.” The onus of pleading and proving such disability rests on the person seeking to rely on it.

[15] Associate Judge Lee addressed these provisions in his earlier decision. He emphasized that incapacity requires an inability to manage one’s affairs, and he expressly directed the plaintiff to plead, as material facts, the period during which he claimed to have been under such a disability.

[16] Despite that clear direction, the 2025 Amendment still does not plead that the plaintiff was incapable of managing his affairs for any defined period following July 10, 2022.

[17] Paragraphs 86 to 90 of the 2025 Amendment are pleaded under the heading “Tolling of the Limitations of Actions Act.” None of those paragraphs expressly pleads incapacity to manage affairs.

[18] The plaintiff does plead that he suffered a myocardial infarction on July 10, 2022, and that he was “physically disabled” between July 10, 2022, and August 2022 (para. 88(f)). He also pleads a pre-existing diagnosis of schizophrenia and an

exacerbation of his mental condition, including clinical depression, between July 10, 2022, and August 31, 2022 (para. 88(g)).

[19] He further pleads that his “capacity to comprehend” the events relating to his cardiac condition improved in late August and early September 2022 (paras. 88(h)–(i)).

[20] At most, these allegations assert a temporary physical and psychological impairment affecting comprehension. They do not plead that the plaintiff was incapable of managing his affairs for any continuous period extending to September 4, 2022, which would be necessary to extend the limitation period to September 4, 2024.

[21] I find that these pleadings fall well short of pleading the material facts needed to toll the limitation period under section 7 of the **LAA**.

[22] This is therefore one of the cases where the limitation defence is clear from the face of the plaintiff’s own pleading. Given that the plaintiff has again failed to plead incapacity, despite having been granted a final opportunity to do so, there is no possibility that the limitation period can be extended. It is plain and obvious that the claim must fail.

IS THE 2025 AMENDMENT AN ABUSE OF PROCESS?

[23] Rule 25.06(1) requires that a pleading contain a concise statement of material facts, not evidence or argument.

[24] The 2025 Amendment plainly fails to comply with that rule and with the express directions of Associate Judge Lee. It is therefore an abuse of process.

[25] Specifically:

(a) Associate Judge Lee directed the plaintiff to remove irrelevant material, evidence, and argument. Large portions of the 2025 Amendment—particularly paragraphs 13 to 57—remain devoted to irrelevant narrative, evidentiary assertions, and argument.

(b) Associate Judge Lee directed that allegations relating to a report allegedly prepared by Ms. Gunn-Matson be removed. Those allegations nonetheless remain at paragraphs 50 to 57 of the 2025 Amendment.

(c) Associate Judge Lee ruled that concealed fraud could not be relied upon to extend the limitation period, yet paragraph 91 of the 2025 Amendment, spanning two pages, is devoted to that very issue.

[26] The plaintiff was given one final opportunity to file a proper pleading. He has failed to do so.

CONCLUSION

[27] The 2025 Amendment constitutes an abuse of process and, on its face, discloses a claim that is barred by the applicable limitation period with no prospect of extension.

[28] The 2025 Amendment is therefore struck in its entirety without leave to amend.

[29] The plaintiff shall pay the moving defendants' costs of this motion on a Class 2 tariff basis, payable in any event of the cause.

J. L. Goldenberg
Associate Judge